

MPs are securing the KGB'-style SBU. Analysis of amendments to the security service reform

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The pre-final text of the draft law on the reform of the Security Service of Ukraine was announced by the head of the Parliament's working group and the deputy head of the Verkhovna Rada Committee on National Security Maryana Bezugla. According to her, this version will be taken as basis by the Committee for voting in the second reading. The Anti-Corruption Action Center has analyzed the published text and believes that critical risks remain in the draft law. Members of Parliament ignored recommendations of the International Advisory Group or took them into account only formally.

The draft law on the reform of the SBU [has been criticized](#) during preparation for the first reading. However, the large number of problematic provisions are preserved in the text that Members of Parliament prepared for the second reading.

In fact, the SBU will not be deprived of investigative function and this is one of the biggest problems of the draft law despite the fact that it is declared as part of the reform. While some provisions of the draft law state about the expiration of functions of the investigation in 2024-2026, other ones, on the contrary, still assign the investigative functions to the SBU.

In particular, it will be stipulated directly in the body of the new law that the SBU retains the function of pre-trial investigation, and one of tasks of the Service is to "prevent, detect and stop" certain crimes. The same remains among powers of the SBU. Moreover, authors even supplement "investigative function" to the article 19 of the Law of Ukraine "On National Security", which initiated the SBU reform in 2018 and clearly defined what functions the Service should perform by removing the investigation.

"Such manipulations of the text are the attempt of the Parliament to "sell" to society and international partners the "reform" and deprivation of the investigation by simple deception. After all, such contradictory provisions in the draft law will allow the Service to investigate cases even after the expiration of all possible deadlines for these powers. Such an edition is just the deception and imitation. And the draft law cannot be adopted in this form", member of board of the AntAC Olena Shcherban commented .

The imitation of deprivation of investigation of the SBU is also confirmed by the proposal to keep this function in the Criminal Procedure Code, amendments to which are envisaged in [draft law](#) № 4392. There are no norms on deprivation of investigative functions. On the contrary, investigative functions are strengthened by allowing the SBU to investigate cases of any category. Without complete deprivation of the SBU's investigative functions, the security service reform under the best practices and international [standards](#) cannot be discussed.

"Investigative functions are the tool through which the SBU interfered in the work of businesses and anti-corruption units. Without depriving the investigative functions, the SBU retains powerful tool to put pressure on businesses, investigate the economic crimes and duplicate work of the other law enforcement bodies. The SBU will never become real Security Service with the function of investigation, but will remain multifunctional monster that will be used in political interests of the government", Shcherban added .

Provisions of the draft law on demilitarization are also contradictory, as some provisions stipulate that the SBU staff includes persons who have been awarded special ranks and civil servants (part 1 article 27), provides for transfer of servicemen to other positions (para 3, 4 of transitional provisions), however, other provisions still regulate military positions and status of servicemen of the SBU (part 2 article 27, articles 29 and 31).

Moreover, the draft law does not provide for any restrictions on staffing of units by servicemen and persons with special ranks, which will hinder transformation of the SBU into civilian body in accordance with international [recommendations](#).

Other main risks and problems of the draft law are:

- The possibility of using force and special means by any officers of the SBU, and not by employees of a limited number of units for which such rights are reasonable and justified;
- There is still a possibility of placement of officers of the SBU at any state bodies or enterprises. This is a continuation of the Soviet-inherited practice of placement officers of the KGB at various institutions to act as informal “supervisors”;
- Within counterintelligence activities the SBU will be able to make any “recommendations” and “official reservations”, which create opportunities for the Service to have excessive powers and influence any enterprise or person;
- The SBU will retain the so-called monopoly on “wiretapping”, which threatens independence of other pre-trial investigative bodies;
- The Service will retain temporary detention facilities, although this is [contrary](#) to practices of similar bodies in democratic countries and is the extreme risk of human rights violations.
- The SBU will be able to have an influence on appointment to all administrative positions in the Prosecutor’s Office, in the view of the need to take into account the conclusion of the Service based on results of counterintelligence survey of persons who applied to such positions. The same applies to appointments to civil service positions of categories “A” and “B” – representatives of the SBU will be included in regarding Competition Commissions and conclusions provided by the SBU will also be taken into account when making the decision about the person. This creates interference by the SBU in activities of other bodies and branches of government;
- The SBU is empowered to “participate in identification of assets, acquisition or use of which is related to terrorist or intelligence activities to the detriment of Ukraine.” The wording is very vague and it is unclear how the SBU will determine what illegal actions are associated with acquisition of assets. This can lead to interference of the SBU in detection and civil confiscation of unjustified assets, which is a purely anti-corruption mechanism.

All these powers are not typical to similar special services of the NATO countries. Proposals that worsen current provisions regarding the need to disclose asset declarations of the leadership of the Service deserve special attention. Instead, it is proposed to close declarations again. Similarly, authors will limit the current provisions of the legislation regarding access to information, in fact, by creating an artificial veil over activities of the Service and a basis for abuse.