

The reform of the SBU: neither here nor there

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How the Parliament is taking a step towards the reform of the SBU and why it is still incomplete and its prospects for implementation are vague.

Today, on October 16, the Security Committee of the Verkhovna Rada, after seven months of work, approved new version of the [“reform of the SBU”](#) for the first reading. Back in March of this year, the President Volodymyr Zelenskyi submitted his [version](#) to the Verkhovna Rada. The draft law has been criticized both by international partners and within the country. It rather provided for securing arbitrariness and multitasking of the special service, which did not correspond to Zelenskyi’s election promises. No wonder. After all, this presidential reform was prepared by the Service itself, which was headed by friend and close associate of the President Ivan Bakanov after elections.

In spring, the responsible committee of the Verkhovna Rada and the Parliament itself recommended to send the presidential draft law for repeated first reading. This gave chance for the fact that the Parliament was ready to fully update the SBU. Almost seven months have passed since then, and analysis of the new parliamentary version before the first reading shows that the Parliament has taken the number of steps forward regarding the issue of changes. But it is difficult to call these changes the reform now.

The AntAC, as the member of the working group within the Parliament, has analyzed the draft law and gives its own assessment of both the draft law and processes occurring around these changes.

Will there be an investigation power with the SBU or not?

The main expectation regarding changes on the part of civil society, business, experts and international partners concerned the deprivation of the SBU of anti-corruption powers and function of the pre-trial investigation.

It is considered that the service should focus on counterintelligence, namely on preventing security threats through their detection and exclusion. Instead, the investigation is about fighting consequences, that means bringing to responsibility those who implement such threats.

The separation of this functionality between different bodies (for instance, counterintelligence in the SBU and investigation in the SBI) should strengthen each direction. This vision is coincide with the world’s best intelligence [practices](#) and example of the NATO countries.

There are many questions about current effectiveness of the SBU’s work: both regarding investigation and counterintelligence. For instance, MP Andriy Derkach, whom the US government has already officially [called](#) Russian agent, has been part of Ukrainian parliament for more than 10 years. The SBU does not react to this in any way. Economic counterintelligence service in its turn is [famous](#) for numerous scandals regarding abuse and employees with excessive assets.

Till the end, the President and the Parliament refused to deprive the SBU of investigation powers. However, such norm still appeared in the text of the draft law in fall, and this is certainly positive initiative.

However, these norms need to be thoroughly finalized during second reading, otherwise deprivation of investigation will remain only the imitation. After all, for instance, there are currently no amendments to the Criminal Procedure Code, and every lawyer understands that without such changes it is impossible to deprive the investigation. Moreover, transitional provisions of updated draft law remain the function of investigation until January 1, 2026. In Ukrainian reality, such function will remain for a long time, and the deadline will be able to last for decades, as it once was done with the deprivation of investigation of the Prosecutor General's Office.

Some Members of Parliament from the pro-government faction also oppose depriving the SBU of investigation. One of arguments was the State Bureau of Investigation, which has to take over this functionality and cases. Today, it is simply not ready to do so. All participants of the process, however, understand that the SBI will never be ready if this is the political position of the Office of the President and his political force in the Parliament.

Almighty service

In addition to clear powers detailing key functions related to counterintelligence, counter-terrorism, and protection of state secrets, the parliamentary version of the draft law raises many questions about other, often entirely new, powers of the SBU.

For instance, in the field of counterintelligence, the SBU gives the right to block information resources through courts in order to prevent terrorist act or to conduct intelligence and subversive activities to the detriment of Ukraine. However, it is not detailed how this process will take place and how much evidence is needed to make such decision. In practice, it will be possible to block regular messengers if the Service decides that they are being used for subversive activities.

There are also powers to provide compulsory recommendations to state or private entities, or official warnings that their activities pose threat to the state security. Warnings can be issued even to individuals. Such norms are frightening by the fact that activities of the SBU, even without these powers, are [known](#) for so-called "letters of happiness" of business or government agencies with demands that often had nothing to do with state security. For instance, infamous [scandal](#) regarding pressure on nut exporters, when the SBU demanded from customs officers to block export, justifying this by the need for a phytosanitary examination.

Members of Parliament also want to allow the service to examine people before employment. And not only potential employees and agents, but also all candidates for responsible and especially responsible positions in the country. The content of the draft law states that such examinations can be conducted even taking covert measures. The wide range of people can be examined, starting with the Prime Minister and prosecutors. To do this, representatives of the SBU will even be delegated to competition commissions. For instance, if someone wins open competition to the position of the head of the SAPO, it will be possible to miss this chance without "positive" opinion of the SBU.

It is also proposed to allow the Service to submit to the Central Election Commission submissions regarding conducting separatist, terrorist, subversive or investigative and subversive activities by the political party. The consequence of such submission is automatic breakdown from the political process. Submissions will be appealed, but no one can guarantee that the service, which is completely controlled by the President, will not abuse opportunity to directly expel competitors.

Demands of international partners regarding independence of the Anti-Corruption Bureau were also ignored in the Parliament. According to the draft law, the SBU receives monopoly on implementation of special wiretapping equipment. One year ago, the same Parliament [voted](#) for both the NABU and the SBI have such independent right. The implementation of "wiretapping" through the SBU does not allow to fully ensure independence and avoid information leaks, as [practice](#) has repeatedly shown. Similarly, the SBU is given the opportunity to search for unfounded assets of officials, allegedly in cases where such assets threaten the security. However, this is exclusively anti-corruption function. And it is inexpedient to provide

it to the SBU.

We have described only few examples of powers that are proposed to be given to the service, allegedly to increase its efficiency. However, efficiency is not always about over-empowerment and large staff. This position is also emphasized by the international advisory group.

The most important thing is that the draft law does not propose any effective methods of cleaning the service from dishonest employees who have assets of unknown origin, and from foreign agents, especially Russian. Such powerful updated functionality is at least inexpedient to rely on “old staff” who have already been subjects of journalistic investigations regarding corruption scandals. At the same time, the service and the Parliament consider it expedient to close declarations of all staff, even public leadership.

Are changes planned in the structure of the Service?

As now, the SBU will consist of the Central Administration and regional bodies. It is proposed to limit staff to 17,000 person, but the reduction will be gradual, namely until January 1, 2024. In parallel with reduction of the number of employees, wages will be increases. The draft law maintains strong influence of the President on the body through approval of regulations regarding activities of the service and its maximum number.

There are no clear principles for demilitarization in the draft law, which would also coincide with the best Euro-Atlantic practices and would be important indicator of the reform. Previously, the Parliament proposed to keep servicemen in separate units, and transfer the rest to special ranks, and leave some employees in the civil service. All this is also planned to be done by January 1, 2024, but specific proportions, according to which this will happen, have not been determined yet.

Prospects and players of the “reform”

The working group regarding the reform is headed by Maryana Bezugla, MP from the Servant of the People and deputy head of the security committee. Even before the presidential draft law, Bezugla was the author of alternative version, which was much more in line with expectations regarding the reform. But this MP's draft law was not submitted for consideration to the Verkhovna Rada, and the Parliament decided to work with the presidential version.

Opinions regarding the SBU's work model also differ among the faction Servants of the People itself. The structure of the Ministry of Internal Affairs and circles of MPs connected with the Minister of Internal Affairs Arsen Avakov see in the SBU's reform opportunity to strengthen the system of the Ministry of Internal Affairs. The SBU's articles under investigation or powers to fight organized crime can be strengthening of the police. It is noteworthy that amendments to the criminal process related to the reform of the SBU were transferred to the law enforcement committee of the Rada, which is known for strong influence of the Minister Avakov on it. They will model whether the SBU will have investigation and according to which articles.

At the same time, the Parliament is currently working on the establishment of the Bureau of Economic Security, which is also closely connected with the reform of the service. Theoretically, the bureau should replace the so-called economic units of the police and the SBU. There is a risk that influence on activities of the newly created bureau and certain powers of the SBU in this area will be the subject of bargaining between different groups of influence in the Parliament. Members of Parliament, who are controlled by oligarchs and Avakov, will apparently try to exchange votes for the SBU's reform in exchange for leverage over the economic bureau. The latter should deal with economic crimes, tax evasion schemes, which is quite important for oligarchs. For Avakov, this is matter of influencing on economic processes of the state. The jurisdiction of the economic bureau will also be modeled in the law enforcement committee.

Anatoliy Burmich, Member of Parliament from the Opposition Platform For Life and former employee of the

SBU, takes very active position regarding the SBU's reform. The Opposition Platform For Life even submitted the [draft law](#) with its own vision of the SBU's reform before the presidential one. Among authors are Members of Parliament from Opposition Platform For Life and Batkivshchyna. According to their proposal, the SBU should retain all anti-corruption powers and functions in the fight against organized crime. Burmic also insists on these powers, maintaining investigation and expanding it, during meetings of the working group in the Parliament. He believes that without these tools, the SBU will not be able to fight security threats. But there are doubts about whether MPs from the pro-Russian political force really want to strengthen the country's security service, or whether they are simply aiming at banal inconsistency of the reform with the NATO standards in order to prevent Ukraine's integration into the EU and the NATO.

Roman Semenchenko, representative of the Office of the President at the working group's meetings, points to the need to listen to the SBU's position. And this is when vision of the SBU itself does not coincide with Zelenskyi's election promises, strategy of state security, or Euro-Atlantic standards.

In general, version finalized in the Parliament is step forward in comparison with the one prepared by the SBU itself and submitted by the President. But the big question is possibility to further finalize the draft law to the level of real reform. There is even less hope that the service under current leadership will implement updates upon condition of such opposition to the deprivation of investigation and other inappropriate functions.

Under such conditions risks that the "reform" will turn the service into Super Service that politicians will use against their own people is a real one.

P.S. The AntAC analyzed text, which was sent as final to the working group on October 15. This text was discussed at the meeting of the committee and was voted by MPs, but the meeting, unfortunately, was not broadcast for technical reasons.