

Zelensky's government has registered another draft law to dismiss Sytnyk: AntAC's analysis

16.03.2021

The Verkhovna Rada registered a [new version](#) of government draft law №5070 on the dismissal of the current director of the National Anti-Corruption Bureau Artem Sytnyk. According to the [official website](#) of the Verkhovna Rada, the Government revoked the previous version of the draft on March 15 and submitted a new one. According to the AntAC, the new version already directly provides for the political dismissal of Sytnyk. The draft law also provides for the election of a new head of the Bureau, but the procedure creates the basis for the election of the "tame" head of NABU.

The AntAC analyzed the text of the bill submitted to the Verkhovna Rada by the Cabinet of Ministers.

It is worth mentioning that back in November 2020, [at the meeting with G7 ambassadors](#) Zelenskyi stated that despite the decision of the CCU, Sytnyk will continue to act as NABU director. Declaring certain provisions of the law unconstitutional does not threaten the independence and legitimacy of the Bureau's director.

"Zelensky's government and MPs are once again attacking NABU, which undermines the Bureau's independence and cooperation with international partners. While Zelensky promises the ambassadors and other partners not to touch NABU, in practice we see another attack on the anti-corruption institution and each subsequent one is worse and more disgusting than the previous one. Neither the dismissal of the NABU director nor the manual selection procedure for NABU director will be accepted by international partners under any circumstances," said Vitaliy Shabunin, Head of the Board of the AntAC.

What will happen to the current director Sytnyk

From the date of entry into force of this Law, the powers of the NABU Director are allegedly terminated in pursuance of the [decision of the Constitutional Court](#) regarding the appointment of Artem Sytnyk. However, this decision of the CCU cannot be a ground for dismissal or termination of the powers of the NABU Director.

Currently, the law defines clear and exhaustive grounds for dismissal or termination of the term of NABU director. This is one of the guarantees of independence of both the bureau and the director. None of these grounds exist at present. Therefore, dismissal by the adoption of a law equates the position of NABU director to any political position in the country and will mean that any subsequent director can also be dismissed by a parliamentary majority at any moment.

What selection procedure is offered

The new competition procedure for the selection of the director determines the selection commission of 6 people: 3 members from the National Security and Defense Council and 3 from the Government on basis of the submission of international organizations.

It is proposed to introduce the decision-making of the selection commission by a simple majority. In

practice, this means that commission members delegated by international partners will not have a decisive role in the process, as their vote will not be important for decision-making.

The draft law also proposes to limit the work of internationals in the commission to only one selection of the next NABU director: then the Government should prepare and submit to the Verkhovna Rada a draft law to terminate their participation in the NABU director selection commission and NABU audit commission. That means, all subsequent competitions for the director of NABU should take place without the participation of international experts.

“In our reality, the model proposed by the Government means that Sytnyk is fired, a new director is selected under the guise of participation in the competition of delegated international experts. And in six months, for example, if this person also turns out to be disobedient after the case of another “Tatarov”, the Rada removes the new director by law. Then, according to some new procedure, another “Venediktova” is selected without international experts, or the bureau is left without leadership at all, “ Shabunin adds.

In turn, the participation of the National Security and Defense Council in the procedures for selecting the NABU director obviously goes beyond the provisions of the Constitution of Ukraine. That is, the proposed provision again creates risks of declaring them unconstitutional.

Moreover, the draft law does not define even in general terms what are the main stages of competitive selection for the position of NABU Director, these issues remain entirely at the discretion of the selection commission, which determines the rules of procedure and terms of the competition.

There also a space for manipulation in the procedure of appointment of the NABU director following the competition. The selection commission proposes 2 or 3 candidates to the Government, but there are no clear criteria for this in the draft law. From them, the Government selects and appoints the director of NABU.

What are other changes

The NABU becomes a part of the executive branch and reports to the Cabinet of Ministers. However, the draft law includes the risks the independence of the Bureau may be violated by the government, members of which are under the NABU investigation. These provisions are adopted in pursuance of the decision of the Constitutional Court, which previously indicated that NABU is part of executive power.

Consequences

It is noteworthy that after the failed negotiations with the International Monetary Fund, two draft laws have appeared that undermine the independence of the NABU director. Memoranda with the IMF provided for the establishment of the NABU and ensuring the independence of the Bureau. Violation of these previous agreements risks undermining cooperation and destroying the remnants of trust in the Ukrainian authorities.

Similarly, manual procedures for selecting a new director will threaten cooperation with both the EU and the United States. After all, this directly contradicts Ukraine’s commitments to international partners.