



EUROPEAN UNION

DELEGATION TO UKRAINE

Kyiv, 11 September 2019
Ares (2019)

Subject: Position of the EU and Canada on draft law #1008 on judicial self-governance bodies and draft law #1032 on the public prosecutors' office

Dear Ms Venediktova,
Dear Mr Monastyrskyy,

With this letter, we would like to convey to you our position and some proposals regarding the draft law No 1008 "amending some laws of Ukraine on the activities of judicial self-governance bodies" and the draft law No 1032 "amending some laws of Ukraine on priority measures for reform of the prosecutor's office".

We welcome the intention of the Parliament and the Government to swiftly advance the reforms in the judiciary and the prosecutorial system. We also commend your plans to widen the role of international experts in the judicial selection and ethical oversight processes, a tool that has proven effective in the selection of judges to the High Anti-Corruption Court.

However, in order to be in a position to positively assess the overall judicial reform initiatives and to decide on our possible participation in these efforts, including in a potential nomination of international experts, we would need to ascertain that the legislation respects international standards and guarantees a meaningful role for the aforementioned international experts.

In this context, we call on you to enable a thorough consultative process on the abovementioned draft laws by including relevant legal experts, civil society, and the international community. A speedy adoption of imperfect laws may seriously undermine the reform effort, compromise the good intentions of the new Government, and lead to an inadvertent legacy. Technical consultations would not unduly delay the adoption of these reform laws and could be organised within the timeframe of a few weeks.

Among the issues, which in our view require serious consideration, we would like to list the following:

- The application of lustration to post-Maidan judicial office holders is highly problematic, since lustration is an exceptional measure that should not be applied during regular changes of government. Instead, criminal, disciplinary, and other appropriate measures should be used in cases of allegations of abuse of power or other violations.

- Similarly, a renewed selection of the Supreme Court judges should be avoided, and any concerns related to the integrity or professionalism of sitting judges should be addressed by invoking appropriate criminal, disciplinary, and/or corruption prevention measures.
- Any reduction of the number of Supreme Court judges should be based on a thorough analysis of its current structure, workload, and jurisdiction. Enhanced procedural filters and optimisation of the court structure could allow a gradual reduction of its workload and thus permit cutting the number of judges, while at the same time respecting international standards on the independence of judiciary.
- A reboot of the High Qualification Commission and the creation of the new Ethics and Integrity Commission will remain ineffective, unless also the High Council of Justice is reformed.
- Modalities for the involvement of international experts should be further reviewed to ensure their effectiveness, in particular as regards the international experts' decision-making powers in the HQCJ Selection Commission and in the HCJ Integrity Commission. International organisations should not be restricted in their right to nominate international experts from outside the PCIE. The timelines for engagement of international experts should be extended to allow identification of adequate and available candidates.
- The draft law on the prosecutorial reform should be further elaborated and complemented with additional transparency and accountability provisions that are commensurate to the extensive powers exceptionally vested in the Prosecutor General, in order to ensure that the execution of these powers is effective and compliant with European standards and constitutional principles.

We are convinced that with combined efforts of all major stakeholders, it would be possible to address the above issues in a reasonably short timeframe, which would allow for a swift adoption and implementation of the laws with full support of the international community and in full compliance with international standards and best practices. Our experts stand ready to work with you at your earliest convenience.

Judicial reform is likely to be closely watched by the business community and foreign investors and a predictable and independent judicial system is key to attract and maintain much needed investment. We believe that these laws, if properly drafted, can play an important role in this regard.

The EU and Canada have been major partners of Ukraine over the past years with considerable political, financial, and technical support provided across a wide number of sectors. We look forward to continuing our engagement and our good cooperation with Ukraine on its European and Euro-Atlantic path.

Dr. Annika Weidemann
Chargé d'affaires a.i.
EU Delegation to Ukraine

H.E. Roman Waschuk
Ambassador
Embassy of Canada to Ukraine

Attached: Expert assessments of draft laws #1008 and #1032

Ms Iryna Venedikova
Chair of the VR Committee on Legal Policy
Verkhovna Rada
01008 Kyiv – Ukraine
venediktova@rada.gov.ua

Mr Denys Monastyrskyy
Chair of the VR Committee on Law Enforcement
Verkhovna Rada
01008 Kyiv – Ukraine
monastyrskyy@rada.gov.ua

Copy:

H.E. Oleksiy Honcharuk, Prime Minister of Ukraine
H.E. Dmytro Razumkov, Speaker of the Verkhovna Rada of Ukraine
Mr Andriy Bogdan, Head of the Office of the President of Ukraine
Mr Ruslan Stefanchuk, First Deputy Speaker of the Verkhovna Rada of Ukraine
Ms Olena Kondratiuk, Deputy Speaker of the Verkhovna Rada of Ukraine
Mr David Arakhamia, Head of Political Faction, "Sluga Narodu" Party
Mr Yuriy Boiko and Mr Vadym Rabinovycg, Co-Chairs of Political Faction,
"Oppositsiyna Platforma – Za Zhyttia" Party
Ms Yulia Tymoshenko, Head of Political Faction, "Batkivscchyna" Party
Mr Artur Herasymov and Ms Iryna Gerashchenko, Co-Chairs of Political Faction,
"Yevropeiska Solidarnist" Party
Mr Serhiy Rakhmanin, Head of Political Faction, "Holos" Party
Mr Viktor Bondar and Mr Taras Batenko, Co-Chairs of Parliamentary Group "Za
Maybutnye"
Mr Ruslan Ryaboshapka, Prosecutor General of Ukraine