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Ukraine: Verkhovna Rada restores independence of anti-corruption bodies

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On 31 July, Ukraine's Verkhovna Rada adopted a presidential bill (with 331 votes in favour and none against) reversing most of the legal changes introduced on 22 July that had placed the country's anti-corruption bodies – the National Anti-Corruption Bureau of Ukraine (NABU) and the Specialised Anti-Corruption Prosecutor's Office (SAP) – under the authority of the Prosecutor General (see: '*Ukraine: the independence of anti-corruption bodies is being dismantled amid scandals involving top politicians*'). President Volodymyr Zelensky signed the new legislation later the same day.

Adopted as Law No. 13533, the legislation stipulates that the Prosecutor General may not reassign a case from NABU to another body at their sole discretion, but only in the event of 'objective circumstances preventing the competent authority from operating during martial law or conducting pre-trial proceedings. The law also amends a provision that made it easier to conduct searches without a court order. It retains a controversial measure allowing prosecutors to be appointed without open competition and dismissed if a prosecutorial department is reorganised or closed; however, this does not apply to anti-corruption cases. An additional article requires NABU officers to undergo mandatory polygraph testing.

The law was adopted as a result of public pressure manifested in anti-government protests in Ukraine's largest cities, which began on 22 July – the first such demonstrations since the start of the war. The European Union also responded, warning that if the controversial provisions remained in force, Ukraine risked losing disbursements under the ERA scheme – a mechanism for providing loans to the country backed by interest generated from frozen Russian assets. Funding from the European Investment Bank was also at risk. Germany's *Frankfurter Allgemeine Zeitung* even reported that the EU had threatened to suspend all financial aid to Ukraine, including support under the Ukraine Facility. The same would have applied to funding from the European Bank for Reconstruction and Development. Meanwhile, the International Monetary Fund warned that it could withhold $4.8 billion in assistance.

The swift adoption of the law reflects the government's fear of public backlash and its failure to anticipate the strength of the West's response. Although it has reversed the damaging changes to Ukraine's anti-corruption framework, this episode is likely to undermine President Zelensky's reputation abroad, potentially affecting the country's ability to secure further support from Western institutions.

Commentary

- **In practice, the law restores the independence of Ukraine's anti-corruption institutions.** Most of the criticised amendments have either been repealed or significantly softened. The new legislation was drafted in consultation with staff from NABU and SAP. The Prosecutor General will only be permitted to reassign a case to another body under conditions that are highly unlikely to be met – specifically, when the competent body is unable to perform its duties owing to war-related disruptions, such as the paralysis of a law enforcement agency. Even under martial law, such circumstances are extremely rare. The requirement to obtain court approval for conducting searches has also been reinstated, except in cases where there is a risk of evidence being destroyed or where life or health is in danger. The introduction of polygraph tests appears to serve as a means of substantiating allegations that these institutions may be susceptible to infiltration by Russian intelligence services and of justifying the government's earlier actions in this regard, including the initiative to adopt the previous legislation. One lingering issue from the 22 July law is the provision allowing prosecutors to be appointed without open competition. This raises obvious concerns regarding their independence and remains inconsistent with the case law of Ukraine's Constitutional Court.
- **The government failed to anticipate both the domestic and international response.** The 22 July law triggered the most serious internal crisis in Ukraine since the start of the war. Even though martial law remains in force, Ukrainian society responded with rapid and large-scale mobilisation, catching decision-makers off guard. Public outrage likely stemmed from fears that the legislation would stall the country's progress towards EU integration – a goal that, for most Ukrainians, should remain the government's primary objective. The protests appear to have emboldened Ukraine's Western partners as well. The EU's decision to reduce financial support and its threat to halt further disbursements clearly spurred the Ukrainian government into action and accelerated the implementation of long-overdue reforms. For instance, several weeks after the constitutional deadline, President Zelensky finally signed a law reforming ARMA, the agency responsible for tracing and managing assets acquired through criminal activity. By adopting this firm stance, the EU reminded Ukraine that financial assistance depends on implementing concrete reforms and that it has the means to enforce compliance with the agreed requirements. Brussels also began to apply pressure over the appointment of the head of the Bureau of Economic Security, an issue it had previously treated with relative leniency. Pushback from both the public and international institutions was likely the reason why Ukraine's entire political spectrum endorsed the new law.
- **The conflict over the independence of NABU and SAP has damaged President Zelensky's credibility abroad.** Until now, the EU has largely avoided criticising the Ukrainian president openly due to the ongoing war. However, the failed attempt to take control of the country's anti-corruption bodies may prompt the EU to escalate its rhetoric on the reform process, tighten its monitoring of Ukraine's progress in fulfilling its international commitments and adopt a more assertive stance on future financial support. Ukraine's opponents can now argue with greater credibility that the country is corrupt and lacks a genuine commitment to reform, while financial donors may now harbour concerns about whether Ukraine is making proper use of their loans and grants. This could make it more difficult for European decision-makers to persuade voters that it is necessary to continue, or even increase, aid to Ukraine.