

Draft Law
on the National Bureau of Anti-Corruption Investigations of Ukraine
(No. 5031, new version registered on 2 March 2010)

Outline of main provisions

- National Bureau of Anti-Corruption Investigations of Ukraine (NBAI) is a central body of the executive power with special status and law enforcement functions. **Special status** includes: special legal basis for creation (by law), special procedure for selection of the head of the agency and recruitment of certain employees (upon results of an open competitive selection), special mechanisms for control of the NBAI and its accountability.
- **Main functions** of the NBAI – preliminary inquiry (*diznannya*) and pre-trial investigation in criminal cases within its competence; operative-detective measures.
- **Investigative jurisdiction (competence)** of the NBAI:
 - (1) cases of the following **corruption and other crimes** – Misappropriation, embezzlement or conversion of property by abuse of official post (Article 191 of the Criminal Code [CC]); Legalising (laundering) proceeds from crime (Article 209 CC); Interference with activity of law enforcement officers (Article 343 CC); Abuse of authority or office (Article 364 CC); Excess of authority or official powers (Article 365 CC); Forgery in office (Article 366 CC); Taking a bribe (Article 368 CC); Illicit enrichment (Article 368-1 CC); Proposing or giving a bribe (Article 369 CC); Trading in influence (Article 369-1 CC); Prosecution of a knowingly innocent person (Article 372 CC); Delivery of a knowingly unfair sentence, judgment, ruling or order by a judge (or judges) (Article 375 CC); Interference with activity of judicial authorities (Article 376 CC); Stealing, appropriation, extortion or fraudulent obtaining of weapons, ammunitions, explosive or other warfare substances, vehicles, military or special engineering, or abuse of office, by a military serviceman (Article 410); Abuse of authority or official position by a military official (Article 423 CC); Excess of authority or official powers by a military official (Article 424 CC); Omissions of military authorities (Article 426 CC);
 - (2) to fall under jurisdiction of the NBAI cases of the above mentioned crimes must have at least **one of the following characteristics**:
 - a crime was committed by an official of high level (respective officials are listed in the amendments to the Criminal Procedure Code – *see Table of Amendments to the Legislation*), **or**
 - value of the object of the crime (*e.g.* bribe) or damage inflicted by the crime exceeds established margin (about UAH 558,000 or EUR 55,000), **or**
 - proposing or giving of a bribe was committed concerning an official of a foreign state or an international organisation (bribery of a foreign public official).
- Investigation of all other corruption cases that do not comply with the above criteria will be carried out by the existing law enforcement agencies according to the current procedure.
- NBAI will not deal with cases of administrative offences.

- Investigation of corruption cases concerning employees of the NBAI will be carried out by investigators of the interior bodies.
- NBAI will be composed of the **Central Office and 11 regional offices**, as well as a training facility for in-service training of the NBAI staff. Besides, the Cabinet of Ministers of Ukraine can establish additional local offices (e.g. in large cities).
- The **structure** of the NBAI will include operative-detective, investigative units, units of technical support of the operative activity, special forces unit, units for protection of criminal proceedings' participants and security of the NBAI staff, units of internal control, divisions for information and analysis, public relations and public information, human resources, expert unit, etc. (see *Draft Organisational Chart*).
- **Maximum number of the NBAI staff** is proposed to be 1300 persons. This will include 420-450 staff members in the Central Office (including 210 investigators, operative officers, officers of technical support of the operative-detective activity and experts) and 65-70 staff members in each regional office of the NBAI (including 50 investigators, operative officers, officers of technical support of the operative-detective activity). See also *Draft Organisational Chart*.
- **Director** of the NBAI will be appointed by the Cabinet of Ministers of Ukraine upon results of an open and transparent competitive selection. Competition will be conducted by the Selection Commission comprising 9 members (Prime Minister – Chair of the Commission; 3 members of the Parliament's Anti-Corruption Committee determined by the Committee; Minister of Justice; Prosecutor General or his Deputy; a representative of the President; two persons designated by the Congress of Legal Higher Educational Institutions and Legal Academic Institutions). Detailed information about all candidates who applied to the competition and three short-listed candidates who were interviewed by the Selection Commission will be made public.
- Director of the NBAI will be appointed for a 5-year term of office; the same person cannot be appointed to this post for two consecutive terms.
- Investigators and operative officers, heads of operative and investigative units of the NBAI, directors and deputy directors of its regional and local offices will be **appointed only on the basis of an open competition**. There shall be no automatic transfer of staff from the existing law enforcement bodies. Persons who have no prior experience of work in law enforcement bodies will take an internship in the NBAI.
- Status of the NBAI employees will be that of **civil servants**. The Draft Law provides for guarantees of their adequate remuneration, which will include a basic salary, additional payment for the work experience and additional payment for special conditions of work that cannot be less than the amount of the basic salary.
- **Prosecutors** will be seconded to the NBAI. Such prosecutors will remain to serve in the bodies of the procuracy and will be subordinated directly to the Prosecutor General of Ukraine.
- **Units of Internal Control** will be created in the NBAI and its offices. These units will be responsible for the prevention and detection of office-related offences by NBAI employees, conducting of internal and disciplinary investigations concerning them, vetting of the candidates for positions in the NBAI, etc. Internal Control Units of the NBAI will have the power to carry out operative-detective measures. They will be subordinated directly to the Director of the NBAI.