

IFES Comment

Draft Law No 5253 Threatens NACP Political Finance Mandate 2021-03-18

Executive summary:

On March 17, 2021, MPs from all factions of the Verkhovna Rada of Ukraine registered the Draft Law on Improvement of the Procedure of Suspension and Termination of Public Funding of Statutory Activities of Political Parties (Draft Law). The Draft Law amends the Law “On Political Parties in Ukraine” (Law) to specify and change the legal procedure that empowers the National Agency on Corruption Prevention (NACP) to suspend and terminate public funding of political parties.

The stated aim of the Draft Law is to clarify certain provisions and fix flaws in the Law that have previously been identified by the Venice Commission, the Organization for Security and cooperation in Europe (OSCE) Office for Democratic institutions and Human Rights (ODIHR), the Group of States Against Corruption, or IFES as problematic. However, **IFES and NACP believe that this draft, if passed in its current form, would undermine the NACP’s ability to perform effective analysis of the financial reports of political parties.** Moreover, the proposed amendments do not address key shortcomings identified by these organizations.

The proposed amendments, in particular, concern legal provisions of the law that recently had been invoked to suspend public funding to political parties represented in the Verkhovna Rada, including Batkivshchyna, Holos, and Servant of the People, due to violations in their financial reporting.

Key provisions of the draft law and IFES comments:

- *Parties are allowed to keep their public funds at the deposit bank accounts and receive income from the interest rates paid by banks.*

IFES comment: The law is silent about the right of parties to keep their public funding at the deposit accounts and accrue interest, but parties have hitherto never been sanctioned or prosecuted for doing so.

- *The NACP will not be allowed assess the quality of services delivered to a political party by its vendors, nor to identify fraudulent or money laundering contracts and operations based on the analysis of the party financial reports.*

IFES comment: Although there is a need to specify the political finance oversight mandate of the NACP in the law, NACP investigatory powers should enable the regulator to exercise effective political finance oversight. Such oversight would not be effective as required by international standards if the NACP oversight mandate is limited to mere comparison of the financial data presented in the party reports with the supporting documentation (contract copies, invoices and bank statements). To be effective, NACP should have the right to check whether the services delivered to the parties in fact have been delivered, whether they are overpriced etc. The current practice suggests that some parties pay tenfold the real value for certain services and that the documents to substantiate these expenses at times contain untruthful information. This provision is therefore highly problematic in the light of political finance transparency, accountability, anti-money laundering reforms and overall business integrity.

- *If a party re-submits a corrected financial report that was previously rejected by the NACP due to flaws or omissions, and if the corrected report contains similar or new flaws, such resubmission would not serve as basis for termination of public funding to the party.*

IFES comment: The Law states that if a party commits repeated political finance violation (including reporting violation), the NACP is entitled to terminate public funding of that party. While it can be assumed that re-submission of a flawed report does not constitute a repeated violation as the violations are connected to the same report, clarification of which legal actions the NACP must take in this regard should be welcomed as it removes the risk of ambiguous interpretation.

- *Public funding to a political party is suspended if the value of donations, expenses, property, or financial obligations that were untruthfully reported exceeds 300 times the minimum monthly wage (i.e. exceeds UAH 660,000 or USD 23,600).*

IFES comment: The proposed new ceiling is a significant increase compared to the current Law that provides for 20 times the minimum monthly wage (i.e., UAH 120,000 or USD 4,300). While the current ceiling can be viewed as being too low and the sanction for violating the ceiling – the suspension of public funding – as being disproportionate to the offence, the proposed new ceiling is too high and will hardly contribute to due diligence. IFES considers that doubling the current ceiling to UAH 24,000 or USD 8,300 can be a reasonable solution.

- *If public funding is suspended and the party removed the infringements that served as basis for the suspension, the party will receive the funds for the entire period of suspension.*

IFES comment: Under the current Law, parties lose funds for the period the funding is suspended. IFES considers that public funding should be confiscated by the state only in case of severe political finance violations. However, the removal of a severe offence or its outcomes should not automatically entail the return of all public funds that were frozen due to the offence. The Draft Law should differentiate and list the cases when the suspended funding is to be returned to the party that addressed the violations, and those that will not entail a return of the suspended funding.

- *Once NACP has identified reporting violations, it should provide the party in question the possibility to comment on the alleged offence or to address the alleged violation within a 15-day period following the delivery of the NACP request.*

IFES comment: Even though frequent communication between political parties and the NACP is important – for instance on the issues related to reporting, clarifications of legal provisions or on the substance of the reports. IFES considers that serious violations constitute the grounds for sanctions, including the possibility to suspend or terminate public funding of political party. Therefore, parties should not be given opportunity to escape from sanctions by correcting untruthful documents or data. For similar reasons, those accused of crimes are prosecuted even if they remedy the offence.

Conclusion:

The proposed Draft Law is seen by civil society and experts as primarily designed to address the concerns of the Servant of the People party and other parties represented in the Rada in the light of the NACP's recent analysis of their party finance reports that led to the suspension of public funding to the ruling party and others.

While the proposed amendments indeed add clarity to certain provisions of the current Political Party Law and thereby lessen the room for arbitrary interpretation and application, most provisions of the Draft Law seem aimed at limiting the NACP supervisory mandate and water down the financial oversight instruments laid down in the current Law. **Experts believe that if this Draft Law is adopted, it would significantly increase the risks of political corruption, financial misconduct, money laundering, ineffective use of public funds by political parties.**

It is also important to note that while this Draft Law is being tabled, an inclusive, consultative parliamentary Working Group already has prepared an entirely new, comprehensive version of the Law on Political Parties and the parliamentary speaker has forwarded it to the Venice Commission and ODIHR for an opinion that would likely be delivered by the end of this week. Thus, the proposal to adopt a separate draft law that seeks to address only minor issues viewed as politically motivated by many political finance experts and civil society is a highly questionable move by the Verkhovna Rada.

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