

Analytical Note

Depoliticising the Appointment and Dismissal of the Prosecutor General:

European Models,
Constitutional Aspects
and Possible Scenarios
for Ukraine



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Introduction

This analytical note has been prepared to support legislative reforms aimed at depoliticising the appointment and dismissal of the Prosecutor General, which forms part of Ukraine's EU integration commitments under Chapter 23 of the EU acquis.

Progress in fulfilling these EU integration commitments has already been assessed by the Agency for Legislative Initiatives in the Shadow Reports for 2023¹, 2024² and 2025³. This document examines in greater detail international standards and foreign experience, as well as different scenarios for addressing the problem, including an analysis of the constitutionality of the issue raised.

The analytical note addresses the following issues: 1) a description of the existing problems; 2) Ukraine's EU integration commitments; 3) models used by European Union Member States; 4) the issue of the constitutionality of revising the procedure for the appointment and dismissal of the Prosecutor General and 5) options (scenarios) for fulfilling EU integration commitments.

In its Conclusion, the Agency for Legislative Initiatives sets out its position on how to fulfil EU integration commitments, the ultimate aim of which is to guarantee the independence of every prosecutor for the proper performance of public prosecution functions in Ukraine.

¹ [Shadow Report on Chapter 23 'Judiciary and Fundamental Rights' of the European Commission's 2023 Report on Ukraine / Agency for Legislative Initiatives \[and others\]. Kyiv, 2024. pp. 137–138.](#)

² [Shadow Report on Chapter 23 'Judiciary and Fundamental Rights' and Chapter 24 'Justice, Freedom and Security' of the European Commission's Report on Ukraine's Progress under the European Union Enlargement Package 2024 / Agency for Legislative Initiatives \[and others\]. Kyiv, 2025. pp. 190–192.](#)

³ The initial version was submitted to the European Commission. The updated version is expected to be published in early autumn 2026.

1. Problem Statement

1.1. APPOINTMENT OF THE PROSECUTOR GENERAL

The current model for appointing the Prosecutor General is determined by the Constitution of Ukraine and provides that the **Prosecutor General is appointed and dismissed by the President of Ukraine with the consent of the Verkhovna Rada of Ukraine** (hereinafter — the VRU) (Article 131-1 of the Constitution of Ukraine).⁴

This model formally ensures the participation of two public authorities in the appointment procedure, but it does not include any elements of transparent professional selection, prior assessment of a candidate's professional competence or the participation of prosecutorial self-governance bodies in a merit-based selection procedure. This gives rise to a number of systemic problems.

- 1.** The procedure for appointing the Prosecutor General is inherently political, since the key role in it belongs to political actors — the President of Ukraine and the Verkhovna Rada of Ukraine. In the absence of legally defined selection criteria, the risks of political dependence increase, as does the perception of the Prosecutor General as a politically affiliated person. This is particularly important given that it is the Prosecutor General who decides on initiation of criminal proceedings against an MP, detaining or arresting an MP, as well as notifying an MP of suspicion. In other words, a vote of no confidence in the Prosecutor General by certain political forces may be a direct consequence of their efforts to combat political corruption and economic crimes whose beneficiaries are the MPs themselves or persons associated with them⁵.
- 2.** The current legislation does not ensure an adequate level of transparency in the appointment procedure for such an office. Candidates do not undergo open professional assessment, interviews or public discussion of their professional integrity, vision for the development of the prosecution service or managerial competences.
- 3.** The absence of institutional participation by prosecutorial self-governance bodies or independent advisory structures makes it more difficult to ensure the professional nature of the procedure and weakens guarantees of prosecutorial independence. Prosecutorial self-governance (the prosecutorial community) does not participate in the appointment of the head of the prosecution service and is forced to accept the choice of politicians.

⁴ Constitution of Ukraine: Law of Ukraine No. 254k/96-VR of 28.06.1996.

⁵ M. Khavroniuk, Y. Kravyin, D. Pysarenko: Assessment of State Policy on Reforming the Prosecution Service of Ukraine in 2014–2023. NGO 'Tomorrow's Lawyer', 2023, p. 56.

4. Since 2016, the prosecution service has been included in Chapter VIII of the Constitution of Ukraine, 'Justice' (the separate Chapter VII, 'The Prosecution Service', was removed). However, since the adoption of the Constitution of Ukraine in 1996, the appointment procedure has not changed in any version of the Basic Law, despite the change in the role and status of the prosecution service in the system of state power. Therefore, additional guarantees of independence inherent in the judiciary have not been extended to the prosecution service in full, including to the Prosecutor General.

In the context of EU integration processes and law enforcement sector reform, the introduction of a more transparent and professional procedure for appointing the Prosecutor General is increasingly seen as one possible mechanism for strengthening the institutional independence of the prosecution service and increasing public trust.

At the same time, the Constitution of Ukraine does not establish *qualification requirements* for the Prosecutor General. The Law of Ukraine 'On the Public Prosecutor's Office' (Article 40(2)) provides that a citizen of Ukraine may be appointed Prosecutor General if he or she:

- 1)** has a degree in law and at least ten years' professional experience in the field of law;
- 2)** has command of the state language;
- 3)** has high moral and professional qualities, sound managerial abilities and organisational skills;
- 4)** is not subject to circumstances such as being recognised by a court as having limited legal capacity or as lacking legal capacity; having an illness that prevents the performance of prosecutorial duties; having an unexpunged or outstanding criminal record or having been subjected to an administrative penalty for a corruption-related offence;
- 5)** does not have arrears in child maintenance payments exceeding the sum of the relevant payments for six months from the date on which the enforcement document was presented for compulsory enforcement.

This aspect is important for the further analysis of the procedure for appointing and dismissing the Prosecutor General from the perspective of constitutional and legal regulation.

1.2. DISMISSAL OF THE PROSECUTOR GENERAL

The issue of safeguarding the Prosecutor General's independence in the context of dismissal from office remains equally controversial.

The current legislation contains **two models** for the dismissal of the Prosecutor General:

1) a professional model (dismissal for violation of the law);

2) a political model (a vote of no confidence).

Professional model. The Constitution of Ukraine provides that early dismissal of the Prosecutor General may take place only in the cases and on the grounds defined by the Constitution itself and by law. Article 131-1 of the Constitution of Ukraine provides that the **Prosecutor General is dismissed by the President of Ukraine with the consent of the Verkhovna Rada of Ukraine.**

According to Article 42(1) of the Law of Ukraine ‘On the Public Prosecutor’s Office’, the Prosecutor General is dismissed from the administrative position by the President of Ukraine with the consent of the VRU:

1) in connection with the submission of an application for early termination of powers in the administrative position at his or her own request;

2) on the basis of a submission from the relevant body conducting disciplinary proceedings, or from the High Council of Justice;

3) in the event of arrears in child maintenance payments exceeding the sum of the relevant payments for twelve months from the date on which the enforcement document was presented for compulsory enforcement.

The key ground is the second one — the commission of a disciplinary offence established by a decision of the Qualification and Disciplinary Commission of Prosecutors (the Commission, QDCP) or the High Council of Justice (HCJ). In the first case, there have been at least such attempts, but the Commission itself, having established the elements of a disciplinary offence, closed⁶ the disciplinary proceedings because there was no authority competent to impose the sanction (as a general rule, this is a higher-level prosecutor). As regards the HCJ, the Law of Ukraine ‘On the High Council of Justice’ does not contain a procedure for such an application, and the HCJ only conducts appellate review of QDCP decisions. Thus, the professional model, which should provide for dismissal on the grounds of committing a disciplinary offence, is insufficiently regulated by legislation and has not been applied in practice.

Political model. At the same time, the **resignation of the Prosecutor General following a vote of no confidence by the Verkhovna Rada of Ukraine** has the same legal consequence in substance as dismissal (Article 85(1)(25) of the Constitution of

⁶ On Closing Disciplinary Proceedings against Prosecutor General of Ukraine Y. V. Lutsenko: Decision of the Qualification and Disciplinary Commission of Prosecutors No. 97dp-18 of 28.02.2018.

Ukraine). The issue of expressing no confidence in the Prosecutor General is included in the agenda of a session of the Verkhovna Rada on the proposal of at least one third of MPs of the constitutional composition of the Verkhovna Rada, supported by their signatures, and for which more than half of MPs of the constitutional composition of the Verkhovna Rada voted (Article 213(2) of the Law of Ukraine ‘On the Rules of Procedure of the Verkhovna Rada of Ukraine’). In other words, **150 signatures of MPs are sufficient to initiate the issue and 226 votes of MPs (a simple majority) are sufficient** to support a vote of no confidence, which results in the resignation of the Prosecutor General. The procedure provides for a speech by the initiators of the vote of no confidence, a co-report by the main committee⁷ tasked with preparing the issue for consideration, answers by the co-rapporteur to questions and a speech by the Prosecutor General, followed by discussion within the time determined by the VRU (Article 213(3) of the Law of Ukraine ‘On the Rules of Procedure of the Verkhovna Rada of Ukraine’).

It should also be taken into account that dismissal of the Prosecutor General from the administrative position, or termination of the Prosecutor General’s powers in the administrative position, does not terminate his or her powers as a prosecutor (Article 42(3) of the Law ‘On the Public Prosecutor’s Office’), except in cases where he or she submits an application for dismissal at his or her own request, violates incompatibility requirements, a court decision imposing administrative liability for a corruption-related offence enters into force or a conviction against him or her enters into force. In these four cases, he or she is dismissed both from the administrative position and from the position of prosecutor. It is therefore strange that a Prosecutor General in whom Parliament has expressed no confidence (obviously in connection with improper performance of official duties) may continue to hold the position of prosecutor. The Venice Commission draws attention to this point (paragraph 125 of the Opinion on the Draft Law of Ukraine ‘On the Public Prosecutor’s Office’)⁸.

The current constitutional model provides for significant political influence over the procedure for terminating the powers of the Prosecutor General. In practical terms, this creates risks of early politically motivated termination of powers and the potential use of dismissal mechanisms as an instrument of political influence. Although the procedure by which the Verkhovna Rada of Ukraine expresses no confidence in the Prosecutor General is not widespread in Ukraine — it was last applied in 2020⁹ to Prosecutor General R. Riaboshapka — political pressure in the form of threats to initiate a vote of no confidence has repeatedly led Prosecutors General to pre-emptively express a wish to be dismissed at their own request, which in substance is the same as a vote of no confidence by MPs.

⁷ In the current IX convocation of the Verkhovna Rada — the Committee on Law Enforcement.

⁸ [Opinion on the Draft Law of Ukraine ‘On the Public Prosecutor’s Office’, adopted by the Venice Commission at its 96th Plenary Session \(Venice, 11–12 October 2013\).](#)

An analysis of the tenure of Prosecutors General indicates systemic institutional instability in this office. **During 2015–2026, the average duration** of the Prosecutor General’s powers was **approximately two years**, while some terms were significantly shorter (including less than one year).

During the presidency of V. Zelenskyy alone, four Prosecutors General changed. Ruslan Riaboshapka held the office for 6 months and 5 days (29 August 2019 — 5 March 2020); Iryna Venediktova for 2 years, 4 months and 1 day (17 March 2020 — 18 July 2022); Andrii Kostin for 2 years, 3 months and 3 days (28 July 2022 — 31 October 2024); and Ruslan Kravchenko from 21 June 2025 to the present.

Such frequent changes in the leadership of the prosecution service are not consistent with the principle of institutional continuity and negatively affect the effectiveness of long-term reforms in the field of criminal justice.

The actual possibility of early termination of powers by decision of political actors creates a situation in which the Prosecutor General does not have sufficient guarantees of independence and stability, which in turn may affect managerial and procedural decision-making.

In its Opinion on the Draft Law ‘On the Public Prosecutor’s Office’, the Venice Commission noted at the time that since the Prosecutor General ‘is not a member of the government, parliament should not have the power to express no confidence, which is an exclusively political instrument. This could perhaps be seen as an instrument for applying a system of checks and balances in the organisation of state bodies, but doubts arise as to whether it will ensure a fair decision. The excessive centralisation of the Prosecutor General’s role, together with the Prosecutor General’s dependence on political bodies, therefore hinders the independence or autonomy of the prosecution service’ (paragraphs 14 and 15). Indeed, the Government is formed by Parliament and is politically accountable to it, while at the time when the Venice Commission issued its opinion, the prosecution service did not belong to the executive branch because of its separate status outside all branches of power, and today it is likewise not part of the executive branch given its affiliation with the judiciary (justice). At the same time, the Venice Commission expressly recommended: ‘Abolish the vote of no confidence in the Prosecutor General’ (paragraphs 120 and 195)¹⁰.

⁹ On Expressing No Confidence in Prosecutor General R. H. Riaboshapka: Resolution of the Verkhovna Rada of Ukraine No. 526-IX of 05.03.2020.

¹⁰ Opinion on the Draft Law of Ukraine ‘On the Public Prosecutor’s Office’, adopted by the Venice Commission at its 96th Plenary Session (Venice, 11–12 October 2013).

2. EU Integration Commitments and International Standards

2.1. APPOINTMENT OF THE PROSECUTOR GENERAL

European standards¹¹ relating to prosecution services do not establish a single mandatory model for appointing a Prosecutor General. At the same time, soft law instruments consistently emphasise the need to ensure the transparency of the appointment procedure, the professionalism of candidates and the minimisation of political influence.

It is important that the method for selecting the Prosecutor General be such as to secure public confidence, the respect of the judiciary and the respect of the legal profession. Therefore, **professional non-political expertise should be involved in the selection process.** However, it is appropriate for the Government to wish to retain a certain degree of control over the appointment, given the importance of proper prosecution in criminal cases for the orderly and effective functioning of the state, and not to wish to grant *carte blanche* in the selection of a prosecutor to some other body, however distinguished it may be. It is therefore proposed to consider the **possibility of establishing an appointments commission composed of compromise figures who enjoy public respect and the trust of the Government.**¹² The method of appointing the Prosecutor General should be such as to deserve public confidence and the respect of the judiciary and the legal profession. [...] ¹³

When assessing different models for the appointment of chief prosecutors, the Venice Commission has always been concerned with finding an appropriate balance between the requirement of democratic legitimacy of such appointments, on the one hand, and the **requirement of depoliticisation**, on the other. Thus, an appointment process involving the executive and/or legislative branches has the advantage of conferring democratic legitimacy on the appointment of the head of the prosecution service. However, in such a case, additional safeguards are necessary to reduce the risk of politicising the prosecution service. **The creation of a Prosecutorial Council, which would play a key role in the appointment of the Prosecutor General, may be regarded as one of the most effective modern tools for achieving this goal.** [...] ¹⁴

¹¹ By 'European standards', we mean a broad range of standards: those of the Council of Europe, the EU, the OSCE and the OECD. At the same time, below preference is given to the term 'EU standards', which includes both Council of Europe soft law instruments (of the Venice Commission, CCPE, GRECO, etc.) and the requirements of the EU acquis.

¹² CDL(1995)073rev. Section 11 (document note).

¹³ CDL-AD(2017)028, Poland — Opinion on the Act on the Public Prosecutor's Office. § 33.

¹⁴ CDL-AD(2017)028, Poland — Opinion on the Act on the Public Prosecutor's Office. § 33.

Therefore, the introduction of additional procedural safeguards, advisory opinions or competitive mechanisms requires assessment both from the perspective of European standards and from the perspective of compliance with the Constitution of Ukraine.

At the same time, the **requirement to depoliticise the office of the Prosecutor General** appears in the reports under the European Union Enlargement Package for 2023–2025 and in the 10 reform priorities for achieving substantial progress under Cluster 1, ‘Fundamentals’, of the joint declaration following the meeting between EU Commissioner for Enlargement M. Kos and Deputy Prime Minister for European and Euro-Atlantic Integration of Ukraine T. Kachka in December 2025.¹⁵

Thus, one of the reform priorities to be implemented within a year is a **comprehensive review of the selection and dismissal procedure for the Prosecutor General with a view to aligning it with best European practices with the participation of the Venice Commission**. Implementation of this priority requires amendments to the Law of Ukraine ‘On the Public Prosecutor’s Office’ by detailing the procedure for appointment to the office of Prosecutor General (**definition of selection stages, assessment criteria, mechanisms for verifying candidates’ integrity and professional competence and ensuring the public nature of the process**). At the same time, the EU requirements do not mention a mandatory competition, its open type (for all interested candidates) or closed type (only for prosecutors, or only for prosecutors/judges/advocates), or the inclusion or non-inclusion of international experts in the selection commission. These aspects are left to the discretion of the national model, taking into account historical traditions, constitutional and legal regulation, the political situation and so on.

Overall, in the context of Ukraine, the issue of the independence of the office of the Prosecutor General is also considered part of broader EU integration commitments in the field of the rule of law.

For example, the European Commission’s 2025 Ukraine Report under the EU Enlargement Package¹⁶ and the EU accession benchmarks for Ukraine under Cluster 1, ‘Fundamentals’,¹⁷ also recommend, within one year, abolishing the provisions that allow the Prosecutor General to have access to any pre-trial investigation materials, and refraining from applying those provisions until they are abolished.

¹⁵ [Joint Statement between Commissioner Marta Kos and Deputy Prime Minister of Ukraine Taras Kachka. European Commission. 2025.](#)

¹⁶ [Ukraine 2025 Report : Communication on EU enlargement policy / European Commission. Brussels, 2025.](#)

¹⁷ [EU-communicated codified Benchmarks for Ukraine on Chapter 23.](#)

Thus, **EU integration commitments leave it to the state to determine which national model will ensure the depoliticisation of the procedure for selecting and dismissing the Prosecutor General.** The benchmark is best European practice, which the Venice Commission of the Council of Europe has repeatedly summarised, among others. Their analysis is provided in the next subsection.

2.2. DISMISSAL OF THE PROSECUTOR GENERAL

International standards and the practice of European states do not exclude the possibility of early termination of the powers of a Prosecutor General, but they **consistently emphasise the need to ensure clear legal guarantees of the independence** of this office and to **minimise the risks of politically motivated dismissal.**

A fundamental standard is the requirement of legal certainty, which consists in the legislative definition of clear grounds for dismissing a Prosecutor General. International rule of law institutions proceed from the position that termination of the powers of the head of the prosecution service cannot be arbitrary or based solely on political expediency. The grounds for early dismissal must be clearly provided by law, **formulated with sufficient precision and capable of review as to their validity.**¹⁸

Moreover, the Prosecutor General must be **protected from arbitrary dismissal**, even where the procedure itself is formally provided by law. This means that legislation must not only define the authority competent to decide on dismissal but also establish an **exhaustive list of grounds** for early termination of powers, procedural safeguards for considering the relevant issue, the **right to be heard and the possibility of an impartial assessment of the justification** for such a decision.

In states where parliament participates in the appointment of the Prosecutor General, it is often also vested with powers regarding their dismissal. At the same time, international standards emphasise that the exercise of such powers must be accompanied by a fair procedure for examining the grounds for dismissal, including the Prosecutor General's **right to be heard and to provide explanations.**¹⁹ It is also separately emphasised that parliamentary accountability **should not turn into political control** over the procedural activities of the prosecution service.

A separate international standard is the **need to involve an independent or expert element** in the procedure for dismissing the Prosecutor General. It is emphasised that, before a decision on early termination of powers is taken, a competent **expert**

¹⁸ CDL-AD (2021)012, Montenegro — Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor's Office for organized crime and corruption. § 26.

¹⁹ CDL-AD (2010)040, Report on European Standards as regards the Independence of the Judicial System: Part II — the Prosecution Service. § 42.

body should issue an opinion on whether there are sufficient grounds for dismissal.²⁰ This may be a prosecutorial self-governance body, a judicial self-governance body (or a joint body in countries where this is practised), or an independent personnel commission in the justice sector. Such a mechanism is designed to prevent the dismissal procedure from being used as an instrument of political influence and to ensure additional professional verification of the validity of concerns regarding the Prosecutor General's work.

At the same time, European practice includes **mechanisms for special (ad hoc) assessment of the Prosecutor General's performance**, which may be used as a basis for initiating the issue of their dismissal.²¹ Assessment by a specially established commission of the effectiveness with which the head of the prosecution service exercises his or her powers is a fairly common approach in a number of European countries. Certain reforms in this field have drawn on Romania's experience, where assessment of the performance of prosecution service heads was used as one element of the mechanism of their accountability.

Thus, international standards do not deny the possibility of early dismissal of the Prosecutor General but require that such a procedure be based on grounds clearly defined by law, be accompanied by appropriate procedural safeguards, include an independent professional assessment element and not create risks of politically motivated interference with prosecutorial independence.

The Ukrainian model currently does **not meet these requirements**. While the Constitution of Ukraine defines the procedure for dismissal and termination of powers in detail, the professional dismissal procedure is not clearly regulated in the Law of Ukraine 'On the Public Prosecutor's Office'. It is therefore unsurprising that this procedure has never been applied in practice, since there is no procedure for the QDCP or the HCJ to apply to the Verkhovna Rada of Ukraine on the issue of dismissing the Prosecutor General in the event that they commit a disciplinary offence. In other words, the Law does not meet the requirement of clarity.

The second procedure, the political one, which provides for the adoption of a vote of no confidence, contains signs of **excessive political interference** in the activities of the Prosecutor General. Although it provides for an assessment by a VRU committee and the Prosecutor General's right to be heard, the combination of a simple majority of votes of the constitutional composition of the VRU (226 votes) and the hearing

²⁰ CDL-AD (2021)047, Republic of Moldova — Opinion on the amendments of 24 August 2021 to the law on the prosecution service. §§ 83 and 84.

²¹ CDL-AD (2021)047, Republic of Moldova — Opinion on the amendments of 24 August 2021 to the law on the prosecution service. §§ 83 and 84.

of exclusively political arguments in favour of terminating the Prosecutor General's powers (without assessment by professional bodies, for example prosecutorial self-governance bodies) politicises such a decision and turns it into an instrument of potential pressure on the Prosecutor General.

3. Models of European Union Member States

3.1. MODELS FOR APPOINTING THE PROSECUTOR GENERAL

International standards do not require that an open competition be held specifically for the office of Prosecutor General. **A significant number of EU Member States retain a political or mixed model of appointment.** At the same time, **the appointment procedure directly depends on the place of the prosecution service in the system of separation of powers** (checks and balances).

There is no single model of prosecutorial organisation in Europe: the status, subordination and procedure for appointing the Prosecutor General differ significantly depending on the constitutional tradition of a particular state. In general, **three main models of prosecutorial organisation may be distinguished.**

The **first model** provides for the **prosecution service to function as part of the executive branch** — effectively as a department under the Ministry of Justice, whose activities are overseen by the Minister of Justice. In such countries, the prosecution service is not regarded as an independent branch or a separate independent institution, and the **Prosecutor General or an equivalent official is in a relationship of administrative subordination to the Government.** This model is characteristic, in particular, of Germany and Austria.

In Germany, the Federal Prosecutor General is appointed by the Federal President on the proposal of the Minister of Justice and with the mandatory consent of the Bundesrat.²² In Austria, the prosecution service is also subordinate to the Ministry of Justice. The Prosecutor General is appointed by the Federal President on the proposal of the Government, while the Minister of Justice exercises administrative management of the prosecution service.²³

²² [Types of legal professions. Germany.](#)

²³ [Bundesministerium für Justiz \(Austria\).](#)

The **second model** consists in integrating the prosecution service into the judicial branch. Under this model, prosecutors are regarded as participants in the judicial system, and the prosecution service operates at courts or as part of the judicial branch. In such states, the Prosecutor General is usually appointed **with the participation of judicial governance bodies or under a procedure that is as close as possible to the procedure for appointing judges.**

This approach is characteristic, in particular, of Italy, Spain and France. In Italy, prosecutors and judges belong to a unified corps of magistrates and enjoy similar guarantees of independence. Personnel decisions concerning prosecutors are taken by the High Council of the Judiciary. The Prosecutor General at the Court of Cassation is appointed by the President of Italy on the basis of a decision of the High Council of the Judiciary.²⁴ At the same time, however, approval by the Minister of Justice is also required for the appointment.²⁵

In Spain, the State Prosecutor General is appointed by the King on the proposal of the Government after consultation with the General Council of the Judiciary and after the candidate has been heard by Parliament.²⁶ Although the prosecution service is not part of the judicial corps, it is closely connected with the justice system and operates at the courts.

France also belongs to this model: the prosecution service is part of the judicial system and is organisationally connected with courts at all levels. Prosecutors exercise their powers within the judicial system, and the highest office is that of Prosecutor General at the Court of Cassation, who is appointed by the President of the Republic on the proposal of the High Council for the Judiciary.

The **third model** provides for the prosecution service to exist as a **separate independent institution** that does not directly belong either to the executive or to the judicial branch. Ukraine belongs to this model, although de jure the Constitution classifies the prosecution service as part of the justice system, while de facto it continues to remain outside the branches of power, since the corresponding transformation has not taken place since 2016. Under this system, the prosecution service has a separate system of bodies and special guarantees of independence.

Similar elements are also characteristic of certain Central and Eastern European states.

²⁴ [The General Prosecution Office at the Italian Supreme Court.](#)

²⁵ [The General Prosecution Office at the Italian Supreme Court.](#)

²⁶ [Spain.](#)

²⁷ [Latvia's new Prosecutor General confirmed.](#)

For example, in Latvia, the Prosecutor General is appointed by the Saeima on the proposal of the Council for the Judiciary following an open competitive selection process.²⁷ Candidates for the office of Prosecutor General are assessed on the basis of the rules on competition, assessment criteria and the procedure for selecting candidates for the office of Prosecutor General approved by the Council for the Judiciary. Romania also has a direct open competition, announced by the Ministry of Justice for leadership positions in the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Anticorruption Directorate (DNA) and the Directorate for Investigating Organised Crime and Terrorism (DIICOT).²⁸ As a result, the Prosecutor General is appointed by the President on the proposal of the Minister of Justice after receiving an advisory opinion from the Superior Council of Magistracy.²⁹

Some states retain models with a high degree of political influence over the prosecution service. Thus, in Czechia, the Supreme Public Prosecutor is appointed by the Government on the proposal of the Minister of Justice,³⁰ while a similarly political procedure is retained in the Kingdom of Sweden,³¹ Portugal,³² Finland³³ and Slovakia³⁴.

In a number of states, a political decision is combined with the participation of prosecutorial or judicial self-governance bodies. For example, in Slovenia, the State Prosecutor General is appointed by Parliament on the proposal of the Government after receiving an opinion from the State Prosecutorial Council³⁵. In Ireland, a special committee, at the request of the Taoiseach, selects candidates for appointment³⁶ to the office of Director of Public Prosecutions and informs the Taoiseach of the selected candidates and their suitability for such appointment. Similarly, in Bulgaria, the Prosecutor General is appointed by the President on the proposal of the Supreme Judicial Council.³⁷

²⁸ [Justice Minister Announces Picks for Top Prosecutor Posts.](#)

²⁹ [Basic Facts about the Judiciary. Romania.](#)

³⁰ [Types of legal professions. Czechia.](#)

³¹ [Prosecutor-General of Sweden.](#)

³² [Basic Facts about the Country. Portugal.](#)

³³ [Organisation of the judicial system. Finland.](#)

³⁴ [Constitution of the Slovak Republic.](#)

³⁵ [About the State Prosecutorial Council.](#)

³⁶ [The Attorney General and The Director of Public Prosecutions.](#)

³⁷ [Types of legal professions. Bulgaria.](#)

Finally, **in certain countries, the functions of Prosecutor General were historically combined with the office of Minister of Justice or were closely connected with the executive branch.** The most illustrative example is Poland, where the Minister of Justice also performed the functions of Prosecutor General.³⁸ This model significantly strengthened the Government's political influence over the prosecution service and **repeatedly became the subject of criticism by European institutions and the Venice Commission.** The general trend is towards separating public prosecution services from the executive branch,³⁹ so the Prosecutor General acquires maximum independence, which is reflected, in particular, in guarantees concerning appointment to and dismissal from office.

Overall, the procedures for appointing Prosecutors General in most states involve several actors – the head of state, the Government, Parliament or prosecutorial or judicial governance bodies.

It is worth agreeing with scholar Timothy Waters that *'(...) most chief prosecutors are political appointees of some sort, in that they are appointed by the political branches in a more or less discretionary process, and often can be removed by the political branches, although often on defined causes.'*⁴⁰ In other words, the Prosecutor General is the result of a political appointment, and the procedure for appointment is political. This in no way contradicts political neutrality, provided that the standards of clarity, transparency and meritocracy in the appointment procedure mentioned above are achieved.

At the same time, this argument is valid in relation to the **appointing authority**, which always remains political. However, it is important to take into account that it relies not only on its own opinion or the opinion of politicians but often uses **advisory bodies** to determine the candidate for Prosecutor General before submitting the appointment proposal to the authorised body.

The Venice Commission notes that in countries where the Prosecutor General is elected by parliament, the obvious danger of politicisation of the appointment process can also be reduced by providing for the preparation of this process with the participation of a parliamentary committee, which should **take expert advice into account.** The use of a qualified majority for the election of the Prosecutor General may be viewed as a mechanism for achieving consensus on such appointments. [...]

³⁸ [Basic information about Poland.](#)

³⁹ The Status of Public Prosecution Bodies: International Standards, Foreign Legislation and Proposals for Reform in Ukraine / edited by O. A. Banchuk. Kyiv: Atika, 2012, p. 56.

⁴⁰ Waters, T. Overview: Design and Reform of Public Prosecution Services, in Promoting Prosecutorial Accountability, Independence and Effectiveness. 2008. p. 47.

The Prosecutor General should be appointed either indefinitely or for a relatively long period without the possibility of renewal after that period expires. The term of office should not coincide with the term of parliament.⁴¹

Such bodies make it possible to assess a candidate's professionalism, moral and business qualities, professional ethics (integrity) and other criteria by which different candidates from the professional community may be compared. **In EU countries, the role of advisory body is most often performed by parliamentary committees,** which have the opportunity to hear the candidate for Prosecutor General before appointment. **Cases of consultation with external bodies** — prosecutorial or judicial self-governance bodies (Slovenia, Bulgaria) — **are less common.** This is not necessarily a competition with public selection, but rather a nomination procedure with possible consultations. In isolated cases, **it is a competition.** For example, in **Latvia,** the Prosecutor General's candidacy is submitted to Parliament by the Council for the Judiciary following an open competition.⁴² The Council for the Judiciary checks compliance with the criteria established by law and interviews all candidates. At the same time, it selects and nominates only one candidate as a result of such competition. However, the Latvian model involving the Council for the Judiciary and open selection is more of a progressive exception for the Baltic and Eastern European countries.

Thus, **the appointment of the Prosecutor General is usually a closed or semi-closed process among experienced high-level prosecutors/judges (in some cases involving consultations with judicial/prosecutorial self-governance bodies).**

The only institution where a competitive model involving an independent international panel exists is the European Public Prosecutor's Office (EPPO).⁴³ The appointment of the European Chief Prosecutor and of European Prosecutors from each country takes place exclusively through a special Selection Panel. The Panel consists of 12 members, including former members of supranational judicial bodies, in particular the Court of Justice of the EU, the European Court of Auditors and Eurojust, as well as judges of national supreme courts, senior prosecutors and lawyers of recognised competence. The Panel assesses qualifications, conducts interviews and establishes a binding ranking of candidates. However, the European Public Prosecutor's Office is an EU institution and is unlikely to be comparable with the national models that are the subject of this analysis.

⁴¹ CDL-AD(2010)040, Report on European Standards as regards the Independence of the Judicial System: Part II — the Prosecution Service. §§ 35–38 and 40; see also CDL-AD(2017)028, Poland — Opinion on the Act on the Public Prosecutor's Office. § 34.

⁴² [Latvia looks for next Prosecutor General. LSM. 10.01.2025.](#)

⁴³ [Council Regulation \(EU\) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office \('the EPPO'\). Article 14.](#)

4. Competition for the Office of Prosecutor General: Pro et Contra in the Context of Constitutionality

4.1. APPOINTMENT OF THE PROSECUTOR GENERAL

The introduction of a competitive selection procedure for the Prosecutor General is increasingly seen as one of the possible mechanisms for strengthening the independence of the prosecution service, reducing the level of political influence over the office of Prosecutor General and increasing public trust in the prosecution service.

Such proposals appear in professional publications, civil society demands and media publications. A competition for the office of Prosecutor General almost became a matter of state policy: the draft Anti-Corruption Strategy for 2023–2025 contained such a measure, but it was removed during revision. One of the drafts of the Anti-Corruption Strategy for 2026–2030,⁴⁴ currently under consideration by Parliament, also provides for the introduction of a competitive procedure for appointing the Prosecutor General. This is the vision of the NACP registered by an MP, while the Government does not support this idea in its own version of the draft Anti-Corruption Strategy.⁴⁵

One of the key arguments in favour of a competitive model is the **need to overcome the problem of institutional instability of the office of Prosecutor General in Ukraine**. Despite the legally defined six-year term of office, in fact no Prosecutor General in the period of Ukraine's independence has completed a full term. Frequent changes in the leadership of the prosecution service indicate the significant dependence of this office on the political context and current political processes.

Although formally the termination of the powers of Prosecutors General has mostly been framed through resignations at their own request, in most cases such decisions were preceded by political conflicts, public pressure or changes in the political priorities of the authorities. As a result, the actual level of protection of the Prosecutor General from political influence remains limited.

⁴⁴ [On the Principles of State Anti-Corruption Policy for 2026–2030: Draft Law No. 15230 of 13.05.2026.](#)

Expected strategic result 2.2.2.1. Appointment to the office of Prosecutor General is carried out in the manner provided by the Constitution of Ukraine, with the involvement of a competition commission that provides recommendations to the President of Ukraine on potential candidates for this office.

⁴⁵ [Expert Analysis of the Draft Anti-Corruption Strategies for 2026–2030. Agency for Legislative Initiatives. 2026.](#)

The situation in October 2024 related to the scandal over the mass acquisition by prosecutors of disability status and corresponding budget payments is illustrative in this context. Although a significant part of the relevant decisions and practices had formed even before A. Kostin was appointed Prosecutor General, this situation became the catalyst for his political resignation. This example demonstrates the high level of political vulnerability of the office of Prosecutor General and the tendency to place personal political responsibility on the Prosecutor General for systemic problems of the prosecution service regardless of when they arose or the real extent of his or her personal influence over the relevant processes.

In this context, a **competitive procedure may be regarded as an instrument for strengthening the legitimacy of the Prosecutor General**. Public professional selection, interviews, presentation of a vision for the development of the prosecution service, verification of integrity and professional reputation may create a higher level of public trust in the candidate even before the appointment.

In addition, a **competitive procedure could potentially reduce the perception of the Prosecutor General as an exclusively political figure**. Under the current model, the candidate is effectively determined within political arrangements between the main actors in power, whereas the participation of an independent competition commission or prosecutorial self-governance bodies could strengthen the professional component of the procedure.

A separate argument is the need to **ensure predictability and institutional stability in the functioning of the prosecution service**. Frequent changes of Prosecutors General negatively affect the implementation of long-term reforms, staff stability, strategic planning and the continuity of managerial approaches in the prosecution service.

In addition, the introduction of a competitive procedure could potentially broaden the pool of candidates for the office of Prosecutor General and **reduce the risk of appointing exclusively politically loyal persons**. Open selection creates conditions for the participation of candidates with different professional experience, managerial vision and level of public trust.

However, even if a competitive procedure is introduced, the final decision on the appointment of the Prosecutor General, given Ukraine's constitutional model, is likely to remain with the President of Ukraine. Therefore, in such a model, a competition may be regarded not as full depoliticisation of the procedure, but as a mechanism for increasing its transparency, professionalism and public legitimacy.

The key argument against a competitive procedure for selecting (appointing) the Prosecutor General is its incompatibility with the Constitution of Ukraine.

Under martial law, amendments to the Constitution of Ukraine cannot be introduced, while the review of the Prosecutor General appointment procedure is expected by the end of 2026, that is, under martial law, even under the most optimistic scenarios for the end of the war in Ukraine.

Below we set out three arguments supporting constitutionality and three arguments challenging constitutionality of a competition for the office of Prosecutor General. We leave it to the reader to decide whether a competition for the Prosecutor General is constitutional or not, since this is a matter of a lawyer's professional view. There is no institution of preliminary assessment of legislative initiatives by the Constitutional Court of Ukraine (except for draft laws amending the Constitution of Ukraine), so it is also impossible to know the future position of the CCU if the constitutionality of adopted amendments is challenged. ALI's answer to the question of the constitutionality of a competition for the office of Prosecutor General is provided in Vision of the Agency for Legislative Initiatives.

Arguments in favour of the constitutionality (compliance with the Constitution of Ukraine) of a competition for the office of Prosecutor General:

1. Preservation of the discretion of the appointing authority

The Constitution of Ukraine determines only that the prosecution service in Ukraine is headed by the Prosecutor General and that he or she is appointed by the President of Ukraine with the consent of the Verkhovna Rada of Ukraine (Article 131-1 of the Constitution of Ukraine).

At the same time, the procedure for such appointment, the qualification requirements for the Prosecutor General and other aspects of this procedure are determined by laws of Ukraine. In view of this, the Verkhovna Rada of Ukraine may detail the procedure for appointing the Prosecutor General while preserving the dual appointing authority — the President of Ukraine with the consent of the Verkhovna Rada of Ukraine.

The discretionary power of such an appointing authority may be ensured by the fact that, following the competition, the competition commission submits at least two candidates, from among whom the President of Ukraine may choose with the consent of the Verkhovna Rada of Ukraine, so that his appointment powers do not become merely nominal execution of the competition commission's decision.

2. Doctrine of self-restraint

The dual appointing authority — the President of Ukraine with the consent of the Verkhovna Rada of Ukraine — is an entity with the right of legislative initiative. If a competitive procedure for appointing the Prosecutor General is introduced by the Verkhovna Rada of Ukraine, the doctrine of legislative self-restraint may be applied.

At the same time, regardless of whether the initiator is Parliament (in which case the President expresses self-restraint by not applying the veto) or the President (in which case Parliament accepts the President's self-restraint), self-restraint consists in refraining from the full scope of discretionary power to choose any candidate from among those who meet the qualification requirements. In that case, any competition option followed by the implementation of the competition commission's decision will be constitutional if the adoption of amendments to the Law of Ukraine 'On the Public Prosecutor's Office' is viewed through the prism of the doctrine of legislative self-restraint.

3. Principle of 'friendly approach to international law'

The Constitutional Court of Ukraine has repeatedly referred to the principle of a 'friendly approach to international law'⁴⁶ (or 'conforming interpretation'). S. Shevchuk notes that the principle of a friendly approach to international law should be understood as the Constitutional Court of Ukraine's recourse, in its interpretative activity, to international legal norms, in particular the ECHR, while the application of the ECHR without reference to ECtHR case-law is impossible.⁴⁷ The operation of this principle can be traced when, in the process of applying ECtHR case-law, the CCU identifies a contradiction between national legislation and international legal norms whose binding force has been recognised by our state in accordance with the procedure established by law. In such a case, in accordance with the 'principle of a friendly approach to international law', the CCU must apply the norm of international law in the context in which it is interpreted by the ECtHR in its judgments, as the only official interpreter of the ECHR.⁴⁸

With regard to the competitive procedure for selecting the Prosecutor General, this means that introducing a competitive procedure into Ukrainian legislation would constitute implementation — a 'friendly attitude' — of EU standards into national legislation. We have already considered different ways of implementing EU standards through national models, one of which can undoubtedly be the competitive procedure for appointing the Prosecutor General. The Constitution of Ukraine provides that international treaties in force, consent to the binding nature of which has been given by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine (Article 9 of the Constitution of Ukraine), and also establishes the irreversibility of Ukraine's European and Euro-Atlantic course (Preamble to the Constitution of Ukraine).

⁴⁶ Decision of the CCU No. 2-rp/2016 of 01.06.2016 (case on judicial control over the hospitalisation of persons lacking legal capacity in a psychiatric institution).

Decision of the CCU No. 6-rp/2016 of 08.09.2016 (case on advance notification of public worship services, religious rites, ceremonies and processions).

⁴⁷ S. Shevchuk. Consistency between the Practice of the ECtHR and the Constitutional Court of Ukraine. Bulletin of the Constitutional Court of Ukraine. 2011. No. 4–5, pp. 122–130.

⁴⁸ P. M. Synytsyn. 'Friendly Attitude to International Law' as a Principle for Applying ECtHR Judgments in the Interpretative Activity of the CCU. Legal Life of Modern Ukraine: in 3 vols.: Proceedings of the International Scientific and Practical Conference (Odesa, 15 May 2020) / responsible editor M. R. Arakelian. Odesa: Helvetica, 2020. Vol. 1, pp. 344–347.

Therefore, the implementation of EU standards — depoliticisation through the introduction of merit-based selection — in the form of a national model of competitive appointment principles would be consistent with a ‘friendly attitude’ or ‘conforming interpretation’ in relation to international law.

Arguments against the constitutionality (non-compliance with the Constitution of Ukraine) of a competition for the office of Prosecutor General:

1. Textual (constitutionally conforming) argument

The textual argument refers to the fact that the Constitution of Ukraine clearly defines the boundaries of the procedure for appointing the Prosecutor General: ‘The prosecution service in Ukraine shall be headed by the Prosecutor General, who shall be appointed to office and dismissed from office by the President of Ukraine with the consent of the Verkhovna Rada of Ukraine’ (Article 131-1 of the Constitution of Ukraine). No other requirements for the procedure are established. Therefore, no competition, consultations or other form of departure from the will of the dual appointing authority is possible.

By contrast, since the prosecution service is part of the justice system, we can compare the constitutional and legal regulation of the appointment of judges and of the Prosecutor General. Where judges (Article 128(1) of the Constitution of Ukraine) or judges of the CCU (Article 148(2) of the Constitution of Ukraine) are concerned, the Constitution of Ukraine directly provides for a competition for these positions. No competition is provided for the Prosecutor General, while examples from the executive branch, where a political appointment procedure exists, are irrelevant. Thus, a constitutionally conforming interpretation (minimal, without harm to the legal order — consistent with the Constitution) allows one to conclude that there is no competition for the office of Prosecutor General and there cannot be one, since this is an exclusive (discretionary) power of the President and Parliament.

2. Teleological (purposive) argument

In 2016, Chapter VII of the Constitution of Ukraine, ‘The Prosecution Service’, was removed, and Chapter VIII, ‘Justice’, underwent significant changes.⁴⁹ In particular, the prosecution service was included in the justice system. At the same time, the procedure for appointing and dismissing the Prosecutor General was not changed, and the explanatory note to the draft law and other materials do not reflect the legislator’s intention to change the political procedure for appointing the Prosecutor General. At the same time, the legislator was aware of the Venice Commission’s Opinion on the Draft Law of Ukraine ‘On the Public Prosecutor’s Office’, international standards and best practices.

⁴⁹ On Amendments to the Constitution of Ukraine (regarding justice): Law of Ukraine No. 1401-VIII of 02.06.2016.

Thus, from the perspective of teleological (purposive) interpretation, that is, the legislator's intention, the legislator did not intend to change the procedure for appointing the Prosecutor General. This is the constitutional and legal regulation that cannot be changed by narrowing the discretion of the dual appointing authority, since such a step would be unconstitutional.

3. Discretionary powers of the President (the concept of justice)

A reverse argument concerning the place of the prosecution service in the justice system may be made as to the unconstitutionality of a competition for the office of Prosecutor General. It is rather a combination of the two previous arguments. If a competition is provided for the office of judge, but not for the Prosecutor General; if the Verkhovna Rada of Ukraine recently significantly amended Chapter VIII of the Constitution of Ukraine, 'Justice' (2016); and finally, if the Verkhovna Rada of Ukraine fully preserved the key personnel role of the President in relation to judges, then this is part of the system of separation of powers or the system of checks and balances in justice. The President appoints judges, the President plays an active role in establishing courts and, finally, the President appoints the Prosecutor General. Therefore, his powers cannot be narrowed, since these are not merely discretionary powers but a system of checks and balances that ensures the rule of law in Ukraine.

5. Options (Scenarios) for Depoliticising the Procedure for Appointing and Dismissing the Prosecutor General

Improving the procedure for appointing and dismissing the Prosecutor General has several models, which differ in the level of participation of political actors, prosecutorial governance bodies and independent competition commissions. Each model has its own advantages, risks and different degrees of compatibility with Ukraine's current constitutional architecture.

Taking into account the analysis conducted, it is worth noting that there are two dimensions to the issue of depoliticising the procedure for appointing and dismissing the Prosecutor General: 1) what the procedure for appointing and dismissing the Prosecutor General should be if limiting the discretionary powers of the President and the Verkhovna Rada is constitutional (competition, selection with a mandatory opinion of self-governance bodies, etc.); and 2) what the procedure for appointing and dismissing the Prosecutor General should be if limiting the discretionary powers of the President and the Verkhovna Rada is unconstitutional, and whether this is possible at all. With this caveat in mind, possible scenarios are considered below.

5.1. APPOINTMENT OF THE PROSECUTOR GENERAL

5.1.1 Introducing a Direct Competition for the Prosecutor General's Office (Maximum Scenario)

The *maximum* scenario provides for the introduction of a full competitive procedure for selecting candidates for the office of Prosecutor General, with selection stages, assessment criteria and the participation of an independent competition commission defined by law.

This model may be built by analogy with the selection procedures for heads of law enforcement bodies (the Economic Security Bureau of Ukraine) or anti-corruption bodies. Under this model, a competition commission could be formed from representatives of prosecutorial self-governance bodies, international experts, civil society representatives and legal professionals.

The foreign element in the selection commission may vary. At the same time, the model may provide for: a) the participation of international experts (foreigners); b) the participation of representatives of international partners (international organisations, international technical assistance (ITA) projects, etc.), who may be citizens of Ukraine; or c) no international members of the commission at all.⁵⁰

The **decision-making rules** where foreigners (international representatives) participate in the competition commission are also variable. Recently, the model of the so-called 'decisive vote' of international experts has been introduced (according to the formula 'a majority of commission votes, including at least two votes from among international experts', or simply '4 to 2'), the effectiveness of which has a number of problems.⁵¹

The **open or closed** nature of the competition for the office of Prosecutor General is also variable. An open competition allows any candidate who meets the qualification requirements to apply. A closed competition may allow only prosecutors, or prosecutors, judges and advocates (the 'justice triangle'), to apply, or may require prior consent (assessment) by prosecutorial self-governance.

The **authority** conducting the competition is also variable: it may be a) a special ad hoc commission (competition commission); b) the High Council of Justice (taking into account its constitutional status in the justice system); or c) the Council of Prosecutors

⁵⁰ Although this option is not currently proposed, we consider all possible alternatives. Given the political discussion, it is entirely possible that the absence of international experts, provided a full competition is held, may become a compromise during voting on the relevant draft law in the Verkhovna Rada of Ukraine.

⁵¹ [Competition Commissions with the Participation of International \(Foreign\) Experts \(Judicial Bodies and the Constitutional Court of Ukraine\): Analytical Report / Agency for Legislative Initiatives. 2026.](#)

of Ukraine as the highest body of prosecutorial self-governance between meetings of the All-Ukrainian Conference of Prosecutors.

The competition procedure may include:

- verification of compliance with formal requirements;
- analysis of professional experience;
- assessment of managerial competences;
- integrity checks;
- testing or practical tasks;
- public interviews;
- presentation by candidates of a strategy for the development of the prosecution service.

Following the competition, the commission could either determine one winner for submission for appointment or form a list of recommended candidates for a further political decision by the President of Ukraine and the Verkhovna Rada of Ukraine.

The main advantage of this model is the high level of procedural transparency and the strengthening of the professional component of selection. An open competition could potentially reduce the level of political dependence of the office of Prosecutor General and increase public trust in the results of the appointment.

At the same time, this model may also create a number of problems. First of all, the question arises as to the constitutionality of transferring actual decisive influence over the selection of the Prosecutor General to a competition commission, since the Constitution of Ukraine directly defines the appointing authorities — the President of Ukraine and the Verkhovna Rada of Ukraine. Excessive restriction of the discretion of constitutional bodies may be seen as an indirect narrowing of their constitutional powers. Depending on the answers to the question of constitutionality (see Section 4 of this analytical note), this scenario may or may not be considered possible.

In addition, there is a risk of lengthy competition processes, which is particularly critical for the office of Prosecutor General under martial law and given the need for swift personnel decisions.

5.1.2 Selection of Candidates by Prosecutorial Governance Bodies (Moderate Scenario)

The *moderate* scenario provides for strengthening the role of prosecutorial self-governance bodies in the procedure for selecting the Prosecutor General.

Under this model, the **Council of Prosecutors of Ukraine** could conduct **selection** and choose candidates for subsequent submission to the President of Ukraine or the Verkhovna Rada of Ukraine.

The key difference from scenario 5.1.1 is that selection would be carried out according to rules determined by the prosecutorial self-governance body itself. Certain elements of this procedure could be reflected in the Law of Ukraine ‘On the Public Prosecutor’s Office’, but, unlike a competition, the **decisive provisions of selection should be left to the discretion of prosecutorial self-governance, which selects its own head from among the prosecutorial corps (community).**

For example, the Council of Prosecutors could:

- announce the selection;
- assess candidates;
- conduct integrity checks;
- hold interviews;
- form a list of candidates to be submitted for appointment;
- approve a candidate (or candidates) for the office of Prosecutor General by decision of the All-Ukrainian Conference of Prosecutors (if such an obligation is introduced).

In this case, the President of Ukraine would retain the constitutional right to submit a candidate to the Verkhovna Rada of Ukraine, **but only from among the candidates determined by the prosecutorial governance body following selection.** At the same time, **the question of submitting one candidate or several candidates for the President of Ukraine to choose from would remain at the discretion of prosecutorial self-governance.**

An additional argument in favour of the potential involvement of the Council of Prosecutors of Ukraine in the procedure for selecting the Prosecutor General is the planned strengthening of the institutional capacity of prosecutorial self-governance bodies as part of EU integration reforms. The Rule of Law Roadmap provides for reform of the Council of Prosecutors of Ukraine by strengthening its institutional independence, reviewing its functions and the formats of work of its members, establishing it as a separate legal entity and providing it with its own secretariat.

Implementation of these measures could potentially transform the Council of Prosecutors from a primarily representative body into a fully fledged prosecutorial governance institution capable of organising complex personnel procedures, including competitive selection of candidates for administrative positions. Having its own secretariat, autonomous funding and procedural capacity could create the preconditions for a more

independent and professional competition for the office of Prosecutor General, with an appropriate level of organisational and analytical support.

In addition, strengthening the institutional role of the Council of Prosecutors is consistent with the general European trend towards expanding the powers of prosecutorial governance bodies in matters of careers, disciplinary liability and ensuring prosecutorial independence.

Alternatively or additionally, the relevant powers could be granted to the **High Council of Justice** as a constitutional body that includes representatives of both the judiciary and the prosecution service. This approach could ensure a more balanced procedure and reduce the risks of exclusively corporate influence by prosecutorial self-governance bodies.

The **Ethics Council under the High Council of Justice** could play a separate role within this model. Taking into account its current powers to assess the professional ethics and integrity of candidates for the High Council of Justice, as well as to verify compliance with the criteria of professional ethics and integrity, the Ethics Council could be involved in vetting candidates for the office of Prosecutor General. In particular, such a body could:

- assess the integrity of candidates;
- analyse declarations, lifestyle and professional reputation;
- check for possible conflicts of interest;
- issue opinions on candidates' compliance with professional ethics criteria.

The introduction of such a mechanism could partially reproduce the model already applied during the reform of judicial governance bodies with the participation of international experts and independent professionals.

This model is partly close to the practices of certain EU Member States where prosecutorial or judicial governance bodies play a key role in personnel procedures concerning the leadership of the prosecution service.

The main advantage of this model is that it strengthens the professional autonomy of the prosecution service and reduces direct political influence over the selection procedure. In addition, it is prosecutorial self-governance bodies and judicial governance bodies that have the greatest professional awareness of the specific features of the prosecution service, the requirements for candidates for leadership positions and the criteria of professional integrity.

An additional advantage of the potential involvement of the High Council of Justice and the Ethics Council is **that these institutions already have established integrity assessment procedures and experience of cooperation with international experts.**

This may help increase trust in the procedure and its compliance with EU integration expectations regarding transparent personnel processes in the field of justice.

At the same time, this model also entails risks. Involving the High Council of Justice in the procedure for selecting the Prosecutor General may trigger debate about the limits of this body's competence, since the Constitution of Ukraine does not expressly place the prosecution service within the personnel powers of the High Council of Justice.

Similarly, transferring decisive influence over the formation of candidacies to prosecutorial governance bodies or judicial governance bodies may raise questions about compliance with the constitutional model for appointing the Prosecutor General, under which the decisive role in the procedure belongs to the President of Ukraine and the Verkhovna Rada of Ukraine.

5.1.3 Advisory Participation of Prosecutorial Governance Bodies (Minimum Scenario)

The *minimum* scenario provides for preserving the current constitutional model of appointing the Prosecutor General by the President of Ukraine with the consent of the Verkhovna Rada of Ukraine, while introducing additional advisory procedures.

Under this model, the President of Ukraine independently determines the candidate for the office of Prosecutor General, but before submitting the candidacy an advisory opinion must be obtained from the Council of Prosecutors of Ukraine, the High Council of Justice or another independent advisory body established for this purpose and composed of prosecutors.

Such a body could:

- verify compliance with the formal requirements for the office and with integrity criteria;
- assess the candidate's professional experience and managerial competences;
- provide other reasoned comments on the candidate.

At the same time, the President of Ukraine would have the right independently to request an opinion on a candidate for the office of Prosecutor General determined by the President, or in the absence of such candidacies or on other grounds provided by the procedure defined by law. The Council of Prosecutors of Ukraine or another body would be able independently to propose candidates together with the relevant opinion.

The advantage of this model is that it interferes least with the current constitutional structure of the powers of the President of Ukraine and the Verkhovna Rada of Ukraine. In effect, political actors retain the final personnel decision, but the **procedure becomes more transparent and professional, and prosecutorial (or prosecutorial-judicial) self-governance has an influence on it**. In other words, public trust in the procedure for appointing the Prosecutor General increases, and the prosecutorial corps can influence who will lead it.

At the same time, the effectiveness of this model will largely depend on whether the President of Ukraine takes advisory opinions into account. If the body issuing the opinion has real authority and independence, the formation of such a tradition is entirely possible. However, in the absence of a political culture of taking such opinions into account, the advisory procedure may become a formality without any real influence on the outcome of the appointment.

5.2. DISMISSAL OF THE PROSECUTOR GENERAL

5.2.1 Full Exclusion of the Political Dismissal Procedure through Constitutional Amendments (Maximum Scenario)

Taking into account the European standards analysed above, the conclusion is clear: the Prosecutor General must be dismissed from office on **grounds whose list is exhaustive and complies with the principle of legal certainty**. At the same time, the procedure for dismissing the Prosecutor General may only be professional, not political.

Here it is worth recalling the Venice Commission's Opinion (paragraphs 120, 121 and 199) on the Draft Law of Ukraine 'On the Public Prosecutor's Office': *'The Constitution should be amended to provide that the President may dismiss the Prosecutor General only in accordance with established grounds, and that the Prosecutor General should have the right to a fair judicial hearing on the issues of his or her dismissal'*⁵².

This currently requires two steps:

- 1) improving the current procedure for dismissing the Prosecutor General on the grounds that he or she committed a disciplinary offence or that incompatibility grounds have arisen — on the submission of the HCJ and/or QDCP;
- 2) abolishing the vote of no confidence as the power of the Verkhovna Rada of Ukraine to terminate the powers of the Prosecutor General through resignation from office (Article 85(1)(25) of the Constitution of Ukraine).

While the first step may be taken by amending the current legal regulation at the level of the laws of Ukraine 'On the Public Prosecutor's Office', 'On the High Council of Justice' and 'On the Rules of Procedure of the Verkhovna Rada of Ukraine', the second may be taken only by amending the Constitution of Ukraine. Therefore, real improvement of the procedure for dismissing the Prosecutor General will be possible only after the termination or cancellation of martial law, which would make it possible to amend the Constitution of Ukraine.

After the exclusion of the parliamentary vote of no confidence in the Prosecutor General, apart from his or her own wish and the expiry of the term of office,

⁵² Opinion on the Draft Law of Ukraine 'On the Public Prosecutor's Office', adopted by the Venice Commission at its 96th Plenary Session (Venice, 11–12 October 2013).

as well as incompatibility and the commission of a criminal offence, there would be no other possibilities to remove the Prosecutor General. This would reduce political pressure on the Prosecutor General and strengthen the role of prosecutorial (judicial) self-governance in determining cases where the Prosecutor General violates the law, including breaches of rules of professional ethics that undermine the authority of the prosecution service.

5.2.2 Preserving the Political Procedure for Dismissing the Prosecutor General, Requiring a Qualified Majority of MPs' Votes (Moderate Scenario)

There is a scenario of preserving both the professional and political procedures for dismissing the Prosecutor General. If there are no grounds for the criminal or disciplinary liability of the Prosecutor General, then his or her dismissal is rather political in nature. In other words, his or her actions in office do not align with the vision of MPs. The current procedure,⁵³ which provides for the decision on the resignation of the Prosecutor General to be supported by a simple majority of votes of the constitutional composition of the Verkhovna Rada of Ukraine (226 votes), is an instrument of political pressure, as noted in this analytical note.

If amendments are introduced to the Constitution of Ukraine providing that **a vote of no confidence in the Prosecutor General must be adopted by a qualified majority of votes of the constitutional composition of the Verkhovna Rada of Ukraine (300 votes)**, the political support for such a decision becomes significantly more difficult to secure. Although the dismissal procedure remains political, protection from political arbitrariness through the introduction of a qualified majority requirement may reduce its negative impact on the Prosecutor General.

5.2.3 Partial Preservation of the Political Dismissal Procedure by Clarifying the Procedure with the Involvement of a TIC (Minimum Scenario)

An alternative scenario is to reduce the political nature of the dismissal procedure, namely by **introducing a detailed procedure for expressing a vote of no confidence**. This scenario may be considered unconstitutional through the prism of limiting the discretionary powers of the Verkhovna Rada of Ukraine, since Article 85(1)(25) of the Constitution of Ukraine does not establish additional conditions or rules for expressing a vote of no confidence.

⁵³ According to Article 91 of the Constitution of Ukraine, the Verkhovna Rada of Ukraine adopts laws, resolutions and other acts by a majority of its constitutional composition, except in cases provided for by this Constitution. No such exceptions are established for a vote of no confidence in the Prosecutor General.

However, taking into account that the Verkhovna Rada of Ukraine may restrain its own powers, we believe that the Law of Ukraine ‘On the Rules of Procedure of the Verkhovna Rada of Ukraine’ may establish any procedure for expressing a vote of no confidence at Parliament’s own discretion.

For example, **special rules** may be introduced for the **consideration by the relevant committee** of the Verkhovna Rada of Ukraine of the issue of expressing no confidence in the Prosecutor General (clarifying the current hearing procedure), **or** this issue may be referred to temporary investigative commissions (**TICs**).

Since a TIC is a collegial temporary body of the Verkhovna Rada of Ukraine established from among MPs, whose task is to exercise parliamentary oversight by conducting investigations into matters of public interest (Article 1 of the Law of Ukraine ‘On Temporary Investigative Commissions and Temporary Special Commissions of the Verkhovna Rada of Ukraine’), it is entirely logical to refer to a TIC the issue of the Prosecutor General’s failure to perform his or her functions and tasks that goes beyond the commission of a criminal offence, a disciplinary offence or the emergence of incompatibility grounds. In other words, such a commission would examine political issues of public interest.

Vision of the Agency for Legislative Initiatives

Taking the above into account, the ALI considers that the **best** scenario for depoliticising the procedure for appointing and dismissing the Prosecutor General is to **amend Articles 85 and 131-1 of the Constitution of Ukraine** in a way that would make it possible to:

- 1) narrow the discretion of the President of Ukraine and the Verkhovna Rada of Ukraine by **involving a mandatory opinion of the Council of Prosecutors of Ukraine** on the submission of a proposal concerning one or several candidates for the office of Prosecutor General. This is possible only after legislative amendments implementing the measures envisaged by the Government's Rule of Law Roadmap for the fourth quarter of 2026. This will strengthen the institutional capacity of the Council of Prosecutors of Ukraine, that is, its ability to independently perform the functions assigned to it, namely: representation of the prosecutorial corps (community), protection of prosecutorial independence, appellate review of prosecutors' assessment results, active participation in competitive selection of heads of prosecution authorities and so on. At the same time, the decision on conducting a competition, selection or another form of candidate assessment would be determined independently by prosecutorial self-governance;
- 2) fully abolish the political procedure for the dismissal (resignation) of the **Prosecutor General and preserve exclusively the professional procedure for dismissal of the Prosecutor General**, which would cover the commission by the Prosecutor General of a criminal offence, a disciplinary offence or the emergence of incompatibility grounds defined by law.

However, implementation of this scenario is possible only if amendments are introduced to the Constitution of Ukraine after the termination or cancellation of the legal regime of martial law in Ukraine.

At the same time, a **transitional** scenario may consist in partial depoliticisation of the procedure for appointing and dismissing the Prosecutor General within the framework of fulfilling EU integration commitments. Taking into account the political sensitivity of the issue, the need for progress in EU integration and the need to avoid any doubts regarding the constitutionality of such a decision, this means:

- 1) introducing the minimum scenario for depoliticising the procedure for appointing the Prosecutor General — establishing in legislation the obligation for the President of Ukraine to request an opinion from the Council of Prosecutors of Ukraine and/or the High Council of Justice before submitting a candidate for the office of Prosecutor General to the Verkhovna Rada of Ukraine;

⁵⁴ The same caveat applies regarding the need first to strengthen the institutional capacity of the Council of Prosecutors of Ukraine.

2) the optimal approach appears to be the application of the minimum scenario **(partial preservation of the political dismissal procedure by clarifying the procedure with the involvement of the mechanism of a temporary investigative commission of the Verkhovna Rada of Ukraine)**, both where constitutional amendments are possible and where they cannot be introduced. The rationale for this view is the need to preserve the political appointment procedure, which is interconnected with the political dismissal procedure and should be retained.