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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**UKRAINE**

**OPINION**

**ON THE LAW**

**“ON THE PREVENTION OF THREATS TO NATIONAL SECURITY  
RELATED TO THE EXCESSIVE INFLUENCE OF PERSONS  
WITH SIGNIFICANT ECONOMIC AND POLITICAL WEIGHT  
IN PUBLIC LIFE (OLIGARCHS)”**

**Adopted by the Venice Commission  
at its 135<sup>th</sup> Plenary Session  
(Venice, 9-10 June 2023)**

**on the basis of comments by**

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## I. Introduction

1. By letter of 10 September 2021, the Chairperson of the Verkhovna Rada of Ukraine requested an opinion from the Venice Commission on the (then) draft Law on the prevention of threats to national security, associated with excessive influence of persons having significant economic or political weight in public life (oligarchs), ([CDL-REF\(2021\)086](#)), hereinafter (“the Law”).

2. Mr Francesco Maiani, Ms Grainne McMorro, Ms Angelika Nussberger and Mr Cesare Pinelli acted as rapporteurs for this opinion.

3. On 22 and 23 November 2021, a delegation of the Commission composed of the rapporteurs and Mr Schnutz Dürr, Ms Tania van Dijk and Ms Tanja Gerwien from the Secretariat held online meetings with the Minister of Justice, the Ombudsperson (Ukrainian Parliament Commissioner for Human Rights), representatives of the majority and opposition parties in the Verkhovna Rada, the National Agency on Corruption Prevention, the administration of the National Security and Defence Council, international partners of Ukraine and civil society. The Commission is grateful to the Office of the Council of Europe in Ukraine for the excellent organisation of these on-line meetings.

4. On 29 November 2021, the Commission received an additional request from the President of Ukraine, which led the Bureau to decide to postpone the draft opinion to allow for a more thorough discussion on the background of the Law. At its 129<sup>th</sup> Plenary Session, the Venice Commission decided that the draft opinion would be issued through urgent procedure in January, after additional meetings of the rapporteurs with the presidential administration had taken place. The Commission subsequently received two requests to withdraw the opinion request, by the President of Ukraine on 17 December 2021 and by the new Speaker of the Verkhovna Rada on 21 December 2021, on account of the authorities’ intention to improve the Law. An additional meeting between the rapporteurs and the presidential administration took place on 22 December 2021.

5. On 14 January 2022, the Bureau decided that the opinion would not be issued through the urgent procedure in January 2022 but would be submitted to the Commission for adoption at its 130<sup>th</sup> Plenary Session in March 2022. However, at that session, the Commission suspended the adoption of opinions for Ukraine, due to the Russian war of aggression against Ukraine.

6. In its opinion on the EU membership application by Ukraine, the European Commission noted that *"a so-called "Anti-Oligarch law" was signed into Law in November 2021".* Consequently, the EC recommended to *"implement the Anti-Oligarch law to limit the excessive influence of oligarchs in economic, political, and public life; this should be done in a legally sound manner, taking into account the forthcoming opinion of the Venice Commission on the relevant legislation".*<sup>1</sup>

7. On 21 December 2022, the rapporteurs had on-line meetings on the Law with the Ukrainian authorities (Deputy-Prime-Minister for European and Euro-Atlantic integration, Minister of Justice, Office of the President of Ukraine and the National Security and Defence Council of Ukraine). The rapporteurs learned that amendments to the Law and implementing legislation were being prepared and would be submitted to the Commission.

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<sup>1</sup> See European Commission [opinions](#) on the EU Membership applications by Ukraine, but also by Georgia and the Republic of Moldova, 17 June 2022.

8. On 30 January 2023, the Monitoring Committee of the Parliamentary Assembly of the Council of Europe requested an opinion on the Law.

9. On 8 March 2023, shortly before the examination of the draft interim opinion on the Law at the 134<sup>th</sup> Plenary Session of the Venice Commission in March 2023, the Ukrainian authorities submitted draft amendments to the Law. At the same time, the President of the Venice Commission received a request from the Speaker of the Verkhovna Rada to postpone the adoption of the opinion, because of the martial law regime currently in force in Ukraine and the risk of destabilisation of the country. The Enlarged Bureau of the Venice Commission decided to postpone the opinion to the 135<sup>th</sup> Plenary Session in June 2023, to adopt it at the same time as the final opinions for Georgia and the Republic of Moldova, to allow the Commission to continue to work on its final position on this matter.

10. On 4-5 May 2023, a delegation led by the President of the Venice Commission met in Kyiv with the President of Ukraine, the Speaker of the Verkhovna Rada, the Minister of Foreign Affairs, the Deputy Prime Minister for European and Euro-Atlantic Integration, the Minister of Justice and the Vice-Minister of Education, as well as the acting President of the Constitutional Court, representatives of civil society and several members of the diplomatic community in Kyiv. The Law was one of the topics discussed.

11. This opinion was prepared in reliance on an unofficial English translation of the Law (as adopted on 5 November 2021). The translation may not always accurately reflect the original version on all points, therefore certain issues raised may be due to problems of translation.

12. This opinion was drafted on the basis of comments by the rapporteurs and the results of on-line meetings with the authorities of Ukraine and other relevant stakeholders, as well as the in-person meetings in May 2023. It was discussed at the meeting of the Sub-Commission on Democratic Institutions, on 8 June 2023. Following an exchange of views with Mr Denys Maliuska, the Minister of Justice of Ukraine, it was adopted by the Venice Commission at its 135<sup>th</sup> Plenary Session (Venice 9-10 June 2023).

## **II. Background**

13. Preventing non-transparent, undue influence of individuals on political, economic and public life is certainly a priority for any state wishing to achieve a democratic system governed by the rule of law and respectful of human rights. This concern has a specific connotation in the States of Eastern Europe, such as Ukraine, Georgia and the Republic of Moldova, where the non-transparent influence of so-called "oligarchs" is a major problem for democracy-building.

14. It is difficult to grasp the extent of the adverse influence of "oligarchs" on the rule of law, because "oligarchs" usually do not exert overt influence on political life and on the media directly, but in an indirect and scarcely visible manner. Often illegal methods are used to merge political decision-making and business interests. "Oligarchs" tend to successfully avoid the jurisdiction and ambit of the criminal, anti-corruption and anti-monopoly legislation utilising methods designed to undermine the protective mechanisms of separation of powers and by exerting undue influence on the judiciary to their benefit.

15. Indeed, in Ukraine as in other countries, oligarchisation is the combination of exercising political power without political mandate, influence on parliaments, governments, political parties, judiciary and law enforcement bodies; ownership or influence on the media, decisive, if not monopolistic, influence on a number of areas, such as energy, mining, oil and gas,

metallurgy, real estate, etc.<sup>2</sup> Speaking about the problem of oligarchy, the term "captured state" has also been used.<sup>3</sup>

16. While the Venice Commission firmly supports the goal of fighting oligarchic influence, it stresses that the so-called de-oligarchisation is a very complex issue, and the choice of the means to achieve it is of decisive importance if the system is to be effective while respecting democracy, the rule of law and fundamental rights.

17. In its interim opinions concerning the draft laws submitted by Georgia and the Republic of Moldova<sup>4</sup>, which were to a large extent based on the Law of Oligarchs of Ukraine, the Venice Commission outlined the general state of play and distinguished two approaches in fighting oligarchisation.

18. The first approach, which the Venice Commission referred to as "systemic", involves the adoption and strengthening of legal tools in many fields of law, such as legislation relating to media, anti-monopoly, political parties, elections, taxation, anti-corruption and anti-money laundering (etc.) with a view to preventing the destructive influence of oligarchy in a comprehensive and coordinated manner. This "systemic" approach has a long-term preventive effect.

19. The second approach, which has been adopted also by the Law under consideration and which the Venice Commission referred to as "personal", seeks to identify the persons who are considered to wield this negative influence on the state through specific criteria, such as wealth, media ownership, etc. As will be outlined below, the persons who fulfil a combination of these criteria are publicly declared "persons having significant economic or political weight in public life (oligarchs)" (hereafter "oligarchs") with their information included in a public register. Once registered as "oligarchs", these persons are then subjected to a series of limitations that include exclusion from the financing of political parties or activities, exclusion from privatisations of public property, and the strict obligation for public officials to report on the content of exchanges with them or their representatives. The "personal approach" is thus rather punitive in character.

20. In its interim opinions on Georgia and the Republic of Moldova, the Venice Commission supported the "systemic approach" and expressed its strong reluctance to accept the personal approach, as had been outlined in the draft legislation which it assessed.

21. The Commission wishes to stress that any "systemic" measures to fight oligarchisation need to fit the historical, legal, political and contextual situation of each country. There is no one-size-fits-all. It is clear that the prevailing domestic context is very different in Ukraine, as compared to Georgia and Moldova. Furthermore, Ukraine is fighting a war of aggression by the Russian Federation, which seems to have resulted in reducing the extent of the adverse influence of the "oligarchs". Such situation can obviously not be compared with that of Georgia and the Republic of Moldova. The timing and the extent of the measures to be taken against "oligarchs" will accordingly differ for Ukraine, for Georgia and for the Republic of Moldova.

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<sup>2</sup> See among many others, [CDL-AD\(2020\)013](#), Albania - Opinion on draft amendments to the Law n°97/2013 on the Audiovisual Media Service, adopted by the Venice Commission on 19 June 2020, paragraph 48; Wojciech Konończuk, Denis Cenuşa and Kornely Kakachia, "[Oligarchs in Ukraine, Moldova and Georgia as key obstacles to reforms](#)", Understanding the EU's Association Agreements and Deep and Comprehensive Free Trade Areas with Ukraine, Moldova and Georgia, 2017; [Study](#) prepared by the Reporters Without Borders, 2016.

<sup>3</sup> See for example, in respect of the Republic of Moldova: European Parliament resolution of 14 November 2018 on the implementation of the EU Association Agreement with Moldova ([2017/2281\(INI\)](#)), paragraph 3.

<sup>4</sup> [CDL-AD\(2023\)009](#), Georgia - Interim opinion on the draft law on de-oligarchisation, adopted by the Venice Commission at its 134th Plenary Session (Venice, 10-11 March 2023); [CDL-AD\(2023\)010](#), Republic of Moldova - Interim opinion on the Draft Law on limiting excessive economic and political influence in public life (de-oligarchisation), adopted by the Venice Commission at its 134th Plenary session (Venice, 10-11 March 2023).

### III. Analysis

#### A. An anti-oligarch “system” or a law against “oligarchs”?

22. The Venice Commission underlines at the outset that the danger of the concentration in the hands of a private individual of significant influence over the economic, political and public life of a country without transparency, legitimacy and accountability may exist in virtually any country. Most countries have devised and put in place a set of interconnected legislative, (inter-)institutional, administrative, economic and other measures, in order to prevent the disruptive effects on democracy, the rule of law and human rights brought on by the concentration of such influence with the objective of levelling the playing field for all actors in society. Depending on the context of the country concerned, such measures for example include: an effective competition policy, anti-corruption and anti-money-laundering measures, measures to ensure media pluralism, rules on the financing of political parties and election campaigns (etc.). As indicated above, the Venice Commission qualifies such an approach as a “system” to fight oligarchic influence.

23. The question arises as to whether such a “system” may be effective in a country like Ukraine, where oligarchic influence seems to have taken root and could represent a hurdle for the democratic functioning of the institutions of the state, notably the courts and the specialised independent regulatory authorities which are tasked with anti-corruption, anti-monopoly, anti-money laundering, or even for the adoption of appropriate legislation or policies. The anti-oligarch legislation which the Venice Commission has been asked to assess has indeed been devised as an attempt to counter this specific threat. In the words of the Preamble, the Law seeks to *“overcome conflicts of interest caused by the merger of politicians, media and big business, preventing the use of political power to increase one’s own capital, ensure Ukraine’s national security in economic, political and informational spheres, protect constitutional rights and freedoms of a citizen, protect democracy, ensure state sovereignty and avoid instances of manipulating the minds of citizens through deliberate distortion of information for the purpose of obtaining access to resources owned by the Ukrainian people”*.

24. This is certainly a difficult and complex question, which the Venice Commission has carefully considered, and to which it wishes to provide an answer at this stage, while acknowledging that the reflection needs to be continued, not least in the light of the future experience in fighting oligarchic influence.

25. The Venice Commission reiterates that the standard-compliant, and most efficient manner to prevent and limit oligarchic influence in a democratic country is the “systemic” one. Every state should adopt “systemic” measures against the disruptive effects of oligarchic influence and implement them (if this is not already the case), adapting and developing them as appropriate to its specific context.

26. The Venice Commission acknowledges that in exceptional, extremely critical situations, for example a situation of state capture, the effective implementation of the above systems may be difficult, and radical solutions such as some measures of a personal nature could appear to be justified, as a measure of last resort, on a temporary and exceptional basis, and as a supplement, not an alternative, to the anti-oligarchic influence system.

27. However, it needs to be stressed that even when exceptional and last resort, such personal measures would necessarily require clear legal criteria and strong guarantees of an independent decision-making body and due process, with notions defined in such a way that they can be proven, and – as a consequence – judicially controlled, with the establishment of special procedures for the investigation into the applicability of the criteria, for making decisions, for a comprehensive appeal process against these decisions and the possibility of having the “oligarch” designation removed for a person previously registered as an “oligarch”. Such

preconditions seem to contradict the very design of such laws. Besides, in a situation of state capture, even “personal measures” such as the ones outlined in the Law would likely meet the same hurdles as the comprehensive system, and thus likely fail to reduce oligarchic influence effectively. This is the great paradox of de-oligarchisation laws in the form they are currently proposed: If the administration and the judiciary are strong and independent enough to support the implementation of “personal measures” of the kind described, then such measures are no longer needed because the preconditions are met to deploy a much more systemic and effective strategy. If conversely the administration and judiciary are “captured” by the interests that the “personal measures” intend to fight, then such measures are either ineffective or – having to be adopted through executive acts that are not fully subject to effective judicial control – profoundly dangerous for human rights, democracy and the rule of law.

28. For these reasons, anti-oligarch legislation of the kind which the Venice Commission has been asked to assess is not seen as a democratic response to this scourge: De-oligarchisation legislation of this kind undermines democracy and the rule of law. As will be outlined in part C.3 below, the Venice Commission finds that the “personal measures” as set out in the Law do not live up to the required standards and it therefore does not support such legislation.

### **B. A “system” to counter oligarchic influence in Ukraine**

29. The Commission will start its analysis with a short overview of what such a “system” could look like in Ukraine. From the outset, it should be stressed however that it is not for the Venice Commission to prescribe the exact elements of a “system”, as states are themselves better placed to identify and analyse existing tools and shortcomings therein and design an appropriate strategy. Nonetheless, the Venice Commission will enumerate a number of important building blocks of the “system”, which – although non-exhaustive – may provide further guidance to the authorities of Ukraine in this respect.

30. In the opinion of the Venice Commission, the design and realisation of an effective system to prevent the reestablishment of oligarchic influence would first of all require a close look at why the existing legal tools have not been able to adequately address the destructive influence of “oligarchs” (for example, analysing why certain oligarchic monopolies have not been broken up): Identifying which pieces of legislation can be further strengthened, taking into account the power of “oligarchs” in counteracting these measures, and identifying where the weaknesses or loopholes are with a view to making these the legal provisions “oligarch resistant”. It would also require analysing the way various institutions (anti-corruption bodies, anti-monopoly committee, state audit, banking supervisory authorities etc.) can work better together in preventing and eliminating the influence of “oligarchs” (for example, if there are legal impediments preventing effective cooperation and information exchange, these should be addressed; bodies working in this field should be obliged to report about the weak implementation by other bodies when there is reason to suspect that their work has been influenced by “oligarchs”). This should culminate in a focused strategy to tackle oligarchisation, recognising the interconnected nature of the problem, allowing for bridges to be built between various fields of law and the institutions that implement them (through the specific lens of tackling oligarchisation), with due regard to the need to strengthen their independence and effectiveness.

31. Such a “system” would need to build on the on-going structural reforms of the judiciary in line with European standards to strengthen its independence, impartiality and integrity. Only an independent judiciary with judges who refuse being corrupted by “oligarchs” (or any other influence) can act as arbiters in the numerous disputes that result from measures taken to rein the negative influence of “oligarchs” in the various fields relevant to the systemic approach.

32. As concerns specific sectors, an effective competition policy has to be established and implemented on a sound legal basis. The full range of anti-competitive behaviour outlined in EU regulations has to be covered. The body in charge of this sector, the Anti-Monopoly Committee

in Ukraine, has to be provided with the legal tools (inspection and enforcement powers) and has to use these tools to effectively break up existing monopolies and cartels. Entry into oligarchy-controlled sectors should be actively encouraged to foster competition.

33. Measures to prevent and fight corruption should be reinforced, including addressing high-level corruption by, where needed, increasing the capacities and independence of the authorities in charge, in Ukraine National Anti-Corruption Bureau (SABU) and specialised anti-corruption institutions, such as the High Anti-Corruption Court (HACC), the Special Anti-Corruption Prosecutor's Office (SAPO) and Asset Recovery and Management Agency (ARMA), as well as – when it comes to preventive measures - the National Agency for the Prevention of Corruption in the area of asset declarations (once the system is functional again, which should also be served by improvements in the transparency of beneficial ownership), gifts and other advantages and conflicts of interest, in line with recommendations of the Group of States against Corruption (GRECO)<sup>5</sup> and the Venice Commission's Rule of Law checklist<sup>6</sup>, as well as through implementation of the actions foreseen in the State Anti-Corruption Programme adopted in March 2023. This should accordingly also include further measures in the area of lobbying and transparency of public decision-making. On the basis of strong legal powers, the aforementioned bodies should make sure that corruption is fought effectively in practice in all fields of life, working closely together with other relevant bodies (while also ensuring that in relying on cooperation with other bodies investigations are not being hampered).

34. The transparency of public procurement<sup>7</sup> (which is of special importance in view of the funds being committed to Ukraine for its post-war reconstruction which poses risks of re-oligarchisation of the country), has to be increased by aligning legislation to relevant EU Public Procurement Directives<sup>8</sup>, effectively excluding corrupt and fraudulent companies or individuals from accessing government contracts<sup>9</sup>, by taking measures to prevent corrupt needs assessments or terms of reference tailored to certain entities, by enforcing conflict of interest regulations in procurement processes and strengthening the audit and oversight of public contracting and ensuring accountability for integrity breaches in procurement in practice.

35. Given that “oligarchs” are often defined by their influence on media, a central issue is the need to reinforce media pluralism including by the enforcement of competition law and merger control procedures, as outlined above, and transparency of media ownership, in line with Recommendation CM/Rec on media pluralism and transparency of media ownership of the Committee of Ministers of the Council of Europe<sup>10</sup>, and ensuring that such ownership information covers all media actors and is easily available and accessible to the public.

36. The implementation of relevant anti-money laundering measures should be further enhanced, in line with international standards and recommendations by MONEYVAL.<sup>11</sup> More specifically, in

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<sup>5</sup> See GRECO, [Fourth Evaluation Round: Interim Compliance Report in respect of Ukraine](#), adopted by GRECO at its 93<sup>rd</sup> Plenary (Strasbourg, 20-24 March 2023), para. 11 and further.

<sup>6</sup> [CDL\(2016\)007](#), Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), as regards “corruption and conflict of interest”, paras. 114-116.

<sup>7</sup> See OECD, [Public Procurement Recommendation](#), 2015.

<sup>8</sup> [Directive 2014/24/EU](#) of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance.

<sup>9</sup> See, in this regard, the good practices of the EU Anti-Fraud Knowledge Centre, including the system put in place in [Malta](#) for excluding companies or individuals convicted of corruption, fraud, money laundering, tax evasion, distortion of competition.

<sup>10</sup> [CM/Rec\(2018\)1](#), adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies.

<sup>11</sup> See [Ukraine - Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism \(MONEYVAL\)](#). Other than MONEYVAL's recommendations, international standards such as those of the [FATF](#), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism ([CETS No. 198](#)) and the [EU Directive 2015/849](#) on the prevention of the use of the



order to identify who possibly hides behind complex structures of companies, sometimes through direct and indirect foreign ownership, the transparency of legal persons and arrangements, as well as timely and effective access to accurate up-to-date of beneficial ownership information should be enhanced, in line with recommendations of MONEYVAL<sup>12</sup> and the Financial Action Task Force (FATF)<sup>13</sup>, using a multi-pronged approach<sup>14</sup> on the basis of a variety of information sources to ensure that competent authorities have access to accurate and up-to-date information on beneficial ownership to expose oligarchic structures. This information should be made available to all agencies which are relevant for limiting the influence of “oligarchs”. Only on the basis of such information can they take effective measures in this fight and only through smooth cooperation between these agencies can their work be effective. Further measures should also include improvements to the legal regime regarding Politically Exposed Persons (PEPs), *inter alia* to bring the definition on PEPs in line with FATF and MONEYVAL recommendations.<sup>15</sup>

37. The rules on the financing of political parties and election campaigns should be reinforced, aiming to reduce the role of big money in politics and easing participation of candidates and parties not beholden to oligarchic interests. These rules need to be implemented in a general, non-selective way and this implementation needs to be controlled by an independent judiciary. Only such transparent independent control can remove any doubts as to a politically biased implementation. This can be done by reinforcing campaign expenditure caps, introducing a ban on donations by legal persons, increasing allocation of public funds to political parties, in particular during election campaigns, lowering thresholds for receiving public funds and/or providing airtime for political parties on the main television networks to level the playing field. The campaigns of all political parties should be monitored in order to identify major expenses (e.g. for meetings and rallies) which were not declared. The role of the existing control mechanisms, such as the Ukrainian National Agency for the Prevention of Corruption, should be strengthened in supervising compliance with party finance rules and public scrutiny of party and election campaign finance should be eased.

38. Given that “oligarchs” use tax loopholes and the possibility to shift the declaration of revenue to low tax countries, tax legislation should be reformed, to more effectively tax the wealth of oligarchic structures and cut out such tax benefits and exemptions used by such structures. In this context, international cooperation will be very helpful. Again, information on beneficial ownership is essential for this purpose and need to be shared effectively between the relevant bodies and agencies.

39. The war of aggression of the Russian Federation against Ukraine and the measures taken under martial law, combined with the measures taken by persons who could potentially be designated as “oligarchs” to not fall under the eligibility criteria of the Law, seem to have reduced the power and influence of “oligarchs” considerably,<sup>16</sup> as also confirmed by the authorities and civil society during the visit of the delegation of the Venice Commission to Kyiv on 4-5 May 2023. As such, there appears to exist a unique window of opportunity for Ukraine to prevent “oligarchs” from re-establishing their power and influence following the war (in particular in light of their control of large sections of the Ukrainian economy that are crucial to post-war reconstruction and,

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financial system for the purposes of money laundering or terrorist financing (as well as the forthcoming sixth anti-money laundering directive) are also of relevance.

<sup>12</sup> For example one of the key findings of MONEYVAL's Fifth Round Evaluation Report (p. 5 and p. 124), which outlines the deficiencies in the accuracy of information in the Unified State Register of Ukraine.

<sup>13</sup> See for example, FATF, [Best Practices on Beneficial Ownership for Legal Persons](#) (October 2019).

<sup>14</sup> FATF, [Guidance on Beneficial Ownership of Legal Persons](#) (March 2023).

<sup>15</sup> See on this issue *inter alia* MONEYVAL's Fifth Round Mutual Evaluation Report, paragraphs 32 and 140, indicating that the limitation period of 3 years after which persons are no longer considered to be PEPs is a material weakness.

<sup>16</sup> See for example: <https://www.dw.com/en/has-ukraines-anti-oligarch-law-had-an-impact/a-64810387>; [https://www.lemonde.fr/international/article/2023/02/27/en-ukraine-la-chute-inattendue-des-oligarques\\_6163430\\_3210.html#xtor=AL-32280270-\[mail\]-\[ios\]](https://www.lemonde.fr/international/article/2023/02/27/en-ukraine-la-chute-inattendue-des-oligarques_6163430_3210.html#xtor=AL-32280270-[mail]-[ios]).

in this connection, the inherent risks of inappropriate use of reconstruction funds), by pursuing more comprehensive and structural reforms in line with European standards.

40. The Ukrainian authorities informed the Venice Commission delegation visiting Kyiv on 4-5 May of the various legislative initiatives being developed, which includes certain measures to improve antitrust regulations, the Law on Political Parties and to introduce legislation on lobbying. The Venice Commission welcomes these efforts and is indeed mindful that international standards in various sectors described above may have already been taken into account, to differing extents, in Ukraine. According to the Ukrainian authorities, some elements of a “system” have thus already been put in place.

41. The Venice Commission wishes nonetheless to stress in this context that what matters for de-oligarchisation is not only for some sectoral laws to be adopted or amended, on the basis of recommendations of various international bodies, but that concrete measures be taken with the aim to reduce oligarchic influence and assess what the impact of these measures is in countering oligarchisation. Therefore, the Venice Commission recommends preparing a comprehensive, detailed analysis of the failings of existing legislation, policies and institutions in tackling oligarchic influence and assessing at regular intervals the impact of any corrective, additional, complementary measures through the specific lens of de-oligarchisation, as outlined above, to make sure that a co-ordinated “system” to tackle oligarchic influence is in place.

### **C. The Law**

#### *1. The adoption and implementation of the Law*

42. The Law is an initiative of the President of Ukraine and was submitted to the Verkhovna Rada on 2 June 2021. It was approved in first reading on 1 July and adopted in second reading on 23 September 2021 (in a special expedited procedure). During the on-line meetings in November 2021, some interlocutors raised concerns about this hasty consideration of the law in second reading.<sup>17</sup> The need for this expedited procedure indeed remains difficult to understand. Following the second reading, uncertainties remained as to which amendments to the draft law had been adopted. On 3 November 2021, the Verkhovna Rada voted to remove the inconsistencies from the text of the draft law. The draft law was signed by the President on 6 November 2021. The Law entered into force the next day but was only to be applied six months after its entry into force, on 7 May 2022. This period has been characterised as a “grace period”, to allow persons who will potentially be designated as “oligarchs” under the Law to sell some of their assets, divide their companies or sell their stakes in media in order not to be affected by the law.

43. Due to the war of aggression of the Russian Federation against Ukraine on 24 February 2022, Ukraine imposed martial law and announced that, under Article 8 of its Law on the Legal Regime of Martial Law, it would derogate from Articles 4 (paragraph 3), 8-11, 13-14 and 16 of the European Convention of Human Rights (ECHR) and Articles 1 and 2 of the Additional Protocol, as well as Article 2 of the Protocol 4 to the ECHR.<sup>18</sup> The notice of derogation was

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<sup>17</sup> In particular that the issue of supporting only some amendments, while automatically rejecting all other amendments was voted on.

<sup>18</sup> [Notification](#) – JJ9325C Tr./005-287 – Corrigendum – Ukraine – Derogation Related to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), dated 28 February 2022. Please see also: Council of Europe, [Legal analysis of the derogation made by Ukraine under Article 15 of the European Convention of Human Rights and Article 4 of the International Covenant on Civil and Political Rights](#) (November 2022), 42pp. Previously, Ukraine had already derogated from the ECHR on several occasions since 2014, but those derogations related to the situation in the Autonomous Republic of Crimea and the City of Sevastopol and the in the Donetsk and Luhansk regions. The derogation of 2022 imposed martial law on the entire territory of Ukraine,

subsequently extended several times. As a result of this martial law, amongst other things broadcasting came under control of the government and political activities were restricted.

44. On 29 June 2022, President Decree No 459/2022 was adopted, enacting a regulation of the National Security and Defence Council (NSDC) on the operation of a "Register of Individuals with Significant Economic and Political Weight in Public Life (Oligarchs)" (hereafter: the Register, on which further below).<sup>19</sup> To date, the Register has not been set up. The delegation of the Venice Commission visiting Kyiv on 4-5 May was informed that the setting up of the Register was seen as a measure of last resort, if the authorities would not succeed in preventing a return to the situation as it was before.

## 2. Overview of the Law

### a. Definition and designation as "oligarch"

45. An "oligarch" (or "a person wielding significant economic and political weight in political life") is defined in Article 2 as a person meeting three of four criteria outlined in the Law:

- involvement in political life, which in Article 3 of the Law is further defined as including various high-level officials (the President of Ukraine, members of the Verkhovna Rada, ministers, the Prosecutor General etc.), as well as "close persons"<sup>20</sup> or "affiliated persons"<sup>21</sup> to such officials and persons who hold positions in governing bodies of political parties and/or have financed the activities of a political party;
- exerting significant influence over mass media (or, in accordance with the draft amendments to the Law sent to the Venice Commission in March 2023: having "significant impact on a media entity"), which in Article 4 of the Law is defined as being an owner, founder, beneficial owner or controller<sup>22</sup> of a mass medium<sup>23</sup> (or, in the words of the draft amendments of March 2023, "a media entity");
- ultimate beneficial ownership of a business monopoly; and/or
- personal assets (and those of the businesses of which s/he is a beneficiary) representing a combined value of 1 million subsistence minimums (which currently amounts to around 2.7 billion Ukrainian Hryvnia (UAH) or around 70 million euros).

46. The NSDC<sup>24</sup> has been tasked with deciding on a list of people matching three out of the abovementioned four criteria and does so upon proposals made by the Cabinet of Ministers,

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<sup>19</sup> Decision of the National Security and Defence Council of Ukraine of 29 June 2022 on Approval of the Regulation on the Register of Persons who have Significant Economic and Political Weight in Public Life (Oligarchs), and the Procedure for its Establishment and Maintenance, as enacted by the [Decree](#) of the President of Ukraine of 29 June 2022 No. 459/2022..

<sup>20</sup> For the definition of a "close person" reference is made to the Law on the Prevention of Corruption which refers to a large category of persons, such as spouses, family members (including nephews, nieces, parents-in-law etc.) and guardians/trustees.

<sup>21</sup> Affiliated persons are in turn defined as persons "who directly or indirectly have an interest (voting right) in a business entity, an interest or voting right which is directly or indirectly owned by the person with whom affiliation is determined, as well as another person recognised as an affiliated person in accordance with the rules established by the Tax Code of Ukraine".

<sup>22</sup> Being controller of mass media is defined (in Article 1, paragraph 1 (4) of the Law) as "a person who is able to exert a decisive influence on the mass medium's management or business directly or through other persons by exercising the right of a beneficiary or, regardless of the beneficiary's status, to exert such influence on the basis of a contract or otherwise, including through financing".

<sup>23</sup> This includes persons who have had such a position when the Law was adopted, but since then such ownership or control has been transferred to an "affiliated person" or a person who lacks "impeccable business reputation with the meaning of law.

<sup>24</sup> The NSDC is the coordinating state body on issues of national security and defence under the President of Ukraine. The NSDC is chaired by the President and includes the Prime Minister, the Minister of Defence, the Head of the Security Service, the Minister of Internal Affairs and the Minister of Foreign Affairs as *ex officio* members. In March 2023, it additionally included a further 16 members (such as the Chairman of the Verkhovna Rada, various

individual NSDC members, the National Bank of Ukraine, the Security Service of Ukraine and/or the Antimonopoly Committee of Ukraine.<sup>25</sup> If the NSDC decides in the affirmative, the decision can be put into effect by Presidential Decree.<sup>26</sup>

b. Consequences of being designated as an “oligarch”

47. The consequences of being designated as an oligarch are outlined in Articles 6 and 7 of the Law. This involves first of all being named in a public register within three days of the presidential decree having been issued. This register can be accessed through the website of the NSDC) and includes information justifying the decision of the NSDC, the legal entities of which the designated person is the ultimate beneficial owner and the list of elected officials to whom a designated person contributed election funds (or who were nominated by political parties to which a designated person made a donation) for the past three years.<sup>27</sup>

48. Secondly, upon inclusion in the register, persons concerned (and legal persons of which they are beneficial owners) are prohibited from making donations (financial or in kind) to political parties, election campaigns, other political campaigning and/or the holding of rallies or demonstrations “with political demands” and are additionally banned from being buyers (or beneficiaries thereof) in large-scale privatisation processes.<sup>28</sup> In the draft amendments submitted to the Venice Commission in March 2023, it is envisaged to replace the prohibition on financing political parties by an annual cap of four times the minimum wage (in total approximately 670 EUR); The prohibition on the financing of election and other campaigns, as well as rallies and demonstrations, would however stay in place. Thirdly, persons designated as “oligarchs” will be required to submit an asset and interest declaration (on an annual basis to the National Agency for Corruption Prevention (NACP)).<sup>29</sup> These declarations will be made public. A final consequence of the inclusion of names of “oligarchs” in the public register is that public officials (the definition of which reportedly covers around 20.000 persons<sup>30</sup>) will be required to disclose any meeting, conversation or communication by phone, on-line or in person with persons included in the register or their representative through the obligatory filing of a declaration of contacts via the website of the NSDC.<sup>31</sup>

c. Removal from the register

49. The Venice Commission notes that according to Article 9 of the Law, removing an “oligarch” from the register is possible if the person does not match at least two criteria simultaneously. The person him/herself may – according to Article 9, paragraph 4 - request such a removal decision “if no match exists with the criteria stipulated by Article 2 (a) of this Law”.

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ministers, the president of the National Academy of Sciences, head of the financial monitoring service, governor of the National Bank etc.).

<sup>25</sup> Article 5, paragraph 1, of the Law.

<sup>26</sup> Article 5, paragraph 2, of the Law.

<sup>27</sup> Article 6 of the Law.

<sup>28</sup> Article 7, paragraph 1 of the Law.

<sup>29</sup> Article 7, paragraph 2 of the Law and Article 11, paragraph 3 (14), referring to Article 45, paragraph 3 of the Law on the Prevention of Corruption.

<sup>30</sup> Article 8, paragraph 5 of the Law, stipulates the categories of “public officials” required to file a declaration of having been in contact with a person designated as an “oligarch” and includes the President, ministers, members of parliament, judges, the Prosecutor-General, officials of the Anti-Monopoly Committee, NSDC, NACP, National Anti-Corruption Bureau of Ukraine and State Committee for Television and Radio Broadcasting, civil servants in category A and B positions, heads of local administrations and senior executives of state-owned enterprises etc.

<sup>31</sup> Article 8 of the Law.

### 3. Analysis of the Law

50. As outlined in the Interim Opinion on the draft law on de-oligarchisation in Georgia of March 2023, which was at the point in time an almost exact copy of the Law in Ukraine, the Law introduces several restrictions and limitations applicable to persons designated as "oligarchs" which interfere with the enjoyment of rights guaranteed by the European Convention on Human Rights (ECHR).<sup>32</sup> In the Interim Opinion on Georgia, the Venice Commission outlined how, in particular, the process of collecting, assessing, storing and processing personal data on persons potentially designated as "oligarchs", the stigmatisation associated with the publication of information on persons designated as "oligarchs" in a register, the requirement for persons designated as "oligarchs" to submit declarations of assets and the requirement upon public officials to declare their contacts with persons designated as "oligarchs" and/or their representatives may constitute an infringement of the enjoyment of rights under Article 8 ECHR.<sup>33</sup> Similarly, the Commission considered that prohibiting persons designated as "oligarchs" from financing political parties, election campaigns, other political campaigns and rallies and demonstrations "with political demands" may infringe their rights under Articles 10 and 11 ECHR.<sup>34</sup>

51. Interferences with these rights may be justified only insofar as they pursue a legitimate aim, are provided for by law and lawful (in terms of the quality of the Law) and are proportionate to the legitimate aim pursued and necessary in a democratic society. In the Interim Opinion on the draft law on de-oligarchisation in Georgia of March 2023, the Venice Commission already concluded that the overwhelming influence of "oligarchs" in specific sectors could be seen as a threat to public safety and that, from different perspectives, the Law could therefore be said to pursue a legitimate aim.<sup>35</sup> However, as also outlined in this Interim Opinion, the vagueness of the criteria used to designate a person as an "oligarch", the broad discretion of the decision-making body in interpreting and applying these criteria, the lack of independence/impartiality of this body, the lack of due process guarantees<sup>36</sup> and effective remedies afforded to persons designated as "oligarchs", as well as the lack of proportionality and consideration for other less-intrusive measures made it difficult to justify these restrictions.<sup>37</sup>

52. In light of the fact that the Law in Ukraine is almost identical to the draft one in Georgia at the time of the adoption of the Interim Opinion, with the exception of the fact that it is the NSDC in Ukraine, which decides on the designation of an "oligarch" rather than the government, the Venice Commission reaches the same conclusions on the Law in Ukraine as it did in March 2023 the Interim Opinion on the draft law on de-oligarchisation in Georgia: The measures proposed by the Law as it stands raise strong concerns regarding their compatibility with the guarantees of the ECHR.

53. More specifically on the NSDC (the most important differing feature between the draft law of Georgia and the Law of Ukraine), the Venice Commission considers the potentially strong influence of the President himself on this body and thereby on the process of designating "oligarchs" is problematic: The President chairs the NSDC, decides on its composition<sup>38</sup> and

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<sup>32</sup> See CDL-AD(2023)009.

<sup>33</sup> CDL-AD(2023)009, paragraphs 34-38.

<sup>34</sup> CDL-AD(2023)009, paragraphs 39-40

<sup>35</sup> CDL-AD(2023)009, paragraphs 43.

<sup>36</sup> Notwithstanding the fact that in the draft amendments submitted to the Venice Commission in March 2023 some procedural improvements have been envisaged, providing that if a person fails to receive the notification or fails to attend the hearing "for valid reasons" the meeting of the NSDC can be postponed by a maximum of seven days.

<sup>37</sup> CDL-AD(2023)009, paragraphs 42-57.

<sup>38</sup> Other than the *ex officio* membership of the Prime Minister, the Minister of Defence, the Head of the Security Service, the Minister of Internal Affairs and the Minister of Foreign Affairs.

the number of its members. Decisions of the NSDC are put into effect by decrees of the President of Ukraine.<sup>39</sup>As outlined above, one of the consequences of this designation is a prohibition on financing any election campaign, rally or demonstration with a political character or political party (with the latter being replaced by a cap on donations by persons designated as “oligarchs” in the draft amendments proposed to the Venice Commission in March 2023). The Venice Commission considers that there is a risk of selective application of the law by either having political competitors recognised as “oligarchs”, thus rendering them unable to finance the campaigns of oppositional political parties or candidates or rallies held by these parties or candidates and/or not applying the same measures against potential political supporters. The Law is in this respect difficult to reconcile with principles of political pluralism and the rule of law, as it has the potential of being misused for political purposes, constituting a danger as great as oligarchisation itself for the democratic fabric of the state.

54. In this context, the Venice Commission also considers that, notwithstanding the reference to threats to national security in the title and preamble of the Law and the current security situation due to the war of aggression by the Russian Federation, it is not certain if such an extension of powers of the NSDC to designate persons as “oligarchs”, thereby imposing legal restrictions on and incurring additional responsibilities for certain citizens of Ukraine, corresponds to the constitutional nature of this body. Similarly, giving this competence to the NSDC indirectly extends the powers of the President which – in light of decisions of the Constitutional Court<sup>40</sup> – might raise constitutional issues. Ultimately, this is for the Constitutional Court of Ukraine to decide on.

55. Other than having the NSDC designate persons as “oligarchs”, a further difference of the Law of Ukraine with the draft law of Georgia at the time of adoption of the Interim Opinion is that the Law in Ukraine contains extensive transitional provisions. A number of these transitional provisions deal with a wide variety of sanctions for different categories of public officials for failing to declare their contacts with persons designated as “oligarchs” or their representatives, even if these “oligarchs” or their representatives fail to notify the public official concerned that they are included in the register. For some categories of public officials this would even involve dismissal from their post. These provisions leave the door open for abuse, enabling an easy dismissal of crucial public officials – for example, prosecutors of the special anti-corruption prosecution office, the Head of the Anti-Monopoly Committee or the Head of the National Anti-Corruption Bureau of Ukraine – by having them simply be approached by a person who unbeknownst to them acts as a representative of a person designated as an “oligarch”.

56. The Venice Commission is aware, as also mentioned above, that Ukraine has announced that it would derogate, under Article 8 of its Law on the Legal Regime of Martial Law, from precisely the articles mentioned in the previous paragraph. However, given that the Law entered into force before the war of aggression of the Russian Federation, has not been fully implemented yet and during martial law the Law cannot take full effect (for example, the regime of declaring assets and interests has been suspended, the transfer of shares and other corporate rights has been restricted), the conclusions of the Venice Commission do not take this derogation further into account.

57. As outlined above, in reference to the Interim Opinion on the draft law on de-oligarchisation of Georgia of March 2023, the undeniably punitive character of the “personal approach” raises a

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<sup>39</sup> Article 107 of the Constitution of Ukraine.

<sup>40</sup> See the decisions of the Constitutional Court of 16 March 2007, № 1-пн (confirming that the powers of the President are exclusively provided by Article 106 of the Constitution and that Article 106, paragraph 31 of the Constitution cannot vest the President with powers not specifically indicated in the Constitution) and of 28 August 2020, No 9-п/2020, according to which the list of competences of the President enumerated in Article 106 of the Constitution is exhaustive.

series of questions regarding its compatibility with the guarantees of the European Convention on Human Rights and the principle of political pluralism.

58. The Venice Commission reiterates that the fight against oligarchic influence in Ukraine is to be carried out through a well-designed and effective comprehensive “system”, instead of through the Law under consideration. As stated above, as a result of the war of aggression of the Russian Federation against Ukraine the power and influence of “oligarchs” appears to have considerably reduced and the Ukrainian authorities should prevent “oligarchs” from re-establishing their power and influence following the war by pursuing more comprehensive and structural reforms, in line with European standards.

59. Should a reassessment of the situation as to the oligarchic danger in the country after the end of the war reveal the possible need, in addition to such a “system,” of specific, exceptional measures of a more personal nature (different from those in the current Law) to enable such a system to work, such measures will need to be designed with full respect of the standards of political pluralism and the rule of law, and be strictly limited in time. As at this stage, it would seem that, as long as the core of the current “personal approach” has not been changed, even substantial amendments to the Law will not remedy the unavoidable frictions with Council of Europe standards on human rights, democracy and the rule of law, the Venice Commission recommends pursuing the “systemic” approach. It therefore considers that the Law should not be implemented as it currently stands and recommends that the implementation of the Law be legally deferred.

#### **IV. Conclusions**

60. The Venice Commission underlines that the danger of the concentration in the hands of a private individual of significant influence over the economic, political and public life of a country without transparency, legitimacy and accountability may exist in virtually any country. Most countries have devised and put in place a set of interconnected legislative, (inter-)institutional, administrative, economic and other measures, in order to prevent the disruptive effects on democracy, the rule of law and human rights brought on by the concentration of such influence in the hands of a few. Depending on the context of the country concerned, such measures for example include: an effective competition policy, anti-corruption and anti-money-laundering measures, measures to ensure media pluralism, rules on the financing political parties and election campaigns (etc.).

61. Rather than pursuing this multi-sectoral, “systemic” approach, Ukraine has however chosen to tackle the destructive influence of oligarchisation through a different “personal approach”, by adopting a Law on Oligarchs. This “personal approach”, as specified by the Law on Oligarchs, seeks to identify persons as “oligarchs” through specific criteria, such as wealth, media ownership (etc.), and subjects them to a series of limitations (prohibiting them for example to finance political parties and election campaigns). This approach has an undeniably punitive character.

62. While recognising that in the fight against oligarchic influence there is no one-size-fits-all and that in exceptional, extremely critical situations, for example a situation of state capture, radical solutions – such as some measures of a personal nature – could appear to be justified, as a measure of last resort, on a temporary and exceptional basis, the Venice Commission considers that these can only be a supplement, not an alternative, to the “systemic” approach. However, if there were such a need, these measures would have to be designed with full respect for the standards of political pluralism and the rule of law, *inter alia* clear legal criteria, strong guarantees of an independent decision-making body and due process. Such preconditions seem to contradict the very design of such laws. This is the great paradox of de-oligarchisation laws in the form they are currently proposed: If the administration and the judiciary are strong and independent enough to support the implementation of “personal measures” of the kind described,

then such measures are no longer needed because the preconditions are met to deploy a much more systemic and effective strategy. If conversely the administration and judiciary are “captured” by the interests that the “personal measures” intend to fight, then such measures are either ineffective or – having to be adopted through executive acts that are not fully subject to effective judicial control – profoundly dangerous for human rights, democracy and the rule of law.

63. Currently, the Law on Oligarchs cannot be seen as a democratic response to the scourge of oligarchisation. The Law is difficult to reconcile with principles of political pluralism and the rule of law, as it has the potential of being misused for political purposes. As at this stage, it would seem that, as long as the core of the current “personal approach” has not been changed, even substantial amendments to the Law on Oligarchs will not remedy the unavoidable frictions with Council of Europe standards on human rights, democracy and the rule of law. Therefore, the Venice Commission concludes that the Law should not be implemented as it currently stands and that a “systemic” approach should be pursued.

64. Therefore, the Venice Commission recommends that, in order to fight oligarchic influence in the country, the Ukrainian authorities,

- Legally defer the implementation of the Law on Oligarchs;
- Carry out an in-depth and comprehensive analysis of the existing systemic measures, of their shortcomings in terms of structure, powers and coordination;
- Devise corrective, additional or complementary legislation or measures, which, *inter alia*, include:
  - establishing and implementing an effective competition policy;
  - strengthening the fight against high-level corruption and the prevention of corruption, in line with GRECO’s recommendations and through implementation of the actions foreseen in the State Anti-Corruption Programme adopted in March 2023;
  - increasing the transparency of and accountability in public procurement;
  - reinforcing media pluralism, as well as transparency of media ownership;
  - enhancing the implementation of relevant anti-money laundering measures policy, including the transparency of legal persons and arrangements and timely and effective access to accurate up-to-date beneficial ownership information, in line with MONEYVAL and FATF recommendations and improvements of the legal regime regarding politically exposed persons;
  - reinforcing rules on the financing of political parties and election campaigns and existing control mechanisms;
  - amending tax legislation;
- Strengthen the independence and effectiveness of the key regulatory and controlling authorities;
- Assess the way various institutions (anti-corruption bodies, anti-monopoly committee, state audit, banking supervisory authorities etc.) can work better together in preventing and eliminating the influence of “oligarchs” over political, economic and public life;
- Carry out impact assessments of such measures at regular intervals;
- Put thus in place a comprehensive system to prevent and fight oligarchic influence through a focused strategy / action plan to address oligarchisation, recognising the interconnected nature of the problem, allowing for bridges to be built between various fields of law and the institutions that implement them;
- Implement it without delay in a transparent and accountable manner;
- At the end of the war, reassess the situation in terms of oligarchic danger against the background of the “system” and the pertaining circumstances, and either repeal the Law or, where proven necessary to enable such system, amend the Law substantially by providing only those limited, exceptional measures of a personal nature which are compatible with European standards on human rights, democracy and the rule of law; these need to be strictly limited in time.



65. The Venice Commission underlines that, in order for the above-mentioned system to function effectively, the reform of the judicial system aimed at ensuring its independence, integrity and impartiality in line with European standards, should be relentlessly pursued.

66. The Venice Commission remains at the disposal of the Ukrainian authorities for any further assistance.