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# INSIDE UKRAINE

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## Public policies



### Prospects for establishment of Anti-Corruption Court

**The establishment of independent anti-corruption courts is envisaged by the Memorandum between Ukraine and the IMF, as well as by strategic documents for implementation of the anti-corruption reform. However, the last two years did not bring any visible progress in this area. The situation with the introduction of special anti-corruption courts triggered a new phase of debate as regards their necessity. The government is in no hurry to launch specialized anti-corruption courts, primarily due to the lack of the agreed procedure for staffing the court and implementing a control over the exercise of judicial process.**

The issue of special anti-corruption courts coincided with the arrest of the SFS Head Roman Nasirov. Foreign partners, including the US Embassy in Ukraine and the EU Delegation, also emphasized the need for introduction of the anti-corruption court.

The “Nasirov case” serves as a catalyst for establishment of specialized anti-corruption courts

The group of MPs-Euro-optimists has submitted a draft law “On Anti-Corruption Courts” registered in the Verkhovna Rada on February 1, 2017. The draft law contains specific features of anti-corruption courts, requirements to judges of anti-corruption courts, peculiarities of a procedure for competitive selection thereof, as well as their appointment and status. The draft law provides that the competitive selection of anti-corruption judges to the anti-corruption chamber will be held by a separate commission with the involvement of international experts.

However, the High Council of Justice stated in its advisory opinion on March 9, 2017 that the draft law “On Anti-Corruption Courts” contradicts the Constitution of Ukraine and is not consistent with the laws of Ukraine «On the Judicial System and Status of Judges» and «On the High Council of Justice.» It should also be noted that the President has an alternative plan concerning the introduction of specialized anti-corruption courts in Ukraine.

The High Council of Justice considers the draft law “On Anti-Corruption Courts” unconstitutional.

The law “On the Judicial System and Status of Judges” signed by Petro Poroshenko on July 13,

2016, as well as amendments to the Constitution, envisage the possibility for creation of the High Anti-Corruption Court. However, authorities have never officially announced specific dates and deadlines for the launch of anti-corruption courts. In political circles, there are rumors that the main issue in the introduction of specialized anti-corruption courts is the problem of influence on the appointment of judges.

[The Presidential Administration is eager to control the process of selection and appointment of anti-corruption judges.](#)

It is important to the government that the process of judges' appointment is as controllable and predictable as possible. Thus, there is an informal working group of experts and lawyers in the Presidential Administration developing a mechanism of influence in respect of the selection and appointment of judges of anti-corruption court. According to available information, the working group is to propose a consensus version of the concept for further expert discussions and debate in the Parliament by the end of March.



At the same time, the international experience shows that the success in the fight against corruption depends primarily on the efficiency of pretrial investigation, where detectives are responsible for collecting evidence base and materials needed for the public prosecution in the courts.

Critics of the idea of establishing the anti-corruption court emphasize that the primary reason for the failure of the anti-corruption fight is the lack of political will and imitation of activities, rather than the absence of another anti-corruption body. There is also a risk that

the formation of anti-corruption courts will be influenced not only by the President, but also by political influence of the groups close to NABU such as «Uhlava-Saakashvili» and «Euro-optimists» traditionally promoting their candidates to the new anti-corruption institutions. In addition, there are questions on the specifics of courts' functioning after reducing the level of corruption and potential conflicts between the courts in respect of their jurisdiction.

Therefore, before anti-corruption courts' establishment, the authorities should complete the judicial reform, which provides for overcoming corruption in the existing courts and reboot of the judicial corps on the principles of integrity, independence and accountability.

## Economic analysis



### Privatization in Ukraine: Problems and Prospects

**The implementation of large-scale privatization in Ukraine in 1992 - 1998 years was a key element of social and economic reforms and transformations with the purpose to change the existing economic order (economic system) and to ensure economic growth. It is known that in 1992 the share of state property was 92% in value of capital funds and 70% by the number of enterprises. The private sector has occupied a dominating position in the economy through privatization in historically short terms. During the years of reforms Ukraine has privatized more than 128 thousand objects and the proportion of non-state property enterprises in the industrial production constitutes nearly 70%.**

The new stage of privatization started in 2014. The government, which was formed after the Revolution of Dignity, set a course for privatization of a number of large state enterprises, but during 2014-2015 years, the positive results were not achieved. During these years, the revenue from the state property sale were negligible - by 1% of the planned revenues.

Therefore, the great hopes were laid on 2016 year as the year of large-scale privatization of state companies. The international organizations, which cooperate with Ukraine, are interested in privatization. While there is not a large influx of foreign investment in the country, the fair and transparent privatization of state enterprises was the only factor for economic recovery of Ukraine in 2016 and this is strongly expressed by EBRD.

*During 2014-2015, the revenue from the state property sale were negligible*

In general, in 2016- 2017 years there are about 450 objects considered for privatization. These are 20 large enterprises, 50 medium-sized companies and about 380 objects of small privatization. After privatization of state property no more than 300 enterprises should remain.

*In 2016 the revenues from privatization amounted to 188.9 million UAH (11% of the planned amount).*

The SPF planned to fill up the budget with 17.1 billion UAH from the sale of state companies in 2016. However, the privatization plan wasn't fulfilled. Last year 139 objects of state property

and 406 objects of communal property were sold. In value terms, the revenues from privatization amounted to 188.9 million UAH. This figure is only 11% of the planned amount. The SPF explained such low rates referring to the fact that large-scale privatization hasn't started yet, these funds were received from the sale of small-scale privatization and four packages of shares on stock exchanges. In 2017 privatization revenues are expected also in the amount of 17.1 billion UAH. However, it is probable that the privatization in 2017 will also be disrupted.

Key state enterprises are scheduled for privatization in 2017:

- Odesa Port Plant

This year the main object for privatization is 99.6% of state shares of Odesa Port Plant (OPP). Its tender for sale was announced on June 13, 2016. The form of sale is the auction with open bidding. The Odesa Port Plant is the second largest producer of ammonia and carbamide and the third in the production of nitrogen fertilizers in Ukraine. The company also provides the reload of chemical goods entering from CIS countries for export. The plant is the monopolist on the national market for the reception, cooling and reloading of ammonia. In addition, the Odesa Port Plant is the final link of Tolyatti-Horlivka-Odesa ammonia pipeline.



In general, in 2016- 2017 about 450 objects are considered for privatization.

According to the financial report which was published on the company website, OPP finished 2015 year with a net profit of 218.5 million UAH, while in 2014 year the company had losses amounting to 633.2 million UAH. The tender terms for the company privatization provide for participation of at least two members, one of whom must be a non-resident.

In addition, there is a legal requirement - not allow the Russian companies to participate in privatization. The starting price was determined at the level of 13.175 billion UAH (\$ 527 million at NBU rate). But in the IMF and EBRD it is considered that such price is too high. The international organizations and some experts are concerned that many reputable international investors looking at the price won't be interested in the sale conditions. As a result, the tender for sale of OPP was foiled in July 2016. The problems were the OPP debt to Group DF, the court trials with «Nortima» company, restrictions on repatriation of dividends, lack of tax benefits and preferences for investors, high price.

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- Energy privatization

In 2016-2017, about 20 large companies in the energy sector are expected to be privatized, the state owns from 25 to 100% of the shares of these companies.

- “Centrenergo” public company

Earlier, at the end of 2016 the “Centrenergo” privatization was also planned. Now the company sale is postponed for the first quarter of 2017. “Centrenergo” public company is one of the leading electricity producers in Ukraine. This is the only thermal power generating company in the country and is a difficult object to privatization. Many company boilers are operating on coal grade A (Anthracite), which is produced only in the areas controlled by Donbas separatists. The “Centrenergo” company includes 3 TPPs - Trypilska, Zmiivska and Vughlegirska, which is almost at the contact line and this also doesn't facilitate the asset sale. The total installed capacity is 7665 MW – it is 14% of generating capacity of Ukraine. The State Property Fund of Ukraine is considering the possibility to separately sale three thermal power plants which are included in the “Centrenergo”.

In 2016-2017, about 20 large companies in energy sector are expected to be privatized.

- Regional energy enterprises (Oblenergo)  
The state owns a controlling stake in 6 regional energy companies: 70% of "Mykolaivoblenergo" and "Kharkivoblenergo", 71% of "Cherkasyoblenergo", 60% of "Zaporizhyaoblenergo", 51% of "Ternopiloblenergo", 70% of "Khmelnyskoblenergo". After selling these energy companies, the State Property Fund planned to get 300 million UAH in 2016.

- Akhmetov's DTEK

Shortly before the announcement of privatization, oligarch Rinat Akhmetov tried to take total control of 6 energy companies. In these companies, 25% shares belong to the state and the control package belongs to Akhmetov. It covers the "Kyivenergo" public company, "DTEK Krymenergo" public company, "DTEK Donetskoblenergo" public company, "DTEK Zakhidenergo", "DTEK Dniprooblenergo", "DTEK Dniπροenergo" which were planned to be reformatted from public to a private companies. For this purpose the shareholders' meetings were held, during which they had to consider this issue. However, the representatives of the State Property Fund registered for the meeting and didn't vote for this decision, so it wasn't accepted.

Shortly before the announcement of privatization, oligarch Rinat Akhmetov tried to take total control over 6 energy companies.

Also, the state has plans to sell Kherson, Mykolaiv, Odesa and Dneprodzerzhinsk thermal power plants.

- Other giants

This year the Ministry of Agrarian Policy and Food plans to transfer for privatization all state enterprises of the agricultural sector. Thus, so far the "Kirovograd Plant for the Food Production" is the most expensive priced, in which the state owns 99.5%. According to the State Property Fund its cost is about 22.4 million UAH.

In the mining industry, in terms of value, the "Lviv Coal Company" is the current leader, in which the state share of 37.6% was valued at 82.7 million UAH.

Regarding the banking sector, the Finance

Ministry announced the withdrawal from the capital of largest state banks – these are "Oshchadbank" and "Ukreximbank", starting from mid-2018, as well as other banks - by the end of 2017. In particular, in 2016 the restructuring or privatization of the State Land Bank of Ukraine (Derzhzembank) was planned that should bring to the budget about 200-250 million UAH. Also in 2016, it was planned to privatize the state "Ukrainian Bank for Reconstruction and Development" which is estimated at almost 119 million UAH.

100% state-owned «President-hotel» is waiting for the sale with an estimated value of 330.1 million UAH.

Also the 100% state-owned «President-hotel» is waiting for the sale with an estimated value of 330.1 million UAH. However, the leadership of these companies in price is very conditional - most companies are still in the evaluation process.



One of the key issues in privatization sphere in 2014-2016 years was inconsistency of strategic goals and privatization objectives with the concept for economic reforms, social development benchmarks, innovation-investment model of development.

One of the key issues in the privatization sphere in 2014-2016 was inconsistency of strategic goals and objectives of privatization with the concept for economic reforms.

The conflict of privatization goals was formed, the privatization process is often subordinate to the purely current fiscal needs, and sometimes to the narrow lobbying interests of certain corporate groups. This was particularly noticeable at the threshold of a "new wave" of privatization, which would cover a number of

strategically important objects for the national economy.

It should be noted that large-scale privatization of state property in 2017 has a number of significant risks.

First, it is the risk of low prices for privatization objects. Sale of the property will be, in fact, in extreme conditions, so the sale price of state property may be in 3-5 times lower than in normal conditions.

Secondly, there is a threat of a shortfall in budget revenues due to improper preparation of objects for the sale through urgent need to implement this phase of privatization.

Third, due to the lack of clarity and transparency processes of privatization in 2015-2016 strengthening of popular discontent can be expected.

Fourth, there are risks associated with socio-economic consequences of privatization in basic economy sectors, especially in energy sector.

Fifth, there are risks associated with a decrease in the efficiency of privatized enterprises (compared with pre-privatization period).

## PRIVATIZATION IN UKRAINE 2016-2017

Company	State stake for sale, %	
Revenue, '000 UAH (2015)		
<b>ENERGY</b>		
«DTEK Dnyprooblenergo»	25	22 301 740
«Kyivenergo»	25	18 118 511
«DTEK Zakhidenergo»	25	13 807 799
«Zaporozhyeoblenergo»	60	8 259 528
«DTEK Dnyproenergo»	25	7 297 957
«Centrenergo»	78	6 863 846
«Donbasenergo»	25	5 339 784
«Kharkivoblenergo»	65	4 941 404
«Odesaoblenergo»	25	4 462 464
«DTEK Donetskoblenergo»	25	4 438 298
«Cherkasyoblenergo»	46	2 349 943
«Mykolayevoblenergo»	70	2 148 555
«Sumyoblenergo»	25	1 699 590
«Khmelnitskoblenergo»	70	1 420 259
«Ternopiloblenergo»	51	1 014 745
«Severodonetsk Thermal Power	100	589 197
«Kryviy Rig Thermal Power Plant»	100	401 716
«Odesa CHP»	100	386 045
«Kherson CHP»	100	272 818
«Dnyprovsky CHP»	100	268 671
«Mykolaev CHP»	100	244 495
«Kostyantynivska HPS»	100	NA
«Pervomaysk HPS»	100	NA
«Myhiivska HPS»	100	NA
<b>HEALTH/VOCATION</b>		
«President-Hotel»	100	28 143
<b>CONSTRUCTION</b>		
«Ukrzakhidvuglebud»	49	81 195

Company	State stake for sale, %	Revenue, '000 UAH (2015)
<b>AGRICULTURE</b>		
State Food & grain Company	100	12 418 410
Agrarian Fund "	100	2 874 551
Novopokrovsky factory of bakery products	ДП	298 356
«Svit Lasosliv»	40	213 416
National joint stock company «Ukragroleasing»		100
96 012		
<b>MINING</b>		
United mining and chemical company	100	1 829 760
Mine1-3 «Novogrodivska»	100	554 778
Mine Management «Pivdenodonbaske #1»	100	386 600
Mine «Girska»	100	306 284
Coal Company «Krasnolymanska»	100	294 166
Mine «Stakhanova»	100	246 728
«DTEK Oktyabrsk CCF»	38	NA
<b>CHEMICALS</b>		
«Odessa Portside Plant»	100	11 195 159
«Sumykhimprom»	100	2 508 632
Zaporozhye titanium and magnesium plant	51	1 020 608
<b>HOME PRODUCTION</b>		
Ternopil Association «Teksterno»	25	119 280
Vinnitsya factory "Crystal"	100	26 832
<b>FINANCE</b>		
"Ukrainian Bank of Reconstruction and Development"		100
8 337		
<b>ENGINEERING</b>		
«Turboatom»	75	2 734 081

## Political competition



### **High-profile criminal cases: fight against corruption or redivision of influence spheres?**

**Representatives of the public, experts and foreign partners have repeatedly pointed out to the extent of the financial and political corruption remaining and continuing to thrive in the authority structures after Euromaidan. However, over the past two years no top official or influential politician was brought to criminal liability in Ukraine. The majority of criminal cases led by the NABU collapsed in courts due to a weak evidence base (i.e. the cases of Odesa Port Plant and United Mining and Chemical Company) or were initiated by the Presidential Administration as an instrument of political competition and were never completed (i.e. the case of Mykola Martynenko, which became one of the factors for political weakening and resignation of Prime Minister Yatsenyuk ).**

*Fight against corruption has become a tool of political competition.*

**Therefore, the arrest and trial over SFS Head Roman Nasirov may demonstrate the real intentions of the Ukrainian authorities as**

**regards fight against corruption to the society and international community or permanently discredit the new anti-corruption bodies and the authorities.**

Roman Nasirov is charged with the accusations of cooperation with the former Member of Parliament Oleksandr Onyshchenko, namely that former SFS Head delayed the rental fee for extraction of mineral resources. According to the Specialized Anti-Corruption Prosecutor's Office, Nasirov's operations resulted in the losses of UAH 2 billion to the state budget. Following the court decision, Nasirov will remain in custody until April 30, given a possibility of bail in the amount of UAH 100 million. At the same time, the defense insists that Nasirov was guided by the legislation of Ukraine in his activities and tax delays were lawfully granted to other large taxpayers as well.

In this regard, political circles have several versions of the reasons for detention and trial over the former SFS Head Roman Nasirov.

**Version 1 - Competition between interest groups in the power structures.** In 2015, as a result of mediation by the Head of Presidential Administration Borys Lozhkin and the active support of oligarchic groups «Renaissance»

and the «People's will» Roman Nasirov was appointed as the Head of the SFS. In exchange, Nasirov had to assist in solving specific business issues of beneficiaries who financed the parliamentary groups (Ihor Kolomoiskyi, Ihor Yermeyev, Olexandr Onyshchenko, Vitaliy Khomutynnik and other major businessmen). These parliamentary groups supported the President and coalition during the key voting. After oligarch Ihor Yermeyev died and Borys Lozhkin resigned, the Nasirov's positions got significantly weakened.

### Roman Nasirov had a conflict with Vitaliy Khomutynnik.

Nasirov also had strained relations with the President's inner circle representatives Ihor Kononenko and Oleksandr Granovskyi. In addition to these problems in the end of 2016, Nasirov's «business relationship» with the head of the parliamentary group «Renaissance» Khomutynnik began to rapidly deteriorate. Enlisting the support of Poroshenko's inner circle, Vitaliy Khomutynnik actively lobbied in the Presidential Administration the elimination of Nasirov followed by the appointment of a new loyal and capable SFS Head. After the dismissal of Nasirov, the position of temporarily Acting SFS Head was given to a longtime friend of Petro Poroshenko - Myroslav Prodan, who earlier headed the Vinnytsia regional department of the SFS.

**Version 2 - American pressure.** The US State Department demanded from the Ukrainian government and NABU not political PR but actual results of fighting against corruption at the top level as it affects the future funding from the IMF and the reform support. In order not to lose the political support of the West, Petro Poroshenko had to sacrifice the figure from higher power echelons, which was associated with its entourage. It should be noted that this version replicated and informally promoted by civil activists and the euro-optimists.

### Version 3 – Continuation of the conflict between the President and Oleksandr Onyshchenko.

Supporters of this version indicate that using Nasirov's imprisonment, Poroshenko has struck a preemptive hit towards Oleksandr Onyshchenko, who may disclose the next portion of compromising information about the

President. Before Nasirov's imprisonment, the escaped MP has published the records, which describe the facts of corruptive abuse and political corruption in higher power echelons. Since the Onyshchenko's information has significant reputational risks for authorities, Poroshenko decided to sacrifice Roman Nasirov.

### Nasirov's imprisonment can be considered as a preventive Poroshenko's hit towards Onyshchenko.



Vitaliy Khomutynnik and Ihor Yermeyev (deceased).

Also it is mistakenly assumed that Nasirov is the President's person or official who is included in inner circle of Poroshenko. Nasirov in his activities is more oriented towards oligarchic groups "People's will" and "Renaissance", but after Onyshchenko flew the country - his relationship with the President's entourage also began to deteriorate. Thus, Roman Nasirov isn't a member of Petro Poroshenko's team. For this purpose the presidential team coordinated the actions with NABU, for which it is also important to demonstrate its effectiveness and to show the Western partners that invested resources in the fight against corruption bring results. It is indicative that the decision of the Appeal Court (which, reportedly, has the influence of the President) was not in Nasirov's favor.

In this connection, there are several possible scenarios on further developments in the "Nasirov case".

**1. Nasirov's imprisonment.** Under the present circumstances, this scenario seems to be unlikely for several reasons. The most important is that the government hasn't adopted a political decision on the future of Nasirov's status.

**2. Collapse of the case in court.** The “Nasirov case”, which was initiated in the Presidential Administration and NABU may also fall apart during the judicial proceedings. The position of lawyers is in the fact that Nasirov was guided by the Ukrainian legislation and the deferred taxes were lawfully provided also to other large taxpayers. After Nasirov's arrest, the Prosecutor General Yuriy Lutsenko said that NABU detectives allowed a number of professional mistakes that can lead to the failure of the case.



**3. Bailment and home arrest with probable escaping abroad.** This version of the situation is highly probable as the pledge of 100 million UAH is not critical for Nasirov. However, the government understands all risks that can occur after the bailment attempt. The public and Poroshenko's political opponents may try to organize protests outside the court and detention cell to prevent the release of the suspected person.

**4. Permanent prolongation of the trial with probable charges drop.** The decision to extend the detention of Nasirov until April 30, because of the fact that currently, the powers still do not understand what strategy on the “Nasirov case” should be chosen. Second, litigation, appeals and other proceedings may last at least for six months until the final decision is made. Meanwhile, the uncertainty and postponement of the “Nasirov case” consideration will only fuel the political and expert discussions on the introduction of special anti-corruption courts.

**5. Agreement with the investigation.** According to available information, this scenario is actively under discussion in the Presidential Administration and NABU. It should be noted that in its activity NABU is actively promoting the principle of agreements with the investigation. For the government, this scenario is also a very good opportunity to achieve its goals. Nasirov in exchange for judgment mitigation or fine may testify against Onyshchenko and other political opponents who are threatening Petro Poroshenko. In case of this scenario, it will be the first successful case for NABU, which will allow the positive reporting on the results of its work to Western partners.

The aim of the publication is to provide objective information on current political events in Ukraine and thorough analysis of major tendencies in domestic politics. Such analysis will assist in setting priorities in the process of implementing reforms in Ukraine and in evaluating quality of state decisions from the viewpoint of their impact and sustainability. Special attention is paid to evaluation of political competition in Ukraine and ability of key political players to address challenges.

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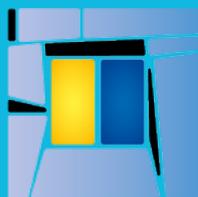
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