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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
OF THE COUNCIL OF EUROPE
(VENICE COMMISSION)

UKRAINE

URGENT JOINT OPINION

**OF THE VENICE COMMISSION
AND THE DIRECTORATE GENERAL OF HUMAN RIGHTS
AND RULE OF LAW (DGI)
OF THE COUNCIL OF EUROPE**

**ON THE DRAFT LAW
“ON AMENDMENTS TO THE LAW
‘ON THE JUDICIARY AND THE STATUS OF JUDGES’
AND CERTAIN OTHER LAWS CONCERNING THE SELECTION
PROCEDURES FOR MEMBERS OF THE HIGH QUALIFICATION
COMMISSION OF JUDGES AND THE HIGH COUNCIL OF JUSTICE”**

**Issued on 25 September 2026 pursuant to Article 14a
of the Venice Commission’s Revised Rules of Procedure**

on the basis of comments by

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I. Introduction

1. By letter of 10 July 2026, Mr Taras Kachka, the then Deputy Prime Minister for European and Euro-Atlantic Integration of Ukraine, requested an urgent opinion of the Venice Commission on the draft law “On Amendments to the Law ‘On the Judiciary and the Status of Judges’ and certain other laws concerning the selection procedures for members of the High Qualification Commission of Judges and the High Council of Justice” (“the draft law”, in [CDL-REF\(2026\)035](#)).

2. On 23 July 2026, the Bureau of the Venice Commission authorised the preparation of the opinion under the urgent procedure, pursuant to Article 14a of the Commission’s Revised Rules of Procedure. The Commission decided to prepare the present Urgent Opinion jointly with the Directorate General of Human Rights and Rule of Law of the Council of Europe (DGI).

3. Mr António Henriques Gaspar, Mr Martin Kuijer, Mr Jørgen Steen Sørensen and Mr Philip Dimitrov acted as rapporteurs on behalf of the Venice Commission. Mr Gerhard Reissner acted as rapporteur on behalf of DGI.

4. On 27 and 28 August 2026, the rapporteurs, assisted by Mr Taras Pashuk and Mr Mamuka Longurashvili from the Secretariat of the Venice Commission, held online meetings with the current Deputy Prime Minister for European and Euro-Atlantic Integration, the Minister of Justice, members of the Committee on Legal Policy of the Verkhovna Rada from the majority and the opposition, the Director General of the Government Office for Coordination of European and Euro-Atlantic Integration of the Secretariat of the Cabinet of Ministers, representatives of the Council of Judges, the High Council of Justice (“the HCJ”), the High Qualification Commission of Judges (“the HQCJ”), the Supreme Court, the Ethics Council and the National Bar Association. They also met with civil society organisations, with representatives of the European Commission and the Delegation of the European Union to Ukraine. The Venice Commission and DGI are grateful to the Ukrainian authorities for the excellent organisation of the online meetings. Several written comments were submitted before and after the online meetings. The Commission and DGI are grateful to the interlocutors for their input.

5. This urgent joint opinion was prepared in reliance on the English translation of the draft law, of the explanatory note and of the comparative table, provided by the authorities ([CDL-REF\(2026\)035](#)). The translation may not accurately reflect the original version on all points.

6. This urgent joint opinion was drafted on the basis of the comments by the rapporteurs as well as the results of the online meetings held on 27 and 28 August 2026 and the written material provided by several interlocutors. In line with para. 10 of the Venice Commission’s Protocol on the Preparation of Urgent Opinions ([CDL-AD\(2018\)019](#)), the draft Urgent Joint Opinion was transmitted to the Ukrainian authorities on 18 September 2026 for comments, which were received on 24 September 2026 and contain the observations of the Ministry of Justice and the Committee on Legal Policy of the Verkhovna Rada. The Urgent Joint Opinion was then issued on 25 September 2026, pursuant to Article 14a of the Venice Commission’s Revised Rules of Procedure. It will be submitted to the Commission for endorsement at its 148th Plenary Session (9-10 October 2026).

II. Background

A. Rationale and content of the draft law

7. In its 2025 Report on Ukraine, the European Commission noted that the mandate of the Selection Commission for the post of member of the HQCJ (“the Selection Commission”), which included international experts, had expired in June 2025 and that while the mandate of

the current HQCJ runs until 2027, the law in force would require a new Selection Commission to be formed from representatives of unreformed national bodies.¹ The European Commission recommended that “[t]o ensure the sustainability of judicial reform and the integrity of the reformed HQCJ, the formation of such selection commission should be discontinued and instead, the meaningful involvement of internationally nominated independent experts in the selection of HQCJ members should be extended. In parallel, Ukraine should launch the reform of the national bodies involved in the selection of the HQCJ members”. The European Commission further expressed serious concern about the “[g]rowing resistance to the involvement of internationally nominated experts in selection or vetting processes, including a pending constitutional petition and a legislative initiative challenging all internationalised processes”.²

8. The request for the present opinion refers to the commitments undertaken by the Ukrainian authorities in the European Union accession process to extend that involvement: Cluster 1 “Fundamentals” calls for the Selection Commission to be extended without delay and its composition expanded with internationally nominated experts. The Joint Statement of 11 December 2025 of the Deputy Prime Minister and the Commissioner for Enlargement confirms that commitment: among the measures which Ukraine is to prioritise within the coming year, the involvement of international experts in the Selection Commission is to be extended, the modalities being defined in close co-operation with the European Commission.³ The explanatory note refers to Points 6.1 and 6.2 of the Action Plan in the field of the rule of law, identified by Ukraine and the European Union as priorities for 2026, which provide for the modalities of the involvement of international experts to be determined and the corresponding draft law to be prepared; and Step 3.16 of the Ukraine Facility Plan, as amended on 30 July 2026, which requires the entry into force by the end of 2026, and not merely the preparation, of legislation expanding that participation.⁴

9. The renewal of the HQCJ needs to be carried out shortly, as the terms of office of 15 of its 16 members expire in June 2027. Under Part 9 of Article 95 of the Law “On the Judiciary and the Status of Judges” (“the Law on the Judiciary”), as amended by the draft law, the HCJ must announce the selection of the HQCJ members no later than three months before that date, i.e., by 1 March 2027. The selection is to be conducted by a second composition of the Selection Commission, whose formation is to begin within ten days of the entry into force of the draft law.

10. During the online meetings, the authorities informed the Commission delegation that they expect to adopt the draft law by the end of 2026.

11. The draft law consists of two sections. Section I amends the Law on the Judiciary: it revises Article 95, which governs the selection of HQCJ members, adjusts the powers of the Selection Commission listed in Article 95¹, and inserts new Items 50¹ and 50² into Section XII, “Final and Transitional Provisions”. New Item 50¹ provides for the formation, for a term of two years, of a second composition of the Selection Commission, with members proposed by the Council of Judges of Ukraine and by international and foreign organisations; new Item 50² terminates the pending selection of members of the Selection Commission announced by the HCJ on 22 July

¹ Under Part 3 of Article 95¹ of the Law on the Judiciary, the members of the Selection Commission are appointed by the High Council of Justice from among the persons proposed by the Council of Judges of Ukraine (three members), the Council of Prosecutors of Ukraine, the Bar Council of Ukraine and the National Academy of Legal Sciences of Ukraine (one member each).

² European Commission, [Ukraine 2025 Report](#), SWD(2025) 759 final, 4 November 2025, Chapter 23. A [constitutional petition](#) was lodged by 56 People’s Deputies of Ukraine on 20 December 2024 and is pending.

³ [Joint Statement between Commissioner Marta Kos and Deputy Prime Minister of Ukraine Taras Kachka](#), Lviv, 11 December 2025, point 7.

⁴ [Ukraine Facility Plan](#), step 3.16, as amended by [Council Implementing Decision \(EU\) 2026/1923 of 30 July 2026 amending Implementing Decision \(EU\) 2024/1447 on the approval of the assessment of the Ukraine Plan](#).

2025 under the current Law. Section II contains the final and transitional provisions of the draft law: it provides for entry into force on the day following publication and amends the Law “On the High Council of Justice” (“the Law on the HCJ”) and the Law “On the Rules of Procedure of the Verkhovna Rada”. The provisions of the draft law are examined in detail below.

12. This urgent joint opinion refers to the draft law as it appears in document [CDL-REF\(2026\)035](#). Given the urgency of the request, the opinion focuses on the most important aspects of the draft law. The absence of remarks on other aspects of the draft law should not be interpreted as tacit approval.

III. Analysis of the draft law

13. International participation in national judicial selection and vetting bodies raised issues of national sovereignty, which were addressed in the past but continue to be raised in Ukraine. It is recalled (see also para. 7 above) that, on 20 December 2024, a group of parliamentarians challenged the legislative acts of Ukraine regulating the procedure for the formation of bodies with the involvement of foreign citizens and representatives of international organisations before the Constitutional Court of Ukraine.⁵ It is not for the Commission and DGI to determine whether the legislative acts of Ukraine concerning the participation of internationally nominated experts in the selection and vetting bodies conform with the Constitution of Ukraine.

14. As regards the draft law, it was prepared by the Government Office for Coordination of European and Euro-Atlantic Integration together with the Ministry of Justice and was shared with the Committee on Legal Policy of the Verkhovna Rada (see details in para. 26 below). During the online meetings, a representative of the parliamentary opposition argued that international participation in the Selection Commission must now come to an end as its renewal would itself depart from the Venice Commission’s earlier recommendations as regards the temporary nature of such participation. Civil society representatives supported the international participation in the second composition of the Selection Commission as the results for which it was established have not yet been achieved. The Venice Commission and DGI will address these issues at the outset.

A. International participation in selection and vetting bodies

15. The participation of international experts in selection and vetting bodies in Ukraine rests on three considerations, consistently reflected in the Venice Commission’s opinions since 2015. The first is public trust. The reforms undertaken since 2014 were intended to remedy “corruption and incompetence among the judiciary which are a result of political influence on judges’ appointments in the previous period”,⁶ and, as the Commission’s interlocutors stressed in 2017, “only international involvement would ensure citizens’ trust in the impartiality of the process”.⁷ The second is the integrity of the bodies of judicial governance. A judicial council “cannot fulfil its functions if the integrity of its members is not ensured”;⁸ the perception was widespread “that appointments are too often politically motivated”;⁹ and a mixed national and

⁵ See <https://ccu.gov.ua/en/novina/constitutional-petition-56-peoples-deputies-ukraine-was-lodged-constitutional-court-ukraine>.

⁶ [CDL-AD\(2015\)027](#), Ukraine – Opinion on the proposed amendments to the Constitution of Ukraine regarding the judiciary as approved by the Constitutional Commission on 4 September 2015, para. 36.

⁷ [CDL-AD\(2017\)020](#), Ukraine – Opinion on the Draft Law on Anticorruption Courts and on the Draft Law on Amendments to the Law on the Judicial System and the Status of Judges (concerning the introduction of mandatory specialisation of judges on the consideration of corruption and corruption-related offences), paras 49-51.

⁸ [CDL-AD\(2021\)018](#), Ukraine – Urgent Joint Opinion on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ (draft law no. 5068), paras 14-16.

⁹ [CDL-AD\(2020\)039](#), Ukraine – Urgent Opinion on the reform of the Constitutional Court, para. 75, quoted in [CDL-AD\(2022\)054](#), Ukraine – Opinion on the draft law on amending some legislative acts of Ukraine regarding improving

international composition “fosters the trust of the public and may help in overcoming any problems of corporatism”.¹⁰ The third is independence from domestic pressure. Members nominated by international partners, “free of national interests and not involved in national conflicts”, are expected to be more independent of the legislative and executive powers and of any authority within the judiciary,¹¹ and reassure public opinion of their impartiality and of the “non-susceptibility of these members to pressure”.¹²

16. On those grounds, the Venice Commission recommended in 2017 that international organisations and donors “temporarily” be given “a crucial role” in the selection of the judges of the High Anti-Corruption Court;¹³ in 2019 and 2020, it welcomed the mixed composition of the body selecting the members of the HCJC; and in 2021, it regarded the international component of the Ethics Council as “a necessary guarantee for such an exceptional measure in Ukraine”.¹⁴ The Commission has consistently treated international participation as exceptional and transitional, designed to last “until the envisaged results are achieved”,¹⁵ that is, when the envisaged reforms of the designated national bodies have been put in place.

17. International participation in selection and appointment procedures is not a novelty in Ukraine: it was introduced in 2015 in the anti-corruption institutions, extended to the judiciary in 2018 and to the bodies of judicial governance in 2021, and is now a feature of more than a dozen selection bodies, both within and outside the judicial sector.¹⁶

18. International participation in judicial selection committees has also been introduced in the Republic of Moldova, where Law No. 26 of 10 March 2022 entrusted the integrity evaluation of candidates for the Superior Council of Magistracy and the Superior Council of Prosecutors to an Independent Evaluation Commission of six members, three proposed by the parliamentary factions and three by the international development partners of the Republic of

procedure for selecting candidate judges of the Constitutional Court of Ukraine on a competitive basis, para. 11; see also CDL-AD(2020)039, paras 77 and 102.

¹⁰ [CDL-AD\(2019\)027](#), Ukraine – Opinion on amendments to the legal framework governing the Supreme Court and judicial governance bodies, para. 22; [CDL-AD\(2020\)022](#), Ukraine – Joint Opinion on draft amendments to the Law “On the Judiciary and the Status of Judges” and certain laws on the activities of the Supreme Court and judicial authorities (draft law no. 3711), para. 41.

¹¹ [CDL-AD\(2022\)023](#), Ukraine – Joint amicus curiae brief of the Venice Commission and DGI on certain questions related to the election and discipline of the members of the High Council of Justice, paras 44 and 53.

¹² [CDL-AD\(2022\)054](#), op. cit., para. 30.

¹³ [CDL-AD\(2017\)020](#), op. cit., para. 73.

¹⁴ [CDL-AD\(2021\)018](#), op. cit., para. 59.

¹⁵ [CDL-AD\(2019\)027](#), op. cit., para. 24; [CDL-AD\(2020\)022](#), op. cit., para. 42.

¹⁶ In the judicial sector: the [Public Council of International Experts](#), composed entirely of internationally nominated members, which took part in the selection of the judges of the High Anti-Corruption Court ([Law No. 2447-VIII of 7 June 2018](#); term extended by 18 months, until May 2026); and four mixed commissions of national and internationally nominated members: the [Selection Commission](#), whose internationally assisted composition expired in June 2025; the [Ethics Council](#), operating until November 2027; the [competition commission for the Service of Disciplinary Inspectors of the HCJ](#); and the [Expert Council](#) for the Specialised District Administrative Court and the Specialised Administrative Court of Appeal. The [Advisory Group of Experts](#) (“the AGE”) pre-selects candidates for the post of judge of the Constitutional Court and operates in a mixed composition until 2029. Outside the judiciary, the mechanism developed gradually: in 2015, the commissions selecting the [Director of the National Anti-Corruption Bureau](#) (NABU) and the [Head of the Specialised Anti-Corruption Prosecutor’s Office](#) (SAPO) each included one foreign expert among members appointed by the national authorities; the commission formed in October 2019 to select the [Head of the National Agency on Corruption Prevention](#) was the first outside the judiciary to include members nominated by international partners – three, alongside three appointed by the Government. That model has since been applied to the selection of the heads of the SAPO and the NABU, of the [Director of the Bureau of Economic Security](#), of the [Head of the Asset Recovery and Management Agency](#) and, under the Customs Code as amended in 2024, of the [Head of the State Customs Service](#) (appointed on 10 April 2026); to the [Advisory Group of Experts for the members of the Accounting Chamber](#), under the law in force since December 2024; and to the [attestation commissions of the Bureau of Economic Security](#) and of the [customs authorities](#) (the [attestation of customs officials](#) was launched in May 2026), half of whose members are proposed by international and foreign organisations. On the bodies in the judicial sector, see Agency for Legislative Initiatives, Competition Commissions with the Participation of International (Foreign) Experts (Judicial Authorities and the Constitutional Court of Ukraine), Analytical Report, 2026 (“the ALI report”), sections 1.1-1.6 and Annex 1.

Moldova, all confirmed by a decision of Parliament adopted by a qualified majority.¹⁷ The Venice Commission and DGI assessed the Moldovan draft law in 2021 and supported the international participation as an exceptional measure; the Constitutional Court of the Republic of Moldova upheld the evaluation mechanism in 2022.¹⁸ The mechanism was subsequently extended to the one-time external evaluation of sitting judges and prosecutors, whose completion was among the steps the European Commission set in June 2022 in the accession process.¹⁹

19. Furthermore, the participation of foreign jurists in the administration of justice is a long-standing feature of several member States of the Venice Commission: the constitutional courts of Liechtenstein and Andorra include foreign judges by virtue of their constitutions, as does that of Bosnia and Herzegovina, and as did that of Kosovo until 2018. In Monaco, the Supreme Court (Tribunal Suprême), which exercises constitutional jurisdiction, has in practice been composed largely of French jurists.²⁰

1. State sovereignty

20. In 2019, the Commission welcomed the mixed composition of the body selecting the members of the HQCJ, observing that such bodies “should be established for a transitional period until the envisaged results are achieved”, while “[a] permanent system might raise issues of constitutional sovereignty”.²¹ In 2020, the Commission and DGI recommended confining the nominating powers to the entities which traditionally co-operate with Ukraine in the field of the judiciary, invited to nominate by a formal request, the nomination in their place being entrusted, should they fail to nominate, to “a neutral and ethical actor or body”.²² In 2021, the Commission and DGI found the rule under which, after a repeat vote, the vote of the group of members including at least two internationally nominated members prevails to be “acceptable from the viewpoint of national sovereignty”, since the decisions of the Ethics Council can be appealed to the Supreme Court and the final decision thus remains with a national body.²³ The 2022 joint amicus curiae brief concluded that the mechanism “should not be seen as posing a threat to the sovereignty of Ukraine because this was a sovereign choice of Ukraine and the chosen mechanism is an extraordinary and temporary solution”, resting in particular on the following elements: the decisions of the mixed body are recommendations, subject to appeal before the Supreme Court; the nominating organisations act “not on the basis of their sovereign right but only due to the fact that they are empowered to do so by Ukraine”; the body is a Ukrainian body governed by Ukrainian law; its members act in their individual capacity; and the decisive vote of two internationally nominated members was itself

¹⁷ [Law No. 26 of 10 March 2022](#) on certain measures related to the selection of candidates for the positions of members of the self-administration bodies of judges and prosecutors, Articles 3-6 and 14 ([English translation](#)), as amended by Law No. 252 of 17 August 2023).

¹⁸ Venice Commission and DGI, [CDL-AD\(2021\)046](#), Republic of Moldova – Joint Opinion on the draft law on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts; Constitutional Court of the Republic of Moldova, [Judgment No. 9 of 7 April 2022](#) (case no. 43a/2022). See also [CDL-AD\(2023\)032](#), Republic of Moldova – Joint Opinion on the Draft Law on the Anti-Corruption Judicial System and on Amending Some Normative Acts, paras 55-56.

¹⁹ [Law No. 252 of 17 August 2023](#) on the external evaluation of judges and prosecutors and the amendment of some normative acts; see also Law No. 65 of 30 March 2023 on the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice.

²⁰ [CDL-AD\(2022\)023](#), op. cit., para. 52 and footnotes 28-31; see also [CDL-AD\(2017\)020](#), op. cit., para. 49. As regards Monaco: Constitution of 17 December 1962, Articles 89 and 92; Sovereign Ordinance No. 2.984 of 16 April 1963, Article 2; Tribunal Suprême de Monaco, “Membres”. Neither the Constitution nor the ordinance implementing it lays down a nationality requirement.

²¹ [CDL-AD\(2019\)027](#), op. cit., paras 22-24.

²² [CDL-AD\(2020\)022](#), op. cit., paras 39 and 77.

²³ [CDL-AD\(2021\)018](#), op. cit., paras 46-52 and Recommendation 9 (para. 75).

a choice of the Ukrainian legislator, constituting “a supplementary guarantee of independence of the Ukrainian judiciary”.²⁴

21. The Commission and DGI see no reason to depart from that assessment, and note that those elements are, for the most part, present in the draft law: the nominating organisations act only because the law so empowers them; the Selection Commission is a Ukrainian body governed by Ukrainian law, whose members, by whomever nominated, are appointed by a Ukrainian authority; its work is preparatory, the final decision remaining with the HCJ as provided by the Constitution and the Law on the Judiciary. The decisive vote of two internationally nominated members, retained for decisions on integrity, is a matter of procedure established by the Ukrainian legislator, constituting a supplementary guarantee of the independence of the Ukrainian judiciary.

2. The exceptional and temporary nature of international participation

22. The Venice Commission has previously expressed the view that the participation of international experts in the formation of the bodies of judicial governance should be exceptional and temporary. The previous opinions defined the limitation by its purpose. In 2019 and 2020, the duration of the transitional period was linked to the achievement of the envisaged results, with mixed national and international bodies being required to “have a mandate clearly limited in time”.²⁵ In 2021, the Commission and DGI found a duration of six years reasonable for the Ethics Council, given the gradual renewal of the composition of the HCJ, and recommended that the law expressly confine that participation to a single six-year mandate.²⁶ In 2022, the Commission recommended a “sunset clause” for the Advisory Group of Experts, which pre-selects candidates for the post of judge of the Constitutional Court (“the AGE”), and the legislator provided for a transitional period of six years.²⁷

23. From that line of opinions, the Commission and DGI draw three consequences. First, the temporary character of the mechanism is defined by its purpose, not by a date: the participation is to last for as long as – but only for as long as – the task for which it was established remains unaccomplished, so that a prolongation proposed because the envisaged results have not been achieved is consistent with that character. Second, the previous opinions require that the mechanism end once its objectives have been attained and that it should not become a permanent feature of the judicial system; they do not require that it end while those objectives remain unattained. The temporary character nevertheless presupposes a credible horizon, on which there was no disagreement during the online meetings and which the authorities reaffirmed in their comments of 24 September 2026: international participation must eventually be phased out and the ordinary procedure restored. Third, that horizon presupposes that the underlying problem – the reform of the national bodies which would otherwise nominate – is addressed within the transitional period, the reversion to the ordinary procedure being the consequence of that reform and not of the mere passage of time.

²⁴ [CDL-AD\(2022\)023](#), op. cit., paras 51-53.

²⁵ [CDL-AD\(2019\)027](#), op. cit., para. 24; [CDL-AD\(2020\)022](#), op. cit., paras 42 and 71; see already [CDL-AD\(2017\)020](#), op. cit., para. 73 (“temporarily, international organisations and donors [...] should be given a crucial role”).

²⁶ [CDL-AD\(2021\)018](#), op. cit., paras 34-36 and Recommendation 4 (para. 75): the Commission and DGI welcomed “the temporary nature of the international participation in the Ethics Council”, considered “the duration of six years to be reasonable given the fact that national law provides for a gradual change in the composition of the HCJ by the various appointing bodies” and recommended that the law “expressly specify that the international participation in the Ethics Council is valid for a single mandate of six years”.

²⁷ [CDL-AD\(2022\)054](#), op. cit., paras 47-48 and 50 (international involvement “should be established only for an exceptional solution, for a transitional period”; “[g]iven the extraordinary and temporary nature of such mechanisms [...] for international members, a limited duration would appear preferable”); Law No. 2846-IX of 13 December 2022 (transitional period of six years) and Law No. 3277-IX of 27 July 2023 (casting vote of the international members); [CDL-AD\(2025\)052](#), Ukraine – Opinion on draft amendments to certain legislative acts regarding the improvement of the competitive selection process for the position of judge of the Constitutional Court, paras 12-13.

24. Finally, the previous opinions have consistently linked the stability of the judicial system to public trust in it, observing that “[t]rust in the judiciary can grow only in the framework of a stable system” and that “convincing justifications have to be presented for yet another reform”,²⁸ and reiterating the need “to refrain from frequent fragmentary judicial reforms”.²⁹ Those considerations weigh against a premature termination of the mechanism as much as against its indefinite prolongation: to end it now, before it has produced the results for which it was established, would alter the framework governing the judiciary just as much as prolonging it and would, unlike a prolongation, leave the underlying problem unresolved.

3. Conclusion as to continued international presence and national sovereignty

25. In conclusion, and subject to the decision of the Constitutional Court about judicial review, the Commission and DGI see nothing in the draft law that would affect Ukraine’s sovereignty or the prerogatives of the appointing and electing bodies. As the Commission has observed, “[i]t is foremost corruption that weakens the sovereignty of the state”.³⁰ The mechanisms described above were created by the Verkhovna Rada to counter that danger, and they produced Ukrainian institutions composed of Ukrainian nationals, appointed in every case by the national authorities designated by the Constitution or by law. In that light, those mechanisms appear to have served, rather than diminished, Ukraine’s sovereignty.

B. Legislative process

26. According to the information provided during the online meetings, the draft law was prepared by the Government Office for Coordination of European and Euro-Atlantic Integration together with the Ministry of Justice and was shared with the Committee on Legal Policy of the Verkhovna Rada; the HCJ and the HQCJ were consulted. Some civil society organisations, however, informed the delegation that they had learned of the draft law only from the Venice Commission, and that none of them had seen its Ukrainian version. The explanatory note states that the draft law gives effect to the rule of law commitments described in para. 8 above; as regards consultations, it states only that the draft law “does not require public consultation”. According to the comments of 24 September 2026, two draft laws on the selection of members of the HQCJ and the HCJ are pending before the Verkhovna Rada: Draft Law No. 16018, registered on 3 September 2026 by members of the Verkhovna Rada Committee on Legal Policy, and Draft Law No. 16018-1, approved by the Cabinet of Ministers and submitted by the Prime Minister to the Verkhovna Rada on 10 September 2026. The authorities state that the explanatory note to Draft Law No. 16018-1 provides that the recommendations set out in the Venice Commission opinion “will be processed and taken into account during the consideration of the draft Law in the Committee of the Verkhovna Rada on Legal Policy”.

27. The comments do not specify whether the text of Draft Law No. 16018-1, as submitted by the Prime Minister to the Verkhovna Rada on 10 September 2026, is identical to the draft law transmitted to the Venice Commission with the request for the opinion of 10 July 2026 (see para. 1 above).

28. The Commission and DGI recall that the quality of law depends to a large extent on the quality of the legislative process.³¹ A draft law, which is intended to fulfil the EU accession

²⁸ [CDL-AD\(2019\)027](#), op. cit., paras 13-15; [CDL-AD\(2020\)022](#), op. cit., paras 6-7 and 33-34.

²⁹ [CDL-AD\(2023\)027](#), Ukraine – Joint Follow-up Opinion to the joint opinion on the draft amendments to the Law “On the Judiciary and the Status of Judges” and certain laws on the activities of the Supreme Court and judicial authorities ([CDL-AD\(2020\)022](#)), paras 24-26, 29 and 70; [CDL-AD\(2025\)044](#), Ukraine – Joint Opinion on draft amendments on disciplinary procedures against judges, declarations of integrity, and other procedures, paras 33-36.

³⁰ [CDL-AD\(2022\)023](#), op. cit., para. 58.

³¹ [CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist, para. 34. The Commission has recalled the same principle in, for example, [CDL-AD\(2025\)053](#), Latvia – Opinion on the draft law on the withdrawal from the Council

commitments, and thereby strengthen the rule of law, must therefore itself be prepared and adopted in a procedure which is efficient, transparent, inclusive and democratic. Under the Updated Rule of Law Checklist, this requires, *inter alia*, that proposed legislation be adequately justified in explanatory documents, that expedited procedures be confined to exceptional situations, and that reforms of particular constitutional or societal importance be the subject of broad public consultation as well as targeted consultations with the stakeholders affected.³²

29. Applying those benchmarks, the Commission has recently found that a process conducted without the involvement of the principal stakeholders is inconsistent with “the standards of good law-making necessary for legislation of ... societal importance”.³³ The present draft law, which determines who will select almost the entire membership of the HQCJ, and gives effect to EU accession commitments, belongs to that category and calls for a transparent and inclusive dialogue with all stakeholders – the judiciary, the legal professions, academia and civil society – on the basis of a publicly accessible text.³⁴

30. The Venice Commission and DGI note that the concerns set out above can be addressed through the legislative process. They welcome, in this context, the undertaking given in the explanatory note to Draft Law No. 16018-1, as reported by the Ukrainian authorities, that the recommendations of the present opinion will be taken into account during its consideration by the Committee on Legal Policy. They therefore strongly encourage the authorities to make full use of the present opinion³⁵ and engage in a transparent and inclusive dialogue with all relevant stakeholders, even when changes are needed urgently.³⁶

31. The Commission and DGI further recommend revising the explanatory note. It should state the reasons for which the international participation is to be prolonged, justify each departure from the arrangements which governed the first composition of the Selection Commission and, as regards the HCJ members, from the law in force; and assess the cumulative effect of the amendments on the current framework.³⁷

C. Formation of the second composition of the Selection Commission

32. Under the current Law on the Judiciary, the Selection Commission is composed of six members appointed by the HCJ on the proposal of national bodies: three judges or retired judges proposed by the Council of Judges of Ukraine and one each by the Council of Prosecutors of Ukraine, the Bar Council of Ukraine and the National Academy of Legal Sciences of Ukraine (Part 3 of Article 95¹). The first composition, which was formed in 2021

of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), para. 35.

³² [CDL-AD\(2025\)002](#), benchmark II.A.6 (Law-making procedures), questions iii, iv and vi.

³³ [CDL-AD\(2026\)012](#), Lithuania – Urgent Follow-up Opinion to the opinion on draft and adopted amendments to the Law on the Lithuanian National Radio and Television, para. 19; see also [CDL-AD\(2026\)001](#), Lithuania – Opinion on draft and adopted amendments to the Law on the Lithuanian National Radio and Television, paras 34 and 41-43, and, on consultation with the stakeholders concerned by reforms of the judiciary, [CDL-AD\(2025\)044](#), op. cit., paras 35-36.

³⁴ [CDL-AD\(2025\)002](#), op. cit., II.A.6; [CDL-AD\(2025\)044](#), op. cit., paras 33-36; [CDL-AD\(2023\)027](#), op. cit., paras 24-26.

³⁵ See, in respect of a legislative process still under way, [CDL-AD\(2026\)012](#), op. cit., para. 22; [CDL-AD\(2026\)001](#), op. cit., paras 43-44.

³⁶ [CDL-AD\(2019\)027](#), op. cit., para. 9 (“[w]hile Parliament can of course not be bound by comments from these stakeholders, it should seriously consider the merits of the arguments presented”); [CDL-AD\(2020\)022](#), op. cit., paras 30-31, where the Commission recommended “integrating the different proposals made into their reflections and the legislative process”.

³⁷ On the content of explanatory documents accompanying draft legislation, [CDL-AD\(2023\)036](#), Montenegro – Opinion on the draft Law on the Government, paras 18 and 21 and recommendation A, and [CDL-AD\(2025\)030](#), Montenegro – Follow-up Opinion to the opinion on the draft Law on the Government, paras 8-9; on the absence of impact assessments in the Ukrainian legislative process, [CDL-AD\(2020\)022](#), op. cit., para. 7.

under Item 50 of Section XII, was mixed: three judges or retired judges proposed by the Council of Judges and three persons proposed by international and foreign organisations; its mandate expired in June 2025, two years after the appointment of the plenipotentiary composition of the HCJ. Section I of the draft law, which amends the Law on the Judiciary, refers to the composition of the Selection Commission now to be formed as “the second composition”.

33. New Item 50¹ provides that “[t]he second composition of the Selection Commission shall consist of three persons from among judges or retired judges proposed by the Council of Judges of Ukraine, and three persons, at least one of whom is a citizen of Ukraine, proposed by international and foreign organisations which, in accordance with international or intergovernmental agreements, have provided Ukraine with international technical assistance in the field of judicial reform and/or the prevention and combating of corruption over the last five years”, for a term of “two years from the date of appointment”. According to the explanatory note, the draft law “proposes to preserve the possibility of temporary involvement of international experts in the second composition of the Selection Commission”, an approach presented as being “in line with the recommendations of the [...] Venice Commission set out in the Joint Urgent Opinion CDL-AD(2021)018”, and it “improves the procedural mechanisms of the Selection Commission, taking into account the practical experience gained during the previous selection”.

34. The Commission and DGI note that the draft law modifies several elements: the admission stage, the mandate, the international quota, the eligibility requirements of the members, the voting rules and the support available to the members. The explanatory note refers generally to “the practical experience gained during the previous selection”, but neither describes the difficulties encountered nor justifies such changes.³⁸ The Commission and DGI recall that the legislator has a general duty to justify any legislative proposal, particularly one affecting fundamental State institutions, and that changes to the bodies of judicial governance should rest on a proper analysis.³⁹ An amendment which changes the rules governing the composition, the mandate or the decision-making of the Selection Commission as they applied to its mixed first composition calls for particularly convincing justification, since those rules were designed to foster the trust of the public in the selection process and, applied by the first composition, allowed the HCJ to appoint a new HCJ in June 2023 – a step which the Commission and DGI welcomed.⁴⁰ The Commission and DGI therefore recommend that the amendments be confined to what the prolongation of the international participation requires or, if retained, that each modification of the arrangements which governed the first composition be justified in the explanatory note (see also para. 31 above and Recommendation 2 below).

1. Ukrainian citizenship requirement within the international quota

35. It is recalled that Item 50 of Section XII, which governed the first composition, provided for “three persons from among judges or retired judges, proposed by the Council of Judges of Ukraine, and three persons proposed by international and foreign organisations which, in accordance with international or interstate agreements, have been providing Ukraine with international technical assistance in the field of judicial reform and/or prevention and combating corruption over the last five years”. New Item 50¹ requires that the three persons

³⁸ [Explanatory note](#), point 2.

³⁹ [CDL-AD\(2020\)022](#), op. cit., paras 30 and 33-34; [CDL-AD\(2025\)044](#), op. cit., paras 34-35.

⁴⁰ [CDL-AD\(2019\)027](#), op. cit., paras 22 and 24 (a mixed national and international composition “fosters the trust of the public and may help in overcoming any problems of corporatism”); [CDL-AD\(2020\)022](#), op. cit., paras 41, 75 and 78 (the mixed body for the selection of the members of the HCJ “follows the successful model chosen for the Anti-Corruption Court and is welcome” and “should ensure the integrity of the HCJ before it commences its work”); [CDL-AD\(2023\)027](#), op. cit., paras 9 and 27 (“It is commendable that the HCJ has promptly appointed new members of HCJ and that the latter has resumed its work on the selection of candidates for the numerous vacant judicial posts in the country”).

proposed by the international and foreign organisations “include at least one citizen of Ukraine”. The explanatory note does not justify the new requirement. During the online meetings, the Minister of Justice referred to the knowledge of Ukrainian law that the assessment of professional competence requires. In its comments of 24 September 2026, the Ministry of Justice also referred to the citizens’ right to take part in the management of public affairs under Article 38 of the Constitution. The Committee on Legal Policy stated that citizenship cannot in itself be regarded as a criterion of independence or integrity, and that the international character of the quota is determined by the nominating organisations.

36. In its opinions on the AGE, the Commission accepted that a suitable candidate of Ukrainian nationality might be found among the persons chosen by the international actors and recommended that the law make that possibility clear.⁴¹ Comparable bodies have since used this possibility, and it raises no objection of principle.

37. The draft law goes further by turning that possibility into a statutory obligation, and this raises questions of a different order. The Commission raises questions not about the independence and the integrity of citizens of Ukraine, nor their right to participate in the management of public affairs, but about the mandatory character of the requirement. A possibility leaves the nominating organisations free to propose a citizen of Ukraine where a suitable person is available; an obligation reserves one of the three seats in advance for a citizen of Ukraine, whether or not a suitable person of that nationality is available. The previous opinions of the Commission and DGI attribute the specific contribution of the internationally nominated members to their being “free of national interests and not involved in national conflicts” and to their acting in an individual capacity; since the purpose of their participation is to reassure public opinion of their independence, of their impartiality in domestic matters and of their non-susceptibility to pressure, the Commission has observed that the choice of a non-Ukrainian “seems to make it easier and more suitable to meet these targets”.⁴² A statutory reservation of one of the three seats for a citizen of Ukraine reduces, by operation of the law, the number of members who possess that distance from the domestic professional and political environment, within the very quota whose purpose is to provide it, and it constrains the choice of the nominating organisations. The personal experiences reported during the online meetings confirm this concern: members of Ukrainian nationality who live and work in Ukraine are considerably more exposed to pressure than their foreign colleagues.

38. The draft provision must, moreover, be read together with the proposed voting rule for decisions on professional competence, which requires four votes, “at least one of whom was nominated by international and foreign organisations”. For that purpose, a citizen of Ukraine nominated by those organisations counts as an internationally nominated member. Under that rule, a decision on professional competence, the stage which determines whether a candidate is retained or excluded, may be adopted with the vote of only one internationally nominated member, and that member may be the citizen of Ukraine whose presence the draft provision requires. The international participation which the rule is meant to secure would then rest on a single vote. The Commission and DGI recall that the participation of the internationally nominated members must be meaningful and not merely formal.⁴³ The Commission and DGI further agree with the Ministry of Justice that the involvement of international experts requires

⁴¹ [CDL-AD\(2022\)054](#), op. cit., para. 30 (“it is possible that a suitable Ukrainian candidate could be found ... the amendments should make clear that the members chosen by international actors could also be Ukrainian citizens”); [CDL-AD\(2023\)022](#), Ukraine – Follow-up opinion to the opinion on the draft law on amendments to certain legislative acts of Ukraine on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court of Ukraine on a competitive basis, para. 27 (the “international” members of the AGE “may well be Ukrainian citizens”, including “reputable representatives of civil society organisations”). The possibility was already noted in [CDL-AD\(2021\)018](#), op. cit., para. 30 (“in practice the international organisations might even propose some Ukrainian candidates”).

⁴² [CDL-AD\(2022\)023](#), op. cit., paras 44 and 52-53; [CDL-AD\(2022\)054](#), op. cit., para. 30; [CDL-AD\(2020\)022](#), op. cit., para. 41.

⁴³ [CDL-AD\(2023\)022](#), op. cit., paras 16, 19 and 24; [CDL-AD\(2021\)018](#), op. cit., paras 48-51.

“an adequate level of their actual participation”. The combination of the two provisions does not provide that guarantee for decisions on professional competence.

39. Two further difficulties arise. It may prove difficult to identify, within the 30 days allowed for the joint list, a candidate of Ukrainian nationality who enjoys the confidence of all the nominating organisations, and that difficulty may itself lead to a failure to nominate, which triggers the subsidiary nomination (see paras 41-43 below). The draft law is also silent on how the requirement operates: it does not say whether the joint list must include a citizen of Ukraine, whether the Head of the HCJ must appoint one, or how the requirement applies where the first three candidates on the list are “deemed appointed”.

40. The Commission and DGI recommend replacing the compulsory requirement of a Ukrainian citizen with a provision making clear that members proposed by international and foreign organisations may also be citizens of Ukraine without making this a mandatory requirement. Should the legislator nevertheless retain it, the Commission and DGI could only deem it acceptable if the following conditions are met: above all, that the voting rule applicable to decisions on integrity is extended to decisions on professional competence (see para 55 below), which would substantially reduce the risk described in para. 38 above; that the law states how the requirement operates at each stage of the procedure, including where the first three candidates on the list are deemed appointed; and that the impossibility of identifying such a candidate does not trigger the subsidiary nomination.

2. The subsidiary nomination

41. Where the international and foreign organisations fail, within 30 days of the request of the Head of the HCJ, to propose candidates “or propose a number of candidates insufficient to form a quorum”, new Item 50¹ provides that, instead, the Council of Prosecutors, the Bar Council, and the National Academy of Legal Sciences are to propose candidates within 15 days. The provision reproduces the subsidiary nomination provided for in the current Item 50 for the first composition, which was never triggered.⁴⁴ The Commission and DGI acknowledge that the legislator should not be placed in a position in which the formation of the Selection Commission could be held up indefinitely by the inaction of the nominating organisations. Experience shows, however, that the international partners have nominated in time.⁴⁵ The Commission and DGI consider that what matters is the consequence which the Law attaches to the expiry of the 30-day period without a complete list. Under the draft law, the international quota then passes to national bodies, so that the expiry of the period alters the composition of the Selection Commission for the whole of its mandate. If the consequence were instead a renewed request and an extension of the period, the composition would remain unchanged (see para. 43 below).

⁴⁴ Law on the Judiciary, Section XII, Item 50, inserted by Law No. 1629-IX of 13 July 2021. The draft law No. 3711 examined by the Commission and DGI in 2020 entrusted the fallback nomination to the Parliamentary Commissioner for Human Rights; the version enacted in 2021 substituted the three bodies now designated, and has not been the subject of an opinion.

⁴⁵ Public Council of International Experts: Law No. 2447-VIII of 7 June 2018, Article 9; first composition appointed by the HCJ on 6 November 2018 ([PCIE website](#)). Selection Commission: Law on the Judiciary, Section XII, Item 50 (Law No. 1629-IX of 13 July 2021); first composition appointed by the HCJ on 17 September 2021 ([explanatory note](#), point 2). Ethics Council: Law No. 1635-IX of 14 July 2021; established on 9 November 2021 ([CDL-AD\(2022\)023](#), op. cit., para. 9; [Ethics Council website](#)). Advisory Group of Experts: Law No. 2846-IX of 13 December 2022, as amended by Law No. 3277-IX of 27 July 2023. The Venice Commission considered it preferable, in January 2023, to await the amendments to the law which it had recommended before nominating a member and a substitute member; the legislator adopted those amendments in the course of the same year, the nominations followed, and the first composition of the AGE was appointed on 13 October 2023, without any need to entrust the nomination to other bodies ([CDL-AD\(2023\)022](#), op. cit., paras 3-4, 15-16, 34 and 42; [Law on the Constitutional Court](#), Section IV, items 4 and 8-13; [CDL-AD\(2025\)052](#), op. cit., para. 13; ALI report, op. cit., section 1.4).

42. That said, the proposed design calls for observations. First, if triggered, the subsidiary nomination would fill the international quota with nominees of three national bodies, two of which convene the congresses and conferences electing members of the HCJ, the body which appoints the members of the HQCJ, and all of which are among the national bodies whose reform the European Commission has called for, recommending that the formation of a Selection Commission composed of their representatives be discontinued.⁴⁶ Given their own role in the formation of the bodies of judicial governance, they would not readily be perceived as the “neutral ... actor or body” to which the 2020 opinion referred.⁴⁷ A mechanism which would transfer the international quota to those bodies before their reform has taken place would reverse the sequence on which the prolongation rests (see para. 23 above). The provision would thus reintroduce, by default and for the whole two-year mandate, the composition which the draft law is intended to avoid. The delays which have affected the formation of the bodies of judicial governance have, moreover, arisen at national level: the selection under Part 3 of Article 95¹ of the Law on the Judiciary announced by the HCJ on 22 July 2025 was suspended pending the reform and has led to no appointment.⁴⁸ Second, the provision is difficult to reconcile with the rest of new Item 50¹. Under that Item, the second composition may begin its work only once four members have been appointed, “two of whom are nominated by international and foreign organisations”, and its decisions on integrity require the votes of two such members. Persons proposed by the Council of Prosecutors, the Bar Council and the National Academy of Legal Sciences are not nominated by international and foreign organisations. The threshold required to begin work and to decide on integrity could therefore never be met, and the Selection Commission would be paralysed, unless the persons so nominated were deemed to take the place of the internationally nominated members, in which case the safeguard would disappear altogether. The draft law does not specify which of the two outcomes is intended, and it leaves the alternative mechanism undeveloped: it does not state how many candidates each of the three bodies is to propose, nor how the majorities and the tie-breaking rule would then operate.⁴⁹

43. The Commission and DGI therefore recommend that the proposed subsidiary nomination be deleted. Where the international and foreign organisations have not nominated within the 30-day period, the Head of the HCJ should address a renewed formal request to each of the listed organisations and grant an extension of the period. In the meantime, the members proposed on the lists already received should be appointed (see para. 45 below), and the draft law itself allows the Selection Commission to commence its work once at least four members, two of them nominated by the international and foreign organisations, have been appointed; a delay on the international side would thus postpone the completion of the composition but, provided that two internationally nominated members have been appointed, would not prevent the Selection Commission from operating. Should the legislator nevertheless consider it indispensable to provide, as a last resort, for the nomination of the members of the international quota by another body, the recommendation made in 2020 applies: that function “should be entrusted to a neutral and ethical actor or body”, it being for the legislator to decide which institution meets those requirements.⁵⁰ That requirement would be met by an actor

⁴⁶ European Commission, [Ukraine 2025 Report](#), SWD(2025) 759 final, chapter 23 (“the formation of such selection commission should be discontinued and instead, the meaningful involvement of internationally nominated independent experts in the selection of HQCJ members should be extended. In parallel, Ukraine should launch the reform of the national bodies involved in the selection of the HQCJ members”). On the risks of corporatism and politicisation in bodies responsible for the career of judges, see [CDL-AD\(2025\)002](#), op. cit., paras 105 and 108.

⁴⁷ [CDL-AD\(2020\)022](#), op. cit., para. 45.

⁴⁸ Law on the Judiciary, Section XII, Item 53 (announcement within five days of the expiry of the term of office of the first composition). Written opinion of the Ukrainian National Bar Association of 31 August 2026, paras 23-26 and Annex (HCJ decisions Nos. 1542/0/15-25 and 1543/0/15-25 of 22 July 2025; Bar Council decision of 12 August 2025; HCJ letter No. 12191/0/9-26 of 22 June 2026).

⁴⁹ See, on the requirement of clarity and foreseeability of legislation, [CDL-AD\(2025\)002](#), op. cit., paras 47-50; and, *mutatis mutandis*, [CDL-AD\(2026\)012](#), op. cit., para. 29.

⁵⁰ [CDL-AD\(2020\)022](#), op. cit., para. 45.

which preserves the international character of the quota, and not by the bodies designated in new Item 50¹.

3. The appointment of the members of the Selection Commission

44. Under new Item 50¹, the Head of the HCJ appoints the members of the Selection Commission within five days of receiving the lists of candidates from all the nominating bodies. If no appointment is made within that period, the first three candidates on the list of the Council of Judges and the first three on the list of the international and foreign organisations “shall be deemed appointed”. This rule on automatic appointment, taken over from the current Item 50 of the Law on the Judiciary, is welcome: it guards against the formation of the Selection Commission being held up by the inaction of the appointing authority, in line with the recommendation made by the Commission and DGI in 2021 for the Ethics Council.⁵¹ Draft Article 95¹ contains no such rule, and it is under that Article that the selection announced on 22 July 2025 could be suspended without any appointment being made (see para. 42 above). As currently worded, however, the rule does not fully achieve that purpose: the five-day period runs from the receipt of the lists from all the nominating bodies, so that where one of them is not submitted in time, the period does not begin to run and the automatic appointment does not operate. The completion of the Selection Commission would then be postponed for as long as that list is awaited.

45. The Commission and DGI suggest three adjustments. First, the five-day period should run, for each list, from the expiry of the time-limit for its submission, including any extension granted under the procedure suggested in para. 43 above, so that the absence of one of the two lists cannot delay the appointment of the members proposed on the other. Second, the automatic appointment should apply to each of the two lists independently of the other. Third, since the rule appoints “the first three candidates”, each list should contain at least three candidates, in an order of precedence established by the nominating body and published together with the list; without such an order the rule cannot operate. The Commission and DGI further suggest introducing the rule in Article 95¹, which contains no such safeguard for the future composition of the Selection Commission. The logic is the same throughout: the delay of one actor should neither prevent the formation of the Selection Commission nor alter its composition – automatic appointment where a list has been submitted, a renewed request and more time where it has not.

4. Status of the members of the Selection Commission

46. Under new Item 50¹, candidates for membership of the Selection Commission must have “an impeccable professional reputation” and “public standing” and must meet “the criteria of integrity and professional competence”. The draft law does not specify any additional eligibility requirements, nor clarify who is responsible for verifying that candidates satisfy the criteria.⁵² In their comments of 24 September 2026, the Ministry of Justice and the Committee on Legal Policy referred to Article 95¹ of the Law on the Judiciary, which governs the Selection Commission under the ordinary procedure. Part 4 of that Article requires its members to have the same qualities as in new Item 50¹. Part 17 requires a member to decline to take part in collecting information on a candidate with whom he or she has personal or business relations, or where another conflict of interest exists. The Commission and DGI recall that persons called upon to assess the integrity and competence of others may be expected themselves to satisfy

⁵¹ [CDL-AD\(2021\)018](#), op. cit., para. 25 and Recommendation 2 (para. 75): the establishment of the Ethics Council should not depend on the approval of the Chairman of the HCJ, and a “default mechanism” should be introduced for the case where the Council of Judges fails to appoint its members.

⁵² For the selection under Article 95¹ announced in July 2025, the HCJ approved a methodology for assessing candidates for membership of the Selection Commission (decision No. 1542/0/15-25 of 22 July 2025); Item 50¹ provides no equivalent, and requirements of this kind should be laid down by law.

requirements at least as demanding as those which they apply.⁵³ As the Commission has observed, the central question of any such model is *quis custodiet ipsos custodes*: whether there is good reason to trust the assessing body more than the bodies whose choices it is meant to correct. The answer depends on how its members are appointed, their qualifications, the incompatibilities to which they are subject, their autonomy and security of tenure, their accountability, and the availability of judicial review of their decisions.⁵⁴

47. For the Selection Commission, that trust rests on its mixed composition and on the guarantees which the law attaches to membership; the remaining elements are examined below (see paras 48, 67 and 71). Since the draft law provides for no assessment of the integrity of its own members, those guarantees can only take the form of clear statutory requirements and grounds for disqualification.⁵⁵ In its comments of 24 September 2026, the Ministry of Justice stated that such guarantees may be laid down directly by law, as they concern the independence and legitimacy of the assessing body. That position corresponds to the view of the Commission and DGI, set out in para. 46 above, that persons called upon to assess the integrity and competence of others must themselves satisfy requirements at least as demanding as those which they apply. The provisions of Article 95¹ to which the authorities refer do not, however, provide those guarantees. Part 4 lists qualities, as does new Item 50¹, and not verifiable eligibility conditions. Neither provision lays down specific incompatibilities. The duty under Part 17 concerns only the collection of information on a candidate; it does not extend to deliberation and voting. The Commission and DGI recommend that the law set out the eligibility requirements for membership of the Selection Commission, such as higher legal education and substantial professional experience; the incompatibilities; the rules on conflicts of interest, recusal and disqualification.⁵⁶ As regards the members proposed by the Council of Judges, the current Item 50 requires, for the first composition, that they be judges or retired judges who have successfully passed the qualification evaluation; new Item 50¹ omits that requirement, which should be restored, and, as the Commission and DGI recommended in 2021 for the national members of the Ethics Council, such members should moreover have no disciplinary or criminal record.⁵⁷

48. The draft law contains no provision on the replacement of a member whose mandate has come to an end or who is unable to act, or on the grounds and procedure for early termination of a mandate. Neither the current Item 50, which governed the first composition, nor Article 95¹ of the Law on the Judiciary provides for such replacement. Part 21 of Article 95¹ lists the grounds upon which the powers of a member cease, but says nothing about the appointment of a successor; its application to the second composition is uncertain, and one of its grounds, the termination of Ukrainian citizenship, cannot apply to foreign members. In a body of six members, whose decisions require at least four votes, including those of two internationally nominated members, the prolonged absence of one member narrows the margin within which decisions can be taken, and the absence of two members may block the work. For the Ethics Council, by contrast, the Law on the HCJ lists the grounds for early termination exhaustively

⁵³ [CDL-AD\(2021\)018](#), op. cit., paras 23-24 and 30 (the national members of the Ethics Council to be judges or retired judges who have undergone the qualification evaluation and have no disciplinary or criminal record, with these requirements to be spelled out in the law).

⁵⁴ [CDL-AD\(2021\)046](#), op. cit., para. 17; [CDL-AD\(2023\)005](#), Republic of Moldova - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft Law on the external assessment of Judges and Prosecutors, paras 29-30 (“the central question of this model is *quis custodiet ipsos custodes*: is there a good reason to trust the Assessment Commissions more than the existing bodies of judicial and prosecutorial governance?”; independence to be assessed by “the manner in which their members are appointed, what are their qualifications, the incompatibilities requirements, the level of autonomy in internal procedures, security of tenure, mechanisms of accountability of the members, availability of judicial control over the ACs decisions”).

⁵⁵ CCJE, [Opinion no. 10 \(2007\)](#), paras 21-24 and 36; see also [CDL-AD\(2020\)022](#), op. cit., para. 32.

⁵⁶ [CDL-AD\(2025\)002](#), op. cit., para. 76 (rules on incompatibilities, advance disclosure of conflicts of interest and recusal, and special integrity requirements for appointment to positions exposed to a high risk of corruption) and para. 105.

⁵⁷ [CDL-AD\(2021\)018](#), op. cit., paras 30-31; Law on the Judiciary, Section XII, Item 50, fifth sub-paragraph.

and requires the Head of the HCJ to request a new nomination without delay, a procedure applied when two internationally nominated members resigned in 2025.⁵⁸ Of these gaps, the absence of rules on early termination is the more serious, since it concerns not the functioning of the Selection Commission but the independence of its members. A mandate may end before its term only on grounds exhaustively listed in the law and under a defined procedure.⁵⁹ Without such rules for the second composition, the appointing authority could remove a member at its discretion, which would be incompatible with that independence. The Commission and DGI therefore strongly recommend that the law provide for a replacement procedure, and lay down the grounds and procedure for early termination of a mandate.

49. The lists of candidates are published on the HCJ website and on the judicial web portal. In line with their recommendation for the Ethics Council in 2021, the Commission and DGI recommend that publication precede the appointment by at least two weeks, with all relevant documents, “to allow for transparent debates on the candidates”,⁶⁰ the periods for the appointment and for the automatic appointment being adjusted accordingly.

5. Decision-making within the Selection Commission

50. New Item 50¹ lays down the majorities required for decisions on integrity and on professional competence, examined below, and provides that the second composition “shall commence its work, provided that at least four members of the Selection Commission have been appointed, two of whom are nominated by international and foreign organisations”. The explanatory note does not address the decision-making rules. The Selection Commission may thus begin work once four of its six members, including two internationally nominated, have been appointed. The rule guards against blockage and preserves the mixed character; it should nevertheless remain a short-term exception, with the rule on automatic appointment, as adjusted, making completion of the composition attainable within a short period. With only four members, a decision on integrity amounts to unanimity, each member holding a veto, a risk against which the Commission and DGI cautioned in 2021.⁶¹ The quorum is, moreover, referred to but nowhere defined. The Commission and DGI suggest that the quorum be defined in the Law and that the law state how the majorities apply while the composition is incomplete.

51. For decisions on integrity, new Item 50¹ requires four votes, including those of two internationally nominated members; three votes, including those two, are decisive in the event of a tie. This corresponds to the model recommended in 2021 and applied by the Ethics Council, and its retention is welcome. The rule, however, is incomplete in two respects. First, it omits the intermediate step of that model, a repeat vote within a period fixed by law before the decisive vote applies.⁶² Second, it addresses only a tie, and not the situation encountered by the Ethics Council in its own practice, in which four members vote in favour but only one of them is internationally nominated, so that no decision is adopted. A voting arrangement which leaves the body unable to decide “institutionalises and may even encourage non-decisions”.⁶³ The Commission and DGI therefore recommend that the law provide for a repeat vote within a period fixed by it and that, thereafter, the vote of the group of members which includes at least two internationally nominated members prevail whenever no decision has been reached.

⁵⁸ Article 9-1, Parts 9 and 10, of the Law on the HCJ (request for a new nomination no later than the working day following the termination); European Commission, Ukraine 2025 Report, op. cit., chapter 23 (two international members of the Ethics Council resigned for personal reasons and were replaced in September 2025).

⁵⁹ See, *mutatis mutandis*, [CDL-AD\(2025\)002](#), op. cit., para. 141 (the cases of termination of a mandate to be narrowly defined, laid down in clear, detailed and precise legal provisions and subject to strict procedural guarantees).

⁶⁰ [CDL-AD\(2021\)018](#), op. cit., para. 31.

⁶¹ [CDL-AD\(2021\)018](#), op. cit., para. 48.

⁶² [CDL-AD\(2021\)018](#), op. cit., paras 49-51 and Recommendation 9 (para. 75); [CDL-AD\(2022\)023](#), op. cit., para. 50.

⁶³ [CDL-PI\(2023\)002](#), Follow-up to the Opinion [CDL-AD\(2022\)054](#), section D.

Such a rule does not give those members a majority: under the ordinary rule they cannot decide without a national vote, and their votes prevail only where the body has been unable to decide.⁶⁴

52. For decisions on professional competence, new Item 50¹ lays down a different rule: a decision is adopted by the votes of at least four members, of whom at least one has been nominated by the international and foreign organisations, and no tie-breaking rule is provided. The first composition applied a single rule to all its decisions, which required the votes of two internationally nominated members, and the explanatory note gives no reason for departing from it. The Commission and DGI note that the departure is not a matter of detail: the assessment of professional competence precedes and conditions the drawing up of the list of recommended candidates, and the proposed rule would allow that list to be determined without the support of more than one internationally nominated member. During the online meetings, the Minister of Justice explained the difference by reference to the view that national members are better placed to assess professional competence, in particular knowledge of Ukrainian law. In the comments of 24 September 2026, the Committee on Legal Policy indicated that all decisions should be adopted by a simple majority of four of the six members, without a decisive vote for either group, to encourage consensus and avoid inequality among the members. The Ministry of Justice considered such a majority sufficient, at least for the adoption of the list, which, in its view, merely formalises the individual decisions.

53. The Commission and DGI observe that the criterion of professional competence, as defined in Part 22 of Article 95 of the Law in force (Part 28 as renumbered by the draft law), comprises not only knowledge of domestic law but analytical skills, diligence, communication and the ability to work with colleagues, which internationally nominated members, sitting with three national members and provided with interpretation and adequate analytical support are well placed to assess. Where the concern relates to domestic law, it can be met by the design of the assessment itself, for instance by a written component on Ukrainian law, as is done for the AGE, or by expert support made available to the members,⁶⁵ rather than by lowering the majority required for the decision. Nor can the two criteria be kept apart: integrity information may surface at the competence stage, and a less demanding rule there would offer an alternative route for removing a candidate, so that a candidate who passed the integrity stage with the support of two internationally nominated members could be excluded by the three national members joined by one international member. A simple majority for all decisions, as the Committee on Legal Policy proposes (see para. 52 above), would allow a candidate to be excluded by the three national members joined by a single internationally nominated member at every stage, including the integrity stage and the adoption of the list; the concern of inequality among the members is met by the limits of the rule recommended in para. 51 above, under which the internationally nominated members cannot decide without a national vote and their votes prevail only where the body has been unable to decide. For the AGE, the Commission considered that the decisive weight of the internationally nominated members should extend to both criteria.⁶⁶ The absence of a tie-breaking rule also means that a three-to-three division results in the candidate not being recommended, so that the outcome is determined by the failure to reach a majority rather than by a reasoned assessment, and the list may remain incomplete.⁶⁷

⁶⁴ [CDL-PI\(2023\)002](#), op. cit.; [CDL-AD\(2023\)022](#), op. cit., paras 19 and 24.

⁶⁵ Part 22 of Article 95 of the Law on the Judiciary in force (Part 28 as renumbered by the draft law) (knowledge in the field of law, analytical skills, the capacity to work diligently, oral and written communication skills, and the ability to interact with colleagues). For the AGE, see [CDL-AD\(2022\)054](#), op. cit., paras 53-54, and the Methodology of the AGE, Article 4 (a written assessment on a question prepared by an external group of international experts and selected at random).

⁶⁶ Venice Commission, [CDL-AD\(2023\)022](#), op. cit., paras 19, 24 and 40 (“a voting model which gives the members on the international quota a decisive say”); [CDL-PI\(2023\)002](#), op. cit., sections C and D.

⁶⁷ [CDL-AD\(2022\)054](#), op. cit., paras 58-59 (an anti-deadlock mechanism is “essential”, since the procedure would otherwise have to be repeated).

54. The draft law does not make clear which rule governs the reasoned decision on the recommendation of a candidate (new Part 23 of Article 95) and the determination of the list of candidates recommended to the HCJ (new Part 24). New Item 50¹ sets out special majorities only for decisions on compliance with the integrity criterion and the professional competence criterion. Insofar as the recommendation and the list are distinct decisions, they fall under the general rule of Part 13 of Article 95¹, under which a decision of the Selection Commission is adopted if at least four of its members vote for it, without any requirement as to the participation of the internationally nominated members and with no means of resolving a tie. Adopting the list is not merely a formality; it identifies the candidates eligible for appointment by the HCJ. The draft law also deletes, without explanation, the requirement that the recommended candidates be selected “by open vote”,⁶⁸ although an open vote alone permits verification of majorities defined by the origin of the votes.⁶⁹

55. In the interests of clarity and of the uniformity of the procedure, which would reduce tensions within the professional community and doubts among the public, the Commission and DGI recommend that decisions on professional competence and on the adoption of the list of candidates recommended to the HCJ be adopted under the same rule as decisions on integrity: four votes in favour, at least two of them cast by internationally nominated members, a repeat vote where no decision is reached and, if the division is not overcome within a period fixed by the law, the prevailing vote of the group of members which includes at least two internationally nominated members; that the open vote be restored; and that the quorum and the majority for procedural decisions be defined.

6. Mandate, time-limits and continuity of the HQCJ

56. New Item 50¹ provides that “[t]he term of office of the Selection Commission and its members [...] shall be two years from the date of appointment” and that “[t]he next composition of the Selection Commission shall be formed in accordance with the procedure set out in Article 95¹”. The explanatory note recalls that the term of office of 15 of the 16 members of the HQCJ expires in June 2027. The second composition is thus appointed for a fixed term of two years. The term of office of the first composition was defined differently: under the current Item 50, it expired two years after the appointment of the plenipotentiary composition of the HQCJ, that is, a period running from the accomplishment of its task, so that the Selection Commission remained in office until it had accomplished that task and for a further period during which it could fill any vacancy arising.⁷⁰ A mandate fixed by date may expire before a selection is completed, the formation of the second composition may be delayed by contested nominations or litigation, and two years is short for a body which must renew almost an entire institution in wartime. In its comments of 24 September 2026, the Committee on Legal Policy indicated that Part 6 of Article 151 of the Code of Administrative Procedure of Ukraine precludes interim measures⁷¹ which would suspend or otherwise interfere with a competitive procedure. The Commission and DGI note that this rule, which is also relevant to para. 67 below, limits the risk of delay through litigation. However, it does not address the two other difficulties, namely the expiry of a mandate of fixed duration before a selection is completed and the shortness of

⁶⁸ Article 95¹, Part 18, Point 7, of the [Law in force](#) requires the Selection Commission to select the candidates to be recommended “by open vote”.

⁶⁹ See in this regard Regulations of the Advisory Group of Experts, Articles 10 and 11: votes are cast “for” or “against”, without abstention, and the minutes record the vote of each member. On the deletion of a statutory voting rule without reasons, see, *mutatis mutandis*, [CDL-AD\(2026\)012](#), op. cit., paras 37 and 41.

⁷⁰ [Explanatory note to the draft law](#), Point 2; Item 50 of Section XII and Part 9 of Article 95¹ of the Law on the Judiciary; see para. 32 above. The first composition conducted selections for single vacancies in 2024 and 2025; the ordinary composition provided for in Article 95¹ is appointed for four years.

⁷¹ [Code of Administrative Procedure of Ukraine](#), Chapter 10 (Securing the claim), Article 151 (Types of interim measures), Part 6: “It is not allowed to take measures to secure a claim that consist of (or result in) terminating, postponing, stopping or otherwise interfering with the conduct of a competition, ... conducted on behalf of the state (state body), ... or with the participation of an entity appointed by a state body as part of a commission conducting a competition, ...”

a two-year period for the renewal of almost an entire institution. The Ministry of Justice, for its part, stated that the temporary character of the mechanism must rest on clear and predictable conditions for its termination, whether a fixed term or objective criteria upon whose fulfilment the powers of the Selection Commission cease. As discussed above, the temporary character of the mechanism lies in the task, not in a fixed period; a mandate defined by the completion of the task is an objective criterion for that purpose. The Commission and DGI therefore recommend that the fixed term be replaced by a mandate defined, as for the first composition, by the completion of the task, or at least that the mandate continue until any selection commenced, including any repeat selection, is completed.

57. The timetable is tight. Under the periods laid down in the draft law itself, the formation of the second composition requires at least 41 days, and the first composition held its first meeting four months after its appointment.⁷² Under amended Part 9 of Article 95, the HCJ “shall announce the start of the selection no later than three months before the expiration of the term of office of a member of the [HQCJ]”, that is, by 1 March 2027. According to information received during the online meetings, the special background check alone takes at least two months, and a full selection takes about a year in comparable procedures. A period of three months is therefore manifestly insufficient. For the selection of the members of the HCJ, the draft law itself requires the announcement to be made no later than six months before the expiry of the term of office; the Commission and DGI recommend that Part 9 of Article 95 be aligned with that period, the HCJ remaining free to announce the selection earlier. Two points of wording also call for clarification: since in March 2027 the 15 posts will not yet be vacant, the references to “vacant posts” in new Item 50¹ and in amended Part 5 of Article 95 should cover posts whose term of office is about to expire; and it should be made clear that the joinder of several posts in a single selection, which Part 5 permits “if there is more than one such vacant post”, is optional, a selection being held in any event where a single post is to be filled.

58. If the terms of office expire in June 2027 before the new appointments are made, the HQCJ will lose its plenipotentiary composition and all procedures before it will stop. Part 4 of Article 92 of the Law on the Judiciary defers that outcome without removing it: a member whose term is set to expire and whose departure would deprive the HQCJ of its quorum continues in office until a successor is appointed, but for no longer than three months, that is, until September 2027 at the latest.⁷³ The provision does not extend the mandate of all the members, but only of those whose departure would leave the HQCJ without a quorum. The experience of 2019-2023, when some 2,000 judicial vacancies went unfilled, shows the seriousness of such an interruption, the HQCJ having had no composition at all from November 2019 until June 2023. In 2020, the Commission and DGI recommended that all HQCJ members’ mandates continue until their successors are appointed.⁷⁴

59. The Commission and DGI recommend that the transitional provisions give full effect to that recommendation by providing that, for the 2027 renewal, the mandate of all members continues until the appointment of the members replacing them, and not only for three months. The Ministry of Justice noted, in its comments of 24 September 2026, that the selection may result in fewer appointments than there are posts to be filled. The Commission and DGI consider that, in that event, the transitional provision should determine, on the basis of an

⁷² Five days for the list of the Ministry of Foreign Affairs, one working day for the request of the Head of the HCJ, 30 days for the nominations and five days for the appointments. The first composition was appointed on 17 September 2021 and held its first meeting on 21 January 2022 (ALI report, op. cit., section 1.2; Explanatory Note, point 2).

⁷³ Part 4 of Article 92 of the Law on the Judiciary. The HQCJ is deemed to have a quorum where at least eleven members, at least six of them judges or retired judges, have been appointed.

⁷⁴ [CDL-AD\(2020\)022](#), op. cit., para. 49; see also [CDL-AD\(2019\)027](#), op. cit., para. 25. See also, in respect of Montenegro, [CDL-AD\(2022\)050](#), Montenegro – Opinion on the draft amendments to the Law on the Judicial Council and Judges, paras 23-27.

objective criterion such as drawing lots, which of the outgoing members remain in office until the remaining posts are filled. Such continuation is a temporary anti-deadlock solution: the law may set a maximum period for the new appointments.

60. During the online meetings, HQCJ representatives highlighted the competitions for judicial posts and the qualification evaluations, which will still be pending when the composition of the HQCJ is renewed in 2027. They stressed that those procedures should be continued by its new members rather than started again, and that a different practice applied to the remaining part of a competition already under way could raise questions of unequal treatment of the candidates in that competition.⁷⁵ The Commission and DGI recall that in 2019 and 2020, when the dissolution of the HQCJ had interrupted all pending assessments, they deplored that interruption and recommended that the new HQCJ “build on the work of its predecessor”.⁷⁶ The Commission and DGI reiterate that recommendation.

7. The selection procedure for the HQCJ

61. Under new Part 16 of Article 95, the selection comprises three stages: admission, on the basis of whether the candidate and the documents submitted “meet the requirements established by this Law”; the special background check and the determination by the Selection Commission of the candidates’ compliance with the integrity criterion; and the determination of their professional competence and the drawing up of the list of candidates recommended to the HCJ. The live broadcasting of the interviews and the two-candidates-per-post requirement are carried over from the law in force.⁷⁷

62. The draft law transfers the compilation of the lists of candidates to the Secretariat of the HCJ and the decision on admission to the HCJ itself. The reallocation is acceptable only in so far as the functions are confined to the formal and administrative domain: the compilation of the lists must remain the technical assembling of the candidatures received, and admission the verification of objectively ascertainable documentary requirements, any appreciation of the merits being reserved to the Selection Commission, since otherwise the appointing authority would determine the pool from which it must later choose.⁷⁸

63. The Commission has drawn the same limits for the AGE: the involvement of the appointing authorities in the procedure must not enable them to revisit or set aside the assessments made by the expert body, whose function would otherwise be deprived of its purpose.⁷⁹ The Commission and DGI accordingly recommend that the law make clear that the reasoned decision of the HCJ on the appointment, under Part 7 of Article 95, concerns the choice among the candidates recommended by the Selection Commission and neither reopens nor duplicates the assessments of that body. Admission, moreover, is only partly regulated: no time-limit is set within which the HCJ must decide, and the criterion is not workable as it stands, since compliance with the criteria of integrity and professional competence, which are among “the requirements established by this Law”, can be ascertained only at the end of the

⁷⁵ The competitions for the courts of appeal and the first-instance courts, the competitions for the new specialised administrative courts and the qualification evaluation of more than 1,200 judges.

⁷⁶ [CDL-AD\(2019\)027](#), op. cit., paras 20, 25 and 85 (“The work the HQCJ has done so far should be the basis for these urgent nominations”); [CDL-AD\(2020\)022](#), op. cit., paras 11, 36 and 77 (“The new HQCJ should build on the work of its predecessor”).

⁷⁷ Article 95, Parts 5 and 18 (final sub-paragraphs), and Article 95¹, Part 18, Point 7, of the Law in force.

⁷⁸ [CDL-AD\(2025\)052](#), op. cit., para. 38 (the appointing bodies may select a candidate only from among those whom the expert body has found suitable); see also paras 51-52 (transfer of core functions away from an expert pre-selection body may generate conflicts of interest and undermine the independence and effectiveness of the process).

⁷⁹ [CDL-AD\(2025\)052](#), op. cit., paras 37-39; see also paras 45 and 47 (the risks of technical and informational dependence, and the institutional balance); CDL-PI(2023)002, op. cit., section C (allowing the appointing bodies to select candidates found not suitable “has the potential to render the role of AGE meaningless”).

procedure. The first selection illustrates what is at stake at that stage.⁸⁰ Admission should therefore be refused only where a candidate fails to meet the formal conditions of eligibility or to submit the required documents; a period should be set within which the HCJ must decide and within which formal deficiencies may be rectified, as the draft law provides for the parliamentary procedure; and refusals should be reasoned, notified to the candidate and subject to review, the reasons being made public at the candidate's request.

64. The modalities of the assessment are left largely to the Selection Commission, which is appropriate, subject to the following. Under new Part 20, a candidate is interviewed at the integrity stage only where reasonable doubts arise, and then as an alternative to a written explanation, although the interview is, in practice, the principal instrument for assessing integrity; the Commission and DGI suggest that the Selection Commission be free to interview any candidate and that a candidate facing exclusion be entitled to be heard. They further suggest that the instruments for assessing professional competence be applied uniformly, on criteria and a structure published in advance, interviews being as a rule held in person; a written or practical component on the model of the AGE would enhance objectivity and answer the concern regarding domestic law. The Commission and DGI consider that live broadcasting of the interviews may remain the rule, with the law allowing the Selection Commission, by reasoned decision, to hear in closed session the parts of an interview concerning sensitive personal data.⁸¹

65. Finally, the draft law sets no time-limit for any stage of the selection. Given the June 2027 horizon, the Commission and DGI recommend that realistic time-limits be set for each stage, their expiry not invalidating the procedure.⁸²

66. Under new Parts 20 and 23 of Article 95, the decisions of the Selection Commission are to be reasoned, and the candidate may request the decision excluding him or her and an explanation of the reasons for not recommending him or her; specific reasoning is thus required where the decision is negative. What the draft law leaves to the candidate's initiative is the communication of those reasons, which corresponds to the minimum under Recommendation CM/Rec(2010)12⁸³: exclusion is in practice final, knowledge of the reasons is the precondition of any effective challenge, and a violation has been found where a vetting body withheld the underlying material and gave inadequate reasons.⁸⁴ The Commission and DGI therefore recommend that the reasoned decision excluding a candidate or not recommending him or her be notified to the candidate concerned, the time-limit for an appeal running from that notification,⁸⁵ favourable findings being recorded summarily, which addresses the concern expressed during the online meetings that reasoned decisions at every stage would delay the procedure; and that negative decisions be published without their reasons, the reasoned decision being made public at the request of the candidate.⁸⁶

⁸⁰ High Council of Justice, "The Selection Commission has completed the competition and announced a list of 32 candidates for the post of member of the HCJ", 15 March 2023 (301 participants, 64 admitted to the interviews, 32 recommended); ALI report, op. cit., section 2.2; the figures of 64 and 32 were referred to by the Minister of Justice, the HCJ and the Ukrainian National Bar Association during the online meetings.

⁸¹ [CDL-AD\(2025\)052](#), op. cit., paras 36 and 42 (information obtained during the parts of the interviews held in camera not to be conveyed); on the written component, Methodology of the AGE, Article 4, para. 2.

⁸² Committee of Ministers, [Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights](#), Guideline III.2, and [Explanatory Memorandum](#), para. 62; see [CDL-AD\(2022\)054](#), op. cit., para. 69.

⁸³ Committee of Ministers, [Recommendation CM/Rec\(2010\)12](#) on judges: independence, efficiency and responsibilities, para. 48.

⁸⁴ ECtHR, [Thanza v. Albania](#), no. 41047/19, 4 July 2023, paras 109-123 (non-disclosure of the material underlying the decision, and inadequate reasoning).

⁸⁵ Compare, for the AGE, the Methodology of the AGE, Articles 3(3) and 4(5) (reasoned decisions drawn up within 15 days of their adoption), and [CDL-AD\(2023\)022](#), op. cit., paras 31 and 33 (publication of the decisions on the candidates rated "not suitable", the reasoned decision being published at the request of the candidate).

⁸⁶ [CDL-AD\(2023\)022](#), op. cit., para. 33.

67. The draft law says nothing about judicial review,⁸⁷ although the decision of the Selection Commission is final for an excluded candidate, who should be able to challenge it or at least the procedure under which it was taken.⁸⁸ The question of whether the exclusion of a judicial appeal against a decision of the Ethics Council finding a candidate for membership of the HCJ not to meet the criteria of professional ethics and integrity is compatible with the Constitution is pending before the Constitutional Court of Ukraine.⁸⁹ It belongs to the Constitutional Court of Ukraine to decide on the conformity of the issue with the Constitution. The Venice Commission and DGI recall that the European Court of Human Rights has stated that decisions affecting the career of judges and of members of bodies of judicial governance must as a rule be amenable to judicial review.⁹⁰ Under the draft law as it stands, a candidate who does not meet the criteria cannot challenge the decision before a court. The Commission and DGI therefore recommend that the law provide expressly for the designation of a court to hear an appeal against the decisions of the Selection Commission,⁹¹ and that such decisions may be challenged, within short time-limits, only on formal (procedural) grounds and not on the merits.⁹² That designation may take account of the reform of the administrative judiciary now under way (see footnote 16 above), and may be of an administrative court, provided that the court concerned offers the guarantees of independence and impartiality which such review requires. The Commission and DGI further note that a remedy capable of paralysing the procedure would be as damaging as the absence of any remedy. The law should therefore also state that an appeal does not suspend the selection as a whole and that, where a decision is annulled, the Selection Commission adopts a new decision on the candidate concerned within a short period.⁹³

68. Under new Part 24 of Article 95, the Selection Commission shall recommend at least two candidates per vacant post, including at least two judges or retired judges for each post reserved to them. The requirement secures for the HCJ a genuine choice among candidates who meet the required standards,⁹⁴ an expert body being expected to exclude only those who fail to meet them.⁹⁵ Applied to the renewal of 15 posts in a single selection, however, it presupposes that at least 30 suitable candidates come forward. The draft law attaches different consequences to a shortfall, which under Part 25 of Article 95 concerns only the post for which fewer than two candidates have been recommended: where the selection is held for all vacant posts, the HCJ “may” announce a new selection for that post within 30 days; where

⁸⁷ Supreme Court, Grand Chamber, judgment of 14 September 2023 in case No. 990/9/23; digests of the case-law of the Grand Chamber in cases concerning challenges to the acts, actions and omissions of the HCJ, published by the Supreme Court as of 1 November 2023 and as of 1 February 2025, together with the separate opinions appended in several of the cases. The Grand Chamber has since applied the one-month time-limit of Article 122(8) of the Code of Administrative Procedure to challenges to decisions of the HCJ in the selection of judges, running from the adoption and publication of a decision which lays down rules for all participants (case No. 990/516/25, 2026); a digest of its case-law on challenges to acts of the HCJ covering the period from 1 January 2025 to 1 July 2026 is also available.

⁸⁸ [Recommendation CM/Rec\(2010\)12](#), op. cit., para. 48.

⁸⁹ [Constitutional complaint](#) lodged by a candidate for membership of the HCJ whom the Ethics Council had found not to meet the criteria of professional ethics and integrity, contesting Part 4 of Article 22 and para. 3 of Section VII of the Code of Administrative Procedure and para. 5 of Section II of Law No. 1635-IX in so far as they preclude a judicial appeal against such a decision. The Second Senate of the Constitutional Court of Ukraine opened the examination of the case on 24 April 2024; no decision had been published at the time of the preparation of this opinion.

⁹⁰ ECtHR, [Grzęda v. Poland](#) [GC], no. 43572/18, 15 March 2022, paras 299-350; [Bilgen v. Turkey](#), no. 1571/07, 9 March 2021, para. 96; [Oleksandr Volkov v. Ukraine](#), no. 21722/11, 9 January 2013, paras 87-91.

⁹¹ CDL-AD(2021)018, op. cit., para. 63 and Recommendation 10 (para. 75); [CDL-AD\(2020\)022](#), op. cit., para. 65; [CDL-AD\(2022\)023](#), op. cit., para. 52; [CDL-AD\(2023\)022](#), op. cit., paras 36-37.

⁹² [CDL-AD\(2023\)042](#), Ukraine – Urgent follow-up opinion to the opinions on the Law “On amendments to certain legislative acts of Ukraine to clarify the provisions on the competitive selection of candidates for the position of judge of the Constitutional Court of Ukraine”, paras 14-15; [CDL-AD\(2023\)022](#), op. cit., paras 37 and 40 (judicial review confined to formal grounds, “and not on the merits”).

⁹³ See, *mutatis mutandis*, on the importance of not leaving the posts concerned vacant for prolonged periods, [CDL-AD\(2023\)022](#), op. cit., para. 38; [CDL-AD\(2025\)052](#), op. cit., para. 55.

⁹⁴ [CDL-AD\(2025\)052](#), op. cit., paras 30 and 32.

⁹⁵ [CDL-AD\(2021\)018](#), op. cit., paras 41-45 and Recommendation 8 (para. 75).

a single post is concerned, it “shall” do so. In the first case, a post may remain unfilled indefinitely; in the second, successive selections may follow one another, a risk which is not merely theoretical.⁹⁶ Of the two, the discretionary solution carries the lesser risk, since an automatic repetition offers no assurance that the next selection will attract a sufficient number of suitable candidates; neither, however, meets the real difficulty, which is that the two-candidate requirement operates as a condition of the validity of the selection rather than as a guarantee of choice.

69. A parallel rule in all three amended acts (Part 17 of Article 95 of the Law on the Judiciary, Part 6 of Article 9 of the Law on the HCJ and Part 4 of Article 208-1 of the Law on the Rules of Procedure of the Verkhovna Rada) requires a new selection where fewer than two candidates per post are admitted. The Commission has recently accepted that a margin of discretion may prevent the systematic repetition of competitions, provided that any decision not to repeat a competition is made public and prolonged vacancies are avoided.⁹⁷ The Commission and DGI suggest a uniform regime for every situation in which fewer than two candidates per post are admitted or recommended in the selection of the members of the HQCJ as in that of the members of the HCJ: the Selection Commission and the Ethics Council should recommend all the candidates who meet the criteria, even if they are fewer than two per post. Appointments should be made only from among the recommended candidates, a single recommended candidate being sufficient; decisions on whether to repeat a selection should be reasoned and published; and posts left unfilled should be re-advertised within a defined period.

8. Information management and administrative autonomy

70. Under new Part 30 of Article 95, the Selection Commission shall transfer to the Secretariat of the HCJ, within five days of submitting its list, “all documents and information received and/or collected” during the selection, that is, before the HCJ has taken its decision and including the material on the candidates whom the Selection Commission has not recommended. Safekeeping of selection material by a permanent institution is understandable. Its confidentiality nonetheless protects candidates against reputational harm, the members against pressure, and the procedure itself against deterring qualified applicants.⁹⁸ In its comments of 24 September 2026, the Committee on Legal Policy explained that the transfer concerns only the material collected during the assessment and is intended, in particular, to make it available to the courts in the event of a challenge to the decisions of the Selection Commission. The Commission and DGI suggest that the transfer take place only after the appointments have been made and for the purpose of storage only; the Selection Commission, which remains in office, being able in the meantime to make the material available to a court; that the records of the internal deliberations be excluded from it; that access to the sensitive data of unsuccessful candidates require their consent or be confined to narrowly defined circumstances; and that the law itself define, as the Commission recommended for the AGE, the categories of information transmitted and withheld, the retention period and the conditions of access.⁹⁹

71. New Item 50¹ provides that “[a]t the request of a member of the second composition of the Selection Commission, the Commission may engage interpreters to provide organisational

⁹⁶ In the selection announced in 2024 for a single vacancy on the HQCJ, the HCJ appointed neither of the two candidates recommended by the Selection Commission; the post was filled only after a further selection, in August 2025 (European Commission, Ukraine 2025 Report, op. cit., chapter 23; ALI report, op. cit., section 2.2).

⁹⁷ [CDL-AD\(2025\)052](#), op. cit., paras 53-55. See also [CDL-AD\(2022\)054](#), op. cit., para. 66.

⁹⁸ [CDL-AD\(2025\)052](#), op. cit., para. 36; ECtHR, [L.B. v. Hungary](#) [GC], no. 36345/16, 9 March 2023, para. 123; Council of Europe, [Convention 108+](#).

⁹⁹ [CDL-AD\(2025\)052](#), op. cit., paras 36-42; [Methodology of the Advisory Group of Experts](#), Article 8, providing for storage of the selection materials for three years followed by their destruction. On the retention period and the conditions of access, see [CDL-AD\(2023\)027](#), op. cit., para. 52.

and technical support for the exercise of that member's powers. The activities of such interpreters may be funded with the assistance of international technical aid"; according to the explanatory note, "[t]he implementation of the draft Law will not require additional expenditures from the state and local budgets". Other support comes from the Secretariat of the HCJ, and the possibility of engaging assistants, available to the first composition, is not carried over, without explanation. Integrity assessment requires the collection, verification and analysis of voluminous information and the preparation of reasoned decisions; the internationally nominated members depend on such support even more than the national members, without which their participation would risk being reduced to a formality. For the AGE, whose secretariat answers exclusively to it, the Commission has considered such autonomy inherent in the independence of a selection body and warned against technical and informational dependence on another institution, in particular one whose composition the selection body helps to determine.¹⁰⁰ Those considerations apply here: the support would come from the Secretariat of the HCJ, that is, of the authority which appoints the members of the HCJ, and that authority would thus control the infrastructure on which the Selection Commission depends.

72. The Commission and DGI therefore recommend that the Selection Commission be given responsibility for its main secretarial and administrative functions, including the management of documents, correspondence and personal data, through secretarial and analytical support of its own, subordinated exclusively to it and reflecting its mixed composition, the Secretariat of the HCJ providing only limited logistical and technical support and the safekeeping of the files, any additional safeguards in the field of data protection being introduced through precise statutory obligations; as a minimum, that the members again be able to engage assistants as well as interpreters. The funding of that support should be secured for the whole of the mandate.

D. The selection of the members of the HCJ

73. Section II of the draft law amends the Law on the HCJ and the Law "On the Rules of Procedure of the Verkhovna Rada". Under Article 131 of the Constitution, the HCJ consists of 21 members, 20 of whom are elected or appointed by the Congress of Judges, the President, the Verkhovna Rada, the Congress of Advocates, the All-Ukrainian Conference of Prosecutors and the Congress of Representatives of Law Schools and Academic Institutions, the President of the Supreme Court sitting *ex officio*. Since 2021, the candidates have been screened for professional ethics and integrity by the Ethics Council, a body of six members – three judges or retired judges proposed by the Council of Judges of Ukraine and three persons proposed by international and foreign organisations – established for a period of six years to assist the electing and appointing bodies in determining whether candidates for membership of the HCJ meet those criteria (Article 9-1 of the Law on the HCJ). The Ethics Council has assessed the candidates in all the selections since its establishment.¹⁰¹ Most sitting members of the HCJ resigned before undergoing the one-time evaluation.¹⁰² The HCJ recovered its quorum in January 2023, all its members other than the President of the Supreme Court having been found by the Ethics Council to meet the criteria of professional ethics and integrity.¹⁰³ The term of office of the members of the Ethics Council expires in November 2027.

¹⁰⁰ [CDL-AD\(2025\)052](#), op. cit., paras 43-52; Regulations of the Advisory Group of Experts, Section III, Article 14.

¹⁰¹ Ethics Council, Rules of Procedure and Methodology, [court.gov.ua/eng/ec](#) (ALI report, op. cit., section 1.1: Rules of Procedure adopted on 1 and 9 December 2021, Methodology on 9 December 2021); the Ethics Council was established on 9 November 2021 ([CDL-AD\(2022\)023](#), op. cit., para. 9).

¹⁰² [CDL-AD\(2022\)023](#), op. cit., paras 10-14 (twelve members resigned in January and February 2022; of the four remaining non-*ex officio* members evaluated, one was found non-compliant on 7 May 2022).

¹⁰³ [CDL-AD\(2023\)027](#), op. cit., para. 9. On the one-time evaluation of the sitting members and its outcome, see [CDL-AD\(2022\)023](#), op. cit., paras 8-19; on the exclusion of the President of the Supreme Court from that evaluation, see [CDL-AD\(2021\)018](#), op. cit., para. 58. The election of eight members by the XIX extraordinary Congress of Judges of Ukraine on 11 and 12 January 2023, by which the quorum (15 of 21 members) of the High Council of Justice was restored, is recorded on the [website of the High Council of Justice](#). The decisions of the

74. Under amended Article 9 of the Law on the HCJ, the body convening the relevant congress or conference is to announce the selection “no later than six months before the expiration of a member’s term of office on the High Council of Justice or within 14 days of the date of the member’s early termination of office”, to review the candidates’ documents and decide whether they “meet the requirements established by this Law”, to interview the candidates recommended by the Ethics Council “in order to assess the candidate’s professional competence” and to “make a decision regarding each candidate”. According to the explanatory note, the transfer of those powers from the HCJ to the convening bodies is intended to increase “the legal certainty of selection procedures” and to ensure “the timely formation of the composition of the High Council of Justice”. The draft law thus transfers the decision to announce the selection, the receipt and publication of candidatures and the verification of compliance from the HCJ and its Secretariat to the bodies convening the respective congresses and conferences, with the Secretariat continuing to publish the announcement. In its comments of 24 September 2026, the Committee on Legal Policy explained that verification at the admission stage concerns only the documents submitted and the formal requirements of the law, with the assessment of professional ethics and integrity reserved to the Ethics Council. The draft law does not name those bodies, which can be identified only by reference to the legislation governing each congress or conference: the Council of Judges of Ukraine, the Bar Council of Ukraine and the Council of Prosecutors of Ukraine, which convene the Congress of Judges, the Congress of Advocates and the All-Ukrainian Conference of Prosecutors, respectively.¹⁰⁴ The Congress of Representatives of Law Schools and Academic Institutions has no convening body of its own, its time and venue being determined by the HCJ itself or, where the HCJ cannot decide for want of a sufficient number of members, by the central executive authority in the field of education and science.¹⁰⁵

75. The Commission and DGI see merit in that reallocation, which distances the HCJ from the initial stages of the selection of its own future members and is consistent with the prerogatives of the authorities designated by Article 131 of the Constitution; the special background check and the opinion of the Ethics Council are preserved, which is welcome. Since the draft law does not name the convening bodies (see para. 74 above), and since for the Congress of Representatives of Law Schools and Academic Institutions the functions transferred would either remain with the HCJ, which the reallocation is intended to avoid, or pass to a ministry, whose officials the law excludes even from the organising committee of that congress, the Commission and DGI suggest that the law identify each convening body and that the authorities confirm its capacity to receive and process the candidates’ documents; failing that, the Secretariat of the HCJ could retain these functions. The Commission and DGI agree with the Committee on Legal Policy that the verification at the admission stage should be confined to the documents submitted and to the formal requirements of the law. However, the wording of the provision is broader: the convening body decides whether the candidates “meet the requirements established by this Law”, and those requirements include, under Article 6 of the

Ethics Council are published on [its website](#). The full composition of 21 members has not been reached: as of 31 August 2026, the two seats of the Verkhovna Rada and the two seats of the Congress of Advocates are vacant, the selection for the parliamentary quota being at the Ethics Council stage.

¹⁰⁴ [Law on the HCJ](#), Article 9, Part 1 (the expression “the body convening the respective congress or conference”, which the draft law takes over, is used in the law in force without being defined); Article 10, Part 6, Article 11, Part 6, and Article 12, Part 6 (the procedure for convening the Congress of Judges, the Congress of Advocates and the All-Ukrainian Conference of Prosecutors is governed, respectively, by the Law on the Judiciary, the Law “On the Bar and Practice of Law” and the Law “On the Public Prosecutor’s Office”). Under Article 130, Parts 1-3 and 7, of the [Law on the Judiciary](#), the Congress of Judges is convened by the Council of Judges, which determines its date and venue; where members of the HCJ are to be elected, the announcement is published no later than forty-five days before the Congress. Under Article 54, Parts 4 and 5, of the [Law “On the Bar and Practice of Law”](#), the Congress of Advocates is convened by the Bar Council of Ukraine; under Article 68, Parts 1 and 2, of the [Law “On the Public Prosecutor’s Office”](#), the All-Ukrainian Conference of Prosecutors is convened by the Council of Prosecutors. See also [CDL-AD\(2022\)023](#), op. cit., para. 41, footnotes 20-23.

¹⁰⁵ [Law on the HCJ](#), Article 13, Parts 8, 9 and 12. The organising committee of up to ten representatives which may be set up to prepare the congress receives its invitations from “the body convening the congress”; officials of the central executive authority in the field of education and science may not sit on it.

Law on the HCJ, the criteria of professional competence, professional ethics and integrity (for the HQCJ, see para. 62 above). In any event, the Commission and DGI recommend that uniform minimum rules govern announcements, submission, the grounds and reasoning of compliance decisions, rectification and publication, and that the verification by the convening bodies remain strictly formal and not anticipate the assessment of professional ethics and integrity, which belongs to the Ethics Council alone;¹⁰⁶ the parliamentary rule that immaterial errors do not indicate non-compliance, with ten working days for rectification, would usefully apply to all the procedures,¹⁰⁷ and refusals of admission would need to be reasoned, notified and subject to judicial review.

76. The draft law retains the requirement that the Ethics Council list contain at least twice the number of vacant posts. In its comments of 24 September 2026, the Ministry of Justice explained that the list comprises all the candidates found to meet the criteria and does not rank them, and that the requirement follows from the competitive nature of the selection, which presupposes at least two candidates for each post. The Commission and DGI reiterate their 2021 recommendation that this requirement be removed and that the Ethics Council submit a list of all candidates who meet the criteria of professional ethics and integrity.¹⁰⁸ Candidates either meet those criteria or they do not; they cannot be ranked by degree of integrity. A requirement which enables the Ethics Council to include in its list only some of the candidates who meet the criteria turns its assessment into a ranking, goes beyond the assistance which an advisory body may lend to the constitutional prerogative of the electing and appointing bodies – an expert body should “exclude only candidates who clearly fail to meet the required moral or professional standards, leaving the appointing authorities a meaningful choice in the final decision”¹⁰⁹ – and, where fewer eligible candidates come forward, leads to the repetition of the selection. If, as the Ministry of Justice explained, the Ethics Council lists every candidate who meets the criteria, the electing and appointing bodies already receive the widest choice the pool of candidates allows, and the requirement for twice the number of vacant posts cannot widen that choice. The requirement then applies only where fewer than two candidates per post meet the criteria: the list falls short of the required number, and the selection has to be repeated. That situation would be better governed by the uniform regime suggested in para. 69 above.

77. Another significant innovation is the interview of the candidates recommended by the Ethics Council by the convening bodies and, for the parliamentary quota, by the competent committee, followed by “a decision regarding each candidate”.¹¹⁰ The explanatory note does not explain why that assessment should be entrusted to several bodies of different character (see para. 74 above); the convening bodies have no established criteria or methodology, their capacity is not demonstrated, and different practices will not produce comparable assessments; for the Congress of Representatives of Law Schools and Academic Institutions, the interview would fall to the HCJ itself or to a ministry. These reservations were widely shared during the online meetings. In its comments of 24 September 2026, the Ministry of Justice explained that the Ethics Council assists the electing and appointing bodies only with respect to professional ethics and integrity, with professional competence verified by those bodies themselves. The Committee on Legal Policy added that the decision taken after the interview is advisory, since an unsatisfactory assessment is not among the grounds on which a

¹⁰⁶ [CDL-AD\(2021\)018](#), op. cit., paras 55-57.

¹⁰⁷ Draft amendments to Part 4 of Article 208-1 of the Rules of Procedure of the Verkhovna Rada (new paras 2 and 3); the same rule governs the selection of judges of the Constitutional Court (Law on the Constitutional Court, Article 10-6, paras 1 and 2). See also the Methodology of the AGE, Articles 3, 4 and 6 (written clarifications and extensions of time-limits upon justified request).

¹⁰⁸ [CDL-AD\(2021\)018](#), op. cit., paras 41-45 and Recommendation 8 (para. 75); see para. 68 above.

¹⁰⁹ [CDL-AD\(2025\)052](#), op. cit., para. 32.

¹¹⁰ The “selection commission” referred to elsewhere in Article 9 of the Law on the HCJ, which conducts the competence interview for the presidential quota, is a body distinct from the Selection Commission of Article 95¹ of the Law on the Judiciary.

candidate ceases to take part in the selection, and that the Rules of Procedure of the Verkhovna Rada already provide, for the parliamentary quota, for a preliminary discussion of the candidates and a decision on each of them.

78. The Commission and DGI do not question the prerogative of the electing and appointing bodies to assess the professional competence of the candidates recommended by the Ethics Council. What the draft law adds is a separate assessment, before the election or appointment, by the convening bodies and the parliamentary committee. The draft law does not define the legal effect of that assessment. If it could exclude a recommended candidate, the interviews would constitute an additional filter operated by bodies of a corporate or political character, without the guarantees attaching to the Ethics Council's assessment, and would undermine the 2021 reform, under which that assessment is the only merit-based filter before the decision of the appointing body. The Committee on Legal Policy considers the decision to be advisory (see para. 77 above). The draft law contains no provision to that effect and does not determine what weight a negative decision carries in the vote. The Commission and DGI therefore recommend that the law not entrust the assessment of professional competence to the convening bodies and to the parliamentary committee. Should the interviews nevertheless be retained, the law should state expressly that they produce no effect on eligibility, every candidate recommended by the Ethics Council and not excluded on formal grounds remaining eligible for election or appointment, and that the resulting assessments be reasoned, follow pre-published criteria and be made available to the delegates and, subject to data protection, to the public.

79. New Part 21 of Article 9 of the Law on the HCJ raises, in respect of the Ethics Council, the same difficulty as that examined in para. 70 above in respect of the Selection Commission. The rules for each selection procedure require the Ethics Council to send the electing or appointing body, together with its list, only the documents concerning the candidates it recommends. New Part 21, however, requires it to hand over, within five days, all the material collected on all candidates. This would disclose the personal data of unsuccessful candidates without any need; it could be read as an invitation to the electing and appointing bodies to re-examine candidates whom the Ethics Council did not recommend; and it would interfere with the Ethics Council's independence in its deliberations.¹¹¹ The Commission and DGI recommend that Part 21 be deleted or reworded so that only the material concerning the recommended candidates is transmitted. Any transfer of the remaining material for archiving should be subject to the safeguards set out in para. 70 above.

80. The new time-limits for announcing the selection (see para. 74 above) address the recurrent problem of belated convocations: the two seats of the Congress of Advocates remain vacant because that Congress has not launched the selection since January 2022.¹¹² Since a mechanism dependent on the convocation of large gatherings cannot operate reliably in wartime, the legislator is invited to provide modalities enabling those functions to be discharged under martial law, with guarantees of the integrity and openness of the vote. The requirement that the congress or conference be held within three months of receipt of the list of the Ethics Council gives effect to the recommendation that the bodies of judicial governance be composed in good time;¹¹³ but if no list is received, no period runs; the trigger should therefore be the earlier of the receipt of the list and a fixed period before the expiry of the

¹¹¹ [CDL-AD\(2021\)018](#), op. cit., paras 55-57. See also [CDL-AD\(2025\)052](#), op. cit., paras 38-39 and 41 (deliberative autonomy of the expert body; no transmission of information on the candidates not selected).

¹¹² European Commission, Ukraine 2025 Report, op. cit., chapter 23; on the vacancies in the quota of the Congress of Advocates, the written opinion of the Ukrainian National Bar Association of 31 August 2026, op. cit., and the composition of the High Council of Justice published on its website. During the online meetings, the Ukrainian National Bar Association explained that the statutory sequence of assemblies, conferences and Congress cannot be carried out while mass events are prohibited.

¹¹³ [CDL-AD\(2025\)044](#), op. cit., para. 92 (mechanisms to ensure the full composition of the bodies of judicial self-government); see also [CDL-AD\(2022\)023](#), op. cit., paras 21-26.

mandate. Finally, the authorities are invited to verify that the framework governing the Ethics Council, whose members' term of office expires in November 2027 (see para. 73 above), will remain in force for the selections launched under the amended provisions.

81. The letter of request for the opinion refers to safeguards for the institutional continuity of the HCJ, but the draft law contains none. The HCJ has operated close to its minimum plenipotentiary composition since 2025; the terms of office of eight of its 17 members¹¹⁴ expire in January 2027; and appointing a judge requires 14 votes.¹¹⁵ Unless the elections are held in time, the HCJ could lose the capacity to exercise its core functions at the very moment the HJCJ is being renewed. The uninterrupted functioning of the Council for the judiciary is a requirement which the Commission and the Consultative Council of European Judges (CCJE) have underlined.¹¹⁶ The law in force contains only a limited safeguard: under Part 3 of Article 5 of the Law on the HCJ, a member whose departure would deprive the HCJ of its plenipotentiary composition continues in office until the successor is elected or appointed, but for no longer than three months.¹¹⁷ In January 2027, that rule would keep the eight members in office until April 2027 at the latest, in the middle of the renewal of the HJCJ. In its comments of 24 September 2026, the Ministry of Justice noted that an automatic continuation of the mandate would be inconsistent with the four-year term laid down in Article 131 of the Constitution, which cannot be amended under martial law. The Commission and DGI note that Part 3 of Article 5 of the Law on the HCJ already continues a mandate beyond that term, which Part 2 of the same Article restates, within a limit of three months; the law in force thus admits the principle of a continuation, and what remains to be determined is its duration. They accordingly recommend that the mandate of the members of the HCJ continue until their successors are elected or appointed, as recommended for the HJCJ (see para. 59 above),¹¹⁸ the three-month limit being replaced by a longer maximum period provided by law, having regard to the four-year term of office laid down in Article 131 of the Constitution.

82. Candidates submit their documents in person, by post, or electronically, within 30 days of the announcement, implementing the 2021 recommendation that personal submission not be the only channel.¹¹⁹ For the parliamentary quota, however, the draft law removes electronic submission, without justification and notwithstanding the conditions of martial law. The Commission and DGI recommend that electronic submission be restored and the modalities harmonised across all the procedures, including the presidential quota and the selection of the members of the HJCJ, and that the rule that documents may not be refused on grounds other than late submission apply to all of them.

83. No transitional provision governs the selections already under way, although the Council of Judges has been conducting one since June 2026. Since the rules of a selection ought not to be changed once it has begun, save by a justified intervention of the kind examined in para. 84 below, the Commission and DGI recommend that the rules in force continue to apply to procedures already announced.

¹¹⁴ As of 31 August 2026, the HCJ has seventeen members, including the President of the Supreme Court and the member elected on 27 August 2026 by the Congress of Representatives of Law Schools and Academic Institutions; the two seats of the Verkhovna Rada, the terms of whose members expired in August 2026, and the two seats of the Congress of Advocates are vacant. The eight members elected by the XIX extraordinary Congress of Judges on 11-12 January 2023 leave office in January 2027; the Council of Judges launched the selection of their successors in June 2026, for which more than seventy candidates have applied (see para. 83 below).

¹¹⁵ Parts 2 and 3 of Article 37 of the Law on the HCJ: the plenary session at which a submission on the appointment of a judge is considered requires a quorum of fourteen members, and the decision requires no fewer than fourteen votes.

¹¹⁶ CCJE, [Opinion no. 24 \(2021\)](#) on the evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, para. 36; Venice Commission, [CDL-AD\(2022\)023](#), op. cit., paras 21-26; [CDL-AD\(2025\)002](#), op. cit., para. 140 (mutatis mutandis, in respect of the Constitutional Court).

¹¹⁷ Part 3 of Article 5 of the Law on the HCJ. Under Article 18, the HCJ is plenipotentiary once at least fifteen of its members, a majority of them judges or retired judges, have been elected or appointed and have taken the oath.

¹¹⁸ [CDL-AD\(2020\)022](#), op. cit., para. 49.

¹¹⁹ [CDL-AD\(2021\)018](#), op. cit., para. 66.

E. Temporal scope of the draft amendments

84. New Item 50² of Section XII provides that, as of the entry into force of the law, the selection for the vacant posts on the Selection Commission announced by the HCJ on 22 July 2025 “shall be deemed terminated”; the new selection is to be announced within ten days (see paras 9 and 11 above). The explanatory note does not mention the termination. The Commission and DGI recall that the principle of legal certainty protects the foreseeability and stability of legal rules and the legitimate expectations of those who have relied on them, so that a legislative intervention in a procedure already under way calls for justification. Such an intervention is not excluded where it pursues a legitimate public interest and is proportionate. That appears to be the case here: the termination ensures that the body which is to renew almost the entire HQCJ is formed with the international participation which the reform extends; the ten-day time-limit keeps the interruption short; and the terminated procedure has led to no appointment (see para. 42 above). The Commission and DGI nonetheless recommend that the termination be accompanied by transitional guarantees for the persons who applied: individual notification, the possibility of taking part in the new selection without prejudice and the carry-over, at the applicant’s request, of the documents already submitted.

IV. Conclusion

85. By letter of 10 July 2026, Mr Taras Kachka, the then Deputy Prime Minister of Ukraine for European and Euro-Atlantic Integration, requested an urgent opinion of the Venice Commission on the draft law “On Amendments to the Law ‘On the Judiciary and the Status of Judges’ and certain other laws concerning the selection procedures for members of the High Qualification Commission of Judges and the High Council of Justice”.

86. The Commission and DGI welcome the central choice of the draft law: to entrust the renewal of almost the entire HQCJ, due in 2027, to a second composition of the Selection Commission which includes internationally nominated members, for a limited period, before the ordinary national procedure is restored. That choice is consistent with the previous opinions, respects the exceptional and temporary character of the international participation and gives effect to the accession commitments. Several features of the draft law also implement earlier recommendations or are welcome, in particular the retention of the voting rule on integrity and of the rule on the automatic appointment of the members of the Selection Commission, the six-month time-limit for the announcement of the selection of the members of the HCJ and the time-limit for the convocation of congresses and conferences, and the widening of the channels for the submission of documents.

87. The Commission and DGI reiterate that the international participation provided for by the draft law does not adversely affect the sovereignty of Ukraine: it results from a sovereign choice of the legislator, the Selection Commission is a Ukrainian body governed by Ukrainian law whose members are appointed by a Ukrainian authority, its work is preparatory and the final decision remains with the HCJ, as provided by the law. That participation remains exceptional and temporary; its temporary character is defined by the task for which it was established and not by a fixed date, so that its prolongation, for as long as that task remains unaccomplished, is consistent with the preconditions identified in the Commission’s previous opinions. It should come to an end only once the national bodies which would otherwise nominate have been reformed.

88. The draft law goes further than merely prolonging international participation: the Venice Commission and DGI are of the view that several of the additional changes would, in the absence of any justification in the explanatory note, weaken the safeguards which made the mechanism credible: the requirement that the international quota include a citizen of Ukraine; the subsidiary nomination by three national bodies; the lower majority for decisions on professional competence and the general rule for the adoption of the list of recommended

candidates; the fixed two-year mandate; the transfer to the HCJ and its Secretariat of the admission of candidates, the compilation of the lists, the safekeeping of the selection material and the everyday support of the members; the absence of eligibility requirements, of rules on early termination and of judicial review; and, for the selection of the members of the HCJ, the interviews by the convening bodies, to which is added the retention of the twice-the-number requirement criticised in 2021.

89. Moreover, the legislative process has so far not met the standards of good law-making that legislation of this importance requires under the Rule of Law Checklist. The Commission and DGI are mindful of the urgency created by the expiry of the first composition's mandate and the June 2027 renewal. Urgency does not, however, preclude adherence to good law-making standards, and can be reconciled with them: the shortcomings identified above can be remedied in the course of the legislative process by consulting all the stakeholders concerned, including civil society, and revising the explanatory note so that it justifies each of the proposed changes (see paras 30-31 above and Recommendations 1 and 2).

90. The Commission and DGI attach particular importance to the cumulative effect of the changes introduced by the draft law, departing from the framework which regulated the first – mixed – composition of the Selection Commission. As the Commission has recently emphasised, amendments that each raise distinct issues must also be assessed in their interaction, since measures that might individually appear acceptable may, taken together, alter the balance the framework was designed to secure.¹²⁰ In the present case, most of the changes operate in the same direction: the admission of candidates, the lists, the selection material and the everyday support of the members would all lie with the HCJ or its Secretariat, that is, with the appointing authority and the body which serves it; the decisions which determine the list of recommended candidates could be adopted with the vote of a single internationally nominated member, or with none; the international quota could pass to national bodies upon the mere expiry of a time-limit; the mandate of the Selection Commission would end after two years whether or not its task had been accomplished; and no judicial review is explicitly provided. Each of these changes reduces one of the safeguards of the mechanism which produced the HQCJ in 2023. Their combination would shift control over the procedure towards the appointing authority and reduce the international participation to one which is no longer meaningful, with the result that the mechanism might retain the form, but not the substance, of the one which the accession commitments and the previous opinions envisage (see para. 38 above).

91. The Commission and DGI therefore make the following key recommendations and note that further detailed recommendations are to be found in the text of this Urgent Joint Opinion:

1. To conduct transparent and inclusive consultations before adoption of this law.
2. To limit the amendments to what is necessary for prolonging international participation to the second composition; to revise the explanatory note to justify the prolongation and any departure from the arrangements which governed the first composition of the Selection Commission, including possible cumulative effects.
3. To leave the nomination of a citizen of Ukraine within the international quota to the discretion of the nominating organisations rather than impose it; should the requirement be kept, to extend the voting rule applicable to decisions on integrity to decisions on professional competence, to regulate the application of the requirement

¹²⁰ [CDL-AD\(2026\)001](#), op. cit., paras 55 and 101 (measures which cumulatively weaken the safeguards of an independent institution must be assessed in their interaction and not in isolation); [CDL-AD\(2026\)012](#), op. cit., paras 30-31 and 87-91 (cumulative effect of the funding provisions and combined effect of the governance provisions). On the sequencing and the cumulative effect of the reforms of the Ukrainian judiciary, see [CDL-AD\(2020\)022](#), op. cit., paras 6-7 and 80, and [CDL-AD\(2021\)018](#), op. cit., paras 13-14.

at each stage of the procedure and to ensure that the impossibility of identifying such a candidate does not trigger the subsidiary nomination.

4. To replace the subsidiary nomination by national bodies with an extension of the period for the international organisations, or to entrust it to a neutral and ethical actor which preserves the international character of the quota.
 5. To provide in the law the eligibility requirements and incompatibilities of the members of the Selection Commission, the rules on conflicts of interest, recusal and replacement, and the exhaustive grounds and procedure for the early termination of their mandate.
 6. To apply the same voting rule to all the decisions of the Selection Commission on candidates, whether on integrity, on professional competence or on the list of recommended candidates: a decision requires four votes, two of them cast by internationally nominated members; if no decision is reached, the vote is repeated; if the division persists, the vote of the group which includes two internationally nominated members prevails. To restore the open vote and to define the quorum.
 7. To secure continuity by keeping the Selection Commission in office until its task is completed; by announcing the selection at least six months before the terms of office expire; and by keeping the members of the HQCJ and those of the HCJ in office until their successors are appointed, within a maximum period provided by the law, having regard to the four-year term of office laid down in the Constitution.
 8. To confine the admission of candidates to a formal check of eligibility and of the documents, refusals being reasoned and subject to review.
 9. To provide that the decisions of the Selection Commission may be challenged before a court, within short time-limits, on formal (procedural) grounds only, without suspending the procedure as a whole, and that the reasoned decision excluding or not recommending a candidate is notified to him or her.
 10. To remove from the draft law the interviews of the candidates recommended by the Ethics Council by the convening bodies and by the parliamentary committee or, should they be retained, to make clear that they produce no effect on eligibility, every candidate recommended by the Ethics Council remaining eligible for election or appointment; and to require the Ethics Council to recommend all the candidates who meet the criteria rather than a list of twice the number of vacant posts.
 11. To provide the Selection Commission with its own secretarial and analytical support, answerable exclusively to it, the Secretariat of the HCJ providing only limited logistical and technical support; as a minimum, to restore the possibility for the members of the Selection Commission to engage assistants as well as interpreters; and to defer the transfer of the selection material until after the appointments, under precise statutory rules on data protection, retention and access.
92. The Venice Commission and DGI remain at the disposal of the Ukrainian authorities for further assistance in this matter.