

/Coat of arms /

The Corruption Prevention and Combating Bureau

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Riga

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To _____ No. _____

According to the attached list

Dear deputies of the Parliament

On the Draft law "Amendments to the Law on Corruption Prevention and Combating Bureau"

According to the information reported by media that *the fraction of "Vienotība" of the Parliament calls not to forward the amendments to the Law on Corruption Prevention and Combating Bureau (KNAB), prepared by the State Chancellery (SC), for examination [LETA, 25 February 2015]* we conclude that progress of these amendments is stopped, however, these amendments are significant for strengthening the status of the Corruption Prevention and Combating Bureau (concerning the functional independence of the institution), and for removal of legal framework drawbacks in operation of KNAB, therefore, we inform.

According to Section 2 of the Order No. 12 of the Prime Minister "On the working group for improvement of legal framework of the Corruption Prevention and Combating Bureau" of 17 January 2014 (hereinafter - Order No 12), the State Chancellery submitted to the Prime Minister a Draft law "Amendments to the Law on Corruption Prevention and Combating Bureau" (hereinafter - the Draft law) (http://www.mk.gov.lv/sites/default/files/editor/mklik_140914_knablik_groz.pdf) and annotation thereof (http://www.mk.gov.lv/sites/default/files/editor/mkanot_130914_knablik_groz.pdf) on 15 September 2014.

The working group, chaired by E. Dreimane, the director of the State Chancellery, was composed by representatives of the Corruption Prevention and Combating Bureau (hereinafter - the KNAB), Prosecutor General Office, Supreme Court, Ministry of Justice, Ministry of Finances and State Chancellery (hereinafter - the SC). Also Gundars Jankovs, the representative of Delna, participated in the working group, and solutions offered by the working group were also discussed with the representative of the Corruption Prevention Panel of the Defence, Home Affairs and Corruption Prevention Commission of the Parliament, and the representative of the Legal Office of Parliament.

By putting the previously mentioned draft law forward the working group also explained the purpose and substantiation of these amendments in the cover letter, indicating that the Draft law is addressed to strengthen the functional independence of KNAB, and it includes the following solutions:

1) The extent of KNAB supervision and rights of the supervisor (the Prime Minister) are clearly defined. KNAB is operating under the institutional supervision of the Cabinet of Ministers, which is implemented through the Prime Minister. According to laws and regulations the functional supervision is ensured, respectively, by the Prosecutor General (criminal

procedure, operational action) and the court (pursuant to the procedure laid down in the Administrative Procedure Law). The limitation of interfering in implementation of functions specified in the Law on KNAB is laid down in the law.

2) The responsibility framework and the mechanism of accounting for actions of the head of KNAB are assessed. The head of KNAB is responsible towards the Parliament and the Cabinet of Ministers - assessment of his/her performance is executed within the framework of examination of the report on KNAB operation.

3) The basis for discharge of the head of KNAB are laid down in the law and it is determined that the decision of the Parliament on discharge is final. Assessment of discharge basis and in other cases, upon a proposal of the Parliament, the Cabinet of Ministers, the Prime Minister or the Prosecutor General, operation of the head of KNAB is first examined by a competent commission stipulated in the law, which is chaired by the director of the State Chancellery and which is composed by the president of the Supreme Court, the Prosecutor General, the director of the Constitution Protection Bureau and the head of the Security Police. The Commission gives their opinion to the Parliament.

4) Concerning deputy heads of KNAB it is determined that for assessment of their performance the head of KNAB shall create and chair a commission which is composed by representatives of the State Chancellery, Supreme Court, Prosecutor General Office, Constitution Protection Bureau and Security Police in order to ensure impartial and exhaustive assessment of performance of deputy heads of KNAB.

5) A necessity to preserve territorial structural units in the law has been assessed. The working group supported preservation of existing territorial divisions in the law, indicating that utility of formation of territorial divisions will be assessed, during the process of the state budget preparation, provided that budget funds will be available.

6) Assessment of the solution for legislation applicable to employees of KNAB has been assessed. According to the State Service Law which would come into force on 1 January 2016, officials and employees of KNAB are employed in a state service. Until the date of the State Service Law coming into force it is determined that standards of regulatory laws and regulations for employment legal relations shall be applied which determine the principle of equal rights, the principle of prohibition of different attitude, the prohibition of causing negative consequences, periods of work and rest, wages, material responsibility of employees and terms as far as it is not specified by the Law on KNAB, the Law on Remuneration of Officials and Employees of State and Local Government Authorities, or the State Administration Structure Law.

7) The Draft law stipulated that in case of discharge of employees of KNAB the decision can be appealed in the court pursuant to the procedure laid down in the Administrative Procedure Law.

In the area of disciplinary responsibility of employees of KNAB it is indicated that employees of KNAB shall be applied the basis of disciplinary responsibility, types of disciplinary violations and disciplinary sanctions, as well as the procedure under which the issues on subjecting a person to disciplinary liability are examined, specified in the Law on Disciplinary Responsibility of State Civil Servants, as far as the Law on KNAB does not provide different legal framework.

Regarding assessment of employees of KNAB it is determined that the procedure laid down in the State Service Law shall be applied, however, until implementation of this law on 1 January 2016, the existing legislation on assessment in the NEVIS system shall be applied.

10) The procedure of allocation of the state budget funds to KNAB has been assessed. The working group supports preservation of the existing procedure as the most efficient mechanism for calculation and allocation of state budget funds necessary for ensuring functions of KNAB.

According to the legal framework intended in the Draft law extent of authority of the Prime Minister as the supervisor of KNAB will differ from the existing legal framework as follows:

1) Extent of authority of the supervisor of KNAB, and the mechanism in case of illegal administrative decision of the head of KNAB has been specified. Currently, the State Administration Structure Law states that supervision means that the supervisor is entitled to verify rule of law concerning any decision adopted by KNAB or the head thereof, and himself annul any illegal decision, as well as give an order to adopt a decision in case of illegal inaction. According to the Draft law by detecting any illegal administrative decision the supervisor shall give an order to the head of KNAB to rectify the situation. If the head of KNAB disagrees, he can request for opinion of the commission specified in the law, which forwards its opinion to the Cabinet of Ministers, which adopts the final decision concerning the respective administrative issue.

2) Currently, there is an unclear legal framework in relation to rights of the supervisor of KNAB to interfere in execution of functions of KNAB. The Draft law excludes such option.

3) Currently, there is an unclear legal framework in relation to disciplinary power of the supervisor of KNAB over the head of KNAB. In the Draft law it is clearly defined that disciplinary responsibility is not applicable to the head of KNAB, instead there is intended an appropriate mechanism for responsibility of the head of KNAB, which ensures proportionality of independence guarantees of such institution and responsibility for efficiency and rule of law of the institution operation.

4) As the supervisor the Prime Minister shall ensure assessment of performance of the head of KNAB once in every two years. As it is already indicated regarding the issue of disciplinary power, the Draft law provides another mechanism of responsibility - the head of KNAB is assessed in the Cabinet of Ministers and the Parliament through examination of the annual report on operations of KNAB. The Prime Minister can participate and express own assessment in the Parliament when the head of KNAB presents the report on operation of KNAB. In addition, the Draft law provides the option to extend office of the head of KNAB for another term, after the Parliament has listened to the report on results of KNAB operation, and opinions of the Prime Minister and the Prosecutor General.

5) As the supervisor the Prime Minister coordinates projects of internal laws and regulations of KNAB. The Draft law stipulates that the head of KNAB adopts projects of internal laws and regulations without special coordination with the supervisor, thereby strengthening the structural independence of KNAB.

6) According to the existing legal framework the Prime Minister or the Prosecutor General can propose to the Cabinet of Ministers formation of a commission for assessment of separate basis for discharge of the head of KNAB (for example, non-compliance with the occupied position). The commission submits its opinion to the Prime Minister, who brings the issue forward in the Cabinet of Ministers. According to provisions provided for in the Draft law the Prime Minister, the Cabinet of Ministers, the Prosecutor General or the Parliament can propose to the commission specified in the law to assess the basis for discharge. The commission submits its opinion to the Parliament, which adopts the final decision.

7) Likewise the current procedure, the Prime Minister will continue to issue orders of administrative nature concerning the head of KNAB - business trips, vacation, decisions specified in the Law on Remuneration of Officials and Employees of State and Local Government Authorities.

We inform that the 50th meeting of the Public Advisory Council of the Corruption Prevention and Combating Bureau took place on 2 October 2014, where officials of KNAB together with representatives of non-governmental organizations and the society discussed the possible reorganization of KNAB and current institutional subordination or change of

supervision, as well as examined amendments to the Law on Prevention and Combating Bureau, prepared by the working group, chaired by the director of the State Chancellery.

The Public Advisory Council of the Corruption Prevention and Combating Bureau (composed by representatives of the Society for Openness "Delna", the Employer's Confederation of Latvia, the Law Society of Latvia, the Centre for Public Policy "Providus", the Association of Latvian Commercial Banks, the Latvian Association of Press Publishers, the Latvian Merchant's Association and the Council of Ethics) conceptually supported further progress of the Draft law, except the issue on formation of commissions for assessment of deputy heads of KNAB.

On 24 November 2014, the Public Advisory Council wrote a joint letter No. 1/7975 to the Prime Minister, requesting to ensure preservation of independence and inseparability of KNAB, and ensure progress of the Draft law "Amendments to the Law on Corruption Prevention and Combating Bureau", developed by the working group of the State Chancellery, in Parliament.

Also in the public discussion on 23 January of this year, organized by the State Chancellery in cooperation with the Society for Openness "Delna" and the society "Providus", pursuant to the order issued by the Prime Minister, high-ranked experts and officials from the state administration, law enforcement authorities, non-governmental organizations and from abroad, during the discussion on the institutional development of the Corruption Prevention and Combating Bureau, approved proposals developed by the working group led by the State Chancellery. Information on the discussion is available on: <http://www.mk.gov.lv/lv/aktualitates/atbalsta-valsts-kancelejas-priekslikumus-knab-nedalamibai-un-neatkaribas-stiprinasanai>.

Proposals of the working group for amendments to the law were also examined and approved in the meeting of the Corruption Prevention Panel of the Defence, Home Affairs and Corruption Prevention Commission of the Parliament on 10 February of this year. In the conclusion of the meeting A. Loskutovs, the chairman thereof, informed that he will address the Prime Minister with a request to precipitate progress of this Draft law.

In addition, KNAB informs that in the first EU Anti-Corruption Report (published on 3 February 2014) the EC proposes to KNAB to continue its successful operation, strengthen its independence and protect it from possible political intervention.

In its turn, in the 66th Plenary Session of GRECO (December 2014) it was emphasized that within the framework of GRECO fourth stage of assessment a specific recommendation was given to Latvia in order to strengthen independence of KNAB and it could perform its functions in independent and impartial manner - GRECO will assess execution of this recommendation in its next Plenary Session (GRECO 67, March 2015).

We inform you that on 23 February in the news program "Panorāma" on the channel LTV1 (<https://www.youtube.com/watch?v=53CRYh1CnpE>) the representative of the Trade Union of Officials and Employees of KNAB expressed a negative opinion about this Draft law.

Also according to publicly available information similar opinion has been expressed in the fraction meeting of the party "VIENOTĪBA", during examination of the issue on further progress of this Draft law.

In the light of the above KNAB is ready to explain the aim and purpose of the legal framework laid down in the Draft law.

Pursuant to that and the fact that, currently, progress of this Draft law will be obviously delayed, thereby still leaving the issues on drawbacks within the legal framework of operation of KNAB unresolved, we request to use the rights mentioned in Section 65 of the Constitution of the Republic of Latvia and Section 79 of the Rules of Order of the Parliament, and in a group of five deputies submit the Draft law to the Parliament.

Yours sincerely,
the head

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ELECTRONICALLY WITH
SECURE ELECTRONIC
SIGNATURE AND IT
CONTAINS A TIME STAMP

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