August 29, 2024, Warsaw

Opinion of the Association of Prosecutors Lex Super Omnia on the draft bill amending the Act - Law on the Prosecution Service and certain other acts authored by the Ministry of Justice (draft dated June 25, 2024)

General remarks:

The presented draft bill amending the January 28, 2016 Law on the Prosecution Service is, by its nature, a temporary regulation, as it is widely known that the Minister of Justice has established a Commission for the Reform of the Common Court and Prosecution System. The task of this Commission is to develop comprehensive legislative proposals that regulate the structure and operation of justice and prosecution bodies. A detailed analysis of the draft reveals that important aspects of the prosecution service structure, such as the internal organizational structure of common prosecution units, the status of prosecutors, regulations concerning the oversight model of preparatory proceedings, and other significant matters, have been omitted from this proposal. Given the practice of recent years, a new perspective and regulation are undoubtedly required for organizational areas such as the scope of the prosecutor's authority (status, rights, and duties), including regulations on prosecutorial independence, the issue of periodic evaluations for prosecutors, disciplinary procedure reforms, and several other important areas. Consequently, the comments presented below will primarily address the regulations in the draft and will not suggest additional changes beyond those proposed at this stage.

Specific comments:

The drafted Article 1 § 1-3 of the Law on the Prosecutor's Office contains a fundamental regulation, deserving of an unambiguously positive assessment, related to the institutional separation of the functions of the Prosecutor General and the Minister of Justice and the establishment that the Prosecutor General is the supreme body of the prosecutor's

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office. It should be stated that the fundamental demand of the Association of Prosecutors Lex Super Omnia was embodied, which was the separation of both functions and the introduction of regulations ensuring the institutional and budgetary independence of the Prosecutor General and the institution of the prosecutor's office as such. The position of the drafter requires the split, that the commented change will also be the implementation of the fundamental goal of establishing an independent prosecutor's office, and will be expressed in the exclusion of the prosecutor's office from the sphere of executive power and the establishment of the Prosecutor General as an independent state body. The conclusion that such a solution will serve effective control of the executive branch and will contribute to preventing the use of the institution of the prosecutor's office to achieve goals other than those resulting from generally applicable law is also approved. It should also be expressed that such a formation of the institution will contribute to the implementation of international standards in the field of regulating the independence of the prosecutor's office.

As a consequence of the above proposal, the naming was changed in the entire act - the Law on the Prosecutor's Office, i.e. in places where the "National Prosecutor" was indicated so far, the "Prosecutor General" was introduced. In many cases, these changes are editorial – adaptive, so in such cases they will not be commented on separately.

The proposed changes in Article 3 § 1 of the Law on the Prosecutor's Office Act should be positively assessed, consisting in supplementing the list of activities undertaken by the Prosecutor General, his deputies and prosecutors who have fallen to supplement the scope of the subject interaction of the prosecutor's office with state bodies, state organizational units with areas of violations other than committing crimes and dissemination of the idea of the rule of law, as well as adding point 11a supplementing the prosecutor's office's task of cooperation with the European Prosecutor's Office.

The above-mentioned changes in § 3 of the Act - Law on the Public Prosecutor's Office should be considered justified. It is obvious that the prosecutor's office, as a law protection authority whose task is, among other things, to protect the rule of law, should – also in the light of the practice of recent years – have an assigned task consisting in

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promoting the idea of compliance with the law, which is a complementary task for activities related to its observance. Moreover, since the Polish prosecutor's office joined the European Public Prosecutor's Office, it should also be taken for granted that this scope is the main tasks of the prosecutor's office described in the legal regulations governing its functioning.

The regulation consisting in the repeal of Article 7 § 2a and 2b should be assessed very positively for two reasons. Firstly, for formal reasons – the repealing of the position of the National Prosecutor, and secondly, it eliminates (together with the other changes) the erroneous regulation, which made the National Prosecutor the central function of the prosecutor's office, and the Prosecutor General's authority without his own and independent competence. These solutions, introduced by the legislator by the Act of July 7, 2023 (entered into force on September 28, 2023), raised reasonable constitutional doubts related to, among others, the deprivation of the Prosecutor General's powers while maintaining responsibility for the functioning of the prosecutor's office institution. Their removal by the project promoter is a clear, worthy of approval, expression of the negative assessment of the regulation introduced in this way.

The proposal to add Article 10a of the Law on the Prosecutor's Office Act deserves a positive assessment, as it regulates the scope of cooperation with the Minister of Justice (limiting the scope of cooperation to the organization and functioning of the prosecutor's office), leaving outside this sphere the internal area of competence of the prosecutor's office, including in particular the substantive one, concerning the functioning of the prosecutor's office, including conducting and supervising preparatory proceedings and participating in court proceedings in criminal cases.

The proposed amendments to Article 12 of the Law on the Prosecutor's Office Act consist in excluding the possibility of providing information about the activities of the prosecutor's office, including ongoing proceedings, to entities other than public authorities (currently applicable regulations provide the basis for transferring such information, in addition to public authorities, also to “other persons”). Thus, it is specified that such information may be provided only to entities exercising public authority and, as it should be

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interpreted, only for the purpose of its use by these bodies to exercise official authority and at the same time – only in the areas of competence assigned to them (§ 1). Another proposed change is the obligation to obtain the written consent of the prosecutor conducting the preparatory proceedings - if the supervisors need to provide information from this preparatory procedure. A derogation from this rule is provided for in particularly justified cases justified by the public interest. Thus, according to the intention of the drafter, no other reason could justify the provision of information from the criminal proceedings (§ 3). The proposed amendments to Article 12 of the Law on the Prosecutor's Office should be considered correct.

The amendment of Article 13 of the Act - Law on the Prosecutor's Office consists in indicating the competences of the Prosecutor General, taking into account the repealing of the position and competences of the National Prosecutor. The above regulation did not change the position of the chief prosecutor's office, it is therefore of an orderly nature. On the other hand, it should be emphasized that the drafted legal norm is of fundamental importance for the prosecutor's office, establishing the autonomous nature of the institution and the independent competence of the Prosecutor General.

The proposed repeal of Article 13a of the Law on the Prosecutor's Office should be assessed unambiguously positively. On the one hand, it is a norm for the abolition of the position of the National Prosecutor, on the other hand, it removes the exception to the generally applicable principle of competence from the legal area of the functioning of the prosecutor's office. According to the repealed provision, the Prosecutor General, despite the fact that he was the superior of all prosecutors of the general organizational units of the prosecutor's office and prosecutors of the Institute of National Remembrance, did not have the authority to take over the case to continue to conduct cases conducted by them and perform activities in them. This norm, introduced into the legal order by the law of July 7 last year, which came into force on September 28, 2023, was one of several whose actual task was to deprive the Prosecutor General of the authority to exercise his powers as the supreme body of the prosecutor's office.

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Summarizing the changes proposed in this area, it should be assessed that they were aimed at functional and material separation of the Prosecutor General and the prosecutor's office from the executive branch and this procedure should be considered successful at the current stage of the planned changes. Of course, it is essential to separate the constitutional body of the minister responsible for justice from the function of the Prosecutor General and to establish new rules for his election. The additional changes discussed above have characteristics that are auxiliary to this essential purpose, but also among these it is difficult to see those to which any significant defects could be attributed. It should be added that at the same time no elements requiring completion necessary to achieve the goal assumed in the project and expressed in the justification were found.

The draft provisions of Article 13b-13 of the Act – Law on the Prosecutor's Office, which is in fact the main subject of the amendments to the draft Act, and contain detailed rules for appointing the Prosecutor General, including specifying the bodies participating in the appointment procedure, specifying their role, determining the majority necessary for the Sejm to adopt a resolution on the election of a candidate for the Prosecutor General, specifying the entities selecting candidates, specify the requirements to be met by candidates for the Prosecutor General, the selection procedure, the status of the Prosecutor General and the reasons and method of revocation.

Moving on to the individual elements, it should be stated that in the drafted Article 13b § 1 of the Act - Law on the Prosecutor's Office, the appointment of the Prosecutor General by a resolution of the Sejm adopted by an absolute majority of votes with the consent of the Senate. This solution, although different from the project by the Association of Prosecutors Lex Super Omnia, in which the competence to elect the Prosecutor General was granted to the president, deserves a positive assessment. It should be stated that in each of the variants of the appointing body, we are dealing with a constitutional institution legitimized by universal elections. The further regulations proposed in Articles 13b to 13c of the proposed law relating to the selection of candidates for this position and the detailed procedure relating to their opinion and presentation in Parliament, including the possibility

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for members of the legislative power to debate the election, require that this regulation be considered to be positive.

It should be emphasized that the systemic regulations related to the selection of persons acting as the supreme authority of state institutions or representing them also provide a justified position for adopting such a solution. Although the Constitution gives the President the power to elect the Presidents of the Supreme Court, the Supreme Administrative Court, the Constitutional Tribunal and the State Tribunal, first of all, it should be noted that the prosecutor's office as an institution does not belong to the judicial authorities in the sense described in Article 175(1) and Chapter VIII of the Constitution. Secondly, the Prosecutor General, unlike the presidents of the Supreme Court, the Supreme Administrative Court, the Constitutional Tribunal and the State Tribunal, whose powers are largely representative, has a very large empire of power. Finally, thirdly, in the current form of the Law on the Prosecutor's Office Act, this institution is closer to - described in Chapter IX of the Constitution, state control bodies and law protection. The fact is, however, that the President of the Supreme Chamber of Control and the Ombudsman are elected by the Sejm with the consent of the Senate (only members of the National Broadcasting Council are elected in the competence shared by the President, the Sejm and the Senate).

It should also be added that such a formation of the mechanism for the election of the Prosecutor General cannot justify the thesis on the politicization of the election, if one takes into account the detailed solutions contained in the project related to the nomination of candidates (both by a group of at least 35 deputies or 15 senators and by a professional entity - the newly established National Board of the Prosecutor's Office, "industry" non-governmental organizations and an impartial body such as the Main Council of Science and Higher Education, which brings together scientists and other persons representing higher education institutions in Poland), the criteria necessary to meet for the position described in the drafted Article 13 § 1, their public hearing enabling familiarization with the profiles of candidates not only by the bodies of choice, but also by society, by regulations guaranteeing institutional independence, including competence and financial (budgetary) independence. The above is also favored by solutions relating to the regulation of the proposed Article 13e

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§ 1 of the above-mentioned Act (6-year term of office, necessarily unrelated to the parliamentary term of office), the prohibition of membership in a political party and a trade union (Article 13h), detailed – narrowly defined reasons obliging the dismissal of the Prosecutor General (Article 13l of the draft) and the regulation of Article 13n of the draft regulation of the professional position of the current Prosecutor General in the event of termination of the term of office or appeal related to the resignation of office.

The proposed regulations contained in Article 13p of the Law on the Prosecutor's Office, which regulates the submission of annual reports on the activities of the prosecutor's office, should also be positively assessed. On the one hand, they constitute regulations analogous to the duties imposed on the President of the NIK (in Article 7 paragraph 1a of the Act of 23 December 1994 on the Supreme Audit Office) and the Ombudsman (in Article 19(1) of the Act of 15 July 1987 on the Ombudsman) and are an emanation of the control function of the Sejm as a body taking a key part in the election of the Prosecutor General. The solutions adopted in this regard do not at the same time duplicate the defective solutions of the previous legal status (before the entry into force of the current Act – the Law on the Prosecutor's Office) included in Article 10e of the Act of 20 June 1985 on the Prosecutor's Office, which imposed the competence of the Prime Minister to accept or reject the report, and in the latter case creating the possibility of dismissing the Prosecutor General by the Sejm (and in this respect placing the Prosecutor General to some extent in the position of a hostage of the executive branch).

The proposed wording of Article 13q of the Act – the Law on the Prosecutor's Office granting the authorities indicated there the competence, exclusively within the scope of their competence, to obtain information on a specific aspect of the prosecutor's office's activity at the request formulated by themselves. Undoubtedly, such regulation can contribute to the proper exercise of competences by these bodies, it also constitutes a kind of control over the activities of the prosecutor's office, at the same time prohibiting these authorities from obtaining information on a specific procedure.

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The provisions of the proposed Article 13r Act - Law on the Public Prosecutor's Office establish a new institution, which is the Social Council operating under the Prosecutor General. Its task will be to express positions on important issues concerning the organization and functioning of the prosecutor's office. The proposed regulations indicate that the positions of the Social Council will be advisory and advisory. The composition of the Social Council - representatives of local governments of legal professions, non-governmental organizations indicates that there will be a body that is a voice from outside the prosecutor's office, including circles working "in contact" with the prosecutor's office on a daily basis and having a lot of knowledge about the reception of prosecutor's actions. The establishment of this body indicates the desire of the prosecutor's office to open up to the public, which should be assessed unambiguously positively.

The drafted Article 14 of the Law on the Public Prosecutor's Office introduces significant changes in the formation of the management of the Prosecutor General's Office. In accordance with applicable regulations, the Prosecutor General may have a total of eight deputies – the First Deputy Prosecutor General, who is the National Prosecutor by law, and other deputies appointed by the Prime Minister at the request of the Prosecutor General – in no more than 7. The proposed regulation limits this number to a maximum of four substitutes. The three Deputy Prosecutor General have a strictly defined scope of tasks already at the level of the law and their appointment is mandatory. In addition, the Prosecutor General may appoint one more deputy. Thus, the number of deputies of the Prosecutor General has been significantly reduced, which will allow for greater transparency in the functioning of the Prosecutor General's Office and the Prosecutor's Office as such, greater transparency in the distribution of competence responsibilities between individual deputies, and will also reduce the costs of the current operation of the prosecutor's office.

The proposed amendments to the provisions of 15-41 Act – Law on the Prosecutor's Office are editorial, resulting mainly from the abolition of the National Prosecutor's Office, including the Department of Internal Affairs, which has so far been an independent organizational unit of the National Prosecutor's Office and the creation of the Prosecutor General's Office, as well as adapting to the other proposed changes.

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The amendment consisting in the repeal of Chapter 2 in its entirety results from the abolition of the National Board of Prosecutors at the Attorney General and the establishment of the National Board of Attorneys. The drafter foresees a different shape of the composition of this body than at present. Until now, the National Prosecutor's Council under the Prosecutor General consisted only of prosecutors - representatives of units at various levels. The Prosecutor General was the most strongly represented because he himself was its chairman, and additionally appointed 5 prosecutors to its composition. Further, the most strongly represented were the prosecutors elected by the meeting of prosecutors of the National Prosecutor's Office. This formation of the composition did not give the real vote of the prosecutor's environment. According to the proposed regulations, the new National Board of Prosecutor's Office, in addition to prosecutors, this body will include: a representative of the President of the Republic of Poland, the Marshal of the Sejm, the Marshal of the Senate, and the Minister of Justice. While the proposed solution should be assessed as a whole positive, the wording of the proposed Article 42b § 1 point 2 raises doubts, it indicates that the composition of the National Prosecutor's Council consists of representatives elected by the congregations of prosecutors in regional prosecutor's offices, who are prosecutors – one from each regional prosecutor's office. This wording may suggest that only the prosecutor of the regional prosecutor's office can be elected to the National Prosecutor's Office. The composition of the National Prosecutor's Office Council, shaped in this way, would be deprived of representatives of the largest group of prosecutors, namely prosecutors of district prosecutor's offices and district prosecutor's offices. This provision therefore requires clarification by indicating that the representative of the regional prosecutor's office is chosen by the assembly of the regional prosecutor's office from among its members (the assembly consists of prosecutors – delegates of the regional prosecutor's office, delegates of district and district prosecutor's offices operating in the area of operation of a given regional prosecutor's office). In this way, it will be possible to choose a representative from each level of the prosecutor's office. This will ensure that the opinions and voices of all groups of the prosecutor's community are reflected.

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The tasks of the National Prosecutor's Council have been defined broadly, it will, among others, give opinions on draft legal acts concerning the prosecutor's office, listen to information on the activities of the prosecutor's office, as well as reports on the activities of the Disciplinary Ombudsman of the Prosecutor General, participate in the procedure for appointing the Prosecutor General, give an opinion on a candidate for the Director of the National School of Judiciary and Prosecutor's Office. These are issues in which the voice of the prosecutor's community is very important and cannot be ignored, so the proposed solutions should be evaluated positively. However, special attention should be paid to the imposition on the National Board of the Prosecutor's Office of the obligation to present a position annually on the observance of prosecutorial independence. On the basis of the current regulations, this issue was not directly indicated in the scope of the activities of the National Board of Prosecutors under the Prosecutor General. During the period of operation of the National Council of Prosecutors under the Prosecutor General, the independence of prosecutors was repeatedly violated, and the above-mentioned body, which by definition should guard the independence of prosecutors and the prosecutor's office, never once took a stand on this issue. Thus, the direct indication that the National Prosecutor's Office Council will annually present a position on the subject of compliance with the prosecutor's independence is, on the one hand, its obligation to draw attention to this issue, and on the other hand, a signal to the prosecutors' community that this is one of the fundamental issues of the functioning of the prosecutor's office.

Amendments to Articles 44-48, Articles 50 and 52 are editorial in nature, adapting to the substantive changes introduced by the reviewed draft.

The drafted § 4 and 5 in Article 53 of the Law on the Prosecutor's Office concern the budget of the prosecutor's office. First of all, the draft specifies that it is the Prosecutor General who establishes the budget of the prosecutor's office, taking into account revenues and expenditures, and independently transfers it to the minister responsible for public finances in order to include it in the draft budget law, on principles analogous to the expenses and revenues of, among others, the common judiciary, the Ombudsman, the Ombudsman for Children. The project also provides for the independence and independence of the

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Prosecutor General from other bodies in the field of budget execution in the part corresponding to the general organizational units of the prosecutor's office. Such a solution should be evaluated unequivocally positively. The budgetary separation and independence of the Prosecutor General in the implementation of this part of the budget, the disposal of funds is one of the basic components of the independence of the prosecutor's office as an institution from the executive branch. Only a financially independent prosecutor's office will also be a prosecutor's office independent of the executive branch.

The proposed amendments to Articles 57, 60, 61, 63 and 68 are editorial and adaptive to the overall nature of the proposed regulations.

The proposed changes in Chapter 1 of Section IV concern the procedure for appointing prosecutors to individual positions, the conditions that the prosecutor must meet in order to be appointed to the position of prosecutor in a higher-level unit. First of all, it should be noted that the prosecutors of the general organizational units of the prosecutor's office will be appointed by the Prosecutor General after consulting the opinion of the National Council of the Prosecutor's Office, which is consistent with the previously discussed proposals for changes and what should be assessed as correct. The proposal to repeal Article 75 § 1a of the Law on the Public Prosecutor's Office Act should also be assessed as correct. These regulations made it possible to appoint to the position of prosecutor a person who passed the bar or legal counsel exam and for a period of at least three years performed activities related to the creation or application of the law in offices serving state bodies or has a doctorate degree. It should be noted here that in the Polish legal system there are separate exams for individual legal professions, separate applications with individual training programs - preparing for the specificity of each profession. The bar and legal counsel exams have a different nature and scope than the prosecutor's exam. Therefore, passing the bar or legal counsel exam alone does not properly prepare you to practice the profession of prosecutor. The three-year period of performing activities related to the creation or application of the law in offices serving state bodies is also not sufficient to prepare the work in the position of a prosecutor. Without excluding in the future the possibility of changes in the professional paths of the legal professions, including

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prosecutors, the unification of training, the introduction of a uniform state examination and the adoption of the custom of gaining experience in various legal professions over the course of the entire professional path by the example of other European countries, it is emphasized that the current regulations described above and repealed by the draft under review do not guarantee proper preparation for the prosecutor's service.

The proposed amendments to Article 76 of the Law on the Prosecutor's Office, i.e. § 1 points 1 and 2 concern the requirements for the length of service in the appropriate position that the prosecutor must meet in order to be able to be appointed to the position of prosecutor of the Prosecutor General's Office. The required seniority as a prosecutor or other legal profession is extended from the previous 8 years to 15 years. This period is significantly longer, giving, on the one hand, the opportunity to gain experience in units at all levels of the prosecutor's office, on the other hand, it does not close the possibility of development for people who have gained professional experience at an earlier stage in other legal professions. The repeal of § 5 of Article 76 of the Law on the Prosecutor's Office should be assessed unequivocally positively. This provision gave the Prosecutor General the right to appoint - at the request of the National Prosecutor, the prosecutor to the position of any organizational unit of the higher-level prosecutor's office, bypassing the requirements for the internship in the position of prosecutor of individual units. This regulation – subject to an exception, has in recent years become the rule and basis for the pathology that has occurred in the prosecutor's office. The career paths of individual prosecutors ran without any uniform, clear criteria. The appointment of higher-level units to the positions of prosecutors has become a tool for institutional corruption of prosecutors, depriving them of their independence, and for awakening in them a sense of loyalty to the people holding the highest positions in the prosecutor's office, who were responsible for decisions to appoint them to a given position. The proposed change will eliminate this negative phenomenon.

Further changes in the regulations concerning the appointment of prosecutors to the positions of a higher-ranking prosecutor or the first position of a prosecutor, as well as the duties and powers of prosecutors are editorial and adapting to the substantive changes provided for in the draft under review.

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Articles 2-39 of the draft law contains editorial changes in other acts consisting in changing the nomenclature resulting from the abolition of the National Prosecutor's Office and the creation of the Prosecutor General's Office.

Comments on the draft transitional and adjustment provisions (Articles 40-59 of the draft).

It seems that the systemic changes of the prosecutor's office should already be much deeper at this stage, penetrate the structure of the prosecutor's office so that the new Prosecutor General, independent of the executive branch, does not use instruments from the 1960s in the management of the prosecutor's office. Provision of art. 1 of the Law on the Public Prosecutor's Office defines the prosecutor's office, and specifically it is to indicate that the prosecutor's office is not an office but all prosecutors mentioned with the names of the positions existing in the prosecutor's office. Meanwhile, the bill duplicates the error of the current law and in the provision defining the prosecutor's office lists some functions in the prosecutor's office, specifically the Deputy Prosecutor General. These are not prosecutorial positions.

The project legitimately provides for a competitive procedure to take up both the first and each subsequent prosecutorial position. It is a well-known fact that such a procedure of appointment to prosecutorial positions was in force in the years 2010-2015. Since 2016, practically a competition for a prosecutor's position (except from art. 80 of the Act - Law on the Prosecutor's Office, and yet it is not in force absolutely). Since the drafted regulations return to the competition procedure when appointing to the prosecutor's position, the transitional provisions should regulate the status of prosecutors who were appointed to the first prosecutor's position bypassing the competition procedure and those prosecutors who received a position promotion in the authoritarian decision of the Prosecutor General, often as a prize. There may be cases where a prosecutor appointed to the position of prosecutor of the district prosecutor's office or prosecutor of the regional prosecutor's office did not have at the time of appointment the internship required by Article 76 respectively § 2 or § 3 of the Act – Law on the Prosecutor's Office for a given position. The absence of this cannot be

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validated. The bill does not provide for positional promotion as an award (repeal of § 5 in Article 76 of the Act - Law on Public Prosecutor's Office) and at the same time maintains the requirements for promotion in the scope of a specific seniority in lower positions. Transitional provisions governing the status of these prosecutors are therefore needed. In addition, it is worth taking into account in the provisions introducing the project the procedure for validating job promotions obtained by prosecutors who meet the criteria for internship in lower prosecutorial positions, specified in Article 76 of the Act – Law on the Prosecutor's Office, but obtained after 2016 in a non-competitive procedure. In this case, it would be necessary to provide for a period in which these prosecutors should submit to the competition procedure to verify the qualifications for the position they have taken up in a non-competitive mode. The lack of such regulations will result in the fact that prosecutors with significantly different qualifications and skills will be in the same level for years, which will significantly more difficult to carry out the tasks of the prosecutor's office. The drafters see the problem discussed, but only in relation to the prosecutors of the National Prosecutor's Office and in the context of the liquidation of this unit. Article 44 of the draft law introduces criteria for appointment to the first positions, such as qualifications for the performance of tasks, the course of previous service, the scope and nature of the tasks performed so far. Similar criteria should be introduced when staffing the prosecutor's staff of all organizational units of the prosecutor's office.

The method of building the first prosecutorial staff of the Prosecutor General's Office (Article 44 of the draft) should, as a rule, be evaluated positively. However, it should be borne in mind that the first appointments to this unit take place without the implementation of the competition procedure. The number of prosecutors appointed in this procedure should be limited to positions absolutely necessary in the first phase of the Prosecutor General's Office and specified in the Act (introductory provisions). Appointing too many prosecutors to the position of prosecutor of the Prosecutor General's Office destroys the ideas of appointing a prosecutor to a position under the competition procedure.

It is not clear why the drafter provides in Article 44 paragraph 1 of the bill for as many as 60 days from the taking of the oath by the Prosecutor General to appoint the first

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prosecutors of the Prosecutor General's Office. The proposed mode of appointment is not complicated. Decision-making, however, the Prosecutor General should be prepared much earlier, at the candidacy stage. After all, the Prosecutor General will be a prosecutor with extensive experience and knowledge of the realities of the prosecutor's service and the staffing needs of the Prosecutor General's Office. It can be assumed with high probability that such a long waiting period for the prosecutor's staff in the staff of the National Prosecutor's Office will destabilize the activities of the Prosecutor General's Office already at the initial stage of its existence.

The drafted Article 44 in paragraph 2 and subsequent assumes the transfer of prosecutors of the National Prosecutor's Office not appointed to the position of prosecutor of the Prosecutor General's Office to another position and place of office. In the wording of these provisions, it should be clarified that it is a different prosecutorial position. It does not seem that the drafter allows the possibility of transfer to a position other than prosecutorial, which can be, for example, from the content of the draft paragraph 7 of Art. 44.

The draft law does not provide for a change excluding the appropriate application to prosecutors of Article 71 and Article 100 of the Law on the System of Common Courts in the event of a change in the system of the prosecutor's office. Therefore, there may be doubt whether the Prosecutor General can apply to the National Council of the Prosecutor's Office (the draft wording of Article 127 of the Act - Law on the Prosecutor's Office) for retirement of the Prosecutor of the National Prosecutor's Office, whom he did not appoint to the position of prosecutor of the Prosecutor General's Office and did not transfer to other places of office. The provisions of the Law on the Prosecutor's Office in the form amended by this draft will not provide otherwise. If the drafter wants to keep the entire current prosecutor's staff active during this reform of the prosecutor's office, he should include a transitional provision in the draft that excludes the possibility of applying Article 71 § 3 and 100 § 1 of the Act on the Common Court System accordingly.

According to the proposed art. 56 The Prosecutor General's Office takes over the law and the obligation of the National Prosecutor's Office on the day of its creation. Meanwhile,

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the provision of Article 57 does not specify the deadline for the transfer of budget funds by the Prime Minister to the part of the budget corresponding to the common units of the prosecutor's office. The transfer of funds should take place on the day of the establishment of the Prosecutor General's Office, otherwise it will not be possible for this unit (new entity) to dispose of budget funds.

With a relatively short vacatio legis of the entry into the law as a whole (Article 60), because it is only one month, the authors of the project provide long deadlines for the introduction of individual proposed solutions, which may significantly disrupt the functioning of the prosecutor's office. In addition to the previously indicated appointment of prosecutors of the Prosecutor General's Office and the transfer of prosecutors to another duty station, which, according to the drafters, will begin no earlier than 4 months after the entry into force of the Act, point out other long deadlines for the introduction of the draft law that are not time-consuming. Article 41 of the bill provides that the first election of the Prosecutor General is made within two months from the date of entry into force of the Act. The provision is unclear because it suggests that it is about starting the selection procedure. In this case, it is not understandable to wait for the procedure to begin. If the Prosecutor General is to be appointed within two months, this should be clearly indicated in the provision. (projected Article 13 b § 1 of the Act - Law on the Prosecutor's Office). It is not necessary to keep the National Board of Prosecutors with the Prosecutor General for more than a month from the date of entry into force of the Act, i.e. until the candidates for the Prosecutor General are nominated. The drafted Article 50(2), however, provides that the National Board of Prosecutors at the Prosecutor General shall be abolished on the day the Prosecutor General takes the oath. The National Prosecutor's Office Council is established on the date of entry into force of the Act (Article 51(1) of the draft) and it should be constituted within 30 days of the entry into force of the Act (Article 51(2) of the draft). So there will be two entities in parallel, albeit with different institutional character, but with similar competences.

The framers provide for the preservation of the force of executive acts issued on the basis of the provisions of the Law on Public Prosecutor's Office for a period of 2 months from the date of entry into force of the Act and allows the possibility of changing them on

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the basis of existing provisions, and therefore no longer in force at the time when the regulation was to be amended. Orders issued pursuant to Article 36 § 2 and § 2a of the Law on Public Prosecutor's Office, pursuant to Article 60 of the draft, will remain in force without specifying a deadline until the new implementing regulations come into force. Executive acts are an important segment of the legal framework on the basis of which the prosecutor's office operates. Meanwhile, the drafters do not indicate the scope of changes in the implementing regulations. The question arises why the drafters are changing the provisions of the Law on the Prosecutor's Office authorizing the issuance of executive acts, allowing their further use and even changing on the basis of existing provisions. According to § 127 Principles of Legislative Techniques, which is an annex to the Regulation of the Council of Ministers on "Rules of Legislative Techniques: of 20 June 2002. (Journal of Laws of 2016, item 283) the regulation should enter into force on the date of entry into force of the Act on the basis of which it is issued.

The comments presented on the introductory and transitional provisions indicate that the efficient implementation of the proposed systemic change of the prosecutor's office on their basis is associated with a high risk.

The dissatisfaction leaves too narrow the scope of the reform, which is limited only to the separation of the offices of the Prosecutor General and the Minister of Justice does not implement other demands of the Lex Super Omnia Association regarding the independence of the prosecutor.

The provisions adapting the wording of other acts to the proposed changes in the Law on the Public Prosecutor's Office require a detailed analysis and supplementation again. For example, you can indicate here:

– in Article 3(2) of the draft, after the words 'Article 19(1)' should be replaced by the words 'Article 19(1) in point 9', because a legislative technique consisting in changing only some of the words in the content of one of the points of the provision is used;

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the fragment of the amended provision must be precisely indicated so that the change is understandable to the addressees (§ 87 point 3 of the legislative technique principles);

– in Article 4 of the draft, the words "Article 9 in paragraph 1" should be replaced by the words "Article 9(1) in point 9", similarly as indicated in the first indent – a legislative technique consisting in changing only some words in the content of one of the points of the provision is used; the fragment of the amended provision should be precisely indicated so that the change is understandable for the addressees (§ 87 point 3 of the legislative technology principles).

Moreover, the method of invoing regulations should be standardized. In the same article, sometimes the point at which the changes are made is mentioned, other times only the paragraph of a given article, although it contains separate points, e.g.:

- in Article 5 of the draft, point 2 concerns a provision that has been repealed and previously regulated a matter other than the National Prosecutor's Office;

- in Article 6 of the draft, point 1, the amendment provided for in this paragraph should also include Article 100b of the Code of Criminal Procedure, which will enter into force on October 1, 2028. This provision is temporarily not in force, but it is in the text of the law.

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