

Monitoring Committee

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Post-monitoring Ukraine

Roadmap

(Adopted following the meetings held in Kyiv at the Ministry of Regional Development, responsible for implementing the decentralisation reform)

I. General considerations

The Congress issued a first report on the state of local and regional democracy in Ukraine in 2001, followed by a second in 2013. This last report underlined the slow progress made by the country between 2001 and 2013 in matters of local and regional democracy.

The 2013 report called on the Ukrainian authorities to implement genuine decentralisation within the country, in particular through a clear allocation of competences and administrative activities between government departments and local authorities, to reinforce local authorities' financial autonomy, to put in place a fair and transparent equalisation system and for the organisation of elections in the cities where the office of mayor was vacant.

Since the Congress adopted this report and the recommendations, in October 2013, a great deal has happened in Ukraine:

The dramatic events on the Maidan square brought about a regime change. The country's territorial integrity was undermined by the Russian Federation's annexation of Crimea and Sebastopol. War broke out in the Donbas region. On 25 May 2014 a new President was elected. The same day elections were held to elect mayors in the cities where the office was vacant. Lastly, democratic parliamentary elections were held in October 2014, resulting in a significant renewal of the membership of the Verkhovna Rada.

The new Ukrainian authorities announced their wish to institute a political dialogue with the Congress with a view to the rapid implementation of Recommendation 348 (2013) on local and regional democracy in Ukraine, pursuant to Resolution 353 (2013) REV on "Congress post-monitoring and post-observation of elections: developing political dialogue".

A post-monitoring programme (PMP) was drawn up in partnership with the authorities, including three post-monitoring units (PMUs) based on the principal recommendations made to the authorities (REC 348 (2013)) following the visits in 2012 and 2013:

1. Paragraph 7d on the transfer of competences
2. Paragraph 7c on financial autonomy
3. Paragraph 7a on the merger of local government units and inter-municipal co-operation.

The rapporteur and the members of the delegation¹ also took into account the Venice Commission's Opinion No.766/2014, which incorporated to a large extent the Congress's opinion of 11 July 2014 on the proposed amendments to the Constitution.

They expressed the desire to **ensure their work remains perfectly in line with the Council of Europe's action in respect of Ukraine, while implementing a Post-Monitoring Programme. The programme units (PMUs)** are aimed at drawing up, in agreement with the government and in co-operation with the other parties concerned, **a roadmap with a specific time-table**, for implementing the Congress recommendations.

PMU 1 consisted of sessions held in Kyiv on 11 and 12 December and resulted in an initial interim roadmap, which was submitted to the authorities on 18 December 2014. PMUs 2 and 3 were the subject of a full-day meeting held on 12 March 2015.

The rapporteur underlines that between the monitoring visits (2012 and 2013) and the three PMUs (2015) the political situation changed considerably and in dramatic ways making it all the more remarkable that the Ukrainian authorities have been able to persist in their efforts to make the decentralisation of powers one of the principal objectives of the implementation of a new stage in the country's democratisation process.

¹ See Appendix 1 for the composition of the delegation

The rapporteur would also draw attention to the fact that, between the PMU 1 meetings and the PMU 2 and 3 meetings, the governmental authorities showed a reinforced rather than a weaker determination, despite the growing threats and the continuing violence in the East of the country and near the border with Russia. This determination seemed to stem from a will to carry out far-reaching reforms in line with, but also ranging far beyond, the measures included in the so-called "Minsk II" agreements.

II. The stages in the post-monitoring dialogue

PMU 1 (10-12 December 2014)

The delegation first noted that none of the proposed amendments to the Constitution, which had been submitted to the Venice Commission for an opinion in July 2014 and concerning which the Congress had issued an official opinion on the decentralisation aspects, had as yet been submitted to the Verkhovna Rada. It informed its interlocutors that it deeply regretted this situation, since the tabling of the amendments would have been perceived as a very clear expression of the Ukrainian authorities' intention to pursue a far-reaching reform of territorial administrative structures, in accordance with the principles of the European Charter of Local Self-Government.

The Congress had moreover expressed a globally positive opinion on the preliminary draft amendments concerning decentralisation, as set out in its Opinion of 11 July, prepared under the aegis of the Congress's Monitoring Committee and incorporated in the Venice Commission's Opinion No. 766/2014.

The post-monitoring delegation also noted that:

- The parliamentary rules of procedure in force required the tabling of new draft legislation since the first draft submitted to the Venice Commission had not been adopted at first reading, and any constitutional amendment initiative could but originate from the President or from 150 members of parliament, with the government's role being confined to preparing or making proposals.
- Following the results of the most recent elections a new coalition had been formed in accordance with the constitutional provisions in force, and a very clear programme of action had been adopted on 21 November 2014. This "coalition agreement" included a Chapter VII on "Decentralisation and reform of public administration", which was particularly detailed. The document took into account not only the purely legislative aspects, but also their consequences in terms of territorial authorities' organisation, functioning and procedures. It also addressed the question of redeployment of the public services currently in the hands of central government and set a number of priority objectives regarding economic development and service provision to the population. The coalition's programme considerably expanded upon the Cabinet of Ministers' Directive 333-p of 1 April 2014 concerning "The concept of reform of local self-government and territorial organisation in Ukraine".
- The ministries concerned, and, first and foremost, the secretariats of the Cabinet of Ministers and the Ministry of Regional Development, had taken action to ensure that certain of the necessary legislative provisions which were not strictly dependent on the constitutional amendments could be submitted to parliament without delay. A law on co-operation between territorial communities had already been voted in June and had resulted in over 30 co-operation agreements by December.
- These positive steps were additional to those already taken in response to Recommendation 348 (2013) of 31 October 2013, such as the direct election of the mayor of Kyiv and the merger, under the mayor's authority, of the decentralised services and the former State-run services.
- Lastly, the delegation was able to see that a spirit of co-operation prevailed between the Prime Minister's office, the Ministry of Regional Development and the Ministry of Finance, which were at the heart of the reform process.

The delegation nonetheless raised a number of issues which required clarification:

- the maintenance of certain State ministerial services at the regional or district level;
- the role of the President's representative in the regions, as highlighted in the Venice Commission's opinion. This issue does not seem to have been settled, and the government departments do not seem to have arrived at any definitive position;
- the nature, form and extent of supervision of the decentralised authorities' activities;
- the form that could be taken by the executive bodies of the regions and districts. Under the current provisions of Article 141 of the Constitution, these executives may not be elected separately from the councils;
- the distribution of powers and responsibilities remained a subject of debate, although it seemed clear that, in accordance with the principles of subsidiarity and proximity that typify the organisation of local self-government bodies, priority would be given to the minimum services essential for the population (utilities networks, administrative formalities, spatial planning). This would make it possible to avoid the complete elimination of the notion of the village, which could prove useful in a country with a low population density.

Lastly, it should be noted that:

The delegation's meetings took place in the presence of the representatives of the main national associations of local authorities, which had come together in a "congress" and were determined to influence the legislation under preparation while also seeking means of support to enable them to play an effective role in the implementation of the reforms. The discussions with the representatives of these associations and the meetings with the newly elected mayors also enabled the delegation to gain an awareness of the conditions and difficulties under which the emerging local self-government bodies operated on a daily basis, in particular in the country's rural areas. It was able to see that the management approach of the local teams in place had given rise to the development of financial and non-financial practices which were incompatible with the requirements of transparency and equity of public management.

PMUs 2 and 3 (12 March 2015)

The further meetings held in Kyiv under the aegis of the Ministry of Regional Development made it possible to take stock of the trends in the political climate and the Ukrainian authorities' determination to pursue their decentralisation efforts. These efforts are naturally now being made in the light of the Minsk II recommendations, but it was clear that the basic will to implement a general decentralisation movement had become all the stronger as the difficulties posed by the military and economic contexts had increased.

The visit also took place against the background of the establishment, on 3 March 2015 by President Poroshenko, of a Constitutional Commission, with the objective of preparing amendments to the Constitution currently in force. Proposals concerning the Commission's members had to be made by 12 March, the very day when the delegation arrived in Ukraine, and it was generally acknowledged that the Speaker of Parliament, Mr Volodymyr Groysman, would agree to head this group of experts. The rapporteur considered this latter decision as positive for the cause of local self-government, since at the time of the monitoring visit he had already had a meeting with Mr Groysman, then Minister for Regional Development, who had shown himself to be a firm proponent of decentralisation.

It was also abundantly clear that, subject to the specific provisions to be proposed for certain eastern areas of the country, this part of the constitutional reform was one of the most consensual and, if it had been brought before the parliament, it would in all likelihood have obtained the necessary majority.

The government authorities appeared fully aware of this situation and, certainly with a view to consolidating the momentum, at the post-monitoring meeting of 12 March Deputy Minister Nehoda

invited the Congress to participate in the work of the Constitutional Commission and to designate an expert.

Despite the political will mentioned above, this work may delay the entry into force of provisions which are essential for the implementation of a decentralisation reform to the full extent desired. According to the information given to the delegation, a preliminary draft document could be submitted to parliament in June before being referred to the Constitutional Court, as required by the Constitution.

A constitutional revision is still needed to give tangible form to the wide-ranging reform of local and regional self-government to which the Ukraine authorities aspire. The process that has been initiated, in accordance with the constitutional rules, should permit the adoption of this reform in September 2015, which is moreover in line with the Minsk II timeframe.

The resulting decentralisation, in conformity with the principle of subsidiarity, will have many positive consequences in terms of public administration, service provision to citizens and Ukraine's economic development.

It would be welcome if the new Constitution permitted the future amendment of the competences of the oblasts in general, or of certain oblasts in particular, through the passing of a special law, adopted by a two-thirds majority of parliament. This would make it possible to transfer to certain oblasts, where appropriate, competences compatible with the country's territorial integrity, while maintaining at central government level the essential competences of a sovereign State.

Despite the current constraints, the delegation was able to make good progress with items II and III on the agenda:

Concerning **item II (financial autonomy)** the delegation took note of the very considerable progress that has already been achieved through the adoption of a new Budget Code and it was given a presentation on its basic structure.

The principle of equivalence of financial resources transferred and competences delegated by central government seems accepted. Conversely, a further basic clarification effort is recommended, so as to make a clear distinction between "own" competences, those definitively transferred to the various tiers of local self-government, and "delegated" competences, which are competences vested in central government or certain local or regional government bodies but which can be exercised, under the terms of an agreement, by another authority than that to which they are allocated.

The key point is the introduction of a comprehensive system which would, in anticipation, correspond to the wording of the proposed constitutional amendments on local financial autonomy.

This includes both a very high level of fiscal decentralisation, in particular in favour of the municipalities, at least at the level of the capitals of the oblasts or districts, or of the future amalgamated territorial authorities, a liberalisation of borrowing conditions, the introduction of an ambitious system of "horizontal" equalisation based on personal income tax revenue (with only 25% of such tax revenue being retained by central government) and a system of State grants, intended to be distributed according to objective criteria in three essential fields: education, health care and vocational training.

The new decentralised tax system includes corporation tax, an environmental tax, excise duties and the land tax.

There are therefore the beginnings of a sound financial base, guaranteeing, at least in a context of growth in territorial authorities' economic activities, a degree of stability of their resources from one year to the next. However, guaranteeing that State grants will remain at the previous year's level is not enough to ensure the full attainment of this goal, since the decision largely depends on the resources available in the national budget, and the link between local authorities' own resources and economic development is another source of uncertainty. It is accordingly all the more necessary to maintain some local taxes, as provided for in the new draft legislation, so as to guarantee the stability and continuity of own resources in local budgets.

The delegation also echoes the concerns of the small local authorities, which fear that the new system of own resources will be somewhat unfavourable to them.

This important reform of local government resources goes hand in hand with a simplification of the budgeting process, with increasing levels of responsibility and accountability according to the size of the municipalities. As a result the regional or district capitals and the so-called municipalities with oblast or district status could enjoy "direct inter-budgetary relations" with the Ministry of Finance during this process.

This financial component cannot really be dissociated from the separately pursued policy to promote voluntary mergers of municipalities, which can benefit from financial advantages for five years and, in a way, undergo a "change of category" by in turn becoming municipalities with oblast or district status and thus have access to the new "direct relations" recently introduced for the preparation and adoption of the 2015 budgets.

2015 will therefore be a key year of experimentation and transition.

The financial reform is also inseparable from another reform adopted in early February, that of State regional policy. The success of this reform is clearly staked on the revitalisation of urban "poles" or agglomerations with sufficient critical mass to support economic development initiatives.

The decentralisation policy can therefore quite clearly be seen to be more than a mere institutional reform and is being used as a "lever" to foster more harmonious local and regional development and civil society participation, particularly by economic operators.

The delegation thus felt that it was faced with a relatively complete, audacious development project, entailing far-reaching reforms and above all a change of mentalities.

Regarding **item III (mergers of municipalities)**, which calls for a degree of tact since the aim is to simplify and strengthen the local institutional landscape, the delegation took note of a new law on mergers passed on 5 February. Alongside the 27 *oblasts* or regions which continue to exist, and which were listed in the Constitution according to the first amendments transmitted, only about 150 districts (or *raions*) would remain instead of the 490 at present, and roughly 1500 municipalities instead of 458 town councils, 783 village councils and 10 279 communities. Article 24-1 of the Budget Code in force since January 2015 completes the provisions on the regional development fund offering additional resources for the support of economic development projects, which should further convince municipalities that are reluctant to envisage mergers or co-operation. The new legislation also includes measures aimed at sparing the sensitivities of the smallest local authorities and maintaining a fine coverage of the territory through the creation of authorities with "*starostat*" status.

Lastly, concerning the **structures and the conditions for their administrative functioning**, it was confirmed to the delegation that the Ukraine authorities henceforth wish to draw a clear distinction between supervisory powers and powers to determine and implement decentralised policies. Similarly, there should be a sharper distinction between the political responsibilities vested in the elected representatives alone and the execution and support responsibilities assumed by the administration. In this connection, draft common statutes are being drawn up for both State and local public employees so as to facilitate, in particular, the mass transfers of competences which decentralisation should entail, notably at the levels of the regions and districts.

In conclusion, the departments concerned seem to be well-prepared and to have used the three months between the delegation's two visits to bring about **a maturation and further development of the reform's objectives with, it should be highlighted, an educational approach on the ground during the implementation of the new budgetary procedures, and constant involvement of the associations of elected representatives.**

Elected representatives were present throughout the delegation's discussions and played an active role in them. Some even considered that "more had been done for local self-government in 18 months than over the previous 23 years".

Overall, 50 bills are in the process of being drafted and nearly 70% of them are said to be already completed, pending the adoption of the amendments to the Constitution.

III. Post-monitoring recommendations

1. It would seem a matter of priority, in order to both consolidate the political will expressed through the amendments to the Constitution and assure the local authorities' representatives that the reform process constitutes a reliable working environment, to insist that **the constitutional amendments relating to the decentralisation process should be resubmitted to Parliament at the very earliest opportunity**, since the Congress delegation did not have the impression, notably in the light of the coalition's programme, that there was any intention to call into question the content of these amendments. This should be clearly confirmed by the President of the Republic and the *Verkhovna Rada*, who alone are able to give a tangible impetus to the reform.

2. Before the first post-monitoring unit was held in December 2014, discussions were taking place in Ukraine as to the **advisability of bringing forward the date of the local elections** which, under the Constitution, are to be held in October 2015. The Congress delegation gave **no encouragements to do so** (as the nine months remaining before the normal date will be scarcely sufficient to implement the minimum absolutely essential reforms). A specific question could nonetheless arise concerning the mayors elected on 25 May 2014 (along with only one council, that of the city of Kyiv), who will have served only 16 months in office, which is not long enough to implement any policy in an effective manner, especially not at a time of great changes).

Following the creation of the Constitutional Commission, which will be formed and ready to begin its work by the end of March 2015, the time-table for adopting the constitutional amendments will be delayed. This time-table is in principle scarcely compatible with the proper preparation of the local elections scheduled for 25 October 2015, and the date of these elections must be set 60 days before polling day (that is to say during the last week of August 2015).

In common with the Ukrainian authorities, the delegation is aware that there is no entirely satisfactory solution, since at the same time it deems it logical that the principal pieces of legislation, notably concerning the amalgamations, should begin to be implemented before the new representatives are elected. However, in view of the urgent need to give a decisive impetus to the country, it is important that new local senior officials, who are aware of what is at stake, should very rapidly be able to take up their new responsibilities and, through their dynamic approach, offset the rigidities and bureaucracy inherited from the former Soviet Union.

Since postponing the elections requires the adoption of a constitutional legislative instrument, it would perhaps be appropriate to consider whether the separate adoption of the decentralisation part of the reform could not be envisaged by the new commission set up by the President of the Republic.

3. **Forward planning is necessary to develop a clear vision of the relations between the elected representatives, who must be fully accountable, and the new State administrations, which must not interfere with their management, in addition to the new decentralised administrations, which must clearly be placed under them.** To this end, a revision of their role and status should be included in the government's programme.

IV. Priorities to be addressed

- The electoral law, including the organisation of relations between the organs of local self-government (directly elected mayors for the municipalities, executive bodies for the municipal, district and regional councils) so as to reduce the scope for potential conflicts, ensure the future elected representatives' visibility and place them in a position to "demand" the necessary transfers in both legal and financial terms;
- The law on the State's representative at local level and the outlines of the future "supervision". This law can but result in a provisional system, aimed at preventing any attempts at flagrant legal violations (notably with regard to the question of secession) but taking care to leave the new

territorial authorities a minimum degree of own initiative, since it is essential that confidence be placed in them if a satisfactory equilibrium is to be achieved in view of the specificities of the different territorial units;

- This confidence and experimentation should constitute the cornerstones of the future draft text on competences. It cannot be finalised immediately and will therefore need to be revised and doubtless supplemented, for example on the occasion of an annual meeting. At the same time, regardless of the pace at which competences are transferred, it seems necessary, to prevent any ambiguity, that preference be given to the transfer of own competences rather than delegated competences (since the exercise of such competences may indeed be delegated under certain conditions, but they remain attributed to the delegating authority – principally the State but also any autonomous territorial units larger in size than the municipalities.

V. The conditions for success

- There must be no underestimating the extent of the task, nor the **real "revolution" of structures and mentalities that it entails**. It would seem preferable to put in place a specific centralised steering body so that the ministries concerned can have at their disposal an additional capacity for action and so as to permit effective co-ordination.
- The introduction of a genuine, **permanent consultation system with the representatives of the national associations of elected representatives** so that the series of reforms can go be accompanied by a positive dynamicon the ground. To facilitate this, special attention must be paid to the conditions in which the mergers of territorial units take place, even when they are voluntary, so as to maintain local service provision.
- **The issue of training and mobility incentives for staff**, to ensure that the necessary transfers of skills take place as quickly as possible. The prompt development of competent local public services, committed to serving the population's needs, is vital to guarantee the success of the proposed reforms. An important aspect of the establishment of the new administrations will be to ensure that the necessary measures are taken in parallel so as to guarantee the probity and neutrality of the new public management.

**CONGRESS POST-MONITORING VISIT TO UKRAINE
Kyiv
(09-10 December 2014)**

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**CONGRESS POST-MONITORING VISIT TO UKRAINE
Kyiv
(12 March 2015)**

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