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APPRAISAL
OF THE DRAFT LAW OF UKRAINE
"ON SELF-ORGANISATION BODIES OF POPULATION"

The Present Appraisal was prepared by the Council of Europe's Democratic Institutions and Governance Department of Directorate General II - Democracy, in co-operation with the Council of Europe expert Anna Gamper.

Appraisal of the Draft Law of Ukraine "On Self-Organisation Bodies of Population"

I. Introduction

The draft law of Ukraine "On Self-Organisation Bodies of Population" was submitted to the Council of Europe Programme "Decentralisation and territorial consolidation in Ukraine" by the Committee of Verkhovna Rada of Ukraine on State development, Regional policy and Local Self-Governance.

The draft law, which has no constitutional status, is concerned with the status, establishment, functions, management, termination and liquidation of public self-organisation bodies. While this may be due to the English translation, it does not seem coherent to speak of "public self-organisation bodies" in the text, while the title calls them "bodies of self-organisation of population". There seems to be a substantive difference between "public" bodies which is a term mainly used to describe legal persons under public law and "bodies of the population" which obviously means representative bodies of the people themselves.

According to the explanatory note, the draft law replaces the current Law of Ukraine "On Bodies of Self-Organisation of Population" and seeks to facilitate the establishment procedures as regards the self-organisation bodies and improve the operation of these bodies in order to overcome certain legal lacunae and to encourage local residents to actively engage in local affairs. It also stresses that the present law is not in line with the Constitution of Ukraine and the law "On Local Government in Ukraine".

Article 140, the last paragraph, of the Constitution of Ukraine reads: *"Village, settlement and city councils may permit, upon the initiative of residents, the creation of house, street, block and other bodies of self-organisation of population, and to assign them part of their own competence, finances and property".* The Article 1 of Law of Ukraine "On Local Self-Government in Ukraine" defines bodies of self-organisation of population as *"representative bodies that are established by a part of residents who temporarily or permanently reside in the respective territory within a village, settlement, or city"*. Besides, the Law defines self-organisation bodies as a component of the system of local self-government and stipulates that the legal status of such bodies shall be determined by law and statute of territorial community.

According to the explanatory report provided, the Law "On Bodies of Self-Organisation of Population" "*failed to regulate properly the legal status of public self-organisation bodies, introduced an extremely complex procedure for their establishment…"* and *"conflicts with the Constitution of Ukraine and the Law of Ukraine "On Local Self-Government in Ukraine*".

This appraisal[1] does not cover the question whether the draft law is in line with the national legal system.

In addition, the Law of Ukraine on "On Voluntary Amalgamation of Territorial Communities" prescribes that a body of self-organisation of population can initiate voluntary amalgamation of territorial communities, Article 5, part 1, para 4), reads: *"self-organisation bodies of population of the respective territory (if they represent interests of minimum one third of members of the respective territorial community"*.

In the light of the decentralisation reform the bodies of self-organisation of population could contribute to the amalgamation process if this instrument becomes efficient and of a widely used.

European standards.

The European standards in this case are set out in the European Charter on Local Self-Government, the Additional Protocol to the European Charter of Local Self-Government (Ukraine declared that it should take measures regarding the exercise of the right to participate in the affairs of a local authority, set out in Art 2 para 2 of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, in accordance with its constitutional order), Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life and the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level (Ukraine has not yet signed this Convention).

As regards the right to participate in the affairs of a local authority and implementing measures for promoting this right, Article 3 of the European Charter of Local Self-Government reads:

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute. Paragraph 2 of the Article refers to assemblies of citizens, referendums

[1] The appraisal relies on the English translation of the draft law and its explanatory note. The Council of Europe is not responsible for any errors of the translation.

or any other form of direct citizen participation. The Charter does not include any more specific principles or forms of direct citizen participation at local level.

The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority supplements the Charter by setting out the right to participate in the affairs of a local authority as *"the right to seek to determine or to influence the exercise of a local authority's powers and responsibilities"*. The Article 2 para 2a sets out the implementing measures for the right to participate: *"procedures for involving people which may include consultative processes, local referendums and petitions and, where the local authority has many inhabitants and/or covers a large geographical area, measures to involve people at a level close to them"*. The Explanatory Report to the Additional Protocol under the Article 2 para 2 emphasizes that the list of these measures is not exhaustive: "*This paragraph enumerates, non-exhaustively, measures that are to be taken as part of the effort deriving from the general obligation set out in paragraph". Besides, Article 1 paras 5.1-5.3 require that the formalities, conditions and restrictions to the exercise of the right to participate should be prescribed in law as well as "formalities, conditions and restrictions necessary to ensure that ethical integrity and transparency of the exercise of local authorities' powers and responsibilities are not jeopardised by the exercise of the right to participate".*

Appendix II (Part B, paragraph 7, point i) of the Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life enlists measures to encourage and reinforce citizen's participation in local public life:

"Develop, both in the most populated urban centres and in rural areas, a form of neighbourhood democracy, so as to give citizens more influence over their local environment and municipal activities in the various areas of the municipality. More specifically:

i. *Set up, at sub-municipal level, bodies, where appropriate elected or composed of elected representatives, which could be given advisory and information functions and possibly delegated executive powers;"*

The bodies of self-organisation of population as introduced by the draft law can be such sub-municipal bodies, composed of elected representatives and given advisory and information functions and can be given delegated powers. Although the European standards do not specify the universal forms of citizens' participation in the affairs of a local authority, in some European countries the legislative framework specifies self-organisation bodies among the procedures and instruments of direct citizen participation, although different terminology and legislative approaches can be used.

Other standards pertaining to the role of children and young people and foreigners in democratic participation; use of information and communication technologies for the promotion and exercise of the right to participate; *"use of wide range instruments, and the possibility of combining them and adapting the way they are used according to circumstances"* appear in (Rec(2001)19);

II. Detailed Analysis

Article 1: This article sets out the ambit of the law. Perhaps it would be more useful to use the headings of the sections (some of these should be rearranged, though; see below) in order to describe the key issues dealt with by this law.

Article 2: This article includes a list of legal definitions which enhances the clarity of the law and thus promotes legal certainty. Some important terms, however, are missing, while others are defined in a misleading way.

This concerns the term "bodies of self-organisation of population", as mentioned above, which may be due to the English translation of the term.

It would, moreover, be necessary to define "territorial community" in order to delimitate it from the term "microcommunity". Is the term "territorial community" identical to that mentioned in Art 140 para 1 of the Constitution of Ukraine? Does the term "community" relate to an authority, a territorial entity or to a collectivity of persons?

The definition of "conference" is vague, especially because it is unclear whether "members of a respective territory" and "smaller constituent territories" refer to the microcommunity or another level of local government. It should be specified whether "conference", in contrast to "general meeting", just means a representative body of the microcommunity instead of the members of the microcommunity themselves.

The definition of "local issues" is vague inasmuch as it deals with "any other issues beyond the exclusive competence of Ukraine's governmental authorities" and with "human activity and development of a territorial community".

The terminology used in this draft law should be harmonised with the draft law "On General Meetings (Conferences) at Place of Residents of Territorial Community Members".

The recommendation is to use wording "general meetings and conferences" in order to make it clear that different rules and procedures apply to these two instruments.

The members of a territorial community and microcommunity are defined in the article, however, the word "member" (член) is not found in the Constitution of Ukraine where the word "inhabitant / resident" (житель) is used, andthe term "microcomminy" is new in the legislation.

Article 3: Art 3 para 1 stresses that public self-organisation bodies are "representative bodies" of microcommunities, while they are also characterized as "a form of direct democracy". This is misleading, since "representative bodies" need to be elected and thus constitute a form of representative democracy.

As regards the different forms of these bodies, it seems very far-reaching to refer even to houses, blocks or streets. While sub-local entities, such as, e.g., districts of larger cities, are also known in other European countries,[2] a segregation of local residents in such tiny is highly unusual. Although these may be the levels closest to the citizens, they are at the same time prone to the risk of a unilateral representation of individual interests and too little supervision by superior authorities. This is, for instance, reflected in Art 3 para 3 sub-para 2 according to which these bodies "represent and advocate the interests of microcommunities or individual members". The provision does not exclude the possibility that the interests of some individual members are taken care of to the disadvantage of other individual members.

Paragraph 4 of the article attributes a not for profit status for bodies of self-organisation; however, it is inconsistent with Article 17 on the financial basis of a body of self-organisation of population. Article 17 para 1 enlists the financial resources of bodies of self-organisation of population and some of them are "*funds received from business activities by enterprises, institutions or organisations established by a public self-organisation body"*.

Article 4: Art 4 para 1 mentions that the legal status of public self-organisation bodies is determined, inter alia, by the European Charter of Local Self-Government. Although this is surely commendable from the Council of Europe's point of view, the question remains whether the draft law is really in line with the European Charter of Local Self-Government as well as the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (which is not mentioned by Art 4 para 1).

Art 4 para 2 mentions a number of legal acts that determine the performance of functions by public self-organisation bodies, including "agreements". The draft law should expand on the legal nature of these agreements, e.g., whether they have a public- or private-law nature and

[2] See, eg, in Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Greece, Hungary, Lithuania, Poland, Portugal, Romania, Slovenia, Spain and Switzerland.

whether they need some sort of ratification by the microcommunity or the local community itself.

Article 5: This article contains specific provisions in case of city-district councils.

Article 6: This article mentions several principles according to which public self-organisation bodies operate. Although most of these principles are in line with common European principles such as the rule of law, transparency or accountability, they are partly overlapping (e.g., "rule of law" and "legality"), partly fragmented, vague and incomplete (e.g., Art 6 para 9: restriction to "delegated powers" only). Art 6 paras 4, 15 and 16 do not refer to principles, but rather to functions or certain procedural steps. Art 6 paras 13 and 14 are hardly compatible, while Art 6 para 11 is not consistent with Art 17 (see below).

Article 7: It is assumed that the reasons for which a person is deprived of the right to vote or eligibility by a court are regulated elsewhere.
How does Art 7 relate to Art 10? How does it relate to the criterion "entitled to vote" used in Art 9 paras 3 and 8, and to the wider definition of microcommunity members in Art 2 or the term "residents" used in Art 140 para 6 of the Constitution of Ukraine?

Article 8: The difference in Art 8 para 2 between "include a territory of the village, settlement [etc.]" and "part of a territory of the village, settlement [etc.]" is unclear. If the whole territory is covered, why does it need a public self-organisation body apart from the "ordinary" local authorities?
Again, Art 8 paras 3 and 4 refer to extremely small units in which such bodies can be created, including "other committees created on a territorial basis", which is highly undetermined.
Art 8 para 8 mentions the possibility of more than one public self-organisation body (of different territorial levels) which operate within the same territory. The hierarchy between them and their legal acts remains as opaque as the nature of their agreements referred to in this provision (see already above).

Article 9: Given the unclear distinction between "general meeting" and "conference" (see above), this article should be specified and made more coherent with the draft law "On General Meetings (Conferences) at Place of Residence of Territorial Community Members".

For democratic reasons, it would be better to let only the general meeting decide on this matter.

Art 9 paras 2 and 3 mention microcommunity members "entitled to vote". It should be clarified whether this means the right provided for by Art 7 para 1. If, however, this refers to the right to vote in national elections, which implies citizenship, Art 9 para 3 would contravene Art 140 para 6 of the Constitution of Ukraine which mentions the "initiative of residents" (and not just of citizens). The same goes for Art 9 para 8.

Art 9 para 7 vests the general meeting (conference) with wide discretion, e.g., with regard to its name, the definition of its territory or the key areas of its operation. It is hardly consistent that the permission under Art 12 para 3 should determine these issues.

Art 9 para 8 is highly problematic for democratic reasons: Given the very small units (houses, apartments, dormitories) to which these bodies may apply, it would be risky to use open ballot, since decisions would be prone to the exercise of force, pressure and other channels to influence members in their decisions. It is unclear who "registered members" (of the microcommunity?) are and what "entitled to vote" means in this context (see above). It is unsystematic to place this rather general provision about decisions of general meetings in the specific context of the procedure to establish a public self-organisation body.

Article 10: The relationship between Articles 7 and 10 is unclear. This provision does not fully respect the principles that should govern elections according to Art 3 para 2 of the European Charter of Local Self-Government – some of these principles are missing, and the ballot should surely be secret –, nor is it clear what "entitled to vote" means in this context, whether it requires, e.g., citizenship (see above).

The electoral rules entrenched in Art 10 para 4 are extremely vague, do they allude to proportional elections?

It is finally made clear, however, that the public self-organisation body consists of representative organs ("members") and is no instrument of direct democracy.

Article 11: This article vests the general meeting with wide regulatory discretion, e.g. with regard to the name, the definition of territory or the "own" powers of a public self-organisation body. It is hardly consistent that the permission under Art 12 para 3 should determine these issues.

Article 12: It seems that the respective local authority must grant permission to establish public self-organisation bodies unless this would violate the Constitution of Ukraine or certain laws, while the violation of other laws would not be an obstacle. Since the draft law vests general meetings with the widest possible discretion to determine matters such as territory or scope of functions, local authorities would not be able to prevent, e.g., an inadequately wide scope of territory or functions. As a consequence, local authorities and their decision-making powers could be considerably undermined by public self-organisation bodies whose organs, as mentioned above, are not even elected in accordance with the principles provided by Art 3 para 2 of the European Charter on Local Self-Government. The roles of bodies of self-organisation should be to support the local authorities (councils and mayors) and not to replace them.

Article 13: The context of this provision is extremely confused with the content of Articles 27, 29 and 30. The draft law should address the issue much more systematically and, above all, distinguish between the term of a public self-organisation body (which has no "office") and that of the organs ("members") working for it. It is recommended to dedicate a particular section of the draft law to the latter (election, functions, term of office, liability).

Article 14: The registration procedure, which is quite apart from the establishment and permission procedures, is rather complex.
The assistance provided by Art 14 para 14 is consistent with Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life.

Article 15: This article enlists the "own" powers of a public self-organisation body. Although the provision, together with Art 16 ("delegated functions") refers to the usual two scopes of local self-government, the distinction is misleading. The European Charter of Local Self-Government mainly seeks to protect local government from national or regional interference, but it does not address the question whether, within a local government, powers should be assigned to smaller sub-units in a parallel way, namely as "own" or "delegated" powers of the sub-units.
The European Charter of Local Self-Government provides for democratic elections of local authorities which must not be undermined by the at least partly undemocratic establishment of

sub-local authorities who are in charge of many ("own" or "delegated") local tasks, while the local authorities cannot efficiently influence the assignment of these tasks.

It is natural that the conference and/or body be given some room to decide over small internal organisation issues, but some of the powers given by the law are extremely far-reaching, eg "initiate voluntary amalgamation of territorial communities", "aid law enforcement agencies in the maintenance of public order in accordance with the law". How can such mini-local authorities initiate voluntary amalgamation? Raising signatures – then this could be the case for any local initiative and the voluntary amalgamation should not be singled out specifically. What about "aiding law inforcement agencies"? This provision seems very wide; does it include establishing sub-local militias or groups of "vigilantes"?

Para 7 of Art. 15 gives these bodies (representing residents) the "onw power" to "monitor the procedure for establishing utility service rates, the quality and cscolpe of utility services delivered […]; to sign, jointly with representatives of the utility service and repair work customer acceptance certificates in respect of the utility services delivered to the microcommunity members or reparis performed". This seems to duplicate and contradict Law 2866-14 on owners associations, which gives the same rights to representative association of owners, not of residents…

The clause on expansion or limits entrenched in Art 15 para 3 suggests that the general meeting may individually decide on the scope of "own" powers, but the fact that the concrete allocation of "own" powers depend on such a decision should be made more explicit.

Article 16: The range of possible "delegated" tasks is extremely wide, given also the residuary competence in Art 16 para 1 sub-para g. As local councils may determine the delegation in accordance with Art 16 para 5, their influence is, however, safeguarded.

It is of course natural (and provided for in Rec(2001)19) that local authorities themselves (and not the law) delegate some functions to bodies of self-organisation. According to available information, it seems that 53 % of the established self-organisation bodies have already been given delegated powers. The legal status of these delegated powers is however unclear. Local authorities can decide to delegate powers among those appearing on the list, which is typical.

They are supposed to exercise some form of control (monitoring, as expressed in the draft law) over their implementation, but it is not clear if this implies the right to change the decisions taken by these bodies. Normally, such right should exist: local authorities are public authorities vested with the task to protect the interests of the local community and should not be forced to sit back in cases micro-organisations take bad decisions on the behalf of the local authority (indeed, in cases of delegated powers they act as agents).

It seems also (para 5) that local authorities can only end the delegation in the instances and in the manner set forth by law and agreement. It is to be hoped that the agreements concluded will be solid and will allow the local authority to expediently put an end to the delegation in case this is needed! It would probably be better to give more space to local authoritites to take such decision based on expediency considerations; in such cases of delegation (where the body of self-organisation acts like an agent of the local authority), there is no need to over-protect the body against the local authority…

Indeed, speaking of over-protection: para 6 establishes that if delegated powers are not supported by funds or assets they will be implemented within the allocated financial resources (here the material ones are no longer mentioned), then the body/conference may withdraw unilaterally from the agreement with only one week of advance notice. Such body/conference may use this article to exhaust the resources given in a very short period of time, then claim funds allocated are not sufficient and withdraw. It should be mentioned that this should apply only if the local authority has not fulfilled its contractual obligations to transfer resources.

Article 17: The rules regarding the financial basis of a public self-organisation body demonstrate that these bodies depend, inter alia, from local budget funds, and that these bodies are therefore not financially "independent" (see above). It is unclear what "passive income" or "other earnings not prohibited by law" means. "Local taxes on the basis of voluntary self-taxation, as introduced by a general meeting (conference)" is problematic since this vests the general meeting (conference) with a specific kind of regulatory competence going far beyond the normal powers of general meetings. Moreover, since decisions in the general meeting need not be taken unanimously, one may doubt whether "voluntary self-taxation" is a proper term. Tax powers are very important powers and normally only attributed to public authorities, so it is recommended to not give access to them to the bodies

of self-organisation. One can easily see how such powers could be misused e.g. by a majority of residents of an apartment building against a minority…

Articles 18/19: It seems that Art 18 para 1 refers only to public self-organisation bodies legalised through registration, while Art 18 para 2applies to all such bodies. The distinction between bodies which have and do not have legal status should be made clear as should be which provisions of the text apply differently

Section V (Articles 20-28): The section includes several provisions on the organs ("members") of a public self-organisation body which should be systematically integrated with Art 13, while provisions such as Art 20 or 22 would be better placed in Section III.
Art 22 para 1 distinguishes between "mandatory decisions" and those that are only "recommended", but it is not clear how decisions could be "recommended".
The wording in Art 22 para 1 "other entities affected by these decisions" should be specified.
Art 22 para 4 provides no possibility for an individual complaint against decisions of a public self-organisation body.

Article 24: The powers of the chairman are vast, including the management of a public self-organisation body, the issuing of instructions (orders) (those to which Art 22 para 5 refers?) or "other powers" established, inter alia, by the Regulations of the public self-organisation body.

Article 26: An audit committee should be an independent body and have investigative powers fixed by the Law. Art 26 clearly does not reach this standard. While it is not uncommon that elected authorities establish their own specialised committees, this should not preclude the possible intervention of "real" independent audit bodies.

Article 27: This provision is very unsystematic, since its content relates to Articles 13, 29 and 32. It is strongly recommended to develop a coherent section on the election, term of office and early termination of organs ("members") of public self-organisation bodies.

Article 28: It is unclear how monitoring would be exercised by "governmental authorities within their competence". A judicial control by courts is not provided.

Article 29: As above. The provision is not systematic; see Articles 13, 27 and 32.

Article 30: A local government's possibilities to liquidate a public self-organisation body are very limited. For instance, a liquidation of the body itself would not be possible even in case of continued illegal behaviour.

Article 31: Art 31 para 2 provides the principle of non-interference with a public self-organisation body, "unless otherwise provided by law". It should be specified which kind of interference is possible under which conditions.

Article 32: Art 32 para 1 does not specify who may appeal to which council or court under which circumstances.
Art 32 para 2 includes further provisions on the termination of delegated powers of the body of self-organisation of populations, termination of powers of members, which is unsystematic with regard to Articles 13, 27 and 29.

Article 33: Possible sanctions are not specified; it is necessary that integrity standards pertaining to local government officials, as expressed in Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life and in the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, are established elsewhere in the law.

III. Overall Analysis

The draft law "On Self-Organisation Bodies of Population" seeks to regulate public self-organisation bodies as sub-units of local government in a very detailed and complex way. It is commendable that the draft seeks to address important issues such as local democracy, transparency and accountability and that explicit reference is made to the European Charter of Local Self-Government. While the legal definitions and the detailed legalistic approach of the draft law serve the overall aim to provide clear and precise rules on these bodies, the draft could still be greatly improved both with regard to form and content.
As regards the form, many provisions are placed in an unsystematic way, i.e. in the wrong sections, even though they address the same or similar issues. Some legal definitions that would be useful are missing, while other terms are defined ambiguously. The draft law "On general meetings (conferences) at Place of Residence of Territorial Community Members"

clarifies the context to some degree, but the question is whether both draft laws should not rather have been incorporated into one single document or whether at least explicit references between both laws would be useful.

As regards the content, the intention is to guarantee a type of sub-local government which has strong powers vis-à-vis local government, but whose establishment and continued existence can be influenced by local authorities only in a limited manner. However, direct (sub-local) democracy comes only into play as far as general meetings are concerned, while the bodies ("members") of public self-organisation bodies are a token of representative democracy. The European Charter of Local-Self Government does not explicitly deal with sub-local forms of direct or representative democracy, although it provides in its Art 3 para 2 that the right of local self-government shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This shall, however, in no way affect recourse to assemblies of citizens, referendums or any other form of citizen participation where it is permitted by statute.

There is no doubt that the draft law would be such a statute and that the proposed general meetings constitute such assemblies of citizens, even though they are limited to certain parts of the local territory. The problem, however, is that public self-organisation bodies are managed by "members" and, thus, representative organs. It is to be deduced from Art 3 para 2 of the European Charter of Local-Self Government that where sub-local authorities are given a large share in the performance of local functions, these authorities must meet the same democratic standards. Given the extremely small ambit of such bodies – which may even be established for streets, blocks or houses – the lack of some of the principles mentioned in Art 3 para 2 of the European Charter of Local-Self Government is worrying. This critique particularly concerns the possibility of open ballot. The possibility for certain persons living in the same house, or block of flats to exert influence or pressure on others in order to get elected is greatly facilitated by open ballot.

Moreover, the provisions on membership and the right to vote in the general meeting (conference), the difference between general meetings and conferences (which are not clearly set out at the beginning of the draft law) as well as on the election to become an organ ("member") of the public self-organisation body are underregulated, scattered and confused. There should also be clearer distinction between the provisions on the "public self-organisation body" (whose nature as a legal entity should, moreover, be clarified in the case of legalisation without registration) and its organs ("members"). When contrasted to the draft

law “On general meetings (conferences) at Place of Residence of Territorial Community Members”, the complex functional relationship and need of co-existence of a general meeting or, what is more, conference on the one hand and the public self-organisation body on the other hand are questionable.

As regards powers, the European Charter of Local Self-Government focuses on the scope of local powers vis-à-vis national or regional powers, while it does not say anything on the question of an intra-local distribution of competences. If domestic legislation provides for sub-local entities and vests them with competences because they are “closest to the citizen” (Art 4 para 3 of the European Charter of Local Self-Government), it must, however, also legitimize them through democratic elections, accountability and supervision. The draft law neither gives local authorities any great say in the question of permission, supervision or liquidation of public self-organisation bodies nor does it sufficiently provide for independent auditing or judicial review. As a result, public self-organisation bodies do not serve as subsidiary or auxiliary bodies to local authorities, but they rather form a (new) type of territorial government of their own that, to some extent, might rival local governments in a similar way – though, “from below” – as is usually attributed to national or regional governments.

The same goes with regard to the compatibility with other provisions of the European Charter of Local Self-Government, such as those concerning financial resources or local authorities’ right to associate: The draft law addresses these issues only from the perspective of public self-organisation bodies, while it does not seek to protect local authorities vis-à-vis superior levels of government. The Charter does not explicitly regulate the relationship between local authorities and sub-local authorities. Even though Art 13 European Charter of Local-Self Government provides that the principles of local self-government apply to all categories of local authorities existing within the territory of a state and even if public self-organisation bodies are conceived as types of (sub-)local government in the sense of Art 140 of the Constitution of Ukraine, the Charter does not entitle sub-local authorities with certain rights vis-à-vis local government. According to the draft law, however, the rights of a local government seem to be more at stake than that of a public self-organisation body, inasmuch as a local government has little discretion to prevent or liquidate such bodies or to influence its decisions.

As regards the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, the draft law implements some of its

provisions, such as the possibility for residents (not just Ukrainian citizens)[3] to vote in general meetings or to be elected as members of public self-organisation bodies. Above all, it implements Art 2 para 2 ii a of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, which mentions "procedures for involving people which may include consultative processes, local referendums and petitions and, where the local authority has many inhabitants and/or covers a large geographical area, measures to involve people at a level close to them", as well as similar requests of the Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life. Public self-organisation bodies may be seen as a measure to involve people at a level closest to them, although the draft law does not restrict them to large geographical areas, but allows for extremely small sub-local units. Even though the law-maker's intention to provide for citizen-closeness and subsidiarity is commendable, the concrete problems arising from this draft law, also with regard to the European Charter of Local Self-Government, cannot be resolved just by reference to Art 2 para 2 ii a of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority. Finally, the unusual smallness of such units raises doubts whether they would be capable to deal with the wide range of issues attributed to them, including even private law enterprises and taxation.

IV. Recommendations

On the substance and aim, the draft law can be supported and it meets European standards. It is aimed at providing better foundations as regards the procedure of establishment and operation of the bodies of self-organisation of populations; encouraging local residents to actively engage in local affairs. It is however unclear why there needs to be two separate laws, one on conferences and the other one on bodies that these conferences may create; there is clear duplication between the two and several provisions appear in both.

However, it is recommended to revise the draft law in order to address several issues, both with regards to form and content.

The main issue to be criticised is the very broad competences given to such bodies directly by the law or by the general conference (both of which may actually be called "own powers").

[3] Even though the Ukraine has not ratified the Convention on the Participation of Foreigners in Public Life at Local Level.

Such broad competences could undermine local government itself and limit its capacity to represent the local community, to devise and implement policies which benefit all residents and to offer quality public services. While it is natural that the local self-organisation bodies and conferences have some autonomous capacity to decide on issues related to thier own organisation, some of the powers included in this draft law among "own powers" seem to be excessive. It is for example the case for the taxing powers that Art. 17 attributes to the Conferences, which is clearly excessive. This question obviously does not concern competences which can be delegated (and taken back) by the local authority – such powers do not undermine its capacity as they are left to its very discretion.

Detailed recommendations to improve the draft law follow from part II of this analysis. More generally, it is recommended:

- to make the law more coherent and systematic, in particular with regard to the provisions on the right to vote, elections, term of office (not a subject??) and liability of organs ("members") of public self-organisation bodies, and to improve the coherence with the draft law "On general meetings (conferences) at Place of Residence of Territorial Community Members";
- to clarify and extend some of the legal definitions as well as the provisions on the legal nature of the public self-organisation bodies and on the relationship between overlapping (smaller and larger) public self-organisation bodies; improve and harmonise terminology with the draft law "On Self-Organisation Bodies of Population".
- to simplify the procedures as regards the procedures of establishment and operation of the bodies of self-organisation of population;
- to introduce secret ballot with regard to the elections of members of public self-organisation bodies;
- to reassess the need of very small units as well as the actual capability of persons to engage both in general meetings or conferences or as members of public self-organisation bodies as intensely as proposed;
- to reassess, in the light of the purposes of direct democracy at local level (such as citizen-closeness and straightforward procedures), the complicated relationship between general meetings and conferences on the one hand and public self-organisation bodies on the other hand; the rules and procedures should apply

effectively both in large city and small village communities as well as in different regions of Ukraine.

- to reduce the functions of public self-organisation bodies and/or make them more accountable to local authorities; this includes both the reduction of "own" powers and the modification of the status of "delegated" powers in order to make sure they do not become "own" upon delegation; in any case, taxing powers should not be given to general meetings/conferences.
- to improve the independence of auditors and options for judicial review.