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**CENTRE OF EXPERTISE FOR LOCAL  
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**REPORT ON THE RESULTS OF  
ROUND TABLE DISCUSSION ON  
LOCAL SELF-GOVERNMENT REFORM IN UKRAINE  
*(Sevastopol, 27-28 August 2012)***

The present report was prepared by the Council of Europe Centre of Expertise for Local Government Reform, Directorate General II - Democracy, in co-operation with the Council of Europe expert Prof. Gérard Marcou, University Paris 1 Panthéon-Sorbonne, Director of GRALE (Research Group on Local Administration in Europe), France, Prof. Pawel Swianiewicz, Warsaw University, Poland, and Ms. Diane Bunyan, founding partner, GEM Consulting, UK.

## Introduction

This report is prepared as a result of the round table discussion devoted to the draft Concept of the Local Self-Government Reform in Ukraine and in response to the request of the Constitutional Assembly within the framework of the Council of Europe (CoE) Programme to Strengthen Local Democracy in Ukraine (2010-2013, funded by the Government of Sweden).

The report is based on the 6<sup>th</sup> version of the draft Concept. Previously, a detailed appraisal of the draft Concept of March 2012 was submitted officially by the CoE in June 2012<sup>1</sup>.

The discussion on the last version of the Concept confirmed the previous assessment: the draft Concept represents an adequate basis for the comprehensive reform of LSG and territorial organisation that has been recommended by the CoE for many years, provided that some points are to be clarified and that some proposals are to be considered. As a whole the new draft was significantly improved on several points:

- The strategic vision is improved thanks to the identification of the purpose of each stage of the reform;
- The future functions of the local State administration at the *rayon* and *oblast* levels are clarified;
- There is a clear commitment on incentives to municipalities to undertake the reform and on the future financial basis of the reform, although this needs to be spelt out more in detail: the financial aspects will probably decide on the success or the failure of the reform.

However, some important issues still need clarifications, and the document could be improved further. The key points of the reform and of the implementation stages should be reviewed.

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<sup>1</sup> CELGR/LEX 4/2012, dd. 12 June 2012, sent to the Ministry of Regional Development, Parliamentary Committee on State Building and Local Self-Government, Presidential Administration and Secretariat of the Cabinet of Ministers.

## **I. Key points of the reform**

1. The purpose of the reform is to improve the quality and accessibility of public services provided locally by local governments to the population.
2. There will be a three tier system with LSG bodies and State administrations at each level.
3. The *matryoshka* system will be abolished where it still exists: local councils within the territory of a city with equal LSG rights leads to confusion in the allocation of tasks; this will not rule out the possibility of self-organisation of citizens.
4. The key issue of the territorial re-organisation is the territorial reform at the first level, in order to achieve a pattern with first level units that have the administrative and financial capacity to perform the functions devolved upon them.
5. There will be elected executive bodies of LSG at each level: this requires a constitutional reform in order to provide for the election by regional and district councils of their own executive body.
6. As a consequence, the local State administration will change in nature. It will not be a general-purpose administrative body any longer, but an authority in charge of the oversight of the legality of local government decisions, and in charge of the control and coordination of the local branches of the central government departments and agencies (see par.5 in "reform tasks").
7. Citizen participation in the management of LSG affairs will be developed on the basis of a new legal framework, LSG bodies and their public servants will be accountable to citizens.
8. As regards local finance, the concept lays down four crucial commitments for the functioning of the new system: a) equalisation grants will be allocated directly to all local budgets, on the basis of unified standards, for the delivery of administrative and social services; b) own competencies shall be financed through local taxes and fees linked to the territory and the council shall have the power to fix rates; c) no tax exemption may be granted on local taxes, but by the local authority itself; d) LSG bodies shall have access to loans in order to improve the financing of infrastructure investments, subject to State control and rules preventing the risk of bankruptcy.
9. New possibilities for LSG to pool resources and assets for common purposes will be introduced.

## II. Reform stages

The Concept still provides for two stages but the period of implementation is extended; their purposes appear more clearly:

First stage: 2012-2014

Second stage: 2015-2017

This is in line with the schedule of political elections: parliamentary elections in 2012 and 2017; presidential election in 2015.

This makes sense as a mandate for the new Parliament, meaning that the reform should be fully implemented before the 2017 parliamentary elections.

The first stage is aimed at creating favourable conditions for the reform. It has in some ways an experimental character:

- The Concept put first the adoption of the legal framework for broader citizen participation; a draft law on the subject is pending at the Parliament: this could help raising interest for the reform among citizens while demonstrating what benefits they could receive, with a less fragmented and more decentralised local government. This should be accompanied by action to raise awareness of the reform and make it acceptable to citizens. But, over-regulation should be avoided, as pointed out in the assessment of the pending draft law in July 2012, especially when there is no power delegation upon citizen organisations.
- There should be a new legal framework for voluntary amalgamation of municipalities, with State support for improving infrastructure and public transport during three years; the CoE recommended for several years to link the territorial reform and a development programme as an incentive for the consolidation of "*hromadas*".<sup>2</sup>
- The law should establish a new legal framework for inter-municipal co-operation.
- The law should determine own competences: duties and powers of LSG bodies.
- Administrative and social services should be unified and standardised as a guarantee for citizens as regards access to

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<sup>2</sup> 1) CELGR/LEX 1/2012, dd. 13 March 2012: Appraisal of the draft Law of Ukraine "On Amalgamation of Territorial Communities"; 2) CELGR/LEX 4/2012, dd. 12 June 2012: Appraisal of the draft Concept of the Local Self-Government Reform and Territorial Organisation of Power; 3) DPA/LEX 2/2011: Appraisal of the draft Law of Ukraine on Stimulation and State Support of Unification of Rural Territorial Communities.

services under equal conditions, whether they are provided by local governments or by local State administrations.

- Local employees have to be prepared for the reform; the document points out that the reform will increase the responsibilities of the personnel and therefore require a review of classifications; this could help gaining their support for the reform<sup>3</sup>.
- The Ministry of Regional Development, Construction, Housing and Local Economy is clearly vested with the responsibility for the implementation of the reform.

The second stage is for the general implementation of the reform:

- There will be new legislation for the whole LSG system; although the options for the consolidation (unification and/or inter-municipal co-operation) of the first tier of LSG are not clearly stated; the Concept only suggests that the territorial reform should be completed in the second stage of the reform;
- The determination of functions and resources of local governments shall be achieved;
- A new legal framework for the relationships between LSG bodies and local State administration will be created;
- The Constitution will be revised to create elected executive bodies in the *oblasts* and *rayons*; the new concept of the local State administration will be developed.

### **III. Issues and recommendations**

#### ***1. Some important issues are overlooked***

Looking forward to the Constitutional reform, the Concept should propose a modern definition of the municipality instead of a list of settlements of different kinds, urban or rural. Boundaries are an important issue: the boundaries of the municipalities should embrace every piece of land (even outside of the built-up areas) within local government units, and there should be, after the reform, a full coverage of the territory by the municipalities. This would increase considerably the development capacity and the tax potential of municipalities.

The impact of the consolidation at the first level on the *rayon* pattern is not contemplated, whereas stronger and larger *hromada* will question the

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<sup>3</sup> CELGR/LEX 3/2012, dd. 8 June 2012: Appraisal of the draft Law of Ukraine "On the Local Government Service".

present size and boundaries of *rayons*. In 1961 there were 251 and in 2012 – 490 *rayons*; the number of cities of *oblast* significance (*mista oblasnoho znachenyia*) increased also significantly and often includes very small towns (some of them having around 10,000 inhabitants). There seems to be a need to reduce both numbers of rural *rayons* and of cities of oblast significance. The existence of numerous small cities governed separately from their rural surrounding hampers management of the functions which should be delivered for the whole functional urban area. But it should be stressed that the recommendation to reduce the number of cities of oblast significance is valid only under condition that clearly self-governmental character is secured for *rayon* (as discussed above). Otherwise the reform would mean re-centralisation, not de-centralisation.

The Concept is silent on the future distribution of tasks between the State administration and the three LSG levels; this issue is closely linked with the local finance issue, since resources have to be adequate to the tasks.

The issue of transferring personnel and services from the State administration to LSG bodies following the devolution of functions is overlooked. Yet the personnel issue is extremely important for cost reasons and for the management capacities of the new local government executive bodies. The implementation of the reform will require a quantitative and qualitative strengthening of the staff of LSG bodies. This cannot be achieved at a reasonable cost without transferring services and personnel from the local State administration and from local branches of the central executive organs, in accordance with the competences devolved upon LSG bodies.

The impact of the reform on gender equality is not considered. An example of the current inequality is that in Ukraine, in common with many countries, the number of women elected at local level is higher in the smaller, less powerful councils. In 2010 women held 51% of the seats in village councils: 46% in townships and 28% in city districts but not single head of a regional council, regional capital city council, or regional administration is a woman.

Increased responsibility, power and resources are likely to increase the number of men coming forward to both to stand for elected office and to work for local administrations. Local government reform has often led to a decrease in the number of women elected and working at senior levels. This can only be addressed by a programme of specific support and encouragement of women to stand for election and to apply for senior positions in the new LSG structures.

There needs to be a gender analysis of the impact of different ways of raising finance at a local level. User charges have a particularly adverse affect on women as they are more likely to use local services. For example licenses and site fees for street traders affect more women, property tax more men. It is currently unclear from the plan how the balance of funding sources will be determined but a gender analysis of their different impact should be done before a decision is taken.

## ***2. Other issues are not treated precisely enough***

The scope of delegated competencies is crucial: if they are overwhelming, LSG bodies will become mainly agents of the central government. Furthermore, paramount importance has to be paid to sector legislation. During the round table in Sevastopil, the need to coordinate sector reforms (for example in education or health) with the LSG reform has been emphasised by many participants.

The draft should provide for the general competence clause of local councils as provided by Article 4 of the Charter (ECLSG, European Charter for Local Self-Government).

The distinction between own and delegated competences, that is already present in the 1997 Law on LSG has to be worked out more precisely, in particular with regard to the typology of local government expenditure in the Budget Code (free own tasks, mandatory own tasks taken into account in the equalisation grant, delegated tasks). During the round table, it was revealed that about 75% of local budgets were devoted to delegated and own mandatory tasks, and that State funding for delegated tasks was always 20% lower than costs; the shortage of the state money for these tasks is to be covered by own resources of local budgets. It is therefore important to think about the level of discretion that local governments should have for the different categories of tasks.

The ECLSG provides for full compensation of transferred tasks; this requirement was further clarified by a recent recommendation of the CoE Committee of Ministers. This obligation should be re-stated in the Concept.

## ***3. Several statements raise questions.***

The partnership between the State and local government (p.3) has to be worked out: beyond an obvious interaction, the legal and financial instruments have to be clarified.

The emphasis on State standards for the delivery of administrative and social services: such standards can be useful but they cannot be taken as a condition prior to the devolution of functions; otherwise, they can be used to postpone or restrict the scope of the reform (see previous appraisal). It is good that this version of the Concept does not consider any longer the adoption of service standards as a condition for the devolution of functions.

Furthermore, the notion of standards is not used by all stakeholders with the same meaning. For the Ministry of regional development, a standard is a norm regulating the access to public services, it is an entitlement; for others this is the basis for the calculation of financial needs; there are also other definitions. These definitions are not necessary incompatible, but they cannot have the same function. It is not possible to build a budget on the addition of costs; it has to start from the resources available and then ensure equity in sharing of resources according to needs. Furthermore, even if standards are issued as entitlements they should not go too far into the details. The study of some foreign experiences could be helpful (France, UK, Sweden, Italy).

Furthermore, if common service standards have to be developed and agreed, they have to be communicated to citizens so that they understand what they are entitled to. These standards should not be overly prescriptive but should include the need to show that services are accessible and used by all within the community. In order to show that services are being delivered fairly data will be required. For example this could include the composition of the local community; their needs; who uses the services provided and who participates in decision making. This data needs to be collected on a disaggregated basis to show the number of women/men; young/old etc. This information could also be extended to require the gender monitoring of budgets etc.

The scheme of the territorial reform of the first tier remains unclear: for the Ministry of regional development, the priority is given to voluntary amalgamations supported by strong incentives and to inter-municipal co-operation (IMC). But there is no concept of IMC. If it is based on agreements to pool resources and assets on projects, this will not help the territorial reform; on the contrary, there is high risk that *hromadas* will turn to this option in order to avoid amalgamation. The law has to establish a legal framework for integrated inter-municipal and multifunctional co-operation bodies, with own resources. This point has to be further elaborated in the Ukrainian context.



The financial reform announced in the Concept is welcome but also has to be elaborated. One of the first important steps in reforming LSG finance was introduction of the Budget Code in 2001. The next steps are still to be made, in particular:

- a. Strengthening revenues from own sources. The concept Plan rightly identifies that the share of own revenues is very low (local fees and taxes constitute just below 3% of total LSG revenues) but is very vague on the ways in which they could be strengthened. In particular, it seems that no major change is possible without introduction of the property tax. It is worth considering the simple version of the tax, which would be much easier to implement than complicated ad valorem arrangements (see reports on prospects of property tax in Ukraine prepared within the SUFTAR DFID Project). Accompanying materials of the draft Concept mentioned the future option of giving some local taxing power in relation to PIT, but a necessary pre-condition would be to change the current system to allocation based on place of residence (instead of work place, or place of registration of the employer).
- b. There is still a need to discuss stabilisation of the transfer system (set of criteria used in the allocation formula). The present system is still not free of subjective decisions on resource allocation. A very important issue would be an extension of the formula to the basic level, as contemplated by the Concept.
- c. Financial reform would be a necessary pre-condition for building effective incentives for voluntary amalgamation, such as special allocation for merging municipalities in the Development Fund. This may be a good idea, but only if allocation formula of Development Fund is extended down to the basic level. This in turn might require provisions in the Budget Code allowing for multi-year usage of obtained subventions.

The oversight exercised by the State administration on local government acts and decisions is on their legality, which is correct (p.9). But on page 13 it is stated that the reform requires a mechanism ensuring the control by the State administration and by the population of the provision of administrative and social services to the population. From the viewpoint of

control, State and LSG bodies cannot be treated on the same footing. On page 9 (par.5), there is a statement on the necessity to establish a mechanism of State control of the "quality" of the services provided to the population. As such this could challenge the scope of control and open the door to an extension of the oversight to the merits (appropriateness) of decisions. The "quality" in the meaning of "performance" should be assessed by independent bodies, with a fair procedure (for example a court of accounts or independent inspections) and without breach of LSG rights. "Quality" has to be based on conditions, entitlements, standards or targets against which such an assessment can be done.

Again in paragraph 5 it is proposed that local councils may vote distrust against the head of the State administration. This proposal is inappropriate and should be removed: the authority performing oversight functions must be independent from the bodies it supervises. This provision results from present legislation, but the future local State administration will not have the same functions as today, in particular the function of the executive body of the region and district councils.

As regards the future of the local State administration, the question remains if it is really necessary to keep local State administration on both *oblast* and *rayon* level, while changing its role from service delivery to supervision of local governments. Supervision functions may be effectively performed from the *oblast* level (especially if the number of local governments of the basic level is going to be reduced).<sup>4</sup>

Lastly, the leadership and the monitoring of the reform have to be clarified. The proposal to assign the monitoring of the reform to the Ministry of regional development can be supported. This Ministry has accumulated much expertise on the subject for many years and has produced good preparatory documents. But the political leadership of the President of Ukraine is necessary to overcome all obstacles and oppositions. Additionally, close co-operation has to be ensured with departments/ ministries in charge of the sector legislation affecting local government competences and finance. Therefore, in the Ukrainian

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<sup>4</sup> Similar Polish reform of 1998/1999 led to liquidation of the state administration on the powiat level (which is to a large extent an equivalent of the Ukrainian rayon), while the supervision is performed by the wojewoda and Regional Chambers of Accounts from the regional (województwo) level. Another issue is the capacity of the local State administration to exercise qualified legal oversight in 490 *rayons*. In France, for key legal issues, specialised supervision poles with good lawyers dealing with specific cases on an interregional basis were set up.

context, at the level of the executive power, there needs to be a close co-operation between a task force in the Presidential Administration and the Ministry of regional development, and the Minister should report regularly to the Cabinet of Ministers, as well as the ministers in charge of sector legislation.

#### **IV. Recommendations of the Sevastopil Roundtable**

The Recommendations propose to the President of Ukraine to adopt the Concept as a basis for the reform and legislative changes.

However, they should not be limited to this first stage, so the CoE experts recommended revising them on two points:

1. The territorial reform of the first tier should be done either through amalgamation or co-operation of *hromadas*. The formulation of this second option is too timid: a) it does not mention possible co-operation for the implementation of own competences that are of national and not of local significance (for example, education or health care) thus limiting co-operation to domains with little impact on citizens; b) if a stable, long-term and multi-functional co-operation is not established, this solution would not prepare the ground for effective territorial reform.
2. The commitment to establish elected executive bodies of the *oblast* and *rayon* councils has completely disappeared from the list of recommendations, whereas it is a key issue with regard to the ECLSG.

#### **V. Conclusion**

As it was presented at the Sevastopil Roundtable, **the Concept of the LSG Reform should be adopted at the highest political level without further discussions and delays.**

There is certainly scope for further improvement, and a number of points require further preparatory work and discussions with stakeholders. But no great reform has been successful because it was based on a perfect blueprint. What is essential is to start moving in the right direction and to have the political commitment.