Strasbourg, 7 June 2019

CSD/LEX(2019)1

EXPERT OPINION

on the Draft Law of Ukraine No. 10158 "On Amending Certain Legislative Acts of Ukraine on the Forms of Direct Participation of Citizens in the Management of Local Affairs and Statutory Rulemaking"

The present expert opinion was prepared by the Democratic Governance Department of Directorate General II - Democracy, Council of Europe Secretariat, in co-operation with Alfonso Zardi, the Council of Europe international expert.

EXPERT OPINION

on the Draft Law of Ukraine No. 10158 "On Amending Certain Legislative Acts of Ukraine on the Forms of Direct Participation of Citizens in the Management of Local Affairs and Statutory Rulemaking"

The present expert opinion was prepared in the framework of the implementation of the Council of Europe Project "Promoting civil participation in democratic decision-making in Ukraine" upon the request of the Head of the Committee on State Building, Regional Policy and Local Self-Government of the Verkhovna Rada of Ukraine[1] concerning the Draft Law of Ukraine No. 10158 "On Amending Certain Legislative Acts of Ukraine on the Forms of Direct Participation of Citizens in the Management of Local Affairs and Statutory Rulemaking".

1. Introduction

Since 2015, a number of draft laws for supplementing and/or amending existing legislation on local democracy and civil/ citizen participation. The Council of Europe has provided two legal opinions on pieces of draft legislation, concerning General meetings (conferences) of population and Bodies of self-organisation of population respectively[2].

In the light of the several drafts submitted, covering different aspects of local self-government and civic participation, a working group (led by two parliamentarians, Ms Olena Boyko and Mr Lyubomyr Zubach) was set up under the Committee on State Building, Regional Policy and Local Self-Government of the Verkhovna Rada of Ukraine in 2018 which included members of Parliament, MinRegion, LSG associations, experts and civil society representatives. The working group produced a comprehensive draft law #10158 which aims at amending several pieces of legislation at the same time, thus giving consistency of approach and avoiding legal uncertainties due to possible lack of coordination between the numerous pieces of legislation in force.

It is this draft that is being considered in the framework of this opinion.

2. General appraisal

The draft can be considered as a positive step towards the systematisation of existing legislation on local self-government as regards both the functioning of "representative" bodies like city councils and the "participation" of citizens in the management of local affairs through citizen participation mechanisms (local citizen initiatives, consultations, referenda, self-organisation bodies, etc.). It can be commended in particular - as regards the former aspect, "representative" local democracy – for adding the notion of "ubiquity"[3] to the list of fundamental characters of a local self-government, thus making it clear that all territory of the State be subject to the jurisdiction of the same level of local-government. The second aspect that deserves approval is the requirement that local authorities adopt a "communal charter" that lists the aims and means of local self-government at the level of the community. While specific comments will be made under the appropriate provisions hereunder it is worth mentioning from the outset that these two aspects of the draft law go into the direction of filling gaps in the current legislation and bringing it more into line with existing European legislation and practice.

The comments made hereunder should be considered as an attempt at clarifying notions and simplifying procedures for the functioning of bodies and implementing practices in the areas of both "representative" and "participatory" local democracy, that could find their consecration in a forthcoming law.

Finally, this would also be in line with the priorities of the Agenda for decentralisation reform in Ukraine, adopted on 23 January 2019 by the Cabinet of Ministers of Ukraine, which mentions local elections, local referenda and citizens' direct participation in decision making at local level as issues that need to be addressed (and solved satisfactorily).

---

[1] By letter of Mr Vlasenko dated 21 March 2019 № 04-14/13-853

[2] http://www.slg-coe.org.ua/category/documents/appraisals/?lang=en
Draft Law of Ukraine "On general meetings (conferences) at a place of residence of territorial community members"
CoE Appraisal CELGR -LEX (2016)7
Draft Law of Ukraine "On self-organisation of population"
CoE_Appraisal_CELGR -LEX (2016)6

[3] In plain English, "ubiquity" is the quality of being ubiquitous, meaning "to be present everywhere or in several places at the same time". The word ubiquity of probably an inadequate translation from Ukrainian, the intention being to ensure that no part of the territory belonging in a local authority escapes its jurisdiction (in other terms, that there are no territories subject to the direct jurisdiction of a higher authority).

3. What is envisaged by the draft law – and what is not

The draft law mainly amends and specifies the provisions of the law on local self-government on procedures concerning general meetings of residents, bodies of self-organisation of residents, public hearings, and citizen/local initiatives. It is to be noted that the right to participate in public affairs is based on the provisions of the Constitution and tools and mechanisms specified sporadically in legislation, are not applied everywhere and are largely underused or not available to a large part of the population.

The draft aims therefore at making their availability (almost) universal, requesting (but not obliging) in addition each municipality to adopt its "communal charter" in which the relevant implementing provisions will find their place. The risk however is that the law, with all its positive intentions, slightly "overregulate" citizen participation instead of just setting main principles – guaranteeing equality of treatment and fairness of participation – and leaving it to local authorities, through their "municipal charters", to take local reality into account when fixing ceilings, quorums, majorities, etc. Also, the law seems not to be fully "aware" of the provisions and practices that already exist in the same area, as well as guidelines and other laws. Prospective new laws should use and possibly consolidate "good practices" by municipalities across Ukraine and provisions already enshrined in existing normative documents and guidelines.

It is also typical of the exercise of local self-government to act within the boundaries of law only to the extent that it is *required* by law. Instead, local *self*-government is based on the assumption that a margin of discretion exists and that not all municipalities will necessarily follow the same path and use the same tools. This may well correspond to different conditions, circumstances and needs. In the field of local democracy such "margins" need to be protected and local authorities be set free to act responsibly within them.

The draft also transfers the responsibility for approving (registering) the "municipal charters" to the Minregion (previously the Ministry of Justice) thus comforting this ministry in its role of supervisory and supporting body for local authorities.

If there is a lacuna to be spotted in this draft it is the lack of provisions for "participatory budgeting" which is gaining ground across Europe and in Ukraine too. Again, what is not prohibited – and participatory budgeting is *not* prohibited by law – can be done, and there are examples of this technique being practised in numerous municipalities. The value of mentioning it in a law on "participatory" democracy is that it would become visible and therefore positively appraised, meaning that local authorities would feel encouraged (not obliged) to use it. In this case like in others, some basic rules, aiming at ensuring equality of treatment and access ("ubiquity" in the terminology of the law) would be welcome.

Having regard to the existence of standards at European level on the participation of foreigners in public life at local level – especially the Convention on participation (STE 144) and the Additional protocol to the Charter of Local Self-government (STE 207) – it is to be regretted that the draft law adopt a restrictive definition of who can or cannot participate in the various processes.

Finally, the boundaries of the respective competences of a local council and of the body (or bodies) "of self-organisation of population" that may exist within it are somewhat blurred. It is important that both competition between and "replacement" (in practice) of the former by the latter be avoided at all costs.

4. Comments by article in respect of each law to be amended

Only the provisions deserving a comment or eliciting a remark are reproduced hereunder. ***Bold*** *denotes amendments to current legislation, subject to scrutiny here.*

Code of Administrative Procedure of Ukraine

Article 264. Features of proceedings in the cases of contested regulations adopted by executive authorities, the Supreme Council of the Autonomous Republic of Crimea, local authorities or other power entities…
2. The right to challenge a regulation shall be granted to the persons against whom it has been applied, to the persons who are subjects of legal relations under which such regulation is to be applied, **as well as to other persons in the instances determined by law**.

Comment: the meaning of this adjunct is not clear and, as a general rule, it should be avoided to modify, in the framework of legislation on, say, local self-government, provisions of other laws not directly linked to it, like the Law (code) on administrative procedures. Unless, but this should be stated clearly, the right to challenge a regulation is

granted "as well as to the bodies established under the Law on local self-government such as the councils, bodies of self-organisation, etc."

The Law of Ukraine 'On Local Self-Government in Ukraine'

Article 8. General meeting **at the place of residence**

1. General meeting at the place of residence constitutes a form of direct **residents'** participation in addressing the issues of local importance.
2. Citizens of Ukraine who legally reside within the respective territory and have reached the age of eighteen on the date of the general meeting shall be entitled to attend a general meeting at the place of residence.
Other persons may attend a general meeting at the place of residence with a right of deliberative vote.

Comment: This provision raises a number of concerns in respect of the notions of "place of residence", "residents" and "other persons".
"Residence" is a legal concept whose definition is usually given in the civil code or in legislation on voting rights, or in the law on civil status of persons. In the case of local democracy, residence may found (justify) the right to vote, or the obligations resulting from fiscal legislation (you vote, or pay tax in the place you reside). In the field of civic participation without *decision making powers (such as electing local councillors or the mayor, for instance, or adopting binding decisions) there is no need to restrict the right to participate to the residents only. Issues of local importance to be debated in a given place may well impact on neighbours, even far away ones. Foreigners who reside lawfully should have the same rights as residents, and non-residents (inhabitants of a holiday cottage, for instance, who regularly stay in the city) and persons who have a genuine connection to the place where the general meeting takes place should be allowed too.*
The formulation is also unclear about what type of vote "residents" would have, that would distinguish them from "non-residents" having a "deliberative" (consultative?) vote. Would residents cast a "decisive" vote, meaning that they are the only ones entitled to "decide"? If so, the distinction would be admissible, but the powers granted to the "general meeting" are not to decide *(even if the outcome of the meeting is called "decision") but to "submit proposals" (see 5.1, 5.4 and 5.5) or to have their decisions "examined" (see 4.4).*
In conclusion, having regard to the standards in force at European level as regards the right granted to foreigners by the European Convention on participation of foreigners in public life the Additional protocol to the ECLSG, it would seem appropriate to extend the right to participate (and "decide") in general meetings also to non-residents and foreigners lawfully resident.
It goes beyond the scope of this appraisal to discuss the appropriateness or necessity to give the same rights to refugees, but this should be examined too, having regard to the validity in Ukraine of the relevant Geneva conventions.
Finally, internally displaced persons would not be, by definition, local residents but having been granted the right to temporarily inhabit the territory of the village or city, as per their status, and being in all cases citizens of Ukraine, depriving them of the right to take part in consultative/deliberative processes in the place where they live would be tantamount to a dual disfranchise (no rights in the place from where they were expelled, no rights in the place they live). And this should be avoided.

3. The procedure for **initiating, convening, and** conduct of a general meeting **at the place of residence** shall be determined by the territorial community charter.
4. The territorial community charter shall determine the following in respect of a general meeting at the place of residence:
1) the territory where the general meeting is to be held;
2) the principles of attendance, including with a deliberative vote;

Comment: See above the discussion on the meaning of "deliberative" vote. It is unclear what "principles of attendance" mean. Would it be conceivable that the attendance at the general meeting be made compulsory?

3) the procedure for assistance by local authorities in preparing and holding the general meeting;
4) the procedure for and terms of examination by local authorities of decisions adopted at the general meeting;

Comment: This is an important provision. It should be clear however that the "decision" could only consist of the requirement for the local authorities to examine *with due diligence and in good faith the "decision" – in practice, the request or the appeal made by the general meeting – and* give a reasoned justification *for acting or not acting on it.*

5) other matters of organising and holding of the general meeting.

Comment: "Other matters" may cover several issues, in particular: is there a minimum number of signatories required to convene the meeting? Who convenes the meeting? Who establishes the agenda? Would a quorum of attendance be required? Or a quorum needed for any "decision" to be valid?

5. The powers of the general meeting at the place of residence shall include:
1) examination of any matters referred by the Constitution and laws of Ukraine to the competence of local self-government, submission of proposals to relevant authorities and officials;

Comment: this definition is very wide ("any matters referred to the competence of local self-government") and covers ideally two distinct issues: examination and submission of proposal. Examination *may not require complex or elaborate preparatory works (local officials or councillors may be asked to give oral explanations or information on issues relatively well known by inhabitants) but the* submission of proposals *is a totally different issue. It implies that the issue has been thoroughly examined by some, that draft texts have been prepared and circulated, that sufficient information exists on the consequences that would result from the adoption of the proposal by the body that would receive it following its discussion and approval in the general meeting, etc.*
It would be preferable to distinguish these two types of acts and make the implications of either one clear in a revised version of this article.

2) discussion of draft acts by local authorities and officials;
3) hearing of information from local officials, heads of enterprises, institutions and organisations held in communal ownership by respective territorial communities;
4) submission of proposals on transfer or sale into the respective territorial communities' communal ownership of enterprises, institutions or organisations, their structural subdivisions or other items held in the state or other forms of ownership, provided that they are of key importance in meeting the territorial communities' utility, household, social and cultural needs;

Comment: this is the type of debate followed by a "decision" that requires careful preparation. It is curious to leave the proposal "on transfer or sale" to the general meeting. It should rather be the other way round, the proposal to transfer or sell should come from the municipal council and the meeting should discuss its appropriateness. If the proposal comes from the meeting it would require a very detailed and possibly complex economic and financial appraisal of cost-benefit etc. which might escape the understanding of the majority of citizens, especially if they are not adequately informed through preparatory work. The risk of manipulation is great.
For these issues (discussion of technical issues and of projects with heavy budgetary and financial implications) refer to the Charter adopted at the Nafplion conference of European ministers responsible for spatial planning, 2014[4].

5) submission of proposals to the executive bodies of village, settlement or city councils on raising, on a contractual basis, of funds from enterprises, institutions and organisations, regardless of patterns of ownership, located within the respective territory, and from the population, as well as of budget funds to develop, expand, repair and maintain, on a cost-sharing basis, social and production infrastructure facilities, and to finance environmental protection activities;

Comment: this issue amounts to proposing that taxes or fees be raised upon enterprises, institutions and organisations, as well as, in given circumstances, upon citizens. Its compatibility with fundamental provisions of tax law should be checked. Even in the event that "proposing" that such tax be established is in line with other relevant legislation, the process leading to such proposal being examined and eventually adopted in the meeting requires also complex preparation and technical skills that could lead to the meeting being actually manipulated. The initiative should rather be left to the municipal authorities that would be obliged to request the opinion of citizens on projects concerning "social and production infrastructure facilities" (the meaning of this is quite obscure) and "environmental protection activities".

6) submission of proposals to the executive bodies of village, settlement or city councils on the provision of aid to disabled persons, veterans of war and labour, families of the deceased (dead or declared missing in action)

[4] https://rm.coe.int/council-of-europe-conference-of-ministers-responsible-for-spatial-regi/168076c728

servicemen, as well as discharged (save for conscripts and called-up officers) or retired servicemen, persons disabled since childhood, and large families;

Comment: this provision is tantamount to requesting a municipal budget to pay benefits to a certain categories of persons socially and possibly also economically disadvantaged. This is laudable per se, but would local budgets in a position to absorb the costs? The risk is that social pressure becomes irresistible, that a proposal is made and possibly voted by the council and that the budget is inadequate or that it poses unbearable strain on the city and its budget.

7) submission, in accordance with the law, of proposals on the naming (renaming) of geographic locations;
8) other powers defined by the laws of Ukraine.
6. A general meeting at the place of residence may be convened by the village, settlement, or city chairmen, deputies of the relevant council, starosta, or residents referred to in the first indent of part two of this Article.

Comment: it would be appropriate to speak here of a minimum number of residents addressing such a request to the mayor, starosta or councillor, or a minimum number of signatures collected among residents to start the procedure, or of the justification that the city chairman should give (to the city council?) for taking such an initiative that, in a sense, bypasses the council. Mayors are accountable to citizens and also to the councils and bringing an issue to people directly without even informing (or explaining the reason to) the council may not be the best approach. Note that in this case the reference to "residents" only seems appropriate, because they are better qualified than non-residents (in general) for appraising the need and urgency of such a meeting. However, should the meeting happen, also "non-residents" (see before) should be allowed to attend.

7. A general meeting at the place of residence may not be held in the event of the introduction of a legal regime of martial law or a state of emergency in accordance with the law.

Comment: there may be also other cases of "incompatibility" between the holding of a meeting and other events such as local or general elections held on the same day or ongoing electoral campaigns – the aim is to avoid having technical debates held at the time of political confrontation, which may make the debate derail from its original scope.

8. Decisions approved by a general meeting at the place of residence shall be taken into consideration by the local authorities and officials.

Comment: this proposition is crucial and should be qualified: which local authority (the council?), within which deadline, with which outcome (positive, negative answer, to be given to whom?). Also the placing on the same level (equal footing) of local authorities and officials seems strange. General meetings should not challenge the authority or behaviour of officials but rather invite or elicit action by bodies of local self-government. Officials are needed and they obviously qualify for preparing the meetings, answering questions, assisting local councillors in translating proposals into official acts and decisions, but they should not be expected to "take into consideration" the decisions on equal footing with the local government bodies. In a sense, in this draft the position and responsibilities of local government officials in the preparatory stages and in the management of the general meetings should be revised in order not to give the impression that they are the targets of the process (even if their role in shaping policies and implementing decisions is very important). The targets, so to speak, are the elected bodies.

Article 9. Local initiatives

1. Residents of a village, settlement, or city who are entitled to vote under Article 70 of the Constitution of Ukraine may submit, by way of local initiative, for consideration by the relevant council any matters referred by the Constitution and laws of Ukraine to the competence of local self-government.

Comment: Please refer under this paragraph to the same comments made above. This provision should be, as the case may be, aligned to the previous one as regards the requirement of "residence" for submitting initiatives to the relevant local council. In a sense, the consequences of "submitting for consideration by the relevant council" are the same or even less fateful than those of addressing issues at general meetings, therefore since there is not any "binding" character in the submission, there is no evident need to exclude "non-residents" from the procedure.

2. A territorial community charter shall determine: the procedure for submitting a local initiative for consideration by the council; the number of signatures required to support a local initiative; the procedure for,

manner and form of, collecting the signatures; the procedure for consideration by the council of a local initiative and for informing of the outcome of its consideration; other issues of the local initiative implementation.

Comment: this provision meets the requirement of a correct and transparent procedure. It should serve as a source of inspiration for the previous procedure. If appropriate, a single provision of this nature covering both general meetings and local initiatives could be drafted. Having regard to what follows (the initiator), it would it seem appropriate to add here a reference to the person or group of persons under whose responsibility the local initiative is started.

3. A local initiative submitted, in the prescribed manner, for consideration by a council shall be subject to mandatory consideration at an open sitting of such council attended by the initiator (or an authorised person from among the initiators). **The initiator (or an authorised person from among the initiators) shall be notified of the outcome of the local initiative consideration.**

Comment: it is important to identify the person(s) to whom the council will be answerable for the local initiative. It is strange however to mention the "attendance" by the initiator as if it were compulsory (it should not, the council should discuss the initiative even if the initiator would not be present) and give the impression that any other person who supported the initiative is not required nor welcome to attend (it should be, since meetings of a local council are public).

Article 13. Public hearings

1. A territorial community shall be entitled to hold public hearings — to meet the respective councillors and local self-government officials, during which **residents of the respective village, settlement or city** may hear them, voice their concerns or submit proposals on the issues of local importance referred to the competence of local self-government.
Local authorities and officials shall hold public hearings in the instances prescribed by the law and the territorial community charter.
2. The subject matter of public hearings shall include the issues referred by the Constitution of Ukraine or the laws to the competence of local self-government. The subject matter of public hearings may include other issues in the instances determined by law.
3. The conduct of public hearings shall be mandatory prior to the adoption by a local self-government authority of a decision concerning:
1) the territorial community charter or any amendments thereto;
2) the territorial community's development strategy, socio-economic and cultural development programmes (plans);
3) the master plan of the inhabited locality concerned, the zoning plan and the detailed plan of the territory;
4) the local budget for the following year;
5) the introduction of local taxes and fees, their rates or tax benefits;
6) issuance of local loan bonds;

Comment: public hearings in relation to budgets, local taxes and fees (creation and subsequent alteration of rates), tax benefits and local bonds are welcome insofar as they contribute to a better perception by the public, of the financial needs of the commune and of the requirement of sound management of the funds at its disposal. The issue however requires careful management, because the risk exists that the public could resist tax increases however necessary and/or reduced budgets. These matters should be dealt with having full regard to the obligations that legislation places on local authorities and the margins the latter enjoy (or not) with regard to taxation and budgeting. To compensate possible frustration by citizens in regard of deciding the budgets (something they will influence only marginally) they should be allowed to decide how to spend a fraction of them by way of "participatory budgets" schemes. Such "participatory budgets" could be decided and attributed to district councils or bodies of self-government by citizens, where they exist.

7) disposal of community-owned enterprises that create, produce or provide housing and communal services, their transfer into concession or long-term lease;
8) setting the rates for housing and communal services, decisions in respect of which are adopted by local authorities;
9) setting up territories and sites of the nature reserve fund of local significance or other territories subject to protection;

10) placement within the community's territory of environmentally hazardous sites, granting permits for which is referred to the council's competence.
4. The procedure for initiation, preparation, and conduct of public hearings and the terms for consideration of proposals made following such public hearings shall be determined by the territorial community charter, unless otherwise provided by law.

Comment: the procedure referred to in this provision could be largely the same as per the previous procedures. It would be advisable to group in the law the provisions of substance, on the "types" of participatory tools and have a single provision for the procedural matters which, to large an extent, could be identical.

5. Proposals submitted following the public hearings shall be subject to mandatory consideration by local authorities and officials. **The decisions taken following the consideration of such proposals shall be subject to mandatory publication.**

Comment: also in regard of this provision, the mentioning of "officials" appears to be unnecessary. Officials do not have a separate and autonomous decision making power except for the duty to serve the local council in preparing its deliberation and subsequently into implementing its decisions. Reference to officials could be removed from this provision too.

Article 14. Public self-organisation bodies

1. Village, settlement, city or city-district (if any) councils may permit, upon the residents' initiative, the establishment of house, street, block, or other public self-organisation bodies and to vest them with some of their competence, finances, or property.
2. The procedure for organisation and operation of public self-organisation bodies shall be determined by law **and the territorial community charter.**

Comment: even if drafted soberly and briefly, this provision is very important. "Self-organisation bodies" are mentioned in the Constitution and occupy therefore a place in the catalogue of participatory tools available to citizens. However, they should not be construed as nor become counterparts of or opponents to the local councils. Since their functioning will depend upon another law, there is little scope here for comments apart from urging restraint and careful weighing of the interest at stake: those of the local council, which should not be divested of its functions and role, and those of citizens whose involvement in public affairs is welcome but not in whichever form small or large groups may decide. If vested with some of the competencies, finance and property (ownership or management) of the commune, the conditions for the establishment and the rules of functioning (and accountability) of these PSOB should be carefully drafted. In such cases, the requirement that those involved in the management of PSOB be residents is valid, as a certain degree of continuity and connexion with the place where decisions are taken and budgets implemented is justified.

Article 19. Territorial community charter

1. **A village, settlement, or city council,** with the purpose of taking into consideration historical, ethnic, cultural, socio-economic and other specifics in the exercise of local self-government, **may adopt, on the basis of the Constitution and the laws of Ukraine, a territorial community charter.**

Comment: this paragraph sets the principle that villages, settlements or city councils may adopt a territorial community charter. On the one hand, given the important issues that should be regulated by the charter (see hereunder) it seems important that it be compulsory and not optional. It would be strange if some cities had a charter, and therefore possessed the legal basis for implementing major initiatives at local level, including participatory democracy, and others had not. This would create unacceptable inequality between citizens some of which would have their rights enhanced while others would not, simply because the village, etc. has decided (or omitted) not to have a charter.
(An alternative could be that the law sets a threshold under which the charter is optional and above which it is mandatory, for instance, 1,000 inhabitants. If so, a provision should be added to this draft law or any other law on participation allowing for the direct implementation of the provisions of the law on general meetings, initiatives, hearings and PSOB, etc. whenever the village, settlement or city has not adopted a charter which, as a rule, would contain the detailed provisions enabling these processes to be implemented. In the absence of a charter, the same provisions would nonetheless apply, by virtue of the law).

On the other hand, it seems questionable that the justification of such a charter be the need to "[take] into consideration historical, ethnic, cultural, socio-economic and other specifics in the exercise of local self-government". By linking the purpose of local self-government to social, cultural, ethnic and other "specifics" of the community the risk exists that the enjoyment *of the right to local self-government become a modality of implementation of other rights. This sentence, whose imperfect drafting may be the consequence of inadequate translation, could be dropped, to avoid any ambiguity of interpretation and implementation (see paragraph 3 hereunder).*

2. A draft territorial community charter shall be prepared by a task group formed by the council, which may include relevant councillors, local officials, representatives of the public, etc.
3. A territorial community charter, subject to the specifics of the exercise of local self-government in this territorial community, shall address the following matters:
1) general description of the territorial community (history of local self-governance in the respective territory, membership in associated organisations, international cooperation, etc.);
2) the procedure for public self-organisation bodies' organisation and operation;
3) forms of direct participation by the territorial community in the exercise of local self-governance;
4) principles of relations between local authorities and their officials with civil society institutions;
5) specifics of economic and financial support for local self-governance;
6) forms of public control over the activities of local authorities and officials, including their reporting before the territorial community and informing of their activities;
7) principles of relations between the respective territorial community and other territorial communities, their local authorities and officials.
A territorial community charter may address other matters not inconsistent with the law and attributable to historical, ethnic, cultural, socio-economic and other specifics of the territorial community.

Comment: the list above could be supplemented by a reference to the main principles that would inspire the action of the council (and the local community) in the implementation of its tasks and policies, such as : promoting the social and economic development of the community, ensuring equality of treatment to all citizens, protecting the most vulnerable, respecting the environment and promoting a "green" approach to development, etc. The charter could also refer to the type of instruments that the commune could adopt in order to give itself a sense of direction and goals to be achieved: strategic plans, mid- or long-term objectives, sustainable development goals, etc.

4. A territorial community charter, upon its approval, shall be promptly delivered by the village, settlement, or city mayor to the central executive authority in charge of shaping and implementing the state policy in the sphere of territorial organisation of power, administrative and territorial structure, local government development, for its examination for compliance with the Constitution and laws of Ukraine.

Comment: this paragraph should mention the body that adopts the TCC, presumably the council.

The central executive authority in charge of shaping and implementing the state policy in the sphere of territorial organisation of power, administrative and territorial structure, local government development shall perform, within thirty days from the receipt of the territorial community charter, its expert examination and, in the event of its non-compliance with the Constitution and laws of Ukraine, shall forward to the respective village, settlement, or city council its reasoned request demanding that specific provisions of the charter be brought in compliance with the Constitution and laws of Ukraine.

The village, settlement, or city council shall consider at its next regular session the request from the central executive authority in charge of shaping and implementing the state policy in the sphere of territorial organisation of power, administrative and territorial structure, local government development and shall adopt a decision to bring the territorial community charter in compliance with the Constitution and laws of Ukraine or to reject this request, or shall notify that this matter was not considered by the council. A duly certified copy of the adopted decision or the original notice shall be promptly forwarded by the council to the central executive authority in charge of shaping and implementing the state policy in the sphere of territorial organisation of power, administrative and territorial structure, local government development.

In the event that the village, settlement, or city council has failed to adopt, under the third indent of this paragraph, a decision to bring the territorial community charter in compliance with the Constitution and laws of Ukraine, the central executive authority in charge of shaping and implementing the state policy in the sphere of

territorial organisation of power, administrative and territorial structure, local government development may file a lawsuit, in the manner prescribed by the Code of Administrative Procedure of Ukraine, to declare the decision adopting the territorial community charter unlawful and invalid.

The term for filing by the central executive authority in charge of shaping and implementing the state policy in the sphere of territorial organisation of power, administrative and territorial structure, local government development of a lawsuit with an administrative court to declare the decision adopting the territorial community charter unlawful and invalid shall commence upon the receipt by the central executive authority in charge of shaping and implementing the state policy in the sphere of territorial organisation of power, administrative and territorial structure, local government development of a copy of the respective council's decision to reject the request demanding that the territorial community charter be brought in compliance with the Constitution and laws of Ukraine or of a notice stating that said matter was not considered by the council under the third indent of this paragraph.

Expert examination of the territorial community charter for compliance with the Constitution and laws of Ukraine shall be carried out in the manner prescribed by the Cabinet of Ministers of Ukraine.

Comment: the five paragraphs above contain a very detailed description of the procedure to be followed for validating the TCC. Surprisingly, the fifth paragraph seems to render the previous four unnecessary, since it states that it shall be the Cabinet of Ministers that prescribes the manner this examination will take place! Be as it may, it looks indeed more expeditious to say that the control over the legality of the draft TCC shall be performed by a body to be described in a less convoluted form, such as the Minregion, leaving it to a subsequent decree the setting of modalities and deadlines.

Article 75. Responsibility of local authorities and officials before territorial communities

1. Local authorities and officials shall be accountable to, controllable by and responsible before territorial communities. They shall inform the population on a regular basis, but at least twice a year, of the implementation of socio-economic and cultural development programmes, execution of local budget, on other matters of local importance, and shall report of their activities before territorial communities. **The procedure for such informing and reporting shall be determined by the territorial community charter.**

Comment: the new draft law only adds the last sentence – which raises no difficulty – to a text already in force. It is nonetheless appropriate to reiterate here the difficulty of accepting that elected bodies (local authorities) and individuals (officials) be put on equal footing when it comes to accountability, controls and responsibilities in front of the local community (the people). Officials act like "tools" of the body (local authorities) whose decisions and activities they describe, defend or justify in the eyes of the public. Their accountability cannot be ascribed in political terms (have local authorities' policies and acts proved to be effective? Have they delivered results?) but only in legality terms (have they acted in conformity with the law?). Making individuals accountable for the political acts (of the commune) before the citizens looks very strange. Insofar as individuals have "political responsibilities" – this is the case of local councillors, and of senior officials vested with political or quasi-political functions, for instance because they are appointed by the mayor and will cease their functions when the mayor end its term of office – they are also accountable and can be revoked like a councillor, or a mayor (if this possibility exists by law) but otherwise they should be protected by their legal status, that would make them legally, not politically responsible for the activities (or mistakes) of the commune.

Article 80. Early termination of powers of public self-organisation bodies

1. Powers of a public self-organisation body shall terminate early in the event of:
1) failure to implement decisions of a village, settlement, city, or city-district (if any) council, its executive committee, general meeting at the place of residence, or failure to exercise its own powers, violation of the Constitution or laws of Ukraine, other legislative acts;
2) its dissolution.
2. A decision to terminate early the powers of a public self-organisation body shall be adopted by the general meeting of **the residents at the place of residence, who have established such body, or by the respective council in the manner prescribed by the law and the territorial community charter.**

Comment: article 14 above refers in very brief terms to the establishment of PSOB. This article 80 is on the contrary very detailed as regards the dissolution of such bodies. The provision is drafted in a strange way inasmuch as it gives, on the

one hand, a few very detailed reasons and modalities for dissolution (point 1) but on the other leaves the decision to terminate the body (and its modalities) to the law (on PSOB?) and the communal charter (TCC) (point 2). The provisions of this article look as an attempt at introducing as a wide-ranging and supreme reason for dissolution both the "failure to implement a decision" and "failure to exercise its powers". Both situations need further qualifications in order to be possibly enacted: what does a "failure to implement a decision" consist of: a delay? a refusal ? the lack of justification ? the challenge to the legality of the decision? And what is the even broader "failure to exercise its powers"? Finally, what does "dissolution" means – as opposed to "early termination": the normal coming to an end of a PSOB with limited duration, or an exceptional measure prompted by serious violations of law, grave mismanagement, etc.?

This article is very problematic and should be dropped, or drafted in a very different manner.

The Law of Ukraine 'On Public Self-Organisation Bodies'

Article 15. Delegated powers of a village, settlement, city, or city-district (if any) council
1. A village, settlement, city, city-district (if any) council may additionally vest, **in the manner prescribed by the territorial community charter**, some of its powers **(save for the council's exclusive powers)** in the public self-organisation body, with a concurrent transfer to it of funds, logistical or other resources as may be necessary for the exercise of said powers, and shall monitor the discharge thereof.

Comment: the amendment to this article, referring to the "council's exclusive powers" is important because it protects the councils from being voided of most of their functions by way of transfer (delegation) to one or more PSOBs within the commune. However, it is not clear what these "exclusive powers" are. Maybe a definition of these "core" powers appears in other laws on local self-government, in which case this draft should explicitly refer to the relevant provisions thereof. If this is not the case, the generic reference to "exclusive powers" is insufficient and misleading and could give rise to litigation. It would be better to remove this adjunct and add, to the last sentence, the words "according to law".