



Strasbourg, 2 April 2019

CEGG/LEX(2019)1

**Opinion on the draft Law of Ukraine
on amendments to the Law of Ukraine
'On Local Self-Government in Ukraine'
(as to changes of territorial boundaries
at local and rayonal levels)**

I. Introduction

The Head of the Committee on State Building, Regional Policy and Local Self-Government of the Verkhovna Rada of Ukraine has requested¹ the Council of Europe’s legal opinion on the draft law of Ukraine “On amendments to the Law of Ukraine “On Local Self-Government in Ukraine” (resitr. No 9515).

The present opinion was prepared on the basis of the contribution of Council of Europe experts, in the framework of the implementation of the Council of Europe Programme “Decentralisation and local government reform in Ukraine”.

European standards and good practice

The main European standards (and international obligations) relevant to this law are set in **Articles 5** of the European Charter on Local Self-Government which stipulates that: *“Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.”*

The explanatory report of the Charter specifies with regards to **Article 5** that *“Proposals for changes to its boundaries, of which amalgamations with other authorities are extreme cases, are obviously of fundamental importance to a local authority and the citizens whom it serves. Whilst in most countries it is regarded as unrealistic to expect the local community to have power to veto such changes, prior consultation of it, either directly or indirectly, is essential. Referendums will possibly provide an appropriate procedure for such consultations but there is no statutory provision for them in a number of countries. Where statutory provisions do not make recourse to a referendum mandatory, other forms of consultation may be exercised.”*

Compliance of the proposed amendments with the provisions of the Charter

In the light of the above provisions, the proposed amendments to the Law of Ukraine “On Local Self-Government in Ukraine” introducing decisions made either solely by the Council of Ministries or (in case of changes in the map of rayons) by Council of Ministries initiating the change, with the final decision to be made by the Verkhovna Rada, are not in conflict with the Charter.

However, it must be stressed, that it is obligatory to conduct consultations with local communities before such decisions are eventually made. Therefore, for more clarity, it is suggested to mention the consultation – as part of the process; this could be done in the proposed amendment 7.1 to Section V (Final and transitional provisions) (comparative table in Appendix).

It should be noted that – according to information provided by the Ukrainian authorities – the proposed amendment had been consulted with potentially interested stakeholders (such as

¹ By letter of Mr Vlasenko No. 04-14/13-652 dated 28 February 2019.

local government associations); the results of the consultations had suggested that there was a wide consensus and the proposed regulations were considered non-controversial.

A possible impact of the proposed amendments on the efficiency and effectiveness of local governments' system in Ukraine.

The unresolved issue of accurate delimitation of boundaries between the first tier local government units in Ukraine has been discussed for a long time as an obstacle for several aspects of local government's operation and sometimes for some necessary reforms. Unclear boundaries have been an obstacle for the efficient implementation of the local property tax, since it has been not always clear who should be the recipient of the tax yield. The proposed regulation makes at least possible to re-solve the issue.

The need to re-think the role and territorial shape of rayons is also clearly related to the ongoing process of the municipal voluntary amalgamation reform, which has been supported – among other – by the Council of Europe. The excessive territorial fragmentation of the municipal tier (several experts have indicated the fragmentation of the rayon tier as well) has been seen as a barrier for the effective functioning of local government. There have been several rayons with less than 10,000 population, and even smaller (below 100 residents) village councils.

The reform initiated in 2014 has at least partially addressed those challenges. By the end of 2018 the number of local councils has reduced by more than 4,000 from over 11,000 in 2014. The mean population size of new hromadas is over 10,000, although there are still 28 with population between 1,000 and 2,000, and above 300 with population between 2,000 and 5,000. The original plan of the government was to reduce number of basic tier local governments to about 1,500, but the plans prepared in regions as well as progress so far suggest that the final number could be higher.

Although not completed yet, the process of forming new, enlarged hromadas has had several positive consequences. At the same time it requires re-thinking of the role and the territorial shape of rayons. New hromadas are taking over several of former function services delivered previously by the rayon tier. In several cases the territory of new hromadas is identical or very close to the area of the respective rayon. A simple comparison of the target number of 1,500 municipalities (even if the eventual number would be higher) with number of almost 500 rayons (and beyond their jurisdiction about 180 cities of oblast significance) suggests that the relationship between the two tiers have to be re-worked again. In such circumstances maintaining both hromada and rayon structures is neither economic nor logical.

The solution of reviewing the number of rayons, proposed in the discussed law seems to be realistic and acceptable option.² It gives more flexibility in re-drawing the map of territorial-administrative division of the country and allows to develop various options in which reviewed rayons might be assigned with new set of functions organized within new territorial

² Provided that the other option of abolishing the rayon tier after the hromada amalgamation reform is completed seems unrealistic, also requiring an amendment to the Ukrainian constitution.

setting. The final decision would still stay in the hands of the Verkhovna Rada, but initiative for changes would with the central government, who would have more discretion to prepare a strategic solutions in this respect.

Overall, the proposed Law is not only in compliance with the European Charter of Local Self-Government, but it also makes it possible to further reforms contributing to a more effective functioning of the local government system in Ukraine.

Appendix

COMPARATIVE TABLE

to the draft Law of Ukraine “On amendments to the Law of Ukraine “On Local Self-Government in Ukraine”

Provisions of the law in force	Provisions of the draft law
Law of Ukraine “On Local Self-Government in Ukraine”	
<p>Article 1. Key Terms Used in this Law</p> <p>The key terms used in this Law shall have the following meaning:</p> <p>‘territorial community’ shall mean residents consolidated by permanent residence within a village, settlement, or city that constitute independent administrative territorial units, or a voluntary association of residents from several villages that have a common administrative centre;</p> <p>...</p> <p>N/A</p>	<p>Article 1. Key Terms Used in this Law</p> <p>The key terms used in this Law shall have the following meaning:</p> <p>‘territorial community’ shall mean residents consolidated by permanent residence within a village, settlement, or city that constitute independent administrative territorial units, or a voluntary association of residents from several villages that have a common administrative centre;</p> <p>...</p> <p>territory of a territorial community is the territory covered by the powers of the territorial community, carried out according to the procedure and within the limits prescribed by the Constitution and laws of Ukraine, both directly and through local authorities.</p>

Section V	Section V
<p data-bbox="208 264 846 296">FINAL AND TRANSITIONAL PROVISIONS</p> <p data-bbox="208 405 1122 730">7. Until the law on the administrative territorial structure of Ukraine has been adopted, territorial communities of a village, settlement, or city who have voluntarily consolidated into a single territorial community may adopt a decision, by conducting a local referendum, to withdraw from such community only where a sufficient financial and economic basis exists that would ensure the exercise by each of these communities of local self-government functions and powers under this Law.</p> <p data-bbox="208 772 271 804">N/A</p> <p data-bbox="208 909 1122 1027">8. The Verkhovna Rada of Ukraine shall keep record of the number and composition of territorial communities and local self-government bodies and provide technical assistance to them.</p>	<p data-bbox="1184 264 1823 296">FINAL AND TRANSITIONAL PROVISIONS</p> <p data-bbox="1184 405 2121 692">7. Until the law on the administrative territorial structure of Ukraine has been adopted, territorial communities of a village, settlement, or city who have voluntarily consolidated into a single territorial community may adopt a decision, by conducting a local referendum, to withdraw from such community only where a sufficient financial and economic basis exists that would ensure the exercise by each of these communities of local self-government functions and powers under this Law.</p> <p data-bbox="1184 730 2121 932">71. Prior to adoption of the law on the administrative territorial structure of Ukraine, the definition of territories of territorial communities as well as submission to the Verkhovna Rada of Ukraine draft laws on the creation and liquidation of rayons shall be carried out by the Cabinet of Ministers of Ukraine.</p> <p data-bbox="1184 970 2121 1088">8. The Verkhovna Rada of Ukraine shall keep record of the number and composition of territorial communities and local self-government bodies and provide technical assistance to them.</p>