



CENTRE OF EXPERTISE FOR GOOD GOVERNANCE

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**Opinion on the draft law
“On Service in Local Self-Government Bodies”
(No. 6504)**

The present Opinion was prepared by the Centre of Expertise for Good Governance,
Department of Democracy and Governance, Directorate General II – Democracy

Executive summary

The current draft law No. 6504 represents an updated version of previous legislative initiatives which were not finalised at the time. It deals with the organisation of the service in local self-government bodies in Ukraine at all levels, aimed at improving the quality of governance and transposing the principles of the European Charter of Local Self-Government, primarily by improving the quality of recruitment based on merit and competence, creating conditions for professional development, better remuneration and career prospects.

More specifically, the draft law represents an important step towards harmonising the status of the civil service in central government with that of corresponding positions in local self-governments; it makes a better distinction between elected positions and administrative/career jobs in local governments; regulates the executive support service; improves the procedures for open selection through competition, prevention of politicisation of local civil servants, their professional training and upgrading qualifications. It also deals with ethical issues (situations of conflict of interest, the regime of incompatibilities, general rules about accountability) in close coordination with other relevant laws, for instance in the field of anti-corruption.

The adoption of the draft law would lead to improvements compared to the current situation. However, several areas of concern remain, where further action should be considered. They are:

- still incomplete distinctions between elected representatives and career civil servants at all levels of governance; the concepts of “public official” and “support service” can be further clarified;*
- the limitations created for local self-government employees to be members of political parties are too harsh; a better balance may be found;*
- the privacy aspects should be considered in some stages of the recruitment process for administrative staff; the composition of selection or disciplinary commissions should be reviewed;*
- the framework for dealing with conflicts of interest can be further improved;*
- the various employment regulations applicable to career staff in local self-governments and, separately, to elected representatives, should be reviewed;*
- good planning and support are needed in the implementation stage of the law, where guidance and monitoring are necessary to ensure adequate and consistent enforcement; some aspects require special attention, for instance the building of capacity for creating a performance payment system and for gender mainstreaming; this means proper methodologies and timely budgeting.*

Overall, the draft is in line with the Charter, European good practice, and the previous recommendations of international partners, as well as with the commitments made by the Ukrainian authorities and included in the Roadmap for Recovery produced by the National Council for Recovery of Ukraine from the Consequence of the War presented in July 2022.

I. Introduction

1. The present Opinion comes in response to a request by the Chair of the Parliamentary Committee on State Building, Local Governance, Regional and Urban Development of Ukraine, to the Council of Europe of 21 January 2022. It has been prepared for the Council of Europe by DGII – [Centre of Expertise for Good Governance](#) (henceforth “the Centre of Expertise”) based on contributions from its experts (national experts Olena BOIKO and Lesia FEDCHENKO, and international experts Arnaud DURANTHON and Sorin IONIȚĂ) within the framework of the [Programme](#) “Enhancing decentralisation and public administration reform in Ukraine”. In the last ten years, the Council of Europe, through its Centre of Expertise, produced several legal assessments on draft laws addressing the local government service in Ukraine (these drafts were not adopted): in 2012 ([CELGR/LEX 3/2012](#)), in 2016 ([CELGR/LEX\(2016\)4rev](#)) and in 2018 ([CELGR/LEX\(2018\)1](#)). These appraisals remain relevant.

2. The professionalisation of the service in local government is a major condition for further decentralisation in Ukraine. The current draft law No. 6504 represents an updated and finalised version of the previous legislative initiatives – draft law “On Amendments to the law of Ukraine “On Service in Local Self-Government Bodies” No. 1223 of 2 September 2019 and identical to it draft law No. 8369 of 17 May 2018. It “envisages the establishment of new legal and organisational grounds for service in local self-government bodies as a professional and politically unbiased activity, better arrangements for exercise by Ukrainian citizens of the right of equal access to service in local self-government bodies, clarified classification of the local self-government positions in order to improve the terms of local self-government officials’ remuneration, and alignment with the requirements of budget legislation and the new administrative territorial structure”¹.

3. This Opinion examines the compliance of the current text with the European Charter of Local Self-Government, and with other European standards such as the Recommendation of the Committee of Ministers of the Council of Europe ([CM/Rec\(2022\)2](#)) on democratic accountability of elected representatives and elected bodies at local and regional level, as well as the good practice of other Council of Europe member States. The draft law includes important positive features such as:

- It initiates ‘autonomous’ legislation on the service in local self-government bodies. The draft law does not contain references to the law “On Civil Service”, but the logic of the basic principles is aligned with its provisions, and it is thus likely to close the gap in terms of prestige and performance between the two sets of civil servants (in State and local authorities);
- It makes a better distinction between the political and administrative positions in local governments;
- It regulates the executive support service;

¹ Letter of Mr Andrii KLOCHKO, Chair of the Committee addressed to the Director General, Council of Europe — Directorate General Democracy (DG II), of 21 January 2022.

- It creates conditions for the professionalisation of the service (selection through open competition, prevention of politicisation of employees, professional training and upgrading qualification, safeguards provisions);
- It is fully in line with the commitments made by the Ukrainian authorities and included in the Roadmap for Recovery produced by the National Council for Recovery of Ukraine from the Consequence of the War, presented at [Ukraine Recovery Conference](#) in Lugano (Switzerland) in July 2022, specifically the ones decided by the Public Administration Working Group.

4. Overall, the present draft law sets up a clear and ambitious organisation of service in local self-government bodies in Ukraine. The text is clearly aimed at improving the quality of governance and transpose the principles laid down in the Charter, whose Article 6 stipulates: *“The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.”* It is good that those principles give its general structure to the draft law, making it particularly well-balanced and in line with the spirit of European standards. Furthermore, it must be noted that this draft law:

- defines the basis of service in local self-government bodies around 15 principles which makes it compliant with the European standards: such as rule of law, legality, integrity, combination of local and state interests, efficiency, equal access, professionalism, political impartiality, transparency, openness, responsibility;
- designates categories and subcategories of local self-government positions in order to create a better organised and more transparent service in local self-government bodies;
- -sets up, at Article 11, a clear and well-balanced mechanism to solve the situation of execution of illegal orders by local self-government employees, specifying a clear mechanism of responsibility;
- strives to organise the career paths of agents taking into account the interest of the service and the situation of the agents.

5. However, several important areas of concern have been identified which practically limit the ambition of the law and may create problems in implementation; they should be corrected in order to fully comply with European standards. The following important issues will be discussed further:

- A.** There are still incomplete distinctions between elected representatives and career civil servants at all levels of governance; the concepts of “public official” and “support civil service” can be further clarified.
- B.** The limitations created for local self-government employees to be members of political parties are too drastic; a better balance can be found.

- C.** There are privacy protection (personal data) aspects to be considered when it comes to the proposed videorecording of the competitive selection for the positions of local self-government employees.
- D.** The situations of conflicts of interest and the framework necessary to deal with them can be improved further.
- E.** There may be problems generated by the intended participation of external experts and trade union representatives in commissions – during selection or disciplinary procedures.
- F.** How to implement performance payment, other financial aspects, and the central support / monitoring to ensure adequate and consistent implementation of the law.
- G.** Other aspects: employment regulations.

II. Analysis

A. The distinction between elected representatives and career civil servants is not complete; the notions of “public official” and “support civil service” are not fully clear

6. Article 6 of the draft law defines different “positions” in local self-government bodies, which include, at 2°, *“elective positions to which persons are elected in local elections or are elected by the relevant council from among the deputies of that council or approved by the relevant council, empowered to perform objectives and functions of local self-government”*. The draft law also includes a section XI named *“Specifics of the service in local self-government bodies of elected local self-government officials”*, from Article 79 to Article 85. Article 5 of the draft law provides, at 2°: *“Provisions of labour legislation shall apply to local self-government officials in so far as it is not governed by this Law”*. Article 85 of the draft law provides, at 3°: *“The salary of an elected local self-government official shall consist of [...]”*; at 6° and 7°, it provides: *“The long-service increment shall be set at 3 percent of the base salary of an elected local self-government official for each year of service in local self-government bodies, but not more than 50 percent of the base salary”* and *“Monthly or quarterly bonuses shall be established for elected officials of local self-government according to their personal contribution to the overall performance of a local self-government body”*.

7. These provisions result in treating the elective mandates on a par with the positions in the career civil service, creating a legal regime common to both. However, European standards tend to treat them separately, because the logic of their functioning is completely different: from recruitment to oversight, relationship with political parties, payment, or termination². Elected officials at local level are politicians – full-time or part-time – democratically designated by people in order to put in practice a political programme which was voted. They are more like members of a parliament whose legitimacy comes from the vote; this is not a sort of administrative appointment, but a political designation; it is also limited to a fixed mandate; criteria like seniority and promotion are not applicable. The draft law tends to treat political legitimacy as a mere employment relationship, betraying a slight distrust in local democratic politics.

8. Historical reasons may exist for such an attitude, based on the extreme politicisation of local government activity which may have occurred occasionally in Ukraine, but the solution is to improve the framework for expressing political priorities at the community level, in parallel with an increased accountability for decisions. Indeed, the Preamble of the European Charter of Local Self-Government provides that *“local authorities are one of the main foundations of any democratic regime”*. Consequently, public institutions are based on the fundamental distinction between persons who are representatives and those who are employees working under the authority of the representatives. The Recommendation mentioned above ([CM/Rec\(2022\)2](#)) on democratic accountability of elected representatives and elected bodies

² On this matter, this report agrees with the previous analysis that has been published: please see “Opinion on the proposal to appoint deputy city mayors following a competitive procedure” ([CELGR/LEX\(2018\)1](#)) and “Assessment of the draft law of Ukraine on service in local self-government bodies” ([CELGR/LEX\(2016\)4 rev.](#)).

at local and regional level offers good legal language on the definition of elected representatives, and mechanisms of accountability and revocation applicable in their case. Furthermore, this analysis seems to be reinforced by the fact that Article 79, concerning elected officials, tends to exclude these people from the application of most of the law, somehow contradicting the logic of their inclusion in this law and giving a strong argument for a much clearer separate treatment, possibly in a different law, as in many other countries. If elected representatives are kept subject of this law, there will be permanent complications in implementation when questions will arise about their political activity, electoral procedures and ethics requirements which are intrinsically linked with other categories of legislation.

9. One example is the problem arising in relation to remuneration. Article 85 of the draft law mentions a “salary”, which is the term traditionally used to designate the amount somebody is paid for their regular daily job, which most elective mandates at the local level *are not*. It would be more in line with the European practice to introduce an “allowance fairly compensating the discharge of their functions”, that is the time spent in meetings, committees and other non-permanent activities related to their mandate. The term “salary” is more appropriate for an administrative career position; extending it to a local councillor undermines the democratic spirit according to which a mandate is primarily a commitment in the service of the general interest, conceived outside the logic of a working relationship. This being so, the provisions of 6° and 7° of Article 85 are also questionable: they were probably meant as an incentive, but end up encouraging the accumulation of mandates, which is not compliant with an objective of democratic rotation of elected people. For them remuneration is secondary, having the sole purpose of covering the elected official for the sacrifices of time and personal career that he or she consents in the service of the general interest. In this sense, the activity of an elected representative – especially a part-time one – is radically different from that of a public official for whom it is the normal source of his or her income and is perfectly comparable to any other professional activity.

10. As follows from Clause 3(1) of the Final and Transitional Provisions, a revised definition of the notion of a *local self-government official* is proposed: “a person who *holds a position* in a local self-government body, exercises respective official powers for implementation of organisational, administrative and advisory functions, and receives a salary from the local budget”. At the same time, Article 2(1)(7) of the draft law states that “*a position in the local self-government body means a primary structural unit at a local self-government body established by the structure and the staffing table with assigned job responsibilities*”. These definitions require a mutual clarification (for example, a position in a local self-government body means a structural unit at a local self-government body established by the structure and the staffing table with assigned job responsibilities from among the positions of local self-government employees and elected local self-government officials). The mentioned amendments also imply the necessity to review other laws criminal, administrative, anti-corruption and other laws that recognise the notion a *local self-government official* (see, for example, Articles 57, 365-2, Clause 3(3) of the Notes to Article 368-1, Article 368-4 of the Criminal Code of Ukraine etc.). This is especially important in

the anti-corruption legislation, as the experience of other new member States of the European Union attest.

11. Article 3(1) of the draft law deals with the *executive support service*: hiring, performance in office and termination, including labour relations. The specificities of the executive support service are set in Article 86 of the draft law. However, it remains unclear to which local self-government positions this provision refer, as defined in Article 6 of the draft law. Many other aspects of the draft law do not appear to be applicable in this case, but this is left somewhat implicit. Therefore, it is debatable whether the law can be extended entirely to the executive support service. For instance, the law will probably not apply to competitions, promotion, secondments), because Article 86(1) reads *“The village, town, or city mayors, chairperson of city district councils (where established), rayon and oblast councils, for the term of their powers, may set up their executive support service within the number of staff (executive staff) of the council and the limits of their operational costs”*.

B. Prohibition of party membership for local self-government employees

12. Article 12 of the draft law reads at 2°: *“A local self-government employee shall have no right to: [...] 2) be a member of a political party, if he or she holds a position of category “I”. The person shall suspend his or her membership in a political party for the period of service in local self-government bodies in the position of category I”*. Articles 9 to 11 of the European Convention on Human Rights (ECHR) protects freedom of thought, freedom of expression and freedom of assembly and association, and ECHR jurisprudence has consecrated this interpretation: see for instance the [Guide to Art 11 of the Convention](#), based on case law. These rights are, of course, not absolute and may be subject to limitations in democracies for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. The preoccupation for a clear separation between administration and political parties in Ukraine is understandable, in light of the experience of the recent past, and the depoliticization of the civil service is also a legitimate goal of the public reform, but the provisions of the law must be proportional to the problem to be solved. Indeed, local self-government employees are still citizens and must have the necessary attributes for the exercise of normal civic rights, which implies the possibility to be a party member. In many countries the limitations apply to the forms of expression of partisanship, not to the party membership as such.

C. Conditions of videorecording of the competitive selection

13. Article 24 7° of the draft law, which defines the procedure for organising competitions for positions in a local self-government body and specify the duties of the competition commission, reads: *“The local self-government body shall ensure video recording of the competitive selection for positions of a local self-government employee of category I with the subsequent publication of the video on its website within one working day from the day it was held”*. Article 8 of the

ECHR protects the right to private and family life: *“1. Everyone has the right to respect for his private and family life, his home, and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”*. The European Court of Human Rights considers that *“a person’s image constitutes one of the chief attributes of his or her personality, as it reveals the person’s unique characteristics and distinguishes the person from his or her peers. The right to the protection of one’s image is thus one of the essential components of personal development. It mainly presupposes the individual’s right to control the use of that image, including the right to refuse publication thereof”* (Case of van Hannover v. Germany, 7 February 2012, §96).

14. The image of a person without his or her acceptance can only be used in the interests of certain objectives defined by the Charter. Moreover, the General Data Protection Regulation of the European Union (GDPR) and the rapidly evolving practice based on this piece of legislation point in the same direction and are worth considering in light of the recent status of Ukraine as a candidate country. From this perspective, the proposed videorecording of the process of recruiting and making the clip public looks disproportionate. While the desire to ensure transparency in recruitment is of course commendable, transparency finds its limits in the need to protect people from the harmful effects they could suffer from the posting of these videos for example, the effect that the broadcast of a bad interview of a candidate could have on other future recruiters. The harmful effects produced by the recording could far outweigh the interest of keeping it. Moreover, it is worth bearing in mind the technical capacity necessary for videorecording and a situation where the lack of technical measures or their insufficiency could lead to the failure to hold a competition.

D. General framework for prevention of conflicts of interest

15. The law of Ukraine “On Prevention of Corruption”, currently in force, deals with conflicts of interest. A direct reference to this text is made by the draft law at Article 2, 3°: *“The terms “related persons”, “a conflict of interest”, “direct subordination”, “special inspection”, “corruption-related offence”, “private interest”, “potential conflict of interest”, “real conflict of interest” and other terms in the field of prevention of corruption, shall be used in this law in the meaning specified by the law of Ukraine “On Prevention of Corruption”*. Conflicts of interest are also defined as a ground for termination of service in local self-government bodies, when the right of a local self-government employee to service is lost or restricted at Article 72 1 which provides: *“[...] 6) relationship of direct subordination of closely affiliated persons, a conflict of interest in cases provided by law; 7) a local self-government employee has a current or potential conflict of interest of permanent nature that cannot be resolved in any other way”*.

16. The draft law analysed here refers to the provisions of the law of Ukraine “On Prevention of Corruption”. However, that law does not contain any provisions concerning restrictions on admission to the service in local self-government bodies which are currently found in the current law (Article 12), namely: *“A person shall not enter the service in local self-government bodies [...] where, upon entering into the service in local self-government bodies, he or she will be directly subordinated to closely related persons”*. In accordance with Article 57(3)(11) of the draft law, *“Disciplinary offences shall include: failure to notify the head of the service of the relationship of direct subordination between a local self-government employee and closely related persons within 15 days from the date of their occurrence”*, which is not fully compliant with anti-corruption laws. In particular, Article 27(2) of the law of Ukraine “On Prevention of Corruption” establishes that in the event of a situation of direct subordination between closely related persons *“the respective persons or persons close to them shall take steps to eliminate such circumstances within fifteen days. If during this period the circumstances are not voluntarily eliminated, the respective person or persons close to them shall, within one month from the occurrence of the circumstances, be transferred in accordance with the established procedure to another position which eliminates issues of direct subordination. If it is impossible to perform such a transfer, the subordinated person shall be dismissed”*. Thus, the draft law improperly establishes the responsibility of local self-government bodies, which may result in the unjustified establishment of discretionary powers and the creation of conditions for the emergence of a conflict of interest.

17. Prevention and punishment of conflicts of interest are a very important for improving the quality of governance. It is part of principle 6 named “Ethical conduct” from the [12 Principles of Good Governance](#): *“Conflicts of interest are declared in a timely manner and persons involved must abstain from taking part in relevant decisions.”* It is also the subject of an important [Resolution 434\(2018\) “Conflicts of interest at local and regional level”](#). In 2020, [Guidelines of the Committee of Ministers of the Council of Europe on Public Ethics](#) were adopted which establish a clear framework regarding this issue. Ukraine has made important efforts on the subject and the law “On Prevention of Corruption” represents relevant basis for work. The purpose of these observations and subsequent recommendations is therefore to suggest a better integration between this text and the law on service in local self-government bodies. Indeed, if special provisions exist elsewhere to tackle the issue of conflict of interests, it is not necessary to create redundant here but make cross-references where appropriate.

E. Participation of external actors and trade union representatives to competition and disciplinary commissions

18. Article 24 of the draft law, when defining the composition of the competition commission, stipulates: *“3. The Competition Commission may comprise local self-government employees, including from other local self-government bodies, deputies of the village, town, or city mayor, the chairperson of a city district council (where established), rayon and oblast councils, civil servants, scientists, specialists, experts, representatives of civil society associations who have experience in the relevant field, as well as a representative of the elected body of the primary*

trade union organisation (if any).” The quality and integrity of the recruitment process is a major issue for all local self-governments. Ukraine has made the choice of local and sectorial recruitments. Therefore, it is necessary to form commissions able to guarantee such a process. In this regard, participation of local self-government employees, elected officials and civil servants is justified by their expertise and/or a good knowledge of the requirements for the positions available.

19. However the participation of scientists, specialists, experts, representatives of civil society with relevant experience, as well as a representative of the elected body of the primary trade unions, is more questionable. First, it is difficult to define objective criteria for the scientists, specialists and experts, who are selected. What is an expert and to what extent his or her participation will have an interest in the recruitment process? Second, the presence of civil society with sectoral interests and the trade unions in commissions may open the door for conflicts of interest or even clientelism. The interests of a trade union organisation are, of course, not neutral. Therefore, participation of a representative could lead to discrimination and conflicts of interest in the course of the recruitment activity.

20. On disciplinary procedures, Article 61 3° of the draft law stipulates: “[...] *The Disciplinary Commission may include scientists, specialists, experts, representatives of public associations with experience of service in local self-government bodies, public service or in the legal profession with the right of an advisory vote*”. For the same reasons mentioned before, the participation of scientists, specialists, experts, and representatives of public associations may be problematic. The objective of the procedure is to apply a sanction proportional to the violation of norms judged as essential to the good functioning of the local self-government. With their good knowledge of the institution, the members of the commission mentioned in the preceding paragraph of the Article – the “insiders” – seem perfectly capable of providing a solution on their own to the case submitted to them. If special expertise is necessary by the nature of the case, a written opinion may be requested from an expert prior to the meeting of the disciplinary commission. Moreover, in order to preserve the adversarial principle, the written expertise should be submitted for observation to the prosecuted employee, and its reply to the expertise presented to the commission.

F. Performance payment, financial and institutional capacity aspects

21. Several provisions of the draft law refer to performance measuring and performance-linked bonuses. First, it has to be repeated that such mechanisms are not appropriate for local elected representatives, especially councillors (who are also the most numerous), apart from simply counting the meetings in which they take part. Their performance is primarily political, and they must be accountable to citizens; their activity is thus very different from that of a career civil servant. Even in this latter case, performance is a concept not easy to operationalise, quantify and link with the salary system. Special bonuses linked to performance should be based on objective criteria, be transparent and hard to manipulate. For example, it could be provided

that each year, an action plan indicating objective and achievable indicators is sent to each employee and becomes subject of ex-ante discussion before being enforced.

22. Another concern is that the draft law creates a lot of room for modulations linked to this measured performance and seniority. As a result, the remuneration framework may be subject to great variation and strong individualisation. Such tendency is, of course, in line with the logic of management by objectives and creating incentives for effort. However, care should be taken to limit excessive pay gaps that may appear between different local self-government bodies, with very different economic situations; these gaps have only increased after the latest Russian full-fledged armed aggression against Ukraine which began in 2022. Large gaps in payment for similar positions could indeed lead to making recruitment in small communities very unattractive because of their financial inability to provide good salary conditions. The draft law – or the secondary legislation – could consider introducing incentives for joining small local self-government structures.

23. Article 43 1 should include a mechanism that protects employees from abrupt remuneration reductions. Without such a provision, this lever can be used to put an employee under pressure and obtain his or her dismissal or resignation. For example, it can be provided (as it is in most European countries) that the conditions of remuneration of a local self-government employee cannot be revised downwards. Such a provision seems to be a condition of an application of Article 70 2 of the draft law which provides: *“Elections of village, town, city mayors and councillors of local councils; change of other elected officials of local self-governments, change of the head of service and direct supervisors shall not constitute grounds for termination of service by a local self-government employee at the initiative of newly appointed superiors”*. Indeed, it would otherwise be easy for a newly elected team to pressure employees into resigning by reducing their remuneration conditions.

24. Both the local experts and practitioners have emphasised during debates that this law raises the standards in operational quality and ethical requirements for the local self-governments. If so, a major concern relates to its adequate and systematic implementation across the whole territory of the country, in conditions when even the current framework, much less demanding, is often inconsistently applied. There is an obvious need for the government to create capacity at central level to (i) monitor implementation; (ii) offer guidance and assistance to local self-government with lower administrative capacity on a demand basis; and (iii) collect information in order to better calibrate policies in the future: number of civil local servants by demographic category and professional class; info about salaries; training needs; gender balance and other relevant aspects. Whether it does this through the existing central agency (National Agency of Ukraine on Civil Service), a ministry, or it creates a dedicated institution, it is crucial that these functions are performed somehow. All these support and capacity-building activities must also be properly budgeted.

25. One area in which this support is necessary is the obligation introduced for the local self-government bodies to use the Unified Portal of Public Service Vacancies (Article 22), to be operated by the central government body in charge of the public policy in local self-government service (Article 14). The way it is framed as an obligation, this creates the risk of limiting the

capacity of local self-government bodies to decide upon their own internal administrative structure. As stated in the Council of Europe Opinion [CELGR/LEX \(2016\)4 rev](#), “central government is entitled to supervise the proper implementation of the national legislation and it is fully justified for the central government body in charge of the civil service policy to check local governments” approach as regards the application of the new law. But national regulations should not impinge on local government’s competence. Article 6 of the European Charter of Local Self-Government requires that “local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management”. What is more, the [Recommendation CM/Rec\(2009\)1](#) of the Committee of Ministers to member States on electronic democracy (e-democracy) points out that democracy “concentrates heavily on the importance of trust between institutions and citizens and affirms that technology is not an end in itself that solves all matters and problems, but a means (...) When applying, reviewing and improving e-democracy, the focus should be on democracy and stakeholders rather than on technology”.

26. Another aspect which is increasingly discussed in Europe is the participation of women in the public administration, in conditions of equality of chance to occupy superior positions in hierarchy according to their qualification. Second, and equally important, is the participation of women in political life, including at local level. If Ukraine choses to cover in the same law the civil service and the elected local representatives, as it seems to be the case, the topic of political participation of women will inescapably become part of the discussions when this law is implemented, in terms of data collection (see para 24 above) but probably going beyond this, in areas of guidance and regulation.

III. Recommendations

A. On the distinction between elected representatives, career civil servants and the support service

27. Aiming to separate completely elected political representatives from local civil service and other employees, provisions pertaining to representatives would better be included in the general law “On Local Self-Government in Ukraine” or in the law on the status of local elected representatives so that no confusion can be made regarding the difference of status between elected officials and local self-government employees. If for various reasons this option is not feasible in practice, review the requirements created by this law for elected representatives and better define their unique position in the democratic system along the line presented above in paragraphs 6-11.

28. Establish the remuneration of elected officials outside the frame of the remuneration given to the local self-government employees, in order to avoid contamination of elective mandates by a tendency to assimilate them into a career system. This implies to remove the criteria of “performance” (which is objectively unmeasurable in that context) or “long-term service” (which is irrelevant in context) linked to remuneration.

29. Change the sequence in Article 6 of the draft law by placing 'elective positions' first, according to the democratic logic. In addition, it could make sense to provide a clear list of elective positions in the draft law. The positions of local officials and executive support service are defined, and only elective positions are left undefined (specific position titles – secretary of a village, settlement or city council, deputy village, settlement or city mayor, village *starosta*, etc.). For example, the current law on Service in Local Self-Government Bodies contains such a list (Article 10).

30. Clarify the provisions of Article 3 regarding the applicability of the law to the executive support service.

B. On the prohibition of party membership for local self-government employees

31. Improve Article 12 2° of the draft law and introduce new provisions relating to neutrality and reserve duty of local self-government employees in the draft law as following:

- At Article 4 1°, add a provision that creates a new principle of service as follows: *“x) neutrality and loyalty – no confusion can be made between personal beliefs or political affiliation and service in a local self-government body, which implies that any personal philosophical, religious or political belief cannot interfere in loyal service of a local self-government body and that public expression of local self-government employees complies with these objectives;”*;
- At Article 10, add a provision creating a new requirement for local self-government employees, who should *comply with a strict duty of reserve in the context of his or her duties and observe absolute neutrality in the exercise of his duties, ensuring loyal service of the instructions given;*
- Modify Article 57-3-8° in order to make violations of these principles disciplinary offences: *“non-compliance with the requirements for political impartiality of a local self-government employee”*.

32. These propositions can be reinforced by the affirmation of a clearer framework on conflicts of interest. If the propositions in paragraph 31 are not followed for various reasons, it is at least suggested to limit the scope of the limitation to public display of membership of a political party and/or holding any office in a political party.

C. Privacy aspects

33. Withdraw point 7) of Article 24 from the draft law. If this proposition is not followed, at least be clearer on the purpose and conditions of such recording and define strong conditions regarding the usage of this record. For instance, that it should not be posted publicly but used by the Court or a supervisory body upon request if complaints or contestations appear. Provisions regarding the duration of retention of the images should also be introduced, limiting it to what is strictly necessary for the purpose.

D. Situations of conflicts of interest

34. In addition to the current provisions, strengthen the requirements applicable to employees at Article 10 1° by mentioning explicitly the responsibility to comply with the law of Ukraine “On Prevention of Corruption” by declaring any conflict of interest before carrying out his or her responsibilities, declaring any outside activity and refusing any present or advantage from people with whom he or she is in contact or could be in connection in the context of his or her professional activities. A special provision to the same effect can also be inserted in Article 12. Similarly, a more explicit provision could be added in Article 57-3 making undeclared conflict of interest a disciplinary offence, by stressing the culpability of the absence of declaration of conflict of interest or side activity and acceptance of any present or advantage from people with whom the local self-government employee is in contact or could be in connection in the context of his or her professional activities.

35. To strengthen responsibility, requirements and guarantees related to activities undertaken by local self-government employees after their employment, in the general interest of avoiding activities through which they would gain a personal or professional advantage due to their having been a public official, extend the obligations after the termination of their employment for a specified period proportional with the importance of the position held: “*cooling-off period*”.

36. Stipulate restrictions on the admission to local self-government service of persons who, upon entering the service in local self-government bodies, will be directly subordinated to closely related persons.

E. On external experts and trade unions in selection and disciplinary commissions

37. Modify Article 24 3° of the draft law as follows: “*The Competition Commission may comprise local self-government employees, including from other local self-government bodies, deputies of the village, town, or city mayor, the chairman of a city district council (where established), rayon and oblast councils and civil servants. Participation of scientists, specialists or other experts can be decided if the nature of the position which is to be attributed makes it necessary. In this case, these scientists, specialists or other experts are designated by a deliberation of the deliberative assembly.*” If this proposition is not followed, at least to remove a representative of an elected body of the primary trade union organisation from participating in the recruitment process.

38. Introduce a new provision as follows: “*When the characteristics of a case so require, a written report may be requested from an expert appointed by the local authority's deliberative assembly. Its written expertise is brought to the attention of the prosecuted employee, who may submit written observations on it to the commission prior to its meeting*”. If this suggestion is not followed, at least to remove the concerned paragraph.

F. On performance payment, financial and institutional capacity aspects

39. Build gradually and carefully a performance-related payment system, applicable strictly to career civil servants, using transparent and objective criteria and ex-ante consultations in institution. This effort should be phased-in over a period of years and benefit from methodological assistance from the central government. Limit the fraction of salary related to seniority and performance and, on the other hand, protect civil servants from abrupt payment cuts which can be a form of pressure.

40. Create capacity in central government to monitor the implementation of the law, offer guidance and assistance to local self-government with lower administrative capacity on a demand basis, and collect information in order to better calibrate policies in the future. The Unified Portal of Public Service Vacancies is a good idea leading to efficiency and transparentising, but the mechanism has to be introduced gradually and on an opt-in basis, at least in the first years. Strengthening central capacity for evidence-based policy in human resource and public administration is also important in the area of gender mainstreaming: without a good reading of the current situation and trends, it will be more difficult in the future to design nation-wide guidelines or regulation applicable at all levels.

G. Other recommendations: employment regulations

41. In order to guarantee the neutrality of local self-government employees, introduce a new paragraph at Article 10(1) relating to “Impartiality of a local self-government official” (which would not be specific to political neutrality but would have a wider scope) as follows: *“A local self-government employee shall not discriminate on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Therefore, he/she observes a strict neutrality towards citizens”*. This formulation is derived from Article 1 of the ECHR and would strengthen the existing dispositive. In order to complete this provision, modify Article 18 4 as follows: *“4. Any form of direct or indirect discrimination shall be prohibited, when citizens of Ukraine exercise their right to serve in local self-government bodies”*. This would help to struggle against disguised discriminations.

42. In order to avoid situations when “special requirements” of a position are defined in such a way as to unduly facilitate the recruitment of a specific person or category of people, or to prevent the recruitment of another person or category of people, amend Article 19 5 as follows: *“5. Special requirements for a candidate for a local self-government position shall be determined by the relevant head of the service according to the law and with regard to objective requirements of the concerned position”*.

43. Harmonise the procedure of oath-taking by all elected officials in the relevant legislation; in this draft law the subject is addressed in Article 82. The Electoral Code of Ukraine (Article 283(6)) include this symbolic step, but the law “On the Status of Councillors of Local Councils” does not mention the oath of a councillor at all. Separately, the law “On Local Self-Government

in Ukraine” requires that only a newly elected village, town, or city mayor shall be bound by oath. It is therefore unclear whether a person elected as a local councillor has to repeatedly take the oath should he or she be elected or approved for the position by a village, settlement, city council, city district council (where established), rayon or oblast council.

44. Article 12(4) of the draft law reads: “*A local self-government employee cannot be at the workplace, he or she shall stop performing official duties following the ordinance (order) of the head of the service for the period of participation in the electoral process (from the date of the registration as a candidate in respective elections until the official announcement of election results or the cancellation of such registration)*”. It is also pointed out that “*Such a local self-government employee, upon his or her request, shall be granted unpaid leave of absence or may be granted the main annual and/or additional leave that he or she is entitled to in accordance with the law*”. However, the Electoral Code establishes the right of candidates to be granted unpaid leave, and there are no prohibitions on *being at the workplace* and no obligation to cease the performance of official duties for the period of participation in the electoral process. Moreover, the Labour Code does not stipulate that an employee has to cease to carry out his or her official duties for the period of participation in the electoral process. In conclusion, the provisions of Article 12(4) of the draft law need to be harmonised with the provisions of the Electoral Code of Ukraine and the Labour Code.

45. Article 21(2)(3) of the draft law stipulates that a competition for a position of a local self-government employees is held “*for a position from which a person was appointed to an elected position*”, but the draft law contains no provision on guarantees of retention of office for persons who have transferred to an elective position; apart from this, a person cannot be *appointed* to an elective position – they must be elected or approved for such position. This provision of the draft law requires further elaboration with regard to the definition of safeguards for the retention of office for the elected official and the clarification of the body to which the person has transferred to the elective position (local self-government body of the territorial community concerned etc.).

46. The provisions on entry and termination of service in local self-government bodies should be harmonised. According to Article 72(1) of the draft law, among the grounds for termination of service in local self-government bodies, where the right of a local self-government employee to service is lost or restricted, are (i) the establishment of the fact that a local self-government employee has citizenship of a foreign state or acquired citizenship of a foreign state, while serving in a local self-government body (sub-Article 2); (ii) entry into force of a court decision to bring a local self-government employee to administrative responsibility for an offence related to corruption, which deprives him or her of the right to hold relevant positions or engage in activities related to the exercise of functions and powers of local government or state functions (sub-Article 3). However, Article 18(3) of the draft law does not contain among the circumstances preventing entry into service the cases mentioned above. These provisions need to be aligned.

Overall assessment

In general, the draft law lays the background for service in local self-government bodies and is in line with the European principles on the matter. Its adoption would lead to significant improvements compared to the current situation, such as a better – though not yet optimal – differentiation between various types of local self-government employees and elected representatives, as well as improvement of the legal framework for the professionalisation of local self-government employees.

The draft law creates conditions for improving the prestige and performance of service; eliminates many shortcomings of the current state of affairs; improves the competitive selection procedures; and creates framework for professional development of civil servants. There are clearer procedures for service in local self-government bodies, with special attention paid to accountability. This is all welcome.

The draft can be further improved when it is considered by the Verkhovna Rada of Ukraine, in particular when it comes to the clear separation between elected positions and career civil servants (A), the restrictions applicable to representatives and the civil service (B), or various recruitment procedures and employment regulations (C, D, E, G). A special attention must be given to the stages downstream, when the law is implemented and when methodological guidance and support from the central government are needed, as well as data collection capacity and adequate funding.