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**APPRAISAL
OF THE DRAFT LAW OF UKRAINE
"ON AMALGAMATION OF TERRITORIAL COMMUNITIES"**

The present report was prepared by the Council of Europe Centre of Expertise for Local Government Reform, Directorate General II - Democracy, in co-operation with Prof. Gérard Marcou, University Paris 1 Panthéon-Sorbonne, Director of GRALE (Research Group on Local Administration in Europe), France and Mr. Anatoliy Tkachuk, Director of Science and Development, the Civil Society Institute, Ukraine.

Introduction

The Parliamentary Committee on State Building and Local Self-Government requested the Council of Europe (CoE) to provide legal expertise of the draft Laws "On amalgamation of territorial communities" and "On local initiatives". The appraisals – CELGR LEX 1 and CELGR LEX 2 - were prepared by the CoE experts within the framework of the CoE Programme to Strengthen Local Democracy in Ukraine (2010-2013, funded by the Swedish International Development Cooperation Agency Sida).

The draft law on the amalgamation of territorial communities is an important step to the territorial reform of the first local government tier in Ukraine that has been discussed for many years and has already given rise to numerous reform projects. The draft law on local initiatives is an attempt to regulate such an important instrument for citizen participation in local self-government issues as "local initiatives". Both refer to the Ukrainian constitution and to the local government law 1997, where the legal basis can be found, but due to the lack of procedures that would make respective legislation provisions operational, it is not always possible to implement general provisions on amalgamation of territorial communities and local initiatives in practice.

These are two separate but inter-related draft laws: for example, in case of the implementation of the law on the amalgamation of territorial communities, legal norms regarding the right for local initiatives should be significantly specified – the larger size of the municipal self-government units should be considered in the provisions of the draft law on local initiatives.

Overall, improvement of legal regulations on the procedure of amalgamation of territorial communities and exercising the right for local initiatives would result in significant improvements of the local government system of Ukraine and in further development of local democracy. These drafts are, in general, in line with the European Charter on Local Self-Government and the Principles of Good Democratic Governance at the Local and Regional Levels endorsed by the Ministerial Conference of October 2007 in Valencia.

However it is necessary to consider two major issues that could undermine the reform:

1. As regards the draft law on the amalgamation of territorial communities, the schedule for the implementation of the reform has to be regulated by the law. Enough time and a deadline should be given by the law for discussions at local level in order to build political agreements on the new boundaries. There is also a contradiction between the principle of voluntary amalgamation based on an agreement and the fact that amalgamation can be carried out only within the boundaries designed in a Perspective plan on the formation of local communities (PPFG) established only by State authorities. Financial support is not specified clearly enough, and will be given only to amalgamation projects based on PPFG in each region. Participation of existing local government councils and their associations in the elaboration of PPFG is not ensured.
2. As regards the draft law on local initiatives, its purpose, on one hand, is to give the opportunity to local communities to exercise their right for local initiatives, but, on the other hand, the adoption of this law would limit the right of local councils to manage local affairs, as it is stipulated by Article 9 of the current Law of Ukraine "On local self-government". This issue should be regulated by legislation at the national level; the draft law should be better coordinated with the law on local referendum pending for adoption. Some of the CoE remarks on this draft law can be repeated again on the draft law on local initiatives. The possibility should be given to submit local initiatives concerning only one part of the territory of the municipality, submission procedures should be quite simple and apply efficiently both in large city and small village communities.

This appraisal will propose amendments in order to improve the draft law on amalgamation. The proposals on the draft law on initiatives are discussed in the separate appraisal (CELGR LEX 2).

General Remarks

The draft law is not devised for an overall territorial reform but only to reorganise the municipal pattern in rural areas and shape viable local communities. However, smaller rural communities could be integrated in the territory of a city. The draft law is in line with the 2010 draft law on the stimulation and State support to unification of rural territorial communities, but it is more comprehensive and avoids the difficulty of delimitating legally what is rural. There is also an important difference of approach: the 2010 draft contained provisions on the development of inter-municipal cooperation; this is not the case in the present draft law. Focus on amalgamation could be quite justified, however, even after a good territorial reform, **it would still be important to have an adequate legal framework for inter-municipal cooperation, and such a framework is currently missing.**

The following points will be discussed below: 1) local communities and administrative territorial units; 2) territorial organisation of new municipalities and accessibility of public services; 3) plans on the formation of unified territorial communities and unification procedure; 4) the State support to new municipalities; 5) establishment of new municipalities resulting from amalgamation.

1. Local communities and administrative territorial units

The Ukrainian Constitution and the 1997 Law on local government are based on a distinction between "local communities" and "administrative-territorial units" (ATU), and on a sociological concept of the local community. This is restated in the explanatory note on the draft law: 10,278 local councils represent 28,451 rural agglomerations (*населений пункт*); about 200 rural agglomerations are integrated in 64 cities of regional significance, and about one thousand are integrated in cities of regional or republican significance but are nevertheless local communities within their limits.

In principle, each ATU must not be the territorial framework of a local community with own self-government bodies, but first tier self-government bodies should coincide with ATU. This very logical and simple requirement has been made complicated by the formulations of the Constitution and of the local government law. According to article 140, a local community (*hromada*) is formed of "residents of a village or a voluntary association of residents of several villages into one village community, residents of a settlement, and of a city" (*жителів села чи*

добровільного об'єднання у сільську громаду жителів кількох сіл, селища та міста). As a consequence, the notion of a local community is based on a sociological fact and the members of the community may form local self-government bodies. Therefore a distinction is made between villages, towns or boroughs, and cities although no clear legal consequence is derived from this distinction. On the other hand, they are, according article 133, units of the territorial structure of Ukraine, e.g. ATUs. However, because of the sociological basis of the concept, it is not always easy to determine what is a territorial community, even more so that, according to article 140 of the Constitution, a local community can embrace several villages as well as one village. Ukraine has around 30,000 local communities (*hromadas*), meaning that a local council may represent several communities as the case may be. The Constitutional Court had partly solved this problem, making clear that "rayon" has the same meaning in all articles, but "city districts" refer to inner divisions of cities; hence, local communities are also ATUs: "administrative territorial units are basic elements of unitary territory of Ukraine that are the spatial basis of the organisation and the activity of the State power bodies and of local self-government bodies" ("Адміністративно-територіальна одиниця - це компактна частина єдиної території України, що є просторовою основою для організації і діяльності органів державної влади та органів місцевого самоврядування" - sentence of July 13th, 2001, n°11-рр/2001, in par.2 of the grounds). The constitutional amendments (Draft law 3207-1 of 2004) would have put in line article 133 with this interpretation but they never came into force. However, this did not solve the problem of the territorial determination of *hromadas*.

The explanatory note of the new draft law correctly emphasises the necessity to recognise the link between local communities and ATUs. As a consequence, the exclusive competence of the law to determine the territorial structure of Ukraine (Constitution: art.92, pt 13), and of the Verkhovna Rada to establish or modify the boundaries of districts (*rayon*) and cities (art.85, pt 29), prevail on the legislative provision providing for a local referendum to decide on the unification of local communities or the separation of a locality as a new local community (Local government law 1997, art.6, par.3 and 4). However, as it will be seen later, not all consequences are drawn from this interpretation.

Amalgamation is contemplated between neighbour communities only, in order to form a "unified territorial community" (*об'єднана територіальна громада*). This process will solve the problem of the boundaries of

territorial communities as a consequence of amalgamation, due to the conditions listed by the law (art.4, par.1):

- Only those *hromadas* that have their own representative body may be involved in the amalgamation process.
- The territory of the unified territorial community must be "indissoluble" (*нерозривна*), and the boundaries must coincide with the boundaries of the communities involved in the amalgamation: this requires the continuity of the territory of the new territorial community. This requirement should be formulated more clearly; it would overcome the drawbacks of areas subject to the direct authority of the district administration instead of the municipal administration. **The principle of "повсюдність" that was introduced in three of the four 2005 reform bills, and that could be translated as "full coverage", should be re-introduced in the list of principles of article 2.**
- The case of amalgamating only part of an agglomeration (населений пункт) of a territorial community is contemplated only when the amalgamation overlaps the boundaries of a neighbour district, and in that case it belongs to the *Verkhovna Rada* to modify the district boundaries (point 5); subject to a decision of the VR, **this deviation from the rule should be made possible also when it looks relevant in other cases (for example, due to communication issues).**

Three other conditions (points 6, 7 and 8 of paragraph 1) should be discussed:

- The **distance** from the administrative centre of the unified territorial community to the more remote agglomeration included in the community should not be over 30 km on standard highways: this is quite a long range for municipal administration. The 2008 reform project proposed 11 km as the maximum radius from the centre, and 20 km were proposed in the draft law of 2010. Furthermore, more important than the distance, accessibility, communications and travel time have to be considered: for example mountainous areas versus flat country. **The rule of point 6 of the draft law could downgrade the level of accessibility for the residents.**
- The boundaries of the new unified territorial community have to comply with boundaries designed by the Perspective Scheme for the formation of territorial communities (PPFG) of the regions (as well

as the Autonomous Republic of Crimea and the territory of the city of Sevastopol): the problem is that the law does not provide for the participation of representatives of municipalities, and there is no way to review these boundaries. Therefore, as it is, **point 7 is contradictory with the principle of free amalgamation (добровільність) stated in article 2. Point 7 should be deleted, and completed by new provisions in the articles on the PPFG** (see below).

- Point 8 is about the factors to be considered to determine the boundaries of the new unified territorial community. The emphasis is on factors reflecting the past (historical, ethnic, cultural factors...) and other factors that influence socio-economic development. As a matter of fact, **factors based on tradition may give wrong indications, because they are linked with another demographic and settlement structure; nowadays, it is much more important to consider communication networks, labour market and consumption areas. Therefore, it would be more relevant to put forward these factors rather than traditional ones.**

To illustrate the last points, when the territorial reform was performed in Germany, the new administrative units were devised on the basis of an analysis of the services to be delivered from every central place within a hierarchy of centres (depending on the population area deserved). In France, the new schemes established for the generalisation of inter-municipal authorities in each “*département*” are based on statistical analysis worked out by the National Institute of Statistics and Economic Studies (INSEE) on so-called “urban areas” based on home-work and home-consumption trips measuring the level of dependence of all localities on various centres.

2. Territorial organisation of the new municipalities and accessibility of public services

As already emphasised, the unified territorial community (new municipality) should not make local public services more remote to citizens. According to the new paragraph 3 of article 6 of the 1997 local government law (as amended by paragraph 3 of final and transitional provisions of the draft law), a territorial community could opt out of the unified territorial community if the result has been to worsen the volume

and the quality of the services delivered to the population by the municipal administration.

This provision is thought as a guarantee to overcome the reluctance of small communities to engage in the amalgamation process. But this is hardly sustainable in these terms. First of all, such an exit should be based on a fair procedure, for example:

- **exit should not be undertaken before at least one or two years of experience of amalgamation;**
- **there should be an initiative submitted to an open and contradictory debate with an independent assessment (for example by regional audit chambers if they are created, or by any other auditing body);**
- **the costs of the exit for the rest of the unified territorial community should be considered;**
- **if the decision has to be taken through a referendum, this procedure has to be regulated by the law, and the draft law should refer clearly to the law on local referendum or relevant articles thereof.**

Another amendment to the local government law is to establish the "*starosta*" of the village or of the borough (new article 15-1, introduced by paragraph 3 of the final and transitional provisions of the draft law). The *starosta* will keep a representation of the inhabitants of the territorial community that has lost its centre and take part in the meetings of the executive committee on points concerning its community with advisory voting right. The *starosta* fulfils her/his functions according to the powers conferred upon her/him by the council of the unified territorial community. This provision is close to Polish legislation, where the *starosta* also exists and probably explains that the amalgamations of the seventies have proved to be sustainable after the collapse of the communist regime, (unlike in Hungary and the Czech Republic).

However, some points are unclear. Whereas article 7 of the law regulates the end of the powers of the local councils of the territorial communities after the establishment of the unified territorial community, the new article 15-1 of the local government law provides that the local council presents the *starosta* to the executive body of the unified territorial community. In that case, a councillor has to be there to do this presentation. Or this means the former local council before the end of its

powers, but this would imply that the *starosta* is only a transitional measure – something that the law does not suggest.

Therefore the draft law has to be completed on this point. **The CoE expert recommendation is to keep a smaller council, with advisory functions, and the power to propose the *starosta*. Or, it should be made clear that after the first mandate of the council of the unified territorial community there is no *starosta* any longer, or that the *starosta* is just appointed by the executive committee of the unified territorial community. The first option is better to secure the acceptance of the amalgamation. Moreover, the draft law overlooks the problem that can arise in case of a small city being engaged in an amalgamation process with a bigger city. Even if such case will not be frequent, it would be necessary to provide a similar form of representation of the inhabitants through a *starosta* with a (smaller) advisory council.**

The draft suggests that the territorial communities engaged in the formation of the unified territorial community continue to exist, whereas it also provides for the succession of all rights and powers of the former councils. **The law has to be clear on the question of whether after the amalgamation only the unified territorial community is a territorial community or whether smaller territorial communities continue to exist.** The first solution is better and results clearly from the terms of articles 6 and 7. This is more understandable for the public and does not rule out the exercise of local democracy rights at a lower level. There are implications on the interpretation of the legal provisions on citizen participation based on territorial communities.

3. Perspective amalgamation schemes

Perspective plan for the creation of territorial communities (*Перспективний план формування громад*, PPFG) is an essential element of the draft law, although **there is no adequate provision on its elaboration process, legal nature and legal force. This is the most important shortcoming of the draft law.**

Experience of administrative-territorial reforms in European countries shows that central government played a significant role in determining parameters of amalgamation of local government units with various levels of details. In Germany, the territorial reform of the sixties was based on territorial analysis based on the central place theory in order to determine the design of the new municipalities established through amalgamation. In

France, the strategy aimed at implementing a territorial reform through the development of integrated inter-municipal bodies has been based since the law of 1992 on inter-municipal cooperation development schemes established under the leadership of the prefect at the level of each department with the participation of mayors; these schemes design the boundaries of the proposed units; the law of December 2010 has strengthened the authority of these documents. In the Law of Estonia "On the Promotion of Amalgamation of Local Self-Government Units", it is stipulated that Government determines so called "amalgamation zones", in the boundaries of which amalgamation takes place. The law of Estonia stipulates provision of subsidies for amalgamation, if it is in line with the determined "zone". But the law also stipulates that in the amalgamation process, initiated by local self-government, central government can introduce corrections into amalgamation zones; it also allows entering a part of another administrative-territorial unit into a new unified territorial community.

It follows from point 7, in paragraph 1 of article 4, that the boundaries of the unified territorial communities are determined in the PPFG, and that the determination of the communities involved in the formation of a unified territorial community has to comply with the boundaries designed in this plan. As a consequence, the PPFG can be considered as an amalgamation scheme.

More detailed provisions can be found in articles 10 and 11. There is one PPFG for each region (including the republic of Crimea and the area of the City of Sevastopol) (art.11, par.3); this scheme designs the boundaries of the unified territorial communities to be formed (art.4, par.1, pt 7); the financial support of the central government to newly formed unified territorial communities for the development of the infrastructures necessary to the new territorial community is bound to the compliance with the boundaries designed in the PPFG (art.10, par.1); this means that the financial support will drop if the unified territorial community deviates from this boundary, for example if the referendum on unification is organised in different boundaries. It is difficult to consider that such a procedure supports the right of territorial communities to unify on a free will basis, as it is put forward in article 2 and in article 11, paragraph 1. From these provisions we can infer that **the PPFG is indeed a legal regulation with quasi-binding effects, and not a simple guidance document.**

The process to adopt the PPFG gives little opportunity to local communities and to the population to express their voices in the

determination of the new boundaries. The draft law provides for a local referendum or a vote of the local council based on citizen conferences in order to decide on amalgamation in a unified territorial community (art.5, par.1), but this is only the possibility to approve or reject the project. This means that there is very little room or no room at all to build a political agreement on the unification scheme with stakeholders and, in particular, with the population. The draft law provides for the publication of the decision to inform the population not later than five working days following this decision (ibid.). There is no provision on the publication of the project before the decision in order to make public debate possible.

According to article 11, the PPFG of each region is prepared by the State administration of the region (the Republic of Crimea, the city of Sevastopol) following the methodology determined by central government, then it is approved (*схвалюється*) by the regional council (the Verkhovna Rada of the Republic of Crimea, the council of the city of Sevastopol) and finally submitted to the Cabinet of Ministers by the respective regional State administrations for confirmation (*затверджується*). Some points are unclear, but reflect the lack of the organisation of a debate on the implementation of the reform. The law does not make it clear whether the regional State administration could submit the PPFG to the Cabinet of Ministers if the regional council did not approve the document (negative vote, or refusal to vote on it). In this process, the Cabinet of Ministers has the final decision: without its "confirmation" or "ratification", the scheme could not be enforced. Although it is unlikely to happen, could the Cabinet of Ministers refuse to confirm the PPFG submitted by the regional State administration, because it is not in line with the methodology previously enacted by the Cabinet of Ministers? Most probably, yes, but these ambiguities should be removed and the powers of the respective institutions involved in the process should be clearly determined.

The whole process should be rewritten in order to enable a more open debate on the formation of the unified territorial communities. As correctly pointed out in the explanatory note, the European Charter of Local Self-Government does not require leaving the decision on boundary changes to the local communities concerned. Article 5 of the Charter states: "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". Only a consultation is required. This norm is based on the idea that determining the divisions of the territory is basically a competence of the

State. However, **the Ukrainian draft law on the unification of territorial communities does not even organise an open debate on the boundary changes; there is no possibility to discuss and compare several versions of unification. The process proposed by the draft law can be formally considered as in line with the Charter, but it does not comply with its substance.**

The problem is not only the compliance with the Charter. It would be useful to create good starting conditions for the implementation of the reform. Local governance requires trust and support from the local population and this is not given automatically. In order to build this trust and support, it is necessary to involve councillors and citizens in the formation of the unified territorial communities.

Therefore the recommendation is to restructure the process of the elaboration and approval of the PPFG. Such document is necessary to rationalise the unification process within regions. But local communities and citizens should be involved.

The following stages should be provided by the law:

- 1) Establish a consultation framework: for example elect a committee of mayors at the regional level to work with the State administration on the PPFG project, review the project established by the State administration and propose amendments; then seek advice of district councils, of the regional council and of economic / social stakeholders (business associations, trade unions, major citizen associations...).
- 2) Publish the project, with an explanatory note and maps, in the press and on the Internet, for public scrutiny for a given time, for example one or two months. At the same time, the State administration and members of the mayors committee should organise meetings in various places, in particular where the implementation is more controversial, in order to find reasonable adjustments.
- 3) At the end of this procedure a report should be made, discussing remarks and objections and giving grounds for those finally rejected. This report has to be published with the final PPFG draft. If the PPFG is a central government act, there is no need to seek approval by the regional council. The distribution of powers has to be clear. Then, the PPFG might be enacted either by the Cabinet of Ministers, as it is now the case in the draft law, or by the Head of the regional State administration empowered by the Cabinet of

Ministers. This latter solution is better, because it is more favourable to local adjustments in the PPFG.

In principle, these suggestions represent a certain modernization of the procedures stipulated by the Law of Ukraine "On the Foundations of State Regulatory Policy in the Sphere of Economic Activity", and there is already some experience in Ukraine of enforcing them.

In France, such a procedure was established, in each "*département*" to support the formation of inter-municipal bodies with larger responsibilities; the elected commission is chaired by the prefect. The commission may also adopt amendments to the scheme proposed by the prefect; these amendments are binding for the prefect if adopted at a two-third majority of commission members.

The purpose of such a procedure is to build support to the new territorial pattern of each region, create conditions for the new local self-government bodies to perform their tasks with enough support from the population. This will be more time consuming but will be more efficient at the end. The consultation of citizens on a unification project through a referendum or citizen conferences will make more sense, since the project will have been discussed before and major arguments for and against will be known.

4. State support to unified territorial communities

According to article 9, the State will provide organisational, methodological and financial support to the unification of territorial communities. The financial support will grant additional resources in order to finance the development of the infrastructures necessary to the unification of the municipal functions deemed to be exercised on a wider scale (art.10).

According to article 10, every year before the 15th of July, the regional State administration will submit to the Cabinet of Ministers financial support proposals presented by the councils of the unified territorial communities (par.2). However, the volume of the financial support will be allocated according to the surface and the number of inhabitants of the new unified territorial communities (par.3). **These two provisions are not consistent. If the amount of the grant is subject to the discretionary appraisal of the needs expressed by the councils of the unified territorial communities, the provision of paragraph 3 is**

redundant. If the grant is allocated on the basis of objective criteria, as stated in paragraph 3, the procedure of the submission of proposals to the Cabinet of Ministers is redundant. Anyhow, the total amount of the financial support has to be determined in State budget appropriations. Then, there are two methods: to determine a key and then to calculate the amount of the budget appropriation necessary to cover its implementation or to determine an amount and then to determine the methodology to allocate the grants.

Objective criteria have to be applied. Those expressed in the draft law are correct, but they could be refined by other criteria: for example for mountain areas, for areas of low population density (thresholds to be determined by the law), etc. It is also better to determine by law the rate of the grant: for example, x Hryvnia per unit (inhabitant or km²) since it makes the process more transparent; the mayors may have their own estimate of the benefits they can expect. **Paragraph 2 of article 10 should therefore be deleted.**

However this is not enough to support the territorial reform. As correctly emphasised in the explanatory note, the purpose of the reform is to form efficient territorial communities, the main task of which is to achieve a better satisfaction of citizens' needs with the provision of basic social and administrative services of a better quality, to improve the development conditions of the territory of the unified territorial community and to use budgetary resources and other resources more efficiently (par.2). This will not be achieved only with the compensation by State grants of the additional costs generated by the necessary upgrading of the municipal infrastructures, as contemplated by article 10. This issue is not new and has been emphasised several times in previous consultations with the Council of Europe. **The implementation of the territorial reform has to be linked to the implementation of the Reform programme of housing and communal services. This would allow demonstration of the improvements to be expected nationally by the implementation of both reforms. It would also facilitate the planning of the development of the various sectors of the communal services, which, in turn, could help in the discussions on the new boundaries.** This suggestion was already made in the CoE expertise of November 2010 on the draft law on stimulation and state support to the unification of rural territorial communities, and earlier in the expertise on the amendments to the National Programme of reform and development of housing and communal services adopted in August 2007: "The National Programme should help promote the responsibility of

local government; [its] implementation (...) could prepare better conditions for the local government reform”.

5. Establishment of new municipalities resulting from amalgamation

The unified territorial municipalities will be new municipalities, and will bring the local government of Ukraine closer to European standards.

The draft law organises the procedure to establish the unified territorial community and its succession to the respective amalgamated communities (art.5-8), and the 1997 local government law is amended accordingly.

Any mayor may take the initiative of establishing a unified territorial community in accordance with the approved PPFG (art.5, par.1) and turn to the mayors of the neighbour communities with an agreement project, complying with a model agreement issued by the Cabinet of Ministers (par.3), the basic content of which is determined by the law (par.2). Then, the decision (*рішення*) to carry out the unification is taken by a local referendum in each community concerned at the same time or, alternatively, by the local council on the basis of the consultation of citizens' general assemblies. The next steps are: the publication of the decision (par.1, last sentence), the signature of the agreement by the mayors (par.4), and the transmission to the respective community councils for approval (*затвердження*) (par.4). Then, the agreement will come into force after approval by all these community councils (par.5). Then, according to paragraph 7, the community councils that have decided to create the unified territorial community send the copy of the decision taken by referendum or local councils and the agreement's original to the regional council and to the regional State administration (accordingly for Crimea and Sevastopil). Lastly, according to article 6, paragraph 1, the unified territorial community is considered to be created the day after the decision is taken by the regional council (the Verkhovna Rada of the Republic of Crimea, the council of the city of Sevastopil).

This procedure is confusing in many aspects:

1) There are no clear requirements as for the content of an agreement and the procedure of its initiation and signature; Article 5 is quite chaotic and confusing in its norms, which are difficult to interpret. Particularly, in the agreement there must be provided: “4) *mechanisms for improving the level of public service provision for the population of unified territorial community*”.

It would be worthwhile to determine the logic of preparing for amalgamation: first, one or several heads of local communities address the neighbouring communities with the proposal for unification, in which they state certain minimal set of parameters (determined by this article); then follow negotiations between the heads and approval of the text of an agreement; then follow public consultations, in the first place, with the communities concerned; then approval of an agreement by the local administration; and then – its approval by local councils' sessions .

2) There is no indication on the determination of the results of the referendums, and on the conditions for communities to be amalgamated in a unified territorial community: is it necessary to get the assent of all communities, e.g. the majority in favour of the amalgamation for each referendum and the decision of each council where the alternative procedure has been chosen? If the law does not require any majority, the unanimity of communities is required. But this puts the reform at risk: the opposition of only one community would make the creation of the unified territorial community impossible. Or could the unified territorial community be created without the opposed community? This is unlikely, due to the reference to the PPF, and can hardly be derived from an interpretation of this provision. Therefore, **the draft law should be completed on this point, and a better solution would be to have a majority rule weighted by the number of inhabitants of the respective communities.** For example in France, in similar cases, the usual majority is: at least the majority of councils representing at least two-thirds of the population, or two-thirds of the councils representing the majority of inhabitants.

3) There is no authority in charge of establishing the results: this might be the purpose of article 6 paragraph 1, but the formulation is confusing: the word "decision" is wrongly used, since in article 5 the decision is said to be taken by the communities. Furthermore, if the purpose is to have an authority establishing the results, this should not be the regional council, but the head of the State administration (more conveniently at the district level). As a matter of fact, the council is a political body, and such a function should be rather in the hands of an administrative authority, which has, in principle, to keep outside of political competition. Therefore, **paragraph 1 of article 6 should be amended as follows: "the results of the referendums, respectively of the votes of the councils are transmitted to the Head of the district (rayon) State administration. The Head of the State administration declares the results and as a consequence enacts the creation of the unified territorial community"**.

4) As regards the organisation of local referendums and of citizens' general assemblies, the draft law should refer expressly to the legislation in force for these decision-making or consultation procedures. Any other regulation would create confusion.

Furthermore, if the decision is taken through a referendum, there is no need for the community council to approve the decision. Such an additional step would be necessary only if the referendum was only a consultation without decision-making power. Therefore, the recommendation is to **delete the end of paragraph 4 of article 5: "та вноситься на розгляд відповідних місцевих рад для затвердження"**.

With the declaration of the results of votes and the enactment of the unified territorial community, the regional council has to call for new municipal elections and to adopt the necessary decisions on boundary changes.

Although this is not clearly stated, **the former territorial communities cease to exist once the unified territorial community is established**. This is not clear in the new wording of article 6, paragraph 2, of the 1997 local government law: "territorial communities (...) may join into a (...) unified territorial community, form unique local self-government bodies and elect their mayor (...) accordingly". However this is the necessary interpretation of paragraph 4 of article 6: "The unified territorial community and its local self-government bodies succeed to the territorial communities that have decided to join and to their local self-government bodies in their rights and obligations". This means that **citizens are members of only one territorial community in the sense of article 140 of the Constitution: the unified territorial community. This has to be clearly stated**.

As a consequence, article 7 organises the end of the previous territorial communities: their self-government bodies cease to exist as legal subjects as soon as they have transferred all rights, properties and resources to the new elected bodies of the unified territorial community, and they cease totally to exist on the day when this is registered in the State registry of legal and natural persons. A liquidation commission is established to resolve all practical questions related to the succession of the unified territorial community and its self-government bodies. There is no problem in the provisions of articles 7 and 8 in this respect, but

paragraph 4 of article 7 should be deleted: since the law regulates all steps of the dissolution of the former territorial communities and their self-government bodies, there no need for a decision of the regional council.

The provisions formulated in paragraphs 1 and 2, Article 6, which vest oblast councils with the power to establish new communities and set up elections in these communities, look like those that do not correspond to the nature of an oblast council, which “represents interests of territorial communities” and has no authority to establish ATUs, and new territorial communities are the new ATUs. Moreover, the Constitution of Ukraine refers issues of territorial arrangement of power 1) exclusively to the law, and appointment of local government elections; 2) to the jurisdiction of the Parliament.

Finally, the draft law does not stipulate any transition period, when there is already a decision to amalgamate communities into a unified territorial community, but new local government authorities on the basis of new elections are not yet organised, new accounts are not open, new tax rates are not established. This issue is critically important for people’s lives; therefore it should be properly regulated.

¹Par. 13), part 1, Article 92, Constitution of Ukraine

²Par. 30), part 1, Article 85, Constitution of Ukraine