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ASSESSMENT OF THE DRAFT LAW OF UKRAINE ON SERVICE IN LOCAL SELF-GOVERNMENT BODIES

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Introduction

The present Report was requested by the Parliamentary Committee on State Building, Regional Policy and Local Self-Government (dd. 10 June 2016) within the framework of the Council of Europe Programme “Decentralisation and territorial consolidation in Ukraine”.

The professionalisation of the local government service is a major condition for further decentralisation in Ukraine. The present draft law follows the scheme of the recent law on State civil service of 10 December 2015 (n°889-VIII) and replaces the previous law on Local government service of 2001, still in force after that the draft law of 2012 was dropped¹.

The present analysis focuses on the most important issues which arise from the draft law.

Compared to the legislation in force, the present draft gives better foundations for the local government service and is in accordance with the generally recognised principles of European countries on this matter, despite the great variety of modalities of organisation and legal regime of the local government personnel in these countries².

Major achievements of this draft are the differentiation between professional and elected officials, and the improvement of the legal framework for professionalisation of the local government personnel. There will be a clear distinction between political and administrative positions, e.g. elected and permanent positions, whereas at present up to 70% of the personnel of local government bodies may change after local elections³.

The professionalisation is introduced and supported through provisions on the recruitment following open competition and the prevention of politisation of the local government personnel, provisions on professional training and career development, provisions on guarantees granted to local government personnel in order to allow them sufficient professional independence, in particular the provision whereby two thirds of the remuneration shall be the salary and only one third shall be the bonuses – quite the opposite of what the situation is today.

The draft could be improved or supplemented as regards several important issues in order to be consistent with its objectives. Therefore, the following issues will be reviewed:

- 1) scope and legal basis of the local government service;
- 2) legal structure of the local government service;
- 3) recruitment through open competition;
- 4) rights and duties of local government civil servants.

¹ Council of Europe, *Comments on the draft law of Ukraine on the local government service*, prepared by G. Marcou, April 2012.

² Council of Europe, *Professional and elected officials in local self-government administration. An outline of European experiences*, prepared by G. Marcou, February 2016.

³ Letter of Mr S. Vlasenko, Head of the Committee, to the Council of Europe Special Advisor to the government of Ukraine on decentralisation, of 10 June 2016.

I. Scope and legal basis of the local government service

Two questions are not solved in a proper way in the draft law: who is really subject to the civil service rules? And how to reconcile the various set of rules referred to by the draft law?

A) Who is really subject to civil service rules?

1) Apparently a major issue is solved, since a clear distinction is made between professional and elected officials. Nevertheless, as regards councillors, the answer of the draft is ambiguous and continues to treat them as if they were professional officials.

Chapter 9 (art.80-88) is devoted to specific features of the service of elected officials in local government. Article 80 refers to the legislation on local self-government, on local councillors and on local elections as the basis for the status and functions of elected officials, and it states in paragraph 2 that questions that are not regulated by these provisions are regulated on "an analogy basis" by the provisions of the draft law. The analogy reasoning and the relationship between the general provisions and chapter 9 opens a too wide space for judicial interpretation. This raises some confusion on the status of elected officials with regard to professional civil servants.

As regards the regulation of the political activity of elected officials, according to Article 83, they may not belong to boards of political parties, at national or local levels, and they cannot take part in political demonstration during working hours. Councillors, including mayors and their deputies are usually politicians and are elected on the basis of political programmes, especially in small villages. While discharging their mandate they have to treat all citizens on equal basis, but this does not imply that they would become "politically neutral" figures after their election.

Another issue is the remuneration. According to article 87, the remuneration of councillors includes three parts: the salary which goes with the job position, the seniority bonus and some allowances. For an elected official, there is no reason to foresee a career system with increasing salary according to the number of mandates. In addition, the more people will stand for elections the more they will become "professionals". There is no reason either to grant performance premiums: councillors are accountable to their electors, and those have no power to grant a bonus to their mayor.

Therefore, the differentiation between political and administrative functions should be strengthened. Again, articles 80 to 88 apply to councillors vested with executive responsibilities (since these articles are about "service"- служба- and not "mandate" or "powers"- повноваження), but this is not clear in the draft.

It would be better and less confusing to shift provisions of chapter 9 on councillors holding executive functions to the law on the status of local councillors, in particular to remove restrictions on their political activities and to replace salaries and bonuses by an allowance fairly compensating the discharge of their functions. As a consequence, paragraph 2 of article 3 should be deleted.

2) Another issue is the definition of the personnel subject to the law on the local government service. Article 3 on the scope of the law makes a distinction between "servants" (службовец) and "employee" (працівник). Only servants are subject to the law. Political advisers or employees supporting political leaders (патронатна служба), employees of enterprises, organisations or establishments that are local government property are considered as "employees" in the sense of this

terminology and are not subject to the law.

As regards political advisers or employees supporting political leaders (патронатна служба), it would be better to consider them in the draft law than leave them in a “grey area”. Otherwise the risk would be that political executives develop that kind of personnel instead of relying on the professional civil service, so by-passing the new rules for the professional local government service. Therefore, ***the law should provide strict limits for the employment of such personnel:*** for example only for cities, and chairmen of district and regional councils, with a maximum of three for cities of oblast significance and for chairmen of oblast and district councils.

The exclusion of ***employees of budgetary institutions*** (by contrast with local enterprises) does not raise legal objections, but, with regard to the concept of civil service, the employees who are not involved in the delivery of services of economic character, ***should be treated also as civil service members***. This is justified by the fact that ***some of them could be appointed in managerial functions of their branch in local government bodies***. ***With the new rules, this would require them to pass through a competitive recruitment procedure***.

More difficult is the next exclusion: of the "employees of local self-government bodies who do not discharge powers (повноваження) directly related to the exercise of functions and the power (повноважень) of the local self-government", e.g. employees who discharge "support functions" (функції з обслуговування). The draft provides for lists based on criteria referred to by the law on the State civil service of 10 December 2015, in order to distinguish civil service positions and support function positions (art.3, paragraph 3, item 14). According to this law, it belongs to the Cabinet of Ministers, on proposal of the State body vested with the responsibility of the State civil service policy, and then to this body, to establish the list of positions with only support functions (paragraph 4). According to the present draft law, it will belong to the respective local councils to adopt the ***list of positions corresponding to support functions*** for their own administrative bodies (paragraph 4, point 2). ***Such a competence of local councils is acceptable only if the types of these positions are fixed at the national level; otherwise, this would leave to local councils to decide on the scope of the law on the local government service***.

This conception reflects the administrative apparatus underlying the organisation of the Soviet administration. In practice, such a distinction is very difficult to implement, especially in local self-government bodies, and can raise difficulties in daily administrative work. Such a concept is also typical of the German civil service, limited to the discharge of public power functions. But, precisely at the local level, it is not fully respected, and employees (on a labour contract) are involved in tasks that, in theory, belong to civil servants. Therefore, ***the definition of the scope of the local civil service should be broader and exclude only purely material tasks (cleaning, drivers, cooking...)***. ***Article 3 should be redrafted accordingly***.

The scope of the law is limited to the personnel of the municipal administration, since at the level of *raion* and *oblast* there exists only a State administration, the personnel of which is subject to the law on the State civil service. At the *raion* and *oblast* levels, the personnel of the local government administration works only within the executive body of the respective councils and not in the administration of the administrative territorial unit.

B) How to reconcile the various set of rules referred to by the draft law?

Article 5, paragraph 2, of the draft law, provides that labour legislation is applicable to local government civil servants as regards “parts of relationships” that are not regulated by the law on the local government service. However, on different issues, the draft law refers to the law on the State civil service and is based on similar principles. The subsidiary application of labour legislation is also provided for by the law on the State civil service (art.5.3).

It cannot be ignored that labour law is based on very different principles, due to the functions to be carried out. There are risks of collision of norms, if not carefully interpreted with regard to their implications. Therefore, it is recommended to state first that ***“parts of relationships that are not regulated by the law on the local government service have to be solved on the basis of common civil service principles and, as the case may be, by the application of the labour legislation compatible with them or declared applicable by the law itself”***.

II. Legal structure of the local government service

The draft law organises the local government service as a career service under a public law status, making possible for civil servants to continue their career in various local self-government bodies. Subject to some improvements, as suggested below, this piece of legislation should make local government service more competent and more attractive.

A) Main achievements of the draft law

After a competition, a selected candidate is recruited by an administrative act (no contract) (art.30). It could be presumed that the nomination comes from the head of the *hromada* (the mayor), but the draft law should make it clear. This appointment is not time limited, except in cases provided by the law (art.31). There is a probationary period, which is obligatory for a first appointment (art.32). The legal organisation of the local government service is based on the distinction between rank and job position: the rank is a title conferred upon the civil servant when he is appointed on a position. The civil servant keeps his rank when appointed on a lower position or when removed from his position. He may be deprived of his rank only by judicial decision (art.36, paragraphs 8 to 10).

The draft law provides rules ensuring career continuity with transfers on positions of the same or of another local self-government body, without passing through a new competition procedure (art.37).

Local government civil servants are divided into three categories according to the nature of the tasks and levels of responsibility: A, B, B (art.7). The category A embraces all executive positions and includes three ranks: from the top - 1, 2 and 3. The category B embraces managerial positions at the level of administrative subdivisions of the administration of local self-government bodies and includes ranks: 3 to 6. All other positions are in the category B: ranks from 6 to 9 (art.36.3). ***Rank 3 overlaps categories A and B; rank 6 overlaps categories B and B.***

B) Problems with the definition of categories

There is a problem in the definition of these categories, which do not exactly correspond to the categories in the State civil service (art.19 and 20 of this law).

The requirements are not the same within each of the two categories, because of the level of

responsibility and the size of the local community. For example, regarding the level of education required for positions of category A: a master is necessary for appointment to executive functions in cities of regional significance, but secondary education diploma (baccalauréat) is necessary for similar positions in towns and villages. Additionally, for category A - seven years of experience in functions with higher education requirements, three of which shall be in executive functions in positions of category B; for category B - the minimum level remains the baccalauréat (art.18). Special skills or qualifications required by the position are determined by the appointing authority with reference to qualification classifications of the State civil service. As a consequence, only people having a master degree have direct access to higher positions of categories A and B, while lower positions of both categories require only the baccalauréat.

This system has two consequences : 1) those appointed on positions of category A will have access to the highest ranks, starting at rank 3, never mind if they are recruited at the baccalauréat or at the master level, whereas those appointed on positions of category B will be recruited at the master level for highest functions of this category (for example, head of division in the administration of a city of regional significance or of an amalgamated community), starting at 6 up to rank 3; 2) this will favour post based recruitment at B level, by contrast to the recruitment of a bulk of candidates with regard to type-positions, which is typical for career systems. To sum up, the system is not consistent in terms of hierarchy, and is contradictory in terms of public employment policy.

Therefore, it is suggested to design 2 or 3 levels of recruitment in relation with qualification requirements, with overlapping career development scales, and giving access to comparable positions; then managerial positions can be allocated to staff members – or external candidates, on the basis of an open procedure.

C) Evaluations and dismissal

The draft law organises the performance appraisal of local government civil servants, as the basis for awarding bonuses or promoting civil servants, but also for dismissing them after two successive negative evaluations (art.39, in particular paragraph10). This provision is too hard, for two reasons: 1) dismissal is practically an automatic consequence of two successive negative evaluations, according to the terms of paragraph 10, - such a solution would be considered incompatible with the European Convention on Human Rights because of the absence of a review of the case and absence of possibility given to the civil servant to challenge the dismissal; 2) this could be easily manipulated against a civil servant in case of conflict.

Dismissal cannot be decided without a fair procedure; in case of problems with the work or the behaviour of a civil servant, intermediate steps need to be introduced to solve the problem before dismissing a person. ***It is suggested to remove paragraph 10 and to introduce after article 75 a supplementary article with a fair dismissal procedure including a commission and the guarantee of defence rights.***

D) Types and scales of remuneration

The legal hierarchy established by the law is reflected in rules on the remuneration of civil servants, in Chapter V (art.46 sq).

The remuneration of a civil servant includes six components: 1) the salary related to the work position; 2) the supplement for seniority; 3) the supplement for the rank; 4) compensation for

temporary supplementary work; 5) compensation for temporary supplementary work resulting from a vacant position; 6) bonuses. The supplement for seniority cannot exceed 50% of the salary related to the work position. The supplement for the rank follows the rate fixed by the Cabinet of Ministers for State civil servants. Lastly, bonuses, which are incentives for better performance, are determined by the local authority on the basis of the performance appraisal (art.48). The draft law restores the role of basic salary linked to the position, and bonuses cannot exceed 30% of the yearly basic salary (par.5).

This scheme looks thoroughly thought. Article 47 determines five groups of local self-government bodies, according to their population or status, and for each group the minimum and the maximum of the basic salary for civil servants of a given local self-government body. Local councils have to fix the salary scale within these brackets. If no decision is adopted on the salary scale, the law provides for a subsidiary scale (art.47.4). These rules should avoid excessive disparities. All components are regulated by the law or linked to the rank supplement of the State civil service. Local authorities have more discretion on the remuneration of supplementary work and for bonuses, but they have to take in account the level of bonuses on the State civil service.

It is important to avoid too big disparities in remunerations between local communities of similar categories, because this would make mobility more difficult, at the detriment of the development of professional experience.

III. Recruitment by open competition

The draft law provides that vacant positions in the local government service have to be filled according to the results of an open competition, as organised according to the Regulations issued by the Cabinet of Ministers for the State civil service (art. 19 and 20 of the draft law). The principle stated by paragraphs 1 and 2 of article 19 is a significant step ahead to upgrade the local government service. However, there are some drawbacks in the provisions of the draft law.

The first problem is that the provisions are designed for filling one position, not to recruit a number of civil servants deemed to fill various positions. This interpretation arises from article 23, paragraph 7(a) where according to the results of a competitive examination, the competition commission proposes to the appointing authority two candidates for one position. However, organising an open competition to fill one post is not consistent with a career system, in which civil servants are supposed to occupy successively various positions with mobility and functional flexibility requirements. Such a system is indeed more in line with the need to adjust constantly administrative organisation to changing needs.

There is another problem for higher positions in the local government service. If competitive examinations are organised only for the local councils, as provided by article 20 and 21, it is very likely that recruitment in big cities will attract good graduates, whereas competitive examinations for smaller cities in remote parts of the country will be less attractive. Therefore, competitive examinations for executive personnel with a master as minimum level should be organised nationally, and then the winners appointed in the respective communities on positions proposed for such a nation-wide competitive examination. To apportion the winners to the various posts, it is necessary to take their wishes in consideration, but two procedures are possible: either the winners

choose their post in the list of those offered by the competition, according to their ranking in the results of the competition; or the authorities of the respective communities chose in the list those that they prefer, subject to acceptance by candidates. Then people should have the obligation to stay at least four years (for example) in their position, before applying for another position elsewhere. Such a procedure would guarantee to all communities that they would have qualified managers, and would favour a more diversified professional experience of young local government civil servants. Furthermore, with a national competition, the risk of a complacent recruitment procedure – not impossible at local level, where “everybody knows everybody” and potential candidates are realitively easy to identify - would be much smaller. Therefore, it is suggested ***amend article 20 and insert a new paragraph 5 providing for a national procedure based on competitive examination, to be organised for instance each year, for the recruitment of local government civil service in positions requiring at least a master degree. This means it will be necessary to form a commission at the national level, according to rules of article 23, but with 7 or 9 members, due to the higher number of candidates expected.***

As regards to the procedure of competitive examination itself, articles 24 and 25 are quite adequate. As regards the modalities of the competitive examinations, ***the nature of the written tests, the area of knowledge required, the rules for the interviews, should be fixed nationally and not only by the local authorities*** as suggested by article 20, paragraphs 2 and 4. If not, the risk is to have serious disparities in recruitment requirements, making more difficult the career development through various local self-government bodies. Second, in article 22, the ***list of documents to be submitted by candidates to the commission has to be a “closed” list.*** Paragraph 3 should be deleted. If candidates may submit other documents they think relevant, this will affect the equality of treatment of all candidates by the commission, and in particular this could be used to influence indirectly the final decision of the commission.

Lastly, the access to managerial positions can be regulated in different ways. Most of them may correspond to ranks, and appointment should follow the promotion. For the most important ones, a more formal procedure may be used: following a promotion list established by a commission, on the basis of evaluations (as provided by article 39) or an open competition based on the submission of a report based on past and current professional activities and an interview. This should be regulated more in detail by the draft law. Equality of treatment based on merits and performance has to be guaranteed, not only for recruitment, but also for promotion.

For higher managerial positions, such as the head of the municipal administration, for example, more discretion may be left to the mayor, as political executive of the local community. Such « soft » politisation could be made possible as regards the managers appointed for a limited mandate (four years) as heads of the municipal administration (art.31.3). This can be accepted if the managers are chosen among the civil servants. The point is that there is a need of a confidence-based relation between the mayor and the head of his administration.

The procedure provided for positions of category A, with the commission proposing to the appointing authority two successful candidates, leaving it to choose one, is not satisfactory. If the competitive examination has been fairly organised, the appointing authority might have no serious ground to choose one rather than the other, and in this case, the choice will suggest a political preference. Such a procedure might be also an incentive for influencing the commission, at the local

level, with the best candidate being proposed, but jointly with the one proposed by the appointing authority. Therefore, it is suggested *to amend article 23, paragraph 7(a) accordingly, the appointing authority being bound by the results of the competitive examination as established by the commission.*

IV. Rights and duties of the local government civil servants

Rights and duties of the local government civil servants, as designed by the draft law are generally in accordance with the generally recognised principles of the civil service in a State of law. Particularly good is Article 14, paragraph 6, on the limits of the duty of obedience of a civil servant. However three kinds of provisions raise some criticism.

A) On political rights of civil servants in local self-government bodies

Restrictions to the political rights of civil servants in local government bodies are commensurate to their purpose. Article 15.1 states that civil servants of local self-government bodies have to discharge their duties regardless the political engagement of their director and their own political preference. But, this does not imply the complete neutralisation of their political rights as citizens. Among European countries, there exist various conceptions about the conciliation between the duties of a civil servant and his fundamental political rights. France has the most liberal system; by contrast, in the UK the political rights of the personnel of public administration are severely limited and even more as regards national civil servants as employees of local self-government bodies (who are not civil servants according to UK legislation); in Germany and Austria, political rights of civil servants are also severely limited, but not those of the employees, who are about 85% of the personnel of local self-government bodies.

The purpose of restrictive rules is to prevent the possibility for a civil servant to misuse his functions in order to create better conditions for his own election, and hence to distort the exercise of powers conferred by the law. Concerning the right to run for elections, the French electoral code provides that a municipal employee (civil servant) may not stand for an election as municipal councillor in the municipality where he is employed. But, there is no prohibition to run for an election in another municipality. Those having exercised the functions of head of services or head of division of the administration of a regional or a departmental council in the last six months or less may not run for an election in a municipal council of their jurisdiction (see : French electoral code : art. L.231). By contrast, there is no limit to run for an election in a council of a higher level or for national elections. Once elected, the employee may be seconded (or must be, if he (she) is elected in parliamentary assemblies), in other terms, exempted from his (her) professional duties in order for him (her) to exercise an elective mandate if it is a full time mandate.

Beyond the participation in elections, the exercise of political rights may be limited according to the level of the functions within the administration of a local self-government body. Under the French administrative law, the principle is that civil servants are citizens and have as such the same rights as the other citizens. However, the Council of State has formulated for decades in its case-law a specific obligation of self-restraint for all civil servants and public employees as a whole, at national or at local level. This means that a public employee has always to take care that his (her) personal behaviour or expression does not prejudice the interest of his administration and of undergoing

policies. There is no absolute definition of this duty, which depends in essence on the appreciation drawn by administrative judges from circumstances. The higher the responsibilities exercised, the stricter the limitation to the exercise of political rights. Considering this framework, a public employee is generally allowed to belong or not to a political party, to be an executive member, to take part in demonstrations, to be a member of a union, to strike. But, as it can be understood, those having functions as directors or managers will refrain from going to strike and to demonstrate publicly. ***Paragraph 2 of article 15 could be formulated as follows: « Civil servants and employees of local self-government bodies enjoy their political rights as citizens. They have, however, to exercise them in due consideration of their professional duties, with the purpose not to be detrimental to their administration or their professional responsibility. Any breach of this duty of care might result into a disciplinary procedure ». Such a text could also refer to obligations determined by article 13.***

B) Language capacities

According to article 13.1 item 5, all civil servants of local self-government bodies have the duty to use the « State language » in the exercise of their professional obligations. More important, in order to have access to a local government service, the “capacity of fluent use of the State language” (art.17.1) is required. As a consequence, article 22.1 item 5 requires candidates to provide a statement (certificate) on their capacity to use « fluently » the State language.

Such provisions may easily be used in a discriminatory way. Firstly, the requirement to use « fluently » gives an opportunity to control the quality of language praxis, beyond the normal requirement to speak and understand Ukrainian language. Furthermore, the draft law is just for local government, not for the State administration. In areas where some minority languages have been recognised as “regional” languages, the obligation to use the state language should be without prejudice of what is provided by the Language law for the official use of those “regional” languages.

Last but not least, the obligation to provide language certificates by all applicants to a public servant position is very cumbersome. Under the Framework Convention for National Minorities, the severity of language tests has been criticised and reasonable requirements, flexibility and effective measures of language training for civil servants recommended.

Therefore, it is suggested the adverb « fluently » in article 17.1 should be removed and point 5 of article 22.1 should be completely removed.

C) Application of the law on “power sanitation” (про очищення влади)

According to article 17, paragraph 2, item 8, the access to the local government service is ruled out for people that fall under the prohibition established by the law on power sanitation (про очищення влади). The purpose of this law of 16 April 2014 (n°1682-VII), as stated by article 1.2, is to ban out of any participation in government those who, « by their decisions, their action or their inaction have given effect to measures (or have tried to do it) deemed to the usurpation of power by President of Ukraine, Viktor Ianukovich, and have then damaged the bases of national security and defence of Ukraine... ». Such people are banned from public functions for 5 or 10 years, depending on the functions previously exercised (par. 3 and 4 of art.1). These persons are banned, not because of criminal offences charged upon them, but only for having occupied one of the functions listed in articles 2 and 3 during at least one year between 25 July 2010 and 22 July 2014, and people

concerned have to submit a declaration on whether or not they are subject to the said provisions (art.4).

The Venice Commission opinion on lustration (CDL-AD(2015)012) should be reminded:

“50. **Article 3(1)-(2)** disqualifies certain individuals on the basis of the position that they held during the period of presidency by Viktor Yanukovich in 2010-2014 (1) or during the Maidan events at the turn of 2013-2014 (2). The disqualification based solely on the position is not a priori contrary to international standards, provided that it is reserved for the high positions within organizations responsible for serious human rights violations and for serious cases of mismanagement. The Venice Commission is not completely persuaded that all the positions listed in Article 3(1)-(2) meet this condition. It notes however that the Ukrainian authorities are better placed to assess which public institutions played a prominent role, engaging in non-democratic processes, in the two relevant periods.

51. The time frame set in Article 3(1) – holding an office “for at least a year cumulatively between February 25, 2010 and February 22, 2014” – would require some justification. Given that Article 3(1) mostly relates to high-level posts within the state administration, it is not clear, why a minimum period of holding such posts is needed and why this minimum period has been set to one year.

52. **Article 3(3)** disqualifies “police officers, public prosecutors or other law enforcement agencies who, through their decisions, actions or inaction, took steps (and/or contributed to their taking) to criminally prosecute and bring to criminal liability of the persons subject to full personal amnesty according to the Law of Ukraine No. 792-VII of February 27, 2014 On amending the Law of Ukraine On granting amnesty in Ukraine regarding full rehabilitation of political prisoners”. The Venice Commission does not have the Law No. 792-VII at its disposal to be able to consider the content of the provision. Yet, the scope of persons covered by it seems to be rather extensive, including not only those who could an active part in the prosecution but also those who helped them by their inaction (no knowledge or intent is required) or contributed in any form.

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d) It is for the Ukrainian authorities to consider whether all the positions listed under Articles 3(1)-(2) played a prominent role in the misuse of power by the regime of V. Yanukovich in 2010-2014 or during the Maidan events at the turn of 2013-2014. When doing so, they should take into account the concrete situation in Ukraine, while at the same time respecting that “*where an organisation has perpetrated serious human rights violations, a member, employee or agent shall be considered to have taken part in these violations if he was a senior official of the organisation*” (para. h) of the Guidelines).

* * *

With respect to questions raised by the Chair of the specialised sub-Committee, the following answers, based on this assessment of the draft law on the local government service can be provided.

1) Holders of elected executive mandate should not be considered as professional civil servants. Therefore, provisions on their status should be shifted to (pieces of) legislation regulating to the status of councillors. Some provisions of the present draft law still reflect the confusion.

2) Civil servants are also citizens. Therefore, limitation of their political rights should be adequate to what is strictly necessary to preserve the neutrality of their functions. There is no reason to forbid them to belong to a political party. Depending on the level and the nature of their functions they may have a self-restraint obligation in the exercise of their political rights. Furthermore, a local government civil servant may not run for elections to the municipal council in the community where he is employed; he could however run for an election in another community.

3) In any municipality, the head of the local self-government body is the mayor, or in some countries an executive committee. The general director is subordinated to the mayor, and he is his (her) first adviser; the mayor may delegate to him (her) his signature. Legally, the mayor is the head of the administration, but he needs the experience and the competence of the general director to manage the municipal administration. Some countries have tried to set a clear distinction between political and administrative responsibilities: for example the case of the *notar* in Hungary and of the executive committee in the Netherlands (councillors cannot be elected in the executive committee). In practice it is extremely difficult to separate completely administrative and political responsibilities.

4) 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; in case of disputes, it belongs to administrative courts to resolve them.

5) It is appropriate for the law and national regulations to fix at least framework salary scales for the local government personnel and to also establish a framework for variable parts of the remuneration. If this is not the case, the risk of disparities between richer and poorer communities would be too big; this would undermine the legitimacy of local governments and make more difficult the transfer of personnel.

Conclusions

Compared to the legislation in force, the present draft gives better foundations for the local government service and is in accordance with the European Charter of Local Self-Government and with generally recognised principles and practice of European countries on this matter.

This draft law would lead to some major achievements, such as the differentiation between professional and elected officials and the improvement of the legal framework for professionalisation of the local government personnel (competitive selection, appraisal, better regulated salary framework...).

A number of recommendations are however made in this opinion in order to improve the draft law in line with the best European practice.