



**Centre of Expertise
For Local Government Reform**



Strasbourg, 16 November 2017
CELGR/LEX(2017)3

**ANALYSIS AND RECOMMENDATIONS ON THE DRAFT LAW OF UKRAINE ON
URBAN AGGLOMERATIONS, IN THE LIGHT OF COUNCIL OF EUROPE NORMS
AND STANDARDS, AND GOOD EUROPEAN PRACTICE**

The present expertise was prepared by the Democratic Governance Department of Directorate General II - Democracy, in co-operation with Prof. Robert Hertzog, Professor emeritus, University of Strasbourg, France

Introduction

The Committee on State Building, Regional Policy and Local Self-Government of the Verkhovna Rada of Ukraine have requested the opinion of the Council of Europe on the draft Law N°6743 – Law of Ukraine on Urban Agglomerations.

The present document was prepared in response to this request and within the framework of the Council of Europe Programme “Decentralisation and territorial consolidation in Ukraine” (2015-2017), funded by the Government of the Swiss Confederation. The document is divided into three sections, as follows:

- **Section I** – an overview on the institutional set up of urban agglomerations, main models of governance of metropolitan areas and the sustainability of metropolitan institutions.

- **Section II** – a summary of the main recommendations on the draft Law N°6743.

- **Section III** – the analysis of the draft Law N°6743, including observations on major issues and specific comments and recommendations on individual articles.

The Council of Europe’s experts remain ready to discuss further their comments and recommendations with the Ukrainian authorities.

Section I - Good governance of large urban areas: a major stake in modern societies

The governance of large urban areas, where a growing part of the population lives¹, is a major stake in modern societies. The draft law on Urban Agglomerations (UA), submitted by members of the Parliament of Ukraine, intends to bring new and adapted solutions. Therefore, prior to the analysis of the articles of the draft law, we would like to present some general observations on the importance of an adequate institutional status of urban agglomerations.

1. The “Metropolises” as a universal phenomenon with important economic consequences

International studies show that changes in societies, especially in the economy, are driven in *metropolitan areas*. This commonly used expression by geographers and experts in regional development policies refers mainly to big urban areas, large cities with their surrounding territory in direct inter-relation, sometimes called *metropolises*². It can also refer to larger territories, *metropolitan regions*, when they have similar characteristics.

These characteristics are: an important population size and high demographic density, presence of a great variety of economic activities, an important job market, research centres, universities and other education institutions (professional, technical, etc.), financial services, communication facilities, hospitals and health institutions, various public services. They often have their own political governance bodies. This rich structure facilitates, at a reduced cost, relations and cooperation between these entities that stimulate innovation and activity.

The Metropolises are the places where happen the creation of richness, innovation, evolution of social behaviours and cultural modes (*The metropolitan century*, OCDE, Paris 2015). Studies also show a clear relation between economic growth and quality of governance of metropolises; good or bad governance has a positive or negative impact that can be measured in points of national GDP, up to around 1%. A cumulative 1% makes a significant difference in a short period of time.

Studying a large number of metropolitan areas, OECD found statistical evidence that:

- Doubling the number of citizens in an area leads to an increase of the GDP per capita in the area of between 2% and 5%;
- Doubling fragmentation (doubling the number of member municipalities in a metropolitan area) leads to a decrease of the GDP per capita of around 6%;
- Metropolitan governance (i.e. having a metropolitan body/authority) mitigates the effect of the fragmentation by half.

Approximately 280 metropolitan areas with more than 500,000 inhabitants exist in OECD countries. 31% of them have no metropolitan authority, 51% have metropolitan authorities with no regulatory powers and 18% have metropolitan authorities with regulatory powers.

¹ Many Ukrainian cities have lost population in the last 15 years, which is a concern and needs a policy that makes them more attractive.

² Ukraine's five major agglomerated metropolitan areas (sometimes called *conurbations*) have no formal status. They remain administered according to the general subdivisions of oblast-raions, when these ones are no longer pertinent with the characters of such entities.

Median budget and staff are far higher in metropolitan areas with management bodies having regulatory powers.

The authors of the draft Law N°6743 are well aware of this reality, understood in Ukraine since a long time. Especially, territorial fragmentation in urban areas is clearly a handicap for conceiving and implementing efficient policies at the relevant level. However, the adoption of appropriate solutions has been delayed until now.

Comparative studies show the existence of **three main models for reshaping the governance of metropolitan areas**.

The amalgamation merges existing local entities, in a given perimeter, in one single local self-government body. One legal person, with one budget, exercises all competences on the territory of that larger commune, called “metropolitan city”. 8% of the OECD States’ metropolitan areas have been consolidated in such metropolitan cities. While this is likely the most efficient economic solution, its democratic impact is harder to assess. And it is not recommended when an important population lives on a large territory with a high degree of “urban sprawl”. It also seems that such solution might be difficult to accept in many Ukrainian urban areas. The general amalgamation process in Ukraine is 100% voluntary process and it is unlikely that a compulsory solution could be accepted for metropolitan areas. As regards the voluntary amalgamation, this could be done based on existing legislation (and updated prospective plans).

A second solution is the **intermunicipal co-operation (IMC)**, by creating specialised “functional” unions between existing local self-governments. The union will have competence in a limited list of matters of metropolitan interest: waste collection and disposal, public transportation, roads, economic development, housing ... This improves the policy in these precise domains thanks to a more pertinent scale and by getting resources for investment and better technical means. Such arrangements come in various forms and formats. For larger cities informal co-operation is clearly not sufficient. Mostly it needs formal institutions with a governance body and a budget. Regulating powers depend on the nature of the competences that are transferred to the IMC (urban planning or construction permits, for example). In respect of the various fields of intervention, OECD found out that more than two thirds of the 280 metropolitan areas existing on the territory of its member States have mutualised (in whatever forms) the competences of regional development, transportation and spatial planning. Between 20 and 40 % of them have mutualised, in the order of importance: water provision, waste disposal, culture, leisure, tourism and sewerage.

One can discuss if the IMC model is best appropriate for managing a metropolitan area, which governance cannot be just a juxtaposition of various services. It may need leadership with a strong legitimacy, a global vision of the development policy, appropriate powers and resources, which are conditions of enriching the economic situation, as shown by OECD study. It is also a condition for better visibility on the international level. And we see examples where IMC was a first step to more integrated institutions.

The draft law gives preference to this second model, intermunicipal cooperation, based on an agreement between equal local government entities, for managing functional activities. The result is a rather complicated system, both in its political organisation and in the distribution of competences. It is also a weak one, especially on the financial side. One could hardly

consider that it will be the first step to a more integrated and solid organisation. Once an UA is created, it will be difficult, and costly, to make it evolve in order to correct its weaknesses. The Council of Europe considers the third model is far more efficient and preferable. However, the option chosen by the Ukrainian lawmaker is this one and the Council of Europe will not challenge this political decision, though it considers that it will be complicated to organize and will not bring the highest benefits one can expect from good metropolitan governance as said above.

The third model, which leads almost to the setting up of **a two-level local self-government system**, is adopted in many capital cities and is implemented in 18% of OECD's 280 metropolitan areas. Communes keep tasks where "proximity" is required for efficiency and for the citizen's satisfaction. On the second level, another local self-government body - Metropole, Urban Community or Agglomeration, whatever the name - often called "supra-municipal authorities", has broad responsibilities, own competences, solid financial resources, own staff and administrative apparatus and a political governance, all independent from the ones of the member communities. Cooperation procedures between the two levels are however decisive conditions for harmonious policy making in both of them. This is typically the solution adopted in France, even for non-metropolitan areas, when a law of 1999 created "communities", after 40 years where preference was for more loose IMC structures. Since 1999 many of these communities have expanded their territory and added new competences transferred voluntarily by the member communes. Then, in 2010-2014, a specific form, for the largest urban areas, called *metropole*, has been issued by the law and immediately implemented.

For constitutional reasons, Ukraine cannot follow entirely the French model and create a full local self-government body on the second municipal level, with directly elected bodies and own taxing powers. However, it could probably do so in case these elements are abandoned. So, the option in the draft law is to create a special intermunicipal body with sufficient integration to fit to metropolitan governance, though it has limited competences and a weak financial autonomy. In any case, Ukrainian authorities could have a debate on the legal and practical conditions that would allow the creation of such new metropolitan authorities with their own competences, which would be simpler to manage and have more efficient results.

2. Some lessons about conceiving a sustainable metropolitan institution

Large cities, with their surrounding territory, are a specific political and managerial object that must be conceived in an innovative and prospective way. One has to take into account what has already been learned on the conditions that allow sustainable metropolitan institutions. They need a political, institutional and financial frame, solid enough to face the stakes of modern society.

- Economic development is moving mainly on polarized models, rather than on large territorial models (regions). This does not mean that regions are not important, but one must analyse, in a subsidiarity method, which are the functions that should be given to regions in order to be implemented with greatest efficiency at that level. Cities have powerful instruments, especially property of land and urban planning. There is an indisputable lesson from experience: cooperation between a region and its metropole(s)

is of major importance. The winning couple is the metropole *and* its region, where the metropole holds a decisive role.

- Organisation of big cities is not just reshaping municipal architecture and administrative structures; it has major economic and social consequences that are also of regional and national interest. Agglomerations, with the name of the central city, are much more visible and in competition on the international level than regions whose name is often unknown.
- Metropolises concentrate all the problems of public governance: traffic, health, education, security, immigration, water distribution, waste collection and disposal, roads and transportation, energy consumption, pollution, poverty and social inequalities, etc. There are strong interrelations between all these factors that create a specific societal model. Therefore, it is of major importance that there exists governance dealing with them in a *systemic* way.
- Innovative political and administrative structures have to be conceived on the metropolitan level; territorial fragmentation, that is everywhere a historical heritage raising serious problems, must be suppressed or, at least, corrected.
- The competences (functions) of metropolitan authorities cannot be just a copy of traditional municipal competences. Considering the size of the population and the impact on economy, metropolises are not only *municipal* affairs. Distribution of powers must be rethought in a new way (subsidiarity). In certain domains, State or regional powers are better exercised by metropolitan authorities, as own or as delegated competences; financial and human resources must be defined at an appropriate level. In Ukraine it will be necessary to reshape the raions in a UA; even the powers of the Oblast should be analysed to determine if some ones should be delegated to the UA.
- The political procedures for the election of the council and of the head of the executive power must be drawn in an adequate way.

Section II – Summary of the main recommendations on the draft Law

1. In Ukraine, for constitutional reasons, UAs may probably not become full local self-government bodies, with own taxes and directly elected bodies. Therefore, a thorough discussion should be held on how far the integration can be organised in a specialised intermunicipal body that will fit to metropolitan governance, though it has a limited list of competences and a rather weak financial autonomy. The Council of Europe believes that there is a value in ensuring the highest degree of integration which the Constitution (and the existing political will) allows.
2. UAs require a rigorous definition of the block of competences that would be transferred to them, as compulsory or optional. Respective articles of the draft law should be more precise and sometimes more ambitious regarding the transfer of competences.
3. Financial issues will be the major stake of the whole reform. Communes will be reluctant to enter in a UA, knowing that they will have to pay the major part of its expenditures. This reform will not be easily feasible without an effort by the State budget to allocate supplementary resources to the UAs, which must be considered as an “institutional investment” that will generate future benefits.
4. Therefore, it would be highly recommended to revise the resources and the financing procedures of the UA. Ideally, UA should have own fiscal revenues. However, this seems to be neither envisaged nor constitutionally feasible in Ukraine. Then, at least it must receive current grants from the national budget, partly taken from the grants formerly allocated to member communities. Of course, fees for services provided should also constitute a substantial source of revenue for UAs.
5. Under the draft law, the creation of the UA results from the adoption of an *agreement* considered as a contractual act. Establishing a public law institution is normally done by a unilateral normative act, which contains the status of the new legal person. It is proposed to replace the word *agreement* by the words “*status of the UA*” in the draft law.
6. The composition of the UA council should take into account the importance of the population of the member communities. The principle of equal representation (two delegates from each community) is not really coherent with a big urban entity. Some proportionality with the population should be introduced.
7. Provisions relating to the Chair of the council, who has also executive powers, should be more precise. The way he/she is appointed may be modified. It may be desirable also to elect deputy-chairs (vice-presidents).
8. The Prospective Plan established by State administration is an excellent idea and can be an important added value of this law. Its content, delay and procedure of production and legal scope should be defined in a more precise manner. It is also recommended that these Plans be the subject of comprehensive consultations with all stakeholders concerned.

9. The procedure of creation of the UA is complicated. The adoption is not clearly described, as well as the consequences of negative vote by certain local communities. The adoption should not need unanimity and communities, who voted against the adoption of the status, can nevertheless become members of the UA, if a special majority decides so.
10. UAs should be created for an indefinite period. Dissolution would bring enormous difficulties and a mechanism whereas each local authority can decide to opt out any time can bring uncertainty, political deadlocks and waste of resources in the process. Only a special law can decide to end a UA and fix its modalities.
11. In the area of an UA raion councils should be reorganised. Having several raions that overlap the perimeter of the UA would create administrative chaos. And having just one, in the same territorial limits, would create costly and inefficient competition. The Constitution provides for the existence of raion councils so they cannot be fully eliminated; it is however likely in line with the Constitution to give raion powers to UAs; in this way UAs would in fact “become” raion councils with extra competences, and constitutional provisions concerning the number of levels of local authorities would be respected while these raion/UA councils would become efficient bodies.
12. The role of the State for the success of this reform will be decisive. It has a main responsibility for drawing the Prospective Plan on establishing UAs, for initiating the process of creation in a given urban area, for providing legal and financial support during the preparatory and launching period.

Section III – The draft Law of Ukraine on urban agglomerations

Major issues

1.1 The nature of the UA: a new model of inter-municipal co-operation

For constitutional reasons – though the pertinence of the constitutional provisions in this matter is discussed in Ukraine – the law cannot establish, a second level self-government for the UA on top of the existing local-raion-oblast one, even if this seems to be the best efficient model, as explained in the introduction. It is however likely constitutional to transform UAs in “enhanced” raion councils.

A multipurpose entity for managing a limited number of local government affairs would not really need a new law as there are already general provisions on intermunicipal cooperation (IMC). These provisions give a methodology for voluntary co-operation and allow the government to decide on financial incentives but does not provide for the Prospective Plans, which proved to be very useful in the context of municipal amalgamation. But the draft law takes the specificity of urban agglomerations into account by providing a more adequate status. Drawing the limits of the socio-political entity *agglomeration* that deserves a system of governance adapted to the current economic and social realities in order to improve significantly public administration for benefit of regional and national development is a project of greater ambition than ordinary IMC. We see this in the provisions and in the explanatory note: the statement for creating UAs, the procedure, especially the national prospective plan, the variety of missions. Establishing a solid frame could be obtained also by adapting the provisions in other domains where the draft looks too traditional and shy: creation by contract, composition of the council, competences “delegated” by the members, possibility to dissolve, financial autonomy...

Let us just take the example of art. 23 § 4, concerning the relations between the UA and its members. It empowers local councils to “*make decisions involving if necessary, instructions and recommendations... aimed at improving the work of the Agglomeration Council and considering the needs of the respective territorial communities...*” This is not acceptable because the members cannot have a *legal* supervision power of the UA.

UA is an independent public person that is not under the direct authority or supervision of the territorial communities. These ones express their wishes and critics in the sessions of the UA council, thanks to their representatives. Of course, the leaders of the communities can express them on a strictly political level, as opinions or wishes. In practice, informal political and technical relations with the metropolitan leaders and staff appear to be much more efficient as they allow compromises for most problems.

Official instructions or recommendations would be used for political manoeuvres and become matter of permanent conflicts between the UA and its members. These latter would use these procedures to show how much they care for their citizens and the users of public services, but that all problems come from the UA management. This would go into the media and contributes to delegitimize and weaken the UA. Better leave that on the strictly political level and don't create legal procedures for that.

1.2 The act creating an UA: contract or regulatory status?

The creation of a UA, as proposed by the draft, needs an agreement between the local communities that will be included in the perimeter of the UA. Consultation and negotiations on such issues are a basic requirement for a democratic organisation of local self-government, as defined in the ECLSG (art.5). But one must be cautious about the signification of the word *agreement*.

It is used in the article 8 concerning the initial procedure of creation of the UA when a “draft agreement” must be submitted to the councils of the different communities. Agreement is then used in articles 9-12. Its contents are in art. 12. Art. 10 provides that the adoption of the agreement is decisive for the creation of the UA.

The legal nature of this document should be considered. *Agreement* refers to a contractual document and the idea of contract is in several other articles. This does not seem to be the adequate wording and concept. An agreement is a legal act that is governing the relations between the signatories in their mutual interests. Creating a new legal person with a public law status of local self-government is done by a unilateral normative act. Public institutions need a public *regulatory* act. The fact that the decision is taken after negotiation by several authorities does not change it into a contract. When political groups in National Assembly conclude an agreement, the law they adopt is not a contract!

The nature of this act is that it is the normative status of the UA. It becomes part of the legality that applies to local authorities and can be invoked in Courts by any person who has a legitimate request. This could not be the case if it was just a contract between the signatories. Therefore, it is proposed to replace the word *agreement* by the words “*status of the UA*” in all articles.

1.3 The competences (powers, missions) of the UA

Competences of the UA are the central and the most important object of this reform; they are the very reasons for the creation of the UA. The provisions of the law are excessively complicated and deal with a lot of different issues, giving no clear image of the missions, activities and powers that will be under the responsibility of the UA authorities.

A UA is a new public body that is created by logic of subsidiarity in order to perform certain tasks of public interest in a more efficient way than the existing local self-government institutions. So, it is of high importance that the law describes precisely what it will have to do in the place of the other local government institutions. The doctrine of creating *Urban Agglomerations* is to transfer them responsibility for matters that are of metropolitan interest and need a management with a global vision. These matters should be defined as *blocks* in which the UA has full and exclusive competence; otherwise this would add complexity in managing public affairs, i.e. cost and inefficiency.

The definition of competences (*missions*) of the UA is done in a complicated manner. There is no article specifically dedicated on this subject. The most precise information is in article

15. *Powers of the Agglomeration Council*, which contains provisions that refer to three different types of situations:

- the power to make legal acts of various significations (budget, development programmes, decide transfers of property...)
- the power to intervene for “solving issues” on many questions, which is a formula that does not say precisely what has to be done (creation of facilities, of public services?);
- the responsibility to fulfil certain missions of public interest (transportation, roads...)

The exact signification of the powers of authorities is often difficult to understand. What means *solving issues* (“*solving issues on regulation of land relations*” ...)? Does it give power to issue such regulations? Does it give to the UA a kind of supervision on the acts of the members in these domains? The same question is about the scope of *coordination* (“*coordination of public transport routes and transportation conditions on the territory of urban agglomeration*”). Is this a power to issue plans or schemes that the members must respect? Another question is about the exact signification of formulas like “*promoting an investment activity on the territory of urban agglomeration*”. This is a very general mission as long as the instruments to obtain such results are not defined. Which are the respective powers in this domain? In many domains where it would be necessary, there can be no harmonised policy, no joint financing, no equal delivery of service for the citizens. The UA, whose political assembly is composed with delegates of the communes has little authority on its members and will have a very modest capacity of coordination.

The law should give a list of competences that will be automatically transferred to the UA and a list of matters where the transfer is optional and decided in each status. It should also have a provision allowing new transfers at any moment by modifying the respective articles of the status. Structuring equipment (roads, transportation), services of common interest (water supply, sanitization, waste collection and disposal), strategic competences (urban planning, economic regulations and development programmes, environment protection and sustainable development policy...) have vocation to become UA competences. The respective infrastructures, buildings and equipment are transferred to the UA as will be the respective legal powers.

Law must avoid, as much as possible, to create complicated distribution of competences between the UA and its members. If they are not properly defined there will be detrimental overlapping of powers, competition between administrations and financial mismanagement. Responsibilities and powers must be clear for the practitioners as well as for the citizens.

The legal nature of the UA’s competences, as presented in the draft, is also disputable. For example, article 12 provides that the status of the UA (agreement in the text) defines “*procedure and conditions for funding the delegated powers (...)*”. This sentence raises serious questions.

Powers (competences) of the UA should not be considered as “delegated powers” by the members. The concept of “delegated powers” – opposed to “own powers” - is used in art. 4 §5 and in art. 8 §2 of the European Charter of Local Self-Governments (ECLSG). It refers to State competences that are considered as delegated to local governments and implemented in the name of the State which can therefore exercise large controls on them. When

municipal competences are given to an intermunicipal body this is not a *delegation* but a definite *transfer*: these matters become full own competences of the intermunicipal entity. The UA council is not acting in the name of the communes but in the name and for the interest of a distinct legal person. The UA, as an institution, cannot be under direct supervision of its members who could give instructions, make controls, etc. This would create managerial and political chaos. The member communes control the institution by their representatives in its council, in a process of co-decision.

We propose five separate articles on the competences. A leading article to define the domains in which local self-government competences will be exercised by the UA.

*“In the area of the Agglomeration the UA is in charge of following matters: (for instance: waste collection and disposal; housing; water supply and sanitization; public transportation; roads of category ***; urban planning; economic development plan).*

Any other matter that is in the competence of the member communities, except those which are State delegated competences due to the law, can be transferred to the UA as provided in its status.”

1. An article to define the conditions of transfer to the UA of facilities, equipment, properties existing in the member communities for the different competences that are transferred to UA.
2. An article to list the powers of the Council: *“In order to fulfil the missions given to an UA by this law and by the status of the UA, the Council has following powers and responsibilities:”*
3. Another article to list the powers of the executive authority of the UA: *“In order to fulfil the missions given to an UA by this law and by the status of the UA, the Chair (or the executive authority) has following powers and responsibilities:”*
4. An article to decide that in the perimeter of the UA the powers of the raion(s) will be transferred to the UA council and executive. The raion does not formally disappear, but its powers are implemented by the UA authorities; this important simplification should be in line with the constitution. The law may even decide that certain powers of the Oblast are transferred to the UA.

1.4 The financial system

Financial issues will be the major stake of the whole reform. Creation of UA will hardly be feasible if there is no special effort by the State budget to allocate supplementary resources to the new institutions, especially during the launching period. This must be considered as an “institutional investment” that will generate important benefits if the UA governance is efficiently conceived. A UA cannot fulfil the ambitious missions defined in the law without having some **financial autonomy**. If it depends totally on participations of the members it will be a weak institution, struggling continuously for money. Relations with the member entities will be spoiled by this problem. The council, composed with delegates from the member

entities, will be reluctant to adopt ambitious programmes because the councillors fear the pressure on their community's budgets. Therefore it is essential that the law creates additional resources, independent from the member communities.

Article 18, on the financial basis for the UA: a very critical one.

If financial provisions are not clearly defined in the law and are let to the negotiation of local governments when discussing the status of a new UA, this could become a major obstacle for creating UAs. It will be a matter of endless bargaining and severe confrontations. In such situations there is the common opinion that the money the communities give to the UA is paying for the central city and that they will lose capacity to fulfil their own missions.

Revising the provisions of the draft law related to the resources and the financing procedures of the UA is therefore highly recommended. It should receive permanently from the national budget current grants which amount will be partly taken from the grants formerly allocated to member communities, as they have no longer responsibility in matters transferred to the UA. Raising taxes has clear advantages in terms of autonomy, capacity to adapt to local preferences and accountability; however, this may not constitutionally feasible in Ukraine. Is there yet some window of opportunity to make it possible for UAs? This would be a strong incentive for creating them³.

The draft law (art. 18) lists, as first resource of the UA's budget, the participations paid by the members of the UA for financing certain expenditures or activities. This is traditional in "ordinary" intermunicipal cooperation, but may be very problematic here if it is the *main* source of revenues for the UA. No local entity will admit that it has means that could be given to another one. When services are transferred to IMC it is logical that the communes pay to the IMC at least the amount corresponding to their former expenditures for the given services.

On a political and practical level this will create difficulties that the law must take into account. It is very complicated to define for each service or facility (waste collection, bus transportation...) the specific criteria to calculate the participation of each member. It will be matter of hard fights between partners. The subsequent procedures will also create administrative difficulties: complicated accounting and budgetary procedures, delays of payment and tensions in the treasury. Programme budgeting for long term policies will be a headache. Financing the UA mainly with earmarked or specific contributions paid by the members would be a handicap. Precise provisions on these sensitive questions cannot be written in the status; it would be too long and these provisions must keep some flexibility to be periodically adjusted to changing realities. This needs numerous deliberations of the council relative to each type of cost, expenditures or missions.

³ Fiscal resources are specifically important to conceive and implement long term investment policies whose financing is based on a mix of fiscal revenues and loans. Banks are reluctant to contract with an institution which has no own fiscal revenues, which are a guaranty of solvability. The political mechanism of participations that is in the draft is the following: the UA council, when adopting the budget, urges member communities to raise their local taxes in order to pay a higher participation to the UA's budget. One can easily imagine the controversial debates...

A system of global grants that the communes pay to the UA, based on an equalization formula, may be a good compromise. The status could have a provision saying that each member contributes to the UA's budget by a global annual grant which is calculated due to an equation which parameters are defined by the status, on the basis of a general formula given by the law: % population - % wealth - % superficies - % school children - etc.

Additionally UAs will be eligible for the general State grants, one proportion being taken from the amount paid in the past to the member communities whose expenditures will reduce following the transfer of competences to the UA. It is much more simple and efficient to pay directly State grants to the UA than paying them to the communes who will have to pay for UA's budget!

This needs a thorough and impartial study to calculate the average cost of the different competences and hence the level of resources that will be allocated to a UA and the level of revenues that will be taken from the member communities due to the economy resulting of the transfer of competences to the UA.

We propose rewriting these provisions in two separate § or even articles:

- general principles on the budget of the UA;
- a list of the resources of the UA's budget : State grants and allocations, fees paid for public services, participations of the member communities as said above, loans, other resources allowed by the law...

1.5 UA: creation procedures

a) First step: elaboration of national Prospective Plan

It will be established by the relevant State administration. It could be a part or the object of an internationally supported programme as it looks very attractive for foreign donors.

The contents, delay of production and legal scope (links with the following steps of UA creation procedure) of the Plan should be defined in a more precise manner by the law. Attention should be paid to consultations with all local communities involved, as well as with representatives of vulnerable groups whose access to services could be affected and with representatives of national minorities.

- What is the content of the prospective plan?

Will it contain a list of agglomerations that must be created and another one where they are optional? Does it define an optimal perimeter of each UA, i.e. the list of territorial entities that should (must) be included? Does it define the competences that should be transferred to the UA, differently in each one, considering its specificities or the demands of local governments? Can it present various scenarios for a given UA, with different possible sizes, perimeters, competences? Does it start from analysing which is the "functional area" that should be included?

Considering their importance, defining the territorial limits of the UA should better be a State responsibility. State has the information and the human resources to prepare such a document and he will be able to pay experts to do it. There may be necessity to reshape the limits of raions or even Oblasts, which is also a State responsibility. State authorities have some neutrality in the local affairs that can avoid the drawing of perimeters that are not in a general interest by taking too much into consideration party or personal relations which are of minor importance, compared to the stake of creating an UA. State can also avoid that certain entities refuse to enter the UA for quite egoistic reasons: keep their fiscal bases for themselves, do not want to share land for housing or industrial districts... So the Plan contains a draft perimeter, but making clear that this is not a final decision and that in the procedure of creating the UA new territories can be added and proposed entities can eventually stay out.

➤ What will be the legal scope and signification of the plan?

Is it just a “document”, a study made by experts under the supervision of the government? Or does it contain compulsory provisions? This must be said in the law. The most logical provision would be that, for each urban area, the initial proposal for starting the creation of an UA will be the draft contained in the prospective plan.

➤ Should *all* larger cities become UA?

Will all “central cities” (big cities) have to enter a UA, voluntariness being only for the surrounding communities? About 50 Ukrainian cities have a population of over 100 000 inhabitants or near this figure. So, the number of urban areas with a population of 100 000 inhabitants is even higher. Considering the time and human resources needed for consultations and thorough studies on each UA area, the drawing of maps and projects for all of them will need delay. Does the government have the capacity and resources to elaborate a thoroughly studied Plan in a short delay for numerous UA, without getting special external support?

The law should be very cautious with the idea of voluntariness that can have very negative consequences and which is not commonly recognized in other countries. It should be mainly focused on the agenda: some cities may want to launch the process in a short term, when others will need more time. The prospective plan could take this into account and have a general agenda. But it should cover all agglomerations that fulfil certain objective criteria, without taking into consideration, at this stage, political declarations about acceptance or opposition to become a UA.

In any case, Prospective Plans should be the subject of thorough consultations with various stakeholders (including, as the case may be, with representatives of national minorities).

A progressive process could be defined in following wording:

“In a delay of 3 months following the publication of the present law, the government publishes a list of at least 15 urban areas where he will fulfil the required studies in order to propose the creation of an Urban Agglomeration. This list is established after informal consultation with the executive authorities of the 50 most important cities of Ukraine. These

authorities can apply a demand to be on the priority list. Any central city that is not on the list published by the government can ask that its situation be reconsidered; the government must answer in the delay of 3 weeks.

The central executive authority shall then elaborate a “Prospective Plan for Establishment of Urban Agglomeration” for the territories that are on the published list. It must be published in a delay of one year following the entering in force of this law.”

The preliminary studies and consultation for drawing the Prospective Plan may show that in certain urban areas a UA is not needed or that consensus will not be possible. It could then propose, as an alternative, to create an “ordinary” intermunicipal solution for public services where a broader territorial scope looks particularly urgent.

b) The initiation procedure of a new UA

The procedure of launching the creation of an UA is described in art. 6; it seems complicated, with many technical and political risks.

Can reshaping the governance of urban agglomerations be a task that is laid exclusively in the hands of political local authorities? It is a traditional responsibility of the State. The law empowers central State authorities to establish a prospective plan for creating UA in the country. This cannot be a document without future consequences. It should be the frame for the creation of UAs all over Ukraine and therefore the starting object for creating each individual UA. Would it make sense to have proposals that are not based on the national Prospective Plan?

Allowing initiation by all the persons listed in article 6 looks democratic; but will generate a lot of complications. These persons have legitimacy for asking a modification of the limits of *their* community. They have less legitimacy for conceiving the reform of creating a UA, which needs a broader vision.

A proposal supposes solid studies for gathering the required information and presenting a convincing project. This can only be done by persons who have access to some expertise and have the support of a professional staff. It would not be a positive experience to have mayors of villages, city councillors, associations of citizens submitting weak and incomplete projects. Additionally, the initiator will have a responsibility in leading the following steps of the procedure, which supposes also that he has adequate professional human and administrative resources; a group of councillors or of citizens may not have them.

These provisions will generate separate proposals from different initiators, sometimes in competition. Three or four different proposals may then result in a non-manageable situation when each initiator will defend his ideas. Who will arbitrate? The law cannot say that no other formal proposal will be accepted as soon as one has been submitted.

The initiative should be a clear and simple act, not immediately spoiled by political connotations linked to the persons or organism who presents it. Negotiation and democratic guaranties will work in the further steps.

Several possibilities can be imagined. One is that a State authority (Minister or Head of Oblast state administration) submits a general proposal, based on the Prospective Plan; but then it should also conduct the subsequent phases of the preparation, which may not be well accepted by local political leaders.

Another possibility is that this State authority sends a formal request to the head of the main central city asking to prepare and submit a proposal that will then be discussed as said below.

Or, to avoid that this will be seen as “hegemony” of the big city, State authority can ask any local government, in the perimeter projected in the National Prospective Plan, to prepare a formal proposal. This allows giving the task to a local self-government administration that has the required capacities. It allows also choosing leaders of a middle range city who appear most able to produce consensus, due to their personal position or to their political neutrality.

c) The negotiation and the *Commission*

On behalf of article 8, a special Commission will discuss the status of the future UA and try to reach a consensus. It is established after the territorial communities have expressed their will to participate or not at the UA. It is composed by representatives delegated by each territorial community.

The draft law is not very clear about who will send delegates. Our opinion is that *all* territorial communities listed in the Prospective Plan; even those who do not want to enter the UA, will participate at the meetings of the Commission and have a representation. A community, which opposes the creation of the UA or which just does not want to be a member, must yet participate at the procedure throughout. It may have general reasons to condemn the whole project of UA and not only specific “personal” interest not to be in the UA. So, it must get the opportunity to submit these arguments for discussion by the Commission. Presence at the Commission’s meetings may also allow getting more information and a different look on the project, which may modify the initial refusal decision.

d) Adoption of the status and creation of the UA

The adoption is not clearly described, as well as the consequences of negative vote by certain local communities. The law does not express the precise conditions for full and definitive adoption of the status of the UA (draft agreement): unanimity? Majority? How will majority be calculated? It should be clear that the adoption does not need unanimity and that communities, who voted against the adoption of the status, can nevertheless become members of the UA, if a special majority decides so. A principle of unanimity and absolute voluntariness are not recommended.

The *principle of voluntariness*, in art. 2, is probably meant to reduce potential opposition to this law by political leaders and by citizens, as they will consider this as a guaranty against compulsory participation in an UA. But this is not a recommended provision because it may have severe negative consequences.

Reshaping the governance of a large urban area is not a matter on which each local council can decide “sovereignly”. If the participation of each local community could be freely decided by its council, this would produce absurd shaping of the area of the UA, “holes” in the territory and irrational frontiers when peripheral communes or “rich” communes decide to stay out. Promising voluntary participation in an UA to all possible communities is antonymic with having an efficient territorial administration.

Art. 9 §1 has a strange provision. It says that territorial councils which have to vote on the draft status adopt or “*express their remarks with regard to it*”. Does this mean that a council cannot just vote a blank rejection of the draft? If it does not accept the proposed document, it must express “amendments”. Are they the conditions for an acceptance? If this is the correct interpretation, it should be said in an explicit way.

What will happen with these remarks? Will there be a new round of negotiation? When several communities express remarks, this will generate a complicated situation. Remarks, objections, demands are made during the negotiation process in the Commission. The representatives of a community can threaten that a rejection of the project will be adopted by the council. If these remarks have not been taken into account at this stage, it is of little utility to have them repeated in the adoption / rejection decision.

Therefore we recommend not mentioning this concept of “remarks”. The councils vote yes or no. The motivations are expressed in the debate preceding the vote, on a political register, without legal consequences.

A proposal could be the following: “*The status of the UA (draft agreement) is definitively adopted if 2/3 of the councils that have been consulted, representing at least 60% of the total population of the proposed UA, have approved it*”. Any other figures can be chosen, of course.

This is to avoid blockage by a minority or risk of bad shaped perimeter if any community could decide to stay away from an UA. Experience shows that a majority rule incites, in fact, reluctant communes to negotiate in order to get acceptable provisions in the status of the UA, rather than to camp in an unsuccessful opposition.

1.6 The UA council: composition

The *Agglomeration Council* is described in art. 14 “Management bodies of the urban agglomeration”. The comprehension of the law would probably be improved if we had separate articles on the council, the executive authority and other authorities.

In the logic of intermunicipal cooperation institutions the Council is composed by representatives of the territorial communities included in the UA; these persons are elected by the respective councils and member of the assembly or the executive of these communities. This formula has balanced pros and cons. It should facilitate the acceptance of the Union and the cooperation with and between the members; it avoids a conflict of legitimacy between the persons elected in the Agglomeration council and these elected in the municipal councils. As it is proposed, the council will pay excessive attention to the

interest of the territorial communities compared to the interest of the Agglomeration. Direct election by citizens is probably not feasible, though it is the way of legitimation by the electors of a global agglomeration strategy and programme.

The Council of Europe expresses no strong recommendation on these issues, but wishes that they are discussed in Parliament and that a clearly motivated option is adopted on the subject considering also the number of representatives.

Representation of the communities in the Council of the UA is one of the most politically sensitive provisions in the status. The draft law provides *equal representation*, meaning that each member entity has the same number of representatives with a minimum of two. But it could be fixed on any other figure? The principle of equal representation is acceptable in purely technical IMC entities, but it is not adapted in a big urban entity, where a city, which has a huge proportion of inhabitants, wealth, activities, will be united with small ones and villages. Six territorial communities with a total population of 13000 will have 12 members in the Council, when the central city, which has 230000 inhabitants, has only 2? This destabilizes the entire system by generating recurrent coalitions of small communities against the “big” one!

Therefore, having the same number of delegates for the centre city and a village is not realistic. Equality, by electing a number of representatives in proportion of the respective population looks more logic. Yet, for reasons of efficiency and cost, one has to avoid that the council has too numerous members. So, strict proportionality will not be possible.

The law could include a chart in the following form:

Population of a community member of an UA	Number of representatives in the council of the UA
Less than 1000	2
1000 - 3500	3
3501- 10000	4
10001- 50000	5
50001- 100000	8
100001 and over	12

This chart should be seriously discussed because it will have structural impacts. Small communities have often a strong sense of their identity and the will to preserve their special interests. If they have a leading majority in the council it will be difficult to conceive policies that need a global vision of the metropolitan issues.

Two solutions could be imagined:

- Leave the definition of the number of representatives to the negotiation, the law saying that it is discussed in the Commission, with the condition that the number of councillors respects following limits:

N.B.: This is an example to illustrate the method

NUMBER OF MEMBERS OF UA	TOTAL UA POPULATION	MAXIMUM NUMBER OF UA COUNCILORS
5 and less	Less than 120 000	25
5 and less	120000 - 500000	35
5 and less	500001 and over	45
6- 10	Less than 200 000	35
6-10	200000 and over	50
11 and more	Less than 300000	50
11 and more	300000 and more	70

- Another solution is to decide in the law that communities with less than 2000 inhabitants shall unite with others in order to have at least 6000 inhabitants, for instance, and that this group will elect two representatives. This avoids excessive fragmentation of the council.

1.7 Chair of the council and executive authority

Provisions on the Chair of the council, who has also executive powers, are in art. 14 “Management bodies of the urban agglomeration”. We suggest having a separate article with more complete and precise provisions. The way he/she is appointed should be reconsidered.

The head of the centre city is automatically chair of the UA council. This will certainly be seen by the other local communities as a form of hegemony of the main city. Sociology and political orientations are often different in the centre city and in the suburbs. Therefore this provision may create strong reluctance of the territorial communities to participate in a UA. Election by the members of the Council may create a reverse situation, of which we have examples: the leader of a metropole is a rural mayor, elected by a majority of councillors from small communities in opposition to the central city’s leadership. This is neither satisfying. There is probably no perfect solution.

We propose two compromises.

- One is adding following sentence to §3:
“Yet, at the first meeting of the council following the general renewal of the members of the Council, one third at least of its members can present the candidature of any member of the Council to become its chair. This person is elected if she has a majority of votes of the members of the council representing at least 40% of the population of the UA”.

This supposes however that there is no secret ballot!

- A better solution, probably, is to have deputy chairs or “vice-presidents” who will balance the power of the central city president.

“At its first meeting following the general renewal of its members, the Council elects vice-presidents who cannot be more than 4 if the population of the UA is less than 400000 inhabitants or 7 if it is over this figure. Conditions of candidacy are provided by the status of the UA. The Chair of the Council can give delegation of powers to the Vice presidents in the domains he decides. In case of absence of the chair of the Agglomeration Council or an

inability to perform his/her duties, his/her powers shall be fulfilled by a deputy chairman following the order of their election”.

The powers of the Chair as executive authority of the UA need more precise and complete provisions, by taking basically those of the mayors as far as related to the competences of the UA.

1.8 Duration of the UA

UA are established without time limit, for an indefinite period. Such an important and complex public body will not stop its activity at a given moment. The law should not contain procedures of dissolution, like the ones that are in art.26 of the draft law. An acceptable provision could be: *“For exceptional circumstances, a UA can be dissolved by a law”.*

There is need of provisions on modifying the UA perimeter by entering of new members.

Voluntary exit of a member is hardly acceptable and one cannot see reasons for that. Especially the Centre city may not leave the UA. A new political majority in a given member community cannot be a motive for asking to leave the UA. Municipal elections should not become opportunities to discuss permanently the belonging to the UA.

1.9 UAs and raions

A reasonable solution is that there will no longer be a separate raion administration in the perimeter of the UA. The organisation would not perform well if several raions existed in the UA, totally or partially. And it would create endless rivalries to have a single raion with the same perimeter than the one of the UA.

Thus, powers and resources of raions will be devoted to the UA. This may need to reshape the limits of the raions around the UA. It is another reason to give responsibility to State authorities for proposing, in the Prospective Plan, the limits of each UA. Council of Europe is aware of the Constitutional difficulties which this proposal raises. A draft law statuating the dissolution of raion councils in raions where all municipalities have amalgamated into a single one was recently rejected by the Verkhovna Rada mainly for constitutional reasons. On the other hand, the raion councils of Lviv and Kyiv were abandoned in 1998 and 2006 respectively. With the proper wording making clear that such reform is not about abandoning constitutionally-established raion councils but rather making sure that the same councils implement both metropolitan and raion competences, constitutional provisions would normally be respected.

1.10 External control

There are no systematic provisions, on this important subject. The draft gives (too) much importance to the control by territorial communities. A general provision could say that the control on the legal acts of the UA’s authorities, as well as the control on its finances, are submitted to the same rules and procedures that the ones which apply to the Ukrainian cities (of more than 100000 inhabitants, if there are special provisions for them).

The draft law has provisions empowering the territorial communities to have a kind of supervision or control on the UA, especially in art. 23. As said above, formal control of local self-government bodies by other local self-government authorities is not in line with the ECLSG. This can only be done by State authorities or by Courts.

Art 25 § 2 has a provision about termination of the UA's Council when this one does not function correctly. It should be modified. In this case, it is the responsibility of the State authority in charge of legal supervision to find it by an official decision, generally after a formal notice calling for a new meeting and when there is no success of this convocation.

Analytical commentary (article by article) ⁴

(Draft Law N°6743)

LAW OF UKRAINE

On urban agglomerations

This law stipulates the organisational and legal framework for establishment of the urban agglomerations by territorial communities of villages, settlement, and cities, including the amalgamated territorial communities, principles and mechanisms of interaction between territorial communities within the urban agglomerations, guarantees and liabilities of participants of the urban agglomeration, as well as forms of the state support to the urban agglomerations.

This introduction could specify that the law creates a new entity, adapted to urban agglomerations in order to enhance the efficiency of territorial governance in areas of high importance for economic and social development and in order to deliver better services to the population at an acceptable cost.

Section I

GENERAL PROVISIONS

Article 1. Concept of an urban agglomeration

1. In accordance with this Law, an urban agglomeration is a form of multi-purpose co-operation of territorial communities of the city – agglomeration centre and territorial communities of villages, settlements, and cities, located in the area of the city’s – agglomeration centre’s influence, which have intensive economic, labour, cultural and household connections with the city – agglomeration centre, with the purpose of the joint implementation of certain functions of local self-government.

2. The urban agglomeration centre is a settlement categorised as a city has preconditions to perform functions of the administrative centre of the urban agglomeration (its area, population, and economic potential are much greater than in settlements located in its suburban area).

3. The span of the city’s – the agglomeration centre’s – influence is to be determined individually in each urban agglomeration in view of the approved spatial planning documentation and/or Prospective Plan for Establishment of Urban Agglomeration Territories.

A law must establish normative provisions and give “legal information”. Article 1 should define the legal nature of an UA.

It could be formulated as follows “*An urban agglomeration is a public entity. It is a multipurpose cooperation institution between different territorial communities in order to have more efficient governance on this area and better services for the population*”.

⁴ Comments are provided in framed boxes; proposed amendments are provided in *italic*.

The physical and geographic description could find a better place in an art. 2 saying that UA will be established when an urban territory has following characters: ...

Article 2. Principles for establishment of urban agglomeration

1. The urban agglomeration shall be formed on the basis of:

- 1) rule of law;
- 2) voluntariness;
- 3) mutual benefit;
- 4) transparency and openness;
- 5) responsibility;
- 6) state stimulation

Several provisions of this article have no normative signification. *Rule of law* is a general obligation that has not to be repeated. *Transparency, openness and responsibility* are positive ideas but rather on an ethic level, without a precise legal scope and without any effective possibility to monitor their application. *Mutual interest* is an idea that would find a better place in the preamble as a political statement, because it has no legal scope and it is difficult to measure.

Voluntariness is not a recommended provision, as explained in III-1.

State stimulation deserves a special article, which is art.19. See comment under this article.

For these reasons, we suggest to erase *voluntariness and rule of law*, and to use *mutual benefit; transparency and openness; responsibility* and *State stimulation* as statements in the preamble.

Conclusive remark: art. 2 could be deleted and its provisions dispatched in the preamble and in Art. 19.

Article 3. Subjects of urban agglomeration

1. The subjects of establishment of the urban agglomeration are the agglomeration centre and territorial communities of villages, settlements, cities, including amalgamated territorial communities located in the area of agglomeration centre's influence.

This sentence looks complicated; "*communities located in the area of agglomeration centre's influence*" are not a precise concept. What means "influence" and who measures it?

Proposed amendment: "*In the perimeter of an urban area, as it is defined by this law, the legal subjects that can establish an Urban Agglomeration are the city, centre of the agglomeration, other cities, territorial communities of villages and settlements, including amalgamated territorial communities*".

Article 4. Basic conditions for establishment of urban agglomeration

1. The urban agglomeration shall be formed in line with the following conditions:

- 1) a minimum number of subjects for the establishment of the urban agglomeration, except for the agglomeration centre, must be at least three territorial communities;
- 2) a total number of population of territorial communities involved in the establishment of the urban agglomeration should be at least 100,000 persons ("*inhabitants as shown in the last census*");

3) an urban agglomeration must be located within the territory of the Autonomous Republic of Crimea or *in* one region;

4) a territory of the urban agglomeration has to be inseparable; boundaries of the urban agglomeration shall be defined in terms of the external limits of the jurisdiction for the boards of territorial communities that have formed the urban agglomeration.

2. Establishment of the urban agglomeration does not lead to the termination of powers of local self-government bodies-subjects of the urban agglomeration or to a change in the status of settlements.

3. As a rule, the name of the urban agglomeration is stemmed from the name of the agglomeration centre.

The name of the urban agglomeration may include the name of a second settlement if the urban agglomeration covers several cities and the difference in population size in these cities constitutes to no more than 25 per cent.

This condition may not be relevant often because it supposes that two large cities are in the same agglomeration. In order to facilitate political compromise, it could be added that any second name can be chosen if it is the name of another local community included in the UA or if it has a link with its history or geography and if at least 2/3 of the communities of the UA agree on that name.

Article 5. Prospective Plan for Establishment of Urban Agglomeration Territories

1. The Prospective Plan for Establishment of Urban Agglomeration Territories shall be developed by the central executive authority, which ensures the establishment and implementation of the state policy in the field of construction, architecture, and urban planning based on proposals made by city councils that are potential centres of the urban agglomerations, in view of the approved master plans of cities and state standards and regulations in the field of urban planning, as well as socio-economic, cultural and historical features of the development of the areas around cities.

2. To take into account interests of territorial communities during the development of the draft Prospective Plan for Establishment of Urban Agglomeration Territories, there shall be consultations with the authorized representatives of local self-government and their associations.

3. The Prospective Plan for Establishment of Urban Agglomeration Territories shall be approved by the Cabinet of Ministers of Ukraine and included in the General Scheme for the Planning of the Territories of Ukraine.

See comment above in III-1.

Section II

PROCEDURE FOR ESTABLISHMENT OF URBAN AGGLOMERATION

ART 6. Comment above in III-1

Article 6. Initiation of the urban agglomeration establishment.

1. Initiators of the urban agglomeration establishment may be as follows:

- 1) a village, settlement, city mayor;
- 2) no less than one-third deputies of the total composition of a village, settlement, city council;
- 3) members of a territorial community through a local initiative;
- 4) population self-organisation bodies of a respective territorial community.

2. The initiator of the urban agglomeration establishment shall ensure the preparation of a proposal on initiation of the urban agglomeration establishment to be submitted to a corresponding council.

The proposal on initiation of the urban agglomeration establishment must contain information about areas of co-operations within the urban agglomeration, the expected results, as well as other conditions that are important for the establishment of the urban agglomeration.

3. The decision made in the prescribed manner by a village, settlement, city council in relation to the consent to the establishment of the urban agglomeration is a basis for a village, settlement, city mayor to start negotiations among potential subjects of the urban agglomeration with regard to such establishment. The decision to grant consent to the establishment of the urban agglomeration should specify a representative (representatives) from the territorial community on the Commission on drafting the agreement on participation in the urban agglomeration (hereinafter 'the Commission').

Article 7. Negotiations on establishment of urban agglomeration

ART 7. See comment above III-1

1. A village, settlement, city mayor representing the territorial community as an initiator of the urban agglomeration establishment (including a potential agglomeration centre) shall submit a proposal to start negotiations on the urban agglomeration establishment to the heads of respective territorial communities-potential subjects of the urban agglomeration.
2. Within 30 days from the date of receipt of the proposal to start such negotiations on the establishment of the urban agglomeration, a village, settlement, city mayor shall ensure its study and evaluation in view of the compliance with the needs of a territorial community, as well as hold public discussions of such a proposal, afterwards it shall be submitted to the relevant council to make a decision on granting consent to the establishment of urban agglomeration or to decline it and delegate a representative (representatives) to the Commission.

30 days may be short for fulfilling the whole procedure: council must meet for defining the

procedures for public discussions, unless there is a permanent rule already adopted that can apply; studies must be done by the administration or external contractual experts to evaluate the impact of creating a UA; consultations must be prepared and organized; and, finally, there is the council meeting for decision. Delays depend also on the size of each entity. 45 days could be an alternative option.

At this stage it would not be recommended to have many representatives. To work efficiently, the Commission should not be too numerous and there cannot be several voices and opinions from a given municipality.

3. On the basis of the received decisions on granting consent to the establishment of the urban agglomeration, a city mayor of a potential agglomeration centre shall ensure the establishment of the Commission, which involves representatives of respective territorial communities.
4. The procedure for holding public discussions on the issues stipulated by this Law shall be established by a village, settlement, city council.

Article 8. Commission

ART 8. Please see comment above III-1

1. The Commission shall be established after making decision on the consent to establish the urban agglomeration by the city council of the agglomeration centre and under the condition of available decisions on the consent to establish the urban agglomeration out of, at least, three territorial communities, including amalgamated territorial communities.

Does this mean that if these conditions are not fulfilled, the process for creating a UA will definitively stop?
If this is the case, it must be said explicitly.

2. The composition of the Commission shall be approved by the decree of the city chairman of the agglomeration centre acting as the co-chair of the Commission.

It might be better writing "The composition of the Commission shall be *published* by the decree..."

The mayor of the centre city cannot be empowered to *approve* the membership of representatives elected for this function by the different councils.

3. The Commission shall involve, on a parity basis, representatives of all territorial communities, the councils of which have agreed to establish the urban agglomeration as of the date of the decree issued by the urban head of the agglomeration centre.

What means *parity basis*? If this is equal membership of women and men, it should be said more explicitly: "*Each community delegates two representatives, obligatory a male and a female.*"

Or does it mean the same number of representatives for each member, regardless of its size?

4. The co-chair (co-chairs) who preside, on a rota basis, at a meeting of the Commission shall be elected from the members of the Commission.
5. The work of the Commission shall be in the form of meetings convened by the co-chair's decision or at the request of, at least, two members of the Commission.
6. *Decisions* taken by the Commission at its meetings shall be recorded in the Protocol and signed by the presided chairman and the secretary.

Is *decision* the adequate word? There are rather opinions, conclusions, and advices?

5. The organisational support of the Commission activity shall be carried out by executive authorities of the city council of the agglomeration centre.
6. Within 90 days from the date of its foundation, the Commission shall prepare a *draft agreement on participation in the urban agglomeration*.
7. The Commission shall cease its activities from the date of entry into force of the agreement on participation in the urban agglomeration or the adopted decision by relevant councils on refusal in establishment of the urban agglomeration that leads to the decrease in the number of potential subjects dealing with the establishment of the urban agglomeration below a minimum number specified in paragraph one, Article 4 of this Law.

Article 9. Approval of the draft agreement on participation in the urban agglomeration

ART 9. Comment above in III-1

1. Village, settlement, city mayors shall submit a draft agreement on participation in the urban agglomeration to respective councils, which are obliged, within one month after receipt of such draft agreement, to adopt it *or to express their remarks with regard to it*.
2. A public discussion may precede the relevant council's consideration of the draft agreement on participation in the urban agglomeration.

Article 10. Conclusion of the agreement on participation in the urban agglomeration

It would be better to use the following title for this article: "*Entering into force of the status of the UA*".

A new UA modifies the territorial structure of public administrations in Ukraine; it is a responsibility of the Government to supervise modifications of this structure as said in the law on the territorial organisation in Ukraine. It is not just an agreement between local government entities. Therefore, §3 could be completed by a sentence saying:

“A decree of the Government (or Minister of...) authorises State registration of the new UA as prescribed by the Law of Ukraine ‘On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations’, and inscription into the Register on co-operation of territorial communities, after verification of its conformity with the law.”

1. The agreement on participation in the urban agglomeration shall be concluded in writing between village, settlement, city mayors upon approval of such a draft by relevant village, settlement, city councils.

The city council of the agglomeration centre is responsible for submission of information on implementation of the agreement to the central executive authority, which ensures the establishment and implementation of state policy in the field of construction, architecture, and urban planning.

2. The *subject matter* of the agreement on participation in the urban agglomeration shall be defined according to the requirements of this Law and in view of other forms of co-operation selected by the subjects of the urban agglomeration.

A list of competences should be established here.

3. Number of copies of the agreement on participation in the urban agglomeration shall be one more than a number of subjects of the urban agglomeration.

Each of the subjects of the urban agglomeration shall receive one copy of the agreement on participation in the urban agglomeration.

In order to enter into the Register on co-operation of territorial communities, one copy of the agreement on participation in the urban agglomeration shall be given to the central executive authority, which ensures the establishment and implementation of the state policy in the field of construction, architecture, and urban planning.

4. The agreement on participation in the urban agglomeration shall come into force in 10 days from the date of its conclusion in view of requirements of the budget legislation if the subjects of the urban agglomeration have not agreed other time limits as stated in the agreement.

Article 11. Accession to the agreement on participation in the urban agglomeration

ART 11. See comment above in III-1

1. Territorial communities of villages, settlements and cities that are in the area of agglomeration centre`s influence of the, but have not participated in the establishment of the urban agglomeration, may voluntarily accede to it under the council`s decision of a relevant territorial community and a higher management body of the urban agglomeration.

2. In the decision on accession to the urban agglomeration, a local council must confirm the consent to the binding provisions of the agreement on participation in the urban agglomeration and may express its own remarks about application of provisions of the agreement on the part of an acceding territorial community.
3. Remarks to the agreement on participation in the urban agglomeration are not allowed if they are incompatible with the goals and objectives of the urban agglomeration or such remarks are prohibited by the agreement on participation in the urban agglomeration.

What is the legal scope of “*remarks*”? Will they have some legal force? Are they a sort of amendment to the status of the UA?

A new member cannot decide, by “*remarks*”, to get a special regime in certain matters. Remarks should stay on the pure political level and not become legal provisions with unclear scope.

4. After receiving the consent of the higher management body of the urban agglomeration on accession of a territorial community to the urban agglomeration, an addendum to the agreement on participation in the urban agglomeration shall be signed. The addendum shall be signed by the appropriate village, settlement, city mayor of the acceding territorial community and by the head of the higher management body of the urban agglomeration.

Section III

PARTICIPATION IN URBAN AGGLOMERATION

Article 12. Essential conditions of the agreement on participation in the urban agglomeration

1. The agreement on participation in the urban agglomeration should contain information on:
 - name of the urban agglomeration;
 - goals and objectives of the urban agglomeration;
 - participants of the urban agglomeration;

- *competences of the UA as said in the law or transferred from its members or by State;*
The comment on competences can be seen above in part III-1.

- procedure for establishment (convocation) and fundamentals for management bodies of the urban agglomeration;
- delegation of powers to the management bodies of the urban agglomeration by its participants;
- scope and terms of financial (property) participation in the urban agglomeration;
- procedure and conditions for funding the *delegated* powers, joint activities, use of the property of the urban agglomeration;

- “procedure and conditions for funding the *delegated* powers, joint activities, use of the property of the urban agglomeration;”

This sentence raises serious questions. See comment in III-1

- procedure for reporting and monitoring over the activity performed by the management bodies of the urban agglomeration;
- validity of the agreement on participation in the urban agglomeration;
- amendments to and termination of the agreement on participation in the urban agglomeration;
- other contractual conditions envisaged by participants of the urban agglomeration.

The last three § raise questions of principle. Comment in III-1.

2. The agreement on participation in the urban agglomeration may contain commitments on a joint funding (supporting) of communal enterprises, institutions and organisations; on the creation of joint communal enterprises, institutions and organisations; on the implementation of joint projects.

Article 13. State registration of urban agglomeration

1. After signing the agreement on participation in the urban agglomeration, the urban agglomeration represented by a higher management body (the Agglomeration Council) shall be subject to a mandatory state registration and obtaining the status of a legal entity.
2. State registration of the Agglomeration Council shall be carried out in the manner prescribed by the Law of Ukraine ‘On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations’.
3. The location of the urban agglomeration shall be the location of the Agglomeration Council and the executive agglomeration body.
4. The urban agglomeration shall report in the manner prescribed by the Law of Ukraine ‘On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations’ about amendments to the agreement on participation in the urban agglomeration, changes of person(s) authorized to represent the urban agglomeration and other changes in the information about the urban agglomeration contained in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations, within 60 days from the date of adoption of the corresponding decision.

Article 14. Management bodies of the urban agglomeration

A general introductory § should say that the provisions of the law on local self-government in Ukraine, and especially the ones on cities, apply to the UA with respect to the provisions stated in the present law.

1. The urban agglomeration management bodies consist of the Agglomeration Council and executive agglomeration bodies.
2. The Agglomeration Council is a higher urban agglomeration management body. The Agglomeration Council is composed of representatives of territorial communities-participants of the urban agglomeration on the basis of *equal representation* – no less than two persons from the territorial community.
3. Representatives of the territorial community in the Agglomeration Council are, ex officio, city, village, settlement mayor and a local councillor(s) according to the decision of the appropriate city, village, settlement councils.
4. The Agglomeration Council is formed for the term of powers granted to respective local councils-participants of the urban agglomeration and to relative city, village, settlement mayors.

This may create complicated situations if the member communities have elections at variable dates. The Council cannot be changed every time there is a modification in the communities. The Council must have its own terms; it is established for 4 or 5 years, after general renewal of all the representatives. If during this period, there is an election in member communities, the delegates of these communities will be replaced by other representatives; but this does not need a general election of all the councillors.

5. The Agglomeration Council is headed by the urban chair of the agglomeration centre, he/she presides at its meetings and represents interests of the urban agglomeration in external relations.

In case of absence of the chair of the Agglomeration Council or an inability to perform his/her duties, his/her powers shall be fulfilled by a deputy chairman–city, village, settlement mayor of territorial community, which in terms of population size ranks second in the urban agglomeration.

Art. 14 § 5. See comment above in III-1

6. The work of the Agglomeration Council shall be carried out in the form of meetings, which are held as necessary, but at least once a quarter.

Convening meetings of the Agglomeration Council, preparing and reviewing issues, as well as making decisions by the Agglomeration Council, shall be envisaged in the Rules of Procedure for the Agglomeration Council subject to the requirements of this Law and the agreement on participation in the urban agglomeration.

The Rules of Procedure for the Agglomeration Council shall be approved by the decision of the Agglomeration Council no later than at its second meeting.

7. The executive staff is the executive agglomeration body ensuring the exercise of powers granted to the Agglomeration Council under this Law and other laws.

The executive agglomeration staff shall provide organisational, legal, informational, analytical, material, and logistical assistance to the Agglomeration Council and its members, promote the interaction between territorial communities, local executive authorities, bodies, and officials of local self-government bodies, fulfil other powers in line with the regulations approved by the Agglomeration Council.

8. The executive agglomeration staff shall be established in the structure of executive bodies of the city council of the agglomeration centre according to the decision of the Agglomeration Council and with the consent of the city council of the agglomeration centre.

The number and regulations on the executive agglomeration staff shall be approved by the decision of the Agglomeration Council.

The head of the executive agglomeration staff shall be appointed and dismissed by the decision of the Agglomeration Council.

9. The Agglomeration Council may create other executive bodies, determine a procedure for their activities and financing in line with the requirements of this Law and the Law of Ukraine 'On co-operation of territorial communities'.

The executive agglomeration bodies are accountable to the Agglomeration Council. Coordination of activities of the executive agglomeration bodies shall be the responsibility of the Chair of the Agglomeration Council and his/her deputy(ies).

10. Activities of the urban agglomeration management bodies shall be funded from the budget of the urban agglomeration, which is formed by combination, on a contractual basis, of the funds of respective local budgets-participants of the urban agglomeration and other revenues in accordance with Article 18 of this Law.

11. The urban agglomeration management bodies shall be guided in their activities by the Constitution and Laws of Ukraine, acts of the President of Ukraine, of the Cabinet of Ministers of Ukraine, decisions of local councils-participants of the urban agglomeration passed within their powers, as well as by the agreement on participation in the urban agglomeration.

The working of § 11 does not seem useful, without any normative provisions: there is neither reason nor need to say that the UA authorities have to respect the law.

Article 15. Powers of the Agglomeration Council

ART 15. Comment above in III-1 on competences

1. The competence of the Agglomeration Council involves:
 - 1) approval of the Rules of Procedure for the Agglomeration Council;

2) establishment, if necessary, and elimination of standing and other committees of the Agglomeration Council, approval and modification of their structure, election of chairs of commissions;

3) hearing of reports on standing commissions and heads of executive bodies of the urban agglomeration;

4) approval of socio-economic development program of the urban agglomeration, development projects for housing and municipal engineering, road-transport infrastructure of the urban agglomeration, other target programs on issues of common interest for communities-participants of the urban agglomeration;

5) approval of the budget of the urban agglomeration, making changes to it, and approval of the report on budget execution;

6) making a decision on development and approval of territory planning scheme for the urban agglomeration, local rules regulating the construction and landscaping, other spatial planning documentation if it applies to all or several communities included in the urban agglomeration;

7) solving other issues in the field of urban planning pursuant to the law, as well as delegating relevant matters to executive authorities or appropriate state authorities according to their competence;

8) creating appropriate bodies and services for ensuring the implementation by the participants of the urban agglomeration of joint projects or joint funding (supporting) of communal enterprises, institutions and organisations, determining powers of such bodies (services);

9) according to the law, solving issues on provision of administrative services within the powers delegated by local councils-participants of the urban agglomeration;

10) exercising authorisations of the owner for possession, use, and disposal of the property of the urban agglomeration, as well as management of joint property rights of territorial communities transferred by the relevant local councils-participants of the urban agglomeration or by other authorized entities to meet common interests of the participants of the urban agglomeration;

11) giving consent to the transfer of objects from the state property to the joint property of territorial communities and making decisions on the transfer of objects from joint property of territorial communities to the state-owned property, as well as acquisition of objects of state-owned property;

12) organisation of transport connections within the urban agglomeration, coordination of public transport routes and transportation conditions on the territory of urban agglomeration (except for transportations within settlements);

13) according to the law, solving issues on regulation of land relations on the territory of the urban agglomeration (outside settlements);

14) solving issues on territory landscaping of the urban agglomeration (outside settlements), including approval of the landscaping rules and monitoring over the landscaping conditions;

15) solving issues on the collection, transportation, recycling, and disposal of domestic waste, neutralisation and burial of dead bodies of animals within the powers delegated by local councils – participants of the urban agglomeration;

16) promoting an investment activity on the territory of urban agglomeration;

17) under the law, granting consent for placement on the territory of the urban agglomeration (outside settlements) of new facilities, including places or facilities for

disposal for which the scope of the environmental activity impact covers a relevant territory in line with applicable standards;

18) approval and submission of funding projects for agglomeration development at the expense of the State Regional Development Fund.

19) on a contractual basis, involvement of enterprises, institutions and organisations into the landscaping of the urban agglomeration and participation in the servicing of the urban agglomeration by population and coordination of such work;

20) granting consent to the accession of the community to the urban agglomeration;

21) making decision to dissolve the Agglomeration Council and elimination of the urban agglomeration;

22) other self-governing powers delegated by the decision of respective local councils to the Agglomeration Council.

2. The scope and limits of the powers of the Agglomeration Council that are delegated by respective local councils shall be provided for in the agreement on participation in the urban agglomeration and addenda hereto in view of the interests and needs of territorial communities-participants in the urban agglomeration.

Article 16. Acts of the Agglomeration Council

1. The Agglomeration Council shall make decisions and other acts (appeals, statements, etc.) by a majority vote of its total composition.

2. The decision of the Agglomeration Council shall be signed by the chair of the Agglomeration Council-city chair of the agglomeration centre within seven days from the date of such adoption.

3. After voicing his/her suggestions (remarks), the Chairman of the Agglomeration Council-city chair of the agglomeration centre has a right not to sign the decision of the Agglomeration Council and return it to the Agglomeration Council to reconsider. Suggestions (remarks) made by the Chairman of the Agglomeration Council should be published on the web site of the urban agglomeration within seven days from the date of adoption of the corresponding decision of the Agglomeration Council.

4. At a meeting of the Agglomeration Council the reconsideration of the decision as to which there were suggestions (remarks) expressed by the Chairman of the Agglomeration Council may take place only after the support of such a decision by all of the local councils-participants of the urban agglomeration. Based on the results of such re-consideration, the decision shall be made by a majority vote of its total composition.

5. A regulatory decision passed by the Agglomeration Council shall come into force after its official publication if the Agglomeration Council has not set a later period for enacting such acts.

6. The decisions of the Agglomeration Council are subject to the obligatory publication and presentation at the appropriate request in compliance with the Law of Ukraine 'On Access to Public Information'.

Article 17. Property pool for activities of the urban agglomeration

1. The urban agglomeration has the right to possess, use, and dispose of funds and other property, which under the law have been transferred to this urban agglomeration by their members or the State acquired as a result of business activity, legal entities (associations, enterprises) created by it (urban agglomeration), as well as property purchased at the expense of its own funds granted for a temporary use (except for disposal)

or on other grounds which are not prohibited by the law.

The property of the urban agglomeration may involve:

- integral property complexes of enterprises, institutions, organisations, and their structural subdivisions;

- immovable property (buildings, structures, including assets under construction, premises);

- securities;

- land plots;

- proprietary rights (including intellectual property);

- monetary funds

- another individually defined property

2. Ownership rights of the urban agglomeration shall be exercised by its higher management body (the Agglomeration Council) in the manner prescribed by the law and by the agreement on participation in the urban agglomeration.

A member of the urban agglomeration is entitled to receive a share of the property of the urban agglomeration in case of its liquidation. A size of the share and a procedure for its receipt shall be stipulated by the agreement on participation in the urban agglomeration.

3. The urban agglomeration represented by the Agglomeration Council is entitled to manage a joint property of territorial communities-participants of the urban agglomeration, which has been transferred on their behalf by respective local self-government bodies or on the basis of the decision made by the authorized entity that has a right to transfer from the state-owned property to the property of territorial communities in line with the law.

4. The management of a joint property of territorial communities means the exercise of rights for possession, use, and disposal of joint property rights of territorial communities within the scope of the decisions of the entities who made the property over to the urban agglomeration to manage, and in order to ensure common rights and interests of respective territorial communities, which are co-owners of such property.

5. A joint property of territorial communities may involve:

- integral property complexes of enterprises (joint communal companies);

- immovable property (buildings, structures, including assets under construction, premises);

- shares (stakes, equity interests) of members of communal property in assets of business companies;

- land plots;

- another individually defined property.

Article 18. Financial basis for the urban agglomeration

ART 18. See comment above in III-1 Financial system

1. Activities of the urban agglomeration shall be funded at the expense of:

- respective local budgets-participants of the urban agglomeration;

- the State budget

- international technical and financial assistance, credit resources, and other sources which are not prohibited by the legislation.

2. Calculation of the volume of financial involvement in a respective territorial community in the urban area shall be stipulated by the agreement on participation in the urban agglomeration and addenda hereto.

3. The main financial document of the urban agglomeration is the financial estimate (budget) of the urban agglomeration, where the distribution of the received appropriations is provided for the achievement of goals and objectives of the urban agglomeration.

4. The financial estimate of the urban agglomeration shall be approved for the relevant budget year by the decision of the Agglomeration Council, which considers the volume of transfers from budgets of participants of the urban agglomeration and other sources not prohibited by the laws.

5. By the decision of the Agglomeration Council, funds for the urban agglomeration may be kept in treasury bodies or in the state-owned banking institutions.

6. Preparation of the draft financial estimate of the urban agglomeration and changes to it, as well as a report on budget execution of the urban agglomeration, shall be responsibility of the executive staff of the urban agglomeration.

Section IV

STATE SUPPORT FOR URBAN AGGLOMERATIONS

Article 19.

The article could start with the following *“Considering the national interest of having good governance of Urban Agglomeration, the State has a special responsibility in supporting the creation of these new institutions by different forms:*

1. The State provides organisational, methodical support of urban agglomerations, ~~as well as financially stimulates the activity of urban agglomerations.~~

2. The Council of Ministers of the Autonomous Republic of Crimea, local state administrations jointly with the all-Ukrainian associations of local self-government bodies shall provide organisational and awareness-raising support to the establishment of urban agglomerations.

3. The central executive authority dealing with the establishment and implementation of the state policy in the field of construction, architecture, and urban planning shall provide methodological support to the establishment of urban agglomerations and determination of the scope for promotional activities of urban agglomerations.

It would be useful to add the following paragraph:

4. *Special financial support for the period of creation of a UA and incentive grants for the 3 (5) years of the implementation of the new UA will be decided by a budget law.*

Article 20. State promotional activities of urban agglomerations

1. The State shall encourage the establishment and activities of urban agglomerations through:

1) granting subventions to the development of housing and municipal, engineering and road-transport infrastructure of the agglomeration (hereinafter ‘the subvention’);

2) funding of strategic projects for development of the urban agglomeration at the expense of the State Fund for Regional Development.

2. Proposals for granting subventions to the urban agglomeration shall be made on basis of relevant decisions of the Agglomeration Council to the Cabinet of Ministers of Ukraine no later than 15 September of the year preceding the budgetary period in which granting of such subventions shall be provided for.

3. The total amount of subventions for the urban agglomeration shall be allocated between the urban budgets of agglomeration centres in proportion to the area of the urban agglomeration and a size of the rural population in this urban agglomeration with an equal weight of both these factors.

4. The procedure for granting of subventions for the development of housing and municipal, engineering and road-transport infrastructure of the urban agglomeration shall be provided by the Cabinet of Ministers of Ukraine.

Section V

GUARANTEES OF THE ACTIVITY OF URBAN AGGLOMERATIONS. RESPONSIBILITY OF THE URBAN AGGLOMERATION BODIES

Article 21. Guarantees of activity of the urban agglomeration

1. Participants of the urban agglomeration shall provide conditions for effective work of the urban agglomeration and its bodies by means of:

- a timely (in accordance with the agreement on participation in the urban agglomeration and annexes hereto) decision-making by respective local councils regarding the organisation and support of urban agglomeration and its bodies;
- a mandatory financial (property) involvement in the work of the urban agglomeration in the manner and on the terms specified in the agreement on participation in the urban agglomeration and annexes hereto.

This could be considered as an advice given to members rather than as a normative provision.

2. Budgets of territorial communities, which have established the urban agglomeration, shall be prepared separately. In this case, equal budget status, i.e., *an identical structure of the revenues and expenditures of local budgets* in the manner prescribed by the Budget Code of Ukraine, shall be guaranteed for all the participants of territorial communities in the urban agglomeration.

This will be complicated to realise when the local communities included in a UA have different accounting, budgetary and fiscal regimes and, probably, staff of various levels of competence in financial management and in accountancy. Creating for all, from the smallest to the big centre city, the same regime will be creating exceptional regimes for many of them.

3. Executive authorities and their officials have no right to interfere with legitimate activities of urban agglomerations, as well as to deal with matters related to the powers of urban agglomeration management bodies, which are stipulated by this Law and other laws unless otherwise envisaged by law.

4. If a local state administration or branches of central executive authorities consider matters affecting interests of the urban agglomeration, it should inform the appropriate urban agglomeration management bodies about such a fact.

5. The urban agglomeration management bodies are eligible to apply to the Court to recognize as illegal the acts of local executive authorities, of local self-government bodies, of enterprises, of institutions, and of organisations, which limit the powers of the urban agglomeration management bodies.

“Management bodies” cannot go to Courts. This can only be done by the executive authority of the UA who is in charge of defending its interest, or by a State authority in charge of supervising the decisions of local self-governments.

Article 22. Obligatory force of the acts passed by urban agglomeration management bodies

1. Acts of the urban agglomeration management bodies passed within the scope of the powers granted to them are binding for all located on the territory urban agglomeration bodies, associations of citizens, enterprises, institutions and organisations, officials and citizens who permanently or temporarily reside in the respective territory.

2. Local executive authorities, local self-government bodies, enterprises, institutions, and organisations located on the territory of the urban agglomeration, as well as citizens, are responsible for the damage caused as a result of non-performance of the decisions of the urban agglomeration management bodies taken within the powers granted.

§ 2 Is it useful to express this very general legal provision in this law?

3. Acts of the urban agglomeration management bodies passed due to the non-compliance with the Constitution or laws of Ukraine are recognized as illegal at the initiative of stakeholders judicially.

Article 23. Responsibility of the urban agglomeration management bodies before participants of the urban agglomeration

1. The urban agglomeration management bodies are accountable and responsible to local councils of participants of the urban agglomeration, as well as within the scope of the powers delegated to the urban agglomeration management bodies by respective local councils.

2. The Agglomeration Council shall annually approve and publish a report on its activities for the previous year, as well as submit the report to local councils-participants of the urban agglomeration. Requirements on the time limits, form, procedure for preparation and publication of the report of the Agglomeration Council shall be set forth in the agreement on participation in the urban agglomeration and the Rules of Procedure for the Agglomeration Council.

3. Chairs of the village, settlement, city councils and deputies of local councils, who represent corresponding territorial communities in the Agglomeration Council, shall annually present the Activity report of the Agglomeration Council before relevant local councils, inform about the use of the budget of the urban agglomeration, the adopted development programs

of the urban agglomeration, as well as on the work of representatives of the relevant territorial community in the Agglomeration Council.

4. Based on the results of the report presentation on the work of the Agglomeration Council and the work of the representatives of the territorial community in the Agglomeration Council, local councils:

- shall make decisions involving, if necessary, instructions and recommendations of the local council aimed at improving the work of the Agglomeration Council, and considering the needs of the respective territorial communities in the Agglomeration Council;

- can decide on the call-off of a local councillor out of the Agglomeration Council and further delegation of another councillor to the Agglomeration Council.

§4 this provision should not be include in the law. See comment in III-1

Article 24. Responsibility of the urban agglomeration management bodies before the State, legal and natural persons

1. In exercise of the powers, the urban agglomeration management bodies shall bear responsibility in case of their violations of the Constitution or laws of Ukraine.

2. A damage caused to legal and natural persons as a result of unlawful decisions, actions, or omissions of the urban agglomeration management bodies shall be reimbursed at the expense of the urban agglomeration.

These general provisions do not appear having an added legal value.

Article 25. Early termination of powers of the Agglomeration Council and its members

1. Powers of the Agglomeration Council shall be terminated early in the following cases:

1) if meetings of the Agglomeration Council are not held with no valid reasons within the period established by this law and/or by the agreement on participation in the urban agglomeration or the Agglomeration Council does not cover matters related to its competence;

2) dissolution of the Agglomeration Council in the manner prescribed by the law and the agreement on participation in the urban agglomeration.

2. Powers of the Agglomeration Council shall be terminated early:

1) on the grounds mentioned in paragraph 1, part one of this Article, – from the date of the decision making to call-off of their representatives from local councils no less than half of the members of the urban agglomeration. The Agglomeration Council shall renew its work after delegating by local councils (including local councils of new convocation) other deputies to the Agglomeration Council instead of the called-off.

See comment above in III-1 on external control.

2) based on grounds set forth in paragraph 2, part one of this Article, – from the date of the decision by the Agglomeration Council with regard to the dissolution.

3. In the case of early termination of powers of village, settlement, city mayor, in the manner prescribed by the law, his/her mandate of the Council member shall be terminated simultaneously with the early termination of powers of the village, settlement, city mayor. The powers of a representative of the territorial community in the Agglomeration Council shall be delegated to the acting village, settlement, city mayor until election of a new village, settlement, city mayor.

4. In case of early termination of powers of a local councillor, in the manner prescribed by the law, his/her powers, as a member of the Agglomeration Council, shall be terminated simultaneously with the early termination of the powers of a local councillor. At its nearest meeting, the local council decides on the issue of delegation of another councillor to the Agglomeration Council instead of the called off.

Article 26. Termination of the urban agglomeration

The UA is created for an indefinite period.

Can one imagine a unanimity decision for dissolving a UA? And the only moment when a Court could decide on the existence of a UA is immediately after its creation if there is a case alleging serious illegality in the procedure of creating the Union.

1. The urban agglomeration shall be terminated in case of:

1) consent of the participants of the urban agglomeration and the decision to dissolve and to liquidate the Agglomeration Council;

2) making by the Court decision on the termination of the Agglomeration Council;

Termination of the urban agglomeration should not cause a reduction in the scope and deterioration of the quality of services for the population.

2. Disputes arising in connection with the termination of the urban agglomeration shall be resolved by local councils-participants of the urban agglomeration by negotiation or judicially according to the laws.

Section VI

FINAL PROVISIONS

Several provisions of this section will have to be reconsidered if the recommendations and modifications proposed above are accepted. We cannot anticipate this.

1. This Law shall come into force from the day of its publication.

2. To amend the following acts of Ukraine:

1) the Law of Ukraine 'On Local Self-Government in Ukraine' (The Official Bulletin of the Verkhovna Rada of Ukraine, 1997, No. 24, p. 170 with the following amendments)

to supplement part one of Article 5 with the new paragraph as follows:

'Agglomeration Councils.'

to add Article 14² as follows:

'Article 14². Agglomeration Councils

1. The territorial communities of villages, settlements, cities, including amalgamated territorial communities, located in the area of the city's – agglomeration centre's influence and have intensive economic, labour, cultural and household relations with the area of the agglomeration centre's influence, may create, on a contractual basis, the urban agglomeration with the Agglomeration Council as a higher management body with the purpose of joint execution of separate functions of local self-government.

2. A legal status, a procedure for organisation and activities of the Agglomeration Council shall be stipulated by law on urban agglomerations.'

in Article 26:

a) clauses 33¹ and 33² of part one of the Article should read as follows:

'33¹) making decisions regarding the granting of consent to the organisation of co-operation between territorial communities, the member of which is a territorial community of a village, town, city in the forms specified in Article 4 of the Law of Ukraine 'On territorial communities' co-operation' and the Law of Ukraine 'On urban agglomerations', on approval of the draft agreement on co-operation, on participation in the urban agglomeration and other decisions relating to territorial communities' co-operation or with the involvement of the territorial community of a village, town, city in the urban agglomeration in accordance with the above-mentioned law;

33²) in accordance with the Law of Ukraine 'On territorial communities' co-operation', hearing of reports on territorial communities' co-operation, the subject of which is a territorial community of a village, town, city, as well as hearing of reports related to the participation of territorial communities of a village, town, city in the urban agglomeration in accordance with the Law of Ukraine 'On urban agglomerations';

b) to add part one of Article 33³ and 33⁴ as follows:

'33³) delegation and the call-off of a local councillor to the Agglomeration Council in cases stipulated by law;

33⁴) making decisions on delegation to the Agglomeration Council of separate own powers of local self-government bodies;'

2) add part one of Article 4 of the Law of Ukraine 'On co-operation of territorial communities' (The Official Bulletin of the Verkhovna Rada of Ukraine, 2014, No. 34, p. 1167) with the new clause as follows:

'6) establishment of the urban agglomerations in the manner prescribed by the applicable law.'

3) the Law of Ukraine 'On State Registration of Legal Entities and Individual Entrepreneurs' (The Official Bulletin of the Verkhovna Rada of Ukraine, 2003, N 31-32, 263; 2006, N 37, 310; 2009, N 26, p. 322):

to add the words ', the Agglomeration Council' in paragraph two of clause 8 of first part of Article 1 after the words 'creation of the state body, local self-government body';

in Article 9:

a) to add ', the Agglomeration Council' in paragraph one of third part after the words 'local self-government bodies';

b) to add third part with sub-clause 6¹ as follows:

'6¹) a list of local self-government bodies-founders (participants) of the Agglomeration Council: name, location, and identification code of a local council;'

second paragraph of clause 9 of part one of Article 15 should read as follows:

'First paragraph of this first clause as to the notary certification of authenticity of signatures does not apply to the state registration for establishment of legal entity (except for creating as a result of separation, merger, reorganisation, division), as well as to the state registration of the creation of the state authority, local self-government body, the Agglomeration Council, or to the state registration of changes to the information on the state authority, local self-government body, the Agglomeration Council, public associations, or charitable organisation containing in the Unified State Register.'

part one of Article 16 shall read as follows:

'1. Name of legal entity must contain information on its organisational and legal form (except for state authorities, local self-government bodies, the Agglomeration Council, authorities of the Autonomous Republic of Crimea, state, municipal organisations, institutions, and establishments) and name.'

in Article 17:

a) to add ', the Agglomeration Councils' in paragraph one of part one after the words 'local self-government body';

b) to add part two of the Article with paragraphs as follows:

'For the purpose of state registration of the creation of the Agglomeration Council, the application, decisions of local councils on approval of the agreement on participation in the urban agglomeration and the agreement on participation in the urban agglomeration shall be submitted for the state registration for creation of a legal entity.'

For the purpose of the state registration of amendments to the information on the Agglomeration Council, the application jointly with the decision of the Agglomeration Council shall be filed to make changes to the information on legal entity, and in case of acceding a new participant to the urban agglomeration – the decision of a respective local council on the approval of the agreement on participation in the urban area jointly with the addendum on participation in the urban agglomeration.

For the purpose of state registration of termination of the Agglomeration Council, the application and the decision of the Agglomeration Council on termination of the urban agglomeration or a decision of the Court shall be filed to make state registration of termination of a legal entity.'

4) the Law of Ukraine 'On Regulation of Urban Planning Activities' (The Official Bulletin of the Verkhovna Rada of Ukraine (VRU), 2011, No. 34, p. 343):

to add part one of Article 1 with the following clause:

'12¹) territory planning schemes at the local level means spatial planning documentation that stipulates the fundamental solution of the planning, development, and other uses of territories of the urban agglomeration;'

in Article 16:

a) to add part one after the word 'approval' with the words 'territory planning schemes'

b) to add first sentence of part two with the words ', Agglomeration Councils.'

c) after the words 'with articles' to add part four with numbers '16¹';

to add new Article to read as follows:

'Article 16¹. Territory planning scheme for the urban agglomeration

1. The Agglomeration Council shall decide on the development for territory planning scheme for the urban agglomeration or for amendments to it, or its individual sections, and it acts as the customer of the territory planning scheme of the urban agglomeration.

2. The territory planning scheme of the urban agglomeration defines the priority areas for the use of territory of the urban agglomeration to ensure sustainable development of

settlements, development of the production, socio-engineering and transport infrastructure; stipulates the planning structure of the whole territory in view of state, regional requirements, and public interests.

3. The Agglomeration Council shall ensure:

- the notification through the local media about the beginning of the development of the territory planning scheme of the urban agglomeration and determines the order and the time limit for making proposals;

- the preview and coordination of documents on territory planning scheme for the urban agglomeration with local councils representing the interests of territorial communities-participants in the urban agglomeration.

4. The territory planning scheme for the urban agglomeration shall be approved by the decision of the Agglomeration Council. Documents related to territory planning scheme of the urban agglomeration must be published on the web-site of the urban agglomeration in the local print media and/or in publicly available domain.

5. The territory planning scheme for the urban agglomeration shall be implemented through the development, approval, and implementation of programs for economic and social development, as well as of the spatial planning documentation.

6. Village, settlement, city councils are obliged to bring their master plans of cities, settlements, and villages, which are located on the territory of the urban agglomeration, in conformity to the territory planning scheme for the urban agglomeration.'

5) the Land Code of Ukraine (The Official Bulletin of the Verkhovna Rada of Ukraine, 2002, No. 3-4, p. 27):

to add Article 12¹ as follows:

'Article 12¹. Agglomeration Councils` powers in the field of land relations

The Agglomeration Councils` powers in the field of land relations on the territory of the urban agglomeration shall cover:

1) management and disposal of the co-owned land plots of territorial communities;

2) granting consent to the disposal of the state-owned lands as required by this Code

3) approval of the transfer of the state-owned land plots into the ownership of citizens and legal entities in accordance with this Code;

4) approval of the provision of land plots in the use of state-owned lands as required by this Code;

5) solution to other issues in the field of land relations in accordance with the law.'

part three of Article 86 shall read as follows:

'3. Subjects of the joint property right to the land plots of territorial communities may be district, regional councils, and the Agglomeration Councils.'

to add Article 117¹ as follows:

'Article 117¹. Transfer and transition of the state-owned lands and land plots into joint ownership of territorial communities or the co-owned land plots of territorial communities into the state-owned ownership

1. Transfer of the state-owned land plots into the joint ownership of territorial communities or vice versa shall be carried out according to the decisions of respective executive bodies, local self-government bodies or the Agglomeration Councils

disposing of the state-owned or joint property of territorial communities based on the powers defined by this Code.

The decision made by central executive bodies, local self-government bodies or the Agglomeration Council on transfer of a land plot into the state or joint ownership of territorial communities shall contain cadastral number of such a land plot, its location, area, designated purpose, information about encumbrances over proprietary rights to the land plot, limitation in its use.

The Acceptance and Transfer Act for such a land plot shall be prepared on the basis of the decisions of executive authorities, local self-government bodies or the Agglomeration Council on the transfer of a land into the state or joint ownership of territorial communities.

Decisions of executive authorities, local self-governments or the Agglomeration Council on transfer of a land plot into the state-owned or joint ownership of territorial communities jointly with the Acceptance and Transfer Act for such a land plot are a basis for the state registration of the ownership of the state, territorial communities (district, region, or urban agglomeration) for the above land.

2. State-owned lands and land plots located outside the settlements and within the territory of the urban agglomeration are subject to transfer into the joint ownership of territorial communities on the basis of the address of the Agglomeration Council and on the basis of the decisions of relevant executive authorities.

3. State-owned land plots envisaged by Article 117 of this Code cannot be transferred into the joint ownership of territorial communities.

4. Land plots co-owned by territorial communities, where there are buildings, structures, and other facilities of the co-owned real estate of territorial communities, cannot be transferred into the state ownership, as well as it concerns the land plots, which are in permanent use of the urban agglomeration management bodies, of joint communal companies, of institutions, of organisations, except for the transfer of such objects into the state-owned property.'

to add Article 122 with parts eleven and twelve as follows:

'11. The Agglomeration Councils shall transfer the land plots into the ownership or use of the relevant co-owned lands of territorial communities for all needs and shall agree to transfer state-owned land plots into the ownership and use on the territory of the urban agglomeration (outside the settlements), as well as state-owned lands bordering on its territory, except for the cases specified in parts eight and nine of this Article.

12. In the case of creation of the urban agglomeration, executive authorities specified in parts three-seven of this Article shall transfer the state-owned land plots into the ownership or in use with the consent of respective Agglomeration Councils.'

**Chairman of
the Verkhovna Rada of Ukraine
A. PARUBII**