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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW

**ON AMENDING THE CONSTITUTION
OF UKRAINE
AS TO DECENTRALIZATION OF POWER**

**AS SUBMITTED BY THE VERKHOVNA RADA
OF UKRAINE
TO THE CONSTITUTIONAL COURT OF UKRAINE**

ON 16 JULY 2015

Draft
Introduced by the President of Ukraine

LAW OF UKRAINE

On amending the Constitution of Ukraine
(as to decentralization of power)

The *Verkhovna Rada* of Ukraine hereby decrees:

I. To amend the Constitution of Ukraine (Bulletin of the *Verkhovna Rada* of Ukraine, 1996, No. 30, Art. 141) as follows:

1) Articles 118, 119, 132, 133, 140 – 144 shall be amended as follows:

"Article 118. The executive power in the *rayons* and *oblast's*, in the cities of Kyiv and Sevastopol shall be executed by prefects.

Specifics of exercising the executive power in the cities of Kyiv and Sevastopol shall be set forth by separate laws of Ukraine.

Prefect shall be appointed and dismissed from the office by the President of Ukraine upon recommendation of the Cabinet of Ministers of Ukraine.

Prefect is a public official.

When exercising its authorities, the prefect shall be responsible to the President of Ukraine and accountable and subordinated to the Cabinet of Ministers of Ukraine.

Article 119. The Prefect in the respective territory shall:

1) supervise adherence to the Constitution of Ukraine and Laws of Ukraine by local authorities;

2) coordinate the activity of territorial offices of central executive bodies and supervise their adherence to the Constitution of Ukraine and Laws of Ukraine;

3) ensure fulfilment of state programs;

4) direct and organize the activity of territorial offices of central executive bodies, and ensure their interaction with local authorities in the state of war or emergency, of extraordinary ecological situation;

5) execute other powers prescribed by the Constitution and laws of Ukraine.

On grounds of and according to the procedure prescribed by law, the prefect shall issue acts which shall be mandatory at the respective territory.

Acts issued by prefects in execution of the powers set forth in sub-paragraphs 1 and 4 of the first paragraph of this Article may be revoked by the President of Ukraine, and the ones issued in execution of powers set forth in sub-paragraphs 2 and 3 of the first paragraph of this Article may be revoked by the Cabinet of Ministers of Ukraine. Acts issued by prefects in execution of powers determined by sub-paragraph 5 of the first paragraph of this Article, shall be revoked by the President of Ukraine and in cases provided for by the laws – by the Cabinet of Ministers of Ukraine.

"Article 132. Administrative and territorial structure of Ukraine shall be based on the principles of unity and integrity of the territory of the State, decentralization of power, ubiquity and ability of local self-government, sustainable development of administrative and territorial units while taking into consideration their historical, economic, ecological, geographic, and demographic characteristics as well as ethnic and cultural traditions.

Article 133. The system of the administrative and territorial structure of Ukraine shall include administrative and territorial units: *hromadas*, *rayons* and *regions*.

The territory of Ukraine shall be divided into *hromadas*. *Hromada* is a primary unit in the system of administrative and territorial structure of Ukraine.

Several *hromadas* shall constitute *rayon*.

Regions are the Autonomous Republic of Crimea and *oblast's*.

Specifics of Kyiv and Sevastopol in the system of administrative and territorial structure of Ukraine shall be established by separate laws.

The order for creation, liquidation, establishing and change of boundaries, naming and renaming of *hromadas*, *rayons* and *oblast's* as well as the order for creation, naming, renaming and classification of settlements (villages, towns and cities) shall be set forth by law.

Change of boundaries, naming and renaming of *hromadas* and settlements shall be provided upon the opinion of people who live there due to the procedure prescribed by law”;

"Article 140. Local self-governance shall be executed by the territorial community both directly or through the local self-governance bodies by means of autonomous regulation of locally significant social affairs and managing them within the framework of the Constitution and the laws of Ukraine.

Territorial community shall be formed of people living in the settlement or settlements of the respective *hromada*.

Territorial communities shall exercise local self-governance directly through local referenda and other forms prescribed by law.

The self-government bodies of *hromada* are *hromada's* council as a representative body, and the executives of the self-governing *hromada*.

The executives of the self-governing *hromada* are subordinated and accountable to the *hromada's* council.

The head of *hromada* presides at *hromada's* council meetings, and is a chair of the self-governing *hromada's* executive.

Rayon and *oblast'* councils and their executive committees are the local self-government bodies which accordingly represent and fulfil the common interests of territorial communities in *rayon*, *oblast'*.

The status of heads of *hromadas*, of deputies of *hromada's* councils and of *rayon* and *oblast'* councils, the order for creation, re-organization and liquidation of the executives of self-governing *hromadas*, of the executive committees of *rayon* and *oblast'* councils, and the scope of their powers, are determined by law.

Hromada's council shall promote activities of self-organisation bodies of population established by the law and charter of the territorial community and may provide them with finance and property for this purpose.

Article 141. The right to vote at the elections of the *hromada's* head, of deputies of *hromada's* council, *rayon* council, *oblast'* council shall be granted to residents of the corresponding *hromada* (*hromadas*) being the citizens of Ukraine and not less than eighteen years old as of the day of elections and who are not recognized by the court as legally incapable.

Hromada's head, deputies of *hromada's* council, *rayon* council, *oblast'* council shall be elected on the basis of general, equal and direct suffrage by secret ballot.

For the position of the *hromada's* head, deputy of *hromada's* council, *rayon* council and *oblast'* council may be elected a citizen of Ukraine not less than eighteen years old as on the date of elections, and who are not recognized by the court as legally incapable. Ineligible for the post of the *hromada's* head, deputy of *hromada's* council, *rayon* council and *oblast'* council shall be a citizen serving a sentence for a crime or possessing a conviction for committing intentional crime.

The order for election of deputies of *rayon* and *oblast'* councils shall ensure securing representation therein of territorial communities within that *rayon* or *oblast'* and be envisaged by law.

The term of office of the *hromada's* head, deputy of *hromada's* council, *rayon* council and *oblast'* council elected at the regular elections shall be four years.

The grounds and order for early termination of powers of the *hromada's* head, deputy of *hromada's* council or of the relevant *hromada's* council, *rayon* council, *oblast'* council shall be determined by the Constitution and laws of Ukraine.

Regular elections of deputies to all councils of *hromadas*, *rayons*, *oblast's*, of *hromadas* heads shall be held on the last Sunday of October on the fourth year after the previous regular elections.

Pre-term elections of *hromada's* head, deputies to *hromada's* council, *rayon* and *oblast'* councils shall be held not later than 180 days from the date of early termination of the powers of the *hromada's* head, *hromada's* council, *rayon* council or *oblast'* council, and in case of early termination pursuant to provisions of Article 144 hereof – within 120 days from the date of such termination.

Rayon council or *oblast'* council shall elect from among its members the head of *rayon* council or the head of an *oblast'* council accordingly.

Rayon council, *oblast'* council shall appoint and dismiss the head of executive committee of the council and shall form the composition of this body upon proposal of the head.

Head of *hromada*, deputies of *hromada's* council, of *rayon* or *oblast'* councils shall not hold any other representative mandate.

Other requirements regarding incompatibility of the mandate of the *hromada's* head, of deputy of *hromada's* council, *rayon* or *oblast'* councils shall be determined by the law.

Article 142. The material and financial basis for the local self-government shall be:

1) land, movable and immovable property, natural resources, other objects, belonging to communal ownership of the territorial community;

2) local taxes and fees, part of national taxes and other revenues of local budgets.

The objects of joint ownership of territorial communities shall remain under administration of *rayon* or *oblast'* council, and shall be maintained on account of the *rayon* or *oblast'* budget.

The State shall ensure the adequacy of financial resources and the scope of powers of local self-government bodies as prescribed by the Constitution and laws of Ukraine.

Change in competence of the local self-government body shall be executed together with simultaneous corresponding changes in distribution of financial resources.

The State shall compensate the expenses of the self-government bodies incurred as a result of the decisions of State organs.

Territorial communities may unite objects of communal ownership and budget funds on a contractual basis for fulfilment of joint projects or for joint financing (maintaining) of communal enterprises, organizations and institutions, and establish with this purpose the relevant bodies and services.

Article 143. Territorial community, directly or through local self-governments bodies of the *hromada*, in accordance with law shall:

1) manage the property being in communal ownership;

2) approve budget of the respective *hromada* and control its implementation;

3) approve programs of social and economic and cultural development and control their implementation;

4) determine local taxes and duties;

5) ensure implementation of local referendums' results;

6) establish, reorganize and liquidate public utility enterprises, organizations and institutions, as well as exercise control over their activity;

7) resolve other issues of local importance assigned by law to the scope of their competence.

Oblast' or *rayon* council shall:

- 1) approve *oblast'* or *rayon* budget for implementation of joint projects, inter alia, on account of funds involved on contract basis from local budgets, and control its execution;
- 2) resolve other issues of local significance assigned by law to its competence.

Oblast' council shall approve the regional program of social, economic and cultural development of the *oblast'*, and control its implementation.

Division of competences between the local self-governance bodies of *hromadas*, *rayons* and *oblast's* shall be determined by the law based on principle of subsidiarity.

In accordance with the law, certain powers of executive authorities may be delegated to executives of the local self-governing *hromada*, to the executive committees of *rayon* and *oblast'* council. The State shall finance the exercise of these powers in full at the expense of funds from the Ukraine State budget, and transfer to local self-government bodies the relevant objects of state property. Such powers may be revoked on the grounds and in accordance with the procedure prescribed by law.

The executives of the local self-governing *hromada*, executive committees of *rayon* council, *oblast'* council, on matters of delegated powers, shall be subordinated to the respective executive bodies which have delegated these powers.

Article 144. Territorial communities, the *hromada's* heads, bodies of local self-government shall, in accordance with the law, adopt acts that are mandatory in the respective territory.

The effect of acts of local self-government bodies due to their incompliance with the Constitution or the Laws of Ukraine shall be ceased by prefect with parallel legal recourse.

Where any act approved by the head of *hromada*, council of *hromada*, *rayon* or *oblast'* council is non-complying with the Constitution of Ukraine, pose a threat to breach the state sovereignty, territorial integrity or pose a threat to national security, the President of Ukraine ceases the effect of the respective act with parallel appeal to the Constitutional Court, suspends the powers of the head of *hromada*, of the council of *hromada*, the council of *rayon* or *oblast'*, and appoints temporary authorized State official. The temporary authorized State official shall direct and organize the activity of relevant executives of local self-governing *hromadas*, of the executive committee of *rayon* or *oblast'* council.

The Constitutional Court of Ukraine shall decide on such appeal of the President of Ukraine without any delay.

Should the Constitutional Court of Ukraine recognize the act of the head of *hromada*, of *rayon* council or of *oblast'* council as compliant with the Constitution of Ukraine, the President of Ukraine shall revoke the act issued pursuant to paragraph 3 of this Article.

Should the Constitutional Court of Ukraine recognize the act of the head of *hromada*, of *rayon* council or of *oblast'* council as non-compliant with the Constitution of Ukraine, the *Verkhovna Rada* of Ukraine, as proposed by the President of Ukraine, shall terminate the powers of the head of *hromada*, of *hromada's* council, of *rayon* council or of *oblast'* council, and call pre-term elections as prescribed by law";

2) Sub-paragraphs 29 and 30 of paragraph 1, Article 85 to be amended as follows:

"29) creation and liquidation of *hromadas*, *rayons* and *oblast's*, establishment and alteration of their boundaries; designation and change of names of settlements, *hromadas*, *rayons*, *oblast's*;

30) calling pre-term elections of the heads of *hromadas*, deputies of *hromada*, *rayon*, *oblast* councils";

3) Sub-paragraph 16 of paragraph 1, Article 92 to be amended as follows:

"16) the status of Kyiv as the capital of Ukraine";

4) to incorporate into Paragraph 1, Article 106, the new sub-paragraph 8¹ as follows:

"8¹) shall suspend the powers of the head of *hromada*, of the council of *hromada*, the council of *rayon* or *oblast'*, and appoints temporary authorized State official in cases prescribed by the Constitution";

5) to delete Sub-paragraph 5, Article 121;

6) to amend the title of Section IX as follows:

"Section IX. Administrative and Territorial Structure of Ukraine";

7) to incorporate into Paragraph 1, Article 150, the new Sub-paragraph 1¹ as follows:

"1¹) deciding on appeal of the President of Ukraine as for compliance to the Constitution of Ukraine of an act of the head of *hromada*, of council of *hromada*, of *rayon* or *oblast'* council";

8) to incorporate into Section XV "Transitional Provisions" Paragraph 17 as follows:

"17. Upon coming into effect of the Law of Ukraine "On Amending the Constitution of Ukraine (as to decentralization of power)":

1) next regular local elections - elections of heads of *hromadas*, of deputies to *hromadas*, *rayons* and *oblast'*s councils - shall be held on the last Sunday of October, 2017.

The powers of village, town and city heads and deputies of local councils elected at regular elections in October, 2015, and local elections within the period from October, 2015, till October, 2017, expire from the date of acquiring the powers accordingly by the heads of *hromadas*, by the councils of *hromadas*, *rayons* and *oblast'*s elected at the next regular local elections in October, 2017;

2) The President of Ukraine, as proposed by the Cabinet of Ministers of Ukraine, shall appoint and dismiss the heads of local State administrations before appointing the respective prefects;

3) temporary, till prefects are appointed, the power stipulated in Sub-paragraph 1, Article 119 and Paragraph 2, Article 144 of the Constitution of Ukraine, shall be exercised by the head of the relevant local State administration;

4) till electing heads of *hromadas*, deputies of *hromada* councils, *rayon* and *oblast'* councils at the next regular local elections in October, 2017, The President of Ukraine shall exercise the powers stipulated by Article 144 of the Constitution of Ukraine as to acts adopted accordingly by village, town and city heads, village, town, city, *rayon* and *oblast'* councils. The temporary authorized State officials shall direct and organize the activity of executive bodies of the relevant village, town and city council, of the executives of the relevant *rayon* or *oblast'* council.

The Constitutional Court of Ukraine shall, without any delay, decide on the respective appeal of the President of Ukraine as regards the acts of village, town and city heads, of village, town, city, *rayon* or *oblast'* councils.

Should the Constitutional Court of Ukraine recognize the act of village, town and city head, of the village, town, city, *rayon* or *oblast'* council as non-compliant with the Constitution of Ukraine, the *Verkhovna Rada* of Ukraine, as proposed by the President of Ukraine, shall terminate the powers of the respective village, town and city head, of the village, town, city, *rayon* or *oblast'* council, and call pre-term elections".

"18. Specific arrangements for self-government in some parts of Donetsk and Luhansk *oblast'*s shall be set forth in a separate law."

II. Final and Transitional Provisions

1. This Law comes into effect in three months from the date of its publishing.

2. With this Law coming into effect, one or a few settlements (villages, towns, cities) with the adjacent territories shall acquire the status of *hromada* on the basis of and as prescribed by law.

3. From the date of this Law coming into effect:

1) village, town and city councils, till assuming the powers by the councils of *hromadas* elected within the *hromadas* established by the *Verkhovna Rada* of Ukraine, shall continue exercising such powers: administration of property of communal ownership; approval of programs on social, economic and cultural development and supervision of execution thereof; approval of budgets of the respective administrative and territorial units and supervision of fulfilment thereof; imposing local taxes and duties pursuant to law; ensuring holding local referendums and implementation of results thereof; incorporation, re-organization and liquidation of communal enterprises, organizations and institutions, and supervision of their activity; resolving other issues of local significance assigned by law to their competence;

2) village, town and city heads, till assuming the powers by heads of *hromadas* elected within the *hromadas* established by the *Verkhovna Rada* of Ukraine, shall continue exercising the powers assigned by law to the authority of village, town and city heads;

3) *rayon* and *oblast'* councils, till assuming the powers by *rayon* and *oblast'* councils elected at the next regular local elections in October, 2017, shall continue exercising such powers: approval of programs on social, economic and cultural development of the relevant *rayons* and *oblast's*, and supervision of execution thereof; approval of *rayon* and *oblast'* budgets, generated from the State budget funds, for the appropriate distribution thereof between territorial communities or for fulfilment of joint projects, or from funds involved on contract basis from local budgets for implementation of joint social, economic and cultural programs, and supervision of fulfilment thereof; resolving other issues of local significance assigned by law to their competence.

4. *Rayon* and *oblast'* councils elected at the next regular local elections in October, 2017, shall create executive committees pursuant to the law on local self-government, determining the powers of the executive committees of *rayon* and *oblast'* councils.

5. Local State administrations, till the executive committees are created by *rayon* and *oblast'* councils pursuant to the law on local self-government, determining the powers of the executive committees of *rayon* and *oblast'* councils, but the latest within March, 01st, 2018, shall continue ensuring on the relevant territory:

1) observation the Constitution and the Laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine and other executive authorities;

2) legality, law and order; observing of rights and freedoms of the citizens;

3) implementation of state and regional programs of social, economic and cultural development, environmental programs, and at sites of compact habitation of indigenous peoples and national minorities - also the programs of their national and cultural development;

4) preparation and fulfilment of the respective *oblast'* and *rayon* budgets;

5) reporting on fulfilment of the respective budgets and programs;

6) interaction with local self-government bodies;

7) exercise of other powers vested by the state and delegated by the relevant councils.

Kyiv and Sevastopol city State administrations, district State administrations in the cities of Kyiv and Sevastopol shall continue exercising the powers stipulated in this Clause till establishing local self-government executives of the local self-government in respective *hromadas*, but the latest within March, 01st, 2018.

6. The President of Ukraine, as proposed by the Cabinet of Ministers of Ukraine, shall first appoint prefects upon establishment of executive committees by the relevant *rayon* and *oblast'* councils, but the latest within March, 01st, 2018.

7. Acts of local State administrations shall remain valid until coming into effect of the relevant acts of local self-government, acts of prefects and other executive authorities approved pursuant to the Constitution and the Laws of Ukraine.

**Chairman of
the *Verkhovna Rada* of Ukraine**