DECENTRALIZATION REFORM IN UKRAINE: PROSPECTS AND CHALLENGES

POLICY BRIEF

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INTRODUCTION

Decentralization became a top priority on Ukraine’s political agenda in the aftermath of Euromaidan in February 2014 as a result of the pronounced public demand for the devolution of power and resources to local communities and a subsequently strong commitment by the new political elite to reform the existing system of local governance.

Although in 2014-2015 a number of legislative acts on different aspects of decentralization were passed, the first draft of constitutional amendments on decentralization reached the parliament only in mid-2015 furthered by the need to implement the Minsk-II agreement signed by Ukraine in February 2015. While the deputies voted for the first draft of the bill on August 31, 2015, the process was marred by violent confrontations outside the parliament. Given the subsequent defections and splits within the ruling coalition, the final bill may not gather 300 votes (the constitutional majority) needed for approval.

This paper begins with a brief analysis of the current problems in local public administration. It then reviews the policies that have already been put forward and considers the consequences of adopting or rejecting the proposed constitutional amendments. We conclude with recommendations on the next steps for the decentralization reform.

KEY PROBLEMS IN LOCAL SELF-GOVERNMENT

Since Ukraine’s independence, ordinary citizens had little say on public affairs at the local level. In November 2014, before the start of major decentralization initiatives, only 9 percent of Ukrainians were satisfied with their ability to influence local government decisions in their residential districts, while 74 percent expressed their dissatisfaction. More than half of the citizens disapproved activities of local state administrations, local councils, and heads of local settlements.

Public discontent with local authorities stemmed from their inability to provide high-quality and affordable services, such as utilities, transportation, road infrastructure, healthcare, and education. Management of public property and land was also highly ineffective, resulting in poorly controlled urban planning and legally dubious land appropriations. Finally, citizens felt they lacked effective instruments to hold local authorities accountable.

Territorial communities in cities, towns and villages lacked resources to take charge of the situation. First of all, these administrative units possessed extremely limited financial autonomy because they were subsidized through regional and district administrations. Prior to changes in the budget and tax codes in December 2014, a whopping 96.3 percent of local budgets was dependent on state handouts.

Second, most territorial communities lacked human resources to be financially sustainable. Before the decentralization reform, out of Ukraine’s 11,518 communities, 10,278 were villages. 92 percent of them had fewer than 3,000 residents and 47 percent had fewer than 1,000 residents. Clearly, a large number of communities simply lacked sufficient manpower to generate income.
Finally, elected councils at the regional and district level lacked authority because the executive power was vested in heads of state administrations nominated by the cabinet of ministers and appointed by the president. Consequently, real powers were concentrated in the hands of appointed state officials who fuel centripetal tendencies, promote extensive national control over regional development, and leave regional self-government institutions largely impotent.

**DECENTRALIZATION REFORM TO DATE**

In view of the above facts, Ukraine lacks effective self-governance at the local and regional level. To tackle this issue at the local level, the government wants to create strong and institutionally capable territorial communities. At the regional level (districts and oblasts) a redistribution of powers from state administrations to elected councils is seen as the key to success.

On April 1, 2014 the cabinet of ministers approved a conceptual framework on reforming the local governance structure that set out to expand the size of territorial communities and provide them with necessary resources and authority. The parliament followed up on this step through two legislative provisions that enabled territorial communities to engage in joint projects, delegate powers to one another, and allowed for their consolidation to increase their powers and financial resources. As a result of the latter, the government hopes to reduce the number of territorial communities from approximately 11,500 to 1,500.

The newly available venues for cooperation among territorial communities were complemented by changes to the budget and tax codes in December 2014. In particular, they redistributed tax revenues in favor of local communities, increased the share of state subsidies to local budgets, and provided local communities with stronger financial incentives and more leeway to increase their incomes and levy taxes.

The new legislation has already increased the financial and institutional capacity of territorial communities. During the first nine months of 2015, the total income of local budgets increased by 40.7 percent compared to the same period in 2014: from EUR 1,96 billion (UAH 50,4 billion) to EUR 2,76 billion (UAH 70,9 billion). During this time, local communities have generated additional income that exceeds their expenditure by EUR 953,8 million (UAH 24 billion), which shows their potential to become self-sustaining and even prosperous entities.

The consolidation of territorial communities is also going full speed ahead. To date, 159 consolidated communities have been established from 800 previously existing communities. On October 25, 2015 they took part in a nationwide local election and voted for their new councils. The newly elected councils in these communities were granted the right to receive subsidies directly from the national budget and additional financial opportunities to boost their financial capability.

At the same time, the absence of legal guidelines spelling out the mandates of newly established and previously existing territorial communities makes the work of newly elected councils extremely challenging, especially when both types of communities co-exist in the same district. This unusual and confusing reality is the result of how decentralization reform has unfolded in Ukraine. While the process of decentralizing financial resources has already begun, the redistribution of powers from state to sub-national entities can happen only after the parliament amends the constitution, which it has so far failed to do.

The proposed constitutional amendments fall into three categories. The first establishes a new territorial division of Ukraine into three types of sub-national units: communities, districts and regions. The second category draws up a new model of power distribution between different
kinds of sub-national governments and central authorities by abolishing local state administrations at district and regional levels and providing district and regional councils with the ability to create their own executive bodies. The third group of amendments increases the authority of sub-national entities by replacing state administrations with prefects who would have the right to suspend the decisions of local councils. Furthermore, should any decision of a sub-national council contradict the constitution or pose a threat to territorial integrity, national sovereignty or security, the president would have the power to suspend the decision, dissolve that local body, and refer the matter to the constitutional court.¹⁶

The Constitutional Court of Ukraine approved these amendments and the parliament voted for their first draft with 265 votes. However, given the internal disagreements over this matter in the ruling coalition, their final approval in the parliament remains uncertain. For this reason, it is critical to review a number of possible alternatives, should the current set of proposals fail to pass the legislative muster.

POLICY ALTERNATIVES ON DECENTRALIZATION

Given the determination of President Poroshenko and his parliamentary faction to pass the constitutional amendments and the pressure from Western countries on Ukraine to fully implement the Minsk agreement, the final vote on the proposed changes will most likely take place before the end of the current parliament’s session in January 2016. Even if it fails, attempts to pass similar amendments to pertinent legislation may continue unless the backlash against them is so severe that policy makers opt out for the current status quo. Therefore, three main policy scenarios are on the table: (1) rejection of the constitutional amendments and preserving the status quo, (2) rejection of the constitutional amendments with attempts to substitute them with legislative changes and (3) adoption of the constitutional amendments.

Scenario 1: Constitutional amendments rejected and status quo maintained

Under this scenario, the parliament rejects the constitutional amendments and continues the decentralization process without introducing similar changes to any current legislation. This may have one important advantage:

1. Decentralization continued at the lowest common denominator. If in the end the parliament fails to pass the constitutional amendments, the parliamentary coalition would stay intact since their rejection would be seen as a victory by the opposing faction within the parliamentary majority. The parliament would continue financial decentralization and empowerment of consolidated territorial communities because the majority of parliamentary factions support these reforms.

At the same time, this option could have the following negative consequences:

1. Absence of a comprehensive administrative and territorial reform. The current constitution implicitly prevents any territorial modifications at the national level without an amendment. This provision would become a stumbling block on changing the presently complicated administrative structure in Ukraine.
2. **No devolution of powers to sub-national units.** The status quo between state administrations and elected councils at the regional level would cement the power imbalance in favor of the former. District and regional councils would lack an executive body, and administrative functions would be performed by appointed civil servants, not elected representatives.

3. **Lack of effective state oversight over sub-national governments.** In October 2014 the Prosecutor General’s Office lost the power to monitor legal compliance for acts and regulations adopted by various public institutions. Without any constitutional changes, no public authority is currently able to control compliance with legislative acts and procedures by sub-national bodies. What happened in reality is that decentralization has given them more power without any oversight. If left unchecked, these bodies may abuse their authority or undertake functions that are beyond their mandates.

4. **Ineffective implementation of key decentralization principles.** The current reform is driven by three ideas: a) certain tasks can be performed most effectively at the lowest level (subsidiarity); b) sub-national units are able to exercise authority over the entire territory under their remit (ubiquity), and c) commensurability of powers and resources. Their practical implementation would be more difficult without explicit changes in the Constitution because the national government would be able to avoid the responsibility for providing subnational bodies with sufficient financial resources to perform their functions.

**Scenario 2: Constitutional amendments rejected and changes introduced through regular legislation**

If the parliament rejects the constitutional amendments, it could still choose to include some reform ideas in regular legislation. However, the parliament would be constrained in its options because neither comprehensive territorial modifications nor any delegation of authority to sub-national governments is possible without explicit constitutional amendments. Left with few choices, the parliament may assert legal control over sub-national bodies by giving heads of state administrations the right to monitor and, if necessary, suspend their decisions. This would bring two advantages:

1. Similar to scenario 1 — the ability to proceed with low-level decentralization reforms without splintering the ruling coalition.

2. **National oversight over activities of local government bodies.** Empowering state administrations at the sub-national level with the right to suspend acts of local councils and community heads would create a strong preventative mechanism against possible power abuse by the former. This legal instrument would be significantly more effective than the previously used supervision by the Prosecutor General’s Office because local state administrations are far more competent in local issues.

In addition to having some of the same drawbacks as scenario 1 (i.e., lack of a comprehensive administrative and territorial reform, lack of a real devolution of powers to the local level, and ineffective implementation of decentralization principles), this option would create an additional risk:
Potential abuse of oversight powers by state administrations. Granting regional and district state administrations this authority would further amplify their dominance over local councils and heads of territorial communities. In this situation, state administrations would combine both executive and control functions and may exercise those without any fear of retribution.

Scenario 3: Constitutional amendments adopted

Finally, if the proposed changes to the constitution were successfully adopted, the main potential advantages would be:

1. A comprehensive administrative and territorial reform. The parliament could follow up by passing a law on a new administrative and territorial structure of the country. This would help the government foster consolidation of territorial communities and harmonize relations between administrative units at different levels.

2. Devolution of executive powers from state administrations to sub-national councils. Members of local communities would be able to influence governance on their territories through directly elected district and regional councils.

3. Establishment of effective state oversight over local self-government bodies. Prefects, as a new institution, would introduce a viable mechanism of accountability for local councils and heads of territorial communities. Furthermore, since prefects would have no executive authority, their incentives to abuse the oversight function would be weaker.

4. Effective implementation of the decentralization reform. Having legal mandates, powers and responsibilities enshrined in the constitutional amendments and through regular legislation would speed up the reform, avoid confusion and overlap between various levels of government and provide local governments with resources to effectively meet on-the-ground demand for their service. Introducing these measures would make the whole decentralization effort less vulnerable to likely attempts of its opponents to reverse its course.

Nevertheless, there are certain negative sides of the proposed option:

1. The parliamentary coalition may collapse and slow down (or kill) this and other important reforms. President Poroshenko would have to rely on the opposition to secure enough votes for the constitutional amendments. If he succeeds, disgruntled factions within the majority may impede cooperation on other legislation or leave the coalition altogether. Further decentralization will be hampered by a shrunk parliamentary majority. In the worst scenario, a snap parliamentary election would be called.

2. Fight for local power between prefects, president and prime minister. Because prefects are nominated by the president and appointed by the cabinet, their appointment process may become a source of contestation between these two leaders over who controls the sub-national level of government. The constitution would also give prefects the right to
coordinate activities of territorial government bodies and may exacerbate confusion over who runs the show at the regional and local levels.

3. **Potential abuse of oversight powers by the president.** Although the final draft of the constitutional amendments decreases the president’s authority to suspend and dissolve sub-national bodies, potential abuse of these powers is possible because the amendments are not clear on the grounds that would trigger the president’s action.

**CONCLUSIONS AND RECOMMENDATIONS**

Adopting the constitutional amendments would be the most favorable outcome for continued decentralization, as this would enable substantial devolution of authority at the sub-national level. Replacing the constitutional changes with piece-meal legislation would bring limited success in establishing oversight over sub-national governments, while at the same time risking to backfire through further centralization and potential abuse of power by national authorities.

As with many reforms in Ukraine, passing the constitutional amendments would require sustained engagement and pressure from a variety of actors. Our recommendations below are addressed to the Ukrainian authorities, domestic civil society, and the international community.

**For the parliamentary factions supporting the constitutional changes:**

1) **Engage with smaller factions on the legislation about local self-governance and prefects.** By doing so, the president’s allies in parliament would create good will and allow their colleagues to address their grievances through specific amendments to regular legislation.

**For the president and the cabinet of ministers:**

1) **Launch a public campaign to explain the constitutional amendments in a plain and accessible language and organize townhall meetings with the availability of key government officials to answer questions from the public.** The campaign should focus on pragmatic deliverables of the reform that would improve citizens’ wellbeing and public service delivery and the costs of inaction. The authorities should establish clear domestic ownership of the reform by spelling out the domestic reasons behind its implementation to fight the widespread perception of the changes being imposed on Ukraine from the outside under the Minsk-II process.

2) **Solicit more external input to increase the transparency and inclusiveness of the reform.** The constitutional changes were drafted by a limited number of experts with little input from external stakeholders. The government should broaden the pool of those involved in drafting the new legislation to complement the reform and make the whole process more open to the wider public.

**For the members of parliamentary coalition:**

1) **Ensure that the institution of prefects is politically independent from the president and the cabinet.** To prevent any future conflicts over who controls prefects, they should be appointed by means of transparent competition with minimal input from both ‘heads’ of the state. The legislation should also stipulate a clear set of reasons for dismissing prefects to narrow
down any subjective interpretation by the president or prime minister of their authority in this matter should have ability to dismiss prefects at will.

2) **Explicitly define the grounds for dismissing self-government bodies by the president.** The legislation on local governance should provide a specific and exhaustive description of the threats to state sovereignty, territorial integrity and national security that would warrant the dissolution of a local council to limit the president’s discretion and potential abuse of this provision.

**For Ukrainian civil society organizations:**

1) **Contribute their expertise to elaborating the laws on self-government and prefects.** By participating in the preparation of the key draft laws, Ukrainian CSOs and think tanks will improve the legislation necessary for implementing the relevant constitutional provisions.

2) **Monitor the development of new legislation on decentralization.** Ukrainian CSOs are well positioned to scrutinize the process of developing the laws and raise alarm if the process lacks transparency or risks undermining the main achievements of the decentralization reform.

**For EU institutions:**

1) **Decouple the issue of constitutional decentralization from the Minsk-II process.** The EU would improve the prospects of a successful constitutional reform on these issues if they separate the issue of decentralization from implementing the Minsk-II agreements. This would lower the temperature around the decentralization reform by making the debate a more domestic, rather than foreign policy issue.

2) **Work with the Ukrainian government and CSOs to provide assistance to newly established consolidated communities.** By offering consolidated communities technical, advisory, and financial assistance, as well as opportunities to exchange knowledge and experience with their counterparts in EU member states (like Poland), the EU will help local communities in Ukraine to take advantage of their enhanced powers to improve the wellbeing of Ukrainian citizens and, in the end, secure their greater commitment to democratization and European integration.
**Table 1. Current system of public administration at various administrative-territorial levels.**

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<th>Administrative-territorial unit</th>
<th>State institutions</th>
<th>Self-government institutions</th>
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<tbody>
<tr>
<td>Region</td>
<td>Regional state administration <em>(executive functions)</em></td>
<td>Regional council</td>
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<tr>
<td>District</td>
<td>District state administration <em>(executive functions)</em></td>
<td>District council</td>
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<tr>
<td>City (town, village)</td>
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<td>City (town, village) council</td>
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<td>Executive body of city (town, village) council</td>
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<td></td>
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<td>Head of city (town, village)</td>
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**Table 2. Proposed system of public administration at various administrative-territorial levels according to the constitutional changes.**

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<tr>
<th>Administrative-territorial unit</th>
<th>State institutions</th>
<th>Self-government institutions</th>
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<tbody>
<tr>
<td>Region</td>
<td>Prefect <em>(control functions)</em></td>
<td>Regional council</td>
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<td>Executive body of regional council</td>
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<tr>
<td>District</td>
<td>Prefect <em>(control functions)</em></td>
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ENDNOTES:

1. The Minsk-II agreement contained a provision on granting a special status to the territories of Donetsk and Luhansk oblasts (known as Donbas) controlled by pro-Russian separatists. This obligation was addressed in the separate provision of the constitutional draft which otherwise was dedicated to the decentralization reform.


6. Ukraine has 490 districts (raions) and 24 oblasts whose regional councils lack an executive body.


