

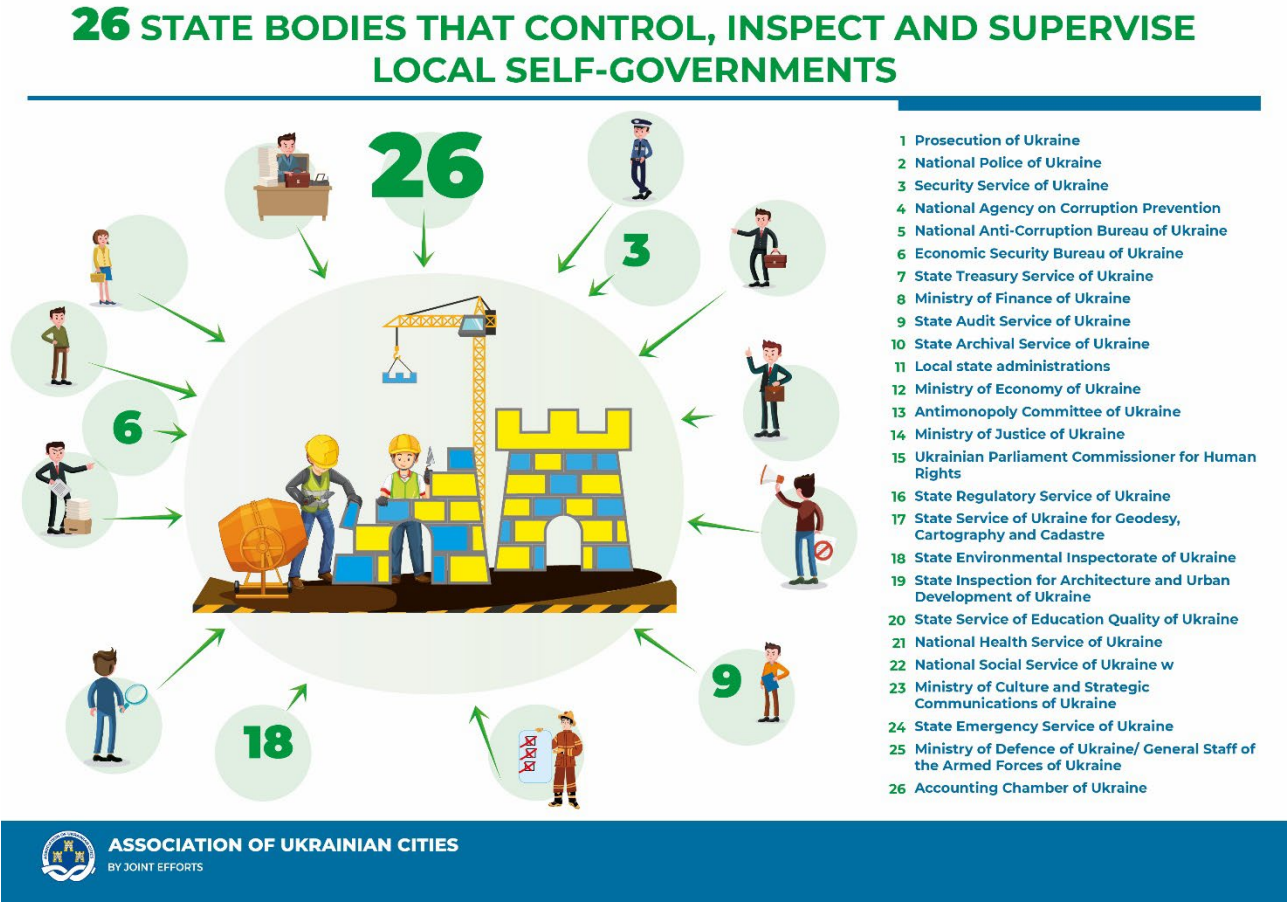
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Myths and Reality of Draft Law on Supervision over Local Self-Government

1. Myth one: there is no supervision over local governments

The infographic is worth a thousand words:



In reality, there are more than enough supervisors and controllers of local self-government - from language inspectors... to the State Archival Service..., from the police... to the National Bureau of Investigation...

On 30 October 2024, the Verkhovna Rada of Ukraine prolonged this list [by expanding the powers of the Accounting Chamber of Ukraine](#) in terms of supervision over local self-government.

This was done using the political technology that has been tested recently - ‘this is what our foreign partners demand, so we vote without reading (without thinking, without...)’.

This decision actually started the dismantling of the system of financial supervision/control over the financial activities of local governments. Why? Because folk wisdom says that ‘too many cooks spoil the broth’. The funds of municipalities will now be controlled simultaneously and by similar

indicators by two central bodies: the Accounting Chamber and the State Audit Service. Conflicts between these public authorities are inevitable; doubling the number of controlling officials will lead to an increase in expenditures from the state budget for the performance of similar functions and the need to increase the number of staff in state bodies. For local officials, these are additional grounds for challenging the findings of controllers. It will be like in one of the Ukrainian jokes – one will accept the report of the body that is more convenient. In such a situation, everyone loses: the state authorities, municipal authorities, and most importantly, the citizens of Ukraine.

2. Myth two: European partners have mandated the approval of Draft law №4298 as a condition for receiving Ukraine Facility funds

Some speakers from state authorities have been replicating the thesis that the approval of draft law №4298 is an indicator of compliance with the requirements for receiving assistance under the Ukraine Facility.

A glance at paragraph 72 of the preamble to Regulation 2024/792 of the European Parliament and of the Council of the European Union, which established the Ukraine Facility is worth a thousand words. This paragraph refers in one sentence to a clear delineation of powers, appropriate internal structures of municipalities, and a proportional system of supervision over local governments in accordance with the European Charter of Local Self-Government.

Already in the Ukraine Plan, which was developed by the Ukrainian Government to implement the Ukraine Facility, but in violation of its Rules of Procedure, as it was prepared without engaging representatives of local governments, contrary to the requirements of European partners, the delineation of powers and supervision are separated in time. Moreover, they were separated ‘opposite’ to the order set out in the statements of the Ukraine Facility: supervision was proposed for spring 2025, and the delineation of powers for spring 2026.

This wording of the Ukrainian party is not only inconsistent with the requirements of the Ukraine Facility and logic. It has already received comments from our European partners on the February version of the Draft Law ‘On Amendments to the Law of Ukraine “On Local State Administrations” and Other Legislative Acts of Ukraine on Reforming the Territorial Organisation of Executive Power in Ukraine’, №4298, as stated in the [Opinion of the Secretariat of the Congress of Regional and Local Authorities of the Council of Europe](#) dated 21.02.2024 regarding:

a significant extension of the forms of supervision in the Draft Law (paragraphs 43, 44, 45, 46, 47, 48, 61 of the Opinion), which violates the provisions of Article 8 of the European Charter of Local Self-Government;

a very large number of powers of local state administrations in various fields (paragraphs 59, 62 of the Opinion), which means a derogation from the subsidiarity provided for in Article 4 of the European Charter of Local Self-Government;

the lack of a clear delineation of powers (paragraph 37 of the Opinion), which will lead to a duplication of control functions and contradicts Article 4 of the European Charter of Local Self-Government.

In fact, in the Ukraine Facility, as well as in the European Commission's Report on Ukraine's Readiness for EU Accession Negotiations, the delineation of powers and a proportional system of supervision are defined in one paragraph and should be implemented by Ukraine simultaneously. After all, the Europeans are demanding to restore order in the system of supervision over local self-government (see Myth one), not to create new controllers or supervisors.

Since the text of draft law #4298 as amended in February 2024 contradicts the European Charter of Local Self-Government and violates the requirements of the Ukraine Facility, its approval in this version may lead to the blocking of the next tranche of assistance. In view of this, its wording should be revised or a new draft law should be introduced to ensure a clear delineation of powers, appropriate internal structures of municipalities, and a proportional system of oversight of local authorities in accordance with the European Charter of Local Self-Government.

3. Myth three: Supervision is the only element missing to complete the local self-government reform

A lot could be written here, but everyone can see the reality. Let us focus only on global issues.

Do the state authorities have a strategic vision of the functioning and development of local self-government? The answer is obviously no.

The concept of reforming local self-government and territorial organisation of powers in Ukraine was approved more than 10 years ago. This concept was the basis for the decentralisation reform, which was launched and implemented under the leadership of Volodymyr Hroisman.

But time flies, new challenges arise, especially in times of war, and new tasks are posed. And when asked by international partners how they see the recovery of local self-government, the state authorities have no answer today. Because recovery is not about burying billions of the aid into infrastructure, but about qualitatively changing the public administration system. Including at the local level.

That is why, in April 2024, on the 10th anniversary of the decentralisation reform, the Association of Ukrainian Cities presented the [Concept of Recovery of Local Self-Government in Ukraine](#), developed jointly with international partners.

The Concept of Recovery is a strategic document that defines the principles of local government functioning during the war and for 10 years after Ukraine's victory; outlines the directions of reforming the public administration system and restoring local self-government; and contains clear criteria for updating the local self-government system in all areas of the life of municipalities.

In reality, the path to genuine decentralisation and democratisation of society still has a long way to go. Given that great efforts and intervention by the Council of Europe were required even to get the state authorities to commit to updating the 2014 Concept, this path will be difficult. The completion of this process will be marked by amendments to the Constitution of Ukraine that will make the reform irreversible.

4. Myth four: Draft law №4298 only provides for supervision over the legality of local government decisions

The provision ‘Ensuring the legality of the exercise of their powers by local governments is exercised in relation to their compliance with the Constitution and Laws of Ukraine’ in Article 59-2 of the Law of Ukraine ‘On Local Self-Government in Ukraine’ was removed from the latest version of the Draft Law.

This dramatically increases the number of documents that will be subject to supervision. And, accordingly, it increases the scope and depth of inspections, the possibility of identifying minor

violations, and various kinds of interference in the activities of local governments. The only feature that delineates the supervision of own and delegated powers has been erased.

Such a provision, which is enshrined in the latest version of draft law №4298, contradicts Part 2 and 3 of Article 8 of the European Charter of Local Self-Government:

‘2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

It also contradicts Paragraph 2 of Section I, Paragraph 2 of Section II of the Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities’ activities dated 4 April 2019:

‘I. Principles of supervision

2. The application of these principles should, in every aspect, respect the concept of self-government as set out in Article 3 of the Charter and distinguish between own and delegated competencies where these have the meaning set out below:

- i. own competencies: in accordance with Article 4, paragraph 4, of the Charter, “powers given to local authorities shall normally be full and exclusive”;
- ii. delegated competencies: as provided for by Article 4, Paragraph 5, of the Charter, “where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions”.

‘II. Aims and framework of supervision

2. The nature and scope of supervision over local authorities’ activities should be defined by law, depending on whether they relate to responsibilities carried out within local authorities’ own competencies or are implemented on behalf of central or regional authorities.’

In fact, the version of Draft Law №4298 proposed this year provides for the introduction of supervision and control not only over delegated powers, but also over the local authorities' own powers.

Draft Law №4298 also introduces the suspension of the relevant act of the local government for the duration of the consideration of the request to eliminate the violation of the law in part 2 of Article 59-6 of the Law of Ukraine ‘On Local Self-Government in Ukraine’, which will lead to the possibility of indiscriminate, extrajudicial suspension of any act of the municipality and create opportunities to put pressure on local governments by sending such requests en masse. This contradicts Article 8(3) of the European Charter of Local Self-Government:

‘3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.’

Moreover, when looking at Draft Law №4298 not only from the perspective of local governments, but also from the perspective of businesses operating in Ukraine, entrepreneurs will continue to have the same controller. After all, Article 18 of Draft Law №4298 provides state administrations with the right to exercise control on the territory, and Article 19 gives them the right to inspect objects of all forms of ownership and give binding orders to all of them.

Thus, the authors of the draft law introduce a full-fledged supervisory structure that will restrict not only the rights of local self-government but also economic development. And such a structure also retains broad managerial and political tasks that are expected to burden supervision.

5. Myth five: the influence of local self-government on the formation of the leadership of local state administrations

The authors of Draft Law #4298 claim that they are establishing a supposedly transparent procedure for selecting heads of state administrations with the participation of local government associations.

In reality, the Single Commission for the Formation of the Management Staff of Local State Administrations, envisaged by Draft Law #4298 in Article 27-1 of the Law of Ukraine ‘On Civil Service’, which will conduct competitions for the positions of heads of regional state administrations, competitions for inclusion in the personnel reserve for the positions of heads of district state administrations and disciplinary proceedings against heads of local state administrations, will consist of eight members, including two from associations. When decisions are made by a majority of those present, such a number of local self-government representatives in the Commission will only allow them to voice concerns about candidates for the positions of heads of local administrations to other members of the Commission. This will not affect the final decision, as it will be made by the relevant majority.

The Draft Law provides for the inclusion of two representatives of associations with all-Ukrainian status in the Commission. However, as of today, there are four of them. So, two will only observe activities in the Commission, and two will observe from the outside. Please note that they will only observe, not influence, because they are two out of eight members.

But this is not even the most important imitation of democratic selection through the participation of associations. It gets more interesting.

The annual rotation of association representatives specified in the draft law legally means that the same two associations will ideally (if the Government adopts the relevant decisions) have their representatives on the Commission changed every year. And the other two associations will never be able to even acknowledge the decisions made by representatives of state authorities within the Commission. It is clear that between the association that forms the position of local self-government and defends it in dialogue with state authorities, and between the local self-government association that agrees to all proposals of state authorities, the relevant submitting body (ministry) will submit the one that is loyal to it to the Government for approval. This is all the more understandable now, when representatives of the state authorities publicly name certain associations and selectively do not name the one that has a different position from the national government, formed by local self-government.

Conclusion: local self-government will not have any influence on the decision-making process regarding the leadership of local state administrations.

Myths debunked

People demand the truth.

The war brings about justice.

Our common task is to help Ukraine's Victory as much as possible, implement the Ukraine Facility and ensure democratic changes in local self-government to fulfil the rights of the residents of the municipalities.

To do this, we all need to put aside our own ambitions, unite and introduce changes to the legislation to clearly delineate powers, create appropriate internal structures of municipalities, and establish a proportional system of oversight of local authorities in accordance with the European Charter of Local Self-Government.

Fortunately, a working group of the relevant Parliamentary Committee with the participation of representatives of the Congress of the Council of Europe has already commenced its work, and a new comprehensive draft law is being prepared.

It is important to do this work efficiently and without politics.

The authors from the working group of the Board of the Association of Ukrainian Cities on the draft new version of the Law of Ukraine ‘On Local State Administrations’, №4298:

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Taras Kuchma, Mayor of Drohobych, Lviv region

Vasyl Sydor, Mayor of Slavuta, Khmelnytskyi region

Olena Sydorenko, Mayor of Orzhytsia, Poltava region

Volodymyr Miahkikhod, Expert of the Association of Ukrainian Cities on organisational principles of local self-government