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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**INFORMATION DOCUMENT
CONCERNING THE VISIT OF THE RAPPORTEURS
OF THE VENICE COMMISSION
TO UKRAINE
ON 25 – 26 FEBRUARY 2003**

A. Introduction.

1. In December 2002 Mr A. La Pergola received a letter from the President of the Parliament of Ukraine Mr Lytvyn, inviting the Venice Commission to participate in a joint meeting with the Ukrainian Constitutional Commission. The aim of this activity would be to discuss the concept of the constitutional reform in Ukraine and some aspects of the electoral system in Ukraine.
2. On 6 February 2003 the date for such meeting was set for 26 February. The Secretariat of the Venice Commission was also informed that the Ad-Hoc Commission on constitutional reform (hereinafter 'Ad-Hoc Commission') composed of representatives of different fractions of the Verkhovna Rada (Parliament) had met on January 16 and had established a working plan as well as a certain number of proposals for the content of the planned constitutional reform.
3. On 25 – 26 February a delegation of the Venice Commission composed of Mrs Finola FLANAGAN, Messrs Sergio BARTOLE, Gerard BATLINER, Laslo SOLYOM, Kaarlo TUORI and a member of the Secretariat of the Venice Commission travelled to Ukraine with a purpose of having an exchange of views with the representatives of the Ad-Hoc Commission. During their visit the Rapporteurs met with Mr ZINCHENKO, Deputy of the President of the Verkhovna Rada, Mr M. SELIVON, President of the Constitutional court of Ukraine, representatives of the Ad-Hoc Commission. All meetings received an extensive coverage by the local mass media.

B. Meeting with the First deputy of the President of the Verkhovna Rada, Mr Zinchenko.

4. Mr Zinchenko informed the delegation about the planned reform. He stressed that both the Parliament and the President agreed on the necessity to change the Constitution and to transform Ukraine from a Presidential Republic into a Parliamentary – Presidential one. Mr Zinchenko stressed that now, one year before the Presidential elections, it was the best moment to make such a transformation and recalled that according to Ukrainian legislation such a constitutional reform had to be discussed during two consecutive sessions of the Parliament.
5. Referring to the content of the possible reform, Mr Zinchenko pointed out that both the majority and the opposition in the Parliament were unanimous in proposing to make the Government responsible to the Parliament. The majority in the Parliament should form the Government and a clear procedure for the non-confidence vote should be established.
6. The Ukrainian side also informed the representatives of the Venice Commission about the current legislative work of the Rada, notably on the legislation concerning the organisation of the executive branch, electoral legislation, amendments to the law on mass media and additional guarantees of individual rights and freedoms. Mr Zinchenko and the Ukrainian parliamentarians present at the meeting paid special attention to the issue of the organisation of the judiciary and to its possible reform.

C. Meeting with the President of the Constitutional court of Ukraine, Mr M. Selivon.

7. Mr Selivon informed the delegation about the main competencies of the Constitutional court. He reminded that the Constitutional court had very limited powers when examining

proposals for constitutional amendments. According to Article 158 of the Constitution it only examined if the proposed constitutional changes do not endanger human rights and freedoms, and independence and sovereignty of Ukraine. Regarding the limited power of the court, Mr Selivon made no comments on the proposed reform of the constitution. However, he mentioned that one of the proposed texts of the reform had been examined by the Court and had been declared constitutional.

8. Mr Selivon invited members of the delegation to attend a seminar on the relations between the judicial and legislative power organised by the court in September 2003 in Crimea.
9. The Permanent Representative of Ukraine at the Council of Europe, Mrs S. Stanik, also attended the meeting.

D. Meeting with the members of the Ad hoc Commission.

10. 5 members of the Ad hoc Commission attended the meeting: Messrs Vasiliev (President of the Ad hoc Commission), G. Kriuchkov (Communist party), A. Martiniuk (Communist party), I. Kouras (Regions of Ukraine) and A. Matvienko (J. Timoshenko block). Mrs S. Stanik also attended the meeting.
11. Mr Vasiliev informed the delegation that there were two groups working on the project of the constitutional reforms: the Ad hoc Commission of the parliament and a group of experts from the presidential administration¹. He stressed that all political fractions of the Verkhovna Rada were in favour of carrying out the constitutional reform. The Ad hoc Commission continued to receive different proposals from the parliamentarians (at the date of the visit of the delegation there were 6 different proposals). At the same time, parliamentarians present at the meeting were unanimous in giving priority to the set of proposals drafted in May 2002.
12. The delegation of the Venice Commission recalled that it had already given an opinion on one of the proposals to reform the Constitution in 2001 (see opinion: **CDL-INF(2001)011 Consolidated Opinion on the Ukraine Constitutional Reform Project: Adopted by the Venice Commission at its 47th Plenary Meeting (Venice, 6-7 July 2001)** and expressed its regret that the text of May 2002 had not been made available before its arrival to Kiev.
13. Mr Kriuchkov outlined the main proposals forwarded by a group of Parliamentarians in May 2002². The main scope of these proposals was to transform Ukraine into a Parliamentary-presidential republic. The Government would be formed by the parliamentary majority and would be accountable to the Parliament. The project also elaborated on the notion of the 'parliamentary majority'. He expressed his concern as to the number of political parties in Ukraine and voiced an opinion that the electoral system should also be modified in order to reduce the number of splinter groups and small parties, which, in his opinion, prevent the formation of the operational majority within the Parliament. Another issue was the change by parliamentarian of their fraction membership in the Parliament. He expressed his hope that the law forbidding such

¹ The President of Ukraine announced on 5 March that experts from the Presidential administration had finalised the draft. The text of the address of the President of Ukraine is appended to the present document.

² The text is available at the Secretariat of the Venice Commission (Eng. only).

changes would be passed. Another proposal made by Mr Kriuchkov was to reform the judiciary. In his opinion judges should be elected for a term of 10 years.

14. Representatives of the Venice Commission expressed their doubts as to certain proposals, especially the ones concerning the reform of the judiciary. As to the constitutional reform they reminded the parliamentarians that the Commission was available for cooperation but that it was for Ukrainian side to decide on the general scope of the reform and its implementation.
15. The participants agreed that there were three major issues for possible future cooperation on the constitutional reform: a) political system and elections; b) formation of the Government and c) the judiciary. The delegation of the Venice Commission invited the Ukrainian side to provide it with the draft text of proposals of the Ad hoc Commission.

ANNEX

**ADDRESS OF THE PRESIDENT OF UKRAINE,
Leonid KUCHMA
OF 5 MARCH 2003**



UKRAINE

PRESS RELEASE

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ENGLISH only

Permanent Mission of Ukraine to the International Organizations in Vienna

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On March 5, 2003 President of Ukraine Leonid Kuchma addressed the Ukrainian people in connection with the signing of the Decree on submission of the draft Law of Ukraine "On Introduction of Changes to the Constitution of Ukraine" for nation-wide discussion. The President of Ukraine called on all the citizens to take part in the discussion of the project of the political reform. The Head of State emphasized that Ukraine should come to the political system which would correspond to the parliamentary-presidential model prevailing in democratic European countries.

TV Address by President of Ukraine Leonid KUCHMA in connection with the signing of the Decree on submission of the draft Law of Ukraine "On Introduction of Changes to the Constitution of Ukraine" for nation-wide discussion

My dear countrymen,

As you remember, last year in my Independence Day address I focused your attention on the necessity of a political reform. Namely: transition to the political system, which is principally new for Ukraine - parliamentary-presidential.

More than 6 months have passed since I made that address.

But this time cannot be considered lost. The general public began discussing the idea of the political reform. A wide discussion started. More and more citizens make concrete questions about the meaning and terms of the reform.

All the political circles with no exception showed the whole spectrum of attitude towards it in - from full acceptance to absolute negation.

A commission was created to work out a project of the reform. But many of those who sang hosanna to the new system, and, what is more, advertised themselves as its invisible authors, sabotaged its work. I refer to the representatives of the opposition who were invited to it. Neither did the work of the commission created by the Verkhovna Rada produce the expected results.

We can dwell for a long time why it happened this way. But the conclusion will be short. In spite of being supporters of the reform, the majority of oppositionists understand it, to a large extent, primitively. As purely arithmetical redistribution of authorities. Something like: take away and redistribute.

To tell the truth, the most realistic politicians are becoming more and more aware of the necessity of constructive steps to implement the reform. And today real possibilities for cooperation between the authorities and opposition are opening. But it took a while to understand it, and time for common work was lost.

At the same time - as the President - I do not want and will not risk the political reform's future.

That is the why I decided to take the discussion of the reform out of the circle of counteraction between polar political forces. If politicians cannot come to an agreement, all the people should become judges.

People should discuss the fundamentals of the reform and express their own opinion, and the Verkhovna Rada, approve it.

I am addressing you with a request - take part in the discussion of the project of the political reform. I submit it to the state structures, and, what is more important, to the general public. To you, dear countrymen.

So, why is it necessary to go over from the presidential-parliamentary to parliamentary-presidential model?

In short: the presidential-parliamentary system played a very important historical role - especially in the first years of statehood, ensuring stability of both the society and the state. But today it is absolutely clear that a mechanism of counteraction between the legislative and executive powers was put in the acting Constitution.

Now the situation in our economy is stable, gradual economic growth has started.

The results of the last elections and signing of the political agreement between the parliamentary majority and its government, creation of the coalition government itself became the final argument in favor of the reform. We already have some practical experience of the government's cooperation with the majority's factions.

Now it is necessary to go further. To consolidate this experience by introducing changes to the Constitution.

What kind of reform is proposed?

We should go over to the political system that corresponds to the parliamentary-presidential model prevailing in democratic European countries. Voters elect deputies from one or another political party to the parliament. The parties who received the largest support create parliamentary factions. These factions form the majority. The majority forms the government.

The majority and the government are the basis, the core of power - thanks to the additional authorities they receive.

What kind of authorities are those? It was proposed to change the procedure for appointing the country's Prime Minister and forming the government's composition.

So, the Prime Minister is to be appointed by the parliament, and the President should propose a candidature to this post agreed by the parliamentary majority.

The parliament also approves the government's composition, and the government, heads of central organs of the executive power. So everybody will understand who is responsible for what in the state. Your responsibility is to elect the right people. Those elected by you have the responsibility to unite in the majority and form the government - and in the future support it by passing proper laws. The government will be responsible for daily management of the economy and social sphere. And if ministers from one or another party demonstrate their incapability to improve the situation, I am convinced that at the next elections you will not vote for them.

What is the President responsible for? He/she will remain the guarantor of citizens' constitutional rights and freedoms, independence and territorial integrity of the state, the Supreme Commander-in-Chief and representative of the state on the international arena.

To exercise these functions he/she will be empowered to appoint only ministers of defense; internal affairs; foreign affairs, on emergencies and protection of population against consequences of the Chernobyl catastrophe; 4 other heads of central agencies; heads of state administrations - on submission of the Prime Minister. It should reassure those who are afraid that the institute of presidency might be extremely weakened.

Such a compromise proposition makes it possible to fix in the Constitution the unity of the majority and its government - for the benefit of their common responsibility to you.

But at the same time the Main Law should provide for guarantees of stable functioning of such a construction of power. So that those elected by you in the future would not only wish but would be obliged to create the majority and form the government. It will be the basis of stability in Ukraine.

That is why the President should get the right to dissolve the parliament ahead of time. For those who accuse me of intentions to usurp power I especially emphasize: this right is not necessary for Leonid Kuchma as a person, it is necessary for all those who will exercise the President's functions after me.

The President can use this right in 3 clearly defined cases. The first one: if deputies fail to form the majority within the period of time stipulated in the Constitution. The second one: if the majority fails to form the government. And the third one: if the parliament fails to approve the state budget for the next year. And that is all.

A new structure of the parliament will become an important element of the reform. Namely, division of the parliament into 2 chambers. The first one will be formed by parties and blocs who won the election according to the proportional system. And the second one, on the basis of equal representation of all the regions - oblasts and towns of central subordination. The task of the chamber of regions will be to ensure reliable representation of Ukraine's territories.

The total number of the Verkhovna Rada's deputies will decrease. I remind you that both the introduction of a bicameral parliament and decrease in the number of deputies is in line with the wish of citizens expressed at the All-Ukrainian referendum in 2000.

Some more of the proposed changes.

It is necessary that elections to the Verkhovna Rada, organs of local self-governance and presidential elections should not take place at the same time. And all these elections should take place within one year for one term - 5 years so as not to make Ukraine a state with permanent election campaigns.

And one more thing. The results of the All-Ukrainian referendum should have direct action and do not require approval by any organ of power. Because the will of people is the highest law. It is the world's practice.

Dear countrymen,

Tomorrow I am submitting to the Verkhovna Rada the draft Law "On Introduction of Changes to the Constitution of Ukraine". I also signed a Decree on its submission for nation-wide discussion. This draft law will be made public in mass media and published as a separate booklet.

And every citizen will be able to take part in the discussion of the project of the political reform, and express his/her own opinion. There will be a lot of possibilities for it: public debates, statements in the press, appeals to the ad hoc working group on the reform, to power institutions.

All the proposals and remarks will be thoroughly examined and generalized by the state structures - with participation of scientific and public organizations, mass media - and submitted to the Verkhovna Rada.

Once more I ask all those who are not indifferent to the future of Ukraine, who are interested in maintaining the democratic direction of our state's development to take an active part in the discussion of this extremely important issue.