



Сприяння реформі соціальних послуг в Україні Facilitating Reform of Social Services in Ukraine

Non-Government Organisations in the Market of Social Services: Institutional, Legal, Financial and Tax Aspects

Evidence based

POLICY RECOMMENDATIONS

Derived from

a series of Oblast and National Level Round Tables

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Responsibility for the contents of this document lies with the Project Director and the authors.

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List of Acronyms

EU	European Union
FRSSU	Facilitating Reform of Social Services in Ukraine
GoU	Government of Ukraine
LSS	Law on Social Services
MoF	Ministry of Finance
MoLSP	Ministry of Labour and Social Policy
NGO	Non Governmental Organisation
NPO	Non Profit Organisation
PDDT	Policy Dialogue and Development Team
UK	United Kingdom

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Context

The FRSSU project assists the Ukrainian government (GoU) in adopting EU best practices in policy development processes for social services. As part of this work, we provide analytical support to the Inter-Ministerial Working Group for the Implementation of the Law on Social Services of Ukraine, and have growing and strong bilateral relationships with a number of ministries.

Our goals include, among other things, achieving a more diverse structure of service providers with more active engagement of the non-governmental sector

Influencing the process of policy making itself

We assist GoU to instigate more effective reforms by putting policy and legal developments in the correct perspective:

- The logic and sequence of steps in the process of policy making, which is recommended by the best EU practices, significantly differs from how GoU tries to stimulate reform in Ukraine today. The European experience suggests that it is helpful to start by embarking on wide consultations of draft policies¹, at the central level and especially at regional levels. This consultation process allows for the identification of blind spots and the elaboration of conflicting interests from the very beginning rather than after approval of the legislation – when it is often too late to address fundamental flaws or omissions. It also means that once legislation is adopted – it is understood and welcomed and practitioners are enthusiastic about its implication.
- The existing Law on Social Services was already approved in a different way, and so there is nothing equivalent to a comprehensive draft policy that would have helped in the formation of a national policy consensus. The MoLSP led concept has not yet been widely approved by the practitioners of social services and specifically has not been approved by MoF. Therefore lots of conflicts are resolved in a legalistic and detailed way, rather than by reverence to an overarching policy statement and the subsequent issue of regulation and guidance in implementation rather than reform of the law. However, the WGILSS is now working on refining the Concept for Social Services Reform, which can play this role of being a policy reference point, against which refinement of social services reform processes are promoted and gain a consensus. We in FRSSU's PDDT will use this and Ukrainian variant of this process to promote the strengths of the “European” approach into Ukrainian policy making in social services, in parallel with

¹ This can take the form of draft policy documents – which in some EU countries such as the UK and Ireland are referred to as “Green” [First Draft] and “White Papers” [Second Draft] – that enable various stakeholders [in government, business and civil society] to comment on the broad thrust and content of new policies and governance structures.

working on the substance of the reforms. The Concept for Social Service Reform also needs supporting by a Transition Action Plan that FRSSU will facilitate in discussion with GoU before any redrafts of the LSS are accepted.

- We will support GoU's development of a policy package by gradual promotions and discussion of various technical elements and strategic ideas, which are core to successful and sustainable reforms in social services, and through practical cooperation with the ministries and agencies of GoU and local authorities. We will also have complementary brief presentations and materials – policy building blocks - to back up, and make concrete our principles for policy-making. This is one of these policy building blocks.

Stimulating non-state service provision: financial and administrative issues

At the moment, informed consensus suggests that Ukraine's social services system is skewed towards residential state-owned services. This is accepted, too, in the MoLSP's concept and is implicit in the LSS. This imbalance is rooted in various barriers to the development of alternative, non-state providers. Therefore, a "balance of service provision" model with an appropriate mix of residential, day care and community based services will never develop until these barriers are removed. Although some of the barriers are financial (linked to taxation, budgeting procedures, accounting regulations etc), there are plenty of others (linked to dysfunctional licensing systems, legal requirements, etc).

The FRSSU PDDT analyzed these barriers and extracted concrete recommendations from the series of consultations conducted at different levels and forums. Specifically, the PDDT conducted a series of regional and national consultations regarding the problems faced by NGOs as social service providers. The key purposes of these consultations were:

- first, to develop a set of coordinated recommendations on how to improve the climate for NGOs to engage in the markets for social care services; and,
- secondly, to validate progressively and then promote these recommendations among the key decision-makers in the government.

The regional consultations were held in the two pilot regions of the FRSSU project: Khmelnytsky and Kharkiv oblasts, during November-December 2006. In each oblast, we held two meetings: one for the representatives of local NGOs and another – for the representatives of respective public authorities of oblast, rayon and municipal levels. During the February 2007, we conducted the consultations with national level NGO and representatives of key governmental institutions of central level.

The FRSSU would like to present the results of its analytical studies on the current climate for NGO engagement in social service provision, as well as the cascade of feedback received during the regional consultations. These studies and consultations resulted in the attached summary of practical policy recommendations, which we are submitting to:

- the Inter-Ministerial Working Group for the Implementation of the Law on Social Services of Ukraine; and
- bilaterally to relevant ministries.

Substantive detail for the recommendations is included especially in annex 1, but also in the whole NGO policy development package as set out in the other annexes.

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Summary of recommendations

- Classify the provision of social services as falling under corporate tax exempt activity of NGOs.
- Adopt a Law on Non-Profit Organisations classifying NGOs into public and mutual benefit organisations; define a framework for classification of public benefit activity and define the provision of social services as falling under this classification.
- Simplify the procedure for registration of public, charity and religious organizations, cancel double registration of NGOs at Ministry of Justice, at territorial boards and state registrars, and to apply to NPOs the same registration procedure as to other legal entities
- Abandon direct State Budget funding of selected non-profit organisations and implement a tendering regime for the allocation of funds to non-profit organisations for the provision of social services.
- In future (after the standards for social services and for enhancing guarantees for employment of disabled are defined) to revise (or if possible, reduce or limit step-by-step) the privileges for organizations and enterprises of the disabled, UTOG/UTOS.
- Ensure transparency of tenders for the allocation of budget funds for social services; define procedures for announcing tenders and publication of the rights of bidders, general selection criteria, procedures for appealing against and criteria for cancelling the results of tenders.
- Eliminate the current limitation on funds transferable to non-profit organisations on the charitable basis and classifiable as gross expenses and tax loan.
- Change taxation legislative frameworks to include provisions that enable income tax payers to define a percentage of tax to be spent as charitable donations to non-profit organisations.
- Develop a database of social service providers with the responsibility to maintain to be placed with the Ministry of Labour and Social Policy; ensure free public access to this information; and define the types of data to be included in the database, among them, year established, territory covered and types of social services provided.
- Expand the state order for the training of workforce for the delivery of social services.

- Define the minimum standards for social services (subject to approval by the Ministry of Labour and Social Policy) and empower local self governments to raise quality requirements as needed and define the standards for services not included in the national minimum standards; financial implications of standards must always be considered so that standards do not become unaffordable; make the involvement of NGO providers of social services a requirement for adopting local standards.
- Facilitate commissioning of NGOs to provide social services, even without prevailing general standards subject to local mutual agreement – FRSSU has piloted model examples successfully.
- Narrow the list of social services subject to licensing to include only services associated with higher levels of potential health hazard to service users and to which special requirements apply (more stringent requirements in terms of workforce qualifications, equipment availability and the quality of premises where social services are to be provided).
- Specify licensing requirements for the provision of selected types of high hazard social services (social medical, social psychological etc.) based on risk assessment.
- Define the audit responsibilities of licensing authorities, criteria for and frequency of audits on service providers, the rights of auditors and auditees and the processes for appealing against audit decisions.
- Define the measures of civil liability to apply to social workers providing social services of substandard quality and amend the Civil Liability Code as appropriate.

Annex 1: Detailed policy recommendations based on round table materials

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This is the first of the annexes presenting the evidence base of the summary policy recommendations.

1. Improvement of legislation on non-profitable organizations and change of the criteria for taxation NGOs activities

At present, the activities of NGOs providing social services are regulated by at least three laws on:

- Associations of Citizens,
- Charity and Charitable Organisations, and
- Liberty of Conscience and Religious Organisations.

The relevant laws have been adopted in different times and therefore they regulate the activities of NGOs differently. For example, charity organizations are entitled to perform economic activities though public organizations lack the right, maintenance expenditures for charity organizations are limited at 20% by the law while administration expenses public organizations are not limited.

Taxation principles for NGO incomes are defined by the Law “On Taxation of Incomes of Enterprises” which along with the Law “On Social Services” are not adjusted with laws defining general principles of activity for the relevant NGOs. Provision of social services is not reason for release of funds or property received by a public organization free of charge or as an non-repayable financial aid or a voluntary contribution, from taxation with enterprises’ income tax. Tax privileges are only granted to those organizations performing ecological, sanitary, amateur sporting, and cultural, educational and scientific activities.

Registration procedure for public organizations is practically the permitting one that complicates their creating. Moreover, the creation of non-profitable organizations is hampered with their double registration: by justice bodies (primary registration) and by local state administrations (final registration after which an organization is considered to be the created one).

Current legislation formulates the requirements to statutory tasks of non-profitable organizations as if the organizations do not perform the particular types of activities but only *promote* their performance by the third persons. For example, according to the Law “On Associations of Citizens” public organizations can be created not with the aim of providing educational, ecological or sanitary activities, but *to promote* those activities.

Hence the following is recommended:

- Approve a unified law on non-profitable organizations (non entrepreneurial) organizations, to unify requirements towards non-profitable organizations;
- Introduce subdivision of non-profitable organizations to: 1) socially useful organizations supporting needs of the entire society, and 2) organizations of mutual interest providing

necessities of their own members (relevant subdivision exists in the major part of European countries); to indicate types of socially useful activities (where provision of social services should be referred to socially useful activity); and to release from taxation incomes of organizations created for socially useful activity;

- simplify the procedure for registration of public, charity and religious organizations, cancel double registration of NPO at Ministry of Justice, at territorial boards and state registrars, and to apply to NPOs the same registration procedures to other legal entities
- foresee direct performance of particular activities by public organizations rather than promoting the performance of the activities by the third persons

2. Step-by-step reduction of privileges for particular members of the social services market

A number of social services' providers (for example, enterprises and organisations for the disabled, UAB/UAD) have considerable additional tax remissions, which are not available to other providers.

Furthermore, some organisations are financed in a centralised way from the State Budget through a special budget line, while others cannot receive budget funds even through tender-based procedures (because funds for NGOs are not provided by the State Budget, and local budgets are mostly subsidized). Moreover, analysis of the current legislation enables us to state that in Ukraine at cost of State budget is often funded not the activity of a particular organization (or specific types of the activity, e.g. provision of social services) but an institution itself. The above approaches to financing organizations providing social services do not promote efficient spending of the budget funds or improving the quality of the social services.

At the same time there should be a differential approach towards so-called paternalistic organizations receiving direct and indirect financial support from the state (some of them, for example enterprises of disabled employ the least well-to-do layers of population).

The following is recommended:

- Cancel direct financing of non-profitable organizations providing social services, from the State and local budgets and transfer to transparent tender-based distribution of social services funding, and envisage funding for not an institution but for the concrete services it provides;
- In future (after the standards for social services and for enhancing guarantees for employment of disabled are defined) to revise (or if possible, reduce or limit step-by-step) the privileges for organizations and enterprises of the disabled, UTOG/UTOS.

3. Enhancing transparency of tender-based distribution of the funds aimed at financing social services

At present, only part of budgetary funds are distributed through tenders, while the greater part of public expenditures and expenditures of local self-governance are distributed at the stage of drawing up and adopting budgets.

Moreover, *even the procedure of holding tenders for attracting budgetary funds for financing social services is characterised by a high degree of intransparency* – there are no clear criteria for evaluation of bidding proposals, the order of publishing the decisions on holding tenders and on the results of tenders is not fixed, the procedure of considering bidding proposals is not transparent, there is no list of grounds for declaring the results of a tender to be invalid, and consequently – it is impossible to appeal against the results of a tender. Besides, tenders are of a closed character and there is lack of control over them (participation of NGOs' representatives in the work of tender committees is not obligatory, an applicant has no possibility to submit additional explanations, documents etc).

To ensure transparency of the tenders the following is required and recommended:

- Develop methodology for studying needs of current and potential consumers of social services, aiming at definition of social order; develop the standards for the quality of social services, and correspondingly develop the criteria for transparent estimate of bidding proposals, and implementation of the relevant methodologies
- Introduce social services standards enabling development of distinct criteria for assessment of bidding proposals from social services suppliers
- Concretize the procedure for publishing the decisions on tenders and the tenders' results in local mass-media publications
- Introduce public control over bidding commissions, authorize the social services providers applying for the tender, to participate in the meetings of bidding commissions
- Define the range of grounds for declaring the results of a tender to be invalid.

4. Enhancing NGOs' fiscal capacity by encouraging charity

Provision of social services of high quality requires appropriate funds. The sources of these funds can be both budgets (through improvement of transparency of public procurement) and private donations. *Though there are some tax incentives for private donations in Ukraine* (the tax credit 2% to 5% of a natural person's income directed to charity, and excluding a legal entity's charitable contributions from its taxable profits at the rate of 2% - 5% of the profits of the previous accounting period), *they are insufficient*. Besides, individuals and legal entities being unified tax payers have no tax incentives for supporting public organizations (as the amount of the unified tax does not depend on total expenses of a taxpayer).

In this connection, it is feasible to introduce additional incentives for individuals and legal entities to finance activities of organizations providing social services. We recommend:

- introducing additional tax incentives for legal entities - payers of the unified tax (by reduction of the amounts of revenues to be taxed with the unified tax, for the amount of charity donations to NGOs), under the condition that the donation does not exceed the certain amount (by the current legislation 2 – 5%);
- cancelling lower limit (2%) and raising upper threshold of charitable donations (e.g. up to 10-15%) from individuals and legal entities, to be included to tax credit or production costs respectively, of a taxpayer
- creating favourable conditions for long-term support to social services providers from individuals and legal entities (raise tax credit amounts for those taxpayers funding NGOs providing social services permanently or periodically)
- granting individuals with the right to transfer certain percentage of their income tax (e.g. 1%) as a voluntary donation or non-repayable financial aid to support one or several NGOs providing social services
- promoting stimulation of financial aid for NGOs providing social services from individuals and legal entities.

5. Raising the level of awareness as an indispensable component of the competitive environment

At present, neither service users, nor providers, nor the state have complete and reliable information of *what* needs are in the market of social services; *who* and *how* operates in the market of social services; *what* funds are allocated for financing social services, *why*, *by* whom and *on* what conditions. In this connection, the problem of meeting the market participants' needs for appropriate information is becoming more and more important.

To resolve it the following is required and recommended:

- combine 2 registers (public and charity organizations) of the Ministry of justice of Ukraine, into the unified register of non-profitable organizations;

- develop an open for users database on organizations providing social services (it could comprise lists of public and charity organizations compiled by Ministry of Justice of Ukraine and its territorial subdivisions along with information received on request from social services providers)
- make Ministry of labour and social policy responsible for administering the database
- include information on location and area of activities of particular organizations, kinds of social services they provide, their experience in providing social services, licenses available (in the cases when services provided by them are licensed), to the database
- publish the decisions on conducting the biddings to attract budget funds aimed at funding social services, and the results of the biddings in identified local paper mass-media and on web-pages of local self-government bodies (when web pages are available).

6. Raising NGOs' staff capacity

One of the factors that greatly hamper privatisation in the social services sector is *the low level of staff capacity of NGOs* – the most promising providers of social services. That is why enhancing NGOs' staff capacity is an important task that should be fulfilled not only by NGOs themselves, but also by the state, which is also interested in establishing a competitive market of social services.

Raising NGOs' staff capacity by individual effort and the state, should foresee the following and we recommend:

- study the staff needs of social services providers
- revise the size of state order for training specialists in the sphere of social services considering current needs of social services providers.

7. Introducing standards for social services

One of the factors that hamper privatisation and introduction of control in the social services sector is the lack of standards of social services. At the same time, in addition to the ambiguity of the contents of standards of specific social services, *the mechanism of their introduction also remains uncertain.*

When introducing the standards for social services the following should be taken into account:

- minimal quality standards for social services should be defined by Ministry of Labour and Social Policy in cooperation with other bodies of central executive power (Ministry of Family, Youth and Sport, Ministry of Health, Ministry of Justice), involving interested organizations in the process of their development
- executive bodies of local self-governance should be entitled to determine standards of quality for those social services not covered by the state minimal standards and to fix higher quality requirements to services compared to minimal state standards
- public organizations should be entitled to independently define the requirements to the quality of those social services which standards had not been fixed at the state or regional level
- mechanism for standardization of innovative services should be defined at the state level (when the requirements to their quality had not been fixed by the state or local standards) on the initiative of public organizations providing the services, along with the procedure for revising fixed standards on the initiative of social services providers
- the financial consequences of standards must always be evaluated in order that realism in their definition is introduced

8. Improving licensing of social services

The Decree of the Cabinet of Ministers of Ukraine of 31.01.2007 #80 introduced licensing professional activities in the sphere of providing social services, and entitled Ministry of Labour of Ukraine, Council of Ministers of the Crimea, oblast and Kyiv and Sevastopol city administrations to license the relevant activities. As the Law “On Social Services” is not adjusted with laws regulating activities of non-profitable organizations (Laws “On Associations of citizens”, “On Charity and Charitable Organizations”, “On Liberty of Conscience and Religious Organisations”), and social services’ standards are absent, it would be hardly expedient to license all types of social services to attract NGOs to social services market.

Improvement of social services’ licensing procedure should, we recommend, envisage the following:

- contract the list of social services taking into account that only those activities fraught with hazards to life and health of users of such services, should be licensed
- clearly define license conditions for the specific social services (and not the services in general) basing on assessment of risks that might be caused by their poor provision
- define the powers of the licensing bodies when exercising control over compliance with license conditions

9. Improving the state control and responsibility in the social services sector

Introduction of social services standards and licensing some of them entail an objective necessity of control over compliance with the standards and/or license conditions, and to define types of responsibility for organizations providing the social services along with the persons whose activity or inertia caused negative results (health injury, additional expenditures from the state etc.)

For nothing prevents the management and social workers of an organisations that violated license conditions from reorganising or setting up some other organisation, getting a new licence and continuing to provide poor services.

Improvement of the state control and responsibility in social services sector requires to:

- define forms of exercising control over activities of social services’ providers (local and field inspections)
- authorize controlling/licensing bodies to check the activities of social services’ providers aiming at checking the compliance of licensing conditions (standards of quality), define frames of such checkups, grounds and the procedure for them, rights of the objects of control and the procedure for appeal against the decisions of a controlling body
- introduce amendments to the Code of Ukraine on administrative violations, to define types of administrative responsibility for the persons guilty of providing low-quality social services (e.g. fine, deprive of a special right etc.)