

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

FACILITATING REFORM OF SOCIAL SERVICES IN UKRAINE (FRSSU)

Contract Number: CNTR 03 5289

Recommendations and Resource Papers on Europeanisation and European Choice Social Services Policy and Legislative Frameworks Developing further the National Document on Social Services Policy

November 2006

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Disclaimer

This document is an output from a project funded by the UK Department for International Development [DFID]. The views expressed are not necessarily those of DFID.

Acknowledgements

This report has been prepared as a document for discussion by Laurie Joshua and Lyubomyr Chorniy and the FRSSU Policy Development and Dialogue (PDDT) and international teams, as an integral part of the DFID Project *Facilitating Reform of Social Services in Ukraine* [FRSSU].

Responsibility for the contents of the report rest with Stace Birks, the Project Director of the DFID FRSSU project

Purpose of the Document and Next Steps

This document is one of a series of technical papers produced by the FRSSU project as a series of building blocks for the development of policy and strategy for, and implementation of, the reform of social services in support of the implementation of the Law of Social Services and the Concept of Reform for Social Services of the MoLSP.

It is background information circulated in advance of the development of abstracted bullet point lists of recommendations by a consultative process facilitated by FRSSU's Policy Development and Dialogue Team (PDDT).

The paper is for consideration at two levels in Ukraine:

- i. by policy makers, who will find a brief summary of recommendations and policy makers at the start of the executive summary. It is this that is to be refined by the discussions of the PDDT; and
- ii. by technical level social services staff, for whom a variety of the different annexes and attachments will be relevant according to their speciality and according to the stages of national policy development that are attained.

This discussion will be associated with the analysis in a related FRSSU paper entitled "Underpinning the Implementation of the Concept for the Reform of Social Services and the Law on Social Services" which is also attached for ease of reference.

The discussion, as it is to be led by the Policy Development and Dialogue Team of FRSSU, will be broadly participative. The PDDT will be in contact with interested parties to ensure the widest reasonable contribution to the discussion.

LIST OF ABBREVIATIONS

AIDs	Acquired Immunodeficiency Syndrome
CB	Cash Benefits
CoE	Council of Europe
CoM	Cabinet of Ministers
DFID	Department for International Development
EC	European Commission
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood Policy Instrument
EU	European Union
EUUAP	European Union-Ukraine Action Plan
FCO	Foreign and Commonwealth Office
FRSSU	Facilitating Reform of Social Services in Ukraine
GOF RE	Global Opportunities Fund for Reuniting Europe
GDP	Gross Domestic Product
GoU	Government of Ukraine
ICESR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IMF	International Monetary Fund
INTOSAI	International Organisation of Supreme Audit Institutions
LSS	Law on Social Services
MoES	Ministry of Education and Science
MoF	Ministry of Finance
MoFYS	Ministry of Family, Youth and Sports
MoLSP	Ministry of Labour and Social Policy
MoH	Ministry of Health
MP	Member of Parliament
NCRSS	National Council for the Reform of Social Service
NGO	Non-Government Organisation
OMC	Open Method of Co-ordination
PER	Public Expenditure Review
PCA	Partnership and Co-operation Agreement
SAA	Stability and Association Agreement
SG	Social Guarantees
SMART	Strategic, Measurable, Achievable and Realistic
SP	Social Privileges
SS	Social Services
TAIEX	Technical Assistance and Information Exchange Office
USIF	Ukraine Social Investment Fund
UN	United Nations
UNDHR	United Nations Declaration of Human Rights
USSR	Union of Soviet Socialist Republics
WTO	World Trade Organisation

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A Resource Paper and Recommendations on Europeanisation and European Choice Social Services Policy and Legislative Frameworks

Developing further the National Document on Social Services Policy

Executive Summary: Analysis, Review and Recommendations

Summary Recommendations

The Ministry of Labour and Social Policy [MoLSP] has made considerable strides with policy development in the production of the Concept for the Reform of Social Services, “**the Concept**” that will set a necessary context for the implementation of the Law of Social Services [LSS].

Such social services policy and legislative frameworks for Ukraine need to go beyond the domestic policy environment, and to take account of the external influences upon change that have a bearing on the domestic policy agenda.

The European Union-Ukraine Action Plan (EUUAP) and Ukraine’s membership of the Council of Europe, will have impact upon the internal policy environment, and will increasingly influence other international actors (the World Bank, the United Nations [UN], the European Investment Bank [EIB] and the European Bank for Reconstruction and Development [EBRD]).

This is one of the considerations that influence the analysis and recommendations of this report. The recommendations, at this preliminary stage, prior to the PDDT led discussions are to:

- refine and further prepare the **National Document “the Concept”** so that it more clearly forth the GoU’s strategy on Social Services Policy in the context of the LSS and closely related legislation;
- take further steps to ensure a consensus amongst practitioners, and a wide understanding amongst the population at large of the Concept;
- ensure that the Concept sets out the objectives and prioritises areas for further policy development in the context of the Constitution of Ukraine, the GoU’s *Towards the People*, Ukraine’s membership of the CoE, the LSS, and the EUUAP;
- the concept is fully evidence-based, grounded in reality, and should feature the following elements:

- ❑ Introduction of the Balance of Service Model of Provision to facilitate planned progressive and gentle reductions in the level of residential service provision, with related and innovative expansion of community-based social services;
- ❑ Clear linkages to sustainable patterns of finance and devolved financial responsibilities;
- ❑ Clarification of the nature and application of the basic principles of the LSS, to facilitate genuine debate of its refinement;
- ❑ Measures for ensuring that policy transfers take account of social, political and economic factors and other policy goals that prevail in Ukraine – in this, the European dimension is key;
- ❑ Means of internal control and management, policy design and management, service improvement management under conditions of decentralised decision making across local tiers of government, and horizontal coordination at central levels;
- ❑ Measures to address the current fragmentation of administrative systems that oversee social services;
- ❑ Incentives to promote inter-ministerial and inter-departmental co-operation and coordination;
- ❑ Definition of links and boundary between social services, social privileges and social guarantees, but also elaborate the distinctive attributes of, and policy directions for, social services;
- ❑ Measures that take account of demographic profiles, expenditure trends, and the future demand for social services to 2015;
- ❑ Measures that take account of systems for improving the financial and quality control auditing of social services.

The refinements of the Concept document should aim to incorporate:

- the background of current legal provision and the main short-comings in social services policy;
- The reasons for adopting a social services policy, the objectives of the new law on social services, and intended policy goals of both the law and the policy;
- The development of and implementation of policy needs to be set in a clear time frame, for all stakeholders, to facilitate coordination of steps to reform;

- A risk assessment framework that identifies potential risks and problems implementation, and measures to mitigate leading problems and risks during implementation of the national social services policy;
- Incentives that focus on building partnerships among key stakeholders, to help a consensus on the directions of policy;
- Ensure that system standards and standardised conceptual instruments are developed and applied to the elaboration of the national social services policy.

In other words, the Concept should lead adjustments to the LSS, rather than the many ad hoc refinements and even full alternatives that have been proposed.

These recommendations will be considered and analysed, by the PDDT and other stakeholders, in the context of the evidence base assembled in this and other FRSSU reports on oblast, city, municipal and rayon level policy and strategic reforms. It is important that the views of local government [at Oblast, city, municipal and rayon level is fully considered].

The FRSSU project is confident that the attention to detail and the cross-referencing – in the supporting annexes of this report, to ensure consistency and factual accuracy - will make a valuable contribution to public policy in Ukraine.

Processes of Decision Making for Policy Making

Good quality policy-making depends on high quality information, derived from a variety of sources – expert knowledge; existing domestic and international research; existing strategies, legislative frameworks; evaluation of previous policies; and new research. Thus knowledge, ideas and research evidence play a key role in the policy process.

This report has been prepared in keeping with these ingredients, and to facilitate an enabling environment that helps policy-makers in Ukraine to develop, and implement a national social policy for social services that accords with:

- the Government of Ukraine’s [GoUs] European Choice agenda as set out in *Towards the People* [2005].
- achieving this goal within the frame of the European Union – Ukraine Action Plan [EUUAP] that was accorded between the European Union and the GoU. The EUUAP provides an important and contingent context for approximating domestic Ukrainian policy with the norms and standards of the EU; and which build upon
- The “concept” and the LSS.

Broadly speaking, a systematic review entails drawing together a series of techniques for minimising error and bias, primarily through the use of a *protocol* which states what the criteria are that will guide the review – including exclusion and inclusion criteria, standards of methodological adequacy, the precise definition of conceptual issues and terminology, and unbiased view of the goals of policy. These will be utilised by specialists at various points in the policy development cycle.

The report fulfils these criteria by delineating the conceptual framework and the key drivers for change in the policy environment in Annex 1; and in the analysis and recommendations, that underpin the rationale for the construction of a national social services policy, delineated in Annexes 2 and 3.

This report has been prepared in the context of the DFID project on Facilitating Reform of Social Services [FRSSU] with the other FRSSU papers, makes an important contribution to providing a macro-level framework for elaborating:

- Policy objectives and priorities, and the development of strategies for social services reform which support the Government of Ukraine's [GoU] overall aims of poverty reduction and decentralisation

And, the identification of:

- Financial systems and processes that need to be in place to support the delivery of community based social services...and new approaches to financial planning, management and auditing

The methodologies for meeting these objectives are largely absent in the prevailing policy environment, in Ukraine (as in many transition states) and this report makes a number of strategic interventions, linked to an assessment of available evidence, that are aimed at addressing gaps and omissions that exist in the strategic interface that needs to be forged between a new social services policy and evolving legislative frameworks.

The focus on Europeanisation and European Choice for Social Services Policy and Legislative Frameworks, is complementary to other policy related analytical work¹ undertaken by the DFID FRSSU project in the context of elaborating the Law on Social Services [LSS] and affiliated legislation. This report, which is rooted in an evidence-based approach to policy analysis and policy development, is divided into annexes that draw attention to:

- **Annex 1** Establishing Baseline Measures for Framing Policy Dialogue on a National Social Services Policy: Foundations for Europeanisation and the GoUs European Choice agenda
- **Annex 2** Framing a National Social Services Policy: The Constitutional Framework, the Law on Social Services, Adaptation and Elaboration
- **Annex 3** Goal Attainment, System Stability and Maintenance: Developing and Elaborating a National Document on Social Services Policy

¹ The main analytical focus of tasks undertaken by the DFID FRSSU Project on central level policy development incorporate: (1) *An Assessment of Public Expenditure Management: Developing a Technical Framework for the Financial Reform of Social Services* (2006a); (2) *The Interface Between Legislation on Non-Government Organisations, Taxation and The Delivery of Social Services* (2006b); (3) *Demographic and Financial Trends: Scoping the Future Demand for Social Services* (2006c); and (4) *Auditing for Improved Performance in Social Service Quality and Outcomes*,

In the context of the evidence collated in each annex r, the report specifically focuses on:

- The definition of Europeanisation, its application to the GoU's European Choice agenda and Ukraine's membership of the Council of Europe [CoE], and the underpinnings of these features for policy development;
- The structure, content, and objectives of the EUUAP, the methods of policy transfer and integration, and the implications for a national social services policy;
- The identification and application of policy and process baseline measures for the formation of a national social services policy;
- The structure and content of the Constitution of Ukraine and the interface with the legislative process; the comparative strengths and weaknesses of the legislative process and the content and quality of its outputs, and the scope for adapting and elaborating a national social services policy based on rights enshrined in the Constitution;
- The interface between social services, social privileges and social guarantees, and the need to strike a balance that takes account of this interface, while at the same time establishing a distinctive frame for a national social services policy
- The framework for establishing dialogue on the interface between social services policy and legislative frameworks, the rationale for establishing priority areas in the development of social services policy; and the opportunities that need to be translated in to a workable national social services policy
- The development of goals for a national social services policy, and the attention to particular process details and technical features that will assist in the achievement of goals, and the technical and procedural requirements for establishing system stability and system maintenance for a national social services policy.

Methods:

The two-person team that undertook the analysis comprised a national Ukrainian and an international expert. The team gathered information using a range of methods that included meetings with central government ministries, Oblast level authorities, representative NGO bodies, and various national and regional consultation events.

The baseline framework delineated in this report was prepared [as a *protocol*] in advance of the analytical work commencing, and was used to guide the analysis and the interpretation of evidence. These processes were accompanied by a detailed

review of the Constitution and the main bodies of legislation that pertained to social services, social privileges and social guarantees.

The next stage is the broader discussion of the report through the leadership of the PDDT with practical policy related outputs to be put before the WGILSS, and as it is established the National Council for the Reform of Social Service (NCRSS) .

A Resource Paper and Recommendations
on
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The annexes

Annex 1

Establishing Baseline Measures for Framing Policy Dialogue on a National Social Services Policy: Foundations for Europeanisation and the GoUs European Choice Agenda

European Integration will become the top priority issue of the international activity of Cabinet. The Government is going to pass from the tendency to make pronouncements for effect to actual steps that will lead the relations with the European Union to the level of membership perspective

Towards the People [GoU, 2005]

Overview:

Relations between the European Union [EU] and the Government of Ukraine [GoU] have, over the last 10 years, been growing in scope¹ and have in more recent times intensified in depth culminating in the EU-Ukraine Action Plan [EUUAP]² which

¹ In 2002, for example, the Verkhovna Rada adopted *the Law on Conception of the Overstate Programme On Approximation of the Legislation of Ukraine to the Legislation of the EU*. The law, which was adopted on 21 November 2002, defines the main goals, tasks, elaborating principles, structure and organisational provisions for adapting Ukrainian legislation to the legislation of the EU. Prior to the advent of the Law on Approximation, the National Council on Approximation of Ukrainian Legislation to the Legislation of the EU was established under the President of Ukraine. The framework for expanding the scope of co-operation was the Partnership and Co-operation Agreement [PCA] which entered into force in 1998, and is due to be renewed – through the consent of the EU and the GoU – in 2008. The bilateral structures established to oversee the PCA included a series of sub-committees including Trade and Investment; Economic and Social Affairs, Finance and Statistics; Enterprise Policy, Competition, Regulatory Co-operation; Energy, Transport, Information Society Nuclear Safety and Environment; Customs and Cross-border Co-operation; Justice, Freedom and Security; and Science and technology, Research and development, Education, Culture and Public Health.

² European Commission, *EU/Ukraine Action Plan*, DG Enlargement, UE-UA 1051/05, Brussels. 2005. Within the framework of the ENP, the EU, together with the GoU, will endorse the final structures of

was signed by the two parties on 21 February 2005. The EUUAP, which is integral part to the EU's European Neighbourhood Policy [ENP]³, focuses on political dialogue and reform, trade and measures for engagement with the EU's internal market, justice and home affairs, energy, transport, information, environment, research and innovation, social policy and people-to-people contacts. While Accession is not currently on the agenda for EU-Ukraine relations the provisions of the ENP do not contradict the provisions laid down under the Treaty of the European Union, which provides that any European State which respects the principle of democracy, human rights and the rule of law may apply to become a member of the Union^{4,5}. Thus the European Commission's position is quite clear: it intends to focus on the ENP and the EUUAP for now, and does not *a priori* exclude Ukraine's membership in the long-term. In a similar vein, the EUUAP recognises that Ukraine is a European country [thus acknowledging its membership eligibility principle under Article 49 of the European Treaty], and simultaneously emphasises that there is much that the GoU can do to elaborate the detail of the European Choice⁶ set out in *Towards the People*, while at the same time actively engaging in the Europeanisation process. The annex therefore sets to define:

- Europeanisation and the mechanisms for policy transfer under conditions of closer EU integration and the GoU's European Choice;
- Europeanisation and the European Union-Ukraine Action Plan [EUUAP];
- Europeanisation, Social Services Policy and the Law on Social Services; and
- Establishing Baseline Measures for Integrating Social Services Policy and Legislative Frameworks

the EUUAP in June 2006. The EUUAP acknowledges Ukraine's European aspirations and welcomes Ukraine's European choice [EUUAP, pg 1]

³ The ENP emerged in the wake of enlargement of the EU from 15 to 25 member States. The ENP provides a framework for closer co-operation with neighbouring countries of the newly enlarged union. The ENP provides the framework for the EUUAP [See: European Neighbourhood Policy Strategy Paper COM (2004) 373 final, Brussels]

⁴ European Union, Delegation of the European Commission to Ukraine, *EU-Ukraine Relations: from co-operation to integration*, Press Release, Kyiv, May 07 2006

⁵ It should be noted that while the majority of Member States of the EU favour closer co-operation with Ukraine there is no consensus on offering membership to Ukraine in the immediate term. However, in terms of key institutions of the European Union [i.e., the Council of Europe, The European Court of Justice, the European Commission, and the European Parliament] the European Parliament has adopted the most overt stance on the question of Ukraine's EU membership. On January 13 2005 the European Parliament voted in favour [467 MEPs voted in favour versus 17 against and 7 abstentions] of a resolution that alluded to an offer of a membership perspective [See: *Will the Orange Revolution bear Fruit?: EU-Ukraine Relations in 2005 and the beginning of 2006*, Stefan Batory Foundation, 2005]

⁶ The concept of European Choice was elaborated by the President of Ukraine at the Joint Statement issued at the EU-Ukraine Summit on December 1 2005, where the GoU reiterated its strategic goal to be fully integrated into the EU [See: www.president.gov.ua]

Europeanisation and Mechanisms for Policy Transfer:

The concept of ‘Europeanisation’ has gained prominence⁷ in assessing the EU’s institutional dynamics and its impact on national policies – including the policies of long standing members of the EU, and the policies of countries that have recently acceded to the EU. However it can, in the wake of the ENP and the EUUAP, also be applied to policies of countries, like Ukraine, which are seeking closer integration with the EU. Conceptualisations of Europeanisation have varied in both approach and application. Laderch [1994] provides a useful starting point and defines Europeanisation as “*an incremental process reorienting the direction and shape of politics to the degree that the European Commission political and economic dynamics become part of the organisational logic of national policies and policy making*”. Borzel [1999] draws more explicit attention to the ‘penetrative’ nature of Europeanisation and focuses on processes through which: *domestic arenas become increasingly subject to European policymaking*”, while Bulmer and Bach [2000] refer to Europeanisation as the “*the impact of the European integration process upon the national level, and specifically upon the domestic institutions of government*”. This latter definition reflects the notion that Europeanisation is a distinct concept identified with the impact of a political process [i.e., European integration] and on systems of governance. The definitions ventured by Laderch and Borzel distinctively focus on the standpoint of the EU, while Bulmer and Bach’s definition draws a link between the challenge posed for countries that are seeking to integrate with the EU and the processes laid down by the EU for the adoption of a set of rules, norms, institutional structures, ideas, meanings, interests and ideas. Radaelli [2000] is sensitive to these multidimensional features and defines Europeanisation as “*a set of processes through which EU political, social and economic dynamics become part of the logic of domestic discourse, identities, political structures and public policies*”. These definitions are helpful in setting the scene of what Europeanisation is, and what the GoUs European Choice is likely to entail.

These definitions were, however, formulated outside of the Ukrainian policy environment and prior to the ENP and the EUUAP. The definitions also do not take account of the interface between these recent geo-political developments and pre-existing membership of transition countries, like Ukraine, in the Council of Europe [CoE]⁸. Europeanisation for the Ukrainian context therefore needs to go further

⁷ For example, Meny et. al. 1996; Bulmer and Burch 2000, Lehmkuhl 2000; Knill and Lenschow, 2001; Jordan, 2002; Guillen and Bruno (eds) 2004; Ferge and Juhasz, 2004; and Piana, 2005.

⁸ Ukraine is a full member of the CoE having joined on 9 November 1995. The CoE is distinct from the European Union, and was set up to defend and promote human rights, parliamentary democracy and the rule of law; develop continent-wide agreements to standardise member countries’ social and legal practices; promote awareness of a European identity based on shared values and cutting across different cultures. Since 1989, following changes in central and eastern Europe, the main tasks of the CoE has focused on acting as a political anchor and human rights watchdog for Europe’s post-communist democracies; assisting the countries of central and eastern Europe in carrying out and consolidating political, legal and constitutional reform in parallel with economic reform, providing know-how in areas such as human rights, social cohesion local democracy, education, culture and the environment. In the context of Ukraine’s relations with the CoE, the Venice Commission of the Council played a key role in drafting the Constitution of Ukraine adopted by the Verkhovna Rada on June 28 1996 [See: Annex 2]. Ukraine also ratified, in 1997, the European Convention on Human Rights and Fundamental Freedoms pursued through the CoE. No country has ever joined the EU without first belonging to the CoE.

than these definitions, and given the focus of this report on Social Service Policy and the elaboration and implementation of the Law on Social Services – the author of this report defines Europeanisation as consisting of:

The construction, diffusion and institutionalisation of formal and informal rules, procedures, policy styles and shared beliefs and norms which are first defined and consolidated in EU and CoE processes and then incorporated into the logic of domestic Ukrainian political structures and public policies as it seeks to integrate into the European Union.

This definition of Europeanisation is deemed more appropriate because it takes account of the fact that EU integration is an interactive process where the GoU – in exercising its European Choice - is not simply a receptor of stimuli and policy directives from the EU, but is involved in the establishment of a negotiated order in which EU integration shapes post-communist domestic policies and politics. Within this negotiated order the GoU will need to project its interests in a manner that shapes the trajectory of its integration; and in ways that suit its national interests within the framework of the EUUAP and its pre-existing membership of the CoE. Knill and Lehmkuhl [1999] identify three mechanisms that influence and guide negotiated orders under conditions of Europeanisation and EU integration:

- The first mechanism – **Positive Integration** - involves the imposition of a EU model with limited discretion at the national level – involving policy templates to achieve market-correcting goals. The mechanism is coercive and is backed up European law with an expectation that they will be put into effect by countries seeking integration.
- The second mechanism – **Negative Integration** – uses policy templates in a limited sector specific way, and is designed to bring about integration into the Internal Market. Legal measures spell out policy requirements. However, regulatory intrusion is less than in positive integration;
- The third mechanism – **Policy Transfer Coordination** – uses soft measures where the ability of the EU to use coercive measures is weak. Policy Transfer Coordination relates to altering beliefs and expectations of domestic actors – though a system of cognitive logic where knowledge about policies, administrative arrangements, institutions, and ideas developed in one system (past or present) is used in the development of policies, administrative arrangements and institutions in another time and place¹⁰.

These mechanisms are not mutually exclusive, and they all – to varying degrees - have a role to play in the adaptation process depending on the policy domain that is the focus of attention¹¹. However, these mechanisms constitute the basic

¹⁰ Adapted from Dolowitz and Marsh, 2000:5

¹¹ It should be noted that under conditions of transition, policy transfer is not solely associated with the EU. The policies and programmes of the International Monetary Fund [IMF] and the World Bank, admission to the World Trade Organisation [WTO], and bilateral aid programmes all involve policy transfers. The distinctive aspect of policy transfer under conditions of Europeanisation is the emphasis given to particular areas of policy transfer, the

framework¹² within which the EU laws, norms and standards becomes embedded features that frame the domestic policy of countries seeking greater integration with the EU¹³. With these frames Europeanisation is taken as the independent variable and adaptation of domestic institutions as the dependent variable, and is underpinned by an active process of **policy transfer** – given that the three mechanisms outlined above have a strong interface with the ways in which policy transfer from the EU is adapted and coordinated to the domestic contexts of countries seeking integration.

The first mechanism is linked to what Risse [2001] refers to as the ‘goodness of fit’¹⁴. The goodness of fit applies to both institutions of government and policies i.e., policy goals, instruments/techniques used to achieve policy goals, and problem solving approaches. In circumstances where the fit between European policy norms and standards and domestic Ukrainian arrangements are low, adaptation pressure will be high leading to transformation, as Ukraine [which is seeking to integrate with EU norms and standards] is encouraged and supported to alter the domestic policy environment to satisfy EU requirements. On the other hand, when the pre-existing policy fit is high, adaptation pressure will be low and absorption can be expected as Ukraine incorporates EU policy/ideas without substantially changing existing practices.

The second mechanism is concerned with domestic institutional structures, and with how EU norms and standards interact with domestic variables such as unitary and decentralised territorial decision-making; the mix of public, private and non-governmental agencies in the economy; public administration systems and organisational cultures – including legislative and policy development processes; institutional capacities; patterns of competition; and levels of social exclusion and social cohesion. Political obstacles, or ‘veto points’ on all these variables are significant factors that will affect the design, development, as well as the pace, at which implementation of the Europeanisation process can progress¹⁵.

The third mechanism is concerned with normative learning processes linked to questions about:

methods adopted to facilitate policy transfers – which can include coercive and voluntary measures, and the methods used to evaluate and benchmark the effectiveness of policy transfers.

¹² A framework is defined as “*a particular set of rules, ideas or beliefs that are used in order to deal with problems, or decide what to do*”. See Collins English Dictionary, Harper Collins 1999: 672-3

¹³ See Wallace, 2000.

¹⁴ Risse et. al. (2001) defines ‘goodness of fit’ as being “the degree of adaptation pressure generated by Europeanisation” which depends on the ‘fit’ or ‘misfit’ between European institutions and domestic structures.

¹⁵ Risse et. al. (2000) note that the more power is dispersed across the political system and the more actors have a say in decision making, the more difficult it is to foster the domestic consensus necessary to introduce institutional changes in response to Europeanisation. This observation has particular resonance for implementation of the Law on Social Services and the fragmentation of decision-making on social services across four line Ministries [Ministry of Labour and Social Policy (MoLSP), Ministry of Education (MoE), Ministry of Health (MoH), and the Ministry of Family, Youth and Sports (MoFYS)]. See Annex 2.

- Who are the key actors to be involved in policy transfer processes?
- What policies need to be transferred?
- Where lessons are to be drawn from policy transfer?
- What are the different degrees of transfer?
- What might restrict or facilitate the policy transfer process?
- How is the policy transfer related to success or failure?

The engagement of domestic Ukrainian institutions with these learning processes can take the form of ‘single loop learning’ whereby domestic policy actors acquire new information, and develop or alter strategies. Alternatively such learning may be more fundamental in nature involving a radical change of objectives associated with paradigm shifts [such as shifting social service provision from residential to community-based alternatives]. This second type of learning is known as ‘double loop’ learning.

The three approaches – outlined above - to policy transfer will need to take place in interactive structures that involve various levels of engagement between the European Commission [EC] and domestic policy actors in Ukraine. Thus in reality Europeanisation is characterised by a dynamic processes in which domestic and EU institutions evolve, and where policies, priorities and orientations are expected to change over time. Thus for example, the level of social policy integration in the EU today is not the same as when previous integration efforts took place when Greece joined in 1983, Spain and Portugal in 1985 or, when the ten new members acceded in 2004. Thus it is imperative that domestic policy actors in Ukraine are fully aware of the fact that the mechanisms for integration have incrementally changed over time as the EU has got larger and as Treaties have undergone revision. Indeed, the process has become more onerous for each additional country that seeks to integrate into the EU. Not only has hard law changed, but so too has the Single Market, the benchmarks associated with introduction of National Action Plans for Inclusion [NAPs/Inc] and National Action Plans for Employment [NAP/Empl], and the expanding use of the Open Co-ordination Method [OMC]¹⁶ across matters of social policy [e.g.; employment, pensions, social inclusion, and health].

¹⁶ The OMC is formally part of a new governance architecture established by the Lisbon European Council [23-24 March 2000], which aims to provide policy makers with a common vocabulary to address matters associated with the balance that needs to be struck between competitiveness and social policy. As process OMC seeks to facilitate convergence in policy-makers assessments of causal mechanisms at work in particular policy areas, and definitions of desirable and undesirable policies [i.e., what works], beliefs about how policies work, and to spread best practice that support the formulation of clear EU goals. The OMC approach is seen as superior to traditional approaches of policy transfer because it fosters learning and provides flexibility in the policy process [See: Radaelli, 2003]. The elaboration of the OMC methodology has been accompanied with the development of indicators and benchmarks and systems for monitoring, peer-review and evaluation. In technical terms OMC is strongly associated with the third mechanism – i.e., Policy Transfer Coordination which places more emphasis on compatibility between the different domestic arrangements of countries rather than uniformity between countries. The inclusion of Twinning and TAIEX in the EUUAP, which have been borrowed from the enlargement process in central and eastern Europe suggests that OMC methods are likely to become of significant importance to the policy transfer process in Ukraine.

This dynamic aspect of Europeanisation draws attention to the importance of learning loops, which is particularly relevant to a country, like Ukraine, where EU integration will of necessity need to focus on addressing policy or institutional voids. This means that Europeanisation, under conditions of integration from a post-communist legacy, will therefore need to be associated with institutionalisation rather than institutional change *per se*¹⁷. This is because in periods of uncertainty the ability to transfer technical and codified knowledge within a particular policy field is a difficult task that will require repeated and prolonged encounters on policy dialogue. Indeed, it is precisely for this reason that policy dialogue channelled through programmes and projects associated with Policy Transfer Co-ordination have become increasingly important in the context of EU integration.

Europeanisation and the EUUAP:

The EUUAP is designed to cover an initial time frame of three years, and is designed to set the framework for EU-Ukraine cooperation, and to encourage and support the GoUs objective of further integration into European economic and social structures; and advance approximation of Ukrainian legislation, norms and standards to those of the EU. Furthermore, the EUUAP is expected to help devise and implement policies and measures to promote economic growth and social cohesion, and raise living standards.

The operational framework underpinning the EUUAP draws on the loop learning processes referred to above, and incorporates a range of measures that will:

- Move beyond cooperation to a significant degree of integration including though a stake in the EU's Internal Market, and the possibility for Ukraine to participate progressively in key aspects of EU policies and programmes;
- Support for legislative approximation to meet EU norms and standards, including technical assistance, Twinning with administrations of EU Member States, and targeted advice and support through mechanisms such as the Technical Assistance and Information Exchange Office] TAIEX.
- Increase financial flows to support actions identified in the EUUAP¹⁸.

The EUUAP sets out a comprehensive set of priorities in areas that fall within and beyond the scope of the PCA¹⁹. In the context of implementing the EUUAP - and the

¹⁷ The distinction between 'institutionalisation' and 'institutional change' is important in the context of Europeanisation because post-communist domestic policy is not comparable to EU norms and standards. Thus 'institutionalisation' incorporates the transfer of values and approaches alongside norms and standards; while 'institutional change' assumes the existence of domestic policy comparable to EU policy. Institutionalisation, therefore, involves more fundamental reforms linked to 'double loop' learning associated with a paradigm shift; while institutional change is more closely linked to 'single loop' learning.

¹⁸ This includes resources that will be channelled through the European Neighbourhood and Partnership Instrument [ENPI] which will replace the current TACIS programme in 2007, and include technical assistance plus Twinning arrangements and access to TAIEX which provides for a range of targeted assistance and policy advice.

interface with Social Services Policy and the Law on Social Services - the following policy areas – as depicted in the action plan, are likely to be salient²⁰:

- Fostering the development of civil society – which includes the Non-Government Organisations [NGOs] – in the context of ensuring freedom of association and involvement of citizens in the decision making process, including through civil society organisations; and encouraging local and regional initiatives and the development of cross-border co-operation;
- Ensuring equal treatment for men and women in society and economic life;
- Ensure respect of Children’s Rights – including implementation of recommendations by the UN Committee on the Rights of the Child, implementation of juvenile justice standards; implementation of the UN and Hague Conventions on protecting the rights of children in Ukraine;
- Strengthening dialogue and co-operation on social matters – including employment and social policy, with a view to developing an analysis and assessment of the situation and identifying key challenges and ways of bringing Ukraine’s policies and practices closer to EU standards²¹; and monitoring relevant legislation and policy development.
- The introduction of effective employment creation and poverty reduction measures, aimed at a significant reduction in the number of people with income below the poverty line and improved social cohesion, including sustainable systems for education, health and other social services with access for all.
- Promotion of sustainable development - including administrative structures and procedures to ensure strategic planning of sustainable development and co-ordination between relevant actors;
- Development of conditions for open and competitive award of contracts, in particular through the call for tenders for the procurement of goods, services and all works across all relevant public bodies;
- Public Internal Financial Control – including restructuring the system of public financial control and audit in Ukraine; and harmonisation with agreed standards and methodologies [e.g. the norms and standards of the International Organisation of Supreme Audit Institutions (INTOSAI)]
- External Audit and Control – including adequate function of the Accounting Chamber in line with internationally accepted external audit standards

The advances made with the frame of the EUUAP have, in its wake, generated bilateral initiatives²² that have sought to elaborate and support implementation of the

¹⁹ See Annex 1, footnote 1 for an elaboration of the Partnership and Cooperation Agreement [PCA].

²⁰ These policy areas in the EUUAP have selected on the basis of the FRSSU policy reviews referred to in the introduction. See Introduction footnote 1.

²¹ EU standards in social policy cover social and civil dialogue, health and safety at work, gender equality, labour law, employment policy, social protection, including social security and social inclusion.

²² The United Kingdom, has for example, recently proposed the development of a programme that is jointly funded by the Foreign and Commonwealth Office [FCO] Global Opportunities Fund for Reuniting Europe [GOF RE] and the UK Department for International Development [DFID]. The main outputs of the programme focus on: supporting Ukraine’s EU integration policy; Analysis of

ENP and with a specific focus on changes required to policy and legislative frameworks. Thus the EUUAP has generated a wider constituency of support aimed at improving the international architecture for supporting and elaborating the GoU's European Choice.

Europeanisation, Social Services Policy and the Law on Social Services

It is clear that policy dialogue on Europeanisation across the areas delineated in the EUUAP will not be an even process. This is because the EU is in a constant state of negotiation across multiple policy areas, and because the EU's authority varies considerably across the range of policy areas, from having exclusive authority [for example, on the Internal Market] to having more limited powers on setting targets and recommendations [for example, on social policy and social cohesion]. It is this variation that underpins the rationale for the deployment of the mechanisms delineated by Knill and Lehmkuhl [1999]²³, and reflects the fact that Europeanisation is not simply about formal policy rules but also the emphasis given to the transfer of organisational approaches, beliefs and societal values.

In the context of increasing emphasis on organisation approaches, beliefs and societal values, three components are of paramount importance to the process of policy transfer:

- **Policy formulation** – which focuses on the construction of policy [usually ahead of legislation];
- **Putting Policy into Practice** – which focuses on the institutionalisation of policy [through the explicit development and articulation of national policies that are embedded in institutional norms and practices];
- **Policy Structuring** – which focuses on the diffusion of policy, values, norms, and values [through deliberative processes].

Within the framework of the ENP and EUUAP, social services²⁴ – as defined by the Law on Social Services [LSS] and other bodies of legislation delineated in Annex 1²⁵ - does not fall under mechanisms that support Positive Integration given that there is

budgetary, institutional and human resource requirements; Co-ordination of donor policy advice and technical and financial support; and improving technical capacities in EU policy analysis, policy making and co-ordination [See: [http: www.fco.gov.uk/Files/kfiles/EUCOP%20-PCNamend.0.htm](http://www.fco.gov.uk/Files/kfiles/EUCOP%20-PCNamend.0.htm)]

²³ The mechanisms being positive integration, negative integration and policy transfer coordination: See page 13.

²⁴ Indeed, defining the term 'social services' in countries seeking to integrate with EU norms and standards has often proved a challenge. Krzyskowski (2005) notes that even in Poland the term 'social services' has proven difficult to translate in a context where the term social welfare (pomoc społeczna) has traditionally referred to both cash benefits and social services. Cerami (2005) observes that under the communist welfare state social services and cash benefits were conflated, thus making it difficult in the post-communist period for politicians and policy makers to rationalise the distinctions between the two. These observations are salient to the Ukrainian policy environment where social services and social privileges are highly interwoven in social policy –See Annex 2.

²⁵ The Law on Social Services, Verkhovna Rada (BVR) 2003, N45, p.358 updated under Law N 1891-IV (1891-15) of 24 June 2004.

not a body of EU law that prescribes ways in which social services should be managed or organised – although strategic moves are afoot that may result in changes to the *status quo*²⁶. Instead, social services – within the framework of EU integration – has thus far been subjected to mechanisms that focus on Negative Integration and Policy Transfer Co-ordination [i.e., the development and transfer of administrative and institutional knowledge associated with particular practices that prevail in the EU on measures for enhancing social inclusion]. The objective with regard to the integration of social services is therefore twin-tracked through:

- **Soft transfers** which lead to substantial similarities of central ideas, concepts and attitudes between the policies of the EU and those of Ukraine [i.e., **emulation and innovation**];
- **Hard transfers** that involve substantial elements of specific programmes and implementation [i.e., **copying**].

For the purposes of adapting and elaborating this twin-tracked framework to the Ukrainian context ‘Social Services’ are defined in this report as:

Policies, financial resources and practical interventions aimed at addressing the needs and problems of citizens at risk of, or experiencing, social exclusion that stem from income poverty, family separation, illness, violence, physical and mental disability, and old age, and that promote social cohesion.

Specific service oriented measures within this definition, include:

- Domiciliary care;
- Home help services;
- Foster care and adoption;
- Counselling and advice;
- Residential services;

The application of the twin-tracked Policy Transfer Coordination approach towards social services does not rule out the fact that the EU is able to compel governments seeking to integrate with the norms and standards of the Union to adopt programme

²⁶ Following the mid-term review of the Lisbon strategy in 2005 – which focused on economic and social policy and sustainable development in Europe – the Commission announced [*The Social Agenda*, COM (2005) 33 final] the clarification of a framework within which social services of general interest operate and can be modernised. The announcement had been preceded by the production of the Green Paper on Services of General Interest [COM (2003) 270 final], and the *White Paper on Services of General Interest* [COM (2004) 374 final]. The objective behind these developments focused on attempt to define which instruments [e.g., directive, regulation, recommendation, communication, guidelines, or inter-institutional agreement] should be used to elaborate and harmonise EU policies on services of general interest in the context of WTO guidelines and the Internal Market, and developing a clearer framework for distinguishing economic and non-economic services – particularly with regard to health and social services. In 2006 the Commission issued a Communication [COM 2006) 177 final] which recognised that social services have an important role to play in maintaining and promoting social cohesion and in the context of supporting the social economy [including the role of NGOs], and undertook to consult with States on the development of a specific EU legislative proposal on social services.

and policies against their will by means of conditionality²⁷. Thus the emphasis given to soft and hard transfers [which includes programme funding streams to be devised under the ENPI (that will replace TACIS in 2007), and the Twinning and TAIEX arrangements provided within the EUUAP] for the integration of social services will focus on establishing institutional and organisational arrangements that reflect normative practices in the EU towards social cohesion.

In the context of integrating social services into the norms and standards of the EU, the LSS provides a useful starting point for developing and elaborating a national social services policy document that takes full account of legislative frameworks, and which overlaps with public expenditure management and public administration. Under current administrative arrangements in Ukraine defining and elaborating the focal points for EU integration is neither linear nor straightforward given the disparate range of actors and agencies involved in the funding, management and delivery of social services. Indeed, if Positive Integration measures were to become integral to social services policy the challenges would intensify in both scope and depth. Under prevailing conditions, however, it is nevertheless a precondition that meeting the GoU's European Choice objectives will require a baseline framework that blends policy research and policy analysis with the formation of policy directions in order to determine how Policy Transfer Coordination and Negative Integration mechanisms for social services can be advanced - though policy dialogue – over the **medium term**. The ultimate goal being to facilitate a negotiated order that gives form and structure to Ukraine's European Choice.

Ideas, knowledge and research evidence have played, and will continue to play, a key role in Europeanisation in the context of Ukraine's integration with EU norms and standards. Indeed, ideas, knowledge and research evidence are essential for identifying policy choices that need to be made with regard to social services. The need for policy choices will, of necessity, need to be made in the light of research evidence on what works, what is cost-effective, and what fits well with prevailing EU norms and standards. Five stages can be identified as being of critical importance to facilitating policy dialogue within the domestic Ukrainian policy environment, and in the policy dialogue between the GoU and the EU:

- The problems which require action are identified. The goals, values and objectives related to the problems are set out;
- Important ways of solving the problems or achieving the goals or objectives are listed or identified. These are alternative strategies, courses of action or policies;
- The important consequences which would follow from each alternative strategy are predicted and the probability of those consequences occurring is estimated;
- The consequences of each strategy are then compared to the goals and objectives identified;
- Finally, a policy or strategy is elected in which consequences most closely match goals and objectives.

²⁷ See: Grabbe 2002

These five stages are not linear and will need to be accompanied by reflexive processes that allow:

- For policy deliberation and reflection;
- For relationships between key stakeholders in the policy elaboration process to be forged;
- For issues that are adjunct to social services [such as social privileges] to be assessed and analysed, and judgements made about how to manage and define the distinctive aspects of social services policy; and
- For terminologies and the use of language to be clarified.

Establishing Baseline Measures for the Integration of National Social Services Policy with Legislative Frameworks:

In order to facilitate the emergence of these five stages and the accompanying reflexive processes, the definition and specification of baseline measures will be required to guide and inform the emergence of an effective national level social services policy that is based on the LSS. As an illustrative guide the baseline measures can be divided into the **legislative and policy framing baseline** measures, which take account of the five stages delineated above, and focus on: *legislation and definitions, institutional roles and responsibilities for legislation and policy, and gaps and omissions in the legislative- policy interface*. The legislative and policy framing baseline measures will then need to be matched with **process baseline** measures, that take into account the incremental processes outlined above, and focus on: *achieving adaptation and elaboration; goal attainment, and establishing system stability and maintenance*. Taken together these baseline measures constitute the basic framework that can be used to determine the content and form of existing legislative frameworks, and provide a structure for identifying the steps required to facilitate policy dialogue on framing a national social services policy that eventually leads to integration with EU norms and standards. The legislative and policy framing baseline measures are depicted in Table 1.1 below, while the process baseline measures are depicted in Table 1.2.

Table 1.1: The Legislative and Policy Framing Baseline Measures²⁸:

Fundamental Legislation	Laws and Subordinate Acts
The Constitution of Ukraine	The Law on State Social Standards and Public Guarantees The State Classifier of Social Standards and Norms Specific Laws on Children, Elderly and Disabled ²⁹

²⁸ It should be noted that legislation on NGOs and its interface with the LSS is not included in this table. The Interface between the LSS and NGO legislation and the implications for social services policy is the presented in a separate assessment conducted by the FRSSU project entitled: *The Interface Between Legislation on Non-Government Organisations, Taxation and the Delivery of Social Services*, 2006

	Law on Social Services
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²⁹ For a **detailed analytical overview** of this body of legislation - and its bearing on framing social services policy – See Annex 1.

Table 1.2: Baseline Measures for Integrating Social Services Policy and Legislative Frameworks:

Process Baseline Measures	Explanation
Adaptation and Elaboration	Adaptation focuses on the steps required to improve that policy environment for the emergence of national social services policy that elaborates the LSS and its regulations; ensures that the rights and responsibilities of citizens and duties of the state are clearly defined; and facilitates approximation with EU norms and standards.
Goal Attainment	Goal Attainment focuses on specifying the policy goals of the LSS; identifying how the goals can be achieved in the context of the body of legislation depicted in Table 1.1, and the measures required to ensure that policy goals accord with EU norms and standards.
System Stability and Maintenance	System and Stability Maintenance focuses on assessing the extent to which the LSS is consistent with the body of laws depicted in Table 1.1, and on specifying the conceptual framework, content and focus of a national social services policy.

Applying the baseline framework outlined above to the Europeanisation of social services, and elaborating a concomitant national social service policy, needs to take account of that fact that fundamental legislation is principally concerned with the structure of prescriptions, the permissions, and prohibitions that apply to the definition of the *rights* and *responsibilities*³⁰ of citizens, and the *duties* of the state³¹. Thus fundamental legislation defines the laws and subordinate acts that will need to structure the governance arrangements within a national social services policy, and define the institutional arrangements and inter-governmental relations in this particular area of social policy.

However, the principles enshrined in fundamental legislation and their relationship with laws and subordinate acts can – under conditions of reform – be disjointed and idiosyncratic. In the Ukrainian context the degree of disjuncture and the presence of idiosyncratic features are accentuated by the fact that legislative and administrative responsibilities for social services are fragmented across different line Ministries [i.e. the Ministry of Labour and Social Policy (MoLSP), the Ministry of Education and Science [MoES], the Ministry of Health (MoH)] and the Ministry of Family, Youth and Sports (MoFYS)]³². In addition, financial responsibility for social services – as

³⁰ See Annex 2 for an elaboration on the rights and responsibilities of citizens.

³¹ The term ‘duties’ refers to responsibilities and accountabilities [financial, legal and administrative] that the State acquired with the framework of the Constitution.

³² See FRSSU Project report on: *An Assessment of Public Expenditure Management: Developing a Technical Framework for the Reform of Social Services* (2006a).

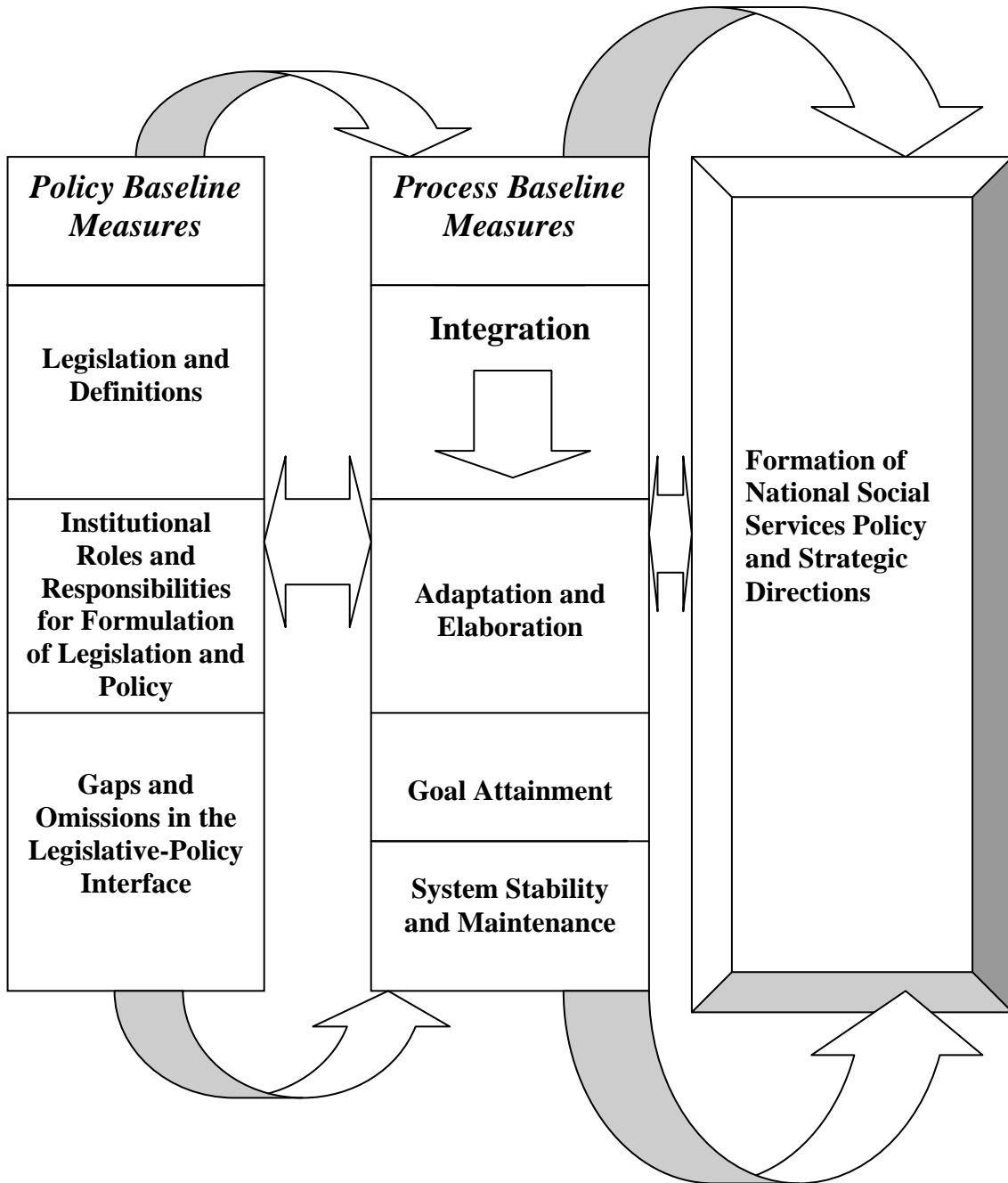
defined in the Budget Code – is divided between the Ministry of Finance [MoF], and the delegated functions of Oblasts, Cities and Rayons.

Thus the body of laws and subordinate acts depicted in Table 1.1 above have a formal bearing on the elaboration of national social services policy – and should at least in theory fulfil an integrative function with the fundamental law embodied in the Constitution. However, given the institutional arrangements for the administration and financing of social services policy, and its highly fragmented character, questions will arise as to the type of gaps, omissions, opportunities and threats that exist in the policy environment for ensuring effective implementation of the LSS, and the formation of a national social services policy that explicitly focus on:

- Expanding the range and scope of community-based social services provision;
- Reducing the dependence on residential service provision;
- Establishing a Balance of Service Provision Model for social services

The inter-relationship between the variables incorporated into the legislative and policy framing and process baselines can be depicted in the following form:

Diagram 1.1 Inter-relationships Between Baseline Measures



This illustrative framework is designed to ensure that analysis and recommendations for a national social services policy are based on essential features that characterise

the structural relationship between legislation and laws and subordinate acts. The framework is also designed to ensure that a national social services framework takes full account of:

- The extent to which the LSS can be complied and conformed to in the context of EU integration objectives;
- The extent to which the LSS [and its policy goals] can be clearly interpreted, and in a manner that effectively governs the activities, and defines the specific duties of the state, and the specific rights and responsibilities of citizens
- The extent to which the LSS provides effective sanctions that need to be enforced in the event of non-conformity with the law, and specifies by whom such sanctions [via incentives and coercive measures] will be applied in instances of non-conformity
- The identification of areas where further technical support and policy transfer measures are required in the context of the EUUAP and the new funding mechanisms that will be developed under the ENPI

It is anticipated that a focus on these particular areas will shape, inform and facilitate policy dialogue between domestic institutional actors. The next annex therefore focuses on the application of the policy and process baseline measures to the Ukrainian Constitutional Framework, their relationship to the LSS, the identification of factors that need to be considered for adapting and elaborating the frame for a national document on social services policy.

Annex 2

Framing a National Social Services Policy: The Constitutional Framework, the Law on Social Services, Adaptation and Elaboration

Overview:

The 1996 Ukrainian Constitution declares: “*Ukraine is a sovereign and independent, democratic, social, law-based state*” [Article 1]. This proclamation, along with the undertaking on human rights protection “*as the main duty of the state*” [Article 3] and membership of the Council of Europe [CoE] in the year prior to the adoption of the Constitution, marked a departure from the Soviet era when the communist party undertook the leading role in society¹. The Ukrainian legislative system – based on its Roman and Germanic origins - is rooted in the pandect system, where the main legislative sources are codified in laws, accompanied by a hierarchy of normative acts² with the principle source being the Constitution of Ukraine. In order to determine the scope for adapting and elaborating the frame for a national document on Social Services Policy it is essential that participants in the process have a full grasp of the current structures that guide and inform the formulation of legislation, and some of the characteristics and current weaknesses – particularly the impact of the absence of policy framing prior to the enactment of laws, and the steps needed to rectify this anomaly in the context of social services.

Against this background, this annex focuses on:

- The Constitutional Hierarchy of Legal Acts and the Basis of Legitimacy;
- The Codification of Legislative Acts and Policy Development
- Key Features in the Legislative Process in Ukraine;
- Constitutional Guarantees and the Social and Economic Rights of Citizens;
- Social and Economic Rights, Social Privileges and Social Services;

¹ The post-Soviet Ukrainian legal system draws on Roman and Germanic legal traditions. Within the framework of these traditions civil law prevails, and the main efforts have focused on the introduction of legal principles to replace the dogmas of soviet law. Civil law is based on Roman law which was once the common system of law in much of Europe. However, with the rise of nationalism in the 17th century civil law became fractured into separate national systems which brought about the development of separate national codes – the French Napoleonic Code, and the German and Swiss Codes being among the most influential. Because Germany was a rising power in the late 19th Century many countries adopted the German civil code. In many respects civil law served as the foundation for socialist law used in Communist countries but embedded with Marxist-Leninist ideas. It is estimated that around 75 laws passed during the soviet era are still in force in Ukraine. Article 3 of the *Law on Legal Succession of Ukraine*, September 12 1991, No 1543-X11 states that the Laws of the Ukrainian SSR and other acts approved by the Verkhovna Rada of the Ukrainian SSR are effective in Ukraine where they do not contradict legislation adopted after Ukraine acquired independence.

² Normative legal acts in Ukraine have different legal scope and validity depending on the law-making subject and which state body issues the act.

- Establishing a Framework for Dialogue on the Interface between Social Services Policy and Legislative Frameworks;
- The Rationale for Prioritising Areas for Policy Development in Social Services
- Concluding Observations and Recommendations for enhancing the Policy Environment for Social Services

The Constitution, Hierarchy of Legal Acts and the Basis of Legitimacy

The rule of law is recognised by the Constitution, and the appeals to the court in defence of guaranteed rights and freedoms. The provisions of the Constitution are norms of direct effect, and laws and other normative legal acts should be adopted in accordance with its provisions. The fact that the civil law basis of the legal system is code based³, there are a number of codified laws in main spheres of national legislation, including the Civil Code, the Budget Code, the Economic Code, the Criminal Code, the Land Code, the Family Code, the Customs Code, the Code of Civil Procedure, the Code of Criminal Procedure, and the Labour Code. Only the Verkhovna Rada is entitled to issue normative acts in the form of laws – which constitute the highest normative acts in Ukraine⁴ [i.e., they have greater legal effect compared to ordinary laws – see Codification of Legislative Acts and Policy Development below].

The next tier of legislation in Ukraine is secondary legislation – which consist of different normative acts issued in the form of decrees, resolutions, and orders. This body of legislation can be issued by: the President⁵, the Cabinet of Ministers [CoM]⁶, the National Bank, line ministries, and other state agencies. This body of law is adopted on the basis of, and in realisation of, general provisions of law. All secondary legislation has the effect of law within the hierarchy of the legal system. In pursuance of the laws of Ukraine, line ministries, state agencies and committees can issue subordinate acts in the form of resolutions, directives, regulations, instructions and orders that concern their specific sphere of competence and responsibility. In addition, local state administrations and local self-government bodies can issue resolutions, orders and decisions to ensure observance of laws and freedoms, the implementation of development programmes and delegated budgets. Table 2.1 below provides an overview of the hierarchy of public law in Ukraine:

³ Civil Codes are customary laws which are based on compilations of legal principles that are recognised as normative. However, codification is by no means a defining characteristic of a civil law system. In Sweden, Denmark, and Norway for example civil law systems remain largely un-codified whereas common law systems – such as Scotland – have codified parts of their law.

⁴ Since independence the number of laws have increased considerably and at a rapid pace. This pattern has led to significant gaps, omissions, and contradictions between laws. This trend has resulted in instability, over-regulation, and complexity.

⁵ The President issues decrees [*ukazy*] and directives [*rozporiadzhennia*].

⁶ The CoM can – within the limits of its competences – issue resolutions [*postanovy*] and directives [*rozporiadzhennia*].

Table 2.1. The System of Normative and Legal Acts in Ukraine

The Constitution of Ukraine⁷	
Legislation of Ukraine	
1.	The Laws of Ukraine [adopted by the Verkhovna Rada of Ukraine]
2.	Decrees of the President of Ukraine
3.	Decrees ⁸ and Resolutions of the Cabinet of Ministers of Ukraine ⁹
Acts of Central Executive Bodies of Ukraine	
1.	Orders of the Ministries of Ukraine
2.	Orders of the State Committees of Ukraine
3.	Inter-agency orders [approved by several ministries (i.e., state committees)] ¹⁰
Acts of Local Executive Bodies and Acts of Local Self-Governance	
1.	Directions of the heads of oblast and rayon state administrations
2.	Orders of the regional structures' directors [Ministries' and State committees' boards, departments]
3.	Decisions of oblast and rayon councils
4.	Decisions of cities', villages' and settlements' councils
5.	Decisions of the executive committees of the cities', villages' and settlement councils
6.	Directions of the cities' villages' and settlements' heads

Within the legal system all laws and other normative acts have to be adopted on the basis of the Constitution and must [under Article 2] comply with it. This means that laws can only be adopted if they comply with the Constitution, and to implement provisions of the law the CoM may adopt resolutions, and line ministries and state committees may issue orders. Resolutions and orders have to accord not only with their particular area of concern, but also with other acts that are in force within the body of Ukrainian legislation. Table 2.2 below provides an overview of the inter-relationship between the Constitution, laws and sub-ordinate acts – such as resolutions and orders:

⁷ International Treaties – such as the UN Convention of Human Rights and the European Convention on Human Rights and Freedoms – which are agreed as binding by the Verkhovna Rada are incorporated [under Article 9] into the Constitution.

⁸ The power of the CoM to enact decrees was observed during the period 1993-1994

⁹ The power to issue resolutions is based on the decision [Case No 17/81-97] of the Constitutional Court of Ukraine.

¹⁰ The practice of issuing inter-agency orders is common with regard to issues related to the jurisdiction of several ministries/state committees.

Table 2.2: Constitution, Laws and Subordinate Acts

Constitution of Ukraine [Fundamental Law]
Laws of Ukraine
Subordinate Acts¹¹
1. The Resolutions of the Cabinet of Ministers of Ukraine 2. The Orders of the Ministries of Ukraine 3. The Orders of the State Committees of Ukraine 4. Inter-agency orders [approved by several ministries/ state committees]

Under conditions of transition, there are many omissions and gaps at the level of laws, and it is not uncommon for these gaps and omissions to be filled by regulations issued by line Ministries. However, in keeping with the principles of the Rule of Law, subordinate normative acts [such as regulations] should not, in theory, substitute for the force of law. In practice subordinate acts do sometimes broaden the subject of regulation¹². Subordinate acts that broaden the subject of regulation, or contravene the respective law are by definition *faulty acts*, but are considered effective in so far as they operate under the *presumption of truth* in the act. The presence of faulty acts is not uncommon in transition states. In Ukraine responsibility for the removal of faulty acts, particularly those that are in contravention of the Constitution, is the specific function of the Constitutional Court¹³. However, the jurisdiction of the Constitutional Court does not extend to acts promulgated by line ministries, state committees or local executive bodies or local self-governance bodies¹⁴.

Codification of Legislative Acts and Policy Development:

Codification is an integral characteristic of most pandect systems, and is designed to ensure comprehensive legal regulation of individual areas that of importance to social

¹¹ There is a special procedure of registration for subordinate acts in Ukraine. The latter was introduced through the Decree of the President of Ukraine “*On the registration of normative and legal acts of the ministries and other authorities*” of 03.10.1992 No 493/92. In order to elaborate this decree the Cabinet of Ministers of Ukraine adopted the Resolution “*On Adoption of the Provision on the State Registration of normative and legal acts of the ministries and other authorities*” of 28.12.1992, No 731. However, the procedure introduced by the Decree and the Resolution does not extend to all normative and legal acts, but only to acts issued by central and local executive power bodies and to those acts that concern rights, freedoms and lawful interests of citizens, or that are of an inter-agency nature.

¹² Attempts to remedy this systemic anomaly were made in January 2000 when the Verkhovna Rada adopted the *Law On Normative and Legal Acts* which defined the types and legal effects of normative and legal acts, established the main principles and procedures for the drafting, adoption, their entry into force, regulating issues with regard to interpretation and systematisation. However, the President vetoed the law. The Verkhovna Rada were not able to reverse the veto.

¹³ Provisions of the Constitutional Court are set out in the Constitution of Ukraine [Chapter XI, Articles 147-153]. The Constitutional Court is empowered to make decisions with regard to issues of compliance of laws and other legal acts

¹⁴ The Administrative Code of Ukraine entered into force on September 1 2005. The code combines the legal rules that deal with relations between state bodies and citizens, and administrative offences.

and economic relations. Within the hierarchy of law, codified legal acts have greater legal affect compared with *ordinary laws*. The majority of ordinary laws that affect public policy [including social policy] are regulated through the adoption of individual laws – i.e., normative and legal acts with defined subject spheres of legal regulation. As consequence of this approach such laws tend to focus on narrow segments of social life or specific issues. Table 2.3 below provides an illustration of the relationship between codified legislation and ordinary laws:

Table 2.3: Distribution of Laws According to the Legal Hierarchy

The Laws of Ukraine	Codified legislative acts e.g., Civil Code of Ukraine, 16.01.2003 No 435-IV, Budget Code of Ukraine 21.06.01. No 2542-III, Principles of Legislation for Health Care of 19.11.1992 No 2801-XII
	Ordinary laws e.g., The Law of Ukraine “On Social Services” of 19.06.2003 No 966-IV; The Law of Ukraine “On Local Self-Governance on Ukraine” of 21.05.1997 No 280/97-VR

Within the legal hierarchy ordinary laws can be broadly categorised into two groups:

- *Constitutional Laws*: which are adopted on the basis of the provisions of the Constitution and directly point out specific social relations that are of primary importance [e.g., citizenship, elections and referenda, status and organisation of local self-governance, property, fundamentals of social protection etc] that have to be defined/established solely by law¹⁵; and
- *Special Interest Laws*: which regulate other spheres of social relations - although there is no direct reference in the Constitution of Ukraine that [such relations] should be regulated by way of adopting individual laws – examples include, the Law on the Rehabilitation of the Disabled in Ukraine¹⁶ – which provide special measures of social protection to specific groups of citizens, or provide specific social guarantees to nominated groups of citizens¹⁷.

Key Features of the Legislative Process in Ukraine:

¹⁵ A list of the areas is specified in the Article 92, as well as in a number of other provisions, of the Constitution of Ukraine.

¹⁶ Verkhovna Rada Law No 2961-IV October 6 2005.

¹⁷ It is possible to sub-divide Special Interest Laws in to two as well given that some of these laws have more general applications than others. For example, the *Law on the Foundation of Social Protection of Disabled People* (1991) consolidates a body of law that pertains to the governance and regulation of social relations for all disabled citizens; while other laws – such as the *Law on the Rehabilitation of Invalids* (2005) - refers to a more narrow group of citizens that fall within the framework of the 1991 Law and is more specific in its procedures and regulatory framework.

In Ukraine the legislative process¹⁸ is characterised, as in most civil law legal systems, by the relationship between three major systemic components – cognition, action and outcomes – which are combined to complete the cycle of law making. Within the logic of the system all social relations are governed by written regulations, rather than through legal customs or legal precedents. Thus, although the legislative process is complex and administrative in nature, the result is expected to shape social relations and regulate society. Within this system two broad approaches can be taken to implement legislative regulations that govern social relations:

- The adoption of legislation that regulates existing customs or practices in social relations;
- The adoption of legislation that simulates social relations that are likely to emerge in the future or not yet established in practice.

These provisions mean that the legislative process can: respond by regulating social relations that emerge; respond by re-regulating existing practices that have undergone substantial changes; or develop responses to anticipated future practice. In theory these approaches allow – in the context of the GoUs European Choice - for an integrated approach to the development of policy that takes account of existing legislation and regulations and future developments that need to accord with the process of Europeanisation. However, in practice the flexibility afforded by the legislative process is not appropriately utilised because of a fundamental absence of adequate prior policy analysis. This weakness can – if not adequately tackled - result in public alienation from government and its policy products may be undermined. In Ukraine the absence of prior policy analysis has, based on empirical evidence, tended to encapsulate the following features – all of which have profound consequences for the quality of public policy:

- The drafting of laws is undertaken by departments with no specialised law drafting practice, or by legal departments that do not have substantive knowledge of the policy area;
- The contracting of local external consultants to draft laws – which opens up the risk of ‘state capture’ given that the consultants employed are drawn from interest groups – such as Non-Government Organisations [NGOs] that have particular orientations that may not serve the public interest – which result in heavier burdens on policy development within Ministries and Parliament, and accentuate difficulties in the implementation phase due to severe inconsistencies and shortcomings in the drafting process;
- Laws are drafted in a policy vacuum without a clear vision of what the is expected to tackle;
- Inadequate levels of definition given to concepts and ideas which are then thrust into the public policy arena;

¹⁸ The notion of ‘legislative process’ refers to the process of reviewing and publishing laws not only laws but also other legislative acts – including Presidential Decrees and Resolutions of the CoM.

- The copying of foreign legislation without taking account of the Ukrainian policy environment¹⁹;
- Draft laws are shared for inter-ministerial consultation and review only after the core legislative text is an advanced stage of preparation – when it is too late review or revise key assumptions or the policy premise on which the law has been structured;
- The financial and budgetary aspects of new legislation is often the most problematic since, more often than not, these issues are completely overlooked. Where legislative impact is taken into account it is often restricted to calculation on State budget subventions, thus ignoring the impact for equalisation transfers and the impact on local revenues. Costs and benefits in total or even total income and expenditure are not taken into consideration. As a consequence a holistic assessment of the benefits, or the transition costs, that are expected from a particular law are lost.

The outcomes from these acts of omission in the policy development process mean that opportunities for integration, adaptation and elaboration, goal attainment and system stability and maintenance [see Diagram 1.1 Annex 1] in the context of developing new approaches to emerging problems are not fully utilised. It also means that the goals of policy-transfer coordination, and opportunities for institutional learning from other EU member states [including the 10 countries that acceded in 2004], are undermined.

In broad terms the legislative process in Ukraine focuses on the generation of two the types of legal outcomes: **Lawmaking** – which focuses on the development and adoption of legal acts; and **Regulation** – which focuses on the development and adoption of statutory instruments. In many respects the development, passage and enactment of laws is well defined and formalised²⁰. In countries like Ukraine – where the institutional framework is weak - lawmaking and institution building are processes that cannot always be distinguished. Indeed, in Ukraine the development, passage and adoption of statutory instruments is only partially formalised. Moreover, because the development of specific pieces of legislation are often related to other areas of public policy and/or legislation, other types of regulation – such as CoM Resolutions²¹ – have to be taken into consideration, and often Resolutions need to be

¹⁹ In highlighting this particular weakness it is important to note that the author is not implying that copying foreign examples is necessarily inappropriate, but the need to acknowledge an understanding of the local context is paramount [See: World Bank, 1995, pg.11]. Where institutions are stable and have the capacity to adapt to change, legal reform slips into a process of social change in a relatively unproblematic way. This is far from the case in the transition from command and control type legislative frameworks to democratic and discursive approaches where institutional frameworks are weak [See: Grindle, 1997; and World Bank, 1997 pg.151]. Indeed, drafting laws based almost word for word on the laws of other countries is likely to be counter-productive as it is unlikely that such laws will ever be fully implemented, let alone understood by local stakeholders. Moreover, the approach can breed or reinforce public cynicism towards the legal system.

²⁰ The processes involving the development, introduction and enactment of laws are directly defined in the Constitution, and in *Parliamentary Procedures* [129a/94-VR] adopted on July 27 1994.

²¹ See Annex 2 for a schematic overview of the structures and procedures for the passage of Cabinet Resolutions.

developed and elaborated to clarify the Law after it has been passed. This means that a package of relevant draft regulations have to be prepared fairly soon after the law comes into force. This however is not established practice for many pieces of legislation.

Thus aside from the absence of coherent national policy strategies [or frameworks as defined in Annex 1] being prepared ahead of the new legislation, the regulatory regime to guide implementation of laws is often absent. Consequently many laws are deemed to be declaratory in nature rather than substantive in form. Under current practice legislation drafted by line ministries and presented to Parliament, as bills, are expected to go through the following stages:

- Development of a legislative concept for the would-be law;
- Assessment of existing regulations and relevant best practice;
- Development of the draft bill
- Examination of the draft bill

Once bills have been formulated they are introduced into Parliament and put on the Orders of Business of a plenary meeting²². Those eligible to set forth lawmaking initiatives include:

- The President
- Members of Parliament
- The Cabinet of Ministers, and
- The National Bank

Draft bills the President declares urgent receive priority consideration by Parliament²³. In practice the major contributions to the law making process are:

- Members of Parliament [Parliamentary-based lawmaking]
- Government Committees [Government Department-based law making]

Once a draft bill²⁴ is registered the legislative initiative is usually referred to the Standing Committee, and concurrently to the Legislative Committee, who then hold a preliminary discussion on the draft bill and make proposals on to further it

²² It is up to Parliament to decide whether to accept the Orders of Business, and which matters will be debated by the plenary and in what order.

²³ Article 93: The Constitution of Ukraine.

²⁴ See Annex 3 for an overview of the drafting of legislation for preliminary debate

development. In principle when draft bills or other statutory instruments are presented to Parliament, they usually have to be accompanied by a rationale [Examination Report] that explains why the law is necessary, and outline general principles of the would-be Law, where it slots into the overall legislative framework, and provide an overview of projected socio-economic costs. The explanatory note that accompanied the bill is also expected to state which experts contributed to the development of the bill's concept. Before the bill can proceed to its second reading, the Head of the Standing Committee or the Clerk of the relevant Parliamentary Committee will arrange for the bill to be revised based on the first reading. The drafts are usually examined by clause and section. The discussion may result in some sections of the draft in general being returned for re-drafting, and each amendment is discussed and voted on separately²⁵.

When the draft bill is debated in Parliament MPs discuss the general principles, put forward proposals and comments and decide whether to print the draft and make it available for wider public consideration. This approach provides an opportunity for MPs to discuss the bill in detail with particular constituencies and interest groups and to reflect on comments and proposals put forward during earlier discussions. The law making process ends when the law is printed²⁶. To become a generally binding command of the state, regulations have to be developed and objectified, and published in manner that is generally accessible^{27, 28}.

Constitutional Guarantees and the Social and Economic Rights of Citizens

Legal processes in Ukraine are informed by principles enshrined in the Universal Declaration of Human Rights [UNDHR]²⁹. The UNDHR is incorporated into the Constitution of Ukraine which affords protection to a wide range of social and economic rights. The UNDHR proclaims, for example: "Everyone has a right to work, to free choice of employment, just and favourable conditions of work and to protection against unemployment" [Article 23]. It also provides a "right to equal pay for equal work", a right to form and join trade unions for protection", and a right to "just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity and supplemented, if necessary by other means of social protection." More broadly still the Declaration gives "everyone" a "right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right

²⁵ See Annex 4: for an overview of the enforcement procedures that follow once a draft bill has commenced its first reading.

²⁶ See Annex 5 for an overview of the Law Adoption and Enforcement Procedure

²⁷ Under Article 57 of the Constitution the printing of laws is a prerequisite for a law coming into force, and is the legal grounds on which the presumption of legislative awareness is based.

²⁸ Under Article 51 of the Constitution the Constitutional Court has a key role in determining whether laws and other regulations passed by the Verkhovna Rada are in line with the Constitution. This oversight role also extends to acts and resolutions passed by the Cabinet of Ministers, and acts adopted by the Parliament of the Autonomous Republic of Crimea. The President of Ukraine, Members of Parliament [providing they form of a quorum of not less than 40], The Supreme Court, the Parliamentary Ombudsman, and the Parliament of the Autonomous Republic of Crimea

²⁹ UN General Assembly, Resolution 217A(11), December 10 1948

to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control [Article 25].

The Declaration also provides a “right to education” and to “social security in accordance with the organisation and resources of each state” [Article 22]³⁰. Likewise the Constitution of Ukraine also incorporates the International Covenant on Economic, Social and Cultural Rights [ICESCR]³¹ whose articles make provision for:

- States which ratify the covenant undertakes to take steps, individually and through international assistance and co-operation to achieve full realisation of the rights recognised by the Covenant [Article 2];
- The rights to social security and social insurance [Article 9];
- The right to an adequate standard of living, including food, clothing and housing [Article 11];
- The right to health [Article 12];
- The right to education [Article 13]

In the definition of the primary characteristics of the state, the Constitution of Ukraine [Article 1] declares that Ukraine is a **social state**, which means that the state will aim to act in accordance with the UN Declaration on Human Rights[UNDHR], and the International Covenant on Economic, Social and Cultural Rights [ICESCR]³². It is notable that during preparations on drafting the Constitution, the Venice Commission of the CoE³³ the Commission made the following observations³⁴:

The list of human rights appeared to be exhaustive and in line with international instruments, but that some of these rights seem to be more goals than real, enforceable rights.

The GoU, at the time, explained to the Venice Commission that this was due to the constitutional tradition prevailing in the country, and that people might not appreciate a constitution without such provisions³⁵. The response of the GoU to the observations

³⁰ Ukraine has also ratified the Council of Europe [CoE] Convention for the Protection of Human Rights and Fundamental Freedoms [Rome, April 11 1950] which draws its principles and articles from the 1948 Universal Declaration of Human Rights.

³¹ UN General Assembly, Resolution 2200A (XXI) December 16 1966 – which entered into force on January 3 1976.

³² See Annex 6 for the list of the fundamental social and economic rights protected by the Constitution of Ukraine.

³³ See Annex 1, footnote 8

³⁴ Meeting on the draft Constitution of Ukraine, Kiev 31 May – 2 June 1993. See: [http://www.venice.coe.int/docs/1993/CDL\(1993\)042-e.asp](http://www.venice.coe.int/docs/1993/CDL(1993)042-e.asp)

³⁵ *Ibid.*

made by the Venice Commission suggest that the interpretation of these rights were being ‘uploaded’ from the Soviet Constitution with scant attention given to whether the social and economic rights enshrined in the Constitution could be enforced under conditions of transition from a command-and control economy to one based on democratic processes and a market-economy. This raises a larger implication, with direct relevance to the question of social and economic rights. All constitutional rights have budgetary implications; all constitutional rights cost money³⁶.

The underlying argument behind the observation made by the CoE on whether rights, as defined in the Constitution, were mere goals or enforceable can be characterised in the following form: if the government plans to protect private property, it will have to expend resources to ensure against both private and political intrusion. If the government wants to protect people against unreasonable searches and seizures by the traffic police, it will have to expend resources to train, monitor, and discipline the traffic police. If the government wants to protect the freedom of speech, it must at a minimum, take steps to constrain its own officials and agencies. Now it is possible that some rights will be unusually costly – in ensuring, for example, that everyone has housing [as defined in Article 47 of the Constitution of Ukraine] it will be necessary to spend more than must be spent to ensure that everyone is free from unreasonable searches and seizures by the traffic police. Such comparisons are empirical and contingent; they cannot be made on *a priori* basis. Thus providing social guarantees and social privileges – as part of social policy - is more expensive than the provision of social services, or the management of a system to protect property rights. These are the kinds of distinction – which are quantitative rather qualitative in nature – that the CoE arguably saw as central to their observations on the way social and economic rights were defined in the Constitution.

³⁶ See Holmes and Sunstein, 1999

Social and Economic Rights, Social Privileges, Social Guarantees and Social Services:

It is clear from the analysis of the Constitution that social services are not explicitly mentioned under the framework of economic and social rights. However, there is sufficient empirical and policy-related evidence that social services are considered an integral part of the social protection system - as defined under Article 46 of the Constitution³⁷ - given that the organisational arrangements for the delivery of social protection are tied to a network of over 820 residential institutions - that provided 'protection' to children, the elderly and disabled - under the legislative and managerial remits of the MoLSP, the MoH and MoES. However, the introduction of the LSS is bound up with two inter-related features that are central to the elaboration of social policy:

- Diversification of the way social services have traditionally been defined and delivered [i.e., through residential institutions] and expanding the range of services through community-based alternatives³⁸;
- The legacy of a social protection system tied to categorical and occupation-based principles³⁹ [i.e., norms] which are used to assign entitlements, social guarantees and social privileges to distinct groups of citizens [e.g., war veterans, disabled people, particular groups of children, and people affected by the Chernobyl catastrophe]⁴⁰ through the Law on Social Standards and State Social Guarantees⁴¹.

³⁷ See Footnote 24 Annex 1 for comments on the way social services are – in many transition countries – conceptually bound with cash benefit systems. The exception to this rule is in countries of former Yugoslavia where social work and social services – under the socialist welfare state - had a much more pronounced institutional, professional and financial framework that underpinned community and residential based social services [See: ILO Report on Good Practices in Social Services Delivery in South Eastern Europe www.stabilitypact.org/soc-cohesion/socserv-delivery.pdf]

³⁸ For an overview of policy pronouncements on the development and elaboration of community-based social services between 1994 and 2005 see the FRRSU Project report entitled: *The Interface Between Legislation on Non-Government Organisations, Taxation and the Delivery of Social Services (2006b)*, pp 17-19.

³⁹ The principles of categorical and occupation-based social guarantees and social privileges is based on the notion of providing benefits and services based on defined social categories [e.g., disabled people] and occupational groups [e.g., ex-military service men and women] rather than on an assessment of needs that help with targeting social policy instruments to particular policy goals of poverty reduction or the reduction of social exclusion. The system of categorical and occupational-based social guarantees has been reinforced by decision taken by the Constitutional Court – examples include *Decision No 8/99 of July 6 1999 on establishing the non-conditional principle for protecting worker groups irrespective of their incomes or the availability of budget funding*; *Decision No 7/99 of March 17 2002 on Benefits, Compensations and Guarantees*; *Decision 7/2004 of 17 March 2004 on the Social Protection of Servicemen and Law Enforcers*] and *Decision 20/2004 of December 1 2004 on the Termination or Limitation of Benefits, Compensations and Guarantees*.

⁴⁰ For a detailed analysis of social privileges and social guarantees in the Ukrainian social protection system See: World Bank (2000) *Social Safety Nets and Poverty*.

⁴¹ Verkhovna Rada, No 2017-111, October 5 2000.

The linkage between social services, social privileges and social guarantees is both policy-based [i.e., rooted in the way laws are drafted – see Annex 1] and practical in that citizens in receipt of social services often also lay claim to social privileges and social guarantees. Thus the development of a national social services policy cannot be totally divorced from an account of social privileges and social guarantees. However, legislation and policy formation towards the provision of social services and the definition of categorical and occupation based entitlements and the system of social privileges and social guarantees have not – in a chronological sense - evolved in tandem. Indeed, the evolution of social policy in these two areas can be schematically delineated into the following chronological periods:

- In the period 1991-1995 emphasis was given – in the immediate post Soviet era – to defining categorical and occupation-based social guarantees and social privileges;
- In the period 1996-2000 the emphasis was on codifying the system of social guarantees and social privileges. The elaboration on the codification process was linked to elaboration of the Constitution of Ukraine, the definition of social state, and the subsequent codification of the system of social guarantees and privileges under the rubric of the *Law on State Social Standards and State Social Guarantees* which was promulgated in 2000;
- In the period 2001-2004 there was a political interregnum on new policy developments. Significant efforts, instead, focused on implementation of the *Law on State Social Standards and State Social Guarantees*, and defining the budgetary constraints. However, it was within this period that the Law on Social Services was developed and came into force in 2003, and also when the Ukraine Social Investment Fund [USIF] – which has a social services component - became operational.

In the period between 2004 – 2006 social services has risen up the policy agenda, and is reflected in the growing number of international policy transfer and technical assistance projects [e.g., EU-TACIS, DFID, USAID], increased emphasis on the development of regulations⁴² to elaborate the Law on Social Services, the emergence of an Inter-ministerial Working Group on Implementation of the LSS, and the formation of the Ministry of Family, Youth and Sports [MoFYS] which incorporates directorates on family and children’s affairs, and the promulgation of the *Law on Social Work with Children and Young People*⁴³ which introduced and defined the role and function of ‘social work’ as a distinct form of professional practice.

Establishing Dialogue on the Interface Between Social Services Policy and Legislative Frameworks:

⁴² Regulations are being developed under the procedure of COM Resolutions. Among the regulations that have been developed these have included: Licensing procedures, Procedures for the delivery of Paid Social Services, Procedures for Granting and Paying Reimbursements for the Delivery of Social Services, Approval of Volunteer Activities in Social Services, and the Assessment Criteria for Proposals on Obtaining Budget Funds for Social Services.

⁴³ Verkhovna Rada, N6, 147, 2005 - See Annex 1

The development of the LSS clearly marks a step change in the GoU's approach to social services – particularly in elaborating Article 46 of the Constitution. The principles underpinning the LSS also represents an affirmation of Ukraine's membership of the Council of Europe [CoE], in which all member states are obliged to actively promote social cohesion through fulfilment of the following objectives:

- Guarantees of adequate levels of social welfare;
- Promotion of equal opportunities for all citizens;
- Prohibition of social exclusion and discrimination;
- Ensuring protection of the most vulnerable groups in society;

In the context of Ukraine's membership of the CoE and the new EUUAP, the step-change opens-up opportunities for the GoU to:

- Embark on a process of policy Europeanisation in the field of social services;
- Ensure that the integration of social services policy and legislative frameworks facilitate the emergence of an administrative system that provides answers to the following questions: What needs to be adapted and elaborated? What goals need to be achieved? And, What needs to be stabilised and maintained?
- Facilitate measures that enable the creation of a Balance of Service Provision Model⁴⁴.

These opportunities have to be translated into workable policies that aim to:

- Reduce the use of residential service provision and increase the scope of community-based social services provision in line with policy stance of *Towards the People* – which states that the policy objective, within the framework of social protection, is to: “...solve the problems of poverty, and increase the quality of social services in order to approach the European level and enlarge the circle of those who render such services”
- Reduce the contested policy terrain that has emerged in the wake of the LSS, and improve utilisation of the LSS as the basis for moving towards the Europeanisation of a national social services policy drawing on the operational principles of Article 14⁴⁵ of the European Social Charter;
- Capitalise on the EUUAP and the scope it opens up to embark on an active process of Policy-Transfer Coordination and lesson learning through

⁴⁴ For an elaboration of the **Balance of Service Provision Model** in social services see the FRSSU project report entitled: *Public Expenditure Management for the Reform of Social Services* (2006a)

⁴⁵ Although Ukraine has not ratified the European Social Charter of the CoE, there are, in Constitutional terms, no apparent contradictions between the operational principles of Article 14 as a means of informing policy in the context of the GoU's policy towards improving the quality of social services to meet European standards. Article 14 of the Revised European Social Charter [1996] stipulates the right of citizens to use social services. Article 14 does not contradict Article 46 of the Constitution of Ukraine.

Twinning, TIAEX, and specific technical assistance programmes and projects through the new ENPI funding mechanism [that will replace TACIS in 2007]; and to balance these measures with inputs from other multi-lateral and bilateral sources

- Redress the highly fragmented organisational arrangements that currently dictate the way policies on social services are articulated and implemented. Of necessity this will need to take account of measures for realigning and streamlining the way responsibilities for social services are currently organised at the central level [i.e., across 4 line Ministries: MoLSP, MoES, MoH and MoFYS], and the way social services are managed and co-ordinated at local level [i.e., between Oblasts, Cities and Rayons]
- Specify a policy structure that helps take account of how the interface between social services and the system of social privileges and social guarantees can be rationalised, streamlined and effectively targeted in a manner that shifts the focus away from categorical and occupation-based principles towards a framework based on promoting social cohesion and the rationalisation of measures for the reduction of income poverty and inequality. The policy structure will need to draw distinctions between measures that are effective for targeting social transfers, social privileges and social guarantees; and distinctive measures that are effective for targeting social services.

The Rationale for Prioritising Areas for Policy Development in Social Services:

The rationale for pursuing the opportunities outlined above is, in the context of the LSS, linked to the following evidence-based observations that characterise the policy environment of social services:

Reducing Residential Services and Expanding Community-Based Social Services:

Residential social services dominate the practical orientation within which social services are delivered in Ukraine. In 2004, for example in residential institutions [elderly and disabled adults, and disabled children] that fall under the legislative remit of the MoLSP total expenditures based on subventions from the state budget and equalisation transfers amounted to UAH 389.7 million, while expenditures on territorial centres that provide community-based domiciliary services to elderly and disabled people amounted to UAH 257.1 million. The figures for 2004 are set against the backdrop of a 200 per cent increase in funding to residential institutions for disabled children between 1998 and 2004, and by a 250 per cent increase in funding to residential institutions for elderly people and disabled adults over the same period. In the same period expenditure on territorial centres increased by less than 10 per cent.

In the MoH – which is responsible for administering 50 residential institutions for children aged 0-3 – absolute expenditure between 2002 and 2004 increased by 26 per cent; while 196 residential institutions [for children aged over 3, for children without parents (“orphans”), and children with learning disabilities] that fall under the remit of

the MoES increased by over 90 per cent between 2002 and 2004. The MoFYS – [which is a new Ministry, its remit having previously been performed by a State Committee] – which provides community-based social services through a network of social service centres to families, children and young people, saw expenditure under the State Budget Law for 2004 and 2005 decline by 2.1 per cent⁴⁶. Overall the number of residents in residential care homes for the elderly administered by the MOLSP increased by 14.7 per cent between 1998 and 2004, and just over 50 per cent were under 60 years of age; in MoH residential institutions the number of residents increased by 6.7 per cent between 1998 and 2004; and in residential institutions administered by the MoES the number of children in “orphanages” increased by just over 47 per cent, while the number of children in other types of residential institutions administered by MoES increased by 12.5 per cent between 1998-2004. It is unlikely that these trends can be sustained over the medium term, and it is unlikely – given the financial constraints of meeting the needs of residents and maintaining the physical infrastructure – that the rights of residents can be fulfilled in accordance with the Constitution.

The Contested Terrain of the Law on Social Services:

The LSS originated as an initiative within the MoLSP. The initial draft law was largely based on consultations between officials in this Ministry and a small number of NGOs that are entitled to State funding⁴⁷. None of the other line Ministries [i.e., MoES, MFYS, and MoH] were actively involved in the initial drafting process. However, after the initial draft had been agreed it was circulated to these Ministries for consultation. Their view and opinions were subsequently incorporated into draft before it was submitted – via the Cabinet of Ministers⁴⁸ - to the Verkohvna Rada. According to administrative procedures the Cabinet of Ministers Office is expected to issue an Examination Report that incorporates particular features [see page 31]. However, in the case of the LSS no assessment of socio-economic costs and benefits were undertaken. Despite the regulatory nature of the contents of the bill – e.g., licensing, the separation of commissioning and service delivery functions, and the financial implications for local tiers of government – many of the deliberative phases [see Annexes 2-3] were essentially by-passed. The bill was thus subject to only scant scrutiny during its passage through Parliament and was passed into Law after its first reading in 2003⁴⁹.

⁴⁶ All data collated from MoF, State Treasury, and State Statistics Committee sources. For a fuller analysis of the demographic and financial dimensions of these patterns of expenditure see the FRSSU Report entitled: *Demographic Trends and Future Demand for Social Services* (2006c).

⁴⁷ For an overview and analysis of NGOs entitled to State Budget funding see the FRSSU project report entitled: *The Interface Between Legislation on Non-Government Organisations, Taxation and the Delivery of Social Services* (2006b).

⁴⁸ No initiative by a Ministry or State Committee [i.e., Central Executive Body] that becomes a bill can be introduced into Parliament unless the Cabinet of Ministers grants its approval.

⁴⁹ Informal accounts of the LSS passage through Parliamentary suggest that many MPs found the goals and purpose of the Bill incomprehensible, and conceptually struggled with the distinctions between social services, social privileges and social guarantees.

Thus although the LSS was bringing into force a step-change in policy that had wide-ranging ramifications under Article 46 of the Constitution, and for the way the State organised the delivery and funded social service provision – particularly with the regard to roles envisaged for Non-Government Organisations – it has come against a number of attempts Members of Parliament [MPs] – backed by consortiums of local NGOs - who have sought to reopen debate and re-engage Parliament in the policy implications of the LSS and to clarify and streamline its provisions. The first attempt, made in June 2004, was by MP A.S. Matviyenko under Registration Number 5254. The bill submitted by MP Matviyenko secured the backing of 40 MPs and was included in the Parliamentary agenda for consideration. The bill was reviewed by the Parliamentary Committee for Pensioners, Veterans and the Disabled, and then went to the Standing Committee for revision. The bill was ultimately approved and entered into force. It is this 2004 version of the Law that is currently in force.

Simmering dissatisfaction continued with the provisions of the 2004 version of the LSS, and in the autumn of 2005 a second attempt was made by MP V.I. Konovaliuk under Registration Number 7212 to revise the LSS. In November 2005 – following the convening of a Parliamentary Club⁵⁰, a revised version of the LSS was presented to Parliament – by MP Kisse - and sent for comment to MoLSP. On 14 March 2006 the new Bill was entered the second reading stage under the auspices of the Parliamentary Committee for Pensioners, Veterans and Disabled. However, MPs raised a number of issue and concerns during the second reading, and the bill was directed for re-drafting and re-consideration in preparation for a fresh second reading⁵¹.

Given the lobbies that stand behind the attempts of MPs to revise the structure and content of the LSS future attempts to revise this particular law cannot be discounted. However, the underlying issues that have promoted these attempts rest primarily on trying to use law to determine the content and goals of policy. This reflects a command –and control approach to policy development. It would therefore be pertinent for the GoU to ensure that the development of a national policy on social services sets out the goals and purpose of the LSS and the regulatory objectives. The national policy should, as far as possible, focus on the following issues⁵²:

- What is the precise nature of the problems [e.g., finance, demographics, decentralisation and territorial reform, licensing, establishing a balance of

⁵⁰ A Parliamentary Club is a forum – supported by the Effective Legislation Foundation - where MPs can meet with citizens groups and NGOs to take sounding on matters of public policy.

⁵¹ The MPs who submitted the revised Bill in March 2006 lost their seats during the Parliamentary elections in April 2006. The bills have therefore been revoked and cannot be reconsidered – in accordance with *Parliamentary Procedure 129a/94-BP* (Part 4, Article 6.2.11) of 27 July 1994 – be reconsidered by the new Parliament that was elected. This means that the same Bills cannot be reconsidered, but does not preclude new Bills on policy matters central to the LSS being presented to Parliament.

⁵² It is anticipated that the FRSSU Reports delineated in footnote 1 of the Introduction will, together with this report, inform deliberations and policy dialogue on the content of a national social services policy.

service provision, units costs and cost effectiveness, auditing and quality control etc] to be dealt with, and what are the policy objectives of the LSS?

- What are the possible options for giving effect to the desired policy and which of these options is preferred?
- Should the options be realised through legislation or by other non-legislative means?
- Which authorities or agencies should/will be given specific and clearly defined responsibilities for putting the legislation and policy into effect?
- What are the essential legal, administrative, and financial mechanisms necessary for making the policy effective, and making it workable?

A framework for decisions on questions such as those listed above are necessary because they provide the foundations upon which effective work can be done to link legislative frameworks with social services policy, and establish a sound basis for the future elaboration of relevant legislation as EU integration processes deepen.

The EUUAP, Negative Integration and Policy Transfer:

The EUUAP is designed as an enabling framework aimed at facilitating the Europeanisation of public policy, and supporting the GoU to achieve its 'European Choice' objectives. Underpinning this common goal is the process of policy transfer coordination. However, policy transfers work most effectively when the government is able to set the directions it wishes to take, and is able to shape the policy environment in consultation with all relevant stakeholders. In considering specific actions that would ensure effective performance in social services, it is important to remember that the main reason for reform is to achieve transition from the Soviet-style of government – whose overriding role was to control and allocate resources – to a form of government whose key function is to provide the enabling policy environment and regulate societal relations. Thus the role of policy transfers – under the EUUAP – is to create procedures and structures, which would support this new role for government.

Under EU law there are no specific provisions that apply to policies on social services i.e., the absence of positive integration measures⁵³. However, within the framework of the EUUAP negative integration and policy transfers⁵⁴ do have a hand in facilitating the enabling environment – particularly through the Twinning arrangements, the TAIEX mechanism, and programmes and projects to be funded under the ENPI. The development of a national social services policy document would enable the GoU to negotiate and prioritise the range and type of policy transfers

⁵³ See Annex 1

⁵⁴ *ibid.*

that would be applicable to social services in Ukraine – particularly in relation to experience, knowledge and techniques in the following cross-cutting areas⁵⁵:

Internal Control and Management:

Fiscal control: with a focus on the utilisation of limited resources to achieve specific objectives in social services; the definition of outcomes to be achieved and the assessment of costs; the reprioritisation of expenditure in accordance with the government's policy objectives; methods of reducing costs and improving effectiveness of services; improve financial and outcome auditing to account for how public money is spent;

Improving Accountability: with a focus on developing and improving the understanding of officials on what is expected of them – particularly with regard to techniques and approaches to policy analysis for social services and the development of recommendations, and improving horizontal and vertical communication across central and local tiers of government;

Improving Efficiency and Effectiveness: with a focus on improving regulatory decision making that helps define what regulatory institutions need to be put in place – that support the transfer of European norms and standards - at central and local levels for social services, and ensure that: (a) transaction costs are contained, (b) opportunities for government failure are reduced by avoiding over- and under-regulation, and (c) ensure that regulatory framing takes account of administrative and incentive costs for providers of social services

Policy Design and Management:

Strengthening Capabilities: with a focus on methods and approaches for assessing the skill mix required to perform key tasks in social services design and management, the development human resource plans; establishing quality benchmarks; methods for striking a balance between managing day-to-day tasks and developing medium-term strategies; improving trust between public officials and citizens;

Programme Design and Planning: this includes the development of sound practices and processes for policy analysis and managing information and technical advice for social services; the use of programme cycle management techniques and approaches, methods for risk assessment and risk mitigation; and how manage change in rapidly evolving policy environment;

Service Improvement Management:

Improving Transparency: through the acquisition of expertise in public consultation and the management of feed-back on social services; streamlining internal decision-making processes so that the public have a clearer understanding of what is being done on their behalf; techniques and approaches for improving inter-departmental and inter-ministry co-ordination;

⁵⁵ These crosscutting areas of policy complement the technical analysis and recommendations delineated in the evidence-based reports compiled by the FRSSU – including this report.

Evaluation: including the approaches to the performance of system wide and systemic reviews on social services; public surveys on citizens' satisfaction with social services; the development of links between evaluations and policy development; links an systems for monitoring as part of a wider system of evaluation – including financial and non-financial audits.

Regularisation of Practice: which include systems for improving reliability and quality control of social services; systems and approaches for the design of, and ensuring compliance, with regulations; identifying, assessing and addressing barriers to change; staff training and staff development in key areas of policy and practice.

Fragmented Administration of Social Services:

The horizontal fragmentation of social services across the legislative remits of four line Ministries at the central level, and vertically down to the delegated budgets of Oblasts, Cities and Rayons is a highly complex and cumbersome administrative structure with which to engage in the reform of social services in line with the objectives set forth in the GoU's *Towards the People*. In practice different groups of children and disabled people are distributed over a large number of residential institutions, while community-based social services [such as territorial centres for elderly people and disabled people, and social service centres for families and children] are distributed across two line Ministries.

These administrative arrangements impose high transaction costs on policy development, policy reform, and policy co-ordination. Moreover, the arrangement leads to high levels of inefficiency in the legislative process as each Ministry seeks to develop separate legislation and regulations for the groups and institutions that fall under its particular remit.

The arrangement also leads to a situation were relatively small amounts of expenditure, as a percentage of annual Gross Domestic Product [GDP], are spread very thinly. It also means that high overhead costs are incurred for each residential institution – for example, utility costs, replacement of infrastructure etc; and will make the task of developing and – eventually - striking a Balance of Service Provision between residential and community based services difficult to establish. The latter is accentuated by the fact that the funding formula - devised under the framework of the Budget Code - is oriented in favour of funding residential social services [from the consolidated budget]. On the other hand, community-based social services [as defined in the LSS] are to be funded from revenues generated by local tiers of government. The table below provides an overview of the way expenditures on residential social services are distributed as a percentage of GDP between 2002-2004:

Table 2.1: GDP Spending on Residential Services 1998-2004 by Line Ministry

Ministry	Year	Expenditure as Proportion of GDP
MOLSP	2002	0.165
	2003	0.161
	2004	0.140
MOH	2002	0.029
	2003	0.031
	2004	0.030
MOES	2002	0.025
	2003	0.031
	2004	0.030

Social Services, Social Privileges, Social Guarantees and Measures for Targeting:

It is clear from the way fundamental social and economic rights are enshrined in the Constitution, and the ways in which Parliament has gone about elaborating legislative frameworks for social services and social privileges and social guarantees that the two types of policy systems [services on the one hands, and social privileges and social guarantees on the other] have been highly interwoven. Given the way these two policy systems have evolved social privileges and social guarantees- at least in the immediate post-independence period - were given higher priority. This is not surprising – from a political economy perspective – given that the new and independent State of Ukraine needed to establish visible mechanisms that would demonstrate an intent to meet the needs of a large number of citizens, and facilitate their allegiance to the new State; while at the same time not discounting the contribution that citizens in the new State had made during the Soviet era when Ukraine was a Socialist Republic within the USSR. Social services, within the early period of the independent State performed very much a residual function in nascent social policy. The LSS, alongside the recent *Law on Social Work with Children and Young People* do, however, symbolise the relevance and strength of a legal system – which in Ukraine – is now based on a system of civil law that allows for law and policies to be adopted that stimulate social relations that are likely to emerge in the future, or are not yet established in practice. Indeed, the LSS and other recent and related laws indicate that the definition of social services and social work, as forms of policy and practice, are complementary to, but distinct from, social privileges and social guarantees.

In order to create greater clarity on the distinctive attributes of social services - while at the same time identifying areas for achieving higher efficiency, improving the fiscal space for social services, and assessing the likely impact of key changes being advanced in the field of social services - it will be necessary for the a national policy on social services to highlight and draw the distinctions between social services and social privileges and social guarantees. The necessity is linked to the fact that social privilege and social guarantee programmes have grown in both cost and number – and

include exemptions from payment [or discounted payment] of housing, utilities, transportation, communication services, free or privileged treatment at health spas and resorts, free or discounted dental care and prescription drugs, preferential terms of credit, free provision of cars etc. GoU plans and considerations for phasing out, or restructuring, these occupation and categorical social privileges will need to be highlighted in the context of expanding the range, content and quality of community-based social services – particularly in the context of an ageing population. Plans for phasing out or restructuring social privileges and social guarantees – many of which do not necessarily have a strong income poverty or social exclusion focus – will need to be based on a Public Expenditure Review [PER] of the fiscal cost of these programmes, and the efficiency gains that can be achieved from either phasing them out, restructuring them, or consolidating them. Efficiency gains from such restructuring could then – over time – be refocused on enlarging the circle of social services provision and improving norms and standards to EU levels as depicted in *Towards the People*.

Rationalising and improving the effectiveness of targeting social privileges and social guarantees can be undertaken on the basis of the extent to which social transfers and social privileges reduce poverty – thus poverty rates can be measured before [ex-ante] and after [ex post] the receipt of a social transfer or social privilege/social guarantee. Poverty rates cannot simply be adapted or utilised to improve the targeting of social services given that the content, form and objectives of social services are qualitatively different – for example, a child at risk of harm or abuse has to be protected by the state irrespective of parental income; likewise an elderly person whose mobility has deteriorated as result of their age cannot be left to fend for themselves because their income places them above the poverty line or minimum subsistence. Thus a system of priorities for social service provision will need to be considered and elaborated as a proxy mechanism for targeting.

Concluding Observations and Recommendations:

This annex has charted in considerable detail the fundamental character of the Ukrainian Constitution and the manner and form in which the rule of law is applied – under a civil law system – and codified. It has delineated the way in which system of normative and legal acts are structured in the context of elaborating policy. From these observations it is clear that legislative frameworks have a strong bearing on the manner and form in which social services policy has evolved, and culminating in the LSS approved by Parliament in 2003. The EUUAP does not fundamentally threaten or undermine the Constitution, and given the Roman and Germanic origins of the legislative system there is ample scope for normative acts and laws to be adapted, and for appropriate policy transfers to occur, in line with the process of Europeanisation and the policy objectives of the GOU in the context of its European Choice.

It is also clear from the analysis presented in this annex social and economic rights have become codified under a system that, to a greater extent, has emerged in the shadows of the post-Soviet legacy. This legacy has, in part, led to a current situation where a full appreciation of the fact that all constitutional rights have budgetary implications, and all constitutional rights have costs, has yet to be fully appreciated – particularly at the interface between social services, social privileges and social

guarantees. The LSS provides – in the context of the Europeanisation process – a range of opportunities for the GoU to begin the process of setting, in clearer terms, the policy goals and policy objectives towards social services. The absence of clarity can be rectified by taking steps to elucidate on a policy rationale that sets out the priorities for social services. The LSS has been a necessary pre-condition for establishing clarity. However, the LSS is not sufficient to carry - or persuade - a wider audience of policy makers of the merits of the approach embedded in the law on social services, or of the methods that need to be adopted, to enlarge the circle of social service provision, or set in train processes that will enable EU norms and standards to be met as delineated in *Towards the People*.

In a context where the number of people [adults and children] in residential institutions has been, and still is, on an upward trend with all the attendant human difficulties this entails and the cost-related inefficiencies this trend generates, there is clear need to prepare and elaborate a national social services policy that sets out the GoU's position on the future direction of social services. The necessity for such a policy is of critical importance to the process of galvanising horizontal [central line ministries] and vertical level [Oblasts, cities and rayons] actors towards a set of common goals and policy outcomes.

With the evidence assembled in this Annex, and based on the analysis of the evidence, the following recommendations are proposed:

- The preparation of a **National Document** that sets forth the GoU's strategy on Social Services Policy in the context of the LSS and closely related legislation;
- The National Document will need to set forth the objectives and prioritise areas for policy development in the context of the Constitution of Ukraine, the GoUs *Towards the People*, Ukraine's membership of the CoE, and the EUUAP;
- The Document should be evidence-based, and should consider and feature the following elements:
 - Introduction of the Balance of Service Model of Provision to facilitate reductions in the level of residential service provision, expansion of community-based social services, and supporting the Social Economy⁵⁶;
 - Measures for reducing contestation of the basic principles enshrined in the LSS, but which do not prevent genuine debate and deliberation on its refinement and elaboration;
 - Measures for ensuring that policy transfers take account of, and are informed by, social, political and economic factors that are salient to the policy goals and policy environment that prevail in

⁵⁶ See: FRSSU Project report entitled: *The Interface between Legislation on Non-Government Organisations, Taxation and the Delivery of Social Services* (2006b).

Ukraine; and reflect concerns for internal control and management, policy design and management, service improvement management⁵⁷ under conditions of decentralised decision making across local tiers of government, and horizontal coordination at central levels;

- Measures that will address the current fragmentation of administrative systems that have oversight of social services; and that will promote inter-departmental co-operation and coordination
- Measures that address the interface between social services, social privileges and social guarantees, but also elaborate the distinctive attributes of, and policy directions for, social services;
- Measures that take account of demographic profiles, expenditure trends, and the future demand for social services to 2015⁵⁸;
- Measures that take account of systems for improving the financial and quality control auditing of social services⁵⁹.

⁵⁷ See FRSSU Project Report entitled: *Public Expenditure for the Reform of Social Services* (2006a).

⁵⁸ See FRSSU Project Report entitled: *Demographic and Financial Trends: Scoping the Future Demand for Social Services* (2006c).

⁵⁹ See: FRSSU project Report entitled: *Auditing for Improved Performance in Social Service Quality and Outcomes* (2006d).

Annex 3

Goal Attainment, System Stability and Maintenance: Developing and Elaborating a National Document on Social Services Policy

Overview:

The LSS has set in motion a frame for profound changes in the way social services are provided in Ukraine. This has been the result, in part, of changing attitudes towards the role of the State in the formulation of social policy, and in part from the GoU's policy objectives in the European Choice agenda set forth in *Towards the People*. There is clearly, in light of the growing importance of European Union law and policy transfer mechanisms under the EUUAP, that there will be growing concerns about the quality and impact of policy transfer coordination, and the ways in which these types of transfers interact with the social, political and economic environment in Ukraine. There is a growing appreciation among policy-makers in Ukraine that both the content of policy and the methods by which it is made must be more responsive to the context in which it is designed to operate in; and that the human, institutional and financial constraints that exist in the policy environment must be given greater recognition. As a consequence of these emergent trends systematic methods for the development of policy, and the way in which policy interacts with legislative frameworks, are gaining wider appreciation.

The development of a national document to guide, inform and structure national social services policy would widen this appreciation – particularly in the context of the need to establish:

- Process baseline measures to facilitate goal attainment and for establishing structures that will support system stability and system maintenance;
- System standards and standardising conceptual instruments that give meaning to Article 46 of the Constitution, and its application to social services;
- The undertakings Ukraine is committed to on social cohesion through its membership of the CoE;
- The framework laid down in the EUUAP;
- Ensure effective use of the funding framework of the ENPI [that will replace TACIS in 2007].

Goal Attainment, System Stability and System Maintenance:

Establishing a framing process for social services that sets the goal to be attained by policy is a normative approach to the development of policy for social services in many EU¹ and transition states². The approach is based on System Standards and Standardised Conceptual Instruments. Based on the analysis and recommendations in the preceding annexes standards and standardised conceptual instruments for a national social services policy - which appreciate the specific characteristics of the Ukrainian policy environment - will need to take account of the following:

System Standards:

- Coherence, consistency, and balance between competing policies within social protection;
- Stability and predictability of regulatory requirements for social services;
- Ease of management and oversight, responsiveness to political direction and assessed needs, and a clear definition of priorities towards social services;
- Transparency and openness to the political level and to the public on the direction being set by government towards social services;
- Consistency, fairness and due process during the implementation of social services policy;
- Adaptation to changing circumstances based on evidence on the need for an elaboration of social services policy.

Standardised Conceptual Instruments:

- *User Standards* – with a focus on clarity, simplicity and accessibility for private citizens and service providers;
- *Design Standards* – with a focus on flexibility and consistency with other rules that inform social protection, and European best practice;
- *Legal Standards* - with a focus on structure, orderliness, clear terminology, and the existence of clear legal authority for action;

¹ For example, in 1998 the UK Government produced a conceptual and strategic planning document for the reform and future development of social service entitled: *Modernising Social Services: Promoting Independence, Improving Protection, Raising Standards* (1998)

² For example, The Government of the Republic of Serbia *The Social Welfare Development Strategy* (2005). Given the illustrative value of this particular strategy for social welfare, which incorporates the EU Integration agenda that the Government of Serbia [which is also a member of the CoE] is pursuing under the Stability and Association Agreement [SAA] that is similar in scope, form and content to the ENP and EUUAP a copy of the Serbian *Social Welfare Development Strategy* is attached - **See Annex 7**

- *Effectiveness Standards* – which are linked to relevance to clearly defined problems and prevailing conditions;
- *Economic and Analytical Standards* – which take account of an economic assessment of unit costs and cost-effectiveness analysis³ in social services; the institutional structure that defines the principles and objectives of a license and contact-based system of social service provision; and the separation of commissioning and provider functions⁴ in social services;
- *Implementation Standards* – which focus on practicalities, feasibility, enforcement, public acceptance and public participation, and necessary resource allocations that reflect a budget formula for social services that does not favour residential social services, and discriminate against the enlargement of community-based social services⁵

The application of system and conceptual standards is usually designed to help ensure that policy development becomes an essential precursor to the preparation of legislation. However, this approach has not yet taken a systemic hold in Ukraine despite the requirement that bills presented to Parliament should be accompanied by an Examination Report⁶ that sets out why a particular Law is necessary, outlines the general principles of the would-be Law, identifies where it slots in to the overall legislative framework, and provides an overview of the projected socio-economic costs. Developing and evaluating policy options ahead of normative and legal acts would encourage the introduction of procedures and practices that would make the eventual law more thought through and provide guidance on fundamental questions of policy, approach and intended outcomes – especially for innovative and complex reforms in areas of social policy such as social services where innovation has a critical role. Such an approach is implicitly required for the institutionalisation of system standards and conceptual standards for the elaboration of regulatory instruments.

In the context of the EUUAP the development of policy documents ahead of legislation will become increasingly important – and will have operational resonance irrespective of whether the policy in question has to be undertaken in the context of mechanisms for positive integration, negative integration or policy transfer

³ See: Annex 2, and the FRSSU Project Technical Paper prepared for the World Bank entitled: *Terms of Reference for Technical Assistance: Economic Assessment of Unit Costs in Social Services* (March, 2006e).

⁴ See *Reforming and Modernising Social Services: Lessons from European Union Experience* in FRSSU Report entitled: *A Consolidated Reference Source from Information Sharing Seminars in Khmelnytska and Kharkivska Oblasts on Public Expenditure Management to Support the Reform of Social Services* [2006f]

⁵ See FRSSU Project Technical Paper Prepared for the Ministry of Finance [MoF] and the Ministry of Labour and Social Policy [MoLSP] entitled: *Recommendations for Consideration by the Ministry of Finance of Ukraine on Changes to the Intergovernmental Transfer Formula with Specific Reference to Residential and Community-Based Social Services* (2006g)

⁶ See: Annex 2, Pg 31.

coordination. The preparation of policy documents ahead of laws is not in contradiction of existing legislative requirements in Ukraine given that Parliament passed the *Law on Conception of the Overstate Programme On Approximation of the Legislation of Ukraine to the Legislation of the EU* in on 21 November 2002⁷. Thus consideration of policy compatibility and compatibility of legislation will, within the framework of the EUUAP, increasingly become a principle element in policy development and policy transfers. This means that policy development documents will have to include checks on the extent to which priorities have been set in respect of a particular area of policy, and that there is a realistic chance that they will be followed. Policy Documents – such as in the area of social services – are a vital ingredient to process of translating the GoU’s European Choice objectives into concrete forms of practice. Moreover, approximation of EU law is an issue that in principle affects all ministries, although it will undoubtedly affect some ministries more than others. EU law cannot, therefore, be considered as a separate system of law. Integration with the legal and administrative requirements on any subject will need to become the responsibility of line ministries with the competence and expertise in the national law or area of policy.

Under conditions where legislative and administrative responsibilities for social services are fragmented across four line ministries [five, if one includes the budgetary responsibilities of the MoF] developing policy and effecting policy transfers – in an efficient and effective manner - under the framework of the EUUAP is likely to be daunting. This observation reinforces the need for the GoU to actively consider options for streamlining the administrative and governance framework for the delivery of social services – including options for merging some legislative and administrative responsibilities. The development of a national social services policy could help define these options for the medium term, and in the shorter term provide a mechanism within which options can be assessed and evaluated, and consensus forged horizontally [i.e., across central line ministries] and vertically [i.e., across Oblasts, Cities and Rayons].

Against the background of these features in the policy environment, it is necessary to devote attention to key factors and features that will need to be considered for incorporation into the national social services policy document. The approach will need take stock of the measures recommended in Annex 2, and elaborate these recommendations with a practical emphasis on system standards and standardising conceptual instruments that focus on:

- Setting and Maintaining Drafting Standards for a National Social Services policy;
- Applying Procedures and Standards of Parliamentary Debate on the National Social Services Policy;
- Key Features for the National Social Services Policy: Conceptual Content;
- Concluding Observations and Recommendations.

⁷ See Footnote 1, Annex 1.

Setting and Maintaining Drafting Standards for a National Social Services Policy:

Drafting a national social services policy calls for special skills which derive, in part, from a special understanding of the problems, issues and challenges confronting social services delivery and the linkages with social exclusion and income poverty across different groups of citizens; and, in part, from distinctive experience in drafting techniques and drawing on the best available evidence. Drafting a national social services policy also calls for a systematic, and often painstaking, application of a particular expertise in a range of analytical and writing skills. Policy formulation also requires an appreciation of strategic planning and approaches to managing change⁸, and knowledge of how to convert policy into a coherent body of normative rules. Moreover policy must be compatible with the Constitution and other legislation. The methods used must be practically and legally effective and follow conventional forms, and use appropriate and comprehensible language and terms. Given that the development of a national social services policy will inevitably include the introduction and usage of unfamiliar language and terminology, it will be important to ensure that a glossary is compiled as a companion to the national social services policy⁹. The final document must communicate requirements, directions and areas for further work with clarity and certainty. There are, broadly speaking, five stages to the drafting process of a national social services policy that will interface with legislative frameworks:

- Understanding the Intentions of Policy;
- Analysing the Intentions of Policy;
- Designing the Policy;
- Composing the Draft Policy;
- Scrutinising and Testing the Draft Policy

Understanding the Intentions of Policy:

Choosing the appropriate policy approach and the legal concepts that are relevant - as well as the structure of the national social services policy and the language to be used - cannot be made unless the drafters of the policy are fully informed of what is intended. Part of this knowledge can only come from dialogue and debate among those participating in the drafting process. However, the drafters of the document must also ensure that issues and uncertainties about policy that affect the drafting

⁸ See FRSSU Project Report on *Managing Change in A Consolidated Reference Source from Information Sharing Seminars in Khmelnytska and Kharkivska Oblasts on Public Expenditure Management to Support the Reform of Social Services* (2006f).

⁹ The FRSSU project has compiled a comprehensive glossary to accompany all its policy related reports. The glossary acts as a rough-and-ready 'dictionary' that translates the meaning of terms into their nearest Ukrainian equivalents.

process are focused on and resolved. In particular, and in addition to full background information on the problems to be solved in social services, the drafting process will call for a complete understanding of the intended and achievable objectives, and foreseeable consequences of implementation. Much of this information on social services is gradually becoming available – including from the reports produced by the FRSSU, assessments undertaken by the World Bank, programmes and projects undertaken by EU – TACIS, studies commissioned by line ministries and local tiers of government, and research carried out by independent think-tanks and NGOs. Not all information will be available at the time of writing the document, and likely to be that the case that additional information will need to be acquired through consultations with local policy experts, or through specially commissioned analytical assignments.

Analysing the Intentions of Policy:

Stakeholders involved in drafting the document will need to analyse a number of issues themselves. This means that those with responsibility for drafting should not necessarily trust or rely on the judgement of others, and also indicates the need for drafters to have a clear grasp for themselves of matters that will affect the way in which they approach and draft individual measures. Even before drafting the document, the following matters will need to be verified by the drafters:

- The extent to which the policy proposals and policy options impinge upon matters that are already governed by existing legislation;
- That the intentions of policy and the legal means to be used are compatible with the Constitution, especially the provisions guaranteeing individual rights and the protection of freedoms;
- The identification of policy issues that need to be drafted in particular ways to ensure compatibility with Ukraine’s Constitution, civil-legal code, the obligations the State of Ukraine has by virtue of its membership of the CoE, and the EUUAP;
- The need to take account of EU law affecting the social services area – including EU policies on social exclusion and social cohesion, and if they are not fully compatible with specific provisions of EU policy, they extent to which the Document will diverge;
- That the means of implementation and enforcement proposed on social services policy are practicable and efficient, and the identification of steps required to ensure fairness and transparency;
- The extent to which secondary legislation [e.g., regulations] is likely to be needed to enable the policy be implemented;
- The structure and form of decentralised decision making – including the implications for delegated functions towards both residential and community-based social services under the Budget Code;

- The manner and form in which the policy defines and delineates the duties of the state, the rights of users of social services, and the responsibilities of providers of social service providers;
- The likely range, scope, content and methods of policy transfer that need to be considered in the course of implementing the policy;
- The human resource implications and the type and range of new skills that need to be developed and/or acquired.
- The extent to which the administrative arrangements for social services across local tiers of government can be streamlined with a view of improving economies of scale and addressing informational asymmetries, and revenue constraints;

Designing the Policy:

The document needs to be carefully designed before composition is started. A structure for the entire range of instruments that will need to be called need to be deliberately planned so the document is organised in the most logical form, and therefore aids communication [i.e., facilitates policy dialogue and feedback]. This is particularly important in the case of a complex or lengthy policy document that has take a forward look based on an analysis of the legacy of previous policies and the current situation. Such pre-planning has other advantages:

- It encourages decisions on the basic concepts and terminology to be used in composing the national social services policy document;
- It is a useful approach for testing whether all aspects of the policy process will be fully dealt with, or whether some aspects will be held back until another occasion;
- It reduces the likelihood that major restructuring changes will have to be made during composition of the document, or that the draft must be discarded because of fundamental flaws;
- It provides a checklist of matters that require legislative provisions, enabling progress on drafting to be monitored and any necessary timetable adjustments to be made;
- It provides an opportunity to determine the matters that should be dealt with by new primary legislation, and those that can be covered by secondary legislation, or by non-legislative means such circulars or directives;
- It may be used by the drafters to check whether the shaping of the policy and identify areas that need to be elaborated or edited.

Composing the Draft Policy:

A national social services policy will require the composition of drafts in order to reach the necessary quality in the final document. The exact number of drafts will depend on a number of factors – including, the quality of pre-planning design, the amount of time available, and the complexities encountered in spelling out the policy. The production of a number of drafts will have considerable benefits, since it enables each version or each completed section/annex to be reviewed by the drafters [or working group]. In a similar vein, each draft section/annex can be sent for review to other interested parties, in particular to obtain as early as possible their reactions with respect to key issues. The mode and style of writing the document will be a matter for local tastes and styles. The level of generalisation at which particular aspects of the document are expressed may differ according to level of evidence that has been assembled or that can be rapidly brought into view. However, certain principles will be helpful in drafting the document:

- Express normative aspects as prescriptions, rather than in narrative form;
- Express the goals and objectives directly, avoiding circumlocution, and include only those that perform a direct function to the purpose of the policies;
- Avoid long sentences
- Use expressions in everyday usage, wherever possible avoid unnecessary jargon – and if jargon has to be used always provide an explanation of what is being referred to or implied;
- Omit unneeded words;
- Use terminology consistently throughout the document – use the same term for the same idea or issue, and a different term for a different idea or issue;

Scrutinising and Testing the Draft Policy:

The process of scrutinising the text of the document will need to be continuous throughout the drafting process, particularly to improve its clarity. However, in practice each version of the document should be subjected to specific scrutiny, as the last step to check on policy consistency is clarity and comprehensiveness. This task will first and foremost be the responsibility of those who draft the document but independent reviewers - who can furnish unbiased opinions on the structure and content of the final draft, should perform final scrutiny. More thorough scrutiny should be given to the last step in drafting the final version of the document; this should cover a wide range of matters, including a series of verifications with other policies and strategies [e.g., family policy, demographic strategy, annual budget laws, EU policies, CoE policies etc]. These final checks may repeat checks carried out at an earlier stage, but are necessary as the working out of policy into precise normative text may introduce new features that require further legislation. A checklist provides useful assistance to the process of scrutinising and testing draft policy:

- Constitutional and Legal Compliance;
- Approximation to EU norms and standards, beliefs and values;
- Compliance with International Standards – such as the European Convention on Human Rights;
- Implementation Arrangements at horizontal [i.e., inter-ministry] and vertical [Oblasts, Cities and Rayons] levels; and compliance with existing or future arrangements for territorial governance;
- Secondary law-making requirements, and necessity of particular circulars or directives from CoM or line Ministries;
- Clarity and Comprehensiveness.

Inter-Ministerial Consultation:

The national social services policy will not be concerned with the activities of one sole Ministry, and for social services – where numerous ministries have public accountability – the way in which particular aspects of social services policy are dealt with will impact on the way each ministry currently approaches its responsibilities, and on the way each ministry will need to approach its responsibilities in the future. It will therefore be important for the coherence of the document that policy conflicts are identified sufficiently early on in the process so that they can be resolved before work on a particular issue/problem has gone too far. In principle, there is no reason why a joint working group should not be established for the purposes of consultation and verification. As this procedure is internal to Government, it should be sufficient that it is regulated by a Government standing order. Under this arrangement consultations should be made mandatory, and enforced by requirement that the document cannot be forwarded to Government if the co-ordinating authority or body is not satisfied that adequate consultations have taken place.

Consultation With Non-Government Organisations:

To be most effective, consultations should be deliberately designed to produce useful information which can contribute to the development and elaboration of policy, rather than as a device merely for achieving consensus with affected or interested parties. Accordingly, consultation with NGOs should be instituted at the time and in a manner that is most helpful to the formation of a social services policy, and should involve NGOs that have expertise and/or information to contribute – including NGOs that are not in receipt of subventions from the State Budget. Usually consultations should be initiated early in the policy development process, but in a policy area like social services – where there are still parliamentary contestations over the content of the LSS – it may be necessary to have more than one stage of consultation in the policy drafting process.

The procedures for consultation should enable those consulted to offer experience, special knowledge and relevant data. For agencies and individuals invited to such consultations they will need to be provided with clear statements of objectives of the proposals under consideration, and the policy-developers' current thinking on the nature of the problem(s), the method or methods for its resolution and the likely impact of proposed changes. The precise nature of the information provided before such consultations will depend in part on the purpose of the consultations. If the working group overseeing the document intends to use the consultation as a mode of checking whether a particular aspect of policy is a priority or will work in practice, it may be sensible to circulate the draft policy with a series of precise questions.

A single method of consultation is unlikely to suffice in the production of the Document on social services policy; the form of consultation will need to be considered on a case-by-case basis. Some issues will obviously benefit from consultations with a group of experts, while others may require a broader mix, and some may require a wider public response. Accordingly the Government will need to develop an overall consultation policy to be pursued with all Ministries and with the CoM. But such an approach will have to be flexible enough to permit a selection of materials that are best suited for this purpose. The policy should also determine when consultation is not appropriate for a specified range of reasons, e.g., confidentiality, public interest, or because the matters under deliberation are primarily internal to functioning of administrative arrangements, or because the matters are essentially political in nature. Hosting seminars and discussion forums should also be considered an important aspect of the consultation process. However, all these factors and approaches will need to be factored into the work plans of the developing the document, and allow sufficient time for consultations to be effective.

Applying Procedures and Standards of Parliamentary Debate on National Social Services Policy:

Given that the LSS has already been passed by Parliament, the national social services policy needs to focus on elaborating the will of Parliament. This means that it is unlikely that a new bill will be required to implement the final document on national social services policy. However, it may be advisable – subject to agreement within Government – that the document is reviewed by the Parliamentary Committee for Pensioners, War Veterans and Disabled given that this Committee has been responsible for both approval of the LSS, and has had a role in subsequent attempts to revise the LSS. Typically the verification that Parliament carries out is usually applied with respect to completed drafts of legislation, and not the development and elaboration of policy. However, because of technical omissions in the Examination Report submitted to Parliament when the bill for the LSS was presented to Parliament, members were ill equipped to verify its provisions and its consequences. It may, therefore, be appropriate to explore options for seeking Parliament's scrutiny of the national social services policy document. This would correct any misapprehensions that continue on key provisions of the LSS, and allow for an informed debate on the how the LSS may need to be revised at future points in light of the national social services policy document. It would also allow Government to voice its own views on the LSS and the policy document in the context of its European Choice and the EUUAP. The CoM is likely to have a role in securing agreement to the text of the

document prior to it being submitted for scrutiny to the Parliamentary Committee on Pensions, War Veterans and Disabled.

Key Features for the National Social Services Policy: Standardising Conceptual Instruments

The national social services policy document will need to take account of the framing rationale set forth in Annex 2 together with the system standards outlined above. It will also be important to establish standardised conceptual instruments that will help give some basic structure to intended policy directions. These policy directions will play an important role in framing the basis for dialogue on social services policy. This section of the report therefore draws attention to a number of key features that may need to be considered in framing the conceptual content¹⁰ of a national social services policy:

- Human Rights, Fundamental Freedoms and Family Responsibilities
- Objectives of the Policy
- Purpose of the Policy
- Positive Intervention
- Citizens Welfare
- Enlarging the Circle of Social Service Provision
- Views of Citizens
- Policy Approach
- Balance of Service Model and Welfare Balance
- Mobilising Vertical and Horizontal Co-ordination
- Targeting
- Safeguarding and promoting Social Welfare
- Identification and Assessment
- Prevention
- Family Policy and Family Support
- Cost Recovery for Social Services

Human Rights, Fundamental Freedoms and Family Responsibilities

The importance of human rights and fundamental freedoms in the Constitutional framework are clearly delineated in Article 3. These rights and freedoms are elaborated in 2 of the Constitution¹¹. However, these rights may need to be balanced against “family responsibilities” – which can be defined “as the duties, rights and authority families have in respect of the care and protection of their individual members”. In seeking to strike a balance between rights and

¹⁰ The conceptual content listed below - and the elaboration of what these concepts might entail- are not prescriptive, but are included as a checklist to facilitate policy dialogue. Where a definitive policy cannot be formulated – either because of lack of evidence or information, or because consensus cannot be achieved, the national social services policy document will need to set a forward plan that will help elaborate and clarify policy intentions within a given timeframe.

¹¹ In the context of a national social services policy Articles 21, 22, 23, and 28 of the Constitution are likely to be of particular salience.

responsibilities consideration will need to be given to the relationship between the duties of the state, the rights of individuals, and the responsibilities of the family. Striking this balance may need to ensure receipt of social services does not reduce the duty of family members to continue playing a full part in ensuring the well-being of their family member [i.e., adult or child].

Objectives of the Policy:

The objectives will need to specify why a policy is needed, define what the broad duties of the State are towards the provision of social services in manner that is consistent with Constitution, and provide an outline of the minimum standards that will need be set for different types of social services provision [e.g., for the elderly services, for children's services, and services for people with disabilities] at local tiers of government, with provisions for a review of these minimum standards at period intervals [e.g., 3 or 5 years].

Purpose of the Policy:

The policy will need to specify the circumstance within which social services should be provided – with clear distinctions drawn between voluntary and compulsory measures. The distinctions may need to ensure that service providers [State, NGO or private] undertake to protect and promote the rights of the citizen, and also explain the responsibility of family members to remain actively involved in promoting the well-being of their members irrespective of whether social services are provided under voluntary or compulsory measures, or whether the services are provided the state, NGOs or private providers.

Positive Intervention:

The policy will need to consider an orientation that ensures social services are provided only in circumstances where a particular service, or a combination of services, will make a positive contribution to a citizen's welfare. The objective of positive intervention is designed to ensure that there is demonstrable need for social services, and that the intervention will actually make a contribution that leads to an improvement in the quality of life of the citizen. Positive interventions are conceptually and operationally linked to the development of priorities for social services and effective targeting measures that are distinct from those used to target social privileges and social transfers.

Citizens Welfare

The overriding rationale for the policy will need to consider how social services can promote and safeguard the welfare of citizens. This overriding rationale [which will help underpin the objective and purpose outlined above] will need to be devised in a way that provides clarity on what social services are about, and the paramount consideration in the provision of social services is the citizen's interest when reaching any decision about their welfare and/or property. This means that social service providers [whether State, NGO or private] will need to be advised on the necessity to take account of relevant surrounding circumstances, including the wishes of the citizens, and the need for decisions to be based on the citizen's best interest.

Enlarging the Circle of Social Service Provision

The policy may need to develop a list of the types of social services that can be considered when considering the citizen's best interests – with a particular focus on the needs of the citizen, but also the options available for services to be provided in residential or community-type settings.

Views of Citizens

The policy will need explore the importance of considering the wishes and feelings of citizens when making judgements about how their needs can best be met. This approach may need to be underpinned by principles that ensure that all citizens are treated as independent persons who have a right to be heard.

Policy Approach:

The policy will have to take account of the fact that the LSS does not exist in isolation, and has to be reconciled with other normative acts and specific legislation. The ultimate objective of legislative cross-referencing will need to ensure that decisions are concerned with practical questions rather than abstract rights.

Balance of Service Model and Welfare Balance:

The objective of the Balance of Service Model is to ensure that the most appropriate type of social service provision is offered to a citizen, and to minimise the risk of harm being done to individuals by offering, services that do not ameliorate the problems, improve their circumstances, or prevent the condition from deteriorating further. The Balance of Service Model is closely associated with achieving a Welfare Balance that focuses on preventing service providers [state, NGO or private] from unwarranted intervention in family life.

Mobilising Vertical and Horizontal Co-ordination:

The policy will need to devise and emphasise a unifying policy goal for ensuring that social services focus on the needs of the client, and that limited resources are used to achieve the best possible outcomes for citizens. The current fragmented decision-making process is not conducive to the achievement of either of these objectives, and the policy will need to provide an outline of active measures that the Government will be taking to improve cost efficiency, administrative effectiveness, and service outcomes.

Targeting:

The policy will need to identify classes of citizens who are likely to be the primary target of social services. Targeting social services is qualitatively different from the procedures used to target cash benefits – though the two procedures may, on occasion, overlap and interact given that social problems often nest together. Thus a person deemed in need of social services may also be deemed to be in need cash benefits. However, social services will need distinct procedures that help guide a targeting

framework. The policy could therefore consider the merits/demerits of using descriptive thresholds to define targeting procedures. For example, social services should be provided when:

- A citizen is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health, personal development or perform key social functions without the provision of social services;
- A citizen's health, personal development or ability to perform key social function is likely to be significantly impaired, without the provision of such social services;
- A citizen is blind, deaf, dumb or suffers from a mental disorder of any kind or is substantially and permanently disabled by illness, congenital deformity or other such disability as defined by law

Particular procedures and regulations would have to be developed and approved to ensure that such targeting criteria were based on practical measures, rather than abstract ideas or concepts.

Safeguarding and Promoting Social Welfare:

The policy will need to consider the general duties of central and local tiers of government to provide, or facilitate the provision of, social services of a particular range and level which are appropriate for the demographic profile, and based on clear needs-based targeting criteria. The policy will need to identify what local tiers of government will be required to do to facilitate the provision of social services by other providers, and outline the steps that may need to apply – under the Budget Code – for the provision of community-based social service that take into account the demographic and socio-economic profiles of the population.

Identification:

The policy will need to specify the reasonable steps that will be taken by central and local tiers of government to identify the extent to which social needs can be: (i) mapped and quantified at the local level, and then (ii) prioritised within the context of local social services plans. The policy could explain why such need assessments are necessary, and the reasons why particular issues/problems have to be prioritised.

Prevention:

The policy will need to outline the role of social services in fulfilling preventive functions, for example, preventing citizens from suffering neglect or ill treatment that results from social deprivation, abuse and violence, criminal behaviour, self-harm, or discrimination. This approach will need to provide illustrations of the role prevention plays in social services provision, and the need for intelligence-led social work that identifies the profile of individuals, or groups of citizens, who may be at risk and the measures – compulsory or voluntary – that may be required to prevent further harm to themselves or others.

Family Policy and Family Support:

In view of the orientation of the LSS with its focus on enlarging the circle of providers of community-based social services, the policy will need to ensure that a drive to expand service provision does not undermine family life, promotes family responsibilities, and that community-based social services place particular emphasis on the provision of appropriate and cost effective services that help families to care and look after their members. Removing family members should always be seen as a last resort, and the provision of residential services should be reserved for those citizens where community-based alternatives would be inappropriate. Where citizens are admitted into residential institutions the policy should offer guidance on the steps that will ensure their personal and family situations are subject to regular review, and ensure that family contact is maintained unless there are particular adverse features that would result from such family contact. The policy may need to consider the extent to which it would be helpful to state that the government aims to move to a policy based on principles that enable the promotion and protection of the welfare in community-based settings.

Cost Recovery:

The policy will need to consider the extent to which providers of social services are able to recover charges for a particular range/type of services based on the ability to pay – given that not all citizens who require social services will necessarily be income poor. At the same time, some social services will need to be exempt from cost-recovery based on their essential and fundamental nature for addressing underlying conditions. Such exemptions to cost recovery might include advice, guidance and counselling which constitute some of the core social work tasks. Charges which central and/or local tiers of government deem reasonable may need to be subject to certain exclusions – for example if a citizen lacks the financial means to pay. If some citizens can pay for social services guidance may need to be given on what level of payment may be deemed reasonable. A system of charging will need to distinguish between different types of clients.

Concluding Observations and Recommendations:

The most important prerequisite to improve the environment for implementation of the LSS is the design, development and elaboration of a national social services policy. In the future such policy documents should be produced in advance of legislation being drafted. The current rules on the preparation of an Examination Report¹² that accompanies legislation when a bill is submitted to Parliament is insufficient for a policy environment that is increasingly complex and variegated. At the very minimum a policy document should set out a broad canvass that:

- Delineates the qualitative and quantitative nature of the problems that need to be addressed;

¹² See: Annex 2, Page 31

- Ensures policy options that need to be considered and evaluated are clearly documented;
- Ensures that a regulatory impact assessment is conducted to ensure that errors in legislation are minimised and reduce the risk of unforeseen expenditures that can arise when new legislation is being formulated;
- Provides a meaningful medium for horizontal [inter-ministerial] and vertical [ministries and Oblasts, Cities and Rayons and other informed stakeholders] policy dialogue on the selection of policy directions that can then be entered into a bill.

The introduction of analytical policy documents ahead of legislation would help avoid, or minimise the risk of, continuous challenges to existing laws and reduce attempts to use revised versions of a law to make or refine existing policy. However, given that the LSS has already come into force, the fallback position is to elaborate a national social services policy that elaborates on the principles and objectives enshrined in the LSS, and that builds systemic and structural links with other key legislative frameworks [See Annex 1] that inform social policy. At the very minimum, the national social services policy document should incorporate:

- An account of the background of current legal provisions and the main problems and short-comings;
- The reasons for adopting the policy, the objectives of the new law on social services, and intended policy goals;
- The anticipated results that will emerge set against a clear range of time frames which all stakeholders will have to work to i.e., the development and elaboration of an Action Plan that is Strategic, Measurable, Achievable, Realistic and Time Scaled [SMART];
- A risk assessment framework that identifies potential risks and problems and measures that need to be considered for the mitigation of such problems/risks during elaboration and implementation of the national social services policy;
- A range of active mediums for building coalitions among key stakeholders that will help forge consensus on the directions of policy;
- Incorporate the recommendations outlined in Annex 2 of this report including the use and application of policy and process baseline measures in annex 1 that focus on Europeanisation and European Choice in the context of the EUUAP;
- Ensure that system standards and standardised conceptual instruments are developed and applied to the elaboration of the national social services policy.

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Attachment 1

Main Normative and Legal Acts on Social Protection

Normative and Legal Acts	Target Groups	Date Legislation Passed	Act Number	Fields of Regulation	Observations and Commentary
<p>Key</p> <p>D= Direct Regulations</p> <p>I= Indirect Regulations</p>				<p>Key:</p> <p>SS= Social Services;</p> <p>CB = Cash Benefits;</p> <p>SP =Social Privileges,</p> <p>SG = Social Guarantees]</p>	
The Law of Ukraine on the Status and Social Protection of People Affected by the Chernobyl Catastrophe [D]	People Affected by the Chernobyl Catastrophe	28 February 1991	No 796-X11	SS, CB, SP	This was one of the first legislative acts passed after the declaration of independence. The law covers people who participated in the clean-up operations, people exposed to radioactive irradiation, people who were evacuated, and people who resided in the zone, and people who developed chronic illnesses and disabilities as result of the accident.
The Law of Ukraine on the Fundamentals of Social Security of Disabled People in Ukraine [D]	Disabled adults and disabled children	21 March 1991	No 875-X11	SS, CB, SP	Provides for the formation of NGOs for the disabled that are eligible for funding from the State Budget. The law covers for illness, after effects of birth trauma, and birth defects which restrict life. A disabled child is defined as persons under 18 years of age.
The Law of Ukraine on the Prevention on Acquired Immunodeficiency Syndrome [AIDS] and Social Protection of the Population [D]	<p><i>Directly:</i></p> <ul style="list-style-type: none"> - HIV infected people and members of their families; - Medical staff at risk; - People at risk of infection [e.g., 	12 December 1991	No 1972-X11	SS, CB, SP	This law was passed at the time when global attention began to turn to HIV/AIDS

	intravenous drug abuse] <i>Indirectly:</i> - Other at risk categories; - Foreign citizens - Stateless persons				
The Law of Ukraine on State Support to Families with Children [D]	Families with children	21 November 1992	No 2811-X11	SS, SG	A family with children is defined as persons with kindred obligations of maintenance, adopted children, and children under guardianship.
The Law of Ukraine on Promoting the Social Formation and Development of Young People in Ukraine [D]	People aged between 15-35	05 February 1993	No 2998-X11	SP, SG	Most of the guarantees/privileges stipulated in this law have largely – in the face of budget constraints – remained declaratory in nature
The Law of Ukraine on the Status of War Veterans and Guarantees of their Social Protection [D]	- War veterans; - People equated to war veteran status; - People of special merit; -	22 October 1993	No 3551-X11	SS, SG, CB, SP	This law played an important function in defining the duties of the state in the context of the Constitution. War veterans are classified as participants in military operations, prisoners of war, victims of concentration camps, people forced into ghettos, and people who were in the army of the former USSR etc; people equated with war veteran status include former KGB officers, and officials of the Ministry of Internal Affairs, Civil Defence units who are wounded or suffer from ill health or disablement. People of special merit include people declared as Heroes of the USSR – including people declared Labour Heroes from WW 2.
The Law of Ukraine On the Essential	-Labour veterans; -People equated	16 December 1993	No 3742-X11	SP, CB	Labour veterans are defined as people who worked in the

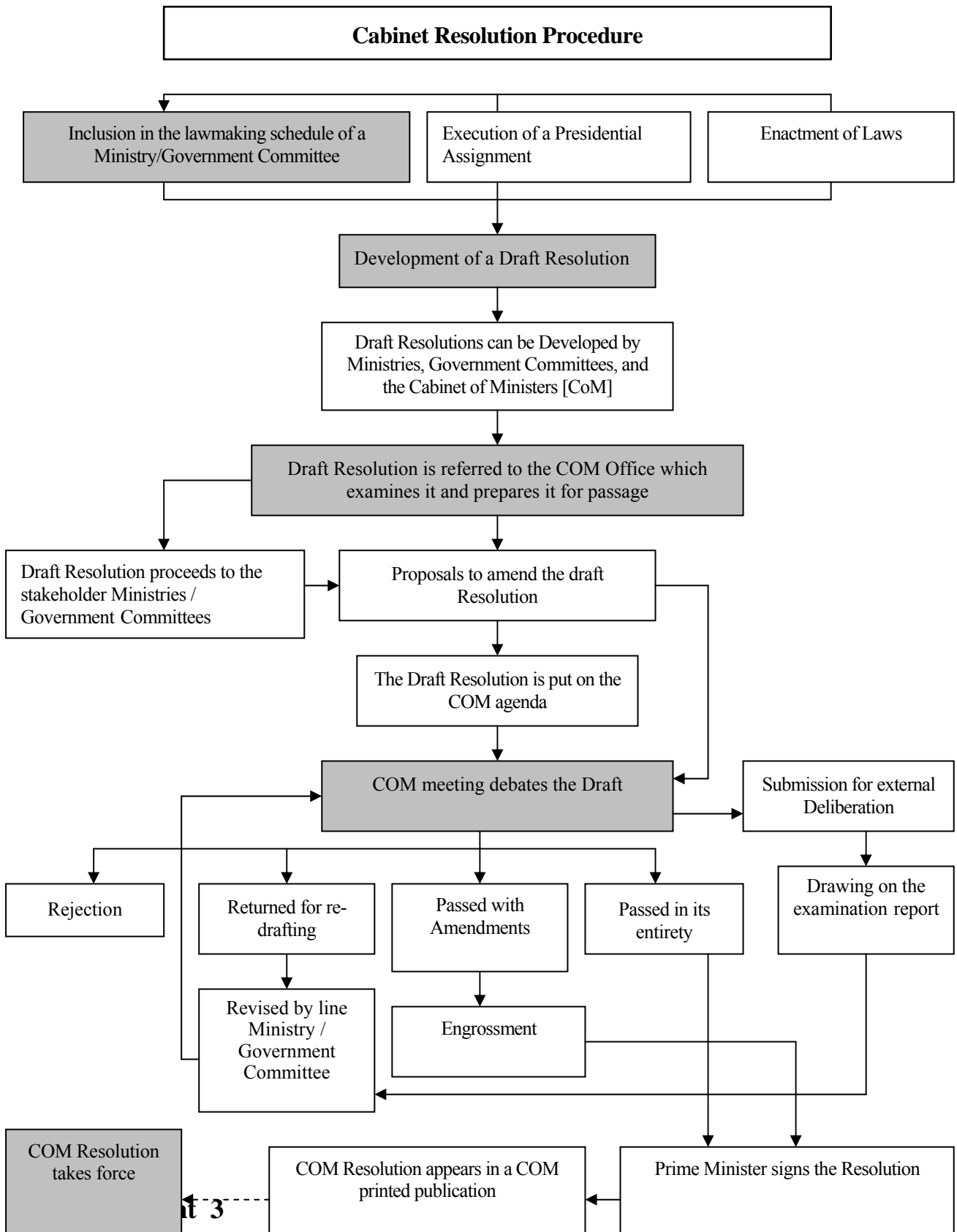
Principles of Social Protection of Labour Veterans and Older People in Ukraine [D]	with labour veterans; - Older people; - People with special labour merit - -				national economy or state institutions of the USSR for over 35 years [for women] and 40 years [for men]. People [based on a specified list of professional and occupation groups] equated with special labour merit are accorded special pension related privileges linked to years of service. The list of occupational groups is based on decisions of the CoM. Older people are defined as women aged 55 years, and men aged 60 years.
Law of Ukraine on the status of Military Service Veterans, Veterans of Internal Affairs Bodies and Some other Citizens and their Social Protection [D]	-Military service veterans; - Veterans of Internal affairs bodies; - Veterans of Public Fire Prevention Services	24 March 1998	No 203/98-BP	CB, SG, SP	This law specifies that people who devote more than 25 years of calendar time, or 30 years of 'privileged time', and who were injured in the course of their duties are entitled to category 1 or 2 disability pensions
The Law of Ukraine On State Support to Low-Income Families [D]	- Low-income families	1 June 2000	No 1768-111	SP	The law defines a low income family as a family who, for reasons beyond their control have an average monthly total income that is lower than the minimum of subsistence for a family
The Law of Ukraine on State Social Standards and State Social Guarantees [D]	-All Ukrainian citizens; - Foreign nationals; -Stateless persons;	5 October 2000	No 2017-111	SS, CB, SG, SP	This law was promulgated to synthesise the social protection system and to introduce transparent state standards and guarantees in social policy. The standards and guarantees embedded in the law have not been assessed for cost or affordability
The Law of Ukraine on State Social Support to Invalids from Childhood and	- Children with disabilities	16 November 2000	No 2109-111	SS, SG	The law laid the foundations for establishing a network of community-based

Disabled Children [D]					rehabilitation centres for disabled children. The centres were supposed to be funded from the State budget, but funding was never sourced from the state budget, and many centres have become financial 'orphans' which local tiers of government have had to finance from their own resources
The Law of Ukraine on Social Services [D]	All Ukrainian citizens deemed to be in "difficult life conditions"	19 June 2003	No 966-IV	SS	The law provides the foundations for reform and modernisation of residential and community-based services with an emphasis on enlarging the scope and provision of the latter
The Law of Ukraine on the Social Adaptation of People who have Served their Sentence by Restraint of Liberty or Imprisonment for a Certain Period [D]	- Ex-prisoners [including Ukrainian citizens, foreign nationals, and stateless persons]	10 July 2003	No 1104-IV	SS	The law lays the foundation for the rehabilitation and social integration of ex-offenders and makes special provisions for women with children aged under 3
The Law of Ukraine on Social Support to Disabled People [D]	- People without entitlement to pensions; - Disabled people	18 May 2004	No 1727-IV	CB, SG, SP	The Law defines people without entitlement to pensions as those who attain the age of 63 [men] and 58 [women] who do not have rights to a pension under current legislation
The Law of Ukraine on State Social Protection Guarantees for Military Men Leaving the Service Due to the Reform of the Armed Forces of Ukraine and Members of their Families	- Military personnel leaving the armed forces;	15 June 2004	No 1763-IV	CB, SP, SG	
Law of Ukraine on Social Protection of Children of War [D]	- Adults affected by WW2	18 November 2004	No 2195-IV	CB, SP	This law was passed with a view to providing a special range of social protection measures to people who were

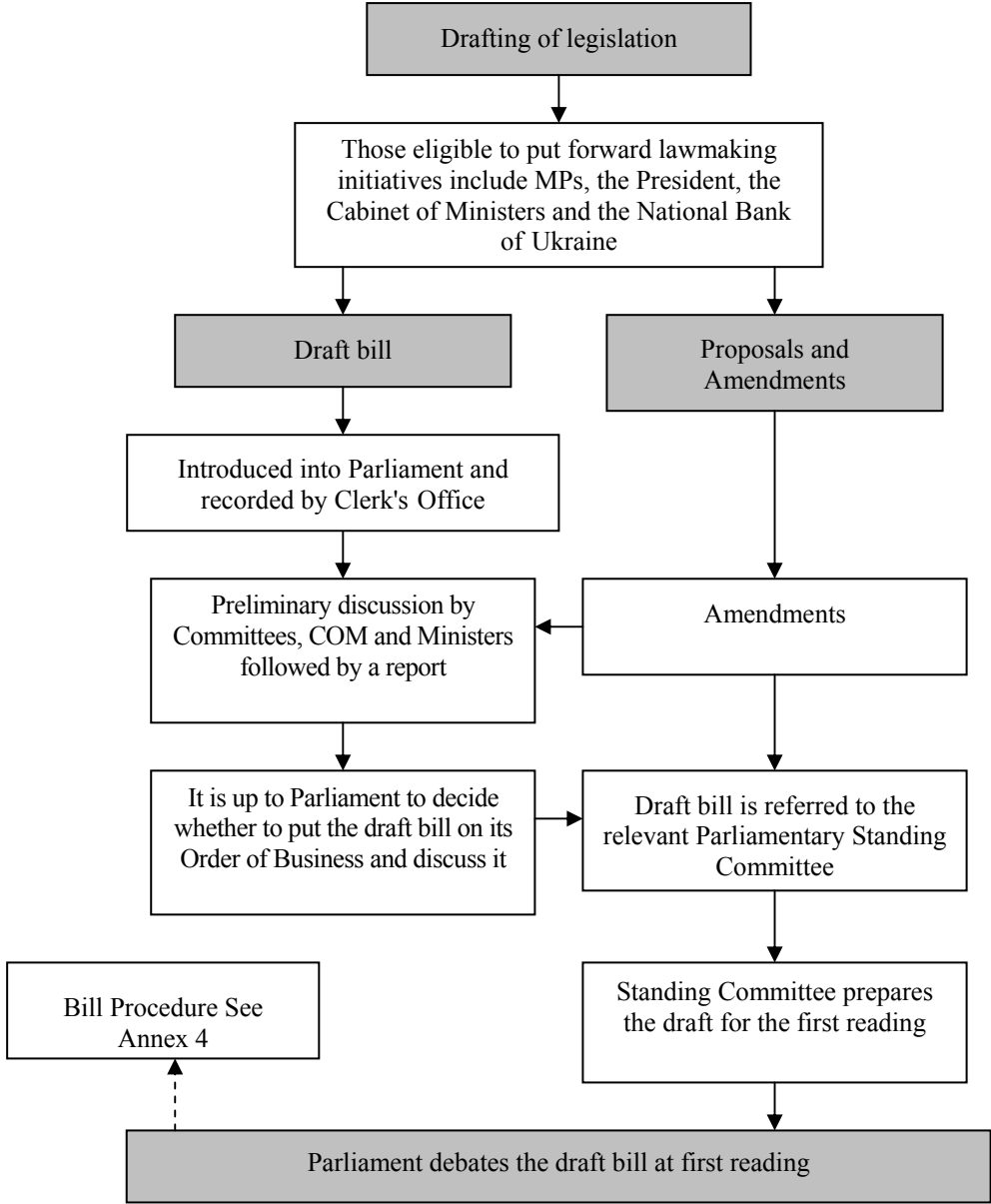
					aged less than 18 years of age at the end of WW 2.
The Law of Ukraine on Providing Organisations and Legal Conditions for the Social Protection of Orphans and Children without Parental Care [D]	-Orphans - Children without parental care; - Children who leave residential institutions	13 January 2005	No 2342-IV	SS, CB, SP, SG	This law is complements the Law on Social Services with a particular focus on children's social services. Orphans are defined as children whose parents are deceased; children without parental care are defined as children whose parents have had their rights annulled, children whose parents who are deemed incapable of providing adequate levels of care; parents in prison, parents who are missing; or parents who are ill.
The Law of Ukraine on Social Work with Children and Young People [D]	- Children aged 0-5; - Young people aged 15-35;	28 January 2005	No 2558-111	SS	This law complements the Law on Social Services and Law No 2342. It focuses on social services for younger age groups and provides a definition of the types of tasks and roles that constitute social work.
The Law of Ukraine On the Fundamentals of Social Protection of Homeless People and Neglected Children [D]	- Children and adults at risk of neglect an abuse or lacking adequate shelter	02 June 2005	No 2623-IV	SS, SG	Within the framework of this law, which is closely associated with the Law on Social Services, homelessness is defined to include people who are stateless but legally resident in Ukraine and all citizens who lack adequate housing
The Law of Ukraine on Rehabilitation of Disabled People [D]	- People with disabilities;	06 October 2005	No 2961-IV	SS, CB, SG, SP	This law applies to children and adults as well as certain categorical groups such as war veterans. The law has philosophical and practical affiliations with the Law on Social Services
The Law of Ukraine on Employment of	- All Ukrainian citizens of working age	01 March 1991	No 803-X11	SG	

the Population [I]					
The Law of Ukraine on the Rehabilitation of Victims of Political Repression in Ukraine [I]	- People classed as victims of state violence and repression	17 April 1991	No 962-X11	SP, CB	
The Law of Ukraine on Social and Legal Protection of Military Men and their Families [I]	- Military personnel and their families	20 December 1991	No 2011-X11	CB, SG, SP	
The Law of Ukraine on the Poverty Level	- All Ukrainian citizens	13 May 1999	No 190/94-BP	SG	
The Decree of the President of Ukraine On Additional Measures of Material and Moral Incentives for Workers of Coal Mining Industries [I]	- People working in the coal mining industry and their families	09 January 1996	No 41/96	SP, CB, SG	
The Law of Ukraine on General Secondary Education [I]	- All Ukrainian Citizens	13 May 1999	No 651-XIV	SP	
The Law of Ukraine on the Minimum Subsistence [I]	- All Ukrainian citizens	15 July 1999	No 966-XIV	SG	

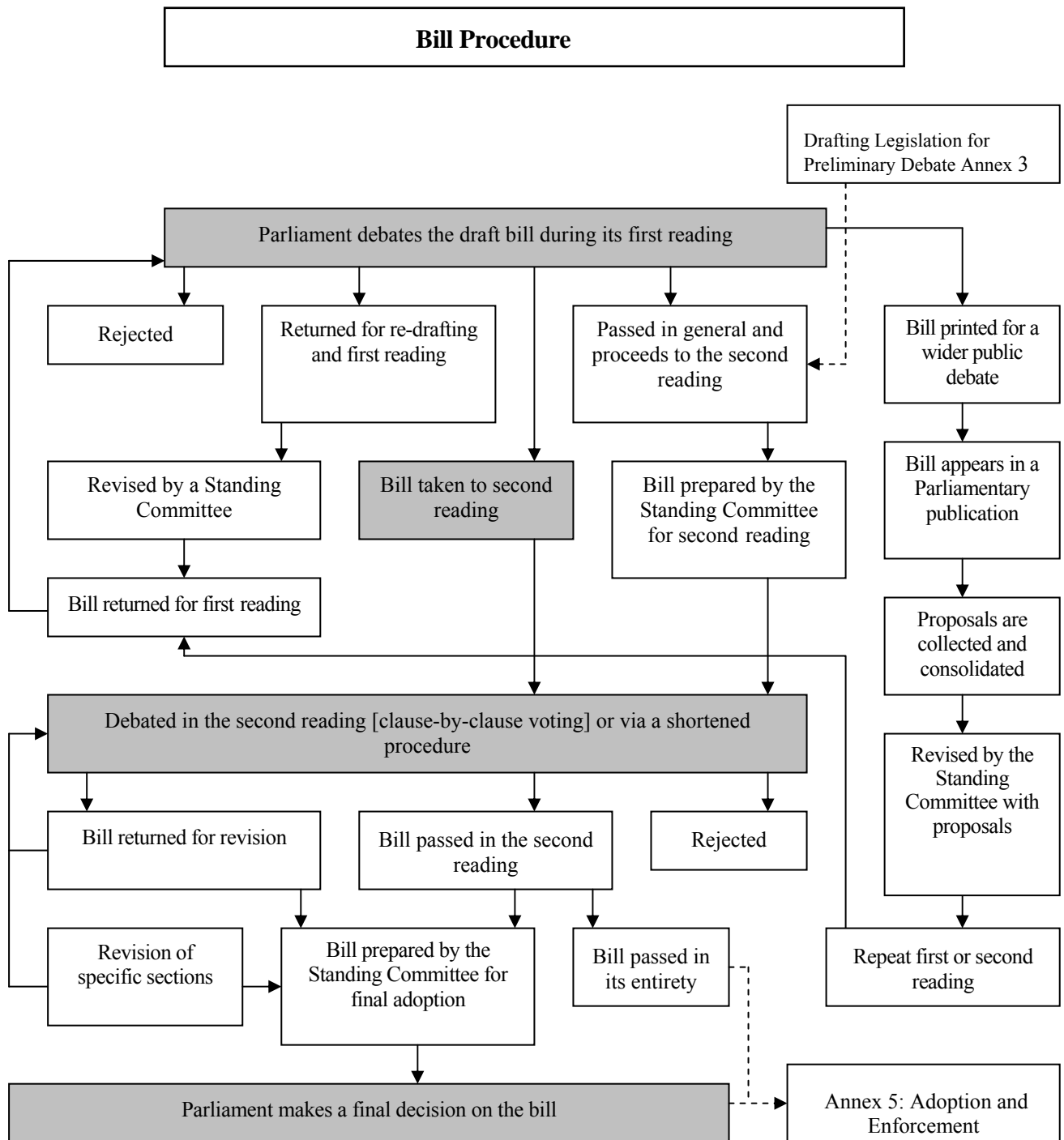
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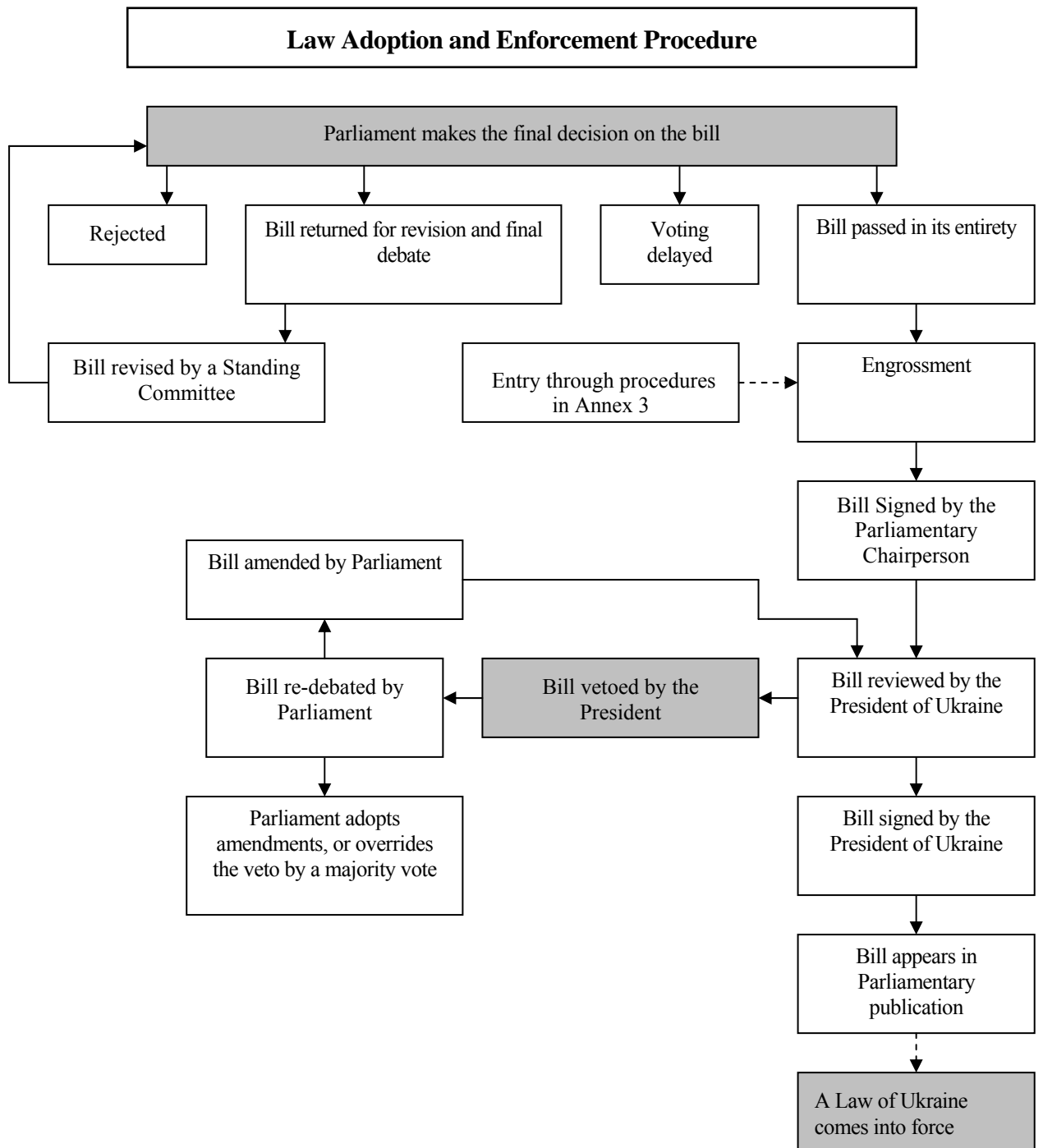
The Drafting of Legislation for Preliminary Debate



Attachment 4



Attachment 5



Attachment 6:

Fundamental Economic and Social Rights Protected under the Constitution

Article No	Rights of Citizens	Commitments of the State ^a	Opportunities for Citizens Ensured by the Constitution ^b	Means of Delivery
Article 46	Citizens have the right to social protection including the right to security in the event of total or partial disability or temporary incapacity, loss of breadwinner, unemployment in circumstances beyond the individuals control, old age or otherwise as required by Law	<p>1.1 Pensions for total/partial incapacity, old age and other pensions defined by law.</p> <p>1.2 Cash benefits for temporary incapacity or otherwise as required by law</p> <p>1.3 Network of residential and community based social services</p>	<p>2.1 Access to different forms of social protection provided by specialised institutions</p> <p>2.2 Access to network of non-government organisations and charitable agencies</p> <p>2.3 Residential institutions under the management of MoLSP, MoH and MoES, and community-based social services e.g. Territorial Centres for elderly and disabled</p>	<p>Compulsory national social insurance</p> <p>Compulsory pension insurance</p> <p>Network of government and communal disability care facilities</p> <p>State budget transfers and equalisation transfers to local levels of government for residential and community – based social services; coupled with resources generated from local budgets.</p>
Article 47	Everyone has the right to housing	<p>1.1 Creating opportunities for everyone to build, buy or rent housing</p> <p>1.2 Provision of affordable housing to vulnerable groups free of charge or at an affordable price</p> <p>1.4 No one shall be deprived of his home other than</p>	<p>2.1 Access to free housing schemes for particular groups of citizens deemed to be in need.</p> <p>2.2. Access to subsidised loans for particular citizens [e.g., young people and rural populations]</p> <p>2.3 Access to local programmes</p>	<p>Government housing programme for young people</p> <p>Government housing programmes for rural areas.</p> <p>Government funded housing programmes</p>

^a Commitments of the state - refer to social guarantees for implementing fundamental social and economic rights of citizens, including the adoption of minimum standards for implementing these rights.

^b Opportunities for citizens - refer to the right of citizens to use [at their discretion] the benefits or other means of protection established by the state, or have access to special government programmes funded from central or local budgets.

		as required by law and pursuant of a court decision		Local social housing programmes [e.g. the 50/50 programme]
Article 48	Everyone has the right to a standard of living adequate for health and wellbeing of himself and of his family, including food, clothing and housing	<p>1.1 Unemployment social assistance</p> <p>1.2 Guarantees of employment, professional development and/or re-training</p> <p>1.3 Child benefits</p> <p>1.4 Pensions in the event of partial/total incapacity, old age or otherwise as provided by law.</p>	<p>2.1 Early retirement including servicemen and law enforcement officers;</p> <p>2.2 Professional development and re-training programmes funded by government</p> <p>2.3 Government subsidies to private business</p> <p>2.4 Access to government housing programmes</p>	<p>Minimum costs of living index</p> <p>Minimum wage</p> <p>Minimum pension</p> <p>Government funded employment programmes</p> <p>Child birth benefits</p> <p>Government housing programmes</p>
Article 49	Everyone has the right to health care, medical care and medical insurance	<p>1.1 Accessible medical services</p> <p>1.2 Medical care is provided free of charge by government and communal health facilities</p> <p>1.3 Preventive and public health measures</p>	<p>2.1 Ability to choose between health care facilities</p> <p>2.2 Availability of health care for high risk conditions</p>	<p>Legal provisions/orders that ensure the amount of government and communal health care facilities cannot be reduced #</p> <p>Support for the development of health care facilities of all sorts of ownership</p> <p>HIV/AIDs support programmes</p> <p>Government TB, and highly infectious diseases, programmes</p>
Article 53	Everyone has the right to education	<p>1.1 Government and communal education facilities are accessible and available free of charge</p> <p>1.2 Development of a variety of avenues and</p>	<p>2.1 Ability to choose educational facilities</p> <p>2.2 Education offered free of charge at schools</p>	<p>Government commissioned training and vocational services</p> <p>Government funding of higher education</p> <p>Special quotas for the education</p>

		<p>routes for educational attainment</p> <p>1.3 Government scholarships and benefits to pupils.</p>	<p>with competition-based admission requirements</p> <p>2.3 Higher education provided at the full cost to the state for certain categories of citizens</p>	<p>of particular groups of citizens.</p>
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