DFID Department for International Development

FRSSU

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

Department for International Development

FACILITATING REFORM OF SOCIAL SERVICES (RESIDENTIAL, NON RESIDENTIAL AND COMMUNITY BASED) IN UKRAINE (FRSSU)

Contract Number: CNTR 03 5289

DEVELOPING AN ENABLING LEGISLATIVE ENVIRONMENT FOR EFFECTIVE SOCIAL SERVICES POLICY IN UKRAINE

A SUMMARY OF CONCEPTUAL RECOMMENDATIONS

Monday 30 April 2007

Birks Sinclair & Associates Ltd
Gatehouse Suite
Palatine House
Belmont Business Park
Durham
DH1 1TW
Phone: +44 191 386 4484
Fax: +44 191 384 8013
Email: Office@Birks-Sinclair.com

Disclaimer

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

Contents

List of Acronyms

CoE	Council of Europe
CoM	Cabinet of Ministers
DFID	Department for International Development
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood and Partnership Instrument
EU	European Union
EUUAP	European Union-Ukraine Action Plan
FIWG	Financial Issues Working Group
FRSSU	Facilitating Reform of Social Services Ukraine
GDP	Gross Domestic Product
GoU	Government of Ukraine
LSS	Law on Social Services
MoES	Ministry of Education and Science
MoFYS	Ministry of Family Youth and Sports
MoH	Ministry of Health
MoLSP	Ministry of Labour and Social Policy
MPs	Members of Parliament
NCRSS	National Council for Reform of Social Services
NGOs	Non-Government Organisations
TAIEX	Technical Assistance and Information Exchange
TORs	Terms of Reference
UK	United Kingdom
USAID	United States Agency for International Development
USIF	Ukrainian Social Investment Fund
WGILSS	Working Group for Implementation of Law on Social Services

DEVELOPING AN ENABLING LEGISLATIVE ENVIRONMENT FOR EFFECTIVE SOCIAL SERVICES POLICY IN UKRAINE

A SUMMARY OF CONCEPTUAL RECOMMENDATIONS

PART 1 INTRODUCTION

Purpose of this Paper

One of the strongest factors in the evolution of social policy is the legislative framework in which it is pursued. Such frameworks include the structure and system of normative and legal acts, and the manner in which the rule of law is applied in the process of policy elaboration.

Such legal frameworks in Ukraine are in transition and development, changing in response to internal and external drivers. This transition involves:

- difficulties of dealing with institutional history, outdated practices from earlier years, and with numerous gaps and omissions inevitably present in any emerging legal system, especially in a complex social and economic environment.

- important opportunities, which originate from recent promising initiatives in social policy:

    - *in Ukraine*, culminating in the approval of the Concept for Reform of and the Law on Social Services; and
    - *external* drivers of change, the Government of Ukraine's (GoU's) European Choice agenda, and the EU-Ukraine Action Plan (EUUAP), as a protocol for approximating Ukraine's domestic policies with norms and standards of the EU.

This document analyses the current legal environment for policy development and provides recommendations for discussion on how to streamline it, making the most of the existing internal and external opportunities. The analysis was conducted by the FRSSU project as part of a series of studies of various aspects of social policy development in Ukraine. It is available in this short version or as full detailed document with background materials and references (Recommendations and Resource Papers on Europeanisation and European Choice - Social Services Policy and Legislative Frameworks: Developing Further the National Document on Social Services Policy, available at www.frssu.co.ua).

The recommendations from this work are offered for discussion as a contribution to the consensual development of public policy in Ukraine.

Approach and Summary of this Paper

Diagnosis

To identify improvements in current legal frameworks, we start with a diagnostic overview of the major factors which shaped these frameworks in the past and will affect them in future.

As an introduction, the diagnosis looks at the Europeanisation agenda and the ways in which this agenda can be defined and utilised for setting reform objectives.

It shows that the best way to utilise EU standards is to treat them as a complex system of values and approaches, rather than concrete isolated benchmarks.

This kind of strategic vision of Europeanisation allows formulation of a set of more strategic criteria to analyse the current legal environment – a set of criteria or "baseline measures" which show the problems with Ukrainian legal frameworks in a systemic, policy-oriented way, and to design appropriate complex recommendations.

The core diagnosis looks at the history of legislative development in Ukraine. In order to apply systemic "baseline measures", based on European experience, to identify key obstacles for effective social policy making in Ukraine, why they have emerged, and how they can be addressed in a sustainable way.

Recommendations

This evidence-based analysis leads to:

- general conclusions about key bottlenecks for effective policy-making based on EU best practice; and
- proposals for practical strategies for making the current legal environment more enabling and coherent.

A summary analysis of the policy recommendations arising from this analysis is presented in a separate report, and is available upon request.

PART 2 SUMMARY OF DIAGNOSTIC ANALYSIS: UNDERSTANDING KEY FACTORS OF LEGISLATIVE EVOLUTION IN UKRAINE

Making the Most of Europeanisation

Why the Europeanisation Agenda Matters

Relations between the EU and the GoU have, over the last 10 years, been growing in scope and have in more recent times intensified in depth culminating in the EU-Ukraine Action Plan (EUUAP) signed on 21 February 2005.

The EUUAP, which is an integral part to the EU's European Neighbourhood Policy (ENP), 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.

Thus the European Commission's focuses are on the ENP and the EUUAP for now, and to 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 emphasises that there is much that the GoU can do to elaborate the detail of the European Choice set out in *Towards the People*, whilst engaging in the Europeanisation process.

What "Europeanisation" Can Mean

The detailed report's (see Recommendations and Resource Papers on Europeanisation and European Choice - Social Services Policy and Legislative Frameworks: Developing Further the National Document on Social Services Policy, available at www.frssu.co.ua) discussion and literature overview show that Europeanisation is a concept with multiple meanings, that are changing in the EU itself, as it develops and expands. Ukrainian policy makers need to choose a clear definition of their vision for the Europeanisation process, to help to agree on expectations, priorities and methods of work.

The term "Europeanisation" originates from the process of EU accession by recent new member states, but is also applied to countries like Ukraine which are seeking closer integration with the EU. This term is defined and applied in different ways, which differ in views about who leads this process, what aspects of it are more important and how it should be happening.

FRSSU recommends the following definition as the most useful for Ukrainian context:

Europeanisation consists of:

- *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.*

Choosing this particular definition underlines that for Ukraine, EU integration is an interactive process. GoU is not simply a receptor of policy directives from the EU, but is involved in the establishment of a negotiated order in which EU integration shapes domestic policies and politics.

How Can Europeanisation be Achieved?

The definition of Europeanisation helps to choose concrete strategies by which it could be achieved. The report defines three general mechanisms by which this process can take place.

i. ***Positive Integration***, under which EU models and policy templates are imposed on GoU, which has limited discretion in this process. The mechanism is coercive and assumes that introducing all necessary legal change is the responsibility of the countries seeking integration. If pre-existing domestic policies already fit well to EU norms, the adaptation pressure on the national government is low, but it rises significantly if there are significant differences, requiring serious transformations.

ii. ***Negative Integration,*** which filters EU requirements through local political and institutional limitations, and to apply EU policy templates only to limited areas. EU templates may be rejected or modified depending on how they interact with already existing domestic variables (such as country's decentralization arrangements, public-private mix in the economy, public administration systems, social priorities etc). The degree to which European approaches are accepted in such cases strongly depends on the ability to mobilize political consensus for necessary changes.

iii. ***Policy Transfer Coordination,*** which uses soft measures where the ability of the EU to use coercive measures is weak. Policy Transfer Coordination relies on altering beliefs and expectations of domestic actors. This transfer is a process in which knowledge about EU policies, administrative arrangements, institutions, and ideas are used in the development of policies, administrative arrangements and institutions in GoU.

This third mechanism supports various ways of learning for the domestic institutions, which in the future can inspire them to change behaviours and strategies. This knowledge transfer might be incremental, when local institutions acquire certain bits of information on specific issues, through more radical shifts of paradigm. Local actors gain maximum time to digest and adopt changes.

These mechanisms are not mutually exclusive and all have roles in engagement of the EU and Ukraine.

However, policy actors in Ukraine need to understand these options, and that in reality:

- EU policies and priorities are evolving quickly, and
- mechanisms for integration change as the EU becomes larger and as Treaties are revised.

Europeanisation has become more onerous, and transferring technical and codified knowledge more difficult task. Therefore, softer and more strategic methods of integration, such as policy transfer coordination, become increasingly important.

What Strategy is Proposed by the EU-Ukraine Action Plan (EUUAP)?

The three-year EUUAP supports the GoU objective of further integration into European economic and social structures. It sets out a list of priorities, including for social policies, which move Ukraine beyond cooperation towards participation in EU policies and programmes.

Under EU law no specific provisions apply to policies on social services. There are no "positive integration measures". However, within the EUUAP, negative integration and policy transfers do have a role in facilitating the enabling environment – particularly through:

- Twinning arrangements;
- TAIEX mechanism; and
- programmes and projects to be funded under the ENPI.

The EUUAP is an enabling framework aimed at facilitating the Europeanisation of public policy, and supporting the GoU to achieve its 'European Choice' objectives, and underpinning this common goal is the process of policy transfer coordination.

The EUUAP clearly underlines that Europeanisation is not simply about formal policy rules but the emphasis is on the transfer of organizational approaches, beliefs and social values.

However, policy transfers need GoU to set the directions it wishes to take, and to shape the policy environment in consultation with all relevant stakeholders, hence FRSSU's approach overall.

Development of a *national social services policy document,* a key recommendation in this report, would enable the GoU negotiate and prioritise the range and type of EU policy transfers applicable to social services in Ukraine.

What Criteria or Baselines Can Help to Design Such Gradual and Systemic Changes?

The baselines for analysing the legal frameworks for policy development to support transfer of policy experience from EU countries should include two types of measures:

- **"Framing" baseline measures,** which describe basic static elements of the legal environment, such as: the presence (or absence) of various concrete parts of legislation, the nature of the definitions, institutional roles and responsibilities of various actors. These help to define the content of the legislative system.

- **"Process" baseline measures,** which describe dynamic aspects of the legal environment, such as relationships between key stakeholders, ways in which policy is developed:

  → ***Why do we need such measures?*** They show how the system fits together and interacts during policy development and implementation.

  A process analysis assumes that all aspects of the legislative system should be subordinated to the idea of attaining a certain policy goal: process baseline measures assess whether:
  - the system as a whole is effective in *goal attainment*;
  - it is flexible enough to allow *adaptation to changing circumstances*; and
  - it is *sustainable in the long-term.*

  → ***How can we assess the system against these measures?*** To assess the degree to which the legal environment is "goal-oriented", flexible and sustainable we analyse all of its individual framing measures based on how well they perform against the following standards:

  1. System standards, which are requirements to the system as such :

  ✓ 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.

2. Output standards, which are requirements to the actual outputs of the legislative and policy development process, namely:

- ✓ User Standards – how clear, simple and accessible are the policy outputs for private citizens and service providers?
- ✓ Design Standards – are the outcomes consistent with other rules that inform social protection, and European best practice?
- ✓ Legal Standards – do legal outputs have appropriate structure, orderliness, clear terminology, and clear legal authority for action?
- ✓ Effectiveness Standards – are the outcomes relevant to the defined problems and prevailing conditions?
- ✓ Economic and Analytical Standards – do the outputs take into account an economic assessment of unit costs and cost-effectiveness analysis 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 functions in social services?
- ✓ Implementation Standards – are the policy outcomes practical, feasible, enforceable, acceptable to public?

We now summarise how the baseline measures diagnose the current legislative environment in Ukraine's ability to support effective policy making for social services delivery.

Learning from Recent Legislative History

Framing Baseline Measures (static description of legal environment)

The following are aspects of Ukraine's legal system that are essential for defining the context for social policy development and implementation.

- **Complexity in hierarchy of legal acts resulting in problems of removing "faulty" legislation**

The Ukrainian legislative system – with Roman and Germanic origins – means that the main legislative sources are codified in laws, accompanied by a hierarchy of normative acts with the principle source being the Constitution of Ukraine.

The background report describes this hierarchy in detail, provides explanations of responsibilities and procedures for issuing legislative acts and for removing acts which do not comply with system requirements. The provisions of the Constitution are norms of direct effect, and law and other normative legal acts should comply with its provisions. The next tier of legislation – secondary legislation, consisting of various acts such as decrees, resolutions, and orders – is adopted through general provisions of law.

In transition, there are many omissions at the level of laws. These gaps are often filled by regulations issued by line Ministries. Though 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 regulation. 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 in contravention of the Constitution, is with the Constitutional Court. 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 bodies.

- **Narrow scope of ordinary laws resulting from the system of codification.**

Codification is designed to ensure comprehensive legal regulation of individual areas of importance to social and economic relations. Within the hierarchy of law, codified legal acts have greater legal affect than *ordinary laws*. Most ordinary laws that affect social policy are regulated through the adoption of individual laws – i.e. normative and legal acts with defined subject spheres of legal regulation. As a result such laws tend to focus on narrow segments of social life or specific issues.

In particular, the Law on Social Services and the Law on Local Self-Governance of Ukraine, which are central to the elaboration and delivery of social policy and social services are both ordinary laws.

They are subordinated to a number of codified legislative acts, of which the most important are the Civil Code, the Budget Code and the Principles of Legislation for Health Care.

- **Theoretical flexibility of the system not fully utilized because of absence of policy analysis.**

Theory

Ukraine's legal system is complex because it follows a mode of civil law which assumes that all social relations have to be covered by written regulations, rather than legal customs or legal precedents.

To achieve this comprehensive regulatory coverage, and to catch up with the development in social relations, such legal systems should be flexible. They need to be able to:

- adopt sufficient legislation to regulate all *existing* social practices, and
- also to adopt new legislation to cover *emerging* or *expected* social relations.

Practice

In practice, this flexibility (needed within Ukraine's legal system), is not appropriately utilized.

Flexibility does not work because the *legislative process does not include adequate, evidence-based analysis of policies at the stages prior to legislative drafting*.

This general conclusion is substantiated by the fact that:

- ✓ 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 often 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. This results in heavier burdens on policy development within Ministries and Parliament, and accentuates difficulties in the implementation phase due to severe inconsistencies and shortcomings in the drafting process;

- ✓ Laws are drafted in policy vacuums without clear visions of what they are expected to tackle;
- ✓ Inadequate levels of definition are given to concepts and ideas which are then thrust into the public policy arena;
- ✓ It is a common to base legislative drafting on copying foreign legislation without taking account of the Ukrainian policy environment;
- ✓ Draft laws are shared for inter-ministerial consultation and review only after the core legislative text is at 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, often, these issues are overlooked. Where financial impact is taken into account it is restricted to calculation of State budget subventions, ignoring the impact for equalisation transfers and the impact on local revenues. Costs and benefits or even total income and expenditure are not taken into consideration. As a consequence, an overall assessment of the benefits, or the transition costs that are expected from a particular law, is lost.

LSS as an Example of Flexibility Not Utilised

The LSS, alongside the Law on Social Work with Children and Young People, shows the relevance and strength of the legal system adopted in Ukraine. This system should allow adoption of laws and policies that stimulate social relations likely to emerge in the future, or that are not yet established in practice.

And indeed, the LSS and other recent and related laws do make a significant step to define social services and to separate them as a policy and practice which is complementary to, but distinct from, social privileges and social guarantees. However, exactly because of the obstacles outlined above, introduction of the priorities in these laws into full-fledged policies has not yet taken place.

- **<u>Lack of coordination between lawmaking and statutory regulation</u>**

Lawmaking Versus Statutory Regulation

Theoretically speaking, the legislative process in Ukraine produces two types of legal outcomes. One is ***lawmaking*** – the development and adoption of laws per se; the other is ***statutory regulation*** – the development and adoption of statutory instruments governing internal institutional processes.

Problems in Ukraine

In Ukraine, typically for countries in transition, the synchronisation of these two processes is weak.

- ✓ The first weakness is in *incoherent formalisation* of the two processes. The passage and enactment of laws is, relatively, well defined and formalised. But adaptation of statutory instruments is only partially formalised, and sometimes cannot be distinguished from lawmaking.
- ✓ The second, additional weakness is *lack of capacity to support new laws with relevant packages of supportive regulations covering related policy areas.* Because the

development of specific pieces of socially focussed legislation are related to other areas of public policy and/or legislation, other types of regulation – such as Cabinet of Ministers (CoM) Resolutions – have to be taken into consideration. Often Resolutions need to be developed to clarify the Law after it has been passed. This means that a package of relevant draft regulations has to be prepared soon after the law comes into force. This however is not done in practice for many pieces of legislation.

Thus aside from the absence of coherent national policy strategies being prepared ahead of the new legislation, the regulatory regime to guide implementation of laws is often absent. Consequently *many laws are declaratory or aspirational in nature rather than substantive in form.*

- **Pressure from post-soviet approaches to defining constitutional rights**

The scope of rights incorporated into the Ukrainian Constitution, guided by historic and international factors, is extensive, but not always supported with appropriate analysis of whether these rights could be practically enforced.

- ✓ The Constitution declares that Ukraine is *a social state*, by which it agrees to act in accordance with the principles of several *international declarations*, such as the Universal Declaration of Human Rights and the International Covenant on Economic and Cultural Rights. Accepting these international declarations means undertaking steps to achieve full realisation of respective rights.
- ✓ However, GoU has officially recognised during the discussions over the Constitution and its presentation to the Venice Commission of the CoE, that some provisions were introduced due to the *constitutional tradition prevailing in the country*. This tradition implied the Constitution declares a certain set of rights, in order to be appreciated by the population, even if the probability of practical enforcement of these rights is unclear.

  Supporting this kind of tradition resulted in approval of a list of rights which the Venice Commission described as "exhaustive and in line with international instruments, but with some of these rights seeming to be more goals than real". Attention was not given to:

  - if these rights could be protected under transition from planned to a market and democratic economy, or
  - the fact that all constitutional rights have budgetary implications.

  The CoE concerns noted that *some rights are usually more costly than others*. Analysis shows that providing social guarantees and social privileges is more expensive than the provision of social services.

- **Lack of coherence and consistency in treatment of social services and social privileges and guarantees**

In Ukraine, as in most transition countries: (a) social services; and (b) social privileges and social guarantees on the other, are highly interwoven. Consequently, the legislative environment is often inconsistent in distinguishing these rights and services, and developments for these different areas have typically occurred without coordination and logical agreement.

The symptoms of this incoherence and areas for improvement include the following:

Areas for improvement	Issues	Opportunities
Vague definition of the rights	✓ *Constitutional definitions.* Social services are not explicitly mentioned in the Constitution under economic and social rights. However, empirical evidence shows that social services are considered an integral part of the social protection system – as defined under Article 46 of the Constitution – given that the organizational arrangements for the delivery of social protection are tied to a network of over 820 residential institutions providing 'protection' to children, the elderly and disabled under the remits of the MoLSP, the MoH and MoES. ✓ *As consequence of this peculiarity in constitutional definitions: there is a bias towards associating social services with residential institutions*, which constitutes one of the key challenges for current reforms	*To draw clear distinctions between social services and social privileges and social guarantees*. This is necessary 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.
Poor targeting and uncontrolled expansion of privileges and guarantees	✓ As another consequence of wage definitions, social privilege and social guarantee programmes *have grown in both cost and number* – and include exemptions from payment of housing, utilities, transportation, communication services, privileged treatment at health resorts, discounted dental care and prescription drugs, preferential terms of credit, free provision of cars etc. ✓ *The legacy of a social protection system tied to categorical and occupation-based principles* (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 peopled affected by	✓ Phasing out, or restructuring, these privileges should be accompanied with expansion in the range, content and quality of community-based social services – particularly in the context of an ageing population. ✓ It is also possible to identify (through a specific public expenditure analysis) concrete amounts of efficiency gains from restructuring these privileges and to *redirect these resources towards enlarging the circle of social services*. ✓ *Improving the effectiveness of targeting for social privileges and guarantees, based on social priorities identified by policies for service provision.* Better targeting will require a specific kind of coordination

	the Chernobyl catastrophe)	between the policy for privileges and guarantees with the policies of social service provision. This is because more effective targeting cannot be based on simple income-based indicators and should incorporate a wider set of social priorities. (E.g. a child at risk of abuse has to be protected by the state irrespective of parental income). Therefore, for the purposes of better targeting of privileges and guarantees, it is possible to rely on the set of such priorities to be developed by the system of social service provision.
Residual role for the social services resulting from uncoordinated development of legislation covering the two systems	A brief overview of these legislative developments is provided in Box 1. It shows that the political realities of early post-independence years gave higher priority to social privileges and guarantees.	Recent approval of the LSS and the Law on Social Work with Children and Young People symbolise an opportunity for the services to start catching up.

Box 1. History of legislative developments for social services, privileges and guarantees

In the immediately post-Soviet era of early 90s the emphasis was on defining categorical and occupation-based social guarantees and social privileges. Later in the 90s, it shifted towards 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 regulations[42] 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* which introduced and defined the role and function of 'social work' as a distinct form of professional practice.

- **LSS as culmination of positive developments but still weak and contested**

LSS as a Step-Change in the Right Direction

In this context, the LSS marks a step change in the GoU's approach to social services – particularly in elaborating Article 46 of the Constitution. The principles of the LSS are an affirmation of Ukraine's membership of the 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;

LSS as Example of Risks from Weak Policy Process

But there are key obstacles which hamper utilisation of the LSS for enhancing effective social policy in Ukraine. Some of these obstacles have been partially mitigated, others still represent serious risks. In particular

- ✓ ***Consultation across line ministries lags behind implementation of the LSS***. 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 funding. No other line Ministries (i.e., MoES, MoFYS, and MoH) were involved in the initial drafting process. Only after the initial draft had been agreed was 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 Ministers - to the Verkohvna Rada.
- ✓ ***No analysis of socio-economic costs***. According to administrative procedures the CoM has to issue an Examination Report. 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 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 2003.
- ✓ ***Resulting tensions with alternative Parliamentary initiatives.*** Development of LSS was not accompanied by consultations on the goals and content of reforms. Although the LSS supported Article 46 of the Constitution and significantly improved organisation of service delivery and funding, particularly with the regard to roles envisaged for NGOs, its approaches were not weighed against alternative views shared by many influential stakeholders.

  Consequently, its approval resulted in a number of attempts by Members of Parliament (MPs) – backed by consortiums of local NGOs – to reopen debate and to re-engage Parliament in the policy implications of the LSS and to clarify and streamline its provisions:

  → The first attempt, 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 2004 version of the LSS, and in 2005 a second attempt was made by MP V.I. Konovaliuk (Registration Number 7212) to revise

the LSS. In November 2005 – following the convening of a Parliamentary Club, a revised LSS was presented to Parliament – by MP Kisse - and sent for comment to MoLSP.

→ On 14 March 2006 the new Bill entered the second reading stage under the auspices of the Parliamentary Committee for Pensioners, Veterans and Disabled. However, MPs raised a number of issues and concerns during the second reading, and the bill was directed for re-drafting and re-consideration in preparation for a fresh second reading.

✓ ***Continued absence of agreed policy approaches***. Future attempts to revise the LSS cannot be discounted**.** The underlying issues that have promoted these attempts stem from trying to use law to determine the content and goals of policy.

✓ To avoid this, GoU needs 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, prior to developing legislation. In this case the approval by CoM of the Concept for Social Service Reform is a major step forward. This will help to resolve key contested questions and to establish the joint work of all stakeholders on implementing this policy and social services reform.

The key contested questions include:

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

▪ **<u>Administration of social services is highly fragmented</u>**

Responsibilities for provision of social services are allocated through a complex structure, fragmented horizontally across the legislative remits of four line Ministries at the central level, and vertically down to the delegated budgets of Oblasts, Cities and Rayons. Different beneficiary 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. The arrangement leads to high levels of inefficiency in the legislative process as each Ministry develops 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.

Process Baseline Measures (Dynamics in Legal Environment)

Therefore it is important that, as defined above, process baseline measures should help show how the various elements of the legislative system fit together, and determine whether the system as a whole is effective to deliver various policy goals in a flexible and sustainable way.

In order to analyse Ukraine's legislative environment from this perspective, we start by summarising how the various elements and aspects of the system, influence each other and the system as a whole and its ability to produce consistent policy outcomes.

Framing aspects of the legislative environment	**Process analysis and systemic implications**
▪ Complexity in hierarchy of legal acts resulting in problems of removing "faulty" legislation	Leads to significant system weaknesses, e.g. through limiting coherence, consistency, predictability and transparency. Significant obstacle to system adaptation to changing circumstances.
▪ Narrow scope of ordinary laws resulting from the system of codification.	Not necessarily a problem in itself. However, it does become a systemic problem in Ukraine given that there are no sustainable mechanisms for coordination of policy action between the narrow ordinary laws and their codified legal "umbrellas" (e.g. LSS and the Budget Code).
▪ Theoretical flexibility of the system not fully utilized because of absence of policy analysis.	A core systemic problem. Lack of policy analysis prior to adopting individual legislative acts means that such acts exist in isolation and do not lead to desired practical changes.
▪ Lack of coordination between lawmaking and statutory regulation.	Another core systemic inconsistency. A lot of laws are not supported by necessary regulatory regimes and remain declaratory.
▪ Pressure from post-soviet approaches to defining constitutional rights.	This circumstance is a basis for a vicious circle of systemic problems. Absence of adequate social and economic analysis results in declarative nature of constitutional definitions. On the other hand, pressures from constitutional definitions make it more difficult to move towards more realistic policy formulations.
▪ Lack of coherence and consistency in treating social services vs social privileges and guarantees.	A source of significant disruption in the system, resulting from weak coordination, wage definitions and lack of inclusive policy analysis.
▪ LSS as culmination of positive developments but still weak and contested	Problems in implementing LSS directly representing a symptom of weak policy processes. This includes: lack of horizontal and vertical consultations, absence of analysis of social and economic costs of legislative decisions, continued absence of agreed policy approaches and, thus, continued contestation of these approaches in the Parliament already after

	approval of the LSS.
▪ Administration of social services is highly fragmented.	A significant obstacle for systemic reforms, which are much more difficult to pursue in a fragmented administrative environment.

This table shows, that several current elements of the legislative environment have similar problematic implications for the overall systemic outcomes.

Most of the issues relate to the fact that ***legislative drafting*** in Ukraine is not preceded with coherent, consultative, evidence based processes for developing and agreeing a national ***policy*** for social services.

In particular, lack of preliminarily agreed policy is evident through:

- **Weak procedures and standards of Parliamentary Debate on the national social services policy;**
- **Significant weaknesses in the process of drafting the national social service policy;**
- **Lack of agreement around the key features and conceptual content for the national social services policy.**

Based on these general conclusions, the next section makes a list of practical recommendations for addressing these current gaps, weaknesses and inconsistencies.

PART 3 PRACTICAL STRATEGIES FOR DEVELOPMENT

General Recommendation: The Need to Develop Policy Ahead of Legal Drafting

Agreeing that "policy before legal drafting is not yet a systematic practice in Ukraine", despite the requirement that bills presented to Parliament should be accompanied by an Examination Report is itself a key recommendation. There is a need to set out coherently:

- why any particular Law is necessary;
- the outline of the general principles of the would-be Law;
- identification of where it slots in to the overall legislative framework; and to
- provide an overview of the projected socio-economic costs.

Why it would be helpful to agree on policy in advance?

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;
- 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; and
- point out where innovation has a critical role.

Would it be in line with the Europeanisation process?

In the context of the EUUAP, the development of policy documents ahead of legislation is increasingly important – and will be important for policy development undertaken in the context of mechanisms for positive integration, negative integration or policy transfer coordination.

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.

Therefore policy development documents will have to include checks on the extent to which priorities have been set in respect of relevant areas of policy, and links to that policy.

Policy Documents – such as in the area of social services – are a vital ingredient to the process of translating the GoU's European Choice objectives into concrete forms of practice.

Would it be possible under current legislation?

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 2002.

A "policy document" has been developed for social services – what are the next steps?

The National Concept for Social Service Reform is a major step in this direction, and the analysis in this report shows how important this step is. It is now (13 April 2007 - reference 178-R) approved by CoM and does go some considerable way in setting forth GoU's strategy on Social Services Policy in the context of the LSS and closely related legislation.

This now needs refinement through consultation to become a full blown evidence based document that takes up a consensus which:

- reduces contestation of the policy's basic principles,
- takes account of its social, political and economic costs,
- appeals to the fragmented nature of the legislative and implementational mandates of the provision of and finance for social services; and
- addresses the major inconsistencies currently present in the legislative frameworks

Given that the LSS has already been passed by Parliament, the development of the concept - and its development into a comprehensive policy consensus - needs to focus on elaborating the will of Parliament.

It is now essential that – subject to agreement within Government – that the Concept, as approved by CoM is:

- further 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;

- now the object of systematic technical scrutiny, to look at the practicalities of the implementation of the policy, as set out in FRSSU's Transition Action Plan for social services;

- the Financial Issues Working Group for Social Service Reform, to review the financial implications in order that the financial – state budget and other revenue and financial – implications are teased out and turned into priorities that give value for money and a realistic and sustainable level of expenditure;

- the cross ministerial implementation of the document needs supporting at a more senior level than the Working Group for the Implementation of the Law of Social Services (WGILSS) and it is for this kind of activity that the ToRs for proposed National Council for Reform of Social Services (NCRSS) (see Annex 1) have been developed, and are attached for convenience;

- each component of the policy is given separate scrutiny – as has already been given to (a) the role of NGOs, and (b) the client focussed approach by FRSSU bottom up and round table consultations; and

- be widely distributed to inform social service practitioners to widen the consensus and understanding of the concept in order to gain the momentum needed for implementation – see for details of this in particular the FRSSU recommendations developed from the consultation on the user focussed oriented services facet of the concept.

Typically, the verification that Parliament carries out is applied legislation, not the development 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 and the supporting technical refinements even after its approval by CoM.

Parliamentary approval of a properly refined Concept and policy document even at this stage would correct any misapprehensions that continue on key provisions of the LSS, and allow for an informed debate on the how both the Policy and 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 social services policy, LSS and their link to broader social policy issues in the context of its European Choice agenda and the EUUAP.

The CoM and MoLSP are likely to have further key roles in securing agreement to the passage of this document prior to it being submitted for scrutiny to the Parliamentary Committee on Pensions, War Veterans and Disabled.

How to Improve the Process of Drafting of Policy Documents in Preparation of a National Strategy

There are, broadly speaking, seven stages to the drafting process of a national social services policy that will interface with legislative frameworks:

A. Understanding the Intentions of Policy;
B. Analysing the Intentions of Policy;
C. Designing the Policy;
D. Composing the Draft Policy;
E. Scrutinising and Testing the Draft Policy
F. Inter-ministerial Consultation
G. Consultations with NGOs

A. Understanding the Intentions of Policy

Choices of 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 policy are fully informed of what is intended.

This knowledge can only come from dialogue and broader debate among those participating in the drafting process. FRSSU's consultation processes are a model for this. The drafters of documents must also ensure that issues and uncertainties about policy that affect the drafting 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. And yet, not all this information will be available already at the time of writing the document, and it is likely that additional analysis will have to be commissioned and social service practitioners need to contribute to the development of drafts.

B. Analysing the Intentions of Policy

Stakeholders involved in drafting policy need to analyse issues themselves. Those with responsibility for drafting should not necessarily trust or rely on the judgement of others, and this also indicates the need for drafters to consult to gain a clear grasp for themselves of matters that affect individual measures. Even before drafting the policy the following 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, the extent to which the Document will diverge;
- ✓ That the means of implementation and enforcement proposed for 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; and
- ✓ 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.

C. Designing the Policy

Policy documents need to be carefully designed before composition is started. A structure for the entire range of instruments for social policy needs to be planned so policy documents are organised in the most logical form, and therefore aid communication (policy dialogue and feedback). This is particularly important in the case of a complex or lengthy policy document that has to 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; and
- ✓ It may be used by the drafters to check the shaping of the policy and identify areas that need to be elaborated or edited.

D. Composing the Draft Policy

A national social services policy requires the iteration 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 has considerable benefits, enabling each version or completed section to be reviewed by the drafters (and practitioners in a working group). In a similar vein, each draft section can be sent for review to other interested parties, in particular to obtain as early as possible their reactions with respect to key issues. This has a particular cross sectional relevance in social services in Ukraine.

E. 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; and
- Clarity and comprehensiveness.

F. Inter-Ministerial Consultation

The national social services policy is not 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 impacts on the way each ministry currently approaches its responsibilities, and on the way each ministry needs to approach its responsibilities in the future. It is 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. This ought to be the role of the WGILSS;
- financial issues should be resolved by the FIWG; and

- a senior cross sectoral group (e.g. NCRSS) needs to be instituted for strategic coordination.

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.

G. 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 further refinement of 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.

What Conceptual Content Could be a Platform for Policy Discussions in Preparation of a National Strategy?

This section draws attention to a number of key features that may need to be considered in framing the conceptual content 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 Chapter 2 of the Constitution. 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 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 need to specify why a policy is needed, define what the broad duties of the State are towards the provision of social services in a manner that is consistent with the Constitution, and provide an outline of the minimum standards that will need be set for different types of social services provision (e.g., for services to the elderly, 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 periodic intervals (e.g., 3 or 5 years).

Purpose of the Policy

The policy needs 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 by the state, NGOs or private providers.

Positive Intervention

The policy needs 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 policy is to consider how social services can promote and safeguard the welfare of citizens. This overriding rationale, which is included in the concept and which helps underpin the objective and purpose outlined above, needs to be enhanced in a way that provides clarity on what social services are about. 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. They also need to be encouraged to be much better acquainted with the concept and to take seriously its refinement.

Enlarging the Circle of Social Service Provision

The policy needs an enhanced list of the types of social services that can to 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 to further 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 takes 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 is 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.

<u>The existing strategy does encourage developments in all these areas, but there is a need for further developments through consultative processes and technical enhancements.</u>

Summary of policy recommendations gained from the national level consultation

- To establish a national interministerial council for policy-making in social services and orienting its activity at strategic planning of the social services reform.

- To reorient the activity of national inter-ministerial working groups more towards generating options for policy in social care sector and strategic planning, for both medium term and long-term outlook rather then immediate legislation.

- To introduce the representatives of the ministries that formulate social services policy, as well as the representatives of the Ministry of Finance and the Ministry of Justice, into the membership of the national interministerial council.

- To provide the establishment of regional working groups for formulating regional policy in social services, attached to oblast and rayon state administrations and executive bodies of local councils; the groups should incorporate representatives of regional departments of line ministries and NGOs that are social services providers, as well as representatives of special commissions of local councils.

- To adjust the mechanisms of interaction (including multilateral exchange of information) between the national council for policy-making in social services and regional working groups.

- The main tasks of regional working groups should be defined as: a) providing higher-level working groups with necessary information about the state and problems of the reform of social services in respective regions; and b) implementing pilot projects for reforming social services in respective regions.

- To ensure the appropriate level of transparency in the activity of the national inter-ministerial council and regional and lower level working groups by: a) incorporating representatives of NGOs that provide social services into the national and regional groups; b) putting draft decisions and other materials prepared by the national group or council and regional working groups on official web-sites of the Cabinet of Ministers of Ukraine (the Ministry of Labour and Social Policy), oblast state administrations, local councils and their executive bodies for further public discussion; and c) making the interaction of working groups with mass media more active.

- To enhance the staffing capacity of the structural units responsible for public relations at central executive power bodies and local state administrations.

- In order to determine the directions and substance of the reform of social services, and to take into consideration related regional features and service users' needs – speed up the creation of a national database (and aggregations of separate databases) of social services providers and the number of potential service users (retired and disabled people, children without parents' care, etc) in the context of administrative and territorial division of Ukraine.

- The fundamental role in the reform of social services should be assigned to:

    - the elaborated Concept for Reform of Social Services, which will determine the goal, objectives, stages of the reform, the substance of each stage of the reform; as well as to
    - the improved Law on Social Services developed with consideration of the provisions of the elaborated Concept.

- To carry out the reform of social services simultaneously with and with close reference to decentralisation of the budget policy and the reform of inter-budgetary relations.