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**APPRAISAL OF THE DRAFT LAW  
ON THE PRINCIPLES OF STATE REGIONAL POLICY  
OF UKRAINE**

The present appraisal contains two reports prepared by the CoE experts, Mr Paul Hildreth (UK) and Prof. Gérard Marcou (France), in cooperation with the Council of Europe Directorate of Democratic Institutions. The first report addresses the policy aspects of the draft law, and the second report focuses on its legal and institutional aspects.

In preparing this appraisal, account has been taken of both the Concept of State Regional Policy prepared by the Ukrainian Ministry for Regional Development and Construction and the Council of Europe appraisal of this Concept Paper [DP/PAD 1/2008], both of which were discussed at the conference in Kyiv on 17 June 2008. It has also been drawn on best practice in regional policy in other European countries and published sources. The experts have finalised it building on the conclusions of the meeting held in Kyiv on 16 September 2008.

## I. POLICY ISSUES

### 1. Purpose and introduction

This report provides comments and an overall assessment of the draft law, ‘On the Principles of the State Regional Policy’, from a policy perspective.

The CoE appraisal DP/PAD 1/2008 stated that:

*“The ambition of modern regional policy is to seek to realise the potential of different regions and localities and their populations.”*

Modern regional policy acknowledges the reality that market competition and openness to the wider world economy impacts differently on different regions and localities. As a result, it should take advantage of market-led opportunities in regions and in the national economy. Different places offer different potential and opportunities, and face different challenges. In this context, the appropriate role of Government is to identify and address the barriers (market and government failures) that prevent regions, their localities and the people who live in them from realising their potential. This involves building capacity in regions to grow businesses, developing human capital, investing in infrastructure and improving the connectivity of weaker areas to places of opportunities.

Therefore the key instruments of modern regional policy are:

- *A. Strategy, information and intelligence* – to develop a long-term strategic approach that is informed by evidence on the barriers that are preventing regions and localities from reaching their potential and assessing their capacity for future growth
- *B. Governance infrastructure* – to develop capacity to overcome government coordination and information dysfunctions by building local and regional governance institutions that are responsive to their populations and other stakeholders and offer excellence in delivery
- *C. Policy and project instruments* – to provide a policy and legal framework to enable the implementation of an effective regional policy with appropriate interventions at the right spatial level
- *D. Funding and resources* – to offer appropriate finance and other resources (e.g. qualified staff) that enables a long-term approach to regional development

The following comments and assessment of the draft law have been formulated in the context of the above observations of what should be expected from a modern regional policy framework.

These comments are based on the English translation of the draft law.

## 2. Principles of the State Regional Policy: an overview

### Introduction

The stated purpose of the draft law (as in the earlier Concept Paper) is to:

*Approve the basic legal, organisational and economic principles to improve the quality of life for people across the whole territory of Ukraine, to enhance the spatial unity of the whole country and stable development of Ukrainian regions.*

It is thus made clear from the opening statement that the ambition of regional policy is broadly based encompassing securing the political, social and cultural integrity of Ukraine as well as the economic development of the regions.

As clarified in Article 17 (Parts of the Regional Policy), the main elements of the draft law on regional development are the goal (Article 2), principles (Article 3), institutional structures (Articles 24 to 31) and strategy formation processes (Articles 19, 21 and 22) for regional development in Ukraine. It is also addresses other important supporting issues including the financing (Articles 10, 32 to 35), staffing (Article 14), international promotion (Article 15) and monitoring of regional development policy (36 and 37).

The draft law reinforces the existing sub-national regional economic geography of Ukraine in defining regions as the system of executive authorities and local self-government authorities in the Autonomous Republic of Crimea, oblast', cities of Kyiv and Sevastopol (Article 1, clause 1).

The overall approach taken towards regional development in Ukraine is *structural* and *strategy* based, in that at its core it focuses on the structures and strategy formation processes and supporting infrastructure at the national and regional levels to underpin regional development in Ukraine.

### Structural integrity of the draft law

Each of the key elements (A to D above) of a modern regional policy framework can be found within the draft law. Indeed, the structural integrity of the proposals is its key strength. The challenges, potential weaknesses and inconsistencies lie more in the detailed content of the draft law.

Figure 1 – On the Principles of the State Regional Policy – Structure of Law

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The draft law appears to offer a clear framework which might be reinterpreted diagrammatically as in *Figure 1*, with its content organised around four themes (the horizontal headings in *Figure 1*):

- *Purpose of regional policy*: the goal, principles, priorities and other elements that underpin state regional policy
- *Structure of regional policy*: the national and regional institutional structures for state regional policy
- *Strategy for regional policy*: state strategy and regional development strategy
- *Supporting infrastructure*: funding, staffing and monitoring of state regional policy

Issues relating to the draft law are considered under these four headings. Each section also includes some suggestions for improvement in the draft law, in addition to the comments within each section. An overall SWOT analysis from a policy perspective is also provided prior to the overall conclusions.

### 3. Purpose of regional policy

#### Goal and priorities

The goal of state regional policy is:

*“Goal of state regional policy is providing a natural person with high level of life quality according to approved legislation standards irrespective of his place of living.”* (article 2, clause 1)

The draft law states that this will be achieved through:

- Balanced development
- Integration of regions into a single political, legal, economic, information and cultural space
- Maximising regional potential
- Increasing regional and territorial competitiveness (article 2, clause 2)

This is followed by a list of the priorities of state regional policy in Article 7.

As already stated, it is clear that the ambition of state regional policy is very broadly based. This is one of its strengths, as well as being entirely relevant to the context and challenges faced by Ukraine.

However, because such a broad range of priorities have been identified on an apparently equal basis, this could result in a situation where few of the objectives are addressed effectively. This is either because choices between strategic priorities are not satisfactorily resolved or where there is an absence of clear direction in policy.

Some of the potential tensions that may arise are illustrated below from the priorities for regional policy:

#### Goal and priorities

*“...irrespective of place of his living”*  
(article 1, clause 1)

#### Issues and tensions

The ambition of providing all citizens of Ukraine with a high quality of life is desirable. However, in a context of global competition and with the free movement of people and capital within Ukraine, it is highly likely that development between places will remain unequal in practice for a long time to come

“Mechanisms for determination of problem territories” (article 7, clause 1) Clearly these represent very different challenges for regional development. Problem

5)“territories of ‘relatively increase’...advantages to allow advanced innovative development of the country” (article 20, clause 2)

territories are lagging behind and require policies that address issues such as industrial decline, poverty alleviation, high unemployment. By contrast territories of relatively increase (translation?) present opportunities for innovation and high productivity, not just to the region but for the whole country. Balancing between priorities in the allocation of financial resources between these two will be a challenge

Formation of polycentric system of state territory development (Article 7, clause 3)

Ukraine is an appropriate context for a polycentric system of state territory development with its network of large and successful and relatively successful cities. However, the promotion of a polycentric system will require a stronger framework of connecting cities and their city-regions with investment in supporting infrastructure. It would also require city administrations to play a more central role in regional policy than is currently proposed

### Previous legislation

A list of previous legislation is set out in article 6, clause 1. This appears to confirm that the proposed law ‘On the Principles of the State Regional Policy’ would encompass previous legislation.

What is not clear is whether there are any policy tensions between previous legislation and the new draft law. This is an important issue raised in the CoE appraisal DP/PAD 1/2008. This matter is considered further in Part II of the present appraisal on legal and institutional issues.

### Tools of competitiveness

Article 11 sets out a list of interventions that could contribute towards enhancing regional competitiveness (regional productivity). However, this article stands alone. It is therefore not clear which institutions have delegated responsibility for these interventions and at what spatial level interventions are appropriate. Again this issue was raised in the CoE appraisal DP/PAD 1/2008.

A separate table is attached (Appendix) which identifies potential projects for regional policy and potential sources of funding using as its basis the list of tools for competitiveness set out in Article 11.

### Territory types

There is reference to a number of types of territory that have significance within the draft law. Some of these are defined within article 20. However, overall (at least within the English translation) these territory types are not clear and appear to overlap. Is there scope for rationalisation and the provision of clearer and more precise definitions?

The following is a list of territory types identified within the draft law:

Macro-regions	article 4
Problem territories of regional/national importance	article 19, clause 6; article 22 clause 4
Territories of advanced increase	article 20, clause 4; article 22 clause 6
Territories of slow increase (right translation?)	article 19, clause 5; article 22, clause 6
Interregional territories	article 20, clause 3; article 19, clause 6; article 22, clause 4
Territories of relatively increase	article 20, clause 2; article 19, clause 6
Territories of special regime of use	article 20, clause 4; article 19, clause 4
Special territories	Article 21, clause 2
Depressive territories	Article 20, clause 5

### International tools

This (article 15) suggests that the European Union context is relevant to the draft law.

### What could be improved?

- Strengthen the goal for regional policy so that it overcomes the inherent tensions between priorities for regional policy
- Identify and overcome any tensions between this draft law and earlier legislation
- Make stronger connections between list of potential interventions in Article 11 and competencies and delegations to national and regional institutions

- Rationalise and more clearly define territory types

#### 4. Institutional structure for regional policy

##### Introduction

The approach towards regional policy was described above as *structural*. This section considers the strengths and potential drawbacks of the proposed structures for regional development at national and regional levels.

##### National

At the national level there are three ‘bodies’ mentioned with responsibilities in the field of regional development. These are:

Central executive authority (Article 12, clause 1, Article 18, clause 3, Article 19, clause 4)	The ‘central executive authority’ is mentioned but not defined. It is identified as having a key role in initiating and drafting the state regional strategy. Is this the lead Government department? Otherwise there is no specific mention of government departments, except in the context of membership of the National Council
Cabinet of Ministers of Ukraine	Overall responsibility for state regional policy, including the approval of the state regional strategy (Article 19, clause 3) and its drafting (Article 16, clause 2)
National Council (Articles 24 and 25)	A (new) advisory body with responsibilities overseeing strategy preparation, programmes, monitoring of use of national fund, monitoring of progress etc. Membership extends from central government to heads of councils of regional development and national associations (e.g. Association of Cities and Communities or Ukraine, Association of Agencies of Regional Development in Ukraine). Chaired by the Prime Minister. Meets at least twice a year, with provision for further meetings.

To an external reader it is not entirely clear how the relationships between the ‘central executive authority’, the Council of Ministers and the National Council will work in practice. However, it would appear that (given the National Council meets only irregularly) that the main body of work at a national level will be undertaken by the central executive authority (Ministry of Regional Development and Construction of



Ukraine?). The National Council operates on a consultative basis, drawing in a wider set of interests from the regions and national associations with an interest in regional policy.

As will be discussed further below, the inference is that the national strategy for regional development will be drawn up largely as a central government document. A degree of formal consultation with regions is built into the design of structures – for example in membership of the National Council and proposed voting rights, but overall the approach is on balance ‘top down’.

The CoE appraisal DP/PAD 1/2008 welcomed the possibility that elected Mayors and other elected members might participate as members of the National Council. However, it is not clear whether this will happen in practice.

### Regional

The structures at a national level are paralleled at the regional level. The main bodies at a regional level are:

Regional Executive Authorities	Responsibility for state regional policy in the region. Responsible for the drafting of the regional development strategy (according to procedures determined by the central executive authority)
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Council of Regional Development	A parallel regional body to the National Council. A (new) advisory body under the Council of Ministers of the regional executive authorities. Head of Regional Council is the Head of the Council of Ministers (Oblast’). Membership includes heads of Oblast’ council, cities of regional importance, district state administrations, chamber of commerce, agency for regional development and representatives of civil society agencies. Responsibilities include approval of regional strategy drafts, programmes, project criteria, oversight of agency for regional development. Meets at least four times a year, with provision for further meetings.
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Agency for Regional Development (RDA)	Non-profit institution established on the basis of partnership between the state, non-governmental sectors and private sector. There
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will be one RDA per region. The RDA is accountable to the Council of Regional Development. Has responsibility for programmes and projects for regional development under the direction of the Council.

There are new elements for Ukraine within these proposals. First, as in the case of the National Council, the proposed Council of Regional Development for each oblast' is new. Second, whilst there is a network of Regional Development Agencies in Ukraine, they are currently NGOs relying on grants. The proposals would lead to a more formal network of Regional Development Agencies.

In parallel to the national structure, the regional structure is more 'top down' than 'bottom-up'. Formal consultation with regional stakeholders is built into the design of structures – for example in the membership of the National Council and proposed voting rights, but overall the approach is on balance 'top down'.

What is disappointing in the context of principles of state regional policy set out in article 3, is that little progress is made within in the draft law in progressing decentralisation and subsidiarity in practice.

This can be illustrated by lack of progress in strengthening the role of local self-government authorities within the context of regional policy, despite several references acknowledging their position within the regional architecture (e.g. article 1, clause 1, article 8, clause 1). The primary context in which they are addressed within the draft law is over consultation in the preparation and completion of the national strategy (article 18, clause 1) and regional strategy (article 21, clause 1). However, as pointed out in the Part II of the present appraisal, the development of a more formal role for self-government bodies is a matter for local government reform, which is still on the agenda.

Second the relationship between the oblast' and cities within regions is only partially addressed through membership of regional councils. If Ukraine is to pursue a path towards polycentric development (article 7, clause 3), the role of cities (which have directed elected administrations) will need to be more formally acknowledged and empowered within a regional policy context than as within the current draft law proposals.

### Regional Development Agencies

The draft law proposes a more formal role for Regional Development Agencies in Ukraine than as at present. However, this is being proposed under very tight controls from Regional Councils over what they do, how they are structured, how they are funded and how they are monitored (article 27), even though they will have their own board (which is very public sector orientated). The scope for innovation and initiative appears to be somewhat constrained by these proposals.

What could be improved?

- Clarify identity of ‘central executive authority’
- Strengthen role of local self-government authorities in relation to the Council of Regional Development
- Define strategic purpose of regional development agencies in regional development
- Devolve from the Council of Regional Development responsibility to the board of the regional development agency responsibility for organisational structure, operational plans etc (article 27, clause 8)
- Strengthen role of private sector and civil society on regional development agency boards

**5. Strategy for regional policy**

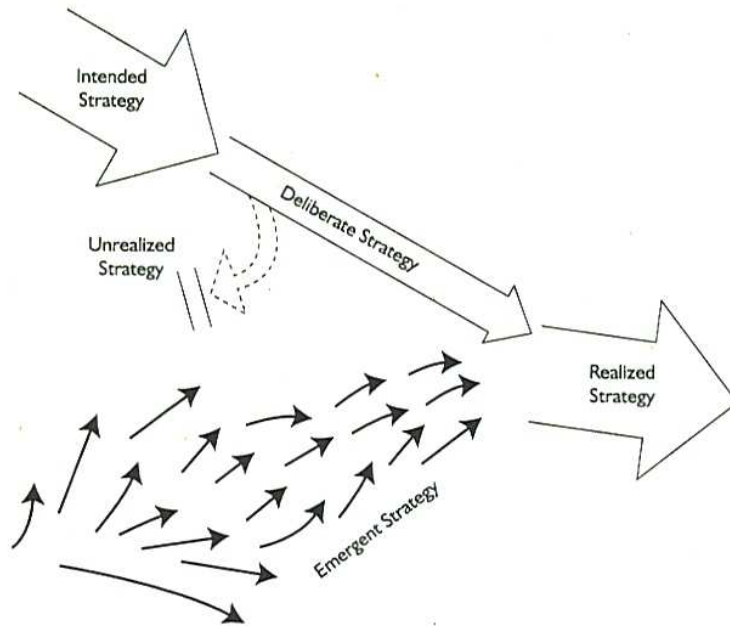
The approach taken towards the production of national and regional strategies is largely ‘top down’, but with consultation mechanisms built into the strategy development process.

Mintzberg et al<sup>1</sup> make a well-known distinction between ‘deliberate strategy’ and ‘emergent strategy’, which is illustrated in Figure 2 below. The point that they make that it is rare in practice to find cases where the ‘intended strategy’ ends up being realised (i.e. it is unrealised). A ‘deliberate strategy’ approach is where an overall plan is developed through a comprehensive and systematic process that is largely ‘top down’ and highly structured. In practice most successful strategies emerge through an incremental (or ‘emergent strategy’ process where there is built-in learning through which stakeholders are engaged creatively in finding solutions.

The processes outlined in the draft law have more characteristics of an ‘deliberate strategy’ than an ‘emergent strategy’ process, and therefore face the subsequent risks that Mintzberg and his colleagues identified with regard to their realisation.

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<sup>1</sup> Mintzberg, H., Ahlstrand, B. and Lampel, J. (1998) *Strategy Safari: A Guided Tour through the Wilds of Strategic Management*, Free Press, New York.



*Figure 2 – Deliberate and emergent strategies (Source: Mintzberg, Ahlstrand and Lampel 1998)*

### National strategy

The national strategy drafting process is initiated by the ‘central executive authority’ announcing the start of the process and inviting proposals from local executive authorities, local self-government authorities and other interested institutions (article 19, clause 4). The strategy will be for seven years, with a 3 yearly review. (article 19, clauses 2 and 3). The strategy will be drafted by the ‘central executive authority’ (article 18, clause 3). Its content is defined in article 19, clause 6.

There are opportunities for consultation with national and regional institutions through the work of the National Council. However, this meets infrequently (‘at least twice a year’) and it will depend on how the Council works in practice as to how well regional bodies in particular are able to influence the shape and content of the strategy. However, article 21, clause 1 is helpful in providing for agreement of the National Strategy with local executive authorities, local self-government authorities and other interested institutions before its submission to the Council of Ministers.

The final strategy is approved by the Cabinet of Ministers (article 19, clause 2).

### Regional strategies

The production of the regional strategy is a mirror of the national strategy at the regional level. Again the process is largely ‘top down’ in accordance to procedure determined by the ‘central executive authority’ (article 11, clause 8), but with consultation processes built in.

Responsibility for the drafting of the regional strategy lies with the Council of Ministers of the Autonomous Republic of Crimea, oblast', Kyiv and Sevastopol city state administrations (article 22, clause 2). The issues covered by the regional strategy are defined (article 22, clause 4). Opportunities for consultation with regional stakeholders and institutions on the strategy are provided for in the role of the Council of Regional Development. Again, as with the National Council, how effectively this work in practice depends on how active and effective regional stakeholders are in shaping the content of the strategy.

#### What could be improved?

- Provide stronger mechanisms to reinforce regional contributions to the national strategy
- Reduce central prescription on production of the regional strategy
- Address capacity building in working across levels of Government and sectors to develop an evidence base and strategic framework

### **6. Supporting infrastructure**

There are a number of articles within the draft law that address the supporting infrastructure to the institutional and strategic framework to regional policy. These in particular relate to funding, staffing and monitoring of regional policy.

#### Funding of regional policy

Article 10 sets the context for the funding of regional policy. However, in its current form it is not clear. In particular it does not clarify the potential role of mainstream central government and regional funding in the context of regional policy. It suggests (article 10, clause 2) that there is an element of budget equalisation ('budget leveling'), but it is not made clear. It would help if the whole of this article could be re-written to provide clarity about the funding framework for regional development. It is also important that funding is provided for more than one year (three yearly funding would assist long-term project planning).

Articles 32 to 34 do set out proposals to establish national and regional funds for regional development and the sources from which they will draw resources. However, it is not clear what the scale of these resources will be or if (see above) they are to be supplemented by mainstream resources.

### Staffing of regional policy

Article 14 sets out some interesting ideas for the training, development and rotation of officials at the regional level in executive authorities and local self-government authorities. These are the only capacity building proposals in the draft law.

### Monitoring of regional policy

Articles 36 and 37 set out proposals for monitoring of regional development. It is proposed that both the national strategy and regional strategies be monitored every three years. The question is whether this is frequent enough?

To support it is proposed to establish a set of social-economic, spatial, ecological and humanitarian indicators to support the monitoring of performance in implementing strategies (article 37). This is to be welcomed and indeed is essential.

### What could be improved?

- Address mainstream funding for regional policy
- Ensure funding is available for at least 3 years period to ensure planning stability
- Develop a background policy and evidence paper on regional policy setting out context to developing a national and regional strategies

## **7. Policy analysis of draft law**

Drawing together comments from the above analysis of the draft law an overall summary of the strengths, weaknesses, opportunities and challenges in relation to the draft law from a policy perspective can be drawn up as follows:

### Strengths

- The ambition for regional policy is broadly based including political, social and cultural integrity of the state as well as economic development
- There is a clearly defined goal for regional policy in Ukraine
- The framework and accountabilities for regional policy in Ukraine are transparent and easy to understand
- The institutional arrangements at the regional level mirror and fit well with those at the national level

- Arrangements to consult regional stakeholders are recognised in the proposed membership of the National Council and regional councils and procedures to draft the National and regional strategies
- The importance of the humanitarian, educational and cultural dimensions to regional policy is recognised
- The importance of training and development of staff in regional institutions is addressed
- The value of the formation of a polycentric system of state territory development is acknowledged
- National and regional funds for regional policy are proposed

### Weaknesses

- It is not clear what regional development priorities are most important within a broad set of ambitions for regional policy in Ukraine
- The potential tensions between improving competitiveness and reducing territorial differences and inequalities are not satisfactorily addressed
- An opportunity to promote a stronger role for local self-government at the oblast' level within regional policy has not been taken
- There is a lot of emphasis on planning, control and accountability and little on innovation, creativity and initiative which are also essential attributes of effective regional policy
- The overall approach to regional policy is 'top down' with all the controls remaining with state institutions and with other bodies contributing through consultation arrangements
- The opportunity to promote the formation of a polycentric system of state territory development is not developed either strategically or in the proposed institutional framework
- It is not clear how a cross-governmental approach will be taken to regional policy across different departments of state
- The institutions directing state regional policy at a regional level are state run
- The proposed remit and role of Regional Development Agencies is unclear

- Apart from staff training and development there are no proposals within the draft law to directly promote capacity building and innovation in national, regional and local institutions
- The contribution of the private sector and civil society to regional policy is limited

### Opportunities

- To create broadly based framework for regional policy across Ukraine
- To develop a broadly owned state strategy for regional development
- To develop broadly owned regional strategies for regional development
- To involve oblast', national associations, civic society, the private sector and other stakeholders in regional policy more formerly in consultation on state regional policy and its implementation
- To initiate a longer-term process of incremental reform of regional policy and institutions

### Challenges

- That a centrally controlled approach to regional policy is ineffective in facilitating innovation and invention in strategy, policy ideas and their implementation
- That given the history of top down Soviet planning in Ukraine there may not be sufficient innovation within the proposals to lead to a change in planning culture
- That without an ordering of priorities for regional policy the outcome may be a fuzzy set of policies without clear direction
- That without stronger engagement in the oblast' from the private sector and civil society in the oblast' there may be a lack of innovation, creative energy and local investment in change
- That a network of regional development agencies is set up in oblast' without having a clear remit and role for regional development
- That tensions between regional executive authorities, local self-government authorities and the directly elected city authorities on the direction of policy are not properly resolved



## 8. Conclusions

Regional policy has potentially an important role to play in realising the economic and social potential of regions and localities in Ukraine and their populations, as well as contributing to strengthening democratic accountability across the country.

The draft law builds on the earlier concept paper. It is wide-ranging containing many of the elements that would form part of a modern regional policy. However, it follows a *structural* and *strategy* approach in that at its core it focuses on the structures and strategy formation processes and supporting infrastructure at the national and regional levels to underpin regional development in Ukraine. It is within this *structural* approach that both its strengths and potential weaknesses lie.

Its strength lies in its architecture of broad ambitions and structural integrity; it proposes a clear goal and a easily understood structural framework.

Its weakness lies in the detail of the proposals. In particular it takes a largely ‘top down’ approach working primarily through state institutions at the national and regional levels. Opportunities to decentralise and create stronger involvement in regional policy by democratic institutions at the oblast’ level has not been taken at this stage.

There are processes built in both within the National Council and Regional Councils to enable regional and local stakeholders to be consulted on strategy formation and its implementation. However, given that these bodies meet irregularly and the history of state planning in Ukraine, it is not clear whether these proposed reforms will be strong enough to empower effective democratic and civil society engagement in regional development. It is noticeable how little emphasis there is within the proposals on capacity building.

Ukraine has already made progress in regional policy through the 2006 law, and it is not clear how far lessons from this experience have been incorporated within this new draft law.

The CoE appraisal DP/PAD 1/2008 concluded: *“The challenge of turning decentralisation reforms into effective regional outcomes cannot be underestimated. Processes for capacity building, putting in place clear lines of communication and accountability between the different levels of government and securing the active participation of appropriate stakeholders are extremely important to the success of reform.”*

In conclusion this challenge has been partially addressed. The proposed structure and accountabilities for regional development are clear, if somewhat top down. However, there may be some way to go if reforms are to be effective in decentralising, building capacity and effectively facilitating the active participation of stakeholders in regional policy – key elements if regional policy is to be a success.

## II. LEGAL AND INSTITUTIONAL ISSUES

### 1. The new law and the existing legal framework of the State regional policy

When appraising the Concept Paper on State Regional Policy the experts' feeling was that little consideration had been given to the work already carried out to develop the instruments of an effective State regional development policy, and that a new law had been prepared without having considered the application or the reason for the non application of the law of 2005 on stimulating regional development. During interviews in Kyiv last April, the Ukrainian authorities argued that this law had not been properly implemented, that the scope of this law was too narrow and focused unduly on the sole economic issues of regional development and that most regions were classified as depressed region, with only three donor regions, a situation impossible to manage.

However the present draft law reflects a different approach. Article 6 refers to the legislation on the State regional policy with which the new law has to be accommodated, and mentions among this legislation the laws on

- “stimulating regional development”,
- “State special programmes”,
- “planning and spatial development”,
- the “general planning scheme of the Ukrainian territory”.

Article 17, paragraph 2 reiterates that the State regional policy will be implemented according to the legislation in force on regional development and planning, and it refers again to the law on stimulating regional development, the law on the general planning scheme of the Ukrainian territory and other pieces of legislation mentioned above.

Furthermore, there is no final article on abrogating or amending any provision from the said pieces of legislation.

***As a result, the new law will have to be implemented jointly with the previous legislation. In fact, several provisions of the new law reflect provisions of the law on stimulating regional development, although they sometimes need to be better coordinated.***

Article 10 resumes instruments already introduced by the law on stimulating regional development, in particular fiscal equalisation, regional development agreements, the concentration of state support on priority areas.

Article 20 refers to depressed territories that were a target for regional development policy according to the law on stimulating regional development.

Article 21 refers to regional development agreements, the legal regime of which has been established by the law on stimulating regional development, albeit with more variable

target areas. The new Bill also resumes in article 23 the programmes and projects of regional development.

In the following sections the issue of consistency will be taken in account while assessing the new provisions.

## **2. . The structure of the draft law**

The draft law consists of 37 articles, divided into five chapters:

- Chapter 1: General provisions: this chapter is probably too detailed (15 articles); numerous provisions are redundant and impinge too much on the content of the following chapter.
- Chapter 2 (articles 16 to 23): Formation and implementation of the State regional policy: this is mainly on the components of the said State regional policy, and the drafting procedure and on the instruments for implementing this policy.
- Chapter 3 (articles 24 to 30): Regional development councils: in fact this chapter also provides for regional development agencies.
- Chapter 4 (articles 31 to 35): Regional development funds: this chapter is separated from other articles on financing the State regional policy and on regional development agencies.
- Chapter 5 (articles 36 and 37): Regional development monitoring.

This structure could be improved.

The first chapter should be restricted to general provisions that are related to all other parts of the law. Definitions of the terms (art.1), the formulation of the goals (art.2) and of the general principles of the State regional policy (art.3) clearly have their place in Chapter 1. It is also relevant to recite in Chapter 1 the subjects of the State regional policy, e.g. the authorities in charge of the drafting, adoption and implementation of this policy, as well as organisations involved in the implementation (art.5), and to refer to other components of the legal framework of this policy (art.6). Lastly, it seems justified to put various provisions in Chapter 1 that are common for all the following chapters of the law and need full consideration in the implementation of their provisions, just as goals and general principles: these are here, in the draft law, the civil, cultural and educational dimension of the State regional policy (art.13), the implications of the State regional policy in terms of personnel policy at all levels of the State organisation and in local government (art.14) and the international instruments to be used to support the State regional policy (art.15).

In contrast, articles 4, 7, 8 and 9 should be set aside, whereas articles 2 and 3 should be completed by some additional provisions (see section III below).

Articles 10 and 11 of Chapter 1 should be included in a chapter on the implementation of the State regional policy that does not exist as such in the present draft law.

Furthermore, there should be a chapter on the institutions in charge of the State regional policy, a chapter on the procedure to formulate the State regional policy and a chapter on the implementation and on the instruments. This would not only clarify the presentation, but also make it easier to overcome disjunctions between some provisions that need to be well coordinated with each other.

*As a result, the draft law structure could be the following (keeping the existing article numbers of the draft law):*

*Chapter 1: General provisions: articles 1 to 3, 5, 6, 13 to 15.*

*Chapter 2: Regional development councils: articles 24 to 27*

*Chapter 3: State regional policy and regional development strategies: articles 16 to 19, and 21 to 23.*

*Chapter 4: Instruments for the implementation of the State regional policy: articles 10, 11, 20, 28 to 31, 32 to 35; this chapter could be subdivided into three sections.*

*Chapter 5: Regional development monitoring: articles 36 and 37.*

It should also be noted that there are no final provisions, in particular regarding the date of entry into force. This means that the law will come into force on the day of its publication, or the day after (depending on the Ukrainian law on this point). The Ukrainian authorities might wish to consider this issue further

### **3. III. Goals and principles**

Article 2 is devoted to goals, article 3 recites the principles and article 7 emphasises the priorities of the State regional policy; article 8 details another principle, the harmonisation of State and regional interests. Article 4 defines what is called “objects of the State regional policy”. Article 12 recites the institutional framework of the State regional policy. Lastly, article 9 is a general statement on methods of implementation of the State regional policy.

However, the expert considers that the distribution of items among the articles of Chapter 1 and their definitions could be improved.

Regarding the conception and the formulation of goals and principles for regional planning and development policy, one can refer to the German federal framework law on regional development and planning of 1997 (although this law is no longer binding for the *Länder*, since the federal government has lost its competence for this matter with the last constitutional revision), and the French law on regional planning and sustainable development of 1995 as revised in 1999. These experiences seem relevant because of the broad scope of regional planning and development reflected by the draft law, just as in these two countries, although they have a quite different conception of the matter, whereas the law on stimulating regional development is focused on the instruments, the procedures and the monitoring.

The problem with goals and principles regarding regional development is the difficulty to work out goals that are sufficiently general albeit clear enough in order to remain reliable

on the long term, without impeding variability in government policy choices on average term. On the other hand, basic principles should be permanent enough, depending on basic geographical and socio-economic factors. Such statements have to be formulated in a way that makes it possible to ascribe them legal force, even if not strictly binding. Because of the generality of the terms, they need to be formulated concisely; otherwise, the meaning will be less accurate.

To be brief, the German conception traditionally makes a clear cut distinction between spatial planning (*Raumordnung*) and regional development policy (*regionale Wirtschaftsförderung*). Spatial planning is based on physical planning according to a hierarchy of planning documents related to each other, not only regarding their content, but also in legal terms. Both policies are formulated and implemented at the *Land* level, since Germany is a federal country; the shared competence of the Federation for the regional development policy was abolished by the constitutional revision of 2006. The main significance of the German federal framework law regarding the Ukrainian draft law is the architecture of the legal conception of spatial planning. The law begins with the definition of a “guiding representation” (*Leitvorstellung*) of spatial planning: this is equivalent with general goals associated with values pursued by spatial planning. Article 2 defines the “principles”. However, principles are three kinds of provisions, called “imperatives” (*Gebote*) of spatial planning: targets (*Ziele*: to be determined and attained at the *Land* level), principles (*Gundsätze*), and other “imperatives”. Principles are general statements addressed to discretionary decisions to be taken by planning authorities that have to balance them in the decision-making process; they are set out in legislation, at the federal and *Land* level. Targets are binding prescriptions applied to specified functions or areas; they are laid down in planning documents by planning authorities. The expert will omit here the other imperatives. Targets are to be complied with, whereas principles have to be “considered”. Targets are only prescriptions that can be enforced.

The French conception of regional planning (*aménagement du territoire*) is devised much more in terms of policy-making rather than in terms of regional planning, although the significance of physical planning at the regional level or at the level of broad territories has increased in the last two decades. By contrast with the Federal Republic of Germany, the French law provides for a national regional planning policy, and the purpose of the law is to formulate the principles of this policy and to establish its instruments. Article 1 defines the purpose of the regional planning policy, and a list of principles in which one can identify basic principles of the regional planning policy, joined with basic values: sustainable development and solidarity. Then the law states four long term “strategic policy choices”, to be implemented and detailed in national planning documents (collective service scheme – “*schémas de services collectifs*”). This law is more detailed on instruments, such as priority areas. Planning provisions makes it possible for the government to adopt planning guidance documents for broad territories (for example where infrastructure and environment protection have to be reconciled). The French legal framework for regional planning is guiding rather than binding, in the sense that there are procedural obligations, and that various instruments are provided by the law as far as they may give rise to rights and obligations for legal subjects, but the principles and the strategic choices cannot be enforced by legal means, as it is in Germany for the various

“imperatives” of regional planning. In France the main binding planning level is the local one; the meso level has authority only in some particular areas (Ile-de-France, overseas regions, areas covered by area planning directives (*directives territoriales d'aménagement*)).

The Ukrainian draft law seems closer to the French model. As in France there is the clear assertion of a national policy for regional development (State regional policy), regional planning and regional development are closely linked. However, one can suggest several improvements to Chapter 1 of the draft law, in order to clarify the different components of the legal system of regional planning policy of Ukraine.

- 1) The provisions of articles 2 and 7 are partly redundant. In article 7, there is a mix of statements similar to broad goals of the State regional policy and of statements for setting the agenda of the Cabinet of Ministers. The first ones should be transferred to article 2 on goals, and the second ones should be dropped. Among priorities listed in article 7: number one is redundant with paragraph 1 of article 2; and 4) with number 2) of paragraph 2 of article 2. The priority number 2 (decrease the territorial differentiation) could be added to point 1 (integral and balanced development) in paragraph 2 of article 2. Lastly, priority 3 (formation of a polycentric system) should be added to the goals in article 2 paragraph 2.
- 2) On the other hand, points 5 to 11 are items for the programme of the Government, not provisions for a piece of legislation, and they should be dropped. Several of them implicitly refer to other provisions of the draft law: article 20 (determination of problem territories); articles 10 (financial-economic support of the State regional policy) and 32 and following (on regional development funds) as regards point 6 on implementing effective tools of State support; articles 24 and following on regional development councils as regards point 11 on establishing effective tools of representation of regions' interests. It is the duty of the Cabinet of Ministers to implement the law, there is no need to reiterate this duty in an article of the law on the State regional policy; the parliament has no injunction power towards the Cabinet of Ministers according to article 85 of the Constitution, and if the Cabinet of Ministers fails to implement the law, it is up to the parliament to adopt a resolution of no confidence to the Cabinet of Ministers. Points 8 to 10 are again of no use: commitments to decentralisation already appear in article 3 on the principles (see the principles of decentralisation, subsidiarity and responsibility), and in particular point 8 is useless when it calls for the “formation of an effective system of public power in regions able to provide for the stable development of territories”, since it is still not clear whether this means strengthening the decentralised authorities or the state executive authorities at the regional level. Furthermore, such decentralisation provisions do not commit the government or the parliament to finally adopt the local government reform that has been on the agenda for many years.
- 3) Regarding article 2, several principles are not at all specific to the State regional policy, and on the contrary have to be enforced in all fields of the State policy: the principle of constitutionality and legality, the supremacy of human rights, the openness in the activity of state and local self-government authorities. These

- provisions also should be dropped. Lastly, the principle of general state support of the development of local self-government is not as such a principle for the State regional policy, its formulation is not related with the purpose of the draft law and, as already emphasised this will commit neither the Cabinet of Ministers nor the Parliament to do it in reality. Therefore, this last principle should also be dropped.
- 4) Article 4 is useless. Its purpose is only to say that the State regional policy will apply to the whole territory of Ukraine, and that specific objectives and policies will apply to specifically determined areas. The first commitment is already included in the goals formulated in article 2 (integral development of Ukraine and integration of regions as a single space) and in the principle of unity of article 3. The second commitment is covered by article 20 on types of territories; probably it would be relevant to add in article 3 a principle of differentiation of the State support due to the characteristics of the territories in order to combat excessive territorial disparities.
  - 5) Surprisingly, the issue of harmonising State and regional interests gives rise to a separate article (article 8), whereas it is even not mentioned in article 3 on principles. This is however a major issue for any regional development policy. Surprisingly again, article 8 is focused on general issues of the central-local relationships, and not on regional development and planning issues. Only point 3 is relevant for the purpose of the draft law. Therefore, The expert suggests deleting article 8 and transferring point 3 to article 3 as an additional principle of the implementation of the State regional policy.
  - 6) Article 9 seems useless, and should be dropped. Firstly, there is no need to affirm, as in paragraph 1, that the implementation of the State regional policy will be pursued with all kind of means; in any case, they need to be provided by the law. Secondly, as regards paragraph 2, if forecasting and planning of region development are not covered by the principle of programming in article 3, they should be added to the principles. The requirement that regional development priorities be determined by law contradicts article 19 paragraph 2, according to which the State strategy shall be approved by regulation of the Cabinet of Ministers. Only the State strategy of long term development as a whole has to be adopted by law (article 16, paragraph 2, and article 18, paragraph 2 – one will see later on that these provisions also require some revision). Lastly, the issue of reconciliation of State (or national) and regional / local interests is already in article 8 and, if our recommendation is followed, will be inserted in article 3.
  - 7) Article 12 is useless and should be deleted. Basic principles for the institutional framework needed for the State regional policy are stated in article 3 (decentralisation, subsidiarity, partnership, responsibility), and these principles are developed in the following chapters on institutions and procedures.

***To sum up, a law should not include provisions which are not related to its purpose or that are not expected to have any legal effect. Therefore, the expert proposes:***

- ***To delete article 4 and add in article 3 a principle of differentiation of the State support due to the characteristics of territories in order to combat excessive territorial disparities;***

- *To delete the present article 7, and transfer points 2 to 4 to article 2,*
- *To also delete items 1 (constitutionality and legality), 2 (human rights), 12 (openness) and 14 (general state support to the development of local self-government) of article 3;*
- *To delete article 8, but point 3 to be displaced to article 3, as an additional principle;*
- *To delete article 9, possibly completing the principle of programming in article 3 with principles of forecasting and planning;*
- *To delete article 12.*

#### **4. IV. The Governance**

The provisions of the draft law cover two issues: the responsibilities of central State authorities with regard to the State regional policy and their relationships with local self-government; the establishment of regional development councils.

##### *A) State long term development policy and State regional policy*

The relationship between the State regional policy (art.17 and 18) and the State long term development strategy (art.16) needs to be clarified. The latter is the overall framework for the former. The State long term development strategy has to be formulated for seven years, being coordinated with the EU budget planning; it is drafted by the Cabinet of Ministers and approved by the Parliament (art.16). However, according to article 18, paragraph 2, it is approved by law and this law should contain tasks to draft the State strategy of regional development. This drafting raises an ambiguity: it is not at all the same to have a document approved by the Parliament, to have a law embracing the document or to have a law approving the document. This has implications on the legal scope of the said provisions. According to the Ukrainian constitution, the Verkhovna Rada is empowered to adopt laws (art.85, point 3); to approve “national programmes of economic, scientific and technical, social, national and cultural development, and the protection of the environment” (art.85, point 6); to “consider and adopt the decision in regard to the approval of the Programme of Activity of the Cabinet of Ministers of Ukraine” (art.85, point 11). ***The Verkhovna Rada should adopt the State long term development strategy as a “national programme” as provided by point 6 of article 85, and not as a law, because this State strategy will not be a normative act, and the “tasks to draft the State strategy of regional development for the same period” as mentioned in article 18 paragraph 2 should take place in the State long term development strategy and not in the law. Paragraph 2 of article 16 and paragraph 2 of article 18 should be amended accordingly.***

It results also from the combination of article 16 and article 19, that the State regional strategy is an implementation document of the State long term development strategy. This is why it is drafted and approved by the Cabinet of Ministers, and the Parliament is not involved (art.19, par.2).



*B) On the responsibilities of State central authorities and the participation of local government in the State regional policy*

In the process of formulation and implementation of the State regional policy and regional development strategies, the draft law provides for the participation of local self-government.

Local self-government authorities and, on the same footing, local executive authorities (e.g. State administrations at the local level):

- may submit proposals to central authorities on the State long term development strategy, as soon as the drafters have announced the start of work (art.18, par.1);
- may submit proposals to central authorities on the State regional policy, as soon as the competent central authority has announced the start of work (art.19, par.4);
- may submit proposals for the regional development strategy (art.23, par.1);
- agree to the draft project of the State strategy of regional development before it is submitted to the Cabinet of Ministers (art.21): however, such a requirement is not manageable if it is taken seriously, due to the number of self-government authorities, **the expert proposes to replace the Ukrainian word “pogodjennia”, that is usually translated by approve or consent, by a word meaning “be consulted”**; paragraph 2 states that priorities on special territories or that have to be carried out in several regions of their parts, but does not determine who should approve;
- the regional section of the Association of cities and municipalities of Ukraine is represented on the board of the regional development agency (art.30, par.2).

Additionally, local government is involved in decision-making in the following way:

- the regional council shall approve programmes and projects of regional development, after agreement from the National Council (art.23, par.2);
- local self-government authorities, after the agreeing process mentioned in article 21 paragraph 2, shall pass an agreement with the Cabinet of Ministers on the development of a region, macro-region, group of regions or their parts.

**In such a way, the principle of decentralisation stated in article 3 is satisfied or, more exactly, would be satisfied if the regional council were not dependent for its work on the State administration of the region acting as its executive. But this is the matter of the local government reform, still on the agenda.**

*C) The regional development councils*

The draft law provides for the establishment of a National Council on questions of regional development (art.24) and of regional development councils (one council for each oblast – or region – for the Autonomous Republic of Crimea, and for the cities of Kyiv and Sevastopol) (art.26). These councils are vested with various tasks in the field of regional development policy. Their composition is a mixture of authorities and of representatives of institutions or interests involved in the implementation of the State regional policy. Thus, the National Council consists of the heads of the regional

development councils (who are the heads of the regional State administrations – see article 26) and of an equal number of representatives of “interested institutions” (no more details in the draft law) appointed according to decision of the Cabinet of Ministers (this is too vague and does not specify who exactly will appoint whom). Additionally, the draft law determines a number of other members due to their functions: heads of various central executive authorities, but also the Association of cities and municipalities of Ukraine, and some other organisations. The head of the National Council is the Prime minister.

The regional development councils consist (art.26) mainly of members due to their functions: the head of the regional council, head of cities of regional importance (mayors), heads of the district (*raion*) State administration, the head of the chamber of industry and commerce, the head of the regional development agency (the law does not determine how he is appointed – see article 30). Other members will be representatives of various NGOs, business associations, higher educational and research institutions of the region. Details shall be determined by the regional State administration.

However, the powers of the regional development councils are not clearly determined. According to the draft law, the National Council on questions of regional development (art.24 par.1) and regional development councils (art.26 par.1 are “advisory authorities”). However, their powers, as detailed respectively in articles 25 and 27 are not only advisory, but on some questions decisive.

Thus, the National Council:

- shall approve the State strategy of regional development before its adoption to interagency and interregional priorities (point 2),
- shall approve priorities and criteria for the commitments of the National Fund for regional development (point 3),
- shall approve sector forecasts and programmes, plans and projects of development of main-line infrastructure affecting regional development (point 5);
- approves the members of the board of directors of the National Fund of regional development before appointment by the Cabinet of Ministers (art.32, par.5).

Again, ambiguity is likely to result from the word “*pogodjennia*” that may be understood as “agree” “approve”, which means a co-decision power.

Otherwise, its main role seems to be drafting or assessing government decision projects in the field of regional development (point 1), to organise drafting of the State strategy of regional development (point 2), coordinate drafting and implementation of the State strategy of regional development and regional development strategies (point 6), monitoring and evaluation (points 8, 10, 11).

This even more so for regional development councils: they shall

- approve the priorities and criteria for the projects to be financed by the regional fund or development (art.27, par.1, point 5),

- approve the basic directions of activity, the organisation, the resources, the business plans and reports of the regional development agency (point 8),
- approve the procedure for hiring and the salary of the director of the regional development agency;
- approve decisions (from whom) on appointment, dismissal and replacement of the director of the regional development agency, approve the annual balances, financial reports and results of the agency (point 11),
- select the auditor of the agency and approve its contract conditions (point 12), etc.

Lastly, article 23 paragraph 6 and article 25 paragraph 6 are about “decisions” that shall be “implemented” by a decree of the Cabinet of Ministers or respectively the head of the State administration at the regional level.

*Therefore, the provisions on the National Council and on regional development councils need clarification. If they are only advisory bodies, their powers must be drafted accordingly, e.g. as proposals, or advice, or recommendations, etc. If the intention of the authors of the draft law is to give them decision-making powers on some issues, as it appears from the quoted provisions, it is necessary to be more precise on their membership, on their decision-making procedure, on appeal procedures.*

## **5. V. The implementation tools**

If our recommendation is followed, there should be a full chapter on the implementation instruments of the State regional policy. This chapter should embrace general provisions on supporting competitiveness of regions, the financial instruments, and the planning instruments.

However, the present provisions need to be better articulated with other pieces of legislation, in particular with the law on stimulating regional development of 2005, and some provision of the draft law under examination should refer clearly to articles of this law. Furthermore, due to the new approach of the draft law, some amendments to this law should probably be drawn up and introduced in a last chapter on final provisions of the new law.

The present article 11 emphasises the necessity to increase the competitiveness of regions, and this is correct, both for developing regions and for lagging ones. The various types of measures listed will have to find concrete expression in programmes and projects developed for specific territories. However, point 1 should be deleted, because it is obvious that programmes and projects will be aimed at increasing the competitiveness of regions, and that this purpose will need programmes and projects.

There should then follow the present article 20 and a new article referring to agreements on regional development, and lastly the articles on regional development funds and regional development agencies.

### A) *The issue of priority territories*

Article 20 presents a typology of territories for the purpose of the State regional policy that need streamlining. These territories do not necessarily coincide with administrative regions. However, to determine the territories classified in each category it is necessary to rely on existing statistical constituencies. Therefore, if the government is willing to use functional and economic areas as the basis for the implementation of the State regional policy, the draft law should refer here to the different scales that are available to produce the necessary statistical materials. In any case, the government will have to do so for the coordination with the European cohesion policy. The reference to functional areas is new with respect to the law of 2005 on stimulating regional development that referred to territorial units smaller than the region only for the definition of deprived territories, for which the district (*raion*) level was chosen, making a distinction between industrial districts, rural districts and cities of regional significance (art.6 of the law on stimulating regional development). However the district is probably the major statistical unit in the Ukrainian statistical system.

According to article 20, five categories of territories are to be distinguished:

- problem territories: territories with human development indicators below 75% of the Ukrainian average;
- relatively developing territories: those with comparative advantages allowing advanced innovative development – however the draft law does not provide for a more precise criteria or indicator, making this category not very workable;
- territories with interregional and cross-border co-operations based on development solidarities;
- territories subject to special land use regime, due to specific infrastructures (airports, harbours...) or preservation requirements;
- depressed territories: territories determined according to special legislation; this refers implicitly to the law on stimulating regional development, but this should be mentioned clearly.

However, the draft law mentions other categories of territories: for regional development agreements the area could be, not only the region, but a group of regions, a macro-region, parts of regions (art.22, paragraph 5). These notions, especially the notion of macro-region (also mentioned in article 4) should be defined: to what extent is it different from a group of regions? Problem territories may be of national importance (art.19, par.6, point 5) or of regional importance (art.22, par.4, point 5). Developing regions may also be of regional importance (art.22, par.4, point 6), but not of national importance (no mention in article 19, paragraph 6). The State strategy of regional development also has to determine “slowly developing territories” (art.19, par.6, point 6), but the regional strategy does not (no mention in article 22 paragraph 4). “Special territories”, characterised by major infrastructures, State border crossings, military objects, reserve and recreational areas, are objects of State priorities in the State strategy of regional development (art.19, paragraph 2).

There is no clear coordination with other pieces of legislation on the definition of territories for similar purposes. Article 6 of the draft law refers to the law approving “the general scheme for planning of the Ukrainian territory” of 7 February 2002, and to the law “on planning and development territories”, that the expert does not have, and to the law “on stimulating regional development”. The typology of article 20 is a mixture of general policy orientations (relatively developing territories), of land use planning areas (territories subject to special land use regime) and of development support territories (problem territories and depressed territories).

Whatever the possible translation difficulties, *such a nomenclature seems to be too fragmented and in several cases with categories with no precise definition, to be workable. A workable typology has to be based on one criterion for the determination of several categories. It would be much better to distinguish several typologies depending on the various policy purposes.*

The notion of macro-region has to be determined if it is deemed to be a possible policy area. The relationships between problem territories and depressed territories have to be clarified by referring to adequate indicators, or one of the categories has to be dropped. Regarding developing regions, it seems that the major point for the regional development policy is not that a region is developing, but that a region has the potential to be developed, and on the basis of which it could develop further self-sustainability. Strengthening this potential is one of the targets of any regional development policy. *Therefore, article 20 should be revised to limit the number of categories and the terminology used in all articles of the draft law should be streamlined on the basis of the revised article 20.*

*For example, it could be possible to distinguish growth areas and depressed territories, and again various subcategories according to specific economic criteria:*

- *According to the law on stimulating regional development, it is the Cabinet of Ministers' role to determine the depressed territories (art.10), on the basis of criteria listed by the law (art.9). With regard to these provisions, the “problem territories” of article 20 paragraph 1 of the present draft law are redundant, the criteria is not precise enough and will make it more difficult to focus State support on the most deprived territories. Therefore, it might be better to drop the category of “problem territories”.*
- *Growth areas are territories where the economic potential, the level of human capital, the level of infrastructure can support economic development: the State support here needs other instruments, for example secure a better integration in international markets and in international communication networks.*

*Other criteria can be used to determine priority planning territories, such as:*

- *macroregions, due to specific natural resources and / or transit infrastructure;*
- *territories with specific land use regimes, including protection areas for environmental purposes;*
- *cross-border areas.*

Such an approach would facilitate the elaboration of regional development strategies, the determination of adequate instruments of State support and the coordination with other pieces of legislation.

#### *B) Regional development agreements*

Concerning agreements for regional development (regional development agreements), the draft law enlarges the scope of their possible use. As in the law of 2005 on stimulating regional development, the regional development agreement has to be based on a regional development strategy. However, ***the draft law makes it possible to work out such a regional development agreement (art.22 par.8), not only for a region, but also for “a macro-region, groups of regions or their parts”, whereas the law of 2005 provides only for an agreement for the region*** and passed between the authorities of this region and the Cabinet of Ministers. This change is probably relevant and can facilitate adjusting interventions to the areas where they are most needed. Therefore, ***the draft law should include, after the present article 20, a new article amending the provisions of the law of 2005 on the regional development agreements, in particular on the procedure to elaborate and sign the agreement***, since the new opportunities opened by the draft law imply some complications in the procedure with more parties involved.

Chapter 4 of the draft law should include the present article 10 (that also refers to regional development agreements – point 9). No changes are needed in this article; the main issue is obviously to get the resources.

#### *C) Regional development funds*

The provisions on regional development funds should follow this article. There is a problem with their legal qualification. ***According to article 32, regional development funds are “financial institutions”. This means that they are legal persons.*** The expert is not sure that such an option is appropriate. Establishing such a structure will involve costs, and will make the control that the Parliament has to exercise on the use of such resources more difficult. ***It would be better to organise the regional development funds as special ones, as allowed by the Ukrainian budgetary law, with a delegation to regional authorities for the management of regional funds. It is illusory to expect that a corporate body will improve accountability and transparency and it is inappropriate and contrary to budgetary rules for the management of resources that will be uniquely public money, from national or foreign origin.***

The resources of the National Fund are likely to be important: 5% of the profit tax except on municipal enterprises (*but the draft law on corporatisation of municipal enterprises raises the question of what is a municipal enterprise for the purpose of this draft law and to determine whether the change of status makes the profit tax paid by these new companies subject to this levy, or not when the local self-government authority keeps the majority of the capital*), subventions from the State budget, international and foreign grants or loans, loans if agreed by the National Council (art.33). The regional funds will receive their resources from the National Fund, from subventions of the investment

budget of the regional authorities, from privatisation of municipal properties, international and foreign aid (art.35). This means that a large part of the National Fund should be redistributed to regional funds; furthermore, the debt is not a resource for regional funds.

*Therefore the statute on the National Fund, which has to be adopted by the Cabinet of Ministers (art.33, par.5), and the procedure rules to be then adopted by the National Fund itself (art.34, par.2) should ensure openness of the management and of the procedure to grant financial support directly to selected projects or to redistribute to regional funds.*

*Another issue is the purpose of the interventions of regional development funds. According to article 32, they have to finance long term interregional and regional programmes and projects corresponding to priorities of the State regional policy stipulated by the law on regional development and other laws. The purpose of the regional development funds is too broadly determined by this provision. Alternatively, article 32 should refer to the provisions of regional development strategies of article 22 and, for programmes and projects of nation-wide significance, to the provisions of the State strategy of regional development of article 19 paragraph 6. Such a link would also give legal force to these strategic planning documents and oblige all authorities involved to take seriously the task to elaborate them, since funds could be used only to support programmes and projects included in them. Due to the necessity to take in account changes that occur over time, article 32 should also provide for the possibility to deviate from this rule, by a decision of the Cabinet of Ministers on proposal of the National Council on Regional Development.*

#### *D)Regional development agencies*

Lastly, this chapter should include the articles on regional development agencies (at present articles 28 to 31). The expert has no additional remarks on the subject after the comments on the Concept Paper on State Regional Policy. The issue of accountability seems to be adequately addressed in the draft law.

## **6. VI. Monitoring**

Articles 36 and 37 of the last chapter require small improvements.

Our only concern is that the paragraphs on indicators envisages a very broad scope for these indicators (in article 37), even in so-called “specific indicators”. The risk then is that the mass of data will blur the key information needed to assess changes in regional development. A review of these provisions from the viewpoint of a statistics expert would be useful.

## APPENDIX

This table identifies potential projects for regional policy in Ukraine and whether the basis of responsibility might be a function for national or regional/local institutions. Indications are also made as to whether funding might be provided through national or regional funds. The suggestions for projects in this table can only be only indicative, subject to advice from the Ministry of Regional Development and Construction. Potential funding sources are in *italics*. The list is based on Article 11 – setting out tools that could contribute towards enhancing regional competitiveness.

<b>Policy instruments</b>	<b>National projects (<i>funding sources</i>)</b>	<b>Regional/local projects (<i>funding sources</i>)</b>
Transport infrastructure	Upgrade of major/strategic road and rail connections between cities, including EU priority Trans European Network axes within Ukraine <ul style="list-style-type: none"> <li>- <i>EU transition funding and EIB lending</i></li> <li>- <i>National regional and mainstream funds</i></li> </ul>	Upgrade and improvement of regional and local road projects and public transport schemes <ul style="list-style-type: none"> <li>- <i>Regional funds</i></li> <li>- <i>EU transition funding</i></li> </ul>
Promotion of cluster development through tax breaks, grants etc	Identification of strategic clusters for development in Ukraine and incentives to promote greater industrial competitiveness <ul style="list-style-type: none"> <li>- <i>National regional and mainstream funds</i></li> </ul>	
Development of technology parks, techopolities, centres of technology transfer	Development of national policy for science and technology park development and promotion of strategic projects in Ukraine <ul style="list-style-type: none"> <li>- <i>EU transition funding and EIB lending</i></li> <li>- <i>National regional and mainstream funds</i></li> </ul>	Development of technology/science park in sites favourable to development <ul style="list-style-type: none"> <li>- <i>National regional fund</i></li> <li>- <i>Regional funds</i></li> </ul>
Land infrastructure development		Preparation of sites for development, including land clearance, treatment for contamination and bringing forward development proposals (including with the private sector) <ul style="list-style-type: none"> <li>- <i>Regional funds</i></li> </ul>



Education (primary to higher education)	University and higher education development in Ukraine - <i>National mainstream funds</i>	Primary and secondary schools development - <i>Regional/local mainstream funds</i>
Adult skills development and human capital investment		Programmes to retrain adults in new skills to adjust to industrial restructuring (e.g. computing, communication, technology skills etc) - <i>Regional funds</i>
Promotion of business start-ups and SME development	National policy to promote entrepreneurship and start-up and growth of SMEs - <i>National regional and mainstream funds</i> - <i>EU transition funding</i>	Regional programmes to promote entrepreneurship and start-up and growth of SMEs - <i>Regional funds</i> - <i>EU transition funding</i>
Attraction of foreign direct investment	Co-ordination of inward investment policy for Ukraine	Co-ordination of regional marketing and handling of inward investment enquiries - <i>Regional funds</i>
Social, economic and ecological programme for the rehabilitation of 'problem territories'	Design of national programme, including identification of 'problem territories' and overall strategic approach	Regional/local plans for rehabilitation of 'problem territories', projects and their implementation - <i>Regional funds</i>
Energy conservation technologies, use of renewal sources of energy etc	National policy for energy conservation and use of renewable sources - <i>EU transition funding (e.g. Tacis)</i>	Regional/local schemes for energy conservation and use of renewable sources - <i>National regional fund (large projects)</i> - <i>Regional funds</i> - <i>EU transition funding</i>
Improvement of fertilisation and preservation of agricultural land		Regional/local programmes for agriculture - <i>Regional funds</i>