



Ms. Olga Smolianko
Legal Transformation Center Lawtrend

Evaluation of the Draft Decree on the Procedure for Obtaining and Use of Foreign Donations

Department for Humanitarian Activities under the Property Management Directorate of the President of the Republic of Belarus made a public announcement on the initiative for collecting proposals regarding the improvement of the legislation governing the receipt and use of foreign donations as well as their exemption from taxes and customs duties. The initiative was strongly supported by non-profit organizations due to the opportunity to express the views of interested parties at the development stage of a normative legal act. However, while developing the proposals to improve the legislation in the sphere of foreign donations we became aware of the draft decree governing the receipt and use of foreign donations. We note that the draft decree contains a number of provisions, which the non-profit organizations sought to change over the years. We hope that public opinion will be taken into account in further work on the preparation of this regulatory act and express our views on some of the new provisions of the draft decree prepared.

The concept of charity institution

The draft decree defines a charity institution as a non-profit legal entity carrying out humanitarian activities and / or implements humanitarian programs and / or projects in the Republic of Belarus, recorded in the list of charitable organizations approved by the Department for Humanitarian Activities under the Property Management Directorate of the President of the Republic of Belarus upon the recommendation of regional executive committees, Minsk City Executive Committee, and other government agencies. In our opinion, there should be a common approach for entering non-profit organizations in the list of charities, as well as clear procedures and criteria for classifying a non-profit organization as charity. Approach: the recording in the list upon the recommendation of a public authority may result in getting to the list depending on the subjective opinion of a representative of the public agency. Public authorities, in accordance with the legislation of the Republic of Belarus and their inherent competencies, are not empowered to decide whether a non-profit organization is a charity one. There is no regulation of charities in Belarus and stating the concept of “charity” in the regulatory act regarding foreign aid does not, in our opinion, correspond to the logic of the law. Charitable status usually has broader meaning in international practice, i.e. organizations with charitable status enjoy benefits and are specially regulated not only in the context of foreign aid, but also in connection with any activity and the income from different sources. For example, charities in international practice enjoy the income tax benefits for donations from local sources while donating natural and legal persons can reduce their taxable income by the amount of donations to charities.

Thus, the first goal should be to consider the legislation on charitable activities and charitable organizations, and subsequently grant charities with additional rights and benefits under the relevant regulations.

Reipients of foreign donations

In accordance with the definition set out in the draft decree, the recipients of foreign donations are natural and legal persons of the Republic of Belarus, including individual entrepreneurs, who have received the aid for use, possession and /or disposal from the foreign states, international organizations, foreign organizations and citizens, stateless persons and anonymous donors, as well as having got aid with the purpose of its further distribution under the targeted use plan. Thus, according to the draft decree not only persons directly receiving the aid from foreign sources are referred to the recipients, but also persons receiving aid from Belarusian legal entities and individuals in the form of distribution. However, the draft decree uses the term “recipient” in terms of the need for the committee to receive and assess the aid provided in the form of property, to register the aid at the Department for Humanitarian Activities, and to report on the use of the aid.

Purposes of foreign donations

The draft decree establishes a close list of purposes for foreign donations to be used for. In addition, the draft provides that the aid can be obtained for other purposes determined by the Property Management Directorate of the President of the Republic of Belarus for the aid in the amount (value) exceeding 500 basic units, and without such consent – in the amount (value) not exceeding 500 basic units. It is also stipulated that the mandatory document submitted for the aid registration is the resolution of a public authority on the approval of the intended use of aid and /or its exemption from taxes and customs duties. The draft decree also defined the concept of “humanitarian purpose”, which includes the promotion of activities in the field of education, health, environment, science, culture and art, physical education and sports and other important goals.

These provisions significantly reduce the capability of non-profit organizations to implement their statutory objectives and carry out traditional activities of non-profit organizations. The existence of the list of purposes for which it is possible to receive foreign donations in the law does not comply with applicable laws, including conflict with the norms of the Civil Code, which stipulates the right of individuals and legal entities to acquire and exercise their civil rights at their free will and for their own benefits (freedom of contract). The draft decree refers the most important areas of social life to the humanitarian purposes that can be achieved only within the framework of humanitarian programs and projects, either implemented in the presence of the responsible public authorities or carried out under the supervision of public authorities. Thus, non-profit organizations are deprived of the opportunity to independently exercise their statutory activities and those traditional for non-profit organizations out of the raised funds. Thereby the basic principles of civil society, i.e. the independence of non-profit organizations, the priority of public interests over the state interest and the principles of partnership and interaction between government and non-profit organizations are violated. The draft decree too broadly stipulates that a humanitarian project must contain the name of a public authority, including the executive committee (Minsk City Executive Committee) or other local executive and administrative bodies supervising the process of project

implementation. Thus, the powers of public authorities in terms of such supervisions remain unregulated and allowing a very broad interpretation. The draft decree requirement on submitting for the registration a resolution of the public authority on the approval of the intended use of foreign donation in the presence of the purposes for foreign donations and the possibility of determining the additional purposes by the Property Management Directorate of the President of the Republic of Belarus does not contribute to the effective application of the decree in practice and gives rise to subjective interpretation of its rules by public authorities. The norms of the decree do not specify what kind of approval of the use of aid by public authorities is in question, if the purposes of use have been already established by the decree or will be additionally determined. Moreover, the criteria for the approval of such purposes have not been established. Lacking the criteria for the approval of the purposes, as well as in the absence of provisions on their transparency, such approval may be subjective and not meeting the needs of the Belarusian society.

Humanitarian programs (projects)

In accordance with the definitions given in the draft decree, a humanitarian program means a whole system of measures implemented by different performers, while a humanitarian project means a set of measures implemented by the specific legal entity. At the same time, the draft decree provides the requirement to specify the donors and a detailed list of goods, works, services and equipment purchased within the project, with regard to both humanitarian programs and humanitarian projects. Such requirements are not feasible when dealing with large humanitarian programs and projects, which (a part of which) still seek funding. The provisions for submission of documents for registration of programs and projects do not also specify the differences between humanitarian programs and projects.

The aid received under a humanitarian program (project) is registered in two stages (acc. to the draft decree): primarily a humanitarian program (project) with an appropriate approval of a public authority is registered, followed by the registration of the aid provided under the registered humanitarian programs (projects). This approach is an extremely bureaucratic one and highly complicates the procedure for foreign donations registration. Moreover, the criteria for deciding on a humanitarian program (project) compliance with national interests, government programs, plans and strategies are not clearly defined.

The draft decree stipulates that humanitarian programs (projects) shall be submitted by the Property Management Directorate of the President of the Republic of Belarus for approval to the Head of State. This provision implies that the functions of the President of the Republic of Belarus shall also include the approval of any humanitarian projects, even those with insignificant funding.

Terms

The draft decree stipulates the need for the resolution of public authorities on the compliance of a humanitarian program (project) with national interests, government programs, plans and strategies, laws and international obligations of the Republic of Belarus, as well as their approval of the intended use of the donations and /or their exemption from taxes and customs duties. However, the regulations do not contain any indication of the term, during which public authorities should consider the program (project) providing for the attraction of foreign funding and issue the appropriate resolution.

The decree provides for the terms for registration of foreign donations. At the same

time it established that the donations shall be registered by the Department within five (5) business days following the day of the President's approval of the intended use of the donations and / or their exemption from customs duties and taxes (in case of registration of the donations for the purposes determined by the Property Management Directorate of the President of the Republic of Belarus in consultation with the President of the Republic of Belarus, as well as in case of their exemption from taxes and customs duties). However, the draft decree does not stipulate the term for approval. Thus, the norms of the decree do not clearly specify the period of time within which such foreign donations shall be registered.

Exemption from taxes and customs fees (duties)

According to the draft decree, the donations are exempt from customs fees, customs duties and taxes: 1) when the donations are provided for the stipulated purposes; 2) when the donations are provided within the framework of the registered programs and projects; and 3) by the Property Management Directorate of the President of the Republic of Belarus in consultation with the President of the Republic under certain conditions. However, the draft decree at the same time provides for a mechanism for the exemption of the donations, including received within humanitarian programs and projects, from customs fees, customs duties and taxes.