

ANALYSIS OF THE DRAFT LAW "ON THE ESSENTIALS OF CIVIL SOCIETY"

On 12 December 2022, the draft law "[On the Essentials of Civil Society](#)" submitted by the government for consideration by the Parliament was published in Belarus. On 20 December, the draft law was adopted by parliament in its first reading. Basically, this law does not change the legal status of the existing NPOs in Belarus, however it imposes special forms of interaction with the state within the All-Belarusian People's Assembly (ABPA) for a small circle of national-level public associations. Thus, despite the official title, the subject of the draft law regulations is not *civil society* as a whole, but only *interaction of its certain civil society actors with the state*, especially regarding the elections of civil society delegates to the ABPA.

Lawtrend experts have prepared an article-by-article commentary on this draft law.

Article of the draft law	Content of the article (Unofficial translation)	Commentary
Introduction	The present Law defines the notion of civil society in the Republic of Belarus, establishes legal and organizational essentials of interaction of state bodies (organizations) and civil society for the purpose of providing consolidation of efforts of an individual, society, and state to implement national interests of the Republic of Belarus.	The concept of "civil society" in modern world practice has a very broad meaning and is rather considered in a philosophical and political context than in a legal one. There is no internationally accepted concept of "civil society." As a rule, national legislations distinguish non-profit organizations (NPOs) by regulating their activities, obtaining tax benefits and preferences due to the non-for-profit and/or socially useful nature of their activities, etc. Basic concepts and forms of interaction between NPOs and the state are usually enshrined in a civil code. Also, forms of interaction between NPOs and the state are contained in special normative legal acts. Most often, those normative legal acts can be divided into two big blocks:

(1) regulations for financial aspects of interaction of the state and other entities: legislation on social services, public procurement, charity, etc., (2) regulations for participation in decision-making: special laws on participation in decision-making, legislation on public councils, on legislative initiative, etc. Special issues of interaction between non-profit organizations and state bodies are regulated most often at the level of concepts and principles of such interaction.

The instruments establishing international standards in the area under consideration include first of all such key documents as [Guidelines on Freedom of Association](#), [Guidelines on the effective implementation on the right to participate in public affairs](#), [UN Human Rights Council Resolution *Civil society space: creating and maintaining, in law and in practice, a safe and enabling environment*](#).

[Recommendations on enhancing the participation of associations in public decision-making processes](#) were developed by the participants to the Civil Society Forum at the OSCE Supplementary Human Dimension Meeting on Freedom of Peaceful Assembly and Freedom of Association (Vienna, 15-16 April 2015).

The draft law under consideration does not change the existing system of NPOs, the procedure of their establishment, activities, financing, and liquidation. Many issues of interaction between NPOs and the state also remain regulated at the level of special legislation, for example, by numerous normative legal acts on the creation of public councils and on the state social procurement. At the same time, the draft law establishes a hierarchy of NPOs enabling special forms

		<p>of interaction with state bodies, in particular, participation in the All-Belarusian People's Assembly (the relevant draft law is also being prepared). Obviously, this is the main purpose to prepare the law.</p>
<p>Article 1. Basic terms used in this Law and their definitions</p>	<p>For the purposes of this Law, the following basic terms and definitions shall be used:</p> <p>civil society – a community of citizens of the Republic of Belarus, foreign citizens, and stateless persons permanently residing in the Republic of Belarus (hereinafter - citizens), who express their civic position through participation in social relations and institutions not prohibited by law;</p> <p>civil society entities - membership-based associations of citizens or of legal entities regardless of their quantitative, territorial, or other qualifications, whose statutory activities are aimed at accomplishing the main objectives of interaction between state bodies (organizations) and civil society specified in Article 4 of this Law.</p>	<p>Until now, the notion "civil society" has not been defined at the legislative level in Belarus. This notion was only found in some statutory acts, state programs, and a corresponding section was on some state bodies` websites. Traditionally, "civil society" was considered as various organizational legal forms of non-state non-profit legal entities, both membership-based and non-membership-based. The draft law suggests a rather broad notion of 'civil society.' At the same time, it contains a very narrow definition of 'civil society entities.' The draft law includes only membership-based organizations among the civil society entities. Accordingly, the most widespread organizational legal form of an NPO in Belarus for the last several years - establishment - does not refer to the civil society entities. Under the draft law, foundations are not included into the civil society entities as well. The draft law also set forth that the civil society entities do not include all associations of citizens or legal entities, but only those, whose statutory activity is aimed at accomplishing the objectives specified in the law. The legislation establishes that statutory activities of NPOs must be based on their charters and be aimed at achieving their statutory goals. Purposes, objectives, subject, and methods of activities must be specified in the charter. Thus, in order to meet the definition of a "civil society entity", such activities must be prescribed in the charter of an association of citizens or legal entities. Nevertheless, the draft law does not specify</p>

		<p>to what extent these objectives should be prescribed in the charter of a member-based organization. The draft law determines the aiming activities at accomplishing objectives from the list set forth in the law as one of the criteria for classifying organizations as civil society entities. However, the current version of the draft law does not give a clear explanation as to whether the aiming by an organization at accomplishing one or some of the objectives from the list or whether full compliance with the whole list of objectives should be considered as meeting this criterion. The approach to the definition of civil society's objectives at the international level is much broader than that envisaged in the draft law. For instance, the OHCHR's Practical Guide to Civil Society defines civil society actors as individuals and groups who voluntarily engage in forms of public participation and action around shared interests, purposes or values that are compatible with the goals of the UN: the maintenance of peace and security, the realization of development, and the promotion and respect of human rights.</p> <p>The Guidelines on the effective implementation on the right to participate in public affairs include the media into civil society actors as well.</p>
<p>Article 2. The legislation on civil society</p>	<p>The legislation on civil society consists of the Constitution of the Republic of Belarus, this Law, and other statutory acts.</p>	<p>The notion "civil society" was introduced into the Belarusian Constitution by the amendments adopted at the republican referendum on 27 February 2022. Civil society is considered in the Constitution to be one of the entities enabled to send delegates to the All-Belarusian People's Assembly (a new representative body that</p>

	<p>The civil society entities shall carry out their activities in accordance with the Constitution of the Republic of Belarus, this Law, other statutory acts and on the basis of their charters.</p> <p>The provisions of this Law shall not limit the rights of civil society entities stipulated by other legislative acts.</p>	<p>stands over the system of separation of powers and "<i>defines strategic directions of development of society and the state</i>").</p> <p>A whole layer of scattered statutory acts can be referred to the legislation on civil society: these are norms of special laws concerning non-profit organizations of various organizational legal forms; financing sphere laws on receiving internal and foreign gratuitous aid, governmental funding, including state social procurement, taxation, including tax and other benefits; legislation on public participation, including a large quantity of statutory acts regulating social counsels activities in Belarus.</p>
<p>Article 3. Principles of interaction between state bodies (organizations) and civil society</p>	<p>Interaction between state bodies (organizations) and civil society is based on the principles of</p> <ul style="list-style-type: none"> legality; publicity; voluntariness; observance of the balance of interests of an individual, society, and the state; equality of citizens` rights and prohibition of discrimination; 	<p>The principles of interaction between state bodies and civil society outlined in the draft law are based on democratic approaches. At the same time, the article lacks the important principles, as follows: independence of associations, transparency, impartiality, openness and accessibility, accountability, and effectiveness.</p> <p>In the light of annulling freedom of association in the country, mass liquidation of non-profit organizations, discriminatory approach to some civil society organizations, creation of favorable conditions for some privileged civil society organizations, and prevention of free expression of opinions, these principles look decorative.</p> <p>Thus, as of December 2022, at least 1,124 non-profit organizations were liquidated, were in the process of forced</p>

	<p>mutual responsibility for achieving the goals of common, social progress.</p>	<p>liquidation or decided to self-liquidate, according to the Lawtrend monitoring results.</p>
<p>Article 4: Basic objectives of interaction between state bodies (organizations) and civil society</p>	<p>The basic objectives of interaction between state bodies (organizations) and civil society are:</p> <ul style="list-style-type: none"> ensuring civil (people's) unity; ensuring the independence, territorial integrity of the Republic of Belarus, and state sovereignty; facilitating further development of democratic, social, and law-governed state; increasing the involvement of civil society in the administration of state affairs, implementation of state policies with due account of the priority of national interests; organizing constructive interaction between state bodies (organizations) and civil society aiming at strengthening trust in the institutions of state authority; facilitating consideration of public opinion and citizens' legitimate interests in the implementation of state policies in order to 	<p>According to Article 1 of the draft law, civil society entities include only the associations of citizens or of legal entities, whose statutory activities are aimed at accomplishing the main objectives of interaction between state bodies (organizations) and civil society specified in Article 4. This list of objectives is exhaustive.</p> <p>Despite the rather wide range of the objectives listed in the article, it is obvious that the activities of associations of citizens or legal persons must be aimed at supporting the current state policy for them to be classified as civil society entities. Nevertheless, international standards state the need for interaction between the state and civil society organizations of all kinds of activities. The right to participate in the administration of public affairs implies the right to criticize public authorities and to make proposals to improve their activities, as well as to draw attention to any aspects of their activities that may hinder the promotion, protection, or implementation of human rights and fundamental freedoms.</p> <p>Thus, according to the Guidelines on Freedom of Association, for impactful consultations with associations, broad participation and representation of views of a wide variety of associations, as well as participation of the associations that may be critical of government proposals must be ensured.</p>

	<p>reach a public consensus on the key issues of the development of the Republic of Belarus;</p> <p>increasing civic consciousness, political culture, and social responsibility of citizens;</p> <p>participating in spiritual, moral, and patriotic guidance of citizens based on cultural and spiritual traditions, preservation of historical truth and memory of the Belarusian people;</p> <p>strengthening the united community of “the Belarusian people”, fostering respect for all nationalities, religions, and cultures.</p> <p>The activities of civil society entities shall not be aimed at war or extremist activities propaganda.</p>	<p>According to the UN Human Rights Council Resolution <i>Civil society space: creating and maintaining, in law and in practice, a safe and enabling environment</i>, domestic legal and administrative provisions and their application should facilitate, promote and protect an independent, diverse and pluralistic civil society and, in this regard, strongly rejecting any acts of intimidation or reprisals against civil society.</p> <p>According to the Guidelines on the effective implementation on the right to participate in public affairs, the legitimate and vital role of civil society actors regarding participation in public affairs should be recognized; the independence and pluralism of such actors should be respected, protected and supported, and States should not impose undue restrictions on their ability to access funding from domestic, foreign or international sources. The right to participate in public affairs should be recognized as a continuum that requires open and honest interaction between public authorities and all members of society, including those most at risk of being marginalized or discriminated against, and should be facilitated continuously. In this context, collaboration with civil society actors for the identification and articulation of gaps, needs and solutions is crucial. Measures should be taken to build mutual respect, understanding and trust between public authorities and civil society actors.</p> <p>The provision that ‘the activities of civil society entities shall not be aimed at war or extremist activities propaganda’ is reasonable and generally consistent with the established international practice.</p>
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<p>Article 5. State support to civil society development</p>	<p>In order to develop civil society and its entities, the state</p> <ul style="list-style-type: none"> promotes the implementation of the basic objectives of interaction between state bodies (organizations) and civil society; ensures effective functioning of government institutions in the interests of civil society; promotes effective interaction of state bodies (organizations) with civil society entities in the forms established by this Law and other legislative acts; promotes a balance between the state interests and the civil society interests; guarantees the protection of the rights and legitimate interests of civil society entities; improves the mechanisms of protecting constitutional rights and freedoms and 	<p>State support to the development of civil society is an important factor in building a genuine democracy. However, this draft law as a whole, as well as this article in particular, is aimed at further breaking the gap between non-profit organizations existing in the Belarus` conditions. This conclusion can be drawn from the fact that the provisions of the law do not provide the development of civil society as a whole, but only of ‘civil society entities.’</p> <p>Proceeding from the provisions of the draft law as a whole, it establishes a special hierarchy of non-profit organizations:</p> <ol style="list-style-type: none"> (1) Non-profit organizations not referred to civil society entities. Those are different organizational legal forms of non-membership-based NPOs (establishments, foundations), as well as membership-based forms of NPOs, which cannot be referred to the civil society entities due to the incompatibility of their activity areas with the list from Article 4 of the draft law. It appears that a large number of public associations will fall under this category. (2) Membership-based forms of NPOs classified as civil society entities (public associations, including trade unions, as well as unions and associations of legal entities), whose activities

	<p>legitimate interests of individuals, society, and the state;</p> <p>promotes the development of civil society, including by providing state support to civil society entities;</p> <p>ensures the development of other areas of interaction between state bodies (organizations) and civil society.</p> <p>The state provides support to civil society entities, which is a set of measures aimed at promoting the development of civil society, creating and providing conditions, guarantees, and incentives for the activities of these entities, protecting their rights and legitimate interests.</p> <p>Civil society entities may receive into possession and (or) use the property being in the state ownership in accordance with the legislation on the procedure for granting a lease and a gratuitous use of the state property in order to implement their statutory purposes.</p>	<p>correspond to the list of objectives from Article 4 of the law, but not having the required number of members or registered regional branches to meet the next third category. General forms of interaction with the state are established for this group of NPOs (Article 6 of the draft law). This category might also include a large number of public associations. At the same time, the law does not directly indicate the possibility of including into the second (non-privileged) category of civil society entities such organizational-legal forms of NPOs as republican state-public associations (there are seven such registered organizations in Belarus), political parties (there are fifteen registered parties so far), and religious organizations.</p> <p>(3) Civil society entities with special relations with the state. Those are republican public associations with the number of members over 100 thousand people, which have branches in all regions of Belarus and in the city of Minsk, as well as trade unions, which unite at least half of the trade unions registered in Belarus.</p> <p>Among the mechanisms of state support to civil society entities, the provision of state support to the ones and the receiving state property into possession and/or use are separated in the article. In fact, this norm does not change the current situation concerning state support for NPOs in the country. According to the practice established, direct state funding in Belarus is allocated only to a very limited number of pro-governmental non-profit organizations. The</p>
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		<p>same approach exists for providing indirect state support. Thus, Resolution No. 761 of the Council of Ministers of the Republic of Belarus of 27 December 2021 (in effect since 30 March 2022) establishes lease benefits only for 23 Belarusian NPOs.</p>
<p>Article 6. General forms of interaction between state bodies (organizations) and civil society entities</p>	<p>Interaction of state bodies (organizations) and civil society entities shall be carried out in accordance with legislative acts in the forms as follows:</p> <ul style="list-style-type: none"> participation of civil society entities in the work of collegial formations of state bodies, of public advisory councils, in meetings of local executive and administrative bodies upon their invitation; provision of the authorities assistance in the activities of civil society entities; participation of civil society entities in forming and implementing the state policy; submission of proposals to rule-making bodies by civil society entities for improving legislation; 	<p>This article mentions the forms of interaction between associations of citizens or legal entities and the state, have already enshrined in a number of normative legal acts, both of national and local levels. Thus, the mechanism of state social procurement is fixed in the Law of the Republic of Belarus of 22 May 2000 № 395-3 "On social services", the Resolution of the Council of Ministers of 27 December 2012 № 1219 "On some issues of the state social procurement in the field of social services", the Law of the Republic of Belarus of 7 January 2012 № 345-3 "On the prevention of spreading the diseases dangerous to public health and human immunodeficiency virus." These normative legal acts do not limit the possibility of NPOs` participation in the mechanism of state social procurement depending on their activities area and envisage the possibility to engage any non-governmental non-profit organizations in it.</p> <p>The notion of "public control" in the current Belarusian legislation is rather vague. It is mentioned directly in statutory acts only in regard to some legal relationship: public control over observing the labour protection legislation and control by public associations over the activity of bodies and institutions executing punishments and other measures of criminal responsibility. At the</p>

	<p>participation of civil society entities in the preparation and public discussion of draft normative legal acts;</p> <p>public control;</p> <p>state social procurement;</p> <p>other forms.</p>	<p>same time, there is a large list of normative legal acts regulating public control issues more or less: legislation concerning the protection of the environment and concerning the protection of historical and cultural heritage. The normative acts define public control entities in different ways. However, most of them refer to specific organizational legal forms of NPOs enabled to carry out public control. Thus, in the legislation regulating control over the activities of bodies and institutions executing punishment and other measures of criminal liability, the functions of public control are assigned to public associations, and in the legislation on labor protection to trade unions.</p> <p>Participation of NPOs in the preparation and public discussion of draft normative legal acts and in the submission of proposals on improvement of legislation is regulated by the Law of the Republic of Belarus of 17 July 2018 № 130-3 "On normative legal acts." It enshrines a number of provisions concerning public participation in the process of adopting legislative decisions. Thus, Article 7 of the law covers public discussions of normative legal acts (the circle of subjects is not limited); according to Article 38, when developing plans to prepare draft normative legal acts, proposals of scientific and public associations, citizens are considered, as well as the results of scientific research in the field of law and of legal monitoring; Article 45 establishes that representatives of public associations (unions, associations of public associations), which perform functions to protect the interests of legal entities and individual entrepreneurs in the relevant areas, may be engaged in predicting the consequences</p>
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		<p>of the adoption (publication) of a normative legal act. Local government regulations can establish an opportunity for NPOs to submit issues for consideration by local authorities.</p> <p>Nowadays, there is no one statutory act regulating the creation and activity of advisory, expert, and other public councils under the aegis of state structures and containing mechanisms for public participation in the development and implementation of state plans, programs, and normative legal acts as a continuum. An opportunity to create specific public councils or councils on certain subjects is provided for by special statutory acts.</p> <p>Thus, the current legislation on the interaction of non-profit organizations and the state in Belarus is rather vague; there are relevant provisions in a huge number of statutory acts. Moreover, the legislation does not have a unified approach to the notion of "non-profit organizations" in relation to interaction with state bodies. Some normative legal acts refer to non-state non-profit organizations, while other ones fix specific organizational legal forms of NPOs, most often public associations, and some ones mention specific non-profit organizations.</p> <p>The article of the draft law under consideration adds nothing new to the existing legal regulation, in particular new forms of interaction between associations of citizens or legal entities and the state. At the same time, a new subject of the interaction was added</p>
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		to the already fragmented legislation - "civil society entity" limited by the criteria of membership and of proper area of activity.
<p>Article 7. Special forms of interaction between state bodies (organizations) and civil society entities</p>	<p>Special forms of interaction between state bodies (organizations) and civil society entities are:</p> <p>election of delegates to the All-Belarusian People's Assembly in accordance with a procedure prescribed by law;</p> <p>holding meetings with people and labour collectives, direct telephone lines, dialogue platforms, public receptions and outreach receptions to gather and to elaborate proposals to be submitted for discussion at the All-Belarusian People's Assembly;</p> <p>participation in implementing the final decisions of the All-Belarusian People's Assembly.</p> <p>State bodies (organizations) interact in the forms specified in part one of this article with civil society entities that are registered and operate in accordance with a procedure prescribed by law and have regional, Minsk city organizational structures, as well as:</p>	<p>The special forms of interaction with the state available to the privileged category of organizations might include only those activities that are directly related to the All-Belarusian People's Assembly: election of its delegates in accordance with a procedure prescribed by law; holding meetings with people and labor collectives, direct telephone lines, dialogue platforms, public receptions and outreach receptions to gather and elaborate proposals to be submitted for discussion at the ABPA; participation in the implementation of its final decisions.</p> <p>The article establishes clear criteria for associations of citizens or legal entities, which are expected to interact with the state in a special manner:</p> <ul style="list-style-type: none"> - registered status; - activities aimed at accomplishing basic objectives of the interaction between state bodies (organizations) and civil society specified in Article 4 of the draft law; - public association or union (association) of trade unions as organizational legal form; - quantitative structure for a public association of not less than 100,000 citizens;

	<p>are republican public associations with a membership of at least 100,000 citizens (for civil society entities being public associations);</p> <p>unite at least half of the trade unions registered in the Republic of Belarus (for civil society entities being trade unions).</p>	<ul style="list-style-type: none"> - quantitative structure for an union (association) of trade unions of not less than a half of the trade unions registered in Belarus; - regional and Minsk city organizational structures. <p>As of August 2022, the Federation of Trade Unions of Belarus (over 4 million people, including industry trade unions), <i>Belaya Rus</i> (over 188,000 people), the Belarusian Republican Union of Youth [BRSM] (over 380,000 people), and the Belarusian Union of Women (140,000 people) and the association of veterans (over 2 million people) met these criteria.</p> <p>Thus, by introducing these criteria, the legislature essentially limits the possibility to participate in the ABPA mechanisms for Belarusian non-profit organizations, even for those not forced into liquidation and remained in Belarus in the unregistered status.</p>
<p>Article 8. Powers of the Ministry of Justice in the sphere of interaction between state bodies (organizations) and civil society entities</p>	<p>Confirmation of the inclusion of civil society entities with those entitled to interact with state bodies (organizations) in special forms is carried out by the Ministry of Justice.</p> <p>Information on civil society entities entitled to interact with state bodies (organizations) in special forms is posted by the Ministry of Justice on its official website in the global computer network Internet.</p>	<p>One more function is added to the functions of the Ministry of Justice, that is to confirm the inclusion of civil society entities into those entitled to interact with state bodies (organizations) in special forms.</p> <p>Under the current law "On Public Associations", public associations must incorporate the information on their quantitative membership in the reports submitted to justice agencies by March 1st, every year.</p> <p>The law of the Republic of Belarus "On Trade Unions" sets forth that the grounds for representation by republican trade unions</p>

		(associations of trade unions) and their organizational structures in the state administration bodies include, among other things, the data of annual internal trade unions reporting on their structure and membership. It is likely that this approach will be applied in relation to participation in the ABPA mechanisms as well.
Article 9. Information interaction between state bodies (organizations) and civil society entities	<p>Civil society entities interact with the media and participate in the information relations in accordance with legislative acts.</p> <p>Civil society entities, in the course of the interaction with state bodies (organizations), have the right to receive information from them about planned and current activities, if dissemination and (or) provision of this information is not restricted by legislative acts.</p>	This article does not add anything new to the existing normative regulation.
Article 10. Measures to implement the provisions of this Law	The Council of Ministers of the Republic of Belarus shall take measures necessary for the implementation of the provisions of this Law within the term of three months.	The draft law under consideration practically does not change the current legal relationship, so, in our opinion, there is no need to amend a large number of normative legal acts in connection with its adoption. It is expected that the changes will be caused by a draft law provision on publishing by the Ministry of Justice the information on confirming the inclusion of a civil society entity with those entitled to interact with the state in special forms, in particular, it will concern the Regulation on the Ministry of Justice.

<p>Article 11. Entry into force of this Law</p>	<p>This Law shall enter into force in the following order:</p> <p>Articles 1 - 9 - three months after the official publication of this Law;</p> <p>other provisions - after the official publication of this Law.</p>	<p>The draft law under consideration is currently (on 22 December 2022) published on the national legal website and has been adopted in first reading. It is necessary to pass second reading in the House of Representatives, approval by the Council of the Republic, and signing by the president for its entry into force. Thereafter, the draft law is subject to official publication. Its main provisions (except for the provisions on its entry into force and on the obligation of the Council of Ministers to take measures to implement the provisions of the law) are to come into force three months after the publication.</p>
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