FOREIGN FUNDING IN BELARUS:

SOME TRENDS AND POSSIBLE LEGAL NOVELTIES.

Analytical brief

As early as in 2001, Belarus introduced an authorization system for receiving foreign gratuitous aid. After receipt of foreign aid to the bank account (regardless of its amount, receiving from a legal entity or an individual, and the purpose of its receipt) a recipient should apply to the Department for Humanitarian Activities, where, in coordination with other bodies, a decision should be made: to register this aid or not, to exempt this aid from taxes or not. At the same time, the legislation is framed in such a way that any recipient of the aid can be refused the registration, including simply because of "inexpediency". At the legislative level, a very narrow list of purposes for receiving foreign gratuitous aid is introduced. Responsibility for violating the law on foreign gratuitous aid is prescribed both in the Code of Administrative Offences and in the Criminal Code. Since 2003, international technical assistance - assistance provided mainly within the framework of international agreements with relevant bodies and organizations - is also subject to regulation.

The whole system of foreign funding coming into the country is legally built on the priority of its receipt by state bodies - unrestricted conditions for them to receive the aid are created, additional purposes of its receipt are introduced, while for other its recipients the possible purposes of foreign funding are constantly reduced – both at the legislative and practical levels.

However, Belarusian non-profit organizations also act as recipients of foreign funding, despite all existing complexities with its registration, reporting, constantly changing practices, etc. Often, programs attracting foreign funding are implemented jointly by state structures and non-profit organizations. This practice is generated, in many respects, by donors themselves, where, sometimes artificially, the condition for project implementation is cooperation of non-profit organizations with local or national authorities. Often, only non-profit organizations can be recipients under the conditions of competitions. In this case, the practice of creation of "their own" pro-government non-profit organizations to attract foreign funding - so-called "financial GONGOs" - has spread in Belarus and it is gathering speed. The law establishes for many of these organizations direct and indirect benefits (including tax deductions for domestic donors who donate money to the NPOs directly listed in the Tax Code), and the most significant negative norms of the law do not apply in relation to them de facto (for example, they do not face problems in registration of foreign aid).

The role of GONGOs has been obviously growing steadily since the 2020 presidential election and will continue to grow in Belarus. For many NPOs inside Belarus, they are almost the only available form of social activity without the threat of sanctions from the government. In particular, the leaders of some of these organizations say they are ready to take over positive social functions of the CSOs which have faced "clean up" in 2021-2022 and have been liquidated. In their most radical form, these organizations officially declare support for the incumbent political

regime, being the main personnel reserve for forming election commissions and even the organizational basis for the election campaign team of the president (for example, trade unions).

Here it should be noted that not all organizations involved by the government in obtaining foreign funding for its own purposes can be regarded as "pure" GONGOs and that such projects can be implemented very successfully and effectively for meeting the specific needs of their target groups. We understand, however, that approaches to defining GONGOs are in any case tentative. Some organizations are forced to include this function in order to survive and implement projects properly for the benefit of their target groups. At the same time, in order to avoid funding of pro-government CSOs and projects implemented for the sake of raising additional funds, it is necessary to develop: (1) universal criteria for evaluation of GONGOs at the international level; 2) effective mechanisms for comprehensive project evaluation with the engagement of CSOs in the process.

The 2021-2022 are the years of mass and unprecedented repressions against civil society organizations: raids, blocking of accounts, sealing of offices, seizure of equipment, administrative and criminal prosecution, long prison terms, other pressure on leaders and activists of CSOs and their family members, mass liquidation of NCOs... One of the factors for this pressure was and still is obtaining foreign funding by non-profit organizations. Despite the fact that foreign funding, within the legal framework, was always attracted by organizations which were "closer" to the authorities. The law does not merely allow human rights organizations, for example, to attract funding. Independent NGOs attracting foreign funding receive constant requests for information, face various inspections by various state agencies, and are summoned "for a talk" to special services and financial control authorities. The topic of foreign funding is constantly used to stigmatize representatives of civil society organizations. Thus, on 11 July 2022, the TV channel *Belarus 1* showed a film which claimed that leaders of independent trade unions received funds from abroad without registering them with the Department for Humanitarian Affairs of the Belarus` Presidential Property Management Directorate. Before that, in spring 2022, trade union members, for instance, the leader of the Free Metalworkers` Trade Union, were brought to administrative responsibility for violating the procedure for using foreign donations (Article 24.14 of the Code of Administrative Offences). The administrative case over the violation of the law on foreign donations will be considered by the Court of the Central district of Minsk on 31 March 2023.

Despite the constant discrediting of independent civil society organizations receiving foreign funding and their donors via pro-government mass media outlets and Telegram channels, liquidation of many traditional foreign aid recipients and the established system for foreign funding, additional measures are taken in Belarus to attract such foreign funding. Thus, if we analyze the Department of Humanitarian Activities` website, we can see that it carries out active work to explain how to attract foreign funding among state bodies and institutions, and the public. For example, the Department, in cooperation with the Minsk Regional Government, held a training for activists of the Berezino district on attracting foreign donations to their district, developing and implementing humanitarian projects. A seminar-meeting was held in the Central district administration of Minsk for considering attraction, registration and targeted use of foreign donations, as well as preparation and implementation of humanitarian projects. The Department`s representatives spoke about the procedure for registration of foreign donations within the framework of the Conference on the Implementation of the Projects of the UNDP Global Environment Facility Small Grants Programme in the Republic of Belarus (GEF/UNDP SGP).

Foreign funding, including that received by Belarusian state bodies and organizations, has not been a transparent process for many years. We have always had to collect bits and pieces of

information about the amount of foreign gratuitous aid and international technical assistance received by the country: from the few publications on the websites of the Department for Humanitarian Activities and the Ministry of Economy, published state programs, and budget laws. We know for a fact that, since 2021, the registration of foreign gratuitous aid has become hardly accessible even for many of still officially registered non-profit organizations, which previously received few refusals to register it. There is no publicly available information on how much foreign donations came to Belarus in 2021-2022 and which entities acted as project implementers. Some conclusions about the international technical assistance attracted to the country can be drawn from individual government programs, reports on them, as well as on the projects approved during this period (international technical assistance projects are subject to approval by the Council of Ministers by issuing a resolution). Thus, the following international technical assistance projects were approved in Belarus

in 2022:

Strengthening National HIV and TB Prevention, Treatment, Care and Support Systems in the Republic of Belarus - Phase 2;

"Supporting the Efforts of the Republic of Belarus in Nationalizing and Localizing the Sustainable Development Goals";

"Inclusive Education: a Supportive Environment for Realizing the Potential of Every Child".

"Improvement of radiation control measures in the zone of influence of the Belarusian nuclear power plant".

"Supporting the functioning of the management architecture for the process of achieving the Sustainable Development Goals in the Republic of Belarus - 4".

"Improving the competence of emergency services in terms of fulfilling responsibilities related to preparedness and response in case of radiological emergencies and prompt notification".

"Adaptation of the emergency response system of the Republic of Belarus to function in the adverse global epidemiological situation related to COVID-19."

"Strengthening the regulatory capacity of the Ministry of Health to ensure effective radiation protection of workers, the public and patients in accordance with IAEA safety standards.

"Strengthening National HIV and TB Prevention, Treatment, Care and Support Systems in the Republic of Belarus".

In 2021:

"Belarus Water Sector Framework, Phase 3: Project Implementation Support and Technical Oversight."

"Support for the functioning of the management architecture of the process of achieving the Sustainable Development Goals of the Republic of Belarus - 3".

"Achieving Maximum Impact of Migration and Mobility on Sustainable Development of the Republic of Belarus.

"Project on Increasing Sustainable Energy Use".

"Strengthening the capacity of the national statistical system of the Republic of Belarus to collect, analyze and disseminate demographic data for the Sustainable Development Goals of the country."

"The Framework Program on the Water Sector in Belarus, Phase 3 - Wastewater Subproject in the City of Shklov."

"Belarus Water Sector Framework Program, third phase - wastewater subproject in the city of Baranovichi".

"Belarus Water Sector Framework Program, third stage - wastewater subproject in the city of Zhlobin".

"Development of ecological tourism to promote green transition to inclusive and sustainable growth".

"Strengthening the scientific and educational capacity of the Republic of Belarus to collect, analyze and use demographic data to achieve the Sustainable Development Goals."

"Strengthening the resilience of pine forests to bark beetle outbreaks and associated stand desiccation."

"From university to labor market in the twenty-first century: a step forward in employment."

"Strengthening of cooperation between the EU and the Republic of Belarus in the field of customs";

"Framework Program on the water sector in Belarus, third phase - subproject of wastewater in the city of Kletsk";

"Belarus Water Sector Framework Program, third phase - wastewater subproject in the city of Luban"; "Belarus Water Sector Framework Program, third phase - wastewater subproject in the city of Luban";

"Belarus Water Sector Framework Program, third stage - wastewater subproject in the city of Fanipol"; "Belarus Water Sector Framework Program, third stage - wastewater subproject in the city of Fanipol";

"Belarus Water Sector Framework Program, third stage - Bereza wastewater subproject";

"Modernization of postgraduate training in the natural sciences and improvement of teaching methods".

Throughout 2022, several initiatives were voiced concerning the future amendments to the Belarus' law on foreign gratuitous aid. In particular, minister of justice of Russia Konstantin Chuichenko, after a meeting with Belarusian minister of justice Sergey Khomenko, spoke on an initiative to liberalize relations in terms of mutual exclusion of donations from Belarus and Russia from the concept of foreign aid (although the earlier initiative on Belarus' reception of Russian legislation on foreign agents is likely to remain unrealized). According to Chuichenko, an agreement was reached at the meeting to make certain exemptions from the restrictions that apply in each country (Belarusian and Russian laws).

At the session of the Parliamentary Assembly Commission on Security and Defense, the plans to develop a Model Law for regulating NPOs` funding in Belarus and Russia were announced.

Plans to amend the national legislation in the field of foreign funding were also voiced. Thus, at the session of Public Council on the Issues of Foreign Gratuitous Aid under the Department for Humanitarian Activities of the Property Management Directorate of the President of the Republic of Belarus, drafting a regulatory legal act was considered to bring the Presidential Decree № 3 "About the foreign gratuitous aid" dated 25 May 25 2020 into line with the Constitution of the Republic of Belarus.