POORLY THOUGHT-OUT AND CONSTANTLY CHANGING LEGISLATION: ADDITIONAL CHALLENGES FOR NGOS IN BELARUS

In late 2024, the Belarusian government eased the negative changes introduced previously during 2024 that targeted civil society organisations, including suspending the ban on printed tax returns and revising strict requirements for institutions providing residential social services (care homes).

The legal environment for Belarusian CSOs is not only characterised by extremely strict requirements that constantly worsen. The frequent changes in legislation add to the complexity, often creating instability and making medium-term planning of many activities difficult. A prime example of this instability was the removal of recently introduced restrictions in the field of tax reporting and requirements for CSOs' social service activities at the end of 2024.

In these two cases, unreasonable and irrational provisions were introduced into the legislation without proper analysis and discussion with stakeholders, including CSOs, and had perverse unforeseen negative consequences for the initiators themselves. For this reason, after adopting these adverse innovations, even the initiator of the novel legislation had to recognise their impracticality and initiate their swift repeal.

The recently introduced requirement for CSOs to submit tax returns exclusively in electronic form has been paused: returns may be submitted on paper for tax years 2024 and 2025.

On December 30, 2022, Law on Amendment of Laws on Taxation was adopted. It introduced significant changes to the tax system, affecting the procedure, reporting deadlines and amount of payment of taxes and fees, the procedure for desk audits, etc.

Among other things, this Law amended clause 2, paragraph 4.1 of Article 40 of the Tax Code, removing the exemption that previously permitted non-profit organizations not involved in entrepreneurial activities to submit tax declarations on paper. Before that Law, CSOs were not required to file tax declarations electronically using specialized software.

As a result of this change, starting from January 1, 2024, when the amended Tax Code came into effect, all legal entities, including both commercial and non-commercial organisations, were required to submit tax returns (calculations) electronically. In practice, this meant that those CSOs that did not engage in business activities and previously submitted the simplest possible declarations on paper were obliged to submit declarations in electronic form. In order to do so, they had to ensure the possibility of using the electronic declaration system. This entailed procuring an electronic key, installing certified cryptographic protection mechanisms and electronic declaration software on their computers, registering as a customer in the Public Key Management System for Verification of Electronic Signatures, and using a computer with cryptographic tools installed to access the Internet. A number of these actions necessitated payment for services and in-person involvement by an authorised representative of the organisation.

There was no rational justification for these compulsory measures for non-business CSOs: they had to invest human resources, time and money in submitting virtually blank e-declarations. In addition, for many CSOs with geographically dispersed teams and managers or founders based outside Belarus, this required even more effort. The commotion of this new process was compounded by the fact that, at the same time, individual entrepreneurs were no longer able to file their tax returns on paper – and thousands of people, along with CSOs, had to go through all the formalities associated with obtaining a digital signature certificate.

Over time, however, the Ministry of Taxes and Levies itself has recognised the difficulties involved in obtaining and renewing certificates for digital signatures. In the middle of 2024, considerable queues were registered at 12 service registration points and 44 reception points. A video went viral on social media, which explained that to obtain an electronic certificate for "convenient electronic declaration", representatives of legal entities were compelled to start queuing at the reception points at night. Consequently, the Ministry elaborated on the prospect of acquiring a digital signature certificate remotely and articulated a circumspect intention to persist in accepting tax declarations on paper.

To address the situation, the Law was passed on December 13, 2024, which stipulated that "*Non-profit organisations that do not engage in entrepreneurial activity for the 2024 and 2025 tax (reporting) periods may submit to the tax authority at their place of registration the following documents:*

13.1. tax returns (calculations) for taxes (levies) – in hard copy, notwithstanding the provisions of clause 2 para. 4.1 of Article 40 of the Tax Code of the Republic of Belarus.

13.2. information on the income of natural persons recognised as taxable persons for personal income tax and taxed at different rates of personal income tax, including information on the benefits and amounts of personal income tax – in electronic form on a USB stick.

Thus, the legislator instigated a two-year moratorium on implementing the recently introduced Tax Code requirement concerning the mandatory electronic form of tax reporting for all CSOs (a similar relaxation has not been introduced for individual entrepreneurs). Notably, information in electronic form regarding the income of individuals associated with CSOs can be submitted in the simplest possible form, such as on a *USB flash drive*. Interestingly, however, there is no provision for submission via email, which would arguably be more efficient and convenient for both taxpayers and tax authorities.

It is important to note that the introduction of mandatory electronic tax filing for all CSOs was critically condemned in CSO Meter's 2023 country review.

2. The licensing of social services has shrined the domain of non-state social services, compelling authorities set up lenient licensing requirements.

Belarus has recently implemented new direct and indirect licensing mechanisms that restrict the capacity of CSOs to undertake various activities, including the production and distribution of printed publications and other information products, the provision of social services and services in the domains of education, healthcare, sports and other areas common to CSOs. In some cases, these innovations have resulted in the complete withdrawal of CSOs from specific areas of activity, with these areas being ceded to commercial and government service providers that can feet increased licensing requirements (as evidenced, for example, in the preschool education).

However, in 2024, introducing licensing for residential social services resulted in the collapse of the entire industry that operated care homes.

On July 1, 2024, amendments to the Law on Social Services and Law on Licensing came into force, introducing licensing for providing social services in the form of inpatient social care.

The Ministry of Labour and Social Protection has asserted that the licensing of this activity will be subject to a range of criteria. The licensing requirements for this sector pertain to fire safety standards, sanitary and epidemiological requirements, and the content and quality of social services. The issuance of the licence is the responsibility of the local authorities, and the processing of licence applications is subject to a timeframe of 25 days. The Ministry of Labour and Social Protection, by Resolution No. 32 of May 15, 2024, established the procedure for assessing the compliance of the licence applicant's capabilities with the licence granting requirements and the licensee with the licence requirements. Later, the government additionally established the requirements for equipping premises to provide such services.

At the time of introducing the new regulation, 34 non-state entities were providing residential social services to elderly citizens and people with disabilities in Belarus. Of these, 11 had already suspended their operations before the licensing process began due to the flaws found by state agencies. In addition to these non-state entities, there were 81 state care homes. Non-state providers of these services, including both commercial organisations and individual entrepreneurs, performed a significant social function. Consequently, they can be classified as social entrepreneurship entities despite the absence of a specific legal definition for this term in Belarusian legislation. Those who failed to obtain a licence were supposed to cease operations as of October 1.

As a result, merely three organisations in the entire country of Belarus had obtained a licence at that juncture. Several additional organisations were in the process of acquiring one. Yet, the majority did not endeavour to obtain a licence, seemingly deeming it unfeasible to bring their operations into compliance with the stringent licensing criteria. In light of the mandatory licensing procedure, many care homes were compelled to announce their immediate closure to clients, while others attempted to obtain the requisite licence. Those who failed to meet the deadline had to stop their activity. This situation hit the customers hardest, as the supply of residential care homes has been reduced by a third due to the pull-out of non-state providers from this market. They had to urgently bring home seriously ill relatives and look for a substitute. According to media reports, the redistribution of former residents of private care homes to state institutions has sometimes caused difficulties, including a shortage of beds. Many families have opted to hire home care workers rather than send their elderly relatives to state institutions.

State-run care homes providing residential social services could not accommodate all those in need who had been deprived of the necessary social services previously offered by non-state providers. This topic gained significant public attention in the autumn of 2024, coinciding with a substantial reduction in the availability of social services. This is particularly pronounced for the most vulnerable segments of the population, including individuals over 65, who have increased by more than 200,000 over the past decade, reaching a current figure of over 1.5 million.

Per Law on Social Services, non-governmental non-profit organisations are instrumental in executing the nation’s unified state policy. This involvement encompasses the provision of social services, including through state social contracting, financed through the allocation of subsidies to non-governmental non-profit organisations for the delivery of social services and the implementation of social projects. Legislation in state social contracting is developing, including in 2024, when improvements were made at the level of government resolutions, and tenders for the provision of funds under the state social contract in the field of social services to the population were expanded.

Consequently, the government initiated a review of the licensing requirements for premises providing social services, as outlined in Government Resolution No. 963 dated December 18, 2024, which served to adjust the previously adopted Resolution No. 490 dated July 11, 2024, entitled “On Requirements for Single-Family Residential Buildings Used for the Provision of Social Services in the Form of Inpatient Social Care”. The fact is that almost all private care homes are not located in major capital buildings but in townhouses or houses in housing estates and are usually rented. It is the requirements for these buildings that have led to many licence refusals, as well as the extremely short three-month period allowed for the licensing process.

Among other things, this recent regulation has introduced amendments to the fire safety requirements for private residences. These amendments include reducing the minimum size requirements for doors and windows, alterations to the evacuation exits and fire danger signs, and introducing more relaxed requirements for the fire resistance of finishing materials. Paradoxically, concerns regarding non-compliance with fire safety requirements by numerous private care homes were previously cited as a rationale for implementing licensing regulations in this domain. (State boarding houses are typically situated in designated major capital buildings, where adherence to these fire safety requirements is more straightforward, but the psychological comfort of the interior environment for residents is marginally lower in comparison to private residences).

“The adjustment of the list of requirements will allow legal entities planning to use a single-family house for residential social services to reduce the amount of work required to bring such houses into compliance with the established requirements without reducing the level of safety”, the Ministry of Labour and Social Protection stated. “The state does not have a monopoly on social services”, the Ministry said back in August, when the negative consequences of excessive licensing requirements in this area became apparent.

The impact of this change on the decision of former social assistance providers, including CSOs who were compelled to depart from the field, return to it, and attempt to provide again this type of social service remains uncertain.