

Belarusian CSOs registered abroad: no country for old rules

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We thank our reviewers for their careful reading of the report and their insightful comments and suggestions.

ABSTRACT

The “Belarusian CSOs registered abroad: no country for old rules” study focuses on the Belarusian civil society organizations (CSOs) operating in Belarus but registered abroad, as well as on the context and specifics of their activities. The paper tackles the reasons for CSO registration abroad, specifics of their “dual functioning” in different countries (in particular, in Lithuania and Poland) and the main challenges they face in their operations. Particular attention is paid to CSO characteristic features needed for the successful operation abroad and the impact of the international and national contexts on these organizations. The paper presents recommendations to different stakeholders as to how to make the operations of organizations under analysis more efficient and effective.

INTRODUCTION

Currently, due to the unfavorable political and legal environment for the activities of civil society organizations (CSOs) in Belarus, some of them have to register as legal entities abroad. According to Freedom House’s reports¹, for almost two decades, Belarus has been among “not free” countries with the consolidated authoritarian regimes. Belarus has the lowest number of civil society organizations and they are most restricted in their access to funding²; the legal framework for CSOs in Belarus, despite some progress in 2018, remains the most unfavorable among the East European and Eurasian countries.³ Certain improvements in the field of freedom of association (primarily, decriminalization of the activities of unregistered organizations in July 2019) can be regarded as “alleviating” circumstances for the registration and activities of non-governmental organizations in the country; however, they do not generally change the unfavorable conditions.

As a result of the above, the Belarusian organizations either choose a different type of legal entity (institution), imposing a number of restrictions on their operations, or are unable to formally register. In addition, they operate at risk of various sanctions, up to the criminal liability

¹ Freedom House. Freedom in the World 2019. Belarus. Available at: <https://freedomhouse.org/country/belarus/freedom-world/2019>; Nations in Transit 2018. Belarus. Available at: https://freedomhouse.org/sites/default/files/2020-02/FH_NationsInTransit_Web_PDF_FINAL_2018_03_16.pdf (viewed on 17.02.2019)

² CSO meter (2019). Assessing the civil society environment in the Eastern Partnership countries Regional Report. Available at: <https://csometer.info/countries/compare/> (viewed on 17.02.2019).

³ USAID (2018). CSO Sustainability Index. Central and Eastern Europe and Eurasia. Available at: <https://www.fhi360.org/sites/default/files/media/documents/resource-csosi-2018-report-europe-eurasia.pdf> (viewed on 17.02.2019).

for their leaders⁴. Limited opportunities for receiving funding inside the country, a cumbersome and non-transparent mechanism of grant registration, a large number of denials of their registration and taxation specifics also create serious obstacles for the activities of the Belarusian CSOs. Therefore, registration abroad for many organizations becomes an opportunity to obtain a legal status and operate in a situation of lower risks.

The institutional stories and trajectories of such organizations are fairly diverse, but there has hardly been any systematized analysis of their status or conditions and specifics of their operations. Based on expert opinions and logical conclusions, we can say that **around 200-300 Belarusian CSOs are registered abroad**, but this number is an approximation and may include both active and dormant organizations.

The object of our analysis is the Belarusian CSOs registered abroad, but that operate in Belarus. These organizations may or may not have formal registration in Belarus.⁵

The objectives of the this research is the study of the context for and operations of the Belarusian CSOs that had to register abroad, including reasons for registration, factors affecting their operations abroad, and main problems faced by the Belarusian CSOs.

24 semi-structured interviews were conducted in late 2019, of which six were with experts from Lithuania and Belarus and 18 – with the representatives of the Belarusian CSOs registered abroad. 8 organizations are registered both in Belarus and abroad, 10 organizations are registered only abroad and are not registered in Belarus. Most of organizations (13) are registered in Lithuania, 3 organizations are registered in Poland and 2 in Estonia.

Due to the particular sensitivity of the topic, the interviews were conducted on condition of anonymity and confidentiality.

CONTEXT AROUND THE BELARUSIAN CSOS' REGISTRATION ABROAD

The domestic political context is shaped, in the first place, by the unfavorable climate for the registration and activities of CSOs in Belarus: criminal liability for the activities of unregistered non-governmental and religious organizations, foundations and political parties (2005-2019) and repressions unleashed against the civil society after the 2010 presidential elections. Until 2013-2014, CSOs in Belarus faced mass denials of registration; however, many organizations were able to technically resolve this problem by opting for a different type of legal entity – institution. On the one hand, a lot of organizations now have a chance to register in Belarus, and on the other hand, still widespread are the practice of denial of registration under flimsy pretexts, abuse of the registration procedure on the part of the government and so on in regard to organizations considered undesirable by the government. These problems are mostly faced by CSOs working in the field of human rights, think tanks and environmental, youth and

⁴ Despite the repeal of article 193.1 of the Criminal Code of the Republic of Belarus, there is still a threat of criminal liability for violating procedures related to foreign donor support.

⁵ Organizations set up by Belarusians living abroad, whose activities are aimed at some kind of cooperation with Belarus are not analyzed as part of this research, but seem a promising object of further analysis.

some other organizations.⁶ The best known Belarusian CSOs not registered in Belarus are Human Rights Center Viasna and the Assembly of Pro-Democratic NGOs of Belarus.

Another important component of the domestic political context is extremely unfavorable conditions for foreign funding (and any other donor support in general). There are practically no mechanisms of domestic (state) funding and private support is not institutionalized and not very common, so foreign funding is the main source of CSO support in Belarus. The key problem with receiving foreign funding is the approval-based registration system for donor support. When registering funding, organizations also face an array of additional difficulties, including lengthy period of consideration of applications, impossibility to provide complete paperwork, frequent cases of denial of registration either without an explanation or for farfetched reasons and so on.

Finally, one more important component of the domestic political context for the CSO activities in Belarus is the issue of personal security of civil society activists. Most illustrative examples are Ales Bialiatski's case (2011), as well as cases of the REP Trade Union and director of the BelaPAN director Ales Lipai (2018).

The external context for the registration of the Belarusian organizations abroad is primarily shaped by the policy of the promotion of democracy in Belarus and relevant foreign donor programs. Following the repressions against the civil society in late 2010 and early 2011, the European Parliament adopted the resolution, called upon the European Commission to, inter alia, "develop a mechanism of registration of NGOs that are denied registration in Belarus for political reasons, in order to enable them to benefit from the EU programmes."⁷

Chronologically, the first mentions of the forced registration of the Belarusian CSOs abroad date back to 2005-2006, although it is possible that some organizations were registered even earlier. The most active registration period falls to 2011-2015, after which registrations take place, but their number decreases. This may be due to both the fact that the majority of the interested organizations have already registered abroad and the shift in the donors' focus towards broader cooperation with the Belarusian authorities.⁸

It is worth noting an evolution of the reasons for the registration of the Belarusian organizations abroad. Thus, initially, it was important to obtain a legal status to avoid liability for the activities of unregistered organizations, to ensure security of organizations and activists, to have a possibility to implement activities that are risky or difficult to organize in Belarus (schools, conferences, website support, etc.) and to improve access to foreign funding.⁹ Over

⁶ The Assembly of Pro-Democratic NGOs of Belarus, Legal Transformation Center Lawtrend (2019). Joint alternative report on freedom of association and environment for CSOs in Belarus. Available at <http://belngo.info/2019.upr-freedom-of-associations-and-legal-environment-for-civil-society-organizations-in-belarus.html> (viewed on 17.02.2019)

⁷ European Parliament resolution of 20 January 2011 on the situation in Belarus <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0022+0+DOC+XML+V0//EN&language=EN> (viewed on 31.03.2020).

⁸ USAID (2019). CSO Sustainability Index. Central and Eastern Europe and Eurasia. Available at <https://www.fhi360.org/sites/default/files/media/documents/resource-csosi-2018-report-europe-eurasia.pdf> (viewed on 17.02.2019); CET (2018). The Belarusian Civil Society: dynamics of change in an unfriendly environment (2015-2017). Available at https://cet.eurobelarus.info/files/userfiles/5/DOC/1/2018_Civil-Society-Belarus_RU.pdf (viewed on 17.02.2020).

⁹ Mapping study (2014). Belarus Civil Society Organizations in Cross-Sectoral Dialogue: Summary of Legal Environment Research and Expert Survey. Conducted by KAS Belarus, Assembly of NGO, NGO 'Act' and Belarusian Analytical

time, the rationale for the registration of the Belarusian organizations abroad started to change. Certain positive changes have taken place in regard to possibilities for organizing events inside the country: in the majority of cases, both registered and unregistered organizations can now conduct conferences, educational events and discussions in Belarus. Consequently, the main reason for registering abroad for the majority of CSOs has gradually become the need to legally receive funding from the international support providers.

MAIN FINDINGS AND CONCLUSIONS

The operations of the Belarusian civil society organizations registering legal entities abroad should be considered at several levels. The first level is the overall unfavorable political, legal, financial and other environment for CSO activities inside Belarus. It is the main reason forcing the Belarusian non-governmental organizations to look for alternative options for registration and activities, registration abroad being one of them. To truly improve the environment for the Belarusian civil society, both the Belarusian organizations and all other stakeholders should direct their advocacy efforts at changing these macro conditions.

The second level is the need to resolve technical problems faced by the Belarusian organizations when they are already registered abroad. It is now obvious that one of the key problems for these organizations is banking services in Lithuania, where the majority of organizations are registered and therefore have bank accounts. It is important to find appropriate solutions to this and other problems related to the Belarusian CSO operations abroad.

The third level is the level of solidarity within the Belarusian civil society. It is obvious that joint and consolidated actions are needed to address both the high-level problems related to the unfavorable environment inside the country and technical problems faced abroad. However, the potential and actual possibilities of such consolidation for joint actions are not completely clear.

The **main reasons** for the Belarusian CSO **registration abroad** are domestic (Belarusian) political, legal, financial and other conditions for the CSO activities. At the same time, security issues and donor policy also play an important role. The evolution of reasons for registering abroad from the perspective of time and essence should be taken into account. While initially they were related to the need to have a formal status and address security issues, now the main reason is a possibility to receive donor funding (although this statement is a generalization and in reality, the reasons are more versatile).

For the majority of Belarusian CSOs registered abroad, the “foreign” part had financial and administrative functions, whereas core activities were implemented in Belarus. No activities in the (foreign) country of registration are usually implemented or are minimal. The “foreign” part plays a “servicing” role for administering projects. In this case, such organizations *de facto* have “double jurisdiction.”

Registration abroad for many was a forced, often urgent, solution not based on the organizational development strategy. Today, the Belarusian CSOs registered abroad face a **variety of problems**. We have divided them into following groups by the problem source:

Workroom. Available at https://docs.google.com/viewerng/viewer?url=http://belngo.info/wp-content/uploads/2015/10/mapping_belarus_2.pdf&hl=en_US (viewed on 17.02.2020).

- **Problems associated with the environment in the host country:** bank account maintenance in foreign banks, accounting taxation legal advice, other technical problems.
- **Problems associated with the cross-border nature of operations:** the need to provide and keep original documents.
- **Organizations' internal problems:** increased core and infrastructure costs for the foreign part of the organization, lack of knowledge and understanding of the local language and rules of the game in the country of registration, internal organizational problems.
- **Problems associated with relationships with stakeholders:** unwillingness of the donor organizations to support additional costs related to registration abroad, non-recognition by the donor community of organizations registered in the EU as the Belarusian CSOs.
- **Sectoral problems:** the problem of solidarity, identity conflict, poor integration into the host community, security threats.

Belarusian organizations also have to deal with general problems faced by the third sector in the country of registration (e.g. changes in the reporting procedures, taxation and so on).

The most acute problem negatively affecting the activities of the Belarusian organizations abroad related to the banks' policies in the EU countries (particularly, in Lithuania and Estonia). The **tightening of banks' requirements** towards organizations founded by third-country nationals, has largely, and in some cases **critically, hampered the operations of the Belarusian organizations**. At the same time, here are no problems of the kind in Poland.

The situation is better for the organizations, which are **more integrated into the country of registration**, have connections with it, permanent staff, projects, etc. However, not all the organizations can follow this path, as it requires not only substantial additional expenses, but also the revision of the organizations' goals, objectives and activity methods. That is why a search for strategic solutions regarding joint activities, cross-border cooperation development or other ways of cooperation with the civil society organizations in the country of registration can be a solution for the Belarusian organizations. Another path could be related to lobbying for a special status for the Belarusian organizations registered abroad.¹⁰ However, all stakeholders should assess the risks and benefits of this approach.

The Belarusian organizations feel **the impact of the political and legal contexts** of the countries of registration. At the same time, as a rule, political changes in these countries (elections, change of government and parliament) are not regarded as directly affecting organizations. However, the foreign policies in the countries of registration (particularly, relations with Belarus) and, on a larger scale, the international political context (the presence of Belarus on the international political agenda) can indirectly affect CSOs via support programs and funding. In the case of Poland, the impact of the foreign policy context apparently plays a bigger role than in the case of Lithuania.

To **successfully operate** and resolve problems abroad the Belarusian organizations have to be financially stable (over 50 000 EUR per year), well-governed (have a high level of management

¹⁰ Thus, in April 2019, the European Humanities University (EHU) in Vilnius was granted a special political status of a "university in exile" which makes it possible for it not to comply with the Lithuanian requirements regarding the quality of education. The latter is controversial from the perspective of the effectiveness of an organization supported by international donors. For more information, see <https://www.lrt.lt/en/news-in-english/19/1057229/lithuania-grants-special-status-for-belarusian-university-in-exile> (Viewed on 17.02.2020).

culture), have minimal staff in the country of registration and integrate into the country of registration at least to some extent.

Since the activities of the Belarusian CSOs are directly related to the foreign donor support policy, **donor organizations are important stakeholders** in the search for and development of solutions to the problems faced by the Belarusian organizations. It is important that these organizations **work jointly with the Belarusian civil society and national governments** of the countries where Belarusian CSOs are registered towards identifying solutions to both high-level and technical problems faced by the Belarusian CSOs with due consideration for the specifics of their development and current situation.

Below we propose recommendations for various stakeholders interested in the activities of the Belarusian CSOs, based on the analysis of the opinions of experts and representatives of the Belarusian CSOs registered abroad.

RECOMMENDATIONS ON IMPROVING THE ENVIRONMENT FOR THE ACTIVITIES OF THE BELARUSIAN CIVIL SOCIETY ORGANIZATIONS¹¹ REGISTERED IN THE EU COUNTRIES

FOR ALL STAKEHOLDERS

1. Keep on their priority agenda issues related to improving the environment for the activities of organizations inside Belarus. Engage in joint advocacy campaigns aimed at lowering political pressure on the civil society and improving the political, legal and operational environment for CSOs in Belarus (more specifically, changes in the regulations and practices related to the CSO registration and terms of receiving funding) at the international and national levels in line with the already existing recommendations.¹²
2. Engage in joint advocacy campaigns aimed at improving the operational environment for the cross-border CSOs registered in the EU countries.

Within the framework of the advocacy campaigns:¹³

- *Donor organizations*: Consider a possibility of compiling a “white list” of trustworthy donors (e.g. the European Commission, the Council of Europe, ministries of foreign affairs, development agencies in the EU countries and so on), including their mission statements, objectives and main directions of activities in the field of international development aid. When applying a risk-oriented approach, if the Belarusian CSO receives funding from donors from the white list, it can be granted the status of a “trustworthy” (low-risk) organization as not posing a threat of terrorism funding and money laundering;

- *Donor organizations and Belarusian CSOs*: Disseminate the white list among stakeholders, including the promotion and reaching of an agreement to include the list in

¹¹ The proposed recommendations can also be used for improving the environment for CSOs in other countries with non-democratic regimes that have to register abroad, particularly, for the Russian CSOs registering abroad.

¹² Recommendations on improving the operational environment and legal framework for the Belarusian CSOs (CSO meter, 2019). Available at: <https://csometer.info/countries/belarus/> (Viewed on 17.02.2020).

¹³ Other advocacy-related recommendations for different stakeholders are formulated in relevant sections of this report.

the official documents (e.g. policy documents on cooperation between the civil society and the state);

- Relevant governmental bodies of the host countries: Consider a possibility of including the white list in the official documents on cooperation with CSOs; organize events to inform national governmental bodies about the white list of trustworthy donors engaged in cooperation with foreign CSOs registered in the EU countries.

3. Facilitate the creation in the EU countries with the largest number of registered Belarusian CSOs of hubs/incubators¹⁴ providing the financial management, legal and accounting services, administration of grants from foreign and national donors and reporting to donors and national bodies on behalf of member organizations. These hubs/incubators could play the role of stakeholders in communications with the governmental bodies and businesses on behalf of member organizations.
4. Whenever possible, regard the Belarusian and/or other civil society organizations from non-democratic countries that have to register abroad for political reasons as a separate target group when developing and formulating policies at the national and international levels, developing support programs and research. Take into account the specifics of their status and difficulties they face in their operations.
5. Initiate, support and continue legal, comparative and mapping studies of the Belarusian CSOs registered abroad.

FOR THE BELARUSIAN CIVIL SOCIETY ORGANIZATIONS REGISTERED IN THE EU

6. When considering registration abroad, assess the need, viability and resources required for the organization's operations in the EU (director's and accountant's salaries, taxes in the host country, legal expenses, organizational and project audits and so on), as well as risks that this registration may entail (fines for non-compliance with the legislative requirements as to reporting and taxation, decrease in funding and so on);
7. Integrate into the local context: broaden the scope of activities to include the host country, establish and develop cooperation with local civil society organizations and their associations, initiate and develop joint projects, delegating the administration of support to local organizations.
8. Unite in umbrella organizations and associations to combine expertise and exchange best and worst practices on management, financial and legal issues. Consult the already existing larger and more experienced organizations, including non-Belarusian CSOs registered outside the country of their core activities.
9. Build their own management capacity, including financial management, accounting, legislation, various reporting requirements in the host country and the knowledge of the language of the host country.

¹⁴ Such hubs/incubators can be set up either on the basis of the well-reputed Belarusian CSOs already registered abroad or on the basis of local organizations or set up from scratch.

10. Whenever possible, increase the transparency of activities (provide all required reporting, clearly stating the directions and nature of activities and so on), which can contribute to improving relations with banks and other institutions in the countries of registration.
11. Include in the institutional and project budgets funds for the management of the foreign organization, explaining to donors why these expenses are needed; do not downplay costs and do not agree to minimal wages when submitting grant applications.
12. Seek advice on tax legislation and include the necessary taxes in the institutional and project budgets.
13. Study and monitor the evolvement of opportunities offered by fintech companies (paysera, revolut etc.) to replace traditional bank services and inform the donor community about new possibilities; promote the use of the most convenient tools among CSOs and donors.
14. Within the framework of the advocacy campaigns aimed at the improvement of the operational environment for the Belarusian CSOs registered in the EU:
 - 14.1. Form coalitions with other stakeholders: the Belarusian CSOs registered abroad, national and international CSOs and international donor organizations;
 - 14.2. Monitor and regularly inform the donor, international and political communities about the specifics of the CSO cross-border operations and related problems in the organizations' activities;
 - 14.3. Target advocacy efforts at both countries where the Belarusian CSOs register (Lithuania, Poland and others) and countries whose regulations affect the operational environment for the Belarusian CSOs abroad, as well as at the level of the EU and other international organizations that can play a role in resolving the existing problems;
 - 14.4. When planning advocacy campaigns, analyze problems and stakeholders and provide different stakeholders with information relevant to their expertise and mandates;
 - 14.5. For Lithuania: target special advocacy efforts at changing the practice of applying regulations aimed at fighting terrorism funding and money laundering to the Belarusian organizations registered in this country.

FOR THE DONOR ORGANIZATIONS AND INTERNATIONAL COMMUNITY

15. Recognizing politically motivated restrictions for CSO activities in Belarus, continue supporting the Belarusian civil society regardless of the registration forms and jurisdiction of its organizations. If there is a need to verify whether an organization implements activities towards and/or in Belarus, conduct this verification in cooperation with other donors and coordinate support via donor and implementor fora.
16. Whenever possible, provide institutional support to both Belarusian organizations registered in the EU and associations and umbrella organizations providing the Belarusian CSOs with consultations and administrative, legal and reporting services in the countries of registration.
17. Whenever possible, engage in and support advocacy campaigns and activities on the improvement of the operational environment for the Belarusian CSOs registered in the EU countries, e.g. provide recommendations and information on the problems faced by civil society organizations funded via the international development aid programs in the so-called "Nordic

banks” to supranational bodies, governmental bodies and banking regulators in the Nordic countries.

18. If possible, reconsider the approach to the assessment of the level of the administrative costs incurred by the Belarusian CSOs registered in the EU. If needed, recognize as justified an increase in administrative costs of the EU-registered CSOs; allow the inclusion of costs related to the activities of the organization’s several legal entities in institutional and project budgets, in particular, director’s and accountant’s salaries, taxes, legal advice, organizational and project audits at realistic rates of the country of registration.
19. Due to the ongoing security threats for the Belarusian civic activists, whenever possible, avoid transferring grants to the personal accounts of the CSO representatives in the EU.
20. Consider a possibility of cooperation with fintech companies (paysera, revolut etc.) to replace traditional banking services when transferring and administering grants.
21. For the European Commission: within the framework of banking regulations, consider a possibility of allowing special treatment for civil society organizations that have to register abroad and receive funding from trustworthy sources (the European Commission, the Council of Europe, MFAs, development agencies in the EU countries and others) and granting them the status of trustworthy organizations from the perspective of not engaging in terrorism funding and money laundering.

GOVERNMENTAL BODIES OF THE HOST EU COUNTRIES

22. Consider a possibility of introducing the concept of the international development aid and its actors in the national legislations and developing a legal framework for the provision and administration of such aid, as well as taxation and other issues.
23. Consider a possibility of developing guidelines on registration, operations and liquidation of foreign CSOs in host countries in languages understood in these organizations (English and/or Russian) and include in these guidelines templates for required reporting, commentaries on typical problems and mistakes made by foreign CSOs.
24. Based on the assessment of the needs of foreign CSOs registered in host countries and their operational practices, consider a possibility of developing recommendations/official commentaries on the problematic aspects of labor and migration legislation, taxation and other issues causing difficulties in such organizations.

GOVERNMENTAL BODIES OF THE REPUBLIC OF LITHUANIA

25. Consider a possibility of introducing provisions for the special treatment of the Belarusian and other civil society organizations registered in Lithuania for political reasons:
 - 25.1. Discuss a possibility and need for establishing a special body (interagency group) on foreign CSOs, whose mandate would include communication with, monitoring and analysis of foreign CSO activities in Lithuania.
 - 25.2. Consider a possibility of organizing regular discussions on the operational environment for the Belarusian (and other foreign) CSOs in Lithuania with all relevant stakeholders, including Members of Parliament and Governmental officials, as well as migration service, labor exchange, banking sector (banking regulator), Lithuanian CSOs and the organizations themselves. The result of such discussions could be a memorandum of understanding in

regard to the activities of the Belarusian and other foreign CSOs registered in Lithuania, its regular updates depending on the current challenges faced by the organizations in their work and the inclusion of its provisions in the official guidelines.

- 25.3. Consider a possibility of designating and recommending one bank or a bank program as preferable for the implementation of the development aid programs and receiving donor funding by the foreign CSOs in Lithuania.
 - 25.4. To minimize the possibilities of pressure on the part of the Belarusian authorities and special services on civic activists, discuss a possibility of developing and implementing a mechanism preventing the automatic provision by the Lithuanian financial and tax bodies of information on the operations of the Belarusian organizations and civil society activists in case Belarus joins the Berlin agreement.
 - 25.5. Consider a possibility of allowing foreign CSOs registered in Lithuania for political reasons not to provide/to provide only for review the information that would pose a threat to the activists' security in case it becomes known to the authorities or special services of non-democratic countries.
26. Continue full-scale visa support to the Belarusian CSOs and civil society activists that organize events in the country.
 27. If possible, develop commentaries to the regulations on the prevention of terrorism funding and money laundering for the banking sector with a view to minimize their negative impact on the operational environment for cross-border CSOs registered in Lithuania for political reasons.