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## **Analysis of the draft Regulation on State Small Grants for Non-Profit Organizations and Other Civil Society Institutions**

**May 2022**

The draft Regulation on State Small Grants for Non-Profit Organizations and Other Civil Society Institutions was submitted for public discussion by the Ministry of Justice of the Kyrgyz Republic on April 12, 2022.

According to the justification document, the draft is aimed at implementing Article 50-1 of the Budget Code of the Kyrgyz Republic and Article 17 of the Law of the Kyrgyz Republic "On State Social Procurement". Thus, in accordance with the classification of legal acts, the analyzed Regulation is a by-law normative legal act adopted on the basis of and in pursuance of the above laws and it is obvious that it cannot contradict them.

Article 50-1 of the Budget Code establishes that expenses for state support of non-governmental non-profit organizations and other civil society institutions are made in the form of state grants and social procurement at the expense of the republican budget in accordance with the procedure approved by the Cabinet of Ministers; article 17 of the Law of the Kyrgyz Republic "On State Social Procurement" regulates the procedure for the implementation of the state social order in the form of state financing of socially useful projects. This article establishes that the state social procurement in the form of state financing of socially useful projects is carried out to solve social problems and / or achieve socially useful goals. In general, Chapter 3 of this law regulates in some detail the procedure for the implementation of the state social procurement. This procedure is regulated in detail by the Regulation on the Procedure for Holding a Competition of Socially Useful Projects in the Implementation of the State Social Procurement, approved by the Decree of the Government of the Kyrgyz Republic No. 814 dated December 15, 2017.

Grant, based on the meaning of the definitions of the Budget Code, is gratuitous and irrevocably provided financial or technical assistance, and based on the meaning of Article 6 of the Law "On State Procurement", the provision of a grant is one of the forms of

implementation of the state social procurement, that is, state financing of socially useful projects. Article 5 of the Law "On State Social Procurement" provides for 14 areas for the implementation of the state social procurement: (1) the achievement of educational, scientific, information, physical and sports objectives; 2) protection of public health, promotion of a healthy lifestyle; 3) environmental protection; 4) support of youth policy and children's initiatives; 5) solving demographic problems; 6) addressing gender issues; 7) support for socially vulnerable segments of the population; 8) assistance to orphans, children from single-parent and multiple children families; 9) assistance in the employment of citizens; 10) protection of the rights and legitimate interests of citizens and organizations; 11) development of culture and art; 12) protection of historical and cultural heritage; 13) strengthening of social harmony; 14) other socially significant areas that do not contradict the legislation of the Kyrgyz Republic.

In practice, the Law "On State Procurement" is an outsourcing tool aimed at meeting the social needs of citizens, solving socially significant problems of society through budget financing of socially useful projects and services. Law "On State Procurement" is implemented in cases where it is more beneficial for the state not to create state institutions or overload existing ones with additional functions, but to delegate part of the tasks for solving social problems to non-governmental organizations.

The drafters of the Regulation claim that the task of the Regulation is to determine the conditions and procedure for holding a competition among non-profit organizations and other civil society institutions involved in the development of civil society institutions that implement socially significant projects and projects in the field of protecting human and civil rights and freedoms. Thus, the draft Regulation, adopted in order to implement the law on the Law "On State Procurement", duplicates the already adopted and existing regulatory acts in this area.

At the same time, from the further arguments of the drafters, it clearly follows that the subject matter of the Regulation is not related to the Law "On State Procurement", but due to the lack of programmatic and framework normative legal acts, they formally substantiate the adoption of the Regulation with the tasks of implementing the Law "On State Procurement". Thus, according to the above arguments, the adoption of the Regulation is due to the fact that there is an undermining, targeted criticism of the President and the Cabinet of Ministers of the Kyrgyz Republic, carried out within the framework of projects funded by foreign donors. The

authors question why donors fund civil society organizations that actively cover these activities on the Internet and social networks, why the opinion of our citizens and politicians in social networks on our own state plans and programs are more important to them, rather than to the Cabinet of Ministers of the Kyrgyz Republic, and why the Kyrgyz Republic cannot fund the potential of civil society institutions in creating important state management decisions, like other countries do? Consequently, the goals and objectives of the adoption of the Regulation are not related to the Law "On State Procurement", the initiators and drafters pursue purely political goals aimed at dividing civil society on the basis of "friend" and "foe", that is, the formation of NGOs loyal to the authorities through the provision of so-called small grants, essentially through bribery. They frankly admit this in their justification note to the draft: **"The task of the Regulation is to eliminate gaps and protect the interests of state authorities and the Kyrgyz state by financing NGOs and other institutions for ongoing research work to increase the responsibility of unscrupulous non-profit organizations and other institutions in case of non-compliance with the country interests of the Kyrgyz Republic."** Clearly, the developers give an open instruction that grants will be provided to those organizations that are ready to support the authorities and attack the NGOs unwanted by the authorities.

Even through the chaotic and illiterate language of the justification, the true goals and intentions of the authors of the draft can be clearly traced, especially when reading the option if everything remains "as it is", **"financing of projects aimed at preserving national unity, as well as commissioned research by individual unscrupulous non-profit organizations (possibly under the influence of opposition forces, both within the Kyrgyz Republic and / or external opposition forces, for one reason or another carrying out their activities within the framework of world geopolitics) in order to create public discontent with the decisions taken by the President of the Kyrgyz Republic and the Cabinet of Ministers of the Kyrgyz Republic will continue and intensify. In this regard, taking into account the current political situation both within the country and the intensification of the confrontation between the West and the Russian Federation, the adoption of this option will worsen the political situation in the country."** Consequently, the adoption of this Regulation is dictated by foreign policy factors, in particular the interests of pro-Russian forces concerned about the influence of the West on civil society in the Kyrgyz Republic.

Thus, the purposes of the Regulation and the tasks outlined have nothing to do with the Law "On State Social Procurement" and are directly contrary to the Law "On State Social

Procurement”. Moreover, the adoption of this Regulation poses serious threats to NGOs and, in general, to the development of civil society in the Kyrgyz Republic, as it undermines the democratic foundations of its very existence. The drafters do not hide the fact that through selective financing the goal of splitting civil society on the basis of loyalty to the President is pursued. The provision conceptually contradicts the Constitution of the Kyrgyz Republic, its action is directly aimed at discriminating against NGOs unwanted by the authorities, creates threats to the rights and freedoms of citizens, moreover, the implementation of this provision will definitely lead to increased intolerance and aggression towards NGOs funded by foreign donors.

At the same time, today in Kyrgyzstan there is an urgent need to revise the relationship between the authorities and civil society. Confrontation, persecution, labeling, the desire to suppress and tightly control the non-governmental sector can have far-reaching consequences, such as another revolution and civil war. Pitting various social groups against each other (national patriots or pro-Russian groups against the groups labelled as pro-Western and pro-American, religious believers against non-believers, etc.), the authorities deftly manipulate the consciousness and mood of people, inciting hatred and enmity in society, and directing aggression in the direction they need.

In this regard, it is important to remember that the Constitutional status of the President, which embodies the unity of the people of Kyrgyzstan, obliges him to implement a policy of interaction and cooperation between NGOs and state bodies, **for this it is necessary to organize a broad dialogue with representatives of civil society and develop a Concept of cooperation between non-governmental organizations and state bodies, based on the principles of equality, partnership, solidarity, responsibility, legality.** The adoption of the program document will clearly outline the goals, objectives and forms of cooperation, and their implementation will allow joint efforts to develop and adopt the necessary legal acts.

2. There is no need to analyze in detail the procedure for granting small grants proposed by the Regulation, since by-law regulation can be carried out only on the basis of and in pursuance of a law that has a higher legal force. The Law “On State Social Procurement” referred to in the draft cannot serve as a framework for this Regulation due to differences in the subject matter of regulation. However, if the initiators intend to “push” the Regulation through, then it is necessary to take into account that the document contains many flaws and gaps, including potential corruption risks.

The main problem of the draft Regulation is the norm-setting plagiarism - it is literally copied from the Regulation on a special competition for grants from the President of the Russian Federation for the development of civil society. It is no secret that the norm-setting bodies of the Kyrgyz Republic often and without hesitation borrow legal acts of the Russian Federation, justifying such practices by the need to unify legislation, for example, member states of the CIS implement the norms of model laws into national legislation. But, in the sphere of state policy in relation to NGOs under consideration, unification is not permissible. Unlike Kyrgyzstan, Russia has established an image of an authoritarian state that pursues a two-faced state policy towards public associations - on the one hand, tightening regulation of the activities of independent NGOs, and on the other hand, generous funding of non-profit organizations aimed at buying the loyalty of civil society. As a result of this policy, civil society and NGOs in Russia have become part of the mechanism for legitimizing presidential authoritarianism.

In the Russian Federation, a similar <sup>1</sup> grant program was established in 2006, before the adoption of the law on foreign agents, which subsequently affected almost all leading human rights organizations. The implementation of this grant program was accompanied by a parallel smear campaign against human rights defenders through state-controlled media. This smear campaign set the main message – if Russian NGOs receive funding from the West, then they work for the West and their activities are directed against Russia. In Kyrgyzstan, the same smear campaign is taking place with a similar message.

In April 2017, within the framework of the program, a new body responsible for state funding was created - the Presidential Grants Fund for the Development of Civil Society,<sup>2</sup> which is accountable in its activities to the ideological body of Russian Federation - the Administration of the President of the Russian Federation. The final decision on the allocation of grants is made by the Administration of the President of Russia. The issue of allocating the necessary funds is also decided by the President of the Russian Federation. It is noteworthy that, similar to the Russian scenario, the draft Kyrgyz regulation on small grants indicates department on Presidential Affairs - a subdivision of the Administration of the President of the Kyrgyz Republic as the operator of the Kyrgyz small grants program.

The Russian authorities understood that simply receiving "domestic" funding would not force NGOs to stop criticizing the authorities and that stronger control over the allocation

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<sup>1</sup> <https://www.themoscowtimes.com/2013/05/12/rise-and-fall-of-surkovs-sovereign-democracy-a23891>

<sup>2</sup> <https://xn--80afcdbalict6afooklqi5o.xn--p1ai/public/home/about>

of grants was needed to prevent state funding from falling into the hands of "enemies" – independent human rights NGOs. For example, the Union of Committees of Soldiers' Mothers of Russia, the Agora human rights group, an association of more than 50 human rights lawyers working on high-profile cases of human rights violations, and a number of other well-known NGOs have not been able to receive a presidential grant for several years.

In other words, "dangerous" organizations were cut off both from funding from abroad – this was subsequently taken care of by the law on "foreign agents" and “undesirable organizations” – and from "domestic" financing.

Preserving the functions and independence of civil society without Western funding was not the goal of Russia's presidential grant program. The goal of presidential funding was to make NGOs dependent on government funding and thus either tame them and turn them from critics into collaborators or force them to close, which is exactly what happened.

Dissenters have been cut off from any legitimate means of support and bled dry by fines and legal proceedings. Many were forced to liquidate their organizations.

In 2012, a law "on foreign agents" was adopted, which significantly complicated the work of NGOs. After that<sup>3</sup>, a number of legislative initiatives were adopted, for example, in 2012 the definition of high treason in the Criminal Code of Russia became broader. Now Article 275 applies to "the provision of financial, logistical, consulting or other support to any foreign state or international or foreign organization or their representatives", which is detrimental to the security of the Russian Federation. “ That is, any contact with a foreign diplomatic mission or an international organization can be interpreted as treason.

To consolidate the effect, the Russian authorities adopted the 2015 Law on "Undesirable Organizations". In this context, "undesirable" refers to international or foreign legal entities that "pose a threat to the foundations of the constitutional order, defense capability or security of Russia." The list of "undesirable organizations" includes the National Endowment for Democracy (NED), George Soros's “Open Society Foundations”, OCCRP, Chatham House, and close to 50 other media, research, academic and other organizations that supported Russian civil society.

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<sup>3</sup> Amendments to the Law on NGOs

The activities of foreign organizations included in the list of "undesirables" in Russia and the cooperation of Russian NGO's with them is punishable by fines or imprisonment.

Budget funding is used by the Russian authorities to put pressure on human rights defenders and fabricate cases against them for economic or corruption offenses. It is easier to present the human rights defender to society as a thief or corrupt official who stole public money and such persecution will not cause any protest in society. One example is Olga Romanova, director of the "Rus Sidyashaia" ("Imprisoned Russia") Foundation. The Foundation was established in 2008 to help convicted individuals and their families. "Imprisoned Russia" won the presidential grant but refused to accept it because of the pressure exerted by the authorities. Deputy Director of the Federal Penitentiary Service Anatoly Rudy wrote a "denunciation" on Romanova accusing her of embezzlement. In 2017, searches were conducted in the fund's office, and in 2018 the Ministry of Justice of the Russian Federation added the fund to the register of foreign agents. The fund was liquidated, Romanova left Russia and continues her activities from Germany without organizing a legal entity. As a result of all the above actions of the authorities, the civil sector in Russia was destroyed, a large number of NGOs were forced to close due to lack of funding, or because of pressure from the authorities, or were forcibly liquidated by the authorities, activists were arrested, NGO employees were imprisoned or forced to leave the country.<sup>4</sup>

Given that the Regulation on small grants published by the Ministry of Justice is a copy of the Russian document, as well as the fact that Kyrgyzstan has already taken a number of steps following the Russian example, such as, the Law on NGOs, which imposes excessively burdensome requirements for financial and program reporting for non-governmental organizations and a decree on the mandatory placement on the website of the authorized tax authority of "information on the sources of funds, their spending, it is easy to predict the trajectory of further developments. Obviously, the result will be similar to the Russian scenario, which includes the adoption of a number of laws complicating the receipt of foreign grants, and the provision of Kyrgyz presidential grants to a narrow circle of NGO's approved by the authorities.

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<sup>4</sup> <https://www.dw.com/ru/%D0%BE%D0%BB%D1%8C%D0%B3%D0%B0-%D1%80%D0%BE%D0%BC%D0%B0%D0%BD%D0%BE%D0%B2%D0%B0-%D0%BE%D0%B1%D1%8A%D1%8F%D0%B2%D0%B8%D0%BB%D0%B0-%D0%BE-%D0%B7%D0%B0%D0%BA%D1%80%D1%8B%D1%82%D0%B8%D0%B8-%D1%84%D0%BE%D0%BD%D0%B4%D0%B0-%D1%80%D1%83%D1%81%D1%8C-%D1%81%D0%B8%D0%B4%D1%8F%D1%89%D0%B0%D1%8F/a-53962115>

3. At present, the Russian mechanism of "taming" NGOs has a rather complex structure and streamlined procedures. It is obvious that it is impossible to fully transfer the Russian experience to the Kyrgyz reality. And first of all, for the reason that the state is not able to refuse foreign grant assistance, in addition, complete copying requires in-depth analysis, time, resources, effort. Kyrgyz plagiarist lawmakers tried to simplify this mechanism as much as possible without burdening themselves too much. As a result, they produced a completely raw, internally contradictory, and, frankly, ridiculous document.

In the Russian Federation, presidential grants are state support for "non-profit non-governmental organizations participating in the development of civil society institutions that implement socially significant projects and projects in the field of protecting human and civil rights and freedoms." In 2021, the volume of grants amounted to 8.3 billion rubles. Financial resources are allocated as subsidies, the amount of budget allocations is provided for in the federal budget for the relevant fiscal year.

The organization of activities for the provision of President of the Russian Federation grants to non-profit non-governmental organizations is carried out by the Coordination Committee for Competitions for the Provision of Grants of the President, the head and members of which are appointed by the Decree of the President of the Russian Federation. The current Coordination Committee consists of 30 members (19 of them are representatives of civil society), heads the committee - First Deputy Head of the Presidential Executive Office of the Russian Federation (Chairman of the Coordination Committee) Sergey Kiriyenko. Thus, in fact, the key subject in the mechanism of grant support for NGOs is the Administration of the President of the Russian Federation.

The administrator of the Presidential Grants is a **Fund - operator of presidential grants** for the development of civil society, which is a non-profit organization established by public organizations: the Russian Union of Rectors, the League of the Nation's Health, the Union of Women of Russia, the Union of Pensioners of Russia, the National Charitable Foundation, the public movement "Civic Dignity" and Charitable Foundation for the Support of Family, Motherhood and Childhood "Pokrov".

The examination of projects is carried out by **the Joint Expert Council**, a collegial body, it consists of representatives of state bodies, public associations, scientific and other organizations, scientists and specialists who are not members of the Coordination Committee. Members of the Joint Expert Council take part in its work on a voluntary basis. The Chairman

of the Joint Expert Council and its composition are approved by the Chairman of the Coordination Committee.

Grant competitions are held twice a year and are held in four stages.

**1. Acceptance of applications.** Applications are submitted in electronic form on the Foundation's website and are checked for compliance with the requirements of the competition regulations.

**2. Examination of applications.** Applications admitted to participation in the competition fall into the automatic distribution system and are sent to the experts of the competition. Examination of applications is carried out by the method of blind selection of applications. Each application is evaluated by at least two different experts. They evaluate applications in accordance with the methodological recommendations of the foundation and assign points to applications for each of the ten evaluation criteria.

**3. Determination of the rating of applications.** The Joint Expert Council accepts the results of the experts' work: it compiles a rating of all applications and proposes threshold values of points in each category of projects for inclusion in the list of winners.

**4. Summing up the results of the contest.** The final list of winners is determined by the Coordination Committee, approving the rating threshold values for winning the competition ("passing scores") and agreeing on the final list of winners.

According to the analyzed draft Regulations, the Office of the President of the Kyrgyz Republic is the manager of grant funds. This circumstance is another proof that the Regulation does not have a systemic connection with the Law "On State Social Procurement". Grant activities motivated by political goals should be under the influence and control of a body as close as possible to the President. At the same time, according to the Regulation on the department of the President's Affairs, its tasks are financial, material and technical, transport, social and household, sanatorium-resort and medical support for the activities of the President of the Kyrgyz Republic; Prime-minister of the Kyrgyz Republic, etc. In the list of tasks and functions of the department of the Presidential Affairs, there is not even a hint of any activities related to NGOs.

The draft states that to ensure an objective and transparent competitive selection, an independent grant commission is established by order of the Chairman of the Cabinet of Ministers of the Kyrgyz Republic. In this regard, it should be noted that the independence of

any body is ensured primarily by its election process, terms, powers, special qualification or reputational requirements and relevant legislative guarantees. Regulation, approved by the Government in its legal force and place in the hierarchy of legal acts, may not grant such a status to the subject of public legal relations. It is completely unclear in relations with which body or official, the commission will be able to exercise independence if it includes ordinary employees of the Presidential Administration; representatives of the Ministry of Finance and other ministries, National Institute of Strategic Research, the Prosecutor General's Office, the Government Accountability Office, and least of all - representatives of civil society, and then they are subject to approval.

The draft does not contain norms defining the procedure for the formation of the Commission, that is, the procedure and rules for the appointment of members of the Commission, the list of requirements imposed on them, the principles of its activities - the basic ideas and rules that should guide the Commission are absent in the text, for example, collegiality, transparency, objectivity, legality, exclusion of conflicts of interest. It is not at all clear whether the commission will have a head, whether he/she will be appointed or elected, etc.

Similar gaps can be noted with regard to such an entity as a joint expert council. Its status, the order of formation, the principles of work, qualification requirements, measures of responsibility, organization of work remained outside the framework of legal regulation.

The drafters suggest that the competition will be held in several stages:

1. Announcement of the competition (it is not clear from the draft with what frequency the competitions will be held, who announces them);
2. Acceptance of applications by the grant commission;
3. Evaluation of applications by the expert of the competition, who must grade them according to a certain methodology and make recommendations);
4. Consideration of applications by the Joint Expert Council, which in turn determines the rating of applications and on its basis forms a list of winners of the competition;
5. Approval of the list of winners by the grant commission.

From the content of the draft, it is unclear how the approval procedure will be carried out, and whether the commission has the right to reject the decision of the expert council? In

fact, the role of the grant commission is to announce a competition and approve the list of winners. Decision-making procedures and dispute resolution procedures have not been defined.

The provision for independent expertise, which is not supported by any guarantees, looks completely inconsistent. Can an expert be independent if he is nominated by members of the grant commission and the joint expert council?

As can be seen, the copied norms of the draft Regulations were taken out of the general context of the Russian document, and as a result of the systemic disunity, the legal regulation of the procedure for issuing grants looks incomplete and contradictory. For the same reason, the norms are set out arbitrarily and chaotically, while any legal procedure involves a strict sequence of actions, the content does not comply with the requirements for formal certainty, clarity and unambiguousness of legal norms.

In the justification document to the draft, the drafters claim that the document does not carry corruption risks. However, it is widely known that it is the sphere of distribution of grants and loans, accompanied by open competitions, that is most susceptible to corruption. The document does not provide for norms that prevent the so-called rollback schemes. In this regard, it should be noted that in Russia, the organizers-operators who distribute grants are often accused of corruption, existence of "kickbacks" and "commission fees", favoritism and bias. Moreover, the initiators of the draft Regulation themselves justify the need for its adoption by supporting NGOs that support and do not criticize the President and the Cabinet of Ministers. Therefore, the corruption potential was initially embedded in the very idea of providing grants to civil society institutions.

An analysis of the draft Regulations and the accompanying justification document shows that instead of finding optimal and effective forms of partnership and mutual cooperation with civil society, the State pursues a policy of confrontation with undesirable NGOs and the formation of loyal NGOs through bribery. The chosen mechanism for the distribution of state grants copies the negative Russian experience, as a result of which the non-governmental sector has become completely dependent on the Administration of the President of the Russian Federation, and independent NGOs have been persecuted and for the most part forced to cease their activities and/or leave the country. This path is unacceptable for Kyrgyzstan. On the contrary, we should make every effort to further improve the institutions of civil society in Kyrgyzstan, support the initiatives and activities of NGOs, the media, and the full realization of the right to association, freedom of speech and assembly.

Thus, we invite the initiators of the draft Regulations to reconsider their biased attitude towards civil society, organize a broad dialogue with it and identify strategic directions for joint activities in order to promote civic activism, improve the activities of NGOs, strengthen the accountability of state bodies and officials to civil society, and in general to preserve and develop the values of democracy, human rights and freedoms, and the rule of law.