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The State Defense Order: A New Law That Follows the Old Trend

At the end of 2012, Russia adopted the Law 'On the State Defense Order'. In its present form, that Law does not have any direct effect in the RF legal system. Moreover, it contains so many blanket and reference norms that analysts have begun to doubt the true intentions behind this legislative act. The Law totally ignores the RF President's calls for the creation of a 'transparent' defense economy and his demands that the authorities should streamline the management of the defense-industrial complex and introduce order into its pricing policy.

On 1 January 2013, just one day after it was officially published, the new Law 'On the State Defense Order' entered into force¹. Public opinion had been focused on the Law's passage through the RF Federal Assembly since early March 2012, when the corresponding draft had been introduced into parliament by the RF Government, in the person of the apparatus of the Military-Industrial Commission (MIC). The Draft Law was considered by the relevant Committees of the RF Federal Assembly, including in the course of field hearings carried out in Russia's regions². Throughout all the stages in the consideration of the Draft Law, the circle of discussants invariably included members of the Civic Chamber of the Russian Federation, the Union of Machine Builders, and the League of Assistance to Defense Enterprises.

Despite all this activity, no significant alterations had been made to the content of the Draft Law since March 2012. Thus, the wording of the Law as signed by the RF President generally coincided with that of the Draft Law submitted, on 16 May 2012, to the first reading in the State Duma by First Deputy Chairman of the MIC Yuri Borisov. It should be noted that those who promoted the Draft Law had utterly failed to prove the necessity of its becoming law, while a number of progressive amendments (including public competitor negotiations) put forth after the first reading by the State Duma Defense Committee and actively advertised by its Chairman, Vladimir Komoedov³, were rejected by his own First Deputy, Sergey Zhigarev, in the course of the second reading on 19 December 2012 - under the pretext that their content 'fall outside the scope of the Draft Law's concept adopted in the first reading'⁴. However, Zhigarev promised that 'these innovations will be included in the text of the new draft law on state policy in the field of resource provision for national defense and state security'.

¹ For the state defense order, see Federal Law of the Russian Federation, of 29 December 2012, No 275-FZ; adopted by the State Duma of the Federal Assembly of the Russian Federation on 19 December 2012; approved by the Federation Council of the Federal Assembly of the Russian Federation on 26 December 2012 // *Rossiiskaia Gazeta* [The Russian Gazette]. 31 December 2012.

² See, for example, Yu. Avdeev. *Oboronnoe 'veche' v Tule* [A defense Pow Wow at Tula] // *Krasnaia Zvezda* [The Red Star]. 6 June 2012 (No 99).

³ *Komitēt Gosudarstvennoi Dumy po oborone provel vyezdnye parlamentskie slushaniia na temu: 'O proekte federal'nogo zakona «O gosudarstvennom oboronnom zakaze»' v g. Tule* [The State Duma Defense Committee Has Carried Out Its Field Parliamentary Hearings, in the City of Tula, Entitled 'On the Draft Federal Law 'On the State Defense Order'] // *Novosti Komiteta po Oborone Gosdumy* [News of the State Duma Committee]. 29 May 2012. URL: <http://www.komitet2-15.km.duma.gov.ru/site.xp/052057124055049057.html> (date of notification: 1.06.2012).

⁴ Minutes of the State Duma meeting on 19 December 2012. URL: <http://transcript.duma.gov.ru/node/3764/> (дата обращения: 14.01.2013).

Thus, the ‘conservative’ version of the Law - a direct descendant of its March version developed by the MIC - has finally gained the upper hand over the ‘progressive’ version that had emerged and circulated in May and June in the State Duma⁵. Unfortunately, all the principal drawbacks of the Draft Law immediately exposed by the MPs in the course of the first reading⁶ were later included in the Federal Law.

First of all, the case in point is the strengthening of the ‘frameworkness’ of the new Law – the number of references to some as yet non-established procedures to be determined either by legislative means or by the government has risen by 25%. In his interview on 21 January 2013, Deputy Prime Minister and Head of the MIC Dmitry Rogozin confirmed that the quality of the new Law was indeed low: ‘The Law has been adopted. Now we have to prepare about ten resolutions on how to enforce this Law and what kinds of contacts are needed; we will accomplish this work, we are working hard, but it will take some time...’⁷. According to his (rather optimistic) estimate, ‘it would take two or three months to create a legal framework’ for the state defense order.

It is not very difficult to understand why the Government needed this new Law: it has not restricted the Government’s powers and has not made any mention of the state authorities’ responsibility for failure to perform obligations, as formulated in Article 10 of the old Law⁸; nor of the Government’s responsibility to submit for presidential approval the key indicators of the state defense order for a corresponding year simultaneously with the draft federal budget for that year being introduced into the RF State Duma; nor of the RF President’s responsibility to approve those indicators simultaneously with the signing of the law on the federal budget (as was stipulated in Part 3, article 3 of the old Law).

This trend towards strengthening the discretionary powers of the authorities can be traced throughout the entire text of the document. It manifests itself, on the one hand, by the absence of any concrete timelines, terms or substantiations for decision making; and, on the other hand, by the frequent use of the term ‘has the right to’ when determining the competence of the RF Government, state customers, chief executors, and executors of the state defense order (the term is used five times vs. one time in the old Law). All these factors can be considered to be corruption-causing⁹. Although they have become much stronger in the new Law, the Legal Administrations of the State Duma Apparatus and the Federation Council Apparatus have somehow failed to detect them (or simply did not want to do so for some obscure reason).

⁵ See *Joint Opinion on Draft Federal Law, No 31990-6, ‘On the State Defense Order and the Introduction of Alterations into Some Legislative Acts of the Russian Federation’* (second reading) [Entered under No 3.14-6/479, of 8 June 2012]. Moscow, Legal Administration of the State Duma Apparatus, [s.d.] URL: <http://asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29?OpenAgent&RN=31990-6&02> (date of notification: 20.06.2012).

⁶ Minutes of the State Duma meeting on 16 May 2012. URL: <http://transcript.duma.gov.ru/node/3633/> (date of presentation: 24 May 2012).

⁷ *Zamestitel’ Predsedatelia Pravitelstva Dmitrii Rogozin dal interv’iu telekanalu ‘Vesti’ po itogam selektornogo soveshchaniia o gosoboronzakaze* [Deputy Head of the Government Dmitry Rogozin Gave an Interview to the ‘Vesti’ TV Channel]. URL: <http://government.ru/docs/22478/> (date of presentation: 21.01.2013).

⁸ For the state defense order, see RF Federal Law, of 27 December 1995, No 213-FZ; adopted by the State Duma of the Federal Assembly of the Russian Federation on 24 November 1995 (as amended by RF Federal Law, No 409-FZ, of 6 December 2011) // *Rossiiskaia gazeta* [The Russian Gazette]. 4 January 1996; 9 December 2011.

⁹ P. 3. *Methods for the Conduct of Anti-Corruption Expestimation of Normative Legal Acts and Draft Normative* (approved by Decree of the RF Government, of 26 February 2010, No 96).

The new version of the Law lacks the previous one's provisions concerning the concept of a state armaments program (Parts 1 and 2 of Article 3 of the old Law, 'The Federal Program for the Development, Creation and Production of Military Equipment for the Ten-Year Period'). Maybe, it is exactly for that reason that the state armaments program has slipped one position down in the list of the basic elements for the formation of the state defense order (Article 4), being superseded by the 'Plans for Building and Developing the Armed Forces'. Although it is hard to say whether this relegation of the state armament program has indeed been caused by a real decline in its influence on the composition of the state defense order,¹⁰ or by a simple slip of the pen, the trend itself is clear and indisputable.

In the course of the Draft Law's second reading in the State Duma, the state regulation of the prices of the products included in the defense order was presented as a major legislative innovation. It should be noted that the proposed price regulation - or rather its principles and methods - abound in tautologies and have an excessive emphasis on registration. All the key aspects of pricing, including the selection of price types (i.e. the choice between the guiding price, the fixed price and the cost-plus price, as specified in Article 11) and the terms of their use are determined by the Government. The need to ensure the transparency of statistics relating to contracts, prices and supplies is not mentioned at all. Moreover, statistical transparency is simply ignored as a method of regulation.

For the sake of objectivity, however, we should note that the new Law strictly and specifically envisages that all the executors of contracts should keep separate accounting records for any contract concerned with the state defense order. This provision will make it much easier to implement the RF President's Decision of 25 November 2010, No Pr-3443, designed to put an end to the uncontrolled price rise of military-purpose products.

Also, the Law contains two noteworthy and rather strange innovations, which are similarly concerned with pricing: first, the 5% ceiling on price growth in excess of the official price index or the implicit price deflator, imposed by Russia's anti-monopoly agency; second, a certain vagueness in the procedure for changing the price of a state contract.

In the first case, the documents accompanying the Draft Law do not contain any economic justifications for the ceiling on price growth being set at 5% (this ceiling can be considered to be too high - bearing in mind that, for example, in 2011 the actual price index for military-purpose products amounted to 109.0%¹¹, which was 2.1 pp. higher than the official forecast made in 2010). Moreover, the imposition of a 30-day limit for submitting information to the anti-monopoly agency implies that this (rather unexplainable) 5% ceiling will be automatically exceeded. It is quite possible that the ceiling was initially imposed at around 0.5% - which made at least some sense; but that later on, in the process of further elaborating the Draft Law, the decimal point 'somehow got lost'. As a result, Russia has obtained a very effective inflationary mechanism, prettily disguised as state regulation of prices.

¹⁰ The federal budget for 2013 envisages expenditures on the state defense order both within and outside of the framework of the state armaments program. It should be noted that purchases of armaments can also be carried out outside of the framework of the state defense order.

¹¹ For the price indices and deflator indices used in the forecasts of the prices of military-purpose products, see *Letter of the RF Deputy Minister of Economic Development* No 21684-AK/DO3i, of 9 October 2012. URL: http://www.economy.gov.ru/minrec/activity/sections/macro/prognoz/doc20121009_0002 (date of presentation: 10 October 2012).

In the second case, according to the text of the Law (Part 5, Article 6; Item 7, Article 7; Item 9, Part 1, Article 9), a change in the price of a product takes place spontaneously and rather mysteriously, so that everybody is presented with a *fait accompli*. As a result, it only remains for the state customer (or the chief executor of a contract) to require justification for the price change, for the chief executor (or the executor) – to justify the price change, and for the Government – to agree with the price change...

Thus, the Law has definitely failed to ‘achieve the transparency of all its articles’, let alone ‘to establish strict parliamentary control in this field’, as was expected by some members of the State Duma Defense Committee¹². President Putin’s demand remains unfulfilled – the demand that ‘the state defense procurement system must be made as open and transparent as possible. Such an approach will be beneficial for establishing fair competition within the industry’¹³.

As regards the exaggerated indicators of state defense order implementation in 2012 (99% for the RF Ministry of Defense), after the ‘adjustment’ of some of its parameters (bearing in mind that 94.3% of the RF Ministry of Defense’s contracts had been placed shortly before the submission of its annual plan¹⁴), the ‘breakdown’ during the finishing spurt¹⁵, the discontinuation¹⁶, from November 2012, of any updates of the information on the Military-Industrial Commission membership on the government website¹⁷, and from December 2012 – of any publications of the agendas of its meetings, are only a few new examples of the ongoing reversal to old Soviet practices and to the predominance of the Military-Industrial Complex’s interests over the interests of both the Armed Forces and the country as a whole.

¹² Yu. Avdeev. *Gosoboronzakaz na marshe* [The State Defense Order on the March] // *Krasnaya Zvezda* [The Red Star]. 6 June 2012 (No 99).

¹³ Minutes of the Conference on the Implementation of State Policy in the Field of Defense-Industrial Complex Development for the Period Until 2020 and for a Further Perspective – Komsomolsk-on-Amur, 20 February 2012. 2012. URL: <http://government.gov.ru/docs/18194/> (date of presentation: 21 February 2012).

¹⁴ Minutes of the Business Meeting with Deputy Chairman of the RF Government Dmitry Rogozin – Novo-Ogarevo, 19 November 2012. URL: <http://news.kremlin.ru/news/16859> (date of presentation: 19 November 2012).

¹⁵ See Dmitry Rogozin’s interview to the *Vesti* news TV channel.

¹⁶ In this connection, the propaganda activity of Deputy Prime Minister Dmitry Rogozin on Facebook and Twitter can cause surprise and even consternation. According to the Federal Law of 9 February 2009 ‘On Guaranteeing Access to Information on the Activities of State Authorities and Local Self-Government Bodies’, this activity is definitely detrimental to his official duties as head of a body of state authority.

¹⁷ The Military-Industrial Commission under the Government of the Russian Federation. URL: <http://government.ru/gov/agencies/134/> (date of presentation: 28 January 2013).