



RUSSIA

Overview of the Law on the “grounding” of IT giants

Federal Law No. 236-FZ “On the Online Activity of Foreign Entities in the Russian Federation”, which has also been referred to as the Law on the “grounding” of IT giants (the “Law”), was signed on 1 July 2021 and entered into force in part.

The adoption of the Law is attributable to the existence of a significant number of foreign companies which do business online and are popular in Russia, but have no legal presence in Russia. This concerns in particular a large number of companies such as social networks, hosting providers, online stores, companies in the IoT sector, search engines, webmail and messaging providers, etc. This complicates materially the sending of requests and demands by the Russian law enforcement and other state authorities to such foreign companies, and equally the enforcement of the decisions of Russian courts.

PARTIES AFFECTED BY THE LAW

A foreign entity doing business online in the Russian Federation is understood to mean a foreign entity engaging in any activity not prohibited in the Russian Federation, provided that the foreign entity is the owner of the website and/or web page and/or information system, and/or computer software, which is accessed during the day by more than 500,000 online users located in the Russian Federation, and also provided that one of the following criteria is met:

- Information is provided and/or disseminated in the Russian language on the information resource of the foreign entity;
- Advertising to consumers in the Russian Federation is disseminated on the information resource of the foreign entity;
- The foreign entity processes data on users located in the Russian Federation;
- The foreign entity receives money from Russian individuals and legal entities.

The main conclusions that can be drawn from this definition include the following:

- Unlike Law No. 242-FZ on the localisation of personal data, the Law applies to all users located in the Russian Federation, and not only to Russian citizens on whom data are collected.
- The threshold of 500,000 may not be exceeded in the case of each resource of a foreign company taken separately, but is exceeded in the case of several resources (for example, websites, applications and cloud systems and services) of the

company taken in aggregate. At the same time, the methodology for determining the number of users of the information resources per day, and equally the list of program metrics used to calculate the number of users from which the foreign companies will be required to select, still needs to be determined by the Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor).

- In addition, the Law establishes directly criteria on the target of the information resource of the foreign entity regarding users in Russia. At the same time, the presence of just one of the established criteria is sufficient (the existence of a Russian version or a Russian interface, advertising which targets a Russian audience, the processing of data on users from Russia, the receipt of funds from persons in Russia in any currency).

Roskomnadzor will maintain a list of foreign entities doing business online in the Russian Federation. In view of the requirements of the Law, an entity may be included in the indicated list both by Roskomnadzor and on the initiative of the foreign company. In connection with this fact, it transpires that companies that meet the requirements of the Law, but are not on the list, will still be required to comply with the requirements of the Law before they have been included on this list.

THE NEW REQUIREMENTS ESTABLISHED FOR FOREIGN LEGAL ENTITIES

Foreign legal entities doing business online, which are covered by the aforementioned criteria, will be required to open in Russia a branch or a representative office, or found a Russian legal entity which will be required to:

- 1) Accept and consider the requests of Russian citizens and organisations, execute the decisions of Russian courts and the demands of the Russian state authorities. It is important to note here that the consideration of requests from the perspective of the Law does not mean that the representative office/branch or subsidiary of a foreign legal entity will be required, based on the results of said consideration, to provide information that is not at the disposal of the Russian representative office/branch/subsidiary, but is at the disposal of the foreign company.

2) Represent the interests of the owner of the information resource in Russian courts.

3) Take measures in Russia to restrict access to information and/or delete information in the instances established by the legislation of the Russian Federation.

Regarding the foundation of a legal entity, the Law does not specify directly whether this company should be a 100 percent subsidiary of the foreign company or not. However, a conclusion on 100 percent ownership can be drawn from the text of the Law. The Law also does not specify, whether a share in such a company after its foundation may be transferred to a third party. In addition, in the case of certain big companies, a material issue is the extent to which the Law permits the foundation of a company which would be able to represent the interests of several foreign companies of a group, each of which is covered by the scope of the Law. We will only have final answers to these questions after the practical application of the Law starts.

In addition, if an information resource meets the aforementioned criteria, then its owner will be required, in particular:

- To post an electronic form on the information resource that complies with the requirements of Roskomnadzor to be used by Russian citizens and organisations to send requests.
- To register an account on the official website of Roskomnadzor and use it for interaction with the Russian state authorities. At the same time, the Law does not clarify the extent to which this account will be the sole or main communications channel with the state authorities – this will be determined by the Government of the Russian Federation.

COERCIVE MEASURES TO ENSURE IMPLEMENTATION OF THE NEW REQUIREMENTS

If a foreign legal entity refuses to comply with the described requirements of the Law and the legislation of the Russian Federation as a whole, then one of the following coercive measures may be applied (or several of the measures simultaneously):

- The users of the information resource are notified that its owner violates the requirements of Russian legislation;
- The dissemination of advertising on the information resource or about the resource is prohibited;
- Restrictions are imposed on payments from Russia to the owner of the information resource;
- Taking down search results;
- The collection and/or cross-border transfer of personal data are/is prohibited;
- Access to the information resource is restricted partly or fully (in other words, for example, there is a slowdown in traffic or the resource is blocked).

PERSONAL DATA PROCESSING ISSUES

Pursuant to the Convention of the Council of Europe for the Protection of Individuals with Regard to Automatic Processing of Personal Data (concluded in Strasbourg on 28 January 1981), of which Russia is a member, as a general rule, a party to the Convention may not prohibit or subject to special authorisation personal data flows transferred to the territory of another Party, proceeding solely from the considerations of the protection of privacy. Based on this provision of the Convention of the Council of Europe, it can be concluded that such a coercive measure as the prohibition of the cross-border transfer of personal data could affect, first and foremost, the transfer of such data outside Europe. Furthermore, the prohibition on the cross-border transfer of data, if such a decision were adopted by Roskomnadzor, would apply to the users of the system or website of the foreign company regarding such a transfer of data through the use of the system or website.

All the aforementioned coercive measures may be applied, *inter alia*, in instances of non-compliance with the requirements of the Federal Law “On Personal Data” regarding the localisation of personal databases. At the same time, one new point is that if such databases are not localised, the website could, for example, be blocked, not only further to the decision of a court, but also further to the decision of Roskomnadzor. The localisation requirement, coupled with the prohibition on the cross-border transfer of personal data, would imply in fact the requirement for the creation of a purely local database.

The prohibition on the collection of the personal data of Russian citizens further to the decision of Roskomnadzor is also a completely new coercive tool. In this case, however, it is important to note that if such a decision is adopted, any processing of personal data other than collection (collection, based on the general rule, is defined as receipt of data directly from the personal data subject) is not restricted pursuant to the Law.

TIMEFRAMES FOR THE ENTRY INTO FORCE OF THE LAW AND RELATED ISSUES

The Law has already entered into force, but in actual fact will only become operational once a wide range of bylaws stipulated by the Law have been adopted. Even though the indicated bylaws could enter into force immediately after publication, it can be assumed that it will take at the very least several months to draft and publish them.

A foreign company has until the end of 2021 to open a representative office/branch or found a subsidiary. In view of the number of formalities inherent in the opening/foundation process, we recommend starting this process soon, when applicable.

In the case of foreign companies which already have a representative office/branch or subsidiary in Russia, the other formalities stipulated by the Law must be performed with due account of the indicated timeframes.



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