



“Foreign agents” in Russian media law

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“Foreign agents” in Russian media law

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Foreword

The Russian Federation's Federal Statute N 121-FZ of 20 July 2012 entitled "on amendments to certain legislative acts of the Russian Federation with regard to regulating the activities of non-commercial organisations acting as foreign agents" is commonly known as the "Foreign Agents" Statute. In its latest version, of 2019, this law requires Russian NGOs to register with the Ministry of Justice of the Russian Federation as "organisations performing the functions of foreign agents" if they receive foreign funding and engage in activities broadly described as "political". It allows the Ministry of Justice to register NGOs as "foreign agents" on its own initiative, imposes the use of the "foreign agents" label on any foreign media directly or indirectly receiving foreign funding and includes in its "foreign agents" status private individuals, such as bloggers and independent journalists.

The "Foreign Agents" Law has been widely criticised. Just to mention a few European examples: the Spokesperson of the EU's European External Action Service (EEAS) released a statement¹ on 26 November 2017 raising some concern about the impact of the law on human rights and independent media in Russia, and the European Parliament adopted a Resolution² on 19 December 2019 calling for the withdrawal of the law in the name of human rights and freedom of expression. Moreover, the OSCE Representative on Freedom of the Media³ intervened in similar terms.

This publication aims at presenting an objective view on the Russian "Foreign Agents" Law and its impact on the Russian media sector, thereby complementing a previous IRIS Extra on foreign media ownership.⁴ It explains the notion of a "foreign agent" and analyses the major legal steps introduced since 2012 which have established a set of wide-ranging restrictions on foreign involvement in media activities in the Russian Federation. It also lists other comparable federal Statutes aimed at limiting the activities of foreign individuals and entities, including their media activities, as well as the distribution of information, both online and offline.

¹ EEAS, Statement by the Spokesperson on the Russian law allowing the registration of foreign media as "foreign agents", 26 November 2017, https://eeas.europa.eu/headquarters/headquarters-homepage_en/36222/Statement%20by%20the%20Spokesperson%20on%20the%20Russian%20law%20allowing%20the%20registration%20of%20foreign%20media%20as%20%20foreign%20agents".

² European Parliament resolution of 19 December 2019 on the Russian 'foreign agents' law (2019/2982(RSP)), https://www.europarl.europa.eu/doceo/document/TA-9-2019-0108_EN.html.

³ Press release of the OSCE Representative on Freedom of the Media, "OSCE Representative Désir concerned by enactment of law broadening 'foreign agent' status to individuals in Russia", 3 December 2019, <https://www.osce.org/representative-on-freedom-of-media/441002>.

⁴ Golovanov D., *The legal framework concerning foreign ownership in Russian media*, IRIS Extra, European Audiovisual Observatory, Strasbourg, 2018, <https://rm.coe.int/the-legal-framework-concerning-foreign-ownership-in-russian-media/16808ee8be>.

It also reviews the constitutional case law of the “Foreign Agents” Law and the Media Statute, as well as administrative practices and case law relating thereto.

Strasbourg, December 2020

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Executive summary

This IRIS Extra, which to some extent complements a previous report on foreign media ownership, addresses the status of foreign agents in Russian media law by analysing the major legal steps introduced since 2012 which have established a set of wide-ranging restrictions on foreign involvement in media activities in the Russian Federation. In most cases, the introduction of these statutes and amendments has been justified by the Russian authorities as mere “mirror actions”, i.e. proportionate responses to restrictions that existed or were then imposed abroad, as illustrated in **Chapter 1**.

The notion of a “foreign agent” was first introduced into Russian law and policy in 2012 by the “Foreign Agents” Statute, the stated aim of which was to organise due public control over the work of certain public associations. The Statute clarifies the conditions under which a non-commercial organisation (NCO) is considered to act as a foreign agent, as well as the obligations arising from this status, such as registering with the Ministry of Justice of the Russian Federation (MoJ) or the obligation to apply for a permit from the authorities before starting any political activity. **Chapter 2** discusses the introduction of this status for NCOs and the obligations deriving from it, as well as the extension of certain principles of this status to media outlets.

Furthermore, several comparable federal Statutes have been implemented, aimed at limiting the activities of foreign individuals and entities, including their media activities, as well as the distribution of information, both online and offline. These limitations include, for instance, the possibility for foreign or international NCOs to have their activities suspended by the MoJ for an indefinite period, or to be banned from distributing information throughout Russia when they are considered to be carrying out an “undesirable activity”. **Chapter 3** provides an overview of the gradual implementation of these limitations from the 2012 “Dima Yakovlev Law” to the 2018 Statute on Countermeasures.

With regard to media outlets, a new law was passed in 2017 amending the Media Statute, requiring certain foreign media in Russia to also register as foreign agents. A succession of amendments to this law, often referred to as the “Foreign Agents’ Media Statute”, subsequently extended its scope to allow the MoJ to apply some of the provisions of the 2012 “Foreign Agents” Statute on NCOs to the regulation of foreign media activities. This extension resulted in a series of specific obligations for those considered to be “foreign agent media”, presented in **Chapter 4**, such as the obligation to label information items with a special disclaimer in every publication identifying their status as foreign agent media or the obligation to register a Russian legal entity within one month from the date of designation as a foreign media outlet.

The most recent set of amendments to the Media Statute went further by allowing individuals to be included in the scope of the provisions governing “foreign agent media”.

As explained in **Chapter 5**, private individuals involved in media-like activity could be designated as “foreign media performing the functions of a foreign agent”, and thus be subject to the relevant provisions on foreign agents of the Statute on NCOs.

In addition to these latest legal developments, **Chapter 6** describes the relevant activities of parliamentary commissions in this area. The activities of foreign media in Russia, especially negative foreign media articles targeting Russian audiences, are a matter of concern for two commissions in particular: the temporary Commission on the Investigation of Foreign Interference in Russia’s Internal Affairs and the Provisional Commission for the Protection of State Sovereignty and the Prevention of Intervention in the Internal Affairs of the Russian Federation.

Chapter 7 reviews the constitutional case law of the “Foreign Agents” Statute and the Media Statute, the constitutionality of some of their provisions having been challenged, notably on the grounds that the status of foreign agent has a negative connotation and could be perceived as a manifestation of distrust or a desire to discredit entities qualifying as such.

Administrative practices and case law relating to this status, including compliance with the requirements and obligations of entities acting as foreign agents, are discussed in **Chapter 8**, which examines a selection of cases primarily involving the obligation to provide reports on foreign financing and the compulsory disclaimers to identify as a foreign agent.

Chapter 9 deals with the international response to Russia’s “Foreign Agents” Statute, reviewing the reactions of various NGOs in Europe and the introduction of a similar foreign agent status in some European countries.

In conclusion, **Chapter 10** offers some reflections on the impact of the introduction of the “Foreign Agents” statute on competition in the Russian media market and the concerns it raises, in particular with regard to respect for the rule of law, freedom of association and freedom of expression.

1. Introduction

This report, which in a way supplements an earlier one on foreign media ownership⁵, is aimed at providing a review and analysis of major legal steps introduced since 2012, which have established a set of wide-ranging restrictions on foreign involvement in media activities in the Russian Federation. In most cases the introduction of these statutes and amendments was justified as a proportionate response to the restrictions that existed or were then imposed abroad, mostly in the United States, in relation to certain Russian entities or citizens, including such media outlets as RT and Sputnik.

For example, the Russian authorities have frequently claimed that their 2012 Foreign Agents Statute⁶ was modelled on the 1938 American Foreign Agents Registration Act (FARA)⁷ and that all legal restrictions introduced since 2012 were in fact mere “mirror actions” in response to the application of FARA to Russian media.⁸ In turn the US authorities and other stakeholders disputed a parallel between FARA and the Russian “Foreign agents” Statute.⁹

In principle, FARA excludes any news or press service from the definition of “agent of a foreign principal”. This exemption applies, however, only if the company is at least 80 percent owned by US citizens and is not owned, directed, supervised, controlled, or financed

⁵ Dmitry Golovanov, *The legal framework concerning foreign ownership in Russian media*, IRIS Extra, European Audiovisual Observatory, Strasbourg, 2018. <https://rm.coe.int/the-legal-framework-concerning-foreign-ownership-in-russian-media/16808ee8be>.

⁶ Federal Statute No. 121-FZ of 20 July 2012, “on amendments to certain legislative acts of the Russian Federation with regard to regulating the activities of non-commercial organisations performing the functions of a foreign agent” (О внесении изменений в отдельные законодательные акты Российской Федерации в части регулирования деятельности некоммерческих организаций, выполняющих функции иностранного агента), http://www.consultant.ru/document/cons_doc_LAW_132900/.

⁷ Foreign Agents Registration Act, ch. 327, 52 Stat. 631 (1938), as amended.

⁸ Explanatory Memorandum to draft Federal statute No 345523-7 (Пояснительная записка к проекту федерального закона № 345523-7). <https://sozd.duma.gov.ru/bill/345523-7>; Ilya Kostin. “Deputies of the State Duma are considering law on education in the second reading today” (Депутаты Госдумы сегодня во втором чтении рассматривают проект закона об образовании), 1st Channel News, 18 December 2012. https://www.1tv.ru/news/2012-12-18/81810-deputaty_gosdumy_segodnya_vo_vtorom_chtenii_rassmatrivayut_proekt_zakona_ob_obrazovanii; European Commission for Democracy through Law (Venice Commission). Opinion on Federal Statute No. 121-FZ On Non-Commercial Organisations (“Statute on Foreign Agents”), on Federal Statutes No. 18-FZ and No. 147-FZ and on Federal Statute No. 190-FZ on making amendments to the Criminal Code (“Statute on Treason”) of the Russian Federation. Adopted by the Venice Commission at its 99th Plenary Session (Venice, 13-14 June 2014). Strasbourg, 27 June 2014 CDL-AD(2014)025. Opinions nos. 716-717/2013, para 34. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2014\)025-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2014)025-e)

⁹ See European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). Draft Joint Interim Opinion on the Draft Statute amending the Statute on non-commercial organisations and other Legislative Statutes of the Kyrgyz Republic. Strasbourg, Warsaw, 7 October 2013. CDL(2013)049. Venice Commission Opinion no. 738/2013 ODIHR Opinion-Nr.: FOASS-KYR/239/2013, para 34, <https://www.legislationline.org/legislation/section/legislation/country/20/topic/1>.

by a foreign principal, and none of its policies are determined by a foreign principal.¹⁰ In fact, the US Department of Justice has stepped up the enforcement of FARA in recent years, including by pressing Russian state-run media companies to register under FARA. At the same time, the Department of Justice has stated that “unless there is an effort by the state-controlled media organization to use its reporting in the United States to target an audience here for purposes of perception management or to influence U.S. policy, there would probably be no obligation for it to register under FARA.”¹¹

This IRIS-Extra looks into the evaluation of the statutes by the Russian Constitutional Court and the Venice Commission of the Council of Europe, as well as national case law and administrative practice. The principles underpinning the Russian “Foreign Agents” Statute seemed to have inspired legal activities in other jurisdictions, such as Hungary, Ukraine, the Kyrgyz Republic and Slovakia, and this article provides an update of relevant developments.

¹⁰ Elena Postnikova. “Agent of Influence: Should Russia’s RT Register as a Foreign Agent”, https://issuu.com/atlanticcouncil/docs/rt_foreign_agent_web_0831.

¹¹ “Justice Department Has Ordered Key Chinese State Media Firms to Register as Foreign Agents”, The Wall Street Journal, 18 September 2018, <https://www.wsj.com/articles/justice-department-has-ordered-key-chinese-state-media-firms-to-register-as-foreign-agents-1537296756>.



2. Status of “foreign agents” for “non-commercial organisations” and their “information materials”

The notion of a “foreign agent” was first introduced into Russian law and policy in 2012 with the adoption by the Parliament of the legal instrument that became known as the “Foreign Agents” Statute.¹² The procedure from draft to adoption took just two weeks, which is a remarkable speed and points to the extreme urgency and importance of the bill for the authorities. Its stated aim was to “organise due public control” over the work of certain public associations.¹³

The “Foreign Agents” Statute made relevant amendments to the following federal legal instruments:

- Federal Statute “on non-commercial organisations” (hereinafter Statute on NCOs);¹⁴
- Federal Statute “on public associations”;¹⁵
- Federal Statute “on countering the legalisation (laundering) of proceeds from crime and the financing of terrorism”;¹⁶
- Criminal Procedure Code of the Russian Federation;¹⁷

¹² Federal Statute of 20 July 2012 N 121-FZ “on amendments to certain legislative acts of the Russian Federation with regard to regulating the activities of non-commercial organisations acting as foreign agents” (О внесении изменений в отдельные законодательные акты Российской Федерации в части регулирования деятельности некоммерческих организаций, выполняющих функции иностранного агента). <http://www.consultant.ru/cons/cgi/online.cgi?from=132900-0&rnd=AEDC070224E6281A0DD510BB7AD0AE5B&req=doc&base=LAW&n=163972&REFDOC=132900&REFBASE=LAW#1o0mm0hc45h>

¹³ Explanatory Memorandum to the draft Federal Statute “on amendments to certain legislative acts of the Russian Federation with regard to regulating the activities of non-commercial organisations acting as foreign agents” (Пояснительная записка “К проекту Федерального закона “О внесении изменений в отдельные законодательные акты Российской Федерации в части регулирования деятельности некоммерческих организаций, выполняющих функции иностранного агента), 29 June 2012, <http://www.consultant.ru/cons/cgi/online.cgi?rnd=1D6EF5D2DB6CDB4BCC8A322603CB3F3F&req=doc&base=PRJ&n=96306&REFFIELD=134&REFDST=100012&REFDOC=96008&REFBASE=PRJ&stat=refcode%3D16876%3Bindex%3D16#c7rzb8e5w74..>

¹⁴ Federal Statute No. 7-FZ of 12 January 1996 “on non-commercial organisations” (О некоммерческих организациях), http://www.consultant.ru/document/cons_doc_LAW_8824/.

¹⁵ Federal Statute No. 82-FZ of 19 May 1995 on public associations (Об общественных объединениях), http://www.consultant.ru/document/cons_doc_LAW_6693/.

¹⁶ Federal Statute No 115-FZ of 7 August 2001 on countering the legalisation (laundering) of proceeds from crime and the financing of terrorism (О противодействии легализации (отмыванию) доходов, полученных преступным путем, и финансированию терроризма), http://www.consultant.ru/document/cons_doc_LAW_32834/.

¹⁷ Criminal Procedure Code of the Russian Federation (Уголовно-процессуальный кодекс Российской Федерации) of 18 December 2001, No. 174-FZ, http://www.consultant.ru/document/cons_doc_LAW_34481/.

- Criminal Code of the Russian Federation.¹⁸

The “Foreign Agents” Statute states that a non-commercial organisation (NCO), generally understood by the Statute on NCOs as an entity that does not aim to generate profit from its activity and subsequently divide it among its members,¹⁹ shall be considered to act as a “foreign agent” if the following three conditions are met:

- 1) the organisation is registered in the Russian Federation as an NCO;
- 2) the organisation receives monetary assets and/or other property from foreign states, their state bodies, international or foreign organisations, foreign persons, stateless persons or from persons authorised by them and/or from Russian legal entities that receive monetary assets or other property from the above sources; and
- 3) the organisation participates, in political activities in the territory of the Russian Federation, including in the interests of foreign entities.

It is important to note that the term “foreign agent” employed was not new in Russian and that there is evidence to prove that it has a negative connotation in everyday Russian, meaning an agent (spy) acting for the benefit of an alien (enemy) country.²⁰

Originally, the term “political activity” was defined in the Foreign Agents Statute very broadly but it became more concise and detailed in later revisions of its provisions. Under the most recent definition of the term, for the purposes of regulating the activities of “foreign agents”, an NCO (with the exception of a political party) is deemed to be participating in political activities in Russia if, irrespective of the purposes and objectives specified in its constituent documents, it carries out activities in the field of “state building, protecting the foundations of the constitutional system of the Russian Federation, the federal structure of the Russian Federation, the protection of sovereignty and ensuring the territorial integrity of the Russian Federation, ensuring the rule of law, law and order, state and public security, national defence, foreign policy, the socio-economic and national development of the Russian Federation, the development of the political system, the

¹⁸ Criminal Code of the Russian Federation (Уголовный кодекс Российской Федерации) of 13 June 1996, No. 63-FZ. http://www.consultant.ru/document/cons_doc_LAW_10699/.

¹⁹ Section 2 of Federal Statute No. 7-FZ of 12 January 1996 “on non-commercial organisations” (О некоммерческих организациях), http://www.consultant.ru/document/cons_doc_LAW_8824/.

²⁰ See Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association. A/70/266, 4 August 2015, para 71, http://freeassembly.net/wp-content/uploads/2015/09/A_70_266_ENG.pdf; European Commission for Democracy through Law (Venice Commission), Opinion on Federal Statute No. 121-FZ on non-commercial organisations (“Statute on Foreign Agents”), on Federal Statutes No. 18-FZ and No. 147-FZ and on Federal Statute No. 190-FZ on making amendments to the Criminal Code (“Statute on Treason”) of the Russian Federation. Adopted by the Venice Commission at its 99th Plenary Session (Venice, 13-14 June 2014). Strasbourg, 27 June 2014, CDL-AD(2014)025. Opinions no. 716-717/2013, para 54, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2014\)025-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2014)025-e); Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights. Application no. 9988/13 *ECODEFENCE and Others v. Russia* and 48 other applications, Strasbourg, 5 July 2017, ComMDH(2017)22, paras 8-9. <https://rm.coe.int/third-party-intervention-by-the-council-of-europe-commissioner-for-hum/1680731087>; ECRI Report on the Russian Federation (fifth monitoring cycle): Findings and Recommendations. ECRI Secretariat, Directorate General II – Democracy, Council of Europe, Strasbourg: 2019, para 98. <https://rm.coe.int/fifth-report-on-the-russian-federation/1680934a91>.



activities of state bodies, local authorities, the legislative regulation of human and civil rights and freedoms in order to influence the development and implementation of a national policy, the formation of state bodies, local governments, their decisions and actions.”²¹

The rules established for government control over non-commercial organisations acting as “foreign agents”, in addition to general requirements for all NCOs, can be summed up as follows:

- “Foreign agents” are required to register with the Ministry of Justice of the Russian Federation (hereinafter the MoJ),²² to which they submit financial reports four times a year, as well as, every six months, additional reports describing the nature of organisations’ activities (to be published online or submitted to the mass media), as well as informing on the composition of their managerial (governing) bodies.
- They are obliged to ask the authorities for a permit before starting any political activities.
- Although planned financial audits must take place once a year, in certain cases (further specified by the Statute) a “foreign agent” can be subject to unscheduled spot checks.
- Foreign donations larger than RUB 200 000 (or the equivalent in foreign currency) are subject to mandatory checks.
- Last, but not least in the context of this article, such NCOs must mark all items produced or distributed by them in all types of media, including the internet, as products of a “foreign agent”.²³

If a “foreign agent” NCO refuses to abide by these rules, it will face substantial legal penalties:

- The persistent refusal to register and report on activities of the organisation may involve a fine of up to RUB 300 000, or – for individuals, such as NCO officers or

²¹ Section 2.(6) of Federal Statute No. 7-FZ of 12 January 1996 on non-commercial organisations (О некоммерческих организациях), http://www.consultant.ru/document/cons_doc_LAW_8824/.

²² Faced with a mass refusal by the NCOs to voluntarily register, in March 2013 the prosecutor’s office began an unprecedented wave of NCO inspections to check their “compliance with the statutes of the Russian Federation.” Those inspections – often repetitive and highly disruptive – seemed to aim at intimidating the targeted organisations. See: Saskia Brechenmacher, Carnegie Endowment for International Peace, 2017. <https://carnegieendowment.org/2017/05/18/civil-society-under-assault-repression-and-responses-in-russia-egypt-and-ethiopia-pub-69953>. Later, in 2014, the Parliament allowed the Ministry of Justice to register “foreign agents” without their consent.

²³ The Venice Commission considered that the imposition of the very negative term “foreign agent” and the obligation for the NCO to use it on all its materials cannot be deemed to be “necessary in a democratic society” to assure the financial transparency of the NCO receiving foreign funding. It noted that the statute is silent as to why materials issued or distributed by “foreign agents” should have special indications of their origin, thus keeping the link between this obligation and the declared aim of the Statute unclear. European Commission for Democracy through Law (Venice Commission), Opinion on Federal Statute No. 121-FZ on Non-Commercial Organisations (“Statute on Foreign Agents”), on Federal Statutes No. 18-FZ and No. 147-FZ and on Federal Statute No. 190-FZ on making amendments to the Criminal Code (“Statute on Treason”) of the Russian Federation. Adopted by the Venice Commission at its 99th Plenary Session (Venice, 13-14 June 2014). Strasbourg, 27 June 2014, CDL-AD(2014)025. Opinions no. 716-717/2013, paras 60 and 93. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2014\)025-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2014)025-e).

- managers – the penalties may include compulsory work for a period of up to 400 hours, correctional labour for up to two years or imprisonment for the same term.
- Its activities can be suspended by a court for up to six months, during which time the NCO is prohibited from carrying out public actions and events and access to its bank accounts is restricted.
 - Its activity falls, at least with regard to the latter, under the Federal Financial Monitoring Service (Rosfinmonitoring)²⁴, which is empowered to freeze the bank accounts of such an NCO.

The MoJ maintains a register of “foreign agents” and provides on its official website a possibility of checking whether a particular NCO carries out such activities. It submits to the State Duma (the lower house of parliament) an annual report with data on the work of “foreign agent” NCOs.²⁵ The latest publicly available MoJ report stated that, as of 31 December 2019, the register of “foreign agent” NCOs listed 190 organisations, of which 74 were still operating, 45 had had their relevant qualification reversed and 45 had ceased to exist (the total number of NCOs registered in Russia at the same time was 213,290).²⁶

Some of the principles introduced by the “Foreign Agents Statute” were also applied to media outlets when in late 2015 the Parliament adopted an additional section (19(2)) to the Statute on the Mass Media (hereinafter the Media Statute).

According to the explanatory memorandum to the bill, the aim was “to simplify the supervision of compliance with the Media Statute” and “to ensure the right of citizens of the Russian Federation to freely receive information in a situation where pressure on the Russian media has intensified in several countries and attempts are made, with the help of economic pressure, the actions of repressive authorities and so-called “judicial decisions”, to limit or stop the work of Russian media in those countries.”

The explanatory memorandum, probably the most explicit of all those considered in this report, states that the measures provided for by the “Foreign Agents Statute” turned out to be insufficient as they left a loophole in the case of foreign grants to Russian media. “Consequently, at present there is an objective possibility of violating the rights of citizens of the Russian Federation to obtain objective information by hiding the details of foreign

²⁴ <http://www.fedsfm.ru/en>.

²⁵ Most likely, this provision speaks of general reports on NCO activities, as no specific reports on “foreign agent” NCOs, at least public ones, could be found. For general annual MoJ reports on NCO activities for 2012-2019, see <https://minjust.ru/ru/doklady-ob-osushchestvlenii-ministerstvom-yusticii-rossiyskoy-federacii-gosudarstvennogo>.

²⁶ Ministry of Justice of the Russian Federation, “Report on the implementation of state control (supervision) by the Ministry of Justice of the Russian Federation over the activities of non-commercial organisations and on the effectiveness of such control (supervision) in 2019” (Доклад об осуществлении Министерством юстиции Российской Федерации государственного контроля (надзора) в сфере деятельности некоммерческих организаций и об эффективности такого контроля (надзора) в 2019 году), 16 March 2020, <https://minjust.ru/ru/print/448883>.

organisations, which pose a threat to the interests of Russian society and the state, which finances the media.”²⁷

Section 19(2) provided an obligation for the editorial offices of a mass media outlet, a broadcaster or a publisher to notify Roskomnadzor, the Russian government’s authority responsible for supervising the media, communications and personal data traffic, every three months of funds received from a foreign government, an international organisation, a foreign organisation, an NCO considered to carry out the activities of a “foreign agent”, a foreign citizen or a stateless person, as well as from a Russian organisation, the participants in and/or founders of which are the above persons or entities.²⁸ Their reports are then summarised by Roskomnadzor in tables published four times a year on its website.²⁹

The latest available report (for the first quarter of 2020) contains a list of 50 organisations that operate hundreds of media, including some mainstream outlets. Noncompliance with the notification obligation leads to administrative fines of up to four times the amount of funds received.

²⁷ “Explanatory memorandum to the draft Federal Statute “on amendments to the Statute of the Russian Federation on the Mass Media and to the Code of the Russian Federation on Administrative Offences (Пояснительная записка “К проекту Федерального закона “О внесении изменений в Закон Российской Федерации “О средствах массовой информации” и Кодекс Российской Федерации об административных правонарушениях”), 7 October 2015, <http://www.consultant.ru/cons/cgi/online.cgi?rnd=1D6EF5D2DB6CDB4BCC8A322603CB3F3F&req=doc&base=PRJ&n=137044&REFFIELD=134&REFDST=1000000013&REFDOC=136733&REFBASE=PRJ&stat=refcode%3D16876%3Bindex%3D18#rur4m4aiyx>.

²⁸ Federal Statute No. 464-FZ of 30 December 2015 on amendments to the Statute of the Russian Federation on the Mass Media and to the Code of the Russian Federation on Administrative Offences (О внесении изменений в Закон Российской Федерации “О средствах массовой информации” и Кодекс Российской Федерации об административных правонарушениях”), <http://www.consultant.ru/cons/cgi/online.cgi?rnd=F31F8FFA34D3AF8184338082268415F0&req=doc&base=LAW&n=191539&dst=100010&fld=134&REFFIELD=134&REFDST=1000000174&REFDOC=346768&REFBASE=LAW&stat=refcode%3D19827%3Bdstident%3D100010%3Bindex%3D343#21nz0v2c5ka>.

²⁹ Roskomnadzor. “Notification of receipt of funds from foreign sources by the editorial board of a mass media outlet, broadcaster or publisher” (Уведомление о получении редакцией средства массовой информации, вещателем или издателем денежных средств от иностранных источников), <https://rkn.gov.ru/mass-communications/notice/>.

3. Ban on “undesirable” and other foreign entities and their media

Related to the issues under discussion in this report are several federal Statutes comparable to the “Foreign Agents Statute” and that aim to limit the activities of foreign individuals and entities, including their media activities, as well as the distribution of information, both online and offline.

Firstly, by way of response to the US Magnitsky Act,³⁰ the Russian Parliament adopted, in late 2012, a statute, often called the “Dima Yakovlev Statute”.³¹ Formally it was aimed at US citizens “involved in violations of fundamental human rights and freedoms, the rights and freedoms of citizens of the Russian Federation.” In fact, it empowered the MoJ to suspend for an indefinite time the activities of NCOs that (1) participated in “a political activity carried out in the territory of the Russian Federation” and were recipients, without compensation, of funds and property from US entities or citizens, or persons with dual US-Russian citizenship, and (2) any other NCOs involved in the activity that presents “a threat to the interests of the Russian Federation” (section 3). Specifically, a provision of this statute prohibited such NCOs from acting as founders of mass media outlets.

Secondly, a package of additional provisions to the Dima Yakovlev Statute and criminal and administrative sanctions for non-compliance with its rules was introduced in 2015.³² It provided that Statute with both a definition of an “undesirable activity” as being any activity “posing a threat to the foundations of the constitutional system of the Russian Federation, the country’s defence capability or state security”, conducted anywhere in the world, by a foreign or international non-governmental organisation (NGO) (section 3(1) of the Statute). Foreign or international NGOs considered to be conducting “undesirable activity” by the Prosecutor-General or one of his deputies, in coordination with the Ministry of Foreign Affairs (hereinafter the MFA), face a ban throughout Russia. In particular, it includes “a ban on the distribution of information items published by a foreign or international non-governmental organisation and/or) distributed by it, including through the media and/or using the Internet, as well as a ban on the production or storage of such items for distribution” (section 3(1)(3)(3)).

³⁰ “H.R. 6156 (112th): Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012”, <https://www.govtrack.us/congress/bills/112/hr6156>.

³¹ Federal Statute No. 272-FZ of 28 December 2012 “on measures to influence persons involved in violations of fundamental human rights and freedoms, the rights and freedoms of citizens of the Russian Federation” (О мерах воздействия на лиц, причастных к нарушениям основополагающих прав и свобод человека, прав и свобод граждан Российской Федерации), http://www.consultant.ru/document/cons_doc_LAW_139994/.

³² Federal Statute N 129-FZ of 23 May 2015 on introducing amendments to certain legislative acts of the Russian Federation (О внесении изменений в отдельные законодательные акты Российской Федерации), http://www.consultant.ru/document/cons_doc_LAW_179979/.

At the time of writing, 22 entities, mostly (former) donors of Russian NCOs, had been placed on the list of such “undesirable” organisations, according to the MoJ’s official website.³³

Thirdly, a set of statutes was introduced which cumulatively put a stop to any foreign commercial investments in Russian media and telecommunications, both infrastructurally or in terms of content. The amendments complemented the above restrictions on the NCO-related activities.³⁴

In 2014, the Media Statute was amended to drastically limit foreign ownership in the media.³⁵ The amendments were consistent with the policy introduced by a 2008 statute to curb foreign investment in companies of strategic importance to the nation’s security.³⁶ A foreign state, international organisation or an organisation under foreign control, a foreign citizen, foreign legal entity, Russian entity with foreign stock, stateless person or a dual citizen (including one with Russian and foreign citizenship) were prohibited from establishing a media outlet in Russia, act as its editorial office or engage in broadcasting. They may not own a share or stock in media entities that exceeds 20 percent of the charter capital and they may not control or direct media outlets and broadcasters or determine their policies or decisions. The amendments applied to all media, including online outlets, registered in Russia.³⁷

These restrictions were extended in 2016 to apply to limits on foreign ownership or control of Russian television audience measurement and research services³⁸ and then to Russian-language Internet search engines as well as those potentially advertising their products and services to Russian audiences.³⁹ They were extended in 2017 to foreign ownership or the control of online cinemas and other on-demand services with advertising accessible to viewers in Russia.⁴⁰

³³ Ministry of Justice of the Russian Federation, “List of foreign and International non-governmental organisations whose activities of have been deemed undesirable in the territory of the Russian Federation” (Перечень иностранных и международных неправительственных организаций, деятельность которых признана нежелательной на территории Российской Федерации), <https://minjust.ru/ru/activity/nko/unwanted>.

³⁴ The amendments have been analysed in detail here: Dmitry Golovanov, *The legal framework concerning foreign ownership in Russian media*, IRIS Extra, European Audiovisual Observatory, Strasbourg, 2018, <https://rm.coe.int/the-legal-framework-concerning-foreign-ownership-in-russian-media/16808ee8be>

³⁵ Federal Statute No. 305-FZ of 14 October 2014 on amendments to the Statute of the Russian Federation on the mass media (О внесении изменений в Закон Российской Федерации “О средствах массовой информации”), <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102362850&intelsearch=14+%EE%EA%F2%FF%E1%F0%FF+2014+%E3.+N+305-%D4%C7+>.

³⁶ See Budarina N., “Statute Limiting Foreign Ownership of TV Enters into Force”, IRIS 2001-9:1/25, <http://merlin.obs.coe.int/article/2136>.

³⁷ See Richter A., “Act on the limitation of foreign ownership in the media”, IRIS 2014-10:1/31, <http://merlin.obs.coe.int/newsletter/download/200/pdf/en>.

³⁸ See Richter A., “TV audience measurement restricted”, IRIS 2016-8:1/29, <http://merlin.obs.coe.int/newsletter/download/218/pdf/en>.

³⁹ See Richter A., “News Aggregators restricted in picking news,” IRIS 2016-8:1/32, <http://merlin.obs.coe.int/newsletter/download/218/pdf/en>.

⁴⁰ See Richter A., “Online cinemas restricted”, IRIS 2017-6:1/28, <http://merlin.obs.coe.int/newsletter/download/226/pdf/en>.

At about the same time, owners of popular online news aggregators worldwide were made accountable for the “faithfulness” of content aggregated and distributed, in any language, unless it originates from official sources and the media outlets that are duly registered in Russia.⁴¹

Content-related responsibilities for the hosting and service providers of electronic message exchanges were also introduced in 2017, in particular to empower Roskomnadzor to block users’ ability to exchange information that is forbidden by the Russian statute and even to stop a messenger’s service completely.⁴²

In order to avoid the possible circumvention of these statutes, the rules for media registration were significantly tightened in 2017.⁴³ Moreover, that same year Roskomnadzor was empowered to prosecute individuals/entities in Russia that utilise or provide access to virtual private networks (VPN) or VPN-type services.⁴⁴

Specific and harsh administrative fines of up to 3 million roubles (about 33 thousand euro) were imposed for non-compliance with the above rules.

Fourthly, a set of amendments to section 15(3) of the Federal Statute on information, information technologies and the protection of information” (hereinafter the IT Statute)⁴⁵ was adopted. They empowered authorities to apply the procedures originally designed and introduced for wider purposes in 2013 (for cases of the online dissemination of “information with calls to mass disorder, to conduct of extremist activity and to participation in mass (public) events held with a violation of established procedure”).⁴⁶ The original scope of section 15(3) was expanded in 2017 to include “information materials” of “undesirable” international or foreign organisations and the dissemination of information on how to technically circumvent the established bans. It was further expanded in 2019 to include the “dissemination of knowingly inaccurate socially significant information under the guise of reliable messages”.⁴⁷ Taken together, all the above types of information were given the overall description in that provision as being “information, disseminated in violation of the statute”. The IT Statute provides for a two-path procedure to block online access to information.

⁴¹ See Richter A., “News Aggregators restricted in picking news”, IRIS 2016-8:1/32, <http://merlin.obs.coe.int/newsletter/download/218/pdf/en>.

⁴² See Richter A., “Amendments to IT law”, IRIS 2017-8:1/34, <http://merlin.obs.coe.int/newsletter/download/228/pdf/en>.

⁴³ See Richter A., “Media law amended to tighten registration procedures”, <http://merlin.obs.coe.int/newsletter/download/228/pdf/en>.

⁴⁴ See Richter A., “Amendments to IT law”, IRIS 2017-8:1/34, <http://merlin.obs.coe.int/newsletter/download/228/pdf/en>.

⁴⁵ See Richter A., “Blocking Internet Allowed without Court Decision, Bloggers’ law adopted”, <http://merlin.obs.coe.int/newsletter/download/193/pdf/en> <http://merlin.obs.coe.int/newsletter/download/196/pdf/en>

⁴⁶ For more, see Richter Andrei and Richter Anya, *Regulation of online content in the Russian Federation*, IRIS Extra, European Audiovisual Observatory, Strasbourg, 2015, pp. 16-17, <https://rm.coe.int/1680783de3>.

⁴⁷ For more, see Richter A., *Disinformation in the media under Russian law*, IRIS Extra, European Audiovisual Observatory, Strasbourg, 2019, p. 13, <https://rm.coe.int/disinformation-in-the-media-under-russian-law/1680967369>.

The first path, introduced, in particular, with the aim of stopping the dissemination of “information materials” of “undesirable” international or foreign organisations, is as follows:

- 1) In response to a complaint from anyone and without judicial authorisation, the Prosecutor-General or one of his (currently 12) deputies sends a written request to Roskomnadzor to take measures limiting access to the prohibited information.
- 2) Having received the request, Roskomnadzor “without delay”:
 - a. orders the communication service provider, through the existing “hotlines”, to limit access to the prohibited information, providing the domain name, network address and reference to the webpages and detailing the information disseminated in breach of the statute.
 - b. determines the hosting provider or other entity that services the owner of the website with prohibited information;
 - c. submits to the hosting provider or the entity referred to in 2b) an electronic notification in Russian and English about a violation of the procedure for disseminating information with an indication of the domain name and network address, making it possible to identify a website which contains the information disseminated in breach of the statute, as well as page indexes on the Internet enabling such information to be identified, together with the requirement to take measures to take down such information;
 - d. takes note of the date and time of the action, specified in 2c), in a special electronic log file.
- 3) The communication service provider, having received the request specified in 2a) will, without delay, take measures to limit access to the information resource, except in cases where such an access can be centrally stopped by Roskomnadzor directly by technical means, as currently provided for by the 2019 “Sovereign Internet Statute”.⁴⁸
- 4) Within 24 hours of receiving the electronic notification from Roskomnadzor in Russian and English, the hosting provider will inform the owner of the online information resource about the need to take down the information in question.
- 5) Once the “information disseminated in breach of the statute” is taken down, the owner of the information resource (such as the website owner) will send an electronic report to Roskomnadzor.
- 6) Once Roskomnadzor receives such a report and checks its accuracy, it will send the communication service provider, through the existing “hotlines”, a note allowing the earlier limitations on access to the website in question to be lifted. Having received this note, the communication service provider will restore access to the information resource, now clean of the “information, disseminated in breach of the

⁴⁸ See Richter A., “Sovereign Internet Law Adopted”, <http://merlin.obs.coe.int/newsletter/download/246/pdf/en>.



statute”, except in cases where the access can be centrally restored by Roskomnadzor directly by technical means (as in 3)).

Roskomnadzor has provided a specific explanatory notice to all media outlets on the inadmissibility of publishing hyperlinks to the items (such as texts, audiovisual files and pictures) of “undesirable organisations” because that would also be considered as the publication of information disseminated in breach of the statute.⁴⁹

The second path is provided for in the case of “false news” in registered online media outlets and differs from the first in some respects.⁵⁰

Administrative decisions by Roskomnadzor can be appealed in court.

Fifthly, the 2018 Statute “on measures to influence (counter) the unfriendly actions of the United States of America and other foreign countries” (hereinafter the Statute on Countermeasures) was adopted.⁵¹ According to its explanatory memorandum, it was designed as a response to the sanctions introduced in the United States against certain Russian companies and individuals.⁵² It vests the Russian President with the authority to instruct, by decree, the Government of the Russian Federation to compile lists of individuals and legal entities “under the control” of “unfriendly” foreign states that would be subject to particular economic sanctions of the Russian Federation.

So far, the only decree adopted by the President under the Statute has introduced sanctions against Ukrainian individuals and companies.⁵³ It was adopted in response to the sanctions introduced by Ukraine against certain Russian individuals and entities.⁵⁴ The initial sanctions, in particular, were apparently aimed at blocking – without going through a court procedure – the Russian social networks OK.ru and VK.ru, which are popular in Ukraine, as well as the Russian broadcasters still operating in Ukraine via cable.

⁴⁹ Roskomnadzor. “For the attention of the Media: explanations in connection with media publications about blocking access to internet resources with materials of organisations recognised as undesirable in Russia” (Вниманию СМИ: разъяснения в связи с публикациями СМИ об ограничении доступа к интернет-ресурсам с материалами организаций, признанных в России нежелательными), 14 December 2017, <https://rkn.gov.ru/news/rsoc/news53226.htm>.

⁵⁰ For details, see Richter A., *Disinformation in the media under Russian law*, IRIS Extra, European Audiovisual Observatory, Strasbourg, 2019, pp. 12-13, <https://rm.coe.int/disinformation-in-the-media-under-russian-law/1680967369>.

⁵¹ Federal Statute N 127-FZ of 4 June 2018 “on measures to influence (counter) the unfriendly actions of the United States of America and other foreign countries” (О мерах воздействия (противодействия) на недружественные действия Соединенных Штатов Америки и иных иностранных государств), http://www.consultant.ru/document/cons_doc_LAW_299382/.

⁵² Explanatory memorandum to draft Statute N. 441399-7 “on measures to influence (counter) the hostile actions of the United States of America and other foreign countries” (О мерах воздействия (противодействия) на недружественные действия Соединенных Штатов Америки и иных иностранных государств), <https://sozd.duma.gov.ru/bill/441399-7>.

⁵³ Decree No. 592 of the President of the Russian Federation of 22 October 2018 “on applying special economic measures in connection with unfriendly actions of Ukraine towards citizens and legal entities of the Russian Federation” (О применении специальных экономических мер в связи с недружественными действиями Украины в отношении граждан и юридических лиц Российской Федерации), <http://base.garant.ru/77681287/#ixzz6KwFMwl3l>.

⁵⁴ <http://merlin.obs.coe.int/newsletter/download/227/pdf/en>

Among those entities the Russian Government sanctioned was StarLightMedia, the largest broadcasting company in Ukraine, with 6 national TV channels.⁵⁵

A draft statute to introduce criminal sanctions for disseminating information that may lead to further foreign sanctions against Russian companies and individuals was under consideration in the State Duma in 2019 but later withdrawn.⁵⁶

⁵⁵ Ordinance No. 1716-83 of the Government of the Russian Federation of 29 December 2018 “on measures to implement Decree No. 592 of the President of the Russian Federation of 22 October 2018 (О мерах по реализации Указа Президента Российской Федерации от 22 октября 2018 г. N 592), <http://base.garant.ru/72141908/#ixzz6LHStJrAF>.

⁵⁶ Draft Statute No. 710110-7 “on amendments to the Federal Statute ‘on measures to influence (counter) the unfriendly actions of the United States of America and other foreign countries’” (О внесении изменений в Федеральный закон “О мерах воздействия (противодействия) на недружественные действия Соединенных Штатов Америки и иных иностранных государств”), <https://sozd.duma.gov.ru/bill/710110-7>.

4. Status of “foreign agents” for media outlets as such

In November 2017, just days after the US Justice Department compelled RT, an international media network controlled by the Russian State, to register as a “foreign agent” in the United States, a new statute was passed by the Russian Parliament requiring certain foreign media outlets in Russia to also register as foreign agents.⁵⁷

An amendment to the Media Statute that expanded the scope of its provisions was then added to a completely different draft statute after its first reading, thus expanding the scope of the latter, which at that time became what often is called the “Foreign Agents’ Media Statute”. In particular, it laid down, in a new paragraph to section 6 of the Media Statute (“Application of the Statute”)⁵⁸ that reads:

“A legal entity registered in a foreign country or a foreign structure without establishing a legal entity that distributes printed, audio, audiovisual and other messages and materials intended for an unlimited number of persons (foreign media outlet) may be recognised as a foreign mass media service that performs the functions of a foreign agent, regardless of its legal status, if it receives money and/or other assets from foreign states, their government agencies, international and foreign organisations, foreign citizens, stateless persons or persons authorised by them and/or of Russian legal entities that receive money and/or other assets from these sources.”

A “foreign structure” according to this definition might mean, for example, an individual hosting his/her own live stream, a group of persons engaged in an online project, a blogger or a public account on a social network.⁵⁹

The Media Statute has since then allowed the MoJ to apply to the regulation of the activities of foreign media outlets, as appropriate, the provisions on “foreign agent” NCOs contained in the Federal Statute “on Non-Commercial Organisations”. In particular it imposes on “foreign agent media” specific obligations, including:

- labelling information items with a special disclaimer in every publication or post identifying their status as foreign agent media (for broadcasters this now becomes part of the licence requirements);

⁵⁷ “Russia retaliates after RT made to register as ‘foreign agent’ in US”, 5 December 2017, <https://rsf.org/en/news/russia-retaliates-after-rt-made-register-foreign-agent-us>.

⁵⁸ Federal Statute N 327-FZ of 25 November 2017 “on amendments to sections 104 and 153 of the Federal Statute on information, information technologies and the protection of information and section 6 of the Statute of the Russian Federation on the mass media (О внесении изменений в статьи 104 и 153 Федерального закона «Об информации, информационных технологиях и о защите информации и статью 6 Закона Российской Федерации «О средствах массовой информации»», <http://merlin.obs.coe.int/redirect.php?id=18810>.

⁵⁹ Galina Arapova. “Statute on ‘foreign media outlets’ and other changes in the mass communications sphere” (Закон об ‘иностранных СМИ’ и другие изменения законодательства в сфере массовых коммуникаций), AIRP – Alliance of 2018, <http://inagent.tilda.ws/#rec51046847>.

- maintaining separate accounting for funds and property received from foreign sources,
- submitting quarterly reports on their funding and publishing semi-annual activity reports.
- conducting an annual audit and submitting the results;
- submitting reports on activities and the membership of executive bodies every six months and, on a quarterly basis, documents about spending purposes.

The individual reports by “foreign agent media” are to be submitted to the MoJ and then published on its official website.⁶⁰

The amended Media Statute required the MoJ to compile, in coordination with the MFA, a “register of foreign media that perform the functions of a foreign agent” and also publish it on its official website. There are currently eleven media outlets entered in the register, namely The Voice of America, RFE/RL (Radio Free Europe/Radio Liberty) and some of their various regional online services in Russian and some other languages of the Russian Federation. Most of them were entered into the register on 5 December 2017, with some additions made on 15 November 2019 and 11 February 2020.⁶¹ The latest addition to the register was in fact the Russian legal entity established to disseminate RFE/RL items.

The registration of a “foreign agent media outlet” follows a procedure approved by the MoJ ordinance which came into force on 16 April 2018,⁶² although “foreign agent media” were to submit papers for registration by 15 April 2018. This led to at least one administrative case resulting in a fine for RFE/RL.⁶³

It is also important to note that, in addition to administrative penalties, since 2012 Article 330(1) of the Criminal Code of the Russian Federation has made the malicious

⁶⁰ Ministry of Justice of the Russian Federation. “Reports of foreign mass media outlets that are entered into the register of foreign mass media outlets performing the functions of a foreign agent” (Отчеты иностранных средств массовой информации, включенных в реестр иностранных средств массовой информации, выполняющих функции иностранного агента), <http://unro.minjust.ru/InoSMIReports.aspx>.

⁶¹ Ministry of Justice of the Russian Federation. “Register of the foreign media that perform the functions of a foreign agent” (Реестр иностранных средств массовой информации, выполняющих функции иностранного агента), <https://minjust.ru/devatelnost-v-sfere-nekommercheskih-organizacij/reestr-inostrannyh-sredstv-massovoy-informacii>.

⁶² Ordinance No. 58 of the Ministry of Justice of the Russian Federation of 28 March 2018 “on the approval of the procedure for the application to foreign media that perform the functions of a foreign agent of the provisions of Federal Statute No. 7-FZ of 12 January 1996 “on non-commercial organisations”, which regulates the legal status of a non-commercial organisation that performs the functions of a foreign agent” (Об утверждении порядка применения в отношении иностранных средств массовой информации, выполняющих функции иностранного агента, положений Федерального закона от 12 января 1996 г. N 7-ФЗ “О некоммерческих организациях”, регулирующих правовой статус некоммерческой организации, выполняющей функции иностранного агента). It came into force on 16 April 2018. <http://base.garant.ru/71915522/>

⁶³ “RFE/RL President Tom Kent: Russian authorities hinder our activity” (Президент РСЕ/РС Том Кент: “Власти России препятствуют нашей деятельности”), Radio Liberty, 5 July 2018, <https://www.svoboda.org/a/29341157.html>.

evasion of submitting necessary papers to be registered as a foreign agent by the MoJ a criminal offence.⁶⁴ The maximum punishment for this crime is two years’ imprisonment.

Under the requirements of the most recent amendments to the Media Statute, all foreign media that perform the functions of a foreign agent must register a Russian legal entity within a one month from the date of designation as a foreign media outlet and foreign agent.⁶⁵ These Russian legal entities may, in turn, be also recognised as “foreign agent media” and be entered into the above-mentioned register. Failure to comply with these new requirements could lead to a court ruling blocking the offending organisation’s information resources and their distribution.

In addition, the statutory information on a registered media outlet founded with the participation of a Russian legal entity that performs the functions of a foreign agent must state that the media outlet has been established by a foreign media outlet that performs the functions of a foreign agent.⁶⁶

The adoption of the “Foreign Agents’ Media Statute” had a reverse effect on FARA. In 2018, a bill was introduced in the US Congress to increase the transparency requirements for foreign media outlets vying for influence in the United States. The Countering Foreign Propaganda Act of 2018 would require government-controlled foreign media outlets with US operations to file semi-annual disclosures to the Federal Communications Commission (FCC) and to include conspicuous announcements informing American consumers of the foreign government funding the content. The bill would amend the 1934 Communications Act by requiring foreign outlets to disclose their ownership and government ties and the FCC to submit regular reports to Congress conveying that information. It would also obligate foreign outlets to include a “conspicuous statement”, that is to say a disclaimer on broadcasts disclosing that the content is produced on behalf of a foreign government.⁶⁷ The bill was not adopted.⁶⁸

⁶⁴ Article 330(1) of the Criminal Code of the Russian Federation (Уголовный кодекс Российской Федерации), http://www.consultant.ru/document/cons_doc_LAW_10699/b858e785e1074f0000bb4a39d9ae0ec8cd65f067/.

⁶⁵ Section. 3(2) of Federal Statute No. 426-FZ of 2 December 2019 “on amendments to the Statute of the Russian Federation “on the Mass Media” and the Federal Statute “on Information, Information Technologies and the Protection of Information” (О внесении изменений в Закон Российской Федерации “О средствах массовой информации” и Федеральный закон “Об информации, информационных технологиях и о защите информации”),.

<http://www.consultant.ru/cons/cgi/online.cgi?rnd=F31F8FFA34D3AF8184338082268415F0&req=doc&base=LAW&n=339109&dst=100042&fld=134&REFFIELD=134&REFDST=100000214&REFDOC=346768&REFBASE=LAW&stat=refcode%3D16876%3Bdstident%3D100042%3Bindex%3D448#8qbgitje1c>. By 1 February 2020 all such media registered prior to the introduction of this requirement also had to establish such a Russian entity.

⁶⁶ Section 27 of the Statute of the Russian Federation on the mass media” (О средствах массовой информации), with amendments dated 2 December 2019. http://www.consultant.ru/document/cons_doc_LAW_1511/.

⁶⁷ Bethany Allen-Ebrahimian, et.al. “New House Bills Take Aim at Foreign Propaganda: Two new measures try to provide Americans with greater disclosure about foreign influence.”, *Foreign Policy*, 20 March 2018, <https://foreignpolicy.com/2018/03/20/new-house-bill-takes-aim-at-foreign-propaganda-russia-today-foreign-agent-manafort-fara/>.

⁶⁸ H.R. 5354 (IH), Countering Foreign Propaganda Act of 2018, <https://www.govinfo.gov/app/details/BILLS-115hr5354ih/summary>.

5. “Foreign agent” status of individuals involved in media-like activity

The above-mentioned most recent set of amendments to the Media Statute further expanded its section 6 by allowing individuals to be included in the scope of the provisions governing “foreign agents’ media”.⁶⁹ The amendments were drafted by a group of State Duma deputies, including Leonid Levin, a secretary of the Russian Union of Journalists, and Pyotr Tolstoy, a popular TV presenter. It is worth pointing out that in contrast to customary practice, the explanatory memorandum to the bill did not state the reasons for its having been tabled in the Parliament.⁷⁰

Section 6 also applies to the following two types of private individuals who can be designated as “foreign media performing the functions of a foreign agent”:

- 1) Those involved in the distribution or production of the items of “foreign-agents’ media”.
- 2) Those “who disseminate printed, audio, audiovisual and other reports and materials (including with the use of the information-telecommunication network Internet) intended for an unlimited range of persons” (this wording partly repeats the legal definition of a mass media outlet in section 2).

Both types of individuals qualify only if they (also) receive funds and/or property from foreign states, their public entities, international or foreign organisations, foreign citizens, stateless persons or persons authorised by them, “foreign agents’ media” and/or Russian legal entities that are established by them and/or receive funds and/or property from these sources. The payment must not necessarily be linked to the distribution or production of the reports and information items.⁷¹

The amendments allow the MoJ to apply to these individuals the relevant provisions on foreign agents of the Statute on NCOs. In particular, those persons must be entered by the MoJ, in coordination with the MFA, into the Register of foreign media that perform

⁶⁹ Federal Statute N 426-FZ of 2 December 2019 “on amendments to the Statute of the Russian Federation on the mass media and the Federal Statute on information, information technologies and the protection of information (О внесении изменений в Закон Российской Федерации “О средствах массовой информации” и Федеральный закон “Об информации, информационных технологиях и о защите информации”), <http://publication.pravo.gov.ru/Document/View/0001201912020074>.

⁷⁰ Explanatory Memorandum to the draft Federal Statute on amendments to the Statute of the Russian Federation on the mass media” and the Federal Statute on information, information technologies and the protection of information (Пояснительная записка к проекту федерального закона “О внесении изменений в Закон Российской Федерации “О средствах массовой информации” и Федеральный закон “Об информации, информационных технологиях и о защите информации”), 20 December 2017.

⁷¹ Federal Statute No. 426-FZ of 2 December 2019 on amendments to the Statute of the Russian Federation on the mass media and the Federal Statute “on information, information technologies and the protection of information (О внесении изменений в Закон Российской Федерации “О средствах массовой информации” и Федеральный закон “Об информации, информационных технологиях и о защите информации”), <http://publication.pravo.gov.ru/Document/View/0001201912020074>.

functions of a foreign agent. Once they meet the definition, they must be required to describe themselves as performing the functions of foreign agents. Like in the case of relevant legal entities, they must establish – within a month – specific legal entities under Russian jurisdiction to publicly disseminate their items (including online) and also designate them as “foreign agents’ media”.

Their activities must then be monitored in accordance with the provisions of the Statute on NCOs that relate to organisations performing the functions of a foreign agent. As laid down in other federal statutes that now refer to such persons, they are subject to a specific legal regime for participation, as “foreign agents” (and/or entities), in activities related to elections and political parties, national security and intelligence work, public scrutiny of state bodies and anti-corruption activities, etc. They also face stricter checks on their taxation, audit and book-keeping procedures.

Additional amendments to the IT Statute (section 15(3)) have enabled Roskomnadzor to block access to information distributed by “foreign agents’ media”, if this material is not properly labelled as such. The procedure for such blocking is yet to be approved by the government.

Another statute, adopted in the same package, introduced into the Code of Administrative Offences, from February 2020, a new Article 19.34.1 (“Violation of the procedure for the activity of a foreign mass media outlet acting as a foreign agent and/or a Russian legal entity that has been established by it and acts as a foreign agent”).⁷² It extends to “foreign media agents” the application of the legal framework that was established in 2012 for NCOs that fail to register as foreign agents and to disseminate the required disclaimer. Article 19.34.1 refers to both “foreign agent” media and individuals and states that individuals who do not comply with the requirement relating to “foreign agent media” regime face a fine of RUB 10 000, while their officers or managers shall be fined RUB 50 000, and legal entities RUB 500 000. A second violation will result in fines of RUB 50 000, RUB 100 000 and RUB 1 million respectively. It also lays down penalties for “gross breaches” of the statute, by which is meant three or more breaches in a year. There is provision for a fine of RUB 100 000 or 15 days administrative arrest for individuals; fines of RUB 200,000 for officers or managers and RUB 5 million for legal entities. Foreign “structures” which are not legal entities shall be penalised in the same manner as for individuals. The fines shall be imposed by officials of the MoJ.

While this new statute has not yet been applied in practice and no individuals have been added to the Register of foreign media that perform functions of a foreign agent, statements emanating from the Parliament suggest that it will be used selectively. One of the sponsors of the bill, Andrei Klimov, the chair of the Provisional Commission for the Protection of State Sovereignty and the Prevention of Intervention in the Internal Affairs of the Russian Federation (see below), explained in an interview: “If an individual reports on

⁷² Federal Statute No. 443-FZ of 16 December 2019 on amendments to the Code of Administrative Offences of the Russian Federation (О внесении изменений в Кодекс Российской Федерации об административных правонарушениях), http://www.consultant.ru/document/cons_doc_LAW_340243/3d0cac60971a511280cbba229d9b6329c07731f7/#dst100011.



an ice hockey match or on catching butterflies, no one will recognise him as a foreign agent”.⁷³

⁷³ Ksenia Veretennikova, Elena Rozhkova, “Deputies are ready to exchange foreign agents” (Депутаты готовы к обмену иноагентами), *Kommersant*, 19 November 2019, <https://www.kommersant.ru/doc/4163652?query=%22иностранный%20агент%22%20СМИ>.

6. Relevant activities of the parliamentary commissions

Related to the most recent amendments of the statute requiring foreign media outlets in Russia to also register as foreign agents is the work of the temporary “Commission on the Investigation of Foreign Interference in Russia’s Internal Affairs” in the State Duma (hereinafter the Commission), which was established in August 2019 and still mostly carries out investigations into and hearings on the activities of foreign media and social networks.⁷⁴

Just weeks after being set up, the Commission convened a meeting to report on “the facts of external interference” by “the German international broadcaster Deutsche Welle”.⁷⁵ Its main transgression, apparently, was a call (“Moscow, Get Out [in the streets]!”) for participation in a demonstration in Moscow, which was not authorised by the authorities and was posted on the broadcaster’s Twitter account.⁷⁶ Signs of interference were also found in the Russian-language reports, found on the DW website, concerning a blogger who had called for reprisals against children of law enforcement officers (he was sentenced to five years’ imprisonment for the post under Article 282 of the Criminal Code of the Russian Federation). The official news release concerning the meeting quotes the chair of the Commission as saying:

“[W]e will send materials to the Ministry of Justice of Russia with a request to include Deutsche Welle in the list of media performing the functions of a foreign agent. We believe that these proposals are justified and equal to the measures taken by the Western countries to suppress the rights of Russian media, such as Russia Today and Sputnik, and are aimed at protecting the national interests of the Russian Federation.”⁷⁷

While this proposal was unanimously supported, the “Register of foreign media that perform the functions of a foreign agent” still contains only US media outlets (see above).

⁷⁴ State Duma of the Russian Federation. “Leonid Slutskiy: we will use the parliamentary resource to resist attempts to interfere in the elections”, 19 August 2019, <http://duma.gov.ru/en/news/46042/>; “The State Duma has established the Commission on the Investigation of Foreign Interference in Russia’s Internal Affairs”, 10 September 2019, <http://duma.gov.ru/en/news/46176/>. The Commission consists of representatives of all four political groups and is headed by the Chair of the permanent Committee on Security and Corruption Control Vasilii Piskarev.

⁷⁵ State Duma of the Russian Federation. “Commission on Foreign Interference in Internal Affairs has completed its investigation into the Deutsche Welle case”, 27 September 2019, <http://duma.gov.ru/en/news/46406/>.

⁷⁶ Nikita Prokshin, “State Duma pressures Deutsche Welle” (Госдума гонит немецкую волну), *Kommersant*, 28 September 2019, <https://www.kommersant.ru/doc/4109239?query=%22иностранный%20агент%22%20СМИ>.

⁷⁷ State Duma of the Russian Federation. “Commission on Foreign Interference in Internal Affairs has completed its investigation into the Deutsche Welle case”, 27 September 2019, <http://duma.gov.ru/en/news/46406/>.



Most recently the Commission worked on “information about the incorrect coverage of our country’s actions to combat coronavirus infection by some Western media.”⁷⁸

Apparently, many of the items of evidence in the Commission’s investigations into the foreign media’s interference come from reports in the Russian national press. At yet another meeting of the Commission, its Chair noted that “the parliamentarians checked news content, which revealed ten thousand negative items of foreign media in Russian. At the same time, the Commission managed to find only 100 neutral and positive items, that is a hundred times less...”⁷⁹

Critical items of foreign media targeting Russian audiences are also a matter of concern for another parliamentary commission: the Provisional Commission for the Protection of State Sovereignty and the Prevention of Intervention in the Internal Affairs of the Russian Federation was established in the Federation Council, the upper house of the Parliament, in June 2017.⁸⁰ Its latest annual report makes the following conclusion:

“The results of monitoring by the Commission on Foreign Media, which worked during this period in Russian and in the languages of the peoples of Russia and contained beyond any doubt signs of propaganda activities, made it possible to identify 12 media outlets, which are basically most active among those engaged in interference in the internal affairs of the Russian Federation. Eleven of them are directly financed from foreign state funds or budgets.”⁸¹

The twelve outlets referred to in the report are the Russian services of the Voice of America, RFE/RL and their media projects (already entered into the “Register of foreign media that perform functions of a foreign agent”), as well as the BBC, Deutsche Welle and France Médias Monde. The report notes that all of them receive direct state funding from NATO member states, while another addition, Meduza, a news portal in Russian, is described as “registered in Latvia (a NATO member state)”.⁸² The report also cites some of the statutes reviewed above as “related to the Commission’s activities”.⁸³

⁷⁸ State Duma of the Russian Federation. “Commission on the Investigation of Foreign Interference is reviewing the publications of foreign media about the fight against coronavirus in Russia”, 5 April 2020, <http://duma.gov.ru/en/news/48227/>.

⁷⁹ State Duma of the Russian Federation. “Russian media provided the members of the State Duma with information about the facts of foreign interference”, 17 October 2019, <http://duma.gov.ru/en/news/46661/>.

⁸⁰ Federation Council of the Russian Federation. The official webpage of the Provisional Commission for the Protection of State Sovereignty and the Prevention of Intervention in the Internal Affairs of the Russian Federation (Временная комиссия Совета Федерации по защите государственного суверенитета и предотвращению вмешательства во внутренние дела Российской Федерации), http://council.gov.ru/structure/commissions/iccf_def/.

⁸¹ Annual Report of the Provisional Commission for the Protection of State Sovereignty and the Prevention of Intervention in the Internal Affairs of the Russian Federation (Ежегодный доклад Временной комиссии Совета Федерации по защите государственного суверенитета и предотвращению вмешательства во внутренние дела Российской Федерации), 30 May 2019, p. 19, <http://council.gov.ru/media/files/LlkqU7Df0m31nfsWAg80N5d4TKFhy8UG.pdf>.

⁸² Ibid.

⁸³ Op.cit., pp. 75-76.

7. Constitutional Court review

In 2013, a number of applicants, including Russia’s then federal human rights ombudsman, Vladimir Lukin, and the head of a media development NCO, challenged the “Foreign Agents Statute” in the Constitutional Court of the Russian Federation, claiming that its provisions did not correspond to Articles 13(1 to 4), 19 (1) and (2), 21(1), 29(1) and (3), 30(1), 32(1), 45, 46(1) and (2), 49, 51 and 55(3) of the Constitution.⁸⁴ In 2014, the court upheld the Statute, finding that the “foreign agent” designation was in line with the public interest and the interests of state sovereignty. It also found that there were no constitutional grounds for contending that the term “foreign agent” had negative connotations from the Soviet era and that, therefore, its use was “not intended to persecute or discredit” organisations. This opinion was based on the following arguments:

“Considering that the Russian Federation, as directly follows from the preamble to the Constitution of the Russian Federation⁸⁵, does not regard itself as being outside the world community, the receipt of foreign funding by Russian non-profit organisations involved in political activities ... cannot in itself cast doubt on the loyalty of such organisations to their state. Anything else would not only be incompatible with the constitutional necessity to ensure mutual trust and respect of citizens (their associations) and the state, but would also contradict Article 21 (para. 1) of the Constitution of the Russian Federation, which imposes on the state the duty to protect the individual’s dignity and not allow him or her to be disparaged. Therefore, the legal model of a non-commercial organisation performing the functions of a foreign agent does not imply a negative assessment of such an organisation by the state. It is not designed to form a negative attitude towards its political activities and, therefore, cannot be perceived as a manifestation of distrust or a desire to discredit such a non-commercial organisation and/or the purpose of its activities.”⁸⁶

⁸⁴ See the official translations of the Constitution into English, French and German at <http://www.constitution.ru/en/10003000-01.htm>

⁸⁵ Ibid.

⁸⁶ Judgment No. 10-P of the Constitutional Court of the Russian Federation of 8 April 2014 “on the case regarding the constitutionality of sections 6(2) and 32(7) of the Federal Statute on Non-Commercial Organisations, section 29(6) of the Federal Statute on Public Associations and Article 19.34(1) of the Code of Administrative Offences of the Russian Federation in connection with complaints lodged by the High Commissioner for Human Rights in the Russian Federation, the Foundation Kostroma Centre to Support Public Initiatives and the citizens L.G. Kuzmina, S.M. Smirensky, and V.P. Yukechev” (По делу о проверке конституционности положений пункта 6 статьи 2 и пункта 7 статьи 32 Федерального закона “О некоммерческих организациях”, части шестой статьи 29 Федерального закона “Об общественных объединениях” и части 1 статьи 19.34 Кодекса Российской Федерации об административных правонарушениях в связи с жалобами Уполномоченного по правам человека в Российской Федерации, фонда “Костромской центр поддержки общественных инициатив”, граждан Л.Г. Кузьминой, С.М. Смиренского и В.П. Юкечева), пара 3.1.
<http://www.consultant.ru/cons/cgi/online.cgi?rnd=8F4A0DFFBDA09E4AB89099FC2A8A7EFC&req=doc&base=LAW&n=161690&REFIELD=134&REFDST=100015&REFDOC=157962&REFBASE=LAW&stat=refcode%3D10881%3Bindex%3D38#8d2hp14zfc>.



In his dissenting opinion, Judge Vladimir Yaroslavtsev disagreed with the above interpretation of the “Foreign Agents Statute”, arguing that the concept of “foreign agent” was arbitrary and had no objective and reasonable justification. He went on to say that in this case the lawmaker had contravened the constitutional requirement that the state had the duty to protect a person’s dignity and not allow it to be denigrated:

“We believe that the legal model of a non-commercial organisation performing the functions of a foreign agent implies a negative assessment of such an organisation by the state, is designed to form a negative attitude towards its political activities and, therefore, can be perceived as a manifestation of distrust or a desire to discredit such a non-commercial organisation and/or the goals of its activities.”⁸⁷

The Constitutional Court issued another judgment on the constitutionality of the provisions adopted in 2014 in the Media Statute that drastically limited foreign ownership in the media.⁸⁸ This time the applicants claimed that section 19(1) of the Media Statute did not meet the requirements of Articles 6(2) and (3), 19(1), 28, 29(1),(3), (4) and (5), 34(1), 35(1), (2) and (3), 44(1) and (2), 45, 46(1), 54(1), 55(2) and (3), 56(3) and 62(2) of the Constitution.⁸⁹ However, it found only minor problems with the amended article, such as the introduction therein of an unidentified notion of a “mass media participant”, but otherwise agreed with its legal provisions. The judges argued their position by referring to the doctrine that national security today includes informational security, and informational security might be in danger, if the media outlets are controlled by foreign entities. They also referred to the special role played by the media in forming public opinion, especially during election campaigning (point 3 of the Judgment).

In his [dissenting] opinion, Judge Konstantin Aranovsky noted that the State Duma had provided no reliable evidence that would allow the Court to establish the threats that would correspond to the contested restrictions. He therefore cast doubt on the constitutional grounds for the latter. He further observed:

“It is not enough to justify by fears alone legislative decisions that lead to exceptions to human rights. Such feelings can be respected but no one is obliged to share them and, even more, see their rights restricted on such grounds. Even if it is sincere, a phobia or a panic, with due respect and sympathy for those who experience them, does not establish by itself the aims of protecting constitutional values to the extent that would allow limiting rights and freedoms. The rights and freedoms of a person and a citizen would become defenceless

⁸⁷ Dissenting opinion of the Judge of the Constitutional Court of the Russian Federation V.G. Yaroslavtsev (Особое мнение судьи Конституционного суда Российской Федерации В.Г. Ярославцева). Op.cit.

⁸⁸ Judgment No. 4-P of the Constitutional Court of the Russian Federation of 17 January 2019 “on the case regarding the constitutionality of section 19(1) of the Statute of the Russian Federation on the Mass Media in connection with a complaint by the citizen E.G. Finkelstein” (По делу о проверке конституционности статьи 19.1 Закона Российской Федерации “О средствах массовой информации” в связи с жалобой гражданина Е.Г. Финкельштейна), <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&cacheid=1EE9E603DA2360118ED4348241544543&S ORTTYPE=0&BASENODE=1&ts=3453341505147876147340765&base=LAW&n=316142&rnd=2AEF49DC07E7D2DF6B4DE36C5F03F1D0#26e01dfiw4g>.

⁸⁹ See the official translations of the Constitution into English, French and German at <http://www.constitution.ru/en/10003000-01.htm>.

if paragraph 3 of Article 55 of the Constitution of the Russian Federation⁹⁰ allowed us to treat just a subjective wish motivated by a restless premonition as a sufficient protective aim...⁹¹

⁹⁰ “Human and civil rights and freedoms may be limited by federal law only to the extent necessary for the protection of the fundamental principles of the constitutional order, morality, health, rights and lawful interests of other people and for ensuring the defence of the country and the security of the State.”

⁹¹ Opinion of the Judge of the Constitutional Court of the Russian Federation K.V. Aranovsky on the case regarding the constitutionality of section 19(1) of the Statute of the Russian Federation “on the Mass Media” in connection with a complaint by the citizen E.G. Finkelstein” (Мнение судьи Конституционного суда Российской Федерации К.В. Арановского по делу о проверке конституционности статьи 19.1 Закона Российской Федерации “О средствах массовой информации” в связи с жалобой гражданина Е.Г. Финкельштейна), 17 January 2019, <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&cacheid=1EE9E603DA2360118ED4348241544543&SORTTYPE=0&BASENODE=1&ts=3453341505147876147340765&base=LAW&n=316142&rnd=2AEF49DC07E7D2DF6B4DE36C5F03F1D0#26e01dfiw4g>.

8. Administrative practice and case law

Roskomnadzor disclosed that in 2018 it had received 218 reports on foreign funding from media outlets, including 44 from broadcasters. In two cases it imposed fines for a failure to report, including a massive fine in late 2018 against the publisher of *The New Times* online magazine⁹² which was fined over a failure to provide timely information to Roskomnadzor about its foreign financing. It had been slapped with a fine of RUB 22 250 000 (at that time, about EUR 300 000), reportedly the largest fine in the history of Russian media.⁹³ The editor was also fined RUB 30 000. The ruling was confirmed on appeal in the district court and in the Moscow City Court of. The Supreme Court found no grounds to intervene.⁹⁴ A complaint related to the court decisions is currently pending with the European Court of Human Rights.

The MoJ reports on the practice of imposing protocols on violations of relevant requirements of the legislation by “foreign agent” NCOs. For example, in 2019 a failure to include “foreign agent” disclaimers on their social media accounts and in publications led to 49 (in 2018: 3) protocols concerning 8 NCOs (in 2018: 2) and 6 NCO officers (in 2018: 1). Fines for this violation were imposed on 2 NCOs (in 2018: 2) and 1 NCO officer (in 2018: 1).⁹⁵ Roskomnadzor confirms these figures and adds that the violators of the requirement to publish a disclaimer were fined a total of RUB 13.1 million in 2018 (latest available data). In 2017, the figure was: RUB 1.8 million).⁹⁶

There is extensive case law on the enforcement of provisions concerning the Foreign Agents Statute, including those on compulsory disclaimers. The courts have stated in response to applications from Roskomnadzor that “foreign agent” NCOs were liable for not providing disclaimers concerning information items (stories) about their activities, even if the items were published (disseminated) by third parties. The courts have affirmed that all the webpages containing the items, and not just the initial main page of the NCO in question, should carry the disclaimer “Organisation is listed in the Ministry of Justice of the Russian Federation’s Register of non-commercial organisations that perform the functions

⁹² Human Rights Watch. *World Report 2020 (Events of 2019)*. 14 January 2020, <https://www.hrw.org/world-report/2020/country-chapters/russia>.

⁹³ Yevgenia Albats. “The case of the 22 mln. fine for *The New Times*” (Дело о 22 млн штрафа The New Times). / *New Times*, 5 November 2018, <https://newtimes.ru/articles/detail/171867>.

⁹⁴ Judgment of the Supreme Court of the Russian Federation of 6 May 2019 in case no. 5-AD-19-21, <https://legalacts.ru/sud/postanovlenie-verkhovnogo-suda-rf-ot-06052019-n-5-ad19-21/>.

⁹⁵ Ministry of Justice of the Russian Federation. “Report on the implementation of state control (supervision) by the Ministry of Justice of the Russian Federation over the activities of non-commercial organisations and on the effectiveness of such control (supervision) in 2019” (Доклад об осуществлении Министерством юстиции Российской Федерации государственного контроля (надзора) в сфере деятельности некоммерческих организаций и об эффективности такого контроля (надзора) в 2019 году), 16 March 2020, <https://minjust.ru/ru/print/448883>.

⁹⁶ Roskomnadzor. Public Report for 2018 (Публичный доклад Федеральной службы по надзору в сфере связи, информационных технологий и массовых коммуникаций - 2018). 15 April 2019, p. 56, https://rkn.gov.ru/docs/doc_2406.pdf.

of a foreign agent”. Such a disclaimer is also compulsory in the case of the NCOs social network accounts, such as Facebook, Twitter and Instagram.⁹⁷

For example, in Krasnodar the regional association of college and university alumni and its chair were fined RUB 150 000 and RUB 100 000 respectively by a district court for their failure to put the disclaimer of being a foreign agent on every webpage of its official website.⁹⁸ The regional court struck down the decision on appeal, among its arguments being that the lower court did not take into account the disclaimer duly published on the first page of the website and the fact that the information items were from the period before the NCO was registered as a foreign agent. It returned the case for a new hearing in the same court.⁹⁹ Having reviewed the case, in July 2016 the district court fined the chair RUB 50 000.¹⁰⁰ This decision was confirmed on appeal in September 2016 by the regional court, which pointed out that “some of the NCO’s items” were published without the required disclaimer.¹⁰¹ It should be noted that this NCO has filed judicial appeals since 2014 against the MoI’s decision to enter it into the Register of foreign agents, and in April 2016 it was deleted from it as it had “ceased performing the functions of a foreign agent”. Its website currently carries no items of the NCO.

In a more recent case, the Samara district court fined the NCO Park Gagarina and its director RUB 500 000 for the publication by Park Gagarina’s online news outlet of items in the Vkontakte social network without properly labelling them as materials provided by a “foreign agent”.¹⁰²

⁹⁷ See, for example, “Fines for not labelling ‘Memorial’ resources in 2019-2020”, a compilation of administrative fines and court cases against just one NCO, “Memorial”, for non-compliance with the requirement to publish a disclaimer (Штрафы за немаркировку ‘мемориальных’ ресурсов. 2019-2020), <https://docs.google.com/document/d/1a3eeyUiPMUNxZt7zZbVWTPRvOcaug1BOUULtfpzbe0/edit>. As of 28 April 2020, this particular NCO had been fined a total of RUB 4.7 million following 26 court appearances.

⁹⁸ Анна Перова, “Foreign agent argues with Roskomnadzor on the point of entry” (Иностранный агент спорит с Роскомнадзором о точке входа). / Kommersant, 4 March 2016, <https://www.kommersant.ru/doc/2931701>.

⁹⁹ Krasnodar Territorial Court, Decision No. 12-1589/2016 of 18 May 2016, <https://sudact.ru/regular/doc/85KLwGqJsvlj/>

¹⁰⁰ Georgy Ivanushkin, “Court fined Chair of Krasnodar Regional Public Organisation of College Graduates” (Суд оштрафовал председателя Краснодарской краевой общественной организации выпускников вузов). / Agency for Social Information, 27 July 2016, <https://www.asi.org.ru/news/2016/07/27/134929/>.

¹⁰¹ Krasnodar Territorial Court, Decision No. 12-3732/2016 of 21 September 2016, <https://sudact.ru/regular/doc/BxCPn6DJRLR>.

¹⁰² “NCO Park Gagarina and its director fined as ‘foreign agents’” (АНО “Парк Гагарина” и ее директора оштрафовали как “иностранцев”) / Park Gagarina online media, 19 February 2020, <https://www.parkgagarina.info/index.php/politika/30853-ano-park-gagarina-i-ee-direktora-oshtrafovali-kak-inostrannykh-agentov.html>.

9. International response

In the words of Amnesty International, Russia’s statute on foreign agents “has had a knock-on effect in other countries in the post-Soviet space and beyond, leading to the introduction of new legislation to restrict foreign funding”. It listed the statutes adopted in Azerbaijan (2013), Kazakhstan (2016), Tajikistan (2015), Belarus (2015) as examples of this effect.¹⁰³

Hungary adopted its Law on the transparency of organisations financed from abroad in 2017.¹⁰⁴ It requires, inter alia, that the disclaimer “organisation receiving foreign funding” should be displayed on the website and on the publications of such entities. National NGOs criticised this requirement by saying that it causes an effect that their opinions “will be handicapped: they will be always coupled with the discrediting message stating that the source of the opinions expressed are serving other interests than those of the Hungarian nation and society”.¹⁰⁵ Eighteen NGOs filed a complaint against the law at the European Court of Human Rights in January 2018. In particular, they referred to the Council of Europe Recommendation in relation to NGOs stating: “All reporting should be subject to a duty to respect the rights of donors, beneficiaries and staff, as well as the right to protect legitimate business confidentiality”.¹⁰⁶

There were also a number of failed attempts to follow the Russian Federation’s policy. In 2014, the provisions on “non-governmental association performing functions of a foreign agent” were briefly introduced into the 2013 Statute of Ukraine on public associations which were almost identical to the Russian “Foreign Agents Statute”. Concerning their taxation, a special regime was also introduced into the Ukrainian Tax Code. Both statutes were repealed two weeks later under pressure from the Maidan protesters.¹⁰⁷

In 2013, the draft statute “on additions and amendments to certain legislative statutes of the Kyrgyz Republic” proposed changes which taken together would require civil society groups and NCOs involved in undefined “political” activities to register as “foreign agents” and provide a relevant disclaimer on all printed materials. It would also require the

¹⁰³ Amnesty International. “Laws designed to silence: The global crackdown on civil society organizations”, London, 2019, p. 22, https://www.amnesty.at/media/5004/amnesty_laws_designed_to_silence_bericht-februar-2018.pdf.

¹⁰⁴ See the text of “2017 LXXVI Law on the transparency of organisations financed from abroad”,
<https://net.jogtar.hu/jogszabaly?docid=a1700076.tv#lbj1idea8c>.

¹⁰⁵ Hungarian Helsinki Committee and Hungarian Civil Liberties Union, “SHORT ANALYSIS OF THE PROPOSED HUNGARIAN BILL ON FOREIGN FUNDED NON-GOVERNMENTAL ORGANIZATIONS.” 11 April 2017.
<https://www.helsinki.hu/wp-content/uploads/NGO-Bill-HU-short-analysis-0411-final.pdf>.

¹⁰⁶ Recommendation [CM/Rec\(2007\)14](#) of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers’ Deputies, <https://www.coe.int/en/web/ingo/legal-standards-for-ngos>,

¹⁰⁷ Statute of Ukraine No. 721-VII of 16 January 2014 “on amendments to the Statute of Ukraine “on the judiciary and the status of judges” and procedural laws on additional measures regarding the security of the citizens” (О внесении изменений в Закон Украины “О судостроительстве и статусе судей” и процессуальных законов о дополнительных мерах защиты безопасности граждан). See the text (in Russian) at http://base.spinform.ru/show_doc.fwx?rgn=65129.

national Ministry of Justice to conduct a wide-ranging set of audits and checks on any group it determines to be a “foreign agent.” A review of the bill, made jointly by intergovernmental organizations, found that “the labelling of a non-commercial organization as foreign agent and the obligation for it to include a reference to the ‘foreign agent origin’ in any materials published or distributed by such a NCO..., together with the additional reporting obligations which ensue from this labelling... undoubtedly represent an interference with the exercise of the right to freedom of association and of freedom of expression without discrimination”.¹⁰⁸ The introduction of the “foreign agent” concept, following harsh criticism from both national and international stakeholders, was voted down in the second reading, while the entire bill failed to be adopted in the third reading in 2016.¹⁰⁹

In Slovakia, the parliament debated in 2016 an amendment to the law on non-commercial organisations, which introduced a term “foreign agent” labelling NCOs that are subsidiaries of foreign natural or legal persons and “act on order, request, under influence or control of a foreign natural or legal person” and are “funded by a foreign agent”. It was also proposed that all activities and information materials must contain an identifying mention “Attention! Foreign agent” in a font as big as the name of the organisation. The amendment also proposed the creation of a registry of “foreign agents” and a possibility for courts to “disband an organisation if it constitutes a threat to the constitutional order, security or defence of the Slovak Republic.” The proposal failed to pass.¹¹⁰

¹⁰⁸ European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). Joint Interim Opinion on the Draft Law amending the Law on Non-Commercial Organisations and other Legislative Acts of the Kyrgyz Republic. Strasbourg, Warsaw, 7 October 2013. CDL(2013)049. Venice Commission Opinion no. 738/2013 ODIHR Opinion-Nr.: FOASS-KYR/239/2013, para 47., <https://www.legislationline.org/legislation/section/legislation/country/20/topic/1>.

¹⁰⁹ “Kyrgyzstan to renounce the use of term “foreign agent” in relation to the NCOs” (Кыргызстан отказывается от термина “иностраннный агент” в отношении НКО), Ferghana.Ru news agency, 15 April 2016, <https://www.ferghananews.com/news/24663>.

¹¹⁰ Elena Gallová Kriglerová, et. al., “Standing and operational space of non-governmental organisations (NGOs) in contributing to respecting and promoting fundamental rights in EU Member States: Slovakia.” Center for the Research of Ethnicity and Culture European Union Agency for Fundamental Rights (FRA), 2017, https://fra.europa.eu/sites/default/files/fra_uploads/slovakia-civil-space_en.pdf.

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