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Explanatory note

Русская версия [Пояснительная записка и законопроект «Об отмене законодательства об иноагентах в России»](#)

With this draft of the federal law «On Ammending Certain Legislative Acts of the Russian Federation and Recognizing Invalid Certain Legislative Acts (Provisions of Legislative Acts) of the Russian Federation in order to Exclude Provisions on Persons Performing the Functions of a Foreign Agent», aimed at improving legislation in the sphere of functioning of non-profit organizations, public associations, the media, it is proposed to exclude from the legislation the concept of a person «performing the functions of a foreign agent» and the norms associated with this concept.

The current framework of legislation regulating the activities of persons «performing the functions of a foreign agent» at the same time does not fulfill the declared by the legislator goal of increasing the transparency and accountability of non-profit organizations, public associations, the media and, because of the discriminatory norms laid down in the legislation, contradicts the Russian laws and the obligations

developed over 9 years causes irreparable damage to society and the interests of the state. This draft law proposes to resolve the existing legal conflict by removing the relevant concept from the legislation and bringing all legislative acts and bylaws arising from it in accordance with Russian legal system and international law.

Currently, Russian legislation provides for four registers of persons «performing the function of a foreign agent»: the register of non-profit organizations, the media (which can include both legal entities and individuals), unregistered public associations and individuals. Persons are entered into the registers without prior notice, extrajudicially.

The concept of a «non-profit organization performing the function of a foreign agent» was introduced into legislation in 2012 «in order to ensure openness and publicity in the activities of non-profit organizations», to «organize proper public control» over their work. In the explanatory note to the relevant draft law No. 102 766-6, it was separately emphasized that the draft «does not worsen the position of non-profit organizations, introducing the necessary publicity and transparency of financing from foreign sources Russian non-profit organizations participating in political activities.»

The concept of «mass media performing the functions of a foreign agent» was introduced in 2017 during the discussion of draft law No. 275 060-7. The stated purpose of this amendment is the possibility of introducing «mirror measures» in response to the restrictions on the activities of «Russia Today» and «Sputnik» in the United States. During the consideration of the draft law, the authors of the amendments expressed the hope that «cases of application of this law will be isolated.» During the consideration of the draft law No. 345 523-7, it was also proposed to introduce

consideration of the draft law in the State Duma, its authors emphasized that the coincidence of the necessary criteria would not be enough to include an individual in the register, arguing that «even if both conditions completely coincide, mirroring in relation to the impact on our media from foreign states is primary here.»

The concepts of «an unregistered public association performing the function of a foreign agent» and «an individual performing the function of a foreign agent» were introduced in 2020 within the framework of draft law No. 1 057 914-7. The explanatory note stated that «the proposed changes will increase the legality and transparency in the activities of public associations, non-profit organizations and individuals supported from abroad and participating in political processes in the Russian Federation.» When considering the draft law in the State Duma, one of its authors called the proposed measures «delicate and non-aggressive protection, because this draft law categorically does not prohibit anything, it just says: if you are engaged in political activity, register, tell about it and criticize the authorities, if you like, or on the contrary, support the system of power, you can do it. But you have to be honest with your citizens, don't you? »

Thus, the legislation on persons performing the functions of foreign agents was introduced and supplemented with the aim of increasing the transparency of the activities of «persons supported from abroad and participating in political processes» and increasing public control over their activities. At the same time, the non-restrictive approach was emphasized: that these norms are not aimed at restricting, and even more so, terminating the activities of persons included in the register, and in the case of the media register, they will be applied in exceptional cases due to the foreign policy of the Russian Federation.

restricting the activities of persons «performing the functions of a foreign agent» includes more than 50 legislative acts at the federal level. In the course of numerous amendments and new legislative initiatives, the relevant concept was included in 8 articles of the Code of Administrative Offenses, 2 articles of the Criminal Code of the Russian Federation.

As of December 7, 2021, there were 75 organizations in the register of non-profit organizations performing the functions of a foreign agent, 3 in the register of unregistered public associations, 103 in the register of media: 27 media outlets, 67 individuals and 9 legal entities created by individuals at the request of the law.

According to the Judicial Department of the Supreme Court, in just four years from the beginning of 2017 to mid-2021, the first instance courts issued fines of more than 30 million rubles to NPOs and their heads in cases related to violation of the marking requirement or of the failure to entry into the register (19.34 of CAO), the average fine increased from 190 thousand rubles in 2017 to 350 thousand rubles in the first half of 2021. In total, during this period first instance courts considered 229 cases under Article 19.34 of the CAO, in 158 cases (69%) indictments were issued, 25 cases (11%) were terminated.

On November 29, Roskomnadzor reported that since the beginning of the year, 920 protocols were drawn up on the absence of marking on materials of persons included in the register of media outlets performing the function of a foreign agent (Article 19.34.1 of the CAO of the Russian Federation), the amount of fines imposed by the courts amounted to more than 300 million rubles.

The problems with the boundaries of the concepts of «political activity», «foreign funding» and other concepts

persons in the registers of «foreign agents» are the dissemination of opinions, conducting sociological research, participation in international conferences, and election observation. The amount of «foreign funding» required for inclusion in the register has no inferior limit. It is not taken into account whether these funds were directed and used specifically for the implementation of activities recognized as «political». Even transfers between accounts of the same individual became the grounds for recognizing the fact of «foreign financing».

During the period of the legislation on «foreign agents», the registries of «foreign agents» included human rights organizations, social and educational initiatives, educational and research projects, organizations aimed at protecting the environment, at protecting electoral rights, at protecting women's rights, at supporting indigenous peoples, at helping convicted prisoners, at helping migrants and refugees, conscripts and military personnel, at the fight against corruption, at HIV and drug addiction prevention, and others.

The legislation on «foreign agents» also affects persons who are not included in the relevant registers. In this way, it restricts the activities of the media that are not included in the register, since they are required to invest resources in tracking constantly changing registries: otherwise, they may face thousands of fines and blocking access to the Internet resource when mentioning persons entered in the registers «Foreign agents» without appropriate marking.

The introduction into legislation of the concept of a mass media performing the function of a foreign agent in order to protect the rights of Russian journalists and media outlets from pressure from foreign states, in practice, leads to the restriction of the activities of Russian media, both included and not included in the relevant register.

current legislation does not lead to an increase in the level of openness and publicity of the activities of the relevant subjects of law and does not create additional instruments of public control over their activities. The regulatory burden imposed by legislation, including in terms of reporting to the controlling government agencies, is excessive for the achievement of the goals set, since transparency and accountability of funding for NPOs and the media are provided in due amount by other legislative acts. On the contrary, the presence of an additional regulatory burden, restrictions on activities and serious legal and financial consequences in case of violation of the relevant norms lead to the desire of the subjects of the law to restructure their activities in such a way as to completely get out of the regulation of the legislation on NGOs and the media, which leads to a significant decrease in transparency in these areas of activity. This trend is confirmed by the statistics of liquidation of organizations included in the relevant registers — since 2013, legal entities of 98 such organizations have been liquidated.

Excluding a range of subjects of law, such as employers' associations, chambers of commerce and industry, public corporations and companies, and non-profit organizations created by them, from the legislation, makes the very task of increasing transparency and accountability impossible in principle. It is these subjects of law that are engaged in lobbying narrow corporate interests, including at the state and political levels. This activity should be regulated by the state to reduce corruption and conflict of interest, state control is necessary, among other things, in terms of performing the relevant lobbying functions in the interests of foreign principals. The complex of legislation on persons «performing the functions of foreign agents» does not fulfill this task. Moreover, contrary to the Civil Code of the Russian

it impossible to objectively identify the relationship between the activity of legal entities and their funding, since it does not provide for the existence of the will of the «principal» for funding. The relevant significant difference between Russian legislation on «foreign agents» from the American «Foreign Agents Registration Act» (hereinafter FARA), which is often cited as an analogue, was noted, inter alia, in comparative legal analysis presented at a joint round table of the Ministry of Justice of the Russian Federation and Moscow State Law University named after O.E. Kutafina (Moscow State Law Academy).

Law enforcement practice in the field of regulation of «mass media performing the functions of a foreign agent» shows that cases of inclusion in the register are not isolated, but massive in nature and do not correspond to the originally laid down principle of «mirroring» application. The corresponding Russian register contains 27 media outlets and 67 individuals. The American register FARA includes only two media projects affiliated with the Russian state or state-owned companies: Federal State Unitary Enterprise Rossiya Segodnya International Information Agency and ANO Novosti.

Despite the lack of a goal to restrict the activities of these persons, the norms introduced into the legislation on persons «performing the function of a foreign agent» lead to numerous restrictions on their activities. The restrictions identified during the analysis of legislation and law enforcement practice are discriminatory.

According to the Constitution of the Russian Federation, the state guarantees equality before the law and court, and must also ensure the guarantees of equality of human rights and freedoms, regardless of gender, race, nationality, language, origin, property and official status, place of residence,

complies with the norms of the Conventions ratified by the Russian Federation: the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Discrimination is defined in international and national law and in judicial practice as unequal treatment in the absence of objective or reasonable justification, legitimate aim, necessity and proportionality. Discrimination can be direct or indirect. Direct is characterized by the intention to discriminate against a person or group, while indirect discrimination looks like an outwardly neutral position, criterion or practice that de facto puts members of a certain group at a disadvantage compared to others. International treaties, just as the Constitution of the Russian Federation, provide for interference with fundamental human rights in several cases, including in the interests of national security and public order. This should only happen under strict conditions stipulated by law and the needs of a democratic society. At the same time, the state must demonstrate that the restriction is necessary to prevent a real, and not only a hypothetical, danger, and that less serious measures will not be sufficient. In addition to meeting pressing social needs, the restriction must also be proportionate to its purpose. Finally, the Constitution prohibits issuing laws that abolish or diminish the rights and freedoms of individual and citizen, and the interpretation of rights and freedoms in the direction of their denial or diminishing cannot be permissible.

Back in 2015, the costs of additional reporting and mandatory audit for organizations in connection with the inclusion in the register of NPOs performing the function of a foreign agent were estimated at more than 270 thousand rubles per year. For individuals, inclusion in the register of media outlets performing the function of a foreign agent also entails financial costs: namely, a fee for registering a legal

right to privacy and violate one of the basic principles of civil law — the inadmissibility of arbitrary interference in private affairs by anyone (Article 1 of the Civil Code of the Russian Federation). Mandatory marking of inclusion in the register puts persons included in the registers in unequal conditions with other subjects of law: according to the literal meaning of the laws, they are deprived of the opportunity to use Twitter, they are obliged to accompany with the marking announcements, theses, applications for the child's enrollment in school, private messages on social networks and parental chats, procedural documents during a court hearing, and so on.

Organizations included in the register of NPOs performing the functions of a foreign agent are excluded from the register of socially oriented NPOs that provide useful services and, as a result, are deprived of priority state support. Such NPOs also face a ban on participation in competitions for regional and municipal grants. Inclusion in the register is the basis for excluding an organization from the Federal Register of youth and children's associations enjoying state support.

A ban on nominating candidates to Public Oversight Commissions, bans on nominating candidates to certain supervisory and advisory bodies, such as the Public Council of Patient Rights Organizations under the Ministry of Health, municipal Public Councils and Public Chambers, a ban on carrying out anti-corruption expertise of regulatory legal acts, a ban for citizens of the Russian Federation to hold positions in state bodies and local self-government bodies, the need for NPOs to agree with the Ministry of Justice on a plan of programs and activities that the ministry may reject, formal and informal restrictions for representatives of government bodies on contacts with the media and NPOs included in the registers of persons performing the functions

limits the activities of organizations and the media, makes it difficult to resolve public problems, the exchange of information between society and representatives of the authorities and contradicts the norms of Russian and international law as clearly discriminatory. A good example of such discriminatory regulation is the moratorium on most inspections for NPOs, introduced in April 2020 as a support during the spread of coronavirus infection, which did not apply to NPOs included in the register performing the function of a foreign agent.

Thus, the inclusion in the registers of persons performing the functions of foreign agents is unjustifiably burdensome: it is associated with the restriction of professional activities, state support and funding, the creation of additional financial oppression, violation of privacy and for individuals it also leads to a reduction in social contacts up to the forced emigration. Since 2012, after being included in the register of NPOs performing the functions of a foreign agent, at least 98 organizations have been terminated.

It should be noted that the revealed facts of discrimination and contradictions with Russian legislation do not contradict the decision of the Constitutional Court of April 8, 2014. The court considered only individual norms of legislation that had entered into force at that time, and did not analyze subsequent legislative changes and law enforcement practice.

Since the adoption of the relevant legislation in 2012, representatives of civil society have repeatedly drawn attention to the facts of direct harm caused by this legislation to Russian society and citizens of Russia, among other things, for 9 years in a row these issues have been raised at the annual meeting of the Council under the President of the Russian Federation for the Development of Civil Society and

activity of law enforcement bodies in 2020–2021 significantly increased the negative consequences for Russian society, which is confirmed both by the testimonies of NPOs and the media and by their public position: 242 Russian organizations and initiatives, including leading media and charitable foundations, educational and civic initiatives, advocated the complete abolition of the relevant legislation, their demands were supported by more than 250 thousand people.

Well-founded fears of being recognized as a «foreign agent» have a deterrent effect on Russian civil society. The severity of sanctions for individuals and legal entities, combined with the legal uncertainty of the concepts used in legislation and arbitrary law enforcement practice, lead to a decrease in the willingness of citizens to engage in socially useful activities. The new reporting requirements for NPOs «performing the functions of a foreign agent» oblige them to provide the regulatory authorities with the personal data of private donors and event participants, which contradicts Russian legislation on the protection of personal data and will inevitably lead to the refusal of Russian citizens to participate in the activities of public associations.

The negative impact of the current legislation on civil society is not limited to the actual discriminatory restrictions of the subjects of its regulation. In 2021, the heads of more than 50 charitable foundations drew the attention of the President and the Ministry of Justice to the fact that the legal uncertainty of the relevant legislation jeopardizes their activities. Foundations, as well as NPOs, «performing the functions of a foreign agent, » are subject to the rule on the collection of personal data of their donors, which poses insurmountable obstacles when submitting relevant reports. In addition, the lack of a clear distinction in the legislation between political and charitable activities puts any NPO

The impact of legislation and law enforcement regarding the regulation of «media performing the function of a foreign agent» goes far beyond just ensuring the transparency and accountability of the subjects of the law concerned. First of all, restricting the activities of the relevant media directly restricts the rights of citizens to access information and thus contradicts both the Russian Constitution and the federal law on the media. In addition, all Russian media face serious legal and financial implications of the relevant legislation: the requirement to mark any subjects of the law included in the registers as «performing the functions of a foreign agent» leads to fines for the media and their executives. The negative effect of this legislation on the media industry is also emphasized in the professional community: according to the statement of the Alliance of Independent Regional Publishers, «the practice of applying the law on 'foreign agents' causes significant harm to the public atmosphere, threatens business and contradicts the principles of law.»

The need to develop and support civil society and independent media is an integral part of state policy, which has been repeatedly emphasized both by top officials of the state and in various program documents on the development of the state and society. For example, the Doctrine of Information Security, approved by the decree of the President of the Russian Federation of December 5, 2016 No. 646, emphasizes that the national interests in the information sphere are to provide information support for democratic institutions, mechanisms of interaction between the state and civil society. Increasing the level of protection of public interests, ensuring the rights of citizens and organizations is also indicated as the main task of the state program of the Russian Federation «Justice».

restrictions imposed on the activities of relevant persons, including in terms of exercising public control over the activities of government agencies, lead to a decrease in the amount of information available to society and the state about human rights violations and other offenses, which cannot be in line with the state's interests in ensuring the rule of law and security their citizens. The destruction of the existing feedback channels between society and the government, including due to formal restrictions on joining public councils under various federal and regional departments, the prohibition on anti-corruption expertise and the existing restrictions on attending the meetings of legislative assemblies in a number of regions, leads to a decrease in both the quality of legislative acts and government decisions. The restriction on receiving state funding and other state support for the subjects of regulation of the relevant legislation significantly reduces competition, and, accordingly, reduces the efficiency of targeted spending of funds from both the state budget and individual departments, and the budgets of the regional and municipal levels.

A striking example is the situation with torture and other violations of human rights in places of deprivation of liberty. In accordance with the Concept for the Development of the Penitentiary System of the Russian Federation for the Period up to 2030, approved by the Order of the Government of the Russian Federation of April 29, 2021 No. 1138-r, one of the main directions for improving and developing the penal system is to increase the level of interaction with civil society institutions, including feedback from citizens and the media, international cooperation. At the same time, the legislation on the regulation of «persons performing the functions of a foreign agent» significantly limited the interaction of the authorities with civil society institutions, prohibiting the

a large number of qualified experts do not have access to activities to assist persons detention facilities in ensuring favorable conditions for their holding. A negative manifestation of the decline in this interaction in practice is the increasingly horrific reports of torture in places of deprivation of liberty. The President of the Russian Federation has repeatedly given relevant instructions to the authorized agencies to investigate the facts of illegal influence on people held in places of deprivation of liberty (for example, Pr-133, paragraph 9).

The negative effects of the legislation on the regulation of «persons performing the functions of a foreign agent» are also manifested in other areas of government. For example, the reduction in the interaction of the authorities with civil society institutions contradicts the approved by the order of the Government of the Russian Federation No. 410-r of March 8, 2017 The National Strategy for Women for 2017–2022, namely, prevents the increasing role of women’s public organizations and associations in public and political life, since many such public organizations and associations have fall under the said regulation. Similar problems are observed in other areas, for example, in the field of environmental protection.

Despite the fact that the President of the Russian Federation annually notes that the law is «not perfect» and stresses the need to «work through» controversial issues that lead to unnecessary restrictions and «broad interpretation», and new amendments are made to the legislation in this area every year, discriminatory law enforcement practice not only persists, but also expands, and the number of vague concepts and vague formulations that allow the law to be applied selectively is growing: the boundaries of the concept of «political activity», «foreign funding» and other criteria for inclusion in the registers of persons performing the functions

responsibility for their violation is becoming higher. All this testifies to the fact that individual changes do not allow solving the systemic problems of the approach originally incorporated into the legislation on «foreign agents».

Thus, the analysis of the law enforcement practice of the legislation on «foreign agents» — already almost ten years old — shows that with the help of this set of laws it was not possible to achieve these goals, and the principles of the absence of restrictions laid down in it were clearly violated. Moreover, these norms and their implementation in the case law and in regulatory documents contradict both Russian legislation and international law, since they are unequivocally discriminatory, unreasonably restrict the rights of an indefinite range of legal entities and individuals and carry deep negative consequences for the state and society as a whole. The proposed draft law resolves the existing legal conflict and neutralizes the negative effects of the current legislation.

The adoption of the draft law will not entail additional expenses of the federal budget and other budgets of the budgetary system of the Russian Federation.

DRAFT LAWS (IN RUSIAN)

Main draft law



[Text of the draft law](#)





Economic and Financial Justification



List of Federal Laws Subject to Cancellation and Amendment



List of Federal Regulations Subject to Cancellation and Amendment

Changes to the Criminal Code and the Criminal Procedure Code



Text of the draft law



Explanatory note



Economic and Financial Justification

List of Federal Laws Subject to Cancellation and Amendment



List of Federal Regulations Subject to Cancellation and Amendment

Changes to the Administrative Offence Code



Text of the draft law



Explanatory note



Economic and Financial Justification



List of Federal Laws Subject to Cancellation and Amendment



ОВД-Инфо

 The legal bot

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On September 29, 2021, the Ministry of Justice put OVD-Info in the “register of non-authorized non-governmental organizations performing the functions of a foreign agent”.

ЦЕНТР ЗАЩИТЫ ПРАВ СМИ

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The Mass Media Defence Centre is included in the “list of non-commercial organizations performing the functions of a foreign agent”.



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