



## EU-RUSSIA CIVIL SOCIETY FORUM ГРАЖДАНСКИЙ ФОРУМ ЕС-РОССИЯ

### **The Law on “Undesirable Organisations” Threatens to Cut Cooperation of Russian Civil Society with Its International Partners**

#### **Statement by the Steering Committee of the EU-Russia Civil Society Forum**

The Steering Committee of the EU-Russia Civil Society Forum expresses its deep concern and dismay over the adoption of the federal law introducing the legal notion of “undesirable organisations” (Federal Law No. 662902-6 “On the Introduction of Amendments to Certain Legislative Acts of the Russian Federation”).

The Russian authorities should hold on to the principles of international law and international obligations of the Russian Federation and repeal this law, believes the Steering Committee. We support the position by the Russia’s Presidential Council for Civil Society and Human Rights, which claimed the character of this law was unconstitutional already at the drafting stage<sup>1</sup>.

The law on “undesirable organisations” - along with the law on “foreign agents”<sup>2</sup> adopted in 2012 - is another blow to the Russian civil society and its cooperation with partners and like-minded associations in other countries. It is another step towards international isolation. In the modern world, open dialogue, exchange of ideas, and useful criticism are indispensable for the development of democracy and the rule of law. This includes establishment of representations of international organisations in the country and their legitimate operation.

The law on “undesirable organisations” is violating these core democratic norms and is aimed at singling out organisations. In legal terms, the Russian legislation has enough instruments to shut down the entities, which ‘pose a threat to the country’s constitutional order, defence capacity, and state security’.

Vagueness of the new law opens another avenue for the arbitrary application, for banning legitimate activities of NGOs and companies, and punishing those individuals ‘engaging in the activities of undesirable organisations’. Like in the case of infamous law on “foreign agents”, the new law does not specify what the word ‘engagement’ stands for. Hence, the biggest threat is posed not even for the foreign organisations’ operation but for the Russian citizens.

Under the new law, an organisation can be declared “undesirable” with no court verdict, by the Prosecutor General (or a deputy) alone and with agreement of the Ministry of Foreign Affairs. The decision is effective immediately. Therefore, the rights of individuals and entities concerned will not be defended by the Court, as required by the European Convention on Human Rights, to which Russia is a party.

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<sup>1</sup> See <http://top.rbc.ru/politics/13/03/2015/5502db7c9a7947ca49b6cdcb> for more information in Russian

<sup>2</sup> See statements by the Steering Committee on 10 June 2014, 23 July 2014, 12 September 2014, and 20 January 2015



### **Background Information<sup>3</sup>**

On 19 May 2015, the Russian State Duma adopted at third (final) reading the Draft Federal Law No. 662902-6 “On the introduction of amendments to certain legislative acts of the Russian Federation”<sup>4</sup>. The draft law vests the authorities with powers to declare foreign and international non-governmental organisations “undesirable on the territory of the Russian Federation” and introduces sanctions for such organisations operating in Russia, their executive officers, and persons participating in their activities.

#### *Summary of the amendments*

According to the Draft Law a foreign or international non-governmental organisation may be declared “undesirable”, if it presents a threat to the foundations of the constitutional order, the defence capacity, and national security of the State. Undesirable organisations are prohibited from carrying out their activities and projects in Russia, producing, storing and disseminating their publications and other information materials as well as from holding public events and using bank accounts and deposits other than for the settlement of their liabilities. Such organisations cannot establish branch offices in Russia, while the existing branch offices are to be liquidated. In effect, a decision declaring an organisation “undesirable” means a complete ban on its operations in Russia.

The decision to declare an organization “undesirable” is taken by the Prosecutor General (or his/her deputy) in consultation with the Ministry of Foreign Affairs. The Draft Law is silent as to whether the Prosecutor General is under an obligation to give reasons for this decision. The organisation is then put on a special roster by the Ministry of Justice. No mandatory judicial review is envisaged by the Draft Law at this juncture. However, the general provisions of Russian law concerning the right to appeal against decisions of the State authorities are likely to apply would an organisation declared “undesirable” choose to challenge the decision.

The Draft Law introduces administrative and criminal liability for “undesirable” organisations, their executive officers, and persons associated with such organisations. Operating and “taking part in the activities” of an organisation declared “undesirable” is subject to an administrative fine. The same actions become a criminal offence if committed by a person who has been held responsible for similar actions under administrative law at least twice during the previous year. Criminal sanctions, according to the Draft Law, include an array of non-custodial measures as well as imprisonment for up to six years<sup>5</sup>.

Finally, the Draft Law stipulates that a foreign citizen or a stateless person “taking part in the activities” of an “undesirable” organisation may be denied entry to the Russian territory.

#### *Incompatibility with international legal standards*

The Draft Law raises serious issues as to its compliance with international treaties binding on Russia - notably, the provisions of the European Convention on Human Rights concerning freedom of association and freedom of expression as well as other applicable international legal standards.

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<sup>3</sup> Summary by Maria Suchkova, *Partner at Threefold Legal Advisors LLC, LLM in International Human Rights Law (University of Essex), expert of the Public Verdict Foundation – a member in the EU-Russia Civil Society Forum*

<sup>4</sup> On 20 May 2015, the draft law was adopted by the Federation Council. On 23 May 2015, President Vladimir Putin sign the law

<sup>5</sup> A person who has willingly stopped taking part in the activities of an "undesired" organisation is discharged from criminal liability (Article 1 of the Draft Law)

While the Draft Law applies to all international and foreign non-governmental organisations, businesses and non-profits alike, it is evident from the explanatory memorandum and the ensuing legislative discussions that the proposed amendments mainly target civil society organisations.

The European Court of Human Rights has repeatedly recognised civil society's important contribution to the operation of democratic society. It underlined that non-governmental organisations should be afforded special protection under the European Convention of Human Rights and restrictions on the exercise of their rights are only possible if justified by "convincing and compelling reasons". Any law serving as a basis for the interference with the freedom of association and freedom of expression should be formulated with sufficient precision and clearly indicate the scope of any discretion granted to the authorities and the manner of its exercise, thereby, preventing arbitrary interference with the Convention rights<sup>6</sup>. Moreover, the Joint OSCE/ODIHR and Venice Commission *Guidelines on Freedom of Association* stipulate that such a severe measure as involuntary termination of an association may only occur following a decision by an independent and impartial court<sup>7</sup>.

In view of the above standards, the key problem pertaining to the Draft Law is that it is couched with vague terms susceptible of discretionary interpretation and, at the same time, does not establish any safeguards against arbitrary application of its provisions in practice.

The grounds for declaring an organisation "undesirable" are formulated in extremely broad terms appealing to such categories as constitutional order, national security, and defence capacity. The power to take such decisions, which effectively amounts to involuntary termination of an organisation's activities in Russia, is vested with the Prosecutor General with no mandatory judicial review envisaged. At the same time, any judicial appeal proceedings – if instituted – would be complicated by the fact that the Prosecutor General is not under an obligation to provide reasons for the decision to declare an organisation "undesirable".

Furthermore, the Draft Law uses ambiguous terms to describe actions for which administrative and criminal liability may be imposed. It is unclear what "taking part in the activities" of an "undesirable" organisation entails in practice and whether these provisions would only apply to members and staff of an "undesirable" organisation or extend to other (external) persons taking part in the organisation's events or, for instance, sharing its materials in social media. It is further unclear whether "taking part in the activities" of such organisations in foreign countries would attract administrative or criminal liability.

The Draft Law – if adopted in its current version – makes it difficult if not impossible to foresee, which specific actions on the part of a foreign or international organisation and individuals associated with it, would trigger its application. As shown by the judicial practice concerning the 2012 Foreign Agents Act<sup>8</sup>, when it comes to the restrictions on civil society activities in Russia, the domestic courts adhere to an overly broad interpretation of legislation to the detriment of non-governmental organisations. This tendency raises particular concerns in view of the fact that once declared "undesirable", an organisation is effectively banned from operating in Russia. This may not only entail a violation of the right to freedom of association but also infringe on the freedom of expression and assembly. Furthermore, the Draft Law creates a risk of arbitrary imposition of administrative and criminal sanctions, including imprisonment, on individuals associated with organisations declared "undesirable" in disregard of the applicable international law standards.

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<sup>6</sup> See, for instance, *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 56-58, ECHR 2009, *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, § 27, ECHR 2009-..., *Vides Aizsardzības Klubs v. Latvia*, no. 57829/00, § 42, 27 May 2004

<sup>7</sup> OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Association*, 17 December 2014, para. 244, available at: <http://www.osce.org/odihhr/132371>

<sup>8</sup> *Judicial Dimension of the Crackdown – Application of the Foreign Agents Act by Russian Courts*, IPHR, 2014, p.p. 13-18