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### **Overview<sup>1</sup> of the Federal Law on Introducing Amendments to Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Noncommercial Organizations Performing the Functions of Foreign Agents<sup>2</sup> dated July 20, 2012 №121-Ф3**

August 10, 2012

On July 20, the Russian President signed the *Federal Law on Introducing Amendments to Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Noncommercial Organizations Performing the Functions of Foreign Agents* (hereinafter referred to as “the Law”). This new law will come into effect in 120 days after the date of its publication in mass media on July 23, 2012. The Law’s new provisions have the potential to significantly affect both Russian and foreign organizations carrying out activities in Russia. Many organizations are concerned that the ramifications of the Law will be most damaging for Russian non-commercial organizations (“NCOs”) actively working in the areas of advocacy and human rights. The Law includes a number of ambiguous provisions that may require elaboration in regulations yet to be promulgated. It is difficult to forecast at this time all of the possible ramifications of the Law, as much will depend on how its provisions are implemented. Continued monitoring of the Law’s implementation will be crucial to a complete assessment of its impact.

Under the Law, all NCOs receiving or intending to receive funding from any foreign sources that also conduct or intend to conduct political activities are to be called “NCOs performing the functions of a foreign agent” (hereinafter referred to as “NCOs-foreign agents”). The Russian translation of the term

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<sup>1</sup> The information in this paper does not constitute legal advice. Before following a course of action relating to issues presented in this paper, please consult Russian counsel.

<sup>2</sup> This overview was prepared under the auspices of the USAID-funded project “Civil Society Legal Support Program.”

“foreign agent” (“иностранный агент”) carries a negative connotation and is usually interpreted as a synonym of a “foreign spy.”

The Law amends five current laws – the Law on Public Associations, the Law on Non-commercial Organizations, the Law on Counteracting Legalization (Money Laundering) of Incomes Received in a Criminal Way, and Financing Terrorism, the Criminal Code and the Code on Criminal Procedure.<sup>3</sup> As certain of the amendments to the Law on Public Associations and to the Law on Non-commercial Organizations are similar or identical, we will address the provisions topically.

With these caveats, we will review the provisions of the Law and consider the practical consequences of these provisions for Russian civil society. We will first summarize the provisions of the Law at issue and then present our review of the provisions in light of the potential consequences from their enforcement.

### **Summary**

The Law introduces a number of new requirements for public associations (PAs), NCOs, and foreign nongovernmental non-commercial organizations (FNNOs). These new requirements impose new burdensome obligations on many NCOs receiving foreign funding and FNNOs, expand the supervisory powers of the state over organizations, and introduce harsh penalties for violation of provisions of the Law.

A brief overview of key provisions affecting activities of Russian NCOs and FNNOs is provided below:

- *Ambiguous Definition of NCOs-Foreign Agents.* The Law provides an ambiguous definition of NCOs who fall under the scope of its regulation by: 1) including those NCOs who *intend* to receive foreign funding and to carry political activities; 2) defining “political activities” in such a vague and broad manner that the definition encompasses traditional NCO advocacy activities; and 3) covering foreign funding from many sources, regardless of the amount.
- *Registration of Russian NCOs-Foreign Agents in a Special Registry.* The Law requires all NCOs to register with a specially authorized governmental body (which will be the Ministry of Justice (MoJ)) prior to receipt of funding from foreign sources if they intend to conduct political activities. Details for the registration procedure for NCOs-foreign agents are to be determined by the authorized government agency, but they are not defined in the Law. Overly complex requirements might create an additional burden for NCOs.

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<sup>3</sup> Federal Law of the Russian Federation # 82- FZ *On Public Associations* of May 19, 1995 (“LPA”), the Federal Law of the Russian Federation #7-FZ *On Non-commercial Organizations* of January 12, 1996 (“LNCO”), Federal Law of the Russian Federation № 115-FZ *On Counteracting Legalization (Money Laundering) of Incomes Received in a Criminal Way, and Financing Terrorism*, dated August 7, 2001; *Criminal Code* of the Russian Federation, dated 1996; and *Criminal Procedure Code* of the Russian Federation, dated 2001.

- *Labeling Materials as Published by Foreign Agents.* All materials published and/or distributed by NCOs-foreign agents must identify the publishing NCO as a “foreign agent,” regardless of whether the particular material was sponsored by foreign funding.
- *Expanded Government Supervisory Powers.* The Law increases the administrative burden on NCOs by requiring NCOs–foreign agents to: 1) maintain separate accounting of funds and other property generated through local and foreign sources; 2) submit activity reports on a biannual basis; and 3) submit reports on expenditures of funds and other property on a quarterly basis. NCOs-foreign agents are also required to pass through an annual independent audit, which many NCOs do not have funds to implement. Reporting forms are to be determined by the authorized government agency and could be burdensome if overly complex. In addition, the Law gives the government invasive powers to interfere in the internal operations of a NCO and even to suspend their activities. These include:
  - According to the Law, the government will conduct annual audits of NCOs. The Law gives the government new reasons to conduct additional audit activities of NCOs-foreign agents without the procedural safeguards that protect other entities against the government’s unfair interference in their activities.<sup>4</sup>
  - The government has the authority to suspend the activities of a NCO-foreign agent for up to 6 months if the NCO fails to register as a foreign agent but is receiving foreign funding and conducting political activities.
  - The authorized government body (which we expect will be Federal Agency on Finance Monitoring or “Rosfinmonitoring”) will review transfer above the 200,000 ruble threshold received by NCOs from foreign sources<sup>5</sup>.
- *New Requirements for FNNOs.* Under the Law, foreign organizations operating in Russia through registered offices will be subject to the following new requirements:
  - They must undergo an annual independent audit by a Russian auditing company and submit the resulting audit report to the authorized government agency (MoJ);
  - The authorized government agency will post all such reports as well as reports on the finances and activities of foreign organizations operating in Russia on its website and provide them to the media;
  - In addition to the mandatory independent audit, the authorized government agency will also have the authority to conduct its own audits of the registered offices of foreign organizations.

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<sup>4</sup> Federal Law of the Russian Federation #294-FZ *on Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Exercise of State Control (Supervision) and Municipal Control*, dated 26 December 2008.

<sup>5</sup> It is important to notice that such transfers will be subject to review in case of all NCOs, not limited to NCOs-foreign agents.

- *Criminal Penalties for Violation of the Law. The Law established criminal liability for the following new crimes:*
  - Along with other violations of the Law, deliberate evasion of the duty to submit the documents required for the inclusion in the register of non-commercial organizations performing the functions of foreign agents will be penalized with a fine in the amount of 300,000 rubles or in the amount of accumulated personal income for the period of the last two years, or with mandatory public works in the amount of up to 480 hours, correction works, or a prison term of up to two years.
  - Establishment of a NCO (including NCO-foreign agent) or a structural unit of a FNNO, the activities of which are connected with urging citizens to refuse to perform their civic duties or to perform other unlawful acts, as well as the leadership of such an association or structural unit, will be penalized with a fine of up to 200,000 rubles or the size of the salary or other income of the convicted person for a period of up to 18 months, or limitation of liberty for a period of up to three years, forced labor for up to three years, or deprivation of liberty for the same period of time. Criminal liability is also established for participation in the activities of the aforementioned organizations.

## **Review**

### 1. Ambiguous Definition of NCOs-Foreign Agents.

- The Law defines NCOs–foreign agents as non-commercial organizations<sup>6</sup> that receive funds and other property from foreign states, their government bodies, international and foreign organizations, foreign citizens, persons without citizenship or persons authorized by them, and/or Russian legal entities receiving funding and other property from said sources (further referred to as “foreign sources”). The Law also does not provide for any minimal threshold under which receipts would not be considered funds/property from foreign sources.
- A NCO is considered to carry out political activity, if, regardless of its statutory goals and purposes, it participates (including through financing) in organizing and implementing *political actions aimed at influencing the decision-making by state bodies intended for the change of state policy pursued by them, as well as in the shaping of public opinion for the aforementioned purposes*. Such activities are considered political, regardless of whether a NCO is conducting them in the interest of foreign funding sources or without such purpose. A NCO carries political activities for the purpose of the Law if such activity takes place on the territory of the Russian Federation.

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<sup>6</sup> Certain types of NCOs are excluded from the scope of the Law, specifically, state corporations, state companies, as well as NCOs established by them, state and municipal (including budgetary) institutions, political parties, religious organizations, associations of employers and chambers of commerce. Please, note that individuals and business entities, involved in political activities and receiving funds/assets from foreign sources, are not subject to regulation under the Law.

- Certain activities are explicitly excluded from the scope of “political activities,” specifically activities in the area of science, culture, the arts, health protection, disease prevention and protection of citizens’ health, social support and protection of citizens, protection of motherhood and childhood, social support of the disabled, promotion of healthy living, physical culture and sports, protection of plant and animal life, charitable activities, and also activities in the sphere of promotion of charity and volunteerism.

#### *Funds/other property from foreign sources*

The Law includes nearly all types of foreign sources.<sup>7</sup> All NCOs that receive funds from any foreign legal entities and/or individuals, including through membership fees, contributions, or sales of services, are considered recipients of funds from foreign sources. This is true even if the individuals are citizens of neighboring states- members of customs union (Belarus, Kazakhstan), persons without citizenship, or foreign citizens permanently residing in the Russian Federation.

It is not clear how anonymous contributions will be treated. It is important to keep in mind that contributions from a Russian legal entity which itself received funds from the foreign sources are also treated as funds/other property from foreign sources. This requirement makes contributions from any Russian entities a potential problem for a NCO-recipient since the donor does not have to provide details about its funding sources to the Russian recipient.

It is also important to note that the Law does not provide for any minimal threshold under which receipts would not be considered funds/other property from foreign sources.

Remarkably, the Law only refers to *funds/other property* received from foreign sources. It remains to be seen how the term “funds/other property,” as used in the Law, will be interpreted by the government in the implementing regulations. It is possible that services provided to NCOs would not fall under terms funds/other property.

#### *Political activities*

The definition of political activities contains a number of terms which are not defined in Russian law and are potentially subject to broad interpretation. Specifically, in defining “political activities,” the Law uses such terms as “political actions,” “state policy,” “the shaping of public opinion,” and “influence.” Political activity is understood as “taking part (including by financing) in the organization and conduct of political actions aimed at influence over the decision-making by state bodies intended for the change of state policy pursued by them, as well as in the shaping of public opinion for the aforementioned purposes.” It remains to be seen how it will be implemented in practice, but, it seems that such a broad definition

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<sup>7</sup> The only exception is in case of foreign funds received from open joint stock companies with state participation and their subsidiaries.

would cover any advocacy activity and any protest against any government decision, including governmental actions that violate human rights.

Remarkably, political activities do not have to be paid for by foreign sources nor does a NCO have to represent foreign interests in order to be required to register as a “foreign agent.” It is our understanding of the Law that a NCO has to register as a foreign agent if it carries out any political activities and receives any foreign funds, even if it does not use any foreign funds to support activities recognized by the government as “political,” and it does not represent the interests of any “foreign sources.”

Furthermore, a NCO is considered to be carrying out political activity if it even participates in such activities organized and financed for by other organizations.

Political activity is subject to regulation under the Law only if it is carried out on the territory of the Russian Federation.

#### *Activities excluded from definition of “political activities”*

A broad range of activities is excluded from the scope of activities under the definition of “political activities.” Among the excluded activities are charitable activities and also activities in the sphere of promotion of charity and volunteerism. Potentially, such exclusions may help a number of NCOs to avoid registration as “foreign agents.” However, if a NCO is primarily covered by one of the exceptions but also engages in some advocacy activities to change governmental policy or public opinion, it is not clear whether the NCO will remain exempt from the Law’s provisions. For example, it remains to be seen whether a health NCO that encourages the public to get flu vaccinations or tries to convince the government to change its HIV/AIDs policy will be covered by the public health exception. Such activities could fall under the definition of political activity, in which case the Law would apply.

Permissible objectives for charitable activities are defined in the Federal Law on Charitable Activities and Charitable Organizations.<sup>8</sup> According to this law, charitable activities encompass a number of activities including free legal aid, “social advertising,” and support for youth initiatives. Activities such as “promotion of charity and volunteerism” may be understood to include financing as well as other assistance for such activities. It remains to be seen how the government will reconcile these two provisions in practice.

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<sup>8</sup> Article 1 of the Federal Law of the Russian Federation # 135- FZ *On Charitable Activities and Charitable Organizations*, dated 1995.

## 2. Registration of Russian NCOs-Foreign Agents in a Special Registry.

The Law requires all NCOs to register in a registry of foreign agents:

- Prior to receipt of funding from foreign sources if they intend to receive funds/other property from foreign sources and intend to conduct political activities.
- Details for registration procedure for NCOs-foreign agents are to be determined by the authorized government agency, but they are not defined in the Law. Overly complex requirements might create an additional burden for NCOs.

The Law does not provide clear guidance on how a NCO shall apply to be included in the registry of NCOs carrying out the functions of foreign agents. The Law requires that the petitioner applying for legal entity registration as a PA or a NCO,<sup>9</sup> file a petition to include the PA or a NCO in the register of NCOs performing the functions of foreign agents at the same time it submits its registration documents. In regards to existing organizations, the Law requires organizations to file documents for inclusion into the registry not only in case of actual receipt of foreign funds/other property and carrying out political activities, but also in cases where an organization has the *intention* to perform such actions in the future. It is not clear yet what will happen if such “intentions” are never realized or how far in the future a NCO and its founders must anticipate potential activities and apply for inclusion into the registry.

The Law does not detail what information must be contained in the application of NCO applying for inclusion into the registry. The Law only states that such information shall be included into the registry and that the authorized government body (which is expected to be the MoJ) will establish procedures for maintaining the registry of NCOs carrying out the functions of a foreign agent.

The Law does not provide for any guidance on the maintenance of the registry. We expect that the implementing regulations to be adopted by the MoJ will clarify what information will be required for registration in the registry. It is also expected that the implementing regulations will also clarify for how many years, after a NCO stops receiving foreign funding and/or performing political activities, the registry will maintain the NCO’s status as a foreign agent and under which circumstances such information will be removed from the registry.

## 3. Labeling Materials as Published by Foreign Agents.

The Law states that any materials published and/or distributed by a NCO-foreign agent, including in the mass media or on the Internet, shall be accompanied by a note stating that such materials are published (distributed) by a NCO-foreign agent.

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<sup>9</sup> A PA (public association) is one legal organizational form of a NCO. However, the registration procedure and activities of PAs are regulated in a special law, the LPAs, and not in LNCOs.

It is important to note that under the Law, “materials” may not necessarily be related to political activity or funded from foreign sources. The Law and other Russian legislation do not define the term “materials,” which may be interpreted very broadly.

#### 4. Expanded Government Supervisory Powers.

The Law increases the administrative burden on NCOs and PAs by requiring NCOs–foreign agents to: 1) maintain separate accounting of funds and other property generated through local and foreign sources; 2) submit activity reports on a biannual basis; and 3) submit reports on expenditures of funds and other property on a quarterly basis. NCOs-foreign agents will also be required to pass through an annual independent audit. Reporting forms are to be determined by the authorized government agency.

In addition, the Law gives to the government invasive powers to interfere in the internal operations of a NCO and even to suspend their activities. These include:

- The government will conduct scheduled audits of NCOs-foreign agents annually and will have additional the grounds to conduct additional audits of activities of NCOs.
- The government will have the authority to suspend the activities of a NCO-foreign agent for up to 6 months if the NCO failed to register as a foreign agent but was receiving foreign funding and conducting political activities.
- The authorized government agency (which we expect will be Rosfinmonitoring) will review a NCO’s activities and expenditures reports and may require submission of additional information if a NCO receives a transfer above the 200,000 ruble threshold.

#### *Reporting requirements*

The Law requires that NCOs-foreign agents submit to the MoJ their activity reports on a biannual basis and reports on expenditures of funds (use of property), including those received from foreign sources, on a quarterly basis (unlike other Russian NCOs which are required to submit activities and expenditures reports annually). It is expected that the MoJ will adopt new or special additional reporting forms for activities and expenditures reports for NCOs-foreign agents, complicating already complex forms applied to other NCOs.

The Law also requires that NCOs-foreign agents submit to the MoJ annual audit reports which would verify accuracy of their annual accounting (financial) reports. In order to comply with this requirement, NCOs will have to hire independent auditing companies to audit their activities. In Russia such companies are private businesses which are certified by the government. The price of an audit is subject



to negotiation and is usually very expensive. Those NCOs with limited finances might have problems paying for such audits.

#### *Expansion of government's authority to conduct audits*

Under the Law the government will conduct annual audits of NCOs-foreign agents, while other NCOs and other legal entities are subject to "scheduled" government audits only once every three years.<sup>10</sup>

Additionally, the government will have new grounds to conduct "unscheduled" audits, specifically: when a NCO receives a violation from the MoJ and is notified that it has a certain amount of time to remedy the violation, the NCO may be subject to an audit at the end of that time period; accusations that a NCO-foreign agent is conducting extremist activity from citizens, legal persons, or information published in mass media; information received by the MoJ from other government and municipal authorities that a certain NCO's activities are violating the law; and in response to a request of the prosecutor's office.

#### *Suspension of NCOs activities*

The Law empowers the MoJ to suspend the activities of a NCO-foreign agent for a period of up to six months if a NCO fails to submit an application for registration in the registry of NCOs carrying out the functions of foreign agents. The MoJ has the discretion to decide whether a NCO qualifies as a "foreign agent" (i.e. whether a NCO received or has the intent to receive funding from foreign sources and whether a NCO conducted or has the intent to conduct political activities). An authorized government official, at his/her discretion, can decide to suspend the activities of any NCO, if, according to his/her opinion, the NCO carried out the functions of a foreign agent but failed to apply for registration in the registry of NCOs carrying out the functions of foreign agents, regardless of how defensible this decision might be. This poses a danger to an NCO receiving foreign funding, taking into account the lack of clarity in the Law's definition of "political activity." It is easy to imagine a disagreement between the MoJ and an NCO on what constitutes a "political activity" in which the NCO insists that its activities are purely youth or educational projects (which are excluded from the scope of "political activities" under the Law), and MoJ official insisting that its activity is "political."

A NCO whose activities have been suspended has the right to appeal the MoJ's suspension decision to either the highest body of the MoJ or to court. The Law does not determine what will happen to a NCO if, after the suspension of its activities, it does not apply for registration within the timeframe set by the MoJ.

The Law also provides an unclear description of legal consequences of suspending a NCO's activities. A NCO whose activities have been suspended will also be prohibited from conducting of mass actions and

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<sup>10</sup> Federal Law of the Russian Federation #294-FZ on *Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Exercise of State Control (Supervision) and Municipal Control*, dated 26 December 2008.

public events and making bank deposits, with the exception of settling accounts related to economic activities and labor contracts, paying assessed damages, resulting from its activities, and paying taxes, dues and penalties. Suspended NCOs that are founders of mass media assets are also suspended from “the rights of the owner of a mass media asset.” Questions remain- for example, will NCOs be allowed to pay courts or legal fees using funds in its bank accounts while appealing the MoJ’s decision to suspend NCOs activities? What does “suspension of the rights of the founder of a mass media asset” mean?

#### *Special control over activities of NCOs*

The authorized government body (which we expect will be Rosfinmonitoring) may review information about NCO’s activities, which it receives within its competence,<sup>11</sup> at its own initiative, or at request of the Ministry of Justice. In addition, Rosfinmonitoring is required to control all transfers above the 200,000 ruble threshold received by NCOs<sup>12</sup> from foreign sources. Prior to the Law, it was the MoJ who was in charge of reviewing NCOs reports. Now Rosfinmonitoring will also have authority review reports, and in cases when information in reports is incomplete or false, it will inform the MoJ about such facts.

#### 5. New Requirements for FNNOs.

Under the Law, foreign organizations operating in Russia through registered offices will be subject to the following new requirements:

- They must undergo an annual independent audit by a Russian auditing company and submit the resulting audit report to an authorized government agency (MoJ);
- The authorized government agency will post all such reports as well as reports on the finances and activities of foreign organizations operating in Russia on its website and provide them to the media;
- In addition to the mandatory independent audit, the authorized government agency will also have the authority to conduct its own audits of the registered offices of foreign organizations.

The Law requires a FNNO to undergo an annual independent audit by a Russian auditing company and submit the resulting audit report to the authorized government agency (MoJ), unless otherwise is stated by an international treaty. Russian auditing companies are private businesses certified by the Russian

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<sup>11</sup> Under the Federal Law of the Russian Federation № 115-FZ *On Counteracting Legalization (Money Laundering) of Incomes Received in a Criminal Way, and Financing Terrorism*, dated August 7, 2001.

<sup>12</sup> <sup>12</sup> It is important to notice that such transfers will be subject to review in case of all NCOs, not limited to NCOs-foreign agents.

Government to perform audits. There are many Russian auditing companies and their prices vary considerably. The price of a particular audit is subject to negotiations and depends on the scope of the FNNO's activities that will be audited. While there is no special form for an audit report, it should verify that the accounting/financial annual report of a NCO is accurate.

All reports by FNNOs, including audit reports by independent companies and finance and activities reports, will be posted on internet or shared with mass media at discretion of the MoJ. It is useful to keep in mind that such reports require very detailed information on the finances and activities of a FNNO and none of the information in reports can be considered confidential.

The Law provides the MoJ with new authority to conduct audits of FNNOs to determine whether their activities are in compliance, including whether the FNNO's expenditures of funds (use of property) comply with its declared purposes. Prior to the Law, the MoJ had such authority only over the activities of Russian NCOs.

#### 6. Criminal Penalties for Violation of the Law.

1) Under the Law (new Article 330/1 of the Criminal Code), deliberate evasion of performing duties connected with the submission of documents required for the inclusion in the register of non-commercial organizations performing the functions of foreign agents, as well as violation of other provisions under the Law will be penalized with a fine in the amount of 300,000 rubles or in the amount of accumulated personal income for the period of the last two years, or with mandatory public works in the amount of up to 480 hours, correction works, or term in prison of up to two years.

2) In addition, the Law (new Article 239 of the Criminal Code) introduces criminal liability for the founders establishing a NCO or a structural unit of a FNNO, the activities of which are connected with urging citizens to refuse to perform their civic duties or to perform other unlawful acts, as well as the management of such a NCO or structural unit of a FNNO is punishable with a penalty up to 200,000 rubles, or in the amount of accumulated personal income for the period of up to 18 months, or with mandatory works for a period of up to three years, or a prison term of up to three years.

Participation in activities described in section 2) above, as well as propaganda of acts referred to in section 2) shall be penalized with a penalty in the amount of up to 120,000 rubles or in the amount of accumulated personal income for the period of up to one year, mandatory works for the period up to two years, or a prison term of up to two years.

The new Article 330/1 of the Criminal Code defines as a criminal offense the deliberate evasion of the duty to submit documents required for the inclusion in the register of NCOs performing the functions of foreign agents, as well as violation of other provisions under the Law. Unfortunately, Russian law does not define the term "deliberate." Usually it means multiple or continuous violations or a violation of a

special public danger. In practice, criminal penalty for such violation is levied after an administrative penalty has been levied for the same violation, if such violation has not been eliminated. If there are no administrative penalties, criminal penalty usually follows a warning or several warnings from the authorized government authority. One would speculate that if a NCO, after its activity was suspended by the MoJ, did not appeal to court and did not eliminate the violation, its management could be subjected to criminal penalties under this Article. Another hypothetical case when criminal penalty might apply is if a NCO-foreign agent did not submit reports or other information required by law to the authorized government body or submitted incomplete/false information, from the government's perspective, and failed to re-submit complete information upon the government's request. Please, note that individuals are subject to criminal liability but legal entities are not.<sup>13</sup> In case of Article 330/1, the manager of a NCO would be liable for this criminal offense.

The definition of the new criminal offense under Article 239 of the Criminal Code requires special attention. This definition is overly broad and unclear. Specifically, liability arises in cases where "activities *relate to facilitation* of citizens refusal to implement their civic duties or conduct of other illegal behaviors." According to this definition, there is no need for the government to prove that punishable activities actually directly caused citizens disobedience. Furthermore, the Law does not require that the disobedience/violation of law even take place.

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<sup>13</sup> Article 19 of the Criminal Code of the Russian Federation.