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Russia further regulates instant messaging services providers

Russia's new law aimed at further regulating instant messaging services will come into force on 1 January 2018. Sergey Medvedev and Ilya Goryachev of Gorodissky & Partners discuss the new legal obligations that the providers of instant messaging services in Russia will need to comply with.

Introduction

Instant messaging services currently play an integral role in the day-to-day communications of people worldwide. Both international (such as WhatsApp, Viber) and domestic (such as Telegram) messengers are actively used on the Russian market.

Taking into account that instant messaging services provide wider opportunities for the private exchange of information (i.e. text, voicemail, photos, videos), serious concerns were expressed by Government officials and businesses in Russia that such means of communication may be used for coordinating illegal activities. Therefore, recent political and economic trends aimed at fighting global terrorism, including in reaction to recent terrorist attacks that have occurred at a national level, are changing the legal approach to the regulation of telecommunications and data flows online.

In addition to the so-called 'Yarovaya Law' that obliges telecoms operators to store the content of users' communications, for a certain statutory period of time, as well as the 'Anti-VPN Law' which restricts the application of VPN technologies and anonymisers, the Russian Government has decided to enhance the existing regulatory regime for messengers. Previously, the related national legislation

did not contain any specific obligations for instant messaging services.

From 1 January 2018, new legislation governing the use of messengers will take effect in Russia. Federal Law of 29 July 2017 No. 241-FZ On Amendments to Articles 10.1 and 15.4 of the Federal Law of 27 July 2006 No. 149-FZ On Information, Information Technologies and Data Protection (the 'Messengers Law') modifies the principle law in Russia dealing with information technologies and telecommunications - the Federal Law On Information, Information Technologies and Data Protection (the 'Information Law'), in particular Articles 10.1 and 15.4 of the Information Law.

Reasons for the amendments

Initially, the regulations for messengers were shaped back in 2014. The Information Law provided general rules for persons responsible for the functioning of IT systems and/or software intended or used for the receipt, transfer, delivery and/or processing of electronic messages on the internet. At that time, the following obligations were introduced:

- the obligation to notify the Federal Service for Supervision of Communications, Information Technology, and Mass Media (the 'Roskomnadzor') about the launch

- of messaging services in Russia;
- the obligation to store the relevant information in Russia; and
- the obligation to cooperate with law enforcement authorities.

The sanctions for non-compliance with these obligations led to the restriction of such messaging activities or the blockage of services under an effective court decision or binding order adopted by the Roskomnadzor.

The explanatory bill to the original draft Messengers Law cited the necessity of defining efficient rules for activities involving the electronic exchange of messages as the main reason for implementing the new legislation.

The regulation and obligations

Unlike the previous regulation introduced back in 2014, the Messengers Law is now focused on applying additional obligations on the owners of platforms that provide the instant exchange of electronic messages. According to the provisions of the Messengers Law, instant messaging services may be defined and will be characterised by the following distinctive features¹:

- they always represent IT systems or software,
- which are intended and (or) used

- for the exchange of information exclusively between users,
- where the sender of an electronic message defines a recipient or recipients,
- where the users cannot publish publicly available information on the internet, and
- where it is not possible to transmit electronic messages to an undetermined list of persons.

As such the owners of instant messaging services (i.e. the persons that operate such services) will be obliged:

- to identify users based on the mobile phone number issued under contract with the corresponding mobile operator (the Russian Government shall provide regulations concerning the user identification procedure)²;
- to store the identification information relating to the mobile phone number of a user on the territory of Russia only (this obligation is only applicable to Russian owners of instant messaging services); the submission of such identification information to third parties is only possible with the consent of the user, unless otherwise provided by law (the burden of proof rests with the Russian owner of the messaging service)³;
- to restrict - within one day from the receipt of the relevant order from the competent authority - transmission of messages which contain: (a) information dissemination that is prohibited in Russia, and (b) information disseminated in breach of Russian law (the procedure shall be determined by the Russian Government)⁴;
- to ensure that users have a technical option to refuse the receipt of messages from other users (i.e. 'blacklisting')⁵;
- to ensure the confidentiality of the electronic messages transmitted⁶;
- to ensure the possibility of transmission of the electronic messages at the request of state authorities under the Russian law⁷; and
- to prohibit the transmission of electronic messages to users in certain

cases and under the procedure set out by the Russian Government⁸.

Furthermore, the general rules under the Information Law as well as the 'Yarovaya Law' on notification obligations and content storage obligations will also apply to instant messaging services. In particular, the messenger service must store in the territory of the Russian Federation the information related to the receipt, transmission, delivery and/or processing of voice data, written texts, images, sounds, video and other electronic communications of users, as well as the information about users for a year following the completion of these activities.

Importantly, under the provisions of Article 10.1 of the Information Law, the operators of instant messaging services shall utilise technologies that:

- provide access to the information/communications to the competent/security state authorities (upon request), in cases set forth by the applicable laws; and
- ensure there is access to such information/communications for the purposes of decoding, provided that the messenger service is using certain additional encoding solutions.

For example, *In re Telegram* (case ref: 12-3227/2017), the Meshchanskiy District Court of Moscow ('Court') recently fined the instant messaging service RUB 800,000 for the failure to provide the Federal Security Service ('FSS') with the information necessary to decode user messages, as prescribed by Article 10.1 (4.1) of the Information Law. Although the *Telegram* case is being appealed, the case may be treated as a precedent that will affect the operation of instant messaging services in the future.

Finally, it is evident from reading the Messengers Law that it will not apply to:

- social networks,
- blogs,
- online chats,

- online mass media, and
- other e-platforms.

Indeed, these types of IT systems and telecommunications services will remain governed by the regulations introduced to the Information Law and effective as of 2014.

Liability and sanctions

Failure to abide by the Messengers Law and attend to the required obligations may result in the following implications for the owners of messengers:

- the blockage of the instant messaging services (as per the provisions of Paragraph 2 of Article 15.4 of the Information Law); and
- the imposition of various administrative fines, including up to RUB 1,000,000 (as per the provisions of Article 13.31 of the Russian Code on Administrative Offences ('CAO')).

In addition, a new Article of the CAO devoted to additional liability and sanctions for breaches of obligations applicable to instant messaging services is under consideration by the Russian Parliament.

Comments

The Messengers Law is another innovative legal instrument that will help the Russian Government exercise control over cyber security and online data flows, including cross-border activities. The owners of messengers should be prepared for the coming into force of the Messengers Law on 1 January 2018 and bring the operation of their services in line with the new legal requirements. Apparently, it is expected that the regulation of messengers will be boosted by official clarification or guidance from the Roskomnadzor, the agency may give its own opinion on the application of the new provisions of the legislation. Of course, court practice will give rise to more precedents on the subject and promote the development of the telecommunications industry in Russia.

1. Paragraph 4.2 of Article 10.1 of the Information Law (as amended by the Messengers Law).

2. Paragraph 4.3 and Paragraph 4.2 (subparagraph 1) of Article 10.1 of the Information Law (as amended by the Messengers Law).

3. Paragraph 4.4 of Article 10.1 of the Information Law (as amended by the Messengers Law).

4. Paragraph 4.2 (subparagraph 2) of Article 10.1 of the Information Law (as amended by the Messengers Law).

5. Paragraph 4.2 (subparagraph 3) of Article 10.1 of the Information Law (as amended by the Messengers Law).

6. Paragraph 4.2 (subparagraph 4) of Article 10.1 of the Information Law (as amended by the Messengers Law).

7. Paragraph 4.2 (subparagraph 5) of Article 10.1 of the Information Law (as amended by the Messengers Law).

8. Paragraph 4.2 (subparagraph 6) of Article 10.1 of the Information Law (as amended by the Messengers Law).