

POSTPONEMENT OF THE TRANSITION OF CRITICAL INFRASTRUCTURE TO RUSSIAN SOFTWARE AND HARDWARE

A number of draft legislative acts put forward by the Russian president and the Russian federal government and ministries have been published¹ which (i) envision postponement of the mandatory transition by operators of critical information infrastructure ("CII") to preferential use of Russian software and hardware from 1 January 2021 and 1 January 2022 to 1 January 2024 and 1 January 2025, respectively, and (ii) establish requirements applicable to software and hardware and the procedure for coordination and approval of their use.

CII

CII operators are government authorities, state institutions, Russian legal entities and/or individual entrepreneurs who own, lease or otherwise lawfully control the following types of CII assets: (i) information systems; (ii) data and telecommunications networks; (iii) automated control systems functioning in the sphere of healthcare, science, transport, communications, energy, banking and other spheres of the financial market, the fuel and energy sector, nuclear energy, defence, the missile and space industry, mining, metallurgy or the chemicals industry, and also Russian legal entities and/or individual entrepreneurs that provide for the interoperation of such systems or networks.

Preferential use means the priority use of Russian software and/or hardware by CII operators when suitable Russian analogues are available.

REQUIREMENTS APPLICABLE TO SOFTWARE AND HARDWARE

The initial version of the draft RF presidential edict envisaged that the federal government was to approve the requirements applicable to software and hardware by 1 September 2020, and CII operators would have had to make the transition to preferential use of Russian software by 1 January 2021 and to

Key Points

- The transition to Russian software and/or hardware is postponed to 1 January 2024 and 1 January 2025, respectively.
- Additional requirements on software and/or hardware are established.
- By 1 July 2021 CII operators must prepare and approve a plan for transitioning to preferential use of Russian software and/or hardware.

¹ (1) Draft RF Presidential Edict "On Measures of an Economic Character to Ensure the Technological Independence and Security of Critical Information Infrastructure";

(2) Draft RF Government Decree "On Approving Requirements Applicable to Software and Hardware Used in Critical Information Infrastructure, and the Transition to Preferential Use of Russian Software and Hardware";

(3) Draft Order of the Ministry for Digital Development, Communications and Mass Media, the Ministry of Industry and Trade, the Federal Security Service and the Federal Service for Technical and Export Control "On Approval of the Procedure for Sending for Approval and Consideration Lists of Foreign Software and/or Hardware in Use and/or Planned to be Used in Critical Information Infrastructure".

preferential use of Russian hardware by 1 January 2022. In the new draft decree those dates have been postponed to 1 January 2024 and 1 January 2025, respectively. The deadline set for the federal government to prepare the requirements is still 1 September 2020, but clearly in the final version of the edict that deadline will also be changed to a later date.

The draft RF government decree, in turn, sets out the following requirements for software and hardware used in CII in order to ensure technological independence and economic security.

CII operators will be able to use only software and/or hardware that has been included in the unified register of Russian software or unified register of Eurasian software and/or the unified register of Russian radio-electronic products, except in the following cases:

- the registers do not list any software of the appropriate class (type) that is an analogue of the foreign software used by the CII operator;
- the register does not list any telecommunications equipment or radio-electronic products that are analogues of the foreign equipment used by the CII operator;
- the technical specifications of the telecommunications equipment or radio-electronic products listed in the register will not allow the CII operator's aims and objectives, as defined by the legislation, to be achieved.

IMPORTANT! FOR SOFTWARE DEVELOPERS: CII operators will be entitled to use software and/or hardware not listed in the registers if the following conditions are met:

- updating of the software and/or upgrading of the hardware will be done by organisations registered as legal entities in accordance with Russian law and which are Russian residents;
- maintenance and technical support of the software and/or hardware will be provided by organisations registered as legal entities in accordance with Russian law and which are Russian residents.

TRANSITIONING TO PREFERENTIAL USE OF RUSSIAN SOFTWARE AND HARDWARE

By 1 July 2021 CII operators must prepare and approve a plan for transitioning to preferential use of Russian software and/or hardware. Within 30 business days after the plan is approved, CII operators must send a copy of it to the Russian Ministry for Digital Development, Communications and Mass Media and to the Russian Ministry of Industry and Trade.

The transition procedure set out in the draft decree applies to CII operators and to the preferential use of software and/or hardware used in CII in regards to:

- software (previously installed and currently in use and/or planned to be acquired by CII operators) not listed in the registers;
- hardware (previously installed and in use and/or planned to be acquired by CII operators) not listed in the register.

According to the draft decree, when transitioning to preferential use of Russian software and/or hardware CII operators must:

- conduct an audit of the existing and/or planned CII. On the basis of the audit, determine the current parameters and characteristics of the foreign software

and/or hardware currently in use (or planned to be used), including compiling a list of such software and/or hardware;

- conduct an analysis:
 - of the requirements applicable to software and hardware, set out in the draft decree;
 - of whether any analogues of foreign software and/or hardware currently in use (or planned to be used) are listed in the registers;
 - the current amortisation periods.

SUBMISSION AND APPROVAL OF LISTS OF FOREIGN SOFTWARE AND HARDWARE

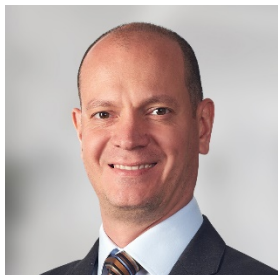
Following the analysis, CII operators must send the list of foreign software and/or hardware currently in use and/or planned to be used to the ministries for approval. Use of such foreign software and/or hardware could be approved on conditions that:

- the foreign software must have no Russian analogue in the registers;
- any foreign telecommunications equipment must have no analogue in the register;
- the technical specifications of the telecommunications equipment listed in the register do not allow the CII operator's aims and objectives, as defined by the legislation, to be achieved.

After reviewing the list of software and/or hardware, the competent authority to which the list has been submitted sends the CII operator one of the following decisions: (i) rejection of the list; (ii) requiring the list be modified; or (iii) approval of the list.

Upon receiving a decision rejecting or requiring a list be modification, the CII operator has 30 business days to submit a revised list of software and/or hardware.

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