

On 26 September, Russia's lower house of Parliament (Duma) adopted by a vote of 430-2 a bill to limit the foreign ownership, control, or operation of Russian mass media editorials or broadcasters to 20 percent or less, thus further restricting the current rules that cap foreign control of radio and television at 50 percent, and have only limited application to print media. **The bill could be signed into law imminently, thus entering into force as early as 1 January 2016 and requiring foreign investors to divest as soon as 1 February 2016.**

If the bill becomes law, the proposed changes will have a significant impact on the Russian media industry and will affect a wide variety of publications, including the country's leading business daily, *Vedomosti*; the Russian versions of magazines such as *Esquire*, *GQ*, and *Cosmopolitan*; and television channels such as Disney and Eurosport. It could also potentially uproot a number of foreign investors in Russia, as many Russian newspapers are partly owned by foreign companies. The Duma rejected an amendment that sought to create an exemption for non-political media, such as sports and advertising, so no exceptions are likely to be included.

Which Restrictions Would the Bill Impose?

- The following persons and entities would be prohibited from constituting any type of mass media, mass media editorial, or broadcaster: foreign states or organizations controlled by foreign states or organizations; foreign legal entities; Russian legal entities with foreign participation; foreign citizens; "stateless" citizens; and Russian citizens holding foreign citizenship.
- The above persons and entities would be prohibited from directly or indirectly owning, operating, or controlling more than 20 percent of the participatory interests (or shares) in share capital of an entity that participates in mass media, a mass media editorial, or broadcasting. The bill would also prohibit other types of corporate control.
- The Russian Law on Mass Media defines mass media to include the following: print periodical publications; television channels; radio channels; television programs; radio programs; video programs; documentary programs; or other forms of periodical dissemination of information having a permanent name. This definition includes online media (or web publishing) if the online media property has registered itself as mass media.
- In practical terms, the bill would forbid all international organizations and foreign citizens, companies, and governments from founding or holding more than a 20 percent stake in Russian media entities.

What is the Timeline for the Bill?

The bill provides a two-phased timeline:

1. The bill (and its restrictions) would generally enter into force on 1 January 2016, requiring foreign companies to comply by 1 February 2016. This timeframe would be applicable to:
 - The constitution of any type of mass media, mass media editorial, or broadcaster by foreign states, foreign organizations, or organizations controlled by foreign states or organizations; foreign legal entities; Russian legal entities with foreign participation; foreign citizens; stateless citizens; and Russian citizens holding foreign citizenship; and
 - The prohibition on directly or indirectly owning, operating, or controlling more than 20 percent of the participatory interests (or shares) in share capital of an entity that participates in mass media, a mass media editorial, or broadcasting.
2. Certain restrictions would not enter into force until 1 January 2017, requiring foreign companies to comply by 1 February 2017. This timeframe would be applicable to the following foreign legal entities and Russian legal entities with foreign participation greater than 20 percent:
 - The prohibition on foreign legal entities and Russian legal entities with aggregate foreign participation of greater than 20 percent directly or indirectly owning, operating, or controlling more than 20 percent of the participatory interests (or shares) in share capital of an entity that participates in mass media, a mass media editorial, or broadcasting; and
 - One or more Russian entities with majority participatory interest, directly or indirectly, of greater than 80 percent.

On 1 October, the Russian Parliament's Upper House (Federation Council) sent the bill to Russian President Vladimir Putin to be signed into law.

Another Potential WTO Dispute?

The Duma adopted these restrictions amid the increasing tensions between the EU/US and Russia over the new sanctions adopted against Russia due to its involvement in the conflict in Ukraine.

If the bill becomes law, the conflict is likely to resurface at the table of the Dispute Settlement Body of the World Trade Organisation (WTO). Russia – which acceded to the WTO in 2012 – is under a legal obligation to ensure enforceable market access to foreign investors, including in the audio-visual sectors.

As the announced measures are not explicitly mentioned in Russia's Schedule on Specific Commitments on Services made upon accession, if the law is adopted, Russia might be viewed as breaching its WTO commitments by violating the guarantee that it made to economic operators in other countries that the conditions of entry and operation in the media sector would not be changed to their disadvantage after the accession date.

This could well become the sixth dispute between the EU and the Russia at the WTO since the latter acceded the Geneva-based organization two years ago.

Could the Bill Trigger BIT Claims?

The new legislation could also violate protections granted to foreign investors under Russia's bilateral investment treaties (BITs). For example, many of those treaties provide that foreign investors should be treated the same as Russian nationals and companies and that their investments shall not be expropriated.

The requirement that foreign investors dispose of their shareholdings in excess of the 20 percent threshold may be found to violate one or both of those, and possibly additional, provisions of the treaties. Russia, which recently lost the record-setting US\$52 billion arbitral award against former Yukos shareholders at the Permanent Court of Arbitration at The Hague, thus may be facing new investor claims soon.

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