

# Newsletter

## *Legislative initiatives in CII regulation and lifting of the antitrust moratorium*

April 8, 2024

Dear Ladies and Gentlemen!

We would like to inform you about an important legislative initiative in the regulation of critical information infrastructure (CII), as well as the lifting of the moratorium on antitrust inspections of accredited IT companies from 28 March 2024.

### **New requirements for import substitution and categorization at CII facilities**

On 21 March 2024, a draft law was submitted to the State Duma<sup>1</sup>, which partially amends the system of requirements for ensuring the protection of significant CII facilities<sup>2</sup>. If adopted, the amendments would come into force on **1 March 2025**.

#### **1. Transition of CII entities to the preferential use of Russian software and radio-electronic products**

At present, only government agencies and state-owned companies are prohibited from using foreign software at CII facilities. This ban will come into effect on **1 January 2025**<sup>3</sup>. In addition, starting from the same date, CII facilities will be prohibited from using information security tools from unfriendly countries<sup>4</sup> or organizations under their jurisdiction that are directly or indirectly controlled by them, or affiliated with them<sup>5</sup>.

The draft law proposes **expanding the requirement for the import substitution** of software and radio-electronic products **for all CII entities** at their **significant CII facilities**.

**The Russian government is responsible for the procedure and terms of transition** of CII entities to the preferential use of Russian software and radio-electronic products, as well as **the monitoring process for this transition**. At the same time, it will be possible to use foreign IT products without the approval of the Russian Government, which will establish the cases and procedures for coordinating such use. In the banking and other financial market sectors, the Russian government is required to coordinate all decisions of this nature with the Central Bank of Russia.

#### **2. New categorization procedure for CII**

Currently, when assigning one of the three categories of significance, CII entities are guided by the categorization rules<sup>6</sup> approved by the Russian government. However, in practice, CII

<sup>1</sup> [Draft Law No. 581689-8](#) "On Amendments to the Federal Law "On the Security of the Critical Information Infrastructure of the Russian Federation".

<sup>2</sup> The provisions of this draft law will directly affect government agencies, state institutions, Russian legal entities, and individual entrepreneurs that work in healthcare, science, transportation, communications, energy, financial markets, the fuel and energy sector, metallurgical and chemical industries, and other significant sectors of the economy ("**CII entities**").

<sup>3</sup> [Decree No. 166 of the President of the Russian Federation dated 30 March 2022](#) "On measures to ensure the technological independence and security of the critical information infrastructure of the Russian Federation".

<sup>4</sup> [Resolution No. 430-r of the Government of the Russian Federation dated 5 March 2022](#) "On the approval of the list of foreign states and territories engaging in unfriendly actions against the Russian Federation, Russian legal entities, and individuals".

<sup>5</sup> [Decree No. 250 of the President of the Russian Federation dated 1 May 2022](#) "On additional measures to ensure the information security of the Russian Federation".

<sup>6</sup> [Decree No. 127 of the Government of the Russian Federation dated 8 February 2018](#) "On the approval of the rules for the categorization of critical information infrastructure facilities of the Russian Federation, as well as the list of criteria indicators of the significance of critical information infrastructure facilities of the Russian Federation and their values".

entities have a certain degree of freedom in categorization and often reduce the actual list of significant CII facilities.

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The draft law proposes regulating the categorization process by creating lists of typical industry-specific CII facilities, which include:

- The names of the types of information systems
- The functions they perform
- The types of activities for which they are intended to provide support

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In addition, when determining the category for CII facilities, in addition to the aforementioned criteria and indicators of their values, as well as the procedure for categorization, it will be necessary to follow methodological guidelines regulating industry-specific aspects of categorizing CII facilities.

The lists of typical industry-specific CII facilities and methodological guidelines will be drafted by the state authorities, the Central Bank of Russia (in the financial market sector), and Russian legal entities responsible for developing, conducting, or implementing state policies and/or regulatory activities in a particular field, in coordination with the Federal Service for Technical and Export Control of Russia (FSTEC).

CII entities, in turn, are obliged to provide up-to-date and reliable information about their existing CII facilities.



If it is established that inaccurate and/or incomplete information was provided, the FSTEC of Russia shall send to CII entity a substantiated request to amend the information within 30 days.

The CII entity shall review this request within 10 days and provide the FSTEC of Russia with information about the assignment of one of the categories of significance to the CII facility or on the absence of the need to assign such categories in writing, or provide justification for the absence of the need to correct the relevant information.

### 3. New requirements for software and radio-electronic products used at CII facilities

The draft law also authorizes the Russian government to establish requirements for software and radio-electronic products used at significant CII facilities, including telecommunications equipment and hardware and software systems.

In the banking and other financial market sectors, the requirements are subject to coordination with the Central Bank of Russia.

CII entities with significant CII facilities should already be monitoring the stages of the draft law's progress and planning for timely responses to the upcoming changes.

### Lifting of the moratorium on antitrust inspections of IT companies



From 28 March 2024 the moratorium on antitrust inspections of IT companies will be lifted<sup>7</sup>. Please note that the moratorium is being lifted due to the large number of complaints from small and medium-sized companies, as well as consumers about violations by dominant entities.



The moratorium on antitrust inspections of IT companies was introduced in 2022 and was supposed to last until the end of 2024.

<sup>7</sup> [Resolution No. 340 of the Government of the Russian Federation dated 20 March 2024](#) "On Amendments to Resolution No. 448 of the Government of the Russian Federation dated 24 March 2022".

After the moratorium is lifted, the Federal Antimonopoly Service (FAS) and its territorial bodies will be entitled to conduct unscheduled inspections of compliance with antimonopoly legislation by accredited IT companies for the following violations:

- Monopolistic activities by legal entities owning a digital platform;
- Anti-competitive agreements of legal entities;
- Anti-competitive agreements or concerted actions of the federal executive authorities, regional government authorities, local government authorities, other bodies or organizations performing the functions of these authorities or organizations, as well as state non-budgetary funds and the Central Bank of Russia;
- Failure to comply with competition requirements for bidding, requests for price quotations for goods, or requests for proposals.

However, the Ministry of Digital Development, Communications and Mass Media of the Russian Federation reports that the lifting of the moratorium will affect only a small number of IT companies, as the innovations primarily aim to prevent legal entities that own digital platforms from abusing their dominant position, namely entities that meet the following criteria:

- The company must have a digital platform;
- The share of transactions between the buyer and seller must make up more than 35% of all transactions in a given market;
- Revenue must exceed 2 billion RUB (approx. 21,500 USD).

At the same time, the Resolution states that an inspection may be carried out with respect to all IT companies. In addition, please note that the moratorium will continue to apply to all scheduled inspections.

Moreover, FAS representatives note that the lifting of the moratorium will make it possible to utilize the measures of the "fifth antimonopoly package", which was adopted in July 2023. You may read more about it in our [newsletter](#).

We hope that you will find the information provided herein useful. If any of your colleagues would also like to receive our newsletters, please send them the [link](#) to the electronic subscription form. If you would like to learn more about our [Data Protection and Cybersecurity](#), please let us know by replying to this email. We will be glad to provide you with our materials.

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If you have any questions,  
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