



Data Protection in Russia

Changes under Federal Law No.242-FZ



Personal Data Protection in Russia

With the adoption on 21 July 2014 of Federal Law No.242-FZ "On Amendments to Certain Legislative Acts of the Russian Federation with regard to Personal Data Processing in Information and Telecommunications Networks", laws have been changed dramatically.

Although different business associations have been fighting for the law to be brought into effect later, it seems that Federal Law No. 242 will come into force on 1 September 2015.

Bearing in mind that Roskomnadzor (DPA) is not entitled to comment on the law officially, the scope of the rule is not left entirely to the interpretation of whoever is called upon to apply it. Nonetheless, Roskomnadzor has stated some views which should be considered in order to comply with the law.

General Requirements

While collecting personal data, for instance by means of the "Internet" as an information-telecommunication network, the operator is to ensure the recording, systematization, accumulation, storage, making more precise (updating, modifying) and retrieving of the personal data of citizens of the Russian Federation by means of databases located on the territory of the Russian Federation.

Exceptions to this requirement include, for example, the processing of personal data for implementing an international agreement, administration of justice, enforcement of court rulings, and the provision of public and municipal services, mass media, or creative work.

Scope

The law introduces a new obligation on personal data operators to "ensure recording, systematization, accumulation, storage, change and extraction of personal data of Russian citizens with the use of data centers located on the terri-





tory of the Russian Federation in the course of collecting personal data including via Internet”.

“Personal data” it is defined as as “any information directly or indirectly related to an identified or identifiable individual”.

First, the law applies to Russian “operators” of personal data (an “operator” is anyone who processes personal data and determines the purpose of such processing) even if they process such data outside Russia.

Second, the law applies to foreign entities that process data of Russian nationals even if they do so outside Russia. Questions remain regarding how Russian regulators will enforce the law with respect to such foreign entities.

“Database” refers to a set of independent materials systematized in such a way that these materials can be retrieved and processed using the computer.

The law relates to any business that processes personal data, including storing electronic accounting and other reporting documentation, or creating and maintaining HR databases etc.

The law will have no retroactive effect; thus, all databases with personal data created before 1 September 2015 can still be used after that date. However, any update of such databases can only

be performed after 1 September 2015 with the use of a primary Russian database.

Penalties for Data Protection Violation

Currently violation of the Data Localization Rule can be penalized with a fine of between €150 € and €4,500 . However, the legislator has not addressed the question of whether the fine is imposed for any incident or per record. Furthermore Roskomnadzor has the power to block websites and introduce a new blacklist of companies which do not comply with personal data regulations.

Please note that companies may only be added to the blacklist based on a court decision.

Risks of non-compliance

Because the Personal Data Law is written in broad and somewhat ambiguous terms, it is necessary to wait for statements from Russian enforcement agencies. The Ministry of Communications has begun working on an official protocol to explain its interpretation of the law. The protocol will be published by the end of summer 2015. Roskomnadzor will be responsible for enforcing the law.

Actions to consider

Under a liberal interpretation, it should be possible to process personal data of Russian citizens





on servers located abroad in addition to servers located in Russia. However, a more restrictive interpretation from the authorities prohibiting parallel storage of personal data cannot be ruled out.

One potential option may be that a company considers database segmentation, whereby it records and stores only data which identifies persons in Russia (any portion of the database containing full names, contact details, etc.), while processing anonymous user transaction data in data centers located abroad.

Companies should set up servers in Russia or establish a contract with a third-party vendor to set up the necessary local servers in Russia.

In addition to this, companies have to set up a processing procedure and include citizenship in the database to identify whether the data originates from a Russian citizen or not.

Data stored in Russia would be transferable outside Russia if the transfer complies with the Russian cross-border transfer rules. The amount of data contained in the local Russian database must be either larger or equal to the amount of data transferred outside of Russia. The Russian database is to be primary and a foreign database can be either a partial or a full copy of the Russian primary database.

Operators processing the personal data of Russian citizens will also have to notify the authorized state body, the Federal Service for the Supervision of Telecommunications, Information Technologies, and Mass Communication — Roskomnadzor — of the location of the servers/storage facilities where such personal data is stored.

For further informations

Get in contact with us and together we will evaluate how data privacy will become a main stakeholder in your Organisation and your developments to be one step ahead.



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