

MARCH 2016

Control over the processing of Russian citizens' personal data is tightened

Since September 2015, both foreign and Russian companies have been required to use databases located in Russia to process Russian citizens' personal data (PD) (the so-called data localization rule).

In 2016 the regulator has been more active in checking compliance with the data localization rule. Even some foreign companies that do not have offices in Russia fall within the area of the regulator's interest.

THE SCOPE OF OBLIGATIONS IS STILL UNCLEAR

Due to the unclear wording of the new rules and the lack of any official interpretation, various approaches to applying the new rules are being taken by the authorities, businesses and the legal community. Moreover, sometimes the same authority adopts contradictory positions.

It is disputable, in particular, whether the use of cloud solutions or 'mirror databases' outside of Russia is allowed. In the worst case scenario, the processing of Russian citizens' PD outside of Russia may be significantly restricted, as the requirement to use Russian databases for the retention of PD calls into question whether the accessing of PD outside of Russia, cross-border transfer of PD and use of PD abroad are actually possible.

RISKS TO BE TAKEN INTO CONSIDERATION

The law provides a very broad definition of PD. It is any data that can directly or indirectly identify a person. Usually, HR and CR data kept in global solutions and data collected through them, for example, a contact form on a website (name, phone, address, e-mail etc.), are considered to be PD.

Servers used for global databases and hosting websites are frequently located outside of Russia. So Russian and foreign companies that use global solutions and/or collect PD via websites will need to pay particular attention to the new localization rules.

Failure to meet the requirements for PD processing can lead, in particular, to the following negative consequences for a company or its officers:

1. Administrative liability:

The Russian Administrative Offences Code provides for **fin**es which can be imposed on a company and its officers for infringements relating to PD processing.

The legislator is set to increase the amount of sanctions, and a draft law on this is currently under consideration by the State Duma.

As a general rule, Roskomnadzor (the supervising agency in the area of personal data protection) issues an order that the infringements be remedied. However, the process of moving databases to Russia is usually time-consuming. Failure to carry out the order can lead to additional fines, as well as the **disqualification** of the company's officers (e.g. general managers) for several years.

2. Blocking access to a website:

There is an official register of websites containing information processed in contravention of the Russian legislation on personal data - the Register of Personal Data Infringers. The regulator may, further to a court ruling, restrict access to the websites included in the Register.



This risk is of great importance in the context of the data localization rule for companies that use websites as the principal tools of their business operations, such as online stores, distance learning portals, booking services, etc. It should be mentioned that website blocking may also be applied to an Internet resource owned by a foreign company without any legal presence in Russia.

INCREASING INSPECTIONS

Over the last six months, Roskomnadzor has been checking Russian and foreign companies on their compliance with the localization rule.

According to Roskomnadzor' statistics, in the last four months of 2015:

- **317** inspections were carried out in respect of more than **100** entities;
- **104** websites were listed in the Register of Personal Data Infringers;
- access to **31** websites was restricted.

The number of planned inspections and monitoring activities in the area of PD processing is expected to rise significantly in 2016. This year Roskomnadzor will be checking more 'sensitive' sectors, such as online stores, social networks, distance learning portals, booking services, etc.

The regulator has the right to inspect companies even if they have no legal presence in Russia. A number of non-Russian companies have already received inquiries from Roskomnadzor in connection with alleged infringements. When identifying possible targets, the regulator tends to use its newly elaborated criteria which allow a foreign company to be deemed to be "aimed at the territory of the Russian Federation".

RECOMMENDATIONS

Examine the current solutions used for PD processing for their compliance with Russian law and if necessary adjust them in accordance with the new rules.

Continue to keep an eye on the regulators' guidelines and compliance practices.

Reviewed by Elena Agaeva, Pavel Sadovsky, Elena Kvarnikova

Contacts

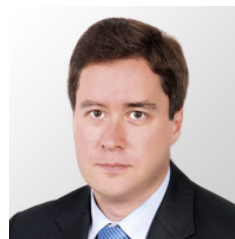


Elena AGAEVA

Counsel, Head of M&A and corporate practice (St. Petersburg)

+7 (812) 322 9681

elena_agaeva@epam.ru



Pavel SADOVSKY

Counsel,
Head of Intellectual Property/TMT practice

+7 (495) 935 8010

pavel_sadovsky@epam.ru

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