

23 July 2014



Despite drawing sharp criticism from the professional community, on 21 July 2014 the President of the Russian Federation signed the Federal Law No. 242-FZ “On amending certain legislative acts of the Russian Federation to provide clarification on the processing of personal data in information and telecommunications networks” (“the Law”).

The Law amends the Federal Laws “On personal data”¹, “On information, IT and data protection”² and “On protecting the rights of legal entities and individual entrepreneurs during the implementation of state control (supervision) and municipal control”³.

I. Major amendments

1. The duty of operators to collect personal data on the territory of the Russian Federation

The Law provides for the introduction of a fundamentally new obligation for all operators of personal data⁴, i.e. from the date when the Law comes into effect, all operators, including foreign ones, when collecting the personal data of Russian citizens, including via the Internet, will be required to ensure that this information is recorded, classified, stored, updated and retrieved using databases located on the territory of the Russian Federation. In other words, the servers on which the personal data

of Russian citizens is stored must be physically located on the territory of Russian Federation.

The Law provides a number of exceptions to this rule. In particular, this regime shall not apply to cases where the processing of personal data falls within any of the following categories:

- necessary to achieve the goals prescribed by an international treaty concluded by the Russian Federation
- necessary for the execution of justice, the execution of a judicial act, etc.
- necessary for the implementation of the Federal Law “On the organisation of public and municipal services”⁵
- necessary for the work of journalists, lawful activities of mass media, etc.

2. Notification on processing of personal data

The Law extends the list of information that must be included in notifications sent by operators to Roskomnadzor on their intention to process personal data. Starting from the date on which the Law comes into effect, these notifications will need to include information on the location of the database on which the personal data of Russian citizens is stored.

¹ Federal Law No. 152-FL “On personal data” of 27 July 2006

² Federal Law No. 149-FL “On information, IT and data protection” of 27 July 2006

³ Federal Law No. 294-FL “On protecting the rights of legal entities and individual entrepreneurs during the implementation of state control (supervision) and municipal control” of 26 December 2008

⁴ See Section 2 of Article 3 of Federal Law No. 152-FL

⁵ Federal Law No. 210-FL “On the organisation of public and municipal services” of 27 July 2010

3. Consequences of violating the requirements for processing the personal data of Russian citizens

The procedure for restricting access to information processed in violation of the legislation of Russian Federation is enshrined in the Law.

The Law establishes the Register of those in violation of the rights of subjects of personal data ("the Register"), which will include:

- domain names and/or indices of websites containing information processed in violation of the Russian legislation
- network addresses that make it possible to identify these websites
- confirmation that a court decision has come into effect
- information on measures to be taken to correct violations
- date on which information on the informational resource was provided to the network operator in order to limit access to it.

The Register will be maintained by Roskomnadzor.

Information will be included in the Register on the basis of an effective court decision.

The legal consequence of information being included in the Register is the possibility that access to the respective information resource may be limited.

Information is deleted from the Register once the violations have been corrected (within three days of submitting the respective appeal to Roskomnadzor), or on the basis of a court decision cancelling the previous one.

The Law envisages the following mechanism for notifying operators on violations and the procedure for correcting said violations:

- 1) Roskomnadzor determines a hosting provider or other entity that enabled a violation to take place, and sends that entity an electronic notification (in Russian and English) of the

entry into effect of a court decision obligating that entity to take action to eliminate violations of Russian personal data legislation.

- 2) Within one business day of receiving that notification, the entity notifies the owner of the information resource of its obligation to take measures to correct the identified violations.
- 3) Within one business day of receiving that notification from the hosting provider (or other entity), the owner of the information resource is obliged to take necessary measures to correct the violations indicated in the notification. If the owner of the information resource refuses to do so, the hosting provider (or other entity) is obliged to restrict user access to that information resource within three business days.

If the hosting provider (or other entity) fails to take the necessary measures, Roskomnadzor shall send the network operator an order to block access to the relevant information resource (including its network address, domain name and indices of the website).

II. Effects on the business community

The adoption of the Law may result in the necessity for a thorough review of business models by multinational companies, which serve Russian citizens amongst other clients.

Therefore, the Law may strongly affect companies involved in the following industries:

- IT (e.g. information on the users of Internet services and social networks may include personal data)
- International transport (e.g. online booking systems for air or rail tickets involve the collection and processing of personal data)
- Tourism (e.g. reservations made directly via hotel websites or international agencies involve the collection and processing of personal data)

- Financial services (e.g. the use of debit or credit cards abroad involves the collection and processing of personal data of cardholders by credit institutions)
- Telecommunications (e.g. paid Internet-telephony services involve the collection and processing of personal data)
- e-Commerce (any purchase made in a foreign online store involves the collection and processing of personal data)
- Other businesses that process personal data, including storing electronic accounting and other reporting documentation, creating and maintaining HR databases, etc.

We will monitor the future status of the Law and any legislative changes.

III. Unanswered questions

The Law leaves a number of issues in need of clarification, which should be answered once the legal practice has been developed, namely:

- the Law does not specify whether it is necessary to ensure the **primary** recording of the personal data of Russian citizens using databases located on the territory of the Russian Federation when collecting said information
- it is unclear whether it is permissible to create duplicates of the personal data of citizens of the Russian Federation for backup purposes using databases located abroad.

IV. Effective date

The Law comes into effect on 1 September 2016.

It seems probable that the legislators will have enough time to make additional changes, taking into account the opinions of affected market players, before the Law comes into effect.

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