

LT in Focus

Roskomnadzor clamps down on personal data processing violations

The penalties for breaching the personal data laws will be raised effective 1 July 2017. Along with a significant increase of penalties, the new law introduces a classification of elements of the personal data offences.

Furthermore, the authority of the Federal Service for Supervision of Communications, Information Technology, and Mass Media (Roskomnadzor) is expanded: from 1 July, Roskomnadzor officials will be entitled to make reports of the administrative offences relating to personal data processing and file them directly with courts, which will speed up the administrative proceedings. According to the existing procedure, the Roskomnadzor division that has discovered a violation reports it to the Prosecutor's Office that initiates administrative proceedings, issues a decree of an administrative offense, which is then forwarded to the court.

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Background

Today, there is one common element for all personal data offences - a breach of the statutory procedure for collecting, keeping, using or distributing individuals' personal data. According to Article 13.11 of the Administrative Offenses Code, the corporate offenders will receive a warning or will have to pay from RUB 5,000 to RUB 10,000 in fines for breaching the law. Compared to the EU countries, Russia has much lower fines: by May 2018, penalties for breaching the personal data laws in the European Union may reach up to EUR 10 million, or up to 2 percent of the total global revenues of the company.

Changes in a nutshell

From 1 July, there will be several special offence elements instead of one.

Type of breach:	Fine
Personal data processing in instances not covered by law, or personal data processing inconsistent with stated purpose of personal data collection	RUB 30,000 to RUB 50,000
Personal data processing without data subject's written consent (where such consent is required) or with written consent not meeting regulatory requirements	RUB 50,000 to RUB 75,000
Failure to provide free access to privacy policy	RUB 15,000 to RUB 30,000
Failure to provide personal data subject with information on her/his personal data being processed	RUB 20,000 to RUB 40,000
Failure to fulfill personal data subject's/Roskomnadzor's request to adjust, block or destroy personal data.	RUB 25,000 to RUB 45,000

How Roskomnadzor controls compliance with personal data protection laws

Territorial divisions of Roskomnadzor may conduct both scheduled and extraordinary checks. On the average, they complete about 1,000 scheduled checks and 100 extraordinary checks a year. Roskomnadzor is also monitoring the Internet on a regular basis: for 2017, the Roskomnadzor Division for the Central Federal District has planned a whole set of regular monitoring activities in respect of telecom operators, financial and credit institutions, insurance companies, collection agencies and online stores.

The most common breaches discovered by Roskomnadzor are:

- Filing an incomplete and/or inaccurate personal data processing notice;
- Personal data processing in instances not envisaged

by the Federal Law On Personal Data;

- Inconsistency of the written consent to personal data processing with the statutory requirements;
- Failure to include the obligation to ensure personal data confidentiality and safety and comply with the personal data protection requirements into the assignment given by the data controller to data processor;
- Breach of confidentiality requirements;
- Data controller's failure to take measures that are necessary and sufficient to comply with the statutory obligations;
- Failure to privacy policy on the website.

How to mitigate risks

To mitigate the risks of incurring a liability for breaching the personal data protection requirements, the companies are recommended to:

- Check their corporate personal data processing policies for compliance with the applicable laws;
- Develop and post a privacy policy on the corporate website;
- Ensure that all legal prerequisites for personal data processing are in place;

- Develop an adequate written consent format;
- Make sure that requests of personal data subjects are attended to;
- Ensure that personal data are processed using the databases located in the Russian Federation, that is, localise the processing. Although there is no special offence element in the new law for the failure to localise personal data processing in Russia, there is a high risk of website blocking over breaching this requirement.

We hope that you will find this newsletter interesting and informative. Please feel welcome to contact us for more information on the topics covered.

Best regards,

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