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New administrative rules and sanctions in Russia

The Federal Law of 7 February 2017 No. 13-FZ on Amendments to the Code of Administrative Offences ('the Personal Data Violations Law'), which significantly reforms the procedure and circumstances in which the Federal Service for Supervision of Communications, Information Technology, and Mass Media ('Roskomnadzor') can impose sanctions on companies for violations of data protection legislation, entered into force on 1 July 2017. Sergey Medvedev and Ilya Goryachev of Gorodissky & Partners analyse the background to, and implications of, the Personal Data Violations Law for data controllers in Russia.

Introduction

In Russia, the definition of personal data is rather broad; any information which is directly or indirectly related to an identified or identifiable individual, is considered to be personal data under Article 3 of the Federal Law of 27 July 2006 No. 152-FZ on Personal Data (as amended) ('the Personal Data Law'). The Russian personal data landscape and legal regime are regulated mainly by the Personal Data Law. The Personal Data Law has undergone several changes and developments recently.

Administrative sanctions for the breach of the Personal Data Law are set in the Code of Administrative Offences ('the Code') in particular, in Article 13.11, which contains certain sanctions for violation of provisions on the collection, storage, use and distribution of data related to individuals as established by the Personal Data Law. Prior to 1 July 2017, under that article, the maximum administrative fine which a company could face for a typical data protection or privacy breach was RUB 10,000 (approx. €150). In practice, there were cases

when smaller fines had been imposed on breaching entities, i.e. data controllers.

In Russia, the national personal data watchdog is the Roskomnadzor. The Roskomnadzor is entitled to investigate compliance with the data protection regulations as set forth by the Personal Data Law and other related laws. Prior to 1 July 2017, in the event of the detection of a data breach, the Roskomnadzor had to collect the appropriate evidence and transfer the administrative investigation file to the Public Prosecution Office, whose officers were in charge of initiating an administrative case and bringing the case to the competent court to seek imposition of the relevant fine on the infringing data controller. Because of the involvement of these two state agencies, there were significant delays in administrative proceedings, which eventually resulted in the lapse of limitation periods and the dismissal of the initiated cases. For privacy infringement matters, the statutory administrative limitation term is three months, commencing from the date of the corresponding administrative offence.

Starting from 1 July 2017, as per the Personal Data Violations Law, the Roskomnadzor has been given the legal competence to initiate administrative cases directly by filing the reports related to the administrative offence with competent courts for rendering judgements for data protection breaches. Therefore, all domestic and foreign companies acting as data controllers that are collecting, storing, using, processing, transferring the personal data containing the Russian element, need to take into account the newly implemented rules and sanctions for privacy violations in Russia.

Background to the amendments and legislative history

In 2014, the Legislative Committee of the Russian State Duma (the lower chamber of the Russian Parliament) drafted and presented a bill (No. 683952-6) providing the establishment of amendments to the Code, clarifying the provisions setting the liability for infringement of privacy regulations ('the Bill'). The submission of the Bill was aimed at improving the personal data enforcement situation to ensure more effective legal protection

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to deal with the growing statistics of Russian personal data violations.

The following reasons have been cited by the legislators to explain the proposed amendments:

- intensive development of information and communication technologies resulting in growing statistics of data breaches from the privacy perspective;
- then-effective low fines fail to provide adequate remedies to challenge data breaches;
- specific types of data breaches should be determined in the Code;
- liability should correspond to the European rules on data protection;
- the procedure related to judicial imposition of fines for data breaches should be simplified.

In 2015 and 2016, the Bill was subject to legislative hearings in front of the Russian State Duma and the Russian Council of Federation (the upper chamber of the Russian Parliament). Then, on 7 February 2017, the Bill was signed into law by the Russian President. The amendments to the Code for privacy violations became effective on 1 July 2017.

New administrative rules and sanctions

The previously effective wording of Article 13.11 of the Code was quite broad in terms of its general interpretation, and provided no specific types of data protection breaches. The new version of the mentioned article now lists specific categories of administrative offences for privacy violations under the Personal Data Law.

More specifically, the previous wording of Article 13.11 of the Code reads, ‘a breach of the procedure of collection, storage, use or distribution of the data on citizens’ personal data’ shall be punishable either with a warning or with the imposition of the following fines:

- on individuals - from RUB 300 (approx. €4.50) to RUB 500 (approx. €7);
- on company officers (the same

- as for individual entrepreneurs)
 - from RUB 500 (approx. €7) to RUB 1000 (approx. €14);
- on companies - from RUB 5000 (approx. €75) to RUB 10,000 (approx. €150).

Starting from 1 July 2017, the data protection breaches have been diversified into the following types of specific violations, and the following fines are now becoming applicable, unless the offence constitutes a crime, for the following data infringements:

- For processing data in cases not provided under the applicable laws, as well data processing incompatible with the processing purposes, a fine, on companies, of RUB 30,000 (approx. €450) to RUB 50,000 (approx. €740) (a warning is possible instead of a fine);
- For processing data without written consent in cases where such consent is necessary or the data processing made with the written consent does not meet mandatory requirements, a fine, on companies, of RUB 15,000 (approx. €220) to RUB 70,000 (approx. €1050);
- For the failure to publish or provide access to a privacy policy or the information on requirements for data protection, a fine, on companies, of RUB 15,000 (approx. €220) to RUB 30,000 (approx. €450) (a warning is possible instead of a fine);
- For the failure to provide an individual with the information on his/her data processing, a fine, on companies, of RUB 20,000 (approx. €300) to RUB 40,000 (approx. €600) (a warning is possible instead of a fine);
- For the failure to satisfy (within the prescribed term) a request on personal data clarification, blocking or destruction (in cases where personal data is not complete or is outdated, imprecise or illegitimately received or unnecessary for the announced purpose of data processing), a fine, on companies, of RUB 25,000 (approx. €370) to RUB 45,000 (approx. €670) (a warning is possible instead of a fine);

- For the failure, in the case of data processing without automated means, to comply with the terms of security requirements while storing tangible media containing personal data; or terms that exclude unauthorised access, if it has resulted in illegitimate or accidental access to personal data or its destruction, modification, blocking, copying, submission or dissemination, a fine, on companies, of RUB 25,000 (approx. €370) to RUB 50,000 (approx. €740).

Therefore, if the Roskomnadzor investigates and locates a data breach committed by the data controller, it is empowered to:

- initiate an administrative offence case;
- prepare the administrative offence report against the infringer; and
- move the administrative case to the court.

Conclusion

At this point in time, there are no issued official recommendations or practical guidance from the Roskomnadzor or the Ministry of Communications of the Russian Federation on the possible interpretation and application of the amendments. Therefore, it is generally expected that, for the time being, the new rules and sanctions will have to first be tested in practice.

At the same time, it is already clear that the Roskomnadzor reserves the right to conduct scheduled, i.e.. regular and non-scheduled, i.e.. random, privacy compliance checks. Therefore, for this particular reason, it makes sense for companies to immediately audit their internal data processing operations, as well as underlying documentation and policies, to bring them all in line with the Personal Data Law and the amendments.



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