

September 30, 2015

Developments related to enforcement of Russian personal data legislation

Dear Sir or Madam,

We would like to provide you with an update on developments related to enforcement of personal data legislation including the Localization Act (Federal Law No. 242-FZ dd.21 July 2014) which came into force on September 1, 2015.

1. *The first case of application of a new enforcement mechanism set out in the Localization Act*

As we mentioned in our previous newsletters, the Localization Act provides for a special enforcement mechanism which implies inclusion of the information resources (domain names, references to the web pages in the Internet, web sites addresses), where the data is processed in violation of rights of personal data subjects, into the special register of the violators of data subjects rights (the “**Register**”). The Localization Act also provides for the right of the competent state authority, namely Federal Service for Supervision of Communications, Information Technology and Mass Media (“**Roskomnadzor**”), to restrict access to such information resources for users from Russia.

Based on the above provisions recently Roskomnadzor has restricted access to the online database <http://abonenty-chast2.pw> which contains personal data belonging to approx. 1.5 million of the Russian citizens. The reason for access restriction is not connected with non-compliance with the requirement on on-soil processing of Russian nationals' personal data, but is other violations of Russian Federal Law on Personal Data.

2. *The Draft Decree of the Russian Government outlining procedure of performing state control (supervision) over compliance with personal data laws (the “Decree”).*

The Decree is designed to replace provisions of the Federal Law No. 294-FZ dd. December 26, 2008 which regulate procedure of inspections held by state authorities and which is not applicable to the sphere of personal data as of September 1, 2015. The Decree was submitted to the Russian Government for arranging its final adoption. We expect that the Decree will be signed and officially published in the nearest future.

As for the coming changes related to adoption of the Decree, the main are as follows:

- Before September 1, state control (supervision) over personal data legislation was officially conducted in two forms: scheduled and unscheduled examinations. Under the Decree, a new additional form of supervision is introduced, namely “**regular monitoring**” over data operators.
- The Decree sets out criteria for inclusion of data operators into the annual plan of scheduled examinations, which are rather broad, e.g.:
 - i. Expiration of 3 years from the date of the last scheduled examination of a data operator;
 - ii. Receipt of information on violations of personal data legislation appeared as per results of regular monitoring measures;

- iii. Receipt of information on violations of personal data legislation obtained from any state (municipal) authorities / media;
 - iv. Processing by a data operator of personal data belonging to significant amount of data subjects as well as processing of biometric and sensitive personal data;
 - v. Failure to provide by a data operator of information required by the Federal Law “On Personal Data” (e.g. failure to submit notification on processing of personal data to Roskomnadzor, including failure to submit information on location of databases processing Russian nationals’ personal data as of September 1, 2015).
- The list of grounds of unscheduled examinations is also extended under the Decree. Here are some examples of new grounds based on which Roskomnadzor will be entitled to conduct unscheduled inspections:
 - i. Receipt of information on violations revealed in the course of regular monitoring measures;
 - ii. Receipt of information obtained from any state (municipal) authorities / mass media;
 - iii. Detection of non-accuracy or falsity of the information indicated by a data operator in the notification on data processing submitted to Roskomnadzor;
 - iv. Receipt of respective instructions from the President and the Government of the Russian Federation;
 - v. Receipt of respective demand of the State Prosecution Office.
 - Under the Decree, a so-called procedure of “analysis and assessment of performance of the personal data legislation” will be introduced. Under this procedure a data operator may at its own initiative submit to Roskomnadzor its internal policies and documents, as well as other information related to processing of personal data for review. Upon such review, Roskomnadzor will confirm compliance of the data operator or will demand to eliminate revealed violations / inaccuracies. Data operator must eliminate violations detected by Roskomnadzor in course of the assessment within 6 months.

We continue monitoring status of the Decree adoption and its coming into force and will keep you informed on the developments.

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*We hope that you find this information helpful. Should you have any questions, please contact our Partner **Irina Anyukhina** (ianyukhina@alrud.com).*

Kind regards,

ALRUD Law Firm

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