

# RUSSIA'S DATA LOCALIZATION LAW: NEW INTERPRETATIONS OF THE AUTHORITIES

The effective date of the new law affecting both foreign and domestic players is approaching

Russian data protection law is still the hot topic among the business community. The amendments to the Personal Data Law made in July 2014, better known as the Russian personal data localization law (the **Law**), created a new procedure restricting access to websites violating Russian laws on personal data and a requirement to store personal data of Russian citizens on servers located in Russia. The Law will become effective on 1 September 2015.

## The Law: main aspects of the amendments

The Law creates a new procedure restricting access to websites violating Russian laws on personal data.

For these purposes the following amendments were introduced:

- Register: *Roskomnadzor* (the **DPA**) will create a register of websites with infringing information. There will be an automated data base of violators run by the DPA or by a sub-contracted entity. The register will be named the "Register of Personal Data Rights Violations" (the **Register**).
- Blocking of infringing websites: The Law provides for a detailed "notice and take down" procedure of the websites with infringing information.
- Storage and processing of personal data: The processing actions which trigger the application of the Law are recording, systematizing, aggregation, storage, specification (update and modification) and extraction of personal data.
- Notification of server locations: The data operators which do not fall under the exemptions of article 22

of the Law (i.e. companies collecting only employee data or collecting data on the basis of a direct agreement with an individual without transfer to third parties) must notify the DPA on the location of servers with personal data.

## Meeting with the DPA

The following are the interpretations given by the DPA during our meeting with them on 23 June 2015. Apart from the caveat that the DPA is not entitled to officially comment on the Law, they shared the following views which they also asked to bear in mind when considering ways to comply with the Law.

### **No official act with clarifications/interpretations of the Law:**

The DPA confirmed that there will be no act clarifying the Law, which was earlier promised by them. There will be adopted, however, two regulations of the Government and two orders of the DPA regulating the technical issues related to the Register. Otherwise, the DPA asked to rely on their unofficial interpretations and on the actual enforcement practice after the effective date of the Law.

**Territorial Applicability of the Law:** The Law will apply to any legal entities, including foreign ones, irrespective of whether they have actual presence in Russia or not. The criteria for the DPA would be whether a foreign entity targets its offers, goods and services at a Russian individual. For instance an offer to buy goods allowing Russian citizens to make purchases would be considered as such targeting and, thus, would trigger the applicability of the Law.

**Definition of Personal Data:** The definition would remain the same in the near future and the DPA would interpret it as broad as possible. The current definition of personal data is 'any data that relates directly or indirectly to an individual who can be identified by this data'.

**Retroactive Effect:** The Law will have no retroactive effect, thus, all databases with personal data created before 1 September 2015 can be still used after that date. However, any update of such databases can be performed after 1 September 2015 only with the use of a primary Russian database.

**Russian Primary Database:** The Law can be fulfilled by placing a database in a Russia-based data center or computer/server. The amount of data contained in the local Russian database must be either larger or equal to the amount of data transferred outside of Russia. The Russian database shall be primary and a foreign database could be either a partial or a full copy of the Russian primary database.

**Cross-Border Transfers:** Cross-border transfers of personal data would be still allowed after 1 September 2015, provided that (i) relevant requirements of the cross-border transfers are complied with and (ii) the primary database is located in Russia.

**Permitted Actions:** The DPA also commented that the following actions are out of scope of the Law and, thus, can be performed without the use of the Russian local database: use, distribution, anonymization, blocking and deletion. All other actions, such as recording, systematization, aggregation, storage, specification (update and modification) and extraction of personal data must be performed with the use of the Russian primary database.

**Database:** The DPA uses the term database very broadly, thus, including any organized/structured set of information, irrespective of the material medium and means of processing to be used.

**Mirroring Databases:** The DPA confirmed that mirroring databases are not prohibited, provided that the Russian local database is primary.

**Exemptions from the Law:** The exemptions include: (i) processing of data for the purposes required by law or an international treaty (the DPA commented that airlines

would be out of scope of the Data Localization Law because their operations are subject to international treaties, but this reasoning does not appear to be conclusive to us); (ii) judicial purposes; (iii) processing by state authorities; (iv) professional activity of mass media.

We are keeping in touch with the authorities and Russian business associations and will keep you informed as matters develop.

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