

VEGAS LEX

PERSONAL DATA PROCESSING IN RUSSIA

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Due to the increase in the number of the Federal Supervision Service on Network, Information Technology and Mass Communications (“Roscomnadzor”) inspections on personal data protection we would like to draw attention to the significant issues of the effective law application.

I. The necessity to obtain consent for the personal data processing

Personal data processing is permitted only with the prior consent of personal data owner (the “Owner”). The prior consent may be given in any form which may confirm that the consent was given (also the consent may be given by the Owner’s representative).

Personal data processing is permitted with the Owner’s prior *written* consent if the personal data relates to: race, nationality, political and religion views, health conditions, intimacy, biological and physiological data under which the individual may be identified and finally when personal data is transfers abroad.

We are expecting amendments to the applicable legislation which will allow the personal data operator (the “Operator”) to receive consent from the Owner in electronic form (via e-mail or on web site).

In case of any dispute the burden of proof for the consent receipt lies with the Operator. The Owner may withdraw the consent in any time.

II. The Operator’s obligations

The Law imposes the following obligations on the Operator:

- 1) Appointment of an employee who will be in charge of the personal data processing;
- 2) Issuing internal regulations which will regulate the personal data processing and protection;
- 3) Application of technical, organizational and legal remedies to the personal data protection;
- 4) Familiarization of all employees with the Law, internal acts and (if necessary) employees training regarding personal data protection.

The Operator should provide unlimited access to the personal data processing acts and at the request of Roscomnadzor should provide it with such acts.

Roscomnadzor has pointed out the most common violations of the applicable law in Operator’s internal regulations dealing with personal data protection:

1. The Operator should clearly indicate the exact articles of the applicable law under which it performs personal data processing.
2. The Operator should clearly indicate the exact purpose of the personal data processing. Indication just personal data gathering, storage, utilization as personal data processing is prohibited.
3. The Operator should indicate personal data list which will be processed. The list should be exhaustive.
4. The Operator should clearly indicate protection measures during personal data processing.
5. The Operator should adopt a list of employees who have access to personal data.

III. Violation of the applicable law

Defaulting person or entity bears administrative, disciplinary and criminal liability and should also compensate moral damages under the RF Civil Code in the event of any violations detected during inspection of Roscomnadzor.

In the event of breach of any obligations imposed by the applicable law, currently the Operator may be subject to fines of up to 10,000 Roubles, (app. US\$ 333 as of April 2013). However we are expecting amendments to the Code of Administrative Offences which will rise the fines up to 500,000 Roubles (app. US\$ 16,600) or a prohibit to carry out activity for up to 90 days.

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Current issue contains an overview of the recent legislative changes. The presented material should be treated as general information and not as professional advice. VEGAS LEX recommends seeking professional advice on any matter

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RECOMMENDATIONS & RECOGNITION:

- European Legal Experts 2012
- Best Lawyers 2012
- International Financial Law Review 2012
 - ▶ Restructuring and insolvency
 - ▶ Corporate and M&A
 - ▶ Project finance
- Chambers Europe 2012
 - ▶ PPP
 - ▶ Competition/Antitrust
 - ▶ Dispute Resolution
 - ▶ Tax
- PLC which lawyer? 2012
 - ▶ Competition/Antitrust
 - ▶ Insurance
- The Legal 500 EMEA 2012
 - ▶ Dispute Resolution
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- Russia's leading rankings "Pravo.ru-300", 2012
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