



## Hit like a thunderbolt

### Localization of personal data: fines with a bite

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The President of the Russian Federation has signed into law a bill **increasing administrative liability** for violations of the localization requirement for personal data belonging to Russian citizens.

Federal Law No.405-FZ dated **02 December 2019** introduces amendments to the Code of Administrative Offences of the Russian Federation ("KoAP RF"), and entered into force from its date of publication.

Under the provisions as amended, the maximum amount of administrative fines that can be imposed for violations of data protection legislation is increased from 75 thousand to **18 million rubles**. As an alternative administrative measure, the supervisory authority also retains the possibility to block access to websites and other internet resources.

## Before the amendments

Since 01 September 2015, operators of personal data have been under an obligation to localize personal data belonging to citizens of the Russian Federation<sup>[1]</sup>. Localization<sup>[2]</sup> is understood as ensuring that the recording, systematization, accumulation, storage, revision (updates, changes), and extraction of personal data belonging to Russian citizens, is performed using databases located on the territory of the Russian Federation when being collected from the data subject.

Nevertheless, KoAP RF previously did not establish any specific elements of an administrative offence for violation of this duty.

In case of violation, personal data operators could only be brought to administrative liability through other offences in KoAP RF, or alternatively could be subject to administrative measures by way of blocking access to their website.

Notably, the social networks Twitter<sup>[3]</sup> and Facebook<sup>[4]</sup> were in recent cases brought to administrative liability under article 19.7 KoAP RF and imposed a fine of three thousand rubles for failure to provide Roskomnadzor with evidence of compliance with the localization requirement.

Another striking example is the social network LinkedIn<sup>[5]</sup>, which was included in Roskomnadzor's register of data protection offenders for violations of the localization requirement, which in practice entails that the website was blocked.



## After the amendments

Article 13.11 KoAP RF is now supplemented by the new paragraphs 8 and 9. Under the new provisions, failure to comply with the requirement to localize Russian citizens' personal data can lead to the imposition of administrative fines in the amount of **50 thousand rubles** for private persons, **200 thousand rubles** for individuals acting in an official capacity, and of up to **6 million rubles** for legal entities.

Repeated violations may lead to fines of up to **100 thousand rubles** for private persons, **800 thousand rubles** for individuals acting in an official capacity, and **18 million rubles** for legal entities.

It is in addition clarified in the provision that individuals carrying out business activities without having duly incorporated a legal entity for that purpose, nevertheless carry the same level of administrative liability as legal entities.

Any decision to impose administrative fines or measures to block infringing websites lies with the courts, acting upon petition by the regulator.

[1] Cf. Art. 18(5) of Federal Law No. 152-FZ of 27.07.2006 (as amended 31.12.2017) "On Personal Data"

[2] This term is not used in the legislation, but is widely used in practice

[3] Cf. Decision of the Taganskiy District Court of the City of Moscow of 08.05.2019 No. 12-0513/2019

[4] <https://www.vedomosti.ru/technology/articles/2019/04/12/799023-oshtrafoval-facebook>

[5] Cf. Appeal ruling of Moscow city court of 24.04.2017 in case No. 3.-15365/2017

## Whom are these amendments intended for?

These amendments are primarily intended to affect companies wholly or partly located in the Russian Federation and which process Russian citizens' personal data.

As far as foreign companies without any physical presence in Russia are concerned, collecting fines is arduous in practice. In such instances, Roskomnadzor may resort to administrative measures by blocking the offending website, as long as there are grounds for this. *\*Cf. Art 15.5(5) of Federal Law No. 149-FZ of 27.07.2006 "On Information, Information Technologies, and the Protection of Information".*

## Any practical recommendations?

It is first and foremost necessary to clarify whether the localization requirement is applicable to a given company. If that is the case, measures should be taken to localize databases containing Russian citizens' personal data. Following this, an assessment of risks associated with infringing other requirements of data protection legislation should be carried out. In any case, companies should be prepared to defend their rights and interests in their dealings with the supervisory authority.



### Questions

Eversheds Sutherland's Russian practice is well-equipped to advise on all issues related to data protection, offering a comprehensive range of services to assist our clients and defend their interests. This includes consulting, interactions with supervisory authorities, assisting in case of investigations, and acting in litigation if necessary. If you have any questions about the application of the new provisions in this area, please do not hesitate to get in touch with our attorneys, who will be glad to help.

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