

PERSONAL DATA PROTECTION IN THE EUROPEAN UNION

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The article is devoted to a new stage of legal regulation of personal data protection in the European Union, based on the General Data Protection Regulation. The author draws attention to the main innovations and provisions of the General Data Protection Regulation, including the extraterritorial effect of its provisions, the system of legal grounds for personal data processing, the principles of personal data processing, the mechanism for cross-border transfer of personal data, as well as the new rights of data subjects in relation to their personal data. The author concludes that the General Data Protection Regulation and its proposed level of personal data protection can become a reference point for Belarusian legislation in the field of personal data protection.

Key words: GDPR REGULATION; PERSONAL DATA PROTECTION; PERSONAL DATA; DATA SUBJECTS RIGHTS; CONTROLLER; PROCESSOR.

Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data repeals Directive 95/46/EC (General Data Protection Regulation) (hereinafter – the GDPR) and reflects a new stage in the development of personal data protection in the European Union (hereinafter – the EU). Basically, it offers new standards in the legal regulation of personal data protection, taking into account their active and ubiquitous use and processing, including the use of electronic technologies and automated means.

The main complication with the previous Directive 95/46 /EC was that the EU directives are not acts of direct effect (in contrast to EU Regulations) and their provisions require implementation into national legislation (i.e. the adoption of national laws by EU Member States).

If fact, this has led to a lack of a unified approach within the EU to implementing the provisions of Directive 95/46/EC and legal uncertainty in the field of data protection, including fragmentation and contradictions in the national legal regulation of the order and level of data protection in EU Member States. Moreover, the existing data protection rules needed to be updated due to significant changes in technology, widespread computerization, expansion of e-Commerce and services (for example, cloud services, social networks, geolocation services, etc.).

Therefore, the adoption of the GDPR marked the transition to a qualitatively new approach in the field of personal data protection in the EU, based on the direct applicability and effect of its provisions in order to harmonize law

enforcement and uniformity of protection practices of natural persons' personal data on the territory of the EU.

However, it should be borne in mind that the GDPR is not the only act in the field of personal data protection in the EU. On the contrary, it acts only as a single platform that defines common standards in the field of personal data protection in the EU and does not replace existing national laws in the field of personal data protection in the EU Member States, which, however, must be brought into compliance with the GDPR and not contradict it.

The GDPR entered into force in 2016 after it was passed by European Parliament, and as of May 25, 2018, many organizations and businesses (including those outside the EU) were required to be compliant. In this regard, the study of the key provisions of the GDPR is important.

Here are the key provisions and facts that are relevant to the GDPR.

Firstly, the GDPR introduces the following categories: data controller and data processor; data subject; data processing, special categories of personal data ("sensitive data"). Moreover, the "right to be forgotten" and "right to data portability" along with 6 other rights are legally established. Meanwhile, the "right to be forgotten" is not absolute and its implementation may be difficult in many cases and sometimes even impossible (for instance, due to the actual priority of the right of freedom of expression). On the other hand, the right to data portability allows a data subject to freely transfer their personal data from one company to another in electronic form (where technically feasible).

Secondly, the GDPR applies to the processing of personal data by automated means, as well as to the processing of the latter in other ways (manual processing).

Thirdly, in terms of applicability the GDPR provides two criteria which must be taken together: material scope and territorial scope.

Taking into account the extraterritorial effect of the GDPR, if certain criteria are met, it is also applicable to companies and organizations located outside the EU, i.e. in third-country jurisdictions. The location of the personal data itself does not matter.

Fourthly, the GDPR is aimed at regulating relations related only to the processing of personal data of natural persons. The scope of the GDPR does not apply to the processing of anonymous information and personal data of the deceased.

In the fifth, the concept of personal data processing covers the full cycle of interactions (operations) with personal data, starting from the collection and ending with the transfer, erasure and destruction of personal data.

Data processing is based on 7 principles: lawfulness, fairness and transparency; purpose limitation; data minimization; accuracy; storage limitation; integrity and confidentiality; accountability.

The GDPR specifies the specific, unambiguous consent of the data subject as one of the legal grounds for data processing and sets fairly strict and clear requirements for the process of obtaining it. However, in addition to consent, there are 5 other legal grounds for personal data processing under the GDPR, namely contract, legal obligation, vital interests, public task, legitimate interests.

Moreover, companies that are not incorporated in the EU sometimes are required to appoint representatives within the EU who act as intermediaries and represent the interests of the data controller or processor in matters related to the processing of personal data.

The GDPR also determines the status of Data Protection Officer for the controller and processor. Moreover, it establishes a unified system of national supervisory authorities, possibility of administrative and judicial protection as well as provides clear mechanism for cross-border processing of personal data.

Currently, there is no comprehensive Belarusian legislation in the field of personal data protection. This creates a state of uncertainty for both companies and natural persons whose personal data is used. The adoption of a new law of the Republic of Belarus, which is now under consideration in the Parliament, may create new guarantees and increase the level of personal data protection for Belarusian people.

The new law is supposed to create a clear framework and boundaries for the processing of personal data, systematically regulate relations between persons who process personal data and introduce a new local supervisory authority in the field of personal data protection.

To sum up, in the context of the economy digitalization and law, the topic of personal data protection of natural persons is becoming widespread. This naturally grounds the topicality of the research. Many of the GDPR provisions can be used as “best-practice” for the Belarusian national approach to regulating the protection of personal data.

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