

# Client Update

## Russian Data Protection Developments: Localization, Messengers and Data Transfer

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This spring the following issues were on the radar of the Russian data protection regulators:<sup>1</sup>

- messengers' compliance with the requirements of internet data facilitators;
- Twitter localization in Russia; and
- the definition of cross-border transfer of personal data.<sup>2</sup>

### MESSAGERS: INTERNET DATA FACILITATORS' COMPLIANCE

Messengers facilitate exchange of electronic messages between their users via the Internet without control of a telecom carrier. According to Article 10.1 of the Information Law,<sup>3</sup> they qualify as Internet data facilitators as they operate through information systems and/or software intended and/or used for the reception, transfer, delivery and/or processing of the electronic messages of Internet users. As a result all messengers have to:

- notify Roskomnadzor on the start of their operations in Russia;<sup>4</sup>

<sup>1</sup> The Federal Service for Oversight in the Sphere of Communications, Information Technologies and Mass Media ("Roskomnadzor") and the Ministry of Communications and Mass Media.

<sup>2</sup> Article 3 of the Federal Law No. 152-FZ on Personal Data dated July 27, 2006 (the "Personal Data Law").

<sup>3</sup> Federal Law No. 149-FZ on Information, Information Technology and Protection of Information dated July 27, 2006 (the "Information Law").

<sup>4</sup> The notification is not mandatory but Roskomnadzor may require the messenger to provide such notification if it is not done.

- store information about their subscribers in Russia, as well as any information on the receipt, transfer, delivery and/or processing of voicemail, written text, images, sounds, video, etc. of such subscribers for one year after the respective actions are completed and provide this information to any governmental investigative or state security authorities upon their justified request;
- ensure that the equipment and software used allow governmental investigative or state security authorities to perform their functions (i.e., install specific equipment and software which enables the respective governmental authorities to collect and analyze information required for the performance of their functions) and keep the respective information confidential; and
- provide the Federal Security Service with information required for decoding the electronic messages of its subscribers if the respective service enables such messages' additional coding.

Failure to comply with these requirements may lead to an administrative fine in the amount of up to RUB 1,000,000 (approx. USD 17,500) for legal entities and up to RUB 50,000 (approx. USD 875) for officers.<sup>5</sup> Failure to eliminate the violations may lead to the blocking of the messenger per court or authorized administrative body decision until it cures the violation.

In the framework of its routine activity on maintenance of the Register of Internet Data Facilitators ("Register"), Roskomnadzor requested that several messengers provide information for the Register. Such steps were also aimed at facilitating the messengers' further communication with Roskomnadzor. Several services, including Vimeo, Opera and WeChat, complied with Roskomnadzor's requirement, but some others, such as Blackberry Messenger, Imo, Line and VChat, refused to do so.

As a result, in May 2017, Roskomnadzor blocked Blackberry Messenger, Imo, Line and VChat in Russia. The blocked services can challenge Roskomnadzor's decision on blocking in court.<sup>6</sup> As of today there is no publicly available information on such challenge and these messengers remain blocked.

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<sup>5</sup> Article 13.31 of the Administrative Offences Code of the Russian Federation.

<sup>6</sup> Article 218 of the Administrative Proceedings Code of the Russian Federation.

## TWITTER LOCALIZATION IN RUSSIA

Under Article 18 of the Personal Data Law, recording, systematization, accumulation, storage, updating (renewal, amending) and extraction of the personal data of Russian citizens must be done only through databases located in Russia. Personal data processors' failure to comply with this requirement may result in the blocking of the respective resources upon Roskomnadzor's request on the basis of a court decision.

As of now Twitter is not registered in Russia. At the beginning of 2016, Roskomnadzor determined that Twitter processed the data of Russian citizens and targeted Russia,<sup>7</sup> and consequently was subject to Russian personal data law requirements, including requirements on localization and provision of non-English-speaking Russian customers with terms of use and a confidentiality policy in Russian. This did not, however, result in the blocking of Twitter,<sup>8</sup> and in April 2017, Twitter notified Roskomnadzor that it will transfer personal data of its Russian users to Russian servers by mid-2018. The absence of blocking and a substantial grace period for compliance with the localization requirement might have been a result of Twitter's cooperation and interaction with Roskomnadzor. In addition, the blocking might have had a significant negative social impact. Twitter has a monthly audience of more than seven million in Russia and is used by some government officials to reach audiences quickly. This case indicates that Roskomnadzor has the discretion to commence blocking proceedings and may not block resources that cooperate and undertake to comply with Russian law requirements.

## CROSS-BORDER TRANSFER OF DATA

As currently defined in the Personal Data Law, the cross-border transfer of data is a transfer of personal data to the territory of a foreign state to:

- a foreign state authority;
- a foreign individual; or
- a foreign legal entity.<sup>9</sup>

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<sup>7</sup> Twitter's website and application for smartphones had a Russian version.

<sup>8</sup> Although a similar violation resulted in blocking of LinkedIn in 2016.

<sup>9</sup> Article 3 of the Personal Data Law.

The definition does not cover transfers of personal data to Russian companies' or individuals' servers located abroad. In order to eliminate this loophole, the Ministry of Communications and Mass Media has proposed amending this definition to specify that any transfer of data to the territory of a foreign state qualifies as a cross-border transfer. Such qualification will require a written consent of the personal data subject for the transfer of personal data to a foreign state even within one personal data processor if the respective foreign state does not ensure adequate protection of the rights of the personal data subjects.

The proposed amendments are currently undergoing public discussion.<sup>10</sup>

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Please do not hesitate to contact us with any questions.

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<sup>10</sup> Full text of amendments is not yet available (<http://regulation.gov.ru/projects#npa=64389>.)