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Legal Update – 31 January 2013

Recent Changes in the Legal Regime for Personal Data Protection

Further to our Legal Alerts concerning the legal regime for personal data protection, we would like to remind you that on 20 December 2012 a number of important amendments to the Law “On Personal Data Protection” (the “**Law**”) came into force, including:

The new/updated definitions were introduced into the Law. For example, the amended definition of the *consent* of subject of personal data (i.e. individual) provides that the consent of the individual may be given not only in written, but in any other form, which would allow to make the conclusion that the relevant consent was granted; also new definitions of *data file* and personal data *receiver* were introduced.

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The following rights of the subjects of personal data (individuals) were added:

- to withdraw the consent for processing personal data;
- to make reservations concerning restrictions to personal data processing while granting the consent;
- to be familiarized with the personal data automated processing procedure;
- to approach not only public authorities, but also courts with claims concerning personal data processing.

The Law releases from the registration requirement the personal databases the maintenance of which is related to ensuring realization of labour relations, as well as the personal databases of members of non-governmental, religious organizations, professional unions and political parties. Cancellation of the registration requirement, however, does not release the owner of the above personal databases from all other requirements set by the Law.

At the same time a number of ambiguous new requirements were added to the list of the information that should be indicated in the Application for registering personal data base:

- information on the composition of personal data which are being processed;
- information on third parties to whom personal data is being transferred;
- information on a cross-border transfer of personal data.

Disclaimer

The content of this Legal Alert is not legal advice, but a general informational summary of the law. Resource to qualified legal counsel is always required for legal advice. Failure to make timely inquiries of legal counsel may cause important legal deadlines to be missed.

As of today neither the form of Application has been updated nor any clarification from the State Service in the Sphere of Personal Data Protection has been issued with regard to the implementation of the above provisions. There are still a number of questions requiring clarifications: what exactly should be stated in the Application, whether each cross-border transfer of personal data should be notified, whether the companies, which already filed their Application (registered their personal data bases), should re-file their Applications, etc. We contacted the State Service in the Sphere of Personal Data Protection and were given an informal explanation that until it issues its official recommendations the companies should fill out old Applications without taking into account the new added requirements. We do not support this explanation because it is contradictory to the new requirements of the Law, but at the same time in practice until there is a new form of the Application available, it is not clear how the new requirements can be inserted into the old form of the Applications.

The Law added the following new grounds for personal data processing:

- conclusion and execution of an agreement, to which the individual whose personal data is processed is a party, or which is concluded in a favor of such an individual, or for the actions preceding the conclusion of an agreement upon the request of such an individual;
- protection of vitally important interests of the individuals whose personal data is processed;
- the need to protect the legitimate interests of personal data owners, third parties, except when the individuals whose personal data is processed require that the processing of their personal data be stopped and the need to protect the personal data is beyond such interests.

The regulation of cross-border transfer of personal data has also been changed. The most important change is that the cross-border transfer is allowed *only* on the condition that the foreign country to which personal data is transferred ensures due level of personal data protection. The Cabinet of Minister of Ukraine is to draft a list of such countries. The Law states that the States - parties to the European Economic Area, as well as countries which signed the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data are deemed to achieve the necessary level of personal data protection.

The following additional provisions for personal data cross-border transfer were added in the Law:

- granting explicit consent for cross-border transfer by the subject of personal data (individual);
- the need to conclude/execute an agreement between the owner of the personal data and a third party- subject of the personal data in favor of the subject of the personal data;
- the need to protect vitally important interests of subjects of personal data (individuals);
- the need to protect public interest, establish, execute and ensure a legal requirement;
- relevant guarantees regarding non-interference into private and family life of a subject of personal data (individual) by the owner of such personal data.