

# Data Protection in Russia: five hot topics in practice

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# Background

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The Federal Law No. 152-FZ “On personal data” – in force since 2007



Council of Europe Convention 108+



Regulator – Roskomnadzor, Federal Service for Supervision of Communications, Information Technology and Mass Media



Commentaries and clarifications – Ministry of Digital Development, Communications and Mass Media of the Russian Federation

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# Orienteers

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# Today's agenda

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What is considered personal data



Legal grounds for processing – what to rely on



Consents for advertising and profiling



Localisation requirement and new fines



Cross-border transfer of personal data

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# What is considered personal data

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**Personal data** – any information related to a person, who is identified or could be identified



**Name**



**Passport  
details**



**Contact  
details**



**IP  
addresses**



**Cookie**

Besides that, court practice recognises IP-addresses, cookies and other technical identifiers as personal data.

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# Special Categories of Personal Data

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Race and ethnic origin



Religious or philosophical beliefs, political opinions



Health data



Information about intimate life



Biometric data

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# Grounds for data processing

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**Consent**

**Conclusion  
or performance  
of contract**

**Performance  
of statutory  
obligation**

**Protection of vital  
interests**

**Publicly available  
data**

**Legitimate  
interest**

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# Consent

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- Must be informed, conscious and specific
- Most reliable option in Russian practice
- Russian DPA requests separate consent for each processing purpose





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## Types of Consent

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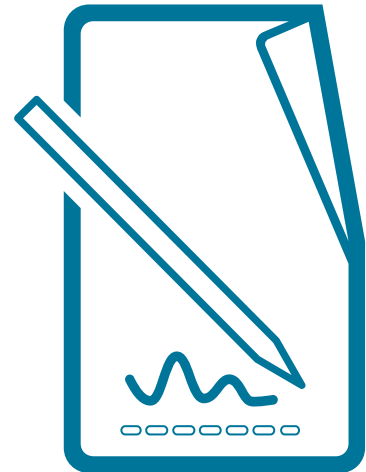
1. “Simple” consent, e.g. click-consent, other electronic consent
2. Written consent (paper form or electronic form signed by digital signature):
  - a. Processing of special categories and biometric data
  - b. Cross-border transfer to “non-adequate” countries
  - c. Automatic decision-making
  - d. Transfer of employees data to a third party

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# Performance of Agreement

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- Purpose limitation
- No excessive processing
- Allows cross-border transfer to “inadequate” countries



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## Legitimate interest

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Processing of data is necessary for performance of rights and legitimate interests of an operator or third parties ... or for public interests, provided that processing does not breach rights and freedoms of a data subject

- Not frequently used as a ground for data processing
- Not very much welcomed by the Russian authorities
- In some cases still used – e.g. anti-corruption checks, KYC



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## Consents for marketing

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### **Data Protection Law and Advertising Law: prior consent for marketing is obligatory**



Must relate to a particular advertiser



Explicit – cannot be hidden in long agreements



Voluntary – provision of service shall not depend on provision of the consent



# Consents for marketing in practice

Вход **Регистрация**

Физ. лицо Юр. лицо

Имя \*

Фамилия \*

E-mail \*

Телефон \*

Я согласен(а) получать рассылку (новости, акции, скидки)

Подтверждаю свое согласие на обработку и хранение моих персональных данных в соответствии с **пользовательским соглашением**

**Зарегистрироваться**

\*Отмечая этот пункт, вы подтверждаете свое согласие на получение рассылки Утконоса. Для получения подтвердите телефон и/или e-mail.

Войти через соц. сети

G f vk o

< **CREATE YOUR ZARA HOME ACCOUNT**

Name \* 0 / 128

E-mail \*

Password \*

I have read and accept the privacy policy

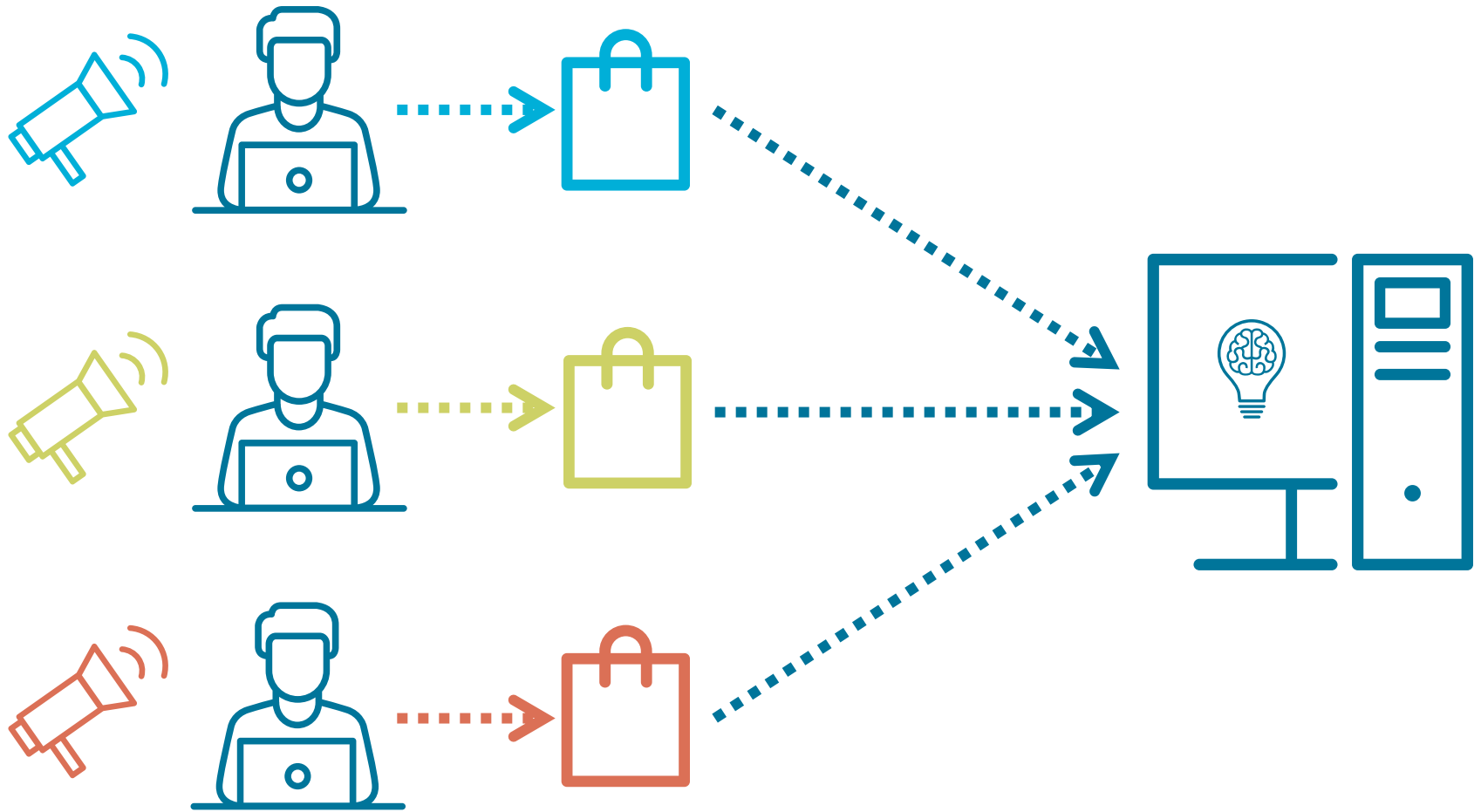
Subscribe to our newsletter to receive information about all the latest news, trends, offers and promotions for your home.

**CREATE ACCOUNT**

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# Profiling of users

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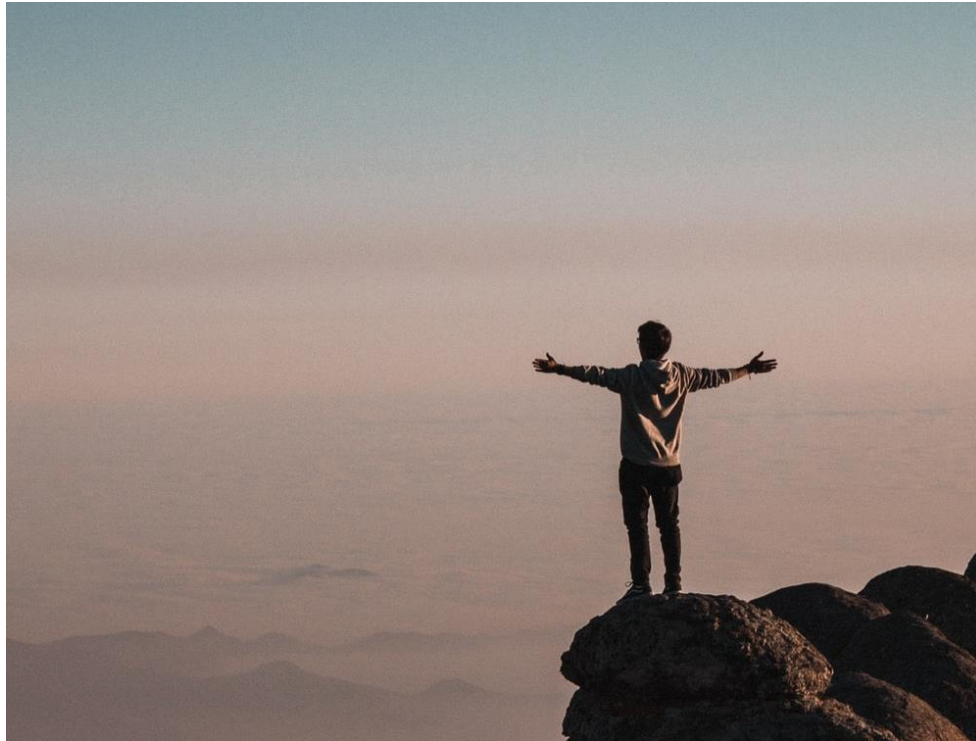


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# Profiling and the Russian Data Protection Law

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There is no such wording as “profiling” or “analysis of user’s behavior” in the Russian Law



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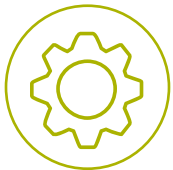
# Profiling and the Russian Data Protection Law

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But there are the following requirements:



Purpose limitation



Minimisation



Prohibition of **automatic decision-making** if it creates legal circumstances or otherwise affects the rights and legitimate interests of a data subject



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# Rules for doing profiling in Russia

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Fit profiling into processing **necessary** for performance of agreement



Obtain consents for profiling



Combine automatised and human processing of personal data

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## Localisation requirement and new fines

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- Requires initial collection to storage and update in the Russian database
- Extra-territorial principle applies
- Exemptions are provided, but usually do not apply for business purposes
- Cross-border transfer is still allowed



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# New fines for breach of localisation rules

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## Previous sanctions

- **Websites could be blocked**  
(e.g. LinkedIn case)
- **Fine RUB 3k – 5k**  
(EUR 39 – 65) for failure  
to provide information

## New sanctions (from 2 December 2019)

- **First violation RUB 1m – 6m**  
(EUR 13,000 – 78,000)
- **Repeated violation  
RUB 6m – 18m**  
(EUR 78,000 - 234,000)
- **Websites can still be blocked**

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# Cross-border transfer

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To “**adequate**” countries (parties to Strasburg Convention and the list of the Russian DPA)

- On general basis, i.e. the same rules as transfer inside Russia

To “**non-adequate**” countries (all other, e.g. USA, India, China)

- Written consent
- Under international treaty
- Performance of agreement with a data subject
- Protection of vital interests

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## Cross-border transfer

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Data sharing agreement is not required, but deemed as best practice



No special rules for intra-group transfers



Specific requirements for employees

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# Conclusions

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Wide approach to qualification of personal data



Consent – the most common ground for processing in Russia



Consent for marketing shall be separate, explicit and voluntary



Localisation requirement is getting more serious



Cross-border transfer is allowed subject to certain requirements

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# Thank you for your attention!

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> 4,800

Partners

> 1,100

19 PRACTICE AND  
SECTOR GROUPS  
WORKING ACROSS  
OFFICES

Operating in

70  
cities

Across

43  
countries

EUR 1.36bn

turnover for 2018

49 NEW PARTNERS IN 2019, TAKING THE TOTAL TO OVER 1,100

» #1 CEE, DACH, Germany

(Mergermarket)

» Top rankings in 2019 M&A League Tables

(by deal count)

» #1 Germany, UK

(Thomson Reuters)

#1 by Bloomberg in Europe, Germany and UK

#1 by Mergermarket in CEE, DACH and Germany

#1 by Thomson Reuters in Benelux and Germany

» #1 Europe, Germany, UK

(Bloomberg)



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