

Newsletter

Cross-border transfer of personal data in Russia: possible ban or restriction and relations between Russia and the Council of Europe regarding Convention 108

February 27, 2023

1. New rules for a ban or restrictions on the cross-border transfer of personal data outside of Russia

As a part of reforms of Russian data protection laws, the Russian data protection authority ("**Roskomnadzor**") has adopted new rules to ban or restrict the cross-border transfer of personal data outside of Russia. Roskomnadzor may decide to ban or restrict the cross-border transfer of personal data in the following cases:

- (1) After considering a data controller's notification on the cross-border transfer of personal data¹
- (2) After a competent authority files a motion with Roskomnadzor²

Please note that the new rules for the cross-border transfer of personal data will come into force on 1 March 2023. If you plan to transfer personal data outside of Russia after 1 March 2023, you will need to submit the respective notification to Roskomnadzor. Please read our [guideline](#) if you are not ready to submit the notification on cross-border data transfers before 1 March 2023 [here](#).

After the consideration of a data controller's notification on the cross-border transfer of personal data	After a competent authority files a motion with Roskomnadzor ³
Purpose of the ban or restriction on the cross-border transfer of personal data	
Protection of the morality, health, rights and legitimate interests of citizens.	Protection of the constitutional system, national defence and state security, and the economic and financial interests of the Russian Federation, and diplomatic and international legal means of protection of the rights, freedoms and interests of Russian citizens, the sovereignty, security and territorial integrity of the Russian Federation and its other interests in the international arena.
Who is subject to a ban or restriction on the cross-border transfer of personal data?	
The specific data controller that is the subject of the decision following the consideration of the notification on the cross-border transfer of personal data.	The specific data controller or a group of data controllers, and may also extend to a particular foreign jurisdiction where the cross-border transfer is banned or restricted.

¹ Decree No. 20 of the Russian Government dated 16 January 2023 on the approval of the rules for decision-making by the competent authority for personal data subjects' rights protection on a ban or limitation of the cross-border transfer of personal data in order to protect the morality, health, rights and legitimate interests of citizens

² Decree No. 6 of the Russian Government dated 10 January 2023 on the approval of the rules for decision-making by the competent authority for personal data subjects' rights protection on a ban or limitation of cross-border transfer of personal data and informing data controllers about such a decision.

³ The list of competent authorities depending on the purpose of the ban or restriction of the cross-border transfer of personal data is given in the amended Article 12 of Federal Law No. 152-FZ dated 27 July 2006 "On Personal Data", which took effect on 1 March 2023.

Legal grounds for a ban or restriction on the cross-border transfer of personal data

The cross-border transfer of personal data may be **banned** in the following cases:

- The data importer has not taken measures to protect personal data and has not defined the conditions for the termination of the processing of personal data
- The activities of the data importer are prohibited in the Russian Federation based on a court decision
- The data importer is included in the list of "undesirable organizations"⁴ in the Russian Federation
- The cross-border transfer of personal data is incompatible with the purposes of the cross-border transfer of personal data
- There is no legal basis for the lawful cross-border transfer of personal data

The cross-border transfer of personal data may be **restricted** in the following cases:

- The content and scope of the personal data planned for cross-border transfer does not correspond to the purpose of the cross-border transfer of personal data
- The categories of data subjects whose personal data are planned to be transferred outside of Russia do not correspond to the purpose of the cross-border transfer of personal data

The cross-border transfer of personal data may be banned or restricted when there is an applicable purpose for such a ban or restriction

What further actions may a data controller take in the event of a ban or restriction on the cross-border transfer of personal data?

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| <ul style="list-style-type: none"> • Correct the reasons for the ban or restriction clarified by Roskomnadzor and resubmit the notification on the cross-border transfer of personal data • Appeal Roskomnadzor's decision on a ban or restriction on the cross-border transfer of personal data out of court and/or in court | <ul style="list-style-type: none"> • Correct the reasons for the ban or restriction on the cross-border transfer of personal data and send a request to the competent authority that filed the motion with Roskomnadzor to lift the ban or restriction with supporting materials attached |
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Our recommendations

- Undertake data mapping according to the purposes specified for the cross-border transfer of personal data
- Prepare a notification on the cross-border transfer of personal data for each purpose of said transfer
- Assess the adequacy of data protection measures taken by foreign data importers
- Evaluate the regulation of personal data in relation to each data importer if the personal data is

⁴ Organizations in the list of foreign and international non-governmental organizations whose activities are considered undesirable in the Russian Federation.

transferred to a jurisdiction that does not provide an adequate level of personal data protection (e.g. USA)

2. Relations between Russia and the Council of Europe in 2023: impact on Convention 108

On 17 January 2023, a bill was introduced in the State Duma (the lower chamber of the Russian parliament) on the termination of the international treaties of the Council of Europe for Russia, including the European Convention on Human Rights⁵. This measure is conditional upon the termination of the Russian Federation's membership in the Council of Europe, following a decision taken by the Council of Europe on 16 March 2022.

The bill *does not list* the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data ("**Convention 108**") among the international treaties to be terminated. Furthermore, the termination of the Russian Federation's membership in the Council of Europe does not automatically result in the termination of its participation in Convention 108.

Convention 108 itself explicitly allows non-member states to accede to it and benefit from it to the fullest extent. Thus, Russia is now listed among the current non-members of the Council of Europe under Convention 108, which means that all the provisions of this international treaty continue to apply to it.

We hope that the information provided herein will be useful for you. If any of your colleagues would also like to receive our newsletters, please let us know by sending us his/her email address in response to this message. If you would like to learn more about our [Data Protection and Cybersecurity Practice](#), please let us know in reply to this email. We will be glad to provide you with our materials.

Note: Please be aware that all information provided in this letter was taken from open sources. Neither ALRUD Law Firm, nor the author of this letter, bear any liability for consequences of any decisions made in reliance upon this information.

If you have any questions,
please, do not hesitate
to contact ALRUD Partner

Sincerely,
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⁵ Bill No. 279220-8 on the termination of international treaties of the Council of Europe in relation to the Russian Federation.