

Data and Privacy Protection in Ukraine



What principal legislation governs personal data and privacy protection in Ukraine?

- The Constitution of Ukraine;
- The Law of Ukraine on Personal Data Protection;
- The Law of Ukraine on Information;
- The Law of Ukraine on Data Protection in Information Telecommunication Systems.

Which regulatory bodies are responsible for the regulation of personal data and privacy protection in Ukraine?

There are four important regulatory bodies that oversee certain related issues of personal data and privacy protection:

- The Ukrainian Parliament's Commissioner for Human Rights (regarding control over processing of personal data);
- The State Service of Ukraine on Personal Data Protection (which was deprived of its controlling functions and now retained only a general advisory powers);
- The State Service of Ukraine for Special Communications and Information Protection (regarding protection of e-signatures and other encrypted information);
- The National Commission for State Regulation of Communications and Information (regarding issues related to internet access regulatory).

How does the law in Ukraine define 'personal data' and 'processing of personal data'?

Personal data must be understood as data or a collection of data about a natural person, who is or may be specifically identified.

Processing of personal data is understood as any operation or set of operations such as collection, registration, accumulation, storage, adaptation, alteration, updating, use and dissemination (distribution, sale, transfer), depersonalization, or destruction of personal data which may involve the use of information (automated) systems (Personal Data Protection Law).

Does a processor of personal data have to notify or register with any controlling body to process personal data?

Pursuant to the recent changes in the personal data protection laws of Ukraine, there is no longer the requirement to register personal data bases. According to the new rules effective as of the beginning of 2014, the processor of personal data is obliged to inform the Ukrainian Parliament's Commissioner for Human Rights only in case such processing refers to the information of a particular risk. In particular, such information of a particular risk includes personal data on:

- Race, ethnicity and national origin;
- Political, religious or ideological beliefs;
- Membership in political parties and / or organizations, trade unions, religious/public/ideological organizations;
- Health condition;
- Sexual life;
- Biometric/genetic data;
- Administrative or criminal record;
- Measure of pre-trial investigation or criminal investigation;
- Violence suffering;
- Location and / or map of movement.

May a controller of personal data sell or by any other way transfer personal data to third parties?

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The law establishes some rules and preconditions on the transfer of personal data to a third party. Basically an individual must grant his explicit preliminary consent for the sale/transfer of his/her personal data without additional notice when the data is initially collected and after the sale/transfer the purpose of the database must correspond to the initial designated purpose. Otherwise, the database owner must notify each individual of his or her data transfer. Preliminary consent shall be submitted by the subject in written or electronic form, that allows to make a conclusion that the permission for transfer of personal data has been granted. Such consent must be given for every occasion of sale or transfer of person's personal data and can be recalled at any time.

The procedure of third-party access to personal data in the possession of a public authorities and state registers is determined by the Law of Ukraine on Access to Public Information.

If a website owner is intending to profile its customer base to target advertising on its website, is this regulated in your jurisdiction? In particular, is there an opt-out or opt-in approach to the use of cookies or similar technologies?

Ukrainian law does not prohibit profiling subjects in compliance with personal data protection laws. For this, the website owner must obtain the consent of the user. There is, however, no explicit opt-out or opt-in approach.

It should also be noted that spam and unsolicited e-mail messages are prohibited under Ukrainian law. The ISPs can suspend any telecommunication services if a user is sending out spam. There is even criminal liability for intentional spam that causes damage or shuts down hardware or a network operation.

Should any legal issues arise when transferring and processing personal data?

Transfer of personal data abroad is allowed only if the following preconditions are met:

- The entity operating the server is related to the personal data being transferred;
- The transferring party has ensured the security of the personal data;
- The transferring party has obtained explicit consent from the natural person for transfer of the respective personal data abroad; and
- The personal data are transferred only for the purpose for which they were initially collected.

If any of the above preconditions is not met, it would be a violation of the Personal Data Law resulting in monetary penalties.

Is there a data breach notification laws in Ukraine?

Ukraine has not yet introduced special data breach notification laws. There is a general obligation that owners, processors and third parties must ensure protection of the personal data against accidental loss or destruction as well as against unauthorised processing, including unauthorised destruction or access. The law, however, does not impose respective data breach notification obligations and relevant liability.



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