

The New Data Protection Law in Georgia - A Brief Outline**

With the General Data Protection Regulation (GDPR), data protection law in the European Union (EU) was regulated in a largely uniform manner. The GDPR replaced the previously applicable Data Protection Directive 95/46/EC with a regulation that is directly applicable in all EU member states. In this way, it creates a uniform level of protection for the right of all EU citizens to the protection of their personal data.

In this context, there was and is an immediate need for action on the part of the Georgian legislator. Even if the GDPR automatically "grows into" Georgia's national legal order as a priority right when Georgia joins the EU, Georgian data protection law must be adapted to it. Upon Georgia's accession to the EU, all provisions of European data protection law are directly applicable. Because the GDPR enjoys priority of application over Georgian data protection law, after accession Georgian data protection law is only relevant for those matters that the GDPR does not regulate, but which it leaves to the EU member states to regulate with so-called opening clauses. It then has a mere supplementary function.

The Georgian legislature has responded to the need for action described above with the "Law on Personal Data Protection", which will come into force in large parts in 2024. It replaces the Law of Georgia on Personal Data Protection, which dates back to 2011/2012.

Who or what does the new law protect?

First and foremost, the new Data Protection Act protects personal data. According to its Article 3 letter a, personal data are particulars of the personal or material circumstances of a specific person which can be identified directly or indirectly on the basis of specific elements. In this sense, the Data Protection Act protects personal data that allow certain conclusions to be drawn about a person.

What is the content of the "Law on Personal Data Protection"?

The new Georgian data protection law deals with

- the legal bases for the processing of personal data (Article 4 and sequent);
- Rights of the persons concerned (Article 13 and sequent);
- the obligations of controllers and processors (Article 23 and sequent);
- Questions of liability and sanctions (Article 58 and sequent, Article 64, 65, Article 66 and sequent);
- the scope of the law, definitions and general principles for the processing of personal data (Article 2, Article 3 and sequent);
- Rules on data protection officers of public and non-public bodies (Article 33);
- the rules governing the Personal Data Protection Service, its status and functions (Articles 39 and sequent);

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- Remedies (such as judicial redress) (Article 63);
- the conditions for data transfers to third countries and international organisations (Articles 37, 38), etc.

The new Georgian "Law on the Protection of Personal Data" shows that the Georgian legislator has given intensive thought and carefully analysed the EU's sometimes complicated data protection law. For this, it deserves hearty congratulations! Overall, Georgia has already largely brought its national data protection law up to the standards of the GDPR through the new law.

It should be noted in addition

The rules in Article 33 of the new Georgian Data Protection Act on "data protection law compliance" by "data protection officers", so-called internal control, are very extensive and much more detailed than, for example, in German data protection law. The law could have exempted the courts from the obligation to appoint a data protection officer. However, this has already been done in the regulation on the scope of application of the Georgian Data Protection Act - Article 2 paragraph 2.

The Georgian "Law on the Protection of Personal Data" contains many regulations for data transfers to third countries and international organisations in Article 37 and sequent. If Georgia joins the EU, Article 45 of the GDPR will automatically apply to the country: The EU Commission must allow the transfer of data by means of an adequacy decision. However, a member state can challenge this decision in court. This is stated in the "Safe Harbour" decision of the Court of Justice of the EU from 2015 (C-362/14). Georgia could then regulate this in its data protection law.