

COUNTRY UPDATE-Latvia: GDPR one year on

May 02 2019 [TRRI commissioning team](#)



In May 2018, the European Union's [General Data Protection Regulation](#) (GDPR) came into force, imposing wide-reaching new obligations on controllers and processors of personal data. It also contained more than 50 derogations and "opening clauses," giving member states considerable powers to shape its application to their country.



A year after GDPR implementation, this article provides a description of the current position in Latvia by [Mikijis Zimecs](#) of [ELLEX KLAVINS](#).

GDPR highlights

Article [5](#) general principles:

Personal data must be processed "lawfully, fairly and in a transparent manner." Processing must be limited to a specified, explicit and legitimate purpose; data must be accurate and processed with appropriate security.

An entity controlling personal data is responsible for ensuring and demonstrating compliance with these principles.

Articles [6-11](#) define "lawfully" and set extra requirements concerning sensitive data.

Examples of derogation powers:

Articles [12-22](#) describe individuals' rights regarding their personal information but Article [23](#) permits member states to restrict those rights and Article [5](#) principles in certain circumstances.

Article [83](#) sets grounds for imposing administrative fines for GDPR breaches. These can reach 4 percent of an organisation's annual worldwide turnover or euros 20m, whichever is greater. In addition, Article [84](#) empowers member states to make GDPR infringements not covered by article [83](#) subject to penalties.

1. Has national legislation come into force that uses GDPR derogation/ opening clause powers?

National legislation which implements derogations from GDPR (Personal Data Processing Law; *Personas datu apstrādes likums*) is in force since July 2018 and it has replaced previous Personal Data Protection law (*Personas datu aizsardzības likums*).

The main derogations implemented in the national data processing law are as follows:

- Data subjects do not have a right to receive the information specified in Article 15 of the GDPR if it is prohibited to disclose such information in accordance with the laws and regulations regarding national security, national protection, public safety and criminal law, as well as for the purpose of ensuring public financial interests in the areas of tax protection, prevention of money laundering and terrorism financing or of ensuring of supervision of financial market participants and functioning of guarantee systems thereof, application of regulation and macroeconomic analysis. Furthermore, the national law allows to restrict rights of data subjects in other situations in accordance with Article 23 of the GDPR.
- National law provides exemptions for application of data subjects' rights for personal data processing in official publications, for statistical purposes, for archiving purposes in the public interest, processing for scientific or historical research purposes and for data processing related to freedom of expression and information.
- Regarding processing of personal data related to freedom of expression and information, a person has the right to process data for the purposes of academic, artistic or literary expression in accordance with laws and regulations, as well as to process data for journalistic purposes, if this is done with the aim of publishing information for reasons of public interest.

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When processing data for journalistic purposes, provisions of GDPR are not applied (except for Article 5 of the GDPR) if all of the following conditions are present:

- 1) Data processing is conducted to exercise rights to freedom of expression and information by respecting the right of a person to private life, and it does not affect interests of a data subject which require protection and override the public interest;
- 2) Data processing is conducted for the purpose of publishing information for reasons of public interest;
- 3) Compliance with the provisions of the GDPR is incompatible with or prevents the exercise of the rights to freedom of expression and information.

When processing data for the purposes of academic, artistic or literary expression, provision of GDPR are not applied (except for Article 5 of the GDPR) if all of the following conditions are present:

- 1) Data processing is conducted by respecting the right of a person to private life, and it does not affect interests of a data subject which require protection and override the public interest;
- 2) Compliance with the provisions of the GDPR is incompatible with or prevents the exercise of the rights to freedom of expression and information.

4. Regarding child's consent in relation to information society services under Article 8 of the GDPR – if the data subject is child, consent is considered basis for data processing and therefore shall be lawful, provided that the child is not below 13 years of age.

5. The national Personal data processing law provides for exemptions regarding the use of in-vehicle dashcams and CCTV cameras (video surveillance).

Regarding the use of dashcams and CCTV cameras, the requirements of the GDPR do not apply if personal data processing are carried out for personal or household purposes. In accordance with national law, the personal or household exemption does not apply where the surveillance is carried out on a large scale or in cases where technical aids are used for structuring of information.

Regarding the use of CCTV cameras in situations when the GDPR would apply for the personal data processing, the law sets out an obligation that the controller on information notices about personal data processing must provide at least the following information:

- 1) the name, contact information of the controller,
- 2) purpose for data processing,
- 3) as well as include an indication of the possibility to obtain other information specified in Article. 13 of the GDPR.

2. Has Article 84 been used to introduce additional GDPR infringement penalties, administrative or criminal?

Article 84 GDPR has not been used to introduce additional infringement penalties. However, long before GDPR came into force, Criminal Law already set out criminal liability regarding illegal activities involving personal data. The law provides for liability for the data processing activities carried out by data controller or processor for the purposes of vengeance, acquisition of property, blackmail or if illegal activities carried out with personal data results in substantial harm. As well, the law provides for criminal liability for influencing a data controller, data processor or the data subject, using violence or threats or using trust in bad faith, or using deceit in order to perform illegal activities involving personal data of a natural person.

3. Is any other GDPR derogation / opening clause legislation either in process or proposed?

There is no any other GDPR derogation / opening clause legislation either in process or proposed.

4. Has the national supervisory authority issued any guidance on GDPR operation or its approach to enforcement?

National supervisory authority (Data State inspectorate) has not issued guidance on its approach to enforcement. So far, after the GDPR became applicable, the supervisory authority has carried out "consult first" policy, meaning that the data controllers are not immediately fined if non-conformity with the GDPR is discovered. Instead, data controllers are given a time to address discovered violations.

5. Have any issues about GDPR's operation arisen that concern financial services firms?

According to publicly available information no issues have arisen regarding GDPR's operation that concern financial services firms.

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