**IMPLEMENTING EU-STANDARDS ON PERSONAL DATA PROTECTION: UKRAINIAN REALITIES**

**As we know, fast informatization of society opened up wide opportunities in information sphere. Global electronic networks, high-speed computers, multitasking operating systems – 50 years ago all these considered almost fantastic. But now it is a part of our everyday life. Without informational support, no social progress is expected. Economy, policy, administration, science – all these spheres are highly dependent on information activities. Wide access to public information is the evidence of democracy, freedom of speech, respect for informational rights.**

**At the same time, uncontrolled use of information can lead to negative consequences. Under certain conditions, it can harm national interests, provoke social conflicts, violate human rights and freedoms. In the light of this, the problem of personal data protection appears to be of great value.**

**History knows a lot of examples when collection and use of personal information were carried out not for good, but for harm. Getting by intruders, personal data often became a powerful tool of influence on human’s will, decisions and actions. It can destroy private life and inflict great suffering. It can be the instrument of blackmailing, extortion, spying and many other crimes.**

**Realizing high importance of this problem European community considers personal data protection as a priority direction of ​​information policy. Currently, most European states have adopted specialized laws, established independent control bodies and did many other steps toward personal data safety.**

**The modern Ukraine is not staying aside. According to the Association agreement between the European Union and Ukraine, our country is doing a lot to implement European and international standards of personal data protection.**

**During past years, Ukraine has made many efforts to improve public administering of personal data protection. In this context can be outlined suck steps, as:**

**ratification of main international agreements on information security;**

**adoption of the new Law on personal data protection, grounded on European Parliament directives;**

**adoption of many other legislative acts, providing access to public information, electronic document management and information security;**

**empowering the Commissioner for Human Rights (Ombudsman) as a leading body of public administration on personal data protection;**

**creation the system of control over the legality of personal data bases;**

**implementation of Information Society Development Strategy, which recognized personal data protection as a priority of national informational policy.**

**As a whole, it can be stated that Ukrainian system of personal data protection is developing in line with general European trends.**

**But, despite of this, it is still far from perfect. It is difficult to call it balanced and harmonic. Its development is too slow. Its organizational, legal and methodical support is too poor comparing with leading European states.**

**Serious problems take place at all levels of personal data protection. The most sensitive are the next.**

**1. As it was mentioned, some years ago the main control powers in the field personal data protection were given to Ombudsman of Ukraine. Indeed, it was very important step toward European standards of public administering. But, in practice this step appeared no so effective, as it was expected. Until recent, the majority of Ombudsman’s powers on personal data protection is rather declarative. The main reason for this is the lack of qualified staff.**

**Some years ago administrative functions in the field of personal data protection were performed by the State Service on Personal Data Protection (specialized executive body with 51 persons staff). Today all these functions assigned to Department on Personal Data Protection of Ombudsman’s office. And this department has only 20 men stuff. And not all positions are stuffed.**

**In the light of this, current staff is physically unable to manage all activities in the field of personal data protection. Huge complexity and variety of Department’s tasks, demand increasing its staff to actual needs of practice.**

**2. Executive authorities in most cases realize their functions on personal data protection without proper coordination. They don’t cooperate in this field and don’t exchange the experience. This situation take place both at the national and local levels. Every separate authority solves the issues of personal data protection on its own specific manner. As a result, their activities are unsystematic, inconsistent and ineffective.**

**Such situation determines the need for a strong coordinating center, able to solve administrative conflicts and consolidate common efforts on personal data protection.**

**Actually, Ukrainian legislation assigns coordinative function to The Ministry of Justice. But, in practice this Ministry does not play notable role in administering personal data protection. It is empowered by functions, but has no tools for their realization. Even in Regulation on Ministry of Justice, there is no single word about its activities in the field of personal data protection. To my opinion, such activities should be determined in current legislation as concrete, as it possible.**

**3. A number of problems take place at the local level of administering personal data protection. Local authorities react to novels of informational legislation very slowly. They adopt local regulations with great delays. There is uncertain power-sharing between state and self-government entities, operating on the same territory (quite often there are administrative conflicts between them). And, a general problem is insufficient attention to issues of personal data protection and low activity on their solving.**

**Of course, outlined problems require fast solution within the framework of both national and regional informational policy.**

**4. Some very acute issues of personal data protection in modern Ukraine raised from adopting by European Parliament The** [**General Data Protection Regulation**](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32016R0679) **(GDPR). On the April of 2016 this Regulation was adopted. On the May 2018 it came into force and started The new era of data protection in EU.**

**New rules gave people more control over their personal data. They designed to ensure that personal information is well-protected, regardless of where it is sent, where it is processing or stored, even outside European Union.**

**In particular, new Regulation introduces new transparency requirements. It strengthens rights of individuals and provide, so called “right to be forgotten”. According to it, if a person, no longer wants his data processed, such data should be obligatory deleted by its owner.**

**By default, any company, collecting personal data about EU citizens, needs explicit consent from every person, whose data is proceeded.**

**In turn, the person can revoke the consent, and request all data, previously given to a company as the consent verification.**

**Also Regulation allows transmitting of such personal data directly from one company to another, defined by citizen.**

**From this year, all companies and organizations should inform individuals about attacks on their data. As well, they should notify about such attacks supervisory authority within 72 hours.**

**Along with the rights on personal data protection new Regulation introduces new rules for public administration and for business.**

**According to it, the officials, public authorities and businesses, processing big amounts of personal data must hire data protection officer – qualified person, responsible for data protection. Some experts convince that this provision requires the appointment of 75,000 data protection officers in the world.**

**Of course, any calculations of this kind are not very precise. But, it is obvious that even in Ukraine, which is not part of the EU, hundreds of legal entities faced the need to introduce data protection officers. At the same time, national legislation doesn’t regulate these issues at all. That negatively affects on cooperation between The Ukraine and EU.**

**New Regulation introduces the principles of “data protection by design and by default.**

**Data protection “by design” means that all businesses should build-in data protection safeguards into electronic products and services from the earliest stage of its development.**

**In turn, data protection “by default” means that all companies and organizations should ensure that personal data, processed automatically (by default), isn’t accessible to indefinite number of persons.**

**Both principles “by design” and “by default” are forcing a lot of world companies to change their approaches to development of software products and electronic resources.**

**The** [**General Data Protection Regulation**](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32016R0679) **is not part of Ukrainian legislation, as Ukraine is not a European Union member. But its provisions are binding all Ukrainian companies, involved in personal data processing of EU residents. Especially it concerns Ukrainian companies, which use email-marketing technologies. If they send their electronic messages to any EU citizen, targeted citizen must clearly know how and why his personal data will be used in the future and give clear consent to this.**

**In addition, for Ukraine, which declared the idea of European integration, new Regulation is not just a set of rules, but also a basis for state information policy and strategy. In the light of this, is clearly seen the need for implementation of new European provisions into Ukrainian legislation and practice of personal data protection.**

**Unfortunately, despite the fact that Ukraine had about 2 years to prepare such implementation, no practical steps have been taken. Moreover, there was no information campaign for Ukrainian businesses about new rules of personal data protection in European Union. New rules are analysed mainly by public organizations, which are focused on protecting information rights of citizens, but not on its impact on business.**

**Such state of affairs does not contribute to development of Ukrainian-European projects related to processing of personal data.**

**In addition, the unpreparedness for new rules can result in extremely high financial losses. Infringements of Regulation entails administrative fines up to 20 000 000 EUR, or up to 4% of total worldwide annual turnover.**

**For comparison: in the case of same violations, Ukrainian legislation provides for a maximum fine, equivalent to 1,000 EUR.**

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**Summarizing above, we can state that legal and organizational support of personal data protection in Ukraine now is in a phase of intensive development.**

**In recent years was greatly upgraded our informational legislation; were optimized the mechanisms of processing personal data; was reformed specialized public administration.**

**However, within the context of this progress there is a wide spectrum of problems at all levels of rule-making and executive activities. These problems are tightly connected and can’t be solved separately.**

**This situation requires a wide set of rulemaking and organizational measures, such as:**

* **providing Ombudsman’s Office in Ukraine with financial and human resources due to objective needs of practice;**
* **creation of a unit for coordinating administrative activities on personal data protection *(such unit should function under “the roof” of the Ministry of Justice of Ukraine)*;**
* **development of the state program on informational security and personal data protection;**
* **implementation of European** [**General Data Protection Regulation**](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32016R0679) **into Ukrainian practice;**
* **introducing data protection officers for businesses, processing or storing personal data of the EU citizens**
* **reviewing the system of fines in the field of personal data protection, according to lasnew European requirements;**
* **providing national-wide informational campaign for businesses about the new rules of personal data protection in European Union.**

**Of course, these are not all steps, which should be taken. Today, Ukraine is on the edge of big and complex changes in the field of personal data protection. Such changes are not easy to plan, but much more difficult to implement. And in context we account greatly on experience of European countries, such as Great Britain, Germany, Denmark, France and, of course, Poland.**

**In this regard, I want to thank organizers of the conference one more time for opportunity to exchange opinions and to get valuable information, which, I am sure, will be helpful not only for science, but also for practice of public administering.**