



LATVIJAS  
NOTĀRS

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## Challenges faced by the notariate as a result of the General Data Protection Regulation

### Introduction

The General Data Protection Regulation does not substantially change the basic principles that apply to processing of personal data.

The legal framework lays down requirements that apply to processing of personal data of individuals and their free movement. The regulation does not apply to the data of deceased individuals or legal entities.

In addition, individuals are granted control rights — to data portability, right to be forgotten and informed, right to object.

The regulation definitely makes us review the requirements that apply to the processing of personal data at the notariate.

### Basic principles of the regulation

Processing of personal data may take place, if one of the following legal grounds can be established:

- 1) consent;
- 2) performance of a contract;
- 3) legal obligation;
- 4) public interest;
- 5) protection of vital interests;
- 6) for the purposes of legitimate interests.

Processing of data at notary offices is regulated by the Notariate law and other legislative acts. These acts stipulate, which data should be processed by a notary in the course of his/her official duties. Thus, legal obligation usually serves as the legal ground of notarial acts.

A consent would be needed if a notary cannot rely on any of the above legal obligations. E.g., it would be necessary in cases when the Council of Notaries would use data of notaries' customers for marketing purposes.

The regulation prohibits processing of sensitive data, unless it specifically provides otherwise.

To protect the interests of data subjects, a notary, acting as a data controller, shall ensure the following:

- 1) transparency;
- 2) purpose limitation;
- 3) data minimisation;
- 4) storage limitation;
- 5) accuracy;

- 6) integrity and confidentiality;
- 7) accountability.

Notaries should inform individuals that they act as data controllers and provide their contact details. Notaries should clearly explain why data are processed (objective), how it will take place and what the legal grounds are. E.g., it has to be explained that name, surname and other data will be included in a notarial deed to comply with statutory requirements on identification of individuals and validity of transactions. Processing of data should have a legitimate ground, and it has to be properly explained to ensure that the data are not used for other unrelated purposes. Right to information is an important principle underlying the processing of data. Explanations should be provided in simple and easily understandable language. And it should be done at the moment, when the respective data are processed. Finally, personal data should be kept in a safe place, mitigating as many technological risks as possible.

If the data are processed contrary to the initial objective of processing or if any other violations are found, the notary, acting as a data controller, should inform the supervisory authority.

### **Legislative changes in Latvia**

The regulation provides for a national delegation to adopt national laws and regulations, as well as specific duties that Member States should fulfil. As a result, draft law on processing of personal data has been prepared in Latvia.

### **How specific provisions of the regulation affect the profession in Latvia**

The notariate intends to implement adequate technical and organisational measures to ensure and be able to demonstrate that processing takes place according to the regulation.

The notariate intends to carry out the following:

- 1) draft internal rules and regulations on data protection policy and requirements, training of notaries and employees;
- 2) perform an impact assessment if practical experience indicates that it is necessary to mitigate high risks to data protection and reputation of the notariate. Currently, data processing activities performed by notaries are strictly regulated by normative acts, as a result, automatic assessment is not warranted;
- 3) introduce and maintain a data processing register, if practical experience indicates that such register is needed;
- 4) appoint a data protection officer at the Council of Notaries for the whole of the notariate;
- 5) cooperate with the supervisory authority.

Requirements of the regulation will affect the activities of notaries and the Council in various areas. I will mention just a few:

#### **[1] Notarial acts**

When notarial acts are performed, processing of data takes place pursuant to the law. A notary processes only data set forth in the law.

Currently, several legislative initiatives have been launched with regards to the Notariate Law to exclude address, date and place of birth, as well as the date, issuing authority and the number of personal ID from future notarial acts and certifications.

Concurrently, there is an ongoing discussion about the possibility of verifying the identity of an individual at a notary office by means of fingerprinting under the Biometric Data Processing System Law.

#### **[2] E-notary portal**

E-notary portal was launched at the beginning of this year, where customers can open their personal accounts, contact notaries and share documents. These activities are not regulated by law, thus, it will be necessary to rely on customers' consent. Users should read and consent to its privacy policy and data processing rules and regulations. Besides, data collected via the portal are stored on a server located in an EU jurisdiction.

### **[3] Communication by e-mail and transfer of draft documents**

So far customers often communicated with notaries via e-mail or other means of communication. This type of data processing is not regulated by the law, either, thus, it will be subject to consent requirements.

### **[4] Processing of personal data of individuals employed at notary offices**

As to HR management, this directly entails such regular activities as the execution of employment contracts and storage of CVs. Usually CVs are submitted to fill a vacancy. There are notaries, who keep the CVs even after they have found a new employee intending to use them in other competitions, which is not allowed. The regulation also applies to the processing of employee data, e.g., information about their financial circumstances, wages and health.

### **[5] Storage of documents**

Requirements currently laid down by the Notariate Law, Archives Law and nomenclature of notarial documents. It should be assessed, whether all types of documents should be stored and what would be a proportionate storage period.

## **Conclusion**

The regulation affects many issues and aspects. It applies not only to notarial acts, but also to the organisational structure and operations of notary offices.