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DEFINITIONS IN THE FIELD OF PERSONAL DATA PROTECTION: A COMPARATIVE ANALYSIS OF THE LEGISLATION OF UKRAINE AND EUROPEAN UNION

Abstract: A comparative analysis of the basic terms and definitions (definitions) of the legislation of Ukraine and the European Union in the field of personal data protection. Significant differences in the definitions and formulations of certain definitions and / or the absence of some in Ukrainian and others in European legislation. European legislation notes a broader scope and completeness of the definition of the same term. Ukrainian legislation has fewer basic definitions in the field of personal data protection than European legislation.

Keywords: definitions, comparative analysis, personal data protection, European and Ukrainian legislation.

DEFINICJE W ZAKRESIE OCHRONY DANYCH OSOBOWYCH: ANALIZA PORÓWNAWCZA PRAWODAWSTWA UKRAINY I EUROPEJSKIEJ UNII

Streszczenie: Analiza porównawcza podstawowych pojęć i definicji ustawodawstwa Ukrainy i Europejskiej Unii w zakresie ochrony danych osobowych. Stwierdzono znaczące różnice w definicjach i sformułowaniach niektórych definicji i/lub brak niektórych w ukraińskim,

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a innych w prawodawstwie europejskim. Prawodawstwo europejskie zwraca uwagę na szerszy zakres i kompletność definicji tego samego terminu. Prawodawstwo ukraińskie ma mniej podstawowych definicji pojęć w dziedzinie ochrony danych osobowych niż prawodawstwo europejskie.

Słowa kluczowe: definicje, analiza porównawcza, ochrona danych osobowych, prawodawstwo europejskie i ukraińskie.

1. Introduction

The number of messages used with personal data processing (PD) is increasing. Since the entry into force of the GDPR, more than 160,000 reports of data breaches have been registered in 28 Member States of the European Union, as well as in Norway, Iceland and Liechtenstein. According to the latest description by DLA Piper, PD protection regulators have imposed fines of € 114 million for a wide range of GDPR reports, not just for breaching data. France, Germany and Austria have the first positions for the total GDPR fines, corresponding to € 51.24 million and € 18 million respectively. It should also be noted that the Netherlands, Germany and the United Kingdom rated the rating of several data reports (40,647, 37,636 and 22,181 cases respectively) reported by the regulator [1, 3, 5, 6].

To minimize the loss from the violation of the organized GDPR Regulations and reduce the negative rating at the levels of the state urgent task is to develop methods and models that implement responses to the assessment. That is why the theoretical of the basic definitions and multiple representation parameters of the GDPR Regulation in the trench model will solve the current scientific and practical problem of formalizing the process of assessing the negative consequences of PD leakage, preventing their processing.

2. Analysis of criteria classification of objects to critical infrastructure

After analyzing and summarizing the existing legal documents of Ukraine and the European Union (EU) [1, 2] and scientific papers [3-14] in the field of personal data protection, we have formed a comparative table of basic definitions with the identified differences (table 1):

Table 1. Comparative analysis of definitions of Ukrainian and EU legislation in the field of personal data protection

Ukraine	EU (GDPR)
<p><i>personal data</i> – information or a set of information about an individual who is identified or can be specifically identified [2, 4, 7];</p> <p><i>personal data subject</i> – a natural person whose personal data is processed [2, 7];</p>	<p><i>'personal data'</i> means any information relating to an identified or identifiable natural person ('data subject') [1, 3];</p>
<p><i>Differences: the European definition of personal data establishes the data subject, and in Ukrainian, this is a separate concept</i></p>	
<p><i>processing of personal data</i> – any action or set of actions, such as collection, registration, accumulation, storage, adaptation, modification, renewal, use and distribution (distribution, sale, transfer), depersonalization, destruction of personal data, including the use information (automated) systems [2, 4, 7, 8-12];</p>	<p><i>'processing'</i> – any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission [1, 5];</p>
<p><i>Difference: European definition contains a greater number of possible operations performed on personal data</i></p>	
<p><i>card file</i> – any structured personal data available according to certain criteria, regardless of whether they are centralized, decentralized or divided according to functional or geographical principles [2, 9-12];</p>	<p><i>'filing system'</i> means any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis [1, 3, 5, 6];</p>
<p><i>Difference: the European definition implies the existence of criteria for centralization, decentralization or dispersion on a functional or geographical basis, and in the Ukrainian definition these criteria do not apply</i></p>	
<p><i>consent of the personal data subject</i> - voluntary expression of the will of an individual (subject to his / her knowledge) to grant permission to process his / her personal data in accordance with the stated purpose of their processing, expressed in writing or in a form that allows to conclude consent [2, 7];</p>	<p><i>'consent'</i> of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her [1, 3, 5, 6];</p>
<p><i>Difference: the Ukrainian definition narrows the right of an individual to voluntarily express the processing of personal data by applying the condition of his awareness of such processing; the European definition excludes the possibility of awareness of the processing of personal data as a condition of voluntary expression of the data subject.</i></p>	

<i>The Ukrainian definition refers to a natural person whose personal data is processed, and not to a "personal data subject", as stated in the European definition.</i>	
<i>depersonalization of personal data</i> – the removal of information that allows you to directly or indirectly identify a person [2, 9-12];	<i>'pseudonymisation'</i> – the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organizational measures to ensure that the personal data are not attributed to an identified or identifiable natural person [1];
<i>Difference: completely different concepts.</i>	
<i>personal data owner</i> – a natural or legal person who determines the purpose of personal data processing, establishes the composition of these data and the procedures for their processing, unless otherwise provided by law [2, 4, 7, 10];	<i>'controller'</i> means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law [1, 3, 5, 6];
<i>Difference: the Ukrainian definition is limited to the fact that the "owner" can only be a natural or legal person, and the European "controller", in addition to them, is also a public authority, agency or other body.</i>	
<i>personal data controller</i> – a natural or legal person to whom the owner of personal data or the law has the right to process this data on behalf of the owner [2, 4, 8];	<i>'processor'</i> – a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller [1, 3];
<i>Difference: Ukrainian definition is limited to the fact that the "administrator" can only be a natural or legal person, and the European "operator", in addition to them, is also a public authority, agency or other body. Also in the Ukrainian definition, the right to the processing of personal data, except for the owner, provided by law, and the European, excludes such a possibility.</i>	

3. Conclusions

A comparative analysis of the basic terms and definitions (definitions) of the legislation of Ukraine and the European Union in the field of personal data protection. There are significant differences in the definitions and wording of certain definitions and / or the absence of some in Ukrainian (such as biometric and genetic data, personal data violations, profiling, etc.) and others in European legislation (eg, personal data base). The GDPR regulates the wider scope and completeness of the definition of the same term. Ukrainian legislation has fewer basic definitions in the field of personal data protection than European legislation.

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