

IKV BRIEF

DATA PROTECTION AGENDA OF BRUSSELS AND ANKARA: SAME GOAL/DIFFERENT MOTIVES

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Since data protection has become one of the buzzwords of the current age, all actors of global governance including nations, regional integration movements and international bodies place this issue at the top of their agenda. To this end, with similar enthusiasm but with slightly different motives, both Turkey and the EU accelerated their efforts towards ensuring beneficial data protection legislation. While leaving the 10th anniversary of Data Protection Day which marks the opening for signature of the Council of Europe's Convention 108, these are crucial times to assess the latest news both in Brussels and Ankara.

Key Findings

- The General Data Protection Regulation aims at granting EU citizens full control over their personal data within the EU.
- 67% of the Europeans consider that they have partial or no control over the information they provide online.
- According to statistics revealed by the Commission, benefits of a single data protection law replacing the national legislations in 28 EU Member States would be estimated at approximately 2.3 billion euros a year.
- The criteria indicated within Chapters 23 and 24 in the context of Turkey's EU negotiation process require an efficient legal system aligned with EU standards regarding data protection in Turkey.
- In relation with integrated border management, document safety and cooperation in criminal and judicial matters, data protection reform is essential to fulfill criteria indicated within the Turkey-EU Visa Liberalization Roadmap.
- Data protection reform in line with the EU *acquis* is an essential task to be able to guarantee fundamental rights and freedoms in Turkey.

EU Data Protection Reform in Prospect

The European Parliament, the EU Council and the European Commission have agreed upon all principles of the EU Data Protection Reform on 15 December 2015. The reform package is comprised of the General Data Protection Regulation that is expected to be effective within all 28 EU countries and of a Data Protection Directive aiming at ensuring the cooperation among judicial and criminal enforcement bodies at the European level. Data protection reform has been on the Agenda of all three main EU institutions since 2012. The Commission has presented the first Draft Regulation in 2012 then the process emerged along with long-lasting divergences and compromises of the Parliament and the Council.

The EU Data Protection Reform has been considered as one of the main elements of the EU's Digital Single Market and Digital Agenda programmes for a long time. According to a Eurobarometer survey published by the Commission on 24 June 2015, 67% of the Europeans consider that they have partial or no control over the information they provide online. Thus, the General Data Protection Regulation aims at granting EU citizens full control over their personal data within the EU. The data protection reform that has been agreed by the three European institutions is also expected to ensure economic gains for the continent where 315 million citizens use the Internet every day. It is expected that the current Digital Single Market Strategy would additionally save up to 415 billion euros in growth. Under these circumstances, protection of personal data is a key element for a credible, safe and efficient Digital Single Market. Nevertheless 72% of Internet users in Europe still worry that they are being asked too much personal data online.

To that end, the agreed Regulation mainly aims at ensuring an enhanced level of data protection and privacy with a notion of fundamental rights and freedoms and puts a special emphasis on granting data internet users more control over their personal data with the efficient monitoring mechanism across the EU. In conjunction with the General Data Protection Regulation, the right to know when one's data has been hacked, the right to be forgotten, easier access to its own data, data protection by design and default and stronger enforcement all around the EU would be guaranteed. Also, the establishment of the "one stop shop" mechanism ensuring that EU citizens and businesses would be dealing with one supervisory authority in every EU Member States is on the agenda. According to statistics revealed by the Commission, benefits of a single data protection law replacing the national legislations in 28 EU Member States would be estimated at approximately 2.3 billion euros a year. The regulation is expected to enter into force in all Member States in 2018. Until then, Member States are expected to enhance their technical, legislative as well as their administrative capacities in line with the regulation.

“EU-Centric” Political Motives for Data Protection Reform in Turkey

In parallel to these developments in the EU, the data protection reform has emerged as a critical item on the law makers’ agenda in Turkey. The Cabinet forwarded the Draft Law on Protection of Personal Data to the Turkish Grand National Assembly (TBMM) on 18 January 2016 and the attention of all stakeholders in Turkey once again turned to this issue. The data protection journey in Turkey began in 1981 when Turkish authorities signed the European Convention for the Protection of Individuals with regards to the Automatic Processing of Personal Data even though the Convention has not yet been ratified. Ever since, there has been a lack of legislative and political will towards establishing an adequate legislative framework regarding the protection of personal data. Turkey is the only Council of Europe member which has not yet ratified the related Convention. Turkey also does not present a comprehensive and general law on this issue. Therefore, the developments which occurred in January 2016 could be considered as a milestone in regards to the data protection journey in Turkey.

The recent steps towards a law on protection of personal data in Turkey are based on a different motive than in the EU. While the EU is seeking to increase the benefits of the digital economy and focusing on the value of data in the digital age as well as in protecting fundamental rights and values, the Turkish side’s approach is in keeping with a “Turkey-EU relations-centric” political impetus. For three reasons, data protection issue has a great importance for the future of Turkey-EU relations.

First of all, the criteria indicated within Chapters 23 and 24 in the context of Turkey’s EU negotiation process require an efficient legal system aligned with EU standards regarding data protection in Turkey. Secondly, as reflected in the national and international press, currently Turkey-EU Visa Liberalization Dialogue is the hottest topic in Turkey-EU relations together with the migration crisis. The Turkish side has been demanding visa-free travel to Europe for all its citizens. To this end, as agreed by both parties in 2013, Turkey has to fulfill 72 criteria according to the Turkey-EU Visa Liberalization Roadmap. In relation with integrated border management, document safety and cooperation in criminal and judicial matters, data protection reform has been widely discussed along these 72 criteria. As soon as Turkey adopts the Draft Law on Protection of Personal Data, there is a possibility that, many of these criteria would be fulfilled at once. Also this would lead to enhanced cooperation between Turkish border control authorities, judicial authorities, enforcement authorities and security units and their counterparts in the EU Member States and EU institutions.

Thirdly, data protection reform is also essential for the economic relations between Turkey and the EU. As mentioned within the EU Directive in force and the prospective EU General Data Protection Regulation, third countries hosting the companies expecting

data transfer to or from the EU needs to be granted “safe country” status by the competent authorities in the EU. To be able to get safe country status, a third country needs to have a comprehensive data protection regulation in line with European standards. Therefore, in the digital age, as it would be understood, having a law on personal data protection is not solely enough. It is of utmost importance that the data protection reform in Turkey occurs in line with EU standards.

Nevertheless, as the Draft Law has been forwarded to the General Assembly of the TBMM, widely intense debates are emerging both within the General Assembly, the media and the civil society. The content of the Draft Law is being criticized in different dimensions. Main criticism has been directed to the conditions regarding when state could collect personal data. The exceptional circumstances in terms of when the public authorities would collect the personal data is found too large according to the wide range of stakeholders. Secondly, independence and structure of the supervisory body foreseen by the Draft Law is an ongoing dispute. After all, Turkey has to establish an independent supervisory mechanism similar to the European equivalents and has to implement a data protection law aligning the EU *acquis* to be able to acquire “safe country” status.

Transformation from Safe Harbour to Privacy Shield

Since conditions for efficient and safe data flows between the EU and third countries is a highly controversial issue within the EU, Turkey’s capacity to obtain the safe country status in a near future would raise a question mark in minds. Even the free flow of personal data between the EU and the USA which together account for about a third of world trade flows has been up in the air.

Safe Harbour Agreement which let adequate USA companies to transfer personal data of the EU citizens to the USA has been declared invalid by the ECJ with a very stupendous ruling urging it didn’t comply with the EU data protection law in October 2016. From that point; after hurried, fast and uptight negotiations, in a short time, two sides decided upon a new data transfer agreement which would be expected to resolve the deficiencies of the prior one referred as the Privacy Shield. This turning point also dropped to the top of the EU’s Digital Agenda. EP and the civil society approach the issue with a great caution and don’t seem much persuaded.

In the forthcoming days all eyes will be on the final agreement and the ECJ’s response. Even it would be considered a difficult task for Turkey to align the EU data protection law in these chaotic times, data protection reform is an essential task to be able to guarantee fundamental rights and freedoms in Turkey.