



## New Turkish data privacy legislation

The right to protection of personal data is a fundamental right that is different from, but closely linked to, the right to respect for private and family life. In Turkey, the main source of this fundamental right is the Constitution. Previously, specific provisions have been set forth in the Constitution, as well as the civil code and criminal code, and have been included in legislation. However, the substance of data privacy as a specific code has been in progress for about eight years.

On 24 March 2016, after a long waiting period, the Turkish Parliament adopted the Law on the Protection of Personal Data (the Data Protection Law, numbered 6698), which took effect on 7 April.

The law establishes a set of rules specifically aimed at protecting personal data. It regulates procedures and principles for processing personal data, as well as the rights and obligations of persons and legal entities. The Data Protection Law largely reflects the EU Data Protection Directive (95/46/EC), which regulates the

protection of individuals with regard to the processing of personal data and the free movement of such data. The stated intent of the Data Protection Law is to protect the fundamental rights and freedoms of persons when personal data is processed, primarily the secrecy of private life.

Under the law, personal data can be processed with the clear consent of the relevant person (with some exceptions).

The law also:

- ▶ Defines the concepts of personal data, sensitive data and data controller
- ▶ Regulates the transfer, processing and deletion of personal data
- ▶ Imposes rules on data controllers for retaining data
- ▶ Regulates the establishment of the Data Protection Authority (DPA)

The law provides exceptional cases that would be outside the scope of data privacy, such as issues that may negatively affect the interests of Turkey or the related person. Such information shall be subject to the approval of the DPA for transfer outside Turkey.

The Data Protection Law, also in reference to the criminal code, has two sets of penalties:

- ▶ Personal imprisonment: one to six years in prison for individuals who violate the criminal code with a data privacy breach; this would follow an investigation by the public prosecutor and a criminal court case.
- ▶ Administrative penalty: a maximum of TRY1 million (approximately €300,000); this would follow a decision by the DPA.

This is a major step in aligning Turkey's legislative framework with the European Union's, and it is expected to have significant implications. The Data Protection Law is important for the real persons and legal entities that perform transactions involving data processing, such as selling, purchasing, leasing and service operations.

To adapt to the law, they should:

- ▶ Harmonize their current operations
- ▶ Receive open consent when necessary
- ▶ Appoint a data authority responsible for organizing internal systems
- ▶ Establish connections with the DPA

Data processed prior to the effective date of the law must comply with the new requirements within two years.

Matters related to implementing the law will be set forth in regulations issued within one year by the DPA, which will be established within six months of the law's effective date. Questions and hesitation about implementation are expected to lessen after the regulations are issued.

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