

Potential Certification Mechanisms Under the Turkish Personal Data Protection Law No. 6698

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With the November 6, 2019 dated announcement, the Turkish Personal Data Protection Authority (the “**Authority**”) announced that it aims to establish a data protection certification mechanism for data controllers and processors.

Pursuant to the announcement, we understand that the Authority is currently working on setting up a new certification mechanism aiming to enhance the corporate capabilities of the data controllers and data processors for processing personal data, by taking into account:

- (i) the awareness level in Turkey;
- (ii) expectations of the data controllers, data processors and data subjects;
- (iii) the current personal data protection practice examples; and
- (iv) the role of the public institutions.

The Authority stated that it would announce the details of its works regarding the certification mechanism in the following days.

Certification mechanisms would be helpful to identify the mechanisms/assurances provided by the data controllers and data processors; and more importantly, they would enable the data controller or processor to prove that it has fulfilled the requirements on accountability and transparency.

Certifications are considered as a reliable evidence for privacy compliance and such certifications would contribute also safeguarding the international personal data transfers. Companies could also benefit financially, as the adherence to the approved certification mechanisms can be considered by the Authority as a mitigating factor in enforcement actions.

Notwithstanding, the recent announcement of Authority, the certification mechanisms do exist under the Regulation the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “**GDPR**”). To be in line with the global privacy practice, the Authority is likely to consider GDPR as an example and implement similar mechanisms accordingly, it is worth taking a look at European experience.

Certification Mechanisms under the GDPR

Article 42(1) of the GDPR regulates the certification process. Main purpose of the certification mechanism is to prove that the respective company/business is compliant with GDPR.

The GDPR does not introduce an obligation of obtaining certification for data controllers and data processors, but rather provides a voluntary accreditation system and a transparent process for certification. The term of the certificate may be for a maximum period of three years and may be renewed (under the same terms and conditions).

The GDPR imposes a legal obligation on EU Member States, data protection authorities, the European Data Protection Board (the “**EDPB**”) and the European Commission to take steps to encourage the creation of data protection certification schemes and the use of data protection seals and marks for the purpose of demonstrating compliance with data processing operation regulated under the GDPR.

What can be certified under GDPR?

The EDPB considers that what may be certified under the GDPR has a broader scope as long as the focus is on helping controllers and processors to demonstrate compliance with the GDPR. When assessing any data processing activity, the following three core components must be considered:

- Personal data (material scope of the GDPR);
- Technical systems - the infrastructure, such as hardware and software, used to process the personal data; and
- Processes and procedures related to the processing operation(s).

Potential Certification Mechanism under the Turkish Personal Data Protection Law No. 6698

Unlike the GDPR, Turkish Personal Data Protection Law No. 6698 (the “**PDPL**”) does not contain a provision regulating the certification. Given the Article 22 (f) and (g) of the PDPL, enabling the Turkish Personal Data Protection Board (the “**Board**”) to take necessary regulatory actions relating to the duties, authorities and responsibilities of the data controllers and data controllers’ representatives, the Board may also adopt a regulation on certification mechanisms schemes.

In this respect, the Board would play a key role in the certification process and probably act as the supervisory authority who determines and accredits competent certification bodies and approves certification criteria. In the determination of the certifiable elements of a data controllers’ compliance efforts, the components provided by the GDPR practice are likely to be exemplary. Besides, we consider that the Board will formulate the certification criteria in such a way that they are clear, comprehensive and practical to implication. With this regard, the EDPB view on the topic, in our opinion, might provide an insight for how certification criteria could be determined by the Board.

Conclusion

The businesses that seek to get a certificate should be aware of the fact that there remain potential pitfalls or drawbacks of certification mechanisms. On the other hand, they also should keep in mind the potential benefits of the certification as it offers competitive advantage, international reciprocity and a source of reliability for data subjects.

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