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### **Turkey is set to bring its data protection regime more in line with the GDPR and streamline the process of transferring data abroad.**



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On 16 February Turkey's government introduced a proposal to amend certain aspects of Turkey's Personal Data Protection Law (PDPL). Introduced in 2016, the PDPL predates the GDPR and departs from the European standard in some notable ways – particularly the limits it places on international data transfers and the restricted enforcement powers of the Turkish regulator.

The recent amendment sets out to remedy these shortcomings.

It will expand the number of legal bases under which sensitive personal information can be processed. This currently requires consent, unless the processing is provided for by law – although this does not apply to data on health and sexuality – or subject to secrecy obligations or is processed by competent public institutions for the protection of public health among other conditions. The amendment will additionally allow processing such data for the protection of life, when the data has been made public by data subjects, when required to exercise data subjects' rights, or in order to fulfil certain legal obligations.

“The current legal grounds for processing special categories of personal data do not correspond to the realities of ordinary business activities, leave a narrow field of action and disrupt daily operations, in particular HR and payroll processes and membership of associations,” said Tuğrul Sevim, partner at BTS & Partners in Istanbul.

Under the current law, appeals against Turkish data protection fines are also heard before criminal courts – a situation which Sevim said “leads to inconclusive appeals due to the lack of technical knowledge of these judgeships”.

If passed, the amendments would move appeals to administrative courts. A new fine of between 50,000 lira (€1,484) and 1 million lira (€29,681) will be introduced for failures to notify the regulator when standard contractual clauses are used for international transfers.

The amendment will ease international data transfers from Turkey. Its adequacy process currently has a reciprocity requirement, which has hobbled the regime by preventing adequacy declarations for any other countries unless they also declare Turkey to be adequate under their frameworks. International transfers are therefore typically based either on individual consent or regulatory approval – which has been granted to just eight data controllers since 2016.

“Most of the data controllers, who transfer personal data abroad, have been doing so in a de-facto manner,” said Bora Yazıcıoğlu at YAZICIOGLU Legal in Istanbul and president of the Turkish Data Protection Association. “These data controllers include the ones which use e-mail service providers, cloud service providers, hosting service providers abroad. Hence, it means quite a big number of data controllers in Turkey.”

Data transfers under the amended law will be closer to those under the GDPR, with a simplified adequacy mechanism, a determination of appropriate safeguards in cases where there is no adequacy in place, and exemptions for one-off transfers.

“These proposed amendments are quite positive steps for bringing Turkish data protection law in line with the GDPR,” Yazıcıoğlu said, adding that the changes “represent a significant step towards enhancing data transfer and business operations between Turkey and the EU.”

The proposed amending law was sent to Turkey’s legislature on 21 February, and is expected to be approved in the coming days. The changes will come into force on 1 June.

## Documents

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Proposed amendments to Turkish Data Protection Law.pdf

