

PERSONAL DATA PROTECTION IN ARMENIA

1. Adoption of a comprehensive legislation on personal data protection

The new Law on Personal Data Protection was adopted by the parliament on 18 May 2015 and came into force on 01 July 2015. The law sets up legal framework of processing personal data by public and private organizations, rights and liabilities for both data processors and personal data subjects. It also defines specific procedures, such as notification about processing of personal data, obtaining permission for trans-border data transfer, as well as the scope of responsibilities and power of personal data protection authority. Amendments to the Code of Administrative Violations defining penalties for the violation of data protection right have been adopted for the enforcement in addition to the personal data protection legislation.

Currently the Armenian personal data protection legislation covers all basic requirements of the Council of Europe's Convention on Protection of Individuals with regard to Automatic Processing of Personal Data. Nevertheless, some issues, such as specific regulatory framework for establishing, access to and maintenance of content of the street surveillance cameras or unsolicited electronic communication are not legally regulated.

Effective implementation of the legislation on protection of personal data

All complementary acts such as Charter on Personal Data Protection Authority and Amendments to the Code on Administrative Violations have been adopted and are in place since January 2016. However, an important legal act, which is the list of countries with adequate level of personal data protection, is still not adopted. The list is an important ground for legitimate trans-border transfer of personal data. Absence of the list of countries with adequate level of personal data protection makes activities of data owners/processors difficult and slow down business process of many information technologies companies.

2. Creation of an independent agency for data protection

In accordance with the Law on Personal Data Protection, Personal Data Protection Agency was created in 2015. It is organized as a separate subdivision of the Ministry of Justice. The activities of the Personal Data Protection Agency aim to ensure maintenance of the registry for those processing personal data; to ensure protection of the rights of subjects of relations connected with the protection of personal data; and to ensure, within the scope of its competence, lawful processing of personal data. The Agency has a power to apply administrative sanctions prescribed by the law in the cases of violation of the requirements of the Personal Data Protection Law; apply to court in cases provided for by law; its decisions may be appealed through judicial procedure. The head of the Agency is appointed for 5-years term by the Prime Minister of the RA, upon nomination of the Minister of Justice, on the basis of joint recommendations of at least 5 NGOs.

The Law stipulates that the authorized body for the protection of personal data shall operate independently. Meantime, according to the Statute of the Personal Data Protection Agency, the Agency is managed by the Minister of Justice and direct administration of the Agency is carried out by the Head of the Agency.¹ The Head of the Agency is accountable to the Prime Minister of the RA, the Minister of Justice, and the corresponding Deputy Minister coordinating the activities of the Agency.

The international best practice stipulates absolute independence of the body, including allocation of sufficient financial means from the state budget. In reality, the Agency is lacking financial independence. The Law on Personal Data Protection does not contain provisions guaranteeing financial independence of the Agency, e.g. the Agency depends on the budget allocations within the Ministry of Justice and the later has instruments of influencing the Agency's activities. The activities of the Agency are financed from the state budget; budget allocated to the Agency for 2016 is 22,215,000 AMD (~46,100 USD).

¹Statute of the Agency for Protection of Personal Data of the Ministry of Justice of The Republic of Armenia <http://www.justice.am/en/structures/view/structure/32>

Efficient functioning of an independent agency for data protection

The major problem of the efficient operation of the agency is its capacity limitations in terms of lack of human resources, professional experience, tools and methodology to perform in full capacity and scope of its functions. In spite of great enthusiasm of recently appointed head of data protection authority and very dedicated members of staff the institution in general is lacking experience in administrative processing, as well as resources for handling number of administrative cases simultaneously. Moreover, the Agency does not have sufficient expertise in investigation of personal data protection cases and the issues that formally are not within its scope of authority. For instance, recently the Agency raised the issue of direct marketing, which is subject to regulation under the European Union Data Protection Directive, but is not within the scope of the Law since it is more relevant to personal data unless personal data is processed for the purposes other than it was collected.

Though, the Law on Personal Data Protection is very specific about most of the notions and procedures it naturally, as many of the legal acts, contain provision requiring clarification and official explanations. Primary task of Personal Data Protection Agency supposed to be organization of public discussion aimed at presenting the Agency's approach towards the main concepts and procedures defined under the law. For instance, Agency may explain the concept of notifications about data processing or data transfer, e.g. who must submit notifications, what should be the format and what are the cases requiring notifications. Apparently, the main role of the Agency supposed to be education of business and public authorities about the requirements of newly enforced law rather than solution of such controversy (in terms of the scope of Agency authority and relevance to the law) task as unsolicited commercial communications or street surveillance cameras.

3. European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 1981

Armenia ratified the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data in 2012. Generally the Law on Personal Data Protection and complementary legal acts (Code on Administrative Violations) has been implemented in accordance with the basic principles of the Convention. The Law specifies notion which mostly corresponds to those defined under the Convention. In particular, the Law defines the notion of "special categories of data" (political, religious, health and sexual data) that are subject to stronger protection, allowed only in cases defined by a law. However, the legislation and sub-legislative acts do not stipulate a procedure for storage of such data of high sensitivity.

In case of violations, the Law does not define sanctions but refers to the Code of Administrative Violations. The later has been amended by a new article foreseeing penalties for the violation of such fundamental provisions of the Law on Personal Data Protection, as non-notification about processing of personal data or trans-border transfer of personal data without permission or in contrary with the rules and procedures defined under the law. However, in most of the cases, the sanctions vary from 100,000 AMD to 500,000 AMD and are not material for preventions of violations by large corporations.

Effective implementation of the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data

All necessary legal instruments have been adopted with slightly delay, but are actually in place since January 2016. Nevertheless, Personal Data Protection Authority is lacking experience in both administration and law specific expertise and often spend resources for proceedings in areas/subjects that are not directly linked with the data protection in sense of existing legal framework (direct marketing, street security cameras), while other important issues, such as, for example adoption of the list of countries with adequate level of personal data protection (required for the simplification of trans-border transfer of data) have not been implemented yet.

4. Additional Protocol to the Convention for the Protection of Individuals with regard to automatic processing of personal data regarding supervisory authorities and representatives of international information flows, 2001

Armenia ratified the CoE's Additional Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data in 2012. Both of fundamental requirements defined under the Additional

Protocol, e.g. establishment of independent personal data protection authority and rules on trans-border transfer of personal data are defined under the Armenian Law on Personal Data Protection and correspond to the requirements of the Additional Protocol.

Effective implementation of the Additional Protocol to the Convention for the Protection of Individuals with regard to automatic processing of personal data regarding supervisory authorities and representatives of international information flows

One of the core requirements of the Additional Protocol, e.g. establishment of an independent supervisory body has been implemented with a minor delay. Though, in general the Law provides solid ground for the institutional independence of Personal Data Protection Authority and does not have substantial financial independence. The Law requires amendments guaranteeing financial independence of the Authority and sufficient resource for effective performance of its responsibilities.

Recommendations for visa dialogue

- Ensure operation of an independent data protection supervisory authority with adequate powers, financial means and obligations.
- Ensure efficient operation of the agency in terms of experienced staff and human resources, professional tools and methodology.
- Financial independence of personal data protection authority is better to define under the law to exclude possible pressure and influence from the government; allocate sufficient funds from the state budget for its operation.
- Develop of specific procedures for storage of high sensitivity data.
- Secure independence of the authority by institutionalized participation of representatives of non-governmental human/civil rights organizations in the advisory body to ensure public trust and professionalism; introduce the concept of public accountability in the form of an annual and public report to National Assembly.

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October 2016**

Publication of this policy analysis is supported by Open Society Foundations - Armenia. The opinions and analyses expressed in the paper are those of the author and do not necessarily represent opinions and positions of Open Society Foundations – Armenia.