

Policy Brief

Protection of Personal Data within the Dialogue on Visa Liberalization and the Negotiation of the Association Agreement between the Republic of Moldova and the European Union

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Protection of personal data in the Republic of Moldova (RM) is a relatively new topic that has lately occurred in the debates, especially in the perspective of the dialogue on visa liberalization, and the negotiation of the future Association Agreement between Moldova and the European Union (EU).

Privacy in the Republic of Moldova

Looking at the personal data protection in the light of the wider privacy domain, the current situation of effective protection in Moldova is deficient, as proven by many glaring examples already brought on the public agenda specially by the annual reports of the Center for Personal Data Protection in Moldova (Center) and the Centre for Human Rights in Moldova (CHRM). Thus, major systemic problems in securing this human right arise in flagrant situations regarding phone tapping (where Moldova has already been condemned at ECHR in the Iordachi case), culminating with the "suspension of mobile telephony services required by public authorities" (in April 2009), systematic intimate examination of persons visiting convicts even when there is no normative act to that effect or the lack of interest from the judicial authorities for this human right, reflected in the disclosure of personal data from judgments (including from nonpublic hearings!).

Under these circumstances and having in view the lack of political interest until 2008 for the protection of personal data, explaining the absence of an appropriate regulatory framework, it is not surprising to see many cases of excessive data collection, including those in special categories (especially those concerning health), and other major infringements of the principles of personal data collection. State institutions in particular, seem not to consider the principles of collection at the initial level of development or even at the initial stage of implementation of all activities affecting the citizens' personal data.

Changes since 2008 to date, especially in the legislative and institutional framework, began to outline a framework for regulating the scope of personal data protection. Given the relatively short time available for the entry into force and establishment of the Center, we believe that it would have been unlikely to see a dramatic increase in the awareness and implementation of the subject in question.

The current legislative, institutional and implementation situation in the Republic of Moldova

Thus, despite the efforts of the Center and of CHRM (main institutions with attributions in implementing the provisions related to privacy), we may conclude that RM has an unsatisfactory level of personal data protection at all stages, with the possibility for improvement in case of consistent measures on short and medium term:

- In terms of the legislative coverage, the new framework legislation to be adopted by the RM can provide, with some minor improvements, an appropriate generic framework, in accordance with the EU legislation in the area. But without these key legislative changes - updating the law on data protection, ensuring appropriate sanction measures for the breach of law and implementation of the Controllers' Registry - effective protection of personal data remains a wish on paper, and the Center is a mediator without real powers to intervene. In addition, important secondary legislation is still lacking, and the sectorial one, sometimes already adopted, is not up to the required level of framework law, particularly with regard to processing of data on health.
- The institutional construction regarding the personal data protection may not yet be at a satisfactory level, but there are premises to meet the minimum criteria required by EU in terms of legislative amendments and clarifications, but also regarding their correct implementation. Furthermore, the subsequent measures can improve the institutional framework beyond a satisfactory level. A real progress in reaching this goal may be achieved, in our opinion, only through the allocation of financial and adequate human resources by the competent institutions, beyond the level of subsistence and with resources for promotion and awareness of personal data protection.
- Implementing legislation of personal data protection does not meet the minimum criteria, despite the efforts of the Center and of CHRМ, which need be followed with a visible and real interest, especially from other government institutions in charge of processing personal data.

The context of the relation with the European Union

The dialogue on visa liberalization and the future Association Agreement between Moldova and EU raise the issue of personal data protection even more. This opportunity gives RM the chance to harmonize the regulatory framework at the world's highest standards. But even if this push can be extremely useful in having the necessary political support for such a process, it is important not to lose sight of the ultimate goal: that of a legislative framework, institutional and practical protection of privacy in RM. Setting this goal very clear allows the approach and attempt to solve the fundamental problems, and not to fulfill the required criteria only for a short period and for the current geopolitical goals. At the same time, RM has to take into account the context of the European Union that comprises detailed discussions with opposed views on many topics that are presented as requirements in relations with the other states. Especially, the data protection field frequently enters into conflict with the judicial or security domains. Moreover, it is important, in every negotiation or discussion process with EU experts, to take into account the current practical situation in RM. An eloquent example in this respect from the personal data protection domain is that of the minimum security requirements for data processing, where too high obligations compared to current conditions in Moldova, may be impossible to implement in practical terms by most operators because of the very expensive costs.

Some Recommendations

The recommendations of the study regard specific issues that need to be addressed concerning the protection of personal data in the Republic of Moldova at the legal, institutional and implementation levels, in connection with the European best practice. This supports the importance of using the concept of data protection officer, the obligation to involve the Center in drafting the laws affecting the private life or the analysis of the implementation of legislation in sectorial areas, particularly processing data from special categories, such as those related to health.

A more active involvement from other state institutions handling personal data, especially those directly implied in the dialogue on visa liberalization, is a necessary step. The same regards the awareness of the issues related to the subject and the internal role of national institutions to actively solve them without waiting for perfect solutions from the Center. Until now, reactions of the public institutions have been mostly ignoring the alarming signals raised by the authorities with competences in the area, as it is shown in their public reports.

On the other hand, the Center, under the conditions of obtaining the legislative changes and necessary resources, must assume a central role in coordinating and training the staff from the institutions involved in the dialogue on visa liberalization.

Regarding the protection of personal data on medium and long term, given the many cases of excessive collection, we consider necessary a comprehensive re-evaluation from the perspective of the necessity of personal data collection, of the fulfillment of the principles of data protection processing, including the duration of data retention. This should regard, in particular, normative acts on the documents required by the Registries, as well as similar cases.

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