



Turkey fines Cathay Pacific Airways for massive data breach

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On 16 May 2019, the Turkish Personal Data Protection Board (KVKK) imposed administrative fines totalling TRY 550,000 (about £81,000) on Hong Kong-based Cathay Pacific Airways for violations of Article 12(1) and Article 12(5) of Turkey's Personal Data Protection Law No 6698 (DPL) stemming from a 5 July 2018 data breach that affected an estimated 9.4 million passengers.^[1]

Although Cathay Pacific Airways is based in Hong Kong and does not offer flights to or from Turkey, the KVKK found that the data breach affected 1,286 individuals located in Turkey.^[2] The decision is consistent with the DPL, which in fact mirrors the provisions of the European Union Directive 95/46/EC. The DPL, which was enacted on 7 April 2016, originates from the directive^[3] and is applicable to any party who processes personal data regarding Turkish nationals.

Although Turkey is not an EU Member State, the DPL mirrors the EU General Data Protection Regulation (GDPR), which was in the process of being enacted at the time Turkey enacted the DPL, and took effect on 25 May 2018.^{[4], [5]} The DPL and GDPR both govern the processing of personal data defined as 'any information relating to an identified or identifiable natural person'.^[6]

The KVKK fined Cathay Pacific TRY 450,000 (£66,000) for violating Article 12(1) of the DPL by taking 'inadequate' technical and administrative measures to ensure the security of personal data.^[7] Article 12(1) requires data controllers to 'take all necessary and organizational measures for providing an adequate level of security in order to a) prevent unlawful processing of personal data, b) prevent unlawful access to personal data, and c) safeguard personal data'.^[8]

Section 12(1) of the DPL mirrors Article 32 of the GDPR, which requires that:

‘taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the [data] controller and the processor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk’.^[9]

The KVKK also fined Cathay Pacific TRY 100,000 (£15,000) for violating Article 12(5) of the DPL by notifying the KVKK of the data breach on October 25 2018, despite the breach occurring over two months earlier on 5 July 2018.^[10] Article 12(5) provides that when personal data is ‘acquired by others through unlawful means, the data controller shall notify the data subject and the Board of such situation as soon as possible’.^[11]

Section 12(5) of the DPL mirrors the GDPR’s Article 34, which requires notification of a data breach to affected data subjects without undue delay, and Article 33, which requires notification of a data breach to the applicable supervisory authority or the authorities.^[12] However, Article 33 requires data controllers to notify the applicable supervisory authority or authorities within 72 hours of becoming aware of a data breach, while Section 12(5) less specifically requires notification to be made ‘as soon as possible’.^[13] The KVKK issued decision No 2019/10 on 24 January 2019, which defined ‘as soon as possible’ for the purpose of Article 12(5) as 72 hours. Therefore, the KVKK’s interpretation of the DPL is in line with the GDPR on this issue.

Although the EU and its Member States that have enacted statutes implementing that GDPR have yet to fine an airline for violating it, on 8 July 2019, the United Kingdom Information Commissioner’s Office released a notice of intention to fine British Airways £183.39m for violations of the GDPR involving inadequate data security procedures stemming from a 2018 data breach affecting the personal data of about 500,000 customers.^[14] British Airways is based in and operates flights to and from the UK. Nevertheless, it is possible that the GDPR could be extraterritorially applied to a non-EU airline that services passengers residing in the EU similar to the extraterritorial application of the DPL to Cathay Pacific since the GDPR expressly:

‘applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to: (a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or (b) the monitoring of their behaviour as far as their behaviour takes place within the Union’.^[15]

Unlike Turkey and the EU, the United States has not enacted any federal statutes or regulations imposing generally applicable or airline-specific data security or data breach reporting requirements. Although numerous states, such as California and Colorado, have enacted statutes imposing data security requirements on businesses that process personally identifiable information and all 50 states and the District of Columbia have enacted statutes requiring notification of data breaches, a California State Appellate Court and US District Court both recently held that state data security statutes are pre-empted as applied to airlines by federal Airline Deregulation Act of 1978.^[16]

Notes

^[1] KVKK Decision No 2019/144, Resolution No 2019/144, 16 May 2019, www.kvkk.gov.tr/Icerik/5487/Cathay-Pasific-Airway-Limited-Hakkinda-Kisisel-Verileri-Koruma-Kurulunun-16-05-2019-Tarih-ve-2019-144-Sayili-Karar-Ozeti accessed 5 August 2019, Daily Sabah, ‘Data Protection Authority Fines Marriott Hotels for Data Breach’, Daily Sabah (5 July 2019) www.dailysabah.com/technology/2019/07/05/data-protection-authority-fines-marriott-hotels-for-data-breach accessed 5 August 2019; Will Horton, ‘Cathay Pacific Faulted for Data Breach but Hackers’ Objective Unclear’, *Forbes* (6 June 2019) www.forbes.com/sites/willhorton1/2019/06/06/cathay-pacific-faulted-for-data-breach-but-

[hackers-objective-unclear/#5256a5617068](#) accessed 5 August 2019.

[2] *Ibid*, KVKK Decision No 2019/144.

[3] Duygu Dogan, *Personal Data Protection in Turkey: The Impact on Business* (6 November 2018)

<https://gdpr.report/news/2018/11/08/personal-data-protection-in-turkey-the-impact-on-business> accessed 5 August 2019.

[4] *Ibid*.

[5] See Ozlem Kurt, 'Gap Analysis: GDPR vs Turkish Personal Data Protection Law (KVKK)', Mondaq (31 July 2018)

www.mondaq.com/turkey/x/724120/Data+Protection+Privacy/GDPR+vs+Turkish+Personal+Data+Protection+Law+KVKK accessed 5 August 2019.

[6] Turkish Personal Data Protection Law No 6698 (DPL) Art 3(d); European Union General Data Protection Regulation (GDPR) Art 4(1).

[7] KVKK Decision No 2019/144.

[8] DPL Art 12(1).

[9] GDPR Art 32(1).

[10] KVKK Decision No 2019/144.

[11] DPL Art 12(5).

[12] GDPR Art 34; GDPR Art 33.

[13] GDPR Art 33; Turkey No 6698 Art 12(5).

[14] Sarah Pearce and Ashley Webber, 'British Airways Faced With Record Fine of £183.39M for Personal Data Breach', *Lexology* (8 July 2019) www.lexology.com/library/detail.aspx?g=edf7f63b-f26e-4967-a484-57e5f0285cde accessed 5 August 2019.

[15] GDPR Art 3(2).

[16] See, eg, Cal Civ Code s 1798.100-198; Cal Civ Code s 1798.81.5; Cal Civ Code s 1798.91.04; Col Rev Stat s 6-1-713.5; Del Code s 12B-100; Md Code Com Law s 14-3501-3503; 201 Mass Code Reg 17.03; Nev Rev Stat s 603A; Cal Civ Code s 1798.82; Col Rev Stat s 6-1-716; Ill St Ch 815 s 530/10; NJ Stat s 56:8-163; NY Gen Bus Law s 899-AA; 73 Pa Stat s 2303; DC Code s 28-3852; *People ex rel Harris v Delta Air Lines Inc*, 247 Cal App 4th 884, 904-905 (Cal Ct App 1st Dist 3rd Div 2016); *Pica v Delta Air Lines Inc*, 2018 WL 5861362, *7-8 (CD Cal 2018).

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