

PH to seek 'adequacy' country status in EU data privacy law

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Although personal data in the country are well protected by companies' compliance mechanisms under the current Data Privacy Act (DPA), the Philippines will still be moving for "adequacy country" status accreditation under the new EU General Data Protection Regulation (GDPR) law, the holy grail in data privacy protection, to boost its status as leading global destination of personal data.

National Privacy Commissioner Raymund E. Liboro said they have started getting consensus and the last person they consulted was the late Senator Edgardo Angara, author of the 21st century DPA law.

"His message to us was to 'push for it'," Liboro said. So far, EU has already granted "adequacy status" on 12 countries under the GDPR, which will take effect this Friday, May 25.

The late Senator was set to deliver a keynote at the International Data Protection Conference in October this year where he was supposed to pitch for the country's position for accreditation under the GDPR.

GDPR provides for very stringent rules and penalties for violators of illegal and abuse in the transfer of personal data of EU citizens. The GDPR has replaced the old EU Data Protection Directive 95/46/EC. GDPR now covers the entire 28 EU member states for the protection of all EU citizens.

With the absence of the "country status" certification, Liboro said compliance to the GDPR is done by companies operating in the country.

He said there are mechanisms that will ensure protection in the transfer of personal data are enshrined in the binding corporate rules being entered into by companies when transacting business.

While it is important that the Philippines be certified "adequacy status" status for a blanket or national coverage, Liboro said the existing DPA enacted in 2012 is relatively close to GDPR's predecessor Directive 95.

"Our DPA is very close to that, almost apple to apple," said Liboro. For instance, the DPA has provision for a "right to blocking, erasure" but the GDPR is still doing that under its provision on "Right to be forgotten."

"So, we promote privacy by design, we are responsible stewards of data protection, not only for EU, but global as we can be leading destination of personal data," he said. "We can make this as our differentiation to compete, there are lots of upside as we grow in compliance," he added.

Walter Van Hattum, head of economic and trade section of the EU Delegation in Manila, however, noted that while the DPA is similar to the old EU Data Protection Directive 95/46/EC, the GDPR is the next level standards and is meant for companies and governments who would like to champion data privacy protection.

Being an exporter to EU, importer of EU products, and as the world's number one contact center hub, most companies in the country are dealing with EU citizens' personal data.

There is no timetable yet as to when the government will apply for accreditation, said Liboro.

“What is important is to cascade the privacy principle and program to raise capacity of individuals, skill building, ensure the complaints mechanism is available to EU citizens,” he stressed.

While there are mechanisms for compliance because some companies have been complying under EU Directive 95, the GDPR also incorporates changes in principles, like the distinction between data controller and data processor.

Liboro is confident of the Philippine compliance with GDPR, stressing the good relationship with the EU committee on personal data process. The Philippines was even granted an observer status in this committee.

Data adequacy is a status granted by the European Commission to nonEEA (European Economic Area) countries who provide a level of personal data protection that is “essentially equivalent” to that provided in European law. It can also be awarded to specified sectors of an economy or international organizations.

Once a country is granted “adequacy status,” personal data can be transferred freely between EEA member states, which include all EU countries. But personal data is allowed to leave the EEA only if the Commission judges there to be sufficient protection for this data in the destination country. When a country has been awarded the status, information can pass freely between it and the EEA.

This regulation has been enshrined under EU’s 2016 GDPR, which provides some additional safeguards around how individuals’ data is used. It harmonizes data protection laws across the EEA, as well as updating and expanding the scope of existing data protection regulation, much of which is two decades old.

Currently, the Commission has recognized 12 countries or territories, including Argentina, Israel and New Zealand as providing fully adequate data protection. The USA and Canada have been deemed to provide only partially adequate protection. In Canada, only private organizations that use the data for commercial activities have free access to EU data.

Children’s right One provision in the GDPR though that is not provided in the DPA is the Protection of Children’s Right to Privacy.

Van Hattum said that child privacy protection is one aspect the Philippines’ NPC can look into.

“The GDPR is very tough on child protection,” Van Hattum stressed. “So, if children or minors are a very important element in your business, protection of these minors should be part of your company’s data privacy protection policy.” For instance, data of minors must have parental consents before any transfer is made.

Liboro, however, said that while Child Protection Rules is not provided in the DPA, this has been covered in the implementing rules and regulation of the law which put emphasis on the vulnerable sectors and sensitive personal data.

This means that companies are obligated to notify the data subjects, like if there is a breach involving children’s data.

“That is how close we got to the protection of children,” he added.

But Liboro also noted that the law, as in any other law is a live document and can be amended later on.

For now, he said, what is important is that the intent of the law is cascaded to everyone.

Two years ago, data privacy protection was still very foreign, very alien, but now its importance has to surface. What started as a local perspective has now an international dimension.

“We see the advantages, we have leaders and even the groups of BPO sector, and global conglomerates with offices here also come to us and encouraging us and even governments from EU including Hungary asked us about data privacy protection,” he stressed.

New capital Quoting from a study, Van Hattum said the potential from digital economy is 12 trillion euros or R750 trillion, which is 50 times the GDP of the Philippines. The personal data from EU citizens by 2020 is expected at R60 trillion.

“I am saying this because a lot of companies look at GDPR very defensively as yet another regulation to comply, but instead look at this as an opportunity,” he said. He noted that “data now becomes like a capital that you can access.” With the Philippines being the contact center capital of the world, Van Hattum said it is a good opportunity for the government to go for the next level of protection. The Philippines also exports to EU, especially electronics.

“I think you are in good hands because Commissioner Liboro is doing a good job with lots of information campaign and companies are getting ready. But to say the Philippines is safe from GDPR is difficult,” he said noting there are several technical processes and regulations to comply.

“GDPR is a game changer because companies are no longer dealing with EU but EU citizens’ personal data,” he said.

“The DPA is similar to the old European law, but GDPR is the next level of standards.”

“Do you want to be the champion of this new standard or stand back, because this is not only a requirement, but for your future,” he said.