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“De Facto” Time Extension Decision for VERBIS Registration

- Summaries of the Board’s Recent Decisions
- ICTA - Research Report on Cryptocurrency
- European Data Protection Board - Guideline on the Targeting of Social Media Users

“De Facto” Time Extension Decision for VERBIS Registration

With the decision dated 23.06.2020 and numbered 2020/482, published in the Official Gazette dated 25.06.2020, Personal Data Protection Board (**Board**) decided to postpone the deadline for Data Controllers’ Registry System (**VERBIS**) to **30.09.2020** considering that certain enterprises have not been able to prepare personal data processing inventory due to Covid-19 outbreak.

The Board identified that as of 01.10.2020, some of the data controllers who were obliged to register with VERBIS until 30.09.2020, did not apply for VERBIS registration or did not complete their notification although they had applied. Considering some data controllers could not fulfil VERBIS registration obligation due to actual, technical or legal impossibilities within fight against Covid-19, the Board decided in the decision dated 01.10.2020 numbered 2020/760 that,

- i. A letter will be sent to data controllers who have not performed VERBIS registration obligation,
- ii. A definitive time period will be granted to each data controller in such letter and
- iii. Data controllers are under obligation to perform VERBIS registration obligation within the definitive period granted in the underlying letters.

Therewith, Board decided on a de facto extension decision for VERBIS registration obligation deadline.

You can reach the full text of Board’s decision dated 01.10.2020 and numbered 2020/760 [here](#).
(Only available in Turkish)

Summaries of the Board’s Recent Decisions Have Been Published

The Board has been continuing its work related to ensuring the processing personal data in a secure manner since the day Personal Data Protection Law (**Law**), which affects our life, entered into force. Within this scope, we compiled below the summaries of the decisions published in September.

The decision summary about the request for opinion on the use of biometric signature data

In the application made to the Board, it was requested for an opinion on whether the biometric signature can be considered as an exception to processing of sensitive data without explicit consent by taking into account the obligation of signing agreements only manually, which is regulated under Article 14 and 15 of Turkish Code of Obligations (**TCO**), in which the principles relating to agreement form requirement is regulated.

The Board defined the biometric signature as “*signatories to create their signatures on a special tablet/pad using specific biometric data*” and added that the biometric signature is different from the wet-ink signature. The Board also indicated that Article 15 of TCO relating to the signature sets forth only “classic signature” and “secure electronic signature” and there is no clear regulation on biometric signature. Therefore, the Board decided that the interpretation of Article 15 of TCO in a way that includes biometric signature would be contrary to the principle of proportionality and would lead to broad interpretation of the exceptions of processing “when prescribed by law” principle.

At this stage, the Board has decided that biometric signature is a biometric data and the explicit consent is required in order to obtain a person’s biometric signature.

You can reach the full text of the decision [here](#). (Only available in Turkish)

The decision summary about the application to data controller related to health report belonging to minor and complaining by the related person upon failure to response

The minor's father has applied to the data controller to destroy the records of the health report belonging to the minor and could not receive any response. Hereupon, a complaint to the Board has been made by the related minor.

Considering the best interest of the relevant person in the concrete case, the Board has examined that whether the minor's right to the protection of personal data can be exercised by its legal representative and that whether it would be appropriate for different persons to apply to the data controller. The Board has considered that minors and their legal representatives are authorized to access the data on the e-Pulse platform and considered the concrete case. Pursuant to the provisions of the Regulation on the Personal Health Data, the Board has concluded that the rights of the related person listed in Article 11 of the Law can be exercised by a minor who has mental competence or by its legal representative. In that respect, provided that the minor has mental competence, the Board has decided that it is acceptable that the minor has entitled to make a complaint to the Board and its legal representative has entitled to apply data controller by considering that the application will of the related minor overlaps with application will of its father.

You can reach the full text of the decision [here](#). (Only available in Turkish)

The decision summary about the cross-border transfer of personal data relying on Convention No 108

In related complaint evaluation, the data controller has stated that a web based software is used in digital marketing transactions and that customers' personal data is transferred to a cloud located (**Cloud**) in a European Union country for sending e-mail/SMS to its customers by this software. The data controller has indicated that the explicit consent has obtained from the related persons for processing their data with the "purpose of marketing" and the transferring personal data to the Cloud is within scope of the exceptions of explicit consent. The data controller also indicated that the country in which the Cloud is located is a party to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, No. 108 (**Convention No 108**), which Turkey is also a party. In this context, it has claimed that Convention No 108, which has the status of an international agreement, is in force of law and therefore he claimed that the transfer pursuant to the Convention No 108 would be in accordance with the conditions set out in Article 9 of the Law.

The Board has remarked that if there is a contradiction between the international agreement and the laws, in order to give priority to international agreements the provisions of the international agreement must be "... sufficiently clear, definitive, unconditional and do not require the state to take additional measures for its implementation" as per Article 90 of the Constitution of the Republic of Turkey (**Constitution**). However, it has been indicated that the necessary measures to protect the data should be taken in the domestic laws of the state parties only and regulations that have a direct impact on the domestic law of the state parties are not included in the Convention No 108. Therefore, in case there is a contradiction between the Convention No 108, which has general provisions and the Law, the Board has decided that Article 90 of the Constitution cannot be applied and that the Law should be applied. In this way, the Convention No. 108 will be interpreted by the Board as being only one of the elements to be taken into account in the evaluation of the authorization decision of data transfer in accordance to the Article 9 of the Law.

With this interpretation for the present case, the Board has decided that becoming the party to the Convention No 108 is not only sufficient element to determine a safe country under the Law and that the personal data was unlawfully processed due to the data being transferred to the foreign country without the necessary conditions, by the data controller. In this context, due to the unlawfully processing of the data, an administrative fine of 900,000 Turkish Liras was imposed on data controller by the Board. The Board has also instructed to the data controller to delete or destroy the personal data of which transferred without any valid legal reason, to update the information text provided to customers according to the requirements of the relevant legislation, and to fulfill the obligation to inform and to take explicit consent separately.

You can reach the full text of the decision [here](#). (Only available in Turkish)

The decision summary about appointing the same natural person as contact person for more than one data controllers based in foreign country

The data controller, which located in foreign country but also have to register the VERBIS due to its data processing activity, is required to appoint a natural person or legal entity based in Turkey as contact person. Due to fact that a contact person could not sign in on behalf of more than one data controllers, the data controllers facing this problem has applied to the Board for making a technical regulation.

The Board has taken into consideration that the contact person has important tasks for providing the data security. As a result of its evaluation the Board has decided that it is difficult to appoint the person who specialized on personal data protection legislation to implement such tasks by data controller based in foreign country.

Therefore, the Board has decided below that:

- i. The same natural person or legal entity can be appointed as contact person by more than one data controllers located in a foreign country,
- ii. The same natural person or legal entity cannot be appointed as contact person by more than one data controllers located in Turkey.

You can reach the full text of the decision [here](#). (Only available in Turkish)

Research Report on Cryptocurrency Has Been Published by ICTA

As is known, there is currently no legislation in force in Turkey regarding cryptocurrencies. However, increase in the global use of cryptocurrencies and the fact that Turkey is one of the countries with the highest interest in cryptocurrencies and the use of cryptocurrencies, has derived the public institutions and organizations in Turkey to work on drafting a regulatory framework regarding the use of cryptocurrencies in Turkey. The latest example of such efforts is the “Research Report on Cryptocurrency” (**Report**), which has been published by the Information and Communication Technologies Authority (**ICTA**) Department of Sectoral Research and Strategy Development at the end of August 2020.

The Report has been prepared for the assessment of cryptocurrencies, which rise in importance with each passing along with the developments in technology and digitalization and get accepted by many as a valid instrument of payment, in aspects that is of interest for Turkey.

The Report provides a general briefing on the concept of “digital currency” as a hypernym and its history, definition and features of cryptocurrencies, current cryptocurrencies in the market, technical features of blockchain and distributed ledger technologies which are the basis of cryptocurrency technology, cryptocurrencies’ areas of use and their current status worldwide and in Turkey. In the conclusion of the Report, ICTA’s general assessment in light of this information is provided with the disclaimer that this assessment is not ICTA’s official position and it has merely been provided as an informative manner.

The most important feature of this Report is that it gives hints regarding ICTA’s approach to cryptocurrencies. It can be deduced from the Report that ICTA has a positive view on the use of cryptocurrencies due to their applicability to several sectors and areas worldwide and the resulting tendency in many governments to legitimize cryptocurrencies, their decentralized structure and reliability through cryptographic security. The Report also emphasizes the fact that a domestic cryptocurrency will be issued by the Central Bank of the Republic of Turkey within the scope of the 11th Development Plan which entered into force upon its publication in the Official Gazette on 23 July 2019, and that the regulatory and supervisory studies of the Capital Markets Board appear to be supportive of future growth of cryptocurrency market.

In the Report's conclusion, it is also emphasized that rapid fluctuation in cryptocurrency value due to the decentralized structure possess substantial risks and that significant measures are required to prevent their theft or use for money laundering. Overall, the Report hints at a positive perspective regarding the cryptocurrencies.

In light of this information, it is an object of interest that whether cryptocurrencies, which are becoming increasingly popular, will gain a more prominent place in the Turkish legal world in the near future.

You can reach the full text of the report [here](#). (Only available in Turkish)

Guideline on the Targeting of Social Media Users Has Been Published by the European Data Protection Board

The European Data Protection Board (**EDPB**) has published the guideline numbered 08/2020 (**Guideline**) to determine the roles and responsibilities of the actors targeting social media users for various reasons by using their personal data. Specifically, the Guideline sets forth regulations regarding the relationship between social media platforms and the targeters and their responsibilities within this context. Furthermore, the Guideline aims to clarify the responsibilities of social media providers and targeters as per the European General Data Protection Regulation (**GDPR**) and thus, provide assistance for GDPR compliance.

Targeting has been defined in the Guideline as the communication of specific messages to the social media users by natural or legal persons in order to advance commercial, political or other interests. The Guideline also emphasizes that personal data processing for the purpose of targeting may lead up to the violation of fundamental rights and freedoms of social media users (such as the processing of personal data without the data subject's consent, causing discrimination etc.). Thus, it is stated that joint responsibility of social media providers, targeters and/or other third parties that participate in targeting should be regulated.

In this context, the Guideline provides assessments under general headings such as the definitions of actors, their roles and levels of responsibility, targeting mechanisms/methods and their legal analysis, personal data impact assessments, special categories of data and joint responsibility. These assessments have been consolidated with practical examples.

We are of the opinion that actualization of this Guidelines, which aims to provide solutions to the problems faced by social media users, is a matter of importance. Comments and opinions regarding the guideline were submitted until 19th October 2020, as it is stipulated that the guideline shall be finalized after this date.

You can reach the guideline [here](#).

Answers. Not theories.

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Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at www.gokce.av.tr for further information on our legal staff and expertise.

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