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# Fine PRINT

February 2021

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## SUMMARIES OF PERSONAL DATA PROTECTION BOARD'S RECENT DECISIONS



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## **SUMMARIES OF PERSONAL DATA PROTECTION BOARD'S RECENT DECISIONS**

We compiled below some of Personal Data Protection Board's (**Board**) decisions, published in February within the scope of Personal Data Protection Law (**Law**) and secondary legislation.

### **Decision on a complaint filed to Board for the reason that an insurance company conditioning its services to explicit consent**

In the complaint petition filed to Board the complainant stated that he requested to renew the health insurance policy issued on behalf of his family by applying to a data controller insurance company and that data controller requested his explicit consent in order to renew the policy. He requested from Board to take further action for data controller with the claim that such request is against Law.

As a result of Board's investigation, Board decided that data controller's request for data subject's explicit consent is not against Law since health data, which is in health insurance policy and is defined as sensitive personal data, can only be processed with data subject's explicit consent. Therefore, Board leded up with this decision that insurance companies can condition their services to explicit consent to the extent that explicit consent for processing personal data is mandatory for providing services. You can reach the full text of the decision [here](#). (Only available in Turkish)

### **Decision on issues to be taken into consideration in determination of data controller and data processor, and by whom obligation to inform is performed**

Board aimed to clarify with the decision dated 30/01/2020 and numbered 2020/71, by whom obligation to inform arising from Law will be performed. Various issues such as how the distinction between data controller and data processor should be determined by referring to foreign legislation and details of criteria or issues to be regulated in the agreement between data controller and processor are included in the decision. It is mentioned in the decision that;

- i. Data controller has the authority to take decisions on processing of personal data, to decide purpose of processing, who will process personal data, when processing will start, "how" and "why" personal data will be processed and other similar matters,
- ii. Data processor can process personal data in accordance with the fundamental purposes and instruments determined by data controller and with instructions and authority given by data controller,
- iii. Data controller can authorize data processor in some matters with a data processing agreement on the condition that data processor follow instructions and adhered to data controller's interests; and in the case where data controller authorizes data processor, data processor will have significant autonomy for data processing activities especially for some technical matters and data processor will have the authority to decide on some matters on the condition following instructions and adhering data controller's interests.

Board also decided that data controller can perform legal obligation to inform - about by whom, for what purposes and for which legal reasons can personal data be processed and to whom and for what purposes personal data can be transferred - **itself or through an authorized person**. Therefore, Board decided that obligation to inform can also be performed by a data controller in accordance with data controller's instructions. As another important point, it is stated that performing obligation to inform is not subject to data subject's approval and obligation to inform can be performed with a unilateral declaration. You can reach the full text of the decision [here](#). (Only available in Turkish)

### **Decision on the claim that unauthorized and unlawful access to the data subject's, who is a partner of the company, e-mail address**

It is stated in a complaint filed to Board that data subject's corporate e-mail address, which was used in the company that data subject a partner and contains personal data, was accessed without permission and against law. In this claim it is requested from Board to take further actions within the scope of Law with the claim that data subject's request to data controller, who is the owner of IP addresses of the e-mail account, to delete and revoke all data in the e-mail account is rejected.

It is determined in the investigation conducted by Board that;

- i. The e-mail address was assigned to data subject for payment transactions and conducting the company's transactions and such e-mail address has company extension,
- ii. The general manager of the data controller is also the partner and executive manager of the company in which the data subject is a partner, and he is obliged to audit contracts and customer correspondence to fulfil his duty as manager in accordance with the Turkish Commercial Code and to protect company interests,
- iii. The data, which is subject to complaint, have been accessed through the company's server backups and used only as evidence in civil and criminal procedures.

In this context, Board decided that no action to be taken under Law with regard to the complaint, due to the fact that (i) personal data subject to this complaint and accessed through server backups of data subject's email address have been processed as per the following data processing condition under Law: "*data processing is necessary for the establishment, exercise or protection of any right*" and (ii) data processing for the lawsuit is within the scope of the following exception of Law: "personal data are processed by judicial authorities or execution authorities with regard to investigation, prosecution, judicial or execution proceedings." You can reach the full text of the decision [here](#). (Only available in Turkish)

### **PERSONAL DATA PROTECTION BOARD APPROVED TRANSFER OF DATA ABROAD!**

Personal data is defined as "*all kinds of information related to an identified or identifiable natural person*" in Law, which has been in our lives since April 7, 2016. Thus, the extent of personal data definition is kept as wide as possible.

Law and secondary legislation regulate many issues such as processing of personal data, measures to be taken, and

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informing data subjects. In addition, Board guides the implementation of Law with its decisions and carries out actions to ensure the compliance of data controllers with the legislation. In this context, Board conducts audits and imposes various sanctions on data controllers. One of the issues that Board pays attention to and concerns many data controllers is **transfer of personal data abroad**.

In accordance with Law, in order to transfer personal data abroad, following conditions shall be met: **(i)** explicit consent of data subject regarding the data transfer must be obtained, or **(ii)** there must be one of the exceptional conditions of explicit consent referred in Law and adequate protection must be provided in the country where data will be transferred. If adequate protection is not provided, data controllers in Turkey and in the relevant country abroad should make a commitment for adequate protection in writing and obtain Board's approval. Although, Law sets forth that countries with adequate protection will be determined by Board, Board has not announced these countries yet. For this reason, in cases where there is no explicit consent, only option is to obtain Board's approval with a written undertaking. A written letter of commitment is required to meet detailed criteria. However, as is known, Board did not give approval to data controllers who made a written protection undertaking until 09.02.2021 regarding transfer of personal data abroad.

On 09.02.2021, with "Announcement on the Undertaking Application" (**Announcement**), Board announced that it has approved TEB Arval Araç Filo Kiralama A.Ş.'s application and allows transfer of data abroad. This is a rather significant progress as it is Board's first approval in respect of transfer of data abroad.

Even without any details being shared in Announcement, it is a matter of curiosity what kind of method Board, who has not given any permission to any data controller before, will follow. With developing technologies, cross-border data transfers are becoming quite normal today. For this reason, data controllers who wish to transfer data abroad should follow Board's statements closely and determine elements that are to be included in the application in line with the Board's policy. You can reach the full text of Announcement [here](#). (Only available in Turkish)

## **PERSEVERANCE LANDED ON MARS**

The rover vehicle Perseverance, which was launched within the scope of National Aeronautics and Space Administration (**NASA**) Mars Exploration Programme, landed on Mars on 18 February. According to NASA authorities, Perseverance costs 2.7 billion dollars.

Explorations made in the past on Mars and its orbit revealed the evidence that, million years ago, Mars might have conditions to support microbiological life. The main purpose of Perseverance is to determine microbiological life trails, if there is, and collect soil and rock samples to comprehend Mars's geology better. Furthermore, in order to prepare for next robotic and human explorations, it is planning to test new technologies on Mars's surface. Therefore, Perseverance will make highly crucial exploration.

Perseverance is the last step of Mars Exploration Programme which has been conducted by NASA since 1993. It is also a crucial mission which shows the progress on studies conducted by both states and private companies regarding Mars's exploration and colonization. Especially, habitability of Mars for humans and the fact that new technologies for next exploration and colonization missions will be tested show that the date for stepping feet on Mars is not far away.

All these progress regarding exploration and colonization of space particularly Mars, will result in with emerging new areas to utilize from space in the near future. For our article regarding space tourism, which is one of these areas see. [New Places To Explore: Space Tourism Law](#)

## **COMPETITION AUTHORITY SUSPENDED WHATSAPP DATA SHARING OBLIGATION**

As you may aware of, WhatsApp Inc. informed its users regarding updates on terms of use and privacy policy and announced that *"in order for users to continue using WhatsApp, users should give consent for WhatsApp data to be shared with Facebook group companies otherwise, users may not use WhatsApp after February 8, 2021"* with new terms of use.

This announcement had great impact on society, millions of users stopped using WhatsApp and it is announced that Personal Data Protection Authority initiated an ex officio investigation. WhatsApp postponed due date for approval of updates to 15 May as a result of public reaction. In the current situation, it appears that WhatsApp will not step back from this decision. Therefore, users who has not approved updates until 15 May will no longer send or receive messages via application after 15 May.

Since updates involves Facebook to collect, process and use more data, Competition Authority initiated an ex-officio investigation against Facebook Inc. and WhatsApp Inc. with the decision dated 11.01.2021 to determine whether Article 6 of Law on Protection of Competition is violated. This article prohibits undertakings to abuse dominant position in market of a good or service and such abusive situations are listed in the article.

Upon such investigation Competition Authority decided to take interim measure and suspend Facebook's terms on using WhatsApp users' data for other services from 08.02.2021, in Turkey. Competition Authority also decided Facebook to notify all users, who approved these terms or who did not approve even though received the notification, that new terms including data share has suspended until the underlying date.

When the decision analysed, it is understood that Competition Authority is concerned that these data might be used by Facebook in other markets, where Facebook operates, in a way that making it difficult to competitors' activities in the case where such data is identified as secret or trade secret and is shared with Facebook group companies; since the extent of WhatsApp data and the scope of data to be shared was not defined explicitly. WhatsApp's path to be followed against this decision will be shaped following days.

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

# Answers. Not theories.

## Gokce Attorney Partnership

### Editors:



**Prof. Dr. Ali Paslı**  
ali.pasli@gokce.av.tr



**Dr. Mehmet Bedii Kaya**  
bedii.kaya@gokce.av.tr



**Elif Aksöz**  
elif.aksoz@gokce.av.tr



**Yağmur Yollu**  
yagmur.yollu@gokce.av.tr

### About our firm

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](http://www.gokce.av.tr) for further information on our legal staff and expertise.

**Please contact us at**  
**[contact@gokce.av.tr](mailto:contact@gokce.av.tr)**  
**0 212 352 88 33**

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