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95

**Personal Data Protection Authority
Published its Guidelines on Artificial
Intelligence and Biometric Data**

**Digital Turkish Lira Cooperation
Platform is Established**

Letter on COVID-19 Measures in the Workplace Sent to 81 Provincial Governorships,
Employers Can Ask For a PCR Test From Employees Who Are Not Vaccinated!

Latest News on Technology

Guide on Recommendations for Protection of Personal Data in the Field of Artificial Intelligence has been Published

Recommendations Guide on the Protection of Personal Data in the Field of Artificial Intelligence (**Guide**) was published by the Personal Data Protection Authority (**Authority**) on 15 September 2021. Guide contains significant recommendations on the protection of personal data in data processing activities involving the use of AI.

There are also some recommendations specific to developers, manufacturers, service providers and decision makers in Guide in addition to general recommendations such as ensuring data security, conducting risk analysis, and enabling the control of data processing activities in terms of the data subject.

Top recommendations for developers, manufacturers and service providers are; *(i)* observing fundamental rights and freedoms at every stage of data processing, *(ii)* ensuring data minimization principle, *(iii)* conducting risk assessment based on the active participation of people who may be affected by AI applications, *(iv)* allowing the application user to cease data processing and erase their data, *(v)* giving individuals the right to object to processing based on technologies that affect their views and personal development; and *(vi)* not designing products and services that would expose individuals to a decision based on automated processing.

It is recommended for decision makers to comply with the principle of accountability, apply to competent authorities, to adopt risk assessment procedures for protection of personal data, and to allocate sufficient resources to monitor whether AI models are used for a different purpose in case fundamental rights and freedoms are likely to be significantly affected.

Recently, National Artificial Intelligence Strategy (**Strategy**) was also published and Turkey's national development targets in the field of AI were determined by the Presidency's Digital Transformation Office and Ministry of Industry and Technology. Publication of the Guide by the Authority following the publication of Strategy, indicates that public institutions prioritize their efforts to promote and regulate AI studies in Turkey. In this regard, we can say that new regulations in general and sectoral terms will come up on our agenda in the medium-term.

You can find the full text of the Guide [here](#) (only available in Turkish), and the National Artificial Intelligence Strategy [here](#) (only available in Turkish).

Guideline on Matters to be Considered in Processing of Biometric Data is Published

Guideline on Matters to be Considered in Processing of Biometric Data (**Guideline**), based on Personal Data Protection Law and related legislation (**PDPL**), has been published on Personal Data Protection Authority's website on 16 September 2021. Guideline imposes additional obligations on data controllers in processing biometric data.

Pursuant to Guideline, in addition to the scope of obligation to inform set forth in PDPL, data controller is required to

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inform data subject on (i) the purposes and legal basis of the collection of biometric data, (ii) importance of the biometric data collected and (iii) the consequences in case there is a data breach (risks regarding the processing of biometric data).

Guideline particularly emphasizes that biometric data is processed appropriately for the intended purpose (adequacy), the necessity of processing method for the purpose intended (necessity), and the balance between the purpose and the method (proportionality) and imposes the obligation to document the processing of biometric data in line with the general principles. It is further envisaged that, during the collection of biometric data, genetic data shall not be collected unless it is required, justification and documents regarding which type of biometric data has been chosen over the others shall be provided, the period of storage for this data along with its justification shall be regulated under the storage and destruction policy.

Finally, Guideline regulates further administrative and technical measures in addition to the measures to be implemented for personal data and special categories of personal data within the scope of PDPL.

You can reach the full text of the Guideline [here](#) (only in Turkish).

Digital Turkish Lira Cooperation Platform is Established

Central Bank of Republic of Turkey (**CBRT**) announced on 15 September 2021 that Digital Turkish Lira Cooperation Platform (**Platform**) was established by reaching agreements with ASELSAN, HAVELSAN and TÜBİTAK-BİLGEM within the scope of the R&D project.

A prototype "Digital Turkish Lira Network" will be established within the body of CBRT, and narrow-scope and closed-circuit pilot tests will be carried out with technology stakeholders within the scope of phase studies. Conducting large-scale phase studies with more participants are planned in the future. It was also emphasized that all studies conducted so far are only at the experimental stage and that there is no final decision given by CBRT regarding the circulation of the digital Turkish lira.

Results of the first phase studies are planned to be shared with the public in 2022, following the completion of the tests. You can find the CBRT announcement [here](#) (only available in Turkish).

Letter on COVID-19 Measures in the Workplace Sent to 81 Provincial Governorships

The letter of the Ministry of Labor and Social Security (**Ministry**) on "Covid-19 Measures in the Workplace" (**Letter**) dated 2 September 2021 has been sent to 81 provincial governorships. Letter published on the Ministry's official website includes significant regulations about the employers' obligations regarding occupational health and safety. Letter emphasized the obligation of employers to inform all their employees about the protective and preventive

measures taken against the health and safety risks that may be encountered at the workplace and regulated that:

- (i) Employers are obliged to inform the employees in writing whose COVID-19 vaccines have not been completed about the risks and measures in the workplace;
- (ii) Employers are also obliged to inform the employees who are not vaccinated subsequent to this notification, about the potential consequences of a definitive diagnosis of COVID-19 in terms of labor and social security legislation;
- (iii) Employer/workplace may require the employees who are not vaccinated against COVID-19 to take a PCR test in a mandatory manner once a week.

Since the vaccination information of the employees are deemed as special categories of personal data, whether the employer may process vaccination information of employees within the scope of PDPL and the method for this is open for discussion. With this regulation, employers are expected to distinguish between vaccinated and unvaccinated employees to fulfill their obligations in the Letter. Although the discussion has not come to an end as there is no clear regulation on this subject, it might be stated that Letter allows employers to inquire about and process the vaccination information of employees by complying with the obligations in the data protection legislation.

You can reach the full text of the Letter [here](#) (only in Turkish).

ICO Calls on the Data Protection Authorities of G7 Countries to Strive Cookie Pop-Ups

Cookies are known to be extremely important for the development of websites, enrichment of data and for online income channels. Consequently, many sites display notifications regarding the use of cookies on banners or on pop-up screens.

The UK Information Commissioner's Office (**ICO**) has called on the data protection authorities of G7 Countries to discuss these pop-up cookie notifications.

ICO stated that the purpose of the meeting was to overhaul the practice of obtaining cookie consents via pop-up. In this regard, it stated that personal data will be protected in a more meaningful way and the user experience will be more efficient.

The reason for this was stated to be due to many people directly clicking on the "I accept" button on the pop-up notifications about cookie consents and them not being able to retain control over their personal data.

You can find the announcement of the ICO [here](#).

Decision has been Made: Apple vs. Epic Games

To recap briefly, in addition to App Store's own, Epic Games had added a special "Epic Direct Payment" option to its globally popular game Fortnite for in-app purchases. Apple had removed Fortnite from App Store for this reason. Following this, Epic Games has filed a lawsuit against Apple in U.S. District Court, Northern District of California (**Court**). In this lawsuit, Epic Games directed two requests: Apple should allow app developers to use other payment methods for in-app purchases and Court should rule on Apple's position as a monopoly.

It is stated in the court decision that Apple usually receives a commission of 30% in in-app purchases and this commission constitutes roughly 70% of all App Store revenue. By bypassing this commission, Epic Games was offering customers a much cheaper price within Epic Direct Payment option.

Court decided in favour of Epic Games for the first request. Thus, Apple shall allow app developers to use other payment methods for in-app purchases. However, unlike Epic Games' claim, it was also ruled in the decision that Apple does not hold a monopoly position.

As seen, the decision contains pros and cons for each party. Epic Games appealed the decision on 12 September. We will be looking forward to the updates.

You can find the full text of the decision [here](#) and Epic Games' notice of appeal [here](#).

El Salvador Adopts Bitcoin as Local Currency

El Salvador became **the first country** to adopt Bitcoin as its local currency. This made American Dollar (**USD**) and Bitcoin two local currencies of the country. The legislation that was adopted on 9 June 2021, entered into force as of 7 September 2021. Thousands started protesting after adoption of Bitcoin as a local currency.

Government of El Salvador, who wants to encourage the public to use Bitcoin, announced that they will give 30 USD worth Bitcoin for free to those who use Chivo wallet (country's national digital wallet). ATMs that convert Bitcoin to USD were placed on streets.

Nayib Bukele, President of El Salvador, updates people on developments regarding Bitcoin from his Twitter account. Bukele tweeted that as of 20 September, with the purchase of 150 new Bitcoins, El Salvador holds a total of 700 Bitcoins.

While some countries pave the way for cryptocurrency regulations, others adopt more restrictive regulations. El Salvador's adoption of Bitcoin as a local currency created a buzz. It is a matter of curiosity what actions other countries will take in this arena.

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The method that Established a Presence in Fintech World: Buy-Now-Pay-Later

A method that we are familiar with in face-to-face shopping turned into a popular topic in fintech world: Buy-now-pay-later (**BNPL**) method. BNPL owes its popularity and development to the consumer's preference for online shopping during the pandemic. BNPL, which is generally used in consumer transactions, takes place in a scenario where enterprises providing BNPL services pay the seller on the line with a certain discount rate and the buyer pays the product price to these BNPL enterprises in installments and mostly interest-free.

BNPL provides convenience to the consumer while purchasing power of the consumer is not enough to buy certain products due to increases in price. Sellers, on the other hand, increase their income since consumers using BNPL buy relatively more expensive products that they would not normally buy. Many of those who use BNPL state that they use this method to avoid paying a loan interest.

As a result of these investments and the developments so far, it is predicted that BNPL services will grow by 200% in upcoming 2 years. It's undeniable that this method, which started to be used by some organizations in Turkey after its widespread use in Europe, will also have some reflections in legal field.

Court of Cassation Ruled in Favour of Unilateral Penalty Clauses Against Employee on Information Security

9th Civil Chamber of Court of Cassation ruled that the unilateral penalty clauses added to the agreement against the employee within the scope of information security, are valid.

In the incident that is the subject of the decision, the defendant employee transferred loads of files titled "strategic plan" to their personal e-mail address one day prior to their resignation. Upon realization of this incident, employer stated that in these files there have been secrets belonging to the workplace and the files belonging to the workplace cannot be taken out of the workplace without the approval of a supervisor. Due to the violation of the information protection covenant that the employee had signed, the employer has filed a lawsuit against the employee. The case came before the Court of Cassation after the court of first instance and Regional Administrative Courts rejected the claim.

As per our legislation, unilateral penalty clauses envisaged against the employee in employment agreements are not valid. However, Court of Cassation ruled that confidentiality obligation, which is the subject of this penalty clause, falls within the scope of the obligation of loyalty to the employer specified in the Labor Law. Hence, the decision is that it is possible to impose a unilateral penalty clause on the obligation since this obligation in nature is unilateral.

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 for further information on our legal staff and expertise.

Please contact us at
info@gokce.av.tr
0 212 352 88 33

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