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The Much-Anticipated Changes to the Personal Data Protection Law are Published!

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• Applications for "a.tr" Domain Names Continue Rapidly

The Much-Anticipated Changes to the Personal Data Protection Law are Published!

The Law on the Protection of Personal Data (PDPL), which came into force in 2016, marked a critical, and perhaps the most significant, breakthrough for personal data protection in Turkey. However, it also sparked numerous debates and became the subject of criticism due to the practical issues it generated. In particular, there was significant criticism that the legislation regarding the transfer of personal data abroad was not compatible with the dynamics of today's commercial life. Consequently, reform efforts on the PDPL have been ongoing for some time.

The long-awaited amendments to the PDPL were realized with the "Law on Amendments to the Code of Criminal Procedure and Certain Laws and Decree Law No. 659" (**Law**). The proposal for the Law has been submitted to the Justice Commission on 16 February 2024. The Law is also known as the 8th Judicial Package.

Below, we have compiled the critical regulations to the PDPL.

PDPL Becomes More Compliant with GDPR in Many Aspects

The Law introduces significant amendments to address two key issues that have been problematic in practice: (i) the conditions for the transfer of personal data abroad and (ii) the conditions for the processing of special categories of personal data.

The new system adopted for the transfer of personal data abroad takes a different perspective and approach compared to the previous regulations. Under this new system, data transfer abroad aligns more closely with the principles of the General Data Protection Regulation (**GDPR**).

Changes in the Conditions for Processing of Special Categories of Personal Data

PDPL identifies special categories of personal data, including health, sexual life, union and foundation membership information, and biometric data. In this context, the PDPL also divides this data into two categories (i) health and sexual life data and (ii) other special categories of personal data. Previously, processing of special categories of personal data, excluding health and sexual life data, required explicit consent of the data subject or as stipulated by law. Data related to health and sexual life could only be processed by certain public institutions and organizations or those under the obligation of confidentiality for specific purposes, without explicit consent.

With the amendment of the Law, the PDPL significantly modifies this distinction and **differentiates the legal grounds for processing special categories of personal data**. This revision is particularly crucial for data processing activities in areas such as employment, occupational health and safety, social security, social services, and social assistance, which are frequently encountered in practice. Consequently, even without explicit consent from the data subject, special categories of personal data can be processed to fulfill legal obligations in these fields, provided that certain conditions are met.

Radical Changes in the Transfer of Personal Data Abroad

The Law introduces a comprehensive framework for the transfer of personal data abroad. Now, a completely new and different systematic will be adopted in the PDPL compared to the previous legislation. This new regulation establishes a **three-tiered and alternative transfer regime**:

- Transfer based on an adequacy decision,
- Transfer based on appropriate safeguards,
- Transfer based on occasional (not repetitive) circumstances.

With the new regulation, the explicit consent of the data subject will no longer directly enable the permanent transfer of data abroad. In addition, in the new regulation, in line with the GDPR systematics, **data processors are listed together with the data controller as the main subject of the transfer process**. Thus, the following points should be taken into consideration by the data controller and the data processor when transferring personal data abroad:

- There must be an adequacy decision issued by the Personal Data Protection Board (**Board**) for the country or specific sectors to which the personal data will be transferred.
- If there is no adequacy decision, the parties will only be able to transfer the data abroad if they provide one of the specified assurances.
- If the parties cannot provide the safeguards, they will only be able to transfer personal data abroad for "occasional cases". The first situation in which personal data can be transferred abroad, provided that it is occasional, is the explicit consent of the data subject to the transfer, provided that the data subject is informed about the possible risks.

The first situation in which personal data can be transferred abroad, provided that it is occasional, is the explicit consent of the data subject to the transfer, provided that the data subject is informed about the possible risks. In this context, with the new regulation, data transfer abroad based on explicit consent will be restricted. This will require data controllers to re-evaluate the systematics they have established for the transfer abroad so far.

Standard Contracts to be Used in Transfers Abroad shall be Notified to the Authority within 5 Business Days

"Standard contracts", which are among the appropriate assurance methods for data transfer abroad, will be notified to the Personal Data Protection Authority within 5 business days by the data controller or data processor. Otherwise, the Law stipulates that the Board may impose administrative fines ranging from 50,000 Turkish Liras to 1,000,000 Turkish Liras.

Binding Company Rules are Considered as Appropriate Safeguards

Companies engaged in joint economic activities within the group of undertakings are required to comply with personal data protection provisions. Board-approved binding corporate rules (BCR) serve as appropriate safeguards for data transfers abroad. Consequently, data can be transferred from a Turkish company within the group to a foreign company without additional authorization from the Board, provided that BCR are in place.

Administrative Court Appeals Against Administrative Fines

Under the previous legislation, the Board's administrative fines could be appealed to the criminal peace judgeship, while the remaining decisions could be appealed to the administrative courts. Now, administrative fines imposed by the Board can be appealed to administrative courts.

Until 1 September 2024, All Compliance Projects Must Be Reviewed

It provides for a two-stage transition process for the amendments:

- Regulations pertaining to data transfer abroad based on explicit consent will remain in effect until **1 September 2024**. After this date, explicit consent for data transfer abroad can only be applied in occasional cases and on condition that the data subjects are informed about the possible risks.
- The remaining regulations will come into force on **1 June 2024**.

Although these amendments have sparked significant public attention and affect only a few articles, they necessitate substantial changes in personal data processing procedures. Consequently, data controllers and processors must internalize these fundamental changes and undertake compliance processes.

You can reach the full text of the Law here (*only available in Turkish*).

Turkish DPA Published a Bulletin Regarding Online Privacy and Cookies

Turkish Personal Data Protection Authority (**DPA**) has been working on cookies intensely for some time. The DPA has recently published a bulletin titled "Online Privacy and Cookies" (**Bulletin**). The Bulletin primarily focuses on the processing of personal data through cookies, a topic of increasing sensitivity globally. A summary of the Bulletin is as follows:

- It starts with an outline of the history of cookies, explaining their function and operation. It then discusses the processing of personal data through cookies and provides recommendations for data controllers.
- The Bulletin summarizes the current situation in European Union law regarding cookies and includes statements from various data protection authorities worldwide to showcase their perspectives on the matter.
- Opt-in and opt-out mechanisms are explained, with examples demonstrating the importance of adopting an opt-in system.
- It briefly describes "The Guideline on Cookie Practices" published by the DPA in 2022, which serves as a guide for practitioners.
- Recommendations from the DPA's guide titled "Recommendations for Protecting Privacy in Mobile Applications" published in 2023, for privacy protection in mobile applications are summarized.
- The concept of privacy is further emphasized through an article on protecting personal data with digital fingerprints. It evaluates the risks posed by digital fingerprint technology in personal data protection and suggests measures to address them.

The Bulletin serves as an important resource due to its detailed evaluations of DPA's sensitivity towards privacy and the processing of personal data through cookies.

You can reach the full text of the Bulletin here (*only available in Turkish*).

Turkish DPA Published an Information Note on Data Processing Condition of "If it is Expressly Provided for by the Laws"

The DPA issued a new information note (**Note**) concerning the requirement of "if it is expressly provided for by the laws" for processing personal data, as outlined in the PDPL on 2 February 2024.

According to Article 5/2-(a) of the PDPL, under the heading "Conditions for Processing Personal Data," it is permissible to process personal data without the explicit consent of the data subject if it is clearly stipulated in the laws.

The Note elaborates on how this requirement is regulated in special laws, whether it can be limited by administrative regulations, and how it is regulated in European Union law. The headlines of the DPA's evaluations in the Note are provided below:

- DPA evaluates the requirement of “if it is expressly provided for by the laws” under two main headings: from the perspective of Turkish law and European Union law. Differing regulations and authority decisions in the European Union are also addressed.
- DPA reminds that the right to request the protection of personal data, as regulated in Article 20 of the Turkish Constitution, falls within the scope of fundamental rights and freedoms, and emphasizes that this right can only be restricted by law, as stipulated in the Constitution.
- DPA distinguishes between statutory and administrative regulations in determining the scope of the requirement for processing personal data. Accordingly, it is stated that personal data can be processed based on this requirement only if there is a clear provision in any law or if there is a directive to secondary legislation with a clear provision. Additionally, DPA suggests that the requirement of “clear provision in the laws” should not be narrowly interpreted; rather, the purpose of the legislator should be considered. In this way, various examples from different sectors are provided by the DPA in the Note.

The Note serves as a significant guide for all data controllers. You can access the full text of Note here (*only available in Turkish*).

Applications for “a.tr” Domain Names Continue Rapidly

The Turkish Information Technologies and Communication Authority published the "Procedures and Principles for the Allocation of Domain Names in the a.tr Structure" and the "Fees for Domain Names in the a.tr Structure" (**Decision**) on 25 August 2023. We covered the significant regulations outlined in the Decision in our TFP September 2023 issue.

In the Decision, the order of prioritization in the allocation of domain names with the "a.tr" extension was determined across three categories. With the completion of the 1st and 2nd categories, the 3rd category, which is the final category, commenced on 14 February 2024.

Pursuant to Article 9 of the Decision and the announcement published by TRABIS (TR Network Information System), **within the scope of the 3rd category, as of 25 August 2023;**

- "a.kep.tr",
- "a.av.tr",
- "a.dr.tr",
- "a.com.tr",
- "a.org.tr",
- "a.net.tr",
- "a.gen.tr",
- "a.web.tr",
- "a.name.tr",
- "a.info.tr",
- "a.biz.tr",
- "a.tv.tr",
- "a.bbs.tr",
- "a.tel.tr"

owners of domain names with extensions are prioritized. Accordingly, under the priority ranking mentioned above, priority is given to parties with the extensions listed in the ranking, provided that the domain structure "a" remains the same.

The Decision sets a four-month period for the completion of the 3rd category. Applications will be accepted from **14 February 2024** until **14 May 2024**. Following the completion of the application process, evaluations will take place between **14 May 2024** and **14 June 2024**, and allocations will be made accordingly.

Applications must be made with the **application code** obtained from the registry where the existing domain name is located. Once the code is obtained, transactions can proceed by selecting the registrar where the relevant domain name is located, or one of the other registrars provided in the link.

Domain names deemed appropriate by TRABIS will be allocated for a period of **1 year**. At the end of this period, the relevant party may renew ownership of the domain name.

Upon the completion of the 3rd category, the "first-come, first-served" rule will be applied to the remaining available domain names. Therefore, it is crucial to submit applications for "a.tr" domain names in a timely manner.

You can reach the full text of the relevant Decision here (*only available in Turkish*).

Answers. Not theories.

Gokce Attorney Partnership

Editors:



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



Assoc. Prof. Mehmet Bedii Kaya
bedii.kaya@gokce.av.tr



Elif Aksöz
elif.aksoz@gokce.av.tr



Yağmur Yollu
yagmur.yollu@gokce.av.tr

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Please contact us at
info@gokce.av.tr

0 212 352 88 33

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