

client alert

DATA PROTECTION | TURKEY |

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TURKEY ESTABLISHES A LAW ON THE PROTECTION OF PERSONAL DATA

Law No. 6698 on the Protection of Personal Data (“the Law”) was published in the Official Gazette on 7 April 2016. The Law in question has been in preparation for close to 15 years, and is based primarily on the European Union Data Protection Directive No. 95/46/EC. The Law is the first framework legislation with respect to Data Protection in Turkey.

The main purpose of the Law, as specified in the preamble, is to protect the rights and freedoms associated with personal data, to specify the conditions under which personal data may be processed and to take necessary precautions in this regard, to enlighten individuals with respect to their rights on the subject matter, and to create the Personal Data Protection Authority and the Personal Data Protection Board to supervise and regulate this field.

Pursuant to the Law, the “processing of personal data” is defined as the obtaining, registration, storage, preservation, alteration, reorganization, disclosure, transmission, assignation, categorization, making accessible or preventing the use of personal data, wholly or partly by automated or non-automated means, provided that such personal data forms part of a database.

In accordance with Article 28, which regulates exemptions from the Law, the Law will not be applicable to the processing of personal data in some specific cases, such as use of such data by a natural person during personal or household activity, processing of anonymised data for research, planning or statistical purposes, processing of data for artistic, literary or scientific purposes, data processed for reasons relating to national defence, security or safety, and for judicial purposes.

Generally speaking, the processing of all personal data shall follow certain principles: such data must be processed lawfully and in good faith, be accurate and kept up to date, be processed for specific, lawful and express purposes, and be kept only as long as specified by law or as necessary for the processing purposes.

Article 5 of the Law specifies that personal data shall not be processed without the explicit consent of the data subject. However, pursuant to the same Article, personal data may be processed without the explicit consent of the data subject under certain conditions, namely:

- If the data processing is clearly provided for in the legislation,
- If data processing is necessary to protect the life or physical integrity of a person for whom it is impossible to grant consent or whose consent is not legally valid,

- If it is necessary to process the personal data of parties to an agreement, provided that such data is directly related to concluding or executing such agreement,
- If data processing is necessary for the data controller to perform its legal obligations,
- If the data has been made public by the data subject,
- If processing the data is necessary to establish, exercise or protect a right,
- If data processing is necessary for any legitimate interest of the data controller, provided that the fundamental rights and freedoms of the data subject are not impaired.

As per Article 6, it is forbidden to process special categories of personal data such as data relating to racial or ethnic origin, political opinions, philosophical beliefs, religious beliefs or other beliefs, physical appearance, labour union or association or foundation membership, health, sex life, offences, criminal convictions or security measures as well as biometric and genetic data, without the explicit consent of the data subject. While some exceptions are provided for in this respect, they are very limited in scope.

The conditions pertaining to the transfer of personal data also state generally that data cannot be transferred without the explicit consent of the data subject. However, the exceptions stated above are valid for transfers as well. The transfer of personal data abroad is specifically addressed in Article 9, which states that in addition to the exceptional conditions stated above, personal data may only be transferred abroad if there is an adequate level of protection in such country. Countries which have adequate level of protection shall be determined and published by the Board. However, if the Board has determined that a country does not have adequate protection, the data controllers in Turkey and in the recipient country may provide the Board with a written undertaking with respect to providing such protection, and if the data controllers receive the approval of the Board, the data may then be transferred in this manner. It must be noted that no specific provisions or exceptions are provided for group companies or subsidiaries.

The data controllers and any third parties authorised by them must take all necessary administrative and technical measures to provide an adequate level of personal data security in order to ensure the storage of such, as well as to prevent unlawful processing and access.

In accordance with Article 11, data subjects may apply to data controllers for access to information on whether their data is being processed, request information on how such data is processed, learn about any third parties to whom their data has been transferred, request the correction, deletion or destruction of their data, object to any negative results arising from analysis of their data by automated systems, or demand compensation for any damages resulting from the unlawful processing of their data.

Data subjects may communicate their requests pursuant to the Law to data controllers in writing or in any other manner determined by the Board. Data controllers must reply to requests within 30 days, and may charge a fee as determined by the Board for such reply. If the data subject is not satisfied by the data controller's reply, they may submit a complaint to be resolved by the Board.

Pursuant to Article 16, the Personal Data Protection Authority shall establish a Data Controller Registry, to be maintained publicly, and all natural and legal persons processing personal data shall be registered prior to any data processing activities.

The related provisions of the Turkish Criminal Code No. 5237 shall apply to crimes concerning personal data. In addition, the Law establishes several misdemeanours with respect to the obligations of data controllers, and specifies monetary penalties up to TRY 1,000,000.

As regards the transition period, once the Personal Data Protection Authority and Board are set up, the Board will determine and publish the period in which data controllers must register in the Data Controllers Registry. Personal data processed before the implementation of the Law shall be brought into compliance within two years of the publication date of the Law. Personal data confirmed to be contrary to the provisions of the Law shall be deleted, destroyed or anonymised immediately. Any consent granted lawfully before the establishment of the Law shall be considered legal unless such consent is objected to within one year from the publication date of the Law.

Some provisions of the Law, including the abovementioned Article 16, will enter into force six months after the publication date. All other provisions are effective immediately. Considering this short timeframe, parties that process and/or control data are advised to assess their internal and external practices, especially with respect to their privacy policies, dealings with data subjects and third parties, technical and administrative measures as well as executives and employees, in order to ensure they meet the provisions of the Law on the Protection of Personal Data.

In compliance with Turkish bar regulations, opinions relating to Turkish law matters which are included in this client alert have been issued by Özdirekcan Dündar Şenocak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.

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