

LEGISLATIVE PROPOSAL FOR AMENDMENT IN THE PERSONAL DATA PROTECTION LAW

The proposed law on amendments to the Code of Criminal Procedure and Certain Laws, known as the 8th Judicial Package, which includes important amendments to the Personal Data Protection Law ("KVKK") is expected to be enacted shortly.

The planned amendments to the KVKK aim to harmonize the Turkish laws with the EU General Data Protection Regulation ("GDPR"). With the enactment of the Proposal, important amendments will enter into force in terms of **the processing of special categories of personal data, data transfer abroad, administrative sanctions and the ways of appeal against the decisions of the Personal Data Protection Board.**

The following amendments which are closely related to data controllers are expected to facilitate the practice.

- ✓ In the processing of special categories of personal data, new legal grounds have been added, in particular the requirement of "the processing of special categories of data is mandatory for the fulfillment of legal obligations in the fields of employment, labor and social security, social services and social assistance".
- ✓ It is planned to ease the current practice in the transfer of personal data abroad. Accordingly, personal data may be transferred abroad if there is an adequacy decision issued by the Personal Data Protection Board regarding the country, international organization or sectors within the country. In the absence of an adequacy decision, the transfer will be possible without the existence of "explicit consent" provided that certain protections included in the amendment proposal are present.
- ✓ Legal actions can be filed against the decisions of the Board before the administrative courts.

If the planned amendments are implemented, **it is possible to say that the issues that cause difficulties in practice for data controllers, such as the requirement to rely on explicit consent in the processing of special categories of personal data and the fact that obtaining the explicit consent of the data subjects for the transfer of personal data abroad has become practically the only option, will be facilitated.**



The current state of the relevant articles of the KVKK that are expected to be amended and the versions that will enter into force if the Proposal is enacted are presented in the table below:

Legislative Proposal for Amendment in the Personal Data Protection Law

Comparison Table

CURRENT STATE	PROPOSAL
Conditions for Processing of Special Categories of Personal Data ARTICLE 6	Conditions for Processing of Special Categories of Personal Data ARTICLE 6
6.1. Personal data relating to the race, ethnic origin, political opinion, philosophical belief, religion, religious sect or other belief, appearance, membership to associations, foundations or trade-unions, data concerning health, sexual life, criminal convictions and security measures, and the biometric and genetic data are deemed to be special categories of personal data.	6.1. Personal data relating to the race, ethnic origin, political opinion, philosophical belief, religion, religious sect or other belief, appearance, membership to associations, foundations or trade-unions, data concerning health, sexual life, criminal convictions and security measures, and the biometric and genetic data are deemed to be special categories of personal data.
6.2. It is prohibited to process special categories of personal data without explicit consent of the data subject.	6.2. It is prohibited to process special categories of personal data. However, the processing of special categories of personal data is possible in the following conditions: <ol style="list-style-type: none"> 1. In the case of explicit consent of the data subject, 2. If expressly provided by law 3. In the case that it is necessary for the protection of the life or physical integrity of the person or someone else who is unable to disclose his consent due to actual impossibility or whose consent is not recognized as legally valid 4. If it is in accordance with the personal data made public by the data subject and the will of the data subject to make it public 5. If it is mandatory for the establishment, exercise or protection of a right 6. If it is necessary for the protection of public health, preventive medicine,

	<p>medical diagnosis, treatment and care services, planning, management and financing of health services by the person under the obligation to keep secrets or authorized institutions and organizations</p> <p>7. If it is mandatory for the fulfillment of legal obligations related to employment, occupational health and safety, social security, social services and social assistance</p> <p>8. In the case of foundations, associations and other non-profit organizations or formations established for political, philosophical, religious or trade union purposes, provided that they comply with the legislation to which they are subject and their purposes, are limited to their fields of activity and are not disclosed to third parties; If it is intended for current or former members and person who are in regular contact with these organizations and formations</p>
<p>6.3. Personal data, except for data concerning health and sexual life, listed in the first paragraph may be processed without seeking explicit consent of the data subject, in the cases provided for by laws. Personal data concerning health and sexual life may only be processed, without seeking explicit consent of the data subject, by the persons subject to secrecy obligation or competent public institutions and organizations, for the purposes of protection of public health, operation of preventive medicine, medical diagnosis, treatment and nursing services, planning and management of health-care services as well as their financing.</p>	<p>-</p>
<p>6.4. Adequate measures determined by the Board shall be also taken while processing the special categories of personal data.</p>	<p>6.4. Adequate measures determined by the Board shall be also taken while processing the special categories of personal data.</p>
<p>Transfer of Personal Data Abroad ARTICLE 9</p>	<p>Transfer of Personal Data Abroad ARTICLE 9</p>

<p>9.1 Personal data shall not be transferred abroad without explicit consent of the data subject.</p>	<p>9.1. Personal data may be transferred abroad by data controllers and data processors if one of the conditions specified in Articles 5 and 6 exists and there is an adequacy decision about the country, international organization or sectors within the country where the transfer will be made.</p>
<p>9.2. Personal data may be transferred abroad without explicit consent of data subject upon the existence of one of the conditions referred to in Article 5(2) and Article 6(3) of the Law and if in the country where personal data are to be transferred;</p> <p>(a) Adequate protection is provided.</p> <p>(b) Adequate protection is not provided, upon the existence of commitment for adequate protection in writing by the data controllers in Turkey and in the relevant foreign country and authorization of the Board.</p>	<p>9.2. The adequacy decision shall be made by the Board and published in the Official Gazette. The Board shall take the opinion of the relevant institutions and organizations if necessary. The adequacy decision shall be evaluated every four years at the latest. As a result of the evaluation or in other cases deemed necessary, the Board may change, suspend or revoke the adequacy decision with future effect.</p>
<p>9.3. The Board determines and announces the countries with adequate protection.</p>	<p>9.3. The following issues are primarily taken into account when making an adequacy decision:</p> <p>a) The reciprocity status regarding the transfer of personal data between Turkey and the country, sectors within the country or international organizations to which personal data will be transferred.</p> <p>b) The relevant legislation and practice of the country to which the personal data will be transferred and the rules governing the international organization to which the personal data will be transferred.</p> <p>c) The existence of an independent and effective data protection authority in the country or international organization to which the personal data will be transferred and the existence of administrative and judicial remedies.</p> <p>ç) The status of the country or international organization to which personal data will be transferred as a party to international conventions on the protection of personal data or as a member of international organizations.</p> <p>d)The membership status of the country or international organization to which personal</p>

	<p>data will be transferred to global or regional organizations of which Turkey is a member.</p> <p>e)International conventions to which Turkey is a party.</p>
<p>9.4. The Board shall decide whether there is adequate protection in the foreign country and whether such transfer is permitted under the sub-paragraph (b) of second paragraph, by evaluating the followings and by receiving the opinions of relevant institutions and organizations, where necessary:</p> <p>a) the international conventions to which Turkey is a party,</p> <p>b) the state of reciprocity relating to data transfer between the requesting country and Turkey ,</p> <p>c) the nature of the data, the purpose and duration of processing regarding each concrete, individual case of data transfer,</p> <p>ç) the relevant legislation and its implementation in the country to which the personal data are to be transferred,</p> <p>d) the measures committed by the data controller in the country to which the personal data are to be transferred.</p>	<p>9.4. In the absence of an adequacy decision, personal data may be transferred abroad by data controllers and data processors if one of the following appropriate guarantees is provided by the parties, provided that one of the conditions specified in Articles 5 and 6 exists or the data subject has the opportunity to exercise his/her rights and resort to effective remedies in the country of transfer:</p> <p>a) Existence of an agreement that does not constitute an international contract between public institutions and organizations or international organizations abroad and public institutions and organizations or professional organizations in the nature of a public institution in Turkey and the Board's authorization of the transfer.</p> <p>b) The existence of binding corporate rules approved by the Board and containing provisions on the protection of personal data, which companies within the group of undertakings engaged in joint economic activities are obliged to comply with.</p> <p>c) Existence of a standard contract announced by the Board, including data categories, purposes of data transfer, recipients and recipient groups, technical and administrative measures to be taken by the data recipient, additional measures taken for special categories of personal data.</p> <p>ç) Existence of a written undertaking containing provisions to ensure adequate protection and authorization of the transfer by the Board.</p>
<p>9.5. Without prejudice to the provisions of international agreements, in cases where interest of Turkey or the data subject will seriously get harmed, personal data, may only be transferred abroad upon the authorization to be given by the Board after</p>	<p>9.5. The standard contract shall be notified to the Board by the data controller or data processor within five (5) business days following its signature.</p>

<p>receiving the opinions of relevant public institutions and organizations.</p>	
<p>9.6. The Provisions of other laws relating to the transfer of personal data abroad are reserved.</p>	<p>9.6. Data controllers and data processors may transfer personal data abroad only in one of the following cases, provided that it is incidental, in the absence of an adequacy decision and in the absence of any of the appropriate guarantees provided for in the fourth paragraph.</p> <p>a) Explicit consent to the transfer, provided that the data subject is informed about the potential risks.</p> <p>b)The transfer is mandatory for the fulfillment of a contract between the data subject and the data controller or for the implementation of pre-contractual measures taken upon the request of the data subject.</p> <p>c) The transfer is mandatory for the establishment or fulfillment of a contract between the data controller and another natural or legal person for the benefit of the data subject.</p> <p>ç) The transfer is necessary for an overriding public interest.</p> <p>d) Transfer of personal data is mandatory for the establishment, exercise or protection of a right.</p> <p>e) In the case that it is necessary for the protection of the life or physical integrity of the person or someone else who is unable to disclose his consent due to actual impossibility or whose consent is not recognized as legally valid.</p> <p>f) Transfer from a registry that is open to the public or persons with a legitimate interest, provided that the conditions required to access the registry in the relevant legislation are met and the person with a legitimate interest requests it.</p>

-	9.7. Subparagraphs (a), (b) and (c) of the sixth paragraph shall not apply to the activities of public institutions and organizations subject to public law.
-	9.8. The provisions of this Law shall be ensured by the data controller and the data processors in terms of subsequent transfers of personal data transferred abroad and transfer to international organizations.
-	9.9. Without prejudice to the provisions of international conventions, personal data may only be transferred abroad with the permission of the Board after obtaining the opinion of the relevant public institution or organization in cases where the interests of Turkey or the data subject would be seriously harmed.
-	9.10. The provisions of other laws regarding the transfer of personal data abroad are reserved.
-	9.11. The procedures and principles regarding the enforcement of this article shall be regulated by regulation
Misdemeanors	Misdemeanors
ARTICLE 18	ARTICLE 18
<p>(1) For the purposes of this Law;</p> <p>a) For those who do not fulfil the obligation to inform provided for in Article 10 shall be imposed to pay an administrative fine of 5.000 to 100.000 TL,</p> <p>b) For those who do not fulfil the obligations related to data security provided for in Article 12 shall be imposed to pay an administrative fine of 15.000 to 1.000.000 TL,</p> <p>c) For those who do not fulfil the decisions issued by the Board pursuant to Article 15 shall be imposed to pay an administrative fine of 25.000 to 1.000.000 TL,</p> <p>ç) For those who act contrary to the obligations for registry with the Data Controllers' Registry and for notification</p>	<p>(1) For the purposes of this Law;</p> <p>a) For those who do not fulfil the obligation to inform provided for in Article 10 shall be imposed to pay an administrative fine of 5.000 to 100.000 TL,</p> <p>b) For those who do not fulfil the obligations related to data security provided for in Article 12 shall be imposed to pay an administrative fine of 15.000 to 1.000.000 TL,</p> <p>c) For those who do not fulfil the decisions issued by the Board pursuant to Article 15 shall be imposed to pay an administrative fine of 25.000 to 1.000.000 TL,</p> <p>ç) For those who act contrary to the obligations for registry with the Data Controllers' Registry and for notification provided for in Article 16 shall be imposed to</p>

<p>provided for in Article 16 shall be imposed to pay an administrative fine of 20.000 to 1.000.000 TL.</p>	<p>pay an administrative fine of 20.000 to 1.000.000 TL.</p> <p>d) Those who do not fulfill the notification obligation stipulated in the fifth paragraph of Article 9 shall be imposed an administrative fine from 50.000 to 1.000.000 TL</p>
<p>9.2. The administrative fines provided for in this article shall be applied to the natural persons and the private law legal persons who are the data controllers.</p>	<p>9.2. The administrative fines stipulated in subparagraphs (a), (b), (c) and (ç) of the first paragraph shall be imposed on the data controller, and the administrative fine stipulated in subparagraph (d) shall be imposed on the data controller or data processing natural persons and private legal entities.</p>
<p>9.3 In the event that the actions listed in the first paragraph be committed within the public institutions and organizations as well as the public professional organizations, the disciplinary provisions shall be applied to the civil servants and other public officers employed in the relevant public institutions and organizations and those employed in the public professional organizations upon the notice of the Board and the result is reported to the Board.</p>	<p>9.3 Administrative fines imposed by the Board may be appealed to administrative courts.</p>
Provisional Clauses	
	<p>The first paragraph of Article 9 before it was amended by the Law which is amending this Article shall continue to be applied until 1.9.2024 with the amended version of the Article entering into force.</p>
	<p>As of 1.6.2024, the applications evaluated in the criminal court of peace will continue to be judged in the same court.</p>
EFFECTIVE DATE OF CODE	
1.6.2024	



Kind Regards,

Koyuncuoglu & Koksall Law Firm

*The explanations contained in our newsletter have been prepared on the basis of the legislation in force in the Republic of Turkey and the information provided to the public by the relevant official authorities, and we recommend that you seek our opinion and support before finalizing any final transactions in case of any doubt. Otherwise, our Law Firm cannot be held responsible for the transactions to be made on the basis of the explanations given herein and the consequences thereof.