

THE LAW AMENDING THE TURKISH DATA PROTECTION LAW HAS BEEN PUBLISHED IN THE OFFICIAL GAZETTE!

The Law No. 7499 on the Amendments to the Criminal Procedure Law and Certain Laws, also referred to as the 8th Judicial Reform Package (the "Law"), has been approved by the President of Turkey and published in the Official Gazette dated March 12, 2024.

The Law includes some long-awaited amendments for the purpose of aligning the Turkish Data Protection Law (the "DPL") with the General Data Protection Regulation of the European Union (the "GDPR").

The articles of the DPL, which are amended by the Law, are as follows (you may find a general summary of the amendments on the following pages):

Article 6 Conditions for Processing of Special Categories of Personal Data

Article 9 Conditions for Transfer of Personal Data Abroad

Article 18 Application against Data Protection Board Decisions

Provisional Article 3 Transitional Provision

Effective Date of Amendments

These amendments will enter into force on June 1, 2024, yet "transfers of personal data abroad with explicit consent" will also be considered as compliant with the DPL until September 1, 2024.

This note does not constitute legal advice and has been prepared and sent only for information purposes. Please contact us if you wish to obtain legal advice on this matter.

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CONDITIONS FOR PROCESSING OF SPECIAL CATEGORIES OF PERSONAL DATA (THE DPL ART. 6)

CURRENT STATUS

Rule

Explicit consent of the data subject

Exemption 1: For Special Categories of Personal Data Other Than Health and Sexual Life

Provided by the laws

Exemption 2: For Personal Data Concerning Health and Sexual Life

Processed by the persons subject to secrecy obligation or competent public institutions and organizations, and required for the purposes of:

- protection of public health,
- operation of preventive medicine, medical diagnosis, treatment, and nursing services,
- planning and management of healthcare services as well as their financing

WHAT WILL CHANGE?

The special rule for processing of personal data concerning health and sexual life will be abolished, and 8 legal bases will be applicable for all special categories of personal data.

The existing 3 legal bases will be retained (as applicable to all special categories of personal data), and 5 additional alternative legal bases will be introduced.

The establishment of a legal basis for processing personal data in the context of employment is a positive step for working life.

AMENDED VERSION

For all Special Categories of Personal Data

Explicit consent of the data subject

Expressly provided by the laws

Processed by the persons subject to secrecy obligation or competent public institutions and organizations, and required for the purposes of:

- protection of public health,
- operation of preventive medicine, medical diagnosis, treatment, and nursing services,
- planning and management of healthcare services as well as their financing

Required for the protection of life or physical integrity of a person, who cannot express himself/herself due to an actual impossibility or whose consent is not deemed legally valid, or of any other person

Personal data made public by the data subject himself/herself, provided that it aligns with his/her intention to make it public

Being required for the establishment, exercise, or defence of a right

Being required for the fulfillment of legal obligations in the fields of employment, occupational health and safety, social security, social services, and social assistance

For the current or former members and affiliates, or individuals who are in regular contact with the foundation, association, and other non-profit organizations or formations established for political, philosophical, religious, or trade union purposes, provided that it is in accordance with the legislation and purposes they are subject to, limited to their field of activity, and not disclosed to third parties

CONDITIONS FOR TRANSFER OF PERSONAL DATA ABROAD (THE DPL ART. 9)

CURRENT STATUS

Rule

Explicit consent of the data subject (Art. 9/1)

If there is no explicit consent of the data subject:

1 Existence of one of the conditions for processing personal data or special categories of personal data

and

2 Adequacy decision given by the Data Protection Board for the third country, where the personal data will be transferred (i.e. whitelist)

In case adequacy decision is not provided:

1 Execution of a written undertaking by the data controllers in Turkey and in the relevant third country

and

2 Authorisation of the Data Protection Board

WHAT WILL CHANGE?

Existence of an Adequacy Decision

-Existence of one of the conditions for processing personal data or special categories of personal data **and**
 -An adequacy decision given by the Data Protection Board for the third country, **international organization, or sectors within that third country** where the personal data will be transferred.

! With the amendment, unlike the existing provision, it will be possible to issue an adequacy decision **also for a sector within a third country or for an international organization, instead of the entire country.**

! **While issuing the adequacy decision, the Data Protection Board :**
 -will **continue to consider the reciprocity** between Turkey and the country, or sectors within the country, or international organizations to which the personal data will be transferred.

If there is no Adequacy Decision

-Existence of one of the conditions for processing personal data or special categories of personal data **and**
 -Presence of the possibility for the data subjects to exercise their rights and to have access to effective legal remedies in the third country to which the data transfer will be made, **and**
 -Providing by the parties **one of the appropriate safeguards**, such as the execution of Standard Contractual Clauses or the existence of Binding Corporate Rules.

If there is no Adequacy Decision and Appropriate Safeguards

- **For certain situations**, such as being required for the performance of a contract between the data subject and the data controller, being required for an overriding public interest, or giving explicit consent to the transfer, provided that the data subject is informed about the possible risks, **provided that it is not repetitive.**

It is explicitly stated in the amended version that **data processors** will also be regarded as transferring personal data abroad, just like data controllers.


In case the Standard Contractual Clauses, which are considered among the appropriate safeguards, are executed, **the Data Protection Authority will need to be notified within 5 business days.** Failure to notify will be subject to **administrative fines.**

After the new rules regarding the transfer of personal data abroad come into force, **the previous provision (Art. 9/1), which accepts explicit consent as a condition for data transfer, will continue to be applicable until September 1, 2024.**

The procedures and principles regarding the implementation of Article 9 concerning the transfer of personal data abroad **will be determined by secondary legislation.**

Obtaining authorization from the Board with a letter of undertaking for data transfers abroad will be retained among the appropriate safeguards in the amended version.

NOTE

You may find the amended version regarding the transfer of personal data abroad on the following page (Art. 9). 

CONDITIONS FOR TRANSFER OF PERSONAL DATA ABROAD (THE DPL ART. 9)

AMENDED VERSION

Rule

1 Existence of one of the conditions for processing personal data or special categories of personal data

and

2 Adequacy decision given by the Data Protection Board regarding the third country, international organization, or sectors within the third country to where the personal data will be transferred

Appropriate Safeguards:

In case there is no Adequacy Decision:

1 Existence of one of the conditions for processing personal data or special categories of personal data

and

2 Presence of the possibility for the data subjects to exercise their rights and to have access to effective legal remedies in the country to which the data transfer will be made

and

3 Providing one of the appropriate safeguards by the parties

a) Existence of an agreement (excluding international treaties), between public institutions and organizations or international organizations abroad and public institutions and organizations or public professional organizations in Turkey, and the transfer is approved by the Data Protection Board

b) Existence of Binding Corporate Rules, with which companies within the enterprise group engaging in joint economic activities are obliged to comply, which contains provisions regarding the protection of personal data, announced by the Data Protection Board

c) Existence of Standard Contractual Clauses announced by the Data Protection Board, including issues such as data categories, purposes of data transfer, recipient and recipient groups, technical and administrative measures to be taken by the data recipient, additional measures taken for special categories of personal data

d) Execution of a written undertaking containing provisions that provide adequate protection and approval for the transfer by the Data Protection Board

If there is no adequacy decision and one of the appropriate safeguards cannot be provided, one of the following situations must exist – only if the transfer is not repetitive:

i) The data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject.

ii) The transfer is required for the performance of a contract between the data subject and the data controller or the implementation of pre-contractual measures taken at the data subject's request.

iii) The transfer is required for the conclusion or performance of a contract concluded between the data controller and another natural or legal person in the interest of the data subject.

iv) The data transfer is required for an overriding public interest.

v) The data transfer is required for the establishment, exercise, or defence of a right.

vi) The data transfer is required in order to protect of life or physical integrity of the data subject or of other persons, where the data subject cannot express himself/herself due to an actual impossibility or whose consent is not deemed legally valid.

vii) The data transfer is made from a register that is open to the public or to persons with a legitimate interest, provided that the conditions required to access the registry in the relevant legislation are met and the person with legitimate interest requests it.

NEW ADMINISTRATIVE FINE, APPEAL AGAINST DATA PROTECTION BOARD DECISIONS (THE DPL ART. 18) AND TRANSITIONAL PROVISION

WHAT WILL CHANGE?

Imposing a new administrative fine:

In case of failure to notify the Data Protection Authority **within 5 business days** after the signing of the Standard Contractual Clauses for the transfer of personal data abroad:

Administrative fines ranging from 50,000 Turkish liras to 1,000,000 Turkish liras will be imposed. This administrative fine will be applicable not only to data controllers but also to data processors, marking the first instance of accountability for data processors in terms of administrative sanctions.

Transitional provision for the Data Transfer Abroad:

The previous provision regarding the transfer of personal data abroad with explicit consent (Art. 9/1) will also continue to be applied **until September 1, 2024**.

Effective Date of Amendments

These amendments will enter into force on **June 1, 2024**.

Appeal against Data Protection Board decisions:

The appeal against the Data Protection Board decisions will be made before **Administrative Courts** instead of Criminal Magistrate Judges.

Transitional provision for the appeal against Data Protection Board decisions:

The files, which are still before the Criminal Magistrate Judges as of June 1, 2024, will be resolved by these judges.