

## TURKISH DATA PROTECTION LAW REFORM (2024 AMENDMENT)

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") 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 following articles of the DPL were amended (details are provided in 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 entered into force on June 1, 2024, yet "transfer of personal data abroad with explicit consent" is considered compliant with the DPL until September 1, 2024!

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

### PREVIOUS VERSION

#### 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 CHANGED?

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.

### NEW 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)

### PREVIOUS VERSION

#### 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 ("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 Board

### WHAT CHANGED?

#### 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 Board for the third country, international organization, or sectors within that third country where the personal data will be transferred. (For details, see [page 5](#))

! 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 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 Contracts or the existence of Binding Corporate Rules. (For details, see [page 5](#))

#### 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.** (For details, see [page 5](#))

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

In case the Standard Contracts, which are considered among the appropriate safeguards, are executed, the Data Protection Authority ("Authority") will need to be notified within 5 business days. (For details, see [page 5](#)) Failure to notify will be subject to **administrative fines.**

Transitional provision: The previous provision (Art. 9/1), which accepts explicit consent **alone** as a condition for data transfer, will continue to be applicable until September 1, 2024.

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

Data controllers and data processors must ensure the safeguards provided in the Law for onward transfers of personal data transferred abroad and for transfers to international organizations.

Data processors transferring data abroad are also subject to these provisions and must take appropriate measures. The data controller remains responsible regardless.

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

### NEW 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 Board regarding the third country, international organization, or sectors within the third country to where the personal data will be transferred (For details, see page 5)

#### 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 Board

b) Existence of Binding Corporate Rules ("BCR"), 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 Board (For details, see page 5)

c) Existence of Standard Contracts announced by the 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 (For details, see page 5)

d) Execution of a written undertaking containing provisions that provide adequate protection and approval for the transfer by the 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 (For details, see page 5):

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 the 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.

The procedures and principles regarding the implementation of Article 9 on the transfer of personal data abroad have been set forth by a regulation, which was published in the Official Gazette on July 10, 2024. Details on the next page!

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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## Matters Introduced by the Regulation on the Transfer of Personal Data Abroad

### What Had Happened?

The draft regulation was published on the Authority's website for public consultation on May 9, 2024.

The draft was enacted with minor amendments and came into force on July 10, 2024.

On the same date, the final versions of the documents regarding standard contracts and binding corporate rules were also published.

### Adequacy Decision

- The Board is authorized to determine additional matters regarding adequacy decisions beyond those specified in the DPL.
- Adequacy decisions will be reviewed and reassessed at least every four years, with the reassessment periods clearly specified in the decision.
- If the Board determines that a country, one or more sectors within that country, or an international organization no longer provides an adequate level of protection, it can modify, suspend, or revoke the adequacy decision prospectively.
- The Board is not bound by the four-year reassessment period when making these decisions.

### Details Regarding Appropriate Safeguards

#### Standard Contracts

Notification Methods for Standard Contracts to the Authority (to be completed within 5 business days) are: (i) physical submission, (ii) registered electronic mail (KEP), or (iii) another method determined by the Board.

The standard contracts can specify who is responsible for the notification. If not specified, the data exporter is responsible.

The notification must include documents attesting the signatories' authority and notarized translations of any foreign language documents.

New instances requiring notification to the Authority: (i) changes in the parties or in the information or explanations provided by the parties, or (ii) termination of the standard contract.

The Board may scrutinize the file in case of (i) amendments to the standard contract text, or (ii) absence of valid signatures from one or both parties involved in the transfer.

#### Binding Corporate Rules

Minimum requirements that must be included in BCRs were detailed.

The Board is also authorized to determine additional requirements.

It became necessary to apply to the Board for approval in order to transfer personal data abroad based on BCRs.

It became mandatory to include a notarized translation of every document in a foreign language submitted with the application related to BCRs.

#### Exception: Occasional Transfers

With the regulation, "occasional transfer" has been explained:

Transfers that are irregular, occur once or a few times, are not continuous, and are not part of the regular course of business are considered occasional transfers.

### Documents Published by the Authority Regarding Safeguards

#### Standard Contracts

The Authority published four different standard contracts:

- Data controller to data controller (C2C),
- Data controller to data processor (C2P)
- Data processor to data controller (P2C), and
- Data processor to data processor (P2P)

#### Binding Corporate Rules

Two separate Binding Corporate Rules application forms were published for data controllers and data processors.

Additionally, two guides providing instructions on how to fill out these forms were also published.

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

### WHAT CHANGED?

#### Imposing a new administrative fine:

In case of failure to notify the Authority within **5 business days** after the signing the standard contracts by all parties for the transfer of personal data abroad:

Administrative fines ranging from 50,000 Turkish liras (approx. 1,510 USD as of 2024) to 1,000,000 Turkish liras (approx. 30,250 USD as of 2024) 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**.

#### Appeal against Board Decisions:

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

#### Effective Date

These amendments entered into force on **June 1, 2024**.

#### Transitional provision for the appeal against Board decisions:

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