

April 2016

The Law on Protection of Personal Data – Turkey

The Law on Protection of Personal Data (Law) has been enacted on March 24, 2016 and published on the Official Gazette dated April 07, 2016. We wish to refer some major topics concerning the Law as follows:

Definition of Personal Data and Sensitive Personal Data

The newly enacted Law on Protection of Personal Data (Law) mainly aims to protect the privacy, rights, and freedoms of persons in connection with the processing of their personal data and accordingly defines personal data as any information relating to an identified or identifiable natural and legal person. The Law defines the "sensitive personal data", as the personal data revealing race, ethnic origin, political opinions, philosophical beliefs, religion, sect or other beliefs, appearance and dressing, foundation or union membership, health, sexual life, data on penal convictions or security measures, as well as biometric and genetic data of a person.

Definitions in relation to Data Processing

Data Processing is any kind of operation which is performed upon personal data, wholly or partially by automatic means, or by means of a manual data recording system such as collection, recording, storage, preservation, change, revision, disclosure, transmission, assignment, making available, classification or prevention of use.

Data Processor is a natural or legal person, which processes personal data based on the authorization given by the data controller.

Data Controller is a natural or legal person who determines the purposes and means of the processing of personal data and is liable for the establishment and administration of the data filing system.

Principals of Data Data Processing

Personal data may be processed only if it is in compliance with the form and essentials of the Law on Personal Data Protection. The principles of data processing to be;

- processed fairly and lawfully,
- accurate and up to date,
- processed for specified, explicit and legitimate purposes,
- adequate, relevant and not excessive in relation to the purposes for which they are proceeded,
- kept for the time stipulated by the law or for no longer than is necessary for the purposes for which they are further processed.

Personal data can only be processed if the data subject has unambiguously given his/her consent.

Conditions for Data Processing Without Consent

The consent of the data subject is not requested if the data processing is explicitly stipulated by Law.

Furthermore the consent will not be required in cases where;

- it is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his consent,
- it is necessary for the concluding and performance of a contract to which the data subject is party,
- it is necessary for compliance with a legal obligation to which the controller is subject,
- the processing relates to data which are manifestly made public by the data subject,
- the processing is necessary for the establishment, use or protection of a right,
- the processing is necessary for the purposes of the legitimate interests pursued by the controller provided that this does not damage the fundamental rights and freedoms of the data subject.

Process of Sensitive Data

The principals for the process of sensitive data has been defined widely and in detail when compared to the EU Directive 95/46, including data of dresses and appearance, biometric and genetic data and data relating to penal convictions or security measures, of the data subject.

The Law prohibits the process of sensitive data without the explicit consent of the data subject. With the exception for the sensitive data on health and sexual life, no explicit consent of the data subject will be required if the sensitive data process is explicitly stipulated by law.

The data on health and sexual life can be processed without the consent of the data subject, if this is required for the purposes of protection of public health, preventive medicine, medical diagnosis, the implementation of care or treatment or the management of health-care services, planning and administration of health care financing. Such data can be processed only by competent bodies established by law or which by the persons having the professional secrecy obligation.

Sensitive data shall be processed according to the adequate measures determined by the Personal Data Protection Board (Board).

International Transfer of Personal Data

Personal data can be transferred by the explicit consent of the data subject. The consent of the data subject is not sought in the existence of the conditions above mentioned for the process of personal data and sensitive data. The Law also provides an exemption to the transfer of the data in case the country to which the data will be transferred ensures an adequate level of protection or in the absence of adequate protection, the Board can permit such transfer, if the controllers in Turkey and the receiving country undertake to provide an adequate level of protection.

Personal data may be transferred outside Turkey, in cases where Turkey or the data subject might face a serious damage of interest and with the permission of the Board based on the opinion of the related governmental institution and organization without prejudice to the provisions of International Conventions to which Turkey is a party.

Obligations of the Data Controller

The data controller or its representative is obliged to give the following information the;

- a- identity of the controller and of his representative, if any;
- b- purposes of the processing,
- c- information as to whom the processed data can be transferred and the purpose of the transfer,
- d- method to collect personal data and its legal basis,
- e- other rights of the data subject mentioned in the Law.

The Rights of Data Subject

Every data subject has the right to:

- be informed whether or not data relating to him/her are being processed,
- request information concerning the process, if data has been processed,
- be informed of the purpose of processing and whether the data is used in line with its purposes,
- be informed about the third parties in receipt of the personal data in Turkey and abroad,
- request the rectification of the incomplete or inaccurate processed data,
- request the erasure or destruction of data,
- request the notification of third parties in case of rectification of the incomplete or inaccurate processed data and the erasure or destruction of data,
- object to the result obtained and analyzed by means of exclusively automated systems against his/her interest,
- request the compensation of the damages suffered as a result of an unlawful processing.

Obligations Related to Data Safety

The data controller must take all necessary security measures in order to provide the adequate level of safety for;

- prevention of the unlawful process of personal data,
- prevention of unlawful access to the personal data,
- providing of the safeguard of personal data.

The data controller is jointly liable with the natural or legal person who processed personal data on his behalf for taking the above mentioned security measures.

The data controller must conduct or must have conducted the necessary audits for the implementation of these provisions.

The data controller shall as soon as possible notify the data subject and the Authority, in case that the processed personal data is obtained unlawfully by a third party.

The Law requires every natural or legal person who processes personal data to register at the 'data controller register', unless they are exempt. This Register will be kept and maintained under the supervision of the Board.

Personal Data Protection Authority (Authority) and Personal Data protection Board (Board)

The Law obliges a Personal Data Protection Authority (Authority) to be established for the implementation of the new regime. The Law also requires the establishment of a Personal Data Protection Board acting as the executive body, monitoring of the compliance of data processing and transferring actions. The Board is also empowered to evaluate the complaints of the data subject concerning the protection of his rights.

Crimes and Misdemeanors

Crimes related to personal data are stipulated in the Turkish Criminal Law. The Law makes an amendment to Art. 243 of the Turkish Criminal Law and adds the provision that the act of unlawfully monitoring the internal data transfer in a data processing system and the data transfer between different data processing systems constitutes crime, which is subject to an imprisonment between 1 to 3 years. For further criminal actions against data privacy, the Law refers to the articles in the Turkish Criminal Law wherein the sanction of illegal recording, transmitting, dissemination and acquiring of Personal Data is determined as imprisonment from 1 to 4 years.

Data controllers who fail to fulfill their obligations stipulated by Law will be charged to pay fines from TRY 5.000.- to TRY 1.000.000.-. Sanctions for officials of the state institutions who fail to fulfill their obligation as a data controller will be punished according to the corresponding disciplinary regulations. The competent authority to impose these sanctions is the Board. No need to say that these administrative decisions may be questioned before the administrative courts.

Entry into Force

Finally, the Articles of the Law relating to;

- The transfer of personal data,
- Rights of data subject,
- Application of data subject to the data controller,
- Filing complaints before the Board,
- The procedure and principals of the inspection conducted by the Board,
- Data register,
- Crimes and misdemeanors,

will enter into force after 6 months as of the publication date (i.e. on October 07, 2016). Other Articles entered into force upon their publication (i.e. on April 07, 2016).