

Secondary Legislation of the Data Protection Law

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Drafts of the long-awaited secondary legislation under the Data Protection Law (the “**Law**”)¹, namely the Draft Regulation on the Data Controllers Registry (the “**Registry Draft**”) and the Draft Regulation on the Deletion, Disposal and Anonymization of the Personal Data (the “**Data Destruction Draft**”) have been published on the official website of the Personal Data Protection Authority (the “**Authority**”).

Highlights can be summarized as follows:

A. The Registry Draft

The Law defines a data controller as “a real or legal person who is responsible for the establishment and administration of the data registration system which determines the purposes and means of processing personal data”. As per provisional Article 1 of the Law, data controllers must be registered with the data controllers registry (the “**Registry**”). The Registry is a system in which the data controllers declare information about their data processing activities, as required by the Law. The Registry Draft sets out the rules for the establishment of the Registry and the registration of the data controllers with the Registry.

- The Registry Draft introduces “VERBIS”, which is a publicly available, online information system for data controllers for registration and other related procedures. The Registry Draft requires data controllers to fulfil their registration obligations prior to processing personal data. The registration obligation will be fulfilled upon submission of the following information to VERBIS: (i) the identity and address information of the data controller and the data controller representative; (ii) the purpose of processing the personal data; (iii) explanations regarding the data subject group or groups and their data categories; (iv) the receiver or receiver groups to which the personal data is transferrable; (v) the personal data foreseen to be transferred to foreign countries; (vi) the measures foreseen under Article 12 of the Law and taken in accordance with the criteria determined by the Personal Data Protection Board (the “**Board**”); and (vii) the maximum time required for the purpose of processing personal data.²

¹ Law No. 6698 published on the Official Gazette No. 29677 and dated 7.4.2016.

² Article 9 of the Registry Draft.

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- As part of the registration process, data controllers must submit a “Personal Data Processing Inventory”, which will be established and detailed by way of associating the personal data processing activities of data controllers depending on their (i) data processing activities based on their business processes, (ii) data categories, (iii) transferred receiver group, and (iv) data subject group.
 - For legal entities, the data controller is the legal entity itself. The liabilities of legal entities established in Turkey are to be fulfilled by the competent body or persons authorized to represent and bind the legal entity, as per the applicable legislation. In this respect, the Registry Draft envisages two different concepts: “Contact Person” (*irtibat kişisi*) and “Data Controller Representative” (*veri sorumlusu temsilcisi*). The data controller representative is a real or legal person resident in Turkey, who will be appointed only by data controllers who are not resident in Turkey and notified during the registration application. The data controller representative is authorized to represent the data controller before the Authority and conduct transactions related to the Registry. On the other hand, the contact person is a real person who is responsible for the communication between (i) the legal entity data controller resident in Turkey, or legal entity data controller representative and (ii) the Authority to ensure that the requests of related persons will be answered promptly and effectively by the data controller. Accordingly, both legal entity data controllers resident in Turkey and data controllers who are not resident in Turkey but who have appointed a legal entity data controller representative are required to appoint a contact person.
 - In principle, all data controllers must be registered with the Registry unless an exemption is provided by the Law. However, the Law authorizes the Board to provide additional exemptions to the requirement of registration with the Registry. According to the Registry Draft, the Board can grant exemptions in respect of personal data processing activities which are not fully or partially automatic, according to certain criteria listed in the Registry Draft, including, but not limited to, the type and quantity of the personal data, the purpose of processing the personal data, the field of activity (such as the industry or sector) to which the personal data relates, and the transfer of the personal data to third parties.
 - The Registry Draft requires data controllers to pay a registration fee for the initial registration and an annual registration fee for each following year in an amount to be determined by the Board.
 - The Registry Draft envisages administrative fines ranging from TL 20.000 to TL 1.000.000 for data controllers who fail to comply with the registration and notification obligations.

B. Data Destruction Draft

The Law requires data controllers to delete (*silme*), dispose of (*yok etme*) or anonymize (*anonimleştirme*) the personal data *ex officio* or upon the request of the relevant person to the extent that the reasons for the processing of the data no longer exist. Accordingly, the Data Destruction Draft sets out the principles and procedures regarding the deletion, disposal and anonymization of the personal data processed automatically or non-automatically as part of any data recording system.

- A personal data must be deleted, disposed of, or anonymized by the data controller upon the request of the relevant person or *ex officio* provided that certain conditions have been met, including, but not limited to: (i) the amendment or annulment of the relevant legislation constituting the basis of the processing of personal data; (ii) the non-existence of the purpose of processing the personal data; (iii) the non-compliance of the processing of the personal data with the laws and the principle of good faith; and (iv) the withdrawal of consent in cases where the personal data is processed upon the explicit consent of the data subject.
- The Data Destruction Draft requires data controllers to prepare a Personal Data Retention and Destruction Policy (the “**Policy**”). The Policy will include detailed information including, but not limited to: (i) its preparation purpose; (ii) the data recording mediums; (iii) any legal, technical or other reasons which require the storage and destruction; (v) the technical and administrative measures taken for the safe storage and the prevention of illegal processing and access; (vi) the names of the responsible persons; (vii) the storage and destruction periods; and (viii) the periodical destruction terms. Data controllers who are not obliged to prepare a Policy are nevertheless required to delete, dispose of and anonymize the personal data in accordance with the Law and the regulation. Data Destruction Draft does not specify the criteria to determine whether data controllers must prepare the Policy or the timing

of the adoption of the Policy. However, the Board has the authority to make decisions about the principles and procedures regarding the drafting and implementation of the Policy. It is expected that the Board will determine the data controllers who are obliged to prepare this Policy.

- The terms “deletion”, “disposal of” and “anonymization” are defined and procedural rules have been detailed under the Data Destruction Draft.
- Data Destruction Draft also sets out the deadlines which data controllers must meet for the deletion, disposal and anonymization of the personal data. Data controllers who are obliged to prepare a Policy are required to *ex officio* delete, dispose of or anonymize the personal data by the first periodical destruction date following the date on which the destruction obligation has arisen. In contrast, data controllers who are not required to prepare a Policy must *ex officio* delete, dispose of or anonymize the personal data within 30 days following the date on which the destruction obligation has arisen. In addition, data controllers can delete, dispose of or anonymize the personal data upon the request of the data subject to the extent that the personal data processing grounds no longer exist. In such a case, a request for destruction must be fulfilled within thirty days. However, if not all the grounds for the processing of the personal data are removed, the destruction request of the data subject can be denied with an explanation of the reasons for such refusal. This refusal must be notified to the data subject in writing or via electronic means within 30 days.

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