

*Please note that below translated text includes only the main parts of the Law. Also, it should be kept in mind that the Law determines only the general principles on protection of personal data; in order to get a clear vision about the practice, the provisions should be interpreted together with application regulation which will be issued after the law came into force.*

## **PURPOSE AND SCOPE (Art. 1-2)**

The purpose of this Law is to protect fundamental rights and freedoms of persons, and in particular their right to privacy with respect to the processing of personal data, and to set forth principles and procedures which bind natural or legal persons who process personal data.

The provisions apply to natural persons whose personal data are processed as well as to natural or legal persons who process such data fully or partially through automatic or non-automatic means, which form part of a filing system or are intended to form part of a filing system.

## **DEFINITIONS (Art. 3)**

- **Explicit consent:** any freely given specific and informed indication of wishes by which the data subject signifies his agreement to personal data relating to him being processed.
- **Data Anonymization:** putting the personal data in a form that cannot be associated to any real person.
- **Data Subject:** the real person to whom personal data relates.
- **Personal data:** any information relating to an identified or identifiable natural person.
- **Processing of personal data:** any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.
- **Data Processor:** a natural or legal person, which processes personal data by authorization of and on behalf of and the controller.
- **Data filing system:** any set of personal data structured and recorded according to specific criteria.
- **Data Controller:** natural or legal person who determines the purposes, conditions and means of the processing of personal data and responsible for establishing and managing the data registry system.

## **PROCESSING OF PERSONAL DATA (Art. 4)**

**General Principles: Personal data must be processed in line with the following principles;**

- compatible with law and rules of veracity (fair and lawful)
- accurate and, where necessary, kept up to date
- processed for specified, clear and legitimate purposes
- relevant, adequate and proportionate with the reason of their processing
- kept no longer than is necessary for the purposes for which the data were collected

## **CONDITIONS OF PROCESSING PERSONAL DATA (Art. 5)**

## **Personal data cannot be processed without the explicit consent of the data subject**

**Exceptions:** However, personal data can be processed without seeking the explicit consent of the data subject in the presence of the following conditions;

- where it is clearly specified by laws
- where processing 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
- **where processing is necessary for drawing up or for performance of a contract to which the data subject is party**
- where processing is necessary for fulfillment of legal obligation of the controller
- where the related data are made public by the data subject
- where processing is necessary for acquisition of, exercising of, or protection of a specific right
- where processing is necessary for legitimate interests of controller, on condition that fundamental rights and freedoms of the data subject are not violated.

## **THE PROCESSING OF SPECIAL CATEGORIES OF DATA (Sensitive Data) (Art. 6)**

The data related to persons' racial or ethnic origin, political opinions, religious, sect or other beliefs or philosophical beliefs, trade-union membership, and health or sex life, criminal convictions records and biometric and genetic information are deemed as Special Categories of Data.

**Special Categories of Personal data cannot be processed without the explicit consent of the data subject.**

**Exceptions:** Special categories of personal data can be processed without seeking the explicit consent of the data subject in the following conditions

- where it is clearly specified by laws
- where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional and authorized institution and organizations subject to the obligation of professional secrecy.

## **DELETION, DESTRUCTION OR ANONYMIZATION OF PERSONAL DATA (Art. 7)**

Upon demand of the data subject, or ex officio, personal data which is no longer necessary for the purposes of processing shall be deleted, destroyed or anonymized by the data controller.

## **TRANSFER OF PERSONAL DATA (Art. 8)**

**Personal data cannot be transferred without the explicit consent of the data subject.**

**Exceptions:** The same exceptions specified in Art. 5 and Art. 6 above (exceptions related to Processing Personal and Special Categories of Data) are valid for transfer of personal data.

## **TRANSBORDER TRANSFER OF PERSONAL DATA (Art. 9)**

**Personal data cannot be transferred to abroad without the explicit consent of the data subject.**

**Exceptions:** The same exceptions specified in Art. 5 and Art. 6 above (exceptions related to Processing Personal and Special Categories of Data) are valid for transfer of personal data, but following conditions should also be present;

- **there is an adequate level of protection in the foreign country to which data is sent**
- **in case there is not adequate level of protection, data controllers in Turkey and in the concerned country should guarantee the adequate level of protection in writing, and also permission of the Data Protection Board is necessary.**

Countries that have adequate level of protection will be determined and announced by **Data Protection Board**.

The Board decides which countries have adequate level of protection, and which countries can be transferred personal data if there is not adequate level of protection, by assessing the following points;

- international agreements,
- the state of reciprocity,
- nature of data, duration and purpose of processing,
- measures as regard to data protection guaranteed by the controller in the country

## **RIGHTS AND OBLIGATIONS**

### **DATA CONTROLLER'S OBLIGATION TO GIVE INFORMATION (Art. 10)**

Data controller or the person authorized by the controller should inform the related persons (data subjects) about;

- the identity of data controller, or his/her representative if any
- purposes of data processing
- to whom the processed data will be given and for what purposes
- method and legal ground of collecting personal data
- personal right of obtaining information

### **RIGHTS OF DATA SUBJECT (Art. 11)**

Everyone is entitled to apply to the data controller to;

- learn whether personal data concerning him has been processed
- request information personal data is processed
- learn the purpose of processing
- learn the third parties in-country or abroad if the data transferred
- demand the rectification of the data content if there is incompleteness or inaccuracy in their processing
- demand deletion or destruction of data

### **RESPONSIBILITIES AS REGARD TO DATA SECURITY (Art. 12)**

It shall be for the controller to;

- prevent unlawful process of personal data
- prevent unlawful access to personal data
- take every necessary technical and administrative precautions for safeguarding personal data

In case the personal data processed by some other natural or legal person on behalf of controller, the controller is jointly responsible for above mentioned points.

The controller is obliged to carry out inspection in his establishment for ensuring application of the provisions of this law.

The controller and data processor cannot pass the personal data to third parties unlawfully, and cannot use them out of their purpose. This obligation continues even after they have retired from their duty.

The controller immediately informs the Board and the data subject in case of any unlawful breach.

#### **PROVISIONS RELATED TO APPEAL AND COMPLAINT (Various Articles)**

- First appeal and complaint by data subject should be made to controller who is obliged to finalize the issue in 30 days at most
- In case of unsatisfying conclusion, data subject may appeal to Data Protection Board

#### **KEEPING RECORD OF DATA CONTROLLER**

**Data Controller Registry will be kept by the Board.**

Natural and legal persons should be registered in Data Controller Registry before starting personal data processing. However, the Board may bring some exemptions for this obligation by taking into consideration the nature and number of processed personal data.

#### **AN INDEPENDENT DATA PROTECTION BOARD WILL BE ESTABLISHED (Art. 19)**

#### **PUNITIVE ARTICLES (Art. 17, 18)**

The Draft Law sets forth various penal provisions for non-compliances.

#### **EXCEPTIONS (Art. 28)**

Some type of personal data processing will be excluded from the scope of the Law, such as;

- Data processing for purely personal purposes
- Anonymized data for official statistics
- Data processing for national security and defense, public security and order, economic security, intelligence activities
- Data processing by judicial authorities in judicial activities
- Processing for prevention of a crime