

## Comparative Table on the Amendments to the Turkish Personal Data Protection Law

As part of the Human Rights Action Plan and the Medium-Term Program alongside the Action Plan for Economic Reforms, the harmonization process of Law No. 6698, known as the Personal Data Protection Law ("KVKK"), with the EU General Data Protection Regulation ("GDPR") has been determined. To achieve this, on March 12, 2024, amendments to the KVKK were approved with *the Law on Amendments to the Criminal Procedure Code and Several Other Laws*. Below, you may find a brief overview of these amendments.

1. **The legal basis for processing special categories of personal data has been expanded, and restricted legal regime concerning health data have been abolished.** Thus, the processing of special categories of personal data, including health data, is now permitted in exceptional cases such as when explicitly stated in the laws, when necessary for the establishment, exercise or defense of legal claims, when required for the purposes of carrying out the obligations and exercising specific rights in the field of employment, occupational health and safety, social security, social services and social assistance, or when necessary for processing activities related to members of foundations, associations, and other nonprofit organizations or entities.
2. **The transfer of personal data abroad, which largely depended on explicit consent in practice,** is now allowed to be carried out without explicit consent. Firstly, if one of the legal grounds stipulated under the KVKK is met and if an adequacy decision exist **regarding an international organization, country, or sector**, the personal data will be transferred without an explicit consent.
3. Additionally, **standard contractual clauses, which are a common method of transferring data abroad under the GDPR, have also been included within the scope of the KVKK.** To use this method, **the following conditions must be fulfilled:** a) The data subject must have the opportunity to exercise their rights and seek effective legal remedies in the transferred country, and one of the conditions specified in Articles 5 and 6 is applicable. b) The standard contractual clauses must be submitted to the Authority within five days from its signing. Failure to fulfill this

notification obligation may result in administrative fines ranging from TRY 50.000 to TRY 1.000.000 for both data controllers and processors.

4. In addition, similar to the GDPR, **occasional data transfer conditions** have been introduced and therefore the transfer based on explicit consent will have an exceptional nature.
5. Regarding the objections to be filed against the administrative fines imposed by the Board, it is now possible to **file a lawsuit in Administrative Courts instead of Penal Courts of Peace**.
6. A transitional provision has been introduced regarding the enforcement of the amendments. In this context, **the transfer of personal data abroad based on explicit consent will continue to be applied until 1.9.2024**. In addition, the applications that are currently being examined by the Penal Courts of Peace as of 1.6.2024 will continue to be examined by these courts. All other **amendments will enter into force on 1.6.2024**.

In the table below, you can find the new amendments in KVKK compared to the previous provisions. Additionally, you can also find a comparative analysis of the GDPR provisions that form the basis of the regulations regarding special categories of personal data.

KVKK Amendment	GDPR
<p><b>Conditions for processing of Special categories of personal data</b></p> <p><b>Article 6 - (1)</b> Personal data relating to the race, ethnic origin, political opinion, philosophical belief, religion, religious sect or other belief, appearance, membership to associations, foundations or trade-unions, data concerning health, sexual life, criminal convictions and security measures, and the biometric and genetic data are deemed to be special categories of personal data.</p> <p>(2) Processing of special categories of personal data <del>without the explicit consent of the data subject</del> is prohibited. However, this prohibition shall not apply if one of the following applies:</p> <ul style="list-style-type: none"> <li>a) the data subject has given explicit consent to the processing of those personal data</li> <li>b) processing is explicitly stated in the laws,</li> <li>c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent,</li> <li>ç) processing relates to personal data which are manifestly made public by the data subject and is in line with the intention of making it public,</li> <li>d) processing is necessary for the establishment, exercise or protection of a right,</li> </ul>	<p><b>Processing of special categories of personal data</b></p> <p><b>Art 9- (1)</b> Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation shall be prohibited.</p> <p>(2) Paragraph 1 shall not apply if one of the following applies:</p> <ul style="list-style-type: none"> <li>(a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;</li> <li>(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;</li> </ul>

e) processing is necessary for the protection of public health, preventive medicine, medical diagnosis, treatment and care services, and the planning, management and financing of health services by persons under the obligation of secrecy or authorized institutions and organizations,

f) processing is necessary for the fulfillment of legal obligations in employment, occupational health and safety, social security, social services and social assistance,

g) processing is carried out in the course of activities of foundations, associations and other non-profit organizations or formations established for political, philosophical, religious or trade union purposes, provided that they are in compliance with the legislation to which they are subject and their purposes, are limited to their fields of activity and are not disclosed to third parties; provided that they are intended for their current or former members and members or persons who are in regular contact with these organizations and associations.

~~(3) Personal data, except for data concerning health and sexual life, listed in the first paragraph may be processed without seeking explicit consent of the data subject, in the cases provided for by laws. Personal data concerning health and sexual life may only be processed, without seeking explicit consent of the data subject, by the persons subject to secrecy obligation or competent public institutions and organizations, for the purposes of protection of public health, operation of preventive medicine, medical diagnosis, treatment and nursing services, planning and~~

(c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;

(e) processing relates to personal data which are manifestly made public by the data subject;

(f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;

(g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;

(h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of

~~management of health care services as well as their financing.~~

(4) Adequate measures determined by the Board shall be also taken while processing the special categories of personal data.

Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;

(i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy;

(j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

(3) Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by or under the responsibility of a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.

	<p>(4) Member States may maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health.</p>
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**TRANSFER OF PERSONAL DATA ABROAD (Art. 9)****KVKK Amendment****Transfer of personal data abroad**

**ARTICLE 9-** (1) Personal data may be transferred abroad by data controllers and data processors if one of the conditions specified in Articles 5 and 6 exists and there is an adequacy decision regarding the country, international organization, or sectors within the country where the transfer will take place.

(2) The adequacy decision is issued by the Board and published in the Official Gazette. The Board may, if necessary, consult relevant institutions and organizations. The adequacy decision is evaluated at least once every four years. The Board may, based on the evaluation result or other circumstances it deems necessary, amend, suspend, or revoke the adequacy decision with prospective effect.

(3) The following factors are primarily considered when issuing the adequacy decision:

- a) The reciprocity status regarding personal data transfer between Turkey and the country, sectors, or international organizations to which personal data will be transferred.
- b) The relevant legislation and practices of the country where personal data will be transferred and the rules applicable to the international organization to which personal data will be transferred.
- c) The existence of an independent and effective data protection authority and administrative and judicial remedies in the country or in the international organization where personal data will be transferred
- ç) The status of the transferred country or international organization as a party to international conventions on the protection of personal data or as a member of international organizations.
- d) The membership status of the transferred country or international organization to global or regional organizations to which Turkey is a member.
- e) International agreements to which Turkey is a party.

(4) In the absence of an adequacy decision, personal data may be transferred abroad by data controllers and data processors, provided that one of the conditions specified in Articles 5 and 6 exists and the data subject has the opportunity to exercise their rights and seek effective legal remedies in the country where the transfer will take place, subject to the provision of one of the appropriate safeguards listed below by the parties:

- a) The existence of a non-international treaty between foreign public institutions or international organizations and Turkish public institutions or professional organizations of public nature in Turkey, approved by the Board for the transfer.
- b) The existence of binding corporate rules approved by the Board, containing provisions on the protection of personal data, to which companies within a group of undertakings engaged in joint economic activities are obliged to comply.
- c) The existence of a standard contractual clauses published by the Board containing provisions regarding data categories, purposes of data transfer, recipients and recipient groups, technical and administrative measures to be taken by the data recipient, additional measures taken for special categories of personal data etc.,
- ç) The existence of a written commitment for adequate protection and permission of the transfer by the Board.
- (5) The standard contractual clauses shall be notified to the Board by the data controller or data processor within five days following its signature.
- (6) In the absence of an adequacy decision and if any of the appropriate safeguards stipulated in the fourth paragraph cannot be provided, data controllers and data processors may transfer personal data abroad only in the existence of one of the following cases, provided that it is occasional,
- a) The data subject has given explicit consent to the transfer, after having been informed of the possible risks of such transfer
- b) The transfer is necessary for the performance of a contract between the data subject and the data controller or for the implementation of pre-contractual measures taken upon the request of the data subject.
- c) The transfer is necessary for the establishment or performance of a contract between the data controller and another natural or legal entity for the benefit of the data subject.
- ç) The transfer is necessary for a superior public interest.
- d) The transfer of personal data is necessary for the establishment, exercise or protection of a right.
- e) The transfer of personal data is necessary for the protection of the life or bodily integrity of the person who is unable to disclose his consent due to actual impossibility or whose consent is not legally valid, or of another person.
- f) Transfer from a registry open to the public or to persons with a legitimate interest, provided that the conditions for access to the registry required by the relevant legislation are met and the person with a legitimate interest requests it.
- (7) Subparagraphs (a), (b) and (c) of the sixth paragraph shall not apply to the activities of public institutions and organizations subject to public law.

(8) Subsequent transfers of personal data transferred abroad and transfers to international organizations by data controllers and data processors shall also be subject to the safeguards set forth in this Law and the provisions of this Article shall apply.

(9) Personal data may be transferred abroad with the permission of the Board, after obtaining the opinion of the relevant public institution or organization, only in cases where Turkey's or the data subject's interests would be seriously harmed, subject to the provisions of international agreements.

(10) The Provisions of other laws relating to the transfer of personal data abroad are reserved.

(11) The procedures and principles regarding the implementation of this article shall be determined by a regulation.

~~9—(1) Personal data shall not be transferred abroad without explicit consent of the data subject.~~

~~(2) Personal data may be transferred abroad without explicit consent of data subject upon the existence of one of the conditions referred to in Article 5(2) and Article 6(3) of the Law and if in the country where personal data are to be transferred;~~

~~(a) Adequate protection is provided.~~

~~(b) Adequate protection is not provided, upon the existence of commitment for adequate protection in writing by the data controllers in Türkiye and in the relevant foreign country and authorisation of the Board.~~

~~(3) The Board determines and announces the countries with adequate protection.~~

~~(4) The Board shall decide whether there is adequate protection in the foreign country and whether such transfer is permitted under the sub-paragraph (b) of second paragraph, by evaluating the followings and by receiving the opinions of relevant institutions and organizations, where necessary:~~

~~a) the international conventions to which Türkiye is a party,~~

~~b) the state of reciprocity relating to data transfer between the requesting country and Türkiye,~~

~~c) the nature of the data, the purpose and duration of processing regarding each concrete, individual case of data transfer,~~

~~ç) the relevant legislation and its implementation in the country to which the personal data are to be transferred,~~

~~d) the measures committed by the data controller in the country to which the personal data are to be transferred,~~

~~5) Without prejudice to the provisions of international agreements, in cases where interest of Türkiye or the data subject will seriously get harmed, personal data, may only be transferred abroad upon the authorisation to be given by the Board after receiving the opinions of relevant public institutions and organizations.~~

## MISDEMEANOURS (Art. 18)

## KVKK Amendment

**Misdemeanours**

**ARTICLE 18 - (1)** For the purposes of this Law;

a) For those who do not fulfil the obligation to inform provided for in Article 10 shall be imposed to pay an administrative fine of TRY 5.000 to TRY 100.000,

b) For those who do not fulfil the obligations related to data security provided for in Article 12 shall be imposed to pay an administrative fine of TRY 15.000 to TRY 1.000.000 ,

c) For those who do not fulfil the decisions issued by the Board pursuant to Article 15 shall be imposed to pay an administrative fine of TRY 25.000 to TRY 1.000.000,

ç) For those who act contrary to the obligations for registry with the Data Controllers' Registry and for notification provided for in Article 16 shall be imposed to pay an administrative fine of TRY 20.000 to TRY 1.000.000.

d) For those who fail to fulfill the notification obligation stipulated in the fifth paragraph of Article 9 shall be imposed an administrative fine from TRY 50.000 to TRY 1.000.000.000.

(2) The administrative fines stipulated in subparagraphs (a), (b), (c) and (ç) of the first paragraph shall be imposed on data controllers, and the administrative fine stipulated in subparagraph (d) shall be imposed on natural persons and private legal entities who are data controllers or data processors.

(3) Administrative fines imposed by the Board may be appealed in administrative courts.

(34) In the event that the actions listed in the first paragraph be committed within the public institutions and organizations as well as the public professional organizations, the disciplinary provisions shall be applied to the civil servants and other public officers employed in the relevant public institutions and organisations and those employed in the public professional organizations upon the notice of the Board and the result is reported to the Board.

**PROVISIONAL ARTICLE (Art. 3)**

**KVKK Amendment**

**PROVISIONAL ARTICLE 3 -** (1) The first paragraph of Article 9 before it was amended by the Law amending this Article shall continue to be applied until 1/9/2024 with the amended version of the Article that entered into force.

(2) The applications currently being examined by the penal courts of peace as of 1/6/2024 shall continue to be examined by these courts.