

Data Protection & Cybersecurity

Amendments to the Cross-Border Data Transfers

The Turkish Law on the Protection of Personal Data ("LPPD") was amended by the Amendment Law on the Code of Criminal Procedure and Certain Laws ("Amendment Law"), published in March 2024. This Amendment Law introduces several significant changes, including new rules for cross-border data transfers. Additionally, the Regulation on the Procedures and Principles Regarding Cross-Border Data Transfer ("Regulation") was published in July 2024, outlining the procedures and principles for such transfers. These changes reflect a multifaceted approach to cross-border data transfers, moving away from a reliance on explicit consent.

According to the LPPD and the Regulation, data controllers and processors may transfer personal data abroad if an adequacy decision has been issued by the Personal Data Protection Board ("Board") regarding the recipient country, sector, or international organization. Adequacy decisions must be published in the Official Gazette and on the official website of the Personal Data Protection Authority ("Authority"). The Board assesses whether the country, sector, or international organization provides an adequate level of data protection based on the principles outlined in the Regulation. Notably, the reciprocity of personal data transfers between the transferee country, sector, or international organization and Turkey is a key factor in the Board's evaluation process.

Since the publication of the Regulation, the Board has not issued any adequacy decisions regarding countries, sectors, or international organizations, and such a decision is not anticipated in the near future.

In the absence of an adequacy decision, personal data can only be transferred abroad if the following appropriate safeguards are in place:

- An agreement (not of an international nature) with the Board's approval.
- Binding corporate rules with the Board's approval.
- Standard contractual clauses published by the Board, signed and notified to the Board within five days.
- A commitment between the transferring parties to ensure adequate protection, along with the Board's approval.

Ensuring appropriate safeguards alone is insufficient for lawful transfers. The prerequisites for this method include (i) the existence of legal grounds as outlined in Articles



Maral Minasyan

mminasyan@kolcuoglu.av.tr



Bahar Esentürk

besenturk@kolcuoglu.av.tr

5-6 of the LPPD, and (ii) the ability for data subjects to exercise their rights and access effective legal remedies in the transferee country. If these conditions are not met, the presence of appropriate safeguards does not make the transfer lawful.

Currently, the most effective and common method for transferring personal data abroad is through the execution of standard contractual clauses between the transferring parties, with notification to the Board within five days. Other methods require the Board's approval.

The Board has recently published standard contractual clauses in four different modules, tailored to the parties' roles, which are aligned with the GDPR. Although these clauses are available in both Turkish and English, only the Turkish version is legally binding. Signatories must also provide documents verifying their authority, along with notarized translations of any foreign-language documents.

In the absence of an adequacy decision or safeguards, incidental data transfers may occur if the conditions outlined in Article 16/2 of the Regulation are met, allowing for legally compliant cross-border transfers in exceptional circumstances.





Practice Area News

Publication of the Standard Contractual Clauses. On July 10, 2024, the Personal Data Protection Board published four distinct modules of the standard contractual clauses, outlining appropriate safeguards for cross-border data transfers.

Publication of the Standard Contractual Clauses in English. On August 29, 2024, the Personal Data Protection Board published English translations of the standard contractual clauses, which outline appropriate safeguards for cross-border data transfers.

The Guideline for the Cross-Border Data Transfer. The Board is currently working on a guideline for the transfer of personal data abroad, and it is expected to be published soon.

In the Firm

• MENA Super 50 Lawyers

We are excited to announce that our partner Bihter Bozbay İnan is named among "MENA Super 50 Lawyers" by Asian Legal Business, a Thomson Reuters company.



• Our Firm's New Senior Associate

We are pleased to announce our new senior associate, Orcan Çetinkaya.

