

DATA PRIVACY RULES IN TURKEY – RECENT DEVELOPMENTS

The Data Protection Board of Turkey recently clarified the implementation of data privacy rules and has extended the deadline for compulsory registration with the data controllers' registry (VERBIS).

Data controllers are obliged to register with VERBIS under the Data Protection Law (DPL) numbered 6698 (DPL). However, the Data Protection Board noted that it had received numerous incomplete VERBIS registrations, and some that are not required, so the deadline for registration has been extended until 30 June 2020 for:

- Turkish-resident data controllers with more than 50 employees or a balance sheet total over TRY 25,000,000 (approx. EUR 3,750,000); and
- Data controllers resident outside Turkey.

The purpose of VERBIS registration is to provide transparency, so information provided should be accurate, complete and reliable and any changes/updates of such information should be notified to VERBIS within seven days. The Board also reiterates that VERBIS registration should be based on data inventories duly prepared by the data controllers. VERBIS registration not based on a duly prepared data inventory is not sufficient for compliance with applicable data privacy legislation.

VERBIS REGISTRATION FOR BRANCHES OF FOREIGN ENTITIES

The Board was recently asked to advise on whether branches of non-resident legal entities located in Turkey should be registered with VERBIS for personal data processed in Turkey. It has concluded that branches of non-resident legal entities should be registered with VERBIS provided that they act as data controllers.

The complication arises from the fact that, under the legislation, the data controller is defined as an **individual or legal entity** who determines the purposes for which, and means by which, personal data is processed and is responsible for establishing and managing the data registry system.

Accordingly, data controllers should either be an individual or a legal entity pursuant to the rule of law, whereas under Turkish Law, a branch is not considered as a legal entity. However, the Board has adopted a more functional definition by reference to the approach followed by the General Data Protection Regulation (GDPR).

Under the GDPR, a data controller is defined as a natural or legal person, public authority, agency or any other organisation which, alone or jointly with others, determines the purposes and means of the processing of personal data. Accordingly, the definition of data controller under the GDPR provides more flexible scope, with a focus on "determining the purposes and means of the data processing."

SENDING MARKETING MESSAGES

Pursuant to the DPL, either (i) the explicit consent of the relevant data subject should be obtained, or (ii) any other data processing grounds (i.e. where processing is necessary for the performance of a contract to which the data subject is party, or for the purposes of the legitimate interests pursued by the data controller, except where such interests are overridden by the interests or fundamental rights and freedom of the data subject) should be satisfied for data processing.

Some data subjects receiving marketing messages have filed complaints before the Board against the relevant data controlling entities indicating that their explicit consent was not given. The Board has concluded that sending marketing messages without explicit consent of the data subject or without other data processing grounds is not compliant with the DPL, and imposed an administrative fine of TRY 50,000 for each non-compliance. Although the principles of sending commercial electronic messages with marketing and/or promotional purposes are mainly regulated under the Regulation on Commercial Communication and Electronic Commercial Messages (E-Commerce Regulation), the Board has not made a separate assessment in relation to compliance with the E-Commerce Regulation within the context of sending marketing messages.

COMMENTARY

We observe that the Board attempts to ensure full compliance with data privacy legislation, but not simply superficial compliance. These decisions are expected to impact both SMEs and large enterprises. However, there are still certain areas that require further clarification which are expected to be addressed in the forthcoming decisions of the Board.

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