

Memorandum

Circular No : 2017/03

Subject : “Protection of Personal Data” – Obligations and Sanctions

Dear Sir and Madam,

We have previously published a memorandum consists of summary info as to ***‘The Code of Personal Data Protection Numbered 6698’ (hereinafter ‘Code’)***, which is entered into force on 7 April 2016. In response to this memorandum, some detailed information about the Code is requested by our clients, particularly regarding the impact of the Code on the daily operations, the responsibilities and sanctions stipulated in the Code.

First and foremost, we would like to point out that **all proceedings and operations that are carried out or will be carried out after the effective date which is 7 April 2016 must conform with the rules and regulations stipulated in the Code. On the other hand, all the personal data processed before 7 April 2016 are required to brought in compliance with the provisions of the Code until 7 April 2018.**

In order to laying emphasis on the significance and impact of the Code, we listed some examples of the acts carried out in the daily business of your company and that are within the scope of the Code.

- Keeping personal data given by visitors while entering the company,
- Keeping and transferring all kinds of personal data of your staff,
- Regulate any personal data of a natural person in any agreement (employment, franchise, sales agreement etc.) which the company is party to,
- Transferring any personal data of your personal, franchise or customer via sms or whatsapp,
- Recording via camera to confirm person’s identity when needed,
- Recording customers’ voice while making a phone call with them,
- Transferring the personal data of employees to any governmental institutions

and many of the transactions the company frequently make in daily basis, shall be done in certain order in the scope of Code.

SOME LIABILITIES STATED ON THE CODE:

Summarized, the below mentioned liabilities are regulated by the Code;

- Excluding the exceptions determined by the Code, **adequately informing the personal data owners and obtaining their express consent** regarding the process of personal data,
- **Reply and conclusion of requests of personal data owners** related to implementation of the Code **in the required form and within the necessary period**,
- Taking **all kinds of administrative, legal and technical measures to ensure protection and safety** of personal data,
- **Deleteing, removing and anonymization of personal data** in accordance with the Code,
- Constitution of a **“Data Processing System”** and an **“Inventory for Personal Data Processing”** in compliance with the Code,
- Fulfilling the **obligations related to the Registry for Data Supervisor** (The regulations regarding the mentioned registry is in the draft form at the moment and not finalized yet. For this reason the implementation respecting the registry is not clarified at the moment).

SANCTIONS:

1. Criminal Sanctions:

Turkish Penal Code (TPC) is implemented for crimes related to personal data and imprisonment for a period of **1 to 4 years** is regulated in the cited Code in case of violation of the same. The following regulations shall apply:

- **TPC 135:** Anyone who illegally **records** personal data shall be punished with **imprisonment for a period of one to three years**. In cases of processing sensitive data, the cited punishment period shall be **increased by one – half of the imprisonment**.
- **TPC 136:** Anyone who illegally **forward, distribute or obtain** personal data shall punished with **imprisonment for a period of two to four years**.
- **TCK 138:** In cases where those who are obliged to **remove data within the system** do not fulfill their duties despite the periods determined by law, they shall be punished with **imprisonment for a period of one to two years**.
- **The 17th Article of the Code:** In cases where personal data **are not deleted or anonymized**, **imprisonment for a period of one to two years** are foreseen.

2. Administrative Fines:

- For those who do not fulfill their duty to inform the personal data owner 5.000 Turkish Liras to 100.000 Turkish Liras,
- For those who do not fulfill their obligations related to data safety 15.000 Turkish Liras to 1.000.000 Turkish Liras,
- For those who do not enforce resolutions of the Personal Data Protection Board 25.000 Turkish Liras to 1.000.000 Turkish Liras and
- For those who act against the obligation to register in the Registry for Data Supervisor and against the notification obligations 20.000 Turkish Liras to 1.000.000 Turkish Liras fines are foreseen.

3. Compensation:

Data Supervisor and data processor (*natural person and legal entity who process personal data on behalf of data supervisor by the authorization given by the same*) may be obliged to **jointly** pay **moral and material indemnities** to personal data owner.

Best Regards,

TILEGAL LAW FIRM