

## Summary of Guidelines on the Transfer of Personal Data Abroad from Türkiye

On 2 January 2025, Turkish Personal Data Protection Authority ("**Authority**") published the much-anticipated guidelines ("**Guidelines**") on the implementation of the conditions for the transfer of personal data abroad, following the amendments made on 12 March 2024.

The Guidelines aim to provide a legal framework for the transfer of personal data abroad, aligning with European Union legislation and the criteria established by the Turkish regulatory authorities. Specifically, it addresses the following key points:

- The implications of Law No. 6698 on the Protection of Personal Data ("**Law**") concerning data transfers across jurisdictions;
- Clarification of the concept of transferring personal data abroad ("**Transfer Abroad**");
- The principles and procedures for complying with the conditions outlined in Article 9 of the Law.

Given the amendments to the Law, it is crucial for stakeholders—particularly data controllers and entities involved in personal data processing activities that entail transfers abroad—to plan their processes in accordance with the Guidelines.

Below we provide a summary of  
key highlights from the Guidelines





## How was Data Transfer Abroad Conducted Previously?

Until 1 June 2024, a total of **86** commitment letter applications were submitted to the Personal Data Protection Authority ("**Board**"), yet **only ten** of them were approved. Additionally, while applications for Binding Corporate Rules were also made, none were approved due to procedural and substantive deficiencies.

As a result, in practice, personal data was predominantly transferred abroad by obtaining the explicit consent of the data subjects. However, this approach posed significant challenges, particularly in the use of cloud-based software—widely employed in commercial life—that is predominantly hosted abroad. Complying with the law under these circumstances became almost impossible. This situation hindered domestic companies' ability to engage in international collaboration and acted as a barrier to attracting foreign investments into the country.

In contrast, with the introduction of the General Data Protection Regulation ("**GDPR**") in 2018, the European Union implemented new mechanisms to provide greater flexibility for data transfers, taking into account the dynamics of digitalisation and commercial activity.

Following these developments, Article 9 of the Law regulating the transfer of data abroad has been amended in line with the GDPR. This amendment now allows for the possibility of sector-based qualification decisions, introducing a more flexible framework for data transfers.



## What is the Territory Scope of the Law?

Unlike the GDPR, the Law does not include specific provisions regarding its scope of implementation in terms of territory. However, the Guidelines provide much-needed clarification on this matter.

In the evaluation outlined in the Guidelines, the territory scope of the Law is interpreted based on the principle of "effect" rather than the principle of "ownership." This means that the protection of personal data is not limited to parties physically located in Türkiye. Instead, it extends to parties abroad, as long as their activities impact the personal data of data subjects within Türkiye.



## What are the Criteria for Data Transfer Abroad?

Sending, transferring or making personal data accessible from Türkiye to a party abroad may not directly constitute a Transfer Abroad. The Guidelines emphasise this distinction and clarify that compliance with Article 9 of the Law will only be required for activities that qualify as a Transfer Abroad.

In this context, the Guidelines outline three key criteria that determine whether a Transfer Abroad has occurred. If all three criteria are met, the conditions outlined in Article 9 of Law must be followed, regardless of whether the parties involved in the transfer are physically located in Türkiye:

- |   |   |   |
|---|---|---|
| <p><b>i. Transfer Between Parties Other Than the Data Subject:</b> A transfer must occur between parties other than the data subject. Specifically, a party acting as a data controller or data processed under the Law ("<b>Responsible Party</b>") must transfer personal data to a party abroad who also qualifies as a Responsible Party under the Law;</p> | <p><b>ii. Personal Data must be Transmitted Abroad:</b> The personal data processed by the Responsible Party initiating the transfer must be transmitted to or made accessible in a foreign country (e.g., account creation, cloud storage)</p> | <p><b>iii. The Receiving Party must be Located Abroad:</b> The Responsible Party to whom the personal data is transmitted or made accessible must reside or operate in a foreign country.</p> |
|---|---|---|



## Is Compliance with the Law Still Necessary If There is No Transfer Abroad?

Transfers that do not meet all three criteria are not classified as a Transfer Abroad and, therefore, are not subject to the conditions outlined in Article 9 of the Law.

However, if such a transfer constitutes a personal data processing activity under the scope of the Law, compliance with other provisions of the Law—such as the obligation to provide disclosure or the requirement to register with VERBIS (Data Controllers' Registry Information System)—remains mandatory.

## - Guidelines Examples -

Circumstances that Do Not Constitute a Transfer Abroad	Circumstances that Constitute a Transfer Abroad
<ul style="list-style-type: none"> <li>• <b>Direct Transfer by the Data Subject:</b> When a data subject residing in Türkiye fills out an online form with their name, surname and e-mail address to arrange the delivery of a purchased item to their address in Türkiye, and the website is operated by a company based in a third country that targets the Turkish market, the personal data is directly transferred by the data subject to the company. Since the personal data is not transferred by a data controller or processor, but rather obtained directly from the data subject, this does not constitute a transfer of personal data abroad.</li> <li>• <b>Online Reservations via Foreign Platform:</b> Similarly, if a data subject makes an online reservation through a platform operated by a hotel reservation website based abroad, the personal data is directly transferred by the data subject to the foreign company. This does not qualify as a transfer of personal data abroad, as the data subject provides their information directly.</li> </ul>	<p>The following scenarios are considered transfers of personal data abroad:</p> <ul style="list-style-type: none"> <li>• <b>Employee Data Uploaded to Centralised Systems:</b> When a group company based in Türkiye uploads employee information to a centralised human resources system provided by its parent company located abroad.</li> <li>• <b>Hotel Reservations via Online Travel Agencies:</b> When a data subject residing in Türkiye makes a reservation at a hotel abroad through an online travel agency, the travel agency collects the personal data in Türkiye and shares it with the hotel located abroad.</li> <li>• <b>Data Transfers to Sub-Processors Abroad:</b> A data processor in Türkiye transfers personal data to a sub-processor located in another country, such as a cloud service provider.</li> </ul>



## What are the Eligibility Requirements for Transfers Abroad?

Article 9 of the Law outlines two main components for the lawfulness of personal data transfers abroad: (i) Prerequisite and (ii) Three-tier System

(i) **Prerequisite:** Before detailing the three-tier system in the Guidelines, the Authority highlights that for personal data to be lawfully transferred abroad, one of the personal data processing conditions outlined in Articles 5 and 6 of the Law must first be met.

Therefore, for the transfer of personal data abroad to be lawful: (i) The activity must comply with the definition of a Transfer Abroad, (ii) The conditions for data processing specified in the Law must exist, and (iii) A three-tier assessment must then be conducted.

PREREQUISITE*			
<b>Are There Any Personal Data Processing Conditions Specified in Articles 5 and 6 of the Law?</b>	Yes	➔	<b>Is it possible to transfer abroad?</b> If the conditions for personal data processing specified in Articles 5 and 6 of the Law are met, a transfer abroad can be made, provided the result of the three-tier evaluation is "Yes".
	No	➔	If the conditions for personal data processing are not met, the transfer abroad cannot be made, regardless of the three-tier evaluation.
THREE-TIER EVALUATION			
1. Adequacy Decision	2. Appropriate Safeguards	3. Exceptional Transfer*	Is it possible to transfer abroad?
Yes	No	No	Yes
No	Yes	No	Yes
No	No	Yes	Yes
No	No	No	No

## **Is Compliance with the Prerequisite Necessary in Exceptional Transfer Cases?**

No. In cases of exceptional transfers, transfers may be made without the need to check compliance with Articles 5 and 6 of the Law.

However, it is now regulated as an exception. Personal data may be transferred abroad without the explicit consent of the data subject, provided that

(ii) **Three-tier Assessment:** Before the amendment of the Law, explicit consent was required for the data transfers abroad. However, it was not regulated as an exception. Personal data may be transferred abroad without the explicit consent of the data subject, provided that: (i) the Prerequisite condition exists and (ii) one of the three steps in the assessment is satisfied.

Accordingly, if an adequacy decision (the first tier) is available for the personal data processing activity, the transferring parties may lawfully transfer personal data abroad based on this decision, regardless of the subsequent tiers.

## **First Tier - What is the Adequacy Decision?**

An **adequacy decision** is a determination made regarding whether a foreign country is "suitable" for the transfer of personal data from Türkiye. The Authority is authorised to issue an adequacy decision concerning a foreign country, an international organisation, or a specific sector within a foreign country.

If the Authority has issued an adequacy decision for a particular country or sector, the first-tier assessment is deemed sufficient, allowing for the lawful transfer of personal data to that country or sector.

The Guidelines provide an example where an adequacy decision could be made specific to the automotive sector.

## **Is the Adequacy Decision Valid Indefinitely?**

According to the Guidelines, the adequacy decision is not valid indefinitely. The conditions for the adequacy decision and the review of previously made decisions must be assessed every four years. During this review, compliance with local legislation will be evaluated, and the status of being a party to Convention No. 108 will be considered a primary factor.

Currently, no adequacy decision has been issued by the Authority. Therefore, parties engaged in foreign data transfers must consider the second and third tiers of the assessment process.

## **Second Tier - What are the appropriate safeguards?**

If there is no adequacy decision under the first tier, personal data may still be transferred abroad under the following conditions: (i) the appropriate safeguards must be in place; and (ii) the data subject must have the opportunity to exercise their rights and seek effective legal remedies in the country where the transfer will be made.

**1 Appropriate Assurance – Inter-Institutional Agreement and Institutional Authorisation:** An agreement that is not an international agreement between public, international or professional organisations must be in place, and the permission of the Authority is required:

- This type of agreement, which is not classified as an international agreement, must be concluded between the parties involved in personal data transfer. The Authority's opinion should be consulted during the negotiation process;
- The provisions of the agreement related to personal data protection should be detailed to ensure compliance with the standards set by the Authority

**Example:** An administrative agreement between the Turkish Medicines and Medical Devices Agency and the European Commission.

**2 Appropriate Assurance – Binding Corporate Rule and Authority Authorisation:** Binding corporate rules (“**BCRs**”) can be used for foreign transfers within a group company:

- A data controller or processor in Türkiye may apply to the Authority for binding corporate rules for Transfer Abroad made to a data controller or processor in another country within the same corporate group. These rules must be approved by the Authority before being implemented for the transfer of personal data.

**3 Appropriate Assurance – Standard Contract:** A standard contract, as announced by the Authority, must be in place and notified to the Authority;

- The texts announced by the Authority must be used in their original form, without modification.
- The contract must be signed by the parties involved in the data transfer or their authorised representatives.
- The signed contract must be submitted to the Authority within five business days of signing.

**4 Appropriate Assurance – Written Undertaking and Authorisation of the Authority:** This is the situation where a written commitment letter containing the provisions that ensure adequate protection regarding the transfer is prepared and authorisation is obtained from the Institution.



## Third Tier - What are Exceptional Transfers?

With the amendment to the Law, a distinction has been made between continuous transfer and exceptional transfer in Transfer Abroad. For continuous and recurring Transfer Abroad processes, compliance with the conditions in the first or second tier is required.

However, for Transfer Abroad processes that are non-recurring, exceptional, and outside the ordinary course of action (and that do not fall under the conditions listed in the first and second tiers), the transfer may still be made under one of the following conditions as a *last resort eligibility criterion* in the third tier. In such cases, the permission of the Authority or application to the Authority is not required.

The following conditions apply

- i. **Explicit consent:** If the explicit consent of the data subject is obtained after they are informed of the risks related to the Transfer Abroad;
- ii. **Contract Performance:** 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 at the request of the data subject.
- iii. **Contract for the Benefit of the Data Subject:** If the transfer is necessary for the establishment or performance of a contract between the data controller and another party for the benefit of the data subject.
- iv. **Overriding Public Interest:** If the transfer is necessary for an overriding public interest;
- v. **Establishment, Exercise, or Protection of a Right:** If the transfer is necessary for the establishment, exercise or protection of a right;
- vi. **Life or Physical Integrity:** If the transfer is necessary to protect the life or physical integrity of the person who is unable to express their consent, or for the life or physical integrity of another person;
- vii. **Public Register:** If the transfer involves information from a public register, and the necessary conditions for access to the register are met, with the request coming from a person with a legitimate interest.



## Which Circumstances are Considered Exceptional Transfer Activities?



Continuous Activity	Exceptional (Incidental) Activity
<ul style="list-style-type: none"> <li>• Granting the data recipient direct access to a database is considered a regular and continuous transfer.</li> <li>• Transfers made by a tourism company regarding the reservation information of its customers are not exceptional, as they are part of company's ordinary business operations.</li> <li>• If a company group conducts payroll and human resources activities abroad as part of its business operations, it is considered regular and continuous, thus not exceptional.</li> </ul>	<ul style="list-style-type: none"> <li>• It is incidental for travel agencies to transfer the personal data of their individual customers to hotels or other commercial partners for the purpose of organising accommodation abroad.</li> <li>• The transfer of personal data of a sales manager travelling abroad to meet different customers as part of their employment contract is incidental.</li> <li>• It is incidental for a Turkish company to transfer personal data to another company abroad in order to fulfil a customer's payment request.</li> </ul>



## How to be informed About Possible Risks in Case of Data Transfer Abroad Based on Explicit Consent?

When data transfer occurs based on explicit consent, the data subject must be informed about specific risks associated with the transfer. This includes the possibility that their personal data may be sent to a country that does not provide adequate protection or where sufficient security measures are not in place to safeguard the data.

The purpose of this information is to ensure that the data subject gives explicit consent with full awareness of the potential risks involved.

The Guidelines provide examples of such risks, which may include:

- The absence of a supervisory authority in the country to which the data is transferred.
- The lack of data processing principles or data subject rights in the country of transfer.



## Which Party is Responsible for Data Security in Transfers Abroad?

Within the scope of the Guideline, it is emphasised that not only the data controller, but also the data processor is responsible for ensuring data security if a Transfer Abroad is carried out by the data processor.



If you require assistance with personal data transfer processes abroad or with personal data protection legislation, please feel free to contact our **Data Protection Law Department.**

*This content has been prepared from publicly available sources and taking into account the content of the guide published by the Personal Data Protection Authority on its website. The content has not been created for the purpose of legal counselling, advocacy service, or other service or for the purpose of advertisement or promotion of such service.*

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