

**THE ISSUE OF TRANSFERRING PERSONAL DATA ABROAD WITHIN THE SCOPE OF
THE DECISION NO. 2020/559 OF THE PERSONAL DATA PROTECTION BOARD**

The Turkish Personal Data Protection Board ("Board"), within the scope of the investigation that it conducted upon the complaint of a data subject regarding the SMS's sent by a data controller operating in the automotive sector for advertising/information purposes, has decided that the "Convention for the Protection of Individuals Against Automatic Processing of Personal Data" ("Convention No. 108"), which was enacted shortly before the entry of the Law No. 6698 on the Protection of Personal Data ("Law") into force on 07/04/2016, cannot be the sole legal basis for the transfer of personal data abroad.

As is known, the countries which are deemed to have adequate level of protection for the transfer of personal data have not yet been announced by the Board and that the finalization of the written contracts executed between the transferor and the transferee in abroad submitted for the approval of the Board regarding the adequate protection is ensured for the transfer of data abroad, takes a significant amount of time. Under such circumstances and with this decision by the Board following its Amazon Turkey decision, it is understood that the Board is pointing out that obtaining of explicit consent of the data subject as the sole mean for the transfer of personal data abroad.

Apart from the practical difficulties of obtaining explicit consent from all data subjects whose personal data is transferred abroad through the information and communication systems services used by the data controllers, the process of withdrawing explicit consent will undoubtedly lead to distinctly other serious problems, such as the retrieval of personal data of the data subjects who withdrew their explicit consent from abroad to local servers.

In this respect, it is of great significance and urgency that the Board announces the list of "countries which have adequate protection", considering that it does not consider Convention No. 108 as a sufficient legal basis for the transfer of personal data abroad alone and that almost 5 years have passed since the enactment of the Law.

Kind Regards,

Koyuncuoğlu & Köksal Law Firm

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