

## INFORMATION NOTE REGARDING PERSONAL DATA PROTECTION AUTHORITY'S DECISION ON THE EX OFFICIO INVESTIGATION CONDUCTED ON THE WHATSAPP APPLICATION

Personal Data Protection Board's ("Board") Decision numbered 2021/891 on the Ex Officio Investigation Conducted on the WhatsApp Application was published on the Personal Data Protection Authority's website on September 3, 2021.

As is known, WhatsApp LLC updated its Terms of Service & Privacy Policy, declaring that the users' explicit consent on processing and transferring their data to third parties abroad is necessary to continue using WhatsApp. Otherwise, these accounts will be deleted.

According to the Ex Officio investigation initiated in the scope of Personal Data Protection Law ("PDPL") numbered 6698 Article 12 Subsection, the Board has identified that; WhatsApp Terms of Service is a contract entered with the user and it cannot take effect unless it is approved. Additionally the WhatsApp Privacy Policy is a fundamental part of it.

Our explanations regarding the rationale and the legal basis of the Board's infringement decision in light of these findings is presented below.

Reason of Infringement	Legal Basis of Infringement Decision
<ul style="list-style-type: none"><li>Obtaining a single explicit consent from the data subjects regarding personal data processing and transferring to third parties residing abroad, without offering alternate options,</li><li>Presenting the activities of transferring and processing personal data to the data subjects in a single text,</li><li>Making the processing of personal data into a part of the contract and imposing explicit consent as a condition of service.</li></ul>	Violation of the <i>freely given</i> explicit consent.
<ul style="list-style-type: none"><li>Obtaining consent on the conditions that were presented without allowing for negotiation.</li></ul>	Violation of the " <i>Lawfulness and fairness</i> " principle partaking in <b>Article 4 of PDPL</b> .
<ul style="list-style-type: none"><li>Requesting explicit consent for the transfer of all the personal data that is processed,</li><li>Personal data not being limited and proportionate to the purposes of processing,</li><li>Not revealing clearly which data will be transferred and for what purpose.</li></ul>	Violation of the "a) <i>Being processed for specified, explicit and legitimate purposes</i> " and "b) <i>Being relevant, limited and proportionate to the purposes for which they are processed</i> " principles partaking in <b>Article 4 of PDPL</b>
<ul style="list-style-type: none"><li>Failure to request explicit consent for transferring personal data.</li><li>Failure to apply to the Board for the commitment letter.</li></ul>	Violation of <b>Article 9 of PDPL</b> titled " <i>Transfer of personal data abroad</i> ".
<ul style="list-style-type: none"><li>Failure to obtain explicit consent on processing</li></ul>	Unlawfulness

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activities carried out by cookies for data profiling purposes.	
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As a result, the Board has decided to;

**a)** By Article 18(1)(b), impose a 1.950.000 TL administrative fine on the data controller WhatsApp who has **failed to take necessary technical and administrative measures to ensure data security** within the framework of Article 12(1) of the PDPL,

**b) Instruct** the data controller to make the texts of the Terms of Service and Privacy Policy conform to the law and make proper disclosure under the provisions of the PDPL Article 10 with the Communique on Principles and Procedures to be Followed in Fulfillment of The Obligation to Inform.

Regards,

***Koyuncuoğlu & Köksal Law Firm***

\*As the explanations given in our newsletter are prepared pursuant to the legislation in effect in the Republic of Turkey and the disclosures made to the public by the relevant official authorities, in case of uncertainty, we advise you to seek advice and support from us before the final transactions are carried out. Otherwise, our Law Firm cannot be held responsible for the actions to be taken on the basis of the explanations contained herein and the consequences of such actions.