

The Turkish Data Protection Authority (“TR DPA”) published the Guidelines on Cross-Border Data Transfers (“Guidelines”).

The TR DPA started the new year by publishing the Guidelines which address the newly introduced procedures and principles regarding the cross-border personal data transfers.

Although the Guidelines mostly expand on existing provisions of the TR DPL and the Regulation on Cross Border Transfers (“Regulation”), our takeaways from the Guidelines are as follows.

- 1. Definition of Cross-Border Transfers:** By referring to the definition provided in the Regulation, the TR DPA defines 3 criteria that should be met for a transfer to be considered as a cross-border data transfer:
 - (i) the data exporter (data controller or data processor) should be subject to the TR DPL for the relevant data processing activity,
 - (ii) personal data processed by the data exporter should be transmitted or otherwise made available, and
 - (iii) the data importer (data controller or data processor) should be located in a third country, regardless of whether it is subject to the TR DPL or not.

Territorial scope: The Guidelines make reference to the principle of territoriality (*mülkiyet ilkesi*) regulated under the Turkish Penal Code No. 5237 since there is no explicit provision in the TR DPL for determining of its territorial scope. However, the Guidelines further underline the fact that the strict application of the principle of territoriality does not serve the purpose of ensuring an effective protection in view of the emergence and widespread use of technologies that enable cross-border data processing. The TR DPA therefore concludes that when interpreting the territorial scope, the principle of effect (*etki ilkesi*) should be applied instead of the principle of territoriality. In fact, in one of the example scenarios provided in the Guidelines, the TR DPA illustrates that processing activity in relation to orders received through a website operated by a third country company that is not resident in Turkey but targets data subjects in Turkey falls within the territorial scope of the TR DPL.

No “exporter”: The Guidelines clarify that the second criterion cannot be considered as fulfilled (i.e., there is no cross-border data transfer) when there is no controller or processor transferring or making the data available to another controller or processor, such as when personal data is directly collected by a data controller or processor outside of Turkey.

- 2. Fulfilling the Annexes of SCCs:** While brief explanations were already available under the SCCs annexes, the Guidelines provide clarification and further details.

Data subject group(s): The Guidelines draw attention to the fact that the personal data transferred should be explicitly associated with the relevant data subject groups.

Categories of personal data: The Guidelines further elaborate on the information that should be included in the SCC annexes under the title of “Categories of Personal Data Transferred”. Accordingly, the personal data subject to transfer should be indicated by their category and type (for instance, Contact Information: E-mail address, phone number, address).

Data exporter’s Data Controllers’ Registry Information System (“VERBIS”) details: The Guidelines underline the fact that the information provided in the annexes by the data exporter must be compatible with VERBIS records.

- 3. Transfers for Specific Situations:** In line with the Regulation, the Guidelines emphasize that for a cross-border transfer to be considered as non-repetitive, the following conditions should be met; the transfer should (i) not take place on a regular basis, (ii) occur only once or a few times, (iii) not be continuous, and, (iv) not be in the normal course of business. It is therefore expected that the TR DPA would strictly interpret non-repetitive transfers.

Conclusion

Companies who wish to engage in cross-border transfers are expected to carry out their compliance efforts in line with the amendments made to the TR DPL and provisions of the Regulation.

You may access the Guidelines in Turkish language through the link below:

[The Guidelines on Cross Border Data Transfers](#)

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