

The Regulation on Deletion, Disposal or Anonymization of Personal Data is Published

Abstract

The Regulation on Deletion, Disposal or Anonymization of Personal Data (the “**Regulation**”) was published in the Official Gazette dated October 28, 2017 and numbered 30224 and it will be effective as of January 1, 2018. The Regulation contains provisions parallel to the draft regulation on Deletion, Destruction or Anonymization of Personal Data (“**Draft Regulation**”) which was presented to the public opinion by the Personal Data Protection Board (the “**Board**”) a few months ago.

Under Article 4 of the Regulation, destruction is defined as the deletion, disposal and anonymization of personal data. These methods are limited in number and the personal data cannot be destroyed through any other method apart from these. The Data Controller may prefer any one of these methods to destruct the personal data, unless otherwise decided by the Board.

These destruction methods are defined in the Regulation as follows:

- **Deletion:** The process of making personal data inaccessible and irrevocable for Related Users.
- **Disposal:** The process of making personal data inaccessible, irreversible and non-reusable for anyone.
- **Anonymization:** Disabling the personal data to be associated with a specific or identifiable real person, even if the personal data is matched/paired off with another data.

Article 4 of the Regulation provides a definition for the "Related User". Accordingly, the Related User refers to the persons who process personal data within the Data Controller's organization or with the authority and direction of the Data Controller, except for the persons responsible for the technical storage, protection and backup of personal data (e.g. the employees working at the Information Technology department of a company do not fall within the scope of this definition). Destruction of personal data was not clear enough under the Draft Regulation due to the lack of an explicit definition for the Related User. Thus, we are of the view that providing a separate definition for the Related User in the Regulation is very useful.

Article 7 of the Regulation stipulates that all transactions relating to the deletion, disposal and anonymization of personal data will be recorded and such records will be kept for a period of at least three years besides the other legal obligations.

Data Controller is obliged to take all necessary technical and administrative measures regarding the deletion, disposal and anonymization processes within the scope of Regulation. However, the Regulation does not include any explicit provision or reference as to which standards these technical and administrative measures refer to.

Pursuant to Article 5 of the Regulation and Article 16 of the Law on the Protection of Personal Data ("LPPD"), Data Controller who are obliged to be registered to the Data Controller Registry will be liable to prepare a personal data retention and destruction policy in accordance with the personal data processing inventory. Article 16 of the LPPD stipulates that the Board may make an exception for the registration requirement before the said registry. by way of taking into account objective criteria, (e.g. the nature and number of the processed data, legal grounds for processing personal data or transferring personal data to third parties). If such exception is foreseen, the relevant Data Controller will neither have to be registered before the Data Controller Registry nor prepare a personal data retention and destruction policy.

The personal data retention and destruction policy should contain information regarding the preparation of such policy, definitions of the legal and technical terms involved, explanations of legal, technical or other grounds requiring the retention and destruction of personal data, the measures taken for the protection of personal data, etc. The policy should also set out periodic destruction periods. Periodic destruction was defined under Article 4/ğ of the Regulation as follows: "The personal data should be deleted, disposed or anonymized at certain intervals stated in the retention and destruction policy if the reasons requiring the processing of personal data under the LPPD disappear". For instance, a CV may be considered valid for a few years since an employee candidate will gain additional qualifications and the CV will not be an up-to-date document in a few years period. To this end, the Data Controller may set out a destruction period of 3 years for the personal data belonging to employee candidates. This should be regulated under the personal data retention and destruction policy and the Data Controller should destroy the relevant personal data upon 3 years.

The Data Controller is also liable to disclose the relevant methods applied for the deletion, disposal and anonymization of personal data in the relevant policies and procedures.

Provisional Article 1 of the LPPD states that the secondary legislation stipulated under the LPPD will be enacted within one year. However, no secondary legislation was published within the said one year period. For this reason, the publication of the Regulation is significant in terms of expanding the enforcement of the LPPD as of 2018. In addition, the Regulation facilitates the practice of the LPPD compared to the Draft Regulation.

Nilgün Serdar Şimşek, LL.M.

Partner, Attorney

T: +90 (212) 326 63 68

nilgun.simsek@gshukuk.com

İpek Okucu Taftalı

Senior Attorney

T: +90 (212) 326 60 60/3881

ipek.okucu@gshukuk.com