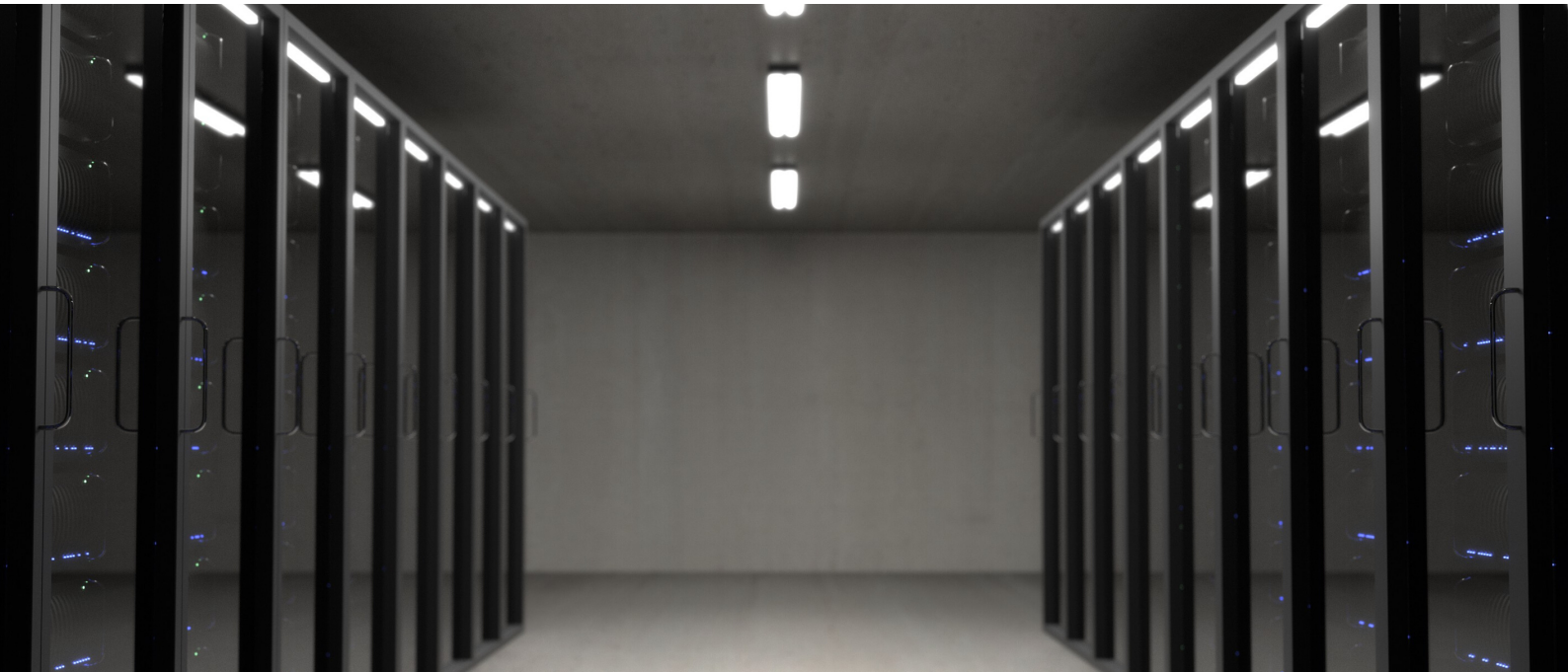


PRIVACY MONTHLY

A MONTHLY NEWSLETTER ON PRIVACY & DATA PROTECTION
DEVELOPMENTS IN TURKEY



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IMPORTANT REMINDER

DEADLINE FOR REGISTRATION WITH DATA CONTROLLERS' REGISTRY IS DECEMBER 31, 2019

This requirement is applicable to all data controllers that collect data from Turkey, including the controllers that are not located in Turkey. Read more on page 2.



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COUNTDOWN FOR COMPLIANCE - VERBIS REGISTRATION

By Burak Özdağıstanlı

A very important step for compliance with the data protection law (Law on Protection of Personal Data w. no 6698 – “Law”) is the Verbis Registration (Data Controllers’ Registry) and the last day to register with Verbis is December 31, 2019.

Therefore, if your company is a data controller that collects and process personal data of individuals from the Republic of Turkey, it is very crucial for your organization to take the necessary steps.

Is My Organization Required to Register?

Yes, if;

- a) your organization is a data controller based abroad Turkey but collects and processes personal data from Turkey,
- b) if your organization is a data controller located in Turkey with 50 or more employees and an annual turnover of more than try 25.000.000, or
- c) if your organization is data controller in Turkey with the core business of processing sensitive personal data (i.e.. Hospitals, doctors etc.) *(certain exemptions apply i.e. attorneys, notary public etc. are not required to register regardless of the turnover and employee number)

What Happens If My Organization Does Not Register?

The deadline is December 31, 2019. You can still register after the deadline but if you miss this deadline you may be subject to an administrative fine of up to TRY 1.470.000 given by the Data Protection Authority. Moreover, having been fined by the DPA may have reputational damage as well.



What Steps My Organization Should Take If I Believe My Organization Is Required to Register?

First step should be to prepare/update your personal data inventory. Your personal data inventory will be the basis and source for the entry to the Verbis.

If your organization is a data controller located abroad, you must first duly appoint a Turkish Real Person or Legal Person as Data Controller Representative.

Only after appointing a Data Controller Representative, the Data Controller Representative can start the entry on behalf of your organization.

After this, you must appoint a Turkish citizen as contact person on Verbis. If your organization is a data controller located in Turkey, you can personally start and finalize the entry on behalf of your organization and it is not required to appoint a Data Controller Representative however you must appoint a Turkish citizen as a contact person on Verbis.

How Long Does It Take to Register?

Verbis uses a drop-down interface to enter data about the category of personal data, data subject, retention time, legal grounds for processing, purpose etc.

Therefore, if you have a readily available Personal Data Inventory, the registration can be finalized within hours. If not, please prepare your Personal Data Inventory as soon as possible.

VERBIS REGISTRATION OF BRANCHES AND LIAISON OFFICES OF FOREIGN COMPANIES



By Büşra Tilkioğlu

On October 7, 2019, the Turkish Personal Data Protection Authority ("the Authority") published a new decision summary on its website.

The Authority's decision w. no. 2019/225 covers the VERBIS registration (Data Controller Registry) requirement of branches and liaison offices of non-resident legal persons in Turkey.

With this decision; it is decided that the branches of non-resident legal persons in Turkey shall be registered under certain conditions however the liaison offices do not have to register.

The Authority made the following assessments in its decision;

According to the Law on Protection of Personal Data ("**the Law**") w. no. 6698; *"The Data Controller is the natural or legal person who determines the purpose and means of processing personal data and is responsible for establishing and managing the data registry system."*

Under the subparagraph 4 of Article 7 of the General Data Protection Regulation ("**GDPR**"); *'the data controller'* means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.

A more comprehensive definition has been given in the GDPR and according to this definition; although the branches of commercial enterprises do not have legal personality, it is clear that they may be defined as data controllers.

In the subparagraph 3 of Article 40 of the Turkish Commercial Code ("**TCC**") it is stipulated that *"The branches of the commercial enterprises whose centers are located in Turkey are registered to the Trade Registry and published."*

According to the subparagraph 4 of the same article *"The branches of the commercial enterprises whose centers are located abroad are registered like domestic commercial enterprises."* Pursuant to these provisions, the branches of non-resident legal persons in Turkey are required to be registered in the trade registry like the domestic commercial enterprises.

Although the Law stipulates that it is required to be a natural or legal person in order to have the capacity of the data controller, such a requirement is not stipulated in the GDPR and the registration of the branches such as domestic commercial enterprises is required under Article 40 of the TCC.

Therefore the Authority decided that the branches located in Turkey of non-resident legal persons may be deemed data controllers.

According to the definition of the data controller under the Law; if the branches located in Turkey of a non-resident legal person determine the purpose and means of processing personal data and is responsible for establishing and managing the data registry system, those branches must be considered as data controllers.

The registration obligation arises under certain conditions to the branches located in Turkey. The branches of non-resident legal persons in Turkey with an annual number of employees of more than 50 or with the total annual financial balance sheet of more than TRY 25 million are obliged to with the VERBIS.

If the conditions are fulfilled, both the non-resident legal person and the branch must be registered with the VERBIS. Therefore, it is important to note that there will be two registrations in Turkey.

The branches located in Turkey of a non-resident legal person that do not meet the above requirements have no obligation to register.

Further, liaison offices are evaluated differently. In order to open a liaison office in Turkey; the legal persons of the companies should be established according to the foreign laws and these liaison offices should not engage in commercial activities in Turkey. Considering that they do not carry out commercial activities and do not have branch characteristics, the Authority decided that there is no obligation to register for liaison offices.

In light of all these explanations; it should be noted that the deadline for VERBIS registration is December 31, 2019. The administrative fine for not registering by the deadline is TRY 1.470.583 for this year. However, as of 2020, the penalty will be increased according to the new raise rates.

MINIMUM REQUIREMENTS IN DATA BREACH NOTIFICATIONS ADDRESSING DATA SUBJECTS

By Büşra Tilkioğlu

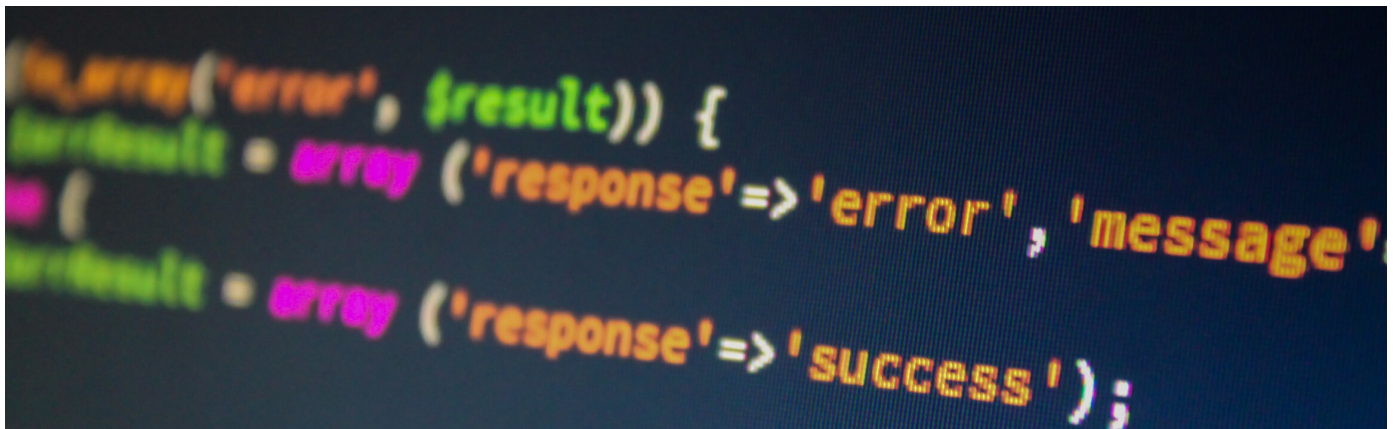
On October 15, 2019 The Turkish Personal Data Protection Authority ("the Authority") published a new decision numbered 2019/271 regarding the minimum requirements that must be included in data breach notifications that address data subjects.

According to the subparagraph 1 of Article 12 of the Law on Protection of Personal Data w.no.6698 ("the Law"), the

If the contact address of the person is available, it will be notified directly, and if not, this notification should be made by publishing the details of the breach on its website. In this context, the Authority has determined the minimum elements to be included in the notification.

Firstly, according to the said decision of the Authority, the notification of breach should be made in a clear and simple language. At the same time, the notification shall at least have the following elements;

- Time of the data breach,
- Which personal data is affected by the breach (personal data or personal data of special nature)
- Possible consequences of the personal data breach,
- The measures which are taken or proposed to take in order to reduce the negative effects of the data breach
- Name and contact details of the contact persons to ensure that the related persons receive information on the data breach or the full address of the data controller's web page, and call center, etc. contact ways.



data controllers are obliged to take **all necessary technical and administrative measures to provide a sufficient level of security** in order to:

- a) Prevent unlawful processing of personal data,
- b) Prevent unlawful access to personal data, and
- c) Ensure the retention of personal data.

In paragraph 5 of the same article; it is stipulated that if unauthorized persons get a hold of the processed data through unlawful methods, the data controller shall notify the data subject and the Authority as soon as possible.

Where necessary, the Authority may announce such breach at its official website or through other methods it deems appropriate. Further, under the Authority's decision on the same issue dated January 24, 2019, the Authority stated that the person affected by the data breach should be informed of this situation as soon as possible.

The necessary measures should be taken by the data controller as soon as possible to minimize the harm of the person affected by the data breach. The related person must be informed of such data breach within a reasonable time and this notification shall contain minimum elements in order for these measures to be taken as soon as possible.

According to the subparagraph 5 of Article 12 of the Law, if the data breach is not notified, the Authority may apply administrative fine. Although it is regulated for cases where no notification is made, the same penalty may also be encountered in case of incomplete notification. Therefore, the notification of the data breach should be made as soon as possible with minimum elements.