



# STRUCTURE AN DUTIES OF THE PERSONAL DATA PROTECTION BOARD





# 1. Introduction

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The Personal Data Protection Board, which is the decision-making body of the Authority, is established by law. The Board is set up to be independent in line with the CoE Convention No 108 and EU Directive 95/46/EC. The Law rules that the Board performs and exercises the duties and powers conferred on it under the Law and other legislation independently and under its own responsibility; and no body, authority, office or person can give orders and instructions, recommendations or suggestions to the Board on matters falling within the scope of its duties and powers. This provision has great importance in terms of the Authority's ability to carry out its duties independently.

## 2. Board Structure

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The Board consists of nine members. Five members of the Board are elected by the Grand National Assembly of Türkiye and four members are elected by the President of the Republic of Türkiye. The consent is sought for the election. In the selection of members, pluralistic representation of those who have knowledge and experience in the field of duty of the Authority is observed.

The Grand National Assembly of Türkiye determines the five Board members as follows:

Persons twice as many as the number of members to be determined in proportion to the number of deputies of political party groups are nominated for election and the members of the Board are elected by the Plenary of the Grand National Assembly of Türkiye from among these candidates on the basis of the number of deputies allocated to each political party. However, no negotiation can be held and no decision can be taken at political party groups

regarding whom to vote for in the elections to be held in the Grand National Assembly of Türkiye. The election of the members of the Board is made within ten days after the nomination and announcement of the candidates. The unified ballot lists for candidates nominated by political party groups are issued in separate list. Votes are cast by marking the specific place across the names of the candidates. Votes given more than the number of members to be elected to the Board from the quota of political party groups determined in accordance with the second paragraph are deemed invalid. Provided that the quorum of decision is ensured, candidates who have the most of the votes for the number of vacancies are deemed to have been elected. The election for the renewal of the members is held two months before the expiration of their term of office; should there be a vacancy in the membership positions for any reason, there should an election within one month as of the date of vacancy; or if the date of vacancy coincides with the recess of the Grand National Assembly of Türkiye, the election should take



place within one month from the end of the recess, by employing the same procedure. During these elections, the allocation of the vacant membership positions to the political party groups are made by considering the number of the elected members from the political party groups' quotas in the first election and the current proportions of the political party groups.

The President of Türkiye determines the four Board members as follows:

Forty-five days before the expiration of the term of office or in case of expiration of term of office by any reason of the members elected by the President of the Republic of Türkiye, the Authority should notify the Presidency of the Republic of Türkiye of the situation in fifteen days. A new election should take place one month before the expiration of term of office of the members. Should there be a vacancy in these memberships before the expiration of term of office, there shall be an election within fifteen days as of the date of notification.

The following conditions must be met to be a member of the Board:

- To have knowledge and experience on the issues in the field of duty of the Authority.
- To have the necessary qualifications to be a civil servant,
- Not being a member of any political party.
- Having a bachelor degree of at least four years.

Term of office of the Board members is four years. Members may be re-elected after expiration of their term of office. The person who is elected for the position of the member whose post ends before the expiration of his or her term of office for any reason, shall serve the remaining period.

Pursuant to the Law, members cannot be removed from their office by any reason before the expiration of their term of office. However, members of the Board may be removed from office with a Board decision if:

- it is found out later that they do not meet the

conditions required for their election,

- the conviction for the crimes, which is rendered for crimes committed by them in connection with their duties, is finalised.
- it is ascertained with a medical board report that they will not be able to fulfil their duties,
- it is ascertained that they have been absent from work for fifteen consecutive days or for a total of thirty days within a year, without legitimate permission and excuse.
- it is ascertained that they fail to attend three Board meetings in one month and ten Board meetings in one year without any permission and excuse.

Members of the Board take the following oath before the First Presidency Board of the Court of Cassation: “I do solemnly swear on my honour and on my dignity that I will carry out my duties with absolute impartiality, correctness, fairness and with sense of justice in line with the Constitution and the relevant legislation.” Application to Court of Cassation for oath taking is deemed to be one of the pressing matters.




Unless provided for by a specific law, members cannot assume any public or private tasks other than those related with carrying out their official duties in the Board; cannot act as executives in associations, foundations, cooperatives and in similar bodies; cannot engage in commercial activities, cannot engage in self-employment, act as arbitrators and expert witnesses. However, Board members may prepare scientific publications, give lectures and attend conferences provided that these will not hinder their primary duties, and may receive copyrights and fees associated with those.



### 3. President, and Composition and Duties of the Presidency

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The Board elects the Head and the Second Head of the Board among its members. The Head of the Board is also the President of the Authority. The President, who is the highest-level official of the Authority as the Head of both the Authority and the Board, organises and conducts the services of the Authority in accordance with the legislation, Authority's purpose and policies, Strategic Plan, performance criteria and service quality standards, and, ensures coordination between service units. The President is responsible for the general management and representation of the Authority. This responsibility entails the duties and powers concerning regulation, execution, inspection, evaluation of Authority's activities and, its announcement to the public, when necessary. The Second President is entitled to act on behalf of the President in his/her absence.

Article 24(3) of the Law lists the duties of the President as follows:

- to chair the Board's meetings,
- to ensure the notification of Board decisions and public announcement of these when deemed necessary by the Board, and to monitor their implementation,
- to appoint Vice President, Heads of Departments and Authority's personnel,
- to finalize the recommendations communicated by service units and submit them to the Board,
- to ensure the implementation of the Strategic Plan and to establish the human resources and working policies in line with service quality standards,
- to prepare the annual budget and financial tables of the Authority in line with the determined strategies, annual purposes and objectives,
- to ensure coordination between the Board and service units to have them work



incoherent, efficient, disciplined and well-ordered manner,

- to maintain the relations of the Authority with other institutions,
- to determine the scope of the duties and powers of the personnel authorized to sign on behalf of the President,
- to carry out other duties related to the management and operation of the Authority.

Article 25 of the Law determines the duties of the Presidency as follows:

- to maintain the Data Controllers' Registry,
- to carry out clerical services for the Authority and the Board,
- to represent the Authority through attorneys-at-law at the proceedings and enforcement proceedings to which the Authority is a party; to follow up such proceedings or have them followed up and carry out the legal services,
- to carry out personnel-related services

of the Board members and Authority's personnel,

- to perform the duties referred to in laws with regard to financial services and strategy development units,
- to ensure that the information systems are established and used in order to carry out operations of the Authority
- to draft reports on the annual activities of the Authority or on other issues which are deemed needed, and submit them to the Board,
- to draft the Strategic Plan of the Authority,
- to determine the personnel policy of the Authority, prepare and implement the education and career-based plans for the personnel,
- to carry out the appointment, transfer, discipline, performance, promotion, retirement and other similar procedures regarding the personnel,
- to determine the ethical principles for the



personnel and provide necessary training,

- to carry out the services with regard to purchasing, leasing, maintenance, repair, construction, archive, health and social issues and similar ones within the framework of the Public Financial Management and Control Law No. 5018 of 10/12/2003,
- to keep record of the movable and immovable properties of the Authority,
- to fulfil other duties conferred by the Board or the President.



## 4. Working Principles of the Board

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Article 23 of the Law regulates the working principles of the Board. As per this article, President determines the dates and agenda of the meetings. The President may summon the Board for an extraordinary meeting, if necessary.

The Board convenes at least with six members, including the President, and takes decisions by simple majority of its total members. Members of the Board cannot cast abstaining vote.

The Law rules that members cannot attend and cast vote in meetings, which concern issues regarding themselves, their relatives by blood up to third degree and relatives by affinity of marriage up to second degree, their adopted children and their spouses even if the marriage has ended.

Members of the Board are not allowed to disclose the secrets they have learned concerning the



relevant persons and third parties during their work to anyone other than legally authorized bodies, neither can they use such secrets for their benefits. This obligation continues even after the end of their term of office.

The issues debated in the Board are recorded in the minutes. The decisions and the grounds for the counter vote, if any, are written within 15 days at the latest. The Board releases the decisions to the public, it deems necessary.

Unless otherwise agreed, debates at the Board meetings must remain confidential.



## 5. Duties of the Board

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Primary duties of the Personal Data Protection Board can be listed as:

- To determine necessary and adequate measures while processing of sensitive data (a. 6/4)
- In cases where adequate measures are not provided in the country to which personal data are to be transferred; granting authorization for the transfer if the data controllers in Türkiye and in the relevant foreign country presents a commitment for adequate protection in writing (a. 9/2-b)
- Determination and announcement of the countries with adequate protection (a. 9/3)
- To announce the breach notified by the data controller at its official website or through in any other ways it deems appropriate, in case the data processed are obtained by others by unlawful means; (a. 12/5)
- To investigate the complaints made in cases




where request of the data subject is refused, the response is found insufficient or the request is not responded within the specified time period by the data controller (a. 14)

- To make a decision that infringements be remedied by the data controller in cases where it detects an infringement exists upon complaint or ex officio (a. 15/5)
- To take resolutions in cases where it determines that the infringement is widespread (a. 15/6)
- To make a decision to stop the data processing of data or transfer of data abroad in cases where damages which are difficult or impossible to compensate for (a. 15/7)
- To supervise the Data Controllers' Registry kept by the Presidency (a. 16/1)
- To provide derogation from the obligation to register with the Data Controllers' Register, if necessary (a. 16/2)
- To notify the relevant institutions for a disciplinary investigation against the officers

who violate the obligations regarding the protection of personal data (a. 18/3)

- To ensure that the personal data are processed in compliance with fundamental rights and freedoms (a. 22/1-a)
- To carry out regulatory acts on the operation of the Authority, to determine obligations related to data security and on the matters concerning duties, powers and responsibilities of the data controller and of its representative (a. 22/1-e,f,g)
- To deliver its opinion about draft legislation prepared by other institutions or organizations that contain provisions on personal data (a. 22/1-h)
- To conclude the Strategic Plan of the Authority; to determine the purpose, objectives, service quality standards and performance criteria of the Authority (a. 22/1-i)
- To discuss and decide on Strategic Plan and the budget proposal of the Authority which are prepared in compliance with its purposes and objectives (a. 22/1-i)



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- To approve and publish the draft reports on the performance, financial situation, annual activities and other matters related with the Authority (a. 22/1-j)
  - To discuss and decide on the recommendations as regards the purchase, sale and lease of immovable properties (a. 22/1-k)
  - To carry out other tasks provided for by laws (a. 22/1-l)





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