

THE

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## What Happened in the Legal World in 2023?

2024

HAPPY NEW YEAR

Noteworthy Developments in  
Fintech Arena

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Legislation

## What Happened in the Legal World in 2023?

### First Interim Decision Regarding NFT Accepted by the Court of Appeals

NFTs became one of the most popular digital assets, especially in 2023. Consequently, numerous legal issues related to NFTs started to be evaluated by the courts.

Even though there are no comprehensive regulations regarding NFTs in our country, disputes and judicial decisions concerning NFTs in practice serve as guiding examples. One of the most significant example is the interim injunction granted by the Istanbul 3<sup>rd</sup> Intellectual and Industrial Property Rights Court in a dispute we, as the representatives of our client Emrah Karaca, which was considered a precedent by practitioners marked a pioneering moment in Turkey. In this decision, the court, upon the plaintiff's request, ordered the blocking of access to foreign-based platforms where the relevant NFT was used without permission and the cessation of the sale of the disputed NFT. After an appeal, the Istanbul Regional Court of Justice affirmed the legality of the interim injunction. Thus, the first interim injunction related to NFTs became final. This process marks one of the initial instances where NFTs can be subject to enforceable decisions, and NFT formats can constitute violations. For details of the decision, you can refer to [TFP January](#) issue.

### Turkey Fintech Guide Published

The fintech world has been quite dynamic, and it undoubtedly continues to be one of the leading technologies in the coming years. On 15 March 2023, the Presidency Financial Office published the Turkey Fintech Guide concerning financial technologies.

The guide served as an informative document for startups, entrepreneurs, and investors related to the fintech sector in Turkey. Under the title "Turkey Fintech Ecosystem," the guide provided information about business models in Turkey, regulatory bodies, regulations applicable to fintech, associations and communities involved in fintech, as well as incentives and support available to fintech entities.

The guide was prepared by considering organizations subject to direct and indirect regulation in terms of the verticals of the fintech sector. Thus, the guide provided detailed information on fintech business models and payment services such as payment systems, electronic money, and payment institutions. Given its comprehensive coverage of various aspects of the sector, the guide holds great importance for the fintech world. For a detailed examination of the topic, you can access [TFP March](#) issue here.

### Silicon Valley Bank Declares Bankruptcy

One of the most prominent developments in the headlines in the relevant months: Silicon Valley Bank (**SVB**), one of the largest banks in the United States, attracted attention with its unexpected collapse on 10 March 2023, despite being a leading and reliable name in the financial world. The bankruptcy of SVB was considered by experts as the largest crisis in the United States since the 2008 financial crisis.

The main reason for the bankruptcy was the decision of the Federal Reserve (FED) to raise interest rates, leading investors, who wanted to take fewer risks, to alter their behaviors. Due to the decision to increase interest rates, technology ventures, which constituted the largest customer portfolio of SVB, faced significant problems. On 9 March 2023, SVB announced a loss of approximately \$1.8 billion due to the rapid depreciation of US Treasury bonds and mortgage-backed securities which it had invested in as a result of the FED's interest rate hike decisions. Considering that about 97% of SVB's deposits consisted of unsecured deposits, and with the additional impact of the loss, investor confidence in SVB suffered serious damage. The rapid withdrawal of deposit holders' funds from SVB also contributed to the collapse.

## Procedures and Principles Regarding Social Media Providers Published

The Procedures and Principles Regarding Social Media Providers, regulated by the Information Technologies and Communication Authority (**Authority**) with Decision No. 2023/DK-İD/119 dated 28 March 2023, were published in the Official Gazette dated 1 April 2023. How the Authority would develop an application against social media providers has always been a subject of curiosity.

According to the decision, parallel to Internet Law No. 5651, foreign-based social media providers with daily access from Turkey exceeding one million are obliged to designate at least one natural or legal person as a representative. The obligations that the representative must comply with were detailed in the decision. For foreign-based social media providers with daily access from Turkey exceeding ten million, more detailed regulations were included than those in Internet Law No. 5651.

The decision foresaw the imposition of administrative fines at different levels in case of non-compliance with obligations. For social media providers with representatives in Turkey and high access numbers, ensuring compliance with the new obligations has become a crucial process. Following the decision, we monitored the compliance processes of social media providers throughout the rest of 2023. You can access [TFP April](#) issue for our assessments on the subject.

## Various Regulations Introduced After the Earthquake Disaster

Following the earthquake disaster centered in Kahramanmaraş on February 6, 2023, affecting all of Turkey, especially Kahramanmaraş, Hatay, Adana, Gaziantep, Adıyaman, Kilis, Malatya, Diyarbakır, Şanlıurfa, and Osmaniye, many institutions took action.

Within the scope of the Presidential Decree No. 6785 published in the Official Gazette dated February 8, 2023, a state of emergency (**OHAL**) was declared for a period of three months starting from February 8, 2023, in the provinces of Adana, Adıyaman, Diyarbakır, Gaziantep, Hatay, Kahramanmaraş, Kilis, Malatya, Osmaniye, and Şanlıurfa based on the Constitution and Article 3 of the Law on State of Emergency. After the declaration of OHAL, various measures were taken in different areas. In this context, the Presidential Decree No. 120 on Measures Taken in the Judiciary Under the State of Emergency was published.

Within the scope of the decree, various periods related to the birth, use, or termination of a right and various periods related to procedural law in the judicial field in the OHAL zone were suspended until 6 April 2023, to prevent loss of rights. Additionally, except for certain exceptions, periods and procedures related to execution were suspended. Various facilities were provided for those who were not at OHAL zone and those whose relatives were at the location of OHAL zone. On 16 February 2023, the Constitutional Court announced the suspension of deadlines for individual applications. The Union of Turkish Bar Associations updated and reissued the Legal Guide for Earthquake Victims. Finally, the Ministry of Labor and Social Security announced that it had suspended the operation of certain rights-reducing periods in the OHAL zone due to the earthquake for specific periods. The ministry also announced various measures to prevent difficulties in accessing health services and obtaining drugs or continuously used medical supplies for residents in the zone.

In addition to these, many institutions and organizations made efforts to take various measures to prevent further damage and loss of rights. Details in [TFP February](#).

## Legislative Changes Regarding Remote Identity Verification by Banks and Establishment of Contractual Relationship in the Electronic Environment

Since 2022, anticipated changes in legislation regarding remote identity verification and the establishment of contractual relationships in the electronic environment for legal entities were expected. In this context, the Banking Regulation and Supervision Agency had announced additional topics it wanted to regulate in the “Regulation on Remote Identity Verification Methods to be Used by Banks and the Establishment of the Contractual Relationship in the Electronic Environment” (**Regulation**) by holding extensive discussions with relevant sector stakeholders for an extended period.

Within this scope, the relevant changes were concluded, and the “Regulation Amending the Regulation on Remote Identity Verification Methods to be Used by Banks and the Establishment of the Contractual Relationship in the Electronic Environment” (**Amendment Regulation**) was published in the Official Gazette dated 25 May 2023. With the Amendment Regulation, legal entities have been included among individuals for whom banks can conduct remote identity verification and establish electronic contract relationships. Thus, processes for legal entities were facilitated similarly to those for individuals. Verification methods and procedures for legal entities and their representatives were determined.

Although, as per the Amendment Regulation, it became possible for legal entities to become bank customers through remote identity verification, this was not yet possible in terms of the Financial Crimes Investigation Board (**MASAK**) regulations. Indeed, as banks are also subject to MASAK regulations, the definition of “customer” in the MASAK Circular No:19 General Communique related to remote identity verification needed to be amended to include legal entities. The expected amendments in this regard came in August 2023.

On 11 August 2023, a new General Communique (**Communique**) from the Financial Crimes Investigation Board was published in the Official Gazette, introducing changes to MASAK regulations concerning remote identity verification.

Legal entities were included in the definition of customers with this Communique. Thus, legal entities became part of the “individuals for whom remote identity verification can be performed.” MASAK obligated entities, especially banks, have now aligned their activities with MASAK regulations, allowing them to establish contracts using remote identity verification methods for legal entities. We thoroughly examined the Regulation in [TFP June](#) and the changes in the Communique in [TFP August](#).

## Fintechs Underwent Critical Changes in Remote Customer Onboarding

Central Bank of the Republic of Turkey (**CBRT**) published the “Regulation Amending the Regulation on Payment Services and the Issuance of Electronic Money and Payment Service Providers” and the “Communiqué Amending the Communiqué on Information Systems of Payment and Electronic Money Institutions and Data Sharing Services of Payment Service Providers in the Field of Payment Services” in the Official Gazette on 7 October 2023. The relevant regulations contain detailed and comprehensive provisions on many issues. Especially, critical regulations have been introduced concerning the definition of digital wallet services and remote identity verification in fintechs. Our comprehensive assessment of these amendments can be found in our [TFP October](#) issue.

Another change for fintechs took place in November 2023. The Amendment Communiqué (No: 25), amending the General Communiqué of the Financial Crimes Investigation Board (No: 19), was published in the Official Gazette on 4 November 2023. Expected amendments regarding remote identity verification and remote customer onboarding for payment and electronic money institutions were implemented in the MASAK regulations with this communiqué.

As a result, fintechs are now able to carry out remote customer onboarding both in terms of CBRT and MASAK regulations. Therefore, the regulations of CBRT and MASAK regarding remote customer onboarding for fintechs are now largely aligned. At this stage, fintechs can now conduct these processes in accordance with the regulations in the “Communiqué on Information Systems of Payment and Electronic Money Institutions and Data Sharing Services of Payment Service Providers in the Field of Payment Services,” similar to banks. Details of these changes in MASAK regulations can be found in [TFP November](#).

## MiCA was Published in the Official Journal of the EU

The crypto regulation, known as the “Markets in Crypto Assets Regulation” (**MiCA**), approved by the European Commission, was published in the Official Journal of the European Union (**EU**) on 9 June 2023. MiCA, which has been on the agenda for a long time, became one of the most detailed and extensive regulations ever published in the crypto asset world.

MiCA includes different provisions taking effect on different dates, initiated a countdown for actors operating in the crypto world. Many obligations for crypto service providers in MiCA will enter into force as of 31 December 2024.

Similar developments are expected in Turkey in the future with the enforcement of MiCA. As in various areas such as financial markets and banking, regulations similar to EU directives continue to come into effect in Turkey. In this context, how the EU will act in the cryptocurrency asset field after MiCA also influences Turkey’s approach to this area. As part of financial stability planning in the Medium-Term Program, it is also known that relevant institutions in Turkey will soon introduce regulations in the crypto asset field, and crypto asset trading platforms will be regulated. We are eagerly following the agenda. You can access our detailed assessment of MiCA and the regulations it introduces in on [TFP June](#) issue.

## Anticipated Changes in GDPR Implementation

On July 4th, the European Commission proposed a new legislative proposal to facilitate cooperation between data protection authorities during the implementation of the General Data Protection Regulation (**GDPR**) across countries. The new regulation introduces procedural rules that institutions must follow when applying GDPR in cases involving multiple member states.

The regulation aims to ease procedural obstacles in the implementation of GDPR based on feedback received from a wide range of stakeholders, including the European Data Protection Board, civil society, market actors, academia, law enforcers, and member states. We are following developments regarding the legislative proposal. Details are in [TFP July](#) issue.

## Changes Made to the Exception Criteria for Registration Obligation in the Data Controllers' Registry

Under the Protection of Personal Data Law, which has been in force since 2016, data controllers who process personal data are required to register with the Data Controllers' Registry Information System (**VERBIS**) before starting to process personal data (*with some limited exceptions*).

Regulation on the Registry of Data Controllers, an exception to this registration obligation can be granted by the Personal Data Protection Board (**Board**).

In parallel with this regulation, criteria for data controllers exempt from the VERBIS registration obligation were introduced in the Board's decision published in the Official Gazette dated August 18, 2018 (Decision No: 2018/87). A new Board decision published in the Official Gazette on 25 July 2023, increased the exemption limit from 25 million Turkish liras to 100 million Turkish liras, considering that the previously set limit was low based on current annual financial balance sheets. Detailed notes on the decision can be found in [TFP August](#).

## Critical Legal Processes in E-Commerce Legislation

In July 2022, the Law Amending the Law on the Regulation of Electronic Commerce (**Law**) was published, introducing many new subjects and concepts to e-commerce and essentially restructuring e-commerce. Subsequently, the Regulation on Electronic Commerce Intermediary Service Providers and Electronic Commerce Service Providers (**Regulation**), outlining the details of the regulations, was published in the Official Gazette in December 2022.

The law introduced subjects that have left a significant mark on the business world, such as electronic commerce service providers and electronic commerce service providers; it also included comprehensive regulations related to electronic commerce marketplaces, data, unfair commercial practices, and licensing. The concepts of 'net transaction volume' and 'economic integrity' and the regulations associated with them were quite novel and different for Turkish e-commerce legislation.

However, debates arose, suggesting that these changes were contrary to the normal flow of commercial life and violated freedom of enterprise, especially after the publication of the Regulation. Immediately after the publication of the Regulation, an application was made to the Council of State for the suspension and annulment of the regulation. The 10th Chamber of the Council of State evaluated the request for the suspension of the execution and suspended the enforcement of many articles of the Regulation.

A constitutional appeal was filed with the Constitutional Court for the Law as well, seeking the annulment of the provisions determining the obligations of electronic commerce intermediary service providers based on net transaction volumes.

In the petition, it was asserted that the mentioned regulations did not serve the public interest, violated entrepreneurial freedom, infringed upon the principle of proportionality within the scope of competition law, were also contrary to the principle of equality, violated the principle of consumer protection, and furthermore, were incompatible with international treaties. It was claimed that the Law was contrary to various articles of the Constitution based on these arguments.

On 22 September 2023, the Constitutional Court decision dated 13 July 2023 rejected the request for annulment. In its decision, the Constitutional Court stated that the regulations in question were considered appropriate for achieving the intended objectives and did not lead to disproportionate restrictions.

Following the decision of the Council of State to suspend the enforcement, it is now curious what will happen to its final decision. It is suggested that the Council of State will make a decision parallel to the decision of the Constitutional Court. For a detailed examination of the evaluations in the decision, you can access the [TFP September](#) issue.

## Turkish Data Protection Authority Releases New Guidelines

Turkish Data Protection Authority (Authority) has published two important guidelines in 2023, addressing the increasing sensitivity towards the protection of personal data and privacy both in Turkey and worldwide.

### ● Guidelines on Matters to be Considered Considerations in the Processing of Genetic Data

Genetic data is extensively used in various fields, particularly in the healthcare sector, for the diagnosis and treatment of diseases before or after birth, as well as for identifying familial relationships. Additionally, the use of genetic data for purposes such as nutrition, sports, or genetic predisposition for abilities, based on individual preferences, is also possible. From the legal site, genetic data is classified as sensitive personal data under the Personal Data Protection Law.

At this stage, Authority released Guidelines on Matters to be Considered Considerations in the Processing of Genetic Data on 13 October 2023. The guidelines cover topics under various headings, including (i) the processing and principles of genetic data, (ii) the responsibilities of data controllers, and (iii) the security of genetic data.

Our assessments on the aspects the Authority emphasizes for processing genetic data is covered in TFP October issue.

## ● Recommendations for Privacy Protection in Mobile Applications

Authority published guidelines titled “Recommendations for Privacy Protection in Mobile Applications” on 22 December 2023. These guidelines not only provide recommendations for data controllers and individuals regarding the protection of personal data processed through mobile applications but also shed light on how specific situations should be evaluated concerning mobile applications.

In this respect, Guidelines also discuss the issues that should be taken into consideration when processing personal data through mobile applications in detail. Despite being recently published, the guidelines are expected to raise awareness among data controllers developing business models on mobile applications.

You can access the full text of the guidelines [here](#) (Only available in Turkish).

## Data Act is Accepted

Data Act has been accepted by the Council of Europe. The primary goal of the Data Act is to increase access to data and provide a fair environment for the use of data. The act also regulates who can benefit from data and under what conditions.

The act, accepted in a vote on 27 November 2023, is planned to come into effect in 2024.

The main objectives of the act are to facilitate individuals’ access to their data and ensure fair and transparent use of data. The law includes the following regulations:

- Strengthening the right of the data subject to access, rectify, and erase their data.
- Setting specific conditions in data sharing agreements to encourage data sharing.
- Increasing transparency and accountability in the use of data by third parties.

The Data Act is considered a significant step in strengthening individuals’ rights regarding their data and ensuring a more transparent and fair use of data.

Data Act is expected to be published in the Official Journal of the European Union in the near future. Following its publication, it will come into effect 20 days later, and implementation will commence 20 months after it takes effect. You can access the full text of the Data Act [here](#).

## AI Act Accepted

The Artificial Intelligence Act (**AI Act**) has been accepted after lengthy negotiations between the European Parliament and the Council of Europe. The act aims to regulate artificial intelligence applications in various sectors.

The main goal of the act is to ensure the development and use of artificial intelligence within the European Union in a manner respectful of human rights and fundamental freedoms. In this regard, the law categorizes artificial intelligence systems into three risk categories:



**Unacceptable risk:** AI systems that pose a threat to human rights will be prohibited. This category includes systems that engage in discrimination based on sensitive attributes such as race, religion, or gender.

**High risk:** Strict conditions will be imposed on AI systems used in critical areas. This category includes systems used in sectors such as health, security, and finance.

**Low risk:** Systems with lower risks in terms of human rights and security will be subject to more flexible rules. This category includes systems used in sectors such as advertising or customer service.

The act also aims to increase transparency and accountability in the operation of artificial intelligence systems. Accordingly, mandatory disclosure of information on how AI systems work and what data they use will be required.

The act is expected to come into effect in 2025 following a vote in 2024. It is considered as an important framework for the safe and ethical development and use of artificial intelligence. You can find the announcement regarding AI Act [here](#).

## U.S. Federal Trade Commission Proposes Rules on Children's Privacy

The United States Federal Trade Commission (**FTC**) has proposed changes to the Children's Online Privacy Protection Act (**COPPA**).

The proposals aim to increase sensitivity to children's privacy and limit companies from monetizing children's data. Additionally, with similar objectives, there is a focus on shifting responsibility from parents to online service providers to ensure the safety of digital services for children, which is considered crucial.

In this context, the proposals include requirements for separate consent for targeted advertisements, strengthening the prohibition on conditioning the collection of personal data on a child's participation in online activities, limiting the encouragement of children to stay online in digital environments, addressing issues related to educational technology (EdTech), increasing accountability, strengthening data security requirements, and imposing limitations on data retention. Changes to COPPA may be made based on these proposals. We eagerly await developments in this regard. You can access the FTC's announcement on the proposals [here](#)

# Answers. Not theories.

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### About our firm

Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at [www.gokce.av.tr](http://www.gokce.av.tr) for further information on our legal staff and expertise.

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