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DRAFT REGULATION ON ELECTRONIC SIGNATURE PRESENTED FOR PUBLIC OPINION

Draft Regulation (**Draft**) on the Amendment of the Regulation (**Regulation**) on Procedures and Principles of Implementation of Electronic Signature Law, which was approved with the decision of Information and Communication Technologies Authority (**ICTA**) dated 13 July 2021, was presented for public opinion.

With the Draft, regulations for electronic identity authentication were incorporated into the Regulation. We compiled some significant regulations below:

- It was envisaged for the definition of Electronic Identity Authentication System (**EIAS**) and technical and significant definitions regarding electronic identity authentication, such as “Secure Access Module Smart Card”, “Card Access Device”, “Identity Authentication Notification” to be added to Regulation. These definitions and further were included in the Article 1 of the Draft, which amended the Article 4 of the Regulation.

- A new section titled “Uploading, Renewal and Cancellation of Qualified Electronic Certificates on Identity Card” was implemented to Regulation with the Draft. In this context:

- o Electronic Certificate Service Provider (**ECSP**) will be able to remotely upload, renew and revoke qualified electronic certificates to the identity card using its own role and secure communication certificates; and can remotely upload qualified electronic certificates and different electronic certificates using a similar infrastructure to the identity card.

- o To be able to perform this, ECSP shall apply to ICTA for obtaining role and secure communication certificates.

- o Further to ECSP receiving the role and secure electronic communications certificates, ECSP will upload them to its own secure electronic signature creation tool.

- o ECSP will deliver to ICTA the necessary information and documents regarding the Identity Access Device (**IAD**) which will be used for remote upload, renewal and cancellation of qualified electronic certificates.

- o ECSP will not be able to charge fees to other ECSPs for role and secure communication certificates.

- o The identity authentication process of the applicant through the identity card will be done remotely in accordance with Regulation on TR Identity Card Electronic Identity Authentication System. Following the identity authentication process, a qualified electronic certificate can be uploaded remotely by ECSP. Likewise, the qualified electronic certificate can be renewed remotely at the request of the certificate owner.

Draft was presented for public opinion for 30 days as of 28 July 2021. Draft has been prepared as to enter into force on the date it is published at the Official Gazette.

You can find the full text of Draft [here](#) (only available in Turkish).

Draft Regulation on Digital Banking has been Published

The Draft Regulation on the Operational Principles of Digital Banks and Service Model Banking (**Regulation**) was published by the Banking Regulation and Supervision Agency. Regulation is expected to enter into force on 1 January 2022.

Regulation sets forth provisions regarding the operating principles of digital banks, which are defined in the Regulation as “credit institutions that provide banking services through electronic banking services distribution channels instead of physical branches”. Pursuant to Regulation, digital banks are subject to all legislation credit institutions are obliged to comply with, unless otherwise stated in the Regulation. In addition, Regulation limits the customers of digital banks to only financial consumers and SMSEs and sets the minimum establishment capital as 1 billion Turkish Liras, which has been criticized.

In accordance with Regulation, banks with operating licenses are not required to apply for digital banking. On the other hand, payment institutions and electronic money institutions can apply for an operating permit for digital banking, provided that they fulfil the conditions stipulated in the legislation.

You can find the full text of the Regulation and share your opinion [here](#) (only available in Turkish).

Regulations on Establishment of Digital Tax Office has been Forming

The digital transformation process, which was initiated with companies’ transmission to e-Invoice which had such an obligation on April 2014 and continued with the number of companies using e-Invoice reaching 427,000 as of June 2021, proceeds with the Economy Reform Package (**Package**).

With the Package, it was expected that the "Turkish Digital Tax Office" application, which would be under the liability of the Ministry of Treasury and Finance and could provide 24/7 service to cover all taxpayers, would be implemented. Some details about the law, the first phase of which was determined as 31 December 2021, started to leak to the public. Accordingly, the following developments and innovations are expected to enter our lives:

- It is aimed to provide tax office services 24 hours/7 days.
- Through the artificially intelligent digital tax assistants envisaged for Digital Tax Offices, it is intended for the potential queries from the citizens to be answered and uniformity to be ensured in practice.
- This digital transformation will remove the bureaucratic barriers that citizens are exposed to; and also paper consumption will be cut down thanks to the online payments made by taxpayers; and operations such as official reports, notifications and reporting will be carried out electronically, saving time. The main purpose is to reduce tax losses by gradually expanding the use of electronic documents and electronic books.
- Another issue planned within the scope of the drafting of laws for the establishment of the Turkish Digital Tax Office is about the exemption of more than 850 thousand tradesmen from income tax and the removal of their declaration obligations. According to the regulations to be presented to Turkish Grand National Assembly at the end of December, the declaration obligations of the tradesmen who are taxed in the small business taxation will be removed and they

will be exempted from income tax.

It is expected that the relevant law on the implementation of the Turkish Digital Tax Office will enter into force until 31 December 2021, and the technical software will be completed by 30 September 2022, the date of the second phase. We will be eagerly awaiting developments.

The Pilot Stage of Digital Turkish Lira is Starting

Further to cryptocurrencies becoming widespread, central banks of several countries started working on a Central Bank Digital Currency (CBDC). After 5 countries including Bahamas fully launched their digital currencies, countries such as China, South Korea and Sweden started the pilot stage on their digital currency. One of the countries that work on their digital currency is Turkey.

We can list the developments on digital Turkish Lira as below:

- Digital Turkish Lira was brought forward following the expression “*block chain based CBDC will be implemented*” in 11th Development Plan prepared by Turkish Presidency.
- Directorate General of Financial Innovation was founded within Central Bank of the Republic of Turkey (TCMB) with the goal of “*making the technological preparations in order to execute the digital currency and making inspections regarding digital currency*”.
- Digital Turkish Lira claimed its place in the Economic Reforms Action Plan that was prepared by Ministry of Treasury and Finance. In the Economic Reforms Action Plan Calendar, it was stated that “*TCMB will form the economic, technological and legal infrastructure of digital currency.*” together with Digital Transformation Office of the Presidency of the Republic of Turkey until 31 December 2021.
- Further to all these developments, Şahap Kavcıoğlu – president of TCMB – stated that the pilot stage for digital Turkish Lira will begin in September 2021. And in case the pilot stage is successful, digital Turkish Lira can be fully launched by 2022.

In the light of all these developments, it is possible to say that if Turkey launches Digital Turkish Lira, it will be one of the pioneer countries in this area.

Summaries of Personal Data Protection Board’s Recent Decisions

We compiled below some of Personal Data Protection Board’s (Board) decisions, published in August within the scope of Turkish Personal Data Protection Law (Law) and secondary legislation.

Decision on the Effective Implementation of Data Breach Policies

The data breach occurred with the former employee of the data controller, operating in the field of computer games, unauthorizedly uploading the folder containing the source code and data files, which are the product of the work, to github.com (GitHub).

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It was determined by Board that;

- (i) This behavior of the former employee indicates that there is a security vulnerability and that the analysis of source codes by third parties may lead to other security vulnerabilities,
- (ii) This situation is against the obligation to determine the roles and responsibilities of employees regarding personal data security in their job descriptions and to ensure that employees are aware of them, within the context of "Employee Education and Awareness" chapter of the Guideline on Personal Data Security,
- (iii) The breach indicated that policies are not implemented effectively despite having the employees sign multiple policies of the data controller,
- (iv) The breach being detected after approximately two years showed that the technical and administrative measures taken by the data controller were insufficient in terms of monitoring personal data security.

Therefore, Board imposed an administrative fine to the data controller for not taking the necessary technical and administrative measures for ensuring data security.

You can find the full text of the decision [here](#). (only available in Turkish)

Decision on Notifying the Data Breach As Soon As Possible

The data breach occurred when it was realized that a contact list, which was prepared by an authorized employee of the data controller operating in the energy sector and stored in a public folder, inadvertently contained the passwords of users of an in-house platform, along with identifiers such as username, name, professional e-mail address. It was determined by Board that; the breach was reported on 24 October 2019 and this exceeded the 72-hour notification period from the discovery of the breach. However, the time exceeded was reasonable since multinational nature of the data controller requires the evaluation of where the affected persons are located and how the notification obligation will be fulfilled. Nevertheless, it was noted that the notification made did not include sufficient information on when the breach occurred and its possible consequences. Thus, it was ruled for the data controller to be instructed to be more careful in notifying in accordance with Board's Decision numbered 2019/271.

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

Decision on Measures to Ensure Data Security

The data breach occurred when the former employee of the bank made more than necessary amount of questioning. It was stated that the breach was realized when it was determined that the employee made ENT inquiries in the absence of the relevant persons and took notes on a paper, took a photograph of this paper on some dates and/or corresponded with his/her mobile phone after making such inquiries.

It was determined by Board that;

- (i) The detection of the breach after it has continued for about one year due to the annual control of the number of ENT inquiries shows that within the scope of the "Monitoring of Personal Data Security" chapter of the Guideline on Personal Data Security, personal data security monitoring was not carried out appropriately.

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(ii) Audits and regulations regarding user authorizations and roles being carried out after the breach shows that technical and administrative measures were not adequately taken within the scope of “Securing Environments Containing Personal Data” chapter of Guideline.

(iii) Not limiting the number of inquiries prior to the breach and to determine whether there is a data breach by examining the camera records of the users who made more than 250 inquiries following the breach was a violation of the "Identification of Current Risks and Threats " chapter of the Guideline,

(iv) The failure to document that 14% of the employees have received training on the Law at regular basis constitutes a violation of the "Employee Training and Awareness" chapter of the Guideline.

Therefore, Board imposed an administrative fine to the data controller for not taking the necessary technical and administrative measures to ensure data security.

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

Decision Regarding the Notices that Lawyers Have Illegally Accessed Personal Data in the Enforcement Proceedings Files

Board decided that the debtor's attorneys conducting personal data processing regarding the execution files of which the debtor is a creditor, is not a violation of the Law that. Board's reasoning was based on the fact that:

(i) Within the Enforcement and Bankruptcy Law, the debtor's receivables, or his/her receivables from a third party may be seized.

(ii) Within Attorneyship Law, litigation and enforcement proceedings can be examined without presenting a power of attorney. According to the Law, it means that the processing is based on the condition that it is "explicitly stipulated in the law", not on explicit consent.

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

Amazon Has Been Fined 746 million Euros for Breaching GDPR Rules

The General Data Protection Regulation (**GDPR**) came into force on May 25, 2018. Right after the GDPR came into force, La Quadrature du Net (**LQDN**) – a group that promotes and defends fundamental freedoms in the digital world – had taken legal action against Big Tech companies such as Facebook, Apple, Microsoft, Google and Amazon. And recently, the collective legal action that LQDN and 10.000 more people initiated against Amazon came to an end with Amazon facing a 746 million Euro fine.

According to LQDN's blog post, the decision on the legal action is about lack of free consent by users on Amazon's targeted ad system. LQDN had made the complaint to French Data Protection Authority (**CNIL**). Then, Luxembourg's National Commission for Data Protection (**CNDP**), who has jurisdiction, and CNIL had worked together on the case. It all came to an end on 15 July 2021 when CNDP fined Amazon 746 million euros.

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Amazon stated that the decision is meritless and added: “There has been no data breach, and no customer data has been exposed to any third party. These facts are undisputed. We strongly disagree with the CNPD’s ruling”. However, LQDN stated in their blog that the claims were not about exposing customer data to third parties; they were on the lack of free consent for targeted ad system.

The fine Amazon is facing is the highest fine that a European data protection authority fined so far for breaching the GDPR rules, previous one being a 50-million-euro fine that CNIL imposed over Google. According to GDPR if an enterprise breaches the rules, it may be fined up to 20 million Euros or 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher.

Currently it is not possible to find out the details about CNPD’s decision due to Luxembourg’s privacy regulations. A decision will only be published after parties exhaust all available appeal processes, which Amazon is planning to initiate according to the current leaks to the public.

You can find the full text of LQDN’s blog [here](#).

Answers. Not theories.

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About our firm

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