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Digital World's Year: What Happened in 2021?

We left 2021 behind. We would not be wrong if we call this year a year of digitalization in which technological innovations had rapidly reflected in our lives. Digitalization also showed its reflections in the law field. Regulations have found their place in a way to initiate an intense transformation in different sectors. Although some developments are still far from legal ground, they undoubtedly paved the way for new regulations due to the dynamism they brought. We compiled these developments for you:

We were introduced to NFTs. Non-fungible entered into our lives. NFTs are mostly used by artists to record their works and distinguish the original and distinct version of the work from its copies.

The game industry, which adapts easily to innovation, also started to get involved with NFTs. It is now possible to create digital objects as NFTs in games and trade them in-game. The famous gaming company Ubisoft has also officially announced that it has entered the NFT industry. You can reach the news [here](#).

Although the concept of NFT has made a rapid entry into the digital world, discussions on its legal basis continue. We are of the opinion that these discussions will gain certainty in 2022, depending on the NFTs' future.

Details are in our [TFP October](#) issue.

A new universe: Metaverse. We were introduced to the concept of Metaverse, which can be defined as "a shared virtual universe which can be experienced simultaneously and in integration with the physical world, through the use of technologies such as augmented reality, virtual reality and blockchain". Almost everyone has heard of Metaverse since Facebook changed its name to "Meta." Governments and technology giants such as Microsoft and Epic Games also announced that they are conducting studies regarding Metaverse universe.

It is envisaged that we will begin to perform our daily activities in Metaverse. This shows that the door to new regulations has been opened. Also, this will require a clear determination of the application area of the existing regulations in terms of Metaverse.

We evaluated the impact of Metaverse in [TFP November](#) issue.

Central Bank of Turkey published "Regulation on not Using Crypto Assets in Payments". With the Regulation, crypto assets were defined for the first time in Turkish law as *"intangible assets that are created virtually using distributed ledger technology or a similar technology and distributed over digital networks, but are not qualified as fiat money, fiduciary, money, electronic money, payment instrument, securities or other capital market instruments."*

The direct or indirect use of crypto assets in payments and providing services for the direct or indirect use of crypto assets in payments were prohibited. Upon this restrictive regulation, it is being stipulated in lobbies that new regulations are expected in 2022.

Our detailed evaluation is in [TFP May](#) issue.

Some regulations regarding identity authentication have changed. Significant amendments were made to the Regulation on Procedures and Principles of Implementation of Electronic Signature Law. Some definitions such as “Secure Access Module Smart Card”, “Card Access Device”, “Identity Authentication Notification” were added to this regulation along with the definition of Electronic Identity Authentication System (**EIAS**). With the inclusion of the electronic certificate system in EIAS, various infrastructural changes and additions were introduced to ensure identity authentication.

Similarly, Regulation on the Applicant’s Identity Authentication Process in the Electronic Communications Sector has been published in the Official Gazette on 26 June 2021. It will enter into force on 31 December 2021. The methods to be used to verify the identity of the applicant were determined when documents related to various transactions in the e-communication sector are issued electronically.

Details are in our [TFP October](#) issue.

“Uniform Rules for Digital Trade Transactions” (URDTT) was published. URDTT will be binding to the extent it is stated that it will be implemented by the parties in the terms and conditions of the digital commerce transaction. The principles of payment obligation in digital commerce transactions, payment commitment of the financial service provider, transfer of these obligations and commitments and liability for force majeure have been determined while detailed regulations on the concept of “electronic records” were also included.

Details are in our [TFP October](#) issue.

The concept of Central REM Guide entered the legislation. As per the Communiqué Amending the Communiqué Regarding REM Guide and REM Account Addresses, the Central REM Guide will be created by the Information and Communications Technologies Authority with the information to be provided by REM service providers. Central REM Guide will be established and operated by ensuring its confidentiality, integrity and accessibility. We have included the details in our [TFP July](#) issue.

IYS commenced operations. Commercial Electronic Message Management System (**IYS**) commenced its operations. Thus, a platform was created where receivers who are sent commercial electronic messages by service providers can manage their commercial electronic message permissions. Service providers became liable to register and transfer their existing databases (the consents already taken from the recipients) to IYS in order to manage the complaint processes and the rights of approval and rejection.

Guideline was published for Influencers. Ministry of Commerce published Guideline on Commercial Advertising and Unfair Commercial Practices by Social Media Influencers (**Guideline**) on 5 May 2021. Through the Guideline, the obligations and responsibilities of influencers and advertisers and the basic principles of sharing advertising content were determined. Our detailed evaluation is in [TFP May](#) issue.

National Artificial Intelligence Strategy (Strategy) was published by the Presidency's Digital Transformation Office and Ministry of Industry and Technology. Turkey's national development targets in the field of AI were determined in Strategy. You can reach the full text [here](#) (only available in Turkish).

New regulations within the scope of the Economy Reform Package (Package). 2021, the year of digitalization, also showed itself with the regulations in the banking sector. The Regulation on the Operational Principles of Digital Banks and Service Model Banking was published in the Official Gazette dated 29.12.2021. Regulation will enter into force on 1 January 2022. Digital banks were defined, and regulations related to their operating principles were introduced. You can find the full text of the regulation [here](#) (only available in Turkish).

Within the scope of Package, Turkey started working on the establishment of the digital Turkish lira. On 15 September 2021, the Central Bank announced the creation of the Digital Turkish Lira Cooperation Platform.

In the Package, it was envisaged 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. It was planned that the relevant law on the application of the Turkish Digital Tax Office would enter into force until December 31, 2021. A regulation related to this has not come into force yet. We are eagerly awaiting the relevant developments.

Details are in our [TFP August](#) issue.

The new version of the Council of Europe Convention on Cybercrime (Budapest Convention) has been published. The Committee of Ministers of the Council of Europe adopted the second additional protocol to the Budapest Convention on 17 November 2021. It was envisaged that the additional protocol will be opened for signature by the parties of the Budapest Convention in May 2022. While the additional protocol addressed both criminal justice and data protection objectives, it received negative reviews related to the protection of privacy.

Long-Awaited Regulations in Fintech Sector Entered into Force

According to those in-the-know, Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (**Law**) has been in force since 2013. It has been discussed that the relevant regulation and communique belonging to the Law, were not suitable with current technology and insufficient to meet the needs. Transfer of the authority arising from this legislation, from the Banking Regulation and Supervision Agency to the Central Bank (**Bank**), has adequately indicated that further changes were about to come.

Two regulations issued by the Bank published in the Official Gazette dated 1 December 2021 put an end to the ongoing wait. Regulation on Payment Services and Electronic Money Issuance and Payment Service Providers (**Regulation**) and Communique on the Management and Supervision of the IT Systems of Payment and Electronic Money Institutions and the Data Sharing Services of Payment Service Providers in Payment Services Area (**Communique**) entered into force on 1 December 2021, along with the provisions of a transition period.

We have compiled the prominent essential provisions in the Regulation and Communiqué below.

Prominent Provisions in the Regulation

Details of conditions and process regarding operating permit were envisaged: It was already regulated under the Law that the paid-in capital of the company who apply for an operation permit must be a minimum of 1 million TRY to provide “intermediation services for paying invoices”, 2 million TRY to provide other payment services, and 5 million TRY to issue electronic money. Additionally, institutions shall pay an application fee of 500 thousand Turkish liras to the Bank, before the registration at trade registry. The institution that has obtained the permit shall also pay a license fee of 1 million TL to the Bank within ten days as of the beginning of its operation. Therefore, in order to be able to operate, it is necessary to meet all three conditions; the minimum capital requirement, application fee and license fee.

Applications will consist of two stages; the informative investigation and the final approval stage.

The procedures and principles for open banking services were determined: A framework has been drawn for the payment order initiation service and the account information service, in short “open banking services”. It was envisaged that the technical and operational requirements to be complied with by the parties would be determined by the Bank.

Two separate concepts were introduced as “pre-paid instrument” and “anonymous pre-paid instrument”: There were concepts that were not defined in detail even though they were referenced in the Law. Both definitions were made under the Regulation.

Transactions where anonymous pre-paid instruments can be used are restricted.

Changes were made regarding representation and the representative appointment procedure: The procedure for the appointment of "representatives" has been changed. Institutions are obliged to register their representatives to the Association of Payment and Electronic Money Institutions of Turkey (**Association**). In case this registration is not completed, the institution cannot provide services through this representative. It was regulated that the framework of the representation agreement would be determined by the Association by obtaining the Bank's opinion.

Conditions of cooperation with peers residing abroad were stipulated: Payment and electronic money institutions resident in Turkey were allowed to cooperate with legal persons residing abroad. However, there are some conditions: The **legal persons residing abroad** must obtain permission from the Bank, at least one party of the payment transaction must be abroad, and the legal entity to be cooperated with must be authorized by the relevant authorities of the country where its headquarters is located to provide payment services or issue electronic money.

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Conditions for outsourcing were regulated: It was regulated that, provided that the obligations in the legislation are complied with and the scope is determined by a signed agreement, services other than payment service delivery and electronic money issuance services, as well as information systems, marketing, advertising, corporate resource management, accounting, call center, and monitoring of the organization's administrative activities linked to payment service providing and electronic money issuance may be outsourced.

Establishment of a workplace registration system was envisaged: It was stated that workplaces will be assigned a unique workplace code and payment methods of payment service providers cannot be used in workplaces that do not register with this system. Interbank Card Center is expected to establish this system till 30 June 2022.

Transition period was envisaged: There are several transition periods foreseen under the Regulation. The main ones are as follows:

- Institutions operating before 1 December 2021 are obliged to comply with the Regulation within 1 year as of 1 December 2021.
- Representation agreements signed before 1 December 2021, will remain in force provided that they meet the minimum requirements which to be determined.
- The representation agreements made with the prohibited institutions will be valid until the expiration date of the agreement but will end on 31 December 2022 at the latest in any case.
- Foreign companies within international cooperation must apply to the Bank for permission within six months as of 1 December 2021.

Prominent Provisions in the Communiqué

Communiqué entered into force as of 1 December 2021 in order to regulate the procedures and principles regarding the management and auditing of information systems by authorized independent audit institutions and data sharing services of payment services. Communiqué is very similar to the rules governing banks' information systems in our legislation. Some prominent regulations in the Communiqué are as follows:

General principles regarding information systems management were regulated: Continuity, safety, efficiency and productivity are among the prominent principles.

Regulations on risk management were envisaged: It is envisaged that institutions are required to establish a risk management framework and a structure with sufficient tools in order to identify, measure, monitor and effectively manage risks that may endanger the smooth functioning of information systems.

Establishment mechanisms against cyber incidents has been aimed: It was set forth that organizations shall conduct incident management by ensuring that incidents are detected on time, intervened within a reasonable time, analyzed in detail, resolved as soon as possible and with the least damage, and that all relevant stakeholders are informed about the incident in a timely manner.

Procedures for identity verification have been determined: Institutions are required to establish an adequate and effective identity verification system, and roles and responsibilities defined for the employees within the framework of the identity verification system to be established are required to be clear and in written. The cases in which strong authentication methods will be used were listed. It should also be noted that the Bank is authorized to make exceptions for identity verification rules listed in the Communique or to issue additional security measures.

The long-awaited regulations impose various obligations on many different subjects. It is obvious that the adaptation process will be intense. Regulations indicate that the conditions for operating as an "institution" in fintech sector in Turkey have been made more difficult and that it will be scrutinized more closely. Considering that there are also provisions that the Bank has been authorized to regulate, we will be looking forward to further developments.

Purchasing NFT Domains

NFTs, which are immutable tokens on any blockchain, have started to take place in many areas of our lives. NFTs are used to tokenize many assets such as artwork, videos, gifs and collections on the blockchain.

As known, the domain is a naming method developed to be used instead of IP addresses which are difficult to remember. It is also possible to obtain domains as NFT over the blockchain network.

NFT domains are new web extensions such as ".crypto" or ".eth" (similar to .com or .info) that are connected to the blockchain via smart contracts. Their difference from traditional domains is that due to the nature of NFTs, the domain is "certified" with personalized smart contracts. When buying a traditional domain is mentioned, domains are actually rented for certain periods while NFT domains are owned by the users and after one-time registration, the owner never needs to worry about the renewal again. The NFT domains are stored in the secured wallets and can be transferred as cryptocurrencies.

The fact that domains can be purchased as NFTs, raises the question of what the current uncertainties about domains will get shape in the blockchain world. It is a matter of curiosity what will happen on discussions in the blockchain world over NFT domains about the concept of cybersquatting, which can be defined as "purchasing brands or similar names belonging to someone else as a domain for profitable resale". In the event of a conflict over NFT domains, only time will tell how it will be resolved, as there is no dispute resolution mechanism.

HSK's New Specialized Courts Decision

In the Human Rights Action Plan which was announced to the public on 2 March 2021, Ministry of Justice envisaged to increase the number and variety of specialized courts to increase the efficiency of the judiciary and the quality of justice services. Council of Judges and Prosecutors (**HSK**) was appointed in charge. In this context, **HSK decision on the establishment of new specialized courts in various areas, was published in the Official Gazette on 30 November 2021. HSK's decision will be implemented from 15 December 2021.**

Accordingly, tax crimes, cybercrimes, financial crimes, financial disputes, union disputes and expropriation cases will now be heard in designated specialized courts. In addition, in places where consumer and commercial courts and juvenile courts are not established, courts to deal with these cases have also been decided. Finally, criminal judgeships of peace, in which administrative fines will be imposed, have been decided and specialization opportunity provided in this area.

Considering the different characteristics of the disputes, the establishment of specialized courts in the areas we mentioned, can be interpreted as a meaningful change to ensure specialization and unity of practice in these areas.

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

New CJEU Decision on Inbox Advertising

The Court of Justice of the European Union (**CJEU**) ruled on 25 November 2021 that the display of advertising messages in an inbox in a format similar to an actual email, constitutes an electronic mail for direct marketing purposes. This type of advertisement is called “inbox advertising”. European Union regulates electronic commercial communications under 2002/58 Directive on Processing Of Personal Data And The Protection Of Privacy In The Electronic Communications Sector (**Directive**). The decision of CJEU given based on the Directive, is critical for the firms in the ad tech industry or those who benefits the advantages of “inbox advertising”.

In the case before CJEU, the advertisement in question have been displayed in the inbox list of a user's private emails, with the appearance of an email, despite the fact that it was labeled "advertisement." A competitor of the advertiser filed a lawsuit, alleging that the conduct violated unfair competition laws. The German Federal Court of Justice heard the matter on appeal, refers the case to the CJEU to determine whether the practice of inbox advertising is legal under EU law.

CJEU stated that what matters is that there is a communication for a commercial purpose, which reaches, directly and individually, one or more email service users and this qualifies as direct marketing communication under Directive. CJEU further clarified that this type of advertisement resemblances “unsolicited e-mails” (spam) regulated in the Directive since user can only get an overview of their private emails after checking the content of the advertisement and actively deleting it.

As a result, CJEU stated that inbox advertising, being a communication for direct marketing, requires prior consent of the person concerned.

You can find the full text of decision [here](#).

Turkish Lira Based Cryptocurrency TRYC is Issued

Stoken – a company founded by Paribu – has issued TRYC, a token indexed to 1 Turkish lira. TRYC has been listed on Paribu since 13 December.

For each TRYC running on the Ethereum blockchain, 1 Turkish Lira is kept in banks. It is not possible to create TRYC without keeping the equal amount of Turkish Lira in the bank. It was also stated this will be audited by independent companies. TRYC currently has a supply of 50 million units, and the supply may increase upon demand. In addition, unlike other cryptocurrencies, TRYC cannot be mined.

Finally, we would like to point out that TRYC – which is not an official cryptocurrency – is not related to the Digital Turkish lira that we mentioned in our previous articles.

The Only Mining Illegal in China: Crypto Mining

Since 2009, China has been gradually banning crypto related activities. The last step was the ban on crypto mining on September, which only leaves crypto possession as legal. Following these bans, a court in Beijing ruled a mining agreement void.

It is stated that the plaintiff entered into three agreements with the defendant about deployment of mining machines in 2019 and paid 1,6 million USD. However, failed to make any profit after mining only 18,5 Bitcoins (now worth around 902,000 USD) and asked for the defendant to pay 278.17 Bitcoins (now worth around 13.5 million USD) in compensation.

The Beijing court refused to grant the plaintiff's wish as it deemed mining agreements invalid and advised National Development and Reform Commission to shut down all mining farms involved in the case.

Answers. Not theories.

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