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Current Developments on Crypto Assets

We are witnessing in Turkey and all over the world the acceleration of regulatory studies to draw the legal framework for crypto assets. Numerous countries work on crypto assets and try to draft policies, in an effort to stand out in the growing crypto asset market and desire to protect its citizens. Current developments reveal the liberal attitude of many countries on this issue.

We compiled some of the current developments below:

European Parliament rejected the proposal banning cryptocurrencies. At the European Parliament Economic and Financial Affairs Committee meeting held in Brussels on 14 March 2022, the proposed Draft on Markets in Crypto Assets (**Draft**), which regulates the use of cryptocurrencies, was debated and rejected by majority vote. Draft included regulations to prevent the listing of crypto assets that do not comply with European Union's (**EU**) environmental sustainability criteria. Adaptation of this Draft would mean a de facto ban on the use of many crypto assets, including Bitcoin and Ethereum, as a digital currency. While some officials expressed their concerns on the sustainability of crypto mining technology following the rejection of the Draft; bitcoin & crypto community in the European Union considers the development a major political success.

You can access the press release of the Parliament [here](#).

USA's step towards digital dollar. On 9 March 2022 the U.S President Joe Biden signed the Executive Order on cryptocurrencies (**Order**). The Order stipulates that Ministry of the Treasury, Ministry of Commerce, and some other public organizations will prepare research reports for the creation of a comprehensive digital asset strategy and submit it to the Presidency. Since necessary technological infrastructure for the electronic version of dollar bills will also be investigated pursuant to the Order, it is commented that we may encounter the application of "digital dollar" in the future. In addition, Order emphasizes that even though unique and diverse features of digital assets may pose significant financial risks for investors, regulations can mitigate this risk. It is also stated that steps will be taken on matters such as preventing money laundering, ensuring financial participation, and protecting consumers.

You can reach the full text of the Order [here](#).

Minimum wages pegged to national cryptocurrency in Venezuela. Venezuelan President Maduro announced that the minimum wage has been pegged to the national cryptocurrency Petro (**PTR**). PTR is built on the DASH blockchain and is centralized around government issuance. With the minimum wage pegged at half PTR, there has been an 18-fold increase in the minimum wage on a dollar basis. In Venezuela, where citizens prefer not to use PTR, it is expected that demand for PTR will increase as a result of this change.

Agenda in Turkey: Crypto Law. In line with the global developments, draft crypto asset law (**Draft**), has been on the agenda of Turkish financial sector for a while. It is stipulated that the Draft will subject crypto asset trading platforms in Turkey to licensing by the Capital Markets Board. Draft also includes a crypto service provider liability regime that provides protection to investors. Experts state that avoiding the adoption of a prohibitive approach in the Draft will pave the way for crypto trading platforms in Turkey and make Turkey the “attraction center” of the crypto-asset ecosystem.

Another Step Towards Single Market of Data: EU Data Act Draft

Draft Regulation on Harmonised Rules on Fair Access to and Use of Data (**Data Act**) was proposed by European Commission (**Commission**) and published on its website on 23 February. Data Act is the second main legislative initiative resulting EU’s data strategy along with Data Governance Act that has been discussed in EU (**Data Governance Act**). Main goal of these regulations is to *“create a single market that allow data to flow freely within the EU and across sectors for the benefit of businesses, researchers, public administrations, and society at large”*.

Where does Data Act stand within the EU legislation? Data Act is consistent with and compliments the previous regulations and proposals regarding data. According to Commission, while Data Governance Act establishes the processes and structures to facilitate data sharing by companies, individuals and the public sector, Data Act clarifies who can create value from data and under which conditions. With regards to the General Data Protection Regulation (**GDPR**), Data Act builds on already existing rules. Data Act defines data as *“any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audio-visual recording”*. Thus it can be stated that the Data Act encompasses all types of data.

Why Data Act? While the volume of data is growing over the time, 80% of industrial data is never used according to Commission’s press release regarding Data Act. Data Act aims to make more data available for reuse while addressing the legal, economic, and technical issues preventing the use of data to its potential.

To utilize data better, Data Act regulates the data transfer and accessibility of data between businesses (**B2B**), businesses and consumers (**B2C**), and businesses and governments (**B2G**). Commission is also planning to develop model contractual terms for B2B data sharing and standard contractual clauses for cloud computing contracts.

Key proposals in Data Act

Data Sharing Obligations: According to Data Act, products shall be designed and manufactured, and related services shall be provided, in such a manner that data generated by their use are, by default, easily, securely and, where relevant and appropriate, directly accessible to the user. With this provision, Commission intends to set up the legal ground to make data, including Internet of Things (**IoT**) data, available to users, other businesses and third parties that users may want to share their data with.

Making Data Available: Data Act includes provisions ensuring that data holders make data available to recipients under fair, reasonable, and non-discriminatory terms and in a transparent manner.

Provisions Regarding SMEs: Through Data Act, Commission is aiming to protect small and medium-sized enterprises (**SMEs**) from unfair contractual terms on data sharing. Such unilaterally imposed clauses will not be binding on SMEs if they are deemed unfair. Commission will also develop and recommend non-binding model contractual terms to help SMEs negotiate fairer and balanced data sharing contracts.

Making Data Available to Public Sector Bodies and EU Institutions: In case of an exceptional need for the data by public sector bodies and EU institutions, such as in public emergencies, businesses will be under the obligation to provide certain data.

Switching Between Data Processing Services: Data Act aims to achieve an interoperability between providers of cloud systems and allow consumers to switch between competitive and trustworthy cloud and edge services in EU. Removing barriers to data sharing and reuse of data between sectors is another goal of Data Act.

Non-Personal Data Safeguards: Data Act adopts a provision to ensure the safety of non-personal data. According to the relevant provision, providers of data processing services must take all reasonable technical, legal and organizational measures in order to prevent unlawful third-party access, international transfer or governmental access to non-personal data held in the EU.

Conclusion

With Data Act, EU is getting one step closer to achieving a single market with regards to data. Adoption of Data Act will remove the barriers against the use and access to data. It is important for private sector players to get familiar with the rules and to take necessary steps to adapt them into their practice. The importance not only stems from the benefits they can achieve, but also the risk of penalties that may face from non-compliance as great as the highest of 20 million Euros or 4% of their annual global revenue.

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

Amendment from Turkish Competition Authority After Years: New Thresholds for Mergers and Acquisitions

The Communiqué (Communiqué No. 2022/2) Amending the Communiqué on Mergers and Acquisitions Subject to the Approval of the Competition Board (Communiqué No. 2010/4) (**Amendment Communiqué**) was published in the Official Gazette on 4 March 2022. Within the amendment, Competition Authority has increased the turnover thresholds sharply, which were last increased in 2012. The reason of the increasement was for thresholds to adapt to the current exchange rate and economic conditions. Also, special regulations have been introduced which will significantly affect the enterprises active in the digital market. Amendments will enter into force as of 4 May 2022.

Increased turnover thresholds. The previous turnover threshold of TRY 30 million has been increased to **TRY 250 million**; the previous turnover threshold of **TRY 100 million** has been increased to **TRY 750 million**; and the previous turnover threshold of **TRY 500 million** has been increased to **TRY 3 billion**.

Thereby;

- (i) If the transaction parties' total turnover in Turkey exceeds TRY 750 million and at least two of the transaction parties' individual turnover in Turkey exceeds TRY 250 million separately; or
- (ii) In an acquisition, if the asset's or the operation's (subject to the transfer) turnover in Turkey and in mergers, at least one of the transaction parties' turnover in Turkey exceeds TRY 250 million and the global turnover of at least one of the transaction parties exceeds TRY 3 billion

the legal validity of the relevant merger and acquisition transaction shall be subject to the approval of the Competition Board (**Board**).

Specific regulations for digital market: One of the most significant amendments within the Amendment Communiqué is the definition of technology enterprises and regulation regarding technology enterprises. "Technology enterprises", pursuant thereto, are those enterprises active in the fields of digital platforms, software and game software, fintech, biotech, pharmacology, agriculture chemicals and, health tech, or assets related to these. The newly introduced TRY 250 million turnover threshold shall not be sought for the acquisition of technology enterprises active or having R&D activities in the Turkish geographical market or offering services to users in Turkey. Thus, Board aims to ensure that transactions relating to acquisition of technology enterprises are materially subject to its audit. Board also aims to prevent killer acquisitions as well.

Calculation of the financial institutions' turnover thresholds: Calculation of turnover thresholds required for mergers and acquisitions of banks, leasing, factoring and financing companies, brokerage houses and portfolio management companies, insurance, reinsurance and pension companies has been updated in line with the current legislation.

Submission via E-Devlet (E-Government Portal): Amendment Communiqué enables to submit the Submission Form and its annexes via e-Devlet in addition to hand-delivery or mail.

Significant impediment to effective competition test: The significant impediment to effective competition test, introduced with the amendment on Law on the Protection of Competition no. 4054 on 4 June 2020, has been reflected to the Communiqué on Mergers and Acquisitions Subject to the Approval of the Competition Board and the relevant guidelines.

New submission form: The submission form and its annexes to be used for mergers and acquisitions have been updated. With this amendment, Board aims to transform the submission form completely into an electronic format in the near future.

Social Security Institution Data Regulation is Published

Regulation on Protection and Processing of Data Before the Social Security Institution (**Regulation**) was published in the Official Gazette on 19 February 2022. It aims to determine the procedures and principles to be followed in the processing of data obtained by Social Security Institution (**SSI**) within the scope of its duties and authorities. Regulation entered into force on the date of publication.

Regulation includes provisions on processing of personal data, personal health data and data that constitutes trade secrets by SSI. Everyone who processes data within the scope of Regulation or those who have access to data due to their duties are under a confidentiality obligation. According to Regulation, health service providers who has a contract with SSI and act as data processors are required to transfer the personal health data they process to SSI data recording system. They are prohibited from copying or transferring data to any place other than this system. In addition, it is stated that data controllers and data processor are jointly responsible for ensuring the security of the data within the scope of Regulation.

Regulation also includes many provisions regarding the transfer of processed data to third parties by SSI. These provisions contain detailed regulations regarding the parties to which the data can be transferred, the purposes of the transfer, and the transfer procedure. Regulation also regulates the requests of the data subjects in accordance with the Personal Data Protection Law and its secondary regulations. There are provisions in Regulation, parallel to the data protection legislation regarding the procedure and content of the requests that the data subjects can direct to data controllers.

It is crucial for data processors within the scope of Regulation to make their activities compatible with the provisions of Regulation. Regulation is significant since it draws the basic framework that SSI and data processors operating within the scope of SSI must comply with. With this Regulation, it is aimed to ensure the security of the data processed before SSI and to prevent data breaches.

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

Customs Duty Increased for Non-EU Goods

Decision Amending the Decision Regarding the Implementation of Certain Articles of the Customs Law No. 4458 (**Decision**) has been published in the Official Gazette on 15 March 2022. With the Decision, the customs duty was raised from 20% to 30% for goods specified below that arrive from countries outside the European Union:

- (i) Goods sent to real persons with post or cargo that is worth less than 150 Euros, as well as medicines worth less than 1500 Euros,
- (ii) Goods sent to legal entities that are valued under 22 Euros. it is envisaged that the same tax rates will be applied.

Furthermore, exemptions are also foreseen in the Decision for goods, such as books and similar printed publications for personal use and biological materials sent for medical examination on behalf of Medical Laboratories and Genetic Diseases Evaluation Centers licensed by the Ministry of Health.

In any case, abovementioned goods must not exceed 30 kilograms in total.

Decision, which will affect the imports from countries outside the European Union, will enter into force as of 1 May 2022. You can access the full text of Decision [here](#) (only available in Turkish).

Answers. Not theories.

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About our firm

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