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Significant Amendments in Consumer Legislation

Law Amending the Consumer Protection Law and Condominium Ownership Law **(Law)** was published in the Official Gazette on 1 April 2022. With Law, significant changes were made to protect consumers. We have compiled some primary amendments below.

New obligations towards intermediary service providers active in e-commerce. With Law, various responsibilities have been brought to intermediary service providers related to distance contracts they mediate in favour of consumers. In this context, intermediary service providers shall be responsible;

- in cases where the deficiencies within the elements that must exist in preliminary information are caused by themselves,
- for keeping records of the transactions in which they provided intermediary service; and sharing these records with public institutions, organizations and consumers upon request,
- from each transaction in which they cause by violating the intermediary service agreement, the seller and providers violate their obligations regarding distance contracts,
- in cases where they mediate the establishment of a distant contract through the campaigns and discounts they organize without obtaining the approval of the seller or supplier; and the goods or services subject to such contracts cannot be delivered or performed at all or properly, such as inability to supply and insufficient stock,
- for the non-compatible information guaranteed in the advertisements that affect the shopping process of consumers with the issues in the preliminary information presented to the consumer, and
- for establishing an uninterrupted system where consumers can send their notifications and requests regarding the issues determined by the distance contracts regulation and follow up the issues determined in the regulation.

In addition, intermediary service providers will be jointly and severally responsible for providing, confirming and proving the preliminary information to the consumer, together with the seller/provider. Also; in cases where the intermediary service provider collects a price on behalf of the seller/provider, they and the seller/provider will be jointly and severally responsible for the use of the right of withdrawal by delivery or performance, as long as the collected price remains with them. The cases where the price is transferred to the seller/supplier after the delivery or performance of the goods or services to the consumer and the cases where the consumer's optional rights regarding defective goods/services are exercised are excluded.

In order to apply for default provisions against the consumer **within the scope of the instalment sales agreement,** it has become necessary that at least one tenth of the "price in the contract", not the "remaining debt", should not have been paid.

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In consumer loan agreements, **(i)** paying the entire loan within the withdrawal period will be considered as exercising the right of withdrawal; **(ii)** in order for the credit-linked insurance to be offered to the consumer with a loan, the consumer will need to be offered an uninsured loan option first, and the insurance will only be a guarantee for the repayment of the loan debt; **(iii)** consumer loan agreements -except for the loan-related financial products and services- cannot be made conditional on the purchase; **(iv)** the obligation to notify the consumer of interest rate changes thirty days in advance in indefinite term loan contracts will be sought only in cases where the interest rate is increased.

Conditions introduced in consumer loans for insurance and other subsidiary financial products were also envisaged for housing finance.

Refurbished products. The concept of "refurbished product" was introduced into the legislation and it became obligatory to provide a minimum of one year warranty for the products included in this concept.

After-sales services. Manufacturers and importers became obliged to record the updated information of all authorized service stations to the system to be established by the Ministry of Commerce. Moreover, the obligation to use the phrase "special service" in all kinds of promotions and activities such as service receipts, signs and brochures was brought to the stations that serve as private service stations.

Application to consumer arbitration committees. Amendments were made in the application criteria of consumers to consumer arbitration committees, both facilitating for the consumer and for the consumer arbitration committees. Maximum limit of the obligation to apply to the consumer arbitration committee was increased from 15,430 Turkish Liras to 30,000 Turkish Liras. In cases where there is no consumer arbitration committee in the consumer's place of residence or the place where the transaction is made, it has become possible to make applications to the district governorship of that place. It is regulated that the objection to consumer arbitration committee decisions can also be made to the courts in consumer’s residence.

It is set forth that litigation expenses and attorney's fees will not be imposed to the consumer at the consumer court if; the arbitrator's decision is annulled due to the submission of absent information and/or documents to the consumer court.

Sanctions. Imprisonment for certain violations related to timeshare vacation were introduced. Administrative fines were rearranged. In addition, in the event that certain violations are committed over the internet, Advertisement Board became authorized to decide to block access regarding the broadcast, part or section where the violation occurred.

The amendments related to timeshare entered into force on the date of publication of the Law, while other regulations will enter into force on 1 October 2022. You can find the full text of the law here (only available in Turkish).

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Latest Developments on Crypto Assets

Anticipated Legislation: Conditions for Crypto Asset License are Tightening in Estonia

Estonia, which had started to issue license to crypto money exchange platforms in 2017, had been regarded as one of the countries with the most positive approach to crypto assets. However, since 2019 it has been made public many times that Estonia had the intention to set stricter licensing conditions, increase audits and thus, prevent the laundering of crime revenues. This has been interpreted among crypto asset users as an impending ban on crypto assets, despite the government's statements to the contrary. Estonian Minister of Finance, on the other hand, had stated that audits of crypto asset companies could not be conducted with the current regulations. Accordingly, it is known that many businesses operating abroad have been obtaining licenses from Estonia due to the ease of this process.

The anticipated legislation regarding crypto assets has entered into force a few days ago. The Estonian Parliament made amendments to the current Law on the Prevention of Money Laundering and Terrorism Financing **(Amendment)**. As expected, the license conditions for crypto asset companies operating in Estonia have become stricter with the Amendment.

With the Amendment, it was made mandatory for crypto asset companies' active workplace and place of residency to be inside the borders of Estonia to obtain a license. The minimum capital required to obtain a license has also been amended. In this context, the businesses which provide digital wallet and crypto asset exchange services will need to have a minimum capital of 100,000 Euros and those which plan to provide storage services will need to have a minimum capital of 250,000 Euros. In addition; higher registration fees and stricter assessment obligations have been determined for crypto assets companies. Amendment stipulates such businesses to prepare detailed policies and plans regarding matters such as the laundering of crime revenues, risk management and business continuity.

Directors and shareholders of the businesses must also fulfill certain conditions to obtain a license; such as having a good commercial reputation and not having committed financial crimes. The crypto asset businesses which must prepare their business plans and financial projections for at least the next two years are expected to establish a reliable information technologies infrastructure and take all technical and administrative measures.

Amendment have entered into force on 15 March 2022. An adjustment period to Amendment has been stipulated until 15 June 2022. Thus, the conditions in Estonia regarding crypto assets have become even stricter than the general regulations of the European Union. How the businesses currently licensed in Estonia will act due to Amendment is one of the key concerns.

Recently, many countries such as those in the European Union, the United States of America and Russia have been closely following this matter. Even though each country's approach differs, generally it is observed that supervision on crypto asset businesses and attempts to establish legal frameworks regarding crypto asset activities have been increasing.

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MASAK Published a New Crypto Money Guide

Crypto asset service providers, which became obligators of Financial Crimes Investigation Board **(MASAK)**, are required to report suspicious transactions. In this scope, MASAK released "The Suspicious Transaction Reporting Guide" **(Guide)** regarding crypto asset service providers reporting suspicious activities in the electronic environment. Guide generally describes the reporting of suspicious transactions through paper and electronically and provides detailed information on how the forms of suspicious activity reporting will be organized.

In addition, Guide categorizes crypto asset service providers, their clients, executed transactions and the suspicions related to the transactions. Thus, the Guide puts out the categories to be considered by crypto service providers when submitting their reports.

The full text of the Guide can be found here (only available in Turkish).

New Trans-Atlantic Data Privacy Framework is on the Way

On 25 March 2022, The European Commission **(Commission)** and the U.S government reached an agreement in principle regarding Trans-Atlantic Data Privacy Framework **(Framework)**. Framework will constitute the basis for continued data flows in cross-border commerce worth yearly 900 billion Euros.

Framework regulates rules and binding safeguards to limit access to data by U.S. intelligence authorities to what is necessary and proportionate to protect national security. It also introduces a new two-tier redress system to investigate and resolve complaints from people in EU on U.S. Intelligence authorities' access to their data, which includes formation of a Data Protection Review Court. In a joint statement, Commission and U.S. government explained that the Framework is an unprecedented commitment from the U.S. on implementing reforms to strengthen the privacy and civil liberties protections.

As we know, the European Court of Justice had invalidated the Privacy Shield applicable for EU-U.S. data transfers in June 2020 due to its violation of European General Data Protection Regulation. This decision had forced companies conducting cross border commerce to search for an alternative data export mechanism. A new agreement had been expected for nearly two years. Following this announcement, both parties will negotiate to draft and finalize the legal documents necessary to implement the Framework in the coming months; however, an agreement has been reached regarding the general principles.

You can reach the official press release regarding the Framework here.

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Significant Decision by the Constitutional Court on Imprisoned Persons' Data Privacy

Constitutional Court's **(Court)** decision on the individual application **(Decision)** regarding all personal letter of a detainee being submitted to the National Judiciary Informatics System **(UYAP)** without any distinction, was published in the Official Gazette on 7 April 2022.

In the practice subject to the Decision; the fact that all letters are systematically submitted to UYAP based on Turkish Criminal Procedure Code and the Circular of the General Directorate of Prisons and Detention Houses dated 10 October 2016 without making any distinction according to the nature of the crime subject to conviction or the status of the detainee and the convict in the context of criminal law or regardless of whether their content are objectionable or not; have been evaluated.

Although there is legal basis for this practice; Court stipulated that the relevant laws are required to determine the main principles on the intervention as the content of the letters may include subjects that are requested to be kept confidential and information that may be considered as personal data. In this context, Decision pointing out that legal provision, which is the basis for this practice, is incomplete and insufficient clearly states that the intervention to the rights of the applicant did not meet the condition of legality.
As a result, Court concluded in the Decision that letters related to private life and that are not considered objectionable should not be submitted to UYAP, otherwise it will cause violation of rights. Within this scope, Decision can be seen as a significant decision emphasizing that the legal provision constituting legal basis for the processing of personal data is required to contain explicit and detailed rules to ensure sufficient security against violation of rights.

You can reach the full text of Decision here (only available in Turkish).

Constitutional Court's Decision on Recording Fingerprints of Employees

The decision of the Constitutional Court **(Court)** dated 10 March 2022 **(Decision)** was published in the Official Gazette on 19 April 2022. Decision covers the processing of fingerprint data at the entrance and exit of the workplace of the applicant, who is an employee at a municipality.

Court evaluated the processing of the fingerprint data of the employee in accordance with the Personal Data Protection Law **(Law)** and with the "protection of privacy" regulated under the Constitution. Court stated that fingerprints, as biometric data, are in the scope of special categories of personal data in accordance with Law, while referring to European Human Rights Court decisions. Court underlined in the Decision that special category of personal data is of high importance in terms of protecting the right to privacy.

In Decision, Court also referred to various decisions of Personal Data Protection Board, the Council of State and the European Court of Human Rights; which all are stating the importance of protection of biometric data and privacy. In general, it is highlighted in such decisions that explicit consent is not solely enough for processing sensitive personal data, that the processing conditions shall adhere to the principles which are being proportionate, and data being minimized, that legal base shall exist, the collected data shall not be used other than the collection purpose and assurance shall be provided for that.

Court expressed that it is for sure possible for institutions to benefit from advanced technologies while monitoring the entry and exit of their employees in Decision. However; Court stipulated that monitoring of entry and exit from the workplace by processing biometric data can only be done with the express consent of data subjects. Therefore, Court convicted that the right to demand the protection of personal data within the scope of the privacy regulated in the Constitution was violated in the case came before it.

You can find the full text of the Decision here (only available in Turkish).

Competition Authority's Evaluation Report on E-Marketplaces

As known, the reforming attempts in the field of e-commerce began in 2000, centering around the general legislations of the European Union law and have pushed the European Union towards a new reform as the economical size of the related shareholders and the dependence of the sellers/providers to the platforms have increased; particularly by considering the importance of the data used by these platforms in terms of competition.

Our country, too, has been working on adapting to these developments in order to not fall behind. Competition Authority has published their Final Report on the Evaluations on the Sector of E-Markets **(Report)** on 14 April 2022. Since the Report does not only include matters related to competition law but also many other matters as well, it is an incomparable resource which all other sectors may infer from.

In a time where the number of platforms and their end consumers have increased this much, it is an evitable fact that competition has also increased in parallel and in proportion to this. Report closely evaluates how the spread-out e-commerce sector has been affected by the acceleration in the users' internet access and use, caused by the developments in the world, together with the effects of the users' habits. The main focus of the Report is on e-marketplaces, in order to understand the competitive and anti-competitive effects and develop policies according to them.

Featured Topics within the Report

Report primarily analyses the factors affecting the development of retail e-commerce through numbers and statistics, then studies the development of e-markets in the world and in Turkey. Report then evaluates the specific market in the world and in our country. It is not wrong to say that these examples include those who are leading the sector.

The competition conditions are evaluated in the Report, through analyzing the user and seller profiles and examining the scope of the activities. The competition issues arising from the behavior of e-markets are evaluated in a wide scope through looking at the competition between platforms; while the concerns regarding consumers, which has become a public hot topic, are also mentioned.

Conclusion

It is expected that the competition issues and policy suggestions mentioned in the Report in detail are useful to resolve the short-middle term issues; through the framework set with the public opinion, opinions shared in the charette and developments in the market. One of the main conclusions reached is regarding a legislative study addressing the enterprises with remarkable market power. It is known that Competition Authority has been conducting its legislative studies regarding digital markets and it will be concluded soon. It is apparent that this law will become the focus in the sector by bringing many new obligations towards the enterprises.

The full text of the Report can be found here (only available in Turkish).

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Answers. Not theories.

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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 for further information on our legal staff and expertise.

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