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Recent Personal Data Protection Board Decision on Cookies: Administrative Fine of 800,000 TRY

Summary of Personal Data Protection Board (**Board**)'s decision dated 10/03/2022 and numbered 2022/229 on the processing of personal data via cookies used by the data controller operating in the e-commerce sector, is published. Board decided to impose an administrative fine of 800,000 TRY against the data controller for processing and transferring the data abroad in violation of the conditions specified in the Personal Data Protection Law and for failure to take the necessary technical and administrative measures.

Board made critical determinations regarding the processing of data via cookies within the investigation initiated upon the complaint of the data subject. Below are the featured topics:

- (i) Obligation of the data controller to obtain explicit consent via the "opt-in" mechanism for the operation of functional cookies, performance-analytical cookies, advertising/marketing cookies located on the website and mobile applications that are not strictly necessary cookies for the site/application to function properly.
- (ii) Necessity to include detailed and clearly understandable information stating which personal data processing activity corresponds to which processing purpose, data processing conditions and method in the cookie policy to be adopted by the data controller. The importance of notice regarding cookies to be made in full compliance with data protection legislation.
- (iii) The importance of adding a link to the cookie policy in the privacy policy of the data controller which will be leading directly to the cookie policy to facilitate access to information regarding cookies.

This decision given subsequent to the publication of the Draft Guideline on Cookie Policies, which is advisory, points out that the expected legal regulation on cookie practices is on the radar of the Personal Data Protection Authority. Decision is also critical for interpreting the Board's approach to the issue and its stance in the following days.

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

Awaited Regulation: Sports Act Entered into Force

After a long period of discussions and expectations, Sports Clubs and Sports Federations Act (**Sports Act**) entered into force on 22 April 2022. Sports Act's entry into force brought many discussions along. Likewise, the regulation radically changes the establishment and operational mechanisms of the sports clubs and sports joint-stock companies (**Sports Clubs**).

Sports Act enables Sports Clubs which were required to be established as associations to be established as companies. Regulations included that the Sports Clubs which were registered before the Ministry of Interior to also be registered before the Ministry of Youth and Sports. In addition, the Ministry of Youth and Sports will be responsible for Sports Club contributing to the development of the infrastructure and sports.

Many financial auditing mechanisms for Sports Clubs, which have been going through financially challenging days, are also foreseen. One of the most spoken mechanisms is the balanced budget requirement. According to this, Sports Clubs will not be able to become indebted to more than 10 percent of their income of the previous year or will need a general assembly resolution for this purpose. Also, Sports Clubs will only be able to transfer at most the 35 percent of their gross income of the previous year without the need of a general assembly resolution. Sports Club managers who act in violation with the regulation both with intention and negligence may be subject to criminal liabilities and will be severally liable for the damages that occur. This regulation aims to prevent Sports Clubs' long term and unhealthy debts.

Sports Act also includes many new regulations regarding the managers. The regulation requires the manager agreement of football players to be executed in the notary public and for a maximum period of two years. The executed agreement is required to be send to the Ministry of Youth and Sports and The Turkish Football Federation within 30 days. Sports Act also includes several limitations on the amounts to be paid to managers.

The sports world responded to this regulation in many different manners. While some say that the regulation should entered into force earlier and it is a significant development for the sports sector, some criticize it. It is a matter of question how the long-awaited Sports Act which has finally entered into force will affect the actors in the sports world, particularly Sports Clubs.

Record Breaking Fine from Hungarian Data Protection Authority for Unlawful Use of Artificial Intelligence

Hungarian Data Protection Authority (**Authority**) published its annual report in which it presented a detailed decision (**Decision**) where it imposed its highest fine to date of approximately 670,000 Euros. This record-breaking fine was imposed on a bank in response to its unlawful use of artificial intelligence for automatically analyzing records of customer services calls.

The artificial intelligence system subject to the review of the Authority is designed for the analysis and evaluation of the emotional state of the callers of the call center and the key words used in the calls. Bank had been using these results of the analyses to determine in what order the customers should be called back and to monitor the efficiency of the call center personnel.

Even though the Authority emphasized that the use of artificial intelligence is not unlawful in itself, it ruled that the particular manner of this use was against the European Union General Data Protection Regulation (**GDPR**). Authority based this Decision on the grounds that **(i)** the voice analysis conducted by artificial intelligence and the purpose of this

kind of process was not mentioned in the bank's privacy policy, **(ii)** even though the bank based the data processing on legitimate interest, how the proportionality of the interests was achieved was not clearly put and **(iii)** despite the voice analysis with artificial intelligence being evaluated as a process with "high risk", the required measures were not taken.

The Decision is highly notable since it emphasizes the degree of care that must be exercised when using artificial intelligence in data management.

The full text of the Decision can be found [here](#) (*The English text is not available, it can only be read in its original language*).

EDPS and EDPB Announced Joint Opinion on the Data Act

Draft on the Harmonized Rules on Fair Access to and Use of Data (**Data Act**) which was proposed by the European Commission (**Commission**), was published in the Commission's website on 23 February. Generally, Data Act is a draft which widened the access and use of more data. European Data Protection Supervisor (**EDPS**) and European Data Protection Board (**EDPB**) published their joint opinion (**Opinion**) on the Data Act on 4 May.

It is highlighted several times in the Opinion that Data Act must follow the current data protection legislations, initially the European Union General Data Protection Rules (**GDPR**) and the e-Privacy Directive. EDPB and the EDPS suggested in the Opinion that several provisions of the Data Act need to be enhanced in terms of personal data. We compiled main suggestions in the Opinion below:

- The definition of "data" included in the Data Act also includes personal data; therefore it is underlined that the definitions of "personal data" and "non-personal data" should be included in the relevant provision.
- When personal data is processed; it is mentioned that when there is a conflict between the Data Act and the data protection legislation, the provisions in the data protection legislation should prevail. It is highlighted that it should either be mentioned that the requirement for the Data Act to have legal grounds in scope of the GDPR when processing and transferring personal data remains or that specific provisions are only valid for the processing of non-personal data.
- It is stated that explicit limitations and prohibitions should be regulated in cases where the data created using a product or service is used by any other irrelevant person, particularly when this data enables it to reach definite results related to the private lives of persons or pose high risks about their rights and freedoms.
- It is advised that when the personal data created through the use of a product and service for the purposes of direct marketing and advertisement, employee monitoring, credit scoring or determining the eligibility for health insurance, the use of personal data should be limited.

The full text of the Opinion can be found [here](#) (Only available in English).

Significant Decision from European Court of Justice on the Copyright

As is known, European Union acted in 2016 to update its copyright legal framework to regulate copyright in the light of digital technologies. This is resulted with adoption of the Directive on Copyrights in the Digital Single Market (**Directive**) in 2019, sparking public discussion due to the radical regulations it introduced. Right after the Directive was adopted, an annulment case before the European Court of Justice (**ECJ**) was initiated. As of 26 April 2022, this case filed by Poland with the allegation that Article 17 of the Directive violates freedom of expression is concluded.

Article 17 of the Directive, subject to annulment case, regulates the liability of online content sharing platforms. If a user uploads content that infringes copyright, the relevant provision obliges online content sharing platforms of a certain size to use their best efforts in accordance with the high industry standards of professional diligence to make the content inaccessible. Poland argued that the provision may also cause platforms to block access to legal content.

While ECJ acknowledged that the relevant provision restricts freedom of expression, it determined that the provision is valid since this restriction is not unlawful. In the reasoning of the decision, it was stated that Article 17 brought sufficient guarantees to prevent disproportionate restriction of freedom of expression. Decision emphasizes the fact that **(i)** article expressly states that this regulation will not lead to a general monitoring obligation, **(ii)** obligation to block content is brought only for the contents which the right holders provide the necessary information **(iii)** upon conflict, whether the copyright is violated or not will be examined separately.

Although the decision has not resolved the uncertainties regarding the implementation of the Directive, it reveals the position of the ECJ to protect the interests of copyright holders vis-à-vis platforms. In general, the practice is expected to be shaped by the decisions of the courts of the countries that transposed the Directive into their national laws.

You can find the official press release of the ECJ on the decision [here](#).

BRSA Gave Permission for the First Digital Participation Bank in Turkey

Banking Regulation and Supervision Agency (**BRSA**) gave permission for the establishment of a digital participation bank with the minimum capital of 1.5 billion Turkish liras and with the trade name “Hayat Katılım Bankası Anonim Şirketi” in its decision published in the Official Gazette on 22 April 2022 (**Decision**). This permission is the first establishment permission given in the scope of the Regulation on Operation Principles of Digital Banks and Service Model Banking (**Regulation**).

The Regulation which was effective as of 1 January 2022 draws the legal frame of digital banking and banking as a service within the fintech sector and may be deemed as the reflection of digitalization on finance sector, a trend pervading all sectors. As per the Regulation, a “digital bank” is defined as a credit agency which provides banking services through electronic banking distribution channels instead of physical branches. Thus, digital banks can be summarized as organizations established as branchless banks.

Granting permission for the establishment of the first digital participation bank in Turkey with this Decision can be viewed as the first big step towards easing the access to banking services in Turkey. It should nevertheless be noted that the permission given within the scope of the Regulation is not sufficient to initiate operations as a digital bank. Hayat Katılım Bankası, having obtained an establishment permission, will also have to apply to the BRSA for its operation license. After obtaining an operation license, it may begin rendering services as the first digital participation bank in Turkey.

The full text of the Decision can be found [here](#). *(Only available in Turkish)*

Answers. Not theories.

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