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New Regulation on Electronic Commerce

Law Amending the Law on the Regulation of Electronic Commerce (**Amendment Law**), which envisaged significant changes within the e-commerce legislation, was published in the Official Gazette on 7 July 2022. After then, the Regulation on Electronic Commerce Intermediary Service Providers and Electronic Commerce Service Providers (**Regulation**) was published in the Official Gazette on 29 December 2022, which elaborates the provisions in Amendment Law.

Amendment Law introduced the concepts of electronic commerce intermediary service provider (**ECISP**) and electronic commerce service provider (**ECSP**) and set forth comprehensive regulations covering electronic commerce marketplaces, data, unfair commercial practices and licensing. We had already assessed the changes set forth by the Amendment Law in detail in TFP July 2022. Our article on Amendment Law can be reached [here](#).

Now, we have compiled below the essential topics brought by Regulation.

Net Transaction Volume. As stated above, Amendment Law determined the liabilities of ECISPs and ECSPs according to their net transaction volumes. Likewise, Regulation included provisions to be applied to **(i)** all, **(ii)** medium-sized, **(iii)** large-scale and **(iv)** very large-scale ECISPs and ECSPs (which are all defined in Regulation).

Regulation has introduced provisions on the following matters to all ECISPs, regardless of their net transaction volume:

- **Removal of illegal content.** ECISPs are obliged to remove the illegal content within 48 hours if they became aware of the illegal content submitted by ECSPs. The cases in which ECISPs would be deemed to have been aware of the illegal content were listed.
- **Presenting and verifying the information of ECSPs.** The information that ECSP shall have on the homepage of its own electronic commerce environment in a way that can be accessed directly has been specified. As per Regulation, ECISPs cannot provide intermediary services to ECSPs whose information they cannot verify.
- **Intellectual property rights violations.** Regulation brought provisions for the applications to be made to ECISPs regarding intellectual property rights violations.
- **Not offering their own brands for sale.** Exceptions were made to the provision on the prohibition of ECISPs to offer its own brands for sale, which was regulated in Amendment Law. These exceptions are listed as the sale of:
 - (i) goods bearing the trademark of persons who derive more than half of the total sales revenue from sales other than electronic commerce, or goods for which they have the right to use the trademark, and
 - (ii) periodical publications such as newspapers and magazines, and devices that exclusively allow the reading/listening/use the digital copies of e-books.
- **Unfair commercial practices.** In the Regulation, in addition to the ones listed in Amendment Law, the following situations are also listed as unfair commercial practices of ECISPs:
 - (i) Determining the right of withdrawal periods higher than as stipulated in Consumer Protection Law, without obtaining prior approval of the ECSP, and
 - (ii) Making false and misleading statements to ECSPs regarding its own products and services.
- **Intermediary agreements.** Amendment Law stated that the conditions of the relationship between ETAHS and ETHS shall be regulated by an intermediary agreement. The minimum elements which must be included in the intermediary agreements are listed in Regulation. In addition to these elements, additional elements that should be included in the intermediary agreement to which ECISP is a party according to their net transaction volumes are also listed.

- **Transmitting order information and updating stocks.** ECISPs are obliged to provide the necessary integration with ECSP for (i) the simultaneous transmission of order information to ETHS and (ii) updating stock information of the goods they mediate in electronic commerce marketplaces.
- **Establishment of a contact point.** As per Regulation, ETAHSs are obliged to establish a contact point for public institutions and organizations to reach out to itself directly.
- **Establishment of the internal communication system.** As per Regulation, ECISPs are obliged to establish an internal communication system to receive applications made by ECSPs for which they provide intermediary services.

Most of Regulation's provisions entered into force on 1 January 2023. By entering into force, Regulation abolished the "Regulation on Service Providers and Intermediary Service Providers in Electronic Commerce". Provisions regarding presenting information, order, confirmation of order and transaction guidelines in the repealed regulation are regulated in Regulation with minor amendments.

Parallel to Amendment Law, the Regulation envisaged a transition period that would last until 2025. You can reach the full text of Regulation [here](#) (Only available in Turkish).

Court of Appeal Approved the Injunction Regarding NFT

NFTs are one of the most popular digital assets that have emerged in recent years. In this context, many legal problems related to NFTs have begun to emerge. Even though there are no regulations fully regulating NFTs, existing disputes and jurisprudence regarding NFTs are guiding the practice. One of the most significant examples of this is the interim injunction decision within the dispute that we have been representing our client Emrah Karaca, at Istanbul 3rd Civil Court of Intellectual and Industrial Rights (**Court**) ruled on 21 June 2022 which was a first in Turkey. The parties of the dispute are the inheritor and the son of deceased Cem Karaca who is one of the most well-known artists in Turkey, Emrah Karaca and Yiğit Mohaç Yücel, an artist who illustrated a portrait of Cem Karaca and put it up for sale in the form of an NFT.

Plaintiff Emrah Karaca brought the relevant dispute to the Court, since the portrait of his father, Cem Karaca, was unlawfully offered for sale by various means, primarily through NFT, and had been shared and exhibited on social media platforms for commercial purposes. In order to prevent the NFT from being sold, and get a recording of evidence, plaintiff Emrah Karaca requested an interim injunction.

The Court accepted the request for interim injunction, as it found that the request was well-founded. As a result, the Court decided to blockade access to the URL to the portrait on one of the most widely used NFT platforms on the Internet, OpenSea and the prevention of sale of Cem Karaca's portrait on the same platform. Upon receiving the judgment, the portrait was taken down from the NFT platform OpenSea.

The interim injunction decision of the Court is crucial as it is a first in Turkey and since it could set a precedent for similar disputes in the future, as it shows that NFTs could be subject of enforceable decisions. Likewise, the removal of the portrait from OpenSea and halt of its sale, also shows how executable Turkish court decisions are on the matter and whether they can be enforceable or not. In this regard, although there is no regulation in Turkey regarding NFTs, this interim injunction is crucial as it shows NFTs can be subject to executable decisions by courts and that NFTs can also constitute rights violations under Turkish law.

The defendant however, objected to the decision of the Court and upon its rejection, brought it before Istanbul Regional Court of Appeal. The second instance court decided in favour of the court of the first instance and approved the interim injunction. Thus, the first interim injunction related to NFTs became final.

The decision of the court of second instance is crucial as it is the first court decision regarding the legal status of NFTs in Turkey. However, how this decision will affect the legal status of NFTs in the upcoming regulations in Turkey in the near future is a matter of curiosity.

Guide to Open Banking Services is Published

The Central Bank of the Republic of Türkiye (**TCMB**) has published the “Guide to Data Sharing Services in Payment Services” (**Guide**) on “open banking” services on 30 December 2022.

Open banking (open bank data) aims to provide better and faster services to customers. In this context, it ensures that the data in the financial system is made available to third-party service providers with the explicit consent of the customer. Open banking services allows customers to access all data in their financial accounts from a single screen and initiate their transactions. Moreover, open banking services in Turkey are regulated and supervised by the TCMB

In the Guide, open banking activity is defined; “payment initiation service” (m.12/f) and “account information service” (m.12/g) included in Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (**Law**) and license and certification processes for these two services are explained. Within the scope of the open banking business model, the Guide also includes explanations for some business models that are frequently encountered in the field of payments.

Below some of the most significant issues included in the Guide:

- In the Guide, open banking activity; “payment initiation service (**PIS**)” and “account information service (**AIS**)” included in Law are defined as open banking activities. Related services could be briefly described as follows:
AIS: Compiling and presenting information about the customer’s accounts in more than one organization on the online platform.
PIS: It is the mediation of the customer to place a payment order from their account with another payment service provider.
- In the Guide, it has been evaluated whether an operating permit is required for different business models in the industry. However, it was highlighted that the final assessment would be made by the TCMB.
- AIS, basically consists of two stages as “establishing consent” and “receiving account information”. In this context, the criteria for classifying a service as AIS, are detailed in the Guide.
- The Guide states that PIS and AIS do not constitute a prerequisite for each other. In this context, it is stated that it is possible to apply for a license for both services separately or to apply for both at the same time.

The Guide also contains guiding information on how PIS and AIS shall be evaluated. In this context, business models have been analyzed under various scenarios and whether it requires a license or not has been explained. The Guide shall be a guideline in open banking services.

You can reach the full text of the Guide [here](#) (*Only available in Turkish*).

First Payment on Digital Turkish Lira Network Successfully Made

In the scope of the first-phase studies of the Digital Turkish Lira Project led by the Central Bank of the Republic of Türkiye (TCMB), the first payment transaction on the Digital Turkish Lira Network is successfully stated in the announcement dated 29 December 2022.

Digital money, which is expressed as internet-based currency in digital contexts, is becoming more widespread. In this context, TCMB established the Digital Turkish Lira Collaboration Platform on 15 September 2021 to come together with local technology companies in order to construct the Digital Turkish Lira. This platform has carried out tests on many subjects such as blockchain technology, the use of distributed structures in payment systems, integration with instant payment systems. We included the announcement regarding the Digital Turkish Lira Collaboration Platform in our TFP September 2021. You can reach this article [here](#).

It is aimed that the Digital Turkish Lira Collaboration Platform will expand in 2023 with the participation of selected banks and financial technology companies, and move into the next phases with more comprehensive pilot tests. Moreover, in the Announcement it is stated that studies on the technological requirements, as well as the economic and legal framework of the Digital Turkish Lira will be prioritized in 2023.

You can find the TCMB announcement regarding the use of Digital Turkish Lira [here](#).

Digital Transformation Office Announces the Commissioning of BIGDES

The Presidency of the Republic of Türkiye Digital Transformation Office announced on 4 January 2023 that the Information and Communication Security Compliance and Audit Monitoring System (**BIGDES**) was commissioned.

With the implementation of BIGDES, it is aimed to oversee the activities for the Information and Communication Security Guide (**Guide**) compliance process and compliance audit, and the establishment and operation of the Information Security Management System.

In order to ensure the security of the guide's critical information/data; it determines minimum security measures in terms of elimination or reduction of security risks, particularly confidentiality, integrity or accessibility of critical information. In this context, with the implementation of BIGDES, compliance and audit processes with the Guide shall be carried out through a single system.

Institutions and organizations within the scope of the Guide are as follows:

- Institutions and organizations within the state organization,
- Those who have IT units from enterprises providing critical infrastructure services
- It covers those who receive data processing services from third parties with contracts.

In this context, sectors providing critical infrastructure services are included in the “2020-2023 National Cyber Security Strategy and Action Plan”; electronic communications, energy, water management, critical public services, transportation, banking and finance sectors.

Institutions and organizations within the scope of the Guide are required to complete until 31 March 2023; then the results need to be uploaded to BIGDES. Authorities determined by institutions and organizations will be able to access the system with e-Government Gateway authentication.

You can find the announcement regarding the activation of BIGDES [here](#) (*Only available in Turkish*).

NIS2 Directive: New Cyber Security Rules in the EU

The NIS 2 Directive on the security of networks and information systems adopted by the European Commission was published in the European Union (EU) Official Journal on 27 December 2022 and entered into force on 16 January 2023. The NIS2 Directive aims to harmonize cybersecurity regulations and the implementation of cybersecurity measures in member states. In this context, the NIS2 Directive constitutes a significant step towards strengthening cyber security in EU.

Why a New NIS Directive?

The new NIS2 Directive will replace the NIS Directive, which regulates the EU’s rules on the security of networks and information systems. The NIS Directive, adopted on 6 July 2016, is known for being the first cyber security legislation adopted by the EU.

The rapid digitalization process and the increasing malicious cyber activities at the global level and the need for legal regulations for these activities had brought up the need to update the NIS Directive. Insufficient cyber resilience regulations, lack of agreement among member states on key risks and challenges, and the lack of a coordinated crisis response were among the main problems of the NIS Directive.

Key Elements of NIS2 Directive

Some key elements of NIS2 Directive, which establishes the minimum standards for cyber risk management and reporting obligations, are compiled below:

- Broader application than the NIS Directive by including additional industries and covering medium and large organizations.
- A list for security measures to be implemented.
- Obligation to submit an initial notification within 24 hours to the relevant competent authority in case of significant cyber threat.
- Strengthened supply chain cybersecurity for key information and communication technologies.
- Member states may conduct coordinated risk assessments of essential supply chains in collaboration with the Commission and the European Union Agency for Cybersecurity.
- Stricter enforcement requirements with administrative fines up to 10 million EUR or 2% of the total global annual turnover of the company.

What Will be the Next Steps?

NIS2 Directive entered into force on 16 January 2023. Member states are obliged to take the necessary measures within 21 months from the entry into force of the directive. In this context, the process of incorporating the provisions of the NIS2 Directive into the national laws of the member states will be completed on 17 October 2024.

You can reach the full text of NIS2 Directive [here](#).

Draft Principles on Digital Assets and Private Law Opened to Public Opinion

As part of the Project on Digital Assets, The International Institute for the Unification of Private Law (**UNIDROIT**) published Draft Principles on Digital Assets and Private Law (**Draft Principles**) on 10 January 2023. Draft Principles has been prepared by working group over the course of seven sessions held between 2020-2022.

In a nutshell, Draft Principles aim to provide guidance to legislators, judges, practitioners, and the industry involved in the digital asset economy for matters relating to private law. This includes the definition of digital asset, the importance of control, matters related to transfer of digital assets, custody relationships, conflicts of law, secured transactions, enforcement, and insolvency.

In a world where global economy is becoming increasingly digital, digital assets, such as cryptocurrencies, are playing an important role across many sectors. Therefore, Draft Principles are crucial for global economy and financial markets.

Currently, UNIDROIT is undertaking a public consultation in relation to the Draft Principles. As a result, feedback from parties will be obtained regarding whether the instrument sufficiently addresses the private law issues related to digital asset transactions. The deadline to submit comments and views is 20 February 2023.

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

Answers. Not theories.

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