

The Twelfth Development Plan Published in the Official Gazette

**We Attended Various
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Details are Included in
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EU Digital Identity Wallet is on the Way

November was a busy month with intensive legal activities, providing our office with numerous opportunities to represent our country on many levels in various international events. We wanted to summarize the highlights of these events for you, where we had the chance to meet colleagues from different countries and fields.

ITechLaw 2023 Europe Conference, Which We Sponsored, Took Place

The ITechLaw 2023 European Conference had brought together legal professionals from all around the world to explore the latest developments in law and technology. Our partner Dr. Mehmet Bedii Kaya represented our office at this event that keeps pace with technology. He shared his experiences with participants in many sessions that directly align with his expertise.



Although more than a month has passed since the event, the topics discussed are still memorable. Many remarkable topics were discussed, specifically the in-depth analysis of the EU Digital Market Act and Digital Services Act, the impact of the EU Artificial Intelligence Act on the future of AI in Europe, cybersecurity, and data localization.

We are sincerely grateful to the ITechLaw Association for organizing this remarkable event and for giving us the opportunity to sponsor it.

We Attended Interlaw's Annual General Meeting

Interlaw stands as a robust network of independent law firms worldwide and we are proud to be a part of this network, as Turkey's only member since 2019.

This year's Annual General Meeting, held in Costa Rica, was a vibrant exploration of the global legal landscape, filled with celebration, learning, and giving back. We would like to thank Interlaw for supporting professional development, keeping us up to date with legal innovations and providing a cross-border perspective to the legal community.



We Also Represented Our Office at the Lawyers Associated Worldwide Annual General Meeting

We are also honored to have attended the Lawyers Associated Worldwide Annual General Meeting as Turkey's exclusive member too. Lawyers Associated Worldwide is a global network of independent law firms working together to best serve their clients.

The meeting was held in Sydney, Australia from October 18 to 22, 2023. The sessions held during the meetings were quite insightful and covered topics commonly discussed in various jurisdictions.

We sincerely appreciate the efforts of the host firms and LAW's organization and execution committees.

Our Founder and Managing Partner, Gökem Gökçe, Shared His Experience at Istanbul Tech Week

At the event organized by Istanbul Tech Week on November 2nd, which brought together leading figures in the technology world, our founding and managing partner, Gökem Gökçe, was a speaker on the panel titled "The Past, Present, and Future of the Entrepreneurship Ecosystem in Turkey."

We merged the business and technology worlds from a legal perspective. Moderated by esteemed Aslı Kurul Türkmen, the General Secretary of Endeavor, it was an enjoyable conversation approaching the topic from different perspectives with Yasemin Tavlaşoğlu, the Venture Screening Manager of İş Bankası Group and İpek Regay, the Marketing Director of Iyzico.

We would like to express our gratitude once again to the Istanbul Tech Week family, of which we have been a part for two years, for this productive event.



The Twelfth Development Plan Published in the Official Gazette

The Twelfth Development Plan (**OKP**), covering the years 2024-2028 and prepared by the Presidency of Strategy and Budget, has been published in the Official Gazette's duplicate issue dated 01 November 2023.

Development plans have been playing a significant role in our country since 1963. These plans determine policies to be followed not only in economic matters but also in fundamental areas such as education, health, and social security.

The OKP outlines objectives for the period of 2024-2028, highly influencing the country's policies for the next 5 years. In this context, the OKP is based on five axes, namely:

- Qualified people, strong family and healthy society
- Stable growth, strong economy
- Competitive production through green and digital transformation
- Disaster-resilient living spaces, sustainable environment
- Democratic good governance based on justice

In the OKP, the priority sectors have been identified as chemicals, pharmaceuticals and medical devices, electronics, machinery, electrical equipment, automotive, and rail system vehicles, while the priority development areas have been agriculture and food, energy, defense industry, and tourism. The highlighted areas among sectoral policies drew significant attention. Goals were set for employment, investment, entrepreneurship, and public investment policies, which are a reflection of the axis of qualified human resources and labor. Moreover, the objectives and forecasts under the titles of intellectual property rights, information and communication technologies, and services aimed at enhancing trade and consumer protection are quite significant. We have summarized the key objectives related to these areas.

In the OKP, there is a series of objectives aimed at protecting and enhancing intellectual property rights. The plan seeks to raise awareness of intellectual property, support it through education and awareness programs, and particularly aims to create awareness among young people and educational institutions. Additionally, various steps will be taken to increase the personnel capacity of courts related to intellectual property rights, encourage academic studies, improve the licensing system, and increase the economic value of intellectual property. The plan also includes support programs to encourage the commercialization of intellectual property.

The information and communication technologies section of the OKP focuses on increasing domestic value-added, improving the efficiency and competitiveness of the economy, and reducing dependence on foreign technology. Moreover, it aims to enhance the competitiveness and sustainability of electronic communication infrastructures operated by the public and private sectors. Additionally, OKP includes important measures in areas such as national broadband strategy, infrastructure development, strengthening competition, disaster preparedness, support for domestic products and services, and cybersecurity strategy.

The topics such as the development of open-source software, digital transformation of small and medium-sized enterprises, and increasing awareness of cybersecurity are among the focal points of the plan. The plan also details policies and steps regarding national cybersecurity assurance, defining the framework for data management, supporting the development and use of technology in artificial intelligence. Establishing regulations in collaboration between the public and private sectors for quality visual and audio content production, branding, contributions to the economy, protecting copyright in the publishing sector, and enhancing media literacy are also significant objectives within the plan.

In the section focused on enhancing trade and consumer protection services, the objectives regarding increasing competition, rectifying deficiencies in wholesale and retail trade, enhancing the security of electronic commerce, and protecting consumer rights were covered.

Key steps outlined in the plan include establishing infrastructure such as electronic transactions in trade and information systems in retail trade, modernizing wholesale trade, and implementing regulations to protect producers and consumers. Additionally, the plan aims to promote electronic commerce and e-export, restructure consumer arbitration boards, and, as an important one, create platforms to resolve consumer complaints through digital means.

Furthermore, the plan emphasizes increasing educational activities for consumer awareness, updating consumer information systems, and implementing specific measures to protect vulnerable consumer groups. The focal points of the plan encompass various measures aimed at enhancing the security of electronic commerce, safeguarding consumer rights, and raising consumer awareness.

It remains to be seen how the current legislation will be affected by the implementation of the OKP and the potential for new regulations in line with these goals.

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

Recent Development in MASAK Legislation: Fintechs Can Perform Remote Identification

The Communiqué on the Amendment to the General Communiqué of the Financial Crimes Investigation Board (Serial No: 19) (Serial No: 25) (**Communiqué**) was published in the Official Gazette dated 4 November 2023. With the Communiqué, the expected amendment to the Financial Crimes Investigation Board (**MASAK**) legislation regarding remote identification (remote customer acquisition) of fintechs was realized.

The legal basis of the issue is as follows: MASAK Communiqué No:19 introduced regulations on remote identification methods of financial institutions. For fintechs, although they were obliged to comply with MASAK, the MASAK Communiqué No. 19 did not regulate the remote identification methods. In addition, the Central Bank of the Republic of Turkey (**TCMB**) regulations allowed fintechs to acquire customers remotely. In this respect, although there were TCMB regulations for fintechs, they could not perform remote customer acquisition as the relevant processes were not made feasible in the MASAK legislation.

With the recent development in MASAK legislation, the Communiqué enables fintechs to conduct remote customer acquisition in accordance with both the TCMB and MASAK legislation. As a result, both TCMB and MASAK regulations have become harmonized great extent in terms of remote customer acquisition for fintechs.

Accordingly, fintechs will now be able to carry out this process in accordance with the regulations in the “Communiqué on Information Systems of Payment and Electronic Money Institutions and Data Sharing Services of Payment Service Providers in the Field of Payment Services”, which banks are subject to for remote identification and subsequent processes.

You can reach the relevant Communiqué [here](#) (only available in Turkish).

Cooperation Between Turkish Personal Data Protection Authority and Competition Authority

An announcement on the signing of the Cooperation and Information Sharing Protocol between the Personal Data Protection Authority and the Competition Authority (**Announcement**) was published on the websites of these authorities on 26 October 2023.

The Announcement stated that the increasingly intensive processing of personal data with the implementation of big data technologies is critical in terms of both effective competition and the protection of personal data. It was emphasized that enterprises can design strategies that may adversely affect both the privacy of personal data and the establishment of effective competition. In this context, it was stipulated that collaboration between the two authorities is inevitable, as there are many relationships simultaneously falling within the realms of both competition law and data protection law, requiring protection in both areas.

As per the protocol, following agreements were reached:

- Conducting joint work in areas falling within the jurisdiction of both authorities, particularly in emerging areas where timely intervention is crucial to prevent irreparable harm.
- Increasing awareness among users regarding the protection of personal data and competition, in digital markets and publishing reports in collaboration with both institutions to convey a joint message to enterprises for practices that concern both legal areas.
- Organizing joint presentation and discussion programs within the framework of the Personal Data Protection Authority's traditional "Wednesday Seminars" and/or the Competition Authority's "Thursday Conferences".
- Organizing training sessions where the expertise and experiences related to the jurisdictions of the relevant authorities are shared.
- Discussing common issues at national and/or international events organized or attended by the relevant authorities and supporting these events in matters falling within their respective areas.

The fact that these two institutions, which are highly active in regulatory terms and operate in two major areas in Turkey, are moving towards such collaboration is a development that should be closely monitored and could have significant implications. We will eagerly follow how this collaboration takes shape based on the decisions outlined in the Announcement and how it addresses the raised concerns.

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

The Law on Renting Houses for Tourism Purposes is Published

The proposal, also known as the "Airbnb Law", which we reported in our previous issue as being at the legislative proposal stage, has become law. The Law on Renting Houses for Tourism Purposes and Amendments to Certain Laws (**Law**) was published in the Official Gazette on 2 November 2023. The main issues regulated by the Law are as follows:

The Law regulates the procedures and principles regarding the leasing of residences to real and legal persons for tourism purposes. The Law covers leases of residences for tourism purposes up to a maximum of 100 days at a time.

To rent houses for tourism purposes, it is necessary to obtain a permission certificate from the Ministry of Culture and Tourism (**Ministry**) before entering into a tourism rental agreement.

In addition, it is regulated that the plaque, the qualifications of which are determined by the Ministry, must be hung at the entrance of the residence rented for tourism purposes. Applications to the Ministry must also include a unanimous approval decision by all the owners of the building in which the relevant independent section is located.

Obtaining the permit is the responsibility of the lessor or Group A travel agencies certified under the Law on Travel Agencies and the Association of Travel Agencies. Additionally, housing enterprises are allowed to engage in rental activities for high-quality housing.

However, in buildings consisting of more than three independent sections, a permit can only be issued in the name of the same lessor for a maximum of twenty-five percent. In the event that the number of independent sections subject to the issuance of a permit exceeds five in the same building in the name of the same lessor, it is mandatory to submit (i) the license to open and operate a workplace, and (ii) the unanimous decision taken unanimously by all floor owners in case the building subject to the application is located in residential complexes consisting of buildings with more than one independent section.

The permit certificate will be revoked in cases where (i) the holder of the permit certificate requests the revocation of the permit certificate, (ii) it is determined that the tourism rental activity has been terminated, (iii) the new lessor of the tourism rental housing does not apply for the transfer of the permit certificate within the given 30-day period or the obligations are not fulfilled despite the change of the permit certificate holder being deemed appropriate and (iv) the authorized public institutions and organizations notify that the tourism rental housing is used in violation of public order, public security and public morality. Pursuant to the Law, the rights of the users of the dwellings whose permits are revoked will continue until the end of the contract period.

The Law also stipulates a wide range of administrative sanctions for unauthorized rental activities and permit holders:

- Those who rent out houses rented for tourism purposes without a permit will be imposed an administrative fine of 100,000 Turkish Liras for each rented house and will be given 15 days to operate by obtaining a permit. At the end of this 15-day period, an administrative fine of 500,000 Turkish Liras will be imposed on those who continue to rent for tourism purposes without obtaining a permit, and another 15-day period will be given to operate by obtaining a permit. An administrative fine of 100,000 Turkish Liras for each contract will be imposed on those who rent out the tourism housing rented from the permit holder to third parties on their own behalf and account.
- In addition, an administrative fine of 100,000 Turkish Liras for each contract will be imposed on those who rent out the residence for tourism purposes on their own behalf and account, and those who mediate the rental of houses without a permit for tourism purposes.
- An administrative fine of 100,000 Turkish Liras will be imposed on intermediary service providers who enable electronic commerce and promotion of unauthorized rental activities and do not remove the relevant content within 24 hours despite the warning issued by the Ministry. In case of non-compliance with the relevant decision, an administrative fine of 100,000 Turkish Liras will be imposed on intermediary service providers for each residence.
- An administrative fine of 1 million Turkish Liras will be imposed on those who continue their rental activities for tourism purposes without a permit and those who rent out the same dwelling more than 4 times within one year from the date of the first contract, although they make a lease contract for more than 100 days each time.

Under certain circumstances, the administrative sanctions to be applied to the permit holders are as follows:

- In case the information and documents requested by the Ministry are not submitted within 30 days, are submitted incompletely, misleading information or documents are submitted, and in case the lessor changes through a legal transaction other than inheritance, an administrative fine of 50,000 Turkish Liras will be imposed if this change is not notified within 30 days from the date of registration in the land registry.
- Within the scope of the Law on the Turkish Tourism Promotion and Development Agency, an administrative fine of 50,000 Turkish Liras will be imposed if the document regarding the payment of the tourism share is not submitted within the period determined by the Ministry or if this document is not presented during the inspections to be carried out.
- The administrative fine to be imposed in cases where the location, quality and physical characteristics of the residence rented for tourism purposes are misleadingly introduced to the user through articles, advertisements, posters, brochures, social media, web pages and similar tools, or the promised conditions are not provided or the residence rented for tourism purposes is allocated to the user for a shorter period than the period specified in the contract will be 100,000 Turkish Liras.
- An administrative fine of 100,000 Turkish Liras will be imposed if the housing rented for tourism purposes is not delivered to the user in accordance with the contract, and an administrative fine of 200,000 Turkish Liras will be imposed if the payment received is not refunded within the given 15-day period.
- If the plaque issued by the Ministry is not hung at the entrance of the houses rented for tourism purposes, an administrative fine of 100,000 Turkish Liras will be imposed and 15 days will be given for the plaque to be hung. However, if the plaque is not hung at the entrance of the residence within 15 days, an administrative fine of 500,000 Turkish Liras will be imposed.
- If the inspection reveals that the dwelling does not meet the qualifications for the issuance of a permit, an administrative fine of 100,000 Turkish Liras will be imposed and a period of 15 days will be given to eliminate the violations.

The Law will enter into force on 1 January 2024. Those who are engaged in tourism leasing activities on the effective date of the regulation must apply to the Ministry to obtain a permit within 1 month from the effective date of the relevant article. According to the Law, those whose application is not accepted will not be able to operate, but the rights of the users of these houses will continue until the end of the contract period.

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

Constitutional Court Decisions on Time Tracking with Biometric Data

The Constitutional Court (**AYM**) decision on the claim that the right to request the protection of personal data within the scope of respect for private life was violated due to the use of a facial recognition system to track overtime, regarding biometric data, was published in the Official Gazette dated 2 November 2023.

According to the Personal Data Protection Law (**Law**), which is the main legislation on personal data, biometric data of individuals are considered as sensitive personal data. Although there is no definition of biometric data in the Law and secondary regulations, the European Union General Data Protection Regulation (**GDPR**) defines genetic data as “*personal data resulting from specific technical processing relating to physical, physiological or behavioral characteristics, such as facial images or dactyloscopy data, which enable or confirm the unique identification of a natural person*”. In this regard, data such as fingerprints, retina, palm, face, hand shape and iris constitute biometric data.

According to the decision, the applicant, a legal entity comprising civil servants employed within the hospital, objected to the practice of starting overtime tracking with a facial recognition system at the workplace and requested the cancellation of the relevant practice.

AYM evaluated the claim of violation of the right to request the protection of personal data within the scope of respect for private life and stated that there are two basic prerequisites for individual application: **(i)** The applicant must claim that he/she has been victimized as a result of the violation of an actual right and **(ii)** the applicant must be personally and directly affected.

In this respect, AYM stated that the legal entity of the applicant trade union could not assert a tangible fact directly affecting its rights and therefore, the legal entity applicant’s actual and personal right was not directly affected. Therefore, AYM decided that the application was inadmissible for the legal person applicant due to lack of jurisdiction in terms of person.

Although no concrete evaluation was made in this decision, in another AYM decision published in the Official Gazette on 19 April 2022, AYM ruled that the overtime tracking with the fingerprint registration system violated the real person applicant’s right to protection of personal data. In the decision, it was stated that since there was no restriction imposed by any law on overtime tracking with the method of recording biometric data, special categories of personal data could only be processed in the presence of explicit consent.

Moreover, AYM has listed the criteria that must be fulfilled even if explicit consent is obtained as follows:

- The employee must be informed in advance about the scope, purpose, limits and consequences of the personal data to be processed.
 - The methods to be applied must have a legitimate purpose within the scope of the administration’s supervision and management authority.
 - There should be no other method to achieve the legitimate purpose with a lesser intervention.
- Biometric data must be processed only for a limited purpose.

In the light of these criteria, AYM decided that the applicant’s right to protection of personal data was violated due to the lack of the applicant’s explicit consent regarding the use of overtime tracking with fingerprints, as well as the use of a system that was not proportionate when a different method serving the same purpose could have been used.

As evident, it is significant to comply with the criteria set by AYM for employers to be able to use overtime tracking systems by processing biometric data. However, it should not be forgotten that the right to demand the protection of personal data must be asserted by the data subject himself/herself, as it is a right closely linked to the individual.

It is also worth mentioning the perspective of the Personal Data Protection Authority. In many of its decisions, the Authority emphasizes that overtime tracking with biometric data is “excessive data processing” and that “it is not legitimate to obtain the benefit that can be provided by another method with more critical and sensitive data”. Therefore, it holds significance to consistently evaluate both the perspectives of the Authority and AYM under all circumstances.

You can reach the relevant decisions of the Constitutional Court on biometric data [here](#) (only available in Turkish) and [here](#) (only available in Turkish).

Public Announcement on the Processing of Personal Data by Sending Verification Codes in Stores

The Personal Data Protection Board (**Board**) has made this public announcement due to complaints regarding the sending of a verification code via SMS to the data subjects during the checkout process in stores and requesting this code for reasons such as completing payments, creating an invoice, forwarding the invoice to the contact address, but then sending commercial electronic messages to the data subjects regarding the store activities in subject.

As known, the Board published an announcement on 17 December 2021. Similar to the announcement, in the aforementioned decision, it was stated that sending commercial electronic messages to the data subjects regarding the store activities by sending a verification code during store shopping is misleading and data controllers were directed in this regard. However, the Board updated its announcement, citing that the practices continued.

In this context, we compiled below the Board's assessments in its public announcement dated 13 November 2023.

Pursuant to the Personal Data Protection Law (**Law**), explicit consent is defined as "*consent related to a specific subject, based on information and expressed with free will*". Accordingly, explicit consent must be related to a specific subject and limited to that subject. In this context, the Board also emphasizes these features of explicit consent and emphasizes that the purpose of the SMS and the consequences that may arise if the code in the SMS is shared should be clearly and understandably conveyed to the relevant persons by the persons authorized by the data controller in the stores and that the necessary information channels should be provided in the SMS content.

If explicit consent is to be declared for the processing of multiple categories of data, the explicit consent must cover different aspects of the processing, such as which data will be processed and for what purposes. In this context, the Board emphasized that different processing activities such as approving the user agreement by sending a verification code, obtaining permission to process personal data, and obtaining commercial message consent should not be carried out with a single action.

In addition, Law regulates the subjects on which the data controller or the persons authorized by the data controller should provide information to the data subjects. The Board reiterated that the obligation to inform individuals must be fulfilled separately from obtaining explicit consent and meeting other conditions for processing of personal data.

The Board also stated that in case obtaining the explicit consent of the data subject is a pre-condition for the provision of a product or service or the utilization of a product or service, the free will factor is violated. Therefore, such obtained consent cannot be deemed valid. In this context, it was emphasized in this decision, as in many decisions, that in the processing of personal data for the purpose of sending commercial messages, it is not in accordance with the law to obtain explicit consent as a mandatory requirement for the completion of the shopping. It was also stated in the announcement that explicit consent for commercial electronic message authorization must be requested after the completion of the shopping in order not to be perceived as a mandatory element.

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

EU Digital Identity Wallet is on the Way

European Commission (**EU**) announced on 8 November 2023 that an agreement has been reached on the regulation governing the establishment of digital wallets that can be used on smartphones, negotiated between the European Commission, the European Council, and the European Parliament.

The eIDAS Regulation, which establishes the cross-border legal framework for digital identities, forms the legal basis for the regulation of the EU Digital Identity Wallet (**Wallet**).

EU citizens will be able to access public services and private online services across Europe using the Wallet with this regulation, without the need for additional identity verification methods. Additionally, “Very Large Online Platforms” regulated under the Digital Services Act (such as Amazon, Facebook) and service providers obligated to authenticate users will be required to accept individuals’ Wallets for identity verification.

Moreover, the Wallet will securely store users’ digital identities and enable them to open bank accounts, make payments, and store digital documents such as mobile driving licenses, medical prescriptions, professional certificates, or travel tickets.

The regulation governing the Wallet will come into effect after formal approval by the European Parliament and member states, following its publication in the Official Journal of the EU.

You can reach the relevant announcement of Council of the EU [here](#).

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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