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Answers. Not theories.

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EXPECTED REGULATIONS ON PERSONAL DATA TRANSFERS

Expected Regulations on Personal Data Transfers: Regulation Entered into Force, Documents on Standard Contracts and Binding Corporate Rules Published

Some of the long-awaited amendments to the Law on the Protection of Personal Data **(PDPL or Law)** were made on 12 March 2024. Following these amendments, the Personal Data Protection Authority (**Authority**) published the Draft Regulation on the Procedures and Principles Regarding the Transfer of Personal Data Abroad on its website and opened it to public opinion. It was expected that the draft would be finalized and the regulation published after the Authority reviewed the opinions. After two months, on 10 July 2024, the Regulation on the Procedures and Principles Regarding the Transfer of Personal Data Abroad (**Regulation**) was published and entered into force on the same day. You can access the full text of the Regulation here **(only available in Turkish)**.

The details of the three-tiered and alternative transfer system for personal data transfers abroad have become clear: With the amendment to the PDPL, personal data can now be transferred abroad under the following conditions: **(i)** if there is an adequacy decision; **(ii)** in the absence of an adequacy decision, if the parties to the transfer provide appropriate safeguards; or **(iii)** if these appropriate safeguards are not provided, in occasional (not repetitive) circumstances and by meeting the specified exceptional conditions.

An adequacy decision can be given by the Personal Data Protection Board (**Board**) concerning the country, a sector within the country, or an international organization, taking into account the issues specified in the Regulation. Additionally, this decision will be reviewed by the Board every four years at the latest.

The appropriate safeguards specified in the PDPL amendment include standard contracts, binding corporate rules, agreements that are not international contracts, and written undertakings. The details of these safeguards have been regulated in the Regulation. In practice, standard contracts and binding corporate rules will be the most common methods for transferring data abroad.

To ensure appropriate safeguards through a standard contract;

- The parties to the transfer should enter into the contract announced by the Board without any changes,
- The contract must be signed by the parties to the transfer and/or authorized signatories and the Authority must be notified within 5 business days after the signatures are completed,
- When fulfilling the relevant notification, documents showing that the contract has been signed by authorized signatories must be submitted and a notarized translation of each foreign language text must be attached.

The contract may also specify who will notify the Authority; if there is no agreement, this obligation will fall on the data transferor. Additionally, unlike the previously published draft, the Regulation now requires notification to the Authority within five business days in the event of a change in the contract's content, the parties to the contract, or the termination of the contract. Moreover, the Board has the authority to conduct investigations ex officio or upon a complaint in cases where the text of the standard contract is amended or the signature is not valid. It remains to be seen how the language requirement and the stipulation that the contract is close to change will be practically implemented.

To ensure appropriate safeguards through binding corporate rules;

- Parties wishing to transfer data abroad through binding corporate rules must obtain approval from the Board,
- The application for approval should include both the text of the binding corporate rule and other information and documents necessary for the assessment,
- A notarized translation of each foreign-language document must also be attached.

Personal data transfer can be initiated after the Board's approval. The matters to be assessed by the Board at the approval stage are also regulated in detail in the Regulation.

The Regulation contains detailed provisions regarding agreements that do not constitute international contracts and written undertakings, which are among the appropriate safeguards. The Board's authorization is mandatory for these two safeguards.

Lastly, in the absence of an adequacy decision and if one of the appropriate safeguards cannot be provided by the parties, exceptional transfers based on occasional (not repetitive) circumstances are also regulated in detail in the Regulation. For an exceptional transfer to be made: **(i)** the transfers must not be regular, must occur on a single or a few occasions, must not be continuous, and must not be in the ordinary course of business; **(ii)** there must be one of the exceptional circumstances specified in the Regulation. These exceptional circumstances are listed in detail in the Regulation. The most notable exceptional case is when the data subject gives explicit consent to the transfer, provided they are informed about the possible risks. Accordingly, the transfer of personal data abroad with explicit consent can now only be made exceptionally under occasional (not repetitive) circumstances. Thus, the procedure of obtaining explicit consent for each data transfer abroad has come to an end.

As is known, the Law stipulates that the first paragraph of Article 9, prior to its amendment by the Law introducing this article, will continue to be applied alongside the amended version of the article until 1 September 2024. For this reason, it is important to complete the relevant compliance processes by 1 September 2024.

As another significant development, the Authority also announced the final version of the "Documents on Standard Contracts and Binding Corporate Rules", of which it had previously announced the draft versions, on its website on the same day **(only available in Turkish)**. Thus, the highly anticipated details regarding the transfer of personal data abroad and the documents to be used have been clarified. These documents include standard contract texts for the transfer of personal data abroad, binding corporate rules application forms, and auxiliary

guidelines on the basic issues that should be included in binding corporate rules. These documents were finalized with the decision of the Personal Data Protection Board dated 4 June 2024 and numbered 2024/959.

The prominent amendments in the published texts are as follows:

- Standard contracts must be signed without any additions, deletions or amendments. However, for transfers from the data controller to the data processor and from the data processor to the data processor, the options of granting general or specific authorization to the sub-processor are provided in the contract texts. Thus, the parties will be able to choose the type of authorization they wish in the contract.

- Restrictions on 'subsequent transfers' of personal data and the obligations to be complied with are also specified in standard contract texts, albeit differentiated for the transfer parties. Thus, companies will need to conduct transfer impact assessment studies in the future.

- The parties to the data transfer will be required to detail information on the data to be transferred, such as the activity of the data transferor, the activity of the data recipient, the categories of data transferred and the relevant group of persons, the legal reason for the transfer, the retention periods, the recipient group and the transfer frequency, in the annexes.

- In addition, detailed regulations have been drafted in the standard contract texts regarding the guarantees for the protection of personal data, the rights of the data subject, methods of claiming rights, liability process, audit, non-compliance with the contract and termination, and the applicable law.

In the binding corporate rules documents published by the Authority, there are separate binding corporate rules application forms for data controllers and data processors, as well as auxiliary guidelines stating the basic issues that should be included in the binding corporate rules.

Common information requested in the application forms prepared for both data controllers and data processors includes the structure and contact information of the group of enterprises engaged in joint economic activity, explanations regarding the processing of personal data and data flow, and the binding nature of the binding corporate rules.

You can access the relevant announcement of the Authority and the final documents here **(only available in Turkish).**

Significant Developments Regarding Crypto Assets

The long-awaited regulation on crypto assets in Turkey (**Crypto Asset Law**) was submitted to the Grand National Assembly of Turkey (**TBMM**) on 16 May 2024 with the Draft Bill on Amendments to the Capital Markets Law. The relevant proposal was approved by the TBMM General Assembly on 26 June 2024 and published in the Official Gazette on 2 July 2024 and entered into force with transitional provisions.

You can find the full text of the Crypto Asset Law here **(only available in Turkish).** We have compiled the significant headings in the Crypto Asset Law below.

Scope: Crypto Asset Law includes the definitions of crypto-assets, crypto-asset service providers (**SP**) and crypto-asset platforms; however, it primarily regulates the activities of crypto-asset platforms and the trading and transfer transactions that residents in Turkey may carry out on these platforms. It is also regulated that SPs must obtain permission from the Capital Markets Board (**CMB**) in order to be established and operate, and that the principles and procedures to be followed will be determined by secondary regulations to be issued by the CMB.

Basic obligations of SPs: With the Crypto Asset Law, SPs are obliged to establish an internal control unit in order to provide a secure system, and their information systems and technological infrastructures must comply with the criteria determined by The Scientific and Technological Research Council of Turkey (TÜBITAK) in order to be permitted by the CMB to start their establishment/ activities.

It is mandatory to sign a contract between customers and crypto asset service providers, and they are given the opportunity to conclude contracts via distance communication tools, similar to the opportunity given to financial institutions.

Authorizations of the CMB: Within the scope of the Crypto Asset Law, the CMB is authorized to determine the principles regarding the issuance of capital market instruments as crypto assets. The other powers of the CMB in the relevant regulation are as follows:

- The CMB will be able to regulate the content, amendments, fees, termination conditions, etc. of the contracts between SPs and customers, and will be able to override the conditions limiting the liability of SPs.

- SPs will be audited by independent audit firms authorized by the CMB.

- In case of unauthorized capital market activities, the CMB will be able to issue access blocking orders, which is likely to be one of the most controversial provisions.

Key obligations and key regulations for crypto asset platforms: Crypto Asset Law introduces a wide range of obligations for platforms that require a comprehensive compliance process. We list the main provisions below:

- In terms of the crypto assets to be traded on the platforms, the obligation to establish a written procedure for the determination of the crypto assets to be traded and the termination of their trading is introduced. Secondary regulations regarding this will be determined by the CMB

- Platforms are obliged to establish internal mechanisms to resolve customer complaints.

- Platforms are obliged to determine the identities of customers in accordance with the Law No. 5549 on the Prevention of Laundering Proceeds of Crime and the relevant legislation.

- The law regulates that the assets of crypto asset platforms and the assets of users will be separate. In other words, the accounts of users will not be subject to seizure in possible enforcement proceedings against the crypto asset platform.

Sanctions regulated in the Crypto Asset Law:

- SPs are liable for damages arising from their unlawful activities or failure to fulfil their obligations. In case the damage cannot be compensated, SP members may also be liable.

- Administrative fines can be imposed on those who violate the relevant legislation.
- Those who provide unauthorized crypto asset services will be punished with imprisonment from 3 to 5 years and a judicial fine.
- In the case of an embezzlement offence committed by SPs, the chairman and members of the board of directors and other members may be punished with imprisonment from 8 to 14 years and a judicial fine.
- As a critical point, it is also regulated as unauthorized crypto asset service provision for platforms based abroad to carry out activities for residents in Turkey or to offer a prohibited activity.

The relevant institutions also initiated action after the Crypto Asset Law entered into force. An announcement (**CMB Announcement**) regarding Crypto Asset Service Providers was made by the CMB on 2 July 2024 on its official website. In the CMB Announcement, it was stated that HSs must apply to the CMB and obtain an operating permit until 2 August 2024 or decide to liquidate and not accept new customers until 2 October 2024. It is also stated that the activities of ATMs and similar devices in Turkey, which enable customers to convert their crypto assets into cash or cash into crypto assets and perform crypto asset transfers, must be terminated by 2 October 2024. It was underlined that the activities of foreign crypto asset service providers for persons in Turkey should also end on the same date. In this context, those who have been crypto asset service providers as of 2 July 2024 and intend to continue these activities must apply to the CMB in writing until 2 August 2024, together with the information, documents and explanations detailed in the application documents and information form specified in the CMB Announcement.

The application documents and information form in the CMB Announcement are available here **(only available in Turkish)**

Another institution that published an announcement regarding the Crypto Asset Law was TÜBİTAK, on 3 July 2024. We have compiled the highlights of this announcement below under headings.

Technical criteria for license: TÜBİTAK will determine the technical criteria that HSs that will apply for a license must have. Exchanges and custodians that meet these criteria will be able to obtain a license.

Support for innovative technologies: Blockchain technology will be specially supported and studies in this field will be encouraged. Permission can be obtained from the CMB for the sale or distribution of crypto assets produced by technology companies developing new generation blockchain. In such cases, TÜBİTAK will prepare a technical report on whether the project is in the original blockchain infrastructure.

Obtaining Opinion: Platforms will determine their own principles and guidelines regarding the listing or delisting of crypto assets. TÜBİTAK will be able to give an opinion on the minimum technical criteria to be followed when determining these principles.

Independent Audit: Licensed HSs will be audited by independent audit firms. TÜBİTAK will be able to provide opinions on the procedures and principles related to information systems during the audits and participate in the audits if requested by the CMB.

Financial Resources: Platforms will transfer 1% of their revenues excluding interest to the CMB and 1% to TÜBİTAK. This financial resource will be used to popularize blockchain technology in Turkey and to finance projects in this field.

You can reach the TÜBITAK announcement here **(only available in Turkish)**.

The secondary regulations will enter into force within six months. It is eagerly awaited to see what impact the Crypto Asset Law will have on the sector.

Good News for Google from the Competition Board!

The Competition Board (**Board**) had launched an investigation into Google's various search features such as "videos", "users also asked about this" and "translation box" on the general search results page. The investigation examined allegations that Google's various search features pushed websites down the search results page, causing traffic loss. The main subject of the investigation was whether Google had abused its dominant position.

As a result of the investigation, the Board decided on 04 July 2024 that Google did not abuse its dominant position through the search features offered on the general search results page. Thus, no administrative fine was imposed on Google.

The decision is significant in terms of Google's behavior regarding various search features in the general search services market. However, another noteworthy point in the decision announcement is that the Competition Authority (**Authority**) also emphasized another ongoing investigation for Google in this announcement.

As a matter of fact, at the end of the decision announcement, the Authority states that Google has been fined a total of approximately 1.25 billion TRY within the scope of four investigations carried out so far. It also emphasizes that an investigation into allegations that Google operates in a vertically integrated manner and therefore favors its own products/services through various behaviors is still ongoing.

Thus, it is clear that the Board is continuing to investigate Google's "self-preferencing" in the sense that Google is prioritizing its own services to the exclusion of its competitors, and that it attaches importance to investigations into this action. The decision to be made after the investigation is a matter of great curiosity.

The full text of the relevant decision announcement is available here **(only available in Turkish)**.

EU Artificial Intelligence Law Enters into Force

With the Artificial Intelligence Act (**AI Act**), the European Union (**EU**) aims to establish a comprehensive legal framework for the development, marketing and use of artificial intelligence in accordance with EU values. This framework aimed to promote the adoption of human-centered and trustworthy AI, while ensuring a high level of protection of health, safety and fundamental rights, including democracy, the rule of law and environmental protection. For these purposes,

further to inter-institutional negotiations, on 13 March 2024, the European Parliament approved the AI Act; taking one of the significant steps that will determine the future of artificial intelligence in the world.

At this point, on 12 July 2024, the AI Act was published in the EU Official Journal. The law will enter into force on 1 August 2024.

The AI Act defines artificial intelligence as a machine-based system designed to operate at various levels of autonomy. AI Act will apply to (i) providers of artificial intelligence systems to be offered on the EU market, regardless of whether they are based in the EU, (ii) users of artificial intelligence systems located in the EU, and (iii) providers and users of non-EU artificial intelligence systems if they are used in the EU.

We have compiled the significant regulations introduced by the AI Act below:

Respect for sensitive data and privacy protection: AI Act introduces regulations to ensure that artificial intelligence systems to be used in EU countries are secure and respect fundamental rights.

Risk-based approach and regulations: AI Act introduces rules based on the risk level of artificial intelligence systems. In other words, the higher the risk, the stricter the rules to be applied. In this context, examples of high-risk AI use cases include critical infrastructure, education and vocational training, employment, basic private and public services, certain systems in law enforcement, and rules that closely concern public order such as immigration.

Regulations to encourage and support innovation: AI Act introduces national-level regulatory provisions for SMEs and entrepreneurs. The law will enable the development and testing of innovative artificial intelligence products within an ethical framework.

Prohibited practices and ethical principles: AI Act envisages several prohibited practices that aim to promote the ethical use of AI-based applications. Some of these practices are as follows:

- Analyzing the emotions of those concerned in business and educational settings,
- Crime prediction based on character analysis,
- Use of applications aimed at manipulating human behavior,
- Biometric categorization systems using sensitive characteristics (e.g. religious, philosophical beliefs, sexual orientation, race), and
- Untargeted scraping of facial images from the internet or CCTV images to create facial recognition databases.

In case of non-compliance with the rules introduced by the AI Act, the penalties to be paid by companies will vary depending on the size of the violation and the company.

The European Union Artificial Intelligence Office is a new unit established by the European Commission to coordinate the implementation, execution and harmonization activities of the AI Act. The AI Office will supervise AI systems based on general purpose models and systems provided by the same provider and will have the powers of a market surveillance authority. The office will coordinate governance among member states and oversee the implementation of rules on general-purpose artificial intelligence. Member state authorities will determine enforcement rules, including fines and other enforcement measures, warnings and non-monetary measures. Individuals will be able to file infringement complaints with the national competent authority, which will be able to initiate market surveillance activities.

In case of non-compliance with the rules introduced by the AI Act, it is envisaged that the fines to be paid by companies will vary between 35 million Euros or 7% of global turnover and 7.5 million Euros or 1.5% of turnover, depending on the violation and the size of the company.

The AI Act will gradually become fully enforceable within 24 months from 1 August 2024, the date of entry into force, as follows:

- **On 2 August 2024**, EU Member States will phase out prohibited systems;
- **On 2 August 2025**, obligations on multi-purpose artificial intelligence systems will enter into force;
- **On 2 August 2026**, the obligations for high-risk systems defined in the list of high-risk use cases will enter into force; and
- **On 2 August 2027**, high-risk system obligations that are currently subject to other EU legislation will enter into force.

This is one of the most important steps taken for AI-based technologies. In addition to being a concrete step, the AI Act also provides a comprehensive roadmap to ensure that AI technologies are developed and used safely and ethically. Therefore, it is critical for companies operating in the artificial intelligence sector to initiate the process of harmonizing with the systematics envisaged by the AI Act.

The full text of the AI Act is available here **(available in EU languages)**.

Editors

Görkem Gökçe
gorkem.gokce@gokce.av.tr

Doç. Dr. Mehmet Bedii Kaya
bedii.kaya@gokce.av.tr

Elif Aksöz
elif.aksoz@gokce.av.tr

Yağmur Yollu
yagmur.yollu@gokce.av.tr

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Please contact us at
info@gokce.av.tr
0 212 352 88 33