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Hidden Threat to Digital Consumers: Obscure Commercial Designs Are on the Radar of the Personal Data Protection Authority and the Ministry of Trade

In the world where digital commerce is developing rapidly, "Dark (Commercial) Patterns" as a concept attracts attention specifically in the field of digital advertising. These designs can be defined as designs that include manipulative and unethical commercial strategies towards consumers and direct customers to make unconscious decisions.

Some examples of dark patterns that are frequently encountered in daily life include hidden subscription automations, manipulative use of color, expressions that may create a misleading feeling about product features, timing manipulated discounts, and information concealment methods.

In 2022, the Organisation for Economic Cooperation and Development (OECD) published a report titled "Dark Commercial Patterns" and for the first time seriously mentioned this concept. The report covered a wide range of practices that could cause consumers to make choices against their own interests. According to OECD, these designs consist of elements that restrict users' ability to make independent decisions and direct them in favor of the business. OECD has actually drawn the general framework of the concept of dark design by categorizing dark designs according to their characteristics. The relevant OECD report highlighted growing concerns that these designs could cause significant harm to consumers and proposed possible solutions for consumers and businesses to mitigate these risks. You can access the relevant OECD report [here](#).

The recent progress is the cooperation protocol between the Personal Data Protection Authority and the General Directorate of Consumer Protection and Market Surveillance within the Ministry of Trade. It is stated in the announcement that advertising practices can affect the purchasing behavior of consumers by violating personal data privacy; for this reason, personal data law and consumer law intersect, and it is aimed to increase consumer awareness on digital advertising and to strengthen consumers' control over their personal data.

It was emphasized in the announcement that in targeted advertising and deceptive commercial design (dark commercial patterns) processes based on personal data, which are carried out for consumers in digital environments, excessive and various data are used in order to deliver the advertisement to the target audience, and this is risky in terms of personal data.

Although the details of the protocol are not yet known, it has been pointed out once again that dark commercial designs have been on the radar of public institutions in recent years. As a matter of fact, the Advertising Board had included dark designs on its agenda at its meeting in August 2023 and announced in an announcement that 'these practices aiming to direct consumers will be closely monitored'. In addition, the Advertising Board had explicitly referred to 'dark commercial designs in which the digital consumer is exploited, and their behavior is manipulated in a wide variety of ways' in the phase-1 report of the digital consumer protection project. You can reach our relevant article [here](#).

This cooperation is also critical for the implementation of personal data legislation, as data processing and interpretation is the cornerstone of digital consumer benefit.

With the rapid advancement of digitalization and the increasing ease of reaching consumers through digital platforms, the cooperation between these two institutions is highly significant in defining the permissible limits for dark patterns in Turkey.

The announcement has been published on the websites of both organizations, you can find them [here](#) (only available in Turkish) and [here](#) (only available in Turkish).

The Medium-Term Program (2025-2027) is Implemented by Presidential Decision

The Medium-Term Program (MTP) covering the years 2025-2027 was published in the Official Gazette dated 5 September 2024. MTP has the following objectives in line with the objects of the Twelfth Development Plan (2024-2028):

- Strengthening macroeconomic and financial stability,
- Maintaining financial discipline, ensuring price stability by reducing inflation to single digits in the medium-term,
- Enhancing R&D and its innovation capacity,
- Ensuring technological transformation with a focus on transferring green and digital economy,
- Strengthening human capital, further strengthening the labor market,
- Ensuring sustainable growth that foregrounding to improve business and investment environment and to reduce informality in the economy.

Within the scope of "Supporting the Transition to Digital Transformation" in the MTP, the main targets in line with accelerating the digital transformation process are as follows:

- Enhancing the capability of design, production, R&D and commercialization in the chip industry,
- Conducting R&D work and enhancing product operations by coordinating satellite development and marketing activities in the new technological areas such as nano and micro satellite and mega team satellite,
- Increasing the number of thematic clusters research centers specific to artificial intelligence, facilitating access of calculation infrastructure to AI researchers,
- Mobilizing Turkey's AI ecosystem with the AI ecosystem calls, ensuring the transfer of the solutions and know-how developed with the projects supported under the call from the ecosystem,
- Carrying out the essential legal regulation studies within the scope of adaptation of legislation with the EU AI Act,
- Development and commissioning of blockchain based new generation digital identity management infrastructure,

- Making the legal regulations relating to cybersecurity area considering the EU acquis,
- Preparation of the national policy framework which covers data ownership, data sharing obligations and considerations on technic methods to accelerate the transition to data economy, establishing data governance framework legislation and governance infrastructure in line with this policy,
- Completion of preparations for the legal basis of microdata presentation via remote access, and implementation of the Electronic Data Research Center (E-DRC) project for scientific research.

MTP also includes objectives for AI implementations, protecting data on digital platform, replacing the current system with digitalization, and completing the legal regulations for the implementation of General Data Protection Regulation.

The most important legal expectation is that the Personal Data Protection Law will be complied with the EU acquis, particularly the European Union General Data Protection Regulation.

How the MTP will be reflected in the legislation in force and the new regulations to be made in line with these targets are matters of curiosity.

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

The National Cyber Security Strategy and Action Plan (2024-2028) was Published

The National Cyber Security Strategy and Action Plan (2024-2028) was completed with the contributions of relevant institutions and organizations under the coordination of Ministry of Transport and Infrastructure and published in the Official Gazette with the objectives of reducing external dependency with domestic and national solutions and contributing to national security and the economy.

To mention a few of the considerations: The number of connections that rapidly increasing with 5G and the internet of things technology, use of cloud computing, analyzing the significant amount of data that results and making new plannings and implementations with the foresights which obtained from analyzed results, contributing these plannings and modellings with digital twin technologies.

The National Cyber Security Strategy and Action Plan sets forth six strategic objectives based on “Human”, “Defense”, “Deterrence” and “Cooperation” themes. These six strategic objectives based on the elements within the framework of the themes are as follows: “cyber resilience, proactive cyber defense and deterrence, people-oriented cyber security approach, safe use of technology and its contribution to cyber security, domestic and national technologies in combating cyber threats, and Turkey’s brand in the international arena”.

The basis of the plan is to ensure a secure cyber environment and digital transformation by determining measures with “zero trust” approach against the forementioned technologies, since a simple malicious software can turn into a large-scale security threat, and to evaluate and determine the requirements and minimum-security criteria for the security of new technologies. At the same time

in terms of protecting countries from cyberattacks, emphasizing technologies produced as domestic and national are evaluated within the scope of the Plan with the principle of “security by design”.

Against the indicated threats, it is planned to develop the certification and accreditation mechanisms, increase inducements in this area, and maintain the combat against the cyber threats with an integrated approach.

To mention the essential details of the determined objectives:

Under the heading of **cyber resilience**, adopting a cyber security approach based on risk-based analyses and contingency planning on an institutional, sectoral, and national basis,

Under the heading of a **human-centered cyber security approach**, embedding corporate cyber security culture within institutions and organizations,

Under the heading of **domestic and national technologies to combat cyber threats**, development of domestic and national cyber security technologies by supporting “R&D” activities and expanding their use domestically is included.

You can reach the full text of the National Cyber Security Strategy and Action Plan (2024-2028) [here](#) (only available in Turkish) and the full version of the section that was published in the Official Gazette can be found [here](#) (only available in Turkish).

An Issue on Competition Authority’s Radar: Competition Violations in Labor Markets

Competition between undertakings in the labor market is often fierce, with employers in a race to retain their employees and to recruit talented staff from competitors. However, agreements that restrict the mobility of employees and prevent competition, particularly on salaries and benefits, exacerbate the existing imbalance in the market. In this context, the most common competition violations include non-discrimination agreements, gentlemen’s agreements and practices to fix salaries and benefits.

Recently, the labor market has become one of the most critical areas of focus for the Competition Authority. On 16 September 2024, the Competition Authority published the Draft Guideline on Competition Violations in Labor Markets (**Draft Guideline**) on its website and brought it to the public consultation. Draft Guideline aims to inform both undertakings and the public by better explaining the connection between the labor market and the Law No. 4054 on the Protection of Competition.

In the past, the Competition Board has conducted various investigations on the labor market but has not imposed any enforcement decisions in this area for a long time. However, recent decisions make it clear that salary fixing, and employee non-solicitation agreements may be considered as cartels (*i.e., collusive or overt agreements or associations between undertakings in a particular goods or services market with the aim of reducing or restricting competition in that market*). In parallel, Draft Guideline, while emphasizing that such agreements fall within the scope of cartels, also provides a broad perspective on competition violations that may arise in the labor market.

We have compiled the significant provisions of Draft Guideline below.

- **Wage Fixing Agreements:** Draft Guideline does not only approach wage fixing from the point of view that the salary should not be determined, but also emphasizes that all kinds of working conditions that are effective in employees' job choices and general labor mobility can be evaluated within this scope. This may include many factors such as fringe benefits, working hours, holiday arrangements, etc.

Such agreements do not necessarily have to be concluded between two undertakings; the influence or intervention of a third party may also be included in the scope of the breach depending on the circumstances of the concrete case.

- **Employee Non-Solicitation Agreements:** These agreements not only stipulate that undertakings shall not make job offers to each other's employees, but also cover practices requiring the employer's authorization for the recruitment of such employees. The employees subject to such agreements may be not only current employees but also former employees of the undertaking.
- **Information Exchanges:** In the context of competition law, in order for information exchanges to be considered an infringement, the information exchanged must be of a competitively sensitive nature that reduces or has the potential to reduce uncertainty in the market. In particular, the exchange of strategic information may lead to a risk of co-ordination between competitors.

Draft Guideline also emphasizes that this principle applies to the labor market, and states that the exchange of information such as salaries and fringe benefits, which may be considered sensitive, may constitute a violation of competition. It is also stated that third parties that mediate these information exchanges may also incur liability.

- **Ancillary Restraints:** Draft Guideline defines "ancillary restraints" as restrictions that are not intended to prevent, distort or restrict competition, but are necessary for the achievement of the objectives of the agreement and are directly related to these objectives.

Draft Guideline will concretize the Competition Authority's approach to competition violations in the labor market and shed light on the future regulations and sanctions to be imposed.

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

EU Prepares New Standard Contract Draft

As known, the long-awaited amendments to the Personal Data Protection Law (PDPL) have finally entered into force. Following these amendments, the Regulation on the Procedures and Principles Regarding the Transfer of Personal Data Abroad was published on 10 July 2024.

With the new regulation, while the new regime regarding the abroad data transfers has become clearer, standard contracts come to the fore as the most preferred method by the leading actors of the sector. Hence, the standard contracts published following the amendments to the PDPL are largely in compliance with the standard contract drafts published by the European Commission.

While the amendments to the PDPL continue to be on the agenda, a new set of standard contracts is being discussed in the EU.

Further to drafts of standard contracts being published by the European Commission in 2021, many debates arose, specifically whether companies outside the EU are subject to the General Data Protection Regulation (GDPR) and whether personal data received from companies in the EU should be considered as a "data transfer to a third country".

It was questioned whether the standard contractual drafting under the GDPR would apply in such cases. In particular, it was argued that standardized contracts could lead to duplication of obligations and confusion due to conflicting legal requirements in the harmonization process, particularly when the data importer is already subject to the GDPR.

However, the Commission announced that it will prepare a special set of standardized contracts for data controllers outside the EU who are subject to the GDPR. In the second quarter of 2025, the new standard contract set is expected to be adopted by the European Commission.

The importance of this issue for Turkey is that companies, based in Turkey and subject to GDPR, may now face a new set of standard contracts regarding the data transferred to them. In particular, the service sector is expected to be the first sector to be affected by these changes.

In addition, considering the decisions of the Personal Data Protection Board that interpret the scope of application of the PDPL broadly, it is also a matter of curiosity whether a similar standardized set of contracts will be on the agenda in Turkish law.

European Commission's announcement is available [here](#) (available in EU languages).

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