

TURKEY CHANGES PAYMENT SERVICES LEGISLATION

The long-awaited draft bill regarding the Amendments to the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (the "Amending Law on Payment Services") has recently been enacted by the Grand National Assembly of Turkey. The amendment meets the need to consolidate payment practices and ensures compliance with the EU's Payment Services Directive 2 (the "PSD2").

The Amending Law on Payment Services which has entered into force on 1 January 2020, introduces changes to the regulation of payment services and electronic money legislation to align the national legal framework with the PSD2 and address new payment services emerged with the rapid change in information services.

REGULATORY AND SUPERVISORY POWERS OF THE CENTRAL BANK

Under the Amending Law on Payment Services, duties and regulatory powers previously exercised by the Banking Regulation and Supervision Authority (the "BRSA") over payment services is now transferred to the Central Bank of the Republic of Turkey (the "Central Bank"). Similar to the PSD2, payment institutions, e-money institutions and other parties that take role in the functioning of payment systems will be under the supervisory authority of a single entity.

The Amending Law on Payment Services also increases the Central Bank's monitoring powers by authorising the Central Bank to set a ceiling for the fees and commissions payable for payment services and monitor (and if deemed necessary, even regulate) the contractual relationships entered into by payment service providers. The Central Bank may also become a shareholder in existing and future payment system operators which it considers systemically important in order to enable continuous operation of the systems.

Additionally, payment institutions and e-money institutions will become subject to independent audit under the Amending Law on Payment Services.

OPEN BANKING

The newly adopted open banking regulations under the Amending Law on Payment Services serve to harmonise the national legislation with the PSD2. The Amending Law on Payment Services categorises and recognises products of payment initiation service providers (PISP) and account information service providers (AISP) as payment services.

Moreover, subject to the account owner's prior approval, payment service providers are now required to open access to account information of their customers to other payment service providers. In this respect, PISP and AISPs are expected to become key players in payment services.

EXEMPTIONS GRANTED FOR MARKET PLACES AND CLOSED NETWORK OPERATORS

The Amending Law on Payment Services narrows the scope of certain exemptions granted under the existing legislation for the benefit of online market places and closed network operators, whose core activities do not involve payment services but are closely related.

The Amending Law on Payment Services gives the Central Bank discretionary powers to identify certain ancillary payment activities as payment services, taking into account the effect and transactional volumes of these ancillary services.

This will trigger licensing requirements for certain online market place owners (i.e., online platforms that act as intermediaries in payment transactions between merchants and customers) and closed loop payment operators (i.e., issuers of payment instruments to be used in transactions performed over a closed network via pre-loaded funds, such as gift cards) who currently enjoy safe harbours under the existing legislation.

The Amending Law on Payment Services will limit the use of these exemptions to certain thresholds. Regardless of whether those currently benefit from the commercial agent exemption or the closed network exemption, marketplaces and closed loop payment operators whose pay-ups reach a certain threshold to be determined by the Central Bank will be deemed to provide payment services and will be subject to the Amending Law on Payment Services.

TURKISH PAYMENT AND ELECTRONIC MONEY INSTITUTIONS ASSOCIATION

The Amending Law on Payment Services envisages the establishment of the Turkish Payment and Electronic Money Institutions Association (the "Association"), a public professional institution, to which payment institutions and e-money institutions will be obliged to become members. Under the amendment, existing payment institutions and e-money institutions will be required to apply for a membership within one month following the establishment of the Association.

The Association targets to develop the profession of payment and e-money institutions, determine professional principles, and ensure corresponding work by its members with the needs of the economy. The Association will have the authority to impose administrative fines on its members.

Changes that concern the establishment and activities of the Association, will enter into force on 22 May 2020.

WHAT'S NEXT?

In summary, the open banking regulations introduced by the Amending Law on Payment Services provides alignment with the contemporary developments in payment services and ensure unity in terms of payment practices. Open banking will allow for a wider accessibility in respect of account data, which will be beneficial for the overall development of and innovation in payment services. Furthermore, the amendment is most cherished to remove the dual regulatory body regime (BRSA and Central Bank) in the sector.

The Association will serve for efficient harmonisation of the legislation by means of cooperation and coordination amongst all actors of payment services. However, certain technical issues such as the thresholds to limit commercial agent and closed loop operator exemptions, nature e-money (i.e. whether issuing e-money to be regarded as a loan) remain unsolved and left for further secondary legislation. As such, while introducing awaited updates to the payment services ecosystem in Turkey, the Amending Law on Payment Services has not provided full clarity on certain hot debates in the sector.

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