

Regulation on Banks' Information Systems and Electronic Banking Services

March 2020

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On 15 March 2020, the Banking Regulation and Supervision Agency (the “BRSA”), the Turkish banking watchdog, issued the long-awaited Regulation on Banks' Information Systems and Electronic Banking Services¹ (“Regulation”). As banking services are driven by developing technologies and services as well as data privacy concerns, the Regulation deals with various points on the information systems used by the banks, which is a critical part of the banking services now more than ever.

The highlights of the Regulation are as follows:

- “Open banking services” and “API” (*application programming interface*) concepts have been introduced to the banking legislation for the first time.

With amendment to the Law No. 6493 on Payment and Security Settlement Systems, Payment Services and Electronic Money Institution² (“**Payment Services Law**”) back in November 2019, account information services and payment initiation services, which are considered as open banking services, were included in the definition of payment services. As per the Payment Services Law, the regulatory authority for payment services is the Central Bank. However, the Regulation authorizes BRSA to regulate the open banking services. The potential dual-authority issue may need to be clarified over time.

- In parallel to the recent amendments to the Banking Law³ on 20 February 2020 with respect to data secrecy, the Regulation provides that, save for the exceptions in the Banking Law, without the customer's demand, the banks are not allowed to disclose or transfer customer secrets to the third parties within or outside of the country. Moreover, the customer's explicit consent on disclosing of his/her information must not be a precondition for services to be provided.
- There are novelties regarding primary and secondary systems of the banks:
 - For a system or application that is used by the bank not to qualify as a primary system, among others, such data which may qualify as sensitive data or secret must not be processed, transmitted or stored through such system or application.
 - Except for the payment or messaging systems which require interaction with abroad due to nature of the transactions, the banks must be able to carry out their banking activities without any requirement of approval from a system located abroad, and continue to provide banking services through their primary and secondary systems located in the country even when they are disconnected to communication networks located abroad. This has been BRSA's approach in recent years and with this provision, it has become part of the legislation for the first time.
 - In case banks outsource or use cloud computing services for an activity that falls under the scope of primary or secondary systems, the information systems and their backups

¹ Published in the Official Gazette No. 31069 and dated 15 March 2020.

² Published in the Official Gazette No. 28690 and dated 27 June 2013.

³ Published in the Official Gazette No. 25983 and dated 1 November 2015 (bis).

used by external service provider for providing its services will be deemed as primary and secondary systems and kept in Turkey. This was also BRSA's interpretation in practice, although there was not an explicit provision in the legislation on this point until now.

- The banks must check whether the service providers, from which the bank wishes to receive advertisement services related to their banking services, such as search engines or social media platforms, take necessary precautions to blocking the fraudulent advertisement using the bank's name. The banks cannot use the services of the providers which do not take these precautions. The banks must incorporate provisions into the agreements to be executed with the advertisement service providers, which entitle the banks to obtain case-specific information to protect the customer in case a fraudulent advertisement is broadcasted. This also applies to the agreements to be executed with intermediary advertisement companies.
- As part of the government's efforts to boost local goods and services, the Regulation requires that, for crucial information systems, the banks must use best efforts to use products or services which are produced in Turkey or R&D center of which must be located in Turkey. These producers and service providers must have operational teams in Turkey.
- The definition of "sensitive data" has been introduced as "*particularly the data used for identity verification; the data belonging to customer, and the data being kept by banks for various reasons, and in case acquired by the third parties, may damage the mechanism that enables distinguishing these parties from the customers and lead to fraud or fraudulent transactions in the name of customers*".
- The banks are allowed to utilize cloud computing services as an external service. The cloud computing systems can be used for primary and secondary systems through hardware and software resources which must be allocated to the bank via private cloud system model. Outsourcing through community cloud computing systems, where the hardware and software resources are allocated only to the institutions which are subject to the BRSA's inspection, is subject to the BRSA's approval.
- Save for the legislation on anti-money laundering, the Regulation entitles the banks to perform identification of their customers via distant methods or utilize services of another bank that has performed identification of the customer previously via open banking services. The BRSA Board is entitled to determine procedures and principles of distant identification. Until the Regulation enters into force, amendments might be expected to anti-money laundering legislation in line with this change.
- The Regulation will enter into effect on 1 July 2020 and abolish the existing Communiqué on Management of Banks' Information Systems.

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