

# Amendment to Law on Payment and Security Settlement Systems, Payment Services and Electronic Money Institutions

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Turkey has passed a new law published in the Official Gazette on November 22, 2019 (the “**Amendment**”) amending the Law on Payment and Security Settlement Systems, Payment Services and Electronic Money Institutions numbered 6493 (the “**Law**”). The Amendment aims to restructure the regulatory framework for payment services and open a new chapter for the development of the FinTech Sector.

The Amendment (Law no. 7192) will enter into force for most purposes on January 1, 2020. Article 15, which creates the Payment Services and Electronic Money Institutions Association of Turkey, will enter into force on November 22, 2019.

The preamble of the Amendment refers to new developments in the payment services market as the driving force for the Law. The EU has also amended its regulatory framework with Directive (EU) 2015/2366 (Payment Services Directive 2 — “**PSD2**”)<sup>1</sup> in 2015 and we see that this Law reflects certain important approaches of PSD2.

## Summary

The Amendment introduces the following key changes:

- **Regulatory Unification:** Only the Central Bank of Turkey (the “**Central Bank**”) will have regulatory authority over the electronic payment sector, eliminating the dual-regulatory system that used also to include the Banking Regulatory and Supervisory Authority (the “**BRSA**”).
- **Introduction of Two New Payment Services:** Two new payment services have been included within the scope of payment services. The first is account information services (“**AIS**”), which are based on user consent and are authorized to collect, retrieve and provide a user’s information in one or more accounts in banks or payment service providers. An example is Mint, a personal finance application which allows its users to connect their financial accounts to the app and track all their records through it. The second is payment initiation services (“**PIS**”) authorized to initiate payments at the request of

<sup>1</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC.

the user with respect to a payment accounts held at another payment service provider. An example of this is Venmo, a mobile phone app through which users can transfer funds to others. With these new services, open banking transactions will take place as third-party payment services providers will be enabled to request user's data and payment information from banks and transmit such data between them.

- **Establishment of the Turkey Payment Services and Electronic Money Association:** All payment institutions and electronic money institutions must be members of this professional association which will establish certain standards for the industry and help ensure coordination among members and with the regulator.
- **Regulation of the Relations between the Payment Service Providers and Users:** The Amendment introduced changes to mitigate the consequences of the unilateral determination of the rights and obligations of the parties to payment services by the payment service providers. For instance, the Central Bank has been granted the authority to limit the fees which can be charged to the users for payment services.

## Glossary of Terms

We thought it would be helpful to include in this alert a glossary of the terms we are using to describe the services and systems governed by the Amendment.

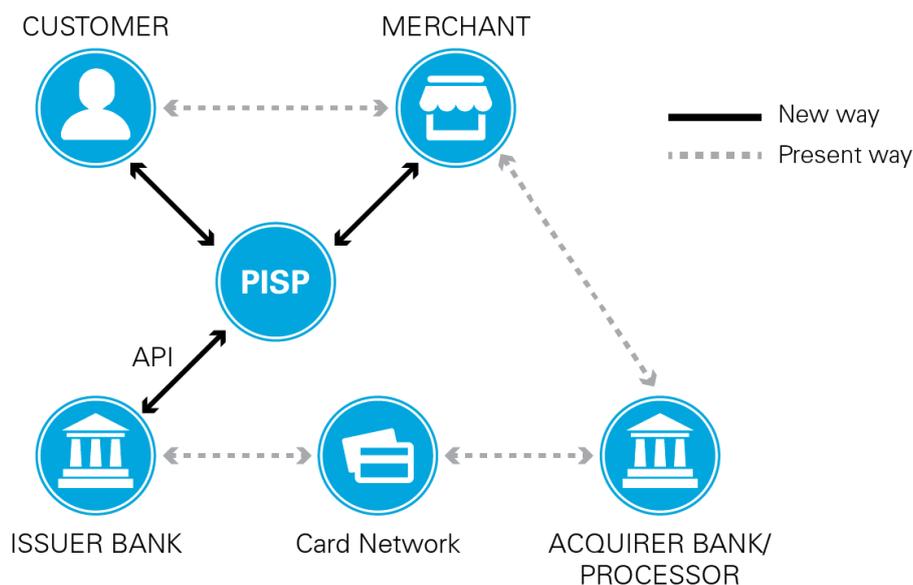
**Payment Services:** Any services necessary to operate payment accounts, including services to draw and deposit money, money transfers, issue or accept payment instruments and account information services and payment initiation services.

**Electronic money institutions:** Any institution which has been granted authorization to issue electronic money.

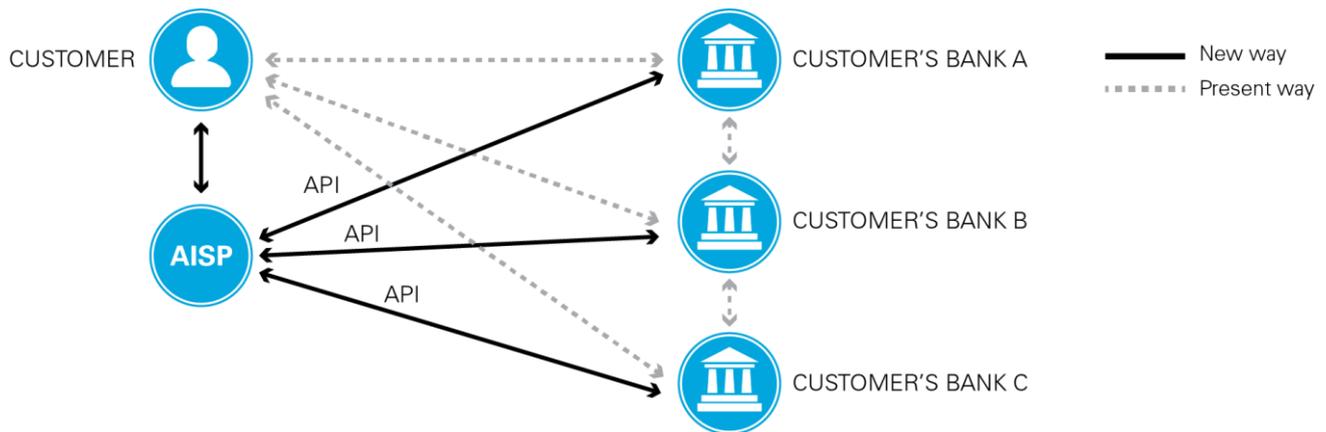
**Electronic money:** Any monetary value issued by the issuer in exchange for funds, stored electronically, used for payment services and accepted as a payment instrument by parties other than the issuer.

**Open Banking:** A banking practice where customer data such as account information, regular invoice payment information, information about loans extended etc. is made available to third party institutions so that new and customized services can be provided to the customers by third party financial service providers.

Open banking can be visualized as follows:



Open banking transaction taking place through payment initiation service providers



Open banking transaction taking place through account information service providers

**FinTech:** New technologies used by businesses to provide automated financial services.

## What does the Amendment change?

### Regulatory Unification

The most striking change brought by the Amendment is the consolidation of the regulatory authorities in the hands of Central Bank of the Republic of Turkey (the “**Central Bank**”). The Amendment abolished the dual-regulator system by transferring the Banking Regulatory and Supervisory Authority’s (the “**BRSA**”) supervision powers over the sector to the Central Bank.

Accordingly:

- Payment and electronic money institutions are no longer among the institutions from which the BRSA can collect contribution fees;
- BRSA’s supervisory authority over the settlement and offsetting of transactions carried out with debit and credit cards has been annulled;
- BRSA’s supervisory authority over the banks’ activities under the Law has been transferred to the Central Bank;
- The Central Bank’s supervisory authority has been expanded to cover all parties whose activities are closely related to the operation of the payment and settlement systems such as system operators, system participants, settlement institutions and the like and it has also been granted the following authorities:
  - to adopt secondary legislation with respect to payment and electronic money services;
  - to become a shareholder in systemically important existing or future system operators; and
  - to monitor the legal relationships to which the payment service providers are party and to regulate the principles that will apply to such relationships to the extent the Central Bank detects practices that may negatively affect the development of the sector.

Hence, all payment service and electronic money service activities including payment systems will be supervised by the same authority, which is expected to create a more coherent regulatory framework. While the Central Bank has been granted wide supervisory and regulatory powers, checks and balances have been introduced to allow judicial review of its decisions to impose administrative penalties which can be challenged by the system operators or the payment service providers before the administrative courts.

However, these broad provisions written into the Law now require secondary legislation in order to be understood and put into practice. The Central Bank also needs to use its authority judiciously in line with the

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stated objective to support and not impede the development of this sector in Turkey. For example, the Central Bank will need to limit its regulation of the relationships between market players and not become a shareholder unless it is essential for the market that it do so and will need to set the limits, if any, for fees for services in consultation with the sector and consistent with norms in other markets.

## New Payment Services

The Amendment introduced two new payment services that are important for open banking and which were included within the scope of PSD2:

1. **Account information services:** Services to provide consolidated information regarding a payment service user's one or more payment accounts on an online platform based on the user's consent.
2. **Payment initiation services:** Services to initiate an order at the request of the payment service user with respect to a payment account held at another payment service provider.

These two new payment services will facilitate open banking applications, since these services by their nature require data sharing and cooperation between banks and third party payment service providers.

The Central Bank also has the authority to consider any transaction or service a payment service if it meets the criteria to be determined in the future by the Central Bank with respect to the size and effect of the transaction or the service. Hence, for example, meal voucher services which currently benefits from the limited network exception<sup>2</sup> may in the future be considered as a payment service and the provisions of the Law may apply to them if they meet the criteria to be determined by the Central Bank. Similarly, e-commerce websites, which are currently considered within the scope of commercial agent exception,<sup>3</sup> may either need to obtain a license from the Central Bank as a payment service provider or conclude an agreement with a licensed payment service provider to conduct payment transactions.

## How Does the Amendment Regulate Open Banking?

The Amendment itself does not regulate data sharing between payment service providers, but it empowers the Central Bank to determine principles and procedures applicable to it. For the development of open banking applications, it will be crucial for the Central Bank to adopt necessary technical and legislative regulations through secondary legislation.

Some Turkish Banks such as Akbank T.A.Ş., Türkiye Halk Bankası A.Ş., Türkiye İş Bankası A.Ş. and Türkiye Garanti Bankası A.Ş. have already joined the open banking system via their individual or shared API platforms.

We expect that detailed open banking regulations will be adopted soon.

## A Professional Association for the Benefit of Both Service Providers and Users

The Amendment creates the Payment Services and Electronic Money Institutions' Association of Turkey (the "**Association**"). All payment institutions and electronic money institutions are obliged to be a member of this professional Association. Its duties include the following:

- Defining the profession's principles and the standards to be followed by its members;
- Taking measures to prevent unfair competition between the members;

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<sup>2</sup> Pursuant to Article 12(2)(h) of the Law, these are transactions concluded through instruments which can only be used in the workplace of their issuer, a limited service provider network or for a limited type of goods or services so are not included in the payment services.

<sup>3</sup> Pursuant to Article 12(2)(b) of the Law, these are transactions concluded through a commercial agent authorized for the bargaining or sale and purchase of goods and services on behalf of the sender or the receiver.

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- Determining the rules to be followed by its members in their advertising activities;
  - Forming an arbitration committee to resolve disputes between its members and their customers.

The Association has a supervisory and regulatory role along with the Central Bank. It is expected to ensure coordination between its members in order to develop the profession of payment services. Thus, the sectoral development is aimed to be achieved within a fair atmosphere for both the service providers and the users of such services.

## Protecting Users

The Amendment also introduced provisions to protect users of payment services following the PSD2 example:

- The rights and obligations of the parties to the payment services (i.e. the service providers and the users) are to be determined in a regulation to be adopted by the Central Bank.
- The Central Bank has been granted the authority to determine the maximum fees charged by the payment services providers for each transaction type.

Lastly, Article 10(7) of the Law regarding the obligation of payment system participants to provide security for the fulfilment of their duties have been revised so that it is clear under what circumstances the security can be used to ensure performance.

## Data Sharing and Data Privacy

Defining the rules regarding data sharing among payment service providers will have an important effect on the existing data privacy legislation. It is important to note that the Central Bank regulates data storage requirements for payment service providers.

## Conclusion

The Amendment reorganized the regulatory framework in the payment and electronic money services to allow the entry of new actors to the market and facilitate the development of FinTech sector in Turkey. The existing and future participants in the system are now subject to a more coherent set of rules, which follow the EU example, which not only benefits them as it improves predictability, but also protects users of their services as their payment activities are better regulated.

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