

## Central Bank of Turkey Prohibits the Use of Crypto Assets in Payments

16 Apr 2021

The Regulation on Not Using the Crypto Assets in Payments ("**Regulation**") adopted by Türkiye Cumhuriyet Merkez Bankası ("**Central Bank of Turkey**") has been published in the Official Gazette No. 31456 dated 16 April 2021. The Regulation is enacted based on Law no 6493 on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions ("**e-Money Law**") and Law no 1211 on the Central Bank of Turkey, both of which do not contain any provisions directly applicable to crypto-assets. According to the Regulation, the purpose of the Regulation is to determine procedures and principles regarding the prohibition of the use of crypto assets in payments, in the provision of payment services and electronic money issuance, and prohibition of payment and electronic money institutions to mediate platforms and fund transfers from the platforms offering trading custody, transfer or issuance services for crypto assets.

Until now, there was no specific regulation regarding crypto assets in Turkish law; however, they were subject to general anti-money laundering and prevention of terrorist financing provisions. Although Turkey has enacted the e-Money Law in June 2016 to regulate the procedures and principles regarding payment and securities settlement systems, payment services, payment institutions, and electronic money institutions, the cryptocurrencies were left outside its scope. e-Money was defined under the e-Money Law as *"Monetary value that is issued on the receipt of funds by an electronic money issuer, stored electronically, used to make payment transactions defined in this Law and also accepted as a payment instrument by natural and legal persons other than the electronic money issuer."*, the cryptocurrencies such as Bitcoin or Libra, however, are neither issued on the receipt of funds nor by electronic money issuers. Therefore, they were not regulated by the e-Money Law. The Banking Regulation and Supervision Agency had also confirmed that the cryptocurrencies were not regulated under the e-Money Law by a public statement in 2013.

On the other hand, in 2017, the Capital Markets Board ("**CMB**") sent a general letter to capital markets intermediary institutions, pursuant to their information request, stating that there is neither a regulation, nor a definition of crypto-assets under Turkish legislation, and as crypto-assets are not listed among the underlying assets that a derivative instrument can be based on, intermediary institutions should not conduct any derivative or spot transaction based on cryptocurrencies. The CMB has also announced that a regulation regarding crypto assets within the capital markets context.

The Regulation is the first direct legally binding document for the regulation of crypto assets in Turkey. Also, with the regulation, the crypto assets attained their legal definition for the first time. Crypto asset is defined under Article 3 of the Regulation as *"intangible assets that are created virtually using distributed ledger technology or a similar technology and distributed over digital networks but are not qualified as fiat money, dematerialized money, electronic money, payment instrument, security or another capital market instrument"*.

Article 3 of the Regulation prohibits the use of crypto assets as a means of payment. As per Article 3, crypto-assets shall not be used directly or indirectly in payments. Also, the provision of services directly or indirectly

for the use of crypto assets as a means of payment are not allowed.

Article 4 of the Regulation prohibits payment service providers to develop business models or provide services regarding those business models where crypto assets are used in the provision of payments services and issuance of electronic money. Article 4 also prohibits payment and electronic money institutions to mediate platforms and fund transfers from the platforms offering trading custody, transfer, or issuance services for crypto assets.

The Regulation will come into force on 30 April 2021. With the regulation, Turkey has become one of the few countries where the use of crypto assets as a means of payment is prohibited. However, taking into consideration their irrepressible rise and the 11<sup>th</sup> Development Plan of the Presidency of the Republic of Turkey that aims to support the use of blockchain technology, it is early to say that this is the final act in Turkey regarding crypto assets. Also, legality of the prohibition is under scrutiny as the e-Money Law and the Law on Central Bank of Turkey as the basis of the Regulation has no specific provisions in respect of crypto assets.

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