RESPONSE TO THE NEW TECHNOLOGIES QUESTIONNAIRE

Turkish Chapter of AIDA

Dr. Ayşegül Buğra[1]

This Report is issued in response to the questions posed in the New Technologies Questionnaire prepared for the AIDA World Congress 2018. The author would be happy to provide further written evidence should any necessity arise.

I. DRIVERLESS/AUTONOMOUS VEHICLES AND VESSELS

1. Are there any specific laws already adopted in your jurisdiction, or proposals for laws, relating to liability in tort for injuries inflicted by the use of such vehicles or vessels? If so, please provide a short explanation.
Comment: answers may include the liability of drivers, producers of vehicles and the suppliers of satellite technology.

1.1. No specific legislation currently exists in Turkey as regards the use of autonomous cars and vessels, neither has there been any recent legislative initiatives on this matter. The case of the use of drones ('unmanned aerial vehicles' – UAV) can also be considered in the same vein in respect of liability in tort, although the Turkish Civil Aviation Act 1983 was recently amended in 2016 so as to contain provisions on criminal liability of UAV operators and owners. An appraisal of UAVs and relevant insurance law considerations is to be found in the document submitted by Asst.Prof. Banu Bozkurt-Bozabalı.
The above being the case, it will be a parliamentary decision to either amend the existing legislation so as to enable it to apply to autonomous vehicles or to enact new pieces of legislation as has been the case in the UK with the Automated and Electric Vehicles Bill 2017 in respect of road vehicles. The applicable regime to road and maritime transport shall be provided here with a view to determine whether any of the existing legislation is apt to accommodate amendments to be introduced on autonomous vehicles.

1.2. With respect to international road traffic, Turkey accessed to the Vienna Convention on Road Traffic dated 1968 on 22 January 2013. The Convention was amended in March 2016 whereby it was provided in Art 8 (entitled 'drivers') that the systems operated in

[1] Assistant Professor of Transport and Insurance Law, Koç University. The author would like to thank the Science Academy ('Bilim Akademisi' – a member of ALLEA) for their generous funding thanks to which part of the research for this response was conducted. Special thanks are also due to Dr. Belma Bulut for her invaluable comments on earlier drafts of this report, as well as to Mr. Rüstem Kağan Oktaykaan and Mr. Cemre Edip Yalçın for their meticulous research. All errors and omissions are entirely mine.

vehicles which render them autonomous can be overridden and switched off by the driver. It was accordingly recognised under the Convention that it applied, *inter alia*, to fully and semi – autonomous road vehicles. Art 49(5)(a) provides that an amendment to the Convention shall enter into force in respect of a Contracting Party where no rejection of the amendment is deposited within 12 months of the notice of amendment thereto. Turkey did not express an objection to the amendment[2] which entered into force in respect of Turkey on 23 March 2016 and it is therefore envisaged that Turkey will be required to comply with its obligations as a Contracting Party which arise under Art 3 in respect of autonomous and semi-autonomous vehicles that will enter into use as well as usual road vehicles.

1.3. With respect to domestic road traffic, there are five pieces of legislation which are in force and require elaboration, namely the Turkish Commercial Code 2011[3] (no. 6102) (hereinafter referred to as 'TCC'), the Road Traffic Act 1983 (no. 2918), the Carriage by Road Act 2003 (no. 4925), the Consumer Protection Act 2011 (No. 6502) and the Code of Obligations 2011 (no. 6098). The Road Traffic Act applies to ensure safety of persons and property with respect to road traffic for vehicles in commercial or personal use, and the latter applying to carriage of passengers and cargo/property by road. Neither of them was enacted with a view to apply to autonomous vehicles, however an account can be given as to what extent their provisions can potentially allow that. The definitions in the Road Traffic Act relating to 'vehicles' or 'means of conveyance' in Art 3 do not include any reference to drivers. This being the case, the Act defines 'automobiles' as motor vehicles which contain maximum 9 seats including the driver's seat and manufactured for carriage of persons. Moreover it is provided that vehicles with engine must be driven by persons entitled to drive as per a valid driving license (Art 36) which may be interpreted to potentially encompass semi-autonomous vehicles where the driver has a certain level of control; however the wording of the provision would leave out autonomous cars. Furthermore, the word 'passenger' in the Act is defined as 'the persons other than the driver and the employees' (Art 3). In semi-autonomous vehicles, the driver becomes a passenger as long as it yields the control to the software programme whereas in fully autonomous vehicles the vehicle is self-driven. For these reasons it can be suggested that although the definitions of vehicle or means of conveyance are sufficiently vague to apply to semi-autonomous or fully autonomous vehicles, the reference to 'driver' in the definition of 'passenger' gives rise to the conclusion that it can encompass semi-autonomous vehicles, yet not fully autonomous vehicles. Articles 85-89 deal with liability in tort for injuries of real or legal persons operating the vehicles, yet does not include any provision regarding liability for injury arising from software alterations or failure to install safety-critical software. Unless specific legislation is enacted to establish

[2] United Nations Convention on Road Traffic, Vienna 8 November 1968 Acceptance of Amendments to Articles 8 and 39 of the Convention, dated 6 October 2015, available at: https://treaties.un.org/doc/Publication/CN/2015/CN.529.2015.Reissued.06102015-Eng.pdf

[3] The dates of the legislative instruments refer to the year of publication in the Official Gazette and not to their date of entry into force.

such liabilities for manufacturers or software installers their liability for injuries inflicted to passengers will be subject to the general provisions of the Code of Obligations on liability in tort (Art 49-56) and of the Consumer Protection Act on liability for defective products. The driver of the vehicle would also be liable as per the general principles of liability in tort found in the Code of Obligations.

1.4. The provisions of the TCC pertaining to carriage of passengers by road and the relevant provisions of the Carriage by Road Act have very similar content to the extent that some scholarly works criticised the latter for being redundant. This being the case, their interrelation rests upon the fact that the TCC is *lex generalis* whereas the Carriage by Road Act is *lex specialis*.[4] 907(1)(b) of the former refers to 'carrying vehicle' in the context of carriage of passengers by road without defining it. Art 916 provides that a Regulation to be prepared by the Ministry of Transport is to contain details about the requirements of the types of vehicles and licences for the driver so as to ensure environmental protection and safety of passengers. To the best knowledge of the author, no preparatory works have yet been undertaken for the drafting of such Regulation for the purposes of the TCC. The carrier is liable under Art 914 for personal injury and death of passengers. The Carriage by Road Act 2003, in turn, also does not define 'vehicle' and provide that any vehicle used in carriage of passengers and cargo will be within the scope of application of the Act. The Carriage by Road Regulation 2009[5] however defines 'motor vehicle' as any vehicle used in the carriage by road of persons, animals or property and one that is propelled by mechanical power (Art 4(1)(bb)). Albeit this definition does not include an element referring to 'driver', the definition of 'automobile' in the Regulation and 'passenger' in the Act do so. The former provides that an automobile is any vehicle constructed to carry persons and designed to have at least 9 seats including that of the driver (Art 4(1)(dd)); and the latter encompasses anyone in the vehicle other than the driver and employees (Art 3). These definitions considered together (the provisions as to liability aside) would leave out at least fully autonomous vehicles.

1.5. The relevant provisions of the Code of Obligations and of the Consumer Protection Act would also apply in respect of carriage of passengers by road. The former would particularly be relevant regarding the compensation regime, and the latter regarding the circumstances where the service provided by the carrier is deemed as 'defective' and is subject to the Act's provisions on defective products.

1.6. With respect to vessels, the Turkish Commercial Code provides a definition which does not include an element referring to manning and can be translated along the following lines:

[4] Art 36 of the Carriage by Road Act provides that the Turkish Commercial Code No. 6762 (the former Code) shall apply where the Act is not sufficient to solve the legal dispute. This article has not been amended following the entry into force of the Turkish Commercial Code 2012 (No. 6102). It shall nevertheless still apply as it constitutes *lex generalis*.

[5] Enacted as per Art 3 of the Carriage by Road Act

"Any craft that is capable of navigation, that is not too small, and the allocation purpose of which requires it to move in water is considered a 'ship' under this Code regardless of whether or not it is capable of self-propulsion" (art 931/1).

This definition is sufficiently vague to encompass unmanned vessels in theory. Nevertheless the provisions of the Act relating to liability for injuries inflicted to passengers carried by sea are confined to the liability of the contractual and actual carrier (Articles 1256 and 1257 respectively) and do not refer to injuries arising from the failure of software installations or in manufacturing of the autonomous or semi-autonomous vessels. Unless specific legislation is enacted to establish such liabilities for manufacturers or software installers their liability for injuries inflicted to passengers will be subject to the general provisions of the Code of Obligations on liability in tort (Art 49-56).

2. Are there any specific laws already adopted in your jurisdiction, or proposals for laws, relating to compulsory insurance coverage for injuries inflicted by the use of such vehicles or vessels? If so, please provide a short explanation.
Comment: answers may relate to motor vehicle insurance and product liability insurance.

2.1. No specific legislation currently exists in Turkey relating to compulsory insurance for injuries arising from accidents caused by the use of autonomous vehicles, nor is there yet any proposal for laws in this regard. We will therefore be contented with giving an overview of the current system in place regarding non-autonomous, driver-driven vehicles (other than drones) and manned vessels which will either be amended to encompass driverless vehicles, or alternatively specific rules will be enacted which will render the below mentioned rules not applicable. Drones will be dealt with by Asst.Prof. Banu Bozkurt-Bozabalı in the document submitted herewith.

2.2. Every owner or operator of a motor vehicle, or any person who rents a motor vehicle has to take out compulsory motor vehicle liability insurance as per Art 91 of the Road Traffic Act (RTA), or otherwise is banned from traffic. The insurance is subject to the General Terms on Compulsory Motor Vehicle Liability Insurance and covers, *inter alia*, bodily injury and death of third persons arising from an accident involving the insured vehicle. Non-pecuniary damages are not recoverable (RTA Art 92/f and General Terms Art A.6/f). The Act provides third parties the right of direct action against insurers for personal injury and death claims (Art 97). The General Terms provide that the insurer will pay against any loss that has occurred as a result of the insured's acts while the insured vehicle is in operation and the Terms have been amended in 2016 with respect to the definition of 'in operation'. The current version of the definition reads that a vehicle is in operation while its mechanical components are in working

condition, or *while it is in motion on its own*[6] regardless of whether or not its mechanical components are in working condition. The amendment gives rise to the question of whether it suggests some degree of autonomy, however it was made so as to render the Terms be in line with the Turkish Court of Cassation decisions whereby a loss was held to be the result of the impact of a vehicle in motion albeit the vehicle's mechanical components were not in working condition.

2.3. The carrier that undertakes to carry passengers subject to the provisions of the TCC is required to insure its liability against personal injury and death of the passengers under the General Terms on Compulsory Motor Vehicle Liability Insurance. The type of insurance that is required to be taken out under the Carriage by Road Act is the compulsory motor vehicle liability insurance (that is subject to the same General Terms) as well as the compulsory personal accident insurance (the Carriage by Road Regulation Art 48) that is required to be made on the General Terms on Carriage of Passengers by Road Compulsory Personal Accident Insurance (2004). The latter insures passengers, drivers of vehicles and their crew against personal injury or death caused by an accident occurring during carriage by road.

2.4. As for carriage of passengers by sea, Articles 1247-1271 of the TCC state that the carrier (either one that has undertaken to carry out the whole carriage or any part thereof) is liable for death or personal injury of the passenger resulting from an accident at sea and is required to insure this liability where the vessel is licensed to carry more than 12 passengers (Art 1259), otherwise the vessel is not allowed to navigate. The maximum policy limits cannot be less than 250,000 SDR. The insurance that can be taken out as per these rules is subject to the General Terms on Sea Vehicles Compulsory Liability Insurance. What vessels are subject to these rules can be determined by reference to Art 931 which defines 'vessel' as "Any craft that is capable of navigation, that is not too small, and the allocation purpose of which requires it to move in water is considered a 'ship' under this Code regardless of whether or not it is capable of self-propulsion".

2.5. Manufacturers' liability is insured under the General Terms on Product Liability Insurance which could potentially apply in respect of any bodily injury or death of third parties for which the manufacturer would be liable. Software programmers' liability could as well be insured thereunder.

3. How do you envisage the future of personal lines in motor vehicle insurance in the next 5-10 years in your jurisdiction?
Comment: you may wish to comment on the future of motor vehicle insurance and the plans being made by the industry for new products.

[6] Emphasis added

3.1. The Turkish Insurance Information and Monitoring Center[7] has created a mobile accident report service[8] that facilitates accident notification following an accident where an insured car is involved. The feature allows the drivers to enter the driver's ID number and the car's license plate number which is required to use the application and upon which the accident report is sent automatically to the insurer without the need for the driver to notify the insurer thereof in paper form. The insureds are also able to retrieve the fault rates following an accident through the same application.

3.2. We have raised this question with some of the representatives from the insurance industry in Turkey which emphasised the rise of the use of telematics that is likely to effect the future of personal lines in motor vehicles insurance in relatively short term in Turkey. Pricing of the premiums, improvement of safety and reduction of claim costs were mentioned among the impacts of telematics. It was envisaged by the said representatives that potential policyholders will have to familiarise with usage-based insurance models such as the ones used in the context of pay-as-you-drive services. Moreover they have provided that a shift from customised services to more responsive and proactive claims management is likely to occur given comprehensive route analytics to be undertaken by insurers. This, in turn, will reduce accident frequency and losses, as well as will facilitate the relevant services such as ambulance to reach the site of the accident to attend any victims having suffered injuries thanks to automatic accident notification feature.

3.3. Representatives from the insurance industry in Turkey specifically mentioned car sharing as a development that will particularly affect the industry in the next 5-10 years once this becomes a workable option in particularly big cities such as Istanbul, Ankara and Izmir.

4. Driverless cars and autonomous vehicles apart, how do you assess the following technological developments that are expected to not only reshape the auto sector but also the insurance industry around it?
Comment: answers may include identifying the legal and regulatory regime and provisions in your jurisdiction.

(a) connected cars (i.e., Internet enabled vehicles, (IEV))

4.a.1. No specific regulatory regime currently exists in Turkey with respect to connected cars, however the country has a current revenue in the connected car market of US$149m in 2017 which is expected to rise to US$1,399m by 2021 with connected car penetration to hit 32%. Albeit the technology used in connected cars is very promising, some connected car

[7] The English version of the Center's website can be reached at: https://www.sbm.org.tr/en
[8] Further information on this service is available in English at: https://www.sbm.org.tr/en/News/Pages/Mobile-Accident-Report-Era-Just-Started.aspx

applications can let hackers access the vehicle's system and cause a disruption therein which could result in an accident. This may in turn give rise to the questions of whether the software developer will become liable for having developed a defective programme and the driver for having caused an accident and damages to third parties while driving. The products that will accordingly be relevant will be cyber risk insurance products (for which currently no general conditions exist in Turkey); software developer's liability insurance products; and the compulsory motor liability insurance products which are subject to the Motor Liability Insurance General Conditions provided that the Conditions are amended to cover the risk of cyber attacks against connected cars.

(b) automated driver assistance systems (ADAS)

4.b.1. The General Terms on Compulsory Motor Vehicle Liability Insurance provide that the insurer will pay against any loss that has occurred as a result of the insured's acts while the insured vehicle is in operation and the Terms have been amended in 2016 with respect to the definition of 'in operation'. The current version of the definition reads that a vehicle is in operation while its mechanical components are in working condition, or *while it is in motion on its own*[9] regardless of whether or not its mechanical components are in working condition. The amendment gives rise to the question of whether it aimed to the operation of ADAS, however it was made so as to render the Conditions be in line with the Turkish Court of Cassation decisions whereby a loss was held to be the result of the impact of a vehicle in motion albeit the vehicle's mechanical components were not in working condition. The Conditions provide cover against any third party claim for losses arising from the operation of the vehicle (which would include the period while ADAS is operative) and do not contain a special clause excluding losses arising from the operation of ADAS. In these circumstances, the motor liability insurer will be answerable for the claim unless it can be clearly identified that the loss resulted from the operation of ADAS for which payment can be made under the product liability insurance of the manufacturer of ADAS (which would be subject to the General Terms on Product Liability Insurance).

(c) car/ride sharing

4.c.1. Representatives from the insurance industry in Turkey specifically mentioned car sharing as a development that will particularly affect the industry in the next 5-10 years. Currently a major car sharing company is already operative in Turkey and offers this service to drivers who must be insured against third party liability under the General Terms on Compulsory Motor Vehicle Liability Insurance. As regards ride sharing that is used in metropoles in Turkey, the vehicles operated by the ride sharing companies are required to be insured under the compulsory motor insurance scheme as per the Road Traffic Act as well as

[9] Emphasis added

under the General Terms on Carriage of Passengers by Road Compulsory Personal Accident Insurance.

(d) alternative fuel vehicles

4.d.1. Turkey is undertaking considerable preparatory work toward legislative changes for the purpose of introducing local manufacturing and use of alternative fuel vehicles. This encompasses, and is not limited to, a local electric vehicle project which aims to manufacture electric vehicles in Turkey; the establishment of a Motor Engine Excellence Centre by the permission granted by the Ministry of Development; initiatives existing as to the establishment of an Automotive Testing Centre and the development of a Brake Testing Runway Project in the next couple of years; and the revision of relevant legislation on electric vehicles, hybrid and hydrogene vehicles as well as compressed natural gas vehicles (CNGs) which will be undertaken by the Ministry of Energy and Natural Resources.[10] The latter includes special consumption tax advantages with respect to hybrid vehicles through amendments made to the Special Consumption Tax Act 2002 (No. 4760). Moreover, electric vehicles have also been available in the Turkish market since 2012 however have not been in demand as of late despite tax advantages applied for this type of vehicles.

4.d.2. Turkey signed the 'Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations' which was done in Geneva on 20 March 1958. The Agreement was approved by Turkey in 1996 subject to the reservation that the regulations of the Agreement would not be applicable in respect of Turkey. Certain pieces of legislation in the form of regulation were introduced such as the Regulation on the Type-Approval and Market Surveillance of Two- or Three-Wheel Vehicles and Quadricycles (2015) and the Regulation on the Type-Approval of Motor Vehicles and their Trailers (2009). The former is a Regulation which aims to establish a framework seeking to comply with the Regulation (EU) No 168/2013 and contains hybrid electric vehicles in Art 3/1(oo); regular electric vehicles in Art 3/1(ppp); and mineral diesel, mineral diesel-biodiesel vehicles in Art 3/1(r). The latter has been enacted in the light of the Directive 2007/EC establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles. Regular electric vehicles and hybrid electric vehicles have been introduced into the Regulation in 2012 through Temporary Art 4. These vehicles are subject to the provisions of the compulsory motor liability insurance regime as well as relevant legislation on road traffic.

[10] 'Turkey Automotive Industry Strategic Action Plan 2016-2019' by Ministry of Science, Industry and Technology available at: https://sgm.sanayi.gov.tr/DokumanGetHandler.ashx?dokumanId=af5d165a-53ac-4516-906b-44d883c99c43

II. CYBER RISKS

5. Identify the concerns that have emerged in your jurisdiction as a result of cyber risks. Is there any legislation in place or under consideration that might affect such risks? Comment: possible matters include cyber-terrorism, hacking, computer or software failure and financial fraud.

5.1. Below is an account of the pieces of legislation which have recently entered into force in Turkey or are in draft form, and which aim to minimise the effects of cyber risks. In general terms they relate to cyber crimes, electronic communications, protection of personal data, information security in energy sector, information systems used in banking and securities and the establishment of a national cyber protection strategy.

5.2. *Turkish Criminal Code (2004) (No. 5237)*
Cyber crimes are enumerated in Articles 243-246 of the Code as hacking (Art 243); obstruction of information systems, destruction or alteration of data (Art 244); misuse of banking and credit cards (Art 245); and facilitating cyber crimes through the production, sale, storing, purchase etc. of devices, systems or programmes (Art 245/A). The sanctions applying to the aforementioned crimes are imprisonment - the duration of which depends on each crime -, together with judicial fines. Legal persons benefiting from the commitment of those crimes are subjected to safety measures (Art 246).

Personal Data Protection Act (2016) (No. 6698)
The Personal Data Protection Act no 6698 is a piece of legislation which transposed the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (hereinafter referred to as the 'Data Protection Directive'). The Act requires data controllers to take necessary measures in order to avoid any illegal access to personal data stored by such controllers, this includes measures against cyber attacks.

Electronic Communications Act (2008) (No. 5809)
The Electronic Communications Act is the main legal framework governing the electronic communications sector which comprehensively regulates the responsibilities of the competent authorities, the authorisation to perform electronic communications services, tariffs, consumer protection policies, and administrative sanctions and penalties. According to the Act, the Information and Communication Technologies Authority's (ICTA) main rights and duties are to establish and to maintain fair competition in the sector, to grant necessary permissions and authorisations, to supervise and to monitor the sector, to approve the access proposals of the

enterprises and satellite positions. Additionally, the Authority is authorised to monitor the use of personal data and the protection of privacy by electronic communications enterprises.

The Act sets forth the Ministry of Transport, Maritime Affairs and Communications and the ICTA as the main authorities for taking necessary measures against risks of security in electronic communications such as hacking, violation of personal data, communications failure, misuse and fraud and performing coordination to ensure the safe sustainability of electronic communications. The Act also establishes a Cyber Security Board which is entitled to decide on the measures that need to be taken by private and public entities against cyber attacks and to coordinate the actions undertaken to prevent them.

Act on Regulating the Provision of Internet Access and Combatting Crimes Committed Through Such Provision (2007) (No. 5651)

The objective of this Act is to control the internet access provided by entities such as public institutions, private companies, hospitals, schools, shopping centres, hotels, internet cafés etc. to combat the commitment of cyber crimes. Under the Act, the access providers are responsible, *inter alia*, of disallowing access to illegal websites and keep a track of access logs and records. The lack of observance of these responsibilities by the entities are sanctioned by judicial and administrative fines depending on the type of breach.

Electronic Signature Act (2004) (No. 5070)

The Act contains provisions on the legal and technical aspects of electronic signatures as well as to the use thereof. As per the Act, anyone who misuses data collected for creating an electronic signature is sentenced to imprisonment and is required to pay a judicial fine (Art 16).

Act on the Organisation and Functions of the Disasters and Emergencies Directorate

The Act provides that the Directorate is responsible from managing natural disasters and emergencies as well as cyber crises by ensuring necessary coordination among the relevant authorities as well as developing policies toward that end.

Regulation on the Safety of Network and Information in the Electronic Communications Sector (2008)

The Regulation sets forth the procedure and principles for the safeguard of network and information security by the operators. The operators' main liabilities under the Regulation are to establish an appropriate Information Security Management System, to determine the necessary policy for the System, to raise awareness of such System among their employees, to prevent vulnerabilities in the System, to make risk assessments and take actions in relation to threats against the System. On the other hand the operators are obliged to make a plan for the sustainability of their business in case of cyber attacks, accidents, deliberate attacks and

natural disasters. Additionally, the operators have to establish efficient information security management systems for reporting information security violations and security vulnerabilities as soon as possible. Lastly the operators are obliged to raise awareness among their subscribers/users of their services as to cyber attacks, slave computers and malicious software. The provisions of the Regulation do not apply to the processing and protection of personal data in the electronic communications sector.

Regulation on the Safety of Information in Industrial Control Systems Used in the Energy Sector (2017)

The objectives of this Regulation are to pursue and regulate the information process of industrial control systems and to provide cyber security in the field of critical energy infrastructure. The scope of this Regulation encompasses 'critical enterprises' which are determined by the Energy Market Regulatory Authority ("EMRA"). The Regulation provides rules on risk assessment including identification, evaluation, prioritisation, minimisation, extermination and notification in this field. Hereby, this Regulation aims to increase preventive security of information systems and to minimise software failures in the field of critical energy infrastructure.

Regulation on the Processing and Protection of Personal Health Related Data (2016)

This Regulation has been enacted following the entry into force of the Personal Data Protection Act. It contains provisions on the protection of personal data and the supervision of the systems established to store personal health related data. It applies to the parties operating in healthcare that collect, process, use, store and transfer such data. The Regulation aims to establish a system that minimises cyber threats by authorising data processors to coordinate with the Cyber Incidents Intervention Team when necessary.

Prime Ministry Circular No.2016/28 on the Subscription of Public Institutions and Organisations to 'KamuNet'[11]

The Prime Ministry Circular No.2016/28 contains rules on 'KamuNet' being established by the Cyber Security Board with the aims of increasing cyber security, minimising the risk of cyber attacks and installing offline cloud computing applications for state/public institutions and organisations. 'KamuNet' provides a safer communication network and data transfer system among state institutions and organisations.

Communiqué on the Management and Supervision of Information Systems of Paying Institutions and Electronic Money Institutions (2014)

The Communiqué sets forth provisions on the management of the information systems of paying institutions and electronic money institutions as well as their supervision by independent authorised audit firms. It provides that those entities are required to ensure

[11] 'KamuNet' can be translated as 'PublicNet'

security and protection of data (sometimes even using cloud storage systems), and to validate the identity of their employees and their users. Furthermore they are responsible of setting up effective processing systems that prevent fraudulent conduct.

Communiqué on the Information Systems Used in Payment and Securities Reconciliation Systems (2016)

The Communiqué provides rules on information systems which are widely used in the field of the payment and securities reconciliation systems. The main concerns of the Central Bank of the Republic of Turkey with this Communiqué were to protect information systems against security vulnerabilities and violations which would include cyber attacks, hacking and fraudulent conduct. The relevant rules aim to regulate information security management, risk management, system sustainability, identity validation and access control in this field.

Draft Regulation on the Processing and Protection of Personal Data in the Electronic Communication Sector

With respect to the Draft Regulation, personal data protection is enhanced through processing of personal data, conservation of confidential personal data and privacy of communication. The Information and Communication Technologies Authority is required to take steps to prevent possible hacking of personal data, abuse of personal data and violation of confidentiality of communication being the authority that receives notification of any such potential abuse or violation. In line with this, the Draft provides rules as to processing of personal data, security policies for operators, data storage, rights of the subscribers and responsibilities of the operators in the electronic communications sector.

Decision on the Approval of the National Cyber Security Strategy and of the 2013-2014 Action Plan (2013)

The Council of Ministers' Decision aimed to take into consideration the rapid spreading of the information and communication systems in modern life which resulted in sophisticated and complex risk of cyber attacks and tackle this issue by assigning to the Ministry of Transport, Maritime Affairs and Communications the duty to prepare policies, strategies and action plans on ensuring cyber security at national level. Accordingly, all public organisations and agencies, natural and legal persons, are obliged to perform the duties assigned in the framework of the policies, strategies and action plans determined by the Cyber Security Council, and also to comply with the procedures, principles and standards determined thereby. In light of the principles enshrined in the Decision, the strategic actions to be followed were specified as the taking of regulatory measures; the establishment of the National Cyber Incidents Response Organisation; the strengthening of the national cyber security infrastructure, human resources education and the raising of awareness in the field of cyber security nationally as well as the development of national technologies for cyber security.

6. How has the insurance industry responded to cyber risks? In particular:

(a) do property policies cover losses from cyber risks, or is special insurance required?

6.a.1. This insurance line has become available in Turkey in 2012. It is taken out as special insurance and not as part of property policies. Only a few insurance companies in Turkey offer cyber risk insurance as yet and the existing tendency is towards the provision of coverage for individual cyber risks rather than corporate ones. To name but few, two leading insurance companies entitle their products respectively as 'Individual Cyber Security Insurance' and 'My Identity is Under Protection', both of which are offered to consumers and the latter offered also to small size enterprises.

6.a.2. Cyber risk cover is granted against personal information or identity theft, password theft, cyber attacks, loss of online reputation, fraudulent acts of third parties towards payment devices (e.g. ATM fraud), and online shopping fraud. Companies offering such products may also provide legal advice on cyber protection as well as cash advance services in case of emergency, and carry out retrospective cyber security check for policyholders.

6.a.3. It is also noteworthy that currently Turkey's general premium income is around TRY 37 billion, a negligeable portion of which comes from cyber risk covers. This being the case, the expectation is that that portion will increase to 5% of the premium generated from all lines in less than a few years on.

(b) is insurance and reinsurance readily available?

6.b.1. As stated above, only a few insurance companies offer this cover in Turkey as yet. It is expected that in the next couple of years there will be a variety of products available both for individuals and corporations. As regards reinsurance, no information could be obtained as to whether access thereto is limited; however it is the author's opinion that no such problem has yet arisen given that the companies currently providing this cover in Turkey are of large scale and would probably be reinsured rather readily.

(c) are there any special restrictions imposed on cyber risks, e.g. event limits or deductibles?

6.c.1. No special restriction is imposed on cyber risks by law or through general conditions applicable to insurance contracts. This being the case, the companies offering cyber risk insurance impose varying event limits and deductibles, an example of which is provided herebelow:

	Deductible	*Event limit (outside of judicial process)*	*Event limit (judicial process)*
Identity theft	TRY600	TRY900	TRY6,000
Loss of online reputation	N/A	TRY900	TRY6,000
Online shopping fraud	TRY600	TRY900	TRY6,000
Fraudulent acts of third parties towards payment devices	TRY600	TRY900	TRY6,000

III. NEW TECHNOLOGIES AND THE INSURANCE PROCESS

7. To what extent have the availability of new technologies affected the way in which insurance policies are placed? In particular:

(a) has there been any effect on the traditional use of agents and brokers?

7.a.1. There is currently no system adopted in Turkey that is in similar terms to Placing Platform Limited (PPL) as exists at Lloyd's which facilitates electronic risk capture, placing, signing and closing via a single electronic channel supporting both face-to-face and remotely broked placements. However several pieces of legislation are applicable as regards financial and commercial activities carried out in an electronic environment which are considered as within the scope of the Electronic Commerce Act Art 2. Online insurance that includes the offer of insurance products on the internet and insurance contracts formed by means of electronic communication tools is thereby subject to the Act. The insurance contracts which are concluded via electronic means and are made with consumers would furthermore be subject to the relevant provisions of the Consumer Protection Act. Oher legislation in this field can be enumerated as the Code of Obligations, the Turkish Commercial Code, the Insurance Business Act and any other secondary instruments enacted in this regard. Online insurance contracts can be deemed as 'distance insurance contracts' in the strict sense, given that marketing of products operate in the electronic environment, and the parties form a contract through electronic communication tools such as web page or call centre calls.[12] The offer of products cannot be made unless prior *consent* has been given to the providers by the receivers of product offers (Electronic Commerce Act Art 6), which must be differentiated from *contact information*. Insurance companies which send offers to potential applicants who have previously given their contact information will be fined (Art 12(1)(a)) as the mere sharing of contact information with insurance companies does not constitute consent. An

[12] Samim Ünan, Sigorta Tüketici Hukuku, On İki Levha Yayınları, 2016, 184

exception nevertheless exists as regards craftsmen and merchants the prior consent of which is not required (Art 6(2)).

7.a.2. Several provisions exist in secondary legislative instruments which affected the traditional use of agents and brokers. By way of example, the Regulation on Service Providers and Intermediary Service Providers in Electronic Commerce (2015) sets out the rules pertaining to information that has to be provided to receivers of electronic commerce services and rules on other practices on electronic commerce. Some insurance agents in Turkey that are entitled to make contracts on behalf of their principals operate via their websites, moreover some banks offer insurance products online. The Regulation contains no specific provision as regards the provision of electronic commerce services by insurance agents however it would in principal apply to them where they provide on their website that they act on behalf of the principal insurance company in selling the insurance products. The Regulation therefore rather expanded the means for the provision of insurance products in ensuring such provision is also carried out in electronic environment by agents in addition to the already existing paper-based practice. With respect to the online conclusion of the contract, the same Regulation applies to insurance intermediaries which are required to inform the policyholder, *inter alia*, as to how the premium has been calculated, as to the line of insurance (e.g. health, travel, motor etc.), the exact scope coverage (i.e. what is being insured under the policy) and as to the period of cover (Art 8). Another example of secondary instrument is the Regulation on Commercial Communication and Electronic Messages which provides that if one party to the agency contract receives consent from the potential applicant, the other parties to the contract are also entitled to benefit therefrom (Art 7(6)). This rule aimed to facilitate access of the client portfolio of the banks acting as insurance agent to insurance companies.[13]

7.a.3. Last but not least, the Circular on the Technical Means Required for the Conclusion of Insurance Contracts Electronically or Via Call Centres requires that all the processes towards the conclusion of an insurance contract must be carried out through encrypted sites, that only information necessary for risk assessment and premium pricing must be delivered to the applicant which must be free of any irrelevant information, that the provisions of the Regulation on Information Relating to Insurance Contracts must be observed throughout the process and the applicant must sign the information form before the policy is issued electronically.

(b) has the underwriting process been affected by the availability of information, particularly big data, from sources other than the applicant for insurance?

[13] ibid, 188

7.b.1. The underwriting process in Turkey has considerably been affected by the making available of data to health, life and motor insurers from several bodies. This has been particularly regulated in recent years through the introduction of a new framework of rules which is, in nature, apt to narrow the scope of the insured's pre-contractual information duties. One of the most important bodies that provide insurers with data about their applicants is the Insurance Information and Monitoring Centre (IIMC) which was established in 2007 by virtue of the Insurance Business Act of 2007 and will be considered below.

Background on IIMC and other bodies which provide data to insurers

7.b.2. The IIMC was established by virtue of the Insurance Business Act (IBA) 2007 within the Association of the Insurance, Reinsurance and Pension Companies of Turkey (AIRPC) to collect information for risk assessment including wrongful insurance practices in relation to policyholders and people benefiting indirectly from insurance contracts (IBA Art 31/B(1)). IIMC is authorised to request information in line with its purposes of foundation from legal persons, public institutions and organisations, professional organisations having the status of a public legal entity and their chief organisations, and other information centres established by the relevant legislation, as well as to sign contracts with these for the exchange of information upon the approval of the Undersecretariat of Treasury (Art 31/B(3)). The mentioned institutions and organisations are required to provide any information required by the IIMC. The Centre is empowered to share the collected information with insurance, reinsurance and pension companies engaged in the insurance sector and with persons[14] appointed by the Undersecretariat. All the insurance, reinsurance and pension companies in Turkey are required to become a member of the IIMC and share any information requested thereby (IBA Art 31/B(2)) as well as contributing to the expenses incurred thereby (Art 31/B(7)). All transactions and records of the IIMC are confidential and it is obliged to provide the Undersecretariat with all information collected within the time frame as required by the latter. Such information may also be provided to a person designated by the data subject in exchange of a remuneration if the data subject has given express consent for such transaction (Art 31/b(5)).

7.b.3. As per Art 5 of the IIMC Regulation, data related to life, sickness/health, motor insurances, compulsory insurance as well as lines of insurance determined by the Undersecretariat (upon obtaining the opinion of the AIRPC) are kept in centres established for the purpose of public monitoring of the insurance sector. Insurance companies that have a license in the relevant branches are natural members of the data centres. 4 such data centres have accordingly been established under the IIMC as per the IIMC Regulation, namely the Health Information and Monitoring Centre ("SAGMER" in Turkish), the Life Information and Monitoring Centre ("HAYMER" in Turkish), the Traffic Information and Monitoring

[14] The IBA does not specify whether this includes natural persons as well as legal persons. No list issued by the Undersecretariat of Treasury could have been found which has publicly been made available.

Centre ("TRAMER" in Turkish) and the Insurance Loss Tracking and Monitoring Centre. The objectives of the Health and Life Insurance Information and Monitoring Centres are to generate reliable statistics related to the insurance products offered under these branches, and to ensure that the public monitoring and supervision is carried out more effectively. The objectives of the Traffic Information and Monitoring Centre include, *inter alia*, obtaining reliable statistics with regard to motor insurances and ensuring unity in their implementation, preventing insurance fraud, enhancing trust in the insurance system, ensuring that the claims are paid on time, and determining uninsured motor vehicles and motor vehicle operators. Insurance companies that operate in these branches are required to provide all the data relevant to the sub-information centres and are entitled to request data about their applicants from the IIMC.[15]

It is also noteworthy that IIMC currently cooperates with the Behavioural Analytics and Visualization Lab[16] on big data analytics. The Lab was established at Sabancı University (Istanbul, Turkey) and is co-founded by Sabancı University and Massachusetts Institute of Technology (MIT) Media Lab Human Dynamics Group.

Special regulations and practices concerning health data and insurance

7.b.4. The Regulation on the Protection of Personal Health Related Data[17] provides that personal health related data cannot be processed or transferred without the explicit consent of the data subject except where the authorised institutions and organisations process such data for the purposes of public health protection, preventive medicine, medical diagnosis and treatment, and for the purposes of financial management and planning of the healthcare system (Art 7(1) of the Regulation and Art 6(3) of the Personal Data Protection Act). This connotes that health service providers in Turkey can process data for these purposes without the need for written and informed consent of the data subject, however in all circumstances, insurers can only have access to such data where the data subject gives written consent to the health providers with respect to the transfer of such data to insurance companies (Circular No. 2014/4 - Code of Practice on the Regulation on Private Health Insurance (Art 2)). Other bodies that provide health data to insurers for risk assessment are the Social Insurance Institution and the Health Ministry upon condition that the data subject gives written consent to the transfer of their health data and any document relating thereto (Private Health Insurance Regulation (PHIR) 2013 Art 5(3); Circular No. 2014/4 - Code of Practice on the Regulation on Private Health Insurance (Art 2)). The written consent may be in the form of a proposal form and/or information form and/or letter of consent. Following the entry into force of the Personal Data Protection Act, insurance companies' information forms began containing

[15] Insurance companies are not required to make payments for such requests (the IIMC Regulation art 14(2)(c))
[16] http://analyticslab.sabanciuniv.edu/about/
[17] Amended on 24 November 2017

special provisions detailing the procedure of how the personal data of the insured will be shared with other listed entities.

Under no circumstances the IIMC is allowed to receive from the insurers or share the insured's data and related documents where the insured's written consent does not exist (PHIR art 15). Moreover where no data can be acquired from the above-mentioned bodies despite the written consent of the applicant, the risk assessment is conducted on the basis of the responses of the applicant to the questions posed by the insurer in the proposal form (Circular art 3(3) and PHIR art 5(4)). A rather curious and pro-insurer provision is found in the Circular which states that where no such written consent is given by the applicant and a medical doctor's opinion is required for the risk assessment, all expenses occurring in relation to the request for the medical opinion are to be borne by the applicant, unless the contrary is agreed in the insurance contract.

7.b.5. Some insurance companies have recently started offering a service to their insureds whereby they are given the opportunity to contact the medical doctors appointed by the insurance company any time to be advised as to their health problems. This service is advertised as "7/24 health advisor service" and offers that expert teams will be arranged to pick up the insured's samples for any laboratory test that has to be carried out or that medical doctors will be directed to the insured's premises for medical support. It appears that this practice (currently in place rather in Istanbul, Ankara and Izmir) is showcased as an opportunity for the policyholders to access health services more easily, yet may lead to the increase of premiums based on post-contractual risk aggravation where for instance the medical doctors affiliated with the insurance companies communicate the health problems of the policyholders to the insurer. It is noteworthy however that according to the legislation in place on the protection of personal data, medical doctors are only entitled to do so where they receive the consent of the policyholder.

8. To what extent is genetic testing regarded as important by life and accident insurers? Is there any legislation in place or in contemplation restricting requests for genetic information, and are there any relevant rules on privacy that preclude its disclosure?

8.1. In Turkey, requesting genetic data or genetic testing has not been an ordinary practice of insurance companies prior to the conclusion of or during the currency of health or life insurance contracts. The Turkish Constitution enshrines the right to privacy in Art 20 by providing that any one is entitled to require the protection of their personal data, to be informed as to their personal data, to have access thereto, and to request their alteration or deletion. Personal data can only be processed under circumstances set out in statutes or where the data subject gives its explicit consent thereto. The legislation on insurance, particularly the Turkish Commercial Code and the Insurance Business Act, neither contain provisions

precluding insurers from requesting genetic tests nor the disclosure of genetic information. In that sense the main rules applying to insurance contracts and insurance businesses are far from containing any provision such as Art 1:208 on genetic tests and data found in the Principles of European Insurance Contract Law (PEICL). This being the case, some legislative restrictions exist under the Personal Data Protection Act which would preclude them from using such data unless certain conditions are met.

8.2. Prior to dealing with the Personal Data Protection Act in more detail, the disclosure duty of the applicant in entering a life or accident insurance contract needs to be elaborated in this context. As per the Turkish Commercial Code, the applicant is required to disclose any information that is important for the formation of the insurance contract which he knows or ought to know (Art 1435). Undisclosed information will be deemed as important if their disclosure would have induced the insurer not to enter into the contract or enter into the contract on different terms. Questions addressed to the applicant orally or in writing are deemed to be important unless and until the opposite is proved (Art 1435). Where the insurer gives the applicant a list of questions the applicant will not be required to disclose any other information unless he/she acts in bad faith in not disclosing the information (Art 1436(1)). Furthermore the insurer is entitled to ask any other question that is not otherwise provided on the list, but this must be made in writing and in clear terms. The applicant is required to answer those questions (Art 1436(2)). These provisions connote that so long as the genetic data is required to carry out a risk assessment by the insurers and the disclosure thereof is requested, the policyholder will be required to provide this information for the premium to be calculated accordingly, failing which the insurer is entitled to terminate the contract or to request higher premium (Art 1439(1)).

8.3. Under the Personal Data Protection Act, genetic data is considered as a special category of personal data,[18] and as a rule their processing (includes collection of data, as per Art 3(e)) is not allowed unless the data subject gives explicit consent to such processing (Art 6(1) and (2)). Explicit consent in this context connotes any freely given specific and informed indication of the data subject's wishes (Art 3(1)(a)). An exception to the aforementioned rule is found in Art 6(3) which provides that explicit consent shall not be required and processing shall be allowed in circumstances which are provided for in statutes; however no statute exists that is currently in force under Turkish law which expressly allows the use of genetic data by legal persons or more specifically insurance companies. Therefore, insurers may not process genetic data unless the data subject gives their explicit consent to such processing under Turkish law, however even if such consent is given, the processing would also be subject to specific measures which are required to be taken by the Data Protection Commission (Art 6(4)). It is noteworthy in this regard that insurance companies in Turkey are required to provide information forms to the applicants as per the Regulation on the Provision of

[18] Akin to 'sensitive data'

Information by Insurers in Insurance Contracts (2007) and more specifically health insurers as per the Regulation on Private Health Insurance (2013) as well as the former Regulation. It is gradually more common to see that insurers employ specific clauses in their information forms so as to notify the applicants that their data, including genetic data, will be processed according to the legislation in force. This would connote that any processing would be subject to explicit consent of the applicant with respect to genetic data.

8.4. Two pieces of legislation may in this regard be further relevant, namely the Act on Human Rights and Equality Institution of Turkey (2016) (No. 6701), and the former Draft Act on the National DNA Data Bank which was drafted in 2007. The former seeks to establish the Human Rights and Equality Institution of Turkey which, under the Act, has the duty to protect human rights and peoples' right to equal and fair treatment as well as to prevent discrimination (Art 1). The Act prohibits any act of discrimination based on, *inter alia*, health condition (Art 3(2)). Art 5 also states that discrimination must relate to the services of education, police, health, transport, communication, social security, social aid, sports, accommodation, culture, tourism, and *similar services* carried out by public or private legal persons so as to fall under the Act. Two questions may accordingly arise: 1) whether genetic data may in this regard be considered as part of one's health condition,[19] and 2) whether an insurer requesting genetics tests and refusing to enter into a contract on the basis of the information received may therefore in principle be regarded as a private legal person providing *similar services* and as such whether the act of refusal based on genetic data could constitute discrimination under the Statute. To the best knowledge of the author no claim has been made against insurers in Turkey on this basis, nevertheless the wording of the Act is sufficiently vague to give rise to this type of claim.

8.5. The former Draft Act on the National DNA Data Bank which has been withdrawn in 2011 and which does not constitute part of the current legislation may nevertheless be relevant for the purposes of the use of genetic data and genetic testing if it is proposed to the Parliament as a Draft Act in the upcoming years and becomes law. Two justifications can be made in this regard: the first consideration is that national DNA banks are established in other jurisdictions and the Parliament may choose to legislate on this issue so as to reach the standards existing elsewhere; the second consideration is that a considerable percentage of the data protection legislation in Turkey entered into force after the withdrawal of the former draft Act and therefore the Act may become relevant in this framework in the near future. The below explanation is given on the basis of the aforementioned background.

The former Draft Act contains provisions with respect to the establishment of the National DNA Data Bank where DNA data will be collected for identification and judicial purposes. Any DNA data collected for the purpose of diagnosing a health disease or the treatment

[19] It is noteworthy that the Personal Data Protection Act considers health and genetic data separately.

thereof is outside of the scope of the former Draft Act (Art 1(2)). This being the case, Art 3 provides that DNA analysis can be carried out upon condition that the data subject gives explicit consent thereto, that analysis is carried out for legitimate purposes and in compliance with the conditions set out in the Draft Act and in other statutes. This article would give rise to the question of whether risk assessment could be considered as a legitimate purpose and allow insurers to have the DNA analysed where the data subject's explicit consent is received. As per Art 9, DNA data collected at the Data Bank (which is what is achieved upon the analysis of DNA) can be used in criminal investigations, criminal proceedings, and in private law disputes as well as for the purpose of identification. This former draft provision could have potentially applied in a legal dispute on insurance (for e.g. where the insurer argues misrepresentation on the part of the insured) where the DNA data collected can be used to shed light to solve the dispute. Otherwise, where DNA data is collected from the person who gives consent to such collection ('volunteer' under the former Draft Act, Art 2(1)(ı)) the person has to be informed as to the scope of use of such data, where and how such data will be kept and processed, and to whom it can be transferred (art 10). In that sense, the volunteer must have been informed that their DNA data will be shared with insurers for the transfer of such data to be legal.

8.6. It is yet to be seen whether Turkey will implement the 'Recommendation on the processing of personal health-related data for insurance purposes, including data resulting from genetic tests' of the Council of Europe which Turkey is a member of. The Recommendation which was adopted on 26 October 2016 provides as follows:

> "**Chapter III - Specific provisions on genetic tests**
>
> ***Principle 4 – Insurers should not require genetic tests for insurance purposes.***
>
> 15. In accordance with the principle laid down in Article 12 of the Convention on Human Rights and Biomedicine, predictive genetic tests must not be carried out for insurance purposes.
>
> 16. Existing predictive data resulting from genetic tests should not be processed for insurance purposes unless specifically authorised by law. If so, their processing should only be allowed after independent assessment of conformity with the criteria laid down in Paragraph 5 by type of test used and with regard to a particular risk to be insured.
>
> 17. Existing data from genetic tests from family members of the insured person should not be processed for insurance purposes."

In the absence of such implementation, it would not be a fallacy to state that no legislation exists to ban the request by insurers of predictive genetic tests for risk assessment purposes, whereas existing predictive data resulting from genetic tests can only be processed for insurance purposes where the data subject gives explicit consent thereto as per the Personal Data Protection Act.

9. Has the assessment of claims been affected by the availability of data? In particular, are there any industry-wide arrangements in place whereby insurers can share information on fraud?

9.1. The 'Regulation on Detection, Notification, Registration of Insurance Malpractices and Fraud and on Combatting Such Practices' (hereinafter referred to as 'the Regulation') entered into force in 2011. IIMC have generated a system as per Art 12 of the Regulation which is entitled 'Insurance Abuses Information Sharing System' ('SISBIS' for short in Turkish). This is a central database keeping information and records on insurance malpractices committed by insurance agents, brokers, employees of insurers, adjusters, claims handlers and fraud committed by policyholders both at pre-contractual and claims stages. SISBIS covers information pertaining to motor, health, life and all other insurance lines. The system registers the use of fraudulent means and devices by policyholders, practices identified as insurance fraud in court decisions, suspicious claims based on inaccurate statements, suspicious claims resulting in the denial of coverage upon which the policyholder sues the insurer, information on drivers' intake of alcohol where claims are denied due to intoxicated driving, information on forged driving licences, and circumstances where insurers required further loss inspection due to fraud suspicion.

9.2. All insurance companies as well as other entities identified by the Secretariat of Treasury are entitled to access the database (Art 12(1)) where suspicious incidents are classified according to their severity (Art 12(2)). IIMC are required to notify the judicial authorities and the Secretary of Treasury once it has been established through systematic checks and notifications received from insurers that the insurance malpractice/fraud constitutes a crime (Art 14).

10. Are there any other ways in which the new technologies have affected the insurance process in your jurisdiction?

10.1. It was pointed out in paragraph 3.1. above that the Insurance Information and Monitoring Center (IIMC) has created a mobile accident reporting service that facilitates accident notification following an accident where an insured car is involved. The feature allows the drivers to enter their ID number and the car's license plate number which is required to use the application upon which the accident notification is sent automatically to the insurer without the need for the driver to notify the insurer thereof in paper form. The insureds are also able to retrieve the fault rates after an accident has occurred through the same application. Subsequently insurance companies transfer the report and photos (if any) to IIMC on an electronic system at the end of the following working day. Each insurance company then evaluates their own fault rate within 3 working days and the issue is settled should an agreement be reached between the insurers as regards the fault rates. Otherwise the

issue is taken before the Report Evaluation Committee[20] which is required to make a decision within 3 working days. Where the vehicles involved in the accident are insured by the same company the policyholder can challenge the decision of the insurance company via 'Accident Report Challenge' feature available on the IIMC website upon which the report issued is evaluated by the Committee. The Committee's decision can in turn be challenged before the Insurance Arbitration Commission or the courts.

10.2. The Center has also developed a system called '5664 Practice' whereby it aims to help users access some types of insurance information via SMS such as the claims history of their vehicle, details of the vehicle, parts replaced based on the experts reports issued, information on whether or not they have motor liability insurance cover, information on the latest status of their accident should they be involved in an accident, and injured party information (including any life insurance policy held by such and their insurance company). Before this system was in place, policyholders were required to contact their insurer's agent to access the abovementioned information.

10.3. Another application currently used and which was released in 2014 is 'SBMobil' which stands for insurance information that can be accessed through an application of IIMC that can be downloaded onto mobile phones. The application gives the policyholders the opportunity to check information on their motor liability and motor insurance, life insurance, health and travel insurance as well as transport and passenger insurance policies. Policyholders can accordingly access post-accident expert reports, appoint their own experts from the expert pool by entering policy and loss information, find the nearest agents of their insurer, and compare premium offers from different companies prior to deciding on a motor liability insurance quote.

IV. OTHER NEW TECHNOLOGY RISKS

11. Are there any other particular risks from the new technologies that have been identified in your jurisdiction? If so, is there any legislation in place or under consideration to regulate them?

11.1. Some discussions took place in conferences held on personal health-related data as to whether insurers are entitled to retrieve such data that is otherwise available in public domain such as on social media or internet. No particular piece of legislation specifically applying to insurers deals with this issue as yet, however the Personal Data Protection Act provides that health related data can only be collected and processed where the data subject gives its explicit consent thereto except where the authorised institutions and organisations process

[20] Committee independent from IIMC the principle duty of which is to evaluate circumstances where insurance companies cannot settle in relation to fault rates.

such data for the purposes of the protection of public health, preventive medicine, medical diagnosis and treatment and for the purposes of financial management and planning of the healthcare system (Art 6(2) and (3); this is also enshrined in the Regulation on the Protection of Personal Health Related Data amended on 24 November 2017, (Art 7(1) and (2)). Except for the aforementioned situations the policyholder would need to give its explicit consent to the collection and processing of personal health related data by the insurers. The question would then arise as to whether sharing information on personal health in social media or internet fora would constitute an explicit consent to the use thereof by insurers. The answer to this question would almost certainly be in the negative on the ground that explicit consent is defined in the Act as any freely given, specific and informed indication of the data subject's wishes (Art 3(1)(a)), and the data subject who is free from having been informed as to for what purposes the disclosed information will be used by the insurer may not be taken to have given explicit consent thereto.

11.2. Albeit it has been stated in the above paragraph that no particular piece of legislation specifically applying to insurers deals with this issue as yet, it is expected to be seen whether Turkey will implement the 'Recommendation on the processing of personal health-related data for insurance purposes, including data resulting from genetic tests' of the Council of Europe which Turkey is a member of. The Recommendation disallows insurers from evaluating risks or calculating premium using health-related data available in the public domain or internet by providing as follows:

> "**II. Processing of health-related personal data**
>
> ***Principle 1 – Insurers should justify the processing of health-related personal data.***
> ...
> 7. The processing for insurance purposes of health-related personal data obtained in the public domain, such as on social media or internet fora, should not be permitted to evaluate risks or calculate premiums."