

Türkiye: New E-Commerce Regulation Published

In brief

The amendments to the Law on the Regulation of Electronic Commerce ("**Law**") that was adopted on 1 July 2022 will enter into force on 1 January 2023. As part of these amendments, the Regulation on Electronic Commerce Intermediary Service Providers and Electronic Commerce Service Providers ("**Regulation**") was published on the Official Gazette no. 32058 dated 29 December 2022. You may access the Regulation [here](#) (in Turkish).

The Regulation aims to detail and clarify the requirements under the Law. In this regard, you may access our detailed legal alert on the amendments to the Law from [here](#).

In depth

In the Law, obligations are gradually determined according to the net transaction volumes and in line with this, the Regulation also includes provisions applied to (i) all, (ii) medium sized, (iii) large, and (iv) very large electronic commerce intermediary service providers and electronic commerce service providers as defined in the Regulation.

Additionally, the Regulation revokes the existing Regulation on Service Providers and Intermediary Service Providers in the Electronic Commerce. The requirements in the revoked regulation regarding presentation of information, transaction, confirmation and transaction guidelines are adopted by the Regulation with minor tweaks. Accordingly, the electronic commerce intermediary service providers and electronic commerce service providers are required to provide transaction guidelines on their marketplace and mediums, comply with the requirements on transactions and confirm the receipt of transactions.

1. Electronic Commerce Intermediary Service Providers

Obligations applicable to all electronic commerce intermediary service providers

- **Removal of illegal content**

In the same vein with the Article 9 of the Law, under Article 10/1 of the Regulation, electronic commerce intermediary service providers are not liable for unlawful content provided by the electronic commerce service providers. The Regulation determines the period for electronic commerce intermediary service providers to act on unlawful content within 48 hours from when they become aware that such content is illegal.

The electronic commerce intermediary service providers are deemed to become aware of illegal content in cases where they (i) identify the illegal content by themselves as part of its reporting obligations for compliance report, (ii) are notified by the relevant judicial authorities and (iii) are notified by the Ministry of Trade ("**Ministry**") or any competent public institution and organization.

- **IP infringements**

The details of the new regime related to the protection of intellectual and industrial property rights in e-commerce are introduced by the Regulation. Accordingly, the right holder claiming that their intellectual or industrial rights have been infringed is entitled to file a complaint before the electronic commerce intermediary service providers with supporting information and documents. This complaint can be sent via an internal communication system, notary channels, or registered email.

The right holder should provide the following information along with their complaint for the electronic commerce intermediary service provider to process the complaint:

- The registration certificate issued by the Turkish Patent and Trademark Office indicating the right ownership, or the banderole form issued by the Ministry of Culture and Tourism, or the certificate of activity for collecting societies as per the Law on Intellectual and Artistic Works No. 5846 ("**Copyright Law**").
- Identity and contact information depending on whether the complainant is a real or legal person, or a proxy
- Evidence showing that the product subject to the complaint is infringing their rights, along with written undertakings stating that any damages occurred due to inauthenticity of these documents will be covered by the right holder.

Upon the receipt of a complaint meeting the aforementioned conditions, the electronic commerce intermediary service provider will remove the product that is subject to the complaint from the platform within 48 hours. The electronic commerce service provider and the right holder will be informed of this removal accordingly.

It is possible to file an objection against the right holder's complaint. It is mandatory to submit certain supporting information and documents along with this objection similar to the one listed above. The most important one is the evidence showing that the removed product is an original or that it has been sold based on the authorization granted by the right holder. Also, the identity and contact information of the objecting party should be provided along with written undertakings, stating that any damages that have occurred due to the objection will be covered by the objecting party.

On the condition that the merits of the objection are clearly supported by the provided documents, the electronic commerce intermediary service provider will put the product back online within 24 hours following the receipt of the complaint. The electronic commerce service provider and the right holder will be informed of that the product is back online. The electronic commerce intermediary service provider will not be able to process new complaints about the same product, unless new evidence or information is provided. The interested parties' right to take action before judicial or administrative authorities in accordance with general provisions (of intellectual and industrial property laws) will be reserved.

- **Not offering their own brands for sale**

Article 19 of the Regulation clarifies that the requirement for not offering the electronic commerce intermediary service providers' own brand for sale is applicable regardless of the producer of the products.

In line with the Law, the Regulation provides two exemptions to this requirement: sale of (i) goods bearing the trademark of persons who derive more than half of the total sales revenue from sales other than electronic commerce; and (ii) periodical publications such as newspapers and magazines, and devices that allow the reading/listening/use the digital copies of e-books.

- **Presenting and verifying the information of electronic commerce service providers**

Article 5 of the Regulation specifies the information to be provided by electronic commerce service providers on their own medium and the information to be disclosed to electronic commerce intermediary service providers when they sell through marketplaces. In parallel to this, as per Article 6/3 of the Regulation, the electronic commerce intermediary service providers cannot provide intermediary services to electronic commerce service providers whose information cannot be verified.

Moreover, the electronic commerce intermediary service provider is responsible for keeping the information of the electronic commerce service provider up to date. Accordingly, the electronic commerce intermediary service provider must check the accuracy of the information of the electronic commerce service provider in the first three months of each year, and if it detects that the information is not up to date, the electronic commerce intermediary service provider will give a maximum of three business days to update the information. If the electronic commerce service provider does not update its introductory information within the given period, the electronic commerce intermediary service provider can only provide intermediary services to the electronic commerce service provider with respect to existing transactions.

In addition, as per Article 33/9 of the Regulation, the electronic commerce intermediary service providers must enable the electronic commerce service provider to display on the marketplace the documents that are required to be issued and presented to buyers as part of the Tax Procedural Law No. 213.

- **Not using the brands of electronic commerce service providers for promotional purposes**

As per Article 20 of the Regulation, the electronic commerce intermediary service provider cannot engage in marketing and promotion activities by using the keywords consisting of the domain names registered to ETBIS of the entities that are not in economic integrity.

The Regulation sets forth the complaint procedure. The entities can apply to the Ministry in case of a violation. If the Ministry identifies a violation, they will send a notification to electronic commerce intermediary service provider (or the electronic

commerce service provider). The electronic commerce intermediary service provider shall cease the violation within 24 hours and notify the Ministry regarding the same.

- **Unfair commercial practices**

In addition to those listed in the Law, the following situations are also recognized as unfair commercial practices by the Regulation:

- Determining the right of withdrawal periods higher than as stipulated in Law No. 6502 on Consumer Protection, without obtaining prior approval of the electronic commerce service provider
- Making untrue and misleading statements to electronic commerce service providers regarding its own products and services

Importantly, the Regulation stipulates that any delay or suspension of the payments to be made to electronic commerce service providers for purposes such as the prevention of illegal activities and fulfilment of obligations arising out of the legislation does not constitute an unfair commercial practice.

- **Intermediary agreements**

Articles 15, 16 and 17 of the Regulation regulate the intermediary agreements. As per Article 15 of the Regulation, the necessary elements of the intermediary agreement are indicated. In addition to the elements required to be included in the agreement for all electronic commerce intermediary service providers, the Regulation also includes additional elements for medium-sized, large and very large electronic commerce intermediary service providers.

The Regulation further sets forth the procedure for amendments of intermediary agreement provisions and the termination of the intermediary agreements. In case the electronic commerce intermediary service provider wants to amend the intermediary agreements, they have to send the amendments for the approval of the electronic commerce service provider. Amendments shall take effect after 15 days from the notification date. However, in case the amendments to be made require technical development by the electronic commerce service provider, increase commission rates and other service fees, restrict, suspend or terminate the intermediary services, introduce new penalty clauses for electronic commerce service provider, and disrupt the balance of rights and interests against electronic commerce service providers, the 15-day period does not apply. In terms of these amendments, the amendments are put into effect at the end of 30 days following the notification of the amendments to the electronic commerce service provider. The electronic commerce service provider may terminate the intermediary agreement without compensation within these 30 days.

The electronic commerce intermediary service provider cannot restrict, suspend or terminate the intermediary agreement without receiving the electronic commerce service provider's response/statements within the scope of the objective criteria that is included in the intermediary agreements. In case the electronic commerce intermediary service provider wants to restrict, suspend or terminate the intermediary agreement, it must notify the electronic commerce service provider to provide its explanations. If the electronic commerce service provider does not submit its explanations within three business days or if its explanations is deemed to be insufficient, the intermediary agreement may be restricted, suspended or terminated. The electronic commerce intermediary service provider must notify of its decision within seven business days following receipt of the electronic commerce service provider's explanations, and in case the electronic commerce service provider does not provide its explanations, at the end of the three business days period which has been granted to the electronic commerce service provider.

On the other hand, the electronic commerce intermediary service provider may immediately restrict, suspend or terminate its intermediary services to electronic commerce service provider by notifying electronic commerce service provider without delay, due to reasons arising out of legislation or in situations involving public order, in cases where delays would result in drawbacks, or in the case of fraud, data breach or other cyber security risks.

- **Establishment of internal communication system**

The Regulation introduces a new requirement for electronic commerce intermediary service providers. The electronic commerce intermediary service provider must establish an internal communication system to receive applications made by electronic commerce service providers. The applications made through this system by the electronic commerce service providers must be finalized within 15 days. The intermediary agreements must be stored in this system so that electronic commerce service providers can access them. The electronic commerce intermediary service providers must provide the technical means for the authorized personnel of the Ministry to display the information in the system.

- **Transmitting order information and updating stocks**

As per Article 33/8 of the Regulation, the electronic commerce intermediary service provider must enable the necessary integration with the electronic commerce service provider for the simultaneous transmission of order information and updating of the stocks.

- **Establishment of a contact point**

As per Article 6/5 of the Regulation, the electronic commerce intermediary service provider must establish a contact point for the public institution and organizations to reach out to the electronic commerce intermediary service provider, and it must notify the Ministry regarding this contact point.

Additional obligations applied to electronic commerce intermediary service providers with a net transaction volume of over TRY 10 billion in a calendar year (medium sized electronic commerce intermediary service providers)

- **Obtainment of electronic commerce license**

The Regulation clarifies that the license application can be made through ETBIS each year during March.

- **Limitations on the use of data**

As for the limitations on the data use, Article 21/1 clarifies that the electronic commerce intermediary service provider can not use the data obtained from the electronic commerce service provider and the buyers when they act as electronic commerce service provider or when they compete with the electronic commerce intermediary service providers through the electronic commerce service providers that it has in economic integrity.

As for the data portability right envisaged under Additional Article 2/2(b), the Regulation indicates that the following data is subject to data portability and data access:

- Sales and refund data, properties, descriptions, images, questions, answers, evaluations of electronic commerce service providers products
- Most preferred product data periodically, for special days, categorical basis and product basis, in case the electronic commerce intermediary keeps this data, such as buyers' gender, age group, province and district distribution and purchase day and time data
- Evaluation score of the performance of the electronic commerce service provider,
- The singularized number given to the products of electronic commerce service provider by the electronic commerce intermediary service provider that is used to distinguish the products in the electronic commerce marketplace

The electronic commerce service provider must respond to the data portability and data access requests within 15 days.

- **Notification of changes in the shares**

The Article 22 of the Regulation clarifies that share transfer notifications must be made through ETBIS.

- **Submission of reports to the Ministry**

Within the scope of submission of reports, as per the Article 23/1 of the Regulation, the reports must be sent to the Ministry during April every year. The Regulation also requires the electronic commerce intermediary service providers and electronic commerce service provider to disclose their registered brands and information on the electronic commerce medium in the reports.

Article 24 of the Regulation sets forth the principles of the reports regarding illegal content. Accordingly, the electronic commerce intermediary service provider must carry out annual examinations on the content provided by the electronic commerce service providers and report these during April. The examinations must focus on compliance with the following legislation:

- The Law
- Law No. 6502 on Consumer Protection
- Law No. 6698 on Protection of Personal Data
- Law No. 5846 on Intellectual and Industrial Works

- Law No. 6769 on Industrial Property

The report must include (i) subject matter of the illegality, (ii) relevant legislation, (iii) identification methods and (iv) measures taken.

Additional obligations applied to electronic commerce intermediary service providers with a net transaction volume of TRY 30 billion and a number of transactions over 100,000, excluding cancellations and refunds, in a calendar year (large electronic commerce intermediary service providers)

- **Advertisement and promotion (discount) expenditure**

Under Article 28/1 of the Regulation, advertisement is considered as "all promotional and marketing communications through written, audio and visual media, digital media, social media or by using any means of communication such as open or closed spaces or public figures for providing direct or indirect economic benefits to real or legal persons in order to facilitate a access to goods and services, promoting goods and services online or offline, increasing their visibility or facilitating their access, influencing buyers' purchasing or leasing decisions including promotions."

The Regulation sets forth the same principles with the Law regarding advertisement expenditure. However, Article 28/9 of the Regulation indicates that in case the electronic commerce intermediary service provider exceeds its advertisement budget by requiring the electronic commerce service provider or third parties to make advertisements in a way that will result in its own benefit, this matter would constitute as transactions that are misleading for the Ministry. Importantly, a violation of the Law by transactions aimed at misleading the Ministry may result in administrative fines of ten times of the penalty amount.

The Regulation further defines the cases that constitute promotion and discount. Accordingly, as per Article 29 of the Regulation, the costs incurred by an electronic commerce intermediary service provider on behalf of buyers and electronic commerce service providers, and by electronic commerce service providers on behalf of buyers, promotions, awards, points, coupons, gift certificates and similar opportunities and other economic benefits provided to them are evaluated within the discount budget. The Regulation exemplifies the cases that constitute promotion and discount.

Additional obligations applicable to electronic commerce intermediary service providers with a net transaction volume of TRY 60 billion and a number of transactions at 100,000, excluding cancellations and refunds, in a calendar year (very large electronic commerce intermediary service providers)

Generally, the Regulation does not envisage additional requirements for very large electronic commerce intermediary service providers that differ from the Law. However, the Regulation indicates that the e-money and banking restrictions and requirements on publications will not be applicable to activities within the scope of the Regulation on Sale of Renewed Products.

2. Electronic Commerce Service Providers

In line with the Law, the Regulation does not provide separate provisions for electronic commerce service providers and instead regulates them together with the electronic commerce intermediary service providers.

As it is known, Additional Article 3, which stipulates requirements on electronic commerce service providers in the Law, will not be applied to electronic commerce service providers that derive more than half of their total sales revenue from sales other than electronic commerce. In this vein, the Regulation introduces the definition of total sales revenue as "the total of electronic commerce service provider and electronic commerce intermediary service provider's revenues from sales in electronic commerce and outside of electronic commerce."

Requirements on the restriction on promotion using the domain names of the entities; not providing transition between mediums; notifying share transfers; submission of reports; obtaining license; restrictions on advertisement and discount expenditures; restrictions on e-money and banking activities; and prohibition of publication and placing orders will be applied gradually to electronic commerce service providers as detailed under the Regulation.

Transition period

The Regulation is aligned with the transition period envisaged under the Law.

- Within the scope of the obligation to establish an internal communication system introduced by the Regulation, the transactions that are required to be made through the internal communication system will be carried out by technical means such as email until 1 July 2023.

- Within the scope of electronic commerce intermediary service providers' obligation to verify the information of the electronic commerce service provider, compliance with the obligation must be ensured until 1 January 2024 for existing electronic commerce service providers.

Conclusion

The Regulation, in line with the amended Law, details the requirements relating to electronic commerce intermediary service providers and electronic commerce service providers and introduces various new obligations. Accordingly, especially, the scope and amendments to intermediary agreements and data portability rights along with the process on IP rights infringements are detailed under the Regulation. In addition, the Regulation on Service Providers and Intermediary Service Providers in Electronic Commerce are repealed and certain provisions are included in the new Regulation. The electronic commerce service providers and electronic commerce intermediary service providers must assess the Regulation together with the Law and carry out the necessary compliance process.

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