

Law Bulletin

Corporate & Commercial | Turkey | September 2022

AMENDMENTS TO THE DISTANCE CONTRACTS REGULATION

On 23 August 2022, a regulation amending the Distance Contracts Regulation was published (the "**First Amendment Regulation**"). The First Amendment Regulation introduced new definitions to the Distance Contracts Regulation, amended the procedure regarding the return of the goods and the payment's refund along with the scope of the mandatory information to be provided in the preliminary information and introduced new obligations for intermediary service providers, sellers, and providers. In addition, on 14 September 2022, a second amendment regulation was published (the "**Second Amendment Regulation**") and amended the enforcement dates of some of the provisions set forth under the First Amendment Regulation.

1. Definitions

The First Amendment Regulation introduced the "intermediary service provider" and "platform" definitions. Accordingly, intermediary service provider is defined as "*an individual or a legal entity who mediate the establishment of distance contracts on behalf of the seller and/or provider through the established system and remote communication tools*", and platform is defined as "*the system established by the intermediary service provider to mediate the establishment of a distance contract, excluding the common public electronic platform where public services are offered from a single point*".

2. Scope

According to the First Amendment Regulation, value-added electronic communication services established via short messages and fully performed simultaneously on a non-subscription basis as well as value-added electronic communication services offered by public institutions have been excluded from the Distance Contracts Regulation's scope.

3. Sellers', Providers', and Intermediary Service Providers' Obligations

The First Amendment Regulation introduced significant changes to sellers' and providers' obligations as well as additional obligations for intermediary service providers. These changes are

KOLCUOĞLU DEMİRKAN KOÇAKLI

as follows:

3.1. Sellers' and Providers' Obligations

(a) Obligation to Refund the Payment and to Notify

The obligations set out under (i), (ii), (iii) and (iv) below will be effective as of 1 January 2024 where the obligation set out under (v) will be effective as of 1 October 2022.

- (i)** If the consumer exercises its withdrawal right, the seller shall refund the payment of the goods within 14 days from the date that the goods are delivered to the carrier specified in the preliminary information. The 14 day-period shall start from the date that the goods are delivered to the seller if the consumer consigns the goods to a carrier other than the one specified in the preliminary information.
- (ii)** The return cost shall be borne by the seller or the service provider if there is no information on the return process in the preliminary information.
- (iii)** In the distance contracts established through platform, the seller or the provider shall immediately notify the intermediary service provider regarding the exercise of the withdrawal right by the consumer.
- (iv)** Amounts related to the refund shall be returned at once, in accordance with the payment method used by the consumer while purchasing, and without incurring any additional expense or obligation to the consumer. If the payment is made by credit card, the card-issuing institutions must return the amount transferred by the seller, the service provider, or the intermediary service provider to the cardholder's card immediately.
- (v)** If the seller or the provider authorized the intermediary service provider to collect payment in distance contracts established through platforms and the intermediary service provider provided additional payment obligations without the consumer's explicit consent and the consumer has made a payment in this regard the seller, provider or intermediary service provider shall refund such amount immediately.

(b) Obligation to Deliver Within the Promised Period

The seller or the provider is obliged to deliver the order received within the promised period. However, if a product is produced in line with the consumer's request or personal needs, the delivery period shall not exceed 30 days. This obligation will be effective as of 1 October 2022.

3.2. Intermediary Service Providers' Obligations

(a) Intermediary Service Provider's Joint and Several Liability with Seller and/or Provider

Obligations of the intermediary service provider set out below shall be effective as of 1 October 2022:

KOLCUOĞLU DEMİRKAN KOÇAKLI

- (i) The intermediary service provider that is authorized to collect payment on seller's or provider's behalf based on the distance contracts established through platform shall be jointly and severally liable with the seller or the provider for fulfilling the obligation to refund.
- (ii) The intermediary service provider shall be jointly and severally liable with the seller or the provider for the preliminary information's realization, confirmation, and evidencing. However, if the data entry is performed by the intermediary service provider, the intermediary service provider will be solely responsible for the deficiencies or inaccuracies in the data entries.
- (iii) If the delivery of the goods' or services' fulfilment becomes impossible or if the intermediary service provider is authorized to collect payment on the seller's or the provider's behalf, the intermediary service provider shall notify the consumer within 3 days from being aware of such event, in writing or with a permanent data store, and shall be jointly and severally liable for returning of all collected payments to the consumer within 14 days at the latest from the notification date. In this regard, lack of goods in stock is not considered as a reason for impossibility within the scope of the First Amendment Regulation.
- (iv) If the intermediary service provider mediates the subcontracts for the distance contracts to be established with the seller or the provider through the platform, the intermediary service provider shall be jointly and severally liable with the seller or the provider regarding the withdrawal right's notification to the consumer.

(b) Obligation to Refund the Payment Where the Intermediary Service Provider Is Authorized to Collect Payment on the Seller's or the Provider's Behalf

Intermediary service provider shall be liable to refund the payment within 14 days if the intermediary service provider is authorized to collect payment on the seller's or the provider's behalf, and the obligations set out under (i) and (iii) shall be effective as of 1 October 2022, and (ii) shall be effective as of 1 January 2024. The 14-days' period shall start from:

- (i) The date on which the notification regarding the withdrawal right's exercise is received, **if the consumer exercises the withdrawal right before the goods' delivery or the service's performance;**
- (ii) The date on which the goods subject to the withdrawal right are delivered to the specified carrier for return, or the date on which the goods are delivered to the seller if they are returned with a carrier other than the one specified. **This is provided that on the date the consumer exercised the withdrawal right after the goods' delivery and the payment has not been transferred to the seller;** and
- (iii) The date on which the notification regarding the withdrawal right's exercise is received **if the consumer exercises the right to terminate the contract due to failure in the delivery or performance within the promised period.**

KOLCUOĞLU DEMİRKAN KOÇAKLI

(c) Obligation to Establish a System and to Notify

The intermediary service provider shall establish an uninterrupted system which enables the consumers to make notifications and track requests regarding the withdrawal right and shall notify the consumer that the withdrawal right's exercise has been received by the seller, provider, or intermediary service provider. This obligation shall be effective as of 1 October 2022.

(d) Obligation to Retain and to Submit

The intermediary service provider shall retain records of the consumer's transactions made with the seller or the service providers for a term of 3 years and provide such information to the authorized institutions, organizations, and consumers upon request.

(e) Obligation to Fulfil Commitments Regarding Campaigns, Promotions or Discounted Sales

The intermediary service provider shall be responsible for the fulfilment of the commitments arising from the campaigns, promotions or discounted sales launched without the seller's or provider's approval and the compatibility between the information in the advertisements and promotions presented on the platform and the preliminary information. This obligation shall be effective as of 1 October 2022.

(f) Obligation to Compensate for Breach

The intermediary service provider shall be responsible for each consumer transaction which causes the seller and the provider to breach the provisions of Law No. 6502 on the Consumer Protection and the Distance Contracts Regulation. This obligation shall be effective as of 1 October 2022.

4. Regulations Regarding the Rights and Obligations of the Consumer

In accordance with the First Amendment Regulation, consumer shall be obliged to cover the return costs not exceeding the delivery costs if the cost for return with a certain carrier is specified in the preliminary information as of 1 January 2024. However, if the goods delivered are defective, the return cost cannot be claimed from the consumer and the return cost can be deducted from the refund amount to be paid to the consumer upon the consumer's request.

5. Amendments Regarding the Withdrawal Right

In accordance with the First Amendment Regulation, 10-days' period for the goods' shipment has been amended to 14 days following the receipt of the notification regarding the withdrawal right's exercise. In addition, contracts set out below are excluded from the scope of the withdrawal right which will be effective as of 1 January 2024:

- Contracts on movables which must be registered according to the Highway Traffic Law and unmanned aerial vehicles subject to registry requirement
- Contracts concluded by way of live auction

KOLCUOĞLU DEMİRKAN KOÇAKLI

- Contracts on mobile phones, smart watches, tablets, and computers delivered to the consumer
- Contracts on the goods that are to be installed or assembled by the seller or authorized services in accordance with the advertisements and user manual

6. Regulations Regarding the Preliminary Information

In line with the First Amendment Regulation, certain changes have been introduced to the mandatory information to be provided in the preliminary information. In this respect, name, or title, MERSIS number or tax identification number, contact information and solutions for complaints of the intermediary service provider must also be included in the preliminary information. In addition, the consumer must be informed on the delivery period, return costs which cannot exceed the delivery cost, the party to bear such amounts and the consumers' obligation to cover the return costs if the good is returned with a carrier other than the one specified in the preliminary information.

7. Conclusion

The First Amendment Regulation aims to establish compatibility between the provisions set out under Law No. 6563 on the Regulation of Electronic Commerce and Law No. 6502 on the Consumer Protection regarding the sales through platforms and to meet the electronic commerce market's necessities through introducing novelties regarding the withdrawal right's scope and exercise period. As such, companies operating in the electronic commerce market must fulfill their obligations in accordance with the effective dates introduced by the Second Amendment Regulation upon a thorough examination.

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