

Law Bulletin

Corporate & Commercial | Turkey | January 2023

NEW REGULATIONS ON ELECTRONIC COMMERCE INTERMEDIARY SERVICE PROVIDERS AND SERVICE PROVIDERS

On 29 December 2022, the Regulation on Electronic Commerce Intermediary Service Providers and Electronic Commerce Service Providers (the "**Regulation**") was published. With the Regulation, the Regulation on Service Providers and Intermediary Service Providers in Electronic Commerce published in 2015 (the "**Former Regulation**") was abolished. In addition, new definitions introduced by the Law Amending the Law on the Regulation of Electronic Commerce (the "**Amendment Law**")¹ published in July 2022, and the below explained additional liabilities of electronic commerce intermediary service providers ("**ECISP**") and electronic commerce service providers ("**ECSP**"), that are divided into three categories as medium, large and very large scale according to the net transaction volume and number of transactions, are regulated under the Regulation in detail.

Intermediary Contract

The Regulation introduces provisions regarding the minimum elements of intermediary contracts that determine the conditions of the commercial relationships between ECISP and ECSP, conditions of amending intermediary contracts by ECISP, and conditions for the restriction, suspension and termination of intermediary services. According to the Regulation, intermediary contracts concluded before 1 January 2023 and not amended to be compliant with the Regulation within six months, will become invalid.

Obligations

The Regulation elaborates obligations of ECSP and ECISP set forth under the Amendment Law

¹ You may access our bulletin including detailed information on the Amendment Law here:
https://www.kolcuoglu.av.tr/Uploads/Publication/amendments_to_the_law_on_the_regulation_of_e-commerce.pdf

KOLCUOĞLU DEMİRKAN KOÇAKLI

and introduces new obligations:

Obligation	Transition Period
Obligations of ECSP and ECISP	
General Obligations	
<ul style="list-style-type: none"> Not engaging in marketing and promotion activities in online search engines by using the registered trademarks of persons who are not part of the economic integrity of ECISPs or ECSPs, which constitute the main element of their domain names registered with ECIS, without obtaining prior written or electronic affirmative consent of ECISPs or ECSPs. 	Beginning from 1 January 2023
Obligations of Medium, Large and Very Large Scale ECSP and ECISP	
<ul style="list-style-type: none"> Notifying the Ministry of Commerce of (i) shareholders' share transfers or acquisitions (except for the shares registered in the stock exchange) amounting to 5% or its multiples within 1 month from the date of registry of the transfer which adds up to such rates in the share ledger, and (ii) incorporation of a company, share acquisitions and transfers, within one month from the registration of the incorporation by the trade registry, or in case of share transfers, from the date of registry of the transfer in the share ledger 	Beginning from 1 January 2023
<ul style="list-style-type: none"> Having the authorized independent auditor conduct an audit for the previous calendar year and submitting the audit report to the Ministry of Commerce in April each year 	
<ul style="list-style-type: none"> Obtaining an electronic commerce license from the Ministry of Commerce and renewing this license annually by paying the license fee determined according to the Amendment Law and the Regulation, in case the transaction number is over 100,000 excluding the cancellations and refunds 	Beginning from 1 January 2025
Obligations of Large and Very Large Scale ECSP AND ECISP	
<ul style="list-style-type: none"> Not spending more than 2% of TRY 30 billion of the net transaction volume (after applying the 12-month average Consumer Price Index change rate for the relevant year) and 0.3% of the amount exceeding TRY 30 billion of the total net transaction volume for advertisements, and not offering discounts over such rates <p>Promotional and marketing transmissions made in open or closed areas using any means of communication such as social media and public figures are also considered within the scope of the definition of advertisement.</p>	Beginning from 1 January 2023, also to be applied to net transaction volumes for year 2022
Obligations of Very Large Scale ECSP and ECISP	
<ul style="list-style-type: none"> Except for credit card payments and other payment transactions, not facilitating provision of services by banks or financial leasing, factoring, finance companies and savings finance companies that are in the same economic integrity with them in the electronic commerce marketplaces they provide intermediary services 	Beginning from 7 July 2022 until 1 January 2024
<ul style="list-style-type: none"> Not accepting electronic money issued by electronic money institutions within the same economic integrity for payment 	
<ul style="list-style-type: none"> Not providing any services similar to the "wallet", relating to instruments that can be used in goods or service purchases in a limited store network and thus falls out of the Law No. 6493's scope or not facilitating the companies that are within the same economic integrity to offer such services 	
<ul style="list-style-type: none"> Not facilitating execution of contracts or the placement of orders for the supply of goods and services in the same environment if an electronic environment is 	

KOLCUOĞLU DEMİRKAN KOÇAKLI

<p>provided for the publication of goods or service advertisements, and not providing access and not promoting each other if these services are provided in different electronic media by the person or persons with whom they have an economic integrity</p>	
Obligations of ECISP Only	
General Obligations	
<ul style="list-style-type: none"> • Removing illegal content within 48 hours, if the content provided by ECSP is known to be illegal and notifying the relevant public institutions, organizations and ECSP of the illegal content 	Beginning from 1 January 2023
<ul style="list-style-type: none"> • Not engaging in unfair commercial practices <p>Two new situations, that are, (i) the determination of a withdrawal period exceeding those stated under Law No. 6502 on Consumer Protection by ECISPs, without the prior approval or ECSPs and (ii) making false or misleading explanations or notifications by ECISPs regarding their own products and activities to ECSPs are considered as unfair commercial practices. Also, it has been prohibited for large and very large-scale ECISPs to restrict the commercial relations of ECSP, to advertise or to offer goods or services through alternative channels at the same or different prices, and to force any person to provide goods or services or to force including any provision in the intermediary contract.</p>	
<ul style="list-style-type: none"> • Removing the products subject to the complaint within 48 hours upon receipt of the notification regarding the violation of the intellectual and industrial property rights of the relevant right holders of ECSP and reporting this to ECSP and the right holder. 	
<ul style="list-style-type: none"> • Providing introductory information on the home page of the electronic commerce marketplace and verifying the introductory information of ECSP within the first three months of each calendar year through the accessible electronic systems of the relevant institutions or, if not possible, through the documents obtained from ECSP 	Beginning from 1 January 2023 for information and from 7 July 2022 until 1 January 2024 for verification liabilities
<ul style="list-style-type: none"> • Assigning at least one contact person that public institutions and organizations can directly communicate with and notifying this person to the Ministry of Commerce 	Beginning from 1 January 2023
<ul style="list-style-type: none"> • Receiving applications made by ECSP through an internal communication system and finalizing them within 15 days from the date of application made by ECSP through the system 	
<ul style="list-style-type: none"> • Not offering for sale the goods bearing their own trademarks or the goods for which they have the right to use the trademark in the electronic commerce marketplace in which they operate, or not acting as an intermediary in the sale of such goods and not providing access and not promoting each other if the goods are offered for sale in different electronic commerce environments, <p>This obligation is not applicable to (i) the goods that bear the trademark of persons who derive more than half of their total sales revenue from sales made via other than electronic means, or the goods for which they have the right to use the trademark, and (ii) periodicals such as magazines and newspapers, and devices whose hardware and software enable the digital copies of electronic books to be read, listened to and used exclusively are exempted from this prohibition.</p>	Beginning from 7 July 2022 until 1 January 2024

KOLCUOĞLU DEMİRKAN KOÇAKLI

Obligations of Medium, Large and Very Large Scale ECISP	
<ul style="list-style-type: none">Using the data obtained from the ECSP and the buyer only for the purpose of providing intermediary services and not using such data to compete with other ECSPs in cases where it is an ECSP itself or through other ECSPs it has an economic integrity withEffective and free of charge transferring of data obtained by ECISPs from the sales made by ECSP, and providing access to such data within the term of the intermediary contractCreating an application programming interface enabling the transportation and storage of ECSP's data.	Beginning from 1 January 2024
<ul style="list-style-type: none">Preparing a legal compliance report	Beginning from 1 January 2023
Obligations of Very Large Scale ECISP	
<ul style="list-style-type: none">Not carrying out transportation, transportation organization and delivery services in electronic sales in which it acts as an intermediary, except for the sales in the electronic commerce marketplaces where it provides intermediary services, or its sales as ECSP and its sales other than those made via electronic means	Beginning from 7 July 2022 until 1 January 2024

The Amendment Law sets forth many new obligations to ECISPs and ECSPs in order to prevent unfair practices of electronic commerce platforms with significant market power, towards others in the market. The Regulation elaborates such obligations and regulates the procedures and principles for the activities and audits of ECSP and ECISP and their commercial relations to establish an effective and fair competition environment and to ensure development of electronic commerce.

CONTACT



Baybora Gökbora

bgokbora@kolcuoglu.av.tr



Esen Çakır

ecakir@kolcuoglu.av.tr