



Overview of the New Electronic Commerce Law

Developments in information and communication technologies have caused important changes in the fields of economy, commerce, public administration, education, health, justice and culture. Accessibility to the internet through pocket devices, smartphones and laptops and the increasing number of electronic commerce transactions are re-designing people's way of living.

In order to regulate the rapidly growing electronic commerce market in Turkey¹, the Law on the Regulation of Electronic Commerce (the "**E-Commerce Law**") was recently enacted.² The E-Commerce Law will enter into force on 1 May 2015. The purpose of this bulletin is to provide a high level overview of the key points and novelties within the scope of the E-Commerce Law.

Scope of the E-Commerce Law

The primary purpose of the E-Commerce Law is to regulate the fundamentals of electronic commerce and to protect the privacy of people who carry out transactions electronically. The E-Commerce Law defines "electronic commerce" as the activities and transactions that occur in the electronic environment without any face to face communication. The E-Commerce Law primarily regulates the obligations of individuals and legal entities that provide (i) electronic commerce services (the "**Service Provider**") and (ii) electronic commerce environment for third parties' financial and commercial activities (the "**Intermediary Service Provider**").

Service Provider's Obligations

The Service Provider must present certain information before entering into an agreement with the consumers/buyers through any electronic commerce tools. The Service Provider must provide, *inter alia*, the following information: the Service Provider's business name, technical information with regard to the execution of the agreement, accessibility of the agreement online, confidentiality of information, etc.

Orders Placed through Electronic Communication Tools

The E-Commerce Law also governs the basic rules regarding orders to be placed through the electronic communication tools (the "**Order**"). Under Article 4, the Service Provider must ensure that the buyer can see the terms and conditions of the agreement, including the total cost, during the confirmation of the Order and before the entry of payment information. With the entry into force of this provision, the buyer will be able to diligently review the details of

¹ According to the Informatics Industry Association's report, "E-commerce Market in Turkey – 2013", Turkey's electronic commerce market size reached TRY 14 billion in 2013.

² Published in the Official Gazette dated 5 November 2014 and numbered 29166.

the Order and the content of the agreement. Under the same article, the Service Provider must confirm the buyer's Order through electronic communication tools without any delay.³

Commercial Communication Obligations

Under the E-Commerce Law, commercial communication is defined as any kind of communication regarding electronic commerce, with the intention of making profit within the scope of occupational and commercial activities, except domain names and electronic mail addresses. Under Article 5, (i) information regarding commercial communication and (ii) identity of the individual and legal entity transmitting such commercial communication must be clearly presented. With the entry into force of this article, we believe that anonymous information in the electronic environment, which may easily mislead the buyer, will significantly decrease, given that each commercial communication will bear the commercial title/name of the Service Provider.

Promotional commercial communications such as discounts, presents, games and contests must contain a clear indication that these communications are transmitted for promotional purposes. The buyer should easily access the relevant terms and conditions and participation rules to these promotions, which should be clear and comprehensible.

Electronic Messages with Commercial Purposes

The E-Commerce Law has also brought novelties on electronic messages that are sent with commercial intentions. Article 6 of the E-Commerce Law provides that such messages can only be sent with the buyer's prior consent. This consent may be obtained in writing or through any other electronic communication tools.

Article 6 of the E-Commerce Law will ensure that unwanted electronic messages via electronic mails, SMS and fax with marketing and advertisement content cannot be sent without the addressee's consent and confirmation. However, it is worth emphasizing that this provision will not be applicable to electronic messages sent to merchants and tradesmen, given that these messages are deemed as a natural requirement of business life.

The content of electronic messages must be in compliance with the buyer's consent. The buyer may elect not to receive these electronic messages, without stating any reason.

Data Protection

Both the Service Provider and the Intermediary Service Provider must protect and preserve the buyer's personal data obtained within the scope of electronic commerce activities. They are not entitled to transmit such personal information to any other third parties without the buyer's consent.

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³ The parties may agree otherwise, if the buyer is not a consumer as per the Law on the Protection of the Consumer.