



## Recent Developments in Turkish E-Commerce Legislation

The past few years have seen a great increase in the number of sales made over the internet in Turkey. Today, Turkey has approximately 35 million internet users. In 2010, Turkey had a total e-commerce volume of 15.2 million TL and it is expected that this will expand by 50% in

2011. According to the data provided in Interbank Card Center's ("IBCC") website, the total number of transactions made over e-commerce websites (between 1 January 2011 and 31 March 2011) have increased by 40%, reaching 28,096,690.<sup>1</sup> In the first quarter of 2011, the sum of turnover increased by 45%, compared to the first quarter of 2010 and reached 4,843,500 TL.<sup>2</sup>

One of the main reasons for this increase is that following the entry into force of the recent rule in relation to the use of 3-D Secure, an added layer of security for online credit and debit card transactions, it is now more secure for consumers to make online payments with their credit cards. As of January 2011, Article 27/A (7) of the Regulation on Bank Cards and Credit Cards entered into force, rendering the use of the 3-D Secure system in online payments mandatory. Accordingly, member workplaces providing e-commerce services must establish the necessary technological facilities required for the use of credit cards and identity confirmation.

At present, there is no specific e-commerce regulation in Turkey. The general principles set forth in the Code of Obligations, the Consumer Protection Law, the Regulation on Distance Sale Agreements, the Electronic Communications Law and the Electronic Signature Law are applicable to different pillars of e-commerce transactions and e-contracts.

### 1. Draft E-Commerce Law

According to the press release of the Ministry of Industry and Commerce (the "MIC") dated 29 November 2010, the Ministry of Justice has completed its work on the Draft Law on the Governance of Electronic Commerce (the "Draft E-Commerce Law") which has been accepted by the Council of Ministers on November 2010. The Draft E-Commerce Law is currently pending before the Grand

<sup>1</sup> [http://www.bkm.com.tr/istatistik/sanal\\_pos\\_ile\\_yapilan\\_eticaret\\_islemleri.asp](http://www.bkm.com.tr/istatistik/sanal_pos_ile_yapilan_eticaret_islemleri.asp)

<sup>2</sup> <http://www.bitdunyasi.com/tr/?Sayfa=Detay&Id=7006>

National Assembly of the Republic of Turkey (the “**National Assembly**”) and is expected to be passed before the end of 2011. The Draft E-Commerce Law governs the general principles that are applicable to e-commerce transactions. The Draft E-Commerce Law aims to enhance trade communications and render e-commerce transactions to become more widespread in Turkey. It governs electronic agreements and includes protective provisions for internet sales to consumers. It also ensures a more secure and transparent environment for e-commerce transactions for the purposes of accelerating e-commerce transactions in Turkey. The two substantial topics covered in the Draft E-Commerce Law are (i) service providers’ obligation to give information in connection with electronic agreements and (ii) the provisions in relation to unwanted e-mails. According to the Draft E-Commerce Law:

- Service providers and the persons who sell goods online must enable the buyer to see all terms (including but not limited to the total purchase price) of the electronic agreement clearly, before the buyer submits his/her payment details.
- Where the trade communication is made on behalf of a real person or legal entity, it will be mandatory for such real person or legal entity to provide the necessary information for him/her/it to be identifiable to others.
- Giving gifts, discounts and promotions and organizing events or games for the purposes of promotion must expressly indicate the promotion purpose. The information in relation to attendance to these events and organizations must be easy to access and clearly comprehensible.
- Commercial text messages and e-mails will not be possible to send before obtaining the relevant persons’ approval and the receivers of these commercial texts and e-mails will be able to reject receiving those messages at any time.
- Service providers will be responsible for the security, protection and maintenance of personal data, which they have acquired during the e-commerce transactions and they will not be able to distribute those personal data to other third parties or use them for any other purposes.

## **2. Consumer Protection Law and the Regulation on Distance Sale Agreements**

The Consumer Protection Law and the Regulation on Distance Sale Agreements (the “**Regulation**”)<sup>3</sup> are the main pieces of legislation concerning the protection of consumers in online sales.

Under Article 9/A of the Consumer Protection Law, distance sale agreements are agreements agreed via written, visual, telephone and electronic media or other communication tools and without coming face-to-face with the consumers. Before the execution of a distance sale agreement, a notification which would involve the necessary information set forth in the Regulation must be provided to the consumer. Unless the consumer confirms in writing that he/she has received such information, the distance sale agreement cannot be concluded. In electronic agreements, the confirmation of the consumer must be given through electronic media as well.

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<sup>3</sup> Published in the Official Gazette dated 6 March 2011 and numbered 27866.

The seller or the provider must perform its duties agreed under an electronic agreement, within 30 days as of the receipt of the consumer's order. This period may be extended for a further ten days, provided that the consumer has been notified in writing in advance. The seller or the provider who sells the goods and/or provides the services to a consumer in electronic media has the burden of proof that the intangible goods or services have been delivered without defects. The relevant article of the Consumer Protection Law also states that during the period when the consumer has the contractual right to withdraw (i.e. return the goods or services), the seller and/or the provider cannot request any payment or negotiable instrument securing payment. If the consumer wishes to withdraw from the contract, the seller and/or the provider must return any payment or any negotiable instrument within ten days and take the goods back within 20 days.

According to Article 7 of the Regulation, consumers have the right to withdraw from the contract within seven days, without showing any reason and/or paying any penalty. In order for the withdrawal to be effective, it is sufficient that the relevant consumer notifies the seller and/or provider in writing in writing or via constant data transmitter.

### **3. Impact of the New Turkish Commercial Code**

The New Turkish Commercial Code (the "**New TCC**") was published in the Official Gazette on 14 February 2011 and will come into force on 1 July 2012. The New TCC requires every company to have a website. Article 1524 of the New TCC, which will enter into force on 1 July 2013, a year after the entry into force of the New TCC, states that it is mandatory for capital companies to have a website. It is contemplated that this provision will serve the needs of the information society. It is expected that the entry into force of the New TCC will have a positive effect on the expansion of the e-commerce market in Turkey. The reason for this is that although, Turkey currently has a large number of internet users, online transactions and online businesses have not yet become a part of people's lifestyle. It is therefore expected that the development of the internet and its ancillary technologies will have an impact on the growth of the e-commerce sector in Turkey.

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