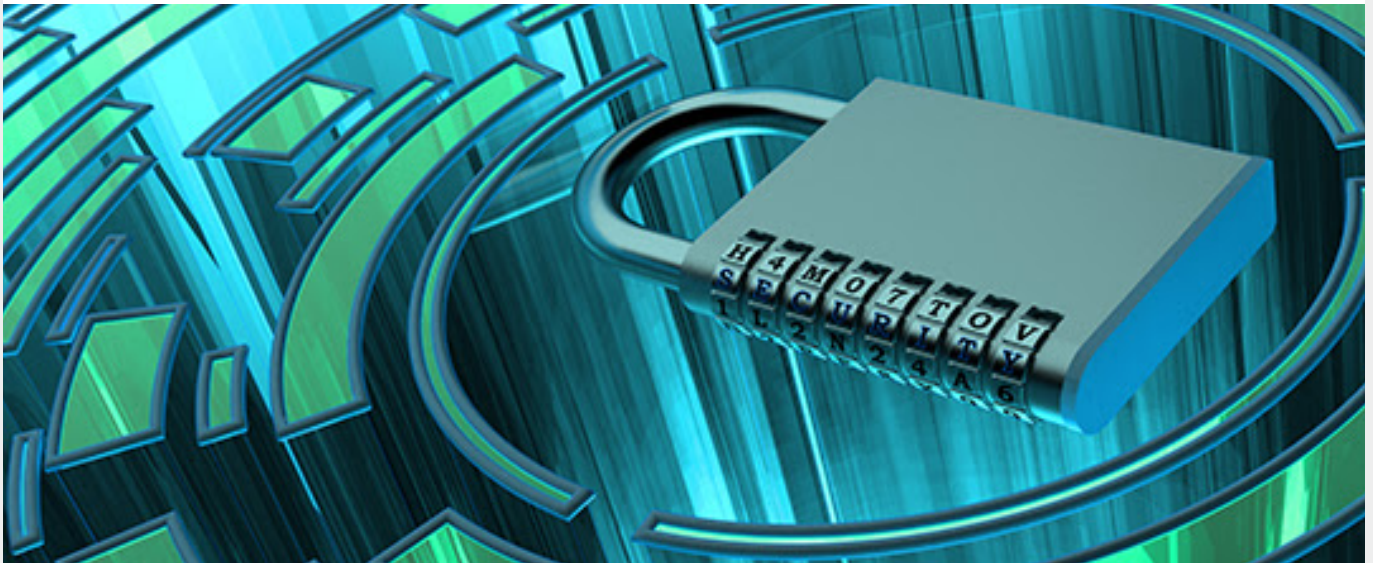


# Recent developments in e-commerce: Commercial Electronic Message Management System and Safety Stamp

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The Regulation on Commercial Communications and Commercial Electronic Messages published in the Official Gazette on 4 January 2020 (the “**Regulation**”) contemplates the establishment of a Commercial Electronic Message Management System to centralise the collection of consent to receiving commercial electronic messages, the exercise of the right to opt out, and the handling of complaints regarding unsolicited commercial messages. In addition, the safety stamp system established by the Communiqué on the Electronic Commerce Safety Stamp published in the Official Gazette dated 6 July 2017 (the “**Communiqué**”) has now become operational, and twelve companies have obtained a safety stamp from the Turkish Union of Chambers and Exchange Commodities.

## 1. Amendments to the Regulation on Commercial Communications and Commercial Electronic Messages

### **Commercial Electronic Message Management System**

- The Regulation contemplates the establishment of the Commercial Electronic Message Management System (“**İYS**”) to centralise the collection of consent to receiving commercial electronic messages, the exercise of the right to opt out, and the handling of complaints regarding unsolicited commercial messages.
- İYS will be established through an institution to be authorised by the Turkish Ministry of Trade. Although there is no official statement from the Ministry yet, it is expected that İYS will be managed by İleti Yönetim Sistemi A.Ş., a company established by the Turkish Union of Chambers and Exchange Commodities (“**TOBB**”), through a website accessible at [iys.org.tr/](http://iys.org.tr/).
- The Regulation provides that individuals and legal entities who wish to send commercial electronic messages (“**service providers**”) must first register with İYS and it is illegal to send messages to recipients

who do not appear to have given consent over İYS. Under the E-Commerce Law No. 6563, any service provider or intermediary service provider failing to comply with this rule will be subject to an administrative fine ranging from TRY 2,092 to 10,175; the amount of the fine can be multiplied by up to ten times if illegal communications are sent to more than one recipient.

- Although this is not clearly stated in the Regulation, the İYS website indicates that the system will open to service provider registration applications on 15 January 2020 and become accessible to service providers as of 1 March 2020. Service providers will be required to record commercial electronic message consents they had previously obtained to İYS until 1 June 2020. Following the upload of such consents, a message will be sent to the recipients stating that they will be able to use their right to opt out of receiving messages through İYS. If these recipients do not opt out until 1 September 2020, their consent will be considered validated.

### ***Consent, opt-out right and complaints***

- In addition to the service providers' own platforms, commercial electronic message consents can also be obtained through İYS from now on. If the consent is not obtained through İYS, a message acknowledging receipt of the consent shall be sent to the electronic contact address of the recipient within 24 hours. Service providers must upload these consent to İYS within three business days. Any consent that is not registered with İYS shall be deemed invalid.
- The exception for commercial messages sent to merchants or craftsmen without their prior consent is maintained. The Regulation however provides that the electronic contact address of these recipients shall be registered with İYS, and service providers will have to check whether they have exercised their right of opt-out right.
- Recipients may exercise their opt-out right either through the service provider's platform or through İYS. Service providers must register any opt-out notification received through their own platform to İYS within three business days.
- Recipients may also file complaints regarding commercial electronic messages through İYS. The complaints shall be subject to a pre-investigation through İYS, after which the Trade Ministry Provincial Directorate shall request the relevant documents from the concerned parties and finalise the process. The Regulation provides that the complaint should include (i) for messages sent through SMS or e-mail, an image reproducing the message at hand, or (ii) for messages transmitted through a phone-call, the subject matter of the message, in addition to other relevant information.
- The retention period for consents and other records related to commercial electronic messages kept by intermediary service providers and service providers has been increased from one to three years.

### ***Obligations of intermediary service providers***

- Intermediary service providers must ensure that their own commercial electronic message system is aligned with İYS. Intermediary service providers that initiate a commercial electronic message transmission upon the instructions of a service provider must first check through İYS whether the recipient has given consent to the communication, and may not send commercial electronic messages to recipients whose consent is not registered with İYS.
- In the event a commercial electronic message was transmitted through an intermediary service provider upon the request of a service provider and the recipient has filed a complaint about such message, the intermediary service provider shall provide a response through İYS within 15 days, together with the relevant information and documents.

- The above obligations of intermediary service providers do not apply to transmissions by e-mail.
- Intermediary service providers must notify İYS in the event a recipient terminates their network subscription.

## 2. Electronic commerce safety stamp

The Communiqué set out minimum safety and service quality standards for the activities of electronic commerce companies and introduced a safety stamp system to identify companies, which meet these standards. Pursuant to the Communiqué, TOBB has been authorised to deliver electronic commerce safety stamps by the Turkish Ministry of Trade.

TOBB has now delivered safety stamps to twelve e-commerce companies whose website technical infrastructure complies with the minimum requirements set out by the Communiqué and whose business processes were designed in accordance with the legislation.

With the safety stamp, which is issued following an examination process conducted by TOBB, Turkish e-commerce companies are expected to become more competitive and better recognised on the domestic and international markets.

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