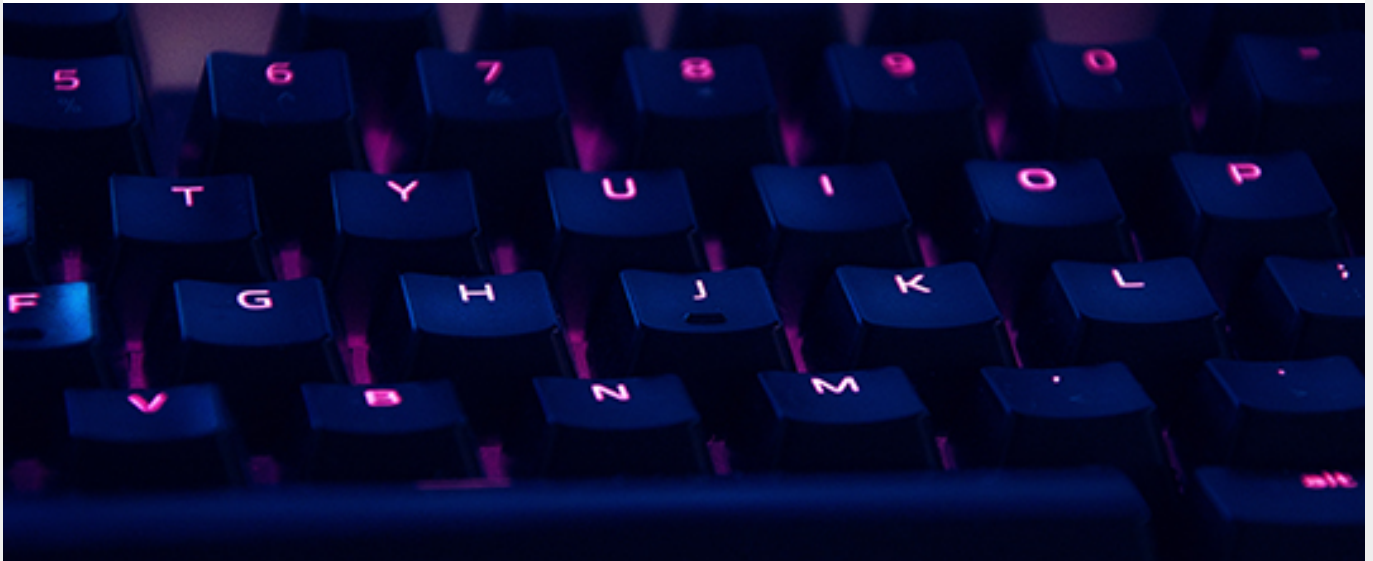


New legislation brings radical changes to Turkish law on the regulation of e-commerce

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The widely anticipated Law no. 7416 amending Law no. 6563 on the Regulation of Electronic Commerce was adopted on 1 July 2022 and published in Official Gazette no. 31889 dated 7 July 2022 (“**New Law**”). The New Law, most of which will enter in force on 1 January 2023, aims to protect the competitive environment, prevent unfair commercial practices and monopolisation, and ensure a balanced and healthy growth of the e-commerce market in Turkey.

The New Law brings radical changes to the previous legislation, which will significantly affect the operations of sector players. It puts a particular focus on protecting e-commerce service providers in their relationship with intermediary service providers, while better defining the contours of the latter’s liability.

Both e-commerce intermediary service providers and e-commerce service providers will have to undertake a substantial compliance process to review their current operations and bring them in line with the new legal requirements. This may include amending their intermediary agreement, updating their electronic platforms and the manner in which they advertise their goods, closing down some of the services they currently provide, establishing mechanisms to monitor and remove unlawful content, and complying with new licensing and reporting obligations. The Ministry of Trade (“**Ministry**”) is expected to issue regulations to implement the New Law and shed light on some of the uncertainties left by the statutory provisions.

Below is an overview of the main changes brought by the New Law:

- **Scope:** The New Law clarifies that enterprises operating in the travel agency, civil aviation, private pension, banking, insurance, finance, capital markets, payment systems, electronic communications, and betting and chance games sectors are not considered e-commerce service providers or intermediary service providers.
- **New definitions:** The New Law brings new definitions for “electronic commerce intermediary service provider”, “electronic commerce service provider”, “electronic commerce platform”, “electronic commerce

marketplace”, “Electronic Commerce Information System”, “net transaction volume” and “economic unit”. Among these, the net transaction volume and economic unit definitions are key to determining the obligations of e-commerce service providers and intermediary service providers.

- **Liability for unlawful content:** The New Law provides that e-commerce intermediary service providers are not responsible for the content or goods and services provided by e-commerce service providers. It however imposes certain duties on e-commerce intermediary service providers upon becoming aware of unlawful content, such as removing such content, notifying the relevant public authorities, or ceasing to display products that violate third party intellectual property rights.
- **Ministry powers:** The New Law grants extended powers to the Ministry, which can regulate the activities of e-commerce service providers and intermediary service providers, determine the mandatory elements of the intermediary agreement, appoint an expert to conduct audits, and request information from the Information Technologies and Communication Authority on enterprises sending commercial messages.
- **New penalties:** Severe administrative fines are imposed on e-commerce intermediary service providers and e-commerce service providers who breach the obligations brought by the New Law, reaching up to TRY 20 million for fixed fines and 10% of an e-commerce intermediary services provider’s net sales in the preceding calendar year for proportional fines. The Ministry can also order the removal of content from a website or bar access to such website in certain cases, such as the failure to comply with restrictions on payment services or obtain an e-commerce licence within the granted remedy period. The fines may be doubled if the violation continues or is repeated within a year, or multiplied by ten in case of practices or transactions intended to mislead the Ministry.
- **Unfair commercial practices:** The New Law prohibits unfair commercial practices by e-commerce intermediary service providers, defined as practices which significantly damage the commercial activities of e-commerce service providers, diminish their decision-making capacity or force them to enter into transactions they would not normally accept. Examples include the failure to pay e-commerce service providers within five business days of receipt of the sale price and delivery of the order, forcing e-commerce service providers to sell goods and services as part of a campaign, making unilateral changes to sales prices, or making retrospective or unilateral changes to the intermediary agreement.
- **Obligations of e-commerce service providers and intermediary service providers:** The New Law brings stringent new obligations, notably on large market players, with carefully crafted exceptions. These include:
 - **No more marketing of own brands in marketplace:** E-commerce intermediary service providers cannot sell or act as dealers in their own marketplace for goods carrying their own brands or the brands of those within the same economic unit, including licensed goods. If these goods are offered on a separate e-commerce platform, the latter may not provide a link between these platforms or promote one platform on the other. This restriction does not apply to goods that carry the brands of persons who generate more than half of their total sales revenue other than through e-commerce, or licensed goods.
 - **Restriction on use of third party brands in marketing and promotion through search engine:** E-commerce intermediary service providers cannot carry out marketing and promotion activities through online search engines by using the registered brand contained in an e-commerce service provider’s or intermediary service provider’s domain name without obtaining their prior consent. The same applies to e-commerce service providers for the use of registered brands of persons who are not within the same economic unit.

- **No cross-promotion of e-commerce platforms:** E-commerce intermediary service providers with a net transaction volume above TRY 10 billion and e-commerce service providers with a net transaction volume above TRY 10 billion and more than 10 million transactions in a calendar year cannot provide links between their own e-commerce platforms (except those included in the net transaction volume) or promote one platform on the other.
- **Notification of share transfers and subsidiaries:** E-commerce intermediary service providers with a net transaction volume above TRY 10 billion and e-commerce service providers with a net transaction volume above TRY 10 billion and more than 10 million transactions in a calendar year must notify the Ministry within one month in case of (i) share transfers or acquisitions by the shareholders reaching 5% or multiples thereof (except for shares listed on a stock exchange), (ii) incorporation of a new company, or (iii) acquisition or transfer of shares in another company.
- **Reporting:** E-commerce intermediary service providers with a net transaction volume above TRY 10 billion and e-commerce service providers with a net transaction volume above TRY 10 billion and more than 10 million transactions in a calendar year must provide the Ministry with an audit report including information regarding their operations, management and organisation structure, shareholding structure, economic unit, financial situation, and compliance with advertising, discount budgets and licence requirements. The reports must be prepared by an independent audit company authorised by the Capital Markets Board.
- **Limitations on advertising and discount budgets:** Yearly limits are imposed on the advertising and discount budgets of e-commerce intermediary service providers with a net transaction volume above TRY 30 billion and more than 100,000 transactions and e-commerce service providers with a net transaction volume above TRY 30 billion and more than 10 million transactions in a calendar year. Each of the advertising and discount budgets will be calculated by reference to the net transaction volume in the previous year (2% of the first TRY 30 million and 0.3% of the part exceeding TRY 30 million), adjusted for variations in the Consumer Price Index. 25% of the budget may be used in each quarter.
- **No restrictions on e-commerce service provider's activities:** E-commerce intermediary service providers with a net transaction volume above TRY 30 billion and more than 100,000 transactions in a calendar year cannot restrict the commercial affairs of e-commerce service providers, limit their freedom to offer goods and services at the same or different prices or advertise through alternative channels, or force them to purchase goods or services from a designated person. No such provisions may be included in the intermediary agreement.
- **Restrictions on banking services:** E-commerce intermediary service providers with a net transaction volume above TRY 60 billion and more than 100,000 transactions in a calendar year cannot allow banks or finance companies within the same economic unit to operate in their marketplace, except for credit card or other payment transactions. They may not allow e-money companies within the same economic unit to accept payments in their marketplace, or provide or allow others within the same economic unit to provide services regarding certain payment instruments. The same applies to e-commerce service providers with a net transaction volume above TRY 60 billion and more than 10 million transactions in a calendar year.
- **Prohibition on transportation and postal services:** E-commerce intermediary service providers with a net transaction volume above TRY 60 billion Turkish Lira and more than 100,000 transactions in a calendar year cannot provide good transportation services, transportation organisation or postal services, except for sales realised in their own marketplace, sales as an e-commerce service provider and sales other than e-commerce sales.

- **No orders of goods and services on listing platforms:** E-commerce intermediary service providers with a net transaction volume above TRY 60 billion and more than 100,000 transactions and e-commerce service providers with a net transaction volume above TRY 60 billion and more than 10 million transactions in a calendar year cannot facilitate agreements or orders of goods and services on e-commerce platforms where classified advertisements for such goods or services are listed, display a link between the different platforms providing these services, or promote one platform on the other.
- **Licence:** The New Law requires electronic commerce intermediary service providers with a net transaction volume above TRY 10 billion and more than 100,000 transactions and e-commerce service providers with a net transaction volume above TRY 10 billion and more than 10 million transactions in a calendar year to obtain a licence from the Ministry and renew it regularly. The licence will be granted and renewed upon proof payment of the licence fee without any other condition.
- **Effective date:** Most of the New Law will come into force on 1 January 2023, with a transition period until 1 January 2024 for compliance with certain obligations. The obligation to obtain a licence will take effect on 1 January 2025. Intermediary agreements executed before the New Law enters in force must be brought into compliance within six months of its effective date, failing which the terms contrary to the New Law will be deemed invalid.

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