

# Developments in Turkish e-commerce law

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Following the adoption of Law no. 7416 Amending Law no. 6563 on the Regulation of Electronic Commerce on 1 July 2022 (the “**Law**”), the Turkish Ministry of Trade (the “**Ministry**”) has started to issue much anticipated secondary legislation. This includes the Regulation Amending the Distance Contracts Regulation, issued on 23 August 2022, and more recently the Regulation on Electronic Commerce Intermediary Service Providers and Electronic Commerce Service Providers (the “**New Regulation**”), which was published in Official Gazette no. 32058 dated 29 December 2022.

The amendment to the Distance Contracts Regulation had imposed certain new obligations on e-commerce intermediary service providers, such as the requirement to fulfil the preliminary information obligation, establish a system to facilitate the exercise of the withdrawal right by customers, or make refund payments.

The New Regulation, on the other hand, further details the obligations brought upon e-commerce intermediary service providers and e-commerce service providers by the Law, imposes additional obligations, and addresses certain points left unclear under the Law. These are consistent with the trend towards stricter constraints imposed on e-commerce intermediary service providers, also known as marketplace operators, and greater protection for e-commerce service providers in their relationships with such marketplace operators.

The main take-aways from the New Regulation are highlighted below.

**Identification information:** E-commerce intermediary service providers and e-commerce service providers must provide certain information, such as their corporate name or central registry system number (MERSIS number), on the e-commerce platform, also known as “marketplace”. E-commerce intermediary service providers should also verify the accuracy of the information provided by the e-commerce service providers whose goods and services are offered on the marketplace. If that information is not up-to-date, and the e-commerce service provider fails to update it within three days of a notice to that effect, the e-commerce intermediary service provider’s services to the e-commerce service provider will be limited to existing orders.

**Unlawful content:** If the e-commerce intermediary service provider becomes aware of unlawful content, it should remove it within no more than 48 hours and notify the relevant public authorities and organisations.

E-commerce intermediary service providers will be deemed aware of the unlawful content identified during the preparation of their compliance report (see below), notified to them through a decision of the judicial authorities, or reported to them by the Ministry or other public authorities.

**Unfair commercial practices:** In addition to the examples given under the Law, the New Regulation identifies the following as unfair commercial practices: (i) granting a longer withdrawal period to customers without the prior approval of the e-commerce service provider, and (ii) making unrealistic or misleading statements and notifications to the e-commerce service providers regarding their products or activities.

**Infringement of intellectual property rights:** In case of intellectual property infringement, the right holder may file a complaint with the e-commerce intermediary service provider based on supporting documents specified in the New Regulation. Upon receipt of a complaint, the e-commerce intermediary service provider must cease to display the concerned product within no more than 48 hours, and notify the e-commerce service provider and the right holder accordingly. The e-commerce service provider may object to the complaint through the same methods, again with supporting documents. If the objection is understood to be rightful, the e-commerce intermediary service provider must re-display the product within 24 hours of receipt of the objection, and notify the e-commerce service provider and the right holder without delay.

**Mandatory provisions of intermediary service agreements:** The New Regulation identifies certain mandatory provisions which must be appear in intermediary service agreements. These include the circumstances that would lead to the restriction, suspension or termination of the intermediary services, the service fees charged to e-commerce service provider, the time periods for payments to the e-commerce service provider, information regarding the proof of ownership of intellectual property rights and the measures taken with respect to infringement.

**Unilateral changes to intermediary service agreements:** If the e-commerce intermediary service provider unilaterally modifies the agreement, the change will become effective 15 days after it is notified to the e-commerce service provider. This time period is extended to 30 days if the change requires the e-commerce service provider to undertake technical developments, increases the commission rate or service fees, results in the restriction, suspension or termination of the intermediary service, introduces new penalties for the e-commerce service provider, or is against the interests of the e-commerce service provider considering the parties' respective rights and interests. In these cases, the e-commerce service provider has the right to terminate the intermediary agreement without compensation.

**Restriction, suspension and termination of the intermediary services:** Consistent with the Law, the New Regulation prohibits the restriction, suspension or termination of the intermediary services except under certain objective conditions determined in the intermediary service agreement. In such cases, the e-commerce intermediary service provider should first request an explanation from the e-commerce service provider and grant them at least three business days to respond. The intermediary service may be restricted, suspended or terminated by the e-commerce intermediary service provider if the e-commerce service provider does not provide any explanation or if the explanation is insufficient.

**Internal communication system:** The e-commerce intermediary service provider must (i) establish an internal system to carry out all communications with e-commerce service providers free of charge, (ii) address requests from e-commerce service providers within 15 days of receipt, (iii) notify the e-commerce service provider of the result through the system, (iv) keep the intermediary services agreement in the system, and (v) make the information in the system visible to the personnel authorized by the Ministry.

**Data transfer and access:** Medium, large and very large scale e-commerce intermediary service providers must make it technically possible for e-commerce service providers to access and transfer certain data free of

charge, including data regarding sales and returns, buyer profile information and performance review scores. To that end, e-commerce intermediary service providers must establish an application programming interface to store and transfer the data, and meet the data access and transfer requests of e-commerce service providers within 15 days by anonymizing the buyer information.

**Notification of share transfer and incorporation:** Share transfers by the shareholders of medium, large and very large scale e-commerce intermediary service providers and e-commerce service providers which cross a 5% threshold or multiples thereof, and acquisitions or disposals of shares in another company or the incorporation of a new company by such e-commerce intermediary service providers and e-commerce service providers, must be notified to the E-Commerce Information System (ETBIS) within one month.

**Compliance reports:** Medium, large and very large scale e-commerce intermediary service providers and e-commerce service providers should conduct annual audits of the contents provided by e-commerce service providers to detect any breach of the consumer, data protection or intellectual property legislation. The report should be submitted to the Ministry every year in April.

**Limitation on listing services:** The Law had prohibited very large scale e-commerce intermediary service providers and e-commerce service providers operating a listing services platform from facilitating agreements or orders of goods and services on the same platform. The New Regulation specifies that this restriction will not apply to refurbishment centres.

**Transition period:** The provisions of the New Regulation entered into force on 1 January 2023, except for those related to establishment of an internal communication system, data usage and sharing restrictions, and annual increases to the thresholds determining the e-commerce licence fee. Grace periods are granted until 1 July 2023 or 1 January 2024 to comply with certain obligations.

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