

The rules have been changed in e-commerce: New obligations, heavy sanctions!

The widely anticipated Law no. 7416 amending Law (The Amendment) no. 6563 on the Regulation of Electronic Commerce (The Law) was adopted on 1 July 2022 and published in Official Gazette dated 7 July 2022. The Amendment introduces new definitions and obligations on the Law regarding "electronic commerce intermediary service providers" (i.e., marketplaces) and "electronic commerce service providers" (i.e., online retailers).

The new Law brings radical changes to the previous legislation, which will significantly affect the operations of sector players. Although influenced by the EU's Digital Markets Act, Digital Services Act, and Platform-to-Business Regulation, the Amendment includes certain aspects that are even more restrictive. Please see below for the summary of the Amendment.

Scope

The Amendment 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.

Definitions

The new definitions have been introduced without limitation the following:

➤ ***Electronic commerce intermediary service provider:***

The intermediary service provider enables placing orders or executing agreements pertaining to providing electronic commerce service providers' goods or services in the electronic commerce marketplace.

➤ ***Electronic commerce service provider:***

The service provider that executes agreements or receives orders on its goods and services in the electronic commerce marketplace or its electronic commerce medium.

➤ ***Net transaction volume:***

Total of the final invoice amounts or the amounts of the documents that can be used as invoice, issued either (i) by electronic commerce intermediary service providers for the agreements concluded and orders placed for the supply of goods/services on e-commerce marketplaces, or (ii) by electronic commerce service providers for the agreements concluded and orders placed for the supply of goods/services on its e-commerce platform. The cancellations and returns are excluded for the calculation of net transaction volume.

➤ ***Economic unity:***

A person or commercial company that (i) owns, directly or indirectly, at least 25% of the shares of the company or holds the majority of the voting rights or holds the shares that

allows making management decisions; (ii) has the right to elect the majority of the members of the managing body of the company pursuant to the articles of association, (iii) has the majority of the voting rights solely or together with other shareholders or (iv) has the company under its control pursuant to an agreement and without limitation to these, the relationship between all companies and businesses belonging to the relevant person/company, or the management of more than one company by the same person or persons, regardless of whether they are shareholders.

The powers of the Ministry of Commerce

The New Law grants extended powers to the Ministry of Commerce, 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.

Obligations and sanctions

The obligations of electronic commerce intermediary service providers have been determined gradually according to their net transaction volumes. In this context, the obligations are divided into four categories:

- (i) obligations applied to all electronic commerce intermediary service providers;
- (ii) obligations applied to electronic commerce intermediary service providers with a net transaction volume of over TRY 10 billion (approximately USD 600 million) in a calendar year;
- (iii) obligations applied to electronic commerce intermediary service providers with a net transaction volume of TRY 30 billion (approximately USD 1.8 billion) and a number of transactions over 100,000, excluding cancellations and refunds, in a calendar year;
- (iv) obligations applied to electronic commerce intermediary service providers with a net transaction volume of TRY 60 billion (approximately USD 3.6 billion) and a number of transactions 100,000, excluding cancellations and refunds, in a calendar year.

Obligations applicable to all electronic commerce intermediary service providers		
Obligations	Sanctions	Effective Date
Removal of illegal content and notification requirement	An administrative fine of TRY 10,000 (approx. USD 600) - TRY 100,000 (approx. USD 6,000) per each violation.	01.01.2023
Restriction on selling private labelled products (except books, e-book readers, publications)	An administrative fine of 5% of the net sales amount for the calendar year preceding the date of the violation.	01.01.2024
Enabling service providers to provide the information required on invoices	An administrative fine of 0.05% of the net sales amount of the calendar year preceding the date of the violation, provided that it is not less than TRY 100,000 (approx. USD 6,000).	01.01.2023
Restriction on using service providers' trademarks without consent	An administrative fine of TRY 10,000 (approx. USD 600) - TRY 100,000 (approx. USD 6,000) per each violation.	01.01.2023

Verification of the service providers' information	An administrative fine of TRY 10,000 (approx. USD 600) per each violation.	01.01.2023
Not applying unfair commercial practices	An administrative fine of TRY 10,000 (approx. USD 600) - TRY 500,000 (approx. USD 30,000) stipulated for each violation, per case and per electronic commerce service provider.	01.01.2023
Keeping records pertaining to their transactions and businesses that fall within the scope of the Law for 10 years.	An administrative fine of TRY 50,000 (approx. USD 3,000) - TRY 250,000 (approx. USD 15,000).	01.01.2023
Additional obligations applied to electronic commerce intermediary service providers with a net transaction volume of over TRY 10 billion (approximately USD 600 million) in a calendar year		
Obtainment of electronic commerce license	An administrative fine of TRY 10 million (approximately USD 600,000)	01.01.2025
Restriction on using the users' data	An administrative fine of 10% of the net sales amount of the calendar year preceding the date of the violation.	01.01.2023
Enabling data portability	An administrative fine of TRY 500,000 (approx. USD 30,000) per each service provider	01.01.2024
Prohibition on providing access between the different e-commerce platforms or promoting these on one another	An administrative fine of TRY 10 million (approx. USD 600,000).	01.01.2023
Notification of Share Transfers reaching 5% or more shareholding in the company and (ii) incorporation of a subsidiary, acquisition of shares of an existing company or transfer of such shares (if any), within one month.	An administrative fine of TRY 1 million (approx. USD 60,000) per each notification that is not made.	01.01.2023
Submitting the independent audit reports prepared by an independent auditor, to the Ministry	An administrative fine of TRY 1 million (approx. USD 60,000) for not submitting the audit report.	01.01.2023
Submitting a separate report on the adopted mechanisms for detection of illegal content and detected illegal contents in that regard.	An administrative fine of 0.05% of the net sales amount of the calendar year preceding the date of the violation.	01.01.2023
Additional obligations applied to electronic commerce intermediary service providers with a net transaction volume of TRY 30 billion (approximately USD 1.8 billion) and a number of transactions over 100,000, excluding cancellations, and refunds in a calendar year		
Limitations on advertisement and promotion budgets, which differ based on the net transaction volume of intermediary service providers	An administrative fine of ten times the amount exceeding the limits, on the condition that it is not less than 10% of the upper limit determined in the provisions.	01.01.2023
Ban of using most favored nation clause	An administrative fine of TRY 250,000 (approx. USD 15,000) per violation	01.01.2023

Additional obligations applied to electronic commerce intermediary service providers with a net transaction volume of TRY 60 billion (approximately USD 3.6 billion) and a number of transactions over 100,000, excluding cancellations and refunds, in a calendar year		
Restrictions in electronic money and banking operations	An administrative fine of TRY 10 million (approx. USD 600,000)	01.01.2024
Restriction in carrying out freight forwarding or transportation or cargo activities	An administrative fine of TRY 10 million (approx. USD 600,000)	01.01.2024
Prohibition on enabling the conclusion of agreements or placing orders on e-platforms for publication of adverts for goods or services, or cannot promote one another	An administrative fine of TRY 20 million (approx. USD 1,200,000).	01.01.2023

In parallel to the distinction explained above, the obligations of electronic commerce service providers have also been evaluated under four categories.

- (i) obligations applied to all electronic commerce service providers;
- (ii) obligations applied to electronic commerce service providers with a net transaction volume of over TRY 10 billion (approximately USD 600 million) in a calendar year and more than 10 million transactions (excluding cancellations and refunds) per year;
- (iii) obligations applied to electronic commerce service providers with a net transaction volume of TRY 30 billion (approximately USD 1.8 billion) and more than 10 million transactions (excluding cancellations and refunds) per year;
- (iv) obligations applied to electronic commerce intermediary service providers with a net transaction volume of TRY 60 billion (approximately USD 3.6 billion) and more than 10 million transactions (excluding cancellations and refunds) per year.

An important point is that the obligations regarding electronic commerce service providers will not be applied to electronic commerce service providers that derive half of their sales from sales other than electronic commerce.

Obligations applicable to all electronic commerce service providers		
Obligations	Sanctions	Effective Date
Ban on marketing and advertisement, through online search engines by using registered trademark of entities with whom it does not have economic unity without their consent	An administrative fine of TRY 10,000 (approx. USD 600) - TRY 100,000 (approx. USD 6,000) per each violation.	01.01.2023
Keeping records pertaining to their transactions and businesses that fall within the scope of the Law for 10 years.	An administrative fine of TRY 50,000 (approx. USD 3,000) - TRY 250,000 (approx. USD 15,000).	01.01.2023
Additional obligations applied to electronic commerce service providers with a net transaction volume of over TRY 10 billion (approximately USD 600 million) in a calendar year and more than 10 million transactions (excluding cancellations and refunds) per year		
Obtainment of electronic commerce license	An administrative fine of TRY 10 million (approximately USD 600,000)	01.01.2025

Prohibition on providing access between the different e-commerce platforms or promoting these on one another	An administrative fine of TRY 10 million (approx. USD 600,000).	01.01.2023
Notification of Share Transfers reaching 5% or more shareholding in the company and (ii) incorporation of a subsidiary, acquisition of shares of an existing company or transfer of such shares (if any), within one month.	An administrative fine of TRY 1 million (approx. USD 60,000) per each notification that is not made.	01.01.2023
Submitting the independent audit reports prepared by an independent auditor, to the Ministry	An administrative fine of TRY 1 million (approx. USD 60,000) for not submitting the audit report.	01.01.2023
Submitting a separate report on the adopted mechanisms for detection of illegal content and detected illegal contents in that regard.	An administrative fine of 0.05% of the net sales amount of the calendar year preceding the date of the violation.	01.01.2023
Additional obligations applied to electronic commerce service providers with a net transaction volume of TRY 30 billion (approximately USD 1.8 billion) and more than 10 million transactions (excluding cancellations and refunds) per year		
Limitations on advertisement and promotion budgets, which differ based on the net transaction volume of intermediary service providers	An administrative fine of ten times the amount exceeding the limits, on the condition that it is not less than 10% of the upper limit determined in the provisions.	01.01.2023
Additional obligations applied to electronic commerce service providers with a net transaction volume of TRY 60 billion (approximately USD 3.6 billion) and and more than 10 million transactions (excluding cancellations and refunds) per year		
Restrictions in electronic money and banking operations	An administrative fine of TRY 10 million (approx. USD 600,000)	01.01.2024
Prohibition on enabling the conclusion of agreements or placing orders on platforms for publication of adverts for goods or services, or cannot promote one another	An administrative fine of TRY 20 million (approx. USD 1,200,000).	01.01.2023

Conclusion

The Law introduces significant obligations for electronic commerce service providers and intermediary service providers. The Law will affect not only these companies but also the financial entities, payment companies and electronic money issuers within their economic integrity because of the definition in the Law. Considering that most of the obligations have an effective date of 01.01.2023, it would be beneficial for companies that are subject to the Law to review their business processes and initiate the necessary compliance processes as soon as possible.

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