

20 September 2022

Significant Amendments to the Regulation on Distance Contracts

Several significant amendments are introduced to the Regulation on Distance Contracts (“**Regulation**”), with the amending regulation published in the Official Gazette dated 23 August 2022. Then, the effective date of some amendments (mainly the ones on right of withdrawal) is postponed to 1 January 2024 with a second amending regulation published in the Official Gazette dated 14 September 2022.

The most remarkable amendments are adding the definition for Intermediary Service Providers (i.e., Electronic Marketplace Operators) to the Regulation and imposing obligations to them.

All the amendments below, which we do not expressly indicate to be effective as of **1 January 2024**, will enter into force as of **1 October 2022**.

The highlights of these amendments are summarized below:

A. New definitions

The definitions introduced to the Regulation are as follows:

- **Intermediary Service Provider:** A natural or legal person that intermediates the conclusion of a distance contract on behalf of the Seller or the Provider by using or allowing the use of remote communication tools via its system.
- **Platform:** The system established by the Intermediary Service Provider to intermediate the conclusion of a distance contract, excluding the common public electronic platform, where public services are provided from a single point.
- In practice, Platform should refer to “**Electronic Marketplace**” and Intermediary Service Provider should refer to “**Electronic Marketplace Operator**”.

B. Amendments to common obligations

1. Pre-contractual Information Form

Sellers, Providers, and Intermediary Service Providers must specify the delivery time of the goods or performance of the service in a manner that is “*in line with the period committed in their commercial advertisements and promotions*”.

2. Pre-contractual Information method

In cases where the distance contract is offered via voice communications (e.g., telephone) or in a limited area or medium (e.g., SMS), the Pre-contractual Information method is no longer required to be “written” and providing Pre-contractual Information with a “permanent data storage device” (e.g., e-mail, etc.) is permitted.

3. The Right of Withdrawal (Effective Date: All, except clause (a) below, 1 January 2024)

- a) Information regarding Consumer requests will be shared between the Intermediary Service Provider and the Seller/Provider with respect to distance contracts concluded via the Platform.
- b) The 14-day reimbursement period will begin from the date of receipt of the goods by the Seller, in cases where the Consumer exercises its right of withdrawal, but, returns the goods through a different carrier from that specified by the Seller.
- c) If the Pre-contractual Information form specifies the return cost and that it will be covered by the Consumer for returns made by using the carrier stipulated by the Seller, "*the consumer shall be responsible for covering the return cost, which will not exceed the delivery costs*". Moreover, if the Consumer returns the goods with a carrier other than the carrier specified by the Seller, the Consumer must bear the return costs. For defective goods, the Consumer shall not be held responsible for the return costs.
- d) If the Pre-contractual Information form does not specify the return costs and that they will be covered by the Consumer, or if the carrier specified by the Seller does not have a branch where the Consumer is located, the return costs must be covered by the Seller. In cases where this situation is caused by the Intermediary Service Provider; the return costs will be covered by the Intermediary Service Provider.
- e) The obligation to make a one-time refund in case of withdrawal in the current legislation will also apply to card issuers if the purchase is made with a credit card.
- f) In case of withdrawal, the 10-day period for sending the goods, for which the Consumer uses his right of withdrawal, to the Seller or the Provider or the person authorized by either, has been increased to 14 days.
- g) The following contracts have also been included to the "exempted contracts" on which the right of withdrawal cannot be exercised:
 - **Contracts for mobile phones, smart watches, tablets, and computers delivered to the Consumer,**
 - **Contracts regarding installed or assembled goods, the installation or assembly of which by the Seller or the authorized service is specified in the introductory guidelines and user manual,**
 - Contracts concluded through auction in the form of a public auction,
 - Contracts regarding movables, which are required to be registered pursuant to the Highway Traffic Law No. 2918, and contracts regarding unmanned aerial vehicles that are required to be registered.

4. Delivery of goods

"Contracts regarding the goods prepared in line with the consumer's request or personal needs" are excluded from Seller's obligation to deliver the goods within 30 days.

C. Amendments to Intermediary Service Providers

1. Pre-contractual Information Form

In the Pre-contractual Information Form, the following information of the Intermediary Service Provider -together with the Seller and the Provider- should also be included:

- name or title, MERSIS number or tax identification number,
- full address, phone number, and similar contact information allowing fast communication,
- If any, contact information other than the one stated above for the Consumer to submit their complaints
- resolution methods for complaints

2. Method and proof of Pre-contractual Information

- a) The Intermediary Service Provider, together with the Seller or the Provider, is jointly liable for the provision of the Pre-contractual Information to the Consumers, the confirmation and proof of provision of the same.
- b) In cases where the Intermediary Service Provider enters data (i.e., to Platform/Pre-contractual Information Form), it will be responsible for the lack of the mandatory content and the accuracy of the data in the Pre-contractual Information form.
- c) Intermediary Service Providers will be held responsible as the Seller and the Provider for *"informing the Consumer, just before the Consumer confirms the order, in a clear and comprehensible manner that the order placed entails a payment obligation"*.

3. Information about, proof, and exercise of the Right of Withdrawal

- a) Together with the Seller or the Provider, Intermediary Service Providers are now obliged to prove that the Consumer has been informed about the right of withdrawal.
- b) *-Although this is already the case in practice-* it is expressly stated in the Regulation that the withdrawal notice may also be sent to the Intermediary Service Provider.
- c) Intermediary Service Providers are obliged to establish the necessary system on the Platform for the Consumer to submit a withdrawal statement, and in addition, to immediately transmit the confirmation information to the Consumer regarding the reception of the withdrawal statements sent by the Consumers by themselves, the Seller or Provider.

- d) When the Intermediary Service Provider acts as an intermediary for the collection of the amounts due:
- In the case the right of withdrawal is exercised, the Intermediary Service Provider will be jointly liable with the Seller and the Provider as regard to the obligation to reimburse the entire amount, including the delivery costs, to the Consumer. **(Effective Date: 1 January 2024)**
 - In the case the right of withdrawal is exercised prior to delivery of the goods or the performance of the service, the Intermediary Service Provider will be jointly responsible with the Seller and the Provider as regard to the obligation to reimburse the entire amount, including the delivery costs, to the Consumer.
- e) Intermediary Service Providers are obliged to establish a system enabling the Consumers to transmit and track their requests and notifications and keep this system open without any interruptions during the period for the exercise of the rights and obligations arising from the distance contracts concluded via the Platform.

4. Delivery of goods / service delivery

- a) In the event that the delivery of goods or the performance of the service becomes impossible, if the Intermediary Service Provider collects the amounts for the service or goods for the Seller or the Provider, the Intermediary Service Provider will also be under the obligation to notify the Consumer within 3 days of becoming aware of this situation and to reimburse the Consumer within 14 days.
- b) If the Intermediary Service Provider organizes a sales campaign, promotion, or discount without the approval of the Seller or Provider, it will be responsible for the consequences arising from the failure to fulfil these commitments in the distance contracts they intermediate.

5. Miscellaneous

- a) If the Consumer made a payment because the options that create an additional payment obligation were automatically selected without obtaining the explicit confirmation of the Consumer, the Intermediary Service Provider, together with the Seller or the Provider, will be responsible for the immediate reimbursement of these payments.
- b) Intermediary Service Providers will be held responsible for each Consumer transaction in which they cause the Seller and the Provider to act contrary to the provisions of the legislation regarding distance contracts due to Intermediary Service Providers' breach to the intermediary service contract that they have concluded with the Seller or the Provider.

YAZICIOĞLU

— AVUKATLIK BÜROSU —

D. Our view

In order to take advantage of the amendments and to avoid facing administrative fines, we kindly advise Seller/Suppliers/Intermediary Service Providers to take action to comply with the amendments to the Distance Contracts as soon as possible, in particular for the ones, which will enter into force as of 1 October 2022.

You may access the relevant regulations via the following links:

<https://www.resmigazete.gov.tr/eskiler/2022/08/20220823-2.htm>

<https://www.resmigazete.gov.tr/eskiler/2022/08/20220823-2.htm>

Please do not hesitate to contact us if you have any questions.

Kind Regards,

Bora Yazıcıoğlu

bora@yazicioglulegal.com

Ayberk Tuncer

ayberk@yazicioglulegal.com

Simge Yüce

simge@yazicioglulegal.com

Aslı Rabia Savaş

asli@yazicioglulegal.com

Merve Betül Baltürk

merve@yazicioglulegal.com

This note does not constitute a legal opinion. Prepared and posted for informational purposes only. If you want to get legal opinion on the concerning matter, please contact us.