

20 January 2023

New Era for E-marketplaces and E-sellers/providers

- (i) *Significant Amendments to the Law on Electronic Commerce and*
(ii) *New Regulation on E-Marketplace Operators*
have entered into force

Amendments to the Law on Electronic Commerce ("**Amendments**"), and New Regulation on Electronic Commerce Intermediary Service Providers and Electronic Commerce Service Providers ("**Regulation**") which impose significant obligations on operators ("**Marketplace Operator**") of e-marketplaces ("**Marketplace**") and e-commerce sellers/providers ("**Seller/Provider**"), have entered into force as of 1 January 2023¹.

Non-compliance with these obligations is subject to administrative monetary fines. These fines vary between TRY 10 thousand and TRY 40 million, and also certain fines are calculated on a percentage basis, varying between 0.05% and 10% of the net sales amount of the preceding year.

Although some of the provisions of the Regulation is the same with the previous regulation, we have also indicated them to give a comprehensive idea about the requirements under Turkish electronic commerce legislation.

1. Obligations applicable to Marketplace Operators

a. General Obligations

A Marketplace Operator shall:

- provide its identification information on its Marketplace's homepage,
- allocate an appropriate area and provide necessary technical facilities to the Seller/Provider to include the identification information of the Seller/Provider on the Marketplace,
- establish an internal communication system to provide easy and free communication with the Seller/Provider and submissions from the Seller/Provider shall be received through this system²,
- designate at least one natural or legal person as a point of contact to communicate with public institutions and bodies and notify the Ministry of Commerce ("**Ministry**") of the contact details of this person via Electronic Commerce Information System ("**ETBIS**"),

¹ The exceptions are indicated in the following footnotes.

² Transactions envisaged to be made via the internal communication system can be made by other technical means until 1 July 2023.

- provide certain information under its transaction guide (as detailed in the Regulation),
- comply with rules on receiving, confirming and delivering orders (as detailed in the Regulation),
- notify the buyer without delay from the receipt of the order via the Marketplace and by at least one of the means of communication as follows: e-mail, text message or phone call,
- ensure necessary integration with the Seller/Provider for the simultaneous transmission of order information to the Seller/Provider and keep the stock information up to date,
- remove unlawful content submitted by the Seller/Provider and notify the Seller/Provider and relevant public institutions and organizations without delay and at the latest within 48 hours. As for intellectual property rights, if the Marketplace Operator receives a complaint from the intellectual right owner supported by relevant information and documents, the Marketplace Operator shall remove the product subject to the complaint and notify the relevant parties without delay and at the latest within 48 hours,
- retain for 10 years the information and documents relating to the services and transactions falling within the scope of the Electronic Commerce Law,
- not restrict, suspend, or terminate its intermediary services, except for the objective criteria included in the intermediation agreement. In the event of a situation requiring the restriction, suspension or termination of the agreement, Marketplace Operator shall give at least 3 business days to the Seller/Provider to submit its explanations. If the explanations of the Seller/Provider are insufficient, or no explanation is provided, Marketplace Operator may restrict, suspend, or terminate the intermediary services. Intermediary services may also be restricted, suspended or terminated immediately for the reasons arising from the legislation or in cases involving public order, non-delayable cases or fraud, data breach or other cyber security risks,
- obtain an e-commerce license (subject to an annual fee) as of 1 January 2025 if it exceeds certain thresholds,
- not offer to sale or act as an intermediary for the sale of products that are labeled with the trademark(s) for which intellectual property rights or right to use belong to itself or to the persons with whom it has economic integrity³,

³ This prohibition does not apply to Marketplace Operators who derive more than half of their total sales revenue from offline sales. The effective date of this article is 1 January 2023 while the deadline for compliance with this obligation is 1 January 2024.

- enable Sellers/Providers to provide the information required under the Tax Procedure Law such as information required to be on receipts/invoices, on its Marketplace,
- not use the registered trademarks of any person (except for the persons with whom they have an economic integrity), which constitute the main element of their websites' domain names registered at ETBIS, in online search engines for marketing and promotion activities without obtaining the prior approval of such persons,
- verify the identification information of the Seller/Provider with documents obtained from the Seller/Provider or via accessible electronic systems of relevant institutions and keeping this information up to date,
- shall not carry out unfair commercial practices, examples which are as follows:
 - failure to transfer the payment to the Seller/Provider in full and within 5 business days from the date when the amount is at the disposal of the Marketplace Operator and the order is delivered to the buyer (certain exemptions exists for the Marketplace Operator's blocked accounts in banks and setoff of Marketplace Operator's receivables from Sellers/Providers).
 - obliging the Seller/Provider to carry out sales campaigns, including unilateral modification of the selling price by the Marketplace Operator.
 - failure to determine the terms of the commercial relationship with the Seller/Provider by a written or electronic intermediation agreement, or failure to ensure that this agreement is clear, understandable, and easily accessible by the Seller/Provider, and failure to comply with the requirements with respect to the intermediation agreement despite the notice received from the Ministry.
 - making retroactive or unilateral amendments or including a provision to the intermediation agreement to the disadvantage of the Seller/Provider.
 - receiving remuneration from the Seller/Provider without providing any services or stating the type/price/rate of the services in the intermediation agreement.
 - lowering the Seller/Provider's position in the ranking or recommendation system or restricting, suspending, or terminating the services provided to the Seller/Provider without any objective criteria included in the intermediation agreement in this regard or on the ground that a complaint has been filed to public institutions or judicial authorities.
 - determining the right of withdrawal periods longer than those specified under the Law on the Protection of the Consumer, without the prior approval of the Seller/Provider.

- providing untrue or misleading explanations and notifications to the Seller/Provider about its products and activities.

Also, the intermediation agreements between a Marketplace Operator and a Seller/Provider shall be amended in accordance with the Amendments and the Regulation.⁴

In addition to the above:

- “Economic integrity” has been defined, based on which, certain obligations have been imposed on the Marketplace Operator and the persons with whom the Marketplace Operator has economic integrity.
- “Net transaction volume” has been defined and depending on the net transaction volume and the number of transactions, certain additional obligations have been imposed on the Marketplace Operator.

b. Additional Obligations for Marketplace Operators having a Net Transaction Volume of Over TRY 10 billion in a Calendar Year

A Marketplace Operator shall:

- not use the data obtained from the Seller/Provider to compete with them. This obligation also covers the persons with whom the Marketplace Operator has economic integrity.⁵
- provide technical facilities, free of charge, to the Seller/Provider for transferring the data they collected through their sales and for accessing the processed metadata.⁶
- not provide access between its commercial electronic environments and shall not promote one environment in another. This obligation also covers the persons with whom the Marketplace Operator has economic integrity.
- notify the Ministry of share transfers or acquisitions of the company’s shareholders reaching 5% and its multiples.
- notify the Ministry of the transactions by which the Marketplace Operator establishes a company, acquires the shares of an established company, or transfers these shares.

⁴ The effective date of this provision is 1 January 2023. However, agreements made before 1 January 2023 should be amended within 6 months from this date.

⁵ The effective date of this provision is 1 January 2024.

⁶ The effective date of this provision is 1 January 2024.

- submit to the Ministry in April of each calendar year:
 - the independent audit committee's report,
 - the report on non-compliance with the legislation of the content provided by the Seller/Provider.
- c. **Additional Obligations for Marketplace Operators having A Net Transaction Volume of Over TRY 30 billion and a Transaction Number of Over 100 thousand -Excluding Cancellations and Refunds- in a Calendar Year**

A Marketplace Operator shall:

- have a restricted budget for advertisements and discounts including promotions, rewards, points, coupons, gift certificates, etc.
- not restrict the Seller/Provider from offering goods or services and advertising through alternative channels at the same or different price than the prices on the Marketplace; and not force the Seller/Provider to supply goods or services from any person. Any provision, which enables an arrangement contrary to these prohibitions, cannot be included in the intermediation agreements.
- d. **Additional Obligations for Marketplace Operators having a Net Transaction Volume of Over TRY 60 billion and a Transaction Number of Over 100 thousand Transactions -Excluding Cancellations and Refunds- in a Calendar Year**

A Marketplace Operator shall not:

- -in the Marketplace that it operates- (i) enable the persons with which the Marketplace Operator has economic integrity to provide services provided by banks or the financial leasing, factoring, financing, and savings financing companies, (ii) accept electronic money which is issued by the electronic money institutions with which the Marketplace Operator has economic integrity, and also (iii) provide -including through persons with which the Marketplace Operator has economic integrity- the services falling under the closed network/circuit exemption as per electronic money legislation.⁷
- not provide courier services, including freight forwarding and postal services (except for the sales carried out by the Market Operator as Seller/Provider).⁸
- not intermediate the conclusion of contracts for the sale of goods or services or receive orders in an electronic environment that is provides publication services for such goods and services

⁷ The effective date of this article is 1 January 2023 while the deadline for compliance is 1 January 2024.

⁸ The effective date of this article is 1 January 2023 while the deadline for compliance is 1 January 2024.

2. Obligations Applicable to Sellers/Providers

a. General Obligations

A Seller/Provider shall:

- provide its identification information on its electronic commercial environments' homepage.
- provide certain information under its transaction guide (as detailed in the Regulation),
- comply with rules on receiving, confirming and delivering orders (as detailed in the Regulation),
- notify the buyer without delay from the receipt of the order via its electronic commercial environment and by at least one of the means of communication as follows: e-mail, text message or phone call.
- retain for 10 years the information and documents relating to the services and transactions falling within the scope of the Electronic Commerce Law.
- obtain an e-commerce license (subject to an annual fee) as of 1 January 2025 if it exceeds certain thresholds⁹.
- provide information required under the Tax Procedure Law such as information required to be on receipts/invoices, on the Marketplace.
- not use the registered trademarks of any person (except for the persons with whom they have an economic integrity), which constitute the main element of their websites' domain names registered at ETBIS, in online search engines for marketing and promotion activities, without obtaining the prior approval of such persons¹⁰.

In addition to the above:

- "Economic integrity" has been defined, based on which, certain obligations have been imposed on the Seller/Provider and the persons with whom the Seller/Provider has economic integrity.
- "Net transaction volume" has been defined and depending on the net transaction volume and the number of transactions, certain additional obligations have been imposed on the Seller/Provider.

⁹ Sellers/Providers obtaining 50 % of their total revenues from offline sales are exempted.

¹⁰ Sellers/Providers obtaining 50 % of their total revenues from offline sales are exempted.

b. Additional Obligations for Sellers/Providers¹¹ having a Net Transaction Volume of Over TRY 10 billion and a Transaction Number of Over 10 million -Excluding Cancellations and Refunds- in a Calendar Year

A Seller/Provider shall:

- not provide access between its electronic commercial environments and shall not promote one environment in another. This obligation also covers the persons with whom the Seller/Provider has economic integrity.
- notify the Ministry of share transfers or acquisitions of the company's shareholders reaching 5% and its multiples.
- notify the Ministry of the transactions by which the Seller/Provider establishes a company, acquires the shares of an established company, or transfers these shares.
- submit the independent audit committee's report to the Ministry in April of each calendar year.

c. Additional Obligations, for Sellers/Providers¹² having a Net Transaction Volume of Over TRY 30 billion and a Transaction Number of Over 10 million - Excluding Cancellations and Refunds- in a Calendar Year

A Seller/Provider shall:

- have a restricted budget for advertisements and discounts including promotions, rewards, points, coupons, gift certificates, etc.

d. Additional Obligations for Sellers/Providers¹³ having a Net Transaction Volume of Over TRY 60 billion and a Transaction Number of Over 10 million -Excluding Cancellations and Refunds- in a Calendar Year

A Seller/Provider shall not:

- -in the electronic commercial environments that it operates- (I) enable persons with which the Seller/Provider has economic integrity to provide services provided by banks or the financial leasing, factoring, financing, and savings financing companies, (ii) accept electronic money which is issued by the electronic money institutions with which the Seller/Provider has economic integrity, and also (iii) provide -including through persons with which the Seller/Provider has economic integrity- the services

¹¹ Sellers/Providers obtaining 50 % of their total revenues from offline sales are exempted.

¹² Sellers/Providers obtaining 50 % of their total revenues from offline sales are exempted.

¹³ Sellers/Providers obtaining 50 % of their total revenues from offline sales are exempted.

falling under the closed network/circuit exemption as per electronic money legislation¹⁴.

- not intermediate the conclusion of contracts for the sale of goods or services, or receive orders in an electronic environment that is provides publication services for such goods and services.

Please do not hesitate to contact us should you have any queries.

Kind regards,

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This note does not constitute legal advice and has been prepared and sent only for information purposes. Please contact us if you wish to obtain legal advice on this matter.

¹⁴ The effective date of this article is 1 January 2023 while the deadline for compliance is 1 January 2024.