

NEWSLETTER

E-COMMERCE | TURKEY

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The Law Amending the Regulation on Electronic Commerce (the "**Amendment**") was published in the Official Gazette dated 7 July 2022 and numbered 31889. The Amendment introduces radical changes to Law No 6563 – Regulation on Electronic Commerce (the "**Law**").

New definitions, such as electronic commerce intermediary service provider, electronic commerce service provider and economic integrity are established and the scope of the Law is clarified. The Amendment will enter into force as of 1 January 2023.

The most important points introduced by the Amendment are summarised below.

Obligations of Intermediary Service Providers

The Amendment defines the electronic commerce marketplace as the electronic commerce environment where electronic commerce intermediary service providers perform intermediary services. The electronic commerce environment covers platforms such as websites, mobile sites or mobile applications where electronic commerce activities are carried out.

Another new definition under the Amendment is economic integrity. If any entity directly or indirectly holds at least 25 per cent of the shares or exercises a majority of the voting rights, or any situation that leads to the same consequences, in two or more companies, then those companies are considered to be controlled by the same entity and will be deemed to be in economic integrity. In this context, new obligations have been introduced for intermediary service providers and any companies with which they are in economic integrity.

Additionally, businesses whose main line of business is in the travel agency, civil aviation, private pension, banking, insurance, financing, capital markets, payment services, betting, games of chance and electronic communications sectors are not defined as intermediary service providers, or service providers and are therefore excluded from the scope of the Law.

Under the Amendment, new obligations on electronic commerce intermediary service providers and service providers have been introduced gradually according to their net trade volumes. A table of the obligations in each category is set out below, with additional explanations beneath.

	INTERMEDIARY SERVICE PROVIDER	SERVICE PROVIDER
All intermediary service providers and service providers, regardless of net trading volume and number of transactions	<ul style="list-style-type: none"> - Removal of unlawful content from publication - Prohibition on applying unfair commercial practices - Prohibition on the entity selling products which bear its own trademark - Obligation to present and confirm information about the service provider 	<ul style="list-style-type: none"> - Limitations regarding promotions
Intermediary service providers with an annual net trading volume exceeding TRY 10 billion and electronic commerce service providers with a net transaction volume over TRY 10 billion and more than 10 million transactions excluding cancellations and refunds in a calendar year	<ul style="list-style-type: none"> - Prohibition on using data for competition - Prohibition regarding the transition between environments - Obligation to report the assignment of the share and incorporations - Obligation to submit reports to the Ministry, and notify any transfers of shares - Obligation to obtain an electronic commerce licence 	<ul style="list-style-type: none"> - Prohibition on the transition between environments and promotion - Obligation to report the assignment of the share and incorporations - Obligation to submit financial reports to the Ministry - Obligation to obtain an electronic commerce licence
Intermediary service providers with an annual net trading volume exceeding TRY 30 billion and more than 100,000 transactions excluding cancellations and refunds in a calendar year, and service providers with a net transaction volume over TRY 30 billion and more than 10 million transactions excluding cancellations and refunds in a calendar year	<ul style="list-style-type: none"> - Limitations on advertising and promotions - Prohibition on a most favoured customer condition 	<ul style="list-style-type: none"> - Limitations on advertising and promotions

<p>Intermediary service providers with a net trading volume exceeding TRY 60 billion and more than 100,000 transactions excluding cancellations and refunds in a calendar year, and service providers with a net transaction volume over TRY 60 billion and more than 10 million transactions excluding cancellations and refunds in a calendar year</p>	<ul style="list-style-type: none"> - Restrictions on cooperating with electronic banking services with which they have economic integrity - Restrictions on transportation services - Prohibition on the transition between environments 	<ul style="list-style-type: none"> - Restrictions on financial services - Prohibition on the transition between environments
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Intermediary Service Providers Will Not Be Able to Offer Their Own Brands For Sale

As of 1 January 2024, it is prohibited for intermediary service providers to offer for sale and/or intermediate the sale of goods bearing their own trademark or a trademark of an entity with which they are in economic integrity on electronic commerce marketplaces.

Regulations Regarding Unlawful Content

Unless set out otherwise in other laws, intermediary service providers are not responsible for the content provided by the service provider or for any unlawful content. However, upon being informed that the relevant content is unlawful, they must remove this content from publication without delay and notify the relevant public institutions and organisations.

Additionally, electronic commerce intermediary service providers must remove a product subject to a complaint by the holder of intellectual and industrial property rights, based on documents regarding the infringement of intellectual and industrial property rights. However, if the electronic commerce intermediary service provider has written evidence proving that the complaint is not justified, the product subject to the complaint can be re-exhibit in the market place.

Unfair Commercial Practices

The Amendment defines unfair commercial practices as practices that significantly disrupt the commercial activities of the electronic commerce service provider, reduce its ability to make reasonable decisions, or force it to take a certain decision, or causing it to be a party to a commercial relationship to which it would not normally be a party. Following the Amendment, the intermediary service provider is prohibited from engaging in unfair commercial practices.

In any case, making a payment to the electronic commerce service provider later than the period specified in the law, forcing the electronic commerce service provider to sell goods or services with campaigns, receiving a fee from the electronic service provider even though no service is provided or no amount is specified in the contract will be considered as unfair commercial practice.

Electronic commerce service providers who engage in unfair commercial practices may face administrative fines from TRY 10 thousand to TRY 100 thousand for each unfair commercial practice.

Electronic Commerce Licence

Electronic commerce intermediary service providers whose net trade volume in a calendar year exceeds TRY 10 billion and more than 100,000 transactions excluding cancellations and returns, as well as electronic commerce service providers whose net trade volume in a calendar year exceeds TRY 10 billion and more than 10 million transactions excluding cancellations and returns are obliged to obtain a licence from the Ministry of Trade (the "**Ministry**").

The obligation to obtain a licence will enter into force as of 1 January 2025, with the licence fee being determined according to the net trading volume of the company applying for a licence.

Limitations on the Use of Data

Within the scope of the Law, electronic commerce intermediary service providers with a net trade volume in a calendar year exceeding TRY 10 billion and more than 100,000 transactions excluding cancellations and returns will only be able to use the data obtained from electronic commerce service providers and buyers for the purpose of providing intermediary services. The data obtained within this scope cannot be used while competing with electronic commerce service providers on electronic commerce marketplaces or other electronic commerce environments.

If the data obtained is used for purposes other than the specified purposes, an administrative fine of up to ten per cent of the value of net sales in the calendar year preceding the date of the violation may be imposed.

Notification of Share Changes to the Ministry

E-commerce intermediary service providers with a net trade volume in a calendar year exceeding TRY 10 billion and more than 100,000 transactions excluding cancellations and returns, as well as electronic commerce service providers with a net trade volume in a calendar year exceeding TRY 10 billion and more than 10 million transactions excluding cancellations and returns are obliged to notify the Ministry if any of its shareholders cross a threshold of owning five per cent of shares in the company, or any multiples of five per cent. The notification must be made within one month from the date of the transaction leading to the threshold being crossed.

In the event that electronic commerce intermediary service providers establish a company, take over the shares of an established company or transfer these shares, they are required to notify the Ministry about these transactions within one month from the date of registering the establishment in the trade registry (in the case of establishment), or one month from the date of registering the transfer in the share ledger (in the case of transfer).

If a notification is not made, or is not made in the appropriate time, there is an administrative fine of up to one million Turkish liras.

Regulations on Advertising and Promotion Expenditure

For electronic commerce intermediary service providers whose net trade volume in a calendar year exceeds TRY 30 billion and more than 100,000 transactions excluding cancellations and returns, as well as for service providers whose net trade volume exceeds TRY 30 billion and more than 10 million transactions excluding cancellations and returns, certain limits are also stipulated for advertising and campaign/promotion expenditures.

Obligations Regarding Electronic Banking Activities

Intermediary service providers that have a net trading volume exceeding TRY 60 billion and more than 100,000 transactions excluding cancellations and refunds in a calendar year are prohibited from cooperating with any banks, financial leasing companies, factoring companies, financing companies and savings finance companies in which they are economically integrated. This concerns all kinds of activities except for credit payment transactions made with credit cards and other payment transactions in electronic commerce marketplaces.

The Amendment Law stipulates an administrative fine of TRY 10 million for service providers that do not terminate their cooperation with financial institutions with which they have economic integrity as of the date of 1 January 2024.



In accordance with the lawyers' regulations, all information on Turkish law contained in this newsletter is provided by Özdirekcan Dündar Şenocak Ak Attorney Partnership, with whom Gide Loyrette Nouel cooperates in Turkey.

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