



## Turkey Introduces a Centralized System for Electronic Marketing Communications

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Recent amendments to the Turkish legislation regarding electronic marketing communications introduced a centralized management system for obtaining, exercising and tracking the opt-in/opt-out requests as well as complaints of the recipients of electronic commercial communications. Service providers sending electronic commercial communications to customers will need to register with this new centralized management system, and notify and/or process opt-in and opt-out requests and complaints regarding electronic commercial communications through this centralized management system.

In Turkey, commercial electronic communications<sup>1</sup> such as messages for promotion and marketing of goods and/or services, celebrations, introduction of campaigns sent through electronic means are governed primarily by the Law No. 6563 on Regulation of Electronic Commerce (“E-Commerce Law”), which entered into force back in 2015.

E-Commerce Law included provisions regulating the procedures and principles of marketing communications (e.g. opt-in and opt-out requirements) and obligations and liabilities of service providers and intermediary service providers in this respect. The Ministry of Customs and Trade (“Ministry”) has been designated as the authority in charge of the implementation and supervision of the E-Commerce Law.

An amendment to the E-Commerce Law made in 2017 also authorized the Ministry to establish an electronic system which would allow recipients of commercial electronic communications to opt-in and opt-out and which would keep track of the consents obtained from the recipients. Nevertheless the E-Commerce Law referred to the regulation to be issued by the Ministry for the principles and procedures related to this system.

The Ministry did not issue a regulation particular to this centralized system for two years. Therefore the provision had no effect in practice, until very recently. On January 4, 2020, an amendment to the Regulation on Commercial Communications and Commercial Electronic Messages (“Regulation”), which is the main regulation on the implementation of the E-Commerce Law, has been published in the Official Gazette.

The Amendment Regulation defined the system, which was previously mentioned in the E-Commerce Law, as “commercial electronic communication management system” (“IYS”) and provided that IYS is a centralized system that enables obtaining commercial electronic communication approvals, use of right to reject such communications and managing complaint processes.

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<sup>1</sup> Commercial electronic communications are defined under the Turkish e-commerce legislation as the communications with audio and video content and data sent for “commercial purposes” and that are carried out electronically through means such as telephone, call center, fax, automatic dialer systems, smart voice recording systems, electronic mail, SMS.



In principle, prior consent is required for sending electronic commercial communications for promoting, marketing goods and services, promoting business or increasing recognition through contents of celebration or wishes. There are certain exception to this principle, such as transactional messages and messages sent to merchants. Prior consent of the recipients, which must include their acceptance to receive commercial electronic communications, can be obtained in writing or via all sorts of electronic communication (Article 6/1 of the on E-Commerce Law No. 6563), but the burden of proof as to consent relies with the sender.

With the recent amendments to the Regulation, IYS will serve as an alternative tool that recipients and service providers (which refers to the real persons or legal entities that conduct e-commerce activities) may use for the obtaining consent or requesting opt-out or filing complaints.

According to the amendments, the Ministry will authorize an institution for the establishment of IYS. The authorized institution will prepare the technical infrastructure for the registration of consent and rejection (i.e. opt-in and opt-out) information on IYS, obtaining consent through IYS, the use of right to opt-out, receiving, reporting and management of commercial electronic communication complaints quickly and effectively.

Real persons and legal entities which are willing to send commercial electronic communications are now, through the recent amendments, obliged to register with the IYS. Commercial electronic communications cannot be sent to the recipients who do not have consent on IYS. Service providers will notify the opt-out notifications to IYS within three days as of receipt. Recipients can use their right to opt-out from receiving commercial electronic communications through IYS as well.

All consents obtained within the scope of the Regulation should be transferred to IYS until June 1, 2020 by the providers of those messages. As of this deadline, IYS notifies the recipients that (i) their approvals are uploaded on IYS, (ii) they have the right to check these approvals until September 1, 2020, (iii) the approvals will be deemed valid, if recipients do not check these approvals within the specified time period and (iv) recipients may opt-out from receiving commercial electronic communications through the IYS. Recipients will have the option to check their approvals on IYS until September 1, 2020 and the commercial electronic communications sent as of September 1, 2020 will be considered as approved communications.

The amended Regulation provides that the Ministry has the authority to postpone the foregoing deadlines for three months and the IYS is not yet available in practice, as of the date of this article.

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