



## *Türkiye's New Electronic Commerce Amendments: Compliance Steps to Follow*

**Authors:** Gönenç Gürkaynak, Esq., Ceren Yıldız, Berna Aytaç and Dila Erol, ELIG Gürkaynak Attorneys-at-Law

The Law No. 7416 on Amendment of the Law on Regulation of Electronic Commerce (“Amendment Law”), published in the Official Gazette of July 7, 2022<sup>1</sup>, introduces new obligations for e-commerce intermediary service providers and e-commerce service providers. Most of the provisions of the Amendment Law will enter into force on January 1, 2023 but the Amendment Law also stipulates different effective dates and transition periods for certain obligations. Amendment Law’s liability regime is tiered in line with the criteria of net transaction volumes and order numbers in a calendar year. E-commerce intermediary service providers and e-commerce service providers under this regime should follow certain compliance steps in due time. In this regard, the obligations of e-commerce intermediary service providers might be outlined as follows and most of these obligations will also be applicable to e-commerce service providers, based on certain thresholds, by analogy as per the Additional Article 3 of the Amendment Law:

### (i) Obligations Concerning Removal of Illegal Contents and Counterfeit Products

The Article 3 of the Amendment Law turns a former non-liability clause to a form of vicarious liability by making the e-commerce intermediary service provider obligated to remove the content without delay and notify the relevant public institutions and organizations if it becomes aware that a content provided by the e-commerce service provider is illegal. Moreover, upon a right holder’s complaint regarding violation of an intellectual property right

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<sup>1</sup> <https://www.resmigazete.gov.tr/eskiler/2022/07/20220707-2.htm> (Last accessed on August 10, 2022)

based on information and documents, e-commerce intermediary service provider must remove the e-commerce service provider's product subject to the complaint from broadcast and inform both the right holder and the e-commerce service provider on the matter. The previous non-liability position of intermediary service providers, where they were not obligated to research an illegality concerning the products and services, has now changed albeit intermediary service providers are still not responsible for illegal aspects of the content and the product or service subject to the content provided by the service provider (unless provided otherwise in the law) Now this form of vicarious liability, where they may no longer "turn a blind eye" to probable illegalities, they may now need to create effective channels for reporting and reviewing illegal content and counterfeit product claims and review their policies for response and notification procedures for the illegal content especially concerning timings since the amendment requires swift actions.

#### (ii) Obligations Concerning Unfair Commercial Practices

As per the Article 7 of the Amendment Law, it is not allowed to conduct unfair commercial practice in e-commerce. Türkiye is not a stranger to unfair commercial practices. But with the Amendment Law, unfair commercial practices rules are not limited to practices directed at consumers, but now e-commerce service providers, which may both be real or legal persons, are protected against the actions that may be defined as unfair commercial practice. Similar to its definition in consumer legislation, e-commerce intermediary service provider's practices that significantly disrupt the commercial activities of the e-commerce service provider to whom it provides intermediary services, reduce its ability to make a reasonable decision or cause the e-commerce service provider to become a party to a commercial relationship that it would not normally be a party to will be deemed unfair. The Amendment Law also provides some examples of unfair commercial practice specific to e-commerce service provider – intermediary service provider relationship such as compelling e-commerce service providers to provide goods and services with campaigns and not making full payment within five days at the latest after the sale price is at the disposal of e-commerce intermediary service provider and the product is delivered to the purchaser. To refrain from unfair commercial practices, e-commerce intermediary service providers might need to review their agreements as well as commercial practices such as the payments they make to e-commerce service providers and if they have a ranking or recommendation system for e-commerce service providers, they might

need to establish objective criteria for dropping e-commerce service providers in such systems.

### (iii) Obligations for All E-Commerce Intermediary Service Providers

Regardless of their net transaction volumes and order numbers, any e-commerce intermediary service provider cannot offer for sale or act as an intermediary in the sale of products bearing the brand of itself or the persons with whom it has an economic integrity or the goods for which it has trademark usage right in the e-commerce marketplaces where it provides intermediary services. In case these goods are offered for sale in different e-commerce environments, e-commerce intermediary service providers cannot enable access between these environments and cannot promote each other. The products bearing the brand or having the right of use of persons, more than half of whose total sales revenue is provided from sales other than electronic commerce are exempted from this restriction. Nonetheless, the deadline to comply with this restriction is January 1, 2024. Furthermore, e-commerce intermediary service providers should allow e-commerce service providers to disclose their information which is required in the financial documents to be issued per Tax Procedure Law in e-commerce marketplaces and verify the introductory information received from the e-commerce service providers through the documents to be received from them and the publicly available electronic records.

The Amendment Law also stipulates that e-commerce intermediary service providers cannot use the registered trademarks of others which are also the main parts of the domain names registered with the E-Commerce Info Platform (“ETBIS”) within the scope of their marketing and promotion activities on online search engines, without the prior written or electronic affirmation of other e-commerce intermediary service providers or e-commerce service providers.

In line with these obligations, e-commerce intermediary service providers would need to refrain from selling their own brands in their e-commerce marketplaces and separate the e-commerce environments for the sale of their own brands and third-party brands. They would also need to obtain e-commerce actors’ prior positive written or electronic affirmation if they wish to use their registered trademarks within the scope of marketing and promotion activities on online search engines. The restriction is also applicable to e-commerce service providers.

This might be particularly alarming for certain intermediary service providers, whose brands are a significant part of their revenue. Moreover, exclusive deals between producers and e-marketplaces are not uncommon. If the e-marketplace would like to benefit from marketing these exclusive sales, they may now need to include positive affirmations to their agreements.

(iv) Additional Obligations for E-Commerce Intermediary Service Providers with a Net Total Transaction Volume above “10 Billion Turkish Liras” within a Calendar Year

Such e-commerce intermediary service providers should use the data they obtain from the e-commerce service providers and purchasers only for the purpose of providing intermediary services and cannot use it while competing with e-commerce intermediary service providers. Moreover, they should allow e-commerce service providers to transfer/port the data obtained due to their sales free of charge and provide technical opportunity for them to access to it effectively and free of charge. The Amendment Law also states that such e-commerce intermediary service providers cannot provide access between their own e-commerce environments and cannot promote each other in these environments, except for e-commerce environments included in net transaction volume.

Besides, such e-commerce intermediary service providers should send an audit report showing the activities, management and organizational structure of the e-commerce intermediary service providers, current shareholders and their share ratios and their shareholding ratios in affiliates and subsidiaries, its financial status including the information of the person in which it is in economic integrity and its compliance with the obligations regarding advertising spending and promotions and e-commerce license to the Ministry of Trade. The Amendment Law also stipulates that e-commerce intermediary service providers should notify certain share transfers and acquisition to the Ministry of Trade.

Finally, these e-commerce intermediary service providers should send a report to the Ministry of Trade including the procedures for the determination of illegal matters regarding the content provided by e-commerce service providers and the violations determined as a result.

To comply with these requirements, these e-commerce intermediary service providers might have to create reporting and data portability policies and procedures. What might particularly

be alarming for certain intermediary service providers are again the advertisement restrictions as they may have to cease their interplatform advertisement investments.

(v) Additional Obligations for E-Commerce Intermediary Service Providers with a Net Total Transaction Volume Above “30 Billion Turkish Liras” within a Calendar Year and with “100 Thousand Orders” Excluding Returns and Cancellations

The Amendment Law stipulates upper limits for (i) advertising and (ii) promotion (gift cards, vouchers, rewards) expenses of such e-commerce intermediary service providers based on their net transaction volume within a calendar year. In addition, such e-commerce intermediary service providers cannot restrict e-commerce service providers’ commercial relations, its provision of goods or services through alternative channels on the same or different prices or its advertising, enforce it to procure goods or service from anyone and cannot place any provisions in this regard in its intermediary agreements. This provisions which will be applied if the e-commerce intermediary service provider attains net total transaction volume above “30 Billion Turkish Liras” and “100 Thousand Orders” orders without returns and cancellations within a calendar year might require these e-commerce actors to review their advertising and promotion expenses and their intermediary agreements in case of provisions restricting e-commerce services providers’ commercial relations.

(vi) Additional Obligations for E-Commerce Intermediary Service Providers with a Net Total Transaction Volume Above “60 Billion Turkish Liras” within a Calendar Year and with “100 Thousand Orders” Excluding Returns and Cancellations

The e-commerce intermediary service providers that fall within this scope may not conduct banking activities in their e-commerce marketplace except for certain payment services, may not accept the electronic money that they issue and except for their own sales undertaken as e-commerce service provider, sales made on their marketplaces, sales out of the scope of e-commerce, e-commerce intermediary service providers may not engage in cargo, distribution operations, transportation organizing and post service provision. The compliance period to remedy these restrictions is until January 1, 2024. Additionally, if e-commerce intermediary service provider provides an electronic environment for the publication of goods or service announcements, it cannot allow the conclusion of agreements or placing orders for the supply of goods or services in the same environment. If these services are provided in different

electronic environments, they cannot provide access between these environments and cannot promote each other.

(vii) Obligations Concerning E-Commerce License

The Amendment Law requires e-commerce intermediary service providers whose net transaction volume in a calendar year is over 10 Billion Turkish liras and the number of orders excluding cancellations and refunds is over 100 Thousand Orders to obtain a license and renew its license in order to continue its activities.

In the light of the foregoing obligations, the e-commerce actors are envisaged a compliance process and should consider the Amendment Law's effective dates and transition periods in this regard. Accordingly, the articles related to restrictions on advertising and promotion expenses will enter into force on January 1, 2023, the articles related to data access and portability and increase of monetary thresholds according to ETBIS data will enter into force on January 1, 2024 and other provisions will enter into force on January 1, 2023. E-commerce intermediary service providers and e-commerce service providers should fulfill e-commerce license obligation as of January 1, 2025.

If the current intermediary agreements require revision in line with the Amendment Law, they should be revised within six months as of its effective date.

Although the compliance periods given might be considered adequate, all the new requirements introduced by Amendment Law could require significant organizational and economic changes for e-commerce intermediary service providers as well as e-commerce service providers. Therefore, the relevant actors may want to give themselves a head start.

Article Contact: Gönenç Gürkaynak, Esq.

E-mail: [gonenc.gurkaynak@elig.com](mailto:gonenc.gurkaynak@elig.com)

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