

IT & Internet - Turkey

New regulation on distance contracts introduced

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Introduction

A new regulation on distance contracts was published in the *Official Gazette* on November 27 2014 and came into force on February 27 2015. As a result, the previous regulation on distance contracts of March 6 2011 was abrogated. The new regulation is part of the consumer protection regime, in line with the European Union, where distance contracts are regulated under the EU Consumer Rights Directive (2011/83/EC). Many of the new regulation's provisions have been adopted from the directive, which marks a step forward for Turkey's efforts for legal compliance with EU legislation.

Purpose and scope of law

The aim of the new regulation is to regulate the processes and basic principles of distance contract practices. The regulation's scope is limited to distance contracts, which are defined as:

"contracts concluded between the seller or provider and the consumer, without simultaneous physical presence of the seller or provider and the consumer within a system created for marketing goods or services via distance communication tools until the contract is entered into including the moment of entry."

The new regulation introduces a narrower definition of distance contracts compared to the previous regulation, as the new regulation requires distance contracts to be entered into via a system created for marketing goods or services. The new regulation's definition of a contract is almost identical to the corresponding definition in the directive – the only difference being that the directive requires distance contracts to be concluded by means of distance communication exclusively, while the new regulation requires no exclusivity.

Excluded contract types

The new regulation expands the excluded contract types listed in the previous regulation and aligns itself with the directive in this regard. Accordingly, a number of contracts are excluded from the scope of distance contracts regulation and the directive, including contracts:

- for financial services;
- concluded by means of automated machines;
- concluded with telecommunications operators through public payphones for the use of relevant public payphones;
- for the creation, acquisition or transfer of immovable property or of rights in immovable property;
- for the rental of residential accommodation;
- for package tours;
- for long-term holiday services and their resale and exchange;
- for the supply of daily consumer goods (eg, foodstuffs and beverages which are physically supplied by the seller on regular rounds to the consumer's home or workplace);
- for passenger transport services; and
- for social services for supporting families and individuals (eg, nursing homes and childcare services).

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The new regulation adds one contract type to the exclusions of the directive: contracts for setting up, maintaining and repairing goods.

New definitions and comparison with directive

The new regulation introduced several new definitions as part of its compliance efforts with the directive.

The new regulation adopted the directive's definition of 'digital content' with minor alterations. Pursuant to the new regulation, 'digital content' is data presented in digital form (eg, software, applications, games, music, video and text). This definition differs slightly from the directive's definition, which also includes data that is produced in digital form.

The definition of 'goods' under the new regulation is limited compared to the definition in the directive, as the new regulation applies only to distance contracts. 'Goods' are defined as any goods subject to trading (eg, movable items, immovable items assigned to holiday and accommodation purposes and non-material goods such as sound, images, software and similar goods designed to be used in an electronic environment).

The directive and the new regulation differ in their definition of the actors in a contract other than the consumer. The directive adopts a unified definition of 'trader' that is consistent with its wide scope, while the new regulation adopts a dual approach for defining the actors in a contract other than the consumer, by dividing the directive's definition of 'trader' into that of 'seller' and 'provider'.

This duality arises from the practices of these actors, where the 'seller' is defined as any natural or legal person, including publicly owned persons that sell goods through any other person acting in its name or on its behalf for purposes relating to its profession. The 'provider' is any natural or legal person that provides services in the same manner.

Further, the new regulation's definition of an 'ancillary contract' is directly translated from the directive:

"a contract by which the consumer acquires goods or services related to a distance contract or an off-premises contract and where those goods are supplied or those services are provided by the trader or by a third party on the basis of an arrangement between that third party and the trader."

Consumer information

The new regulation overhauls the previous regulation regarding obligations on consumer information and brings Turkish legislation in line with the directive. This is achieved by incorporating the provisions listed under Article 6 of the directive into Article 5 of the new regulation, with minor changes. These changes reduce the consumer information obligations of sellers and providers subject to the new regulation compared to the directive.

The new regulation does not require the seller or provider to inform the consumer of the total price, including:

- the total costs per billing period in the case of a contract of indefinite duration or a contract containing a subscription; and
- total monthly costs, where such contracts are charged at a fixed rate.

Further, Article 6(1)(1) is not incorporated within the new regulation, as the provisions regulated under the relevant sub-paragraphs are subject to Law 6502 on Consumer Protection.

However, the new regulation increases the duty to inform consumers by stating that information provided to consumers by the seller and provider within the scope of the new regulation is an integral part of any distance contract.

The new regulation introduces the formal requirements for distance contracts regarding consumer information by incorporating Articles 8(1), 8(2) and 8(4) of the directive. The new regulation did not incorporate the directive's web-specific provisions and this is a disadvantage, as e-commerce is a thriving business sector in Turkey.

Right of withdrawal

The new regulation has improved the previous regulation by incorporating Article 9 of the directive. The previous regulation gave the consumer seven days to exploit the right of withdrawal, while the directive and the new regulation set a period of 14 days under Article 9(1). This is another improvement to existing legislation in terms of compliance with EU legislation. The pursuant paragraphs and sub-paragraphs of Article 9 of the directive are also incorporated within the new regulation (eg, Paragraphs 2(a) and 2(b), which regulate the starting date of the withdrawal period).

Privacy and data protection

Under Paragraph 61 of the directive's recital, the processing of personal data, the protection of privacy in the electronic communications sector and unsolicited communications are regulated with a high level of consumer protection under the EU Privacy and Electronic Communications Directive (2002/58/EC). The directive has excluded the corresponding provisions on the same issues.

However, there is no dedicated law on the protection of personal data in Turkey. Data-protection related provisions of sector-specific laws and regulations are of great importance in legal data protection practices. In this regard, Article 20 of the new regulation imposes data protection-related obligations on sellers, providers and intermediary actors.

Article 20 requires the seller or the provider to store all data related to their obligations on the right of withdrawal, informing the consumer, delivery and other obligations provided for under the new regulation for three years. Further, intermediary actors that mediate a distance contract process via remote communication tools are obliged to store data concerning all transactions between the seller or provider and the consumer for three years and to present this data to the relevant authority, institution or consumer upon request.

Comment

The new regulation is a prominent effort in Turkey's legislative compliance process with EU legislation, especially in terms of consumer protection. The consistency between the new regulation and the directive should help EU-based businesses with plans to extend their business to Turkey in terms of predictability and legal compliance.

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