

New Era on the Commercial Electronic Messages: MMS

Commercial electronic messages are regulated within the scope of the Law on the Regulation of Electronic Commerce (**Law**) in Turkish legislation. Accordingly, “commercial electronic messages” may be defined as messages with audio and video content and data sent by the service provider or intermediary service provider to the recipients with commercial purposes, through various means with the aim of promoting, marketing goods and services, promoting business or increasing recognition through contents of celebration or wishes.

Along with the Law, regulations related to commercial electronic messages have been detailed under the Regulation on Commercial Communication and Electronic Commercial Messages (**Regulation**). The Regulation has been in force since 2015 and essential amendments and regulations have been made with the Regulation Amending the Regulation on Commercial Communication and Electronic Commercial Messages (**Amending Regulation**) published in the Official Gazette dated 04.01.2020. The main source of such amendments and regulations is the Commercial Electronic Message Management System, briefly MMS, which was not previously regulated in our legislation but will be newly established.

Within the Law, Ministry of Trade has power to establish an electronic system or to authorize a third party to establish such electronic system, which enables to receive consents from the recipients for commercial electronic messages and to exercise the recipient’s right to refuse it. In this context, the Message Management System (**MMS**) was established by the Union of Chambers and Commodity Exchanges of Turkey (**TOBB**) who is authorized by the Ministry of Trade. According to the Amending Regulation, the MMS is envisaged as a central and sole platform established to carry out the transactions related to the recipients’ consent to commercial electronic messages, the exercise of the recipients’ right to refuse and the complaint processes.

Main Regulations Related to MMS

TOBB has been held responsible for setting up technical infrastructure and making it available to the access of Ministry of Trade with the purposes of recording of approval and refusal information to the MMS, obtaining consents through the MMS, exercising the right of refusal, obtaining and reporting the complaints regarding the commercial electronic message, managing complaint processes in a fast and efficient way, and to make intermediary service providers use the system. Within this scope, the main regulations regarding the MMS, the system in which messages will be managed, are as follows:

- Real and legal persons sending commercial electronic message are required to register with the MMS.
- Among other means used, the service providers will also be able to obtain the recipient’s consent via MMS. The consents which are not obtained via MMS shall be recorded by the service providers in the MMS within three business days. The consents which are not recorded in the MMS shall be deemed invalid and the commercial electronic messages should not be sent to the recipients whom their consents are not available in MMS.
- Among other means, the recipient shall also be able to exercise its right to refuse to receive commercial electronic messages via MMS. In case the recipients exercise this right by any means other than MMS, the service providers shall also record the refusal notifications in the MMS within three business days.
- The service provider may send commercial electronic messages itself to the recipients whom already been consented, as well as through the intermediary service providers. In this context,

the intermediary service provider shall check via MMS whether the recipients have consent, before initiating sending messages and shall not initiate to send messages to the recipients who do not have consent on the MMS.

- Recipients' complaint applications shall be subject to a preliminary examination through MMS. The intermediary service providers, who initiate the message transmission in accordance with the instructions of the service provider, shall respond to the information and document requests related to the complaint applications within 15 days via MMS.
- Previously, the burden of proof regarding the receipt of the consent belonged to the service provider, while with the Amending Regulation, burden of proof regarding the receipt of the consent will belong to the service providers only when the consent has not been received through MMS.

Compliance Period

- The consent obtained under the relevant legislation shall be transferred to the MMS by the service providers until the date of 01.06.2020.
- The recipients shall check the consents recorded in the MMS until the date of 01.09. 2020. The commercial electronic messages sent after the expiry of this period shall be deemed **approved**.

The detailed information on MMS, its project calendar and compliance period can also be accessed through the MMS's official web site: iys.org.tr/

Other Amendments

In addition to the MMS, the Amending Regulation also sets forth various amendments. With the Amending Regulation, the period of the retention period of consent records and other records by the service providers and/or intermediary service providers has been amended from one year **to three years**.

As a result, the Amending Regulation brings several administrative obligations for the service providers that send or wish to send commercial electronic messages to the recipients, in particular those stated above. To sum up, as of relevant dates, service providers will not be able to send commercial electronic messages without recording consents, the necessary consents for electronic commercial messages will be managed from a single system and the complaint processes of the recipients regarding electronic commercial messages will be facilitated. While some of the regulations are also included in the previous regulations, it can be said that with the Amending Regulation, the recipients are protected more and the obligations of service providers and intermediary service providers desiring to send commercial electronic messages are enhanced or subjected to more strict conditions.

Therefore, prior to sending commercial electronic messages, consents of the recipients should be checked and the compliance with the MMS and legislation should be ensured. Otherwise, administrative fines may be imposed, especially with the effect of complaint process being facilitated.

Please do not hesitate to contact us in case you have any queries regarding the MMS processes.

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