

THE

Gökçe

Fine PRINT

July 2022

104

FUNDAMENTAL AMENDMENTS TO E-COMMERCE LAW: A NEW ERA BEGINS

—
The Guideline on Cookie
Practices is Published

—
License Requirement
Introduced in Public IT
Service Procurements

—
Data Governance Act is
Published



Fundamental Amendments to E-Commerce Law: A New Era Begins

The long-awaited amendments to the Law on the Regulation of Electronic Commerce (**Law**) were published in the Official Gazette on 7 July 2022 with Law No. 7416 Amending the Law on the Regulation of Electronic Commerce (**Amendment Law**).

Especially recently, the balance between the economic size and power of the platforms and the vendors/providers on the platforms has been one of the main agendas of Turkey as much as in the European Union. In fact, the general preamble of the Amendment Law emphasizes that; new issues have arisen as new businesses, business models and product groups emerged in the e-commerce ecosystem due to the developments in information and communication technologies and the pandemic, and thus there is a need for extensive amendments as the current rules do not comply or are unable to keep up with these developments. In light of this, it is clear that the Amendment Law aims not only to make "amendments" but also to "reform" the world of electronic commerce.

So, what are the changes introduced by the Amendment Law? First of all, various new subjects and concepts will enter our lives. Furthermore, comprehensive regulations covering electronic commerce marketplaces, data, unfair commercial practices and licensing have been introduced. These changes will come into effect gradually until 2025. We have compiled below for you the main and essential amendments:

New subjects and concepts have been introduced:

- **Electronic commerce intermediary service provider** and **electronic commerce service provider** have been defined as subjects in addition to the definitions of "service provider" and "intermediary service provider" in the legislation. Additionally, "electronic commerce marketplace" has also been defined, and now the use of the term "marketplace" will have a direct equivalent in our legislation.
- Two more critical concepts have been introduced: **“Net transaction volume”** and **“economic integrity”**. In comparison to the subsidiary and controlling company structure regulated in the Turkish Commercial Code, we can state that concept of economic integrity is more extensive. These definitions will be significant since they impose limitations on persons who are of the same economic integrity as the e-commerce service provider or e-commerce intermediary service provider. The definition of net transaction volume will also be critical since some of the obligations are differentiated according to the net transaction volumes of the relevant subjects.

Exclusions have been envisaged: Subjects that will not be accepted as electronic commerce intermediary service providers or electronic commerce service providers in the implementation of the Law have been listed. This is extremely crucial for institutions and organizations regulated in their own sectors, such as companies licensed and exclusively operating in the areas for which they are licensed in accordance with travel agencies legislation, banking legislation, insurance legislation, financial leasing and factoring legislation, capital market legislation, electronic communication legislation, electronic money and payment institutions legislation, and companies operating under certain authorizations within games of chance legislation.

Ministry of Commerce has been granted extensive powers: "Maintaining an effective and fair competitive environment" and "enforcing inspection and auditing" are among the main powers granted to the Ministry of Commerce.

The period of the document retention obligation has been determined: Intermediary service providers and service providers will be obliged to keep information, documents, ledgers and electronic records of e-commerce business and transactions for ten years from the date of the business or transaction.

New mechanisms for illegal content have been envisaged: In addition to the obligation of the e-commerce intermediary service provider to remove the illegal content, the obligation to "notify illegal content to the relevant public institutions and organizations" has been introduced. It is a matter of curiosity how this mechanism will be operated by the e-commerce giants in the sector.

Comprehensive regulations have been made for unfair commercial practices: It has been regulated that practices that cause significant disruption of the commercial activities of the service provider, reduction of its ability to make a reasonable decision or practices that force it into a commercial relationship with which it would not normally be a party by forcing it to take a certain decision will be considered unfair commercial practices. In addition, practices that will be considered unfair commercial practices under all circumstances were listed.

Obligations have been imposed on e-commerce intermediary service providers based on their net transaction volume: In paragraph 1 of Additional Article 2, the main obligations that each electronic commerce intermediary service provider must comply with, independent of the net transaction volume, have been stated as follows:

- Not to offer for sale or act as an intermediary in the sale of goods bearing its own brand or the brand of persons with whom it has economic integrity or a brand for which it has the right to use.
- Not to engage in marketing and promotion activities in online search engines by using the registered brands that constitute the main element of the domain names registered to ETBIS of the electronic commerce service provider without receiving the electronic commerce service provider's or the electronic commerce intermediary service provider's consent.

- Enable the presentation of the information required within the scope of the Tax Procedure Law on the electronic commerce marketplace where the sale is made.

The primary breakdowns of obligations based on net transaction volume have been determined as ten billion Turkish liras, thirty billion Turkish liras, and sixty billion Turkish liras. The obligations of the relevant e-commerce intermediary service provider will vary in each breakdown.

Some electronic commerce intermediary service providers have been obliged to obtain license: E-commerce intermediary service providers with a net transaction volume of ten billion Turkish liras in a calendar year and meeting certain transaction limits will now have to obtain a license from the Ministry of Commerce. The license fee will be determined according to the net transaction volume.

Sanctions have been rearranged, expanded in scope, increased in quantity and new breakdowns have been added: Many sanctions have been specified for newly introduced unfair commercial practices. In addition, it has been regulated that, fines will be increased in case the violation is not terminated, and a 10-fold penalty will be applied to transactions aimed at misleading the Ministry of Commerce.

As seen, the changes will completely redefine the dynamic in the market. Undoubtedly the transition period, which will continue until 1 July 2025, will be intense. We will be following the developments regarding the effects of the changes with interest.

You can reach the full text of Amendment Law [here](#) (only available in Turkish).

The Guideline on Cookie Practices is Published

On 11 January 2022, the "Draft Guideline on Cookie Practices" (**Draft**) was published by the Turkish Data Protection Authority (**Authority**) on Authority's website to be presented to public opinion. However, Draft was not accessible from the Authority's website for a while. Guideline on Cookie Practices (**Guideline**) has been finally officially published on the Authority's website with minor changes to Draft on 20 June 2022. As such, Authority's ideas, suggestions and recommendations related to cookies can now be accessed from Guideline.

Draft and Guideline consist of almost identical texts except for a few minor changes. We had already evaluated the changes brought by the Draft in detail in our TFP January 2022 issue. You can access our review on Draft by clicking [here](#). To summarize;

- A road map was created for data controllers who process personal data through cookies, by defining cookies in Guideline and examining them by separating them into types. The type of cookie usage scenarios requiring and not requiring the data subject's explicit consent was explained with examples.
- A section on the overseas transfer of data processed through cookies has been added to Guideline which wasn't previously included in Draft. It was emphasized that in cases where websites operating in Turkey use cookies through companies located abroad and thus transfer data abroad, these transactions should be carried out in accordance with the conditions set in Turkish Data Protection Law.
- Elements required to be considered regarding the privacy notice to children have been added to the section of the Draft relating to informing the persons whose personal data are processed through cookies with the Guideline. It was stated in Guideline that if the relevant product or service appeals to children, informative texts should be prepared in accordance with the perception level of children within the scope of the obligation to inform; and if necessary, a comprehensible, plain and clear language supported by visual tools should be used.

You can reach the full text of the Guideline [here](#) (*only available in Turkish*).

License Requirement Introduced in Public IT Service Procurements

Regulation on Authorization of Participants within Public Informatics Service Procurement (**Regulation**), which determines the criteria for tender participants and their authorization within the scope of the IT service procurements by public administrations, was published in the Official Gazette on 29 June 2022. Regulation will enter into force 3 months following its publication.

Pursuant to Regulation, participants are required to obtain one of the following from the Ministry of Industry and Technology (**Ministry**) to participate in the tenders: **(i)** public informatics license, **(ii)** software license or **(iii)** penetration test license. These licenses require the acquisition of a TS EN ISO/IEC 27001 certificate covering the relevant service at the minimum, along with other certifications.

License applications will be finalized within 2 months at the latest. It is also regulated that the applications of those who make false/misleading statements will be cancelled and that these applicants cannot make a new application for 1 year from the date of cancellation. If the application is approved, a relevant license will be issued electronically and announced on the website of the Ministry.

Finally, Ministry has been authorized to inspect the participants within the Regulation. If it is determined that there has been a violation of Regulation or that a false and/or misleading statement has been made, the relevant participant will be warned in writing, and a period of up to 6 months will be granted to remedy the violation. During this time, the participant's license will be suspended. If the violation is not rectified within the given time, the license may be canceled and, in this case, the relevant person will not be able to apply for the same type of license for a period of 1 year. In case of repeated cancellation, this period increases to 3 years.

You can find the full text of Regulation [here](#) (only available in Turkish).

Data Governance Act is Published

The EU Data Governance Act (**DGA**) was published in the Official Journal of the European Union on 3 June 2022. DGA, the first implementation of the European Data Strategy in regulatory, will be binding on all EU member states.

The most significant goal of DGA is to create an EU ready for the digital age. In this context, increasing data sharing between industry stakeholders and member states is important. DGA aims to ensure the safe reuse and sharing of data by ensuring trust between data intermediaries and protecting the rights arising from data use.

The scope of DGA includes not only personal data but also many data categories such as trade secrets and intellectual property rights. DGA has introduced regulations similar to the GDPR for obliged parties. In this context, DGA is generally compatible with GDPR and it can be stated that they will be executed together. In addition, it is emphasized by some sectors that it is necessary to comply with the rules regarding the personal data protection law in the national legislation of the EU member states apart from GDPR and the principles of competition law should also be followed.

DGA also brings several new and significant terms such as data altruism, data intermediation services, and European Data Innovation Board.

The remaining legs of the European Data Strategy are Data Act, Digital Services Act, Digital Markets Act and Artificial Intelligence Act. The effects of this strategy, which will undoubtedly open a new era, will be great.

You can reach the full text of the DGA [here](#).

Answers. Not theories.

Gokce Attorney Partnership

Editors:



Prof. Dr. Ali Paslı
ali.pasli@gokce.av.tr



Dr. Mehmet Bedii Kaya
bedii.kaya@gokce.av.tr



Elif Aksöz
elif.aksoz@gokce.av.tr



Yağmur Yollu
yagmur.yollu@gokce.av.tr

About our firm

Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at www.gokce.av.tr for further information on our legal staff and expertise.

Please contact us at
info@gokce.av.tr
0 212 352 88 33

The Fine Print is prepared and published for general informative purposes only and does not constitute legal advice or create an attorney-client relationship. Should you wish to receive further information, please contact Gokce Attorney Partnership. No content provided in The Fine Print can be reproduced or re-published without proper attribution or the express written permission of Gokce Attorney Partnership. While all efforts have been made to ensure the accuracy of the content, Gokce Attorney Partnership does not guarantee such accuracy and cannot be held liable for any errors in or reliance upon this information. The Fine Print was created for clients of Gokce Attorney Partnership and the possibility of circulation beyond the firm's clientele should not be construed as advertisement.