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Essential Amendments to Regulation on Distance Contracts

With the *"Regulation Amending the Regulation on Distance Contracts"* published in the Official Gazette on 23 August 2022, critical amendments in the provisions regarding the obligation of preliminary notification, the right of withdrawal, and the obligations of the seller, supplier and consumer were made to the Regulation on Distance Contracts **(Regulation)**. Thus, the compatibility of the Regulation was largely ensured with the changes in the Consumer Protection Law, which was published recently.

Excluding a few exceptions, the amendments in the Regulation will come into force on 1 October 2022. We have compiled the main amendments made to the Regulation below:

- Intermediary service providers within the scope of the Regulation have been defined as *"real or legal persons who mediate the establishment of a distance contract on behalf of the seller or supplier by using or making available the remote communication tools"*. This definition substantially overlaps with the scope of intermediary service providers in electronic commerce legislation. Additionally, the system used by intermediary service providers to mediate the conclusion of distance contracts has been defined as *"platform"*.
- Several important liabilities have been imposed on intermediary service providers that mediate the conclusion of distance contracts over their platforms, such as; *(i)* establishing a system where consumers can submit certain requests/complaints, *(ii)* being jointly liable for the compliance of the preliminary notification obligation to be made before the distance contract is concluded, as per the legislation, *(iii)* being liable for consumer transactions in case the intermediary service provider causes the seller/supplier to act in violation of the provisions of the Regulation, by violating the contract it has concluded with the seller/supplier, *(iv)* responsibility for payment refund in cases where payment collection is made on behalf of the seller/provider, *(v)* keeping the records of consumer transactions for 3 years.
- In cases where the right of withdrawal is exercised, it has been regulated that the consumer can be held liable for the return costs, provided that it is stated in advance in the preliminary notification and the amount is included in the return with the carrier stipulated by the seller. However, if the goods delivered to the consumer are defective, the consumer cannot be held liable for these costs.
- The scope of exceptions has been extended. In this content; *i)* contracts for mobile phones, smart watches, tablets and computers delivered to the consumer, *ii)* contracts for goods (that are installed or assembled) to be installed or assembled by the seller or authorized service as specified in the introduction and user manual, *iii)* contracts for movables whose registration is obligatory in accordance with the Highway Traffic Law and for unmanned aerial vehicles with registration or record requirement, *iv)* contracts concluded through auction in the form of a live auction are also included among the contracts considered as exceptions. In this context, it can be stated that the right of withdrawal has been limited to the detriment of the consumer.

With the amendment made in the Regulation, it is apparent that many new obligations and responsibilities have been introduced for the intermediary service provider, whose role in electronic commerce is increasing day by day. The full text of the Regulation can be found here *(only available in Turkish)*.

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New Regulation on Electronic Seal Entered into Force

Regulation on the Procedures and Principles Regarding the Electronic Seal **(Regulation)** entered into force by its publication in the Official Gazette on 14 September 2022. Regulation, that is prepared by the Information and Communication Technologies Authority **(BTK)** based on the Electronic Signature Law **(Law)**, covers the legal and technical aspects of the electronic seal and the procedures and principles regarding its application. We compiled some significant aspects below.

Difference from Electronic Signature: As known, with the additional clause (numbered 1) brought into the Law, electronic seal is defined as *"electronic data added to another electronic data or logically linked to electronic data and used for the purpose of verifying the information of the owner of the seal"*.

In the Law, it was already regulated that the provisions regarding the electronic signature would also apply to the electronic seal, by analogy. However, an electronic seal can only be given to legal entities and determines whether the seal represents the legal entity. For this reason, it differs from an electronic signature, which represents the signature of a real person and whose owner can only be natural persons.

Key Elements of Regulation: Regulation is designed to cover the receipt of electronic seal certificate applications, the processes for the creation, use, cancellation, and renewal of the electronic seal certificate, and the obligations of the electronic seal holder. In this context, it is regulated that the electronic seal certificate will be issued by the electronic certificate service provider and the relevant records will be kept for at least 20 years.

Furthermore, the difference between the secure electronic seal and the advanced electronic seal is explained in the Regulation. While secure electronic seals can be used to verify the identity of the electronic seal owner and to ensure the integrity of the sealed data; advanced electronic seals can be used to authenticate any digital asset of the electronic seal owner.

Lastly, it is significant that the Regulation explicitly stipulates that an electronic seal constitutes a record of the evidence that guarantees the origin and integrity of the document or data and that the electronic document or data was created by the electronic seal holder.

Audit and Sanctions: BTK has been provided with the authority to supervise the implementation of the Regulation. In case of non-compliance with the obligations determined by the Regulation, the implementation of administrative fines and security measures specific to legal entities will come to force. In addition, it should not be forgotten that the law defines the unauthorized use of electronic seal creation data as a crime punishable by imprisonment of up to 3 years.

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In conclusion, the Regulation is noteworthy for allowing legal persons to prove their identities in an electronic environment legally and for ensuring that the content of the electronic document they issue does not change. The Regulation, which was prepared on the basis of principles such as transparency and consumer protection, is expected to encourage new investments and practices in order to spread the use of electronic seals.

You can reach the full text of the Regulation here (only available in Turkish).

Regulation on Healthcare Information Management Systems

Regulation on Healthcare Information Management Systems **(Regulation)** was published in the Official Gazette by the Ministry of Health **(Ministry)** on 25 August 2022 and entered into force with most of its provisions.

Regulation imposes various criteria and obligations on the institutions providing healthcare services, the information systems they use, and the actors providing these systems.

With Regulation, the concepts of *"Healthcare Information Management System **(HIMS)**"*, *"Registration Inscription System **(RIS)**"*, *"Healthcare Service Provider"*, *"HIMS Service Provider"* and *"HIMS Service Recipient"* entered the legislation.

HIMS, the main actor in Regulation, is defined as software that is used by healthcare providers for clinical or administrative purposes and that can exchange data with other information management systems when necessary.

As per Regulation;

- HIMS service providers are required to register with the RIS, established and operated by the General Directorate of Healthcare Information Systems **(General Directorate)**, in order to operate as healthcare service providers.
- HIMS service providers are obliged to have multiple certifications, primarily TS ISO/IEC 27001, and to hold them throughout their operation. HIMS of HIMS service providers that will register with RIS will be audited by General Directorate or an institution authorized by it. HIMS service providers that have successfully completed the audit will be placed on the active list and announced on the website of the General Directorate.
- HIMS service providers included in the active list will also be audited and if a deficiency is found as a result of the audit, they will be given time to correct it. The provider that does not make up for the deficiency within the relevant period will be placed on the passive list. Providers in the passive list will not be able to obtain a RIS authorization certificate.

Regulation brought significant provisions in terms of personal data obtained within the scope of the provision of healthcare services as well. Personal data obtained in this process cannot be recorded and transferred to any place other than the data recording environments of healthcare service providers, the central health data systems of the Ministry or other data recording environments approved by the General Directorate. These data can only be stored in Turkey as per Regulation. Additionally, Regulation also includes provisions on issues such as confidentiality, track records, data backup and archiving, delivery, and transfer of data.

Regulation contains important provisions regarding healthcare information systems as stated above. You can reach the full text of the Regulation here *(only available in Turkish)*.

Planned Amendments Regarding the Regulation on Remote Identification Methods to be used by Banks

The Draft Regulation **(Draft)** Amending the Regulation on Remote Identification Methods to be used by Banks and Establishment of Contractual Relationships in Electronic Environment **(Regulation)** has been published on the website of the Banking Regulation and Supervision Agency on 31 August 2022.

The main purpose of the Draft is to enable banks to carry out remote identification processes not only for real person customers but also for legal entity customers' real person representatives. In this context, legal entities are defined in the Draft as *"commercial companies regulated in the Turkish Commercial Code"*, thus excluding legal entities outside the scope of the definition (such as associations and foundations).

As per the Draft, the identification process for legal entities includes the following steps: **(i)** identification of the relevant person who initiated the process on behalf of a legal entity for the identification of said legal entity, **(ii)** verification of the authority of the person initiating the process through the databases of state institutions and organizations such as the Central Registration System **(MERSİS)** and the Trade Registry Gazette and **(iii)** following the identity verification of the legal entity's representative, confirmation of information such as the trade name, trade registry number, field of activity and address of the legal entity through the databases such as the MERSIS and the Trade Registry Gazette.

The draft also includes regulations on the identification of people with disabilities and the use of artificial intelligence-based applications in such identification. The Draft is quite significant as it aims to eliminate the deficiencies identified in the implementation of the Regulation, especially regarding the remote identification methods for legal entities and the establishment of contractual relationships between legal entities in the electronic environment.

You can reach the full text of the Draft here *(only available in Turkish)*.

An Important Step from EU on Cybersecurity: Cyber Resilience Act

The Cyber Resilience Act **(Act)** proposed by the European Commission **(Commission)** was published on the Commission's website on 15 September 2022.

The Act intends to make software and hardware accessible in the European Union **(EU)** market more secure and to assure cybersecurity throughout the whole lifecycle of products that contain digital elements.

- In the Act, *"items with digital elements"* are broadly defined, covering wired and wireless equipment connected to the Internet, as well as all software sold on the EU market.
- The Act classifies items entailing digital characteristics as *"high-risk"* or *"low-risk"* according to the level of risk they pose. Stricter regulations have been implemented, mandating third-party inspections for high-risk items.
- As per the Act, digital products must fulfill certain basic cybersecurity requirements and have a vulnerability management strategy in place before they are released to the market.

The Commission stated that the Act complements current EU laws, particularly the NIS 2 Directive.

The Act has not yet entered into force. The European Parliament and the European Council will now deliberate on the proposed Act. Upon entry into force, stakeholders will have 24 months to adapt to the Act – with exceptions.

You can reach the full text of the Act here.

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Answers. Not theories.

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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.

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