

## **TURKEY INTRODUCES NEW RULES ON E-COMMERCE**

### **1. GENERAL**

The Act numbered 6563 on the regulation of electronic commerce (**Act** or **REC**), which aims to ensure trust and transparency in electronic commerce, entered into force on 5 November 2014. The Act generally contains provisions compatible with those laid down in Directive No 2000/31 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market (**Directive 2000/31**) which is one of the legal instruments of the European Union concerning electronic commerce. REC also complements Article 48 of the Act on protection of consumer No: 6502, relating to distance contracts.

REC mainly regulates two areas. First, it sets out some obligations for persons who provide services through electronic means in order to enable the recipient of electronic services to identify the good or service to be purchased and to prevent misleading information. Second, it regulates the prevention of unsolicited electronic commercial communications.

### **2. INFORMATION REQUIREMENTS**

#### **a) Requirement to Provide Information before Entering into an Agreement**

According to Article 3 (1) and (2) of the REC, persons who provide services in the electronic environment must provide following information to recipients, before entering into of an agreement through electronic communication tools:

- Up-to-date introductory information regarding the service provider in a way that the information can be easily accessed by recipients,
- Information with respect to technical stages to follow for signing the agreement,
- Information about whether or not the copy of the agreement will be kept by the service provider after entering into the agreement, and whether or not the recipient will have access to this copy and how long the access will be provided,
- Information regarding electronic tools that allow the recipient to identify and correct input errors,
- Information about confidentiality rules and, if exist, alternative dispute resolution mechanisms,
- Information on the professional association which the service provider is a member of, and codes of professional conduct he subscribes, and how those codes can be reached electronically,

However, in two cases the service provider is exempted from the aforementioned information requirement.

The first exception stated in the Article 3 (3) of the REC will be the cases where both parties to the electronic agreement are not consumer. There are two conditions for the application of this exception:

- Both parties to the agreement must not be consumer. If one of the parties is consumer, the service provider's information requirement will continue to exist.
- The parties must agree to remove information requirements. If there is not such agreement between the parties, the service provider will continue to be under the obligation of providing information.

The second exception to information requirements is set out in the last paragraph of the Article 3. Accordingly, Articles 3 (1) and (2) are not applicable to agreements made exclusively by exchange of electronic mail or by equivalent individual communication. The reason behind this exemption is that in such cases the parties usually have an opportunity to directly communicate and negotiate, and that the provisions of the Code of Obligations governing agreements between present persons may applicable to these transactions.

Article 3 of the REC also requires the service provider to allow the recipient to keep contract terms and general transaction terms. Thus, the recipient can reconsider and check these terms later, and by this way, he can prevent any change in contract terms made unilaterally by the service provider after entering into the agreement.

#### **b) Requirements concerning the placing of the order**

Article 4 of the REC lists some obligations relating to the placing of the order. In the case that the recipient of the service places his order through technological means, the following principles will apply:

- The service provider ensures that at the stage of the approval of the order and prior to entering of information for payment, the terms of the agreement, including the total payment, must be clearly visible to the recipient,
- The service provider has to acknowledge the receipt of the recipient's order without undue delay and by electronic means,
- The service provider makes available to the recipient of the service appropriate, effective and accessible technical means allowing him to identify and correct input errors, prior to the placing of the order.

These obligations of the service provider do not apply in two situations, as in the case of the requirement to provide information prior to entering into the agreement. Accordingly, Article 4 of the REC will not apply, (i) if otherwise agreed by parties who are not consumers or (ii) if the agreement is concluded exclusively by exchange of electronic mail or by equivalent individual communications.

### **3. UNSOLICITED COMMERCIAL COMMUNICATIONS**

In addition to information requirements explained above, the REC envisages some provisions relating to commercial electronic communications. As it is said previously, these provisions are inspired by those laid down in the Directive 2000/31.

#### **a) Information Requirements**

Article 5 of the REC states that persons who send commercial electronic communications has an obligation to provide some information to the recipient. Requirements regulated in this context are as follows:

- The natural or legal person on whose behalf the commercial communication is made must be clearly identifiable. The purpose of this requirement is to avoid misleading the recipient due to the anonymity dominating the electronic environment.
- Promotional offers, such as discounts, premiums, and gifts must be clearly identifiable as such, and the conditions which are to be met to qualify them shall be easily accessible and be presented clearly and unambiguously. This requirement is envisaged to ensure trust and transparency for the recipient.

These obligations will apply exclusively when communication is made for commercial purposes. Pursuant to Article 2 (1) (b), ‘commercial electronic communication’ is defined as any form of communication relating to electronic commerce, except domain name and e-mail address, designed to derive a profit from a professional or commercial activity.

#### **b) The Need for the Consent of the Recipient for Sending Commercial Electronic Communication**

According to the Article 6 of the REC, commercial electronic communications can be sent only upon the prior consent of the recipient. This consent can be obtained in writing or by any kind of electronic communication means. If the recipient discloses its contact information for the sender to contact him, it is not necessary to obtain his consent again for commercial

electronic communications concerning the change in goods or services to be supplied and their use and maintenance.

The consent of the recipient is required exclusively for communications to derive a profit from a professional and commercial activity. There is no necessity to obtain the consent for non-commercial electronic communications. Furthermore, in the case that the recipient is a merchant or craft, the condition of consent will not apply. Whether the recipient is a merchant or craft will be determined based on the relevant provisions of the Turkish Code of Commerce. The rationale behind this exception is that in commercial life merchants and crafts are normally expected to opt to be aware of electronic communications including advertisements.

Pursuant to Article 7 of the REC, in order to be deemed that the recipient has given consent to an electronic communication, the content of the communication must be compatible with the consent. In the Articles 7 (2) and (3), it is stated that communications must contain the service provider's identity and contact information, and the subject of the communication.

#### **c) The Right of the Recipient to Refuse Commercial Electronic Communications**

Article 8 (1) of the REC states that the recipient who has previously given consent to electronic communications may, in any time, refuse to receive communications without specifying any reason. Even if the consent of merchants and crafts is not necessary to send communications to them, these recipients have also the right to refuse communications.

The service provider should enable the recipient to send its refusal easily and free of charge by electronic means, and should include necessary information for this purpose in his communication.

According to the Article 8 (3) of the REC, the service provider has to stop sending electronic communications to the recipient within three working days following the request of the recipient reaches.

#### **d) Administrative Fines**

Article 12 of the REC states that the Ministry of Customs and Trade has competence to impose administrative fines on service providers which violate the requirements set out in the REC. Depending on the requirement violated, the amount of administrative fine that could be imposed may change between 1.000 TL and 15.000 TL. Article 12 (2) considers the sending of an unsolicited electronic commercial communication to several people at once as an aggravating factor, and therefore empowers the Ministry to impose an administrative fine up to ten times the upper limit of 5.000 TL mentioned in the Article 12 (1) of the REC.