

Amendments have been Introduced to the Regulation on Distance Contracts

30 Sep 2022

The Regulation Amending the Regulation on Distance Contracts ("**Amendment Regulation**") has been published in Official Gazette dated 23 August 2022 and numbered 31932. Fundamental changes have been introduced to Regulation on Distance Contracts numbered 20237 ("**Regulation**") concerning consumers, sellers, supplier, and intermediary service providers.

Amendment Regulation aims to regulate the obligation of the seller, the supplier, and the intermediary service provider to give preliminary information to the consumer, the cases in which the consumer may exercise the right of withdrawal and the exceptions of the use of the right of withdrawal. In addition, "electronic communication services" have been added to the scope of the Amendment Regulation and the concepts of "intermediary service provider" and "platform" have also been defined.

Accordingly, the intermediary service provider refers to the legal or real person who mediates the establishment of a distance contract on behalf of the seller and the supplier with the platform it creates. Obligations have been imposed on intermediary service providers, either individually or jointly with the seller or supplier.

- In terms of distance contracts established through the platform;

(1) The intermediary service provider has individually liable for the following issues:

- Establishing the necessary system on the platform so that the consumer can fill out the withdrawal form or send the withdrawal
- statement, and promptly transmit to the consumer the confirmation information that the withdrawal statements submitted by the consumers have reached him and the seller or supplier,
- If the right of withdrawal is exercised before the delivery of the goods, all payments collected, including the delivery costs of the goods, if any, are returned to the consumer within 14 from the date on which the notification regarding the use of the right of withdrawal is received,
- In case the right of withdrawal is exercised in contracts regarding service performance, the return of all payments collected to the consumer within 14 days from the date on which the notification regarding the use of the right of withdrawal is received,
- If deficiencies occur in the required scope of disclosure in cases where data entry is made by the intermediary service provider in the preliminary information,
- Failure on promptly conveying the confirmation information regarding the receipt of the withdrawal statements to the consumer,
- The records of the consumer's transactions with the seller or suppliers are not kept for the minimum term of three years and, if requested, this information is not disclosed to the relevant institutions and organizations and consumers,

- Causing the seller or the supplier to act in violation of the provisions of the regulation due to its practices contrary to the contract regarding the intermediary service with the seller or the supplier,
- Failure to fulfill the contract at all or as required due to failure to meet the undertakings based on campaigns and similar commitments regarding sales with campaigns, promotions or discounts carried out without the consent of the seller or supplier,
- Compliance and assuring the quality promise of the advertisements and promotions made on the platform regarding the goods or services offered for sale, and the obligatory matters set forth in the preliminary information.

(2) The intermediary service provider has joint liability with the seller and the supplier for the following matters:

- Except for the case where the post-delivery price is transferred to the seller, the return of all collected payments to the consumer, including the delivery costs of the goods, if any, within 14 days (in case the consumer returns the goods with a carrier other than the one specified for return, the obligation starts from the date the goods reach the seller) from the date of delivery of the goods subject to the right of withdrawal to the carrier specified in the preliminary information for return,
 - In the event that a price is collected on behalf of the seller or the supplier, the return obligation is fulfilled at once without incurring any cost or obligation to the consumer, excluding the cases where the price is transferred to the seller or the supplier after the delivery or performance of the goods or services to the consumer,
 - Failure to provide and confirm preliminary information.
 - In the distance contracts established through the platform, the seller or the supplier shall be obliged to promptly deliver the notification regarding the consumer's exercise of withdrawal the right to the intermediary service provider.
- Within the scope of Article 5 of the Amendment Regulation, titled "preliminary information", the seller or supplier is obliged to inform the consumer before the distance contract is established or the offer is accepted regarding (i) the return cost in the event that the goods are returned through the carrier that the seller has specified (otherwise, the consumer shall bear the cost of return), (ii) which party will cover this cost, and (iii) the delivery or performance period compatible with the promised time in the ads and promotions. In distance contracts established through the platform, if this information is not included in the preliminary information or if the said carrier does not have a branch in the consumer's location, the said costs and obligations must be covered by the intermediary service provider.
 - In the event that a distance contract is established through voice communication or an environment where information about the order is presented in a limited space/time, the information that has to be declared within the scope of preliminary information may be sent to consumer in writing or shared through a permanent data storage.
 - According to the general rule in Article 12 of the Amendment Regulation, the seller is obliged to return all payments collected within 14 (fourteen) days from the date of delivery of the goods subject to the right of withdrawal. In case the right of withdrawal is exercised before the delivery of the goods or in the contracts regarding the performance of services, the calculation is made from the date of the notification regarding the use of the right of withdrawal. It is also regulated that the payment may be made by credit card. Pursuant to this provision, which will be implemented as of 1 January 2023, credit card issuers are required to add the amount transferred by the seller, supplier, or intermediary service provider to the available limit of the cardholder at once.

- The consumer is responsible for covering the return cost, not exceeding the delivery costs, if it is agreed in the preliminary information and the amount is included in the return with the carrier specified by the seller, except for the cases where the goods are deemed to be defective within the scope of article 8 of the Consumer Protection Law numbered 6502.
- New exceptions to the right of withdrawal have been introduced with the Amendment Regulation. In terms of the contracts listed below, the consumer has no right of withdrawal for:
 - Contracts for movables that are required to be registered and unmanned aerial vehicles that are subject to mandatory registry,
 - contracts for mobile phones, smart watches, tablets and computers delivered to the consumer,
 - contracts concluded by auction in the form of a live auction,
 - contracts regarding the installation or assembly of the goods specified in the introduction and user manual by the seller or authorized service.

This is a rather striking change whereby the criteria of economic efficiency and complex nature of certain consumer products have been realistically prioritized over the general principle of consumer protection in distance sales.

- Finally, the seller or the supplier has to fulfill his performance within the promised period from the date of receipt of the order from the consumer, but within 30 days at the latest. This obligation shall not apply to the contracts regarding the goods prepared in line with the consumer's request or personal needs.

This Amendment Regulation, which brings important innovations in the name of Turkish Consumer Law, Subparagraph (g) of the first paragraph of article 5, which was amended by article 3, article 9, subparagraph (b) of the seventh paragraph of article 12/A, added with article 10, article 11 and article 13, which regulates the exemptions of the withdrawal right, of the Amendment Regulation shall enter into force as of 1 January 2024.

Please see this [link](#) for the full text of the Amendment Regulation (only available in Turkish).

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