

Guide on Commercial Electronic Communication Management System

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What is Commercial Electronic Communication?

All kinds of commercial communication conducted via electronic communication tools with the purpose of promoting, marketing of its goods and services or in order to increase the recognition of its business in line with the commercial activities of real and legal persons, are accepted as commercial electronic communication. Communication with the content of data, voice and image that are sent electronically and sent for commercial purposes by using tools such as telephone, call centers, fax, automatic call machines, smart voice recorder systems, e-mail, short message services are included in the scope of commercial electronic communication.

How can I send Commercial Electronic Messages?

Pursuant to the Law on Regulation of Electronic Commerce numbered 6563 ("**Law**"); with certain exceptions, commercial electronic messages can be sent to recipients^[1] by service providers^[2], only with prior consent. Circumstances that do not require consent can be summarized as follows ("**Exceptions**"):

- Commercial electronic messages regarding changes, use and maintenance of goods or services provided.
- Messages containing notifications regarding ongoing subscription, membership or partnership status, and notifications regarding collections, debt reminders, information updates, purchases and deliveries, or similar situations, and messages to fulfill the obligation to provide information imposed on the service provider under applicable legislation.
- Commercial electronic messages sent to the electronic contact addresses of tradesmen or craftsman.
- Commercial electronic messages sent to the customers for information purposes by companies engaged in brokerage activities in accordance with the Capital Market legislation.

Details regarding the mandatory content and mandatory opt-out for commercial electronic communications are regulated under the Regulation on Commercial Communication and Commercial Electronic Messages ("**Regulation**"). Service providers and intermediary service providers need to take into consideration the provisions of the Regulation within the framework of their commercial communications.

^[1] Refers to the consumer or real or legal person acting for professional or other purposes.

^[2] Refers to real or legal persons engaged in electronic commerce activities.

What is the Message Management System ("?YS")?

Due to the difficulties in the implementation of commercial communication processes, Republic of Turkey Ministry of Trade has decided to establish a national commercial electronic communication management system (?YS, *elektronik ileti yönetim sistemi*) and has authorized the Turkish Union of Chambers and Exchange Commodities to that end. ?YS attained its legal ground with the amendments introduced by the Regulation on the Amendment to the Regulation on Commercial Communication and Commercial Electronic Messages published in the Official Gazette dated 4 January 2020 and numbered 30998. Amendments regarding the use of the ?YS will be effective as of 16

January 2021.

In the Regulation, ?YS has been defined as the system that enables obtaining consent for commercial electronic messages, exercising the right to opt-out and managing the complaint processes.

?YS is a national database where;

- Service providers store and manage different types of authorization for electronic communications, such as calls, messages, and emails;
- Recipients (i) view their consents, (ii) submit complaints regarding unauthorized submissions, and (iii) make notifications of consent and opt-out;
- Public authorities can view the complaints and the status of the consents subject to the complaint.

What has changed with the establishment of the ?YS?

With the establishment of the ?YS, all commercial electronic message consents can be stored and managed on a single platform.

With the amendments made within the scope of the Regulation, it has become mandatory for real and legal persons who wish to send commercial electronic messages to register with the ?YS until 1 December 2020^[1].

In the same regard, as of 16 January 2021, commercial electronic messages will not be sent to recipients whose consents are not present on the ?YS. Consents obtained but not registered by 1 December 2020 with the ?YS shall be deemed as invalid.

The Ministry of Commerce is authorized to postpone the said deadline for six months by taking into account the nature of the service providers and the size of the commercial electronic message consents.

^[1] *Initially the deadline was 31 August 2020; then it has been postponed to 1 December 2020.*

Consent Process:

For the recipients who are tradesmen or craftsman, the electronic contact addresses of the persons will be registered with the ?YS by the service provider and it will be checked whether the recipient group to whom the electronic commercial messages shall be sent exercised their right to opt-out on the ?YS, before sending any commercial electronic messages.

With the establishment of the ?YS, service providers now can obtain consents via ?YS. The ?YS will provide services for obtaining consent to service providers over various communication channels as value added services.

Within this scope, recipient consents can be obtained:

- Physically with signatures
- Electronically
- Via the ?YS

On the other hand, the recipients may access and change their consent preferences through ?YS's website or e-Government system. Citizens' access to ?YS will be available as soon as possible .

Consents obtained by any method other than the ?YS will be uploaded to the ?YS within **3 business days**. Otherwise, obtained consents will be considered as invalid since they are not registered with the ?YS.

Service providers should transfer all consents duly obtained to the system (i) manually (ii) in bulk through .csv files or (iii) by the mean of technical integration through ?YS API. Only approved electronic contact addresses must be

uploaded to the system by service providers. The electronic communication address, which is not registered with the ?YS, would be considered as a rejection to receive electronic communication.

Service providers will transfer the consents to the system based on "declaration", and documents that certify consent are not required to be uploaded to the system. The obligation to prove all past consents uploaded to the ?YS falls on the service provider.

The consent uploaded to the ?YS must contain the following information:

- Contact address
- Consent (approval/rejection)
- Consent date
- Communication channel (call/message/e-mail)
- Consent Source

Opt-out Process:

Service providers are obliged to include their accessible contact addresses in the commercial electronic communications, so that recipients can exercise their opt-out rights. Whichever communication channel the commercial electronic message was sent, opt-out notification must be also provided through the same communication channel, easily and free of charge. The opportunity for opt-out shall be included in every commercial electronic message sent or otherwise it may be subject to complaints.

Service providers will be able to design their own opt-out procedures and process those into the ?YS or they can receive these opt-out services from the ?YS as a value-added service.

Service providers, who manage the opt-out rights via their own systems, are obliged to upload to the ?YS opt-out notifications within **3 business days**.

Complaint Processes:

Complaint applications can be made via the ?YS as well with the existing methods. A preliminary examination of complaint applications will also be made via the ?YS.,,,,,,,

Security:

Service Providers will be able to register their text message, e-mail or call consents with the ?YS as time-stamped and via the system with an electronic signature, and keep them on the system securely, and conduct the follow-up on the system.

Recipients will be able to start using the ?YS directly.

Only (i) Service Providers themselves, (ii) public institutions if necessary and intermediary service providers acting on behalf of Service provider will be authorized to access the data uploaded to the ?YS by Service Providers. ?YS personnel and other service providers will not be authorized to access the data uploaded by Service Providers.

How will the ?YS process work?

The ?YS registration process can be summarized as follows:

- Registration applications for service providers were launched in **March 2020**.
- Until **1 December 2020**, service providers are obliged to transfer their current consents to the ?YS. Otherwise, the previously taken consents in accordance with the required procedure will be invalid.

- At the end of the above-mentioned deadline,
- a message will be sent to the recipients stating that their consents have been uploaded to the ?YS by the system and that these consents will be considered valid and that the opportunity for rejection can be used through the ?YS if they do not check until **16 January 2021**.
- As of 1 December 2020, the deadline for the transfer of consents, the ?YS will be available for recipients and the public. Recipients are required to check the consents registered in the ?YS until 16 January 2021 and raise their complaints if any. At the end of this period, commercial electronic messages sent to the recipients from Service Providers registered on the ?YS will be considered as duly conducted.

How will the Service Providers apply to the ?YS?

Applications to the ?YS are made on the website of the ?YS. Only the people who have a central registration system ("MERS?S") registration and who are authorized according to this registration can submit the application. For the application, the authorized person must have the electronic signature token (e-signature) and sign the Basic Services Use Letter of Undertaking. If the authorized person has joint representation powers, at least one other authorized person must sign the document which is already signed by the first authorized person. The application stages can be summarized as follows:

- Filling in and submitting the application form
- The "Basic Services Use Letter of Undertaking" created by the ?YS is signed by the authorized person with e-signature and re-uploaded to the system (at this stage, wet signed applications are also accepted)
- Opening the Service Provider account after the application is approved by the ?YS

Information and documents required for application to the ?YS are as follows^[1]:

- For service providers;
 - Application form
 - MERS?S number,
 - Registration documents of the trademarks for which the commercial electronic messages are sent,^[2]
 - Signed Basic Services Use Letter of Undertaking.
- For authorized person;
 - R. ID number,
 - Mobile phone number,
 - Corporate e-mail address.

^[1] It may vary for physically signed applications.

^[2] Service Providers will be able to carry out the message processes for their registered trademarks through the ?YS separately. In this case, trademark registration documents must be submitted in the application.

How do the recipients use the ?YS?

Recipients are not required to register in the ?YS.

Recipients will be able to use the ?YS through the ?YS Web, ?YS Mobile, call center, short number, short link and e-Government portal. The ?YS provides services for recipients free of charge.

Recipients will be able to optimize their use as members of the system and manage their consent, rejection and complaint processes for multiple contact addresses with a single user account.

What did the ?YS introduce regarding Intermediary Service Providers?

With the establishment of the ?YS, liabilities regarding ?YS have been imposed on the intermediary service providers along with service providers. Within this context, the liabilities of the intermediary service providers as of 16 January 2021 are as follows;

- Integrate their systems regarding commercial electronic message transmission with the ?YS.
- Do not initiate the transmission of commercial electronic messages belonging to service providers not registered to the ?YS. In this context, the intermediary service provider, who will send commercial electronic messages in accordance with the instructions of the Service Provider, is obliged to check whether the consent of the recipients exists on the ?YS before starting the message transmission;
- If the service providers (excluding tradesmen or craftsman) want to send a message within the scope of exceptions, the intermediary service provider is obliged to receive a declaration in this direction;
- Notifies the ?YS if recipients close the subscription line;
- The intermediary service provider, which initiates the sending of messages in line with the service provider's instructions, responds to information and document requests regarding the messages subject to complaints through the ?YS within fifteen days.

The inquiry obligations of intermediary service providers do not apply to the commercial communication processes carried out via e-mail.

What are the consequences of violation of ?YS Regulations?

The most important risk for service providers is that the loss of the taken consent. Consents not transferred to the ?YS until **1 December 2020** will be deemed as invalid. In this case, the service provider will lose all the CRM data it has and will have to obtain consent from the recipients in terms of commercial communication processes.

Furthermore, the service providers who are in violation of their ?YS-related obligations may face administrative fines under the Law.

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