

## Regulation on Subscription Agreements: A New State of Play in Turkey!

*24 Jan 2015*

Consumer law in Turkey is primarily regulated by the Consumer Protection Law numbered 6502 (the "**Consumer Law**")<sup>1</sup>. The Consumer Law entered into force in 2013, bringing a more comprehensive approach to subscription agreements than prior legislative arrangements. Secondary legislation specifically considering subscription agreements was introduced by the Regulation on Subscription Agreements (the "**Regulation**")<sup>2</sup>. The Regulation introduces principles for subscription agreements, imposing obligations on sellers and service providers with regard to validity, preparation, execution, and termination of subscription agreements. It will be challenging for sellers and service providers to adjust their agreements and practices before the Regulation becomes effective on 24 April 2015. Consumers must also become acquainted with the rights granted to them.

The Regulation is primarily aimed at subscription agreements made by utility distributors in the electricity, water, natural gas sectors. It also contemplates the electronic communications sector, including mobile network and service providers as GSM operators, as well as services relating to communication devices. The Regulation also sets out common terms that apply to all parties rendering services or selling goods on a subscription basis in all sectors. These common terms apply to the sectors noted above, as well as to other sectors including (without limitation) providers of goods or services via websites, digital platforms, or by any other means. The most common examples of platforms or service providers which work on a subscription basis can be found in the following sectors: media, satellite television, music and entertainment, sport and health, food and beverage, security and monitoring.

The Regulation outlines minimum obligations for executing an agreement, mandatory content for agreements, consequences for non-compliance, delivery or fulfillment obligations, as well as requirements related to agreement termination and prohibitions on automatic renewal (Articles 5-8, 13, 22- 25 of the Regulation).

In general, regulations relating to subscription agreements are divided under sector-specific legislation. These continue to apply in parallel with the Regulation but where any inconsistencies exist, the provision most favorable to the consumer takes priority:

- Telegraph and Telephone Law
- Regulation on Electricity Market Consumer Services
- Regulation on Natural Gas Market Distribution and Consumer Services
- Regulation on Consumer Rights regarding Electronic Communication Sector

These sectors are also subject to communiqués issued by administrative authorities. The main reason for the new approach for subscription agreements introduced by the Regulation appears to be problems encountered by consumers during their subscription period. While the sector-specific regulations noted above contain protective provisions for consumers, none specifically address issues relating to subscription agreements. It is common for sellers and service providers to make it convenient for consumers to enter into such subscription contracts. However, it is also common for consumers to experience difficulties making alterations to the subscription agreement or canceling their subscription. In this regard, the Regulation aims to address these problems and create a more reliable environment for consumers.

Industry-specific associations such as *the Turkish Independent Telecommunication Operators Association* (TELKODER) have raised concern about being subject to a central piece of regulation. It noted that some requirements envisaged by the Regulation are not applicable to all sectors due to the different nature of services and goods (opinion published on 10 September 2014). TELKODER further asserted that conflicts may arise due to different approaches adopted by the Ministry of Customs and Trade and other sector-specific administrative bodies, leading to unstable and distrusted applications of the Regulation.

Despite industry objections, the Regulation will be effective from 24 April 2015. Sellers and suppliers must comply with the Regulation's provisions when concluding subscription agreement transactions with consumers, irrespective of whether the parties enter the agreement in person or as a distant contract (without meeting face to face). Businesses which conclude subscription agreements with consumers must comply with the Regulation's requirements by the effective date, including revising existing subscription agreements. Otherwise, sellers and service providers will be responsible for non-compliance (discussed further below).

## Definition of "*Subscription Agreement*"

"Subscription Agreement" is defined under the Regulation to be an agreement relating to continuous or periodic supply of goods or services to a consumer. The definition does not include a requirement that the consumer pays for these goods or services. However, the definitions attributed to goods and services indicate that sellers and service providers benefit from such goods and services.

The definition of "goods" includes all traded goods, real estate used for residency, or temporarily for vacation, and intangible products available on electronic platforms (such as software). The definition of "services" refers to all consumer transactions which are made or undertaken in exchange for a price or a benefit (except for those relating to goods). Therefore, the Ministry of Customs and Trade's opinion will be required to definitively determine whether it is necessary to receive a payment in a subscription agreement.

## Obligation to Execute an Agreement

Under the Regulation, sellers and service providers are obliged to formally execute a subscription agreement with consumers. Subscription agreements may be executed either in person or as distance contracts (concluded over the phone or online through an e-commerce website). Either way, the seller or service provider must give the consumer a copy of the agreement on paper or through a permanent data carrier. The Regulation requires the subscription agreement to be presented in at least 12-point type, incomprehensible language, as well as in a clear and legible fashion.

## Mandatory Content for Subscription Agreements

The Regulation provides a long and detailed list of mandatory content for Subscription Agreements in Article 6 of the Regulation which is applicable to all sectors, except for some sector-specific requirements excluded under clauses 2 and 3. Some terms are common for all type of contracts, such as the term and scope of the agreement. However, others introduce new attributes to the subscription agreements. Accordingly, mandatory information includes the legal consequences of the consumer's default in payment, termination of the agreement, information on suspension of services due to unpaid invoice amounts, and means of estimating the consumed amount in case of a failure in measuring devices.

Therefore, the Regulation constrains the freedom of contract for the benefit of consumers. It urges sellers and service providers to enlighten consumers and deliver detailed information regarding the services, but also legal obligations and liabilities. In this respect, subscription agreements become an informative instrument for consumers.

## Fixed Term Subscription Agreements

The Regulation outlines mandatory provisions which must be included in fixed term subscription agreements relating to supply of goods and services within the electricity, water, natural gas and electronic communications sectors (for example, carrier financing agreements).

A fixed termed subscription agreement is defined as an agreement in which the seller or service provider undertakes to:

- reduce the price of the goods or services supplied under the agreement, compared to the standard prices,
- on delivery of goods, transfer the ownership or usage rights for these goods,
- on fulfilment of services, transfer usage rights for these services.

In fixed term subscription agreements, during the term of the agreement, the seller or service provider cannot make any amendments on the agreement to the consumer's detriment.

When a seller or service provider executes a fixed term subscription agreement with the consumer, it must give an engagement letter to the consumer which states several mandatory items required by the Regulation (Article 15). These include the validity period, qualifications of goods or services, methods of calculating the amount which will be paid by the consumer in the event of terminating the agreement prior the fixed term, and several other items pertaining to the pricing and discounts applied.

If the agreement is terminated earlier than the agreed term, the seller or service provider can only request the amount of deduction (compared to standard prices), or the amount of outstanding advantages provided to consumer, which would apply for the period remaining in the fixed term subscription agreement.

One month before the fixed term expires, the seller or service provider must notify the consumer of the pending expiry, including a payment notice (discussed further below). The notification can be made in writing, or via a permanent data carrier such as SMS, e-mail, internet, disc, CD, DVD, memory card and similar tools or media (Article 17 of the Regulation).

## Payment Notice

For subscription agreements relating to electricity, water, natural gas, and electronic communications, the seller or service provider must issue a payment notice at the end of each consumption period and deliver it to the consumer (Article 19 of the Regulation). The payment notice referred by this article differs from an invoice. An invoice or a similar document will not be deemed to be a payment notice unless it includes all of the items required by Article 19 of the Regulation. Minimum requirements include information about the services consumed or used, details of the payable amount (including taxes), pricing methods and tariff plans, as well as communication channels to convey objections and requests.

Consumers can object to a payment notice for one year, starting from the date the notice is delivered. The seller or service provider must evaluate and respond to the objection within 30 days (Article 21 of the Regulation).

## Prohibition of Renewal of Agreement

Sellers or suppliers in all sectors are prohibited from inserting renewal clauses to the subscription agreements with definite term. However, the term of the contracts can be extended by explicit request or approval from the consumer. A seller or supplier cannot request any payment from the consumer if it does not receive the consumer's explicit approval for renewal of the agreement, even if the seller or service provider continues to supply the goods or services (Article 13 of the Regulation). The Regulation does not give details about the required format for such approval.

## Termination of Subscription Agreements

The Regulation outlines mandatory processes for termination of subscription agreements, which apply to all sectors. The Regulation outlines different termination procedures for subscription agreements depending on the duration of the agreement.

- *Subscription agreements lasting one year or more (including indefinite agreements):* Consumers may terminate the agreement at any time, without any reason or penalty payment.
- *Subscription agreements for less than one year:* Consumers may terminate the agreement if the seller or service provider makes amendments to the terms of the agreement, or a valid reason arises which prevents the consumer's enjoyment of the goods or services. Existence of a valid reason must be determined on a case-by-case basis as it is not defined in the Regulation.

Sellers and service providers must take the necessary measures to meet termination requests, including establishing and maintaining a full time system to receive consumer termination requests if necessary. The Regulation prohibits sellers and service providers from adopting termination methods which hinder the termination process or impose more severe conditions on consumers than those which applied for entering the agreement. Accordingly, sellers or service providers may not require consumers to be present in person at the time of the termination.

Sellers or service providers must execute termination requests within seven days from the date the consumer's termination notice was delivered. The termination notice must be addressed to the seller or service provider in writing or via permanent data carrier. The seller or service provider must notify the consumer via the either of these same methods on termination of the agreement.

## Consequences of Non-Compliance with the Regulations

The Ministry of Customs and Trade can issue an administrative fine of TRY 220 for each agreement which fails to meet the minimum content requirements (Article 77 of the Consumer Law). Since the fine applies separately to each non-compliant subscription agreement, serious exposure may arise for non-compliant sellers or service provider. Consumers are entitled to terminate any non-compliant subscription agreement without being required to give a reason or pay a penalty.

The Regulation sets out common terms for all industry sectors, in line with the framework established by the Consumer Law. The obligations introduced under the Regulation, such as mandatory content and payment notices, ensure that consumers will be well-informed and able to monitor their subscription period more easily. Consumers will also benefit from facilitated termination proceedings, particularly as a result of the prohibition of automatic renewal. Previously, it was possible for sellers and service providers to renew agreements without the consumer's knowledge, thus imposing unjust payments.

1. Published in the Official Gazette numbered 28835 and dated 28 November 2013, and which come into force as of 28 May 2014

2. Published in the Official Gazette numbered 29246 and dated 24 January 2015

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