

Turkey Elevates Consumer Protection in Distance Agreements effective from 27 February 2015

28 May 2014

The Consumer Law numbered 6502 (the "**Consumer Law**")¹ came into effect on 28 May 2014. The Consumer Law regulates the fundamental principles which apply to distance agreements. Several rights and obligations applying to consumers and sellers/service providers have also been regulated under the Regulation on Distance Agreements (the "**Regulation**")². These include the obligation to inform consumers prior to concluding distance agreements, rights of withdrawal, and other practical issues with respect to distance agreements. The Consumer Law adopts a series of European Council Directives, including the Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the Protection of Consumers in Respect of Distance Contracts ("**European Directive**"). Therefore, the European Directive may play an important role in interpreting the local Regulation.

The requirements under the Regulation relate to specific information which must be provided to consumers, as well as when and how the information must be provided. Sellers and service providers in a range of sectors who do business via distance agreements must comply with the new requirements by 27 February 2015. Activities which are outside the scope of the Regulation include financial services, sales through automatic devices (for example, vending machines), usage of public phones, lottery and other games of chance, sales and other transactions regarding real estate, house leasing, package tours, sale and resale of time-share property, time-share vacation and long-term vacation, regular standing delivery of daily consumer goods such as food and beverages, assembly, maintenance and repair of goods, provision of social services to patients, the elderly, and children (such as in resting homes). The passenger transportation sector is also outside the Regulation's scope except for certain obligations which still apply to sellers/service providers in this sector. The Regulation also makes changes in relation to consumers' right of withdrawal period.

Sellers and service providers should carefully analyze the nature of their goods or services to correctly determine whether consumers will have a right of withdrawal from the contract and what mechanisms are required to satisfy the new requirements to provide information. The intricacies and operational aspects of each business model play an important role in ensuring compliance with the Regulation. Therefore, a case-by-case analysis is required when drafting distance agreements, taking into account the issues discussed below.

What is a "Distance Agreement"?

Distance agreements are primarily regulated by the Consumer Law. According to the Consumer Law, a "distance agreement" is an agreement concluded for goods or services, via a telemarketing system, without the simultaneous physical meeting of the seller/service provider and the consumer. In that sense, a telemarketing device must be used both during negotiations and also at the time of concluding the distance agreement (Art. 48 of the Consumer Law). For the purposes of the Regulation, a telemarketing device is taken to mean any devices and media that enable the conclusion of an agreement, without the simultaneous physical meeting of the parties. These include letters, catalogues, phone, fax, radio, TV, e-mail, SMS, and the internet. Therefore, examples of distance agreements include agreements concluded over the phone, or through e-commerce websites. These agreements, among others, will be subject to the Regulation's new requirements.

Some overlap exists between the scope of the Regulation and scope of the Law on Regulation of Electronic Commerce (the "**E-Commerce Law**")³. The E-Commerce law defines "electronic commerce" as "*online economic*

and commercial activities performed on an electronic environment and without the physical meeting of the parties". If an agreement meets the definitions of both "distance agreement" and "electronic commerce", then the provisions of the E-Commerce Law and Regulation will simultaneously apply to that agreement. The service provider will be obliged to comply with both pieces of legislation. Detailed information on the E-Commerce Law can be found in our [related article about the E-Commerce Law](#).

Providing consumers with certain information prior to concluding the agreement

Sellers/service providers must inform consumers about a series of essential and practical aspects of the agreement before concluding the distance agreement (Art. 48 of the Consumer Law; Art. 5 of the Regulation). This requirement already existed, but the Regulation increases the scope of information which sellers and service providers must provide to consumers.

The Regulation outlines in detail the mandatory content and specific items which sellers/service providers must provide to consumers. It is important for sellers and service providers to comply and provide each applicable piece of information. The Consumer Law stipulates an administrative fine of TRY 220 issued by the Ministry of Customs and Trade (the "**Ministry**") for each transaction or agreement which fails to meet this requirement. Since the fine applies separately to each non-compliant transaction or agreement, serious exposure may arise for non-compliant sellers/service providers if the Ministry monitors the market effectively. A similar fine existed within the framework of the abrogated Law on Protection of Consumer numbered 4077 (the "**Abrogated Consumer Law**").

Sellers/service providers bear the burden of proof for showing compliance with this obligation. Therefore, sellers/service providers should keep sufficient records to adequately show due performance of the obligation, in case a dispute arises, as was already required under the Abrogated Consumer Law.

How should sellers/service providers inform consumers?

How to implement effective practices to meet the requirements will be an important issue for the sellers and service providers whose activities fall within the scope of the Regulation, particularly for e-commerce businesses which conclude distance agreements as part of their daily business. The Regulation stipulates that consumers must be provided with the information either in writing or via a permanent data carrier (Art. 6/I of the Regulation). In this context, "permanent data carrier" is defined to mean SMS, e-mail, internet, disc, CD, DVD, memory card, and similar tools or media, which enable consumers to save or copy the information that is sent to the consumer (or vice-versa) and which also enables later access to such information. The Regulation states that the information disclosure method should be in accordance with the method used to conclude the distance agreement. The Regulation also requires the information to be presented to consumers in at least 12-point type, incomprehensible language, as well as in a clear and legible fashion (Art. 6/I of the Regulation). Therefore, the required information content and method of informing consumers must be evaluated and determined on a case-by-case basis for each distance agreement method. Such an evaluation would enable a service provider/seller to adequately display and prove in a possible dispute that the Regulation's requirements were fulfilled.

The Regulation adds an additional obligation on sellers/service providers for distance agreements concluded over the internet. For on-line distance agreements, sellers/service providers must provide certain pieces of information to consumers immediately before the consumer undertakes to make any payment (Art. 6/II of the Regulation) ("Internet-specific information disclosure"). Therefore, for on-line distance agreements, sellers/service providers must make two types of information disclosure:

1. Information which must be disclosed to all consumers before concluding a distance agreement (an obligation which applies irrespective of the method used in the distance agreement), and
2. Information which must be provided specifically to consumers in online distance agreements, immediately before undertaking to make a payment (the internet-specific information disclosure)

It is important that sellers/service providers ensure consumers confirm their receipt of the information disclosure(s) via a method that is in accordance with the telemarketing device which is being used to conclude the agreement. Otherwise, the distance agreement in question will be deemed to not have been legally concluded (Art. 7 of the Regulation).

Furthermore, sellers/service providers are obliged to clearly inform consumers of the fact that approving the order will mean the consumer is obliged to make a payment. The information must be provided immediately before the consumer approves their order. If a seller/service provider fails to meet this requirement, the consumer will not be bound by their order (Art. 8 of the Regulation).

Sellers/service providers are required to keep the data and documents which prove that consumers have been informed of the required information prior to the conclusion of each distance agreement. Sellers/service providers must keep this proof for three years from the date of the transaction. The Regulation also introduces a data storage obligation for third parties which provide a system that enables sellers/service providers to conclude distance agreements. Upon request, such third parties must provide the data they collect to consumers and relevant institutions (Art. 20 of the Regulation).

14 Day Right of Withdrawal Period

The right of withdrawal period has been increased from seven days to 14 days. The European Directive states that such withdrawal periods cannot be less than seven days. Therefore, the Ministry adopted a pro-consumer approach and extended the length beyond the required minimum period. Consumers can withdraw from distance agreements within 14 days and without being required to provide any justification or pay any penalties (Art. 9 of the Regulation). For distance agreements relating to provision of services, the 14 day period starts on the date the agreement is concluded. For agreements relating to the sale of goods, the period starts on the date the consumer receives the goods.

If sellers/service providers fail to inform consumers of their right of withdrawal in accordance with the Regulation, the withdrawal period is extended to last for one year, starting from the date the standard 14 day withdrawal period would have expired (Art. 10 of the Regulation).

How can consumers exercise the right of withdrawal?

To exercise the right of withdrawal, consumers can simply send a notification to the seller/service provider within the 14 day period. The consumer's notification can be sent either in writing (a physical letter), or via a permanent data carrier (defined above).

The Regulation contains a sample form which consumers may use when exercising the right of withdrawal. However, consumers are not required to use this form. Rather, consumers are simply required to send a clear declaration to the seller/service provider, which notifies of their decision to withdraw from the agreement (Art. 11 of the Regulation).

Obligations of parties following the withdrawal

If a consumer exercises their right to withdraw from the distance agreement, the seller/service provider must refund to the consumer all payments that have been collected so far, including shipment costs. The seller/service provider must do so within 14 days of receiving the consumer's withdrawal notification. The Regulation outlines further practical details for refunds in detail (Art. 12 of the Regulation). Consumers must send the goods back to the seller within 10 days of the withdrawal notification (Art. 13 of the Regulation).

Exceptions to the right of withdrawal

The Regulation lists a range of agreements and events where consumers are not entitled to a right of withdrawal unless the parties agree otherwise (Art. 15 of the Regulation). The exceptions stated in the Regulation are extensive. Therefore, sellers/service providers should consider whether their specific goods or services could fall under any of these categories. Notable exceptions relate to food and beverages, as well as instant electronic services.

Restrictions on Sellers/Service Providers

The Regulation imposes a range of restrictions on sellers/service providers in relation to conducting business via distance agreements. Notable restrictions on sellers/service providers are outlined below. However, sellers/service providers should consider their specific circumstances and business model on a case-by-case basis in order to determine which restrictions apply.

- Sellers/service providers must perform their obligations within the agreed time period. However, if the distance agreement is in relation to the sale of goods, the period cannot exceed 30 days (Art. 16/I of the Regulation).
- Sellers/service providers which provide a special phone line to consumers cannot charge a higher tariff for calling this phone line than the usual calling tariff (Art. 18 of the Regulation). E-commerce businesses which use a call center should take note of this restriction.
- Sellers/service providers cannot claim additional consideration from the consumer, other than the agreed price, unless the consumer has clearly approved such additional payment. If the options that require the consumer to make an additional payment are marked as default and the consumer has made such payment, the seller/service provider must immediately refund such payments to the consumer (Art. 19 of the Regulation).

1. Ratified on 7 November 2013, published in the Official Gazette numbered 28835, dated 28 November 2013.
2. Published in the Official Gazette numbered 29188, dated 27 November 2014.
3. Published in the Official Gazette numbered 29166, dated 5 November 2014.

Related Practices

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