

INFORMATION NOTE ON THE AMENDMENTS TO THE REGULATION ON DISTANCE CONTRACTS

As it is known, the Law No. 7416 Amending the Law on the Regulation of Electronic Commerce, that regulates the electronic commerce, was published in the Official Gazette dated July 7, 2022 and numbered 31889¹. Due to the rapid developments in the electronic commerce sector and for the solution of the problems encountered in practice, the Ministry of Commerce has now made certain changes in the Regulation on Distance Contracts ("**Regulation**"), and these changes have been regulated with the Regulation on the Amendment of the Regulation on Distance Contracts published in the Official Gazette dated August 23, 2022 and numbered 31932 ("**Amendment Regulation**"). The provision of the Amendment Regulation regarding the refunds for the payments via credit cards will enter into force on January 1, 2023, and all other provisions will enter into force on October 1, 2022.

With the Amendment Regulation, in summary, definitions of the concepts of "intermediary service provider" and "platform" within the scope of distance contracts were made; intermediary service providers are held jointly and severally liable together with the sellers and suppliers within the scope of obligations such as provision of preliminary information to the consumer, confirmation of preliminary information, incomplete information, exercise of the right of withdrawal, refund of the payment to the consumer, and new regulations have been introduced regarding the consumer's right of withdrawal. Although some of these regulations are also included in the Regulation on Service Providers and Intermediary Service Providers in Electronic Commerce, more detailed and comprehensive provisions are included in the Amendment Regulation.

I. WHAT IS NEW WITH THE AMENDMENT REGULATION?

1. Scope of the Regulation

With the Amendment Regulation, it has been regulated that value-added electronic communication services established via short messages and fully executed simultaneously on a non-subscription basis, donations within the scope of the Aid Collection Law No. 2860 and value-added electronic communication services offered by public institutions, are outside the scope of the Regulation.

2. New Definitions

With the Amendment Regulation, intermediary service provider and platform definitions have been added to the Regulation as indicated below:

- **Intermediary service provider:** "The real or legal person who mediates the establishment of a distance contract on behalf of the seller or supplier by using or making available remote communication tools with the system it has created", and
- **Platform:** "The system created by the intermediary service provider in order to mediate the establishment of a distance contract, except for the common public electronic platform where public services are offered from one place".

3. Amendments to the Preliminary Information Obligation

a. Content of preliminary information: The scope of the obligation of preliminary information, which was previously applicable for the sellers and suppliers, has been extended to apply to intermediary service providers as well. Accordingly, in the preliminary information, the following information shall also be included:

- (i) In addition to those of the seller and the supplier, the name or title, the MERSIS number or tax

¹ You may reach our relevant information note via the following link: <https://www.guner.av.tr/articles/16-august-2022>

identification number, full address, telephone number and similar contact information of the intermediary service provider, as well as information on any other contact information for the consumers to submit their complaints,

- (ii) In addition to the information on payment, delivery and performance, time of delivery or performance compatible with the time promised in the relevant commercial advertisements and promotions, as well as the resolution methods of the intermediary service provider regarding complaints, in addition to those of the seller or the supplier, and
- (iii) In cases where a right of withdrawal exists, the terms, duration and procedure of the exercise of such right, information on the carrier anticipated by the seller for the return of the goods, as well as the amount of return cost, which must not exceed the delivery cost, and the party to cover such amount in case the goods are returned with such carrier, and that the consumer shall cover return cost in case of return with a carrier other than the one specified by the seller.

b. Method of preliminary information: Prior to the amendment, the seller or supplier were required to provide the entire information within the scope of the preliminary information in writing until the delivery of the goods or the performance of the service at the latest, if the distance contract was established through voice communication or through a means where the information regarding the order was presented in a limited space or time. As per the amendment, it is now possible to provide this information via a permanent data storage device as an alternative to written submission.

c. Additional obligations of the intermediary service provider within the scope of preliminary information: With the Amendment Regulation, in case the distance contract is established through a platform, the intermediary service provider is held jointly and severally liable together with the seller or the supplier for the provision, confirmation and proof of preliminary information; and in cases where data entry is made by the intermediary service provider, it is regulated that the intermediary service provider shall be liable for the deficiencies in the mandatory matters specified in the Regulation and the accuracy of the data within the scope of preliminary information.

The obligation of the seller or the supplier to ensure that the consumer confirms that he/she has received the preliminary information in line with the communication tool used, and the obligation of informing the consumer in a clear and understandable manner that the order placed means payment obligation, just before the consumer approves the order, has been extended so as to cover the intermediary service providers as well. Likewise, in addition to the seller and the supplier, intermediary service providers have been added to the scope of the obligation to prove that the consumer has been informed on the right of withdrawal.

In addition, the intermediary service provider is held responsible for the compatibility and proof of the information promised in the advertisements and promotions made on the platform regarding the goods or services offered for sale, with the mandatory content to be included in the preliminary notification.

4. Amendments to the Consumer's Right of Withdrawal

a. Exercise of the right of withdrawal: Intermediary service providers have also been added to the scope of the notification to be directed by the consumer to the seller or supplier for the exercise of the right of withdrawal, thus enabling the consumer to send the notification regarding the exercise of the right of withdrawal to the intermediary service provider as an alternative to the seller or the supplier. Additionally, the period specified as a minimum of ten days for the consumer to send to the seller or supplier, or to the authorized person, the goods for which he/she has exercised right of withdrawal, has been increased to fourteen days.

b. Obligations of the seller or the supplier within the scope of the right of withdrawal: Prior to the amendment, the seller or the supplier was obliged to return all the payments collected, including the costs of delivery of the goods to the consumer, if any, within fourteen days from the date of receipt of the notification regarding the exercise of the consumer's right of withdrawal. With the amendment, instead of the date when the notification regarding the consumer's right of withdrawal reaches the seller, the date on which the goods subject to the right of withdrawal is delivered to the carrier specified in the preliminary information for return is taken as basis and the fourteen-day return obligation period starts from this date. In addition, it is regulated that if the consumer returns the goods with a carrier other than the one specified for return, the said obligation

shall be in place from the date the goods reach the seller. In addition, in distance contracts established through a platform, the seller or the supplier is now obliged to immediately deliver the notification that the consumer has exercised his/her right of withdrawal to the intermediary service provider.

Another amendment is in relation to return costs. Prior to the amendment, it was regulated that the seller or the supplier had to make all the refunds at once, in accordance with the payment instrument used by the consumer when purchasing, and without causing any expense or obligation to the consumer. With the Amendment Regulation, an exception to this obligation has been introduced and it has been regulated that the consumer shall be obliged to cover the return costs, which must not exceed the delivery costs, if, in the preliminary information, it is agreed and the return cost amount is included for the returns to be made with the carrier specified by the seller. If the consumer requests, the return cost can be deducted from the cost of the goods or services to be returned and the delivery costs. On the other hand, in case the preliminary information does not include any information about the carrier that the seller anticipates for the return, the amount of the return cost determined in the case of the return of the goods with this carrier, the party to cover such amount, and that the consumer will cover the return cost in case of the return of the goods with a carrier other than the one specified, the said cost will be covered by the seller or the supplier. It should be noted that if the goods delivered to the consumer are defective, the consumer cannot be held liable for the return costs.

Within the scope of the obligation to refund the payment, if the payment has been made by credit card, the card issuing institutions are now obliged to add the transferred amount to the usable limit of the card holder at once, following its receipt.

c. Obligations of the intermediary service provider within the scope of the right of withdrawal: Within the scope of the exercise of the right of withdrawal, it has been regulated that, in the case the right of withdrawal has been exercised by the consumer prior to the delivery of the goods, the seller, as well as the intermediary service provider, within the scope of the distance contracts established through a platform and where the collection of the payment was mediated, shall be obliged to return all the payments collected, including the costs of delivery of the goods to the consumer, if any, within fourteen days from the date on which the notification regarding the exercise of the right of withdrawal is received. Similarly, in case the right of withdrawal is exercised in contracts regarding the performance of a service, the supplier, as well as the intermediary service provider, within the scope of the distance contracts established through a platform and where the collection of the payment was mediated, shall be obliged to return all the payments collected within fourteen days from the date on which the notification regarding the exercise of the right of withdrawal is received.

Except for the cases where the payment is transferred to the seller or the supplier after the delivery or performance of the goods or services to the consumer, in case a payment is collected on behalf of the seller or the supplier in the distance contracts established through a platform, the intermediary service providers shall also be jointly and severally liable together with the seller or the supplier for the obligation to make all the refunds to the consumer at once in accordance with the payment instrument used by the consumer when purchasing, and without causing any expense or obligation to the consumer.

If the intermediary service provider collects payments on behalf of the seller or the supplier, the intermediary service provider is held jointly and severally liable together with the seller or the supplier for the refund of the payment of the goods or services as well as the delivery costs that it has collected within fourteen days starting from the date on which (i) the notification regarding the exercise of the right of withdrawal is received, in case the right of withdrawal is exercised by the consumer prior to the delivery of the goods or the performance of the services, (ii) the goods subject to the right of withdrawal are delivered to the carrier specified for return, or the goods reach the seller if returned with a carrier other than the one specified for return, in case the right of withdrawal is exercised by the consumer after the delivery of the goods and the payment has not yet been transferred to the seller as of the date on which the notification of withdrawal is received, and (iii) the notice of termination is received, in case the right to terminate the contract is exercised by the consumer as foreseen in the Regulation.

Within the scope of the Regulation, if the carrier specified in the preliminary information for the return does not have a branch at the consumer's location, the seller was already obliged to ensure that the goods to be returned are received from the consumer without demanding any additional costs. With the Amendment Regulation, in the distance contracts established through a platform, if this information is not included in the preliminary information or if the said carrier does not have a branch at the consumer's location due to a reason

attributable to the intermediary service provider, the said costs and obligations are imposed on the intermediary service provider.

Finally, with the Amendment Regulation, intermediary service providers are obliged to establish the necessary system on the platform so that the consumer can fill out the withdrawal form or send the withdrawal statement, and to immediately convey to the consumer the confirmation that the withdrawal statements submitted by the consumers have reached it and the seller or the supplier.

d. Effect of the right of withdrawal on ancillary contracts: As per the Regulation, the seller or the supplier is obliged to immediately notify the third party, who is a party to the ancillary contract, that the consumer exercised the right of withdrawal. With the Amendment Regulation, this obligation has been expanded to include intermediary service providers as well and it has been regulated that the intermediary service provider shall also be liable for making this notification in case of mediation in the ancillary contract within the scope of the distance contracts established through a platform. Within this context, the definition of "ancillary contract" in the Regulation has been extended to include intermediary service providers as well.

e. Exceptions to the right of withdrawal: With the Amendment Regulation, the exceptions to the right of withdrawal have been extended and the consumer's opportunity to exercise right of withdrawal has been removed in the following contracts, unless otherwise agreed by the parties: (i) contracts regarding movables, which are required to be registered according to the Highway Traffic Law No. 2918, and unmanned aerial vehicles subject to a registration or recoding requirement, (ii) contracts regarding mobile phones, smart watches, tablets and computers, which have already been delivered to the consumer, (iii) contracts concluded by auction in the form of live auctions, and (iv) contracts for the goods for which it is specified in the advertisement or user manual that the installation or assembly is to be made by the seller or authorized service and such installation or assembly has already been made.

5. Amendments to the Performance of the Contract and Delivery

a. Performance time: Prior to the amendment, there was a regulation that the seller or the supplier had to fulfill its obligation within the period of time that it promised from the date on which the consumer's order was received, and this period could not exceed thirty days in any case in the sale of goods, otherwise the consumer was entitled to terminate the contract. With the amendment, contracts for goods prepared in line with the consumer's request or personal needs are excluded from the scope of this regulation, considering that the performance of such contracts may require a longer period due to their nature. In other words, although the seller or the supplier is still bound by the performance period it has committed to the consumer in terms of such contracts, the promised performance period may exceed thirty days.

b. Impossibility of performance: Within the scope of the Regulation, it was already regulated that in cases where the performance of the goods or services subject to the order becomes impossible, the seller or the supplier shall notify the consumer in writing or via a permanent data storage device within three days from the date of becoming aware of this situation, and shall refund all the collected payments, including the delivery costs, if any, within fourteen days at the latest, following the date of notification. The Amendment Regulation also includes the intermediary service providers within the scope of this obligation, provided that they collect payments on behalf of the seller or the supplier.

6. Other Obligations of the Intermediary Service Providers

a. Obligation to establish a system and keep it available uninterruptedly: It is regulated that the intermediary service provider is obliged to establish a system that is convenient for consumers to transmit and follow their requests and notifications throughout the period of exercise of the rights and obligations arising from the distance contracts established through a platform and to keep such system available without interruption. The scope of these requests and notifications is determined as follows: (i) notification that the right of withdrawal has been exercised, (ii) notice of termination of the contract, (iii) request for refund, (iv) request by the consumers for records of the transactions made with the seller or the supplier, and (v) requests and complaints regarding delivery or performance. The intermediary service provider is obliged to convey such requests and notifications to the seller or the supplier immediately.

b. Record keeping: The intermediary service provider is held liable for keeping the records of the consumer's

transactions with the sellers or the suppliers for a period of three years regarding the matters regulated in the Regulation and providing this information to the relevant institutions and organizations as well as the consumers, if requested. In addition, it should be noted that in accordance with the Law No. 6563 on the Regulation of Electronic Commerce, intermediary service providers are obliged to keep information, documents, ledgers and electronic records of their business and transactions within the scope of the specified law for a period of ten years from the date of the relevant business or transaction².

c. Acts in violation of the contract: In the event that the intermediary service provider causes the seller or the supplier to act in violation of Article 48 of the Law on the Protection of the Consumer No. 6502, which regulates distance contracts, and the provisions of the Regulation, due to its non-contractual practices regarding the contract that it has made with the seller or the supplier on the mediation services, the intermediary service provider is held solely liable for all the consumer transactions affected by this situation.

d. Sales with campaigns, promotions or discounts: In the event that the intermediary service provider organizes sales with campaigns, promotions or discounts without the approval of the seller or supplier, in the distance contracts that it mediated regarding such sales, the intermediary service provider is held solely liable for the non-fulfillment of the contract or the failure to fulfill the contract at all, if caused by the failure to meet the campaign and similar commitments.

e. Additional payments: It has been already regulated that if the consumer has made a payment due to the fact that the options which cause an additional payment obligation were offered to the consumer as pre-selected automatically without the consumer's explicit consent, the seller or the supplier must immediately refund such payments. With the Amendment Regulation, intermediary service providers are also included within the scope of this obligation, provided that they collect payments on behalf of the seller or the supplier in the distance contracts established through a platform.

II. CONCLUSION

As explained above, the Amendment Regulation includes a wide variety of amendments to both the advantage and disadvantage of the consumer and the seller/supplier/intermediary service provider. In particular, it would be beneficial for the intermediary service providers to start fulfilling the relevant obligations, taking into account the effective date of the Amendment Regulation. It is also recommended that the consumers should carefully examine the amendments in order to increase their awareness of both the obligations and favorable regulations.

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Should you have any queries on the above, please do not hesitate to contact us.

Güner Law Office was established in 1996 and has since grown into one of the major corporate, M&A, banking and finance, energy, TMT and dispute resolution practices in Turkey.

Contact

Ecem Çetinyılmaz
Managing Associate
ec@guner.av.tr

Uğurkan Şeber
Associate
us@guner.av.tr

Doğaç Karakurt
Associate
dk@guner.av.tr

Deniz Bade Akkoyun
Trainee
dba@guner.av.tr

Güner Hukuk Bürosu
Levent Caddesi, Alt Zeren Sokak No.7
Levent 34330, İstanbul
T +90 212 282 4385
F +90 212 282 4305
info@guner.av.tr
www.guner.av.tr

² Said regulation will enter into force on January 1, 2023.