Turkish E-Commerce Law: The new Opt-in and Opt-out Regime will put a Halt on Unsolicited SMS and E-mail messages

The Law on Regulation of Electronic Commerce (E-Commerce Law) is published in the Official Gazette on 5 November 2014 (effective as of 1 May 2015), introducing the new opt-in and opt-out system for commercial electronic communications in Turkey.

Why Turkey needed the E-Commerce Law

According to the figures provided by the Interbank Card Centre (Bankalararası Kart Merkezi - BKM), the number of online transactions that paid via domestic and foreign credit cards in Turkey in 2013 is recorded as 168 million having a total amount of approximately TL 34 billion. In 2014, approximately 141 million transactions have been recorded with an amount of TL 31 billion until the end of the third quarter and the sector is expected to grow substantially in 2015 and onwards. Alongside with its substantial benefits and facilitation of commerce, this rapid progress in information technologies has created a need to define new terms and rules, obliging the governments to adapt their old systems and legislations to cover this new commerce method.

In order to create a legal framework for the free movement of information society, the Turkish government enacted the E-Commerce Law, which is in line with the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. The E-Commerce Law will become effective on 1 May 2015.

What the E-Commerce Law regulates

The E-Commerce Law regulates the following two areas: (i) execution of contracts through electronic means and the obligations imposed on individuals and legal entities engaging in e-commerce transactions, which are called “service providers” as per the E-Commerce Law; and, (ii) unsolicited commercial electronic messages.

What type of information should be provided to conclude an electronic contract

The reasoning of the E-Commerce Law provided by the Turkish government is that formation of contracts and timing of formation of contracts will continue to be regulated by the Turkish Code of Obligations and parties’ intention will be construed in accordance with the general principles of law. Nevertheless, certain information must be clearly communicated before and after the formation of the contract if such contract is entered into electronically. Such information include; information on (i) different technical steps to be
followed to conclude the contract; (ii) confidentiality rules applicable to contracting parties; (iii) whether the concluded contract will be kept by the service provider and whether it will be accessible; and (iv) alternative dispute resolution mechanisms (if any).

As per the E-Commerce Law, when an order is placed by a purchaser through electronic means:

- service providers must make available to the purchaser the terms of the contract, including the total amount payable, at the time of approval of the order and before entering payment details;
- service providers have to acknowledge the receipt of the order without any delay, by electronic means;
- the order and the acknowledgement of receipt are deemed to be fulfilled, at the time such declarations are accessible by the parties; and,
- Service providers must make available to the purchasers, appropriate, effective and accessible technical means allowing them to identify and correct input errors, prior to the placing of the order.

E-Commerce Law allows parties, who are not consumers, to agree differently on the above-listed principles.

**How E-Commerce Law proposes Unsolicited SMS and E-mail messages should be handled**

- **The Opt-in System**: E-Commerce Law adopts the opt-in system, also favoured by the EU, and stipulates that commercial electronic messages can only be sent to receivers by obtaining their prior consent. The required consent can be delivered in writing or through any kind of electronic communication device. The content of the message must be in line with the scope of the consent obtained from receivers. In addition, the electronic message must include information allowing the receiver to identify the sender, or in case the sender is an intermediary service provider, information on the legal entity, on whose behalf the sender is sending the communication, must be provided.

- **The Exception for Craftsmen and Merchants**: E-Commerce Law provides an exception for electronic messages to be sent to craftsmen and merchants. In such case, prior consent is not required and instead, the opt-out system will apply for sending commercial electronic messages.

- **The Opt-out System**: E-Commerce Law stipulates that receivers should be provided the right to refuse receiving commercial electronic messages. The opt-out system should be established in a way that recipients can easily reject receiving such messages, free of charge, at any time, without the need to provide any reasoning. Upon receipt of the rejection request, the service provider has three days to stop sending the messages, which the relevant receivers chose to opt-out.

- **Changes to the Electronic Communication Law no: 5809 in line with the opt-in system brought by E-Commerce Law**: In order to establish consistency, the E-Commerce Law amends the Electronic Communication Law and according to this amendment, communication with the subscribers and users through different electronic communication methods is prohibited, unless such subscribers and users have provided their prior consents. In case the contact details of these subscribers and users are obtained during provision of goods and services to such persons, communications can be provided without a prior consent, provided that such persons are informed of these future communications and are provided with the option to reject such future communications. Similar to the E-Commerce Law provisions, the Electronic Communication Law now states that subscribers and users should be provided with the option to reject, or withdraw their prior consents, to receive communications.

- **Liabilities of intermediary service providers**: Intermediary service providers are individuals or legal entities, which provide electronic commerce medium to third persons for economical and
In order to limit the liabilities of intermediary service providers, the E-Commerce Law stipulates that intermediary service providers are not required to check the contents provided by individuals and legal entities, which use their electronic medium or to conduct a research on whether such content or the good and services therein are in violation of the law. The E-Commerce Law indicates that a new regulation will be enacted to regulate the liabilities of intermediary service providers.

- **Provisions regarding protection of personal data**: Service providers and intermediary service providers are liable for the safekeeping of personal data obtained during the transactions entered into in accordance with the E-Commerce Law. Personal data cannot be disclosed to third persons or used for any other purposes without the consent of the relevant person.

**Penalties imposed in case of violation of E-Commerce Law**

E-Commerce Law provides appropriate and yet dissuasive administrative penalties for breach of the obligations under such Law. In case commercial electronic messages are sent without prior consent of the recipient, the applicable penalty will be between TL 1,000 to TL 5,000. In case such commercial electronic messages are sent, without prior consent, to more than one receiver, such penalty will be ten times the applicable penalty. Penalties for violation of the remaining obligations set out in the E-Commerce Law range from TL 1,000 to TL 15,000 depending on the nature of the breach.