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THE NEW E-COMMERCE LAW WILL TAKE EFFECT SOON IN TURKEY

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The Law No. 6563 on the Regulation of Electronic Commerce (the “E-Commerce Law”) has recently been approved by the Grand National Assembly of Turkey and published in the Official Gazette on 05.11.2014. The E-Commerce Law will enter into force by 01.05.2015.

The E-Commerce Law has been enacted in parallel with the EU Directive on E-Commerce (2000/31/EC).

The major provisions to be underlined in the E-Commerce Law are related to commercial electronic communication. Currently, for sending commercial e-communications, opt-out principle applies in our jurisdiction and a tacit consent of the consumer is considered sufficient. As from 01.05.2015, the opt-in mechanism will be principally applied, and the prior explicit consent of the consumer will be obligatory for service providers¹ to send electronic communication.

Such consent may be obtained in writing or through electronic media, and the content of the communication should match with the consent given by the consumer. However, service providers do not need to obtain consent in the following situations: (a) Where the recipient provides contact information, further consent is not needed for messages regarding changes to products and services; and (b) Commercial e-communication may be sent to tradesmen/artisans and merchants without obtaining consent. However, as per Provisional Article 1 of the E-Commerce Law, this requirement will not apply to databases established by obtaining the data subjects’² consent before the E-Commerce Law enters into force.

Recipients may refuse to accept further communication at any time and without showing any ground, and service providers must cease sending further commercial e-messages within three working days of receipt. Service providers must also ensure that such a refusal notice can be sent through electronic means easily and free of charge. All commercial communication must include information on how to unsubscribe.

The electronic communication 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.

Coming to the sanctions, breach of these leads to administrative fines ranging from TRY 1,000 to 15,000 (approximately EUR 350 to 5,100). If communication is sent to multiple recipients in one go without obtaining consent, the fine may be increased up to ten times the original fine.

As a final point, the E-Commerce Law also rules that the service providers and intermediaries shall be responsible for the storage and protection of personal data; and that they should not share personal data with third parties or use it for any other purpose without the consent of the data subject.

The E-Commerce Law is a very important legal step in Turkey as being the first and only law regulation electronic commerce rules together with data protection. It seems that it will be very useful for protecting consumers from unsolicited electronic communications, and the opt-in principle will apply for any electronic communication in Turkey as of 01.05.2015.

¹In the E-Commerce Law, "Service Provider" is defined as real persons or legal entities which conduct business of e-commerce. Whereas "Intermediary service provider" is defined as real persons or legal entities providing an online platform to facilitate e-commerce for service providers.

²Data owner.