

AMENDMENTS ON THE REGULATION ON COMMERCIAL COMMUNICATION AND ELECTRONIC COMMERCE

January 7, 2020

Major amendments were made on the Regulation on Commercial Communication and Electronic Commerce ("**Regulation**") through the regulation published on the Turkish Official Gazette on January 4, 2020.

Commercial Electronic Message Management System

The most significant amendment in the Regulation is the establishment of the Commercial Electronic Message Management System (the "**MMS**"). As per the amended Article 7, those who wish to send commercial electronic messages are obliged to enroll to the MMS. Furthermore, commercial electronic messages shall not be sent to those, whose approvals do not exist on the MMS.

The Regulation defines Service Provider ("**SP**") as those who conduct e-commerce activities; and Intermediary Service Provider ("**ISP**") as those who provide its electronic commerce platform for the performance of economic and commercial activities by others. However, considering the context of the Regulation and verbal information provided by the Ministry of Commerce officials, the ISP concept should be assessed as the parties provide mailing and communication services to SPs. On the other hand, in case marketplaces provide such mailing/communication services to SPs, they may be also deemed as ISP under the Regulation.

SPs may obtain recipients' approval via the MMS or any other method. However, where the approval is obtained via methods other than the MMS, the SP shall be obliged to register such approval with the MMS in **three business days**. In addition, the burden of proof shall be on the SP itself, in such cases. Approvals, which are not registered with the MMS, shall be deemed to be invalid. This provision shall come into force as of **September 1, 2020**.

SPs are obliged to transfer the previously obtained approvals to the MMS until **June 1, 2020**. However, there is no clear provision on the approvals, which may be obtained between June 1, 2020 and September 1, 2020. In order to avoid any violation in this period, it will be safer for SPs to register the approvals and rejection notifications with the MMS in due time.

Following the deadline for the transfer of existing approval databases to the MMS, an automatic message shall be sent to the recipients, in order to inform them on the transfer and to offer them an opt-out mechanism. Approval of the recipients, who do not prefer to opt-out until **September 1, 2020** are deemed to be valid.

The Ministry of Commerce has the authority to postpone the dates set out in this section for 3 months.

Obligations of ISPs

Pursuant to the Article 11 of the Regulation, ISPs are obliged to both provide the technical means with regards to the obligations set out for SPs and ensure that their systems are compatible with MMS.

ISPs are not liable for ensuring the content provided by the persons using the e-platform and inspecting whether there are any illegal activities related to the content on the platform. Moreover, ISPs shall not obtain approval of recipients on behalf of SPs, for promoting the SPs' goods and services or their business.

It is prohibited for the ISPs to send commercial electronic messages on behalf of SPs who are not enrolled to the MMS. Prior to sending such messages on behalf of the SPs, the ISPs shall verify whether the recipients' approvals are registered with the MMS. Where the recipient's approval is missing on the MMS, the ISP shall not send commercial electronic messages. However, if the commercial electronic messages are sent via e-mail, the ISP shall not be obliged to check the above-mentioned approvals.

ISPs shall obtain a declaration from SPs, who wish to send commercial electronic messages, which are not subject to approval of the recipient (such as service change notices, subscription information, etc.).

ISPs are obliged to notify the MMS, in case the recipients cancel the subscription. Meanwhile, the obligation for them to state either their brand name, tradename or the company name within the commercial electronic communication is annulled.

Amendments on Obtaining Approvals

Approvals obtained in electronic media excluding those obtained via the MMS, recipients should be informed through their electronic communication address, in 24 hours. Such communication shall include an opt-out mechanism. This provision shall not be applicable for the approvals, which are obtained via the MMS. This provision shall come into force as of **September 1, 2020**.

Retention Period for the Records

Pursuant to the amendments, the retention period for the records is extended. With this regard, ISPs/SPs are obliged to retain the records of **(i)** approvals for 3 years following the cease of approvals' validity, and **(ii)** other records related to commercial electronic messages for 3 years from the creation of records. The provision on the retention of records shall be deemed in force as of **January 4, 2020**.

The Content of Commercial Communication

In cases where the commercial communication is made through audio calls, traders are obliged to state their trade names and craftsmen are obliged to state their names and surnames to the recipients. The SPs may also provide other introductory information (tradename, business name, etc.) as well.

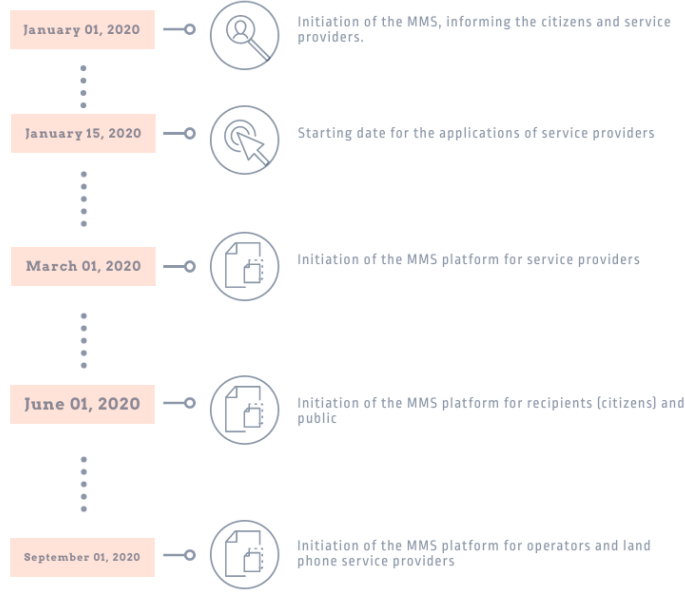
The Complaints Can Be Made Over MMS

Pursuant to the amendments on the Article 14 of the Regulation, complaints can be submitted over both online government system (namely, E-Devlet) and the MMS. Within this regard, the applications shall be subject to a preliminary inspection over MMS. After such inspection, the complaints will be finalized by provincial directorate.

ISPs who send commercial electronic messages on behalf of the SPs shall respond to the inquiries over the MMS **in fifteen days**. The amendments on complaints procedure shall come into force as of September 1, 2020.

Registry Calendar

The calendar published on the official website of MMS, related to the registry process is as follows.



Compliance

Most of the amendments made by the Regulation shall enter into force as of September 1, 2020. However June 1, 2020 should also be noted since it is the deadline for transferring existing databases to the MMS and completing the transition. However, updates on these dates need to be monitored since the Ministry of Commerce is authorized to postpone the dates set out in the Regulation.

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