Legality

"A seminal publication of Şengün Group"

April - May 2024 | E-Bulletin

ŞENGÜN GRUP
Hukuk | Medya | Strateji
Law | Media | Strategy
www. sengungroup.com

ŞENGÜN & PARTNERS
Avukatlık Ortaklığı | Attorney Partnership
www. sengunpartners.com

ŞENGÜN ALSP
Alternatif Hukuk Servis Sağlayıcılığı
Alternative Legal Service Provider
www. sengunalsp.com

APRIL - MAY 2024

Legality / Index

LEGALITY

INDEX

Legality
Editor’s Note

Dear Reader,

Şengün Academy presents its April-May 2024 newsletter that covers the latest local and global developments.

Our articles include the Obligations of Electronic Commerce Intermediary Service Providers as per Amendments Arising from Law no. 7416 and the Turkish Companies’ Process of Compliance with Carbon Border Adjustment.

We will trace the development of sales and marketing as the guest sector of this month. Our article on Occupational Health and Safety Week, May 4-10, will explain the measures that employers and employees can take.

Our “News to the World” section will compile the latest regulations, decisions, communiqués, laws, arrangements and amendments concerning national and international relations. In “World News”, we will report on the latest global developments with transparency as our guiding principle.

We will announce the latest news from our team in “News from Şengün”.

Enjoy reading!

Istanbul, April-May 2024
Şengün Academy

Legality / Editor’s Note

Articles

Article

Obligations of Electronic Commerce Intermediary Service Providers as per Amendments Arising from Law no. 7416

Law no. 6563 was amended by Law no. 7416 Amending the Law on the Regulation of Electronic Commerce ("Law"), published in Official Gazette no. 31889 of 7 July 2022. The revised Law lays down a set of new rules regarding e.g. the obligations of electronic commerce intermediary service providers, administrative fines for breaches of these obligations, electronic commerce licenses, and the extension of the relevant powers of the Ministry of Trade (''Ministry'').

Who is the Electronic Commerce Intermediary Service Provider?

According to the Law, an electronic commerce intermediary service provider is an intermediary service provider that enables the execution of contracts or the placing of orders for the supply of goods or services of electronic commerce service providers in an electronic commerce marketplace.

Obligations of the Intermediary Service Provider

Additional article 2 of Law no. 7416 stipulates the obligations of Intermediary Service Providers and imposes administrative fines for breaches of the obligations set forth in this article pursuant to article 12 of the Law.

1- Accordingly, an Intermediary Service Provider is required:

- Not to sell or mediate the sale of goods whose trademark use rights belong to it or which bear the trademark of itself or persons with which it has an economic integrity relationship in electronic commerce marketplaces, and not to provide access between different platforms where these goods are sold, and not to promote such platforms,

- To enable the Service Provider to provide the information in the documents required under the Tax Procedure Law in the electronic commerce marketplace where it sells,

- Not to engage in marketing and promotional activities in online search engines with the use of it's or the Service Provider's registered trademarks that constitute the main elements of their domain names registered in the Electronic Commerce Information System ("ETBIS"), without obtaining their written or electronic consent,

- To verify the identifying information of the Service Provider from its documents or public electronic systems of the relevant institutions.

2- An electronic commerce intermediary service provider whose net transaction volume in a calendar year is over ten billion Turkish lira is also required:

- To use the data obtained from the electronic commerce service provider and the buyer only for providing intermediary services and not for competing with electronic commerce service providers in electronic commerce marketplaces or other electronic commerce platforms where it provides intermediary services,

- To provide the technical means necessary for the electronic commerce

service provider to be able to transfer its sales data and effectively access them and the processed data derived from them without any charge,

• To block access between its different electronic commerce platforms and not to promote them in these platforms, except for those included in the net transaction volume,

• To notify the Ministry of Trade of the company shareholders' share transfers or acquisitions reaching five percent or its multiples within one month from the date of the recording of the transfer or acquisition with these ratios in the share ledger, except for the stock exchange shares dematerialized pursuant to article 13 of Law no. 6362,

• To notify the Ministry when it establishes a company, takes over the shares of an established company or transfers such shares, within one month from the date of registration of such a company in the trade registry in case of company establishment, and from the date of registration of the transfer in the share ledger in case of a transfer,

• To provide the Ministry with an audit report prepared by an independent audit firm authorized by the Capital Markets Board as per Law no. 6362 in accordance with the procedures and principles determined by the Ministry, which will provide information about the electronic commerce intermediary service provider's activities, management and organizational structure, current shareholders and their share ratios, subsidiaries and the share ratios in these subsidiaries, the details of the persons with whom it has an economic integrity relationship, its financial status including its financial statements, and other issues laid down in the regulation,

• To provide the Ministry with a report specifying the procedures for the detection of unlawfulness in the information provided by the electronic commerce service provider and the

A set of new regulations has been laid down regarding the administrative fines for breaches of the obligations of electronic service providers, electronic commerce licenses, and the extension of the relevant powers of the Ministry of Trade.

irregularities detected through such procedures in accordance with the procedures and principles determined by the Ministry.

3- An electronic commerce intermediary service provider whose net transaction volume in a calendar year is over thirty billion Turkish lira and number of transactions, excluding cancellations and returns, is over one hundred thousand must comply with the following obligations in addition to the ones specified in the first and second articles:

• It must adjust its advertising expenditure based on the amount set down in the Law. The amount calculated thus constitutes the total advertising budget of the electronic commerce intermediary service providers and the electronic commerce service providers having an economic integrity relationship with them and operating in the electronic commerce marketplace, as included in the net transaction volume.

• It may offer promotions, rewards, points, vouchers, gift cards, etc. in accordance with the ratio specified in the Law. The amount calculated thus constitutes the total discount budget to be offered by the electronic commerce intermediary service provider and the persons with whom it has an economic integrity relationship to the buyers and the electronic commerce service providers in the electronic commerce marketplace, and the budget can be used in one fourth of the quarterly periods of a calendar year at most. This limitation includes the costs incurred on behalf of the buyer and the electronic commerce service provider as well as the economic benefits provided to them. The Ministry is entitled to set an upper limit for the use of the amount calculated according to this paragraph by sectors and categories of goods and services.

• It may not restrict the electronic commerce service provider's commercial relations, provision of goods or services at the same or different prices through alternative channels, or advertising, and force it to obtain goods or services from any person. It may not add any clause allowing this to the intermediary service agreement.

4- An electronic commerce intermediary service provider whose net transaction volume in a calendar year is over sixty billion Turkish lira and number of transactions, excluding cancellations and returns, is over one hundred thousand must comply with the following obligations in addition to the ones specified in the first, second and third paragraphs:

• It may not enable the banks with which it has an economic integrity relationship or the companies subject to Law no. 6361 to carry out activities relevant to their services, including offering credits, except for credit card payments and other payments as per Law no. 5464 on Bank Cards and Credit Cards, in the electronic commerce marketplaces where it provides intermediary services,

• In electronic commerce marketplaces where it provides intermediary services;

- It may not facilitate any activities related to the acceptance of electronic currencies issued by electronic money institutions with which it has an economic integrity relationship as per Law no. 6493.

- It may not provide services related to means outside the scope of Law no. 6493 or enable the provision of such services by persons with whom it has an economic integrity relationship.

• It may not engage in goods transportation as per Road Transport Law no. 4925, serve as a transportation organizer as per Decree Law no. 655 on Certain Regulations Regarding Transport and Infrastructure, and provide postal services as per Postal Services Law no. 6475, except for sales in electronic commerce marketplaces where it provides intermediary services, sales as an electronic commerce service provider and sales other than electronic commerce.

• If it offers an electronic platform for advertisements for goods or services, it may not enable concluding an agreement or placing an order for the supply of goods or services in the same platform. If these services are provided in different electronic platforms by itself or by persons with whom it has an economic integrity relationship, it may not provide access between these platforms and promote them.

Monetary limits are raised according to the annual change rate in the volume of electronic commerce calculated each year using ETBIS data. The limits to be applied to the net transaction volume for the calendar year preceding the date of the increase and the annual change rate of the electronic commerce volume are announced on the website of the Ministry in February at the latest.

Notification of Unlawful Content

Article 9 of the Law regulates the intermediary service provider's liability for the service provider's unlawful content and services and obligation to notify the relevant public institutions of any unlawfulness within its knowledge.

Accordingly, unless otherwise provided in other laws, the intermediary service provider will not be liable for any unlawfulness in the service provider's content and its goods or services. However, if the intermediary service provider is aware of any unlawfulness and/or breach of intellectual property rights, it must remove the content in question and notify the relevant public institution and organization of the matter.

Personal Data Protection Liability

Article 10 of the Law has been repealed. The repealed article regulated the liabilities of service providers and intermediary service providers for storing and securing personal data obtained from activities as per the Law, transferring personal data to third parties without the data subject's consent and using such data for other purposes. It seems that other provisions on personal data protection will continue to regulate those liabilities.

Document Retention Liability

The sentence added to the third paragraph of article 11 of the Law requires service providers and intermediary service providers to keep information, documents, books and electronic records pertaining to their activities and transactions as per the Law for ten years from the date of such activity or transaction.

Unfair Commercial Practices

The additional article 1 in the Law forbids unfair commercial practices in electronic commerce. Accordingly, an Intermediary Service Provider will be deemed to be involved in unfair practices if it significantly disrupts the business of the Service Provider to which it provides intermediary services, reduces its ability to make reasonable decisions, or forces it to take a certain decision and be a party to an otherwise unwanted business relationship. Thus, the following commercial practices will be deemed unfair in any case:

• Failing to make full payment to the electronic commerce service provider in return for the sale of goods or services within five business days from the date on which the sales price reaches the electronic commerce intermediary service provider and the order is delivered to the buyer.

• Forcing the electronic commerce service provider to offer discounts for goods or services, including the electronic commerce intermediary service provider's unilateral changes in the sales price.

• Failing to lay down the terms of business with the electronic commerce service provider in writing or through an electronic intermediation agreement, or to ensure that such an agreement is explicit, clear and easily accessible by the electronic commerce service provider.

• Making retroactive or unilateral amendments in the intermediation agreement to the detriment of the electronic commerce service provider, or adding any clause to the intermediation agreement in this direction.

• Receiving payment from the electronic commerce service provider even if no service has been provided, or the service type and the amount or rate of the service fee are not specified in the intermediation agreement.

• Downgrading the ranking or the recommendation of the electronic commerce service provider in the absence of objective criteria in the intermediation agreement or on the grounds that an application has been made to public institutions or judicial authorities, and restricting, suspending or terminating the service provided to the electronic commerce service provider.

Yiğit Okuldaş, Associate

Article

Turkish Companies' Process of Compliance with Carbon Border Adjustment

The Carbon Border Adjustment Mechanism ("CBAM"), an initiative of the European Union ("EU") as a cornerstone of the European Green Deal, aims at environmental sustainability with reduced greenhouse gas emissions. The purpose is to heighten importers' awareness of their products' carbon footprint and to make international trade more sustainable. Within the framework of the Turkish Ministry of Trade's "EU Green Deal Action Plan", Türkiye will need to revise its production and supply processes based on the EU standards.

What is the Carbon Border Adjustment Mechanism?

The Carbon Border Adjustment Mechanism ("CBAM") refers to the EU's carbon tariff to be imposed on its imports of carbon-intensive products, such as steel, cement and some electricity generation systems. Enacted as part of the EU Green Deal, the CBAM will take effect in 2026, with reporting as of 2023. The European Parliament passed the CBAM on 17 October 2023. Since the prices of CBAM certificates depend on the prices of EU allowances in the European Union Emissions Trading System introduced in 2005, the EU aims to curb carbon leakage to countries lacking a carbon pricing system and stop providing free certificates to some carbon-intensive sectors in the EU. This should also accelerate the process of decarbonization.

The EU will undergo the following phases as part of the EU Green Deal:

- **Transitional phase from October 2023 to the end of 2025:** Importers will be required to report their emissions in sectors heavily reliant on international trade, such as aluminum, cement, electricity, fertilizers, hydrogen, and iron and steel. During the transitional phase, regulators will check the possibility of updating the existing list with other items, such as some downstream products.

- **From January 2026 to 2030:** Importers in these six sectors will start paying a border carbon tax for their products based on the price of allowances in the European Union Emissions Trading System.

- **By 2030:** The CBAM will apply to all sectors included in the European Union Emissions Trading System.

- **By 2034:** With the complete phase-out of free allowances in the relevant sectors in the EU, the fully implemented CBAM will mitigate the risk of unfair competition between importers and European companies.

Thus, the reduction of allowances is expected to increase market-traded carbon prices and to encourage companies to invest in emissions reduction. As a result, companies may update their production processes and adopt cleaner production technologies to reduce their costs. With the implementation of the CBAM, the EU importers can request information on the carbon emissions of products they import from Türkiye. This information constitutes a critical process where the relevant data is collected to shape the final stage of the CBAM's transitional phase.

Who is responsible for reporting and financial obligations under the CBAM? When will the financial obligations be effective? Are there any other obligations?

EU-based importers or indirect customs representatives will be responsible for such obligations themselves. However, in case of importers that are not based in the EU, the responsibility lies with indirect customs representatives. During the transitional phase, the only requirement is reporting, with no financial obligations, as the latter will start as of 1 January 2026. Throughout this period, there is also no obligation to verify data. The reports submitted by EU importers will be verified as of 1 January 2026. Under the CBAM, all the accredited verifiers of the EU ETS should serve the purpose of the CBAM, and secondary legislation will be published separately for the appointment of new accredited verifiers.

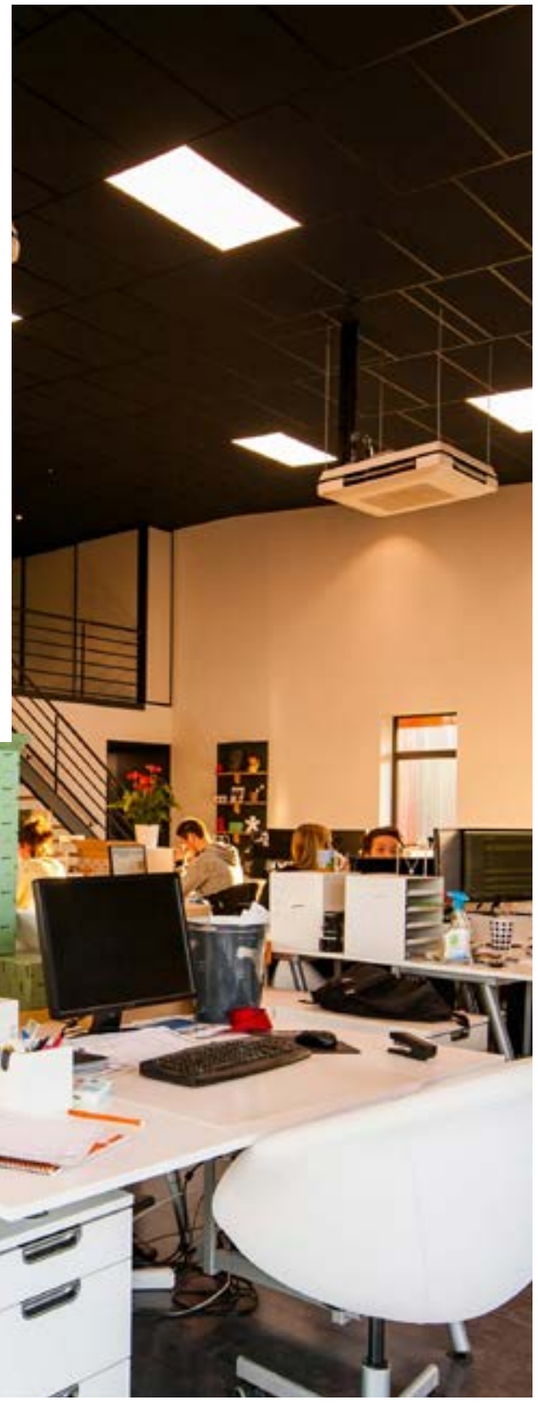
The information requested for reporting during the transitional phase is quite comprehensive, including product details such as the quantity of exported products, CN code and country of origin, along with other information such as the company name, address, location and coordinates of the manufacturing site. Production information also constitutes a critical part of the reporting, including details such as monitoring approaches, production processes and the methods used. Another important component of reporting is emission data, which specify information such as specific direct and indirect emissions. Finally, information on carbon pricing in the country of production is also requested at the reporting stage.

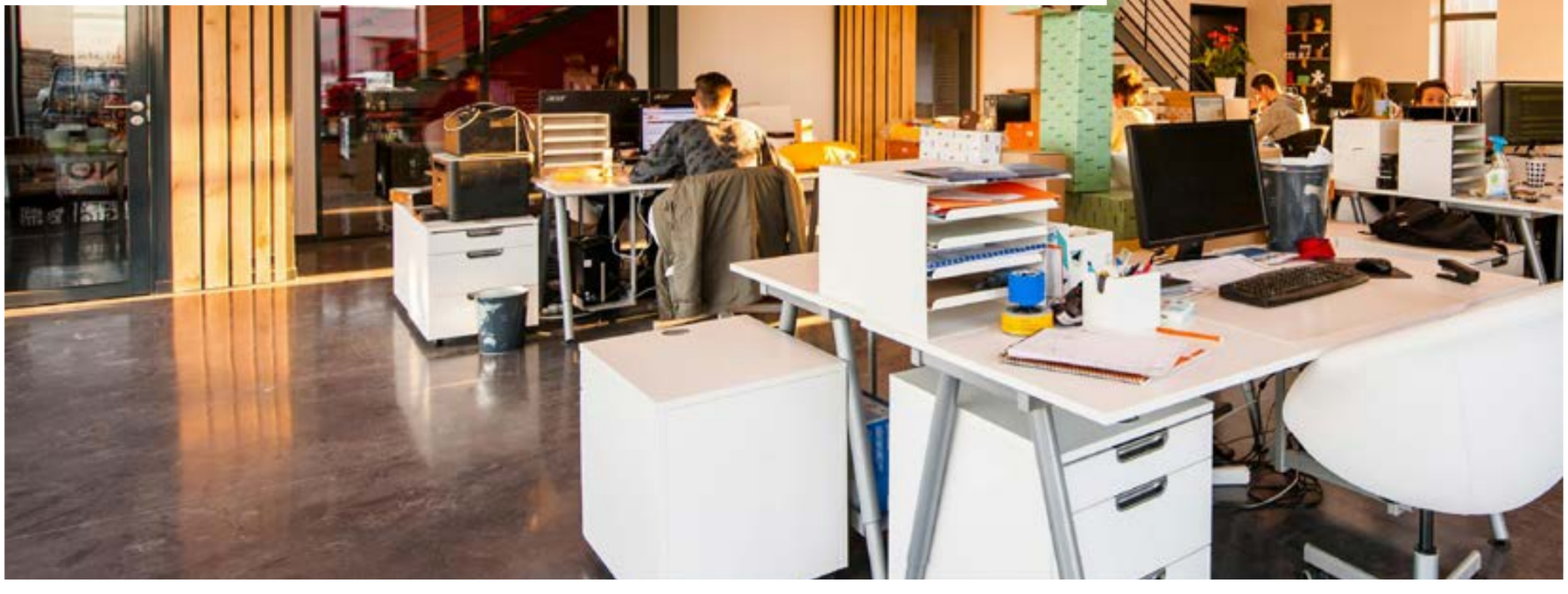
The CBAM will undoubtedly have a significant impact on Türkiye, given the EU's status as a major commercial partner, representing a considerable portion of Türkiye's exports. Therefore, it is necessary to understand how the EU's carbon regulations will influence Türkiye's foreign trade. The EU's introduction of the CBAM stands out as a crucial measure in addressing carbon leakage and ensuring fair competition for European businesses worldwide in the face of cheaper imports from non-EU economies. However, there are some importers, such as Russia, China, Ukraine and the Balkans in addition to Türkiye, whose trade shares may be affected negatively by the CBAM.

The reasons provided for the CBAM indicate that unilateral tariffs may be applied on imports from countries that do not meet the environmental standards set by the EU, while suggesting that foreign countries' adoption of their own carbon pricing policies may be encouraged. However, carbon import fees still do not apply to lots of products or services, ranging from automobiles to clothing, food to animal products, as well as maritime transport, aviation and gas, oil and coal imports.

The CBAM is promoted as an important step in achieving worldwide emission reductions and sustainability goals; however, the legal, economic and political challenges in its implementation also necessitate consideration with further discussion and analysis on its impact and practicality.

Ece Gülerman, Legal Intern





Guest Sector

Guest Sector

The Sectors of Sales and Marketing

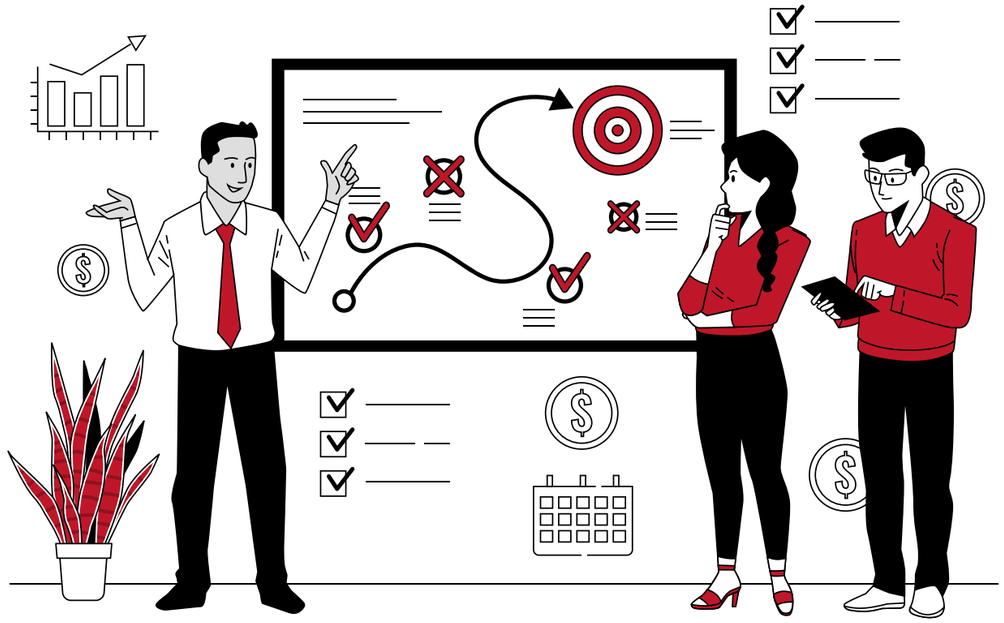
Marketing refers to all the factors targeting consumer needs, comprising of the creation, production, distribution and pricing of products and services.

In broad terms, marketing concerns a company's entire business process relevant to products and services from their creation to sales. More specifically, the marketing process consists of the identification of the product/service demanded by the customer, the production of the product with the desired features and quality, the pricing of the product, the activities that will encourage the customer to purchase the product, and the delivery of the product to the customer.

The initial concerns include how to create products and what features they will have to meet consumer needs. Afterwards, the company should determine how to manufacture the products, what materials will be used, and how, where and for how much they will be sold. In the next stage, advertising is used to promote the product or service, purchasing is encouraged through sales promotion, and service marketing and marketing research are undertaken.

Sales is an activity at the end of marketing and involves the processes of presenting, promoting, selling and delivering a product or service to the consumer. During the sales stage, field visits are made, the customer is contacted, and feedback is reported to the marketing department.

Legality / Guest Sector



In the history of the two sectors, we see that marketing was the process of door-to-door introduction of a product to the customer to sell it during that visit. Today, this process is called selling. With the advancement of technology, the introduction of the Internet in Türkiye and people's increasing tendency to shop online, the marketplace and the operations in the sales and marketing sectors have become online. As a result, the emergence of e-commerce and digital marketing has transformed the course of both sectors.

We may argue that e-commerce has gained momentum in Türkiye recently. The Ministry of Trade announced that the e-commerce volume in the country increased by 109% to TRY800.7 billion in 2022 compared to 2021. Moreover, the ratio of e-commerce to general trade increased by 5% from 17.7% in 2021 to 18.6% in 2022. According to We Are Social Digital 2023 report, Türkiye ranks 3rd in the world with 64.6% of Internet users making online purchases every week. The top three factors that consumers pay attention to while purchasing are free delivery, easy return policy, coupons and discounts.

In digital marketing, nearly 63% of businesses have increased their digital marketing budgets since 2021. Between 2020 and 2021, digital marketing spending increased by 14%. The data for the first 6 months of 2023 show that the digital advertising market grew by 75.5% compared to the same period of 2022.

Direct sales continue to be made despite the popularity of the Internet. Direct selling is the direct sale of a consumer product or service to a consumer at home, at the home of an acquaintance, at work or at a place other than a point of sale through a seller's introduction of it by describing it or

showing it. In terms of the exact figures, the data of the World Federation of Direct Selling Associations (WFDSA) show that the global direct selling industry was worth USD172.89 billion in 2022. When we look at the data on Türkiye, we see a performance that exceeds the global average growth. Showing a distinct growth of more than 33 percent compared to 2021, Türkiye's direct selling sector seems to have resisted against the challenges caused by the pandemic.

Although the figures suggest a positive trend, the sectors still face some problems in e-commerce, including high shipping prices, delayed orders, damage to products during delivery, and malicious websites that sell non-existent products. To prevent such problems and security concerns, e-commerce websites should present certain texts that will protect the rights of the consumer, the website owner, or the seller, such as the preliminary information form, distance sales agreement, membership and user agreement, privacy policy, contact information of the site owner, and legal texts such as personal data protection law.

The challenges in the marketing sector have remained almost the same. They essentially consist of financial constraints, rapid developments in artificial intelligence and ever-changing consumer behavior. Other challenges include achieving long-term customer traffic, dealing with increased competition, maintaining adequate budgets, and identifying the right technologies for the relevant needs.

Clearly, the sales and marketing sectors are highly influenced by constant changes in technologies and in the requirements of the age. Accordingly, shopping habits, customer expectations and experience are also constantly evolving. We can argue that the marketing sector, which is mostly digital these days, and the sales sector, which is equally integrated into the digital environment, will keep pace with the changing conditions in the future.

Özüm Cömert, LL.M., Associate

Legality / Guest Sector

Special Day

Special Day

Occupational Health and Safety Week

standards for a safe and healthy working environment. A workplace that promotes safety and health encourages employees to be motivated and productive. Moreover, effective health measures improve the company's image and attract qualified professionals.

The Turkish Ministry of Labor and Social Security has been organizing annual "Occupational Health and Safety Week" activities from 4th to 10th of May since 1987. Occupational Safety concerns the prevention of work-related health hazards and accidents and the humane design of the work environment. It entails taking appropriate measures for recognizing, eliminating or minimizing hazards. The main goal is to protect the mental and physical health of all employees.

In Türkiye, there are numerous laws and regulations for the protection of workers; however, each year, thousands of people are diagnosed with occupational diseases and have occupational accidents. This number should obviously be minimized, but the measures to be taken to ensure safety in the workplace should also be clearer...

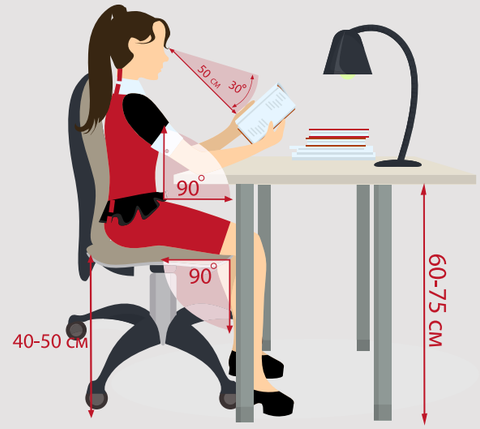
So how can we take measures against possible risks? A company should focus on

Legality / Special Day

Innovative Measures for Companies

1) Companies can organize ergonomics programs. Thus, the design of workplaces and workflows can reduce the burden on the body. This will reduce the risk of injury and long-term conditions such as musculoskeletal diseases or chronic back pain. These programs consist of a series of measures that optimize the workplace and the working conditions.

Examples include height adjustable desks, ergonomic office chairs, proper monitor placement, training on correct posture and working style (lifting heavy objects), ergonomic lighting and ventilation, and encouraging activities such as walking breaks or employee exercise offers.



2) Digital healthcare services can be offered. Companies can provide digital solutions, such as health apps or wearables, to improve employee health. They should be integrated into the available health programs to ensure employee participation. The data collected for such purposes must be stored securely and processed in accordance with data protection principles.

3) Various initiatives can be introduced for gamification. With fun elements such as scoring systems or competitions, employees can be motivated to adopt healthy habits in their daily lives. Companies can introduce different "challenges" to promote health and well-being. For example, employees can be encouraged to reach a step goal with pedometers or fitness trackers.

This list can be used and improved. The employer, in particular, has various obligations in this regard as per the relevant laws. The pertinent laws envisage a comprehensive system for prevention and protection in line with the current understanding of occupational health and safety, including occupational health and safety organization in workplaces, risk assessment, determination of measures, supervision, and coordination between employers in the same business line.

Given the publication of Occupational Health and Safety Law no. 6331 in the Official Gazette on 30.06.2012, which lays down the general principles and obligations in this context, we may expect the system to become more comprehensive with developing technologies. Indeed, new regulations are introduced to adapt to EU Directives on occupational health and safety, with continuing efforts in this area.

All employers have the responsibility to create working conditions that will ensure the health and safety of their employees, and we hope that, in an ideal world, all risks will be eliminated by recognizing and eliminating or minimizing the hazards.

Hilal Yayla, Associate

Legality / Special Day

News to the World

Legality
News to the World

Legality / News to the World

Decision Amending the Decision on the Determination of Companies Subject to Independent Audit

Presidential Decision no. 8313 Amending the Decision on the Determination of Companies Subject to Independent Audit entered into force upon publication in Official Gazette no. 32512 of 6 April 2024.

With this Decision, subclause 3 of subparagraph (b) of the first paragraph of article 3 of the Presidential Decision on the Determination of Companies Subject to Independent Audit, dated 29.11.2022 and numbered 6434, has been amended as follows:

“3) Thresholds for companies that are not specified in subclauses (1) and (2):

i. Total assets worth 150 million Turkish lira,
ii. Annual net sales worth 300 million Turkish lira,
iii. The number of employees totalling 150.”

Accordingly, joint stock and limited liability companies that exceed the thresholds of at least two of these criteria in two consecutive accounting periods, in any sector, will be subject to independent audit in accordance with the Turkish Commercial Code, in the accounting periods as of 1 January 2024.

See the full Presidential Decision at:

https://www.resmigazete.gov.tr/eskiler/2024/04/20240406-6.pdf

Amendments to Law No. 6698 on the Protection of Personal Data (KVKK)

Law no. 7499 Amending the Code of Criminal Procedure and Other Laws was published in Official Gazette no. 32487 of 12 March 2024.

The Law amends Law no. 6698 on the Protection of Personal Data ("KVKK") to comply with the GDPR.

Accordingly:

1. The processing of special categories of personal data, otherwise prohibited, is permitted if: the data subject has given explicit consent; the law explicitly provides for it; processing is necessary to protect the vital interests and the bodily integrity of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent; processing relates to personal data which are manifestly made public by the data subject; processing is necessary for the establishment, exercise or defense of a right; processing by the persons subject to secrecy obligation or competent public institutions is necessary for the purposes of protection of public health, operation of preventive medicine, medical diagnosis, treatment and nursing services, planning and management of health-care services as well as their financing; and processing is necessary to fulfill legal obligations in the fields of employment, occupational health and safety, social security, social services, and social relief.

BEFORE THE AMENDMENT	AFTER THE AMENDMENT
Processing of special categories of personal data **ARTICLE 6-** **(1)**Personal data relating to the race, ethnic origin, political opinion, philosophical belief, religion, religious sect or other belief, appearance, membership to associations, foundations or trade-unions, data concerning health, sexual life, criminal convictions and security measures, and the biometric and genetic data are deemed to be special categories of personal data. **(2)**It is prohibited to process special categories of personal data without explicit consent of the data subject. **(3)**Personal data, except for data concerning health and sexual life, listed in the first paragraph may be processed without seeking explicit consent of the data subject, in the cases provided for by laws. Personal data concerning health and sexual life may only be processed, without seeking explicit consent of the data subject, by the persons subject to secrecy obligation or competent public institutions and organizations, for the purposes of protection of public health, operation of preventive medicine, medical diagnosis, treatment and nursing services, planning and management of health-care services as well as their financing.	**Processing of special categories of personal data** **ARTICLE 6-** **(1)**Personal data relating to the race, ethnic origin, political opinion, philosophical belief, religion, religious sect or other belief, appearance, membership to associations, foundations or trade-unions, data concerning health, sexual life, criminal convictions and security measures, and the biometric and genetic data are deemed to be special categories of personal data. **(2)**It is prohibited to process special categories of personal data without explicit consent of the data subject. However, these data may be processed if: a)The data subject has given explicit consent, b)The law explicitly provides for it, c)Processing is necessary to protect the life or the bodily integrity of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent, ç)Processing relates to personal data which are manifestly made public by the data subject,

BEFORE THE AMENDMENT	AFTER THE AMENDMENT
(4) Adequate measures determined by the Board shall be also taken while processing the special categories of personal data.	d)Processing is necessary for the establishment, exercise or defense of a right, e)Processing by the persons subject to secrecy obligation or competent public institutions and organizations is necessary for the purposes of protection of public health, operation of preventive medicine, medical diagnosis, treatment and nursing services, planning and management of health-care services as well as their financing, f)Processing is necessary to fulfill legal obligations in the fields of employment, occupational health and safety, social security, social services, and social relief, g)Processing is carried out by a foundation, association or any other not-for-profit organization or entity with a political, philosophical, or trade union aim and on condition that the processing relates to its current or former members or to persons who have regular contact with it, provided that the processing is in accordance with its purposes and the legislation concerning it, is limited to its fields of activity, and the data is not disclosed to third parties. **(3)**Adequate measures determined by the Board shall be also taken while processing the special categories of personal data.

2. Personal data may be transferred abroad by data controllers and data processors if any of the conditions for the processing of personal data and of special categories of personal data is present, and there is an **"adequacy decision"** on the country, international organization or sectors in the country to which the transfer will be made.

BEFORE THE AMENDMENT	AFTER THE AMENDMENT
Transfer of personal data abroad **ARTICLE 9-** **(1)**Personal data shall not be transferred abroad without explicit consent of the data subject. **(2)**Personal data may be transferred abroad without explicit consent of data subject upon the existence of one of the conditions referred to in Article 5(2) and Article 6(3) of the Law and if in the country where personal data are to be transferred; a)Adequate protection is provided, or if b)Adequate protection is not provided, upon the existence of commitment for adequate protection in writing by the data controllers in Türkiye and in the relevant foreign country and authorisation of the Board. **(3)**The Board determines and announces the countries with adequate protection.	**Transfer of personal data abroad** **ARTICLE 9-** **(1)**Personal data may be transferred abroad by data controllers and data processors upon the existence of one of the conditions referred to in article 5 and article 6 of the Law and if there is an adequacy decision on the country, international organization or sectors in the country to which the transfer will be made. **(2)**The adequacy decision shall be made by the Board and published in the Official Gazette. The Board shall receive the opinions of relevant public institutions and organizations, if necessary. The adequacy decision is reviewed every four years at the latest. The Board may amend, suspend or revoke the adequacy decision prospectively as a result of the review or in other cases it deems necessary. **(3)**The following factors shall be considered when making an adequacy decision:

BEFORE THE AMENDMENT	AFTER THE AMENDMENT
(4) The Board shall decide whether there is adequate protection in the foreign country and whether such transfer is permitted under the sub-paragraph (b) of second paragraph, by evaluating the followings and by receiving the opinions of relevant institutions and organizations, where necessary: a)the international conventions to which Türkiye is a party, b)the state of reciprocity relating to data transfer between the requesting country and Türkiye, c)the nature of the data, the purpose and duration of processing regarding each concrete, individual case of data transfer, ç)the relevant legislation and its implementation in the country to which the personal data are to be transferred, d)the measures committed by the data controller in the country to which the personal data are to be transferred. **(5)**Without prejudice to the provisions of international agreements, in cases where interest of Türkiye or the data subject will seriously get harmed, personal data, may only be transferred abroad upon the authorisation to be given by the Board after receiving the opinions of relevant public institutions and organizations.	a)The state of reciprocity relating to data transfer between the requesting country, sectors in the country, or international organizations and Türkiye. b)The relevant legislation and its implementation in the country to which the personal data are to be transferred, and the rules governing the international organization to which the personal data are to be transferred. c)The existence of an independent and effective data protection authority operating in the country to which the personal data will be transferred or concerning the international organization to which the personal data will be transferred, and the existence of administrative and judicial remedies. ç)The membership of the country or international organization to which the personal data will be transferred, to global or regional organizations of which Türkiye is a member. d)The international conventions to which Türkiye is a party. **(4)**If any of the conditions referred to in articles 5 and 6 is present and the data subject may exercise their rights and resort to legal remedies in the country where the data will be transferred, personal data may be transferred abroad by data controllers and data processors

BEFORE THE AMENDMENT	AFTER THE AMENDMENT
(6) The Provisions of other laws relating to the transfer of personal data abroad are reserved.	in the absence of an adequacy decision provided that any of the following assurances is provided by the parties: a)There is an agreement, which is not an international convention, between public institutions and organizations or international organizations abroad and public institutions and organizations or professional organizations serving as public institutions in Türkiye, and the Board permits the transfer. b)There are binding corporate rules approved by the Board, including provisions on the protection of personal data to be conformed by companies in a group of undertakings that are involved in joint business activities. c)There is a standard agreement announced by the Board, which specifies data categories, data transfer purposes, recipients and recipient groups, technical and administrative measures to be taken by the data recipient, additional measures for special categories of personal data, etc. ç)There is a letter of commitment containing provisions for adequate protection, and the Board permits the transfer.

BEFORE THE AMENDMENT	AFTER THE AMENDMENT
	(5) The data controller or the data processor shall notify the Authority about the standard agreement within five business days of its signing. **(6)** In the absence of an adequacy decision and of any of the assurances referred to in paragraph four, data controllers and processors may transfer personal data abroad only incidentally and in case of the following: a)The data subject has given explicit consent to the transfer, being informed about the possible risks. b)The transfer is necessary for the performance of an agreement between the data subject and the data controller or for the execution of pre-contractual measures taken upon the data subject's request. c)The transfer is necessary for the conclusion or performance of an agreement between the data controller and another natural or legal person for the benefit of the data subject. ç)The transfer is necessary for a superior public interest. d)Personal data transfer is necessary for the establishment, exercise or defense of a right. e)Personal data transfer is necessary to protect the vital interests and the

BEFORE THE AMENDMENT	AFTER THE AMENDMENT
	bodily integrity of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent. f)Data is transferred from a registry open to the public or to persons with legitimate interests, in case of the fulfillment of the requirements referred to in the legislation to have access to the registry and upon the request of the person with a legitimate interest. **(7)**Subparagraphs (a), (b) and (c) of the sixth paragraph shall not apply to the activities of public institutions and organizations subject to public law. **(8)**Data controllers and data processors shall also provide the assurances referred to in this Law and respect the provisions in this article for the subsequent transfers of personal data transferred abroad as well as their transfers to international organizations. **(9)**Without prejudice to the provisions of international agreements, in cases where interest of Türkiye or the data subject will seriously get harmed, personal data may only be transferred abroad upon the authorisation to be given by the Board after receiving the opinions of relevant public institutions and organizations.

BEFORE THE AMENDMENT	AFTER THE AMENDMENT
	(10) The provisions of other laws relating to the transfer of personal data abroad are reserved. **(11)**The procedures and principles regarding the implementation of this article shall be governed by a regulation.

The amendment will be applied in two phases:

i. Regulations concerning data transfer abroad with explicit consent will be applicable until 1 September 2024, after which personal data cannot be transferred abroad continuously with explicit consent.

ii. The remaining regulations will enter into force on 1 June 2024.

See the full Law at:

https://www.resmigazete.gov.tr/eskiler/2024/03/20240312-1.htm

Communiqué (Number: 2024/9) Amending the Communiqué (Number: 2021/14) on the Promotion of Conversion into Turkish Lira Deposit and Participation Accounts

The Communiqué (Number: 2024/9) Amending the Communiqué (Number: 2021/14) on the Promotion of Conversion into Turkish Lira Deposit and Participation Accounts became effective upon publication in Official Gazette no. 32512 of 6 April 2024.

The new Communiqué amends the first paragraph of article 4 of the Communiqué on the Promotion of Conversion into Turkish Lira Deposit and Participation Accounts (Number: 2021/14), published in Official Gazette duplicate no. 31696 of 21.12.2021. Accordingly:

"(1) As of 31.03.2024, real persons resident in Türkiye, and as of 30.06.2023, legal entities resident in Türkiye may convert their foreign currency deposit account and participation fund account balances denominated in US dollars, Euros and British pounds in banks into Turkish lira at the applicable conversion rate upon their request."

See the full Communiqué at:

https://www.resmigazete.gov.tr/eskiler/2024/04/20240406-24.htm

World News

Legality
World News

Legality / World News

UK Passes Bill to Ban Tobacco Sales to Younger Generations

In the UK, a comprehensive smoking ban, aiming at protecting future generations, has passed a vote in the House of Commons. If the bill becomes law, people born since 2009 will be prevented to legally buy tobacco products in the UK. The former prime minister Liz Truss, who voted against the bill, said, “I think the whole idea that we can protect adults from themselves is hugely problematic and it effectively infantilises people. People want to choose for themselves what to eat, what to drink and how to have fun.” However, the ban outlaws the sale of cigarettes rather than the act of smoking itself. It means that those born since 2009 will never be able to legally buy cigarettes.

The government says it will impose £100 on-the-spot fines for shops in England and Wales which sell tobacco and vapes to these people. The new legislation also includes a ban on disposable vapes and new restrictions on flavors, with only four types of vapes allowed.

Medical and health experts along with charities fully support the ban, saying that smoking causes 80,000 deaths per year across the UK and more than 8 million deaths worldwide and many more smoking-related illnesses.

UK May Withdraw from the ECtHR

Rwanda and the UK concluded an immigration arrangement in 2022, which envisaged that people identified by the UK government as illegal migrants or asylum seekers would be deported to Rwanda for processing, asylum and relocation. The plan was criticized by human rights organizations and many politicians and officials in the UK.

The first deportation was to take place in June 2022, but it was prevented by the European Court of Human Rights ("ECtHR"). After the UK Supreme Court identified that the original plan did not guarantee the safety of asylum seekers, the UK government was forced to come up with a new arrangement last year.

In an interview on TV, the UK Prime Minister Rishi Sunak said, "I believe all our plans are compliant with all of our international obligations, including the ECtHR. But I do believe that border security and making sure that we can control illegal migration is more important than membership of a foreign court because it's fundamental to our sovereignty as a country." Sunak added that the UK may leave ECtHR if it would help in stopping illegal migration.

Legislation to Allow Dual Citizenship in Germany Becomes Effective on June 27

The "Law to Modernize Nationality Law", which will enable dual citizenship in Germany, was published in the country's Official Gazette and will enter into force on June 27. The bill proposed by the German government was passed by the Bundestag on January 19 with 382 votes against 234 and approved by the Bundesrat on February 2. With the Law, Turkish citizens living in Germany will be able to acquire German citizenship without renouncing their Turkish citizenship.

The Law's notable aspects include the fact that the legal residence period required to obtain German citizenship will be reduced from 8 to 5 years, which can be further reduced to 3 years when the applicant achieves a high level of integration, such as having academic or professional success, volunteering, or making special efforts to learn the language.

Anti-Semitic, racist, or xenophobic people, or who commits other inhumane acts will not be granted German citizenship. Applicants for German citizenship must also embrace the values of a free society and acknowledge Germany's special historical responsibility for the National Socialist regime and its consequences. Moreover, polygamists or those who violate the constitutional gender equality cannot acquire German citizenship.

News from Şengün

Legality / News from Şengün

Legality
News from Şengün

The panels planned as part of the events calendar of Istanbul Arbitration Days, hosted by Istanbul Arbitration Centre (ISTAC) as a gathering for arbitration professionals, were held at Çırağan Palace.

In the panels, leading professionals in the sector shared their experience on a wide range of topics addressing arbitration's worldwide position and development.

As the event's Gold and Media Sponsors, Şengün Group and Şengün Media participated in the event, represented by Gizem Can Bilici (Senior Associate) and Ezgi Aydoğanoğlu (Editor).

Şengün Group and Şengün & Partners Attorney Partnership held an evaluation meeting that brought together its members from the offices in Istanbul and Izmir.

The entire team was present at the meeting to discuss projects, needs and expectations and to share their ongoing tasks and suggestions on the current structure.

Legality
News from Şengün

One of our associates at Şengün & Partners Attorney Partnership, Hilal Yayla, got married with a ceremony at Fuat Paşa Mansion on Saturday, April 27.

Members of Şengün & Partners Attorney Partnership attended the wedding. The attendees of the wedding ceremony followed by a celebration dinner were Attorney Nedim Korhan Şengün, Prof. Dr. Caner Yenidünya, Attorney Gülşah Güven, Attorney Gizem Can Bilici, Legal Intern Dila Yıldırım, Ezgi Aydoğanoğlu and Gizem Yağmur Gölbaşı.

We wish attorneys Hilal Yayla and Yılmaz Can Özdemir a life full of happiness.

Attorney Nedim Korhan Şengün and Prof. Dr. Caner Yenidünya participated in the Turkish-German Economy Day event organised by the Association of Turkish Businesspeople and Industrialists in Europe on 4 May 2024 at the Congress Center in Düsseldorf. At the 8th Turkish-German Economy Day, current business topics were discussed, including opportunities offered by the Turkish and German economies, the future of the energy market, developments in the field of artificial intelligence, and the emerging concept of corporate social responsibility. The event aims to raise awareness in the business world and to be a platform for participants to make new contacts, seek information, be inspired and enhance their vision.

Legality / News from Şengün

Attorney Nedim Korhan Şengün addressed the participants at the “Artificial Intelligence” panel of the HR Summit 2024 event by Sales Network.

Talking about the legal consequences of the latest artificial intelligence (AI) trends, the legal obligations of Human Resources (HR) managers who use AI, and the legal framework that will minimize the associated risks, Attorney Nedim Korhan Şengün underlined the importance of using AI technologies in a way that will prevent human rights violations.

The participants at the HR Summit 2024 included team members from Şengün & Partners Attorney Partnership, namely Gülşah Güven (Senior Executive Associate), Gizem Can Bilici (Senior Associate), Hilal Yayla (Associate), Yiğit Okuldaş (Associate), Selin Ünverdi (Associate), Özüm Cömert (Associate), Dila Yıldırım (Legal Intern), Ece Gülerman (Legal Intern), and Ezgi Aydoğanoğlu (Editor at Şengün Media).

Legality
Sources

- https://www.resmigazete.gov.tr/eskiler/2024/04/20240406-6.pdf
- https://www.resmigazete.gov.tr/eskiler/2024/03/20240312-1.htm
- https://www.resmigazete.gov.tr/eskiler/2024/04/20240406-24.htm

Legality
Location

Legality

"A seminal publication of Şengün Group"

April - May 2024 | E-Bulletin