

Turkey: New Legislation for Online Transactions in Line with E.U. Law
[World Internet Law Report, May 2003 Issue, pp. 13-14]

[By Gamze Cigdemtekin-Uysal and Cagdas Evrim Ergun, Cakmak Law Office, Ankara, e-mail: c.ergun@cakmak.gen.tr]

The first piece of legislation dealing directly with online transactions under Turkish law was finally adopted on March 6, 2003 and published in the Official Gazette of March 14, 2003. Law No. 4822 Amending Certain Provisions of the Consumer Protection Law No. 4077 ("Law No. 4822") has been enacted primarily as a result of the efforts towards harmonizing Turkish Legislation with E.U. law. This amendment to the Turkish Consumer Protection Law has basically enlarged the definition of "goods" for the purpose of Turkish consumer law to cover electronic products, and added distance-selling contracts (concluded through electronic means) into the scope of the Consumer Protection Law.

By virtue of Article 3 of the Turkish Consumer Protection Law, the concept of goods in terms of the Turkish Consumer Protection Law also includes any non-material goods designed for use in an electronic environment, such as audiovisual products. In other words, all rights provided for consumers under the Consumer Protection Law will also apply to all online transactions effective from June 14, 2003; this provision of the Law being effective three months from the date of publication pursuant to Article 38 thereof.

The Turkish Consumer Protection Law as amended by Law No. 4822, is similar in many respects to its counterpart under E.U. law, namely the Distance Selling Directive 97/7/EC. For instance, Article 9/A of the Turkish Consumer Protection Law defines the distance selling contracts in the same way as Article 2 of the E.U.

Distance Selling Directive. Both provisions define a distance selling contract as any contract concerning the delivery of goods or performance of services immediately or later, which are concluded in a written, audiovisual, telephonic and electronic environment or by using other communication means without physically meeting the customer.

Furthermore, both the recently added Article 9/A of the Turkish Consumer Protection Law and the E.U. Distance Selling Directive provide that before the conclusion of a distance selling contract, the consumer must be provided with certain information, and the contract may not be concluded before the consumer confirms in writing that he or she has received such information.

Under Law No. 4822, the scope of such information will be determined in the Communiqués to be issued by the Ministry of Industry and Commerce. No such communiqué, however, has been issued thus far. Article 4 of the E.U. Distance Selling Directive sets out the information that the consumer must be provided with prior to the conclusion of the contract. As the amendments to the Turkish Consumer Protection Law are a result of the harmonisation efforts of Turkish law and the *Acquis Communautaire*, it is most likely that the Communiqués to be issued by the Ministry of Industry and Commerce regarding that prior information requirement will set forth very similar provisions to Article 4 of the E.U. Distance Selling Directive.

Pursuant to Paragraph 3 of Article 9/A of the Turkish Consumer Protection Law and Article 7 of the E.U. Distance Selling Directive, the supplier must execute the order within a maximum

of 30 days from the day following that on which the consumer forwarded his order to the supplier. However, under the Turkish Consumer Protection Law, this duration may be extended for a maximum of ten days on the condition of previously notifying the consumer in writing.

There are also a number of differences between the distance selling provisions of the Turkish Consumer Protection Law and the E.U. Distance Selling Directive. For example, pursuant to Paragraph 4 of Article 9/A of the Consumer Protection Law, the vendor and supplier are obliged to prove that the delivery of the non-material goods or services to a consumer by electronic means has been made non-defectively. However, the question of defective goods is not separately regulated under the Distance Selling Directive. In European law, this issue is governed by the Product Liability Directive 85/374/EEC, pursuant to which the injured person must prove:

- actual damage;
- the defect in the product; and
- the causal relationship between damage and defect. In

other words, the distance selling provisions of the Turkish Consumer Protection Law is favourable to the consumer compared to the E.U. Distance Selling and Product Liability Directives regarding the burden of proof.

Another amendment made by Law No. 4822 relates to the application of the provisions that govern the indoor sales as provided in the Consumer Protection Law to the distance selling contracts. Paragraph 5 of Article 9/A of the Consumer Protection Law, however, stipulates a number of exceptions for that application, *e.g.*, the provision pursuant to which any payment or document creating a debt for consumer may not be requested from the consumer in return of a good or service which is subject to the contract, during the duration of right for renunciation.

Paragraph 6 of Article 9/A also provides that the vendor or supplier is under obligation to return the paid price, letters of exchange, and any other documents which create a debt for the consumer due to this legal transaction within ten days from the date of reception of the withdrawal notice, and to take back the good within twenty days.

Moreover, under Article 6(2) of the Distance Selling Directive, where the consumer exercises the right of withdrawal, the supplier shall be obliged to reimburse the sums paid by the consumer and such reimbursement must be carried out as soon as possible and in any case within 30 days. Under the distance selling provisions of the Turkish Consumer Protection Law, however, a shorter period of time is provided; *i.e.*, the supplier must reimburse the sums paid within ten days from the date of reception of the withdrawal notice.

Having analysed the distance selling provisions under Turkish law at some length, it can be stated that the importance of such provisions stem from the fact that this is the very first piece of legislation directly governing electronic commerce. However, compared to its counterpart under E.U. law, much still remains to be done on the distance selling contracts under Turkish law. As stated in Law No. 4822 itself, the Ministry of Industry and Commerce will issue the necessary Communiqués to regulate the distance contracts in detail, and as a result of the approximation efforts of the Turkish legislation to E.U. law, it is likely that those Communiqués will closely follow their European counterparts.