



# Compliance

with the amended  
E-Commerce Legislation

2023



## • Introduction

The speed of developments in internet technologies has affected the functioning of many sectors and consumer habits in our country as well as all over the world. The increase in consumers' online shopping habits and rapidly growing e-commerce platforms have changed the functioning of e-commerce in a short time. In the light of all these developments, considering the growth rate of e-commerce and the rapid transformation it has undergone, e-commerce legislation has undergone significant changes in order to reorganize e-commerce activities and to closely supervise the activities of actors in the sector.

Law No. 6563 on the Regulation of Electronic Commerce (E-commerce Law or Law) adopted in 2014 was amended by the Amendment Law<sup>[1]</sup> published in July 2022. Subsequently, the Regulation on Electronic Commerce Intermediary Service Providers and Electronic Commerce Service Providers<sup>[2]</sup> (E-commerce Regulation or Regulation) were published in December 2022. Although some of its provisions will enter into force on different dates, the new provisions, which entered into force as of January 1, 2023, stipulate important obligations for the actors in the e-commerce sector. Under the new provisions, unfair commercial practices in e-commerce are explicitly prohibited, e-commerce service providers and e-commerce intermediary service providers are classified according to their scale, their responsibilities are determined, certain e-commerce actors with a certain scale are obliged to obtain licenses, and important restrictions, especially to prevent unfair competition in e-commerce and to prevent anti-competitive practices are introduced.

Compliance with the new e-commerce legislation, which imposes separate obligations for each e-commerce actor, requires an elaborate and sensitive process. In this process, as Erdem & Erdem, we provide legal support to local and foreign e-commerce players to continue their activities in the sector in compliance with the new e-commerce legislation and aim to find answers to all questions that may arise in this matter.

## Am I Subject to Compliance with The Amended E-Commerce Legislation?

### What is e-commerce?

All kinds of online economic and commercial activities carried out electronically without physical confrontation.

### Who is an electronic commerce intermediary service provider (ETAHS)?

An intermediary service provider that enables the execution of contracts or placing orders for the supply of goods or services of electronic commerce service providers in the electronic commerce marketplace.

### Who is an electronic commerce service provider (ETHS)?

A service provider that concludes a contract or receives an order for the supply of goods or services in an electronic commerce marketplace or in its own electronic commerce environment.

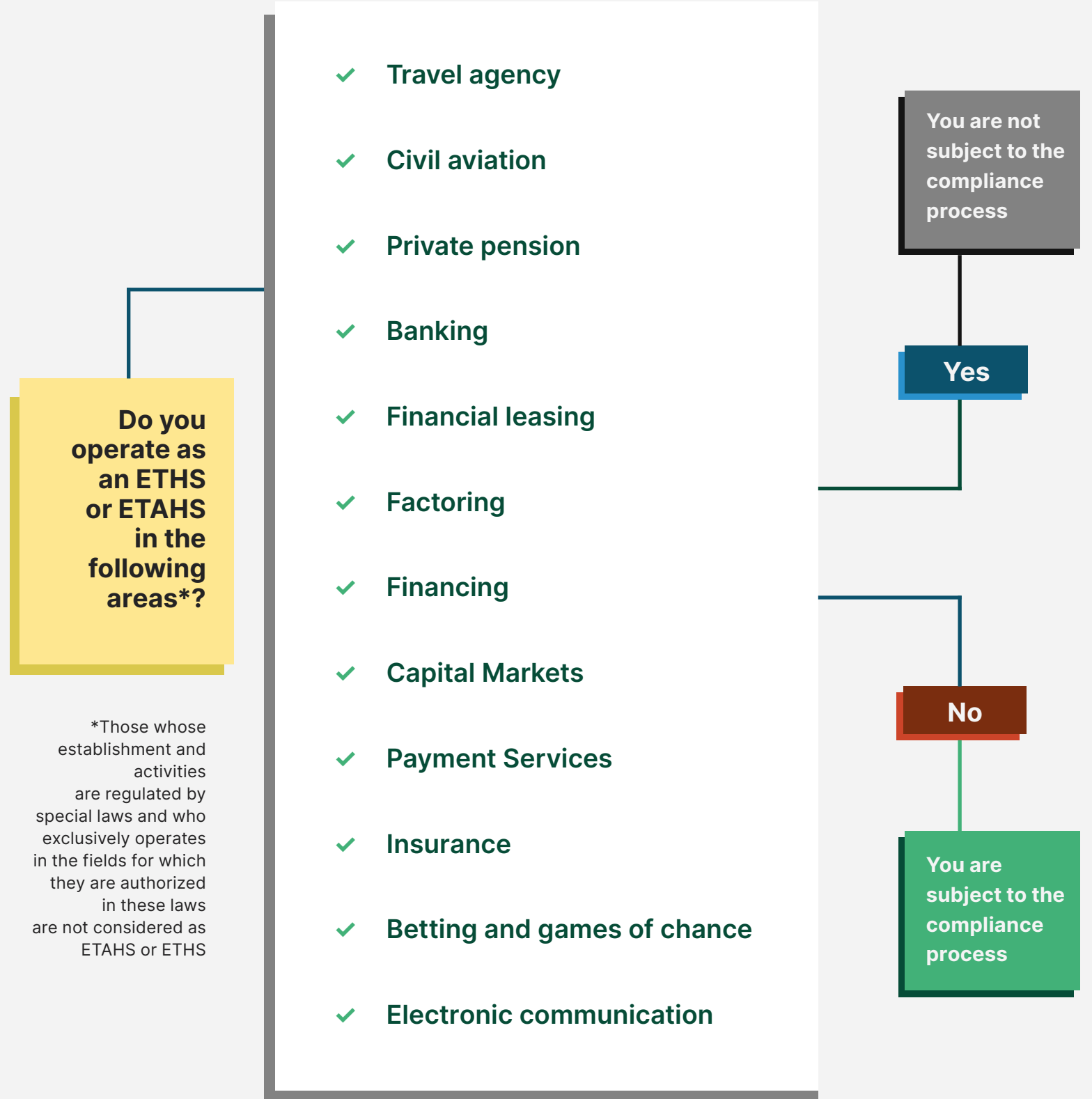
### Do the responsibilities and liabilities regulated in the E-commerce Law and related legislation concern me?

You can determine whether you are subject to the compliance process with the amended e-commerce legislation from the table next page.

1. The Law Amending the Law on the Regulation of Electronic Commerce was published in the Official Gazette dated 07.07.2022 and numbered 31889.

2. The Regulation on Electronic Commerce Intermediary Service Providers and Electronic Commerce Service Providers was published in the Official Gazette dated 29.12.2022 and numbered 32058.

• Table 1. Scope



\*Those whose establishment and activities are regulated by special laws and who exclusively operates in the fields for which they are authorized in these laws are not considered as ETAHS or ETHS

# Are All E-Commerce Actors Subject to The Same Obligations?

The E-Commerce Law and the E-Commerce Regulation introduced different obligations for ETAHS and ETHSs depending on the volume and number of transactions. The Regulation defines ETAHSs and ETHSs as medium, large and very large scale, and sets out the responsibilities and restrictions imposed on each of them separately.

### ETAHS by Scale

Very Large Scale	Large Scale	Medium Scale
ETAHSs with a net transaction volume of more than ₺90 billion in a calendar year and a number of transactions above 100,000 excluding cancellations and returns	ETAHSs with a net transaction volume of more than ₺45 billion in a calendar year and a number of transactions above 100,000 excluding cancellations and returns	ETAHSs with a net transaction volume above ₺15 billion in a calendar year

### ETHS by Scale

Very Large Scale	Large Scale	Medium Scale
ETHSs with a net transaction volume of more than ₺90 billion in a calendar year and more than 10 million transactions excluding cancellations and returns	ETHSs with a net transaction volume of more than ₺45 billion in a calendar year and more than 10 million transactions excluding cancellations and returns	ETHSs with a net transaction volume of more than ₺15 billion in a calendar year and more than 10 million transactions excluding returns

Scope	Obligations to be Complied with	Behaviors to Avoid
All ETHSs	<ul style="list-style-type: none"> <li>Retention of information, documents, books and electronic records related to the business and transactions within the scope of the E-commerce Law for a period of 10 years from the date of the business or transaction.</li> </ul>	<ul style="list-style-type: none"> <li>It is forbidden for ETHS to engage in marketing and promotional activities in online search engines by advertising keywords consisting of registered trademarks that constitute the main element of the domain names registered in ETBIS of persons with whom it is not in economic integrity without obtaining their affirmative declaration of will in writing or electronically in advance.</li> </ul>
ETHSs selling through their own e-commerce environment	<ul style="list-style-type: none"> <li>Providing the contact information stipulated in the Regulation on the home page of its own e-commerce environment.</li> <li>Providing a directly accessible transaction guide on the home page of its own e-commerce environment.</li> <li>Offering second-hand goods for sale in a separate category in its own e-commerce environment, ensuring that the buyer clearly sees the total price to be paid and other terms of the contract before confirming the order and entering the payment information.</li> <li>Providing order confirmation information to the buyer via the e-commerce environment and also via e-mail/text message/phone call.</li> </ul>	
Medium, Large, Very Large Scale ETHSs	<ul style="list-style-type: none"> <li>Notification to ETBIS of share transfers or acquisitions and company establishment transactions stipulated in the Regulation.</li> <li>Commissioning an independent audit and conveying the audit report to the Ministry of Trade.</li> </ul>	<ul style="list-style-type: none"> <li>Except for e-commerce environments included in the net transaction volume, it cannot provide access between e-commerce environments belonging to itself or persons with whom it is in economic integrity, and cannot promote each other in these environments. The relevant limitation must be complied until 01.01.2024.</li> </ul>
Medium, Large, Very Large, and Very Large Scale ETHSs that generate more than half of their total sales revenue from e-commerce sales	<ul style="list-style-type: none"> <li>Obtaining an e-commerce license and renewal of the license. The obligation to obtain a license shall be fulfilled as of 01.01.2025.</li> </ul>	
Large and Very Large Scale ETHSs	<ul style="list-style-type: none"> <li>Compliance with the obligations imposed on Medium Scale ETHSs and, in any case, on all ETHSs, in addition to the obligations attributed to them.</li> </ul>	<ul style="list-style-type: none"> <li>Cannot exceed the advertising budget specified in the Regulation. The relevant limitation is effective as of 01.01.2023 to be applied to the net trading volumes for the calendar year 2022.</li> <li>Cannot exceed the discount budget specified in the Regulation. The relevant limitation is effective as of 01.01.2023 to be applied to the net transaction volumes for the calendar year 2022.</li> </ul>
Very Large Scale ETHSs	<ul style="list-style-type: none"> <li>Compliance with the obligations imposed on Medium and Large Scale ETHSs and, in any case, on all ETHSs, in addition to the obligations attributed to them.</li> </ul>	<ul style="list-style-type: none"> <li>Pursuant to the relevant legislation specified in the Regulation, they may not enable the banks or e-money institutions with which they constitute an economic integrity together, to engage in activities related to the provision of banking and payment services. Relevant ETHSs must comply with this regulation until 01.01.2024.</li> <li>In the event that it provides an electronic environment for the publication of advertisements for goods and services, it cannot enable the execution of contracts or placing orders for the supply of goods or services in the same environment.</li> </ul>



Scope	Obligations to be Complied with	Behaviors to Avoid
<p>All ETAHSs</p>	<ul style="list-style-type: none"> <li>✓ Providing the contact information stipulated in the Regulation on the home page of the e-commerce marketplace, and providing the necessary technical facilities for the ETHS to comply with this obligation. Confirming the accuracy of the introductory information provided by ETHSs in their e-commerce marketplaces within the first three months of each calendar year, and ensuring that this information is up-to-date.</li> <li>✓ Providing a directly accessible transaction guide on the homepage of the e-commerce environment.</li> <li>✓ Offering second-hand goods for sale in a separate category, ensuring that the buyer clearly sees the total price to be paid and other terms of the contract before confirming the order and entering payment information.</li> <li>✓ Providing order confirmation information to the buyer via the e-commerce environment and also via e-mail/text message/ phone call.</li> <li>✓ In case of being aware of unlawful content, removing the content offered by ETHS from publication and notifying ETHS and relevant public institutions and organizations.</li> <li>✓ Ensuring that the brokerage agreement that determines the conditions of the commercial relationship between the ETAHS and the ETHS has the minimum requirements, and ensuring compliance with the legislation in case the agreement is amended, suspended or terminated. The relevant provisions of brokerage agreements concluded before 01.01.2023 and not brought into compliance with the relevant legislation within six months following this date are invalid.</li> <li>✓ Receiving the applications made by the ETHS through the internal communication system and resolving the applications within 15 days as of the application date. The internal communication system shall enter into force as of 01.07.2023.</li> <li>✓ Retention of information, documents, books and electronic records related to the business and transactions within the scope of the E-commerce Law for 10 years from the date of the business or transaction.</li> <li>✓ Simultaneous transmission of the order information of the goods whose sales are mediated to ETHS and integration with ETHS for updating stock information.</li> </ul>	<ul style="list-style-type: none"> <li>✓ Unfair commercial practices are prohibited in e-commerce activities. Unfair commercial practices are practices that significantly impair the commercial activities of ETHSs, reduce their ability to make reasonable decisions, or force them to make certain decisions. Unfair commercial practices are listed by analogy in the Law.</li> <li>✓ It is forbidden for ETAHS to put goods bearing the trademark of itself or of persons with whom it is economically integrated, or goods for which it has the right to use the trademark up for sale on its electronic marketplace.</li> <li>✓ ETAHS is prohibited from engaging in marketing and promotional activities in online search engines by placing advertisements on keywords consisting of the registered trademarks of persons with whom it is not in economic integrity, which constitute the main element of the domain names registered in ETBIS, without obtaining their prior affirmative declaration of will in writing or electronically.</li> </ul>
<p>Medium, Large, Very Large Scale ETAHSs</p>	<ul style="list-style-type: none"> <li>✓ Except for e-commerce environments included in the net transaction volume, it may not provide access to e-commerce environments belonging to itself or to persons with whom it has economic integrity, and may not promote each other in these environments.</li> <li>✓ Data Usage obtained from the ETHS or the buyer only for the purpose of providing and improving the intermediation service. The relevant obligation shall be fulfilled as of 01.01.2024.</li> <li>✓ Enabling the ETHSs to access the data explicitly specified in the Regulation and providing technical means for efficient and free of charge transportation of such data by the ETHS. The relevant obligation shall be fulfilled as of 01.01.2024.</li> <li>✓ Including information in the brokerage agreement that the ETAHS will provide technical means for the ETHS to carry the data explicitly specified in the Regulation free of charge and efficiently and to provide access to such data within the term of the brokerage agreement, and that the ETHS's requests for data access and data carriage will be met within 15 days by anonymizing the buyer information.</li> <li>✓ Notification to ETBIS of share transfers or acquisitions and company establishment operations stipulated in the Regulation.</li> <li>✓ Having an independent audit conducted and conveying the audit report to the Ministry of Trade.</li> <li>✓ Conducting an annual review of the content provided by the ETHS in order to identify any violations of the E-commerce Law, consumer protection, personal data protection and industrial property rights protection legislation, and submitting the regulatory compliance report prepared regarding results of the review to the Ministry of Trade.</li> </ul>	<ul style="list-style-type: none"> <li>✓ Except for e-commerce environments included in the net transaction volume, it cannot provide access between e-commerce environments belonging to itself or persons with whom it is in economic integrity, and cannot promote each other in these environments. The relevant limitation must be complied with until 01.01.2024.</li> <li>✓ It may not use the data obtained from the intermediation service when it is itself an ETHS or when competing with other ETHSs through the ETHSs with which it has economic integrity. The relevant restriction must be complied with until 01.01.2024.</li> </ul>



Scope	Obligations to be Complied with	Behaviors to Avoid
<p>ETAHSs with a net trading volume of more than ₺15 billion in a calendar year and a number of transactions above 100,000 excluding cancelations and returns, Large, Very Large Scale ETAHSs</p>	<ul style="list-style-type: none"> <li>✓ Obtaining an e-commerce license and renewal of the license. The obligation to obtain a license shall be fulfilled as of 01.01.2025.</li> </ul>	
<p>Large and Very Large Scale ETAHSs</p>	<ul style="list-style-type: none"> <li>✓ Compliance with the obligations imposed on Medium Scale ETAHSs and, in any case, on all ETAHSs, in addition to the obligations attributed to them.</li> </ul>	<ul style="list-style-type: none"> <li>✓ Cannot exceed the advertising budget specified in the Regulation. The relevant limitation is valid as of 01.01.2023 to be applied to the net transaction volumes for the calendar year 2022.</li> <li>✓ Cannot exceed the discount budget specified in the Regulation. The relevant limitation is effective as of 01.01.2023 to be applied to the net trading volumes for the calendar year 2022.</li> <li>✓ It may not restrict ETHS's commercial relations, offer goods or services at the same or different prices through alternative channels or advertise, or force it to procure goods or services from any person.</li> </ul>
<p>Very Large Scale ETAHSs</p>	<ul style="list-style-type: none"> <li>✓ Compliance with the obligations imposed on Medium, Large ETAHSs and, in any case, all ETAHSs, in addition to the obligations attributed to them.</li> </ul>	<ul style="list-style-type: none"> <li>✓ Pursuant to the relevant legislation specified in the Regulation, they cannot enable the banks or e-money institutions with which they are economically integrated to engage in activities related to the provision of banking and payment services. The relevant ETAHSs must comply with this regulation until 01.01.2024.</li> <li>✓ Except for the sales on the electronic marketplace where it provides intermediation services and the sales made by itself as an ETHS, it may not engage in transportation business organizer and postal service provider activities in accordance with the relevant legislation specified in the Regulation. The relevant ETAHSs must comply with this regulation until 01.01.2024.</li> <li>✓ In the event that it provides an electronic environment for the publication of advertisements for goods and services, it cannot provide the opportunity to make a contract or place an order for the supply of goods or services in the same environment.</li> </ul>

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