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Assoc. Prof. Dr. Ece Bař Szel

İstanbul Bilgi University
Faculty Of Law

Online Platforms' Liability Towards Consumers

**-a comparative analysis between
EU law and Turkish law-**



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Online Platforms?

- Online platforms?
- Online marketplaces?
- Intermediaries?
- Providers of online platforms allowing consumers to conclude distance contracts?



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Online Platforms Liability



Consumers

**Distance
Contracts
concluded with
the traders**



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Definition

2011/83 EU Directive

"online marketplace means a service using software, including a website, part of a website or an application, operated by or on behalf of a trader which allows consumers to conclude distance contracts with other traders or consumers"

- **using a software** (including a website/part of a website/an app)
- **operated by/ on behalf of a trader**
- **consumers may conclude a contract with other traders or consumers**

Contracts between the parties

P2B

**Platform to
Business**



P2C

**Platform to
Consumer**



B2C

**Business to
Consumer**



Turkish Law



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Turkish Supreme Court Decision

13 Civil Chamber, 14.12.2018, 2017/5834,
2018/12148.

"GİTTİGİDİYOR"
-an ebay establishment-

"The online marketplaces will only be held responsible for the breach of contract to which it is a party and thus could not be held responsible for defect of the phone as an intermediary."

"The online marketplace failed to gather and/or store sufficient and required information about the seller; hence, it breached its duty to inform the consumer, resulting in a defective performance."

Turkish Law

art. 48/6 TCPC



- **Pre-contractual information**



- **deficiencies in the pre-contractual information**

- **compliance and proof of the information**

- **causing the traders to act contrary to the TCPC**



- **keeping records**

Turkish Law

art. 48/6 TCPC

- in the event that the marketplace receives the contract price on behalf of the trader, from the obligations regarding **the delivery or performance and the right of withdrawal**, except for the cases where the price is transferred to the seller or provider after the delivery or performance of the goods or services to the consumer and the use of the rights in Articles 11 and 15 (regarding the defect) (responsible with the trader)



- **Failure to perform the contract at all or as required in the campaign, promotional or discounted sales** they organise without the approval of the trader;

EU Law



**Directive 2011/83 EC
(amended with Directive 2019/2161)
Digital Services Act (2022) (the DSA)**



Directive 2011/83 EC (amended with 2019/2161)

Article 6a

a) general information, (...)

b) whether the third party offering the goods, services or digital content is a trader or not, on the basis of the declaration of that third party to the provider of the online marketplace;

c) where the third party offering the goods, services or digital content is not a trader, that the consumer rights stemming from Union consumer protection law do not apply to the contract;

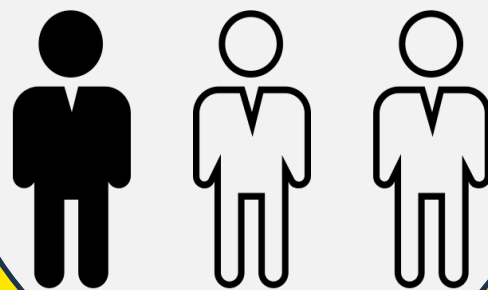
d) where applicable, how the obligations related to the contract are shared between the third party offering the goods, services or digital content and the provider of the online marketplace, such information being without prejudice to any responsibility that the provider of the online marketplace or the third-party trader has in relation to the contract under other Union or national law.



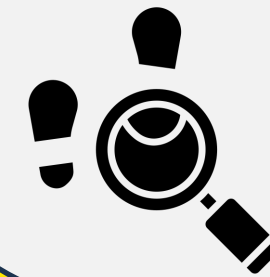
Digital Services Act (DSA)

- Art. 6 + Arts. 29–32 (section 4)
 - “additional provisions applicable to providers of online platforms allowing consumers to conclude distance contracts with traders.”

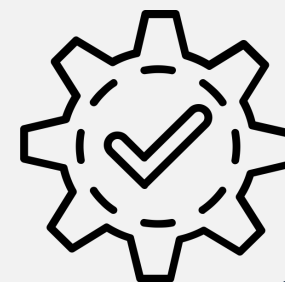
Exemption



Traceability of traders



Compliance by Design



Right to Information



Digital Services Act (DSA)

Art. 6/I, Exemption:

- Is the platform involved anyhow?

Art. 6/III, The exception of the exemption (EJC, Wathelet Decision)

KEYWORD : Consumer Trust



The online platforms

- determine the price/ the contract terms;
- receive the payment;
- fail to explicitly inform the consumer that it is not a party to a distance contract/ to display the trader's identity;
- other examples in ELI rules (*predominant influence)
- ECJ, Uber decision vs. ECJ, Airbnb decision



Traceability of traders (art. 30 DSA)



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a) the name, address, telephone number and email address of the trader;

b) a copy of the identification document of the trader or any other electronic identification as defined by Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council;

c) the payment account details of the trader;

d) where the trader is registered in a trade register or similar public register, the trade register in which the trader is registered and its registration number or equivalent means of identification in that register

e) a self-certification by the trader committing to only offer products or services that comply with the applicable rules of Union law.

- **Collect and store** the information
- **Make best efforts** to reliability of the information
- In case of reasons to believe the information is inaccurate, **ask for a remedy** and after that **suspend** the service to the trader.

Compliance by design (art. 31 DSA)

- Providers of online platforms allowing consumers to conclude distance contracts with traders shall ensure that **its online interface is designed and organised in a way that enables traders to comply with their obligations** regarding pre-contractual information, compliance and product safety information under applicable Union law.
- online interface is **designed and organised in a way that it allows traders to provide the necessary information** (subpar. 2)
- **Random checks** (subpar. 3)



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Right to Information art. 32 DSA



Duty to inform consumers

In case of an illegal product or service has been offered by the trader

Content of Information

- (a) the illegality of the product/ service;
- (b) the identity of the trader;
- (c) any relevant means of redress

If the platform does not have **the contact information of all affected consumers:**

- (a) Publicly available **AND**
- (b) easily accessible on the online platform

Concluding Remarks

ece.bas@bilgi.edu.tr



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EU LAW

The platform is not party to the distance contract

Pre-information and information

Liability is based on **general** “**consumer trust**” established by the platform in the eyes of the consumer

Case law tries to find a link to hold the platform liable

TURKISH LAW

The platform is not party to the distance contract

Pre-information and information

Liability is based on more **specific rules** but again the basis is involvement and “**consumer trust**”

Responsible for:
Delivery, performance and right of withdrawal

Case law tries to find a link to hold the platform liable