

## **Law Proposal on Social Networks**

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A recent law proposal which provides significant changes to the Law on Regulation of Broadcasts via Internet and Prevention of Crimes Committed through Such Broadcasts (“Law No. 5651”) has been published on Grand National Assembly of Turkey’s (“TBMM”) website on July 21, 2020 (“Proposal”). The Proposal mainly introduces obligations on social network providers with over 1 million daily accesses from Turkey.

### **Obligations Introduced by the Proposal**

#### **(i) Social Network Provider Definition**

The Proposal defines social network provider as real persons or legal entities that enable users to create, view or share content such as text, images, sound, location for social interaction purposes on the internet medium.

#### **(ii) Obligation to Appoint a Representative**

Proposal obliges foreign based social network provider (“SNPs”) which secures more than one million daily access from Turkey to assign at least one person to be its representative in Turkey who will be capable of meeting the requests, notifications or notices that will be sent by the Information Communications and Technologies Authority (“ICTA”), Access Providers Union (“APU”), judicial or administrative authorities, and responding to the applications which will be made by individuals within the scope of the Law No 5651, and to fulfill other duties therein. In case the representative is a real person, this person must be a Turkish citizen.

SNPs must include the contact information of the representative in an easily visible and directly accessible manner on their website. SNPs are also obliged to report this person’s identity and contact information to the ICTA.

The Proposal suggests a 5-tiered sanction mechanism that would apply respectively in case the SCP continue to violate this obligation within the given periods: (i) administrative monetary fine of 10 (ten) million Turkish Liras, (ii) additional administrative monetary fine of 30 (thirty) million Turkish Liras (*in case the obligation is not fulfilled within 30 days*), (iii) prohibition for the resident tax payers to place advertisements on the social network provider (*in case the obligation is not fulfilled within 30 days as of the second monetary fine*), (iv) bandwidth throttling up to 50% (*in case the obligation is not fulfilled within 3 months as of the advertisement ban decision*) and (v) bandwidth throttling up to 90% (*in case the obligation is not fulfilled within 30 days as of the first bandwidth throttling*).

**(iii) 48 Hours to Respond to Individual Requests**

Pursuant to the Proposal, SNPs which secure more than one million daily access from Turkey, are obliged to provide a positive or negative response to the applications made with regard to the content that falls under the scope of Article 9 and 9/A of Law No. 5651 within 48 (forty eight) hours starting from the submission of the applications. In addition, negative responses should be given with the reasoning.

Administrative fine of 5 (five) million Turkish Liras might be imposed on SNPs which fail to comply with this obligation.

**(iv) 24 Hours to Enforce Court Orders**

Proposal provides that SNPs will be liable for all of the damages arising from failure to remove or block access to content which is deemed unlawful with a judge or court order, within twenty four (24) hours.

**(v) Reporting Obligation**

Proposal requires domestic or foreign based SNPs which secure more than one million daily accesses from Turkey notify ICTA semi-annually on the reports in Turkish language including statistical and categorical information (i) regarding implementation of removal of content and/or access ban decisions and (ii) regarding the applications that fall within the scope of the applications based on Article 9 and Article 9/A of the Law No. 5651.

The Proposal also requires publication of the applications based on Article 9 and Article 9/A of the Law No. 5651 on SNP's own website by redacting the personal data in these reports.

The first report that will be prepared per the foregoing provision would be notified ICTA and will be published on SNP's own website in January 2021.

Administrative fine of 10 (ten) million Turkish Liras might be imposed on SNPs which fail to comply with this obligation.

**(vi) Data Localization**

The Proposal introduces data localization requirements and obliges domestic or foreign based SNPs which secure more than one million daily accesses from Turkey to take the necessary measures to keep the personal data of the users in Turkey, in Turkey.

**(vii) RTBF Reference**

The Proposal also allows judge to decide on not associating the applicant's (whose personal rights are violated due to the content broadcasted on the internet) name with the websites subject to the decision. Per the Proposal, the decision will also indicate which search engines will be notified by the APU.

**(viii) Notification Procedure**

The Proposal enables notification of the administrative monetary fine decisions through electronic means to the foreign counter-parts and indicates that this notice (i) has the capacity of the notification regulated under the Notification Law with number 7201 and (ii) will be deemed to have been made at the end of the fifth day following the notification date.

**(ix) Provisional Article**

The Proposal provides a transition period with regards to the obligation to respond to individual requests within 48 hours and states that SNPs shall complete the necessary work to fulfil their obligations on this obligation within 3 (three) months.

The Proposal is currently submitted before the relevant commission for discussions. Once the Proposal is discussed and accepted by the TBMM, it will be sent to the President for review. Unless the President objects to the publication of the law and returns it to the TBMM, the President will then publish the law in the Official Gazette within fifteen (15) days. According to the current version of the Proposal, the proposed provisions will be effective immediately as of their publication.

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