

## **Law Proposal Concerning Social Networks**

**Authors:** Gönenç Gürkaynak Esq., Ceren Yıldız, Burak Yeşilaltay and Devlet Çağla Nizam of ELIG Gürkaynak Attorneys –at-Law

On May 1, 2020 a law proposal<sup>1</sup> (“Proposal”) on social network operators and fake accounts, has been published on the TBMM’s website. The Proposal is submitted to the TBMM by a member of parliament from Nationalist Movement Party (MHP). The Proposal provides significant changes to the Law on Regulation of Broadcasts via Internet and Prevention of Crimes Committed through Such Broadcasts (“Law No. 5651”). The Proposal seems to be an updated version of the Draft Law on the Amendment of Certain Laws (“Draft Proposal”) which was thoroughly evaluated in our article of April 13, 2020<sup>2</sup>, considering the similarity between two texts.

According to the current updated version of the Proposal, the proposed provisions will be effective immediately as of their publication.

### **I. Obligations Introduced by the Proposal**

Proposal sets out the obligations for social network providers (“SNPs”) which will be regulated under Additional Article 4 and its subparagraphs to be inserted to the Law No. 5651, as detailed below.

#### **(i) Obligation Establish a Representative Entity and to Appoint an Official**

---

<sup>1</sup> <https://www2.tbmm.gov.tr/d27/2/2-2844.pdf>

<sup>2</sup> Please see our article titled “Recently Proposed Amendments To Turkish Internet Law: Obligations Imposed On Social Network Providers” at <https://www.mondaq.com/turkey/data-protection/916910/recently-proposed-amendments-to-turkish-internet-law-obligations-imposed-on-social-network-providers>

Proposal obliges local or foreign SNPs with more than five hundred thousand (500,000) daily accesses from Turkey to (i) establish a representative entity in Turkey which will be capable of and authorized to receive, respond and comply with notifications, requests and court orders and (ii) appoint at least one person who will be in charge. As per the wording of the article, the duties of this representative entity and the real person representative and the implementation of this obligation will apparently become clearer in the secondary legislation to be issued by the ICTA.

SNPs must notify the ICTA of all information regarding the person who is appointed at the representative entity established in Turkey, within twenty (20) days. According to the Proposal, for those who fail to notify an official within twenty (20) days, ICTA will implement a fifty percent (50%) restriction on the internet traffic bandwidth. If the SNP does not comply with this obligation after twenty (20) days of the initial restriction, the ICTA will block access to entire internet traffic of the relevant SNP, until the SNP notifies an official to the ICTA.

#### **(ii) ID Number Requirement**

Proposal obliges SNPs to request Turkish identity numbers from users who wants to use their services. Furthermore SNPs may not allow use of any accounts, which are not matched with an identity number. The accounts that are already opened and are in use, and which are not attached to an identity number, will be terminated as of the effective date of the Proposal.

Administrative fines ranging from 500,000 to 5,000,000 Turkish Liras could be imposed on SNPs which fail to comply with this obligation.

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

Pursuant to the Proposal, social network providers which establish a representative entity and appoint an official in Turkey will be obliged to respond to the requests received from individuals based on Articles 9 and 9/A of Law No. 5651 within forty eight (48) hours.

Administrative fines ranging from 150,000 to 1,500,000 Turkish Liras might be imposed on SNPs which fail to comply with this obligation.

**(iv) 16 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 sixteen (16) hours.

Administrative fines ranging from 150,000 to 1,500,000 Turkish Liras might be imposed on SNPs which fail to comply with this obligation.

**(v) Reporting Obligation**

Proposal requires SNPs which establish a representative entity and appoint an official in Turkey to provide quarterly reports which include (i) statistical information regarding content removal or access ban decisions, transactions carried out in relation to such decisions, individual requests and their results, and (ii) other categorical information which is requested by the ICTA.

Administrative fines ranging from 200,000 to 2,000,000 Turkish Liras might be imposed on social network providers which fail to comply with this obligation.

**II. Comparison of the Proposal with the former Draft Proposal**

**(i) Social Network Provider Definition**

The Draft Proposal introduced a definition for “social network provider”. The current Proposal does not include a definition for SNPs.

**(i) Access Threshold**

The Draft Proposal introduced one (1) million daily accesses from Turkey as a threshold for the obligations on SNPs. The current Proposal decreases this threshold to five hundred thousand (500,000) daily accesses from Turkey.

**(iii) Obligation Establish a Representative Entity to Appoint an Official**

The Draft Proposal required appointment of at least one real person representative in Turkey. The current Proposal requires both the establishment of a representative entity in Turkey (a legal entity) and appointment of a real person official for exercising duties.

**(iv) Notification of Administrative Fines**

The Draft Proposal included a provision that facilitates the notification of administrative fines (e.g. through e-mail message) where the addressee of the administrative fines is located abroad. Relevant provision has been removed in the current Proposal.

**(v) ICTA's Supervision/Audit Authority**

The Draft Proposal authorized the ICTA to carry out audits in person or through third parties to examine whether or not hosting providers fulfill their obligations under the Law No. 5651, including on site examinations. The current Proposal does not include such a provision authorizing the ICTA to conduct examinations for compliance with the obligations provided under the law.

**(vi) Localization Requirements**

The Draft Proposal introduced localization requirements and obliged SNPs to keep user data in Turkey. This provision has been removed from the recent version of the Proposal.

**(vii) ID Number Requirement**

The Draft Proposal did not provide any requirement with regards to authentication of accounts. The current Proposal introduces a new obligation to request identity numbers from users and to match them with the accounts.

Apparently, the localization requirements have been substituted with the identity number requirement.

**(viii) Time Period to Respond Individual Requests**

The time period of seventy two (72) hours provided with under the Draft Proposal to respond to individual requests is decreased to forty eight (48) hours by the Proposal.

**(ix) Time Period to Enforce Court Orders**

The time period of twenty four (24) hours provided with the Draft Proposal to execute court orders is decreased to sixteen (16) hours by the Proposal. Similar to the Draft Proposal, the Proposal provides that SNPs will be liable for the damages arising from failure to remove or block access to content which is considered as unlawful by a judge or court order, within sixteen (16) hours.

### **(x) Reporting Obligation**

Similar to the Draft Proposal, the Proposal requires SNPs to provide quarterly reports. The former Draft Proposal required SNPs to provide quarterly reports which include statistics and categorical information regarding content removals, execution of access ban decisions and individual requests. The Draft Proposal did not expressly require SNPs to include the result of individual requests in these reports.

The current Proposal brought this additional content to the scope of reporting obligation.

### **(xi) Administrative Fines**

Similar to the Draft Proposal, the Proposal provides high ranges of administrative fines for failure to comply with the obligations provided therein.

## **III. Conclusion**

Considering that this is the second time in the past month that certain legislative proposals regulating social media platforms are being discussed, the legislators give the impression that they are keen on bringing new regulations governing “social network operators”, which would be a newly introduced term to the Turkish internet legislation. The proposed regulations might require local and foreign SNPs to reevaluate their current practices, membership flows and data processing operations and taking strategic decisions on appointment or establishment of a representative.

Article contact: Gönenç Gürkaynak, Esq.

Email: [gonenc.gurkaynak@elig.com](mailto:gonenc.gurkaynak@elig.com)

*(First published by Mondaq on May 4, 2020)*