

## CLIENT ALERT

IT & TELECOMS | TURKEY |

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### NEW PROVISIONS ENTERED INTO FORCE ON 2 OCTOBER 2020 WITHIN THE ICTA PROCEDURES AND PRINCIPLES ON SOCIAL NETWORK PROVIDER, CONSIDERING THE SOCIAL NETWORK PROVIDERS IN TURKEY

The concept of “Social Network Provider” and other concepts related to social media were introduced in “Law No. 5651 on Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publication”, and were amended in “Law No. 7253 on Making Amendments to the Law on Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publication” (“the Amendment”). It has now been announced that foreign-based Social Network Providers whose networks are accessed by more than one million visitors on a daily basis from Turkey shall designate at least one person as a representative in Turkey, authorised to ensure that the requirements of the notifications, notices or requests to be transmitted by the ICTA (Turkey’s Information and Communication Technologies Authority), the Access Providers Association, judicial or administrative authorities are fulfilled.

Some terms and the interpretation of terms such as “social media provider”, “social network providers whose networks are accessed by more than one million visitors on a daily basis” and the way these terms are reflected in practice, were clarified in the ICTA’s Procedures and Principles on Social Network Provider publication.

#### **SCOPE OF THE PROCEDURE AND THE RELATED LAW**

Within this new regulation, it is stated that when numbers accessing the Social Network Provider are consistently below 1 million, the social network provider may send an application to the ICTA requesting to be considered out of the scope, except for Article 22 of the Procedures (said Article provides that the content whose contradiction to law is determined by the Court should be removed within 24 hours as of the notification of the court decision to the social network provider). If this request is found acceptable following a technical review, ICTA shall inform the Social Network Provider that it is outside the scope. However, if ICTA decides that there is a rise in daily access from Turkey to more than 1 million, ICTA will inform the Social Network Provider that it is within the scope.

According to the Procedure, real or legal persons who only include content for social interaction in a certain part of the broadcast on the Internet are not considered as Social Network Providers. Platforms, where content for social interaction purposes such as personal websites, electronic commerce sites, and news sites are offered as a secondary and ancillary service, are out of the scope of the Procedure.

## CHANGES WROUGHT BY THE PROCEDURE AND THE RELATED LAW

- **Obligation to appoint a representative:** Those Social Network Providers whose networks are accessed by more than one million visitors on a daily basis from Turkey shall designate at least one person as a representative in Turkey. The Procedures state that the representative can be a real or legal person.

If the Social Network Provider does not fulfil its obligation to designate and declare its representative within thirty days of the notification, an administrative fine in the amount of TRY 10 million shall be imposed on the Social Network Provider. If the obligation is still not fulfilled within thirty days as of the notification of the administrative fine imposed, an administrative fine in the amount of TRY 30 million shall be imposed in addition to the first administrative fine.

Furthermore, if the cited obligation is not fulfilled within thirty days as of the notification date, although the notification for the second administrative fine has been served, taxpayers, real and legal persons domiciled in Turkey, shall not be allowed to give new advertising content to the said Social Network Provider. In this case, the Social Network Provider that has committed the breach shall not conclude a new contract and shall not make the relevant payment.

In the event that the obligation is not fulfilled within 3 months from the date of the decision to prohibit advertising, the ICTA may apply to the Criminal Court of Peace to reduce the Social Network Provider's Internet traffic bandwidth by 50%. If the obligation is still not fulfilled within thirty days following the court's decision accepting the application, the ICTA may apply to the competent Criminal Court of Peace for the Social Network Provider's Internet traffic bandwidth to be reduced by 90%.

- **48 hours response time to content removal requests:** Within this new Amendment, social media users can apply to the Social Network Provider Companies in case of violation of their personal rights and privacy. Social Network Providers shall respond within 48 hours. If a negative answer is given, it shall include justification. ICTA imposes an administrative fine of TRY 5 million if the Social Network Provider fails to fulfil this obligation. In the event that the content is reported to the Social Network Provider by the judge or court decision, the Social Network Provider that fails to comply with the decision within 24 hours despite the notification will be responsible for compensation for the damages incurred. Social Network Providers are subject to an administrative fine of TRY 1 million and a judicial fine of TRY 5 million if they fail to implement the blocking or removal decisions.
- **Data localisation:** Social Network Providers shall take the necessary measures to store in Turkey the data of users located in Turkey, whether they are domestic or international providers.
- **24-hour action period for content removal/access blocking requests:** In the event that the content is reported to the Social Network Provider by the judge or court decision, any Social Network Provider that fails to comply with the decision within 24 hours despite the notification will be responsible for compensation for the damages incurred.

- **The half-yearly reports:** As per the Amendment, domestic or foreign Social Network Providers are required to submit to the ICTA reports containing statistical and category information regarding the implementation of content extraction and/or access blocking decisions and applications every six months. Social Network Providers are required to file their first report to ICTA in June 2021 and publish it on their website.

As provided for in the procedures, matters relating to the preparation and publication of such reports and its notification to the ICTA can be defined and communicated to the social network by the ICTA.

## CONCLUSION

By imposing obligations on organisations of social media platforms, the Turkish legislator is aiming to regulate publications on such platforms in a bid to combat crime committed via the Internet. Since crime committed via the Internet is becoming more widespread, and the age of those who use the Internet is dropping, the legislator and the ICTA are hoping to gain more control with these new provisions. In addition to this goal, the regulation includes guiding provisions for Social Network Providers in terms of their obligations under Law No. 5651 and its Amendment. With the implementation of both the Law and Procedures, it is clear that this is a perfect time for domestic and international Social Network Providers to take significant decisions to comply with the new system.



*In compliance with Turkish bar regulations, information relating to Turkish law matters which are included in this client alert is given by Özdirekcan Dündar Şenocak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.*

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