



5 August 2020

## AMENDMENTS MADE TO THE LAW NO. 5651

Law (**Law**) on the Amendment of the Law No. 5651 on Regulation of Publications on the Internet and Combating Crimes Committed by means of Such Publications (**Law no. 5651**) has been published in the Official Gazette on 31 July 2020 and several provisions have entered into force as of 31 July 2020. In this context;

With the Law, the concept of “social network provider” regarding social media platforms has been defined for the first time in Turkish legislation and fundamental liabilities for social network providers have been designated. Additionally, there are important amendments with regards to other topics in the Law such as **(i)** notification in case the interlocutor resides abroad, **(ii)** increase of the lower and upper limits of administrative fines for hosting service providers, **(iii)** the right to be forgotten for people whose personal rights have been violated and **(iv)** the addition of the expression “removal of content” to specific clauses as an option for access blocking.

In accordance with the transition clauses of the Law, the definition of social network provider and obligations imposed to the social network providers will enter into force on 1 October 2020.

### 1. The Concept of Social Network Provider

Social network provider has been defined in the Law as “*real and legal persons who enable users to create, view or share content such as text, image, audio and location on the internet environment with the purpose of social interaction*”.

Along with this definition, a new concept has been added to the concepts designated in the Law no. 5651 such as content provider, hosting service provider, access provider and collective use provider. In this context, the social media platforms which previously have been designated as hosting service provider or as occasion requires, content provider, will acquire an additional designation along with the amendments made with the Law. In other words, the designation of a social media platform as a social network provider shall not imply that their obligations exclusive to their designation as a hosting service provider or content provider have expired. In accordance with the Law, service providers which have been designated as both social network providers and hosting service providers/content providers will abide by the responsibilities and obligations exclusive to both titles.

### 2. Obligations of the Social Network Providers

#### a. The obligation to maintain a representative in Turkey and to notify

Within the context of the Law, the foreign based social network providers whose daily access from Turkey is more than one million shall designate at least one real or legal person in Turkey as representative to ensure the fulfilment of its obligations. In the event that the representative is a real person, the representative shall be a Turkish citizen.

The social network provider is required to notify the Information and Communication Technologies Authority (**BTK**) of its representative’s credentials and contact information. The social network provider is also required to include its representative’s contact information in its website in such a way that the users will have easy access to the information.

In accordance with the Law, in the event that the social network provider fails to designate a representative despite the notification made by BTK for the designation of a representative; a 5-step



procedure of sanctions consisting of a 2-step administrative fine procedure, then an advertising ban and eventually a 2-step throttling procedure of the internet traffic bandwidth is being stipulated. Within the context of the sanctions procedure; if the obligation to appoint a representative is not fulfilled within thirty days following the notification of BTK, an administrative fine of 10 million TRY, and if it is not fulfilled within 30 days following the notification of the first administrative fine an additional administrative fine of 30 million TRY shall be imposed. If the violation continues for 30 days following the notification of the second administrative fine, the President of BTK shall ban real and legal persons who are taxpayers residing in Turkey from giving new advertisements to the violating social network provider. If the obligation is not fulfilled within 3 months following the advertising ban, following the application of the President of BTK to the criminal peace judgeship, the social network provider's internet traffic bandwidth can be reduced by 50%, and after the decision of the criminal peace judgeship it can be reduced by 90% at most.

#### **b. The obligation to respond to the applications of individuals within 48 hours**

According to the Law, domestic-based and foreign-based social network providers whose daily access from Turkey exceeds one million are required to respond either affirmatively or negatively to the applications with regards to the violations of personal rights as per Article 9 of the Law no. 5641 and the violation of privacy as per Article 9/A of the Law no. 5641, within 48 hours at the latest. In the event that the social network provider's response to this request is negative, it shall include its justification in the response to the applicant. In accordance with the transition clauses of the Law, the social network providers are obliged to complete necessary operations within three months following the enforcement date of this clause.

#### **c. Data localization obligation**

Within the context of the Law, domestic-based and foreign-based social network providers whose daily access from Turkey exceeds one million have been charged with implementing necessary measures to store the data of the Turkey-based users in Turkey. It is unclear how the transition process will be conducted and what are the details for the required measures. This provision will also come into force on 1 October 2020.

#### **d. The obligation to report**

Domestic and foreign based social network providers whose daily access from Turkey exceeds one million are required to report to BTK semi-annually. This report shall include statistical and categorical information on the decisions for content removal and access blocking and the applications with regards to the violations of personal rights and privacy. In addition, the report shall also be published on the website of the social network provider with the part of the report regarding the applications purged of personal data. In accordance with the transition clauses of the Law, the social network providers shall deliver their first reports to BTK and publish them on their website on June 2021.

#### **e. Legal liability of the social network provider**

As per the Law, if content removal or access blocking has not been realized within 24 hours despite the notification to the social network provider on the illegality of the relevant content, which has been determined by a judge or court decision, the social network provider is obliged to compensate the damages incurred and there shall be no requirement to refer to the content provider's liability or file a case to the content provider with regards to the damages.

### **3. Notification in case the Interlocutor is Abroad**

Due to the fact that most of the subjects within the scope of the Law no. 5651 reside abroad and their activities are carried out in a digital environment, a manner of notification with a special method have



been established with regards to the notification of issued administrative fines to the interlocutors abroad. With this amendment, in the event that the interlocutor resides abroad, BTK shall be able to serve notices for administrative fines straight through e-mail or further communication tools. This notification shall be considered a notification in compliance with the Notification Law and it shall be considered valid at the end of the fifth day following the day the notification has been made. Thus, electronic notification for subjects based overseas has been accepted, which will ease the notification of administrative fines to abroad and the applicability of sanctions. The relevant clause shall be valid for not only social network providers, but for all subjects designated in the Law no. 5651. This clause has come into force on the publishing date of the Law on Official Gazette.

#### 4. The Right to be Forgotten

In accordance with the Law, the person whose personal right has been violated may apply to the court to prevent the association of its name with the violating websites. In this context, the court may rule on which search engines will be notified to prevent the association of the applicant's name with the relevant websites. The relevant regulation is a solid regulation on the right to be forgotten, which has provided a basis for many legal precedents abroad and which has been pointed out by the Republic of Turkey Court of Cassation in recent times.

#### Conclusion

With this Law the concept of "social network providing" has been introduced to Turkish legislation for the first time. Many regulations in the Law point to several new liabilities previously unseen in the legislation. In this context, subjects designated in accordance with their activities as content providers and/or hosting service providers according to the Law no. 5651, shall also be designated as social network providers if appropriate and be liable accordingly.

The Law brings solid regulations especially for foreign based social network providers. In this context, considering the fact that the validity date for regulations regarding social network providers is 1 October 2020, both domestic and foreign based social network providers shall finalize their operations in the upcoming period. It is essential to state that the obligation to assign a representative and respond to the people's individual content removal requests may cause many organizational changes for social network providers. Also the legal liability brought to social network providers and liability for compensation shall emerge as a fundamental difference between social network providers and hosting service providers.

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