

Data Localization Rules Imposed on Social Media Companies in Turkey

The law amending the Law No. 5651 on the Regulation of Internet Broadcasts and Prevention of Crimes Committed through Such Broadcasts (the "Law No: 5651"), known as Social Media Law in Turkey, was published in the Official Gazette on July 31, 2020. Information and Communication Technologies Authority (ICTA), as the competent authority, published a decision providing further clarification on October 02, 2020, right after the date on which provisions applicable to social network providers brought under the Law 5651 became effective. The newly introduced provisions under the Law No: 5651 provides a new definition, social network providers and imposes important obligations on them together with sanctions in case of non-compliance. In this paper, we will discuss data localization requirement brought to social network providers.

Definition of Social Network Provider

Social network provider is defined as "*natural or legal persons that provide opportunities for users to create, view or share textual, visual, audio, or location data, etc. for social interaction.*" The broad definition and thus, interpretation of social interaction might result in a wide range of companies being considered social network providers. The new rules imposing data localization requirements depend on whether companies in question fall under the scope of the social network provider definition.

While the definition has been under discussion and found controversial, ICTA issued a decision regulating the rules on social network providers and narrowed the definition's scope by stating the exemptions. Accordingly, platforms such as e-commerce sites, online newspapers, personal websites providing content related to social interaction as a peripheral service, and internet broadcasts that include social interaction in a particular part are excluded from the requirements.

Data Localization requirement

Under the Law No: 5651, domestic or foreign social network providers, having more than 1 million daily access to their services from Turkey, are obliged to take necessary measures to store the users' data in Turkey within the country. The secondary regulation indicates that the social network providers must prioritize to keep the users' basic information and the information required by ICTA within Turkey, and the measures taken to store data within Turkey must be reported in every reporting period. The requirement covers all citizens of various nations that live in Turkey and excludes the citizens, including Turkish nationals, residing abroad. The relevant provision regulating data localization requirement entered into force on October 01, 2020.

To apply the localization requirement, firstly, the entity must be considered as a social network provider. Secondly, the social network provider must have 1 million daily access to their services in Turkey. The ambiguous definition of social network provider was addressed with the secondary regulation; however, measuring unit and method for the 1 million daily access was not clarified. Further, it is still unclear whether the localization requirement in terms of user data is an only-storage

requirement or if storing a copy of the data (local storage) is sufficient. The data retention period was not stated either, but privacy rules must always be taken into account in terms of storage.

Cross border transfer

There is no restriction imposed under Law No: 5651 in terms of cross border transfer of user data, but privacy laws must be considered in terms of personal data transfers.

Sanctions

Law No. 5651 already set forth hefty administrative fines and severe measures in case of non-compliance with appointing a local representative, notification, reporting, and content removal obligations for social network providers. However, despite the requirement for the social network providers to store the users' data within Turkey, no explicit penalty was provided for a possible violation or non-compliance specific to this requirement. The lack of a penalty for not storing the users' data inside Turkey questions the enforceability of the localization requirement and makes practitioners think that it is an intended gap that leaves room for social network providers and the authority to negotiate if need be. In the meantime, the ICTA's decision specifically states that the measures taken to store user data within Turkey must be included in the reports sent at every reporting period. Law No. 5651 sets an administrative fine of TRY 10 million for not complying with the reporting requirement. Thus, the administrative fine of TRY 10 million might also be evaluated in case of a breach of the localization requirement.

The reasoning behind introducing new rules under the Law No: 5651 are mostly regulating social media content and enforcing social network providers to remove illegal content effectively. In most cases, Turkish authorities claim that it is hard to find a correspondent from giant known social network providers, or in some cases, they do not comply with legal requirements; thus, these newly introduced rules aim to create an effective content removal process for public bodies and prosecutors.

However, data localization (in terms of user data) is the most controversial requirement among others, and social network providers find it very difficult to comply as they all have global servers and storage systems. Further the Law No: 5651 does not either provide detailed provisions on what type of user data must be stored in Turkey, or what are the responsibilities of a representative to be appointed in Turkey and if user data is not stored in Turkey, can the official bodies/prosecutor ask for user data from the representative? In case the representative cannot provide access to the data, can he/she be liable personally or not?

Most practitioners tend to think that the localization requirement is a wishful provision of Law 5651; however, it is also known that the administrative powers of ICTA are extensive, and in case of incompliance, they may interpret the rules widely.

Conclusion

The localization rules under Law No. 5651, although the enforceability of which is in question, might create a heavy burden on social network providers. The secondary regulation did not answer the questions raised on the localization requirements; thus, global social network providers may tend to refrain from applying the localization requirement or not comply with the law entirely.¹

¹ According to FT, Facebook informed the Turkish Government that they will not comply with the law. Pitel, L. and Murphy, H., 2020. Facebook To Defy New Turkish Social Media Law. [online] Ft.com. Available at: <<https://www.ft.com/content/91c0a408-6c15-45c3-80e3-d6b2cf913070>> [Accessed 6 October 2020].