

Sanctions Lined up for Social Network Platforms in Turkey

The law amending the Law No. 5651 on the Regulation of Internet Broadcasts and Prevention of Crimes Committed through Such Broadcasts ("Law No: 5651") known as Social Media Law in Turkey was published in the Official Gazette on July 31, 2020 and became effective as of October 01,2020. Information and Communication Technologies Authority (ICTA), as the competent authority, published the secondary regulation providing further clarification on October 02, 2020. The newly introduced provisions under the Law No: 5651 provides a new definition as social network providers and impose important obligations on them. Since October 2020, ICTA has been active on following up whether the social network providers have complied with the new requirements, particularly in terms of appointment of representative in Turkey.

So far it is known that only Youtube and VKontakte have announced that they will appoint a representative in Turkey. Major global social network providers (Facebook, Twitter, LinkedIn, Instagram, Youtube) already received fines in the amount of TRL 1 million and then 30 million for non compliance with the representative appointment. Some of these platforms had talks with the officers at the ICTA on this issue.

Upon receipt of the second monetary fine, social network providers have 30 days to comply with the appointment requirement and if they do not comply, legal and real persons in Turkey (who are tax responsible) will be banned from placing advertisement on these social network providers as regulated under the Law No: 5651. The advertisement ban decision by ICTA must be announced on the Official Gazette and as per the ban, it will be prohibited to execute new agreement with the social network provider and to transfer money to the social network provider. It is further stated that public bodies will be following up the application of the advertisement ban.

It is worth saying that nowadays relevant stakeholders in Turkey are hesitant to engage with social network providers for new projects and those having on going advertisement engagement with them are questioning the validity of their agreement and its further application.

We must note that requirements relating to advertisement ban is not directly applicable to social network providers as the wording of the law addresses advertisers specifically. That being said, there is no specific fine or sanction regulated under the Law No: 5651 for advertisers. There is only a risk that the advertisers may be fined for not complying with the decision of the ICTA, which is very low and can be ignored. However, advertising ban is already created a great hesitation among the stakeholders in Turkey and in case ICTA issues a decision on advertising ban, it is not clear how it will be implemented, how relevant parties will react and revise their agreement or whether they will comply with the ban and stop placing advertisement on these platforms. It is clear that ICTA's decision will affect seriously SMEs considering the rise of digital advertising especially during the pandemic. Moreover, Law No. 5651 also regulates reducing internet traffic bandwidth by 50% to 90% upon applying to the Criminal Judge of Peace in case of non compliance with the representation requirement

within 3 months as of ICTA's decision on the advertisement ban. Meaning that these platforms will not be able to work properly if that happens.

As mentioned before, the other most critized requirement was in relation to localization of user data of social network providers and it is found even more difficult than representation requirement by global platforms. 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 secondary regulation regulates monetary fine in the amount of TRL 10 million in case of not fulfilling reporting obligation.

In sum, we believe that the economy as a whole will be negatively affected by these new sanctions lined up. Having heard from Youtube and VKontakte, we can presume that other social network providers may be working on appointing a real person representative or establishing an entity in Turkey, as required under the law. It is apparent that if ICTA issues an advertisement ban decision for any social network providers then they will have their final 3 months to become compliant.