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INFORMATION NOTE ON THE PROCEDURES AND PRINCIPLES REGARDING THE SOCIAL NETWORK PROVIDERS

As is known, the obligations of social network providers and administrative sanctions to be imposed in case of a failure to comply with these obligations have been regulated under Additional Article 4 of the Law No. 5651 on the Regulation of Broadcasts on the Internet and the Prevention of Crimes Committed through Such Broadcast ("**Law**")¹ which was introduced in 2020.

Due to the drastic increase in the use internet and social media for broadcasts, the Information and Communication Technologies Board has recently accepted "Procedures and Principles Regarding the Social Network Providers" ("**Procedure and Principles**") with its decision dated 28.03.2023 and numbered 2023/DK-ID/119, as envisaged by the Additional Article 4 of the Law, and the Procedures and Principles has been published in the Official Gazette dated 01.04.2023 and numbered 23150. Procedures and Principles entered into force as of the publication date.

Briefly, with the Procedures and Principles, the provisions of Additional Article 4 of the Law on the obligations of social network providers on reporting and having representatives in Turkey, the rights of users of the social network providers and the precautionary procedures for the protection thereof, and cooperation with the judicial authorities regarding administrative sanctions were largely repeated and more detailed and comprehensive new rules have been introduced on matters such as the criteria for being a representative of social network provider and the provision of categorized services specific to children.

You may kindly find the detailed explanations of the Procedures and Principles below.

I. WHAT DO THE PROCEDURES AND PRINCIPLES BRING IN ADDITION TO THE LAW?

1. Purpose and Scope

With the Procedures and Principles, the obligations of the social network providers and the procedures and principles regarding the implementation of these obligations are regulated in detail with headings, contrary to the Law. Platforms such as personal websites, e-commerce sites and news sites where content for social interaction is offered as a secondary and ancillary service are excluded from the scope of the Procedures and Principles.

2. Criteria regarding the Legal Person Representative of Social Network Providers and its Duties

- a. **Criteria for Representative:** The obligation of social network providers to have representatives was determined under the Law based on the daily access amount from Turkey, and different provisions were introduced according to the daily access thresholds from Turkey, which were determined as 1 million and 10 million per day. For the social network service providers whose daily access from Turkey is more than 1 million, the Law sets forth the obligation to designate a real person representative of Turkish nationality and residing in Turkey or a legal person representative established in Turkey in accordance with the laws of Turkey. In case the daily access from Turkey is more than 10 million and the representative of the social network provider is a legal person, it was obligatory for the representative to be a branch established by the social network provider in the form of a company according to the Law. The Procedures and Principles

¹ You may reach relevant information note through <https://www.guner.av.tr/articles/25-november-2022>.

sets forth more detailed criteria for the relevant company to be accepted as a company representative by the Information Technologies and Communications Authority (“ICTA”).

Accordingly, if the daily access of the social network provider from Turkey is more than 10 million, the company that will be designated as a representative must have a capital of at least **TRY 100,000,000 (one hundred million Turkish Liras), of which all shares shall belong to the social network provider**. In addition, it is required for the company to have in its own commercial title **the distinctive wording of the social network provider's title** and to **include the province in which it was established**, and to include in the articles of association that the company is **affiliated with the social network provider**.

b. Duties of the Representative: The fulfilment of the reporting obligation, which is among the obligations of the social network provider as per the Law, has been determined as the duty of the representative with the Procedures and Principles. In addition, in case the social network provider is also a content and/or hosting provider², the responsibilities and obligations arising from being a content and/or hosting provider shall continue in addition to the obligations of the social network provider as stipulated by the Law and the Procedures and Principles and such obligations are also required to be fulfilled by the representative.

c. Social Network Provider’s Obligations regarding the Representative: The Procedures and Principles stipulate the obligation of the social network provider to inform ICTA of the identity, title and contact information of its representative. In addition, ICTA should also be provided with;

- i) documents showing that the representative is a Turkish citizen and resident in Turkey, in case the representative of the social service provider is a real person,
- ii) the articles of association, a copy of the trade registry gazette and other establishment documents of the legal person and the documents proving the authorized persons to represent and bind the legal entity together with the identity and contact information of the authorized representatives, in case the representative of the social network provider is a legal person, and
- iii) In case the representative of the social network provider with daily access of more than ten million from Turkey is a legal entity, in addition to the information and documents mentioned in (ii), documents and information evidencing that the branch to be established by the social network provider as a capital company meets the requirements explained under *section 2.a*.

According to the Procedures and Principles, in the event of a change in the information and documents to be submitted to ICTA, ICTA should also be notified of such changes **immediately and within 72 (seventy-two) hours at the latest**.

d. Non-compliance with the Obligations regarding the Designation of Representative: As also stipulated in the Law, social network providers who do not fulfil their obligations regarding the designation of a representative, are notified by ICTA. In case such obligations are not fulfilled within 30 (thirty) days from the notification, an administrative fine of TRY 10.000.000 (ten million Turkish Liras) will be imposed by ICTA. In case such obligations are not still fulfilled within 30 (thirty) days from the notification of the fine imposed, this time an administrative fine of TRY 30.000.000 (thirty million Turkish Liras) will be imposed by ICTA. If the obligation to designate a representative is fulfilled upon the administrative fine(s), only one-fourth of the administrative fine(s) will be collected. However, if the obligations to designate a representative are not still fulfilled despite the second administrative fine within 30 (thirty) days from the notification of this second fine, ICTA will be entitled to prohibit all advertisements to social network providers within Turkey. In case the obligations are not still fulfilled, ICTA will be entitled to apply to the Judgeship of Criminal Peace to reduce the internet bandwidth of the social network provider by 50% in the first stage and to 90%

² For instance, the social network provider shall be the content provider due to the content it creates whereas in case the website or application offers the "Marketplace" feature the social network provider shall be a hosting provider.

if the obligation is not still fulfilled within the next 30 (thirty) days from the first reduction of bandwidth.

3. Scope of the Reporting Obligation

The Procedure and Principles introduce more details regarding the content of the semi-annual reports that are required to be submitted to ICTA by social network providers in accordance with the Law, and it is regulated that the reports covering the period of 1 January – 30 June shall be submitted in July, and the reports covering the 1 July – 31 December period shall be submitted in January. With the relevant provision, it is aimed to eliminate any possible confusion that may arise regarding the content of the report by detailing the information that should be included in the report. Accordingly, the report should include especially the following;

- Technical infrastructure, personnel qualifications, and administrative capacity for the implementation of decisions regarding the removal of content and/or blocking of access, and receipt and evaluation of the applications from users,
- Categorical and statistical information regarding the applications from users,
- Categorical and statistical information regarding the decisions sent from judicial and administrative authorities,
- Measures for options regarding user preferences and personal data usage,
- Information on tags, algorithms for featured or restricted contents, and transparency policies,
- Information on advertising policies and advertising library.

An administrative fine of **TRY 10.000.000** (ten million Turkish Liras) shall be imposed on social network providers who do not fulfil their reporting obligation.

4. Obligations of Social Network Providers regarding the Users

Procedures and Principles introduce some obligations for social network providers in order to protect user rights. Accordingly, social network providers shall;

- Treat its users equally and impartially,
- Provide its users with the option to update their preferences for the content they recommended and the **option to limit the use of their personal data**,
- Upon detection of important security breaches related to user accounts that directly or indirectly affect users accessing from Turkey, inform the ICTA of this breach in a clear and understandable manner in Turkish **within 72 (seventy-two) hours at the latest**,
- Ensure that users can easily access to updates that affect user rights in the services that the social network provider provides,
- Disclose the parameters used for presenting suggestions to users on the internet site in a clear, understandable and easily accessible manner,
- Conclude applications within a reasonable time **by establishing a clear, understandable and easily accessible application mechanism** in Turkish for accounts that have been hacked or imitated,
- Share the content and the information regarding the creator of the content with the authorized law enforcement units upon learning **the content that endangers the life and property safety of individuals** where there is an inconvenience in delay.

Social network providers, while fulfilling these obligations, should not cause a possible violation by showing the utmost care to the personal data of the users. In addition, **an effective user application mechanism** should be established in cooperation with ICTA in order to remove the tags and featured content in accordance with the warnings to be submitted by users, **a crisis plan should be created for emergency situations affecting public safety and public health**, and the relevant mechanisms established or operated should be **notified to ICTA in the relevant periods within the scope of the reporting obligation**. With the provision, it is aimed to prevent any violation of personal rights or personal data that may arise from the increased use of internet and social media.

If these obligations are not fulfilled, an administrative fine of **up to 3% (three percent) of the global turnover** of the social network provider in the previous calendar year may be imposed on the social network provider. In addition, social network providers are also directly responsible for the publications/broadcasts of third parties/users disseminated through criminal tags or featured content which are notified by the users with the warning mechanism described above, but are not removed immediately and within four hours at the latest.

5. Provision of Categorized Services Specific to Children

With the Procedures and Principles, the need to provide a categorized service specific to children by social network providers is dealt in detail. Accordingly, the age and best interests of the child should be taken into account in the content, advertisements and other services provided by social network providers to users who can be understood to be children. Therefore, it is aimed to protect the physical, psychological and emotional development of child users, and to prevent the risks of sexual abuse and commercial exploitation of children, which are frequently encountered today. Unconscious purchases in services such as content and advertisements offered by social network providers and the processing of personal data of children are frequently encountered recently. In order to avoid such instances, it is stipulated that social network providers should provide information such as agreements, user settings and data policies **in a way that the child can understand such information**. In the event that this service is not provided, an administrative fine of **up to 3% (three percent) of the social network provider's global turnover** in the previous calendar year may be imposed on the social network provider.

In this context, it is important for social network providers to include mechanisms such as account linking, transaction approval, and identity verification measures insofar as possible, which will ensure that the relevant transactions, especially in-app purchases for users who are understood to be children, are submitted to parental supervision and approval.

In fact, considering the legal capacity of minors from the Turkish Civil Code perspective, the transactions of the children are considered to be temporarily invalid until the consent of their parents is obtained. For this reason, we are of the opinion that while social network providers take measures to "prevent commercial exploitation risks of children", it will also be beneficial for them to implement mechanisms that will submit purchases made within the said social network to the approval of the parents, as explained above.

II. CONCLUSION

As explained above, with the Procedures and Principles, several changes regarding the obligations of social network providers have been introduced and the procedures to be followed within the scope of these obligations have been detailed. In particular, it would be beneficial for social network providers with daily access of more than one million or more than ten million from Turkey to take necessary actions to fulfil the obligations as soon as possible, by taking into account the fact that the Procedures and Principles has become effective.

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Should you have any queries on the above, please do not hesitate to contact us.

Güner Law Office was established in 1996 and has since grown into one of the major corporate, M&A, banking and finance, energy, TMT and dispute resolution practices in Turkey.

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