



## Increased Scrutiny on Internet Actors for Prevention of Money Laundering: New Law Proposal

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In the realm of anti-money laundering legislative efforts, a particular law proposal that is pending before Commission review at the Grand National Assembly of Türkiye strikes particular attention as it adds social media companies to the list of “obligated parties” under AML legislation and brings to fore a novel idea called “*centralized banking system*” applicable for social media platforms.<sup>1</sup>

Law Proposal Amending Law No. 5549 on Prevention of Money Laundering (“**Proposal**”) has first been introduced to the Planning and Budgetary Commission of the Grand National Assembly of Türkiye on February 2, 2022, and later reintroduced to the same commission on July 14, 2023. However, publicly available Commission reports bear no indication that the Proposal has ever been discussed within the relevant Commission. Nevertheless, considering that the Proposal seeks to add “social media companies” to the list of “obligated parties” under Turkish anti-money laundering legislation, the Proposal is notable in the context of convergence between white-collar crimes and internet law in Türkiye.

### - **Rationale of the Proposal**

The Rationale of the Proposal recognizes that social media companies and content created through electronic platforms have reached a notable economic threshold, such that economic interrelationships have changed shape in a way that eases the transfer of monetary value through new technologies, thereby making laundering proceeds obtained from commission of criminal activities possible in novel methods.

To elaborate its argument, the Rationale provides an example where one social media platform’s membership and donation system was abused to commit credit card fraud, and a subsequent inquiry has revealed that fraudsters had laundered nearly 1 million dollars by making donations to content-creators on social media platforms. Rationale provides that there is no system in place that prevents criminal and terrorist organizations from using social media networks in furtherance of their criminal activities or no hindrance for foreign intelligence organizations to carry out psychological manipulation operations or to provide financial support for such organizations.

In this respect, according to the Proposal, “*it is essential that income transfers via social media companies are conducted with transparency, to foster platforms for information exchange and sharing that is free from manipulation, and to prevent citizens from becoming victims of crimes perpetrated by international terrorist organizations.*”

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<sup>1</sup> See <https://cdn.tbmm.gov.tr/KKBSPublicFile/D28/Y1/T2/WebOnergeMetni/cb1dc9aa-89a5-49ae-ae69-9efc7de114a1.pdf> (Last accessed on May 9, 2024)

In accordance with the above-stated rationale, the Proposal aims to deem social media companies and various entities that serve as their intermediaries “obligated parties” in terms of financial transactions that are carried out through the platforms that they provide; and envisions a “centralized banking system” within which all social media companies and their intermediaries will be obligated to establish bank accounts. With all money transfers taking place through the bank account of the social media company, (i) the Financial Crimes Investigation Board (“MASAK”) will be provided with periodical reports on funds obtained by social media companies and their intermediaries; (ii) rightholders will be determined and their funds will be transferred through the centralized bank account; (iii) if any suspicious transactions are detected, cautionary measures that protect public interest will be taken.

- **Proposed Amendments to Law No. 5549**

The Proposal adds the wording “*social media companies and various legal entities that serve as their intermediaries in financial transactions between social media companies and those that have receivables from social media companies due to content that they create*” under Article (2) (1) (d) of Law No. 5549, which is the provision that exhaustively lists “obligated parties” in scope of Law No. 5549. In other words, both social media companies and any legal entity that serve as their intermediaries in financial transactions are added to the list of obligated parties under Law No. 5549.

Under the provision that stipulates definitions, the Proposal adds a definition for “centralized bank” which is defined as “*the Bank appointed by Ministry of Treasury and Finance in which a bank account must be established in Turkiye by social media companies and various legal entities that serve as their intermediaries in financial transactions between social media companies and those that have receivables from social media companies due to content that they create, to transfer allowances of said parties.*”

The Proposal adds the following provisions under Article 5 of Law No. 5549 which is entitled “*Trainings, Internal Audits and Other Measures with respect to Control and Risk Management.*”

- Various legal entities that serve as intermediaries to financial transactions between social media companies and those that have receivables from social media companies due to content that they have created, are obligated carry out all transactions with respect to transfer of allowances of right-holders who are content creators, through the bank account established within the centralized Bank.

- Relevant companies and various legal entities must provide a report to the Presidency of Financial Crimes Investigation Board within three (3) days of placing a transfer order via the centralized bank for the transfer of the allowance, explaining how the financial resource has been obtained. The content, presentation manner, and other relevant aspects of the Report will be determined by MASAK.

- Presidency of MASAK will examine the Report within ten (10) days of receipt and if it deems appropriate, will inform the Centralized Bank to transfer the allowance to the rightholder. If MASAK determines a suspicious transaction, procedures set forth under Article 17 of Law No. 5549 will be applied.

- **Practical considerations of social network providers being deemed “obligated parties” under MASAK legislation**

Obligated parties are certain real persons, organizations, and/or legal entities, who are under the legal duty to continuously perform certain cautionary and preventative measures in the context of anti-money laundering legislation. Non-performance of these duties are subject to administrative and judicial

monetary fines, as well as imprisonment for real persons, in some cases. Moreover, obligated parties are expected to collaborate with audit procedures, and produce records and documentation during investigations.

Obligated parties are exhaustively listed under Article 2 (d) of Law No. 5549 and include “individuals and legal entities that operate in banking, insurance, individual retirement, capital markets, lending, and other financial services sectors; as well as those involved in postal and transportation services; individuals and legal entities that operate gambling and betting games; individuals and legal entities that engage in transactions with currency exchange, real estate, precious stones and metals, jewelry, transportation vehicles, machinery, historical artifacts, artistic works, and antique trading, as well as intermediaries in these activities; notaries; sports clubs and others as determined by the President of the Republic of Türkiye.” Inclusion of social media companies within such a list may have several consequences for social media companies.

As per Law No. 5549, obligated parties are required to (i) perform know-your-customer checks; (ii) report suspicious transactions; (iii) adopt training, internal audit, control and risk management mechanisms; (iv) provide continuous reports to MASAK; (v) provide information and documents to MASAK upon request; (vi) preserve and provide records of transactions. In the event that an individual or a legal entity is determined to be an “obligated party” but has omitted any of its duties, such obligated party may be individually and/or jointly imposed with administrative monetary fines, judicial monetary fines, or imprisonment, in case of a real person.

#### - **Public reception of the Proposal**

National news coverage on social media influencers utilizing their social media outreach as apparatus to commit intricate money-laundering schemes have brought social media companies under the spotlight. In this scope, it has been reported that MASAK has formed a special unit consisting of Tax Audit Board experts and tax auditors to investigate more than 100 social media influencers’ financial assets. To this end, it has been reported that assets of various social media influencers, worth 92 Billion Turkish Liras, has been seized upon MASAK’s inquiry and publication of a confidential report.

The attention towards social media use in the context of money-laundering is not confined to Türkiye. According to one news article, the Central Bank of Nigeria has released new customer due diligence requirements wherein it has made it mandatory for financial institutions to collect and verify customers’ social media handles as part of their Know Your Customer (KYC) requirements.<sup>2</sup> Similarly, in its Guidelines for Financial Institutions, Central Bank of United Arab Emirates’ has explicitly stated that financial institutions may rely on social media websites while conducting “beneficial ownership” controls.<sup>3</sup>

In contrast to the examples from Nigeria and United Arab Emirates examples, which impose the duty to conduct know-your-customer via social media platforms on banks, which are already obligated parties, the Proposal pending in the Commission of the General Assembly can be said to have imposed more burdensome obligations on social media companies themselves, by introducing several AML duties and requiring that they register with a centralized bank.

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<sup>2</sup>See <https://nairametrics.com/2023/06/23/cbn-makes-social-media-handle-mandatory-kyc-requirements-for-bank-customers/> (Last accessed on May 9, 2024)

<sup>3</sup> See [https://www.centralbank.ae/media/zhgjanp0/cbuae-guidelines-on-aml-cft-for-fis-june-2021\\_1.pdf](https://www.centralbank.ae/media/zhgjanp0/cbuae-guidelines-on-aml-cft-for-fis-june-2021_1.pdf) (Last accessed on May 9, 2024)

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