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Commencement of Arbitral Proceedings as a Complementary Measure Following Applications for Interim Measures under Turkish Law 1

Selim Can Bilgin & Vildan Defne Söylemezoğlu

Art Market and Turkish Anti-Money Laundering Regulations 8

Zeynep Ekinci

Climate Finance and Sovereign Green Bonds 19

Gülnur Ceylan

The Res Judicata Effect of Sports Arbitration Awards in the EU 29

H. Semih Öz

Transfer of Substantial Part of a Joint Stock Company's Assets under Turkish Law 36

H. Orhun Atalay

Contents

Commencement of Arbitral Proceedings as a Complementary Measure Following Applications for Interim Measures under Turkish Law 1

Selim Can Bilgin & Vildan Defne Söylemezoğlu

Art Market and Turkish Anti-Money Laundering Regulations 8

Zeynep Ekinci

Climate Finance and Sovereign Green Bonds 19

Gülnur Ceylan

The Res Judicata Effect of Sports Arbitration Awards in the EU 28

H. Semih Öz

Transfer of Substantial Part of a Joint Stock Company's Assets under Turkish Law 35

H. Orhun Atalay

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Under Turkish law, an interim measure is a form of provisional legal protection designed to safeguard the parties' rights without awaiting the outcome of the proceedings on the merits, in situations where delay would entail a risk. In disputes that are arbitrable, an application for interim measure before state courts gives rise to an obligation to commence arbitral proceedings as a complementary procedural step. In disputes without a foreign element where the seat of arbitration is designated as Türkiye, this obligation arises under the Turkish Code of Civil Procedure No. 6100 ("CCP"); in disputes involving a foreign element, it is governed by the International Arbitration Law no. 4686 ("IAL"). In recent years, this mechanism has been invoked with increasing frequency, particularly in relation to claims concerning the fate of bank guarantees connected to the dispute on the merits. This trend can also be observed in practice.

This article examines the interaction between applications for interim measures and the arbitral proceedings, the legal bases of the obligation to commence arbitral proceedings as a complementary measure, the procedure and time limits applicable to the initiation of proceedings on the merits, and the practical difficulties encountered in practice. Thus, the relationship between interim measures and arbitration proceedings will be discussed on this issue, which is becoming increasingly important in practice.

Interim Measures under Turkish Law

An interim measure is a form of provisional legal protection designed to preserve the enforceability of the judgment to be rendered at the conclusion of the proceedings, by guarding against the risk that the subject matter of the dispute may undergo

undesirable changes during the period preceding the final judgment.[1] In this context, interim measures are ordered in order to avert risks such as the potential non-enforceability of the judgment on the merits arising from the length of judicial proceedings;[2] to secure the claimant's eventual recovery of the disputed property or right;[3] to prevent irreparable or hardly reparable harm or to avert the aggravation of existing damage.[4]

The need for provisional legal protection does not cease to exist in disputes that can be subject to arbitration. On the contrary, in connection with arbitral proceedings, there often remains a continuing need, most frequently on the part of the claimant, but in certain cases also on the part of the respondent, to safeguard the right that would be obtained should that party prevail in the arbitration. Indeed, while both the IAL and the CCP confer upon arbitrators or arbitral tribunals the authority to order interim measures, the parties are nevertheless afforded, in certain circumstances, the possibility of seeking interim measures before state courts. This supports the effectiveness of arbitral proceedings, while on the other hand demonstrating that the role of state courts in the field of provisional legal protection continues. The continuing role of courts is of particular importance, as interim measures ordered by an arbitral tribunal frequently do not possess the same coercive effect or practical weight as interim measures granted by state courts.

The Obligation to Commence Proceedings on the Merits as a Complementary Measure

A. General Principles and Legal Basis

The obligation to commence proceedings on the merits, referred to as the "measure-completing act" or the "complementary procedural step", highlights the close and intrinsic relationship between an interim measure and the proceedings on the merits.[5] As emphasised in the reasoning of legislator regarding Article 397 of the CCP, an interim measure establishes only a provisional legal situation; in order to prevent this provisional situation from turning into a permanent instrument of

[1] Hakan Pekcanıtez et al. *Pekcanıtez Usul - Medenî Usûl Hukuku*, Vol. V, 16th Edition, On İki Levha Yayıncılık, 2025, ("Pekcanıtez Usul"), p. 4318.

[2] *Id.*, p. 4319.

[3] Baki Kuru, *Medeni Usul Hukuku El Kitabı*, Vol. II, Yetkin Yayınları, 2020, ("Medeni Usul El Kitabı"), p. 1263.

[4] İlhan E. Postacıoğlu, Sümer Altay, *Medeni Usul Hukuku Dersleri*, Updated, Extended 8th Edition, Vedat Kitapçılık, 2020, p. 962.

[5] Av. Dr. Tahsin Hatipoğlu, İhtiyati Tedbir Yargılaması, 1st Edition, On İki Levha Yayıncılık, 2025, ("İhtiyati Tedbir Yargılaması"), p. 630.

pressure on the opposing party, it is of crucial importance that the claim underlying the interim measure be transformed into proceedings on the merits within a short period of time.[6] In this way, the provisional legal protection afforded by the interim measure is balanced by steering the dispute towards a final resolution within a reasonable time, thereby preserving a fair balance between the parties' competing interests.[7] For this reason, both the CCP and the IAL prescribe period of prescription for the commencement of proceedings on the merits as a complementary procedural step to an interim measure. As will be examined in detail below, failure to comply with these results in the interim measure becoming null and void *ipso iure*.

An application for an interim measure may be made either while proceedings on the merits are already pending before a court or an arbitrator/arbitral tribunal, or prior to the commencement of such proceedings. This article focuses on applications for interim measures filed before the initiation of proceedings on the merits, and on the ensuing obligation to commence arbitral proceedings as a complementary procedural step.

Pursuant to Article 414(3) of the CCP, where a valid arbitration agreement exists, state courts may grant interim measures if: (i) the arbitrator or emergency arbitrator cannot grant a provisional legal protection measure in a timely or effective manner; (ii) the application concerns an interim measure which, by its very nature, cannot be ordered by an arbitrator such as a request for precautionary attachment; or (iii) the parties have expressly authorised the court in writing, or have obtained permission in this respect from the arbitrator or arbitral tribunal.[8] Similarly, Article 6 of the IAL provides that an application for interim measure may be made to either the courts or the arbitrator/arbitral tribunal prior to the commencement of arbitral proceedings.

Pursuant to Article 414(4) of the CCP and Article 6(5) of the IAL, an interim measure shall lapse *ipso iure* once the arbitral award becomes enforceable, or where the claim is dismissed by a decision of the arbitrator or arbitral tribunal.

B. Commencement of Proceedings on the Merits in Arbitration

Proceedings on the merits, as the complementary measure to an interim measure, may be initiated either in the form of arbitral proceedings or before state courts. It is self-evident that, for the proceedings on the merits to be commenced in arbitration, the parties must be bound by a valid arbitration agreement providing that their dispute is to be resolved through arbitration.

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[6] Reasoning of legislator regarding CPP art. 397.

[7] İhtiyati Tedbir Yargılaması, p. 630.

[8] Pekcanıtez Usul, p. 4703.

In certain cases, instruments ancillary to the main contract, such as bank guarantees issued in the course of the performance of the contract, may contain a different forum selection clause (choice of forum). Such clauses become relevant only in limited circumstances, notably where the dispute relates directly to the validity or legal character of the ancillary instrument itself. For instance, if issues such as the invalidity, scope, or abusive calling of a bank guarantee give rise to an autonomous dispute pertaining specifically to the guarantee, the forum selection clause contained therein may assume significance. In practice, however, disputes most often arise from the underlying contractual relationship itself; in such cases, these clauses will not alter the nature of the complementary measure, or, in other words, the forum in which the proceedings on the merits must be commenced.

Another possible alternative for the proceedings on the merits is investment arbitration. This alternative rarely happen in practice.[9] This is because in order for this alternative to occur, several cumulative conditions must be met: (i) the opposing party must be a State or a State entity; (ii) an international agreement granting foreign investors access to international arbitration must exist between the relevant State and the Republic of Türkiye;[10] and (iii) the circumstances must be such as to necessitate an application for interim measures before Turkish courts.[11] This alternative may become relevant where the contract concluded between the investor and the State entity designates the courts of the host State as the competent forum for the resolution of disputes. This is because under Turkish law, the proceedings on the merits as a complementary measure may only be initiated before Turkish courts and domestic or international arbitration. As an investor in whose favour an interim measure has been granted by Turkish courts cannot initiate the complementary proceedings before a foreign State court, such situations may give rise to the possibility of the investor commencing an investment arbitration against the host State as the complementary measure.

C. Time Limits for the Commencement of Proceedings on the Merits

The question of by when proceedings on the merits must be commenced constitutes one of the most significant issues in relation to the completion of an interim measure in practice. From the perspective of the CCP, Article 426(2) provides that, where a party has obtained an interim measure from a state court prior to the commencement of arbitral proceedings, that party must initiate arbitration within two weeks. Failing this, the interim measure shall lapse *ipso iure*.

[9] Although exceptional, we have acted as counsels in an investment arbitration case initiated as proceedings on the merits that will complement the interim measure in at least one example. Therefore, it is possible to talk about the existence of such an option concretely.

[10] E.g., Agreement between the Republic of Turkey and Turkmenistan concerning the Reciprocal Promotion and Protection of Investments dated 02.05.1992, published in the Official Gazette dated 15.01.1995 numbered 22172, art. 7.

[11] E.g., obtaining an interim measure regarding a letter of guarantee issued by banks located in Türkiye.

Under the IAL, where an interim measure is sought from a state court before the commencement of arbitral proceedings, Article 10(A) requires that arbitral proceedings be commenced within thirty days from the date of the court's interim measure decision; otherwise, the interim measure shall likewise lapse *ipso iure*. The same provision states that arbitral proceedings shall be deemed to have been commenced "*on the date on which an application is made to the civil court of first instance for the appointment of arbitrators, or to the person, institution or organisation which, pursuant to the parties' agreement, is to appoint the arbitrators, and, if under the agreement the appointment of arbitrators is vested in both parties, the date on which the claimant appoints its arbitrator and notifies the other party to appoint its arbitrator; and, if the arbitration agreement specifies the names and surnames of the arbitrator or of the arbitrators constituting the arbitral tribunal, the date on which the request for the resolution of the dispute by arbitration is received by the other party.*"

Where an interim measure has been obtained from a state court, the party in whose favour the measure has been granted must, in accordance with Article 397(1) of the CCP, submit documentation evidencing the commencement of arbitral proceedings within the two-week period prescribed by the CCP or the thirty-day period prescribed by the IAL, as applicable to the enforcement officer responsible for executing the interim measure, ensure that such documentation is placed on the interim measure file, and obtain a certificate to that effect.[12]

If the obligation under Article 397 of the CCP is not fulfilled in a timely manner, namely, if proceedings on the merits have been commenced within the prescribed period but the procedural steps required by the provision have not been duly completed, the interim measure shall lapse *ipso iure*.[13] Upon the lapse of the interim measure, the party concerned must request the enforcement officer who executed the measure to carry out the necessary steps for its de facto removal, and, pursuant to Article 397(3) of the CCP, the fact that the interim measure has lapsed shall be notified to the relevant authorities.[14]

In cases falling within the scope of Article 1(3) of the IAL, where the seat of arbitration is designated outside Türkiye, it is provided that only Articles 5 and 6 of the IAL shall apply. This gives rise to uncertainty as to whether the thirty-day time limit set forth in Article 10(A) is applicable in such circumstances. In practice, certain courts have issued decisions referring to Article 397 of the CCP for the purposes of the complementary procedural step required following an interim measure. For this reason, it is advisable, insofar as possible, to commence the proceedings on the merits within the two-week period prescribed under Article 397 of the CCP. Given the very nature

[12] Ziya Akıncı, *Milletlerarası Tahkim*, Updated and Extended 6th Edition, Vedat Kitapçılık, 2021, p. 238.

[13] Pekcanıtez Usul, p. 4407.

[14] *Id.*

of interim measures, the risk that the measure may lapse, even as a result of an erroneous decision, is generally an outcome that parties seek to avoid.

On the other hand, it should be noted that the lapse of an interim measure as a result of the proceedings on the merits having been commenced after the expiry of the prescribed periods has no bearing on the admissibility of the proceedings on the merits themselves. In other words, the claim will not be dismissed solely on this ground.[15]

D. The Content of the Proceedings on the Merits and Proof of Their Commencement

The proceedings on the merits to be initiated as a complementary measure are, by their very nature, those in which the substantive right forming the basis of the interim measure is asserted and in which a final resolution of the dispute is sought. In the context of arbitration, this takes the form of an application for arbitration submitted before an arbitrator or an arbitral institution.

For the complementary procedural step to be deemed validly fulfilled, the parties to the arbitral proceedings must be identical to the parties involved in the interim measure proceedings.[16] Moreover, since the interim measure secures a specific substantive law claim, the same claim must constitute the subject matter of the proceedings on the merits.[17] Accordingly, whatever matter formed the basis of the request for an interim measure must likewise form the basis of the proceedings on the merits to be commenced as the complementary measure. For this reason, the claims advanced in the proceedings on the merits should be carefully formulated.

The question of how to document the commencement of the main proceedings to the court under Article 397 of the CCP is a matter of practical importance. It is common practice to submit the request for arbitration to the court together with an acknowledgement of receipt or registration confirmation obtained from the arbitral institution or where the application is made by email, the relevant correspondence and confirmations. That said, correspondence that merely express an intention to commence arbitration, or that defer the initiation of arbitral proceedings to a future date, should not be considered sufficient to fulfil the obligation to initiate proceedings as a complementary measure. In this respect, given that different arbitral institutions (as well as *ad hoc* arbitration) may adopt differing practices, it is not possible to identify a single, uniform method. What matters is adopting an approach

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[15] Medeni Usul El Kitabı, p. 1289.

[16] İhtiyati Tedbir Yargılaması, p. 631; İstanbul Regional Court of Justice 3rd Civil Chamber, Case No. 2022/205, Decision No. 2022/244, dated 03.02.2022.

[17] İhtiyati Tedbir Yargılaması, p. 632; İstanbul Regional Court of Justice 12th Civil Chamber, Case No. 2019/1448, Decision No. 2019/1218, dated 03.10.2019.

that evidences the commencement of the proceedings in the most concrete manner possible. Where possible, it would be a prudent course of action to demonstrate the initiation of proceedings through multiple means, such as email correspondence, a written confirmation from the arbitral institution, records of physical submission, or acknowledgements of receipt.

Conclusion

Where the mechanism of interim measures intersects with arbitral proceedings, the obligation to commence proceedings on the merits as a complementary measure assumes particular significance. In disputes that can be subjected to arbitration, state courts continue to meet the need for provisional legal protection while, at the same time, recognising the superior role of arbitration in the resolution of the dispute on the merits. Maintaining this balance requires the coordinated and harmonious application of the provisions of the CCP and the IAL.

The timely and procedurally proper initiation of arbitral proceedings as a complementary measure is critical not only for the continued validity of the interim measure, but also for the effectiveness of the arbitral process itself. It ensures that the provisional situation created by the interim measure is transformed, without undue delay, into a final determination of the dispute on the merits, thereby preserving a fair balance between the parties' interests. At the same time, given the forfeiture nature of the relevant time limits, it is essential that the practical difficulties identified above, particularly those relating to the applicable deadlines, be resolved so as to avoid the risk of loss of rights. In light of the existing uncertainties and divergences in practice, it would be prudent to carry out the complementary procedural step by adopting a cautious approach that takes into account the most restrictive possible interpretation, both as regards compliance with the applicable time limits and the evidencing of the commencement of proceedings.

Art Market and Turkish Anti-Money Laundering Regulations

Zeynep Ekinci

The global art market constitutes a significant economic sector worldwide, accounting for an estimated USD 57.5 billion of sales in 2024 with an ever-growing client base.[1]

Although the vital efforts of multi-disciplined professionals, including but not limited to accredited appraisers, auction houses' in-house category specialists, provenance researchers, art historians, authentication boards, art foundations, physical and digital forensic experts as well as art market economic analysts, set a value range for a certain artwork depending on various factors, the final price paid by the buyer depends heavily on subjective, non-financial intangible factors such as prestige and wealth signalling desire.[2] Therefore, it is relatively easy to inflate the prices for the

[1] Art Basel & UBS, "The Art Basel and UBS Art Market Report 2025", 2025, https://www.artbasel.com/about/initiatives/the-art-market, accessed 20 November 2025, p.17; Deloitte, "Art & Finance Report 2025", 2025, https://www2.deloitte.com/lu/en/pages/art-finance/articles/art-finance-report.html, accessed 20 November 2025, p. 27.

[2] Anne Laure Bandle, "Arbiters of Value: The Complexity and Dealers' Liability in Pricing Art", in: L'art a-t-il un prix ? L'évaluation des œuvres d'art, ses défis pratiques et juridiques, Gabus, Pierre & Bandle, Anne Laure (Ed.). Genève. Genève : Schulthess, 2014, pp. 29–76. (Etudes en droit de l'art) pp. 30, 34 ; Henry Peter, Paul-Benoît Duvoisin, "De la valeur et du prix des œuvres d'art" in: L'art a-t-il un prix ? L'évaluation des œuvres d'art, ses défis pratiques et juridiques, Gabus, Pierre & Bandle, Anne Laure (Ed.). Genève. Genève: Schulthess, 2014, pp.120, 122-142; Maxwell Rabb, "What Determines the Price of an Artwork?", Artnet, 13 November 2025, https://www.artsy.net/article/artsy-editorial-determines-price-artwork, accessed 15 November 2025. For an early record of values of the artworks and the subjective nature of valuation, see, in general, Pliny the Elder, *Natural History*, Book 35, trans. H. Rackham, Loeb Classical Library, Harvard University Press, 1952, pp. 79,115,161,169, https://ia801308.us.archive.org/3/items/cu31924031053550/cu31924031053550.pdf, accessed 3 December 2025: "*Another most curious fact and worthy of record is, that the latest works of artists and the pictures left unfinished at their death are valued more than any of their finished paintings (…). The reason is that in these we see traces of the design and the original conception of the artists, while sorrow for the hand that perished at its work beguiles us into the bestowal of praise.*"

purchase of an artwork.[3] In addition, the art world traditionally relies on complex, opaque and confidential structures.[4] The identity of the parties, the ultimate beneficial owners, the purchase price of the artwork, particulars of the artwork itself and commission retained by the dealer and other intermediaries during an art transaction are among the elements that are kept confidential.[5] Thus, it can be difficult to detect the ultimate beneficial owners of a sale. For instance, recently, on 18 November 2025, Gustav Klimt's *Portrait of Elisabeth Lederer* from Leonard A. Lauder's stellar collection, set a historic record at the evening auction of Sotheby's New York when it sold for USD 236.4 million, becoming the most expensive modern artwork ever sold at auction and the second-most expensive artwork sold at auction.[6] Although the sale attracted considerable attention, the identity of the buyer who acquired the painting at the end of a 20-minute auction challenge through a telephone bid has not been disclosed.[7] With sales being conducted through (in some cases multiple) intermediaries, it is theoretically possible to remain anonymous as the buyer, the seller, or, in some cases, both.[8]

The tradition of confidentiality, subjective aspects of the pricing, cash payment preferences along with the portability of artworks through voluminous international trade and other vulnerabilities of the art market render the sale of artworks prone to illicit activities such as money laundering and terrorism financing.[9] It is further suggested that new trends such as online sales where parties to a transaction do not physically

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[3] Mali Suçları Araştırma Kurulu (MASAK), "Tarihi Eser, Antika ve Sanat Eserleri Alım Satımı ile Uğraşanlar veya Bunların Müzayedeciliğini Yapanlar Sektör Araştırma Raporu", 2021, https://ms.hmb.gov.tr/uploads/sites/12/2021/03/TARIHI-ESER-ANTIKA-SANAT-ESERLERI-ALIM-SATIMI-ile-UGRASANLAR-Guncellenmis-sektor-arastirma-raporu-2021-1.pdf, ("MASAK Raporu 2021"), accessed 2 December 2025; Financial Action Task Force (FATF), "Money Laundering and Terrorist Financing in the Art and Antiquities Market", 2023, https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Money-Laundering-Terrorist-Financing-Art-Antiquities-Market.pdf.coredownload.pdf ("FATF Report 2023"), accessed 1 December 2025, p. 8; Basel Institute on Governance, "Basel Art Trade Anti-Money Laundering Principles", 2018, https://baselgovernance.org/sites/default/files/2019-01/Basel%20Art%20Trade%20AML%20Principles%202018.pdf, accessed 1 December 2025, ("Basel AML Principles") p. 8.

[4] Martin Wilson, *Art Law and the Business of Art*, 2nd Edition, Edward Elgar Publishing, 2022, ("Wilson"), pp.382, 385-386; Andrew Dornbierer, "Money Laundering and Sanctions Evasion Using the Art Market", Basel Institute on Governance, Quick Guide Series, https://baselgovernance.org/sites/default/files/2023-04/230412-quickguide_29.pdf, accessed 10 December 2025 ("Dornbierer").

[5] Ralph Lerner, Judith Bresler, *Art Law Volume I*, 4th Edition, Practising Law Institution, 2013, p. 139; Wilson p. 382; *See Accidia Foundation v. Simon C Dickinson Ltd [2010] EWHC 3058 (Ch)* for a UK Chancery Division case where the court addressed issues relating to commission taken by the intermediary that was undisclosed to the seller as the actual purchase price was only known by the buyer and the intermediary.

[6] Sotheby's, "Leonard A. Lauder Collector Evening Auction (2025)", https://www.sothebys.com/en/buy/auction/2025/leonard-a-lauder-collector-evening-auction?locale=en&lotFilter=AllLots, accessed 19 November 2025; Daniel Cassady, "Gustav Klimt's 'Portrait of Elisabeth Lederer' Sells for $236.4 M., Highest Price for Any Work of Modern Art Sold at Auction", ARTnews, 18 November 2025, https://www.artnews.com/art-news/news/gustav-klimt-portrait-of-elisabeth-lederer-auction-record-1234762083/, accessed 29 November 2025.

[7] Rachel Muller-Heyndyk, "Klimt painting second-most expensive artwork sold at auction", BBC, 19 November 2025, https://www.bbc.com/news/articles/cm2emm4737zo, accessed 10 December 2025.

[8] Wilson, p. 386; Dornbierer.

[9] Wilson, p. 382; Dornbierer; FATF Report 2023, pp.18-19; Basel AML Principles, p. 8; MASAK Raporu 2021, pp. 12-13.

meet, or crypto assets, such as non-fungible tokens, facilitating the transfer of ownership and concealability of virtual asset transactions increase the likelihood of illicit activities.[10]

This likelihood has led both to the issuance of non-binding recommendations for art market participants' self-regulation and binding regulations.[11] It must also be emphasised that, although there have been certain sensational cases involving money laundering through art transactions,[12] many market participants such as galleries and auction houses adhere with the codes of ethics prepared by national judicial bodies and international institutions and have adamant internal procedures, such as know your client ("KYC") and source of funds checks, that leave little room for such illicit practices.[13] In that respect, certain criticisms have also been raised against the regulations set out below, claiming that there is insufficient concrete and reliable evidence to establish a widespread money laundering practice in art transactions, and that much of the commentary by the media and law enforcement on the matter is largely speculative.[14]

This article provides a brief insight on the anti-money laundering ("AML") policies in binding and soft law resources with a specific emphasis on the Turkish legal framework.[15]

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[10] FATF Report 2023, pp. 3, 5, 11-14; Basel AML Principles, p. 8.

[11] Basel Art Trade Anti Money Laundering Principles issued by Basel Institute on Governance and the Responsible Art Market (RAM) Guidelines issued by the Responsible Art Market (RAM) initiative are examples to self-regulation instruments. *See* Enzo Bastian, "Fighting Money Laundering in the Art Market: A Comparative Overview of U.S. and Swiss Law", *Harvard International Law Journal Online*, 18 March 2025, https://journals.law.harvard.edu/ilj/2025/03/fighting-money-laundering-in-the-art-market-a-comparative-overview-of-u-s-and-swiss-law/, accessed 10 December 2025 ("Bastian").

[12] *See* FATF Report 2023 for case studies citing examples to such practices. *See also* Dornbierer for a brief analysis on Edemar Cid Ferreira case on how launderers can exploit the portability of artworks.

[13] CINOA, "Addressing Money Laundering in the Art Market: A Trade Perspective on Challenges and Regulatory Reform", 25 January 2025, https://www.cinoa.org/advocacy/addressing-money-laundering-in-the-art-market-a-trade-perspective-on-challenges-and-regulatory-reform/, accessed 10 December 2025 ("CINOA"); Wilson, pp. 383-384. See FATF Report 2023, pp. 39-40 for examples such as Finnish Regional State Administrative Agency's AML/CFT guidelines, British Art Market Federation's guidance on anti-money laundering, French FIU Tracfin and French Customs' joint AML/CFT guidance, UNESCO's International Code of Ethics for Dealers in Cultural Property and International Council of Museums' Code of Ethics for Museums and the initiatives of the Responsible Art Market (RAM) as good practices.

[14] CINOA; Wilson, p. 383.

[15] For a comparative study covering the anti-money laundering regulations by a set of questions relating to the applicable legislation in Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Croatia, Denmark, Finland, France, Germany, Greece, Hong Kong, India, Italy, Luxembourg, Mexico, Netherlands, Poland, Portugal, Romania, Spain, Sweden, Switzerland, United Kingdom and United States, *see* Center for Art Law, "Anti-Money Laundering Regulations and the Art Market", 2nd Edition, last updated 10 October 2025 ("Center for Art Law AML Regulations"), accessed 11 October 2025.

Development of Anti-Money Laundering Regulations in the Art Market

The vulnerabilities of the art market for money laundering attracted the attention of academics and policymakers beginning from the end of the 20th century.[16] Financial Action Task Force ("FATF"), which is an inter-governmental body found in 1989 and is based in Paris, sets the international standards that aim the prevention of global money laundering and terrorist financing activities.[17] First published in 1990, and regularly reviewed and updated in light of the development of new money laundering techniques and methods, FATF's 40 Recommendations provide the legislative, institutional and policy framework for countries to combat money laundering and terrorism financing.[18]

In 2023, FATF published a targeted report that sets out the current state of relationship between the art market and money laundering, including a list of indicators that aids sector participants to identify suspicious activities in the art market and good practices.[19] Also through a self-regulation approach, Basel Institute on Governance has the non-binding Basel Art Trade Principles, which recommends a practical, risk-based approach based on a tripartite check relating to the identity of the client, provenance of the art object and the origin of the buyer's funds involved in the transaction.[20]

Money laundering is a criminal offence in most jurisdictions, and some jurisdictions have taken specific preventative regulatory actions at national or supra-national levels to manage risks relating to money laundering.[21] European Union ("EU") law resources in this matter substantially shaped the inclination toward global regulation.[22] In the EU's 4th Anti-Money Laundering Directive, the Directive's *ratione personae* was expanded to include persons trading in goods that make or receive payments of EUR 10,000 or more.[23] That instrument did not specifically involve art market participants, but was a step for curbing voluminous cash transactions, which affected the art market. It was the EU's 5th Directive which was enacted in 2018

[16] Bastian.

[17] Financial Action Task Force (FATF). "Who We Are". https://www.fatf-gafi.org/en/the-fatf/who-we-are.html accessed 10 December 2025.

[18] FATF Report 2023, p. 8; MASAK Raporu 2021.

[19] FATF Report 2023.

[20] Basel AML Principles, p. 4.

[21] FATF Report 2023, pp. 17-18.

[22] Center for Art Law AML Regulations. *See* https://finance.ec.europa.eu/financial-crime/anti-money-laundering-and-countering-financing-terrorism-international-level_en for an overview of EU's efforts in anti-money laundering and counter terrorism financing.

[23] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, art. 2.1(e).

and entered into force in 2020 that specifically underlined responsibilities of the art market participants in combating money laundering.[24]

The 5th Directive amended the Article 2 of the 4th Directive to specifically include "*persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more*".[25] As such, key obligations such as enhanced customer due diligence on not only to new clients but also existing clients, identification and verification of the beneficial owner of a transaction, reporting of the suspicious transactions through internal procedures and maintaining detailed records for all transactions entered into the lives of the art traders.[26]

These detailed obligations which required concrete actions of the art market participants and supervision from national authorities triggered individual jurisdictions to work and research on the matter. For instance, the United Kingdom ("UK") Government tasked the British Art Market Federation ("BAMF") to issue a guidance document for application of the current British money laundering regulations in the art market.[27] BAMF's "Guidance on Anti Money Laundering for UK Art Market Participants" was approved by UK Government's Treasury Department, and serves as a detailed industry guideline in navigating AML obligations for art market participants.[28] The United Kingdom amended its Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("2017 Regulations") to transpose the EU 5th Anti-Money Laundering Directive.[29] Similar to the EU regulations, the definition of "art market participant" was brought to the scope of the 2017 Regulations for traders who engage in (one or a series of) transactions that amount to EUR 10,000 or more.[30] The art market participants are required to register with His Majesty's Revenue and Customs ("HMRC") for regulatory

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[24] Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing; Center for Art Law AML Regulations, p. 3.

[25] Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, art. 1(c)(i).

[26] Center for Art Law AML Regulations, p. 3.

[27] Wilson, p. 386.

[28] The British Art Market Federation (BAMF), "Guidance on Anti Money Laundering for UK Art Market Participants", 6 February 2023, https://tbamf.org.uk/wp-content/uploads/2023/02/BAMF-AML-Guidelines-February-6th-2023.pdf ("Guidance on Anti Money Laundering") accessed 10 December 2025 ; Wilson, p. 386.

[29] Wilson, p. 384. It must be noted that apart from the 2017 Regulations, which foresee civil penalties in case of non-compliance, other relevant regulations in the UK are in force, such as the Proceeds of Crime Act 2002, Terrorism Act 2000, Sanctions and Anti-Money Laundering Act 2018. The criminal acts relating to money laundering and terrorism financing are subject to penalties that can extend to prison sentence.

[30] Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, art. 14(1)(d).

supervision, oversight and enforcement, carry out a formal risk assessment at least once every year, appoint a nominated officer to ensure compliance, adapt written internal policies and procedures, train their employees, keep records relating to transactions, report sanctions and suspicious activities, and carry out extensive customer due diligence verifying the customer's identity and source of funds.[31] Through these efforts, the United Kingdom became one of the first countries to concretize the European Union's anti-money laundering regulation wave for the art market, despite Brexit.[32]

Turkish Legal Framework

A. Money Laundering Criminal Offence

Under Turkish Law, the act of money laundering is a criminal offence that is regulated in Article 282 titled *Laundering of Proceeds of Crime*, in Chapter Two titled Offences Against the Administration of Justice of Part Four titled Offences Against the Nation and the State and the Last Provisions of the Second Book titled Special Provisions of the Turkish Criminal Code. Accordingly, any person who transfers assets abroad that have been acquired as a result of an offence carrying a minimum sentence of six months' imprisonment, or who subjects such assets to transactions to conceal their unlawful origin or to create the impression that such assets have been legitimately acquired, shall be punished with imprisonment for a term of three to seven years and a judicial fine of up to twenty thousand days.[33]

B. MASAK Legislation

1. Overview

Besides criminal provisions, the main preventive and administrative regulation relating to anti-money laundering is the Law numbered 5549 on the Prevention of Laundering Proceeds of Crime ("Law No 5549") and its relevant secondary regulations.[34] The regulatory authority supervising the application of these regulations

[31] Wilson, pp. 391-393; Guidance on Anti Money Laundering, pp. 5-6,10-11; Rakhi Talwar, United Kingdom, in Center for Art Law AML Regulations, pp. 214-221.

[32] Poppy Kemp, "Focusing on the Anti-Money Laundering Regulations for the Art Market Participants in the UK", 26 July 2022; Center for Art Law, https://itsartlaw.org/art-law/focusing-on-the-anti-money-laundering-regulations-for-the-art-market-participants-in-the-uk/ accessed 8 December 2025. See Wilson, pp. 382-415 for a detailed analysis of the British anti-money laundering and sanctions compliance regulations.

[33] Turkish Criminal Code, art. 282.

[34] See Mali Suçları Araştırma Kurulu (MASAK), Aklama Suçu Ulusal Mevzuat, https://masak.hmb.gov.tr/aklama-sucu-ulusal-mevzuat, accessed 15 December 2025, for all relevant legislative sources.

is the Turkish Financial Crimes Investigation Board (*Mali Suçları Araştırma Kurulu*, "MASAK"), operating as the financial intelligence unit of Türkiye under the Turkish Ministry of Finance and Treasury (the "Ministry").[35] The secondary regulations to the Law No 5549 are the Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism, and General Communiqués of MASAK.[36] In order to raise awareness relating to the issue, MASAK publishes informative materials such as sectoral research reports, brochures and risk reports relating to each category of the obliged persons.[37]

2. Ratione Personae of MASAK Legislation

Law No 5549 explicitly states "*those engaged in or mediating the trade of historical artifacts, artworks and antiques*" among the obliged parties.[38] Article 4(1)(ö) of the Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism ("Regulation") also states "*those who deal in the buying and selling of historical artifacts, antiques and art works, and who act as auctioneers for these items*".[39] Therefore, the legal and natural person actors of the art market, such as auction houses, galleries, antiques traders are bound by this legislation. The *ratione personae* of this regulation does not have a minimum transaction limit such as the EUR 10,000 limit found in the regulations of the EU or the UK, provided that the main activity is trading.

3. Identity Verification and KYC Obligations

Before any transaction, art traders must conduct identity verification on the parties to the transaction and their agents acting on their behalf or account in accordance with KYC principles.[40] As a general rule, the obliged persons must conduct identity verification without regard to any monetary threshold for establishing a continuous business relationship or when there is doubt as to the adequacy and accuracy of the previously obtained customer information.[41] In addition, cases where the total

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[35] Republic of Türkiye, Ministry of Treasury and Finance, "Financial Crimes Investigation Board (MASAK): Duties and Powers", https://en.hmb.gov.tr/fcib-duties-powers, accessed 10 December 2025.

[36] Mali Suçları Araştırma Kurulu (MASAK), Aklama Suçu Ulusal Mevzuat, https://masak.hmb.gov.tr/aklama-sucu-ulusal-mevzuat, accessed 15 December 2025.

[37] Mali Suçları Araştırma Kurulu (MASAK), Rehberler, https://masak.hmb.gov.tr/aklama-sucu-ulusal-mevzuat, accessed 15 December 2025; Mali Suçları Araştırma Kurulu (MASAK), Broşürler, https://masak.hmb.gov.tr/brosurler, accessed 15 December 2025.

[38] Law No 5549, art. 2(1)(d).

[39] Regulation, art. 4(1)(ö).

[40] Law No 5549, art. 3(1); Regulation, arts. 5-17. The Regulation sets out specific detailed identification procedures for different categories of obliged persons, such as, natural persons, legal persons registered with the trade registry, associations and foundations, trade unions and confederations, political parties, foreign-resident legal persons and trusts established abroad, unincorporated organisations, public institutions, persons acting on behalf of another, persons acting on account of another. In addition, the Regulation also explains what type of identity proving documents for each category as well as instances where and how remote identification can be made.

[41] Regulation, arts. 5(1)(a)-(d).

amount of (one or more) transactions exceed the total of TRY 185,000 also requires identity verification.[42] The obliged parties also must take the necessary measures to determine the ultimate beneficial owner of the transaction.[43]

The obliged parties must pay special attention to complex and unusually large transactions or transactions that do not appear to have a reasonable legal and economic purpose, take the necessary measures to obtain sufficient information about the purpose of the requested transaction, and keep the information, documents and records obtained in this context for submission to the authorities upon request.[44] Similarly, transactions that are concluded with real and legal persons from high risk countries need such special attention.[45] Obliged parties must not establish or continue to business relationships in cases where they cannot verify identification or the reason of the business relationship.[46]

4. Reporting of Suspicious Transactions

Another fundamental obligation of the obliged parties is the reporting of suspicious transactions.[47] The Regulation defines a suspicious transaction as "*any information, suspicion, or reason to suspect that the assets involved in a transaction conducted or attempted to be conducted by or through obliged parties have been illegally obtained, or used for illegal purposes, including terrorist acts or by terrorist organizations, terrorists, or those financing terrorism, or are related to or connected with them.*"[48] These transactions must be reported to the MASAK Presidency regardless of the transaction amount.[49] MASAK General Communiqué No:13 further regulates the practical details of the suspicious transaction reporting.[50]

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[42] *Id.*, art. 5(1)(b)-(c). This threshold is TRY 15,000 for crypto asset transfers provided by crypto asset service providers or electronic transfers.

[43] *Id.*, art. 17/A. The same article provides guidelines on how to determine the beneficial owner. For instance, for the continuous business relationships with legal entities registered in the trade registry, the identities of natural or legal person shareholders that hold more than 25% of the shares must be identified. In case there is suspicious that a natural person holding more than 25% of the shares is not the ultimate beneficial owner or no such natural person exists, the obliged party must identify the natural person who ultimately control the legal entity. In cases where the beneficial owner cannot be identified through ownership or control, the natural person(s) holding the highest level of executive authority registered in the trade registry is deemed to be the ultimate beneficial owner in their capacity as senior managing officials. The same approach to treat senior managing officials as ultimate beneficial owners in case where control mechanism cannot be determined also applies to other legal entities and unincorporated organizations. Foreign resident legal entity shareholders can be verified through official or equivalent public sources.

[44] *Id.*, arts. 18-19.

[45] *Id.*, art. 25.

[46] *Id.*, art. 22.

[47] Law No 5549, Article 4; Regulation, arts. 27-30.

[48] Regulation, art. 27(1).

[49] Law No 5549, art. 4(1); Regulation, art. 27(2).

[50] MASAK General Communiqué No:13.

On 13 June 2025, MASAK issued suspicious transaction guidelines for certain categories of obliged persons for the first time and revised several of its existing guidance documents.[51] One of the newly introduced texts is a sector-specific guideline addressed to actors trading historical artifacts, antiques and artworks, as well as to auctioneers.[52] The guideline maps out key red flags specific to the sector, illustrates these risks through practical suspicious transaction scenarios, and provides hands-on guidance on how suspicious transaction reporting forms should be completed.[53] It also explains the use of the MASAK Online system for the electronic submission of suspicious transaction reports.[54] Suspicious transaction types are classified as those relating to the customer profile, sector-specific types, transactions carried out with persons suspected of having links to terrorist organisations or with high-risk countries, types relating to non-profit organisations, and types relating to the financing of the proliferation of weapons of mass destruction.[55] An undue urgency on the part of the client to conclude a transaction, or a lack of reasonable proportionality between the client's job/profession, financial situation, and their transactions are examples of suspicious transaction types related to the customer profile.[56] Similarly, the client's unwillingness to place their name on any document linking them with the auction item, or their use of false names; or their rapid resale of the auctioned item at the same or a lower price constitute sector-specific suspicious transaction types.[57]

5. Other Main Obligations of Obliged Parties

The obliged parties must continuously monitor the compliance and compatibility of transactions carried out by their clients, comply with MASAK Presidency and other audit authorities' information and documentation requests, preserve and present to the authorities when necessary, all documents related to the obligations and transactions regulated with the legislation, and take precautions against technological risks.[58]

Article 5 of Law No 5549 provides that the Ministry, based on a risk-based approach, is authorized to regulate obliged parties to implement anti-money compliance measures, such as implementation of training, internal audit, control and risk management

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[51] Mali Suçları Araştırma Kurulu (MASAK), "Şüpheli İşlem Bildirim Rehberleri ve MASAK Online 2.0 Sistemi Hakkında Duyuru", https://masak.hmb.gov.tr/duyuru/supheli-islem-bildirim-rehberleri-ve-masak-online-2-0-sistemi-hakkinda-duyuru, accessed 10 December 2025.

[52] Mali Suçları Araştırma Kurulu (MASAK), "Şüpheli İşlem Bildirim Rehberi Tarihi Eser, Antika ve Sanat Eseri Alım Satımı ile Uğraşanlar veya Bunların Müzayedeciliğini Yapanlar", Sürüm 1.0, 16 Haziran 2025, https://ms.hmb.gov.tr/uploads/sites/12/2025/06/SIB-REHBER-MUZAYEDE-1.0-d1630103b280dd3e.pdf, accessed 10 December 2025 ("MASAK Sanat Piyasası Şüpheli İşlem Bildirim Rehberi").

[53] *Id.*, pp. 6-17.

[54] *Id.*, p .6.

[55] *Id.*, pp.17-21.

[56] *Id.*, p.18.

[57] *Id.*, pp.19-20.

[58] Law No 5549, arts. 6-8; Regulation, arts. 19-20. The records and documents must be kept for a period of 8 years.

systems and appointment of an administrative-level officer to ensure compliance.[59] However, as of today, the Ministry has not imposed a compulsory regime for non-financial obliged parties including art market participants, and MASAK recommends these compliance measures as non-binding best practices.

6. Penalties

Law No 5549 foresees both criminal sanctions and administrative fines in cases of breaches of anti-money laundering obligations. In case of non-compliance with the core obligations of Law No 5549, such as failure to properly report suspicious activities or to comply with the provision of continuous information and documentation, criminal sanctions apply, namely imprisonment between one to three years and a judicial fine up to five thousand days.[60] In addition, those who act in their own name but on account of another person, in case failure to declare in writing to the obliged parties, are subject to punishment of imprisonment from six months to one year or a judicial fine of up to five thousand days.[61]

As for administrative fines, for the year 2025, administrative fines range from TRY 226,671 to TRY 7,555,806, for failure to carry out proper identity checks, provide continuous information and notify suspicious transactions.[62] Administrative fines cannot be imposed more than eight years after the date of the violation.[63]

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[59] Law No 5549, art. 5.

[60] Law No 5549, arts.14; 4(2), 7, 8.

[61] Law No 5549, art. 15.

[62] Law No 5549, arts. 3, 4, 13(6); MASAK Sanat Piyasası Şüpheli İşlem Bildirim Rehberi, p. 19. The text of Article 13 of Law No. 5549 indicates that failure to carry out proper identity checks and provide continuous information in accordance with Articles 3 and 6 have an administrative fine of TRY 30,000, and failure to notify suspicious transactions in accordance with Article 4 have an administrative fine of TRY 50,000. Furthermore, if an obliged party breaches its obligations under Article 5, which governs the obliged parties' obligation to comply with the procedures and principles determined by the Ministry relating to the implementation of training, internal audit, control and risk management systems and appointment of an administrative-level officer to ensure compliance, the obliged parties are first issued a written warning and granted a thirty-day period to remedy the breach. If, at the end of this thirty-days period, non-compliance persists, an administrative fine of TRY 500,000 is imposed on the obligor. After the notification of the administrative fine, if non-compliance still continues, an additional period of no less than sixty days is granted. If the non-compliance is not remedied at the end of this period, an additional administrative fine equal to twice the amount of the first fine is imposed. If non-compliance still persists within thirty days following the notification of the second administrative fine, the matter is reported to the relevant authority for implementation of measures such as suspending or restricting the activities of the obliged party for a certain period, or cancelling their activity licence. However, it must be noted that these administrative fine amounts are subject to annual reevaluation by the Ministry of Ministry of Treasure and Finance every year. For the year 2025, the amounts have been reevaluated in the ratio of 25.49% and published in the Official Gazette dated 27 November 2025 and numbered 33090. See Revenue Administration of Türkiye (GİB), "General Communiqué on the Tax Procedure Law No. 585 Published in the Official Gazette", 27 November 2025, https://www.gib.gov.tr/duyuru-arsivi/guncel/15258_vergi_usul_kanunu_genel_tebligi_sira_no:_585_resmi_gazete_ede_yayimlandi, accesd10 December 2025; Mali Suçları Araştırma Kurulu (MASAK), "Yaptırımlar", https://masak.hmb.gov.tr/yaptirimlar, accessed 24 December 2025.

[63] Law No 5549, art. 13(6); MASAK Sanat Piyasası Şüpheli İşlem Bildirim Rehberi, p. 19.a

C. Current State for AML Regulations for the Art Market in Türkiye

In its sectoral research report dated 2020, MASAK determined those engaged in the trade of historical artifacts, antiques and artworks constitute "*one of the most problematic groups in terms of obligations*".[64] Nevertheless, it was noted with concern that no suspicious activity was ever received from this sectoral group.[65] Therefore, it is clear that the Turkish art market currently lacks a high level of awareness on this matter.

Similarly, in another sectoral research report dated 2021, money laundering risks specific to the sector were explained.[66] MASAK evaluated that increasing the obligated parties in this sector might be beneficial for raising awareness on the issue.[67]

Despite this state of the art market actors, Türkiye stays committed to reinforcing its policies and enforcement for combatting money laundering activities in accordance with FATF's 40 Recommendations.[68] In that respect, Türkiye's delisting from the FATF Grey List in 2024 and the comprehensive efforts of national bodies draw a promising general framework that will set a good example for the art sector.[69] Nevertheless, it is clear that the art market stakeholders must be more comprehensively informed about their current obligations and, even if not legally required, should create solutions with their internal procedures that will mitigate risks relating to money-laundering. MASAK might also impose stricter fines and more developed monitoring for art market participants' violations of the applicable AML legislation. This way, Türkiye will prove itself to be the desired secure hub for cultural property and artwork transactions that will have a boosting impact on Turkish economy and culture.

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[64] Mali Suçları Araştırma Kurulu (MASAK), "Tarihi Eser, Antika ve Sanat Eserleri Alım Satımı ile Uğraşanlar Sektör Araştırma Raporu 2020", 2020, https://ms.hmb.gov.tr/uploads/2020/12/TARIHI-ESER-ANTIKA-SANAT-ESERLERI-ALIM-SATIMI-ile-UGRASANLAR-Sektor-arastirma-raporu-2020.pdf#:~:text=denetimi%20olan%20bir%20mevzuat%20bulunmaktad%C4%B1r,ilgili%20mevzuat%20a%C3%A7%C4%B1s%C4%B1ndan%20bak%C4%B1ld%C4%B1%C4%9F%C4%B-1nda%3B%20sekt%C3%B6rde, accessed 10 December 2025, ("MASAK Raporu 2020"), pp. 20-21. For an earlier report relating to the fundamental principles relating to traders of historical artifacts, antiques and artworks, see Mali Suçları Araştırma Kurulu (MASAK), "Suç Gelirlerinin Aklanmasının ve Terörizmin Finansmanının Önlenmesine Dair Yükümlülüklere İlişkin Temel Esaslar", 2015, https://ms.hmb.gov.tr/uploads/sites/12/2021/02/Antika-Muzayede-Brosur.pdf, accessed 17 December 2025.

[65] MASAK Raporu 2020, pp. 20-21.

[66] MASAK Raporu 2021, pp.12-13.

[67] *Id.*, p. 24.

[68] Mali Suçları Araştırma Kurulu (MASAK), "Türkiye'de Suç Gelirlerinin Aklanması ve Terörizm Finansmanı ile Mücadele ve Müsadere Uygulamalarında Etkinliğin Artırılması Strateji Belgesi 2021-2025", https://ms.hmb.gov.tr/uploads/sites/12/2024/07/USB_REVIZE_METIN.pdf accessed 18 December 2025.

[69] Türkiye Cumhuriyeti Hazine ve Maliye Bakanlığı, "Türkiye'nin Gri Listeden Çıkarılmasına İlişkin Basın Açıklaması", 28 June 2024, https://www.hmb.gov.tr/haberler/turkiyenin-gri-listeden-cikarilmasina-iliskin-basin-aciklamasi-28-haziran-2024#:~:text=ve%20Maliye%20Bakanl%C4%B1%C4%9F%C4%B1-,T%C3%BCrkiye'nin%20Gri%20Listeden%20%C3%87%C4%B1kar%C4%B1lmas%C4%B1na,Bas%C4%B1n%20A%C3%A7%C4%B1klamas%C4%B1%20(%2028%20Haziran%202024)&text=Mali%20Eylem%20G%C3%B6rev%20G%C3%BCc%C3%BC'n%C3%BCn,sayesinde%20T%C3%BCrkiye%20gri%20listeden%20%C3%A7%C4%B1kar%C4%B1lm%C4%B1%C5%9Ft%C4%B1r, accessed 24 December 2025.

Climate Finance and Sovereign Green Bonds

Gülnur Ceylan

Global climate finance has evolved a special policy objective into a core element of the international legal and financial architecture. It encompasses the investments required for mitigation (reducing greenhouse gas emissions), adaptation (enhancing resilience to climate impact), and ensuring that all financial flows align with climate-resilient development, a fundamental goal of the Paris Agreement.[1]

Reaching these objectives requires a significant investment of funds. While public climate finance is essential for catalysing markets and supporting high-impact adaptation projects, the size of the funding gap necessitates the mobilisation of resources from the private sector.[2] This imperative has driven the rapid expansion of the sustainable debt market, led by the rise of Sovereign Green Bonds ("SGBs"),[3] and, more recently, performance-based instruments like Sustainability-Linked Bonds ("SLBs").

For sovereigns, issuing such financial instruments is no longer just about establishing virtue; it is a strategic tool for diversifying investor bases, locking in long-term

[1] Paris Agreement, art. 2.1(c).

[2] Chiara Falduto, Jolien Noels and Raphaël Jachnik, "The New Collective Quantified Goal on climate finance: Options for reflecting the role of different sources, actors, and qualitative considerations", *OECD/IEA Climate Change Expert Group Papers*, No. 2024/02, OECD Publishing, 2024, p. 10, https://doi.org/10.1787/7b28309b-en, accessed 17 December 2025.

[3] Poland was the first sovereign country to issue a green bond at the end of 2016. See Sakai Ando, Francisco Roch, Ursula Wiriadinata and Chenxu Fu. "Sovereign Climate Debt Instruments: An Overview of the Green and Catastrophe Bond Markets", Staff Climate Notes 2022, 004, 2022, p. 3, https://doi.org/10.5089/9798400210006.066, accessed 17 December 2025.

funding, and, occasionally, obtaining a "greenium"[4] (lower borrowing costs).[5] For investors, however, this market creates a complex new universe of legal responsibilities, disclosure problems, and regulatory fragmentation.

As this market grows, financial know-how alone is no longer enough. It is now crucial to have a thorough understanding of the legal responsibilities and various regulatory approaches. This article offers an overview of the main frameworks and the emerging risks.

Legal Frameworks Governing Climate Finance

Legal architecture governing climate finance is a blend of international treaties, regional hard law, and market-based soft law. The global foundation lies in the United Nations Framework Convention on Climate Change and the Paris Agreement. Specifically, Article 2.1(c) of the Paris Agreement aims to align global capital with low-carbon goals. This is not a small change; it is a systemic financial shift in global finance, supported by nationally determined contributions ("NDCs")[6] and operationalised by multilateral development banks[7] and the International Monetary Fund ("IMF").[8]

It does not stop at international treaties. The European Union ("EU") has established one of the most comprehensive regulatory regimes. The EU Taxonomy Regulation[9] and the Sustainable Finance Disclosure Regulation[10] reinforce these treaties by standardising "green" definitions. Accordingly, global issuers need to understand these frameworks should they seek to benefit from European capital. The EU Green Bond

[4] The "greenium" (or green premium) refers to the borrowing cost advantage realized by an issuer when it issues a green bond instead of a standard one. Because investor demand for green assets often exceeds supply, these bonds typically trade at a higher price, resulting in a lower yield (interest rate) for the issuer.

[5] Gong Cheng, Torsten Ehlers, Frank Packer and Yanzhe Xiao, "Sovereign Green Bonds: A Catalyst for Sustainable Debt Market Development?", *IMF Working Papers 2024*, 120, 2024, pp. 3-4, https://doi.org/10.5089/9798400277030.001, accessed 17 December 2025.

[6] Paris Agreement, art. 4.

[7] World Bank Group, "Climate Change Action Plan 2021-2025", 2021, p. 15, https://openknowledge.worldbank.org/handle/10986/35799, accessed 17 December 2025.

[8] Chiara Falduto and Raphaël Jachnik, "Unpacking the USD 300 billion goal and the USD 1.3 trillion scale up call in the NCQG", *Climate Change Expert Group Paper No.2025(3)*, 2025, pp. 13-14, https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/10/unpacking-the-usd-300-billion-goal-and-the-usd-1-3-trillion-scale-up-call-in-the-ncqg_a93c39ea/bb53df0c-en.pdf, accessed 17 December 2025.

[9] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0852, accessed 17 December 2025.

[10] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2088, accessed 17 December 2025.

Standard ("EuGB") elevates expectations for transparency and legal accountability by introducing a voluntary "gold standard"[11] requiring 85% taxonomy requirements alignment.[12] Crucially, this regulatory landscape is evolving to encompass transition finance. Frameworks like the Climate Transition Finance Handbook now guide the decarbonisation of high-emitting sectors.[13]

While international treaties set the agenda, the actual mechanism for economic change lies in the reform of domestic frameworks. Domestic regulations are what turn global climate promises into real national action, and that usually demands serious structural change. It starts with national climate laws and NDCs, for example, the EU's binding goal of at least 55% net Greenhouse Gas ("GHG") cuts by 2030 compared to 1990, plus tools like climate budgeting.[14] To mobilise private money, governments rely heavily on securities laws and disclosure rules. By 2023, 77 countries and the EU had introduced transparency requirements, forcing companies to report emissions, targets, and transition plans.[15]

At its core, green finance relies heavily on voluntary rules and market norms rather than hard laws. The big one everyone follows is the International Capital Market Association ("ICMA") Green Bond Principles.[16] They centre around four core components: (1) Use of Proceeds, (2) Process for Project Evaluation and Selection, (3) Management of Proceeds, and (4) Reporting.[17] Issuers are strongly recommended to explain exactly how they meet these principles in green bond frameworks and to get external reviews.[18] Building upon this foundation, the Climate Bonds Initiative Standards emerged as a private sector initiative, providing more detailed,

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[11] European Commission, "The European green bond standard – Supporting the transition", https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/european-green-bond-standard-supporting-transition_en, accessed 17 December 2025.

[12] Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds, art. 5, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202302631, accessed 17 December 2025.

[13] International Capital Market Association, "Climate Transition Finance Handbook", November 2025, https://www.icmagroup.org/assets/documents/Sustainable-finance/2025-updates/Climate-Transition-Finance-Handbook-November-2025.pdf, accessed 17 December 2025.

[14] Giusy Chesini, "Can Sovereign Green Bonds Accelerate the Transition to Net-Zero Greenhouse Gas Emissions?", International Advances in Economic Research, Volume 30, 177–197, 2024, p. 178, https://doi.org/10.1007/s11294-024-09900-6, accessed 17 December 2025.

[15] OECD, "OECD Review on Aligning Finance with Climate Goals: Assessing Progress to Net Zero and Preventing Greenwashing", Green Finance and Investment, OECD Publishing, 2024, p. 76 https://doi.org/10.1787/b9b7ce49-en, accessed 17 December 2025.

[16] Latest revision of the ICMA Green Bond Principles was made in 2025. See International Capital Market Association, "Green Bond Principles: Voluntary Process Guidelines for Issuing Green Bonds", June 2025 ("ICMA GBP"), p. 5, https://www.icmagroup.org/assets/documents/Sustainable-finance/2025-updates/Green-Bond-Principles-GBP-June-2025.pdf, accessed 17 December 2025.

[17] *Id.*, p. 3.

[18] *Id.*

sector-specific definitions of "green" projects for certification.[19] The integrity of these bonds is maintained through environmental, social and governance ("ESG") ratings and verification norms. The emphasis on independent verification has proven highly effective. Empirical evidence shows that when a sovereign government issues its inaugural green bond, it frequently acts as a catalyst, prompting corporate issuers in that market to adopt significantly more rigorous verification standards for their own green bond frameworks.[20]

Structure and Legal Frameworks of Sovereign Green Bonds

SGBs are essentially standard government bonds with an explicit environmental purpose: the proceeds, or an equivalent amount, must be used exclusively to finance or refinance eligible green projects.[21]

A key practical challenge for SGBs is the fungibility of public funds, given that money raising typically goes into a general treasury pot. To comply with the green commitment, governments therefore track an equivalent amount through dedicated internal mechanisms (for example, Green Register[22]) and publicly report allocation to eligible expenditures and the resulting environmental impact.[23]

Unlike most corporate green bonds, SGBs carry virtually no credit risk and rank equally with conventional government debt.[24] However, legal documentation almost always states that failure to allocate proceeds to green projects does not constitute an event of default.[25] This avoids the risk of a minor administrative breach triggering cross-defaults across the sovereign's broader debt. As a result, investors have no contractual remedy for a failure to meet green commitments and must instead rely on reputational consequences.

[19] Climate Bonds Initiative, "Climate Bonds Standard Version 4.3", August 2025, https://www.climatebonds.net/files/documents/CBI_Standard_V4.3_FINAL_2025-08-20-102147_gbqn.pdf, accessed 17 December 2025.

[20] *See* Cheng et al., p. 1, fn. [5].

[21] Anuradha Yadav, Vijaya Kittu Manda, Shivani, Vikramaditya Sangwan and Sergij Vambol, "Sovereign green bonds as an unconventional tool to address climate change", Ecological Questions 35 (3):1-26, 2024, p. 2, https://doi.org/10.12775/EQ.2024.028, accessed 17 December 2025.

[22] United Kingdom Debt Management Office, UK Government Green Financing Framework, June 2021, p. 21, https://assets.publishing.service.gov.uk/media/60f008d78fa8f50c7f08ae6e/20210630_UK_Government_Green_Financing_Framework.pdf, accessed 17 December 2025.

[23] *See* ICMA GBP, p. 5, fn. [16].

[24] Daniel C. Hardy, "Alternatives in the Design of Sovereign Green Bonds", Policy Notes and Reports 62, December 2022, p. 36, https://wiiw.ac.at/alternatives-in-the-design-of-sovereign-green-bonds-dlp-6412.pdf, accessed 17 December 2025.

[25] Quinn Curtis, Mark Weidemaier and Mitu Gulati, "Green Bonds; Empty Promises", https://blogs.law.ox.ac.uk/oblb/blog-post/2023/05/green-bonds-empty-promises, accessed 17 December 2025.

Bonds issued internationally are usually subject to English or New York law. While this gives assurance regarding payment obligations, environmental covenants are frequently structured as intentions rather than binding obligations to shield the sovereign from litigation.

From a public finance perspective, SGBs are incorporated into the regular government borrowing programme. Issuance must not add to the total debt burden and must be consistent with the medium-term debt plan. To guarantee efficient coordination between ministries and debt-management offices, nations often create interministerial working groups and implement green budget labelling.

Key Legal Issues in Sovereign Green Bond Issuance

Even with evolving reporting and verification standards, the greatest risk hanging over the SGB market is still greenwashing: the misrepresentation of environmental impact. To attract ESG investors, issuers disclose more specific climate data in prospectuses, which increases their liability surface. In the United States ("US"), "half-truths", *i.e.*, statements that are literally accurate but misleading because of the omitted context, are actionable under securities laws.[26] Thus, sovereigns must guarantee that the "green" statements in their marketing materials correspond to the technical realities of their projects.

While bonds issued internationally typically include a waiver of sovereign immunity, these waivers are often interpreted narrowly. Standard waivers are generally drafted to address payment obligations. As the use of proceeds and reporting clauses are rarely referred to in events of defaults in SGBs, the sovereign's waiver of immunity arguably does not extend to breaches of these environmental promises. Even if an investor successfully obtained a judgment for a breach of an SGB, enforcing such a judgment against sovereign assets remains procedurally difficult under national sovereign immunity regimes, including, in particular, the US Foreign Sovereign Immunities Act ("FSIA") of 1976[27] and the United Kingdom ("UK") State Immunity Act ("SIA").[28]

Lastly, any subsequent change in political priorities, a change of administration, or a reallocation of funds could undermine confidence because SGBs are promoted as evidence of a sustained commitment to the Paris Agreement and national NDCs. As

[26] Macquarie Infrastructure Corp. v. Moab Partners, L. P., 601 U.S. (2024), https://supreme.justia.com/cases/federal/us/601/22-1165/, accessed 17 December 2025.

[27] Under the US FSIA (28 U.S.C. §§ 1605(a)), post-judgment execution is permitted only where there is a specific waiver or if the property is used for the commercial activity upon which the claim is based.

[28] An exception for enforcement applies only if the property is "*for the time being in use or intended for use for commercial purposes*" (UK SIA s13(4)).

a result, investors are left vulnerable to policy risk without the customary legal safeguards associated with financial covenants.

The Rise of Sovereign Sustainability-Linked Bonds

The rigid structure of SGBs has led to the emergence of SLBs, creating a bifurcated market between "use-of-proceeds" instruments and "performance-based" instruments.[29] Unlike SGBs, SLB proceeds are not earmarked for specific projects and can be used for general budgetary purposes.[30] However, this structure also increases their vulnerability to greenwashing relative to SGBs.

For SLBs, the key focus is whether the selected Key Performance Indicators ("KPIs") demonstrate genuine ambition and align with recognised science-based pathways.[31] In other words, with SLBs, the risk flips: the concern is no longer "where did the money go?" but rather "were the targets actually ambitious?" Thus, issuers are under growing pressure to show that their chosen KPIs really push the country beyond business-as-usual. If the targets are set too low, issuers may be accused of ambition washing, as they end up paying a small coupon step-up for outcomes that were likely to happen anyway.

On the other hand, SLBs solve the enforceability gap. If the sovereign fails to meet its sustainability targets by a set date, a financial penalty kicks in.[32] This provides a tangible incentive for achieving targets and reinforces the issuer's accountability. Investors thus trade the project-level transparency of green bonds for the hard contractual enforceability of SLBs.

Case Studies and Comparative Insights

The SGB market has been divided into two distinct kinds: the established, high-volume European model and the smaller but higher-impact emerging-market segment.[33]

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[29] International Capital Market Association, "Guidance Handbook", June 2025, p. 4, https://www.icmagroup.org/assets/documents/Sustainable-finance/2025-updates/The-Principles-Guidance-Handbook-June-2025.pdf, accessed 17 December 2025.

[30] *Id.*, p. 25.

[31] *Id.*, pp. 32-33.

[32] *Id.*, p. 34.

[33] The World Bank, "Labeled Sustainable Bonds", Quarterly Market Update: Q3 | October 2025, https://thedocs.worldbank.org/en/doc/a0b02007cb79cb92aec74b110b61cd98-0340012025/original/Labeled-bond-market-quarterly-newsletter-Q3-2025.pdf, accessed 17 December 2025.

Europe dominates the SGB market in size and sophistication. Particularly, France,[34] Germany (with its liquidity-enhancing twin-bond model launched in 2020)[35] and Italy have together set the reporting benchmark. Entering into application in December 2024 (with verifier registration phased in through 2026), the EuGB mandates standardised documentation and alignment of proceeds with the EU Taxonomy Regulation. This rigour has contributed to a modest greenium for euro area sovereign issuers.

Despite lower volumes, emerging-market issuers achieve substantial pricing benefits. Egypt's oversubscribed US$750 million debut in 2020 opened the MENA region,[36] Indonesia launched the world's first sovereign green sukuk in 2018.[37] Innovative structures are also prominent here. Chile, in addition to being the largest issuer among emerging markets, pioneered the Sovereign SLB.[38]

Türkiye has also successfully joined this market. Following its ratification of the Paris Agreement[39] and the publication of its Sustainable Finance Framework,[40] Türkiye issued its inaugural US$2.5 billion green bond in April 2023.[41] The issuance was oversubscribed, leveraging a Green Bond Framework aligned with ICMA standards, which requires external review and funds projects from renewables to clean transport. With a proven ability to access international ESG capital, Türkiye is now positioned to expand into broader transition finance as its energy policy unfolds. Most importantly, this sovereign benchmark is expected to support Turkish corporates seeking international ESG financing by offering a coherent framework and a reliable pricing reference.

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[34] According to official statements, France has been the largest sovereign green bond issuer based on data available up to the first half of 2025. See Agence France Trésor, "16 May 2025: Presentation of the green OAT framework document update", 2025, https://www.aft.gouv.fr/en/publications/communiques-presse/16-may-2025-presentation-green-oat-framework-document-update#:~:text=Since%202017%2C%20France%20has%20been,sovereign%20issuer%20of%20green%20bonds, accessed 17 December 2025.

[35] Bundesrepublik Deutschland - Finanzagentur GmbH (Finanzagentur), "Twin Bond Concept", https://www.deutsche-finanzagentur.de/en/federal-securities/types-of-federal-securities/green-federal-securities/twin-bond-concept, accessed 17 December 2025.

[36] Farah Imrana Hussain, "Egypt - The First Sovereign Green Bond in the Middle East and North Africa : Case Study (English)", Washington, D.C.: World Bank Group, 2022, http://documents.worldbank.org/curated/en/099825212162238314, accessed 17 December 2025.

[37] *See* Yadav et al., p. 7, fn. [21].

[38] BNP Paribas, "Chile sets a trend with first sovereign sustainability-linked bond", 21 March 2022, https://cib.bnpparibas/chile-sets-a-trend-with-first-sovereign-sustainability-linked-bond/, accessed 17 December 2025.

[39] Türkiye ratified the Paris Agreement on 7 October 2021 (published in the Official Gazette dated 07.10.2021, No. 31621).

[40] Republic of Türkiye Ministry of Treasury and Finance, "Republic of Turkey – Sustainable Finance Framework", November 2021, https://ms.hmb.gov.tr/uploads/2021/11/Republic-of-Turkey-Sustainable-Finance-Framework.pdf, accessed 17 December 2025.

[41] Republic of Türkiye Ministry of Treasury and Finance, "Press Release", 6 April 2023, https://ms.hmb.gov.tr/uploads/sites/2/2023/04/20230406_Press-Release.pdf, accessed 17 December 2025.

Policy Recommendations and Legal Risks to Watch

The future of SGBs will be dependent on stronger policy alignment and more reliable safeguards against greenwashing and political reversals. A key part of this is the convergence of taxonomies. The EuGB already points in this direction by requiring alignment with the EU Taxonomy. Yet the EU model is only one piece of a much larger puzzle. When countries define 'green' differently, investors are left navigating a confusing landscape. Aligning these definitions would remove that uncertainty and create a shared baseline.

Reporting and verification also need the same discipline. Various disclosure rules in play leave too much room for confusion and inconsistencies. Standardised templates required external checks before and after issuance, and a gradual move toward mandatory assurance of impact reports would help ensure that the information released is genuinely comparable and reliable.

Investor protection is still where the market falls short. Most SGBs typically include explicit disclaimers stating that misusing proceeds or failing to report does not amount to an event of default.[42] The intention behind this drafting is to prevent investors from having a contractual right to compel the sovereign issuer to repay the bond due to non-compliance with green standards,[43] thereby protecting the sovereign from the risk of litigation in foreign courts.[44] Consequently, these instruments are viewed as lacking binding commitments on environmental performance with their "green" label depends primarily on the issuer's credibility rather than legal obligations.[45] In practice, these leave investors relying more on the sovereign's reputation, not on enforceable contractual rights.

Finally, long-term credibility necessitates anchoring issuances in solid national climate policy: connecting proceeds and targets to Paris Agreement-aligned NDCs, incorporating climate concerns into multi-year budget frameworks, and protecting programmes from sudden policy shifts.

Taken together, these reforms would provide SGBs with the clarity, consistency, and accountability they require to serve as a reliable component of the global climate finance architecture.

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[42] *See* Curtis et al., fn. [25].

[43] Arab Monetary Fund, "Guidance Note on Sovereign Sustainable Instruments", March 2023, p. 46, https://www.amf.org.ae/sites/default/files/publications/2023-03/Sovereign%20Sustainable%20Instruments%20Guidance%20Note_0.pdf, accessed 17 December 2025.

[44] *See* Hardy, p. 15, fn. [24].

[45] Ugo Panizza, Beatrice Weder di Mauro, Shuyang Shi and Mitu Gulati, "The Sovereign Greenium: Big Promise but Small Price Effect", *Graduate Institute of International and Development Studies International Economics Department Working Paper Series*, Working Paper No. HEIDWP16-2025, 2025, pp. 10, 18, https://repec.graduateinstitute.ch/pdfs/Working_papers/HEIDWP16-2025.pdf, accessed 17 December 2025.

Conclusion

In less than ten years, SGBs have evolved from novelty to a mainstream instrument, emerging as one of the most important instruments available to governments to convert the aspirations of the Paris Agreement into real investment flows. They convey a clear message that climate action is now central to public policy, while enabling nations to access large pools of ESG-driven funding, frequently at lower costs and longer borrowing terms. Each issuance serves two purposes, especially for emerging markets: it finances projects that are urgently needed and compels the quick development of capital-market infrastructure and local verification requirements.

However, the instrument is still paradoxically both powerful and fragile. Its environmental credibility still depends much more on voluntary discipline, reputational pressure, and political continuity than on enforceable legislative commitments, even though its financial credibility is almost invulnerable, given that sovereign risk is sovereign risk. Investors tolerate this trade-off since the benefits of greenium and portfolio greening outweigh the dangers, but they will not continue to do so indefinitely if greenwashing scandals spread or political reversals become prevalent.

Thus, the evolving landscape indicates a shift toward converging taxonomies, truly standardised and verified reporting, and environmental commitments tied more closely to long-term national legislation and multi-year budget programmes. Reputation will continue to be the market's major safety net until the environmental pledge has something approaching the same legal weight as the pledge to repay principal and interest. SGBs will cease to be a specialty product and become the standard method of government borrowing when that shifts, and the day sovereigns make their climate commitment as bankable as their repayment commitment.

The Res Judicata Effect of Sports Arbitration Awards in the EU

H. Semih Öz

The Court of Justice of the European Union ("CJEU") delivered its judgment in *Royal Football Club Seraing SA v. FIFA*, UEFA and URBSFA on 1 August 2025.[1] The significance of the ruling lies in the CJEU's conclusion that awards rendered by the Court of Arbitration for Sport ("CAS") do not automatically produce a *res judicata* effect within the European Union ("EU"). Instead, EU courts must have the ability to review such awards for their compatibility with EU public policy.

Although the underlying dispute arose in a sports law context, and specifically concerned the mandatory nature of CAS jurisdiction, the judgment may reflect a broader tendency in the CJEU's approach to arbitration.

Background of the Dispute

A Belgian football club, RFC Seraing, entered into a contract with a sports investment company, Doyen Sports Investment Ltd ("Doyen"), in 2015. The agreement envisaged future financing arrangements and transferred 30 percent of the economic rights of three players to Doyen. In return, Doyen paid EUR 300,000 and RFC Seraing agreed not to dispose of the remaining share of those rights to any third party. A similar agreement followed shortly after, under which 25 percent of another player's economic rights were transferred to Doyen in exchange for EUR 50,000.[2]

[1] The Court of Justice of the European Union Case numbered C600/23, Judgment of 1 August 2025, *Royal Football Club Seraing SA v. FIFA*, UEFA and URBSFA, ECLI:EU:C:2025:617 ("CJEU, Seraing v. FIFA").

[2] *Id.*, paras. 22-24; *RFC Seraing v. Federation Fédération Internationale de Football Association (FIFA)*, CAS Arbitration Case No. 2016/A/4490, Award dated 9 March 2017 ("CAS, Seraing v. FIFA"), https://jurisprudence.tas-cas.org/Shared%20Documents/4490.pdf, accessed 9 December 2025, paras. 4-13.

After an investigation by FIFA and the Belgian football authorities, the club was sanctioned with a four-window transfer ban and a fine of 150,000 Swiss francs.[3] The authorities considered that both agreements violated Articles 18bis and 18ter of the Regulations on the Status and Transfer of Players ("RSTP"), which prohibit any third-party influence over clubs' employment or transfer decisions and ban third-party ownership of economic rights arising from future transfers.[4]

RFC Seraing brought the decision before the FIFA Appeal Committee and, following dismissal, proceeded to the CAS, which is the mandatory appeal route under FIFA rules.[5] Before the CAS, the club argued that the prohibitions in Articles 18bis and 18ter infringed Articles 45, 56, 63, 101 and 102 of the Treaty on the Functioning of the European Union ("TFEU"), namely the freedom of movement for workers, free movement of services, free movement of capital and the competition rules, as well as Swiss competition law. In March 2017, the CAS upheld the FIFA decision, reducing only the duration of the transfer ban.[6] RFC Seraing brought an annulment action before the Swiss Supreme Court, which dismissed the claims in February 2018.[7]

Meanwhile, before FIFA initiated its disciplinary proceedings, Doyen and RFC Sérésien (the controlling entity of RFC Seraing) had already brought proceedings before the Brussels courts against FIFA, UEFA and the *Union royale belge des sociétés de football association ASBL* ("URBSFA"), claiming that Articles 18bis and 18ter were incompatible with EU law.[8] After disciplinary proceedings commenced, RFC Seraing intervened as well. The court of first instance declined jurisdiction, and the matter was appealed before the Brussels Court of Appeal.

On appeal, the Brussels Court of Appeal held that the CAS award between the same parties had to be regarded as having the force of *res judicata* and, moreover, that even though the URBSFA had not been a party to the CAS proceedings, the CAS award still carried probative value for the Belgian association.[9]

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[3] CAS, *Seraing v. FIFA*, paras. 24-33; CJEU, *Seraing v. FIFA*, paras. 25-26.

[4] CAS, *Seraing v. FIFA*, paras. 14-23.

[5] *Id.*, paras. 34-39; CJEU, Seraing v. FIFA, paras. 27-30.

[6] CAS, *Seraing v. FIFA*, p. 46.

[7] *Id.*, paras. 31-42; Swiss Supreme Court Case numbered 4A_260/2017, Judgment of 20 February 2018, BGE 144 III 120, p. 135.

[8] CAS, *Seraing v. FIFA*, paras. 43-50.

[9] *Id.*, paras. 49-50.

Preliminary Ruling Request

RFC Seraing appealed the decision of the Court of Appeal before the Court of Cassation of Belgium. Since the case required the interpretation of EU law, the Court of Cassation referred two questions to the CJEU.[10] In short, the questions were as follows:

- Whether EU law limits national courts' ability to treat an arbitral award as final when the award's compatibility with EU law was examined only by a non-EU court.
- Whether EU law limits the possibility for national law to give such an award evidentiary force against third parties when its EU-law compliance was reviewed solely by a non-EU court.

The CJEU's Judgment

The CJEU started its analysis by underlying the right to effective judicial protection.[11] It stressed that parties may conclude agreements referring their disputes to arbitration.[12] However, it also noted that if the arbitration mechanism is to be implemented in the EU, then it must be compatible with the EU legal principles and the EU public policy.[13] Therefore, according to the CJEU, in order for the Article 47 of the EU Charter[14] to be respected, the awards must be "*amenable*" to judicial review.[15] At this point, by reference to *Eco Swiss* and *Mostaza Claro*, the CJEU stated that such a judicial review should be limited in nature.[16]

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[10] *See*, the Court of Justice of the European Union Case numbered C-600/23, Summary of the Request for a Preliminary Ruling under Article 98(1) of the Rules of Procedures of the Court of Justice, https://curia.europa.eu/juris/showPdf.jsf?text=&docid=280548&pageIndex=0&doclang=EN&mode=req&dir=&occ=-first&part=1&cid=11481731, accessed 28 November 2025.

[11] CJEU, *Seraing v. FIFA*, para 69.

[12] *Id.*, para. 81. *See also*, the Court of Justice of the European Union Case numbered C-124/21, Judgment of 21 December 2023, *International Skating Union v Commission*, para. 193.

[13] CJEU, *Seraing v. FIFA*, para. 82.

[14] Article 47: "*Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.*"

[15] CJEU, *Seraing v. FIFA*, para. 83.

[16] *Id.*, para. 84. *See also*, the Court of Justice of the European Union Case numbered C-126/97, Judgment of 1 June 1999, *Eco Swiss China Time Ltd v Benetton International NV.*, para. 35; the Court of Justice of the European Union Case numbered C-168/05, Judgment of 26 October 2006, *Elisa María Mostaza Claro v Centro Móvil Milenium SL.*, para. 34.

Then, the CJEU made a distinction between voluntary arbitration and mandatory arbitration,[17] as suggested in the Attorney General's opinion.[18] It stressed that in sports, arbitration is often imposed unilaterally by federations or associations which have regulatory or oversight powers. According to the CJEU, while such an obligation may serve legitimate objectives, including consistent interpretation and application of sporting rules, legal autonomy cannot deprive individuals of rights guaranteed under EU law.[19]

In fact, individuals who wish to participate in sports competitions professionally have little real choice but to accept CAS jurisdiction. In the case of FIFA, for instance, Articles 47(3) and 50(1) of the FIFA Statutes require that disciplinary decisions be appealed before the CAS.[20] For this reason, the CJEU stated that such a mandatory system requires appropriate safeguards to ensure that individuals have access to a court capable of examining whether the award complies with EU public policy.[21] The CJEU underlined that individuals must be able to bring such questions before a court or tribunal of a member state, either directly or indirectly, that can examine the award.[22] Additionally, beyond examining the award, the EU courts must also be able to draw "*all the appropriate legal conclusions where such an inconsistency is found to exist*" for the sake of effectiveness of the judicial review.[23]

As a result, the CJEU concluded that CAS awards cannot be treated as having res judicata effect or probative value without being determined by an EU court that it is compatible with EU law and thus the EU public policy.

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[17] CJEU, *Seraing v. FIFA*, paras. 79-80, 93, 97.

[18] The Court of Justice of the European Union Case numbered C-600/23, Opinion of the Advocate General Capeta delivered on 16 January 2025 ("AG Opinion"), https://curia.europa.eu/juris/document/document.jsf?text=&docid=294268&pageIndex=0&doclang=EN&mode=lst&dir=&occ=-first&part=1&cid=12552353, accessed 28 November 2025, paras., 40, 55, 70-75.

[19] CJEU, *Seraing v. FIFA*, paras. 94-95. *See also*, the Court of Justice of the European Union numbered C-333/21, Judgment of 21 December 2023, European Superleague Company, para. 75; the Court of Justice of the European Union numbered C-124/21, Judgment of 21 December 2023, *International Skating Union v Commission*, para. 196.

[20] Article 47(3): "*Decisions pronounced by the Appeal Committee shall be irrevocable and binding on all the parties concerned. This provision is subject to appeals lodged with CAS."; Article 50(1): "Appeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question.*"

[21] CJEU, *Seraing v. FIFA*, paras. 95-105.

[22] *Id.*, paras. 76, 100, 108, 121.

[23] *Id.*, para. 103.

Importance of the Judgment

In essence, while the CJEU recognized the institutional value of CAS arbitration in promoting coherence within sports governance, it unequivocally affirmed that EU public policy prevails whenever a conflict arises. Consequently, for CAS awards to benefit from res judicata effect, they must be subject to "*effective*" judicial scrutiny on a case-by-case basis regarding their compliance with EU public policy.

Notably, compared to the Advocate General's Opinion, which advocated for a full review of CAS awards and suggested that the Convention on Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") should not apply to them,[24] the CJEU adopted a more measured approach. By limiting the scope of "*effective review*" to EU public policy and maintaining the reference to the New York Convention, the CJEU arguably provided slightly more breathing room for sports arbitration. Furthermore, the explicit distinction made by the CJEU between mandatory and voluntary arbitration signals that voluntary arbitration may remain relatively insulated from such strict intervention.

The issue with CAS awards is that, since the seat of each CAS tribunal is by default in Lausanne,[25] the competent jurisdiction for the set aside proceedings is Switzerland, and more specifically, the Swiss Federal Supreme Court is competent as per Article 191 of the Swiss Private International Law Act.[26] As Switzerland is not an EU Member State, the Swiss Federal Supreme Court cannot be expected, nor is it empowered, to conduct a review of EU law equivalent to that of a Member State court.[27] Besides, although CAS awards are also subject to the mechanisms provided under the New York Convention, the fact that one party is typically a regulatory or supervisory body capable of enforcing awards internally through the threat of disciplinary sanctions means that such organizations often enforce the awards internally, without the need of a formal enforcement process.[28]

Consequently, the probability of a CAS award reaching an EU court is significantly lower than that of an ordinary commercial arbitration award involving EU parties. Addressing this procedural gap, the CJEU clarified that direct recourse (such as by virtue of set aside or enforcement proceedings) is not required for a public policy review; parties may instead request such a review indirectly (in the CJEU's words "*in*

[24] *AG Opinion*, paras. 116-122, 133-134.

[25] Court of Arbitration for Sport, Code of Sports-related Arbitration, Procedural Rules, https://www.tas-cas.org/en/arbitration/code-procedural-rules, accessed 18 December 2025, Rule 28.

[26] Antonio Rigozzi, "Challenging Awards of the Court of Arbitration for Sport", Journal of International Disputes Settlement, Vol.1, 2010, p. 220.

[27] *Id.*, p. 252.

[28] Antonio Rigozzi, Sébastien Besson, William McAuliffe, "International Sports Arbitration", GAR The European Arbitration Review, 2018, p. 7.

any manner whatsoever") through EU courts.[29] Thus, irrespective of whether formal enforcement proceedings are initiated within the EU, the compatibility of a CAS award with EU public policy remains reviewable.

Given that CAS arbitration is frequently mandatory for professionals wishing to participate in major sporting events, this stance undoubtedly introduces stronger safeguards for athletes, clubs, and other stakeholders. However, the precise contours of an "effective review" remain somewhat nebulous. If EU national courts apply the principles set out in this judgment divergently, the aspiration for "coherence" in global sports justice may be undermined. Nevertheless, referring to its prior case law, the CJEU implicitly confirmed that an effective review does not equate to a full review of the merits. Conversely, if this judgment prompts a wave of challenges against CAS awards before EU courts, it could be argued that the CJEU has, at least in the short term, generated more uncertainty than legal certainty. It remains crucial, therefore, to ensure that EU judicial oversight does not become so overarching as to paralyze the sports arbitration system.

As a final remark, the CJEU made a distinction between mandatory and voluntary arbitration in its judgment. This being the case, since the EU public policy is an evolving concept and the fact that some of the reasonings mentioned above may, from time to time, be applicable or required for the commercial arbitration, this judgment may also be viewed as the latest step of a trajectory that began with *Nordsee*[30] and later developed through *Eco Swiss, Mostaza Claro, Achmea*,[31] *Komstroy*[32] and *ISU*[33]. Across these cases, the CJEU has consistently treated arbitration as operating largely outside the EU judicial architecture. Although the disputes involved different types of proceedings, ranging from voluntary commercial arbitration to compulsory sports arbitration and investor state dispute settlement mechanisms, the CJEU has either limited access to the preliminary reference procedure, relied on public policy review before national courts, or otherwise refrained from integrating arbitral awards into the EU's legal system without EU courts acting as gatekeepers first. Seraing continues this approach while refining the contours of such review. The common

[29] CJEU, *Seraing v. FIFA*, para. 115.

[30] The Court of Justice of the European Union Case numbered C-102/81, Judgment of 23 March 1982, *Nordsee Deutsche Hochseefischerei GmbH v Reederei Mond Hochseefischerei Nordstern AG & Co. KG and Reederei Friedrich Busse Hochseefischerei Nordstern AG & Co. KG.*, para. 10.

[31] The Court of Justice of the European Union Case numbered C-284/16, Judgment of 6 March 2018, *Slowakische Republik (Slovak Republic) v. Achmea BV*; Prof. Dr. Dres. h.c. Burkhard Hess, "The Fate of Investment Dispute Resolution after the Achmea Decision of the European Court of Justice", Max Planck Institute Luxembourg for Procedural Law Research Paper Series No. 2018(3), pp. 5, 9.

[32] The Court of Justice of the European Union Case numbered C-741/19, Judgment of 2 September 2021, *Republic of Moldova v Komstroy LLC*; Jed Odermatt, "Is EU Law International? Case C-741/19 Republic of Moldova v. Komstroy LLC and the Autonomy of the EU Legal Order", European Papers, Vol.6, No.3, 2021.

[33] The Court of Justice of the European Union Case numbered C-124/21, Judgment of 21 December 2023, *International Skating Union v European Commission*.

point of all these judgments reflects EU's understanding that the legal autonomy of the EU is superior. Therefore, the belief that the private arbitrators are persons "*who cannot properly apply EU law, in the absence of the indispensable judicial dialogue with the Court of Justice*",[34] coupled with several other factors such as the evolving nature of the EU public policy, may eventually entail further adverse consequences for commercial arbitration within the EU. For the time being, however, the direct impact appears confined to the realm of sports arbitration.

Post-judgment commentary varies widely, ranging from optimism to pessimism regarding the future of sports dispute resolution.[35] Ultimately, the true impact of Seraing remains to be seen as national courts begin to apply this standard in the coming months and years.

[34] Communication from the Commission to the European Parliament and the Council, Protection of intra-EU investment COM(2018) 547, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52018DC0547, accessed 28 November 2025.

[35] Susannah Moody, "CJEU says CAS awards must receive "effective" public policy review", 01 August 2025, Global Arbitration Review, https://globalarbitrationreview.com/article/cjeu-says-cas-awards-must-receive-effective-public-policy-review, accessed 28 November 2025.

Transfer of Substantial Part of a Joint Stock Company's Assets under Turkish Law

H. Orhun Atalay

Introduction

Wholesale of substantial part of a joint stock company's assets require shareholders' approval under Turkish Commercial Code numbered 6102 dated 13 January 2011 ("TCC") art. 408/2(f). From a comparative law perspective, jurisdictions that impose shareholder approval requirement for transfers of corporate assets span a range of legal systems, such as Germany[1], Delaware[2], Switzerland[3], South Africa[4] or Philippines[5]. Such requirements are typically designed to protect shareholders' interests and to ensure major transactions do not jeopardize the company's ability to pursue its business.

In cross-border or domestic transactions, whether structured as asset or share deals, where the transferring party is an entity whose main or substantial asset constitutes

[1] Aktiengesetz dated 6 September 1965, Bundesgesetzblatt (Federal Gazette) I, p. 1089) art. 179(a)1 provides "*[a] contract by which a stock corporation enters into obligation to transfer the entirety of the company's assets […] requires a resolution to be adopted by the general meeting […]*". *See also* German Federal Supreme Court No. 83/122 known as *Holzmüller* decision for broader application of this rule under German Law.

[2] Delaware General Corporation Law, Del. Code Ann. tit. 8, § 271(a). Delaware Law is chosen as the example for the United States because of the state's dominance in corporate establishment. As of 2024, Delaware is the state of incorporation of 66.7% of Fortune 500 companies and 81.4% of all United States initial public offerings. See Delaware Division of Corporations: 2024 Annual Report, p.1 https://corpfiles.delaware.gov/Annual-Reports/Division-of-Corporations-2024-Annual-Report.pdf, accessed 21 November 2025. See also Delaware Court of Chancery, Chancellor McCormick, No. 2021-0946-KSJM, decision dated 22 May 2023 for further application of this rule under Delaware Law.

[3] *See* Swiss Federal Supreme Court, 1st Civil Chamber, No. 116 II 320 dated 24 April 1990.

[4] Companies Act 2008 (Act 71 of 2008), Section 112 titled "*Proposals to dispose of all or greater part of assets or undertaking*".

[5] Nestor Gernando T. Siazon, Update on Swiss Corporate Asset Transfers, https://www.lexology.com/library/detail.aspx?g=32826a55-29b8-4f9e-aae7-561e2906ff49 accessed 23 November 2025.

the subject of the transaction, necessity to obtain shareholders' approval may arise. These requirements may add additional steps and affect the time management of the transaction. Understanding the legal framework governing asset transfers is also important for creating and maintaining stable partnership structures, both when negotiating shareholders' agreements or later resolving disputes among partners.

This article explores how TCC approaches the transfer of a substantial part of a company's assets, focusing on when shareholder approval is required based on the scope of "substantial part of assets", the quorum requirements and the consequences of proceeding without such approval.

General Framework under TCC art. 408/2(f) and Scope of "Substantial Part" of Assets

A. General Framework

Art. 408/2(f) TCC classifies the "*wholesale of substantial part of a company's assets*" in joint stock companies as one of the inalienable and non-delegable powers of the general assembly of shareholders.[6]

Although the previous Turkish Commercial Code No. 6762, which was in force between 1956 and 2012, did not contain any provisions in that regard, the Court of Cassation had developed a case law mandating a general assembly resolution in cases involving the transfer of substantial part of corporate assets. The Court reasoned that, while formal liquidation follows a prescribed legal process, sale of assets that are critical to the company's operations might constitute a "*de facto liquidation*", and since the formal liquidation process envisages a resolution by the general assembly of shareholders, the same must be required for sale of a substantial part of assets for an active company.[7]

[6] TCC art. 408/2: *"[...] (2) Without prejudice to the non-delegable duties and powers stipulated in other provisions, the following duties and powers of the general assembly cannot be delegated: [...] (f) wholesale of substantial part of the company's assets [...]"*.

[7] See Turkish Court of Cassation, 11th Civil Chamber Case No. 1999/8298 Decision No. 2000/19, dated 17.01.2000; Turkish Court of Cassation, 11th Civil Chamber Case, Case No. 2005/1362 Decision No. 2006/1253, dated 13.2.2006; Turkish Court of Cassation, 11th Civil Chamber, Case No. 2007/13482 Decision No. 2009/2957, dated 13.03.2009; Turkish Court of Cassation, 11th Civil Chamber, Case No. 2009/8122 Decision No. 2009/11125 dated 28.10.2009.

Art. 408/2(f) of TCC was introduced in the draft code with the Court of Cassation's case law in mind.[8] The provision refers to a "*substantial part*" of assets, but neither the doctrine nor the Court of Cassation's decisions provide a consistent definition. This lack of clarity is largely because of the ambiguous wording of art. 408/2(f).

B. Doctrinal Views

Turkish law doctrine is mostly aligned on legislature's explicit use of the term "*substantial part*" reflects an intention to extend the rule beyond the context of *de facto* liquidation. However, there is no consensus on how to determine what constitutes a "*substantial part*" of a company's assets.

One view takes a quantitative approach, arguing that either the provision should have established a fixed threshold, or, even under the existing text, judges may rely on other related provisions while exercising their discretion under art. 4 of the Turkish Civil Code numbered 4721 dated 22 November 2001.[9]

- For example, Esra Hamamcıoğlu and Levent Biçer argue that setting a quantitative threshold serves both legal certainty and the protection of the company's and third parties' interests. Accordingly, they suggest that the legislator should have provided under TCC art. 408/2(f) that transfers exceeding 60% of a company's assets require approval by the general assembly.[10]
- Ersin Çamoğlu suggests that the threshold used in Communiqué on Common Principles for Significant Transactions and the Exit Rights numbered II-23.1 for public companies, that is the 50% of either the total assets or the company value, can be used as a reference point by the judges.[11]

Another group believes qualitative elements should be taken into account. In that regard, Mehmet Helvacı argues that, in assessing whether a transaction involves a "*substantial part*", the purpose of the sale must be considered. For instance, even

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[8] The Justice Commission Report on TCC: "*Furthermore, a new paragraph (f) has been added to the second subsection of Article 408 of the Draft. The new provision expressly establishes, in line with Court of Cassation case law, that the sale of a substantial part of a company's assets cannot be carried out by the board of directors, and that this is one of the non-delegable and exclusive powers of the general assembly*"

[9] Turkish Civil Code numbered 4721 dated 22 November 2001, art. 4: "*In matters where the law grants discretion or requires consideration of the circumstances or justified reasons, the judge shall decide in accordance with law and equity*".

[10] Esra Hamamcıoğlu and Levent Biçer, "Anonim Ortaklıklarda Genel Kurulun Devredilemez Yetkileri Kapsamında Önemli Miktarda Şirket Varlığının Toptan Satışı ve Uygulama Alanı (TTK m. 408/2-f)", Kadir Has University Faculty of Law Journal, Vol. 1, No. 1, June 2013, ("Biçer-Hamamcıoğlu") p. 41.

[11] Ersin Çamoğlu, "Anonim Ortaklık Genel Kurulunun Devredilemez Yetkileri Kapsamında Önemli Miktarda Şirket Varlığının Toptan Satışı", Prof. Dr. Sabih Arkan'a Armağan, 2019, pp. 332-333. It should be noted that the Communiqué on Significant Transactions and the Exit Rights numbered II – 23.3, which entered into force upon its publication in the Official Gazette No. 31168 dated 27 June 2020, increased this threshold to 75%.

the sale of the company's sole factory may not qualify as substantial depending on the intended use of the proceeds and the rationale for such sale.[12]

C. Court of Cassation's Case Law

The Court of Cassation has so far avoided setting comprehensive or guiding principles on this issue.

- In majority of its decisions, it follows case law established in the pre-TCC era, requiring shareholder approval based on the transfer's effect on the company's operations. That said, it applies varying criteria, such as assets that "*are vitally important*"[13] or a sale which would "*render the company unable to carry out its main activities*".[14]
- In some other decisions, however, the court takes a more expansive approach, holding that an asset may constitute a "*substantial part*" even if it is not vital for the company's operations. For example, in a decision dated 2023, the Court ruled that 1/3 share of a company's property could be considered a substantial asset.[15]

Quorum Requirements

One of the controversial aspects of art. 408/2(f) of TCC concerns the quorum requirements for the general assembly resolution.

A. General Framework

Art. 418 of TCC sets the meeting quorum for general assembly meetings as at least 1/4 of the capital and the decision quorum as the simple majority of votes present. Since there are no explicit provisions requiring a higher threshold for resolutions under art. 408/2(f) of TCC, it may initially appear that the quorum rules of art. 418 would apply. However, art. 538(2) of TCC provides a qualified majority of at least

[12] Mehmet Helvacı "Anonim Ortaklık Genel Kurulunun Devredilemez Bir Yetkisi Olarak Önemli Miktarda Şirket Varlığının Toptan Satışı - Temel Sorunlar, Hükmün Yorumu ve Uygulanması Hakkında Düşünce ve Öneriler", Türk Ticaret Kanunu Sempozyumu III, 2020 ("Helvacı"), p. 53.

[13] Turkish Court of Cassation, 11th Civil Chamber Case, Case No. 2017/1837, Decision No. 2018/7055 dated 14 November 2018.

[14] Turkish Court of Cassation, 11th Civil Chamber Case, Case No. 2020/8038, Decision No. 2022/4957 dated 16 June 2022; See also Turkish Court of Cassation, 11th Civil Chamber Case, Case No. 2024/3621, Decision No. 2025/3752 dated 28 May 2025.

[15] Turkish Court of Cassation, 11th Civil Chamber, Case No. 2022/2437, Decision No. 2023/6146 dated 25 October 2023.

75% of the company's outstanding capital for the adoption of general assembly resolutions regarding wholesale of company assets taken as part of the liquidation process.

Also, art. 22/12 of the Regulation on the Procedures and Principles of General Assembly Meetings of Joint Stock Companies and the Ministry Representatives to Attend These Meetings ("Regulation") provides that any decision to sell substantial part of the company's assets must be approved by shareholders representing at least seventy-five percent of the company's outstanding capital.[16] Although criticized in the doctrine for its apparent violation of the hierarchy of norms[17], this requirement appears to have been influenced by the pre-TCC case law of the Court of Cassation, which, based on the concept of de facto liquidation, mandated a qualified majority under art. 443(2) of the former Commercial Code governing the wholesale disposal of assets during liquidation.[18]

B. Doctrinal Views

In the doctrine, there is no consensus regarding the quorum required for resolutions on the sale of a substantial part of a company's assets under TCC art. 408/2(f).

- Some scholars consider the fact that TCC does not explicitly impose an enhanced quorum for such decisions. They emphasize that the qualified majority set forth in art. 538(2) of TCC must apply for liquidation process and therefore cannot be analogously applied to ordinary asset sales. Also, the provision in the Regulation requiring approval by shareholders representing at least seventy-five percent of the company's capital is inconsistent with TCC and, accordingly, should not be applied.[19]
- On the other hand, majority of the doctrine opine that it would be appropriate to require the seventy-five percent quorum by analogous application of art. 538(2). This view is primarily grounded in the absence of any logical basis to distinguish the sale of a substantial part of assets between companies that are

[16] Regulation on the Procedures and Principles of General Assembly Meetings of Joint Stock Companies and the Ministry Representatives to Attend These Meetings published in the Official Gazette numbered 28481 dated 28 November 2012 art. 22/12.

[17] Abuzer Kendigelen, "Anonim Şirketlere İlişkin Hükümlerde Benimsenen Bazı Ağırlaştırılmış Nisaplar Bilinçli Bir Tercihin Ürünü Mü?" Banka ve Ticaret Hukuku Araştırma Enstitüsü 60th Anniversary Commemorative Volume, 2015, p. 101, fn [11].

[18] *See* Turkish Court of Cassation, 11th Civil Chamber, Case No. 1984/6072, Decision No. 1985/270 dated 30 January 1985; Turkish Court of Cassation, 11th Civil Chamber, Case No. 1999/8298, Decision No. 2000/19 dated 17 January 2000.

[19] Abuzer Kendigelen, Yeni Türk Ticaret Kanunu: Değişiklikler, Yenilikler ve İlk Tespitler, 3rd ed., On İki Levha Yayıncılık, 2016, p. 309; Helvacı pp. 60-62.

in liquidation or active, and that such an interpretation would effectively ensures adequate protection for shareholders.[20]

C. Court of Cassation's Case Law

The case law of the Court of Cassation on the quorum requirement is inconsistent. Some decisions uphold the application of the qualified seventy-five percent quorum as per arts. 538 and 421, while others apply the ordinary quorum set out in art. 418 of TCC.

- For instance, in one of its decisions in 2019, the court confirmed the annulment of a general assembly resolution on the grounds that the enhanced 75% quorum was required. Here, the reasoning of the decision relies on both the arts. 538 and 421 of TCC and on the Regulation.[21]
- On the other hand, in a decision in 2021, the court ruled that the ordinary quorum under art. 418 applies to resolutions regarding the wholesale of substantial part of company assets. In its decision, the court noted that TCC does not contain any provision requiring a qualified majority for such resolutions. The Court emphasized that any intention by the legislator to require a qualified quorum should have been explicitly stated in the law. On the basis of this reasoning, the Court concluded that the enhanced seventy-five percent quorum in the Regulation cannot be applied to active companies, as doing so would violate the hierarchy of norms.[22]

Legal Consequences of Non-Compliance

The impact of failing to obtain the general assembly's approval on transactions with third parties is also an important aspect. A minority view in the Turkish law doctrine holds that the absence or annulment of the general assembly resolution should not automatically invalidate the transaction.[23] This view is primarily based on:

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[20] Çamoğlu (Poroy/Tekinalp), *Ortaklıklar Hukuku*, Volume I, 16th ed., 2025, p. 551; Tolga Ayoğlu "Önemli Miktarda Şirket Varlığının Satışında Genel Kurul Kararının Hukuki Niteliği", Kadir Has University Faculty of Law Journal, Vol. 5, No. 1, June 2017 ("Ayoğlu"), p. 95; Hasan Pulaşlı, *Şirketler Hukuku Şerhi*, Vol. II, 5th ed., 2024, p. 1057.

[21] Turkish Court of Cassation, 11th Civil Chamber, Case No. 2017/3458, Decision No. 2019/558 dated 21 January 2019.

[22] Turkish Court of Cassation, 11th Civil Chamber, Case No. 2020/306, Decision No. 2021/6945 dated 08 December 2021.

[23] Ayoğlu, pp. 100-102; Alihan Aydın, "Anonim Ortaklık Yönetim Kurulunun Temsil Yetkisinin Sınırları ve Temsil Yetkisinin/Gücünün Kötüye Kullanılması Sorunu", Banka ve Ticaret Hukuku Dergisi, Vol. 30, pp. 164-166.

- The general principle that the general assembly is an internal corporate body under Turkish law (art. 371(4) of TCC), and therefore any exception to this rule should have been explicitly stated by law, and
- The necessity to protect legal security of third parties, which is an essential part of commercial life.

On the other hand, the prevailing view in the doctrine regards art. 408/2(f) of TCC as an exception to the general rule that internal breaches within a company do not affect transactions with third parties. Accordingly, if a general assembly resolution is non-existent, void or annulled, any sale of a substantial part of the company's assets to third parties will also be void[24] and unenforceable.[25]

Court of Cassation is also in this opinion:

- In one of its decisions, the Court ruled that without a general assembly resolution, the board of directors and company officers lack the authority to execute the transaction; in other words, they do not have the legal capacity to act on behalf of the company, therefore any sale of substantial assets without the required general assembly approval is void.[26]
- In another decision, the Court went further, holding that a transaction regarding transfer of asset under the scope art. 408/2(f), if carried out by company managers without the required general assembly resolution, is non-existent (*yok hükmünde*).[27]

Conclusion

Many jurisdictions, including Turkish law, have rules governing the transfer of substantial part of a company's assets. However, the application of art. 408/2(f) of TCC remains far from uniform. There is no doctrinal consensus on what constitutes a "*substantial part*" of a company's assets requiring general assembly approval,

[24] In the doctrine, if transfer to third parties is made without a general assembly resolution, it is considered provisionally void (*askıda hükümsüz*); if the general assembly subsequently adopts an approval resolution, the transaction becomes valid. However, if no resolution is ever adopted, the sale is deemed void. See Helvacı pp. 73-74; Feyzan Hayal Şehirali Çelik (Kırca, Manavgat), *Anonim Şirketler Hukuku*, Vol. 2/1, 1st ed., 2024 ("Şehirali Çelik (Kırca/ Manavgat)") p. 99.

[25] Şehirali Çelik (Kırca/ Manavgat), p. 97; Biçer-Hamamcıoğlu p. 47; Emin Çamurcu, *Anonim Ortaklık Genel Kurul Kararlarının İptaline Bağlanan Hukuki Sonuçlar,* Master's thesis, Galatasaray University, 2020, p. 196; Helvacı pp. 71-75.

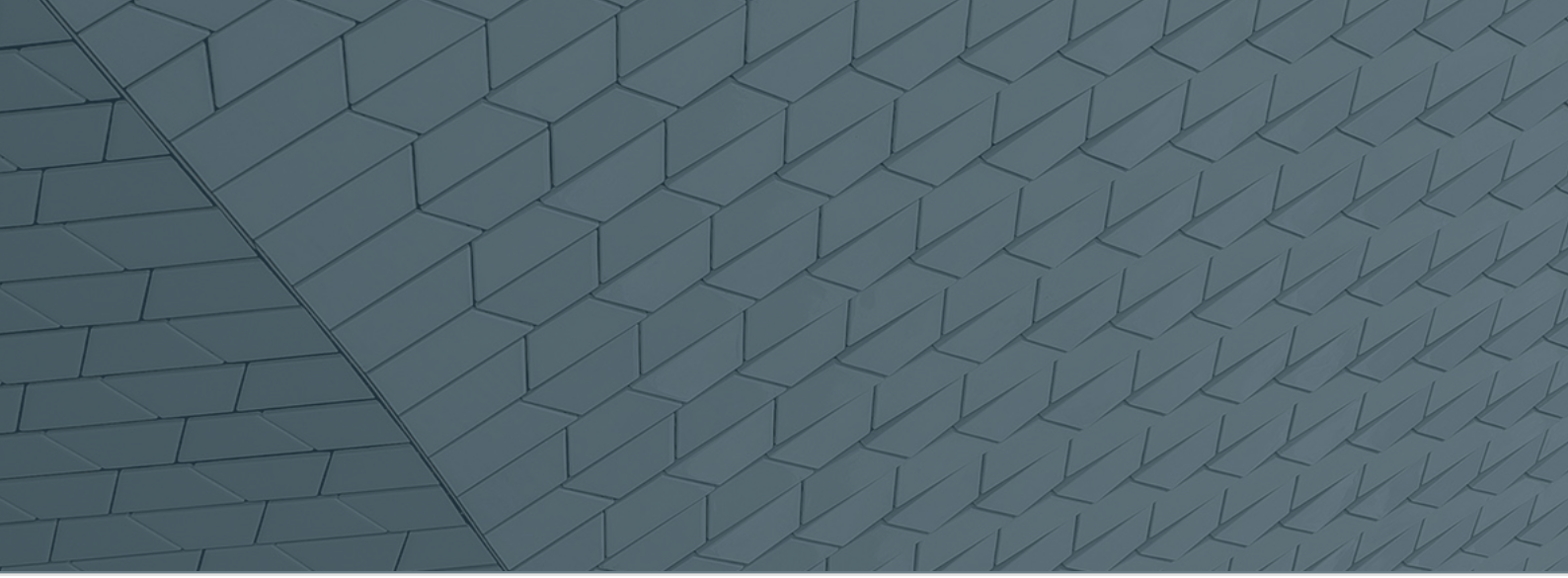
[26] Turkish Court of Cassation, 11th Civil Chamber, Case No. 2016/3810, Decision No. 2017/3294 dated 01 June 2017.

[27] Turkish Court of Cassation, 11th Civil Chamber, Case No. 2020/8038, Decision No. 2022/4957 dated 16 June 2022.

and the Court of Cassation has neither established clear guiding principles for this determination nor developed a consistent case law to date. Regarding the required quorum, doctrinal opinion is similarly divided, and the Court of Cassation has ruled on conflicting decisions, sometimes applying the ordinary quorum given in art. 418, and other times requiring the qualified majority under art. 421(3) of TCC, taking into account the reference in art. 538(2).

One aspect of the issue that is consistently applied by the Court of Cassation is that any sale of a substantial part of assets without a proper general assembly resolution is invalid. While this protects shareholder rights, it has been criticized in the doctrine for undermining legal security for the third parties.

These uncertainties, both in defining the scope of "*substantial part of assets*" and in determining the applicable quorum, and the risk of invalidity arising from non-compliance compound the challenges for companies seeking to make major asset transfers and highlight the need for clearer legislative (or judicial) guidance.



KABİNE
LAW OFFICE

Istanbul Office

Büyükdere Cad No. 195
D:6, Levent, 34394
Istanbul, TÜRKİYE
+90 (212) 278 64 13

London Office

1 Mark Sq. London
EC2A 4EG, UNITED KINGDOM

info@kabinelaw.com
www.kabinelaw.com

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