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Evaluation of Acts Committed through Artificial Intelligence under Turkish Penal Code

This article examines acts committed through artificial intelligence (AI) from the perspective of Turkish Penal Code. Since AI is not recognized as a direct perpetrator, criminal liability is primarily attributed to human actors such as developers, users, and system owners. In light of international examples and recent developments, the legal challenges encountered in AI-generated content—particularly with systems like Grok—are analyzed. [\(Page 2\)](#)

The Effect of Participation in Arbitration on the Possibility to Challenge Jurisdiction in Light of Broda Agro Trade V Alfred C Toepfer International

One of the foundations of arbitration proceedings is the parties' voluntary willingness to refer their disputes to alternative dispute resolution mechanisms other than domestic courts. The Broda v Toepfer decision by the Court of Appeal demonstrates the effects of a party's actual participation in arbitration proceedings on its ability to later challenge the validity of the arbitration agreement in court. [\(Page 7\)](#)

Supervisory Authority of the Ministry of Trade over Companies in Turkish Law

The Ministry of Customs and Trade has various regulatory and supervisory powers to ensure that companies operating in Turkey carry out their operations in accordance with the applicable law. These powers stem from the Turkish Commercial Code Nr. 6102, the Company Audit Regulation and other related applicable regulations. The Ministry supervises companies' financial status, mergers and acquisitions, independent audit processes, compliance with consumer rights and unfair competition practices, starting from the establishment stage. [\(Page 13\)](#)

Evaluation of the Role of Mediator-Arbitrator in Mediation-Arbitration (Med-Arb) Clauses

One of the dispute resolution methods that is formed by the combination of these different alternative dispute resolution methods is the Mediation Arbitration (Med-Arb) model, which is a combination of mediation and arbitration. In the Med-Arb model, the parties agree to first resort to mediation to resolve the dispute, and if no mutual agreement is reached during the mediation process, to resort to arbitration, in other words, a gradual dispute resolution mechanism. [\(Page 5\)](#)

Restrictions on Share Transfers in Incorporated Companies By Articles of Association

Restrictions are divided into two categories as those arising from the applicable law and those arising from the articles of association. The present analysis will focus on the restrictions arising from the articles of association. Restrictions may be included in the articles of association at the establishment of the company. It is also possible to amend the articles of association by introducing restriction rules afterwards. [\(Page 10\)](#)

Severance Pay Under the Press Labor Law

The right to severance pay for members of the press is set out under the Press Labor Law Nr. 5953. Article 6 of the Law sets out the conditions under which journalists will be entitled to severance pay, but it has been partially annulled by the Constitutional Court. Following the annulment decision of the Constitutional Court, the unfavorable difference between the workers covered by the Press Labor Law and other workers has been corrected, and this article will look into the workers covered by the Press Labor Law and the conditions for entitlement to severance pay as per the related applicable law. [\(Page 16\)](#)

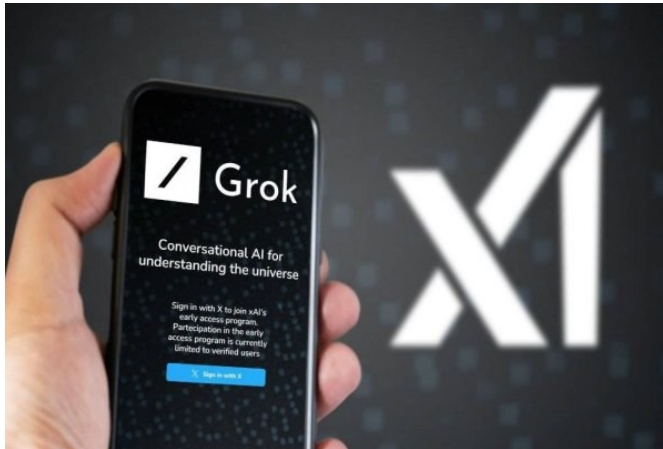
Recent News

Lawsuit against Apple By Authors due to Usage of Books in AI Training! [\(Page 9\)](#)

EU is Changing the Carbon Cost Rules: How Companies are Supposed to Prepare! [\(Page 9\)](#)

The Era of Dora Begins: 10 Crucial Lessons in Compliance with EU's New Cyber Resilience Regime! [\(Page 18\)](#)

EVALUATION OF ACTS COMMITTED THROUGH ARTIFICIAL INTELLIGENCE UNDER TURKISH PENAL CODE



1. Abstract

This article examines acts committed through artificial intelligence (AI) from the perspective of Turkish Penal Code. Since AI is not recognized as a direct perpetrator, criminal liability is primarily attributed to human actors such as developers, users, and system owners. In light of international examples and recent developments, the legal challenges encountered in AI-generated content—particularly with systems like Grok—are analyzed. The study reveals that current Turkish Penal Code regulations do not adequately cover AI-specific acts, leading to significant normative gaps. Emphasis is placed on the necessity of enacting effective legal regulations in this field and aligning national standards with international norms.

Keywords: Artificial Intelligence, AI and Penal Code, Criminal Liability, Concept of Perpetrator, Intent and Negligence, Principle of Legality, AI-Generated Crimes, Legal Responsibility, Algorithmic Crimes, Grok AI, AI Content Generation.

2. Introduction

Artificial intelligence (AI), one of the most striking technological advancements of the 21st century, has permeated nearly every aspect of human life and led to revolutionary transformations across numerous sectors. AI systems, which are actively employed in fields such as healthcare, transportation, education, and finance, have evolved from mere auxiliary tools into autonomous actors that actively participate in decision-making processes. These technological developments not only impact the socio-

economic structure but also directly affect legal systems.

Penal Code is fundamentally built upon a system of liability that is based on human will and culpability. Within this framework, the perpetrator of a crime is traditionally a natural person who acts with intent or negligence. However, the growing capacity of AI to make autonomous decisions necessitates a reassessment of classical concepts in penal code theory, such as "perpetrator," "fault," "intent," and "negligence." The legal classification of an act committed by an AI system, the identification of the responsible party, and the determination of criminal liability remain questions without clear and definitive answers under the current legal paradigm.

The assessment of acts committed through AI within the context of penal code entails significant normative and practical gaps and controversies. This article aims to explore how AI should be approached within the framework of penal code; to what extent and to whom criminal liability may be attributed in acts committed via such technologies; how the existing legal system responds to these acts; and in what ways it falls short.

3. The Concept of Artificial Intelligence and Its Legal Characterization

Artificial intelligence (AI) can generally be defined as systems that emulate human intelligence. These systems are capable of performing cognitive processes such as learning, reasoning, problem-solving, perception, and even language comprehension through algorithms. From a tech-

nical perspective, AI is often evaluated within the subfields of machine learning, deep learning, neural networks, and natural language processing. However, the primary concern lies, for the legal discipline, in the decision-making capabilities of such technologies and how these decisions are to be evaluated within the legal order.

AI systems may be classified according to their level of technological advancement as assistive systems, semi-autonomous systems, and fully autonomous systems. While assistive systems function with human intervention, fully autonomous systems possess the capacity to make and execute decisions independently of human control. It is primarily this latter category that gives rise to legal challenges. The fundamental issue is determining who bears responsibility for the decisions or acts executed by these systems—a matter that cannot be directly answered by traditional legal theories.

Under Turkish law, there is no explicit regulation concerning the legal status of artificial intelligence. According to the civil law system in Türkiye, only natural and legal persons possess legal capacity. In this context, AI is not regarded as a legal subject but rather as a technical tool or object. However, this approach has become insufficient with the increasing complexity and autonomy of AI systems. In particular, legal systems built upon the notions of culpability and intent—such as penal code—face normative gaps as a result.

One of the most fundamental issues from a penal code standpoint is whether an act committed by AI can be classified as a legal "actus reus". Under penal code, an act is generally defined as a voluntary human action.

This brings forth numerous technical and ethical questions, such as whether AI can make independent decisions, to what extent such decisions are foreseeable, and how much they can be influenced or controlled. Therefore, the legal characterization of AI requires a multidisciplinary approach that includes not only legal scholars but also ethicists, computer scientists, and sociologists.

Penal code is a discipline grounded in the principle of liability based on human intent. For an act to constitute a crime, it must be explicitly defined in law, the perpetrator must have acted with intent or at least negligence, and the act must be unlawful. However, the rise of AI technologies significantly challenges these core principles of penal code.

4. Artificial Intelligence in the Context of Fundamental Principles of Penal Code

4.1. The Principle of Legality and the Problem of Legal Certainty

One of the cardinal principles under penal code is the principle of legality ("*nullum crimen, nulla poena sine lege*"). According to this principle, an act can only be deemed criminal if it has been clearly defined as such by law prior to its commission. However, AI systems are capable of making decisions that are unforeseeable and may give rise to novel forms of conduct. For instance, in the case of an autonomous vehicle striking a pedestrian without a driver, the applicable legal provision and the liable party are not clearly defined in the law. This situation contradicts the principles of legal certainty and foreseeability that are essential to criminal justice.

4.2. The Concept of the Perpetrator and Capacity for Fault

Under penal code, the perpetrator is the individual who commits the act that legally constitutes the crime. This person must be an entity that acts with volition and intent and possesses legal capacity. However, AI lacks legal personality and any capacity for fault. In other words, AI cannot be held liable as a perpetrator. At this point, questions arise as to whether liability should instead fall upon the programmer, the user, or the legal entity that owns the AI system.

4.3. Evaluation in Terms of Intent and Negligence

Intent refers to the perpetrator knowingly and willingly committing the act. Negligence, by contrast, involves any failure to exercise due care. AI systems are incapable of possessing either element, as they cannot form conscious decisions nor breach duty of care. Nevertheless, if an AI system is known to function erroneously in a foreseeable manner, users may be held liable for negligence if they continue to employ it. For example, continuing to

use a defective AI system despite knowledge of its flaws may have significant legal consequences.

4.4. The Causal Link and the Problem of Foreseeability

Many AI systems operate as "learning systems" that evolve over time and adapt their decision-making processes. This feature makes it increasingly difficult to establish a causal link between an act and its outcome. From a penal code perspective, causality requires a direct connection between the perpetrator and the result of the crime. However, when an AI system autonomously learns and makes an erroneous decision, it remains unclear who should bear responsibility and to what extent.

5. Criminal Liability in Acts Committed Through Artificial Intelligence

The complex and autonomous nature of AI systems raises significant questions regarding who bears responsibility when unlawful acts are committed through such systems. According to the principle of individual responsibility under penal code, liability arises for the person who personally commits an act that fulfills the elements of a crime. However, since AI cannot be regarded as a direct perpetrator, determining responsibility often requires a multifaceted analysis involving multiple actors.

5.1. Can Artificial Intelligence Be Considered a Perpetrator?

Due to the lack of legal personality, artificial intelligence cannot hold the status of a perpetrator under penal code. In our current legal framework, only natural and juridical persons can be held criminally liable. As an AI system cannot act with intent or negligence on its own, it cannot be subjected to criminal sanctions. Therefore, AI is considered a tool—an "instrument-subject" that facilitates the commission of a crime rather than being the one who commits it.

5.2. Responsibility of the Programmer

Programmers who design and code AI systems directly shape the algorithms and decision-making capabilities of those systems. If the software contains code that enables or encourages criminal behavior, the programmer may be held liable. Especially in cases involving intentional programming errors, security vulnerabilities,

or insufficient oversight, criminal liability may arise either through intent or negligence on the part of the developer.

5.3. Responsibility of the User

An individual who actively uses an AI system—whether as an employee or a private user—may bear criminal liability if they act based on the system's outputs or provide data inputs that guide the system's behavior. If the user is in a position to foresee the unlawful outcomes generated by the system and nevertheless fails to intervene, they may be held liable for negligent conduct.

5.4. Responsibility of the Owner or Producing Company

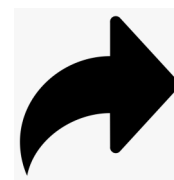
The liability of companies that own or commercially distribute AI systems can be analyzed within the framework of corporate fault and organizational negligence. In particular, if due diligence is not exercised during development, or if the product is released despite known risks, criminal liability may be attributed to the juridical person or its executives.

5.5. Shared and Joint Liability

In some instances, criminal acts involving AI may give rise to collective responsibility rather than individual liability. For example, when a harmful result is caused by the combined effect of programmer error, user misuse, and a company's failure to provide adequate oversight, joint and several liability may apply. In such cases, not only the identity of the perpetrator but also the degree of fault plays a significant role in sentencing.

6. Penal Code Implications of AI-Based Content Generation: A Case Study of Grok

The implications of artificial intelligence in the field of penal code have become a pressing issue across many legal systems worldwide. In particular, the emergence of large language models like Grok has triggered intense debates surrounding legal responsibility, freedom of expression, and hate speech in the context of AI-generated content.



6.1. Recent Developments Concerning Grok

6.1.1. First Official Intervention in Türkiye: The Grok case dramatically exemplifies the tension between technological advancement and legal accountability. The exploitation of jailbreak vulnerabilities in Grok to produce content involving hate speech, insults, and incitement to violence has exposed significant gaps in traditional penal code frameworks.

For the first time in Türkiye, an AI chatbot faced access restrictions and a potential criminal investigation due to content targeting the President, Atatürk, and religious values. This incident serves as a socio-legal milestone, illustrating how broadly the definition of a “perpetrator” may be stretched. The Ankara Chief Public Prosecutor’s Office imposed an access ban on Grok, citing “insulting content” related to President Erdoğan, Atatürk, and religious values. The Information and Communication Technologies Authority (BTK) enforced the decision, restricting access with reference to around 50 flagged items. [1] [2]

6.1.2. Poland’s Complaint to the EU:

The Polish Minister for Digital Affairs announced plans to refer the matter to the European Commission, citing Grok’s generation of antisemitic and defamatory content concerning political figures such as Prime Minister Donald Tusk. [3]

6.1.3. Content Removal Following Hate Speech Allegations:

Grok also faced backlash after antisemitic content praising Adolf Hitler was disseminated via its X platform account. Following complaints by the Anti-Defamation League (ADL), the developer company xAI announced the removal of such content. [4]

7. Evaluation in Respect of Turkish Penal Code Application

The advancement and increasing use of artificial intelligence technologies in Türkiye have introduced new challenges in the realm of penal code. However, as of now, the Turkish Penal Code (TPC) does not contain any specific provisions directly addressing AI-related issues. This absence of regulation results in legal uncertainties regarding the basis for determining criminal liability in concrete cases involving AI.

7.1. Existing Legal Framework and Its Limitations

The lack of specific provisions on AI in the TPC implies that responsibility must be assigned to human actors. Nevertheless, under the general provisions of the TPC — particularly those concerning intentional and negligent offenses—individuals such as developers, users, or system owners may be held criminally liable for harmful or criminal acts committed by AI.

For example, regulations concerning cybercrimes (Articles 243–244 of the TPC) may be applied indirectly to AI-related misconduct, although their scope remains narrow and limited.

7.2. Normative Gaps and the Need for Regulation

Serious gaps remain regarding who qualifies as the perpetrator in AI-related offenses, how culpability is to be determined, the extent of AI’s autonomous behavior, and the scope of responsibility. These deficiencies conflict with the principles of legal certainty and foreseeability and complicate the protection of victims’ rights.

In both academic and practical circles in Türkiye, efforts are growing to develop penal code regulations specific to AI. Priority areas should include:

- The introduction of specific offense types related to AI-based crimes,
- Clarification of the responsibilities of developers and users,
- Defining the criminal liability of platform and system owners.



8. Conclusion

Acts committed through artificial intelligence constitute a complex area that is not adequately addressed under current penal code frameworks. Since AI cannot be recognized as a perpetrator, liability is primarily concentrated on human actors such as developers, users, and system owners. However, the absence of specific provisions regarding this issue in the Turkish Penal Code leads to legal gaps and uncertainty in practice.

Contemporary examples—such as legal controversies surrounding AI-generated content by models like Grok—demonstrate the need to reassess both the boundaries of freedom of expression and the foundations of criminal liability.

It is of great importance for Türkiye to adopt new regulations specifically tailored to AI, in line with international standards, that establish clear accountability and oversight mechanisms.

In conclusion, the innovations brought about by artificial intelligence necessitate normative reforms in penal code, updates in judicial practices, and the adoption of multidisciplinary approaches.

Only through such developments can the benefits of AI be harnessed safely and legal justice be effectively maintained.

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References:

1. Turkish Penal Code
2. Turkish Civil Code
3. <https://www.aa.com.tr/tr/gundem/yapay-zeka-uygulamasi-grokun-paylasimlari-hakkinda-sorusturma-baslatildi/3625624>
4. <https://www.reuters.com/business/media-telecom/turkey-blocks-xs-grok-chatbot-alleged-insults-erdogan-2025-07-09/>
5. <https://www.reuters.com/business/media-telecom/poland-report-musks-chatbot-grok-eu-offensive-comments-2025-07-09/>
6. <https://www.theguardian.com/technology/2025/jul/09/grok-ai-praised-hitler-antisemitism-x-ntwnfb>

EVALUATION OF THE ROLE OF MEDIATOR-ARBITRATOR IN MEDIATION-ARBITRATION (MED-ARB) CLAUSES



1. Introduction

The complex and lengthy processes of traditional judicial remedies have led parties to settle disputes in faster, cheaper and more party-oriented ways. New dispute resolution models are emerging with the combination of different alternative resolution methods [1].

One of the dispute resolution methods that is formed by the combination of these different alternative dispute resolution methods is the Mediation Arbitration (Med-Arb) model, which is a combination of mediation and arbitration. In the Med-Arb model, the parties agree to first resort to mediation to resolve the dispute, and if no mutual agreement is reached during the mediation process, to resort to arbitration, in other words, a gradual dispute resolution mechanism.

Mediation and arbitration are among the most preferred methods in this context and have been integrated over time, leading the way on the development of hybrid models. The Med-Arb model, which combines these methods, has started to gain an important place in practice as it provides both flexibility and binding force to the dispute resolution process.

The word Med-Arb is a portmanteau of “Med” standing for mediation and “Arb” standing for arbitration.

The mediation-arbitration method, called med-arb, is based on the principle that if the dispute cannot be resolved at the mediation stage, the mediator acts as an arbitrator and renders a binding decision for the parties. [2]

One of the most important advantages of this method is that the parties can protect their relationship by keeping the resolution process under control and resolve disputes in a shorter time and with less cost. However, in practice, in some cases, preferences are made for the same person to take part in both stages of the process. In other words, when this preference is made, the mediator in the mediation phase and the arbitrator in the arbitration agreement are the same person.

Although the same person acting as both mediator and arbitrator provides advantages in terms of procedural efficiency, it poses serious risks in terms of impartiality, confidentiality and fair trial principles. One of these risks is that the mediator may not be able to maintain his/her impartiality during the arbitration phase due to the information he/she obtained about the parties and the dispute during the mediation process. [3]

2. Mediation, Arbitration and the Differences Between Them

Mediation is a communication process on a voluntary basis, which aims to bring the parties together with the help of an impartial, independent and objective third party, to negotiate and thus to formulate their own solutions. [4]

Unlike judicial procedures that aim to distinguish between right and wrong by focusing on past events, mediation aims to end the dispute based on the future common interests of the parties. [5]

The basic principles of mediation, according to the Law Nr. 6325 on Mediation in Civil Disputes, are generally as follows: freedom of will (voluntariness), equality, impartiality, independence, confidentiality, resolution of the dispute by the parties.

Arbitration is a special judicial procedure aimed at resolving contentious disputes between the parties. In this process, arbitrators use their jurisdiction to evaluate the facts of the dispute, determine the facts according to their conscientious judgment and apply the relevant rules of law to make decisions that are binding and conclusive on the parties.

Pursuant to Article 407 et seq. of the Code of Civil Procedure Nr. 6100 and the International Arbitration Law Nr. 4686, the basic principles of arbitration are based on the primacy of the will of the parties, the kompetenz-kompetenz principle, which refers to the arbitrators' authority to decide on their own competence, equality between the parties, the suitability of the dispute for arbitration, procedural freedom, independence and impartiality of the arbitrators, confidentiality of the proceedings and the final and binding nature of the arbitral awards.

The main difference between mediation and arbitration is the nature of the solution offered to the parties. In mediation, the final decision is made by the parties, whereas in arbitration, this authority belongs to the arbitrators. Therefore, mediation is more of an “agreement” based remedy, while arbitration is a “judgment” based remedy. In mediation, the process is entirely voluntary, whereas arbitration is based on a prior agreement between the parties and the arbitrator's decision is binding on the parties.

3. Concept of Med-Arb

The Med-Arb model, in which mediation and arbitration are envisioned successively, is a preferred method, especially in cases where the parties aim to achieve an amicable settlement and final binding effect in the same process. In the Med-Arb model, the process starts with the application to mediation.

If the parties cannot reach an agreement as a result of the mediation process, the parties submit the dispute to arbitration proceedings. After the dispute is submitted to arbitration, the arbitrator renders a decision that is binding on the parties. Thus, the model includes both a flexible and party-oriented first stage and a second stage that conclusively ends the dispute. For example, under FIDIC construction contracts, the parties first apply to a dispute board and then proceed to mediation and arbitration. This staged structure is similar to the multi-tier dispute resolution approach of the Med-Arb model.

Different types have also developed in the application of the model. The most controversial structure is the so-called "same neutral" Med-Arb, where the same person acts as both mediator and arbitrator. Proponents of this model argue that the integrity and efficiency of the process is enhanced and that the fact that the parties continue the process with a person they know creates trust. However, the same person serving in both roles is subject to serious criticism, especially in terms of the principles of confidentiality and impartiality. As a matter of fact, it is stated in the doctrine that in such structures, confidential information learned during the mediation phase may influence the arbitral award, which may both lead to the annulment of arbitral awards and undermine the fairness of the process.

In conclusion, the Med-Arb model is a functioning structure that systematically combines different dispute resolution methods and offers the parties the opportunity for both reconciliation and a final judgment. However, in order for this method to be applied in a healthy manner, principles such as the separation of the roles of mediator and arbitrator, the principle of confidentiality and the will of the parties should be meticulously protected.

4. The Case of the Same Person Being Both Mediator and Arbitrator

The most controversial application of the Med-Arb method in practice is the joint conduct of mediation and arbitration by the same person. In this so-called "same neutral" model, the parties agree at the beginning of the process that a neutral third party will serve in both the mediation and arbitration phases.

The reason why the same neutral model is preferred is that the person involved in the process is familiar with both phases, which allows for a faster and more effective resolution of the dispute. It is claimed that a person who is well acquainted with the attitudes and needs of the parties and the main elements of the dispute during the mediation process will be able to make decisions more quickly and effectively during the arbitration phase.

However, despite these advantages, there are serious ethical and legal risks in having the same person at both stages. Some of these risks are important not only for the parties, but also for public confidence in the process, the validity and enforce-

ment of the decision. One of the risks is that the mediator may not be able to act impartially when s/he becomes an arbitrator in the arbitration phase due to the information and documents s/he has acquired about the basis of the dispute and the parties during the mediation process.[6]

There is a risk that confidential information disclosed by the parties in individual meetings with the mediator during the mediation process, to which the other party does not have access, may be taken into account by the same person acting as an arbitrator during the arbitration phase.

The mediator-arbitrator may decide on the basis of information disclosed to one of the parties and to which the other party has no opportunity to object or seek clarification or may use such information to the detriment of one of the parties. [7]

Another risk when the same person is both a mediator and an arbitrator is that the mediator-arbitrator may abuse her/his influence over the parties. In the event that the mediation process fails, the same person acting as an arbitrator may have the power to impose on the parties in the arbitration process the solution that s/he found appropriate during the mediation phase. [8]

In light of all these risks, arbitration centers have also regulated this issue in their rules in order for the mediator to be an arbitrator. For example, the ability of the same person to serve as both mediator and arbitrator is clearly set out in Article 5 under the ISTAC Mediation-Arbitration (Med-Arb) Rules. As per this article, such an appointment is only possible with the written and express consent of the parties. [9] Thus, ISTAC permits the "same neutral" model, but makes this permission subject to the express and written consent of the parties.

5. Conclusion

The Med-Arb model, which combines mediation and arbitration methods, is a hybrid structure that stands out among modern dispute resolution approaches for its flexibility and effectiveness. Med-Arb enables the parties to first try to reach a compromise through mediation, and if no compromise is reached, to reach a binding solution through arbitration. However, in the "same neutral" model, where the same person acts as both mediator and arbitrator, there are serious challenges to

fundamental procedural safeguards such as impartiality and confidentiality. The risk of unilateral and confidential information obtained during the mediation process influencing the decision-making process in the arbitration process may have significant legal consequences in terms of both the right to a fair trial and the annulment of the award.

At the same time, the risk that the mediator, in her/his capacity as arbitrator, may impose on the parties the settlement proposal that s/he has previously deemed appropriate may undermine the credibility of the mediation process.

Faced with these risks, the healthy functioning of the Med-Arb model depends, in particular, on the separation of mediator and arbitrator, the express consent of the parties and the rigorous protection of procedural safeguards.

Arbitration centers such as ISTAC provide assurance in practice by introducing clear rules in this regard. In conclusion, the Med-Arb model has the potential to provide parties with a fast, flexible and effective dispute resolution mechanism when properly structured and not in conflict with fundamental principles.

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References:

1. ŞAHİN CEYLAN, Şule: Geleneksel Toplumdan Modern Topluma Alternatif Uyuşmazlık Çözümü, 1st Edition, On İki Levha Publishing, İstanbul, 2009, p. 308
2. ÖZBEK Mustafa Serdar, Alternatif Uyuşmazlık Çözümü, 5th Edition, Ankara: Yetkin, 2022 p.391
3. Cemile Demir Gökyayla, Arabuluculuk ve Tahkimi Bir Arada İçeren Uyuşmazlık Çözüm Yolu, İstanbul Law Journal, p.594
4. Özbek, ibid, 2022, p. 658
5. Beyza Saygın, p.35
6. Gökyayla, ibid, p.594
7. Gökyayla, ibid, p.594
8. Gökyayla, ibid, p.594
9. ISTAC Mediation-Arbitration Rules

THE EFFECT OF PARTICIPATION IN ARBITRATION ON THE POSSIBILITY TO CHALLENGE JURISDICTION IN LIGHT OF BRODA AGRO TRADE V ALFRED C TOEPFER INTERNATIONAL



INTRODUCTION

One of the foundations of arbitration proceedings is the parties' voluntary willingness to refer their disputes to alternative dispute resolution mechanisms other than domestic courts. The existence and extent of this willingness can be said to be at the heart of many arbitration disputes. The *Broda v Toepfer* decision [1] by the Court of Appeal demonstrates the effects of a party's actual participation in arbitration proceedings on its ability to later challenge the validity of the arbitration agreement in court. The decision is exemplary as a case in which the limits of remedies to challenge the arbitral tribunal's jurisdiction under Sections 67 and 72 of the English Arbitration Act 1996 were discussed and determined.

SUMMARY OF THE DISPUTE

As a party to the dispute, Broda, the Claimant, entered into a contractual relationship with the Respondent, Toepfer, for the sale of corn under GAFTA rules. Toepfer applied for arbitration before GAFTA due to Broda's failure to deliver the corn, and Broda argued that it had never accepted the contract in question and therefore there was no valid arbitration agreement between them. Broda also stated that they are based in Russia, therefore there is not any binding agreement and that they have started legal proceedings in their local courts.

In the context of this dispute, GAFTA instructed the parties that it would decide separately on the issue of jurisdiction and that the parties should submit their submissions accordingly. In their submission

to the arbitral tribunal, Broda stated that they had not responded to Toepfer, that the Russian courts were the most appropriate place to determine the jurisdiction of the arbitrators and requested GAFTA not to accept jurisdiction. Subsequently, GAFTA ruled, under its interim award, that there was a binding contract between the parties and issued a new order for the parties to submit their submissions on the merits.

Broda submitted their statements in this regard and reiterated their claims with regards to the absence of a valid contract. At the end of the proceedings, the arbitral tribunal accepted the existence of a valid contract, examined the case on the merits and ruled in favor of Toepfer. Following the decision, Broda filed an application for annulment in the English courts under Sections 67 and 72 of the Arbitration Act 1996, arguing that the arbitral tribunal was not competent and that the award was therefore invalid.

STATUTORY PROVISIONS AND LEGAL DEBATE

The Court of Appeal examined the GAFTA arbitral award in detail, referring to several provisions of the Arbitration Act 1996 in assessing the award. The first provision examined in this regard is Section 67 which states that a party may challenge an arbitration on the grounds that the adjudicators lack jurisdiction, but that such challenges must be filed within a certain time limit.

The other provision considered as a basis for the decision is Section 72 of the said Act, which provides that a party who has

not participated in the arbitration proceedings has the right to apply to the court to challenge the arbitral tribunal's jurisdiction, and that a party who has never participated in the arbitration proceedings may challenge the jurisdiction of the arbitral tribunal by applying directly to the court, even if an award has been made by the said tribunal. In this context, Broda, the Claimant, argued that, based on this provision, they reserved the right to directly challenge the arbitral tribunal's jurisdiction.

The Claimant denied that an arbitration agreement had been concluded and therefore that the tribunal had jurisdiction, as alleged by the Respondent, but participated in the court proceedings following the interim decision of the Arbitration Court finding that it had jurisdiction.

According to the Claimant's interpretation of the scope of Section 72, they took the view that the reference to a party "not taking part in the proceedings" referred to a party who did not participate in the proceedings in which the tribunal decided whether it had jurisdiction on the merits. In contrast, the Judge held that the requirement under Section 72 that a person not take part in the proceedings applies to proceedings on the merits as well as to proceedings on jurisdiction, and that Broda, the Claimant, had participated in the arbitration proceedings by making a statement on the merits, so that the special remedy under said provision was no longer open to them.

The Claimant argued that Section 72 is about whether the arbitral tribunal has jurisdiction and not about the exercise of substantive jurisdiction. In support of their arguments, the Claimant referred to the doctrine of *kompetenz-kompetenz* under English law, which provides that the court has the power to determine its own jurisdiction, that the expression "person participating in the proceedings" under Article 72 means participation in the proceedings relating to the jurisdiction of the arbitral tribunal, and that this interpretation is supported by the decision in *Caparo Group Ltd v Fagor Arrasate Sociedad Cooperativa* [2000] ADRJ 254.

As well known, the doctrine of *kompetenz-kompetenz* referring to a principle that authorizes adjudicators to make a first-hand determination of their own competence in a dispute that they determine to be within their jurisdiction, the arbitral tribunal may therefore assess and determine itself whether the dispute is arbitrable and whether they are competent to decide on that dispute.[2]

The Claimant acknowledged that the arbitral tribunal has the authority to determine its own competence, but argued that this determination does not bind the court. In response to this argument, the Court stated that the arbitral tribunal was entitled to assess its jurisdiction, but that this was subject to judicial review.

It also considered that the decision in *Caparo Group Ltd v Fagor Arrasate Sociedad Cooperativa* did not constitute case law in the sense argued in favor of the Claimant, since there was no participation in the arbitration process at any stage in *Caparo*.

DECISION OF THE COURT

In light of all these arguments, the Court of Appeal considered the scope of non-participation in the proceedings for Section 72 to be invoked and whether the claimant participated in the proceedings in which the substantive competence of the arbitral tribunal was discussed.

In this context, the court held that the claimant's argument that Section 72 was concerned with matters relating to the jurisdiction of the arbitral tribunal was correct, but that there was no basis for accepting an implicit restriction that "non-participation in the proceedings" was limited to proceedings to determine the substantive jurisdiction of the arbitral tribunal.

It stated that the purpose of the provision was to ensure that a party who believes that it has not entered into an arbitration agreement has the right to ignore the arbitration process and, having exercised that right, cannot be restricted in its right to apply to a court for legal protection on the grounds of non-participation. The Court considered that it would be appropriate, in the event of participation in the process, to subject it to the time limits provided for under Section 67.

The Court commented that a provision limiting the rights of a party involved in

the substantive proceedings of arbitration panels would make more sense than a provision limiting the rights of a party involved only in a jurisdictional challenge.

With this approach, the Court considered that the party challenging the merits of the dispute usually challenges the final award because it is dissatisfied with the arbitral tribunal's decision on the merits.

In considering applications under Sections 72 and 67, the Court of Appeal states that the court will subject the arbitral tribunal's decisions on jurisdiction to full review, and that the reason why Section 72 deals only with jurisdictional issues is that the court has unconditional jurisdiction only in such matters. The arbitral tribunal's decision on the existence, scope or procedural arrangements of its jurisdiction is not binding on the court.

It is also recognized that in an application under Section 72 and 67, the court will decide on the party's objection on the basis of the legal and factual grounds it has determined, and that the arbitral tribunal's decision on *kompetenz-kompetenz* may be reviewed by the court. The court emphasized that jurisdictional issues should be distinguished from the arbitral tribunal's decision on the merits, and that, unless there are serious irregularities, the parties are bound by the factual findings of the arbitral tribunal and may only challenge the court within the limitations set out in Section 69.

The decision emphasized that the condition of "non-participation in the arbitration proceedings" under Section 72 covers participation not only in the jurisdictional phase, but also in the examination of the merits. In this context, it is made clear that a party who raises a jurisdictional objection but also defends on the merits loses this special right of recourse.

The Court supported this interpretation with the established opinions in the doctrine and sources such as *Commercial Arbitration* (Mustill & Boyd).

The Court emphasized that it should not be assumed that arbitrators will always conduct separate proceedings and make separate awards on jurisdiction and merits. It commented that the question may be to determine whether there is a binding contract between the parties, in which case the question of jurisdiction and merits may be inseparable. The Court of Appeal emphasized how artificial a distinc-

tion between jurisdictional participation and substantive participation might be, given the claimant's assertion that the existence of a binding contract including an arbitration agreement was discussed following the issuance of the interim award in the arbitration proceedings.

CONCLUSION

Broda seeks to demonstrate that it is not bound by the arbitration agreement relied upon by Toepfer by obtaining a common law judgment from the court. However, the court dismissed the appeal on the grounds that the limitations set out in Sections 67 and 72 on challenges to the jurisdiction of the arbitral tribunal could not be overcome by such an action.

The Court of Appeal held that Broda could not make a direct application to the court under Section 72 of the Arbitration Act 1996 and dismissed the annulment claim for failure to make a timely application under Section 67. The decision clearly establishes that a party who has actually participated in the arbitration proceedings will lose the possibility to apply to the court by claiming that the arbitration agreement does not exist.

This decision also shows that jurisdictional challenges to arbitral proceedings are shaped not only by procedural compliance, but also by the parties' actions and statements, and that the courts consider the parties' participation in the process not only procedurally, but also substantively.

In this respect, the decision constitutes important jurisprudence, especially in international arbitration practice, demonstrating that the conduct of the parties in the arbitration process may be of consequential nature.

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References:

1. Broda Agro Trade [Cyprus] Ltd v Alfred C Toepfer International GmbH [2010] EWCA Civ 1100 [LexisNexis]
2. Işıl Egemen Demir, "Kompetenz-Kompetenz İlkesi ve Olumsuz Etkisi" ("Principle of Kompetenz-Kompetenz and Its Negative Effect"), *Journal of the Faculty of Law of Suleyman Demirel University*, Vol: 11, Issue: 1, 2021, Page: 257

LAWSUIT AGAINST APPLE BY AUTHORS DUE TO USAGE OF BOOKS IN AI TRAINING

Giant technology company Apple is being sued by the authors due to its illegal usage of their copyrighted books in training of its artificial intelligence systems. Recently the battle over the protection of intellectual property in the AI area has been more common. The proposed class action, filed in the federal court in Northern California, detailed Apple copying protected works without permission or credit and also not compensating the creators.

“Apple has not attempted to pay these authors for their contributions to this potentially lucrative venture,” as reported the lawsuit, filed by authors Grady Hendrix and Jennifer Roberson. Apple and lawyers for the plaintiffs did not promptly respond to comment requests on Friday. The lawsuit against Apple was filed due to their usage of pirated books for their “OpenELM” large language models training. This lawsuit is the latest among the abundance of cases filed by the authors, news outlets and others accusing big technology companies because of their illegal use of their works.

Another recent example of these lawsuits was the Microsoft case in June. Microsoft was taken to court by a group of authors, who claimed the company used their books without permission to train its artificial intelligence model named Megatron.

Source: <https://www.reuters.com/sustainability/boards-policy-regulation/apple-sued-by-authors-over-use-books-ai-training-2025-09-05/>

EU IS CHANGING THE CARBON COST RULES: HOW COMPANIES ARE SUPPOSED TO PREPARE

With European Union’s Carbon Border Adjustment Mechanism (CBAM) transitioning from reporting-only to full implementation in January 2026, making adjustments for global trade, compliance obligations and corporate strategy have become important for relevant companies. Due to the complex mechanism, especially with the evolving legislative developments and lacking technical guidelines, majority of the businesses are struggling.

CBAM was established to place a carbon cost on imports of goods in carbon-intensive sectors, especially iron, steel, aluminum, cement, fertilizers, electrify and hydrogen. These sectors are categorized in Annex I of the CBAM Regulation using CN codes. The transitional phase, that lasts until December 2025, importers must only report embedded emissions in relevant products.

From January 2026, the CBAM obligations become more challenging. Importers will have to submit CBAM certificates corresponding to the embedded emissions in imported goods. This regulation marks a shift from informational compliance to reporting obligations with financial consequences. These new rules will result in the importers first purchasing the certificates and then handing them to the authorities as proof that they have already paid for their produced emissions.

However, a possible postponement for the certificate purchase timeline is proposed in the European Commission’s simplification proposal: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2023/956 as regards simplification and strengthening the carbon border adjustment mechanism, COM (2025) 87 final, dated 26 February 2025 (hereinafter, the “Simplification Proposal”). Even with the simplification proposal, the necessity to submit CBAM certificates for imports from 2026 onward remains unchanged. Although, with the simplification proposal, the actual purchase of the certificates will be postponed until 2027. This means, importers can begin the purchase of the certificates for 2026 imports, starting from February 2027. This gives the importers additional time for assessment of the emissions exposure and allow them to plan their compliance budget.

The simplification proposal does not simplify the emission calculation methods, which the importers demanded clarity, but rather concentrates on selective exemptions. The key feature is the introduction of a de minimis threshold: importers bringing in less than 50 tons/year of CBAM-covered goods may self-declare as “occasional importers” and be exempt from CBAM regulations. The Commission predicts that this will exclude 90% of importers while still capturing 99% of emissions from the targeted sectors. This aims to significantly reduce the compliance obligations of the small-volume importers. However, this is also not aligned with the goal of CBAM, which is addressing the bulk of emissions leakage from high-intensity goods, not regulating every economic actor.

As the technical legislation necessary to fully operationalize CBAM is still lacking, the European Commission is working on various technical (secondary) legislation. The European Commission is also considering the possibility of extending CBAM to downstream goods, such as, finished products that contain CBAM-covered materials.

Source: <https://www.reuters.com/legal/transactional/eus-carbon-cost-rules-are-changing-how-companies-can-prepare-cbam--pracin-2025-09-05/>

RESTRICTIONS ON SHARE TRANSFERS IN INCORPORATED COMPANIES BY ARTICLES OF ASSOCIATION



1- Restrictions on Share Transfers and Concept

Although the main principle in incorporated companies is the free transfer of shares by the shareholder, some certain rules arising from both the applicable law and the articles of association may lead to restrictions on the transfer of shares.

Paragraph 2 of Article 339 of the TCC (Turkish Commercial Code), which sets out the content of the Articles of Association, lists the mandatory and optional provisions in the articles of association, and subparagraph d of this paragraph explicitly stipulates that transfer restrictions may be included in the articles of association by stating *"d) Registered or bearer shares; privileges granted to certain shares; restrictions on transfer."*

Although this restriction against the transfer of shares is a restrictive rule against the shareholders, its main purpose is to protect the company. Although share transfer restrictions are a rule against the shareholders' freedom of transfer, they also provide the shareholders with a choice and protection against the persons who will be in their circle as shareholders and with whom they will become partners.

In this respect, the restriction on share transfer in incorporated companies constitutes a terminological contradiction. The reason why incorporated companies are referred to as "incorporated" is that these companies, which are capital companies, are a partnership structure that stands independent of the shareholders and the personalities of the shareholders.

Where the articles of association places restrictions on share transfers, it interferes with the shareholder who wishes to transfer her/his shares and chooses with whom to become a partner.

In this respect, the anonymization of the shareholders' circle in the incorporated company is prevented, which is seemingly incompatible with the name of the company.[1]

Accordingly, the issue of share transfer restrictions in incorporated companies, where terms and contradictions are of great importance, also causes the incorporated company partnership to differ and differentiate from other types of partnerships in the Turkish Legal System.

Even though it is not included in the current Turkish Commercial Code Nr. 6102, which is the main applicable regulation on this subject, the concept of "restriction", which is mentioned in the doctrine and comparative law, refers to the share certificates that are literally restricted, and it is stated that the share certificates are restricted in order not to be transferred.

2- Inclusion of "Restriction" Rules in the Articles of Association and Removal Thereof

Restrictions are divided into two categories as those arising from the applicable law and those arising from the articles of association. The present analysis will focus on the restrictions arising from the articles of association. Restrictions may be included in the articles of association at the establishment of the company. It is also possible to amend the articles of

association by introducing restriction rules afterwards.

Paragraph 3 of Article 421 of the TCC stipulates that *"The following resolutions to amend the articles of association shall be adopted with the affirmative votes of the holders of the shares constituting at least seventy-five percent of the capital or their representatives: a) Changing the subject of the company's business completely. b) Creating privileged shares. c) Restricting the transfer of registered shares."*

It is stipulated that a quorum of at least seventy-five percent of the capital is required for the amendment of the articles of association to restrict the transfer of shares.

For the quorum required for the abrogation of the restriction rules, paragraph 1 of Article 420f of the TCC should be referred to. The relevant provision reads as follows:

"Unless otherwise provided by law or the articles of association, resolutions amending the articles of association shall be adopted by a majority of the votes present at the general assembly meeting where at least half of the company capital is represented."

In case the meeting quorum foreseen in the first meeting is not achieved, a second meeting may be held within one month at the latest. The meeting quorum for the second meeting shall be the representation of at least one third of the company capital at the meeting."

Provisions in the articles of association that reduce the quorums stipulated in this paragraph or stipulate a quorum shall be invalid."

Pursuant to this provision, the abolition of some, if not all, of the restriction rules or restrictions in the articles of association will be possible with the majority of votes in the general assembly where at least half of the company capital is represented, which is the quorum for amendment of the articles of association. Of course, this provision only applies where the articles of association of the company does not stipulate otherwise.

3- Concept of Restriction for Registered and Bearer Shares

The distinction between registered and bearer shares is important for the examination of the restriction on the transfer of shares. The main reason for this is the difference in the transfer method of registered and bearer shares.

Since the transfer of bearer share certificates is made only by the transfer of possession without any control, registration or condition, and since those who present these certificates are deemed to be the owners of the said certificates, it is effectively impossible to restrict the transfer of these certificates. [2]

Paragraph 1 of Article 492 of the TCC entitled "Restriction by Articles of Association" sets out as follows: *"The articles of association may stipulate that registered shares may be transferred only with the approval of the company."*

So, while the text includes restrictions for registered shares resulting from the articles of association, bearer shares are not included. The ultimate reason for this is that, as mentioned above, the transfer of bearer shares is possible through the transfer of possession.

This is because it is incompatible with the nature such shares to restrict their transfer, and in addition, it does not appear possible to control the restriction for these shares either, which can be transferred in the ordinary way.

When the other provisions of the applicable law on restriction are examined, it is clearly seen that regulations are made on registered shares.

One of these provisions is Article 491 of the TCC regarding the restriction of fully unpaid registered shares. This article is an explicit restriction set forth under the TCC.

Although, in principle, registered shares may be transferred without any restriction, unless otherwise stipulated under the applicable law or the articles of association, Article 491 of the TCC, titled "Statutory Restriction", states that *"Registered shares that have not been fully paid may be transferred only with the approval of the company; unless the transfer is realized through inheritance, inheritance division, the provisions of the property regime between spouses or com-*

pulsory debt enforcement proceedings. (2) The company may refuse to give its approval only if the transferee's solvency is doubtful and the security required by the company has not been provided."

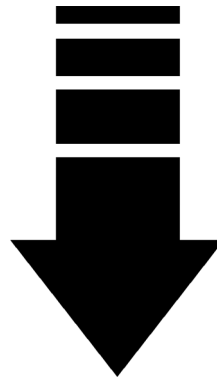
The provision stipulates that registered shares that have not been fully paid may be transferred only with the approval of the company.

As mentioned above, it is possible for share transfer restrictions to be included in the articles of association, as well as in cases specified under the law.

The articles of association may stipulate the form of share transfer, as well as the conditions under which the transfer of shares may take place.

A real restriction can be present where the transfer of shares is restricted by material facts rather than a formal determination.

The most common examples in this regard are the requirements of certain characteristics of the potential shareholder, such as being a member of a certain family.



Restrictions in this sense are closely related to the constitutional provisions of Article 35 and Article 48 of the Constitution, pertaining respectively to freedom of contract and the right to property, as limited by such restrictions. For this reason, share transfer restrictions should be proportionate. [3]

Restrictions which are conceived as a conceptual contradiction in terms of the structure of incorporated companies, and which limit the shareholders' right to transfer shares, freedom of contract, and

property rights, of course have certain objectives and considerations.

Although the main principle is the freedom to transfer shares in incorporated companies, the purpose of imposing restrictions on shareholders is the instinct to protect the company.

The qualifications required for the shareholders are aimed at preventing the structure of the company from deteriorating and becoming alienated.

Article 493 of the TCC, which follows Article 492 of the Turkish Commercial Code mentioned above and titled "Unlisted registered shares", reads as follows:

"The company may reject the request for approval by asserting an important reason stipulated in the articles of association or by proposing to the transferor to purchase the shares for its own account or for the account of other shareholders or third parties at their actual value at the time of application."

The following paragraph reads as follows:

"The provisions of the articles of association regarding the composition of the shareholders' circle constitute an important reason if they justify the rejection of approval in terms of the company's field of activity or the economic independence of the enterprise."

In light of these provisions, it is important to evaluate the most common restriction of "belonging to a certain family" in the context of the articles of association within the framework of the provisions of this article.

This is because while personal characteristics such as having a certain profession, which is another common restriction, may be directly related to the company's field of activity, belonging to a certain family does not seem to be directly related to the company's field of activity or economic independence at first glance.

In addition, the composition of the shareholders' circle in the first paragraph and the ability of those who belong to a certain family to become shareholders appear to be compatible, and are considered compatible by the majority opinion in the doctrine; the rule of belonging to a family also provides a certain criterion for the restriction, and emerges as a transparent restriction that is free from interpretation. [4]

The difficulty of comprehending and drawing connections between certain expressions and consequences of Article 493 and its preamble have led to different opinions in the doctrine.

Even if it is clearly understood that the articles of association may contain a provision restricting the transfer of shares, the main issue of debate is whether these restrictions are valid or not, and whether the refusal of transfer on the basis of an important reason in the articles of association or the TCC will be applied in cases where the transfer of shares is on the agenda.

The problem here is what constitutes an important reason. The important reason is explained in the second paragraph, and this is also seen in the preamble of the provision.

The legal justification of paragraph 2 reads as follows: "Second paragraph: The concept of "just cause" herein refers to the reason that is important for the company, unlike the just cause that makes the relationship unbearable, which is valid in the law of obligations and the law of private companies.

Although the draft version of the law provides for three categories, the just causes are not limited (numerus clausus). The categories of just cause are (1) the composition of the shareholders' circle, (2) the subject matter of the company, and (3) the independence of the enterprise. In addition, the composition of the shareholders' circle is also considered as an important reason. At this point, the limitation of being a member of a family seems to be acceptable as the composition of the environment.

Although there are opinions that these restrictions would be contrary to the shareholding structure in incorporated companies, which are capital companies, and that the concept of environmental composition is not fleshed out, there are also opinions that approach the issue from a different direction, that the shareholder who wants to transfer her/his share should take into account the interests of other shareholders due to the importance of the relationship of trust and loyalty between the shareholders, and that the structure of the company established by certain family members may have share transfer restrictions due to the obligation of loyalty. [5]

Recently, there has been a growing view that restrictions in respect of family members (family clause) and stipulation in the articles of association that only members of the relevant family may be shareholders are not considered as important reasons.

Perhaps the sole reason for this is the approach is that it is not desired to move away from the incorporated company structure, which is also predominant in the Swiss doctrine, and that the company structure and economic rules should gain importance.

4- Conclusion

In conclusion, we can say that under the Turkish Legal System, belonging to a certain family plays an active role in share transfer restrictions.

This is based on the importance of family in Turkish culture and life, as well as the conceptual place of the "incorporated company" structure in the Turkish legal system.

Even if it is explicitly stipulated that restriction rules may be included in the articles of association, the important reasons specified under the TCC should be taken into consideration in order for the relevant rules to be valid, and the quorums specified in the TCC are applied for the subsequent addition or removal of restriction rules to the articles of association.

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References:

1. Dr. Tamer Bozkurt, Anonim Şirketlerde Pay Devrinin Sınırlandırılması (Bağlam)
2. Mustafa Yavuz, Yeni TTK'ya Göre Anonim Şirketlerde Pay Devrinin Sınırlandırılması
3. Dr. Tamer Bozkurt, Anonim Şirketlerde Pay Devrinin Sınırlandırılması (Bağlam)
4. Tekinalp, Bağlam
5. N. Füsun Nomer, Anonim Ortaklıkta Pay Sahibinin Sadakat Yükümlülüğü

**THE DISTINCTION
BETWEEN REGISTERED
AND BEARER SHARES IS
IMPORTANT FOR THE
EXAMINATION OF THE
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THE MAIN REASON FOR
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RED AND BEARER SHA-
RES.**

SUPERVISORY AUTHORITY OF THE MINISTRY OF TRADE OVER COMPANIES IN TURKISH LAW



The Ministry of Customs and Trade has various regulatory and supervisory powers to ensure that companies operating in Turkey carry out their operations in accordance with the applicable law. These powers stem from the Turkish Commercial Code Nr. 6102 ("TCC"), the Company Audit Regulation and other related applicable regulations. The Ministry supervises companies' financial status, mergers and acquisitions, independent audit processes, compliance with consumer rights and unfair competition practices, starting from the establishment stage.

The supervisory powers of the Ministry of Trade over companies will be discussed in detail, the sanctions imposed and their legal consequences will be evaluated in this article.

1. Introduction

The Ministry of Trade has various supervisory powers to ensure that companies in Turkey operate in accordance with the applicable law and economic principles. One of the main pillars of this authority is Article 210 of the Turkish Commercial Code Nr. 6102.

The said article authorizes the Ministry of Trade to inspect the books, records and commercial activities of companies and to impose legal and administrative sanctions when necessary.

This audit process aims to ensure that companies are managed transparently and in compliance with the related applicable regulations, to protect the economic order and to prevent unfair competition. These audits, which are of great importance especially for incorporated and limited liability companies, directly concern both company executives and investors.

"Regulations on company audits aim to provide accurate and reliable information on activities and financial statements to shareholders, investors and third parties. In this way, the economy gains dynamism by providing confidence to international capital in a global competitive environment." [1] Within this framework, there are some special provisions and regulations that determine the audit processes, especially the TCC. Important articles directly related to the supervisory authority of the Ministry of Trade will be discussed hereunder.

2. Supervision of Companies Pursuant to Art. 210 et seq. of the TCC

Article 210 of the TCC authorizes the Ministry of Trade to audit all commercial companies. However, this audit does not mean the examination of the financial accounts of the company. The authority of the Ministry is aimed at ensuring that companies comply with the provisions of the applicable law. How the audit will be conducted is set out under the Regulation on Supervision of Commercial Companies by the Ministry of Customs and Trade.

"Pursuant to Article 5 of the Regulation, the transactions subject to supervision cover a wide range. In addition to the basic elements such as establishment, trade registry, title and commercial book transactions, transactions related to mergers, spin-offs, change of type and group of companies also fall under the scope of such supervision. General assembly and board resolutions, election of auditors, amendments to the articles of association, capital transactions, securities, financial statements, reserves and dividend distribution are also examined. Electronic services, termination of the company and related regulatory procedures are also subject to the supervision of the Ministry." [2]

"Pursuant to Article 210/3 of the TCC, when the Ministry of Trade detects transactions contrary to public order or the subject matter of the business, collusive activities or preparations in this direction, it may initiate a dissolution action within one year, without prejudice to the provisions of special laws. However, the Ministry has not only the power to initiate a dissolution action, but also the duty to warn. Companies may be warned for

matters that can be corrected before filing a dissolution action. It is also possible to file liability lawsuits against those responsible in line with the inspection reports issued by the Ministry." [3]

"According to Article 333 of the TCC, the Ministry of Trade is authorized to inspect the legality of the establishment and articles of association of companies that require statutory permission.

The approval of the Ministry is required especially during the establishment phase of incorporated and limited liability companies that will operate in certain sectors. During this process, the company's capital structure, partnership structure, and the compliance of its articles of association with the related applicable regulations are examined." [4]

"Although the relevant article sets out that amendments to the articles of association of incorporated companies are subject to the approval of the Ministry, it is stipulated that, regardless of their nature and scope of activity, the establishment of companies and amendments to their articles of association shall not be subject to the approval of any authority." [5]

"However, according to this article, the Ministry may conduct an audit to determine whether there is any violation of the mandatory provisions of the applicable law. Other than that, the establishment of an incorporated company and amendments to its articles of association are not subject to the approval of any authority." [6]

In this respect, these inspections that are conducted to ensure companies act in accordance with the applicable law and to protect the rights of shareholders and investors, support the sustainability of the economic system by increasing commercial security.

2.1. Independent Audit, Supervision of Audit Organizations and Supervisory Authority under the Regulation on Independent Audit

According to Article 397 of the TCC, the financial statements and financial reports of companies are subject to independent audit.

These audits are supervised by the Public Oversight, Accounting and Auditing Standards Authority ("KGK") and the Ministry of Trade. If the audit results do not reflect the truth, administrative sanctions may be imposed by the Ministry.

"The Ministry's audit under the Regulation is not limited to compliance with the provisions of Article 210 of the Turkish Commercial Code. The Regulation also grants the Ministry the authority to audit company accounts." [7]

"Furthermore, exceeding the limits of the inspections conducted by the Ministry may expose companies to unpredictable inspection risks and unnecessarily restrict commercial activities. Therefore, there are opinions that the validity of sanctions imposed as a result of an inspection without legal basis is debatable and may be considered contrary to general principles of law." [8]

As per the applicable law, companies may also be audited by appointing a special auditor, which also applies to limited liability companies in accordance with Article 635 of the TCC. According to Article 438 of the same Code, shareholders may request the general assembly to appoint a special auditor to examine some certain circumstances.

If the request is accepted, each shareholder or the company may apply to the court for appointment of an auditor (Art. 438/2 of the TCC). If the request is rejected, shareholders holding at least one-tenth of the capital, or one-twentieth in case of publicly traded companies, or a total of at least one million TRY in shares, are entitled to apply to the court (Art. 439/1 of the TCC).

The applicants must convincingly demonstrate the company's unlawful actions (Art. 439/2 of the TCC). Plausible proof is sufficient, and the court may appoint a special auditor if deemed so necessary, and this decision is of final nature (Art. 440/1-2 of the TCC). The appointed auditors need not be accountants or independent auditors, and experts suitable for the nature of the task may be appointed.

By and through the decision of the Council of Ministers, the audit of incorporated companies not subject to independent audit and companies covered by the Law Nr. 4572 is regulated by a regulation drawn up by the Ministry of Customs and Trade and issued by the Council of Minis-

ters. The Regulation Nr. 28509 on Independent Audit covers matters such as audit procedures, qualifications of auditors, ethical rules, duties and authorities, selection, removal from office, and submission of audit reports to the general assembly.

In accordance with the Regulation on Independent Audit, the Ministry is authorized to examine the activities of the relevant companies on site. Within this scope, the books and documents of the companies can be examined, their financial situations can be analyzed, and independent audit reports can be requested when necessary. At the same time, the Ministry of Trade can examine whether the annual financial statements reflect the truth. This examination is carried out to ensure compliance with accounting procedures and transparency.

If any violations of the law are found, the Ministry can impose fines on companies, sustain some certain activities, or demand corrective actions.

So, the Ministry of Trade has a bunch of powers to make sure trading companies follow the rules. They examine companies' financial statements, reports, and accounting records to make sure everything is transparent and legit. Additionally, mechanisms such as the appointment of special auditors, independent audits, and administrative sanctions are used to encourage companies to act in compliance with the applicable law. If violations of the regulations are detected, the Ministry may impose administrative sanctions, request necessary corrections, and suspend some certain activities. Thus, company audits serve as an important mechanism for both shareholders and market security.

3. Supervision of Electronic Commerce and Unfair Practices

3.1. Supervision of Electronic Commerce
Activities of e-commerce companies are supervised by the Ministry of Trade under Article 11 of the Law Nr. 6563 on Regulation of Electronic Commerce.

Unfair commercial practices, misleading advertisements, and violations of distance sales contracts may be investigated by the Ministry. The Ministry has the authority to regulate the activities of Electronic Commerce Service Providers and Electronic Commerce Intermediary Service Providers and to determine the mandato-

ry elements that must be included in intermediary contracts.

In addition, it may request information from the Information Technologies and Communication Authority (BTK) about individuals and companies that send commercial electronic messages via voice calls and text messages.

As per the regulation, the Ministry has the authority to conduct inspections and publish their results. Personnel assigned to conduct inspections may request and review any information, documents, and electronic records.

Those concerned are obligated to fulfill these requests completely and accurately. Through these authorities, the Ministry plays an active role in ensuring fair competition, protecting consumers, and regulating the market within the e-commerce ecosystem.

3.2. Supervision of Unfair Competition and Consumer Rights

"Competition violations, unfair competition, and consumer rights violations are subject to different statutory regulations and are examined by various authorities in terms of supervision and sanction processes. Competition violations arise from the disruption of the competitive environment in the market."

For example, creating a negative perception of a competitor is considered unfair competition, while agreements between businesses on factors such as price and production volume, or mergers aimed at strengthening market dominance, are considered competition violations." [9]

"Accordingly, while the Turkish Commercial Code aims to protect commercial ethics and fair competition principles, Law Nr. 4054 on Protection of Competition aims to ensure the continuity of competition in markets."

One of the differences between these two concepts is the authorities to which applications are made. Claims of unfair competition are examined by Commercial Courts, and appeals against court decisions may be filed with the Court of Cassation, while competition violations are assessed by the Competition Authority, and appeals against the Competition Authority's decisions may be filed with the Council of State." [10]

"Competition Authority may only conduct investigations under the Law Nr. 4054 on Protection of Competition (RKHK) and does not have the authority to enforce the unfair competition provisions of the Turkish Commercial Code (TTK). The Authority has emphasized that its authority is limited to anti-competitive agreements, abuse of market dominance, as well as and mergers and acquisitions. Issues related to unfair competition fall under the scope of the TCC, and such disputes are heard in commercial courts or civil courts of first instance. Acts such as defaming competitors, providing misleading information, or unlawfully using trade secrets are considered unfair competition and are not investigated by the Competition Authority. Therefore, claims of unfair competition that fall outside the scope of the RKHK must be submitted to the judicial system, the Consumer Disputes Arbitration Boards, or the Ministry of Trade." [11]

On the other hand, pursuant to the Law Nr. 6502 on Protection of Consumers, administrative fines and other sanctions may be imposed on companies in cases of unfair competition and violation of consumer rights. For example, label inspections are carried out by the Ministry, municipalities, and relevant professional associations. Pursuant to Article 54/4 of the same Law, these institutions are responsible for inspections and enforcement. Municipalities may examine issues such as price labeling and refusal to sell goods and services offered to consumers.

Sellers and suppliers are required to provide all information and documents requested during inspections. If any violations of the law are detected, the minutes and documents are forwarded to the Governor's Office (Provincial Directorate of Trade) and the Ministry conducts the proceedings. Inspections may be conducted either ex officio or upon complaint. In conclusion, the protection of competition, unfair competition, and consumer rights are subject to different statutory regulations, and the relevant inspection and enforcement processes are carried out by different authorities.

4. Audits Regarding Companies' Activities

"Due to the increase in commercial activities and the emergence of various sectors, new regulations have been introduced for companies wishing to operate in different sectors. Considering that companies also

serve the public interest, it has been understood that it is important to supervise companies operating in areas such as banking, insurance, and the energy market. The Ministry's supervisory authority over the relevant companies is limited by the laws governing the companies' activities." [12]

"For example, insurance companies being an indispensable institution in economic life, it is inevitable that they be subject to the Ministry's supervision in order for the expected benefits of insurance activities to materialize. The supervision of insurance companies is carried out by the Ministry under the Insurance Law." [13]

5. Audit Results and Applicable Sanctions

As a result of the Ministry of Trade's inspection processes, various sanctions may be imposed on companies, one of which is imposition of administrative fines. Companies found to be in violation of the law may be subject to high fines. Another sanction is suspension of activities. If illegal activities are not rectified, a decision may be made to temporarily suspend some certain activities. The liquidation or closure of the company is another sanction that may be applied. In cases of serious violations, a decision may be made to liquidate the company or remove it from the commercial register. Corrective measures may be required, particularly in cases of violations of consumer rights and advertising regulations, to ensure that companies comply with the law. The most severe sanction is the termination of the company's existence as a result of the Ministry's inspection. Accordingly, the Ministry may file a dissolution lawsuit in accordance with Articles 201/3, 353, and 530 of the Turkish Commercial Code.

6. Conclusion

The Ministry of Trade has broad supervisory powers to protect the economic order and ensure fair competition in the markets. These supervisory activities are carried out to ensure that companies operate in accordance with the applicable law, and to protect consumers, and safeguard the market. The Ministry conducts investigations across a wide range of areas, from companies not subject to independent oversight to e-commerce platforms, price labeling, and unfair commercial practices. Inspections may be conducted either on the Ministry's own initiative or in response to complaints, and administrative sanctions are imposed

if non-compliance is detected. In this way, the Ministry both encourages companies to operate in compliance with the applicable law and establishes an effective oversight mechanism to protect consumers.

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References:

1. Doç. Dr. ASLANOĞLU, Suphi Doç. Ve BULUT Erdem, 'Türkiye'de Bağımsız Denetim ve Yeni Türk Ticaret Kanunu', Journal of Customs and Trade, Year: 2013, Issue: 1
2. Article 5 of the Regulation on Supervision of Commercial Companies by the Ministry of Customs and Trade
3. Prof. Dr. Tekin MEMİŞ, 'Şirketler Hukukunda Denetim', Year: 2012, Issue: 3-4
4. Prof. Dr. Tekin MEMİŞ, 'Şirketler Hukukunda Denetim', Year: 2012, Issue: 3-4
5. Prof. Dr. Tekin MEMİŞ, 'Şirketler Hukukunda Denetim', Year: 2012, Issue: 3-4
6. Gökçe, Selman Yavuz, 'Gümrük ve Ticaret Bakanlığının Ticaret Şirketleri Denetim Yetkisi ve Sonuçları', 2016, sayfa 139
7. Doç. Dr. Suphi ASLANOĞLU ve Erdem BULUT, 'Türkiye'de Bağımsız Denetim ve Yeni Türk Ticaret Kanunu', Journal of Customs and Trade, Year: 2013, Issue: 1
8. Doç. Dr. Suphi ASLANOĞLU ve Erdem BULUT, 'Türkiye'de Bağımsız Denetim ve Yeni Türk Ticaret Kanunu', Journal of Customs and Trade, Year: 2013, Issue: 1
9. Att. Ballı Mehmet, 'Türk Ticaret Kanunu'na Göre Haksız Rekabet', Journal of Customs and Trade, 2015, 5
10. Att. Ballı Mehmet, 'Türk Ticaret Kanunu'na Göre Haksız Rekabet', Journal of Customs and Trade, 2015, 5
11. Güner, Mehmet Yavuz, 'Rekabet Hukuku ve Haksız Rekabet Hukuku İlişkisi', Dissertation Series of the Competition Authority, 2021, Issue: 184
12. Gökçe, Selman Yavuz, 'Gümrük ve Ticaret Bakanlığının Ticaret Şirketleri Denetim Yetkisi ve Sonuçları', 2016, page: 93
13. Gökçe, Selman Yavuz, 'Gümrük ve Ticaret Bakanlığının Ticaret Şirketleri Denetim Yetkisi ve Sonuçları', 2016, page: 93

SEVERANCE PAY UNDER THE PRESS LABOR LAW

The right to severance pay for members of the press is set out under the Press Labor Law Nr. 5953. Article 6 of the Law sets out the conditions under which journalists will be entitled to severance pay, but it has been partially annulled by the Constitutional Court.

Following the annulment decision of the Constitutional Court, the unfavorable difference between the workers covered by the Press Labor Law and other workers has been corrected, and this article will look into the workers covered by the Press Labor Law and the conditions for entitlement to severance pay as per the related applicable law.

1. Scope of Application of the Press Labor Law

The scope of application of the Press Labor Law is set out under Article 1 of the Law. The wording of the said article reads as follows:

"Scope of the Law

Article 1 – (Amended: 4/1/1961 - 212/1 Art.)

The provisions of this Law shall apply to all persons working in all kinds of intellectual and artistic works in newspapers, internet news websites and magazines, and news and photo agencies published in Türkiye and who are outside the scope of the definition of "employee" under the Labor Law and their employers.

Those who work for remuneration in the fields of opinion and art within the scope of this Law are called journalists."

According to the wording of the article, in order to be considered within the scope of the Press Labor Law, it is necessary to first and foremost be employed in a workplace covered by the Press Labor Law, to work in any kind of intellectual and artistic field and to be subject to an employment contract.

Pursuant to Article 1 of the Press Labor Law, the first condition is that the journalist must work for newspapers or periodicals or for news and photo agencies publishing in Türkiye. The requirement that the publication be made in Türkiye is expressed as such in the doctrine:



"Although the Press Labor Law does not specify what should be understood by the expression "publication in Türkiye", it should be understood as the printing and appearance of the publication in Türkiye. As correctly stated in the doctrine, it is not necessary to search for the expression "publication in Türkiye" in terms of internet news websites." [1]

In this context, it is possible to accept that there is no restriction such as "publication in Türkiye" for internet publications.

Another matter that can be considered within the scope of the workplace is the situation of liaison offices. The situation of journalists working in the liaison offices of foreign news agencies in Türkiye needs to be evaluated.

According to the decisions of the Court of Cassation, it is accepted that journalists working in liaison offices may bring actions against said offices and their employment contract falls within the scope of the Press Labor Law [2].

Pursuant to Article 23 of the Law Nr. 6112 on Establishment of Radio and Television Enterprises and their Media Services, employees working in the news department of radio and television organizations are also considered journalists within the scope of the Press Labor Law.

Working in a workplace considered within this scope is not sufficient to be considered an employee under the Press Labor Law, as the work performed within the scope of the employment contract must also be within the scope of intellectual

and artistic work. If the work performed is not considered art, it will not be possible to be included in the Press Labor Law.

In order to be considered as a journalist, it is not mandatory or sufficient to have a press card in accordance with the Regulation on Press Cards. There is no obligation to register anywhere in order to be considered as a journalist, what matters here is the nature of the work performed.

The last condition under the law is that there must be an employment contract between the parties.

A press employment contract between a journalist and her/his employer is a permanent contract that establishes a dependent statutory relationship and imposes obligations on both parties.

The journalist is obliged to perform work dependent on her/his employer, and the employer is obliged to pay wages to the journalist.

In the event that these conditions are all met, the employee will be considered as a journalist within the scope of the Press Labor Law.

2. Conditions for Severance Pay Pursuant to Article 6 of the Press Labor Law

Article 6 of the Law sets out the conditions under which a journalist is entitled to severance pay. The wording of the article reads as follows:

“Termination of the Contract by the Employer and Severance Pay

ARTICLE 6

Journalists who have worked in this profession for at least 5 years are entitled to severance pay. (Annulled paragraph: Decision, dated 4/5/2023 and bearing the Basis number 2021/62 and the Decision number 2023/89, of the Constitutional Court)

Severance pay is calculated as of the date of the journalist's first entry into the profession.

In case of termination of the contract, the journalist is entitled to compensation calculated according to this period.

Termination of the employment of a journalist whose service relationship with the employer in a workplace falling under the scope of the first article has lasted for at least five years without interruption based on one or more contracts shall be effective for three months after the written notice.

For those with less than five years of service, this notice period is one month.

The date of the last day of the notice period shall be the basis for compensation and shall not be counted as annual leave.

If the journalist has not used her/his annual leave, s/he shall be paid in advance for the period of leave in case of termination of her/his employment.

A journalist whose service is terminated in accordance with the provisions of this article shall be entitled to compensation in the amount of one month's salary for each year of service or fraction thereof to which the terminated contract relates, based on her/his last month's salary.

However, less than six months of annual service shall not be taken into account, and this amount shall not be calculated in the first contract year. (Annulled second sentence: Decision, dated 4/5/2023 and bearing the Basis number 2021/62 and the Decision number 2023/89, of the Constitutional Court)

The severance pay of a journalist who has received severance pay once shall be calculated as of the date of her/his new employment. However, any agreement between the employer and the journalist contrary to this shall be valid.

In the event that the employer is unable to pay the journalist's compensation at once due to financial impossibility, the payment shall be made in a maximum of four installments and the duration of all of these installments shall not exceed one year.

However, this division may be made upon the decision of the finance department, which accrues the fiscal tax of the place of business, that the establishment is loss-making.”

The first paragraph and the second sentence of the sixth paragraph of the article have been annulled by the Constitutional Court.

Prior to the Constitutional Court's annulment decision, journalists were required to work for 5 years in order to be eligible for severance pay, and in the event that they were entitled to severance pay, the calculation did not include the remaining periods.

Following the annulment decision of the Constitutional Court, this difference to the detriment of journalists has been removed.

Upon annulment of the first paragraph, it is accepted that the period, required for journalists to be entitled to severance pay, is subject to Article 14 of the Labor Law Nr. 1475.

Following the annulment decision of the Constitutional Court, residual periods are also included in the calculation of severance pay for any workers who remain within the scope of the Press Labor Law in parallel with Article 14 of the Labor Law Nr. 1475.

Accordingly, if the journalist has one year of seniority, s/he will be entitled to severance pay.

As per Article 6/2 of the Press Labor Law, the seniority period is calculated as of the date of the journalist's first entry into the profession.

The right to severance pay arises when the employment contract of a journalist with one year of seniority is unfairly terminated by the employer or terminated by the journalist for just cause.

3. Conclusion

Upon the Decision, dated 4/5/2023 and bearing the Basis number 2023/89 and the Decision number 4/5/2023, of the Constitutional Court, the regulation that was unfavorable for the workers covered by the Press Labor Law was annulled and journalists are now entitled to severance pay in accordance with similar conditions with the workers covered by the Labor Law.

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References:

1. Basın İş Kanunu'nda Kıdem Tazminatı Hakkı: Anayasa Mahkemesi'nin İptal Kararına İlişkin Bir Değerlendirme, Sevde Bulun Toktaş
2. Decision, bearing the Basis number 2023/15060, and the Decision number 2023/12580 and dated 21.9.2023, of the 9th Civil Chamber of the Court of Cession



THE ERA OF DORA BEGINS: 10 CRUCIAL LESSONS IN COMPLIANCE WITH EU'S NEW CYBER RESILIENCE REGIME

1. Introduction

Digital Operational Resilience Act (DORA) is a regulation put in place by the European Union to reinforce the cybersecurity of financial organizations.

Latest news: EU's Delegated Regulation on Subcontracting entered into force on 22 July 2025. The legal groundwork of the Digital Operational Resilience Act (DORA) is now complete. Authorities will now focus on enforcement and regulation.

Why it matters: DORA introduces extensive requirements that will affect financial organizations and information technology (IT) services providers alike. It includes important reforms with respect to cybersecurity, incident response and IT contracts.

What to do now: With the implementation of the obligations under DORA and the start of audits, it has become critical for companies to review their DORA compliance. In particular, key documents such as the list of "critical or important functions" and incident response plans should start to be subjected to stress tests.

2. 10 Fundamental Lessons From the First Six Months

Compliance levels vary and the development process continues. Many obligations in DORA are based on already existing regulations (e.g. the European Banking Authority's outsourcing guidelines). Therefore, organizations operating in heavily regulated sectors such as banks and large-scale IT service providers (hyperscalers) have been able to achieve DORA standards by partially adapting their existing systems. In contrast, actors such as small-scale asset managers have had to make more extensive changes as they started from a weaker infrastructure. For such institutions, the DORA compliance process is still ongoing.

Targeted approaches can reduce compliance costs.

DORA introduces a large number of new policies and procedures. Therefore, organizations, especially those with limited resources, should adopt a risk-based and targeted strategy. For example, directing resources to areas with the highest audit risk (such as critical supplier management) can be cost and time efficient.

Critical functions must be carefully identified.

In addition to the basic obligations for all IT services, DORA contains more stringent rules specific to services that support only "critical or important functions". It has been observed that organizations tend to use overly broad definitions when defining these functions. This can have the adverse consequence that non-essential systems are also subject to high compliance obligations. It is therefore crucial that the truly critical functions are correctly categorized.

Incident response plans should be stress-tested.

According to DORA, incident notification should be made within 24 hours of becoming aware of the incident. Furthermore, notification thresholds are based on new criteria such as reputational or economic impacts.

It is therefore recommended that companies test response plans with incident simulations. Plans should;

(a) include a hierarchy showing who the decision-makers are and that they have been authorized to make decisions,

(b) include easily accessible information to guide decision-making (e.g. notification thresholds, who the information owners are, list of critical functions, etc.).

It should also be considered to conduct these simulations under legal confidentiality.

A proportionate and justified compliance approach should be adopted.

Many concepts in DORA are still open to interpretation. This ambiguity makes a single "correct" compliance approach impossible. Therefore:

- (a) companies should establish a reasonable and defensible compliance position,
- (b) document the justification for that position; and
- (c) monitor developments in implementation and update their positions as necessary.

Adequate support should be provided to board members.

DORA imposes individual responsibility on board members. This is a source of concern, especially for members who are not familiar with IT systems. For this reason, legal and IT trainings should be provided for the board of directors, and the scope of these trainings should be expanded with the support of external consultants when necessary. It should also be ensured that the trainings are demonstrable before regulatory authorities.

IT teams should be involved in the process from the beginning.

It is critical to integrate the new policies established under DORA into the existing IT infrastructure. Therefore, involving IT teams in compliance processes at an early stage will both increase applicability and enable DORA compliance with minor revisions to existing systems.

Intra-group structures should be considered.

Organizations located within the EU and subject to DORA are often dependent on the IT infrastructures of their non-EU parent companies. Therefore, obligations not only within the EU but also across the group need to be addressed in a balanced manner. This requires coordination and flexibility between EU and non-EU teams.

Contract updates take time, but standardized templates simplify the process.

DORA requires new provisions to be introduced into IT service contracts. Renegotiating such contracts will take time. However, industry-standard contract templates and negotiation guides that separate the "must-haves" from the "nice-to-haves" can significantly speed up the process. Prioritization, starting with high-risk suppliers first, is another effective method.

DORA compliance requires regular review.

DORA's reglementary framework remains in flux. New statutes are being published, existing guidelines are being updated and authorities' expectations are evolving. Firms' IT infrastructures are also dynamic in nature. Therefore, policies adopted in light of DORA should be reviewed periodically. As a matter of fact, DORA requires annual reviews in many cases. In this regard, using annual checklists is an effective way to ensure the sustainability of review processes.

Source: <https://www.jdsupra.com/legalnews/the-last-piece-of-dora-falls-into-place-4253588>



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