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Important Developments Regarding the Protection of Personal Data in 2026

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Personal Data Protection Law ("**Law**") completed its tenth year in April 2026. As detailed in the 2025 Presidential Annual Program and the 2026-2028 Medium-Term Program, efforts related to the process of harmonization with the European Union *acquis*, most notably the General Data Protection Regulation ("**GDPR**"), are accelerating and taking concrete shape.[1] Accordingly, during the first half of the year, the Personal Data Protection Authority ("**Authority**") and the Personal Data Protection Board ("**Board**") issued numerous principle decisions, announcements, and guidelines. Furthermore, significant developments have occurred regarding administrative penalties under personal data protection law and findings concerning the Law, including a decision of the Constitutional Court. In this article, we examine the key developments relating to personal data protection and data privacy in Türkiye during the first half of 2026 in chronological order.

Board Decisions, Authority Announcements and Guidelines

A. Updated Administrative Fine Amounts Applicable Under the Law for the Year 2026[2]

On 31 December 2025, the Authority published a table setting out the updated administrative fines prescribed under Article 18 of the Law for the year 2026.

[1] Presidency of the Republic of Türkiye, Presidency of Strategy and Budget, "2025 Yılı Cumhurbaşkanlığı Yıllık Programı", October 2024, p. 88, Tedbir 359.2, https://www.sbb.gov.tr/wp-content/uploads/2024/11/2025-Yili-Cumhurbaskanligi-Yillik-Programi-05112024.pdf, accessed 18 June 2026; Presidency of the Republic of Türkiye, Presidency of Strategy and Budget, "The Medium Term Program (2026–2028)", September 2025, p. 45, https://www.sbb.gov.tr/wp-content/uploads/2025/10/Medium-Term-Program-2026-2028.pdf, accessed 18 June 2026.

[2] Personal Data Protection Authority, "Administrative Fine Amounts under the Personal Data Protection Law No. 6698", https://www.kvkk.gov.tr/Icerik/8291/Administrative-Fine-Amounts-Under-Personal-Data-Protection-Law-No-6698, accessed 18 June 2026.

Accordingly, the administrative fines applicable for 2026 have been determined as follows:

Article	Relevant Article of the Law	Description	Penalty Amount in 2026 (TRY)
18/1/a	10	Failure to fulfil the obligation to inform data subjects	85,437 - 1,709,200
18/1/b	12	Failure to comply with obligations relating to data security	256,357 - 17,092,242
18/1/c	15	Failure to comply with decisions of the Board	427,263 - 17,092,242
18/1/ç	16	Failure to comply with the obligations regarding registration with and notification to the Data Controllers Registry	341,809 - 17,092,242
18/1/d	9	Failure to fulfil the notification obligation stipulated under paragraph five of Article 9	90,308 - 1,806,177

B. Public Announcement Dated 12 January 2026 Regarding the Implementation Principles of the Board's Decision No. 2025/1572 Dated 4 September 2025[3]

Pursuant to the decision, it was determined that, with respect to data controllers that do not maintain accounting records on a balance sheet basis and therefore do not have an annual financial balance sheet, the exemption criteria for registration with the Data Controllers Registry Information System ("**VERBIS**"), as set out in the Board Decision No. 2018/87 dated 19 July 2018 updated by the Board Decision No. 2025/1572 dated 4 September 2025, shall be assessed solely on the basis of the annual number of employees. Accordingly, the conditions for exemption from the VERBIS registration requirement for 2026 are as follows:

[3] Personal Data Protection Authority, "Kişisel Verileri Koruma Kurulunun 04.09.2025 tarihli ve 2025/1572 sayılı Kararının Uygulama Esaslarına İlişkin Kamuoyu Duyurusu", 12 January 2026, https://www.kvkk.gov.tr/Icerik/8577/kisisel-verileri-koruma-kurulunun-04-09-2025-tarihli-ve-2025-1572-sayili-kararinin-uygulama-esaslarina-iliskin-kamuoyu-duyurusu, accessed 18 June 2026.

- Natural or legal person data controllers whose principal activity does not involve the processing of special categories of personal data and who:
    - employ fewer than 50 employees annually; and
    - have an annual financial balance sheet total of less than TRY 100 million;
- Natural or legal person data controllers whose principal activity involves the processing of special categories of personal data and who:
    - employ fewer than 10 employees annually; and
    - have an annual financial balance sheet total of less than TRY 10 million.

C. Recommendations Issued by the Authority on 12 January 2026 for Parents of Children Using Artificial Intelligence Tools[4]

In its recommendations, the Authority included guidance such as selecting age-appropriate applications for children's use of artificial intelligence, raising awareness that information obtained through AI tools may not always be accurate or reliable, being cautious of fake content, and exercising caution when sharing photos and videos. The Authority also issued warnings to children about sharing personal data via artificial intelligence tools. Additionally, a 10-point checklist was published to enable parents to assess whether the artificial intelligence applications used are appropriate for children.

D. Public Announcement Issued by the Authority on 14 January 2026 Concerning Push Notifications Delivered via Mobile Applications[5]

The Authority determined that, in cases where push notifications sent via mobile applications are used as a "single consent" mechanism covering multiple purposes at once, users who wish to consent to one purpose are effectively required to consent to the others as well. This undermines the element of free will required for valid explicit consent and, therefore, does not constitute a lawful basis for processing personal data. In this context, it was emphasized that such consent processes should be reviewed considering the principles of "granular explicit consent" and "specificity", and that application architectures should be redesigned to separate notification purposes and enable users to manage their preferences accordingly.

[4] Personal Data Protection Authority, "Yapay Zekâ Araçları Kullanan Çocukları İçin Ebeveynlere Yönelik Tavsiyeler", https://www.kvkk.gov.tr/SharedFolderServer/CMSFiles/MTY5NjRmZGEyY2I3ZDY.pdf, accessed 18 June 2026.

[5] Personal Data Protection Authority, "Mobil Uygulamalar Üzerinden Gönderilen Anlık Bildirimlere İlişkin Kamuoyu Duyurusu", https://www.kvkk.gov.tr/Icerik/8578/mobil-uygulamalar-uzerinden-gonderilen-anlik-bildirimlere-iliskin-kamuoyu-duyurusu, accessed 18 June 2026.

E. The Authority's Public Announcement Dated 29 January 2026 on the Use of Foreign-Origin Communication Applications in Public Institutions[6]

The announcement was issued following reports and complaints alleging that public employees were being compelled to use foreign-origin communication applications such as WhatsApp, to join various groups on such applications, and that instructions, directives, official documents, and records were being shared through these platforms.

The Authority recalled the provisions of Presidential Circular No. 2019/12, which encourage the use of domestic communication applications and prohibit the sharing of classified information through mobile applications. The Authority further stated that the sharing of information and documents containing personal data via foreign-origin applications must comply with the data processing conditions set out in Articles 5 and 6 of the Law.

The announcement emphasized that data processing activities carried out in violation of the Law may be subject to complaints or *ex officio* investigations and that disciplinary measures may be imposed on public personnel found responsible for such violations. It was also stressed that public employees' mobile phone numbers constitute personal data and that their use in institutional processes must be based on a lawful data processing condition.

F. Board Principle Decision No. 2026/266 of 11 February 2026 on the Use of a Loyalty Card Member's Mobile Phone Number or Loyalty Card Number by a Third-Party During Purchases[7]

The Board's Principle Decision, published in the Official Gazette dated 28 February 2026, and numbered 33182, concerns the practice whereby a third party provides a loyalty card holder's mobile phone number or card number at the point of sale and completes a transaction using the loyalty card without any verification being carried out.

The Board assessed that such practice cannot be based on any personal data processing condition and further concluded that recording invoice and customer transaction information relating to purchases made by third parties in the loyalty card holder's account may violate the principle that personal data must be accurate and, where necessary, kept up to date. It was also stated that contractual provisions in loyalty card membership agreements assigning responsibility to the user not to allow

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[6] Personal Data Protection Authority, "Kamu Kurumlarında Yurt Dışı Menşeli Haberleşme Uygulamaları Kullanımına İlişkin Kamuoyu Duyurusu", 29 January 2026, https://www.kvkk.gov.tr/Icerik/8607/kamu-kurumlarinda-yurt-disi-menseli-haberlesme-uygulamalari-kullanimina-iliskin-kamuoyu-duyurusu, accessed 18 June 2026.

[7] Personal Data Protection Board, Principle Decision numbered 2026/266 and dated 11 February 2026.

third-party use of the card do not relieve the data controller's obligations regarding data security under Article 12 of the Law.

In this context, the Board decided that practices allowing third parties to carry out transactions through loyalty cards without any verification must be discontinued. It further required the establishment of appropriate verification mechanisms to ensure that transactions such as membership creation, earning or redemption of points, and access to discounts and promotional benefits are carried out with the data subject's knowledge and consent. The Board stated that different verification methods may be adopted depending on the characteristics of the relevant categories of data subjects and the risk level of the transaction concerned, and granted data controllers a six-month compliance period starting from the publication of the Principle Decision in the Official Gazette.

An announcement regarding the decision was also published on 28 February 2026.[8]

G. Principle Decision No. 2026/347 of 18 February 2026 on the Requirement for Data Controllers to Prepare Explicit Consent Texts and Information Notices Separately

The Board's Principle Decision, published in the Official Gazette No. 33203 dated 24 March 2026, was adopted in response to a number of unlawful practices frequently encountered in practice. These include presenting the explicit consent text and the privacy notice in a single, intertwined document; requesting the data subject's approval or consent for the fulfillment of the duty to inform; using documents prepared by other data controllers without adapting them to the specific data processing activities in question; and providing texts that are not clear, plain or understandable, are incomplete, misleading, or unnecessarily lengthy.[9] The Board emphasized that the duty to inform is not contingent upon the data subject's request or consent and must be fulfilled before the commencement of any personal data processing activity, irrespective of the legal basis on which the processing is based.

Accordingly, where a data processing activity is based on the grounds of explicit consent, the privacy notice and the explicit consent text must be prepared as separate documents under distinct headings. Even where both documents are presented on the same page, separate declarations must be obtained for each document. Where the processing activity is based on another legal ground provided under the Law, no separate explicit consent text should be presented to the data subject. In

[8] Personal Data Protection Authority, "Sadakat Kart Üyeliği Bulunan Bir Kişinin Cep Telefonu Numarasının veya Sadakat Kart Numarasının Üçüncü Bir Kişi Tarafından Alışveriş Esnasında Kullanılması Hakkında İlke Kararı", 28 February 2026, https://www.kvkk.gov.tr/Icerik/8670/sadakat-kart-uyeligi-bulunan-bir-kisinin-cep-telefonu-numarasinin-veya-sadakat-kart-numarasinin-ucuncu-bir-kisi-tarafindan-alisveris-esnasinda-kullanilmasi-hakkinda-ilke-karari, accessed 18 June 2026.

[9] Personal Data Protection Board, Principle Decision numbered 2026/347 and dated 18 February 2026.

such cases, the data controller may only obtain confirmation that the privacy notice has been read and understood; however, the data subject should not be asked to approve or consent to the data processing activities described therein.

An announcement regarding the decision was also published on 24 March 2026.[10]

H. The Authority's "The Risk Behind QR Codes: Quishing" Guidance Document of 26 February 2026[11]

The document defines "quishing" — a combination of the words "QR" (quick response) and "phishing" — as a phishing technique carried out through QR codes. It provides explanations regarding how quishing attacks are conducted and how they may be identified.[12] The document also sets out the following precautions that individuals should take against quishing attacks:[13]

- Being cautious when scanning QR codes displayed in public places;
- Verifying the source of a QR code;
- Using trusted QR code reader applications;
- Verifying the URL or link to which a QR code directs the user before proceeding;
- Staying vigilant against requests for personal information; and
- Strengthening device and account security.

I. Principle Decision No. 2026/348 of 18 February 2026 on the Display of Apartment/Residential Complex Residents' Debt Information in Common Areas[14]

The Principle Decision of the Board, published in the Official Gazette No: 33210 dated 31 March 2026, concerns the display of personal data of apartment or residential complex residents, such as their names, surnames, apartment numbers, outstanding debt amounts, duration of payment delay, number of default periods, and whether they are owners or tenants, in common areas including elevators,

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[10] Personal Data Protection Authority, "Veri Sorumluları Tarafından Açık Rıza ve Aydınlatma Metinlerinin Ayrı Ayrı Düzenlenmesi Gerektiği Hakkında Kişisel Verileri Koruma Kurulunun 18.02.2026 Tarihli Ve 2026/347 Sayılı İlke Kararına İlişkin Kamuoyu Duyurusu", 24 March 2026, https://www.kvkk.gov.tr/Icerik/8710/veri-sorumlulari-tarafindan-acik-riza-ve-aydinlatma-metinlerinin-ayri-ayri-duzenlenmesi-gerektigi-hakkinda-kisisel-verileri-koruma-kurulunun-18-02-2026-tarihli-ve-2026-347-sayili-ilke-kararina-iliskin-kamuoyu-duyurusu, accessed 18 June 2026.

[11] Personal Data Protection Authority, "QR Kodlarla Gelen Risk: Quishing", February 2026, https://www.kvkk.gov.tr/SharedFolderServer/CMSFiles/MTY5OWVmNzMzOWE4YWM.pdf, accessed 18 June 2026.

[12] *Id.*, pp. 4, 6-8.

[13] *Id.*, pp. 9-10.

[14] Personal Data Protection Board, Principle Decision numbered 2026/348 and dated 18 February 2026.

building entrances, and corridors. The Board held that, under Condominium Law No. 634, co-owners have a right to obtain information regarding common expenses and debts, and that certain data disclosures may fall within the conditions for processing of personal data, namely, where it is "explicitly provided for by law" or "necessary for the establishment, exercise or defense of legal claims." However, it stressed that the manner in which such information is disclosed must also comply with the general principles of the Law and the provisions on data security.

In this context, the Board found that displaying lists containing personal data in common areas and thereby making them accessible to an indefinite number of individuals is not based on any of the legal grounds set out in Article 5 of the Law and constitutes a breach of the data security obligations under Article 12. The Board further stated that such notifications should instead be delivered through channels accessible only to the relevant individuals, such as closed email or messaging groups, or applications designated for this purpose.

An announcement regarding the decision was also published on 31 March 2026.[15]

J. The Authority's Guidance Document on the Use of Generative Artificial Intelligence Tools in the Workplace, Published in February[16]

The document provides an overview of the use of generative artificial intelligence tools in the workplace and addresses the concept of "shadow AI," which is defined as the uncontrolled use of such tools. It further outlines the associated risks, including issues relating to auditability and accountability, decision-making quality and accuracy, protection of intellectual property rights and trade secrets, loss of corporate reputation and trust, information security and cybersecurity, and the protection of personal data.[17]

An announcement on the matter was also published on 5 March.[18]

[15] Personal Data Protection Authority, "Toplu Yapılarda Apartman/Site Sakinlerine Ait Borç Bilgilerinin Ortak Yerlere Asılması Hakkında Kişisel Verileri Koruma Kurulunun 18.02.2026 Tarihli ve 2026/348 Sayılı İlke Kararına İlişkin Kamuoyu Duyurusu", 31 March 2026, https://www.kvkk.gov.tr/Icerik/8719/toplu-yapilarda-apartman-site-sakinlerine-ait-borc-bilgilerinin-ortak-yerlere-asilmasi-hakkinda-kamuoyu-duyurusu, accessed 18 June 2026.

[16] Personal Data Protection Authority, "İş Yerlerinde Üretken Yapay Zekâ Araçlarının Kullanımı", February 2026, https://www.kvkk.gov.tr/SharedFolderServer/CMSFiles/MTY5YTdkNjdjNzJlMjM.pdf, accessed 18 June 2026.

[17] *Id.*, s. 4-9.

[18] Personal Data Protection Authority, "İş Yerlerinde Üretken Yapay Zekâ Araçlarının Kullanımı", 5 March 2026, https://www.kvkk.gov.tr/Icerik/8674/is-yerlerinde-uretken-yapay-zeka-araclarinin-kullanimi, accessed 18 June 2026.

K. The Authority's Document on Agentic Artificial Intelligence, Published in February[19]

The document addresses "agentic AI," which is defined as integrated systems capable of assessing environmental conditions, adapting to changing circumstances, and initiating actions autonomously at varying levels in order to achieve specified objectives.[20]

It outlines potential applications of agentic AI systems as well as the associated risks. In this context, the document notes that the following principles may be taken into consideration in terms of personal data protection:[21]

- Establishing measures to ensure an appropriate level of transparency, considering the nature of the tasks performed by the systems and the risks that may arise;
- Ensuring that the personal data used to generate outputs in agentic AI systems is accurate;
- Clearly defining the roles and responsibilities of the actors involved in the development and deployment of agentic AI systems;
- Systematically incorporating the principles of privacy by design and privacy by default throughout the lifecycle of agentic AI systems with regard to the protection of personal data;
- Adopting risk assessment mechanisms that ensure the systematic identification and management of risks that may arise throughout the lifecycle of agentic AI systems;
- Reviewing existing data protection and governance mechanisms in light of the structural characteristics of agentic AI systems and conducting awareness-raising and training activities for individuals involved in the use or operation of such systems regarding their functioning, limitations of use, and potential risks.

An announcement on the matter was also published on 12 March 2026.[22]

[19] Personal Data Protection Authority, "Etken Yapay Zekâ (*Agentic AI*)", February 2026, https://www.kvkk.gov.tr/SharedFolderServer/CMSFiles/MTY5YWE4ZDE0NWYwMWI.pdf, accessed 18 June 2026.

[20] *Id.*, pp. 3-4.

[21] *Id.*, pp. 17-40.

[22] Personal Data Protection Authority, "Etken Yapay Zekâ (Agentic AI)", 12 March 2026, https://www.kvkk.gov.tr/Icerik/8683/etken-yapay-zeka-agentic-ai, accessed 18 June 2026.

L. The Authority's Public Announcement of 16 March 2026 on the Notification of Personal Data Processed in Activities Conducted Through Partnerships, Consortia, Ordinary Partnerships, and Similar Structures to VERBIS[23]

The announcement reaffirmed the principles set out in the Board's Decision No. 2021/569 dated 9 June 2021. Accordingly, it was emphasized that business partnerships, consortia, ordinary partnerships, and similar structures should not create separate VERBIS registrations in their own name, as they do not possess a legal personality distinct from the parties constituting the partnership. Instead, it should first be determined whether each partner is individually subject to the obligation to register with VERBIS, and that those partners who are subject to such an obligation must include in their own VERBIS registrations, alongside their own processing activities, information on personal data processed within the framework of the partnership's activities.

M. The Board's Principle Decision No. 2026/921, dated 29 April 2026, on the Processing of Biometric Data for Employee Attendance Tracking Purposes[24]

In the Principle Decision published in the Official Gazette No. 33273 on 2 June 2026, the Board addressed the use of biometric identification systems, including fingerprint recognition, facial recognition, iris scanning, and retina scanning, for the purposes of employee attendance and working time monitoring.

The Board stated that, although employers are required to monitor and document employees' working hours, there is no explicit legal provision authorizing such monitoring to be carried out through the processing of biometric data. It further assessed that explicit consent would, as a rule, not provide a sufficient legal basis for the processing of biometric data for attendance and working time monitoring purposes, having regard to the structural imbalance of power inherent in the employment relationship, the possibility that employees may face adverse consequences if they refuse to give or subsequently withdraw their consent, and the incompatibility between the revocable nature of consent and the continuous operation of such systems.

[23] Personal Data Protection Authority, "İş Ortaklığı/Konsorsiyum/Adi Ortaklık Gibi Yapılar Nezdinde Gerçekleştirilen Faaliyetlerde İşlenen Kişisel Verilerin VERBİS'e Bildirimi Hakkındaki Kamuoyu Duyurusu", 16 March 2026, https://www.kvkk.gov.tr/Icerik/8692/is-ortakligi-konsorsiyum-adi-ortaklik-gibi-yapilar-nezdinde-gerceklestirilen-faaliyetlerde-islenen-kisisel-verilerin-verbis-e-bildirimi-hakkindaki-kamuoyu-duyurusu, accessed 18 June 2026.

[24] Personal Data Protection Board, Principle Decision numbered 2026/921 and dated 29 April 2026.

The Board also emphasized that biometric data processing activities must be assessed separately in terms of suitability, necessity, and proportionality. It concluded that, where less intrusive alternatives are available, the use of biometric systems for attendance and working time monitoring would not satisfy the principle of proportionality, even where the data subject has provided valid explicit consent. Accordingly, the Board stated that attendance and working time monitoring should instead be carried out through alternative methods, such as password-protected card or PIN-based systems, signature and paper-based attendance logs, RFID/NFC identification cards, or manual registration under supervisory oversight.

An announcement regarding the decision was also published on 2 June 2026.[25]

N. Announcement of the Authority Dated 21 May 2026 on the Binding Corporate Rules Application[26]

In the announcement, the Authority stated that the application for Binding Corporate Rules submitted to it by Sosyo-Plus Bilgi Bilişim Teknolojileri Danışmanlık Hizmetleri A.Ş. ("**Insider One**") had been reviewed and approved on 20 May 2026.

Accordingly, Insider One has become the first company in Türkiye to implement Binding Corporate Rules, one of the appropriate safeguards required for the transfer of personal data abroad, following the comprehensive amendments introduced in 2024.

O. The Authority's Public Announcement Dated 8 June 2026, on Points to be Observed in the Use of Security Camera Systems in Apartment Buildings[27]

The announcement states that the installation of security camera systems in apartment buildings or residential compounds is permissible for legitimate purposes such as the protection of common areas, ensuring general security, and safeguarding the interests of unit owners. However, since video recording constitutes a personal data

[25] Personal Data Protection Authority, "Mesai Takibi Amacıyla Biyometrik Veri İşlenmesi Hakkında Kişisel Verileri Koruma Kurulunun 29.04.2026 Tarihli ve 2026/921 Sayılı İlke Kararına İlişkin Kamuoyu Duyurusu", 2 June 2026, https://www.kvkk.gov.tr/Icerik/8762/mesai-takibi-amaciyla-biyometrik-veri-islenmesi-hakkinda-kisisel-verileri-koruma-kurulunun-29-04-2026-tarihli-ve-2026-921-sayili-ilke-kararina-iliskin-kamuoyu-duyurusu, accessed 18 June 2026.

[26] Personal Data Protection Authority, "Bağlayıcı Şirket Kuralları Başvurusu Hakkında Duyuru", 21 May 2026, https://www.kvkk.gov.tr/Icerik/8757/baglayici-sirket-kurallari-basvurusu-hakkinda-duyuru, accessed 18 June 2026.

[27] Personal Data Protection Authority, "Apartmanlarda Güvenlik Kamerası Sistemi Kullanımında Dikkat Edilecek Hususlara Dair Kamuoyu Duyurusu", 8 June 2026, https://www.kvkk.gov.tr/Icerik/8769/apartmanlarda-guvenlik-kamerasi-sistemi-kullaniminda-dikkat-edilecek-hususlara-dair-kamuoyu-duyurusu, accessed 18 June 2026.

processing activity, camera systems must be operated in compliance with both the Law and the Condominium Ownership Law.

The Authority emphasized that camera locations should be determined in a manner that does not infringe upon residents' reasonable expectation of privacy. Cameras should not be installed in stairwells or in areas where opening an apartment door would allow the interior of the unit to be viewed. Intrusive features such as facial recognition and audio recording should not be used; camera angles should be kept narrow, and unnecessary areas should be masked. Further, because elevators are confined, narrow, and closed spaces, any surveillance conducted therein must be specifically justified, recordings should be retained only for a reasonable period, access should be restricted to authorized persons, the obligation to inform data subjects must be fulfilled, and appropriate technical and administrative measures must be implemented.

P. The Authority's Public Announcement Dated 8 June 2026 on Points to be Observed in the Use of Security Camera Systems in Workplaces[28]

The announcement states that employers may use security camera systems in workplaces within the scope of their legal obligations to protect employees' personality rights and ensure their health and safety; however, the purpose of processing must be clearly and specifically determined in advance on a case-by-case basis, and camera usage must comply with the principles of data minimization and proportionality.

The Authority noted that cameras installed for workplace security, crime prevention, or the protection of occupational health and safety must not be used for the general or abstract monitoring of employees' attendance, performance, or discipline. Furthermore, cameras should not be installed in areas where there is a heightened expectation of privacy, such as restrooms, changing rooms, prayer rooms, and rest areas.

The announcement emphasized that camera position, viewing angle, zoom capabilities, monitoring frequency, and audio recording functions should be assessed with regard to the severity of the intrusion upon privacy. Employees must be properly informed, recordings should be retained for the shortest possible period, automated deletion mechanisms should be established, access should be restricted to authorized personnel, and procedures concerning the security and confidentiality of recordings should be implemented.

[28] Personal Data Protection Authority, "İş Yerlerinde Güvenlik Kamerası Sistemi Kullanımında Dikkat Edilecek Hususlara Dair Kamuoyu Duyurusu", 8 June 2026, https://www.kvkk.gov.tr/Icerik/8770/is-yerlerinde-guvenlik-kamerasi-sistemi-kullaniminda-dikkat-edilecek-hususlara-dair-kamuoyu-duyurusu, accessed 18 June 2026.

Q. The Authority's Public Announcement dated 23 June 2026 on Live Broadcasts Made by Municipalities for Tourism Promotion Purposes[29]

The Announcement noted that live internet broadcasts made through cameras installed by municipalities in public spaces for tourism promotion purposes are considered personal data processing activity within the scope of the Law, as they involve the ability to view identifiable facial images of individuals and vehicle licence plates. The practice was assessed in light of the following conditions for processing personal data: "processing expressly provided for by law" and "processing necessary for the legitimate interests of the data controller, provided that such processing does not prejudice the fundamental rights and freedoms of the data subjects".

In its assessment, the Authority emphasized that there is no explicit statutory provision authorizing municipalities to conduct continuous live camera broadcasts for tourism promotion purposes. It further observed that individuals using public spaces for socializing, leisure, and recreation have a reasonable and objectively justifiable expectation that their activities will not be subject to ongoing monitoring. Accordingly, the live broadcasting of such spaces was considered to interfere with the right to respect for private life. The Authority also highlighted that the broadcasts are accessible to an unlimited audience and may be misused for malicious purposes, creating a risk of serious and potentially irreversible harm to the individuals concerned. Considering these factors, it concluded that the interference was not proportionate. Municipalities were therefore called upon to discontinue existing live-streaming activities that result in the processing of personal data and to pursue tourism promotion through alternative methods that do not involve the processing of personal data.

Constitutional Court Decision Dated 16 June 2026

In its decision with application number 2020/32193, published in Official Gazette No. 33282 dated 16 June 2026, the Constitutional Court held that the administrative fine imposed by the Board, which departed from the statutory minimum prescribed by the Law, constituted a violation of the principle of legality in crimes and punishments as guaranteed under Article 38 of the Constitution and Article 2 of the Turkish Criminal Code No. 5237.[30]

[29] Personal Data Protection Authority, "Belediyelerin Turistik Tanıtım Amacıyla Yaptığı Canlı Yayınlar Hakkında Kamuoyu Duyurusu", 23 June 2026, https://www.kvkk.gov.tr/Icerik/8777/belediyelerin-turistik-tanitim-amaciyla-yaptigi-canli-yayinlar-hakkinda-kamuoyu-duyurusu, erişim 23 June 2026.

[30] Plenary of the Constitutional Court, Decision *Viennalife Emeklilik ve Hayat A.Ş.*, application numbered 2020/32193, dated 27 January 2026, para. 45.

As grounds for its conclusion, the Court noted that, under the Law, where personal data has been made public by the data subject, the data subject's explicit consent is not required for its processing. However, the Law does not contain clear provisions as to how such data should be made public, the purpose of such public disclosure, or whether the use of personal data in a manner incompatible with the purpose of its public disclosure is subject to any penalties. The Court further observed that explanations regarding the purpose of disclosure had been provided only in the Authority's Guidelines on the Application of the Law on the Protection of Personal Data. Accordingly, it concluded that the imposition of the administrative fine in question was made possible only through an unforeseeably broad interpretation of the statutory provision.[31]

Having found a violation of the constitutional principle of legality in crimes and punishments, the Constitutional Court determined that there was no need to examine the applicant's claims regarding violations of the right to a fair trial and the right to property, while also granting the applicant's request for a retrial on the basis of the identified violation of the legality principle.[32]

This Constitutional Court decision is significant because it highlights the relationship between the obligations established under personal data protection legislation and the administrative sanctions that may be imposed by the Board for violations of those obligations.

Assessment

As part of its commitment to achieving GDPR alignment, Türkiye continues to strengthen and further develop its legal and practical framework governing the protection of personal data. In this context, considering international approaches and technological developments, Türkiye continues its efforts to proactively foster awareness among legal practitioners and interested parties and to resolve emerging issues in a manner consistent with the protection of fundamental rights and sound legal reasoning. The developments in the first half of 2026 have once again demonstrated that personal data protection law is not merely a field confined to documentation-based compliance processes. Rather, it remains a dynamic area in which practical issues affecting numerous products and services encountered in everyday life are actively discussed and addressed.

[31] *Id.*, para. 43.

[32] *Id.*, paras. 46, 48.

The Legal Mechanics of Cross-Border Accelerated Bookbuilds

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At 6:10 p.m. in Istanbul, Borsa İstanbul's equity market is shut. For most of the market, that is the end of trading. However, for lawyers, investment banking partners, and major corporate shareholders who live inside accelerated equity deals, it is the starting gun. When the screens go dark in Istanbul, London is still wide awake at 4:10 p.m., and New York is settling into the middle of its trading day. So, a single transaction can keep moving across three time zones long before Turkish markets open again.

An accelerated bookbuild ("ABB") is "*a way of placing shares with investors in a short space of time once the announcement of the proposed fundraising has been released with little or no marketing.*"[1] Overnight, a Turkish cross-border ABB activates three legal systems at once: Turkish disclosure rules,[2] UK/EU market-abuse and institutional-offer regimes,[3] and U.S. private-placement and anti-fraud rules[4] where qualified institutional buyers' ("QIB") capital comes in. There is no global rulebook holding them together.[5] One misstep before the market reopens, and the speed that made the deal possible becomes the source of its liability.

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[1] LexisNexis, "Equity capital markets—glossary of terms", https://www.lexisnexis.co.uk/legal/guidance/equity-capital-markets-glossary-of-terms, accessed 29 June 2026.

[2] Communiqué on Material Events Disclosure (II-15.1), Official Gazette No. 28891, 23 January 2014 (Türkiye); Capital Markets Board of Türkiye, "Guide on Material Events Disclosure" ("CMB Guide"), https://spk.gov.tr/data/61e36ca51b41c61270320820/0dc4659f7005c7d2bdc5f151a7014ba8.pdf, accessed 29 June 2026.

[3] Market Abuse Regulation; Regulation (EU) 2017/1129 – the EU Prospectus Regulation.

[4] Rule 144A (17 C.F.R. § 230.144A); Regulation S of the US Securities Act of 1933.

[5] LexisNexis, "Accelerated Bookbuild" *(Legal Glossary)* https://www.lexisnexis.com/en-gb/legal/glossary/accelerated-bookbuild, accessed 29 June 2026 (noting that an ABB is "a market practice term, not defined in legislation or case law").

Overnight Prospectus Problem

A prospectus is the regulator-approved disclosure document given to potential investors before securities are offered to the public or admitted to trading, describing the securities, the issuer, and the attendant risks so that investors can make an informed assessment. The prospectus is the slowest form of legal discipline capital markets have as it demands full disclosure, regulator review, and a liability structure built around retail investors. An ABB has no room for that timetable. Yet in Türkiye, just as in the UK, EU, and U.S., the faster route does not mean abandoning disclosure, it means moving into a different regime. Public offerings require a prospectus under the Share Communiqué, while Article 13 permits listed companies to increase capital through share sales that bypass the public-offering process.[6] Even so, these sales require an issue certificate approved by the Capital Markets Board (also known as "Sermaye Piyasası Kurulu") ("SPK"), and when executed on the Borsa İstanbul's relevant market or platform, pricing and tradability fall under the exchange rulebook rather than a retail prospectus regime.[7]

When it comes to existing-share blocks, Borsa İstanbul's wholesale procedures are the operational backbone. They cover sales of listed shares held by existing shareholders and capital increases via private placement.[8] An application to Borsa İstanbul is required, along with a Central Securities Depository and Trade Repository of the Turkish Capital Markets (also known as "Merkezi Kayıt Kuruluşu") ("MKK") balance report confirming whether shares are tradable, a Public Disclosure Platform (also known as "Kamuyu Aydınlatma Platformu") ("KAP") disclosure on the application day, and execution no earlier than the business day following disclosure once exchange approval is in hand.[9] Trades are expected to clear through the Borsa İstanbul equity settlement process by default, but parties can step outside it, at which point the exchange, Takasbank,[10] and MKK disclaim liability for settlement.[11]

The UK and EU reach similar practical results, but through different paths. Since 19 January 2026, the Public Offers and Admissions to Trading Regulations make public offers in the UK unlawful unless the offer is of a specified kind or a general exception applies, and Financial Conduct Authority ("FCA") materials use

[6] Share Communiqué (VII-128.1), Official Gazette No. 28685, 22 June 2013, art. 13.

[7] Borsa İstanbul, "Procedure on Wholesale Transactions Procedures and Principles" ("Wholesale Transactions"), https://www.borsaistanbul.com/files/wholesale-transactions-procedures-and-principles.pdf, accessed 29 June 2026.

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

[9] *Id.*, pp. 3-4, 6.

[10] Takasbank (İstanbul Takas ve Saklama Bankası A.Ş.) is Türkiye's central clearing, settlement, and custody institution for the capital markets, responsible for the clearing and settlement of exchange transactions.

[11] Wholesale Transactions, p. 7.

qualified-investor-only offers as an example of a Schedule 1 exempt offer.[12] The EU takes a parallel but structurally distinct approach, with Article 1(4) of the Prospectus Regulation preserving the classic institutional exemptions, qualified-investor-only offers, high-denomination and limited-offeree structures.[13] The U.S. relies on its familiar pairing of Rule 144A for QIB resales and Regulation S for offshore sales.[14]

Liability does not stop where the prospectus ends. Rule 144A itself says it relates only to Section 5, the Securities Act's registration requirement, which obliges securities to be registered before they are offered or sold, and not to anti-fraud provisions.[15] Section 11 of the Securities Act attaches to false or misleading registration statements, which means it is not the organising liability theory for an exempt ABB.[16] But Rule 10b-5[17] and Section 10(b)[18] remain fully live, and that is what gives the overnight disclosure package so much weight. In practice, lawyers and auditors protect an offering memorandum by going through in detail. They back it up with comfort letters, management certifications, and standard negative-assurance letters, essentially a formal statement confirming that they did not find anything materially inaccurate or misleading. None of these are statutory filings. Instead, they serve as the private offering's defensive shield, often pulled together in a matter of hours rather than months.[19]

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[12] Public Offers and Admissions to Trading Regulations 2024 (SI 2024/105), https://www.legislation.gov.uk/uksi/2024/105/made, accessed 29 June 2026; Financial Conduct Authority, "PRM 1 Introduction, application and prospectus requirement" https://handbook.fca.org.uk/handbook/prm1?date=15-06-2026&timeline=true, accessed 29 June 2026, PRM 1.1.2.

[13] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, https://eur-lex.europa.eu/eli/reg/2017/1129/oj/eng, accessed 29 June 2026, art. 1(4).

[14] Bloomberg Law, "Capital Markets, Overview - Rule 144A/Reg S Debt Offering (Practice Points)", https://www.bloomberglaw.com/external/document/X9GS3MHO000000/capital-markets-overview-rule-144a-reg-s-debt-offering-practice-, accessed 29 June 2026; Thomson Reuters Practical Law, "Rule 144A Offerings Toolkit", https://uk.practicallaw.thomsonreuters.com/2-578-8007?transitionType=Default&contextData=(sc.Default)&firstPage=true, accessed 29 June 2026.

[15] Rule 144A itself says it relates only to Section 5 and not to anti-fraud provisions; Rule 144A, https://www.ecfr.gov/current/title-17/chapter-II/part-230/section-230.144A, accessed 29 June 2026, Preliminary Notes, 1.

[16] 15 U.S.C. § 77k (Securities Act), https://www.govinfo.gov/content/pkg/COMPS-1884/pdf/COMPS-1884.pdf, accessed 29 June 2026, Section 11.

[17] 17 C.F.R. § 240.10b-5.

[18] 15 U.S.C. § 78j(b) (Securities Exchange Act), Section 10(b).

[19] Gary M. Lawrence, "In Search of Reasonableness: The Exercise of Professional Judgment by Underwriters and Its Implication for Judicial Determinations of Reasonableness", American Bar Association Business Law Section, 2022 ("Lawrence"), https://businesslawtoday.org/2022/12/underwriters-professional-judgment-implication-judicial-determinations-reasonableness/, accessed 29 June 2026.

Wall-Crossing Across Borders

Before an ABB formally launches, banks need to check if the market is there. That instinct leads to a legally sensitive step in the process: bringing selected investors over the wall. In form, wall-crossing is relatively straightforward. The disclosing participant checks whether the investor is willing to receive confidential information, flags that the information may constitute inside information, secures confidentiality and no-trade commitments, and finally tests the waters.[20] This is the moment when the deal begins to create a defined and controlled circle of insiders. Both European Securities and Markets Authority's ("**ESMA**") approach to Article 11[21] and the FCA's UK Market Abuse Regulation ("**MAR**") guidance[22] treat market soundings as a formal framework for legitimate disclosure before an announcement, rather than as an extension of ordinary market conversations.

MAR is primarily instrument-focused rather than geographically focused. ESMA is clear that Article 11 market soundings concern potential transactions in instruments falling within the scope of Article 2, instruments admitted to trading, traded, or requested for admission on a regulated market, together with certain linked instruments whose price or value depends on or affects an in-scope instrument.[23] A call run from London to Dubai or Riyadh can still sit comfortably inside the UK or EU market sounding regime if the instrument, or a linked instrument, carries the required venue nexus. The reverse is equally true: not every Turkish equity block handled by a London desk becomes a MAR transaction simply because London bankers are involved. The first real legal question is always the instrument perimeter.

This is the cross-border complication of ABBs. One institutional investor call can simultaneously engage Turkish confidentiality and disclosure planning, UK or EU MAR process discipline where relevant, and U.S. anti-fraud and material non-public information sensitivities if the distribution reaches QIB investors, all at once. The Article 11(4) safe harbour is not automatic; it is available only where the prescribed process is followed. This includes assessing in advance whether the information amounts to inside information, giving the recipient the required disclosures, proper recordkeeping, and later cleansing once the information ceases to be inside

[20] European Securities and Markets Authority, "Final Report - Guidelines on the Market Abuse Regulation - market soundings and delay of disclosure of inside information", 2016, https://www.esma.europa.eu/sites/default/files/library/2016-1130_final_report_on_mar_guidelines.pdf, accessed 29 June 2026.

[21] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC ("Regulation (EU) No 596/2014"), https://eur-lex.europa.eu/eli/reg/2014/596/oj/eng, accessed 29 June 2026, art. 11.

[22] Financial Conduct Authority, "Market Abuse Regulation", https://www.fca.org.uk/markets/market-abuse/regulation, accessed 29 June 2026.

[23] Regulation (EU) No 596/2014, art. 11.

information.[24] An accelerated timetable does not make these requirements any less important. On the contrary, it increases the need for a disciplined process because once a leak occurs, there is no practical room to reconstruct a process that was not followed in the first place.

In Türkiye, KAP adds another layer of urgency. Under SPK's special-circumstances framework, inside information must generally be disclosed without delay. Disclosure may be postponed, however, where this is necessary to protect the issuer's legitimate interests, the delay is unlikely to mislead the public, and confidentiality can be preserved.[25] That makes confidentiality one of the legal conditions that allows the issuer to postpone public disclosure. If a wall-crossed investor in London or New York leaks before launch, the issuer can find itself forced into an unplanned KAP announcement.[26] That, in turn, may weaken the issuer's position on pricing, raise concerns about equal access to information, and disrupt the carefully managed sequence of market sounding, book launch and execution.

Risk Allocation After Midnight

As the order book takes shape, the focus begins to move from securities regulation to contractual risk allocation. In a seller block trade or a privately placed issuance of new shares, the block trade agreement or share purchase agreement determines who bears the consequences if something goes wrong between pricing and settlement.[27]

The relevant Borsa İstanbul documentation identifies some of the basic factual assumptions underlying the transaction. The wholesale transaction application requires confirmation that the shares are not subject to any encumbrance restricting their transfer or circulation and asks the parties to specify whether settlement will occur inside or outside the exchange process.[28] Market-standard ABB documentation develops this framework. Sellers and, where applicable, issuers typically give representations concerning title to the shares, authority and capacity, corporate

[24] Stefano Lombardo and Federico M. Mucciarelli, "Market Soundings: The Interaction between Securities Regulation and Company Law in the United Kingdom and Italy", ECGI – Law Working Paper No. 362/2017, 2017, pp. 320-327.

[25] CMB Guide, pp. 18-20.

[26] *Id.*, p. 20.

[27] Association for Financial Markets in Europe, "Model Block Trade Agreement (Without Backstop)" ("AFME"), https://www.afme.eu/media/anbb21uq/afmeecmsfdmodelblocktradeagreementnonbackstop.pdf, accessed 29 June 2026, art. 3.

[28] Wholesale Transactions, p. 8.

approvals, the accuracy of the disclosure materials, compliance with selling restrictions and the absence of material omissions.[29]

The banks will also require a range of conditions to be satisfied before completion, including the necessary approvals, legal opinions, bringdown confirmations and the continued accuracy of the representations at both pricing and closing.[30] Indemnities complete the allocation of risk by determining the extent to which losses arising from investor claims, disclosure deficiencies or regulatory scrutiny are passed back to the seller or issuer.

A recent English case provides a useful illustration of how these provisions may be interpreted in practice. In *BM Brazil I Fundo de Investimento em Participações Multistrategia v Sibanye BM Brazil (Pty) Ltd (“**BM Brazil**”),*[31] the Commercial Court offered unusually practical guidance on the interpretation of material adverse change and material adverse effect provisions in share purchase agreements. The Court suggested that materiality in an SPA context might begin with a reduction of around 15% to 20% in equity value.[32] It also treated “material” as requiring something significant or substantial;[33] rejected reliance on later “revelatory” events that simply brought an existing problem to light;[34] and held that whether an event “would reasonably be expected” to have the relevant effect should be assessed objectively and prospectively at the time the termination right is exercised.[35] This underscores that material adverse change language should not simply be lifted from acquisition or underwriting precedents. It needs to be tested against the specific risks that could disrupt pricing, closing or settlement in a transaction expected to be completed the following morning.

In Turkish cross-border transactions, the point of failure may be operational rather than connected to the underlying business. A sharp overnight movement in the exchange rate, a mismatch in funding arrangements or poor coordination between the Turkish share settlement and the offshore payment process may prevent completion, even where the issuer’s financial position and enterprise value remain unchanged. Applying the reasoning in *BM Brazil,* such events should not automatically amount to a material adverse change unless the clause has been drafted specifically to cover settlement-system disruption, funding failure or similar execution

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[29] AFME, Annex B.

[30] Lawrence.

[31] *BM Brazil I Fundo De Investimento Em Participacoes Multistrategia & Ors v Sibanye BM Brazil (Pty) Ltd & Anor* [2024] EWHC 2566 (Comm) (10 October 2024), https://www.bailii.org/ew/cases/EWHC/Comm/2024/2566.html, accessed 29 June 2026.

[32] *Id.*, paras. 253-255.

[33] *Id.*, paras. 250-251.

[34] *Id.*, paras. 229-240.

[35] *Id.*, paras. 224-225.

risks. Otherwise, a broadly framed termination right may be introduced into a transaction affected by execution mechanics rather than any decline in enterprise value. This is not a direct holding of *BM Brazil*, but the case has a broader drafting implication when read in the context of Turkish settlement mechanics, which ordinarily requires the shares and purchase price to be exchanged two business days after the trade and allows the parties to settle either through the exchange or outside it.

Lock-up arrangements require the same level of care. In an ABB, the commitment given by the remaining major shareholders not to sell further shares may provide greater support for investor confidence than the discount offered on the shares. In the Turkish context, however, this assurance must be effective at both the contractual and operational levels. The contractual undertaking may be governed by English or New York law and enforceable by the banks, but the mechanics of any subsequent transfer will continue to depend on MKK and Borsa İstanbul.[36] The parties must also consider whether the undertaking is material enough to trigger a KAP disclosure. Therefore, the practical challenge is to structure the contractual commitment, the local transfer process and the applicable disclosure requirements without creating any legal or operational gap between them.

Settlement, Clearance and Next Steps

By 7:30 a.m. in Istanbul, the transaction generally moves to its implementation phase. The remaining tasks are to ensure that the KAP announcement and other public statements are consistent, confirm the final price, determine the settlement method and ensure that the securities transfer and payment can be completed together. Settlement in the Turkish market generally occurs two business days after the trade. Takasbank oversees the corresponding movements of cash and securities, ordinarily on a delivery-against-payment basis,[37] while MKK acts as the central electronic depository in which securities are recorded and transferred. MKK also provides matching infrastructure for off-exchange securities transfers completed independently of payment.[38]

The legal risk during the period between pricing and settlement should not be underestimated. Any disclosure defect discovered in that period may require corrective disclosure, renewed investor consent or confirmation, an assessment of the closing conditions and consideration of the contractual indemnities. Hence, an ABB

[36] AFME, art. 8.

[37] Borsa İstanbul, "Settlement Principles", https://www.borsaistanbul.com/en/markets/equity-market/settlement-principles, accessed 29 June 2026.

[38] Merkezi Kayıt Kuruluşu, "Borsa İstanbul Pay Piyasası" (Borsa İstanbul Equity Market), https://www.mkk.com.tr/saklama-hizmetleri/piyasalar-ve-platformlar/borsa-istanbul-pay-piyasasi, accessed 29 June 2026.

may appear complete once allocations are confirmed, but its most legally sensitive period often begins immediately afterwards.

Conclusion

The ABB is one of the fastest ways to sell listed shares, but it is also legally demanding. Its speed comes from compressing disclosure, diligence, market-abuse controls and settlement planning into hours. This matters increasingly for Turkish issuers, major shareholders and institutional investors as ABBs provide an important route to international institutional capital. These transactions bring together Borsa İstanbul rules, MKK settlement mechanics and SPK disclosure requirements with UK/EU market-abuse standards and U.S. anti-fraud considerations. The success of the transaction depends on bringing those requirements together accurately and efficiently without losing sight of the practical demands of execution.

Arbitral Awards as Protected Possessions: The ECtHR's Evolving Approach to Enforcement Under Article 1 of Protocol No. 1 (*Protection of Property*)

Betül Kahraman

Introduction

The effectiveness of international arbitration ultimately depends on one critical factor: the ability of the successful party to enforce the award. Regardless of the complexity of the dispute, the expertise of the tribunal, or the sophistication of the arbitral process, an arbitral award has little practical value if it cannot ultimately be recognised and enforced by national courts.

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "**New York Convention**") was designed precisely to address this concern. By establishing a uniform framework for the recognition and enforcement of foreign arbitral awards, the New York Convention sought to ensure that final and binding awards would circulate across jurisdictions with minimal judicial interference.[1] The grounds for refusing enforcement were intentionally drafted as limited exceptions.

Yet enforcement disputes continue to arise. Domestic courts occasionally invoke public policy, jurisdictional objections, procedural defects or other grounds to refuse enforcement. In some cases, these objections reflect legitimate concerns recognised by Article V of the New York Convention, such as defects affecting the validity of the arbitration agreement, due process concerns, excess of jurisdiction, irregularities

[1] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), UNCITRAL, 2015, Introduction, Objectives.

in the arbitral process, or violations of public policy.[2] In others, however, they effectively deprive award creditors of the economic value of a final and binding award.

The question that arises is whether such interference is merely an issue of arbitration law or whether it may also engage fundamental rights protected under international human rights instruments.

While most of the European Court of Human Rights' ("**ECtHR**") jurisprudence concerning arbitration has developed under Article 6 of the European Convention on Human Rights ("**ECHR**") and the right to a fair trial, the ECtHR has increasingly examined arbitration-related disputes through the lens of Article 1 of Protocol No. 1 (*Protection of Property*) to the ECHR.[3] Over the last three decades, it has gradually developed a jurisprudence addressing this question. Although the ECtHR has never presented its decisions as a comprehensive doctrine on arbitral award enforcement, its case law reveals a trend. Beginning with legislative interference with arbitral awards, moving through non-enforcement and procedural deficiencies in enforcement proceedings, and culminating in the recent judgment in *BTS Holding A.S. v. Slovakia*, the ECtHR has progressively expanded the protection afforded to arbitral awards under Article 1 of Protocol No. 1.

The Starting Point: Stran Greek Refineries and Stratis Andreadis v. Greece

The foundation of the Court's approach can be traced to its landmark judgment in *Stran Greek Refineries and Stratis Andreadis and Stratis Andreadis v. Greece* ("***Stran Greek Refineries***"), dated 9 December 1994.[4]

The dispute arose out of a refinery construction project and ultimately resulted in an arbitral award rendered against the Greek State.[5] The award was final, binding and enforceable under the applicable contractual framework. However, while judicial proceedings concerning the award were still pending, the Greek legislature enacted a law that retrospectively invalidated the arbitration clause, deprived the arbitral tribunal of jurisdiction, rendered the award ineffective and effectively terminated the pending proceedings.[6]

[2] New York Convention, art. V.

[3] Ursula Kriebaum, "Chapter 66: The European Court of Human Rights and Arbitration", in Stefan M. Kröll, Andrea Kay Bjorklund, et al. (eds), Cambridge Compendium of International Commercial and Investment Arbitration (2023), p. 1981.

[4] ECtHR, Case of Stran Greek Refineries and Stratis Andreadis v. Greece (Application no. 13427/87), 9 December 1994.

[5] *Id.*, paras. 12-14.

[6] *Id.*, paras. 20-23.

The ECtHR found that such legislative intervention violated both Article 6 of the ECHR and Article 1 of Protocol No. 1.[7]

From an arbitration perspective, the judgment established an important principle: a final arbitral award can constitute a "***possession***" under the ECHR.[8] Once a party obtains a final and enforceable award, the State cannot arbitrarily deprive that party of the benefit of the award through subsequent intervention. State action designed to eliminate that right amounted to interference with the applicants' right of property.[9]

Importantly, the ECtHR did not treat the dispute merely as a procedural disagreement concerning arbitration. By treating the monetary entitlement arising from the arbitral award as a protected possession, the ECtHR effectively recognized that the economic value embodied in a final award is protected under Article 1 of Protocol No. 1.[10]

At this case, however, the ECtHR was dealing with a relatively extreme situation involving direct legislative interference. The more difficult question was whether similar protection would extend to situations where the obstacle to enforcement arose not from legislation, but from failures within the enforcement process itself.

From the Award to Its Enforcement: Regent Company v. Ukraine

The Court took an important step in that direction in *Regent Company v. Ukraine* ("***Regent Company***"), dated 3 April 2008.[11]

The case concerned an award rendered by the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry.[12] Although enforcement proceedings had been initiated, the award remained unenforced for years due to a combination of enforcement difficulties, insolvency proceedings and legislative measures imposing restrictions on the forced sale of state-owned assets.[13]

Although *Regent Company* is often discussed as part of the ECtHR's broader non-enforcement jurisprudence in relation to Article 6 of the ECHR, it represents

[7] *Id.*, paras. 50, 75.

[8] *Id.*, paras. 58-62. For a broader overview of the ECtHR's interpretation of the concept of "possessions" and its application to established monetary claims and judgement debts, *see* European Court of Human Rights, Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights - Protection of Property p.12.

[9] *Id.*, paras. 66-67.

[10] *Id.*, paras. 74-75.

[11] ECtHR, Case of Regent Company v. Ukraine, (Application no. 773/03), 3 April 2008.

[12] *Id.*, para. 3.

[13] *Id.*, paras. 9-32.

also an important development in terms of protection of property. In *Regent Company*, the ECtHR's focus shifted from the formal existence of the arbitral award to its practical effectiveness. The underlying concern was not limited to whether the award remained legally valid, but whether the award creditor could actually enjoy the economic benefit that the award was intended to confer.[14] Unlike *Stran Greek Refineries*, the arbitral award itself was never invalidated. The issue was the State's prolonged failure to ensure effective enforcement.

The case demonstrated that the protection afforded by Article 1 of Protocol No. 1 extends beyond the mere existence of a legal entitlement. A creditor who holds a final and enforceable award must also be able to derive practical benefit from it. Where enforcement is frustrated for prolonged periods through state-created obstacles, the economic value represented by the award risks becoming purely theoretical. The judgment therefore shifted the focus from the arbitral award itself to the effectiveness of the enforcement process.[15]

State's Positive Obligation to Enforce: Kin-Stib and Majkić v. Serbia

An important intermediate step in the ECtHR's jurisprudence can be found in *Kin-Stib and Majkić v. Serbia ("**Kin-Stib**")*, dated 20 April 2010.[16] The case concerned the partial non-enforcement of an arbitral award rendered by the Foreign Trade Arbitration Court of the Yugoslav Chamber of Commerce in favour of the applicants.[17] While part of the monetary obligations imposed by the award had been satisfied, the domestic authorities failed to secure the full execution of the award despite lengthy enforcement proceedings.[18]

The ECtHR began its analysis by reiterating the principle under Article 1 of Protocol No. 1: a claim may constitute a protected possession where it is sufficiently established and enforceable.[19] It then expressly extended this reasoning to arbitral awards, observing that it is the State's responsibility to make use of all available legal means in order to enforce a binding arbitral award and to ensure that the enforcement system operates effectively "*both in law and in practice*".[20]

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[14] *Id.*, paras. 59-62.

[15] *See also* ECtHR, Case of Iliria S.R.L. v. Albania (Application no. 31011/09), 5 March 2024, where the ECtHR found a violation of Article 6 due to excessive delays in proceedings relating to the recognition and enforcement of an international arbitral award.

[16] ECtHR, Case of Kin-Stib and Majkić v. Serbia, (Application no. 12312/05), 20 April 2010.

[17] *Id.*, paras. 11-12.

[18] *Id.*, paras.13-27.

[19] *Id.*, para. 83.

[20] *Id.*, para. 83.

Applying these principles, the ECtHR found that the Serbian authorities had failed to take the necessary measures to secure full enforcement of the award and had not provided convincing reasons for that failure.[21] Accordingly, it concluded that the partial non-enforcement of the arbitral award amounted to a violation of Article 1 of Protocol No. 1.[22]

From the perspective of the ECtHR's evolving arbitration jurisprudence, *Kin-Stib* is significant because it confirmed that Article 1 of Protocol No. 1 imposes positive obligations on States to ensure that effective mechanisms exist for its enforcement. In that respect, the case foreshadowed the ECtHR's emphasis later in *BTS Holding v. Slovakia*[23] on the practical effectiveness of enforcement rather than the mere formal existence of an arbitral award.

Procedural Fairness in Enforcement Proceedings: Mont Blanc Trading and Antares Titanium Trading Ltd v. Ukraine

Alongside its developing Article 1 of Protocol No. 1 jurisprudence, the ECtHR has also emphasized that proceedings concerning the recognition and enforcement of arbitral awards must comply with the procedural guarantees of Article 6 of the ECHR in *Mont Blanc Trading Ltd and Antares Titanium Trading Ltd v. Ukraine* ("***Mont Blanc***"), dated 14 January 2021.[24]

The dispute concerned a London Court of International Arbitration award.[25] The applicants sought enforcement of the award in Ukraine while parallel proceedings concerning jurisdiction and the validity of the underlying agreements were ongoing before Ukrainian courts. The domestic courts ultimately refused enforcement and issued a series of decisions adverse to the applicants.[26]

What makes *Mont Blanc* particularly interesting is that the ECtHR's focus was not primarily on the substantive correctness of the refusal to enforce the award. Instead, it concentrated on the fairness of the proceedings themselves. The ECtHR identified significant procedural deficiencies, including the applicants' absence from a crucial

[21] *Id.*, para. 84.

[22] *Id.*, para. 85.

[23] *See* Section VI. Below.

[24] ECtHR, Case of Mont Blanc Trading Ltd and Antares Titanium Trading Ltd v. Ukraine (Application no. 11161/08), 14 January 2021.

[25] *Id.*, paras. 9-15.

[26] *Id.*, paras. 43-49.

hearing due to failures of notification and the domestic courts' failure adequately to address arguments that were central to the dispute.[27]

Unlike in *Stran Greek Refineries*, *Regent Company* and *Kin-Stib*, the ECtHR did not find that the applicants had suffered a separate interference with their property rights. The judgment suggests that not every unsuccessful attempt to enforce an arbitral award will automatically engage Article 1 of Protocol No. 1.[28] In *Mont Blanc*, the ECtHR considered that the issues raised by the applicants were more appropriately addressed through the procedural guarantees of Article 6, focusing its analysis on the fairness of the domestic proceedings rather than on a distinct interference with property rights.

The importance of *Mont Blanc* lies in the recognition that the enforcement proceedings relating to arbitral awards must comply with the procedural guarantees of Article 6.[29] Accordingly, procedural deficiencies that undermine the ability of an award creditor to defend its position may ultimately affect the practical enjoyment of the property rights represented by the award, particularly where they result in judicial determinations that are arbitrary or manifestly unreasonable for the purposes of Article 1 of Protocol No. 1.[30]

The ECtHR's Recent Approach: BTS Holding v. Slovakia

The ECtHR's most significant arbitration-related judgment to date is undoubtedly *BTS Holding A.S. v. Slovakia* ("***BTS Holding***"), dated 30 June 2022.[31]

The dispute arose from the privatization of Bratislava Airport and resulted in a final ICC arbitral award rendered in Paris in favor of BTS Holding.[32] The award ordered the Slovak National Property Fund to pay approximately EUR 1.9 million together with interest. The award became final and binding and was never challenged before the French courts. Nevertheless, Slovak courts refused its enforcement. They relied on a variety of grounds, including alleged defects in the arbitration agreement, formal deficiencies in the award, public policy concerns and considerations relating to public finances.[33]

[27] *Id.*, paras. 68-74, 81-85.

[28] *Id.*, para. 101.

[29] *Id.*, paras. 73, 85.

[30] *Id.*, para. 101.

[31] ECtHR, Case of BTS Holding, A.S. v. Slovakia (Application no. 55617/17), 30 June 2022.

[32] *Id.*, paras. 1-2.

[33] *Id.*, paras. 23-29.

The ECtHR found that several of the reasons advanced by the domestic courts lacked a convincing legal basis. It criticized the courts' treatment of the arbitration agreement, rejected the reliance on formal requirements that were inconsistent with the applicable legal framework and dismissed arguments suggesting that enforcement should be refused because payment would ultimately affect public order.[34]

Most importantly, the ECtHR held that the refusal to enforce the award constituted unjustified interference with the applicant's possessions under Article 1 of Protocol No. 1.[35]

The significance of BTS Holding does not lie in the creation of an entirely new principle. Rather, the judgment crystallizes principles that had been emerging in the Court's earlier case law for decades. *Stran Greek Refineries* established that arbitral awards may give rise to protected property interests. *Regent Company* demonstrated that the effectiveness of enforcement also matters for protection of property. *Kin-Stib* confirmed that States have positive obligations to ensure that effective mechanisms exist for enforcement. *Mont Blanc* confirmed that enforcement proceedings themselves must satisfy the ECHR standards.

The decisive contribution of *BTS Holding* lies in the Court's explicit recognition that an arbitrary refusal to enforce a final and binding arbitral award may itself violate Article 1 of Protocol No. 1.[36]

Unlike *Stran Greek Refineries*, where the interference originated from legislation, or *Regent Company*, where the problem arose from ineffective enforcement, *BTS Holding* concerned a direct judicial refusal to enforce an award. The ECtHR found that the reasons relied upon by the Slovak courts lacked a sufficient legal basis.[37]

The judgment therefore confirms that Article 1 of Protocol No. 1 protects not only the existence of arbitral awards and not only the effectiveness of enforcement mechanisms but also award creditors against arbitrary judicial decisions that prevent enforcement altogether. In that sense, *BTS Holding* represents the culmination of a line of jurisprudence that began with *Stran Greek Refineries* more than thirty years earlier.

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[34] *Id.*, paras. 66-70.

[35] *Id.*, paras. 72-73.

[36] *Id.*, para. 65.

[37] *Id.*, paras. 67-70.

Conclusion

From *Stran Greek Refineries* to *BTS Holding*, the ECtHR has gradually developed a coherent approach to the protection of arbitral awards under Article 1 of Protocol No. 1. What began as protection against legislative interference has expanded to encompass non-enforcement, procedural fairness in enforcement proceedings and, ultimately, arbitrary judicial refusals of enforcement.

For parties to arbitration, this emerging line of authority provides an additional layer of protection where domestic courts depart from internationally accepted enforcement standards. For states, it serves as a reminder that the discretion afforded by the New York Convention is not unlimited. Enforcement defenses may be available, but they must be applied consistently with the ECHR's broader commitment to legal certainty, fairness and the protection of property rights.

This does not mean that every refusal of enforcement will violate the ECHR. The New York Convention continues to recognize legitimate grounds for refusing recognition and enforcement. States remain entitled to deny enforcement where those grounds genuinely exist.[38]

The practical message of the ECtHR's jurisprudence is therefore straightforward. A final arbitral award is more than a procedural outcome. It is increasingly recognized as a protected economic interest, and the ECHR may intervene where state conduct deprives an award creditor of the ability to enforce the award.

[38] *Mont Blanc*, para.101. *See mutatis mutandis* ECtHR, Case of Zagrebačka Banka D.D. v. Croatia (Application no. 39544/05), para. 250.

Emissions Trading Systems and An Analysis of the Turkish Climate Law

Sude Kınık

Introduction

The international legal landscape is undergoing a paradigm shift toward enhanced recognition of both State responsibility and the regulatory oversight of private actors in addressing climate change. The International Court of Justice, in its *Obligations of States in respect of Climate Change Advisory Opinion*, established that the fulfilment of international obligations requires States to exercise due diligence through domestic mitigation measures,[1] which extends beyond public authorities to private actors within a State's jurisdiction.[2] The International Tribunal for the Law of the Sea, in its *Climate Change Advisory Opinion*, also observed that the "*due diligence is particularly relevant in a situation in which the activities in question are mostly carried out by private persons or entities.*"[3] Against this backdrop, States have increasingly turned to market-based instruments, primarily emissions trading systems (ETS).

As a market-based policy tool to reduce greenhouse gas emissions, ETS are increasingly serving as a key policy mechanism for governments committed to addressing climate change. By 2026, 41 ETS operate globally, covering 26% of worldwide greenhouse gas (GHG) emissions[4] across jurisdictions that account for 63% of global

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[1] *Obligations of States in respect of Climate Change*, the International Court of Justice, Advisory Opinion dated 23 July 2025, para. 252.

[2] *Id.*

[3] *Responsibilities and Obligations of States with respect to Climate Change in the Context of the United Nations Convention on the Law of the Sea*, International Tribunal for the Law of the Sea, Advisory Opinion dated 21 May 2024, p. 90, para. 236.

[4] International Carbon Action Partnership, "Emissions Trading Worldwide: ICAP Status Report 2026", https://icapcarbonaction.com/en/publications/emissions-trading-worldwide-icap-status-report-2026, ("ICAP Status Report") accessed 16 June 2026, p. 9.

GDP, more than half of the global population, and 14 of the G20 countries.[5] 16 additional governments are assessing or designing ETS frameworks, including Türkiye, which is preparing to launch its pilot system this year.[6]

As ETS are expanding rapidly, significant variation has emerged in system design, particularly in terms of how caps are defined, how free allowances are distributed and what compliance options are available, including the use of carbon credits.[7]

This article examines different ETS design models. Building on this comparative analysis, it situates and evaluates the emerging emissions trading system in Türkiye within the broader landscape of global ETS practices.

Emissions Trading Systems

A. Origins and Early Practice

In 1968, economist John Dales conceptualised the cap-and-trade system as a government-created market for pollution rights: the state caps on total allowable emissions to ensure scarcity in the market, and issues a tradable pollution credits that emitters must hold against their verifiable emissions.[8] The primary limitation of Dales' system at the time was that an emissions trading market could not function without enforceable scarcity.[9] To maintain this scarcity, regulators would have to possess continuous, real-time data to cross-reference each entity's actual emissions against their permitted allowances.[10]

The US adopted the world's first emissions trading scheme in 1990.[11] The 1990 US Clean Air Act Amendments shifted away from the United States Environmental Protection Agency's earlier pollutant-by-pollutant, technology-prescriptive approach

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[5] *Id.*

[6] Turkish Directorate of Climate Change, "Draft Regulation on the Turkish Emissions Trading System has been published", 22 July 2025, https://iklim.gov.tr/turkiye-emisyon-ticaret-sistemi-yonetmeligi-taslagi-yayimlandi-haber-4519, accessed 14 June 2026.

[7] OECD, "Effective Carbon Rates 2025, Recent Trends in Taxes on Energy Use and Carbon Pricing", 13 November 2025, https://www.oecd.org/en/publications/effective-carbon-rates-2025_a5a5d71f-en/full-report/emissions-trading-systems-a-variety-of-designs_b98e7b5c.html, accessed 14 June 2026.

[8] Daniel H. Cole, "Origins of Emissions Trading in Theory and Early Practice," in *Research Handbook on Emissions Trading*, Stefan E. Weishaar (ed.), Edward Elgar, 2016, pp. 10-11.

[9] *Id.*, pp. 11-12.

[10] *Id.*

[11] Siikamäki et al., "The U.S. Environmental Protection Agency's Acid Rain Program", Resources for the Future, November 2012, https://media.rff.org/documents/Issue_Brief_EPAs_Acid_Rain_Program.pdf, accessed 26 June 2026.

toward cost-effective, market-based regulation.[12] This model was originally developed not for carbon dioxide but for sulphur dioxide (SO_2) to address acid rain, where it proved highly effective.[13] The significant reductions achieved in SO_2 emissions and related environmental harms in the United States[14] established Title IV of the 1990 Amendments as a blueprint for contemporary carbon markets. The EU's adoption of a cap-and-trade system was, at least in part, influenced by this success.[15]

B. Kyoto Protocol and Modern ETS

ETS emerged first as a domestic/market-based policy before being recognised in international law. The 1997 Kyoto Protocol (the "**Protocol**") to the United Nations Framework Convention on Climate Change ("**UNFCCC**") was significant in its expansion to the inter-state plane, as well as its complexification.

The Protocol operationalised the UNFCCC by setting individual GHG reduction targets for industrialised States and economies in transition.[16] For example, in its 1st Commitment Period (2008-2012), participating States committed to reduction from 1990 levels by an average of 5%.[17] The main environmental principle behind the Protocol is the common but differentiated responsibilities and respective capabilities,[18] it only bound developed countries: Annex I parties carried legally binding reduction targets, while Non-Annex I parties, developing states, were encouraged to limit emissions but not bound by specific targets.

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[12] Natural Resources Defense Council, "The Clean Air Act 101," 23 February 2026, https://www.nrdc.org/stories/clean-air-act-101, accessed 12 June 2026.

[13] U.S. Environmental Protection Agency, "THE CLEAN AIR ACT - Highlights of the 1990 Amendments," https://www.epa.gov/sites/default/files/2015-11/documents/the_clean_air_act_-_highlights_of_the_1990_amendments.pdf, accessed 16 June 2026.

[14] Gabe Chan et al., "The SO2 Allowance Trading System and the Clean Air Act Amendments of 1990: Reflections on Twenty Years of Policy Innovation", Harvard Kennedy School Belfer Center for Science and International Affairs, January 2012, https://www.belfercenter.org/publication/so2-allowance-trading-system-and-clean-air-act-amendments-1990-reflections-twenty-years, accessed 26 June 2026, p. 1.

[15] *Id.*

[16] United Nations Climate Change, "Process and Meetings, Kyoto Protocol", https://unfccc.int/process-and-meetings/the-kyoto-protocol, accessed 16 June 2026.

[17] European Commission, "International action on climate change, The Kyoto Protocol", https://climate.ec.europa.eu/eu-action/international-action-climate-change/kyoto-protocol_en, accessed 16 June 2026.

[18] As codified by the Rio Declaration Principle 7, common but differentiated responsibilities and respective capabilities principle provides that while all States share responsibility for environmental protection, their international obligations may differ in scope based on how much they have contributed to environmental damage. Developed countries, in particular, recognise their greater responsibility because of the higher impact of their economies and their greater access to financial and technological resources.

The Kyoto framework has catalysed the proliferation of domestic ETS from the EU ETS alone in 2005[19] to 41 active systems today.[20] This rapid expansion, however, has not been uniform, the main design split being between absolute-cap model and intensity-based cap model.

The absolute-cap model sets a fixed, predetermined limit on total emissions within a given period,[21] ensuring environmental integrity by capping overall pollution through a finite number of allowances,[22] but its inflexibility can lead to higher compliance costs for industry during periods of economic growth when demand for allowances rises. [23]

The intensity-based model regulates emissions relative to output by setting benchmarks per unit of production rather than a fixed overall cap,[24] allowing firms to generate or purchase allowances based on performance, which provides flexibility[25] but does not guarantee a reduction in total emissions as output grows.[26]

1. Jurisdictions Implementing the Absolute-Cap Model

While approximately half of the 41 emissions trading systems (ETS) currently in operation worldwide are based on an absolute cap, intensity-based systems account for nearly 75% of the total emissions covered under ETS globally, largely due to the extensive scope of China's national ETS.[27]

Among jurisdictions adopting the absolute-cap approach, the EU ETS stands out as the oldest and the largest in terms of trading volume and market value.[28] Established under Directive 2003/87/EC, the system is currently in Phase IV (2021-2030), with

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[19] European Commission, "Climate Action, Carbon Markets, About the EU ETS", https://climate.ec.europa.eu/eu-action/carbon-markets/about-eu-ets_en, accessed 16 June 2026.

[20] ICAP Status Report, p. 23.

[21] International Carbon Action Partnership, "Cap Setting" ("Cap Setting"), https://icapcarbonaction.com/en/cap-setting, accessed 16 June 2026, p. 9.

[22] Institute for Energy Economics and Financial Analysis, "China's Emissions Trading System (ETS) Reforms: On Track, But Needs Robust Enforcement," 3 November 2025, https://ieefa.org/resources/chinas-emissions-trading-system-ets-reforms-track-needs-robust-enforcement, accessed 16 June 2026; European Commission, "About the EU ETS," Climate Action, https://climate.ec.europa.eu/eu-action/carbon-markets/about-eu-ets_en.

[23] Carbon Knowledge Hub, "Emission caps and permit allocation", 18 October 2024, https://www.carbonknowledgehub.com/factsheets/caps-and-allocation, accessed 29 June 2026.

[24] Cap Setting, p. 9.

[25] International Energy Agency, "Implementing Effective Emissions Trading Systems, Defining the Role", https://www.iea.org/reports/implementing-effective-emissions-trading-systems/defining-the-role, accessed 16 June 2026.

[26] *Id.*

[27] ICAP Status Report, p. 11.

[28] ICAP Status Report, p. 40.

annual linear reduction factors progressively tightening the cap in alignment with the EU's 2030 climate targets.[29]

Other notable jurisdictions employing an absolute-cap system include South Korea, which launched its ETS in 2015, and the United Kingdom, which introduced its own scheme in 2021 following Brexit.[30]

2. Jurisdictions Implementing the Intensity-Based Model

As of July 2025, Türkiye has also moved toward an intensity-based approach, adopting its first Climate Law, which establishes the legal foundation for an emissions trading system and creates a Carbon Market Board chaired by the Minister of Environment, Urbanisation and Climate Change, together with other relevant regulators.[31] Türkiye's COP31 partner Australia on the other hand, has implemented a system that is neither a pure absolute-cap nor pure intensity-based scheme. Under its Safeguard Mechanism, facilities emitting more than 100,000 tons of CO_2 -equivalent annually are subject to facility-specific emissions baselines: entities performing below their baseline generate tradable Australian Carbon Credit Units, while those exceeding it must acquire and surrender credits to comply.[32]

Another key point of reference is the Chinese ETS. Although the EU ETS remains the largest in terms of trading volume and market value, China's system is the largest globally in terms of emissions coverage.[33] It operates on an intensity-based benchmark model, under which allowances are allocated based on output and sector-specific benchmarks.[34] Notably, in August 2025, Chinese authorities announced a roadmap to transition the national ETS from an intensity-based system toward an absolute cap by 2027.[35]

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[29] ICAP Status Report, p. 40.

[30] South Korean Act on the Allocation and Trading of Greenhouse Gas Emission Permits dated November 2012, entered into force 1 January 2015; The UK Greenhouse Gas Emissions Trading Scheme Order 2020 dated 1 January 2021.

[31] International Carbon Action Partnership, "Türkiye Adopts Landmark Climate Law, Paving Way for National ETS", https://icapcarbonaction.com/en/news/turkiye-adopts-landmark-climate-law-paving-way-national-ets, accessed 16 June 2026.

[32] International Carbon Action Partnership, "Australian Safeguard Mechanism", https://icapcarbonaction.com/en/ets/australian-safeguard-mechanism, accessed 16 June 2026.

[33] International Carbon Action Partnership, "China National ETS", https://icapcarbonaction.com/en/ets/china-national-ets, accessed 16 June 2026.

[34] Id.

[35] International Carbon Action Partnership, "China issues landmark guidelines to transition to absolute cap and expand scope in National ETS", 29 September 2025, https://icapcarbonaction.com/en/news/china-issues-landmark-guidelines-transition-absolute-cap-and-expand-scope-national-ets, accessed 16 June 2026.

Turkish Climate Law Framework

A. Monitoring, Reporting and Verification Regulation

Since 2015, Türkiye has operated a Monitoring, Reporting, Verification (MRV) system covering more than 800 facilities.[36]

This framework is currently governed by the 2014 Regulation on Monitoring of Greenhouse Gas Emissions (MRV Regulation). The Turkish Emissions Trading System Draft Regulation, once enacted, is expected to repeal the MRV Regulation and consolidate the monitoring, reporting and verification obligations within its own framework, leaving the substantive obligations largely intact while integrating them into the broader ETS architecture.[37]

This system has allowed for an effective recording and verification of the GHG emissions by industrial facilities in energy and industry sectors, including combustion installations and sectors such as oil refining, coke production, iron and steel, cement, glass, ceramics, among others.[38] Collectively, in-scope installations as listed under Annex-1 of the MRV Regulation account for approximately half of Türkiye's total GHG emissions.[39] The MRV framework constitutes a critical prerequisite for any functional ETS. The environmental integrity of an emissions trading system rests on the enforceability of its cap: unless actual emissions are continuously and accurately measured, reported, and independently verified, it is impossible to determine whether covered entities are operating within their permitted allowances or to maintain the artificial scarcity upon which carbon price formation depends. Without robust MRV, allowance scarcity becomes unenforceable, the price signal collapses, and the emissions reduction objective of the system is undermined. Effectively, the absence of real-time, verifiable emissions data rendered Dales' original cap-and-trade model largely theoretical at the time of its conception.

The MRV system consists of three main obligations, according to which, operators must adopt a monitoring plan and send it to the Ministry of Environment, Urbanisation and Climate Change for approval six months before the start of monitoring,[40] monitor emissions in accordance with that plan, have the annual emissions

[36] International Carbon Action Partnership, "Turkish Emission Trading System" ("ICAP MRV"), https://icapcarbonaction.com/system/files/ets_pdfs/icap-etsmap-factsheet-66.pdf, accessed 28 June 2026.

[37] Turkish Emissions Trading System Draft Regulation ("Draft ETS Regulation"), art. 40.

[38] ICAP MRV.

[39] *Id.*

[40] Turkish Regulation on Monitoring of Greenhouse Gases Emissions dated 22 July 2014 ("MRV Regulation"), art. 5.

reports verified by an accredited third-party verifier,[41] and finally, submit annual emission reports before 30 April of the year following the reporting period.[42]

The Turkish Climate Law No. 7552 (Climate Law) provides for administrative fines for the violation of certain reporting-related obligations. Its Article 14 provides that operators who fail to submit a verified greenhouse gas emissions report within the prescribed period are subject to an administrative fine ranging from TRY 500,000 to TRY 5,000,000, with this amount doubled for installations operating within the scope of the ETS.[43] Additionally, operators that fail to comply with information, document, or data submission obligations, or that make misleading declarations, are subject to an administrative fine of TRY 170,000.[44]

B. Turkish Emissions Trading System

Climate Law, enacted in July 2025, establishes a legal basis for a national emissions trading system. Although the Turkish Emissions Trading System Regulation (Draft Regulation) has not yet been adopted, its draft gives important indications as to how the system is designed. While noting that the Draft Regulation is not binding, this section of the study will present certain assessments based on the Draft Regulation in order to provide a better understanding of intensity-based models. The Draft Regulation introduces a facility-level categorisation based on annual emission thresholds. Installations emitting below 50,000 tonnes of CO_2 equivalent per year fall within Category A and are excluded from the ETS scope.[45] Categories B and C cover installations emitting between 50,000 and 500,000 tonnes, and above 500,000 tonnes respectively.[46] Certain facilities are additionally exempt regardless of emission levels, including public service installations such as universities and hospitals, as well as facilities engaged in research and development activities.[47]

1. Greenhouse Gas Emission Permit

Covered installations are required to obtain a GHG emission permit prior to commencing operations.[48] Permits are valid for five years, with renewal applications due at least six months before expiry.[49] Where an operator conducts activities across

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[41] *Id.*, art. 8.

[42] *Id.*, art. 7.

[43] Turkish Climate Law no. 7552 dated 2 July 2025, ("Climate Law") art. 14(1)(a).

[44] *Id.*, art. 14(6).

[45] Draft ETS Regulation arts. 4(1)(y), 5(1).

[46] *Id.*, arts. 4(1)(z), 4(1)(aa), 5(1).

[47] *Id.*, art. 5(2).

[48] Climate Law, art. 9(3).

[49] Draft ETS Regulation, arts. 8(1), 8(2).

multiple facilities, a separate permit is required for each.[50] Covered installations may also face permit revocation in cases of serious non-compliance, including the intentional submission of false information or the failure to meet surrender obligations.[51]

The implementation of the ETS is structured based on application periods. The Pilot Period runs for the years 2026 and 2027.[52] Following that period, it becomes fully operational, where the first binding compliance periods run in two sub-periods between 2028-2030 and 2031-2035.[53]

2. System Design in Its Binding Compliance Period

The Turkish ETS is designed as a cap-and-trade system with an intensity-based cap, meaning that the cap is determined by reference to emissions per unit of production.[54] In this system, the Turkish Carbon Markets Board (the Board), with the proposal of the Directorate of Climate Change, determines a certain number of free allowances to be allocated for each in-scope installation.[55] An allowance refers to transferable entitlement issued in the form of units, granting the right to emit one metric ton of carbon dioxide equivalent of GHG for a specified period.[56]

a. Allocation of Free Allowances

As noted above, free allocations are provided to all in-scope installations at the beginning of the implementation period. In determining how many free allowances would be allocated, the system applies a uniform formula across all covered installations: free allowances are calculated by multiplying (i) the benchmark value, (ii) the sectoral activity factor, and (iii) the activity level of each sub-installation.[57]

The activity level of the installation reflects the actual production output of each sub-installation during the relevant compliance year,[58] as reported and verified through an Activity Level Report.[59] The sectoral activity factor is determined by the Board.[60] It adjusts the allocation to account for sector-specific considerations, most notably, carbon leakage risk.[61] Sectors deemed vulnerable to carbon leakage, where

[50] *Id.*, art. 7(2).
[51] *Id.*, art. 10.
[52] *Id.*, provisional art. 1(1).
[53] *Id.*, provisional art. 1(11), 1(12).
[54] *Id.*, arts. 4(1)(j), 4(1)(m).
[55] *Id.*, art. 13.
[56] *Id.*, art. 4(1)(ll).
[57] *Id.*, provisional art. 1(4).
[58] *Id.*, art. 4(r).
[59] *Id.*, art. 13(5), 13(6).
[60] *Id.*, art. 4(1)(hh).
[61] *Id.*

high carbon costs could incentivise the relocation of production to jurisdictions with less stringent climate regulation, receive a higher factor, effectively increasing their free allowance entitlement to preserve competitiveness. The benchmark value represents the emissions intensity of the facilities in that particular given sector,[62] determined based on the reports of industry installations.

Crucially, the allowance calculation is performed not at the facility level as a whole but disaggregated into sub-installations defined by reference to a specific product, measurable heat flow, fuel use, or production process.[63] This ensures that the benchmark applied to each unit of output corresponds to the emissions profile of that specific activity, rather than averaging across operationally distinct processes within the same facility.

As free allowances are calculated using this formula, a sub-installation may not receive allowances equal to its actual emissions. The main reason is the benchmark value. Although the benchmark is based on sectoral emissions data, it does not simply reflect each installation's own emissions. Instead, it sets a reference emissions level for a particular production. As a result, installations that emit less than the benchmark may receive more allowances than they need, while installations that emit more than the benchmark may need to buy additional allowances to comply.

b. Additional Allowances

As to the question of how a sub-installation can buy additional allowances, there are several avenues to do so. The first is the primary market, where allowances are sold by auction under a schedule announced by the Directorate of Climate Change within fifteen working days of the publication of the National Allocation Plan.[64] The market operator under this system is defined to be the EPİAŞ.[65] The second is the secondary market, where installations holding surplus allowances may trade them with other market participants through continuous trading.[66] These two channels constitute the ordinary compliance pathways under the system.

The Draft Regulation additionally provides for an additional reserve mechanism as a last-resort option for installations that remain in deficit after exhausting ordinary market channels.[67] Allowances drawn from the additional reserve are priced at a fifty percent premium over the higher of the three-month weighted average price on the

[62] *Id.*, art. 4(1)(bb).
[63] *Id.*, art. 4(1)(ç).
[64] *Id.*, art. 17.
[65] *Id.*, art. 4(1)(ee).
[66] *Id.*, art. 18.
[67] *Id.*, art. 16.

primary and secondary markets as of the last working day of November,[68] making this avenue deliberately costly so as to preserve its exceptional character.

Reserve usage is capped at ten percent of the ETS cap announced in the National Allocation Plan and requires approval from the Carbon Markets Board.[69]

Finally, the Draft Regulation permits the use of carbon credits generated from mitigation projects carried out within Türkiye as a form of offsetting, subject to a ceiling of ten percent of each installation's total surrender obligation.[70] This flexibility mechanism is unavailable during the pilot period and becomes operative only in the binding compliance period.[71]

c. National Allocation and Intensity-Based Cap

The overall volume of allowances available under the Turkish ETS is determined through the National Allocation Plan (The Plan), which is published in the Official Gazette within sixty days of the final submission deadline for verified greenhouse gas emissions reports for the relevant compliance year.[72] The Plan sets out the ETS cap, the volume of free allowances to be distributed, the quantity to be auctioned on the primary market, and, where applicable, the additional reserve amount.

The aggregate cap emerges as the sum of individual sub-installation allocations, each calculated by reference to a benchmark per unit of output multiplied by actual production levels. As a result, the total number of allowances in circulation is not fixed in advance but varies with the overall output of covered installations: if aggregate production increases, the cap rises accordingly, and if it contracts, the cap falls. This design choice is precisely what places the Turkish ETS within the intensity-based model rather than the absolute-cap model.

Conclusion

Emissions trading systems have emerged as a central instrument in the regulatory response to climate change, yet their design varies significantly across jurisdictions. The core distinction between absolute-cap and intensity-based models carries material consequences: while the former guarantees a reduction in aggregate emissions, the latter incentivises efficiency gains without placing a ceiling on total output.

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[68] *Id.*, art. 16(6).

[69] *Id.*, art. 16(5).

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

[71] *Id.*, provisional art. 1(8).

[72] *Id.*, art. 11.

The Turkish ETS ties the aggregate cap to emissions per unit of production rather than a fixed allowance ceiling, preserving flexibility for industrial growth. This reflects a deliberate policy choice at an early stage of carbon market development, prioritising institutional capacity-building and a gradual compliance trajectory over immediate absolute reductions.

Since Turkey is not an Annex I country under the Kyoto Protocol, it is not bound by specific country-level emission reduction obligations. However, it remains uncertain whether the intensity-based cap-and-trade model will be sufficient in the long term. With the increase in external financial obligations such as the Carbon Border Adjustment Mechanisms introduced by the European Union and the United Kingdom,[73] the adequacy of an intensity-based cap as a carbon reduction tool will likely come under increasing scrutiny. How Turkey's ETS evolves in response to these pressures, including whether it will transition to an absolute cap model, as China has done, will serve as a key indicator of Turkey's broader climate goals.

[73] Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism, 16 May 2023, as amended by Regulation (EU) 2025/2083 of the European Parliament and of the Council of 8 October 2025, 17 October 2025; HM Treasury, "Factsheet: Carbon Border Adjustment Mechanism", 24 April 2025, updated 28 November 2025, https://www.gov.uk/government/publications/factsheet-carbon-border-adjustment-mechanism-cbam/factsheet-carbon-border-adjustment-mechanism, accessed 28 June 2026.

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