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Türkiye's Model Bilateral Investment Treaties

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Introduction

Today, nearly 3,000 bilateral investment treaties ("BITs") exist between states.[1] When negotiating them, states generally start with draft texts prepared in advance[2] that reflect their investment policies[3] and their approach to developments in international investment law jurisprudence.[4] These drafts are known as model BITs.

One of the principal factors determining the extent to which a model BIT is reflected in the final treaty is the imbalance in the parties' bargaining power.[5] Historically, the first model BITs were drafted by capital-exporting states, which held a relatively strong negotiating position.[6] Over time, developing states began preparing their own models as well.[7]

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[1] See UNCTAD, "International Investment Agreements Navigator", UNCTAD Investment Policy Hub, https://investmentpolicy.unctad.org/international-investment-agreements, accessed 8 September 2026.

[2] Stephan W. Schill, *The Multilateralization of International Investment Law*, Cambridge University Press, 2009, pp. 90–91; Chester Brown, "Introduction: The Development and Importance of the Model Bilateral Investment Treaty", in Chester Brown (ed.), *Commentaries on Selected Model Investment Treaties*, Oxford University Press, 2013, p. 2.

[3] Banu Şit Köşgeroğlu, "Model İkili Yatırım Anlaşmaları ve Türkiye'nin Model İkili Yatırım Anlaşması Taslağı" ("Köşgeroğlu"), Türkiye Barolar Birliği Dergisi, No. 107, 2013, p. 149.

[4] See *Enron Creditors Recovery Corporation and Ponderosa Assets, L.P. v. Argentine Republic* ("*Enron v. Argentina*"), ICSID Case No. ARB/01/3, Decision on Jurisdiction dated 14 January 2004, para. 46.

[5] Christoph Schreuer, "Diversity and Harmonization of Treaty Interpretation in Investment Arbitration", *Transnational Dispute Management*, Vol. 3, No. 2, 2006, p. 8.

[6] Jeswald W. Salacuse, *The Law of Investment Treaties,* 3rd ed., Oxford University Press, 2021, pp. 149–150.

[7] See generally UNCTAD, "International Investment Agreements Navigator", UNCTAD Investment Policy Hub, https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements, accessed 8 September 2026.

Some states, including the United States,[8] Canada[9] and Colombia,[10] officially publish their model BITs, while others, such as Switzerland[11] and Türkiye,[12] do not. The main obstacle to studying Türkiye's model BITs is therefore access to their texts.

Although Türkiye does not officially publish its model BITs, the texts of its 2000 and May 2009 models are available on the website of the United Nations Conference on Trade and Development ("UNCTAD").[13] Various sources and the treaties Türkiye has signed indicate that other models were used at different times.[14]

Accordingly, to obtain the other models, we submitted an information request to the Ministry of Industry and Technology through the Presidency's Communication Centre (CİMER). The Ministry's reply of 28 July 2026 provided six additional model BIT texts, dated 2004, 2005, 2006, March 2009,[15] January 2010 and January 2014.[16]

We have thus been able to examine together the full texts of eight models from 2000 to 2014. To our knowledge, no previous study in the literature on Türkiye's BITs has drawn on as many model BIT texts.

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[8] U.S. Department of State, "2012 U.S. Model Bilateral Investment Treaty", https://2009-2017.state.gov/documents/organization/188371.pdf, accessed 8 September 2026.

[9] Government of Canada, "Canada's 2021 Foreign Investment Promotion and Protection Agreement (FIPA) Model", https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/index.aspx?lang=eng, accessed 8 September 2026.

[10] Ministerio de Comercio, Industria y Turismo, "Consulta publica BIT modelo colombiano", MinCIT, https://www.mincit.gov.co/temas-interes/consulta-publica-bit-modelo-colombiano, accessed 8 September 2026.

[11] Michael Schmid, "Switzerland", in Chester Brown (ed.), *Commentaries on Selected Model Investment Treaties*, Oxford University Press, 2013, pp. 659–660.

[12] Köşgeroğlu, p. 149, fn. [22].

[13] UNCTAD, "Turkey Model BIT 2000 (replaced)" ("2000 Model BIT"), UNCTAD Investment Policy Hub, https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2851/download, accessed 12 June 2026; UNCTAD, "Turkey Model BIT 2009 (replaced)" ("May 2009 Model BIT"), UNCTAD Investment Policy Hub, https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2852/download, accessed 12 June 2026.

[14] For example, UNCTAD's website lists Türkiye's 2016 and 2024 model BITs, although their texts have not been uploaded: UNCTAD, "International Investment Agreements Navigator", UNCTAD Investment Policy Hub, https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements, accessed 8 September 2026. On Türkiye's preparation of a new model BIT with UNCTAD's assistance in 2010, see UNCTAD, *World Investment Report 2010: Investing in a Low-Carbon Economy*, pp. 85, 96, fn. [16], https://unctad.org/system/files/official-document/wir2010_en.pdf, accessed 8 September 2026. On the existence of a 2005 model BIT, see OECD, *International Investment Perspectives*, OECD Publishing, 2006, p. 146. See also Bilgin Tiryakioğlu, "Extension of the Most Favoured Nation Clause to Dispute Settlement Provisions in Bilateral Investment Treaties Which Türkiye is a Party of" ("Tiryakioğlu"), *Public and Private International Law Bulletin*, Vol. 43, No. 1, 2023, p. 12.

[15] References to provisions common to both models use "2009 Model BITs".

[16] In its reply to a subsequent information request, the Ministry confirmed that the 2000 text available through UNCTAD is the first model BIT in its archives. It declined to release models prepared after 2014 on the ground that disclosure could harm Türkiye's economic interests. The other texts obtained from the Ministry are referred to here as the "2004 Model BIT", "2005 Model BIT", "2006 Model BIT", "January 2010 Model BIT" and "January 2014 Model BIT", respectively.

For later models whose texts we could not obtain, we drew on treaties described in the reports of the Grand National Assembly of Türkiye's Foreign Affairs Committee as having been prepared on the basis of Türkiye's model. We also drew inferences from provisions repeated in identical or substantially identical wording across treaties Türkiye concluded with different states.

The study's main purpose is to compare the eight accessible models and selected signed treaties to trace continuity and change in Türkiye's model BIT practice. The analysis points to a development in which traditional investor protections are retained while the scope of protection, the protection standards and the conditions of access to arbitration are defined in increasing detail over time.

We separately assess the significance of these changes for Türkiye's investment policy and the interpretation of treaty provisions, distinguishing changes that can be identified directly from the texts from inferences about their source, purpose and effect.

We examine the development of Türkiye's model BIT practice across three periods: the traditional protection framework of the 2000 model; the progressive elaboration of scope, standards and access to arbitration between 2005 and 2014; and common changes to provisions observed in selected treaties after 2014.

Overview of Türkiye's Model BITs

The eight models dated 2000–2014 retain the traditional BIT structure in many respects. All provide for fair and equitable treatment ("FET"),[17] full protection and security ("FPS"),[18] national treatment ("NT")[19] and most-favoured-nation ("MFN") treatment,[20] compensation for expropriation,[21] free transfer of funds[22] and the insur-

[17] 2000 Model BIT, art. II(2); 2004 Model BIT, art. II(2); 2005 Model BIT, art. II(2); 2006 Model BIT, art. II(2); 2009 Model BITs, art. 2(2); January 2010 Model BIT, art. 2(2); January 2014 Model BIT, art. 3(2).

[18] 2000 Model BIT, art. II(2); 2004 Model BIT, art. II(2); 2005 Model BIT, art. II(2); 2006 Model BIT, art. II(2); 2009 Model BITs, art. 2(2); January 2010 Model BIT, art. 2(2); January 2014 Model BIT, art. 3(2). The first six models use "*full protection*"; the January 2010 text uses "*full protection (and security)*", and the January 2014 text "*full protection and security*".

[19] 2000 Model BIT, art. III(2); 2004 Model BIT, art. III(2); 2005 Model BIT, art. III(2); 2006 Model BIT, art. III(2); 2009 Model BITs, art. 3(2); January 2010 Model BIT, art. 3(2); January 2014 Model BIT, art. 4(2).

[20] 2000 Model BIT, art. III(1); 2004 Model BIT, art. III(1); 2005 Model BIT, art. III(1); 2006 Model BIT, art. III(1); 2009 Model BITs, art. 3(1); January 2010 Model BIT, art. 3(1); January 2014 Model BIT, art. 4(1).

[21] 2000 Model BIT, art. IV(1); 2004 Model BIT, art. IV(1); 2005 Model BIT, art. IV(1); 2006 Model BIT, art. IV(1); 2009 Model BITs, art. 5(1); January 2010 Model BIT, art. 5(1); January 2014 Model BIT, art. 6(1).

[22] 2000 Model BIT, art. V; 2004 Model BIT, art. V; 2005 Model BIT, art. V; 2006 Model BIT, art. V; 2009 Model BITs, art. 7; January 2010 Model BIT, art. 7; January 2014 Model BIT, art. 8.

er's subrogation to the investor's rights,[23] among other protections and ancillary provisions. For investor–state disputes, they offer only arbitration under the auspices of the International Centre for Settlement of Investment Disputes ("ICSID")[24] and ad hoc arbitration under the rules of the United Nations Commission on International Trade Law ("UNCITRAL").[25] None of the models contains an umbrella clause that turns a state's obligations concerning investments into BIT obligations. Indeed, Türkiye's BITs containing an umbrella clause were predominantly concluded with capital-exporting states possessing greater bargaining power, generally at earlier dates.[26]

Within this common framework, the provisions that change concern who and which investments benefit from protection, the content of substantive standards, and the conditions for resorting to arbitration. Some provisions incorporate an existing limitation developed in the case law into the treaty; others reduce ambiguity or introduce a new condition. The incorporation of Türkiye's ICSID notification into the 2006 draft illustrates an effort to give effect to an existing position at treaty level.[27]

The comparison must distinguish a textual narrowing of a provision, clarification of its interpretation and a reduction of protection in practice. The first two can be traced through differences between drafts; the third requires further examination of the relevant treaty's wording and its application in actual disputes. The chronological analysis below follows this distinction.

The 2000 Model BIT and the 2004–2006 Revisions

The 2000 model is an older-generation BIT draft reflecting the traditional approach to investor protection. Its text focuses solely on the protection of investments. Unlike newer-generation BITs, its preamble does not refer to social or environmental policy objectives, and the text contains neither a general exceptions provision preserving the right to regulate nor a stipulation that public welfare measures do not amount to indirect expropriation.

[23] 2000 Model BIT, art. VI; 2004 Model BIT, art. VI; 2005 Model BIT, art. VI; 2006 Model BIT, art. VI; 2009 Model BITs, art. 8; January 2010 Model BIT, art. 8; January 2014 Model BIT, art. 9.

[24] 2000 Model BIT, art. VII(2)(a); 2004 Model BIT, art. VII(2)(a); 2005 Model BIT, art. VII(2)(a); 2006 Model BIT, art. VII(2)(a); 2009 Model BITs, art. 9(2)(b); January 2010 Model BIT, art. 9(2)(b)(i); January 2014 Model BIT, art. 10(2)(b)(i).

[25] 2000 Model BIT, art. VII(2)(b); 2004 Model BIT, art. VII(2)(b); 2005 Model BIT, art. VII(2)(b); 2006 Model BIT, art. VII(2)(b); 2009 Model BITs, art. 9(2)(c); January 2010 Model BIT, art. 9(2)(b)(ii); January 2014 Model BIT, art. 10(2)(b)(ii).

[26] See Değer Boden and Yaren Yagdereli, "Investment Treaty Arbitration: Türkiye", *Global Arbitration Review*, 11 August 2026, https://globalarbitrationreview.com/insight/know-how/investment-treaty-arbitration/report/turkey, accessed 13 September 2026, question 8.

[27] ICSID, "Contracting States and Measures Taken by Them for the Purpose of the Convention", 19 August 2026, https://icsid.worldbank.org/sites/default/files/2026-08/2026_August19_ICSID8.pdf, accessed 8 September 2026, p. 12; 2006 Model BIT, art. VII(3)(a)–(b).

Investment is defined in broad, asset-based terms: movable and immovable property, company shares, claims to money related to an investment, intellectual property rights and concessions relating to natural resources qualify as investments, provided they comply with the host state's law.[28] The final sentence of the definition, stating that the term investment refers to "*all direct investments*", allows a reading that excludes portfolio investments.[29] For investors, nationality suffices for natural persons, and incorporation and headquarters for legal persons; there is no requirement of "*substantial business activities*" in the state of incorporation, as in later texts.[30]

Generally, an MFN clause enables a beneficiary, subject to the treaty's conditions of comparison, to claim more favourable treatment accorded to investments and/or investors of third states. The 2000 model does not specify whether the clause extends to procedural provisions. This is unsurprising for its time: the January 2000 decision in *Maffezini v. Spain* was the first to accept that an MFN clause could extend to more favourable dispute settlement provisions.[31] The express procedural exceptions in later models may be read as a response to the interpretative possibility raised by that decision.[32]

The 2000 model also provides a simple framework for dispute settlement. If a dispute remains unresolved during the six-month period for amicable negotiations (the "cooling-off period"), the investor may turn to ICSID arbitration or ad hoc arbitration under the UNCITRAL rules.[33] The model does not provide for proceedings before domestic courts or a fork-in-the-road rule making the chosen forum final for the same dispute. Nor does it exclude from arbitration disputes arising from investment activities that have not yet effectively commenced.

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[28] 2000 Model BIT, art. I(2).

[29] 2000 Model BIT, art. I(2), final sentence. The general "*direct investment*" wording was retained in the 2004–2006 models and removed from the 2009 models. From 2009 onward, however, investments acquired through stock exchanges representing less than ten per cent of a company's shares or voting rights were expressly excluded: 2009 Model BITs, art. 1(1); January 2010 Model BIT, art. 1(1); January 2014 Model BIT, art. 1(1).

[30] 2000 Model BIT, art. I(1).

[31] *Emilio Agustín Maffezini v. Kingdom of Spain* ("*Maffezini*"), ICSID Case No. ARB/97/7, Decision on Objections to Jurisdiction dated 25 January 2000, paras. 54–56.

[32] For an express example of the international response to *Maffezini*, see Free Trade Area of the Americas ("FTAA"), "Free Trade Area of the Americas (FTAA) Draft Agreement, Chapter XVII", 21 November 2003, http://www.ftaa-alca.org/FTAADraft03/ChapterXVII_e.asp, accessed 10 September 2026, fn. [13]: "*The Parties note the recent decision of the arbitral tribunal in Maffezini (Arg.) v. Kingdom of Spain, which found an unusually broad most favored nation clause in an Argentina-Spain agreement to encompass international dispute resolution procedures. […] The Parties share the understanding and intent that [the most favored nation clause] does not encompass international dispute resolution mechanisms […] and therefore could not reasonably lead to a conclusion similar to that of the Maffezini case.*"

[33] 2000 Model BIT, art. VII(2).

The core of the 2000 model remained in place, subject to limited changes, through 2006. The 2004 draft mainly updated terminology.[34] The 2005 draft marked a more significant step: it removed the sentence in the investment definition covering investments made before and after entry into force, added a separate "Scope of Application" article, and stated that the treaty did not apply to disputes arising before its entry into force.[35] The first significant change to the models thus concerned the treaty's temporal scope rather than substantive standards (whether this wording narrowed the earlier scope or clarified an existing temporal limit is a separate interpretative question).

The 2006 draft brought a more extensive change. It elaborated the exceptions to treatment arising from tax treaties and economic integration agreements.[36] It also added a three-part paragraph to the investor–state dispute settlement article.[37] According to that paragraph, (a) only disputes arising from investment activities that have obtained any required permission and have effectively commenced may be submitted to international arbitration; (b) disputes concerning ownership of immovable property and rights *in rem* fall exclusively within the jurisdiction of Turkish courts; and (c) Türkiye will not consent to the referral to the International Court of Justice, under Article 64 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID Convention"), of inter-state disputes concerning the interpretation or application of that Convention that cannot be settled through negotiation.

The first two limitations reflect the notification Türkiye made under Article 25(4) when it became a party to the ICSID Convention in 1989.[38] In *PSEG v. Türkiye*, the first investment arbitration brought against Türkiye, the tribunal held that this notification was not a reservation and could not, by itself, limit consent to arbitration where the relevant BIT contained no such limitation (excluding disputes concerning investments that had not effectively commenced).[39] The notification's later incorporation into the model BIT can be read as a response to the consent issue identified in that

[34] For example, the 2004 Model BIT uses "*Contracting Parties*" instead of "*Parties*", and "*admit*" instead of "*permit*". In the 2000 model, Article VI(3)'s reference, concerning disputes involving a subrogated insurer, to the inter-state dispute settlement provision (Article VIII) was redirected in 2004 to the investor–state provision (Article VII). We consider that this corrected an earlier cross-reference error.

[35] 2005 Model BIT, art. IX: "*… this Agreement shall not apply to any disputes that have arisen before its entry into force.*"

[36] 2006 Model BIT, art. III(4).

[37] 2006 Model BIT, art. VII(3)(a)–(c).

[38] ICSID, "Contracting States and Measures Taken by Them for the Purpose of the Convention", 19 August 2026, https://icsid.worldbank.org/sites/default/files/2026-08/2026_August19_ICSID8.pdf, accessed 8 September 2026, p. 12. Under Article 25(4) of the ICSID Convention, states may notify ICSID of the class or classes of disputes which they would or would not consider submitting to its jurisdiction. The provision also specifies that such a notification does not constitute consent to arbitration.

[39] *PSEG Global Inc. and Konya Ilgın Elektrik Üretim ve Ticaret Ltd. Şti. v. Republic of Turkey* ("PSEG"), ICSID Case No. ARB/02/5, Decision on Jurisdiction dated 4 June 2004, paras. 135–147.

decision.[40] In this sense, the 2006 addition may be viewed as an effort to give effect to a position maintained since 1989, rather than a new policy.

The two limitations in Türkiye's ICSID notification also appeared in different forms in BITs signed after *PSEG*.[41] First, the protocol to the BIT signed with France on 15 June 2006 expressly refers to Türkiye's ICSID notification and restates its two limitations.[42] Next, the investor–state dispute settlement article of the BIT signed with Saudi Arabia on 8 August 2006 makes the states' ICSID notifications an integral part of the treaty without setting out the limitations directly.[43] A third formulation first appears in the BIT signed with Oman on 4 February 2007.[44] This approach incorporates the limitations directly into the treaty text without referring to the ICSID notification. It is the approach adopted in Türkiye's model BITs.

The 2009 Model BIT and the 2010 Revision

A. Substantive Standards and the Scope of Protection

The 2009 model contains more substantial changes. Investor protection remains strong. The traditional protection approach is, however, placed within a framework that also refers to the state's regulatory authority and public policy space in light of developing case law.

The first indication is in the preamble: it affirms that the objectives of protection can be achieved "*without relaxing health, safety and environmental measures of general application as well as internationally recognized labor rights*". The concrete expression is the article entitled "Right to Regulate": it recognises that the state may adopt non-discriminatory measures to protect life, health, the environment and natural resources,[45] measures it considers necessary for its essential security interests, and measures required to fulfil its obligations under the United Nations Charter.[46] A new paragraph in the article entitled "Expropriation and Compensation" also expressly provides that non-discriminatory legal measures designed and applied to protect

[40] Tolga Bayrak, "Türkiye'nin Davalı Olarak Yatırım Tahkimi Karnesi", in Mehmet Helvacı et al. (eds.), *Galatasaray Liseli Hukukçuların Cumhuriyetin 100. Yılına Armağanı*, On İki Levha Yayıncılık, 2023, p. 402.

[41] *Id*.

[42] Türkiye–France BIT (2006), Protocol, statement concerning art. 8.

[43] Türkiye–Saudi Arabia BIT (2006), art. 10(3).

[44] Türkiye–Oman BIT (2007), art. 9(4)(a)–(b).

[45] 2009 Model BITs, art. 4(1). Subparagraph (a) of the March text uses "*necessary for the protection of human, animal or plant life or health, or the environment*", whereas the May text uses "*designed and applied for the protection of human, animal or plant life or health, or the environment*".

[46] 2009 Model BITs, art. 4(2).

legitimate public welfare objectives do not constitute indirect expropriation.[47] These changes can be read as reflecting the *police powers* doctrine, which recognises the state's authority to regulate in the public interest and was emerging in arbitral case law.[48]

Indeed, the 2009 draft was prepared during the period in which this doctrine gained prominence in arbitral case law. The decisions in *Methanex v. United States* (2005) and *Saluka v. Czech Republic* (2006) accepted that non-discriminatory regulations serving the public interest generally do not constitute expropriation requiring compensation.[49] *Methanex* expressed this approach subject to due process and the absence of a specific contrary commitment to the investor, while *Saluka* emphasised good-faith regulation. The United States' and Canada's 2004 models had also included the principle in their annexes, subject to an "*exceptional circumstances*" qualification.[50] The indirect-expropriation paragraph in Türkiye's 2009 draft follows this formula almost verbatim, but without the "*exceptional circumstances*" qualification.[51]

The 2009 models also elaborate the definitions of investment and investor. The general reference to "*direct investment*" in earlier models is removed from the investment definition. The definition instead refers to assets "*connected with business activities*" and acquired "*for the purpose of establishing lasting economic relations*"; it excludes shares or voting power acquired through stock exchanges representing less than ten per cent of a company's capital or voting rights.[52] For corporate investors, the incorporation requirement remains, but "*registered offices*" replaces "*headquarters*". The March 2009 draft adds a requirement of "*real economic activities*",[53] replaced by "*substantial business activities*" in the May 2009 draft.[54]

The armed-conflict clause in Article IV(3), entitled "Expropriation and Compensation", of the 2006 model is placed in a separate Article 6 entitled "Compensation for Losses" in the 2009 model, without any change to its substantive content.

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[47] 2009 Model BITs, art. 5(2).

[48] On the *police powers* doctrine, see Catharine Titi, "Police Powers Doctrine and International Investment Law", in Andrea Gattini, Attila Tanzi and Filippo Fontanelli (eds.), *General Principles of Law and International Investment Arbitration*, Brill Nijhoff, 2018, pp. 323–343.

[49] *Methanex v. United States*, UNCITRAL (NAFTA), Final Award dated 3 August 2005, Part IV, Chapter D, para. 7; *Saluka v. Czech Republic*, UNCITRAL, Partial Award dated 17 March 2006, paras. 255, 262.

[50] 2004 U.S. Model BIT, Annex B, para. 4(b); 2004 Canada Model FIPA, Annex B.13(1)(c).

[51] 2009 Model BITs, art. 5(2). The January 2010 Model BIT, art. 5(2), omits the final phrase expressly excluding compensation, "*and are not subject, therefore, to any compensation requirements*", but that omission does not itself establish an obligation to compensate.

[52] 2009 Model BITs, art. 1(1).

[53] March 2009 Model BIT, art. 1(2)(b).

[54] May 2009 Model BIT, art. 1(2)(b).

Another innovation is the MFN limitation, which we believe was developed with the *Maffezini* line of case law in mind. The March 2009 draft does not yet contain it. The May 2009 draft published by UNCTAD provides that the MFN clause does not apply to "*procedural rights*", seeking to prevent investors from importing more favourable dispute settlement provisions from another BIT.[55] Because the exception addresses procedural rights alone, it may also support the interpretation that importing substantive protections was assumed to remain within the clause's scope.[56]

For dispute settlement, the 2009 models add the host state's courts to the ICSID and UNCITRAL options—even if this arguably states the obvious—and introduce a fork-in-the-road rule under which the chosen forum is final.[57] The wording reflecting the ICSID notification, introduced in the 2006 draft, is retained.[58]

The May 2009 model was revised again in January 2010. This version for the first time ties FET and FPS to the "*international law minimum standard of treatment*".[59] That standard denotes the international minimum level of protection owed to foreign investments. Although the formula might appear to be a feature of post-2016 treaties, it dates to 2010 and appears in signed treaties from 2011 among the texts examined.[60] The heading "Right to Regulate" became "General Exceptions";[61] the MFN exception was clarified from "*procedural rights*" to "*dispute settlement provisions*".[62] The phrase expressly excluding compensation in cases of indirect expropriation was removed,[63] the interest measure for delayed expropriation compensation was changed,[64] and a possibility of temporarily restricting transfers in the event of serious balance-of-payments difficulties was added.[65]

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[55] May 2009 Model BIT, art. 3(4)(c). For an example from a signed BIT, see Türkiye–Montenegro BIT (2012), art. 3(4)(c).

[56] For an example of this approach, see *Bayindir v. Pakistan*, ICSID Case No. ARB/03/29, Award dated 27 August 2009, paras. 156–157. Cf. Simon Batifort and J. Benton Heath, "The New Debate on the Interpretation of MFN Clauses in Investment Treaties: Putting the Brakes on Multilateralization", *American Journal of International Law*, Vol. 111, No. 4, 2017, pp. 892–893. For another critique of importing substantive protections, see Facundo Pérez-Aznar, "The Use of Most-Favoured-Nation Clauses to Import Substantive Treaty Provisions in International Investment Agreements", *Journal of International Economic Law*, Vol. 20, No. 4, 2017, pp. 777–805.

[57] 2009 Model BITs, art. 9(2)–(3).

[58] 2009 Model BITs, art. 9(4)(a)–(b).

[59] January 2010 Model BIT, art. 2(2).

[60] Türkiye–Tanzania BIT (2011), art. 2(2); Türkiye–Azerbaijan BIT (2011), art. 2(2).

[61] January 2010 Model BIT, art. 4.

[62] January 2010 Model BIT, art. 3(4)(c).

[63] 2009 Model BITs, art. 5(2): "*… and are not subject, therefore, to any compensation requirements*". The final phrase does not appear in the January 2010 Model BIT, art. 5(2).

[64] 2009 Model BITs, art. 5(4): "*… an interest at a rate to be agreed upon by both parties unless such rate is prescribed by law from the date of expropriation until the date of payment.*" January 2010 Model BIT, art. 5(4): "*… an interest rate equivalent to the highest interest paid on public claims in the hosting Contracting Party.*"

[65] January 2010 Model BIT, art. 7(3).

Tying FET and FPS to the minimum standard of treatment is a striking choice for a capital-exporting state signing treaties based on these models with states seeking its investment. It ties FET—the most flexible standard available to Turkish investors abroad—to a threshold whose content remains contested among tribunals. At the same time, because evolutionary interpretations of the minimum standard have brought it closer to FET protection not expressly tied to that standard, the change may be regarded primarily as an alignment with contemporary trends, with limited practical effect.

The choice does indeed reflect the trend of the period. The North American Free Trade Agreement ("NAFTA") Free Trade Commission's 2001 interpretation clarified that FET and FPS do not require treatment in addition to or beyond the customary international law minimum standard of treatment of aliens;[66] the 2004 United States and Canadian models[67] and the Dominican Republic–Central America–United States Free Trade Agreement ("CAFTA-DR")[68] incorporated this formula. The Association of Southeast Asian Nations' ("ASEAN") 2009 Comprehensive Investment Agreement took a different approach: instead of tying the standard to customary law, it defined FET by reference to the prohibition of denial of justice in accordance with due process and FPS by reference to the adoption of reasonably necessary measures.[69] When Türkiye's January 2010 text was prepared, although the tribunal in *Glamis Gold v. United States* (2009) required a high threshold for breach of the minimum standard,[70] the line of decisions in *Mondev v. United States* (2002)[71] and *Waste Management II v. Mexico* (2004)[72] had accepted that the standard was not frozen at the threshold of the 1920s *Neer* decision[73] but evolved with contemporary state practice. The continuation of the evolutionary approach in *Railroad Development Corporation v. Guatemala* (2012) supports our assessment above that the change had "limited practical effect".[74]

B. The Relationship Between Domestic Courts and Arbitration

The 2009 model's express provision for domestic courts as an option constitutes another change. In some treaties signed by Türkiye from the 1990s onward, the relationship

[66] NAFTA Free Trade Commission, "Notes of Interpretation of Certain Chapter 11 Provisions", 31 July 2001, "Minimum Standard of Treatment in Accordance with International Law", paras. 1–2.

[67] 2004 U.S. Model BIT and 2004 Canada Model FIPA, art. 5.

[68] CAFTA-DR (2004), art. 10.5.

[69] ASEAN Comprehensive Investment Agreement (2009), art. 11(2)(a)–(b).

[70] *Glamis Gold v. United States*, UNCITRAL, Award dated 8 June 2009, paras. 614–616.

[71] *Mondev v. United States*, ICSID Case No. ARB(AF)/99/2, Award dated 11 October 2002, paras. 116–125.

[72] *Waste Management II v. Mexico*, ICSID Case No. ARB(AF)/00/3, Award dated 30 April 2004, para. 98.

[73] *L. Fay H. Neer and Pauline Neer (USA) v. United Mexican States*, Decision dated 15 October 1926.

[74] *Railroad Development Corporation v. Guatemala*, ICSID Case No. ARB/07/23, Award dated 29 June 2012, paras. 218–219.

between recourse to domestic courts and their failure to render a final decision within one year is expressed through the formula "*provided that, if … and …*".[75] This complicated wording and its layered conditions lend themselves to two readings. Under one, an investor must first bring the dispute before domestic courts and those courts must have failed to issue a final decision within a year before the investor may resort to arbitration. Under the other, recourse to domestic courts is an option for the investor, and the one-year condition arises only if that option is exercised. The text thus left uncertain whether recourse to domestic courts was genuinely a precondition to arbitration or merely an available option.[76]

This ambiguity arose in practice in *Rumeli v. Kazakhstan*. In its decision of 29 July 2008, the tribunal, relying on the English and Russian texts of the treaty containing the same formula, did not treat prior recourse to domestic courts as mandatory.[77]

The issue later became more pronounced in cases brought against Turkmenistan under an older BIT. Tribunals in arbitrations brought by Turkish contractors under the same BIT interpreted the same article differently and reached different conclusions.

In its decision of 7 May 2012, the *Kılıç v. Turkmenistan* tribunal assessed the ambiguity in the English text alongside the Russian text and the circumstances of the treaty's conclusion, and held that recourse to domestic courts was mandatory. In its final award of 2 July 2013, a majority of the tribunal characterised the requirement as jurisdictional and dismissed the claim.[78]

The *Muhammet Çap & Sehil v. Turkmenistan* tribunal, by contrast, read recourse to domestic courts after the six-month negotiation period as merely an option; the one-year period and the absence of a decision would matter only if that option were exercised.[79]

The majority in *İçkale v. Turkmenistan* considered recourse to domestic courts mandatory, but treated the question as one of admissibility rather than jurisdiction. Given that the matters underlying the dispute had already been brought before domestic courts by Turkmen public entities or the prosecutor's office, the tribunal considered it inappropriate to require the investor to file a fresh action and found the claims admissible.[80]

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[75] Türkiye–Turkmenistan BIT (1992), Türkiye–Pakistan BIT (1995) and Türkiye–Syria BIT (2004), art. VII(2): the six-month amicable settlement period and separate one-year period for domestic courts.

[76] *Kılıç İnşaat İthalat İhracat Sanayi ve Ticaret Anonim Şirketi v. Turkmenistan* ("Kılıç"), ICSID Case No. ARB/10/1, Decision on Article VII.2 dated 7 May 2012, para. 9.14.

[77] *Rumeli Telekom and Telsim v. Kazakhstan*, ICSID Case No. ARB/05/16, Award dated 29 July 2008, para. 317.

[78] Kılıç, Decision on Article VII.2 dated 7 May 2012, para. 9.23; Award dated 2 July 2013, paras. 6.2.6–6.2.9, 6.3.15, 10.1.1.

[79] *Muhammet Çap & Sehil v. Turkmenistan*, ICSID Case No. ARB/12/6, Decision on the Respondent's Jurisdictional Objection under Article VII(2) dated 13 February 2015, paras. 280–282.

[80] *İçkale v. Turkmenistan*, ICSID Case No. ARB/10/24, Award dated 8 March 2016, paras. 261–263.

In the 2009 model, by contrast, proceedings before domestic courts are expressly provided as an alternative to international arbitration and are subject to a fork-in-the-road rule. The uncertainty arising from the "*provided that, if … and …*" formula, which also does not appear in the earlier models, therefore does not arise under the 2009 and subsequent model texts. Although this clear provision in the later model may be invoked in support of the view that recourse to domestic courts was merely an option under older treaties as well, it cannot by itself resolve the interpretative issue.

C. The Changes and the Need to Protect Turkish Investors

From the 2009 model onward, Türkiye's approach in the models used to conclude treaties with states receiving Turkish capital may be seen as somewhat at odds with its diplomatic position in those negotiations. Compared with the 2000 model, the 2009–2010 texts appear, at least at first sight, to give greater consideration to the host state. Even if the changes might have only a limited effect in practice, Türkiye could have been expected, in everyday terms, to adopt bolder texts protecting investors in draft treaties for negotiations with states over which it had greater diplomatic leverage.

The 2014 Model BIT

The January 2014 model adds chiefly two new provisions to the 2010 structure. The first allows a Contracting Party to deny the benefits of the treaty to a company and its investments where that company has no "*substantial business activities*" in its state of incorporation and is owned or controlled by investors of a third state or of the host state (denial of benefits).[81] Both the absence of activities and ownership or control must be established, and prior notification to the other Contracting Party is required "*to the extent practicable*".[82] The second specifies the law applicable in arbitration: the treaty, the host state's laws and regulations (including its conflict-of-laws rules), and the relevant principles of international law accepted by both Contracting Parties.[83] This model also expressly limits the exclusion from arbitration concerning immovable property to ownership and other rights *in rem* over immovable property within the territory of Türkiye.[84] The exclusive jurisdiction of Turkish courts over these matters existed in earlier models as well. The new wording clarifies an asymmetrical choice that does not exclude Turkish investors' immovable property abroad.

[81] January 2014 Model BIT, art. 11(1).

[82] *Id.*, art. 11(2).

[83] *Id.*, art. 10(5).

[84] *Id.*, art. 10(4)(b).

Inferences Concerning Model BITs After 2014

As explained in the first section, although the texts of post-2014 models are unavailable, UNCTAD records the existence of models dated 2016 and 2024.[85] Other models may, of course, also have been prepared.

Even so, it is possible to draw inferences about the content of later models. First, the Foreign Affairs Committee reports of the Grand National Assembly of Türkiye on the treaties signed with Palestine (2018),[86] Hong Kong (2023)[87] and Iraq (2024)[88] state that Türkiye's model formed the basis of those treaties. They may therefore serve as points of reference for later models. In addition, wording repeated to a large extent in most of the other treaties suggests that the 2014 model underwent certain changes. We discuss the identifiable changes below, broadly in the likely order of the relevant articles.

The first and most conspicuous change concerns the definition of investment. Later treaties retain an asset-based definition, but also require a protected asset to possess the characteristics of an investment. These include, by way of example, (i) the commitment of capital or other resources, (ii) the expectation of regular gain or profit, (iii) the assumption of risk, (iv) contribution to economic development, or (v) a certain duration.[89] A footnote added in most treaties explains that, if an asset lacks

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[85] See UNCTAD, "International Investment Agreements Navigator", UNCTAD Investment Policy Hub, https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements, accessed 28 September 2026.

[86] Grand National Assembly of Türkiye, "Tekirdağ Milletvekili Mustafa Şentop'un Türkiye Cumhuriyeti Hükümeti ile Filistin Devleti Hükümeti Arasında Yatırımların Karşılıklı Teşviki ve Korunmasına İlişkin Anlaşma ve Anlaşmada Değişiklik Yapılmasına Dair Notaların Onaylanmasının Uygun Bulunduğuna Dair Kanun Teklifi (2/2370) ve Dışişleri Komisyonu Raporu", https://cdn.tbmm.gov.tr/KKBSPublicFile/D27/Y3/T2/DosyaKomisyonRaporunuVerdi/4cfaec76-6881-493a-9ce8-9ec9ce4b50b0.pdf, accessed 28 September 2026, p. 7: "*temel olarak, ülkemizin model anlaşmasının esas alındığı*" (essentially based on our country's model agreement).

[87] Grand National Assembly of Türkiye, "İstanbul Milletvekili Numan Kurtulmuş'un Türkiye Cumhuriyeti Hükümeti ile Çin Halk Cumhuriyeti Hong Kong Özel İdari Bölgesi Hükümeti Arasında Yatırımların Karşılıklı Teşviki ve Korunmasına İlişkin Anlaşmanın Onaylanmasının Uygun Bulunduğuna Dair Kanun Teklifi (2/2639) ve Dışişleri Komisyonu Raporu", https://cdn.tbmm.gov.tr/KKBSPublicFile/D28/Y3/T2/DosyaKomisyonRaporunuVerdi/c898d080-9574-4462-89e6-4f9a8f187c1b.pdf, accessed 28 September 2026, p. 9: "*büyük ölçüde ülkemiz taslak metnine dayandığı*" (largely based on our country's draft text).

[88] Grand National Assembly of Türkiye, "İstanbul Milletvekili Numan Kurtulmuş'un Türkiye Cumhuriyeti Hükümeti ile Irak Cumhuriyeti Hükümeti Arasında Yatırımların Karşılıklı Teşviki ve Korunmasına İlişkin Anlaşmanın Onaylanmasının Uygun Bulunduğuna Dair Kanun Teklifi (2/2344) ve Dışişleri Komisyonu Raporu", https://cdn.tbmm.gov.tr/KKBSPublicFile/D28/Y2/T2/DosyaKomisyonRaporunuVerdi/ed7751e2-c320-47c2-97d1-a4a9d0c0cacb.pdf, accessed 28 September 2026, p. 8: "*ülkemiz taslağına dayanmakta olduğu*" (based on our country's draft).

[89] Türkiye–Jordan BIT (2016), art. 1(1); Türkiye–Somalia BIT (2016), art. 1(1); Türkiye–Moldova BIT (2016), art. 1(1); Türkiye–Mozambique BIT (2017), art. 1(1); Türkiye–Burundi BIT (2017), art. 1(1); Türkiye–Ukraine BIT (2017), art. 1(1); Türkiye–Chad BIT (2017), art. 1(1); Türkiye–Serbia BIT (2018), art. 1(1); Türkiye–Belarus BIT (2018), art. 1(1); Türkiye–Lithuania BIT (2018), art. 1(1); Türkiye–Palestine BIT (2018), art. 1(1); Türkiye–Burkina Faso BIT (2019), art. 1(1); Türkiye–Angola BIT (2021), art. 1(1); Türkiye–Uruguay BIT (2022), art. 1(1); Türkiye–Iraq BIT (2024), art. 1(1). The Türkiye–Guatemala BIT (2015), art. 1(1), is the first example of this formula, but does not list contribution to economic development among the characteristics. The Türkiye–United Arab Emirates BIT (2023), art. 1(9), lists neither economic contribution nor a certain duration. The Türkiye–Serbia

the characteristics of an investment, it does not qualify as an investment regardless of the form it may take.[90]

Under Article 25 of the ICSID Convention, the contribution, duration, risk and contribution-to-economic-development criteria were discussed in *Salini v. Morocco*.[91] The last and most controversial of these[92] will inevitably confront Turkish investors abroad as the basis for jurisdictional objections. In this respect, we consider that omitting the criterion, as in the BITs signed with Guatemala and Georgia, would be more consistent with Türkiye's position.

The addition of the characteristics of an investment to the definition is accompanied by the omission, from the great majority of later treaties, of the provision excluding shares or voting rights acquired through a stock exchange that represent less than ten per cent of a company's capital or voting rights. Among the BITs listing the characteristics of an investment, this provision is retained only in the BIT signed with Burkina Faso.[93]

Compared with the 2014 model, many treaties add a paragraph at the end of the "General Exceptions" provision. According to this paragraph, the "*adoption, maintenance or enforcement*" of the measures referred to in that provision is subject to the requirement that they "*are not applied in an arbitrary or unjustifiable manner or do not constitute a disguised restriction on investments of investors of the other Contracting Party*".[94]

BIT (2022), art. 1(1), adds the flow of capital and technology between the Contracting Parties to all the listed characteristics. The Türkiye–Georgia BIT (2016) and Türkiye–Uzbekistan BIT (2017), art. 1(1), use different formulations; the Georgia treaty also omits contribution to economic development. The characteristics of an investment are also listed in the Türkiye–Colombia BIT (2014), art. 1(4), but this provision appears to derive from Colombia's model. See UNCTAD, "Colombia Model BIT 2011", UNCTAD Investment Policy Hub, https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/3559/download, accessed 21 September 2026, art. 2.4.

[90] Türkiye–Jordan BIT (2016), art. 1(1), fn. [1]; Türkiye–Somalia BIT (2016), art. 1(1), fn. [1]; Türkiye–Moldova BIT (2016), art. 1(1), fn. [1]; Türkiye–Mozambique BIT (2017), art. 1(1), fn. [1]; Türkiye–Burundi BIT (2017), art. 1(1), fn. [1]; Türkiye–Ukraine BIT (2017), art. 1(1), fn. [1]; Türkiye–Serbia BIT (2018), art. 1(1), fn. [1]; Türkiye–Palestine BIT (2018), art. 1(1), fn. [1]; Türkiye–Iraq BIT (2024), art. 1(1), fn. [1]. For the same clarification in the main text, see Türkiye–Belarus BIT (2018), art. 1(1).

[91] *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco* ("*Salini*"), ICSID Case No. ARB/00/4, Decision on Jurisdiction dated 23 July 2001, para. 52. The definition of investment in a BIT and the criteria for an investment under Article 25 of the ICSID Convention are distinct legal inquiries. The point here is that criteria discussed in connection with the Convention are incorporated, in whole or in part, into the treaty's definition of investment.

[92] For an example rejecting contribution to economic development as a criterion, see *Saba Fakes v. Turkey*, ICSID Case No. ARB/07/20, Award dated 14 July 2010, paras. 110–111. *Salini*, para. 52, notes that the elements are interrelated and must be assessed together; they are not an immutable list automatically applicable to every BIT.

[93] See the treaties listed in footnote 89 above. Türkiye–Burkina Faso BIT (2019), art. 1(1).

[94] Türkiye–Jordan BIT (2016), art. 5(3); Türkiye–Georgia BIT (2016), art. 5(3); Türkiye–Moldova BIT (2016), art. 5(3); Türkiye–Mozambique BIT (2017), art. 5(3); Türkiye–Burundi BIT (2017), art. 5(3); Türkiye–Uzbekistan BIT (2017), art. 5(3); Türkiye–Chad BIT (2017), art. 5(3); Türkiye–Belarus BIT (2018), art. 5(3); Türkiye–Mauritania BIT (2018), art. 5(3); Türkiye–Palestine BIT (2018), art. 5(3); Türkiye–Burkina Faso BIT (2019), art. 5(3); Türkiye–Congo BIT (2021), art. 5(3); Türkiye–Iraq BIT (2024), art. 5(3). For a different first paragraph, see Türkiye–United Arab Emirates BIT (2023), art. 6(3).

The interest payable in the event of delayed expropriation compensation appears to have changed from "*the highest interest paid on public claims in the hosting Contracting Party*" to "*an appropriate interest rate from the date of expropriation until the date of payment*".[95]

The armed-conflict clause remained substantively unchanged from Türkiye's first model in 2000 through the latest model whose full text is available, dated 2014.[96] A new paragraph appears to have been added to it thereafter.[97] The first paragraph provided that, with respect to measures addressing investment losses arising from war, insurrection, civil disturbance or similar events, investors would receive whichever of NT or MFN treatment was more favourable. Under the new second paragraph, without prejudice to the first, investors suffering losses from those events shall be accorded prompt, adequate and effective restitution or compensation where the losses result from (a) requisitioning of their property by the host state's forces or authorities, or (b) destruction of their property by those forces or authorities where it was not caused in combat action or required by the necessity of the situation. The resulting payments must also be freely convertible.

The ability to restrict transfers relating to investments has been expanded. The 2010 and 2014 models permitted temporary restrictions where payments and capital movements caused or threatened to cause serious balance-of-payments difficulties, provided the restrictions were applied in a non-discriminatory manner and in good faith. A new paragraph in treaties signed from 2014 also permits transfers to be

[95] Türkiye–Côte d'Ivoire BIT (2016), art. 6(4); Türkiye–Jordan BIT (2016), art. 6(4); Türkiye–Somalia BIT (2016), art. 6(4); Türkiye–Mozambique BIT (2017), art. 6(4); Türkiye–Burundi BIT (2017), art. 6(4); Türkiye–Ukraine BIT (2017), art. 6(4); Türkiye–Palestine BIT (2018), art. 6(4); Türkiye–Burkina Faso BIT (2019), art. 6(4); Türkiye–Congo BIT (2021), art. 6(4); Türkiye–Angola BIT (2021), art. 8(5); Türkiye–United Arab Emirates BIT (2023), art. 7(5). For interest of at least six-month LIBOR, see Türkiye–Uzbekistan BIT (2017), art. 6(4). For interest over the period of delay of at least LIBOR, see Türkiye–Belarus BIT (2018), art. 6(4). Türkiye–Iraq BIT (2024), art. 6(4), refers to "*an appropriate commercial interest rate from the date of expropriation until the date of payment*".

[96] The clause was initially the final paragraph of the article entitled "Expropriation and Compensation": 2000 Model BIT, art. IV(3); 2004 Model BIT, art. IV(3); 2005 Model BIT, art. IV(3); 2006 Model BIT, art. IV(3). From 2009 it appears as a separate article entitled "Compensation for Losses": 2009 Model BITs, art. 6; January 2010 Model BIT, art. 6; January 2014 Model BIT, art. 7.

[97] Türkiye–Sudan BIT (2014), art. 7(2); Türkiye–Colombia BIT (2014), art. 8(2); Türkiye–China BIT (2015), art. 6(2); Türkiye–Côte d'Ivoire BIT (2016), art. 7(2); Türkiye–Ghana BIT (2016), art. 10(2); Türkiye–Jordan BIT (2016), art. 7(2); Türkiye–Somalia BIT (2016), art. 7(2); Türkiye–Georgia BIT (2016), art. 7(2); Türkiye–Rwanda BIT (2016), art. 7(2); Türkiye–Moldova BIT (2016), art. 7(2); Türkiye–Mozambique BIT (2017), art. 7(2); Türkiye–Burundi BIT (2017), art. 7(2); Türkiye–Ukraine BIT (2017), art. 7(2); Türkiye–Uzbekistan BIT (2017), art. 7(2); Türkiye–Chad BIT (2017), art. 7(2); Türkiye–Serbia BIT (2018), art. 7(2); Türkiye–Belarus BIT (2018), art. 7(2); Türkiye–Mauritania BIT (2018), art. 7(2); Türkiye–Mali BIT (2018), art. 7(2); Türkiye–Kyrgyzstan BIT (2018), art. 7(2); Türkiye–Zambia BIT (2018), art. 8(2); Türkiye–Lithuania BIT (2018), art. 9(2); Türkiye–Palestine BIT (2018), art. 7(2); Türkiye–Burkina Faso BIT (2019), art. 7(2); Türkiye–Angola BIT (2021), art. 8(2); Türkiye–Congo BIT (2021), art. 7(2); Türkiye–Uruguay BIT (2022), art. 9(2); Türkiye–Serbia BIT (2022), art. 7(2); Türkiye–United Arab Emirates BIT (2023), art. 9(2); Türkiye–Venezuela BIT (2023), art. 8(2); Türkiye–Hong Kong BIT (2023), art. 6(2); Türkiye–Iraq BIT (2024), art. 7(2).

prevented through the equitable, non-discriminatory and good-faith application of laws and regulations concerning matters that vary from treaty to treaty.[98]

The provision on investor–state dispute settlement also appears to have changed. Most later treaties add an opening paragraph stating that the investor–state dispute settlement article applies to disputes concerning an "*alleged breach of an obligation*" under the treaty "*which causes loss or damage to the investor or its investments*".[99] It is again noteworthy that this change limiting investors' access to arbitration was adopted in treaties signed with states receiving Turkish capital.

A new article entitled "Service of Documents" was added to many treaties signed after 2016.[100] It provides that notices and other documents sent to Türkiye in investor–state and inter-state disputes must be delivered to the Prime Ministry's Department of Legal Services in treaties signed before the presidential system, and to the Presidency's General Directorate of Law and Legislation in those signed afterwards. The stated reason for this addition was that sending requests for international arbitration to embassies or ministries unrelated to the matter wasted time in preparing for arbitration.[101]

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[98] Türkiye–Sudan BIT (2014), art. 8(4); Türkiye–Colombia BIT (2014), art. 9(3); Türkiye–Guatemala BIT (2015), art. 8(4); Türkiye–Jordan BIT (2016), art. 8(3); Türkiye–Georgia BIT (2016), art. 8(4); Türkiye–Rwanda BIT (2016), art. 8(4); Türkiye–Uzbekistan BIT (2017), art. 8(3); Türkiye–Serbia BIT (2018), art. 8(3); Türkiye–Belarus BIT (2018), art. 8(4); Türkiye–Lithuania BIT (2018), art. 10(3); Türkiye–Cambodia BIT (2018), art. 7(4); Türkiye–Angola BIT (2021), art. 9(3); Türkiye–Uruguay BIT (2022), art. 10(3); Türkiye–Serbia BIT (2022), art. 8(3); Türkiye–Venezuela BIT (2023), art. 9(3); Türkiye–Hong Kong BIT (2023), art. 8(3). The Türkiye–Palestine BIT (2018), art. 8(3), limits temporary restrictions on transfers in the event of balance-of-payments difficulties to the application of laws relating to the matters listed in that article. This provision is absent from the treaty signed with Iraq in 2024, which is described as based on Türkiye's model.

[99] Türkiye–Guatemala BIT (2015), art. 10(1); Türkiye–Jordan BIT (2016), art. 10(1); Türkiye–Somalia BIT (2016), art. 10(1); Türkiye–Georgia BIT (2016), art. 10(1); Türkiye–Rwanda BIT (2016), art. 10(1); Türkiye–Moldova BIT (2016), art. 10(1); Türkiye–Mozambique BIT (2017), art. 11(1); Türkiye–Burundi BIT (2017), art. 10(1); Türkiye–Ukraine BIT (2017), art. 10(1); Türkiye–Chad BIT (2017), art. 10(1); Türkiye–Serbia BIT (2018), art. 13(1); Türkiye–Belarus BIT (2018), art. 10(1); Türkiye–Mauritania BIT (2018), art. 10(1); Türkiye–Lithuania BIT (2018), art. 13(1); Türkiye–Burkina Faso BIT (2019), art. 10(1); Türkiye–Angola BIT (2021), art. 10(1); Türkiye–Congo BIT (2021), art. 10(1); Türkiye–Serbia BIT (2022), art. 12(1); Türkiye–United Arab Emirates BIT (2023), art. 13(1). The Türkiye–Uruguay BIT (2022), art. 12(1), adds "*hereinafter referred to as 'investment dispute'*" after the same definition. A footnote to the same definition in the Türkiye–Hong Kong BIT (2023), art. 14(1), fn. [4], clarifies that "*Only disputes arising out of an investment made in conformity with the laws and regulations of the host Contracting Party and that has effectively started shall be subject to this Article.*" For a broader definition, see Türkiye–Uzbekistan BIT (2017), art. 10(1).

[100] Türkiye–Côte d'Ivoire BIT (2016), art. 13; Türkiye–Jordan BIT (2016), art. 13; Türkiye–Somalia BIT (2016), art. 13; Türkiye–Moldova BIT (2016), art. 13; Türkiye–Mozambique BIT (2017), art. 14; Türkiye–Burundi BIT (2017), art. 13; Türkiye–Ukraine BIT (2017), art. 13; Türkiye–Chad BIT (2017), art. 13; Türkiye–Serbia BIT (2018), art. 15; Türkiye–Mauritania BIT (2018), art. 13; Türkiye–Lithuania BIT (2018), art. 15; Türkiye–Palestine BIT (2018), art. 13; Türkiye–Burkina Faso BIT (2019), art. 13; Türkiye–Angola BIT (2021), art. 14; Türkiye–Congo BIT (2021), art. 13; Türkiye–Uruguay BIT (2022), art. 16; Türkiye–Serbia BIT (2022), art. 15; Türkiye–United Arab Emirates BIT (2023), art. 16; Türkiye–Venezuela BIT (2023), art. 17; Türkiye–Hong Kong BIT (2023), art. 16; Türkiye–Iraq BIT (2024), art. 13.

[101] Grand National Assembly of Türkiye, "Tekirdağ Milletvekili Mustafa Şentop'un Türkiye Cumhuriyeti Hükümeti ile Moldova Cumhuriyeti Hükümeti Arasında Yatırımların Karşılıklı Teşviki ve Korunmasına İlişkin Anlaşmanın Notalarla Birlikte Onaylanmasının Uygun Bulunduğuna Dair Kanun Teklifi (2/3053) ve Dışişleri Komisyonu Raporu", https://cdn.tbmm.gov.tr/KKBSPublicFile/D27/Y3/T2/DosyaKomisyonRaporunuVerdi/54ded840-78d4-4dd5-859e-820067952ea8.pdf, accessed 23 September 2026, p. 8.

These changes do not eliminate continuity with the 2014 model. For example, with respect to FET, the substantial repetition of the 2014 model's formulation in later treaties signed with different states supports an inference that it was retained in subsequent models.[102] The approach of excluding dispute settlement from the MFN provision also continued, albeit in different wording.[103] Negotiation, the fork-in-the-road rule and the requirement that an investment have effectively commenced likewise remained conditions for arbitration. The post-2014 period is therefore a continuation of the earlier process of elaboration rather than a break. The changes are consistent with the trend towards clarifying standards and expressly preserving regulatory space.

Assessment of Policy and Interpretation

The changes examined require consideration of Türkiye's interests both as the home state of investors and as a host state. In a relationship principally involving capital exports, broader investor protection might be expected, but reciprocal obligations mean that the same provisions can also be invoked against Türkiye. Although Türkiye generally follows trends and case law, and the changes may have only a limited effect in practice, it could use its bargaining power more deliberately for the benefit of its investors abroad.

One possible explanation for the model revisions is Türkiye's experience as a respondent state. The connection in subject matter and timing between the consent issue discussed in *PSEG* and the addition to the 2006 draft supports this explanation, but does not show that every revision was made for the same reason. The practical convenience of retaining a common starting draft and the risks created by reciprocal obligations are also possible explanations. We treat these as hypotheses that could be tested against negotiating documents or institutional statements, rather than as established policy objectives.

The interpretative value of model texts for older treaty provisions calls for similar caution. A later change may clarify the earlier meaning or alter the previous choice.

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[102] Türkiye–Côte d'Ivoire BIT (2016), art. 3(2); Türkiye–Jordan BIT (2016), art. 3(4); Türkiye–Somalia BIT (2016), art. 3(2); Türkiye–Georgia BIT (2016), art. 3(3); Türkiye–Rwanda BIT (2016), art. 3(2); Türkiye–Moldova BIT (2016), art. 3(2); Türkiye–Mozambique BIT (2017), art. 3(2); Türkiye–Burundi BIT (2017), art. 3(2); Türkiye–Ukraine BIT (2017), art. 3(2); Türkiye–Chad BIT (2017), art. 3(2); Türkiye–Belarus BIT (2018), art. 3(2); Türkiye–Mauritania BIT (2018), art. 3(2); Türkiye–Kyrgyzstan BIT (2018), art. 3(2); Türkiye–Zambia BIT (2018), art. 4(1); Türkiye–Palestine BIT (2018), art. 3(2); Türkiye–Cambodia BIT (2018), art. 2(2); Türkiye–Burkina Faso BIT (2019), art. 3(2); Türkiye–Angola BIT (2021), art. 3(2); Türkiye–Congo BIT (2021), art. 3(2).

[103] Of these, the wording in the treaties with Côte d'Ivoire, Jordan and Somalia (2016), and Mozambique, Burundi and Ukraine (2017) is, in view of its frequency and the dates of those treaties, the most likely to have been adopted in the 2016 model. Türkiye–Côte d'Ivoire BIT (2016), art. 4(4)(c); Türkiye–Jordan BIT (2016), art. 4(3)(c); Türkiye–Somalia BIT (2016), art. 4(4)(c); Türkiye–Mozambique BIT (2017), art. 4(4)(c); Türkiye–Burundi BIT (2017), art. 4(4)(c); Türkiye–Ukraine BIT (2017), art. 4(4)(c).

To distinguish these possibilities, one must consider the old and new wording, any express reason for the change, the context of the relevant treaty and evidence of the parties' shared understanding. A unilateral model text cannot, by itself, amount to subsequent practice establishing the parties' agreement within the meaning of Article 31(3)(b) of the 1969 Vienna Convention on the Law of Treaties. Any supplementary value under Articles 31–32 must be justified by showing its connection to the particular treaty.[104]

Conclusion

The 2000 model represents a period of traditional investor protection. Without changing the substantive standards, the 2005 and 2006 revisions first clarified the treaty's temporal scope and then the subject-matter limits of consent to arbitration, while elaborating the conditions of access to arbitration. The 2009 model and 2010 revision made the substantive standards more specific; the 2014 draft added provisions such as denial of benefits and applicable law. Treaties signed from 2014 onward contain further provisions introduced at different times, including lists of the objective characteristics of an investment, conditions governing the application of general exceptions, direct restitution or compensation for specified losses in armed conflict, elaborated exceptions to transfers, and a definition tying arbitrable disputes to a treaty breach causing loss. These findings show continuity with the transition beginning in 2005 and the subsequent elaboration.

In investment policy terms, the picture is one of retaining traditional protections while defining scope and conditions of recourse more clearly. This tendency does not mean that every change operates solely in favour of host states. The territorial limitation concerning immovable property in the 2014 model and the clarification of the domestic-court option reveal different effects. The relative influence of capital movements, bargaining power and experience as a respondent state on these choices calls for research beyond textual comparison.

As a matter of interpretation, the development of model texts offers a supplementary source showing how the same subject was redrafted over time. Whether a change clarified an earlier meaning or made a new choice must be assessed alongside the wording and context of the relevant treaty and evidence of the parties' common intention. Unilateral changes to models do not replace that inquiry; they can contribute to the formulation and testing of interpretative arguments. Broader access to the model texts will facilitate both historical study of Türkiye's treaty practice and practitioners' assessment of changes between provisions.

[104] On considering the model underlying a signed treaty among the circumstances of its conclusion under Article 32, see *Garanti Koza v. Turkmenistan*, ICSID Case No. ARB/11/20, Decision on the Objection to Jurisdiction for Lack of Consent dated 3 July 2013, para. 36.

The Legal Framework of Carbon Dioxide Removals and the European Union's Emerging Approach

Gülce Keskin & Sude Kınık

Introduction

Carbon dioxide removal (CDR) has evolved from a peripheral climate policy concept into a central component of global decarbonisation strategies. The Intergovernmental Panel on Climate Change (IPCC) considers deployment of CDR essential to achieving the Paris Agreement's temperature goals, particularly where residual emissions cannot be fully eliminated. Yet current levels of removal remain far below projected needs: In 2026, only 2.2 gigatonnes of carbon dioxide ($GtCO_2$) were removed per year,[1] while scientific assessments indicate that around 5-10 $GtCO_2$ per year will be needed to remain within a 1.5°C pathway.[2]

Established that higher levels of CDR deployment need significant policy interventions, policy design must also recognise the great variance among CDR methods.[3] CDR methods vary enormously in many ways, and the divergences raise fundamental questions regarding the integrity of carbon accounting: can a given quantity of CO_2 removal be measured, verified, and treated as genuinely equivalent to an emission reduction?

The European Union (EU) has begun establishing a regulatory framework designed to ensure the credibility and comparability of CDR methods. This article examines the question of carbon accounting integrity, analyses the EU's emerging approach to the certification

[1] Carbon Brief, "Q&A: The current state of 'carbon dioxide removal' around the world", 2 June 2026, https://www.carbonbrief.org/qa-the-current-state-of-carbon-dioxide-removal-around-the-world, accessed 1 September 2026.

[2] It is estimated that by 2050, global sequestration has to amount to 10 billion tonnes of CO_2 per year in order to reach 1.5 degrees Celsius warming goals set in the Paris Agreement. See Dr. Roger Aines' commentary, Climate Now, "Carbon Dioxide Removal with Roger Aines", 9 August 2021, https://climatenow.com/podcast/carbon-dioxide-removal-with-roger-aines/, (Aines Commentary) accessed 1 September 2026.

[3] Luka Štrubelj et al., "The new EU carbon removal certification: Landmark legislation or an empty promise?", One Earth, Vol. 6, No. 9, 2023, p.1094.

of CDR, and considers the implications of these developments for compliance carbon markets both within and beyond the European Union. As the EU refines its CDR framework, questions around measurement, permanence, additionality and sustainability are increasingly coming to the forefront. How these issues are addressed could have implications for both the growth of CDR technologies and the future direction of carbon markets.

Defining Carbon Dioxide Removal (CDR) and the Question of Carbon Accounting Integrity

A. CDR and Its Methods

The IPCC defines CDR as "*anthropogenic activities that remove CO_2 from the atmosphere and store it durably in geological, terrestrial, or ocean reservoirs, or in products.*"[4] Effectively, in order to classify an activity as CDR, the following criteria must be satisfied: Carbon dioxide (CO_2) must come from the atmosphere, removal must take place via anthropogenic activities and not natural causes such as the natural growth of forests, and finally, CO_2 must remain sequestered from the atmosphere for a sufficiently long period to have a meaningful impact.

The IPCC categorises CDR methods based on factors such as their maturity, removal process, time scale of carbon storage, storage medium, mitigation potential, cost, co-benefits, impacts and risks, and governance requirements. These methods range from nature-based solutions, such as reforestation, to engineered approaches, including Direct Air Carbon Capture and Storage (DACCS). For example, the method of reforestation has the net potential to store between 0.5 and 3.6 billion tonnes of CO_2 annually, with a cost of USD 5-50 a tonne of CO_2 sequestered.[5] On the other hand, DACCS has a potential to store between 0.5 and 5 billion tonnes of CO_2 annually,[6] representing a substantial share of the carbon removals required to meet global climate targets.[7] According to the IPCC 6th Assessment Report (6th AR), such process amounts to USD 100-300 per tonne of CO_2 sequestered,[8] while some commentators, such as Dr. Herzog, have suggested substantially higher figures.[9] Herzog's analysis gives a range of USD 600-1000 per tonne of CO_2.[10]

[4] Intergovernmental Panel on Climate Change, 6th Assessment Report, Working Group III, ("IPCC 6th AR") para. C.11.1.

[5] Sabine Fuss et al., "Negative emissions – Part 2 : Costs, potentials and side effects", Environmental Research Letters, Vol. 13, No. 6, 2018, p. 32.

[6] *Id*.

[7] It is estimated that by 2050, global sequestration has to amount to 10 billion tonnes of CO_2 per year in order to reach 1,5 degrees Celsius warming goals set in the Paris Agreement. See Aines Commentary.

[8] IPCC 6th AR, para. C.11.1

[9] Climate Now, "Carbon Dioxide Removal", 10 August 2021, https://climatenow.com/video/carbon-dioxide-removal-cdr/?utm_source=CN_YouTube&utm_medium=CDR_Transcript&utm_campaign=CN_YouTube_CDR_Transcript, accessed 1 September 2026.

[10] *Id*.

While the IPCC emphasises that large-scale deployment of CDR will be necessary to achieve global net-zero emissions targets,[11] the diverse characteristics of removal methods raise important policy and governance considerations. According to the IPCC 6th AR, methods such as reforestation, improved forest management, soil carbon sequestration, peatland restoration and blue carbon management may generate significant co-benefits for biodiversity, ecosystem health, employment opportunities, and local livelihoods when implemented under appropriate conditions.[12] Conversely, poorly planned afforestation projects or the production of biomass crops for bioenergy with carbon capture and storage (BECCS) or biochar may result in negative environmental and socio-economic consequences, including impacts on biodiversity, food and water security, local livelihoods, and the rights of Indigenous Peoples.[13] Ocean fertilization could potentially alter nutrient distribution patterns, disrupt ecosystem structures, increase oxygen depletion, and intensify acidification in deeper ocean layers if deployed.[14]

CDR Method[15]	Cost (USD/ tCO_2)	Mitigation Potential ($GtCO_2$/yr)	Key Risks	Key Co-benefits	Trade-offs and Spillover Effects
Afforestation/ Reforestation	0–240	0.5–10	Reversal via wildfire, disease, pests; reduced water yield.	Employment, biodiversity, wood products.	Large-scale deployment can compete for land with biodiversity conservation and food production.
Soil Carbon Sequestration	-45–100	0.6–9.3	Increased nitrous oxide (N_2O) emissions; reversal risk.	Improved soil quality and productivity.	Increases sequestration potential at the expense of production; net addition per hectare is small and hard to monitor.
Biochar	10–345	0.3–6.6	Particulate emissions; biodiversity/ carbon stock loss from unsustainable biomass harvest.	Increased crop yields, reduced non-CO_2 soil emissions.	Environmental impacts from particulate matter; competition for biomass resources.
DACCS	100–300 (84–386)	5–40	Increased energy and water use.	Water production (solid sorbent designs).	Potentially increased emissions from water supply and energy generation.

[11] IPCC 6th AR, para. C.11.1

[12] *Id.*, para. C.11.2.

[13] *Id.*

[14] *Id.*

[15] Adapted and shortened from IPCC 6th AR, Table TS.7 (Summary of status, costs, potentials, risk and impacts, co-benefits, trade-offs and spillover effects and the role in mitigation pathways for CDR methods), based on {12.3.2, 7.4}.

B. The Question of Carbon Accounting Integrity

These divergences in cost, technological maturity, and environmental trade-offs are not merely technical distinctions; they raise a more fundamental legal and regulatory question: can the quantity of CO_2 actually removed by a given method be measured, verified, and guaranteed to remain sequestered with sufficient accuracy to be treated as fungible with an emission reduction? To date, CDR credits have been transacted almost exclusively within the voluntary carbon market, where quality standards and verification practices vary considerably across registries.[16] Indeed, more than 125 distinct methodologies currently exist for certifying carbon removals.[17] This is now changing, as regulators have been exploring pathways to bring CDR within the scope of compliance-based carbon markets.[18] This question of carbon accounting integrity, encompassing measurement precision, permanence risk, additionality, and the treatment of ancillary environmental impacts, will become especially consequential once CDR is integrated into compliance-based carbon markets such as the EU Emissions Trading System (EU ETS). Within a compliance market, a verified tonne of removed CO_2 is more than a scientific assessment; it becomes a tradable unit. Its acceptance implies that it is fungible with, and therefore capable of substituting for, an equivalent emission reduction elsewhere in the economy. Consequently, any imprecision in measurement, any risk of reversal, any failure of additionality, or any unaccounted environmental cost is not confined to the removal site itself. It is effectively imported into the market, potentially undermining the credibility of the allowances in circulation and the broader integrity of the trading system.

1. Measurement Precision

One of the key challenges in accounting for CDR methods is the ability to measure and verify net CO_2 removals with sufficient accuracy.[19] Effectively, the International Energy Agency categorizes CDR methods into four categories, based on their "MRV-ability".[20] Category 1 represents the core, proven CDR activities that are easy

[16] World Resources Institute, "High-Quality Carbon Removal Requires Credible and Consistent MRV – Government Oversight Can Help", 13 June 2024, https://www.wri.org/technical-perspectives/measurement-reporting-verification-of-carbon-removal, accessed 1 September 2026.

[17] Štrubelj, p.1093.

[18] Carbon Gap, "2026-27 Review of the EU Emissions Trading System 1", https://carbongap.org/review-of-the-eu-emissions-trading-system, accessed 1 September 2026.

[19] Brookings Institute, "What is carbon dioxide removal and capture in the context of climate change?", 14 July 2026, https://www.brookings.edu/articles/what-is-carbon-dioxide-removal-and-capture-in-the-context-of-climate-change/, accessed 18 August 2026; International Energy Agency Greenhouse Gas R&D Programme, "Measurement, reporting and verification and accounting for carbon dioxide removal in the context of both project-based approaches and national greenhouse gas inventories", 15 October 2024, available at https://ieaghg.org/publications/measurement-reporting-and-verification-and-accounting-for-carbon-dioxide-removal/, accessed 18 August 2026, ("IEAGHG Report") p. 19 para. 2.4.1, p.54 para. 4.2.4.

[20] IEAGHG Report, p. 81-82, para. 4.4.

to account such as DACCS and BECCS.[21] On the other hand, methods such as soil organic carbon (SOC) carbon removal in Category 3[22] and enhanced weathering (EW) in Category 4 demonstrate challenges in their measurement and monitoring.[23]

Where net removal cannot be measured with sufficient accuracy, accounting inevitably comes to rely on a combination of the project developer's own MRV methodology and the independent assessment carried out by a third-party verifier, rather than on a direct, instrument-based measurement of CO_2 drawdown itself. This creates uncertainty, especially across Category 3 and 4 methods, and arguably undermines the reliability of verified carbon credits once such credits are used within a compliance market.

2. Permanence Risk

What makes a carbon capturing activity classify as "CDR" depends on whether it can be stored in the receiving media for a meaningful amount of time. Discussions in the scientific community remain with regards to what constitutes "high durability" or "permanent" within the definition of CDR.[24] This also includes the risk of carbon reversal,[25] which refers to the risk of stored carbon being released back into the atmosphere.[26] For example, biochar carbon removal, which refers to the method of converting biomass into biochar through pyrolysis, carries a higher risk of carbon reversal when not handled properly or burned.[27] Similarly, due to the global increase in wildfires,[28] afforestation and reforestation as CDR methods are associated with high risk of carbon reversal.

A carbon accounting-related outcome of this permanence risk concerns carbon certification, and especially the question of what would happen to the carbon certificate if the specific removal project it is attached to becomes subject to reversal. One policy response proposed for this question is to sell carbon certificates with an obligation to replace reversals, therefore, holding the credit holder responsible

[21] *Id.*, p. 81-83, para. 4.4.

[22] *Id.*, p. 59, para. 4.2.4.

[23] *Id.*, p. 83.

[24] *Id.*, p. 5.

[25] *Id.*, p. 9.

[26] Beyond Alliance, "New Approach Could Help Solve One of Carbon Markets' Biggest Problems", 16 June 2026, https://beyond-alliance.org/new-approach-could-help-solve-one-of-carbon-markets-biggest-problems/, accessed 10 August 2026.

[27] Carbon Better, "An Intro to Carbon Dioxide Removal (CDR)", 21 February 2025, https://carbonbetter.com/story/cdr-intro/, accessed 18 August 2026.

[28] Our World in Data, "Wildfires, Burned Area by Year", https://ourworldindata.org/wildfires, accessed 18 August 2026.

to ensure additional removals in case of reversals.[29] This approach, however, risks penalizing CDR methods that, despite carrying a comparatively higher reversal risk, offer substantially lower environmental impact, capital expenditure, and energy costs, reforestation being a prime example.

3. Additionality

Within the context of CDR, additionality refers to the requirement that the removal achieved by an activity exceed what would have occurred under a business-as-usual scenario.[30] In other words, the removal must be attributable to the incentivised activity itself rather than to processes that would have taken place regardless of carbon crediting. Determining correct variables in establishing "additionality" for the purposes of carbon accounting is important, since certifiable and creditable removals must be additional.[31] Failure to demonstrate genuine additionality risks creating credits that do not correspond to real net removals,[32] undermining the environmental credibility of the individual project, as well as the broader carbon market.

4. Environmental Costs of Removal

As outlined in the above table, the IPCC 6th AR, Working Group III exposes the environmental risks as well as co-benefits of certain CDR methods. Accordingly, a carbon accounting framework that focuses solely on the quantity of CO_2 removed risks treating fundamentally different removal activities as interchangeable. Ensuring environmental and social integrity therefore requires regulatory frameworks capable of assessing not only the volume of removals generated, but also their wider sustainability impacts.

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[29] Bellona, "Bellona Briefing: Addressing differences in permanence of Carbon Dioxide Removal", April 2022, https://network.bellona.org/content/uploads/sites/3/2022/04/Addressing-differences-in-permanence-of-Carbon-Dioxide-Removal.pdf, accessed 19 August 2026, p. 12.

[30] The World Bank defines "emissions additionality" as such: "*Under this concept, an action is deemed additional if it leads to lower levels of emissions than would have otherwise occurred under business as usual; this concept is perhaps the most simplified form of additionality. Under such a concept, the question is not raised regarding whether other factors would have resulted in that action occurring. For example, an action may indeed be profitable and yet lead to emissions reductions, on the assumption that not all profitable options will take place.*" *See* World Bank, "Carbon credits and additionality: past, present and future", 19 May 2016, https://documents.worldbank.org/en/publication/documents-reports/documentdetail/407021467995626915, accessed 19 August 2026, p.7.

[31] IEAGHG Report, p. 48, para. 4.2.3.

[32] Gold Standard, "What does 'additionality' mean and why is it important?", 11 March 2026, https://goldstandardhelp.freshdesk.com/support/solutions/articles/44001989691-what-does-additionality-mean-and-why-is-it-important-, accessed 21 August 2026.

The EU's Emerging Approach

The two main texts outlining the EU's emerging approach to the accounting and certification of carbon removals are the Carbon Removals and Carbon Farming (CRCF) Regulation adopted in 2024,[33] and the European Commission's (EC, Commission) revision proposal for Phase 5 of the EU Emissions Trading System (EU ETS) published in July 2026.[34]

The CRCF Regulation essentially provides for a voluntary, EU-wide certification framework for CDR, carbon storage and carbon farming activities.[35] Although at the time of its enactment, CDR was not accounted within the compliance market as an activity granting additional allowance for the emitting operators, the CRCF Regulation was significant in responding to some of the carbon accounting integrity questions raised above.

The EC's proposal marks a potentially significant next step. By creating a pathway for certain CRCF-certified removals to be recognised within the EU ETS, the proposal aims to connect a framework originally developed for voluntary markets with the EU's compliance carbon market architecture.[36]

A. The CRCF Regulation

The CRCF Regulation adopts a definition of CDR that largely mirrors the IPCC's definition, being "*the anthropogenic removal of carbon from the atmosphere and its durable storage in geological, terrestrial or ocean reservoirs, or in long-lasting products*".[37]

As set out in its Article 1, the Regulation establishes quality criteria for CDR activities within the EU, rules for the verification and certification of carbon removals, the functioning and recognition of certification schemes by the EC, and the rules on the issuance and use of certified units.[38] The CRCF Regulation establishes overarching criteria for the certification of CDR, while also bringing rules for certification steps, period verification of compliance with the quality criteria, and governance structure

[33] Regulation (EU) 2024/3012 of the European Parliament and of the Council of 27 November 2024 establishing a Union certification framework for permanent carbon removals, carbon farming and carbon storage in products.

[34] Carbon Gap, "Reaction to the legislative proposal on carbon removals in the EU Emissions Trading System", 31 July 2026, https://carbongap.org/insights/reaction-to-the-legislative-proposal-on-carbon-removals-in-the-eu-emissions-trading-system, accessed 20 August 2026.

[35] Regulation (EU) 2024/3012 of the European Parliament and of the Council of 27 November 2024 establishing a Union certification framework for permanent carbon removals, carbon farming and carbon storage in products, ("CRCF Regulation") Introductory Clause 3.

[36] International Carbon Action Partnership, "EU Commission publishes EU ETS review proposal", 17 July 2026, https://icapcarbonaction.com/en/news/eu-commission-publishes-eu-ets-review-proposal, accessed 28 August 2026.

[37] CRCF Regulation, Art. 2.

[38] CRCF Regulation, Art. 1.

for implementing the certification framework.[39] Effectively, the EC recognizes the certification bodies[40] if they meet transparency requirements and procedures, and manage public registries.[41]

Under Article 3, a CDR activity is eligible for certification if 1) it fulfils the quality criteria under Chapter 2, and 2) if it is independently verified in accordance with Article 9.[42]

1. Quality Criteria

The quality criteria as set out in Chapter 2 of the CRCF Regulation directly corresponds to the carbon accounting integrity questions raised above (measurement precision, additionality, permanence risk, environmental cost of removal). Effectively, the four principles under the CRCF are quantification, additionality, permanence, and sustainability. What this article refers to as "the environmental cost of removal" corresponds, under the CRCF Regulation, to the "sustainability" criterion.

First, Article 4 establishes the quantification criterion. The provision requires the calculation of a net carbon removal benefit by deducting baseline carbon removals and greenhouse gas emissions associated with the activity from the total carbon removals achieved.[43] To qualify as a permanent carbon removal, the resulting balance must be positive (>0).[44] The baseline carbon removal, represented as ($CR_{baseline}$) under Article 4, is set by the European Commission (Commission) to accurately reflect the efforts of land managers and industries that have already engaged in CDR activities in the past.[45]

Second, Article 5 incorporates the principle of additionality. Accordingly, a removal activity must go beyond applicable legal requirements and must benefit from the incentive effect created by certification.[46]

Third, Articles 6 and 8 seek to address permanence and reversal risks. According to Article 6, to guarantee that carbon remains stored over a meaningful period of

[39] Štrubelj, p.1094.

[40] Under Article 2 of the CRCF Regulation, a certification body refers to a "*recognised independent conformity assessment body that has concluded an agreement with a certification scheme to carry out certification audits and issue certificates of compliance.*"

[41] Štrubelj, p.1094.

[42] CRCF Regulation, Art. 3.

[43] CRCF Regulation, Art. 4.

[44] CRCF Regulation, Art. 4.

[45] European Commission, "Q&A on the provisional agreement on the Regulation establishing an EU-wide voluntary framework for certifying permanent carbon removals, carbon farming and carbon storage in products (CRCF Regulation)", 5 April 2024, https://climate.ec.europa.eu/document/download/a8abe1c4-a3c6-4c94-be0e-4b76f7fd0308_en?filename=policy_carbon_faq_crcf_regulation_en.pdf, ("Commission Commentary on CRCF") accessed 8 September 2026.

[46] CRCF Regulation, Art. 5.

time, operators must monitor storage and are liable for carbon reversal during that monitoring period.[47] Article 6 does not specify a precise durability threshold in the Regulation itself, instead defining CDR as storage occurring over "several centuries".[48] Article 8 provides that the liability mechanisms for the occurrence of carbon reversal during the monitoring period would be established through delegated acts, and would include collective buffers, up-front insurance mechanisms, and direct cancellation of units as a last resort.[49]

Finally, Article 7 designates that the CDR activities need to meet minimum sustainability requirements, building where appropriate on the "Do No Significant Harm" (DNSH) criteria established under the Taxonomy Regulation.[50]

Although the CRCF Regulation responds to the main integrity issues by setting standard definitions and calculations under the quality criteria, some argue that these methodologies are bound to produce low-quality units.[51] For example, an analysis made by Carbon Market Watch and Öko-Institut argues that the fact that the CRCF allows units to be issued based on past efforts weakens the additionality principle, since those past actions were taken regardless of the initiatives under the CRCF Regulation.[52] Another argument could be that continuing scientific and methodological uncertainties surround the long-term permanence of certain removal pathways, particularly biological and land-based approaches.

2. Independent Verification

The Commission adopted the first delegated act on methodologies for the voluntary certification of permanent carbon removal methods (Delegated Act) in February 2026, covering DACCS, biogenic emissions capture with carbon storage (BioCCS), and biochar carbon removal (BCR).[53] This constitutes an EU-wide standard for permanent carbon removals.

The Delegated Act operationalises the quality criteria established under the CRCF Regulation by introducing detailed certification methodologies for DACCS, BioCCS and BCR. In doing so, it establishes the EU's first harmonised standard for permanent

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[47] *Id.*, Art. 6.

[48] *Id.*, Art. 2(g).

[49] *Id.*, Art. 8.

[50] Commission Commentary on CRCF.

[51] Carbon Market Watch, "Carbon Certification Removal Framework (CRCF) methodologies among lowest quality – analysis", 2 June 2025, https://carbonmarketwatch.org/2025/06/02/carbon-certification-removal-framework-crcf-methodologies-among-lowest-quality-analysis/, accessed 27 August 2026.

[52] *Id*.

[53] European Commission Directorate General for Climate Action, "EU sets world's first voluntary standard for permanent carbon removals", 3 February 2026, https://climate.ec.europa.eu/news-other-reads/news/eu-sets-worlds-first-voluntary-standard-permanent-carbon-removals-2026-02-03_en, accessed 27 August 2026.

carbon removals and enables certification schemes to seek Commission recognition for applying these methodologies within the CRCF framework. For example, its Article 2 sets out the methodology for DACCS activities and specifies where the detailed rules can be found in the Annex.[54] It defines the eligibility criteria, activity and monitoring periods, rules for identifying carbon removal sinks and emission sources, baseline calculation, quantification of total carbon removals and associated GHG emissions, long-term storage and liability provisions, sustainability requirements, and monitoring and reporting obligations.[55] In addition, it requires that the facility capturing the CO_2 be located within the European Union.[56]

B. Phase 5 of the EU ETS

On 17 July 2026, the Commission proposed a revision to the ETS Directive,[57] a plan that aims to create a compliance market for EU-based CDR activities.[58]

The proposal incorporates domestic permanent carbon removals into the EU ETS through a corresponding increase in the emissions cap. Under the proposed Article 9c, additional allowances would be created only where the Commission purchases CRCF-certified BioCCS and DACCS removal units.[59] The increase in the ETS cap would therefore be strictly linked to verified removals and limited to those technologies that the Commission considers capable of delivering a sufficiently high level of permanence and monitoring reliability.[60] At this stage, no carbon removal methodologies other than CRCF -certified BioCCS and DACCS removal units are eligible for inclusion.[61] Under the proposed Article 9c, the Commission will issue 250 million additional allowances and auction them between 2031-2040.[62] The revenues from those auctions will be used to purchase 48 million tonnes of CO_2 removal credits by 2040.[63]

Notably, the proposal excludes BCR, notwithstanding the fact that the CRCF Regulation provides certification methodologies for such activities. Although the

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[54] Commission Delegated Regulation (EU) of 3.2.2026 supplementing Regulation (EU) 2024/3012 of the European Parliament and of the Council by establishing the certification methodologies for permanent carbon removals activities, ("CRCF Delegated Act") Article 2.

[55] *Id.*

[56] *Id.*

[57] Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC and Decision (EU) 2015/1814 as regards driving competitiveness and cost-effective decarbonisation ("ETS Proposal").

[58] Carbon Herald, "EU Proposes Historic €50B ETS Carbon Removal Compliance Market", 20 July 2026, https://carbonherald.com/eu-proposes-historic-e50b-ets-carbon-removal-compliance-market/, accessed 28 August 2026.

[59] ETS Proposal, Art. 9c.

[60] *Id.*, Part 1.

[61] *Id.*

[62] *Id.*, Art. 9c(4).

[63] *Id.*

Commission does not entirely reject it as a stable CDR method, it believes there is no long-term stability evidence to include it in a compliance market, yet.[64]

C. Implications of the EU's CDR Strategy

By admitting only BioCCS and DACCS into the compliance market's central procurement programme, the proposal concentrates guaranteed, EU-backed demand on two removal methods to the exclusion of all others. This includes biochar, which, as discussed above, already possesses an operative CRCF certification methodology. Compliance-market status tends to offer greater demand visibility and durability than voluntary market participation,[65] and this asymmetry risks channelling investment and research and development disproportionately toward the two included methods, at the expense of the broader CDR landscape. This runs counter to the prevailing scientific consensus. The IPCC's 6th AR advocates for the deployment of a balanced, diversified portfolio of CDR methods, rather than concentrated reliance on any single approach.[66]

A further policy question emerges once the CRCF framework is considered alongside the EU's Carbon Border Adjustment Mechanism (CBAM). CBAM, under its Article 9, regulates that carbon price effectively paid in a third-country market can be deduced from the number of CBAM certificates that need to be surrendered.[67] The wording of Article 9 is critical, as it provides for a reduction "*only if the carbon has been effectively paid in the country of origin*". It does not appear to recognise non-EU CDR activities as a basis for reducing CBAM liability. Similarly, the CRCF Regulation and its quality criteria apply only to activities carried out within the EU.[68] Therefore, even in cases where a third country may have adopted even more ambitious integrity criteria for CDR certification, which is a possibility given the criticism towards the CRCF Regulation,[69] it would not be deducted under CBAM.

This creates a regulatory asymmetry. Within the EU, carbon removals intended to generate compliance value are increasingly subject to detailed requirements. No analogous extension is proposed for CBAM. Far from encouraging removal-based

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[64] CDR.fyi, "The EU ETS Proposal Explained", 22 July 2026, https://www.cdr.fyi/blog/the-eu-ets-proposal-explained, accessed 30 August 2026.

[65] Fast Markets, "Corporate carbon demand shifts toward offtakes as traded market stays muted, survey finds", 12 January 2026, https://www.fastmarkets.com/insights/corporate-carbon-demand-shifts-toward-offtakes-as-traded-market-stays-muted-survey-finds/, accessed 30 August 2026.

[66] IPCC 6th AR, Chapter 12, para. 12.3, p. 1265.

[67] Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism, Art. 9.

[68] See, as an example, CRCF Delegated Act, Art. 2.

[69] Carbon Market Watch, "EU carbon farming methodologies weaker than the Paris standard", 7 May 2026, https://carbonmarketwatch.org/2026/05/07/eu-carbon-farming-methodologies-weaker-than-the-paris-standard/, accessed 7 September 2026.

compliance abroad, the mechanism's own price logic penalises it. Indeed, if an importer undertakes a CDR activity and, as a result, pays a reduced amount for carbon credits in its own jurisdiction, this does not necessarily translate into a lower CBAM obligation. Since CBAM takes into account only the carbon price actually paid in the country of origin, the importer would still be required to surrender the corresponding amount in CBAM certificates, thereby paying the difference to the competent EU authority.

As carbon removals become more closely integrated into compliance markets, this distinction may prompt further discussion regarding the extent to which integrity standards should play a role in the EU's external climate policy framework.

Conclusion

The EU's emerging CDR framework indicates that carbon removals are moving from a largely voluntary-market instrument towards a more regulated compliance-market asset. This shift is likely to increase scrutiny of quantification, additionality, permanence, and sustainability standards, while creating differentiated regulatory value among removal technologies. For companies, the key issue will not only be whether carbon removals are available, but whether the relevant credits are sufficiently robust, certifiable and commercially reliable under developing EU rules.

Yet this framework remains a work in progress. The narrow admission of only two removal methods, and the disjunction between the CRCF's rigorous domestic quality criteria and CBAM's acceptance of third-country carbon prices remain two gaps that would need to be addressed as the EU ETS proposal proceeds through the legislative process.

Scope of the Notification Obligation under Article 198 of the TCC and Uncertainties in Practice

Yusuf Kumtepe

I. Introduction

Article 198 of the Turkish Commercial Code ("TCC") imposes on an undertaking, where its shareholding ratio in a capital company directly or indirectly exceeds or falls below certain ratios (5%, 10%, 20%, 25%, 33%, 50%, 67%, 100%), the obligation to notify the company of this situation, and on the company, the obligation to have this situation registered. The scope and procedure of this obligation are explained in detail in Article 107 of the Trade Registry Regulation ("Regulation"). Nevertheless, there are certain uncertainties both in the TCC and in the Regulation concerning the scope of the persons who may be responsible for the notification obligation and how the method and content of the notification should be.

This article will attempt to answer certain questions which are not clear under the said laws and regulations, by examining the purpose of the statutory provisions and sources of case law and scholarly work. In particular, this article will examine (i) whether the undertaking subject to the notification obligation may be a natural person; (ii) whether it is sufficient to state in the content of the notification that the threshold has been exceeded or fallen below; (iii) whether the notification obligation will also arise where an undertaking becomes an indirect shareholder upon its non-controlled affiliate acquiring shares; and (iv) whether Article 198 of the TCC will apply where a right other than a property right over a share, such as a usufruct right, has been acquired.

II. Can the Undertaking Subject to the Notification Obligation Be a Natural Person?

TCC and Regulation do not expressly regulate whether natural persons are responsible for the obligation to notify their changing shareholding ratio.

According to Article 198 of the TCC, the shareholder upon whom the notification obligation is imposed must be an "*undertaking*". From the replacement of the words "*capital company*" included in the draft bill of the Turkish Commercial Code with the word "*undertaking*" in the final text enacted as law, it may be concluded that the legislator aimed to broaden the scope of the persons subject to the notification obligation.[1]

It is stated in case law and doctrine that the expression of undertaking has a broad scope and also covers natural persons, legal persons, and associations of persons without legal personality.[2]

In addition, Article 107/2 of the Regulation provides that the undertaking must "*be included in a group of companies*". According to Article 105 of the Regulation, for a group of companies to exist, there must be at least three commercial companies within the group. On the basis of these provisions, it has been argued by scholars that not every natural person, but only natural persons who have under their control a group of companies consisting of at least three commercial companies, may be subject to the notification obligation.[3]

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[1] Turkish Court of Cassation, General Assembly of Civil Chambers, E. 2024/568, K. 2025/526, decision dated 17.9.2025, para. 13: "*In the draft bill of the Turkish Commercial Code [...] the concepts of capital companies and undertaking were initially taken as a basis, and although the reason for preferring the concept of undertaking was stated to be that its scope was broad and that it encompassed the undertaking and similar concepts, the Justice Commission made an amendment with the aim of broadening the scope of application of the institution, on the ground that the system introduced by the draft was narrow in scope and could give rise to disadvantages. Indeed, in the Commission's Rationale for Amendment, as the reason for the use of the concept of undertaking in both Article 195/5 and Article 198 and other articles of the TCC No. 6102, it was stated that the concept of undertaking was broader than a commercial enterprise, and the draft was enacted in this form.*"

[2] *Id.*, para. 15: "*as also referred to in the doctrine [...] the concept of undertaking used in group of companies law has a very broad meaning encompassing, in particular, all natural persons, all public and private legal persons capable of participating in a company, artisan enterprises, commercial enterprises and inheritance partnerships (Reha Poroy, Ünal Tekinalp, Ersin Çamoğlu, Partnership Law I, Istanbul 2019, p. 716)*"; Özlem Karaman Coşgun, "Obligation to Notify, Register and Announce Changes in Shareholding Ratios in Capital Companies within the Framework of the Turkish Commercial Code / Türk Ticaret Kanunu Çerçevesinde Sermaye Şirketlerinde Pay Oranlarındaki Değişikliklerin Bildirilmesi, Tescili ve İlanı Yükümlülüğü", Marmara University Faculty of Law Journal of Legal Research, 2025 ("Karaman Coşgun"), p. 302.

[3] Dr. Kadir Baş, "Notification Obligation of Shareholders in Joint Stock Companies Pursuant to Article 198 of the Turkish Commercial Code and the Consequences of Breach of This Obligation / Anonim Şirketlerde Pay Sahiplerinin Türk Ticaret Kanunu m. 198 Uyarınca Bildirim Yükümlülüğü ve Bu Yükümlülüğe Aykırılığın Sonuçları", Journal of Banking and Commercial Law, 2020 ("Baş"), pp. 66-67.

In contrast, in a decision in 2023, the 11th Civil Chamber of the Court of Cassation upheld the decision of a lower court which held that Article 198 of the TCC could not be applied on the ground that the company shares were not acquired by an undertaking in a share transfer that appears to have taken place between natural persons.[4]

In addition to the above explanations, pursuant to the express provision of Article 198/1 of the TCC, if a natural person is a member of the board of directors or a manager in the undertaking that is the shareholder or in the capital company whose shareholding ratio has changed, he/she must make a notification concerning the shares of that capital company held by himself/herself, his/her spouse or children, and commercial companies in which they hold at least twenty per cent.

III. Should the Final Shareholding Ratio Be Indicated in the Content of the Notification?

Article 198/1 of the TCC and Article 107/1 of the Regulation provide that, where an undertaking's direct or indirect shareholding ratio in a capital company exceeds certain percentages or falls below them, the undertaking must notify the "*situation*". It is not expressly specified whether the situation that must be notified is the final shareholding ratio or merely the fact that the ratio specified in the law has been exceeded or fallen below.

In scholarly works, it has been submitted that, since the situation triggering the notification obligation under the provision of law is the fact of reaching certain thresholds or falling below them, it is sufficient to state that the relevant threshold has been exceeded or fallen below without specifying the shareholding ratio.[5] Accordingly, for example, if an undertaking's shareholding ratio in a capital company has increased from 53% to 80%, it should be sufficient for the content of the notification to be made by the undertaking to contain only the information that its shareholding ratio has increased to a ratio above 67%.

Nevertheless, Tekinalp interprets the provision as "*not only the shares in the amount exceeded, but the percentage reached will be notified*".[6] In addition, the sample board of directors' resolution and registration application petition texts published by

[4] Turkish Court of Cassation 11th Civil Chamber, E. 2021/3098, K. 2023/755, decision dated 9.2.2023. The personal data of the parties to the proceedings were redacted in the text of the decision, but it is inferred that the transferor was a natural person from the allegation that the transferor was "made to sign".

[5] Karaman Coşgun, p. 305; Baş, pp. 81-82.

[6] Reha Poroy, Ünal Tekinalp and Ersin Çamoğlu, Partnership Law II / Ortaklıklar Hukuku II, 15th Edition, 2023 ("Tekinalp"), para. 2103.

the Istanbul Trade Registry Directorate indicate that the percentage equivalent of the capital share before and after the share transfer must be specified.[7]

IV. Is an Indirect Shareholder Subject to the Notification Obligation Even If It Is Not the Controlling Entity of the Direct Shareholder Company?

According to the wording of the relevant statutory provision, the notification obligation also arises where the shares indirectly owned by an undertaking in the capital of a capital company pass such thresholds. It may be questioned whether this obligation arises in every type of indirect shareholding situation or only for an indirect shareholder that exercises control over the direct shareholder.

Indeed, an undertaking may not be aware of changes in the shareholding of a third company that is partly owned by a company in which the undertaking holds a minority interest. For example, if Company A holds a 40% shareholding in Company B and Company B's shareholding in Company C increases from 70% to 90%, Company A's indirect shareholding ratio in Company C will increase from 28% (40% x 70%) to 36% (40% x 90%), and will therefore have exceeded the 33% threshold set out in Article 198 of the TCC. However, Company A may not be aware of this share transfer if it is not represented in the management of Company B. According to this example, since Company B's shareholding ratio in Company C has increased from 70% to 90% and there is no question that notification obligation has not been triggered for Company B as the thresholds under Article 198 of the TCC have not been exceeded, it will also not be possible for Company A to learn of this situation through the registration and announcement of Company B's notification. If a situation in which Company B was subject to the notification obligation had existed, Company A would not have been required to make a separate notification upon Company B's notification.[8]

Based on an interpretation that considers the purpose of the law, if an indirect shareholder cannot reasonably be aware of the relevant share transfer, the indirect

[7] Istanbul Chamber of Commerce, "Trade Registry Procedures, Joint Stock Companies, Notification Procedure Pursuant to Article 198 of the TCC for Joint Stock Companies", ito.org.tr/documents/Ticaret-Sicil/dilekceler-belgeler/198_bildirim_dilekcesi.doc, ito.org.tr/documents/Ticaret-Sicil/dilekceler-belgeler/198_yk_karari.doc, accessed 3 September 2026. In a similar direction: Ankara Chamber of Commerce, "Trade Registry Procedures, Trade Registry Company Procedures, Documents Required for Notification under Article 198 of the TCC for Joint Stock Companies, Board of Directors' Resolution (Notarised)", atonet.org.tr/Uploads/Birimler/Internet/Ticaret%20Sicil%20Müdürlüğü/Şirket%20Evrakları/ttk_198_bildirimi.docx, accessed 3 September 2026.

[8] Trade Registry Regulation ("TRR"), published in the Official Gazette No. 28541 dated 27 January 2013, Article 107/3: "*Where notification of indirect participations is in question, notification for all undertakings or commercial companies that indirectly exceed the thresholds or fall below the thresholds may be made by any one of them on behalf of all.*"; Tekinalp, para. 2104.

shareholder should not be held responsible for the notification obligation under Article 198 of the TCC. As also stated in the explanatory memorandum to the legislative bill, this notification obligation aims to inform the public, ensure transparency in the capital markets, and apply the provisions on liability by compelling the disclosure of participation relationships. It may be considered that, where an indirect shareholding relationship is established through non-controlled affiliates, there would be no public interest in terms of ensuring transparency. Moreover, pursuant to Article 198/2 of the TCC, until the obligations of notification and registration and announcement are fulfilled, the other rights, including voting rights, attached to the relevant shares are frozen. In a scenario where the direct shareholder is not obliged to notify a share transfer to the authorities, the freezing of the direct shareholder's rights only because the indirect shareholder did not notify a situation of which it was unaware, would be a consequence contrary to the purpose of the law.

V. Does the Notification Obligation Arise in the Acquisition of Rights Other Than Ownership Rights Over a Share?

Article 198/1 of the TCC describes the subject of the notification as "*owning*" shares representing certain thresholds or the existing shares falling below these thresholds. Article 107/2 of the Regulation also states that the undertaking that "*acquires or disposes of shares*" is subject to the notification obligation. It may be concluded from these regulations that the notification obligation may arise in every type of shareholding situation, including not only in share transfers but also in acquisitions by operation of law. However, acquisition of a right over a share other than an ownership right would not fall within the scope of the obligation. In this vein, in a decision rendered in 2025, the 43rd Civil Chamber of the Istanbul Regional Court of Appeal reversed the lower court's decision ordering the registration of a usufruct right on the ground that the holder of the usufruct right over the share had voting rights and that third parties had an interest in the registration and announcement of this right. The higher court concluded that Article 198 of the TCC only concerns ownership rights, not usufruct rights.9

In this assessment, the provision of Article 196/3 of the TCC may be important. This article applies in the calculation of the percentages of shares pursuant to an express reference in Article 198/1 of the TCC. Article 196/3 of the TCC provides that "*when calculating the shares owned by an undertaking in a capital company, the shares owned by its affiliated companies or acquired on its account and held by third parties*

[9] Istanbul Regional Court of Appeals 43rd Civil Chamber, E. 2022/594, K. 2025/1676, decision dated 17.11.2025.

shall also be taken into account".[10] Taking into consideration the shares owned by affiliated companies is a natural extension of Article 198/1 of the TCC imposing a notification obligation also for shares "*indirectly*" owned. However, shares which are in the ownership of a third person but "*acquired on the account*" of the undertaking are also taken into consideration in the calculation of the percentages. This indicates that, for the purposes of Article 198 of the TCC, the expression "*indirectly*" applies not only to shares in the ownership of the undertaking's affiliates, but also to shares held by a fiduciary owner.[11]

[10] *See also* TRR Article 107/9.

[11] Tekinalp, para. 2021. The author specifies, as other examples of shares acquired on the account of the undertaking and owned by a third person, shares held by a securities broker or an intermediary institution.

Delegation of Decision-Making Powers to AI in Arbitration

Göksu Hakan Öztürkeri

Introduction

Artificial Intelligence ("AI") tools have transformed the way lawyers work, significantly increasing efficiency and reducing the time spent on tasks. Unsurprisingly, the trend has also made its way into the field of arbitration. AI now assists arbitral tribunals in calculating procedural timetables, conducting legal research and summarizing complex and voluminous case files, among other tasks. It has even been discussed as a candidate for the arbitrator's role itself.[1]

At the same time, the use of AI by arbitrators has raised serious questions and risks, a prominent one being the delegation of decision-making to AI tools in violation of the arbitrator's personal mandate. This is not new. In fact, the question of whether a secretary's drafting assistance essentially replaced the personal judgment of the appointed arbitrators and violated the parties' right to select their decision-maker has been a topic of debate.[2] With the emergence of generative AI, it has taken on a new dimension.

This article examines the governing framework and an example of how the principle operates in practice.

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[1] *See* Gizem Halis Kasap, "Can Artificial Intelligence ("AI") Replace Human Arbitrators? Technological Concerns and Legal Implications", *Journal of Dispute Resolution*, Vol. 2021, No. 2, 2021, pp. 237-240.

[2] Gary B. Born, *International Commercial Arbitration*, 3rd ed., Kluwer Law International, 2021 (updated February 2024) ("Born"), §13.07[B]; Anne-Catherine Hahn, "Limits to the Use of AI Tools by Swiss Arbitral Tribunals: A Tentative Analysis", *ASA Bulletin*, Vol. 43, No. 4, 2025 ("Hahn"), p. 754.

The Soft-Law Consensus: Non-Delegation

The field has been shaped by a growing body of soft law instruments, particularly the guidelines established by arbitral institutions.

Across these instruments, the principle of non-delegation emerges as the clearest point of convergence, even though each guideline frames it slightly differently.

- According to the Chartered Institute of Arbitrators Guideline, the use of AI may create risks for the administration of justice, and arbitrators therefore "*should not relinquish their decision-making powers to AI.*"[3] The guideline also makes it explicit that arbitrators must bear responsibility for their decisions, particularly in light of the requirements of impartiality and independence.[4]
- The American Arbitration Association and International Centre for Dispute Resolution Guidance on Arbitrators' Use of AI Tools encourages arbitrators to make use of AI technology, while requiring that they must not delegate their reasoned judgment and must retain authority over their own evaluation.[5]
- The Vienna International Arbitral Centre Note on the Use of Artificial Intelligence in Arbitration Proceedings frames the same concern in terms of retained control, requiring arbitrators to maintain full authority over the decision-making process.[6]
- The SCC Arbitration Institute Guide to the Use of Artificial Intelligence in Cases Administered Under the SCC Rules notes that AI tools cannot replace the decision-making process and prohibits the delegation of the decision to them.[7]
- The Silicon Valley Arbitration & Mediation Center Guidelines on the Use of Artificial Intelligence in Arbitration take an equally categorical position: an arbitrator "*shall not delegate any part of their personal mandate to any AI tool.*"[8]

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[3] Chartered Institute of Arbitrators, "Guideline on the Use of AI in Arbitration", CIArb, September 2025 ("CIArb Guideline"), https://www.ciarb.org/media/bpndtcgu/guideline-on-the-use-of-ai-in-arbitration_updated-sept-2025.pdf?utm_source=AI+Guidelines+Launch&utm_medium=News+Page, accessed 26 August 2026, p. 16, para. 8.2.

[4] CIArb Guideline, pp. 5-6, para. 2.4.

[5] American Arbitration Association and International Centre for Dispute Resolution, "AAA-ICDR Guidance on Arbitrators' Use of AI Tools", 2026 ("AAA-ICDR Guidance"), https://www.adr.org/media/y4hmsz2m/2026_aaa-icdr_guidance_on_arbitrators_use_of_ai_tools.pdf, accessed 26 August 2026, pp. 1-2.

[6] Vienna International Arbitral Centre, "VIAC Note on the Use of Artificial Intelligence in Arbitration Proceedings", April 2025, https://www.viac.eu/wp-content/uploads/2025/04/VIAC-Note-on-AI-1.pdf, accessed 26 August 2026, p. 3, para. 2.

[7] SCC Arbitration Institute, "Guide to the Use of Artificial Intelligence in Cases Administered Under the SCC Rules", 2024, https://sccarbitrationinstitute.se/wp-content/uploads/2024/12/scc_guide_to_the_use_of_artificial_intelligence_in_cases_administered_under_the_scc_rules-1.pdf, accessed 26 August 2026, p. 3.

[8] Silicon Valley Arbitration & Mediation Center, "Guidelines on the Use of Artificial Intelligence in Arbitration", 1st ed., 2024, https://svamc.org/wp-content/uploads/SVAMC-AI-Guidelines-First-Edition.pdf, accessed 26 August 2026, p. 12, Guideline 6.

In sum, the underlying rule is consistent: although AI may assist in research, arbitrators must exercise their decision-making powers by themselves.

The Hard-Law Foundation

While no hard law instrument directly addresses an arbitrator's use of AI, the principle of non-delegation is firmly rooted in hard law.

Under Article V(1)(d) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), recognition and enforcement of an award may be refused if the "*composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties.*"[9] Article 34(2)(a)(iv) of the UNCITRAL Model Law on International Commercial Arbitration ("UNCITRAL Model Law") and Article 15/A(1)(b) and (f) of the Turkish International Arbitration Law No. 4686 recognize a corresponding ground for setting aside an arbitral award.[10]

Accordingly, where the legal reasoning in the essential parts of the award is produced by AI rather than by the arbitrators themselves, the procedure is likely to be considered inconsistent with the parties' agreement and the award open to challenge.[11] A related but different question arises where an AI is appointed as arbitrator in its own right. In that case the objection would concern the composition of the tribunal, although it has been argued that no such objection should succeed where the arbitration agreement expressly provides for an AI-arbitrator.[12]

A second potential ground is public policy. Under Article V(2)(b) of the New York Convention, recognition may be refused where enforcement would be contrary to the public policy of the enforcing State.[13] Article 34(2)(b)(ii) of the UNCITRAL Model Law and Article 15/A(2)(b) of the Turkish International Arbitration Law No. 4686 provide corresponding grounds for annulment.[14]

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[9] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958, 330 UNTS 3 ("New York Convention"), art. V(1)(d).

[10] UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006 ("UNCITRAL Model Law"), art. 34(2)(a)(iv); Law on International Arbitration no. 4686 dated 21 June 2001 (Milletlerarası Tahkim Kanunu) ("Turkish International Arbitration Law"), art. 15/A(1)(b) and (f).

[11] Dominik Stefer and Victoria Fricke, "From algorithms to awards: exploring the technological and legal boundaries of AI's contributions to the work of arbitrators", *Arbitration International*, Vol. 41, No. 1, 2025 ("Stefer and Fricke"), pp. 66-67.

[12] Gülüm Bayraktaroğlu-Özçelik and Ş. Barış Özçelik, "Use of AI-Based Technologies in International Commercial Arbitration", *European Journal of Law and Technology*, Vol. 12, No. 1, 2021 ("Bayraktaroğlu-Özçelik and Özçelik"), p. 11.

[13] New York Convention, art. V(2)(b).

[14] UNCITRAL Model Law, art. 34(2)(b)(ii); Turkish International Arbitration Law, art. 15/A(2)(b).

For instance, as AI depends on the data on which it is trained, outputs shaped by biased data may result in a discriminatory award, undermining the arbitrator's impartiality and exposing the award to annulment or refusal of enforcement on public policy grounds.[15] Similarly, where AI is used to such an extent that it essentially assumes the arbitrator's decision-making function, the resulting award may be contrary to public policy in jurisdictions requiring arbitrators to be natural persons.[16]

The Principle in Practice

A. Lessons from the Tribunal Secretary Debate

Although arbitrators' delegation of decision-making powers to an AI tool has scarcely been tested, the question has long been discussed in relation to the delegation of decision-making powers to tribunal secretaries.[17] A prominent example is the annulment proceedings in the *Yukos* case before the Dutch courts, where the Russian Federation asserted that the tribunal had delegated its powers to the tribunal's assistant.[18] The Hague Court of Appeal rejected the challenge. While assuming that the assistant had made significant contributions to the drafting of parts of the awards, it held that his participation in the decision-making process itself had not been established.[19] According to the court, absent any agreement between the parties, it fell within the tribunal's discretion to decide the extent to which it relied on an assistant in drafting the award, provided that the substantive decisions remained its own.[20] Courts in France, Germany, England, Switzerland and Belgium have taken a similar view, consistently dismissing claims that a secretary's involvement infringed the parties' due process rights.[21] Nonetheless, while the precise scope of a tribunal secretary's permissible functions remains subject to some controversy, it is generally settled that arbitrators may not delegate their essential powers to a secretary or assistant, including the determination of the dispute.[22] The same principle applies where a tribunal relies on AI in a manner that effectively transfers its adjudicative responsibilities to the system. Where an award is drafted by an AI system without

[15] Bayraktaroğlu-Özçelik and Özçelik, p. 13.

[16] *Id.*; Stefer and Fricke, p. 67; see also João Ilhão Moreira and Jiawei Zhang, "ChatGPT as a fourth arbitrator? The ethics and risks of using large language models in arbitration", *Arbitration International*, Vol. 41, No. 1, 2025 ("Moreira and Zhang"), pp. 79-80.

[17] Born, §13.07[B]; Hahn, p. 754.

[18] Born, §13.07[B]; *Yukos Universal Limited (Isle of Man) v. The Russian Federation* ("*Yukos*"), PCA Case No. 2005-04/AA227, Judgment of The Hague Court of Appeal dated 18 February 2020, para. 6.6.1.

[19] Born, §13.07[B]; *Yukos*, para. 6.6.6.

[20] *Yukos*, para. 6.6.14.

[21] Born, §13.07[B].

[22] *Id.*

adequate human consideration of the facts or the law, it may be open to challenge on the ground that the tribunal was not properly constituted and may also amount to a violation of public policy.[23]

In this context, a recent Canadian decision offers a judicial assessment of an arbitrator's delegation of decision-making powers to an AI tool.

B. ARIHQ v. Santé Québec

Decided by the Québec Superior Court on 22 April 2026, *ARIHQ v. Santé Québec* concerned an application to annul an arbitral award rendered in a dispute over unpaid remuneration under a healthcare services agreement.[24] The Arbitrator had dismissed the claim as out of time, holding that the Claimants had failed to comply with a contractual time limit in the Parties' dispute resolution procedure.[25] The Claimants sought annulment on two grounds.[26] First, they asserted that the award was contrary to public policy as it imposed a contractual time limit shorter than the prescription period provided by law.[27] Second, they argued that the award relied on non-existent legal doctrine and case law, which indicated that it had been drafted using an AI tool, and that the Arbitrator had thereby delegated part of his decision-making authority in breach of the agreed arbitration procedure.[28]

In its ruling, the Court rejected the public policy argument, holding that annulment review cannot extend to the correctness of an arbitrator's legal reasoning, but only to whether the outcome itself is irreconcilable with fundamental principles of public policy.[29] The Court added that, in any event, the contractual time limit the Arbitrator had applied did not conflict with the statutory prescription regime.[30]

By contrast, the argument on the arbitration procedure succeeded.

While the Claimants presented strong evidence that the award had been drafted using AI, the Respondent argued that the use of AI is not among the grounds for annulment listed in Article 646 of the Québec Code of Civil Procedure.[31] The Court

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[23] Hahn, p. 754; Stefer and Fricke, pp. 66-67.

[24] *Association des ressources intermédiaires d'hébergement du Québec (ARIHQ) v. Santé Québec – Centre intégré universitaire de santé et de services sociaux du Centre-Sud-de-l'Île-de-Montréal* ("*ARIHQ v. Santé Québec*"), Superior Court of Québec (Commercial Division), Case Nos. 500-11-066427-259 and 500-11-066498-250, 2026 QCCS 1360, Judgment dated 22 April 2026, paras. 19-30.

[25] *Id.*, para. 29.

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

[27] *Id.*, paras. 3.1, 41.1.

[28] *Id.*, paras. 3.2, 41.2.

[29] *Id.*, paras. 55, 64-66.

[30] *Id.*, paras. 56, 61-62, 65.

[31] *Id.*, paras. 68-69.

accepted, in principle, that this provision does not expressly regulate the use of AI,[32] but held that this did not resolve the question, since Article 646(3) permits annulment where "*the procedure for the appointment of an arbitrator or the applicable arbitration procedure was not observed*."[33]

The Court grounded the prohibition on delegating decision-making authority in three converging principles: the parties' autonomy in selecting the arbitrator, the duty to give reasons, and the arbitrator's duty to maintain the confidentiality of the deliberations.[34] In the specific case of AI, the Court noted that the use of AI brings with it certain risks, such as the creation of false citations, the absence of discretion and human values, bias, the loss of confidentiality and the erosion of public trust in the justice system.[35] The Court further recalled that courts have sanctioned the use of AI by parties to draft pleadings, treating it as a serious breach that undermines the integrity of the judicial process.[36] Specifically, the Court referred to its earlier notice, recalling that AI must be used with caution, that parties should rely exclusively on sources from court websites or commonly cited publishers, and that they must retain rigorous human oversight of their submissions.[37] The Court considered the risks to be even greater for decision-makers, since judicial opinions must convey the full authority of the decision-maker, and the delegation of the drafting of a judicial decision is expressly prohibited by the Canadian Judicial Council.[38]

The Court was careful to note that the prohibition does not extend to research assistance, clerical support, translation or citation checking, nor does it prevent a

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[32] Code of Civil Procedure (Québec), CQLR c. C-25.01, art. 646, which provides as follows:
"*The court cannot refuse to homologate an arbitration award or a provisional or safeguard measure unless it is proved that*
(1) one of the parties did not have the capacity to enter into the arbitration agreement;
(2) the arbitration agreement is invalid under the law chosen by the parties or, failing any indication in that regard, under Québec law;
(3) ***the procedure for the appointment of an arbitrator or the applicable arbitration procedure was not observed;***
(4) the party against which the award or measure is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings, or it was for another reason impossible for that party to present its case; or
(5) the award pertains to a dispute not referred to in or covered by the arbitration agreement, or contains a conclusion on matters beyond the scope of the agreement, in which case only the irregular provision is not homologated if it can be dissociated from the rest.
The court cannot refuse to homologate the arbitration award on its own initiative unless it notes that the subject matter of the dispute is not one that may be settled by arbitration in Québec or that the award or measure is contrary to public order." (emphasis added)

[33] *ARIHQ v. Santé Québec*, para. 70.

[34] *Id.*, paras. 73-87.

[35] *Id.*, para. 90.

[36] *Id.*, para. 91.

[37] *Id.*, para. 93.

[38] *Id.*, paras. 95-97.

decision-maker from consulting with colleagues.[39] In the Court's view, what matters is that the involvement of third parties should not compromise the integrity of the process and that responsibility for the reasons remains with the decision-maker.[40]

On the facts, the Court found that the Arbitrator's key reasoning was shaped by articles and case law that were hallucinated by AI, concluding that the Arbitrator had delegated his authority and abdicated his role in reviewing the outcome.[41] The Court emphasized that its decision does not mean that every award citing erroneous references or benefiting from AI must be set aside; rather, the nature of the breach and the extent to which the integrity of the proceedings was compromised must be assessed.[42] In the present case, however, the procedural violation was significant, as a thorough review of the non-existent decisions, which were central to the award, could have prompted the Arbitrator to reconsider his position.[43] Accordingly, the Court annulled the award and ordered the Parties to select a new arbitrator within sixty days.[44]

Conclusion

There is a clear consensus among soft law instruments that the decision-making powers of arbitrators must not be delegated to AI. Hard law instruments do not address the question directly, but public policy and procedural irregularity grounds are broad enough to accommodate it. Where AI takes over the decision-making responsibility of the arbitrator, the award may be at risk of annulment for departing from the agreed composition of the arbitral tribunal or the agreed arbitral procedure, or on public policy grounds.

The recent *ARIHQ* decision is a clear illustration that this risk is not merely theoretical. The decision does not, however, prohibit the use of AI outright. According to the Court, whether an award produced with the assistance of AI will be set aside depends on the nature of the breach and its effect on the integrity of the proceedings.

Finally, the prohibition is not as wide as it seems. Carrying out tasks such as research, translation and citation checking with the help of AI remains permissible. It may even be desirable, since it can reduce the cost and duration of the proceedings.[45] In contrast, the arbitrator's own assessment of the facts and the law cannot be delegated.

[39] *Id.*, para. 87.

[40] *Id.*

[41] *Id.*, paras. 103-115.

[42] *Id.*, paras. 117-118.

[43] *Id.*, paras. 120-121.

[44] *Id.*, paras. 122-123.

[45] AAA-ICDR Guidance, pp. 1-2; Moreira and Zhang, pp. 73-74.

Such delegation is, however, subject to proof. *ARIHQ* was, in this respect, an unusually easy case as the hallucinated authorities were both the breach and the evidence of it. In most cases, a party that suspects improper use of AI will not know what tools or data sources were used, or what instructions were given.[46] Therefore, where an arbitrator delegates their decision-making powers to AI without leaving such traces, a party may find the breach considerably harder to establish, and the Court's test correspondingly harder to apply.

[46] Hahn, p. 756.



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