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We are glad to share June issue of our Law Bulletin which includes recent legal developments and news globally and in Turkey.

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Can Credit Suisse AT1 Bondholders Resort to Investment Arbitration for their Losses?

In March 2023, after the Swiss bank Credit Suisse published its financial report for 2022 and announced a loss of 7.3 billion Swiss francs and Saudi National Bank, which bought 9.9% of the bank's shares for 1.4 billion Swiss francs in 2022, announced that it would not make new investments in the bank, Credit Suisse's shares fell 40% in a week and the bank entered an economic crisis. ***(Page 2)***

Who Owns the Photographs Produced by Artificial Intelligence? What Is the Right of Use?

Artificial intelligence has become an area of interest for people from all walks of life with the increase of science fiction movies and technological developments. Artificial intelligence, which used to be used only for military purposes in the past, has become an integral part of life as it has started to be used even in the television at homes. ***(Page 5)***

The Harmonization Process Awaiting Technology Companies: The European Union Digital Services Act (DSA) and The Digital Markets Act (DMA)

Developments in science and technology have led to the proliferation of digital platforms all over the world. With the increasing number of users benefiting from digital services, ensuring the security of users, controlling the market power of players in digital markets, and providing a legal basis for competition between actors gain great importance. ***(Page 7)***

Is Partial Enforcement Possible? Can Enforcement of Enforcement Be Enforced?

Enforcement can be defined as the enforcement of a judgment rendered by a foreign court in another country. Through enforcement, it is possible for an executive, determinative or constitutive judgment to be directly enforceable in Turkish law. In this context, it is possible to say that a judgment rendered by a foreign court becomes enforceable in the Turkish legal system upon the decision to enforce it. ***(Page 10)***

Recent News

Company Directors Can Be Held Accountable for Breaching Climate-Related Laws! ***(Page 11)***

US Judge Rules, Apple And Amazon Must Face Consumer Lawsuit Over iPhone, iPad Prices! ***(Page 11)***

CAN CREDIT SUISSE AT1 BONDHOLDERS RESORT TO INVESTMENT ARBITRATION FOR THEIR LOSSES?

1. INTRODUCTION

In March 2023, after the Swiss bank Credit Suisse published its financial report for 2022 and announced a loss of 7.3 billion Swiss francs and Saudi National Bank, which bought 9.9% of the bank's shares for 1.4 billion Swiss francs in 2022, announced that it would not make new investments in the bank, Credit Suisse's shares fell 40% in a week and the bank entered an economic crisis. [1]

In the first stage of the crisis, it was announced that the bank would get a loan of 54 billion dollars from the Swiss Central Bank. During this process, a part of the bank's shareholders filed a lawsuit against the bank and bank officials, claiming that they had deceived the shareholders by withholding information about Credit Suisse's financial situation revealed by internal audits. [2]

Subsequently, UBS, which is the largest bank in Switzerland, announced that Credit Suisse was planning to acquire the bank in order to exit the crisis and that the negotiations were being conducted by the Swiss Ministry of Finance, the Swiss Financial Markets Regulatory Authority (FINMA) and the Swiss Central Bank and that the sale process would be realized with the support of these institutions. Within the agreement, Credit Suisse shareholders will receive 1 UBS share for every 22.48 shares in Credit Suisse, making the value of each share in Credit Suisse CHF 0.76 and the total sale price of CHF 3 billion. [3]

FINMA announced that the merger of Credit Suisse with UBS will be financially supported by the government, which will write off Credit Suisse's AT1 bond debts by reducing the value of Credit Suisse's AT1 bonds ("additional tier 1 bonds") with a nominal value of approximately CHF 16 billion to zero, thus increasing the bank's tier 1 capital. [4]

After the sale of the bank for CHF 3 billion, it was understood that the holders of AT1 bonds would not receive anything under the agreement, unlike the shareholders. AT1 bonds were written down, whereas shareholders would obtain a certain amount from the sales prince as a proportion of their shares. As a result,

AT1 bond holders took legal action. [5] In this article, firstly, we will briefly explain the scope, development, and function of AT1 bonds. Then, we will try to explain how the write-off of AT1 bonds can be the subject of a dispute by looking at the public debates that have taken place so far. In the last section, we will evaluate whether the holders of AT1 bonds, whose investments have lost significant value, can subject their losses to investment arbitration.

2. WHAT ARE AT1 BONDS (COCO BONDS OR CONTINGENT CONVERTIBLE BONDS)?

AT1 capital instruments, referred to as CoCo bonds ("contingent convertible bonds"), are investment instruments introduced in the Europe market after the global financial crisis in 2008. In the ordinary course of business, investors holding CoCo bonds are paid coupons just like any other bondholder. However, in case of financial distress, to ease the bank's balance sheets, the coupon payments on these debt securities can be cancelled, converted into shares or written off from the balance sheet by writing off losses to investors. [6]

The aim of AT1 bonds is to create an extra buffer against shocks in the event of bank failure, increase the resilience of the banking system and reduce the threat of systemic risk. [7]

Thus, in the event of a bank failure, the cost of bankruptcy would be borne primarily by the investors holding these bonds, rather than the taxpayers. [8] Therefore, AT1 or CoCo bonds are considered as risk transfer instruments to mitigate the devastating effects of banking crises. [9]

AT1 bonds are the riskiest bonds offered by banks and are issued with the promise of high yields. The risk taken in exchange for this high yield is the assumption of losses in the event of bank failure. [10] The size of the AT1 bond market in Europe is approximately €250 billion. [11]

3. CAN CREDIT SUISSE BE SUED FOR WRITTEN OFF AT1 BONDS?

As explained above, AT1 bonds are designed as risky investment instruments and it is known that in the event of a crisis, they may be written off from the balance sheet and the bondholders will bear the related losses.

Then why did the authorization of FINMA to write off AT1 bond debts as part of the merger between UBS and Credit Suisse [12] provoke a backlash and lead AT1 bondholders to explore their legal remedies?

The main argument here is that the hierarchy of loss-sharing has been broken down. [13] It is argued that the hierarchy between shares and AT1 securities is violated when the value of the shares is maintained at 0.76 Swiss francs as a result of the allocation of the consideration from the sale of Credit Suisse to the shareholders, while the AT1 bondholders lost their investment completely by reducing the value of their securities amounting to 16 billion Swiss francs to zero.

This reduction happened despite that it is accepted that the creditor of debt securities (bonds or bills) will normally take precedence over shareholders in the priority of collection. [14]

After the 2008 crisis, within the framework of international banking principles and rules developed after the crisis, the fact that AT1 bondholders did not receive any payment on the grounds that there was a precedent based on the superiority of AT1 bonds over shares was criticized and characterized as a punishment of investors. [15] Within this framework, the holders of AT1 bonds started to investigate their legal remedies. [16]

In the face of these allegations, FINMA's defense was that there was a contractual basis for the write-off of the AT1 capital instruments issued by Credit Suisse and that the contractual relationship permitted the write-off, especially in cases of extraordinary financial support by the state.

Since it was agreed by the Swiss government to grant a liquidity support loan to Credit Suisse on March 19, 2023, these contractual conditions regarding the bank's AT1 capital instruments were satisfied. [17] According to FINMA, based on the fulfilment of these conditions, the decision to write down the AT1 bonds was lawful.

Previously, AT1 bonds were written off in Spain in 2017 when Santander Bank acquired Banco Popular for €1. Banco Popular was on the verge of bankruptcy back then, and the rescue operation of this bank and the write-off of AT1 bonds were challenged in court. [18]

However, the main difference between the Banco Popular and Credit Suisse bailouts is that in the former, shareholders and AT1 bondholders were both losers, whereas in the latter, AT1 bondholders were the sole losers.

4. CAN AT1 BONDHOLDERS RESORT TO INVESTMENT ARBITRATION?

In exploring the legal remedies available to holders of AT1 bonds, we look at (i.) against whom and (ii.) before which jurisdictions they may bring claims. Public discussions suggest that these claims could be brought against Credit Suisse, UBS, FINMA and/or the Swiss government. It is also seen that these options are generally discussed within the scope of application to national courts. [19]
Another option that is not discussed as much as these options is international investment arbitration. It would be possible for AT1 bondholders who are not Swiss citizens to resort to international arbitration against the Swiss state.

This is an alternative to national courts, by which natural or legal persons who are not Swiss nationals but are foreign investors would be the applicants. Foreign investors will apply to international investment arbitration based on the investment treaty concluded between the Swiss state and the states of which they are a citizen.

Agreements on the Mutual Promotion and Protection of Investments (AMPPI) are international agreements concluded between states for the mutual promotion and protection of investments made by natural or legal persons of one contracting state in the territory of the other contracting state.

The concept of investment is defined in these agreements as any asset owned or controlled directly or indirectly by the investor. In this context, shares, bonds, investment income, monetary receivables, other financial rights that may be derived from the investment, movable and immovable property, real rights such as mortgages, liens, pledges, industrial and intellectual property rights such as copyrights, patents, licenses, industrial designs, technical processes, as well as, but not limited to, trademarks, know-how and other similar rights with material value may be considered as investments. Although the concept of investment is broadly defined in this way, in some bilateral investment treaties, this scope may be narrowed, and a more limited number of activities may be considered investments under the treaty. [19]

Turkey has bilateral investment treaties in force with a total of 85 countries. [20]

In these agreements, issues such as "determining the limits of the treatment to be applied to the investor by the host country, protecting the fundamental rights and interests in the investee countries on the basis of international law, securing profit transfers, determining the conditions of possible expropriation by the host state and resorting to international arbitration in case of dispute" are reciprocally set out. [21]

Some of the provisions in the AMPPI that provide protection to investors are as follows: Pursuant to the nationalization, expropriation and compensation article, in cases of direct or indirect expropriation and interventions resulting in expropriation by the host state, the investor is protected against the damages caused by these interventions and has the guarantee that these damages will be effectively and adequately compensated and paid to him. In arbitration proceedings based on this clause, states are condemned to pay substantial damages unless they prove the existence of an absolute public interest. [22]

The full protection and security clause obliges the host state to protect the foreign investment from adverse treatment by itself, its institutions or third parties. Under this provision, legislative and administrative changes may constitute a violation of the principle of full protection and security. Pursuant to the most favored nation treatment clause, the two contracting states undertake not to provide each other's investors or investments with less privileged and favorable treatment than that accorded to investors or investments of a third country that is not a party to the treaty. Accordingly, both states parties to the treaty will be obliged to grant to each other the same rights that they grant to the other states parties to other AMPPI that they have concluded, and investments and investors of the other state will be able to benefit from the most comprehensive rights granted to any country.

Therefore, in the event of a dispute, not only the agreement concluded by the parties, but also other AMPPIs will be taken into account. Under the national treatment clause, states parties to the treaty guarantee that they will not grant less favorable treatment to an investor of the state party to the treaty than they grant to their own investors. In all their regulations and practices, states shall treat all investments equally, without any distinction between domestic and foreign investments, so that the foreign investor is in a position to compete with the host country's own investors.

The arbitration clause allows for disputes concerning the interpretation or application of the treaty to be resolved through international arbitration. This allows investors to resort to international arbitration without being subject to the courts of the host country.

Under the AMPPI, persons or companies that invest in AT1 bonds and hold AT1 bonds that are not Swiss may also be considered as foreign investors. Accordingly, the bailout operation carried out by the Swiss public authorities for the acquisition of Credit Suisse, and the devaluation of AT1 bonds in this process, may be subject to investment arbitration and international arbitration may be initiated against the Swiss state with claims for payment of the value of the investment, compensation for damages, etc. in accordance with the relevant articles of bilateral investment treaties, particularly by referring to the expropriation article.
Resorting to international arbitration instead of national courts for the resolution of this dispute has some advantages for the investor. First of all, in arbitration, the dispute is resolved by arbitrators appointed by the parties, who are experts in finance and banking and have experience in similar disputes.

Secondly, if the dispute is heard before the courts of the respondent state, there is always a risk that a decision will be rendered in favor of the state and against the foreign investor. It can be argued that this risk is reduced when the dispute is resolved by an arbitrator or arbitral tribunal with international members. Thirdly, arbitration offers a wider range of opportunities to the applicant compared to national courts, both in terms of the procedure and the means of proof available to the investor. Fourthly, arbitral proceedings are shorter than proceedings before national courts.

Considering that even the European Union central and supervisory authorities in the member states have openly criticized the Credit Suisse operation and the write-off of AT1 bonds carried out by the Swiss public authorities on the grounds that, contrary to the hierarchy, the damage was primarily imposed on the AT1 bondholders [23], it would be useful for AT1 bondholders to consider the option of resorting to international investment arbitration against the Swiss state.

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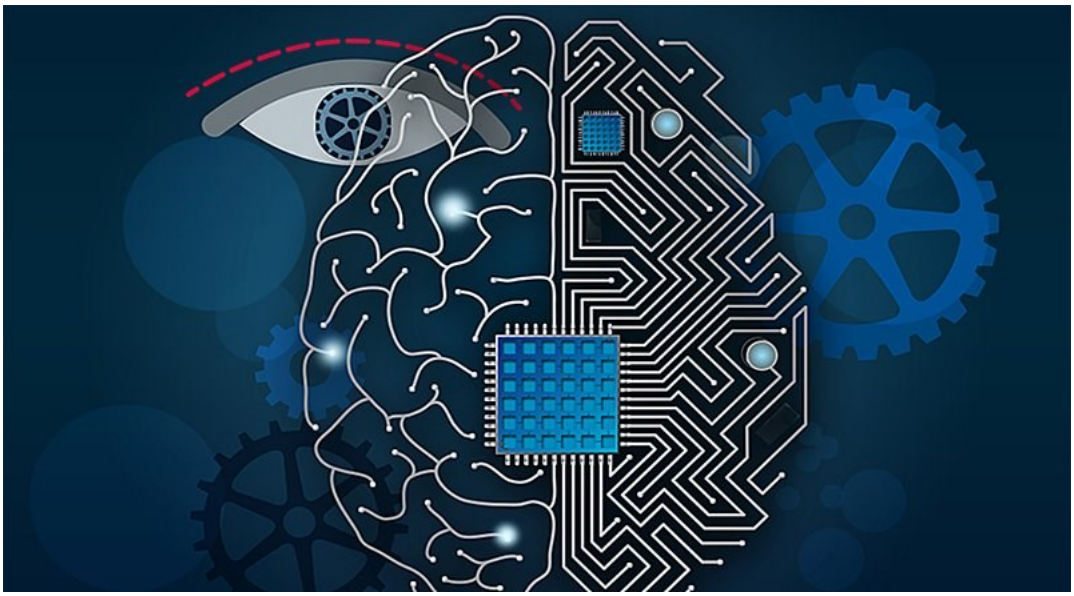
WHO OWNS THE PHOTOGRAPHS PRODUCED BY ARTIFICIAL INTELLIGENCE? WHAT IS THE RIGHT OF USE?



1. Artificial Intelligence: A Brief Summary

Artificial intelligence has become an area of interest for people from all walks of life with the increase of science fiction movies and technological developments.

Artificial intelligence, which used to be used only for military purposes in the past, has become an integral part of life as it has started to be used even in the television at homes.

In addition, the problem of how to evaluate various music, novels, poems and paintings created through artificial intelligence has emerged, and this issue has begun to be legally discussed even in the European Commission.

In this study, firstly, the concept of “work” is defined and how this concept exists in Turkish law is explained. In the second part of the study, the products created by artificial intelligence are explained.

Today, there are many goods which are created by artificial intelligence. These goods have a beautiful and artistic structure that is close to the goods produced by humans.

The problem in terms of artificial intelligence law is whether there is a work within the scope of Law on Intellectual and Artistic Works (LIAW) when these products are created by artificial intelligence and how to determine the ownership of the work.

In our law, the work is regulated under the Law on Intellectual and Artistic Works [1]. The term "work" is defined in Article 1/B of the Law as "all kinds of intellectual and artistic products that bear the characteristics of their owner and are considered as works of science and literature, music, fine arts or cinema".

Based on the definition of work in Article 1/B of the LIAW, it would be correct to say that creations that do not have even one of the characteristics specified therein cannot benefit from the protection of the LIAW.

As explained below, LIAW does not consider every creation as a work, and creations that do not carry the characteristics of their owner are not included within the scope of the law, even if they are the product of an intellectual effort. [2]

In addition, there is no obstacle for the creation to be considered as a work if the work is made with the active participation of the author through computer or other machines. [3]

Accordingly, there is no difference between the creation of a painter on a tablet computer and the creation of a painter on canvas, provided that the other conditions are also met. It is not possible for only the thought or idea of a creation to be considered a work. Even if the work does not have to be completed, it must come out of the inner world of the person. [4]

2. Works Created through Artificial Intelligence

One of the most important creations of artificial intelligence is the "Moral Storytelling System" designed by Margaret Sarlej, a student at the University of New South Wales.

Users define their choice of emotion out of twenty-two different emotions to the system, and the system creates stories containing these emotions, similar to Aesop's fables, from which moral conclusions are drawn. [5]

The novel is the other creation created through artificial intelligence. Ross Goodwin authorized the artificial intelligence program to read the sensors and GPS installed in his car and set off on a journey. The program then processed this data into literary texts. [6]

Although poems have long been written through artificial intelligence, the most advanced among them is the Verse by Verse application developed by Google.

In this application, which is still under development, a start is made by selecting up to three poets whose poems have all been entered as data. [7]

Then, when the user types the first verse, the application brings the appropriate verses according to the poet to the screen, and the other verses are created in this way with the user's choice. Another product created using artificial intelligence is paintings. The Next Rembrandt project was launched with the motto "What would Rembrandt look like if he lived and painted another painting?".

In this context, over three hundred of Rembrandt's paintings were analyzed one by one in the digital environment with the help of most of the owners, including museums, and after dozens of trials and developments, a new painting that is very similar to Rembrandt's works was created through artificial intelligence. [8]

Also worth mentioning is the music produced through artificial intelligence. The most well-known ones are MorpheuS and AIVA, and these artificial intelligences are used to produce music to be used as game and movie soundtracks. [9] Most recently, the picture of Mustafa Kemal ATATÜRK was drawn by artificial intelligence. [10]

3. Who Owns the Copyright on a Photograph?

In order for a photograph to be considered a "work", it must first of all carry the "characteristics of its owner". However, this is not enough; if a photograph has an "aesthetic" value, it is protected as a "work" under the law (LIAW, Art. 4/5).

The Law also recognizes and protects some special photographs as works even if they do not qualify as works. "All kinds of technical and scientific photographic works" are of this nature (LIAW, Art. 2/3). As can be seen, the Law specifically regulates "portraits" apart from the two classes mentioned above. According to Article 86 of LIAW, portraits may be made available to the public 10 years after the death of the depicted person.

In a photograph of a person, there are at least two parties, one being the photographer taking the photograph and the other being the person photographed. Therefore, a photograph of a person is subject to the rights of at least two persons.

If the photograph is a photograph that has "aesthetic value" within the framework mentioned above, or if it is a photograph within the scope of Article 4/5 or Article 86, it will be considered as a work, and the photographer who took the photograph will be considered the author and will be able to use the author rights specified in the law. In summary, all copyrights of the photograph will belong to the photographer who took the photograph.

However, the fact that the copyright of a photograph belongs to the photographer does not mean that he/she can use the photograph as he/she wishes. A photograph of a person falls within the definition of "personal data" under both Article 3/d of the Law on the Protection of Personal Data and Article 135 of the Turkish Penal Code.

In addition, a person's photograph is included in his/her "Private Life". Without the permission of that person, that photograph cannot be disseminated to the public or reproduced. Otherwise, even if it is the photographer, the person who publishes the photograph will be deemed to have violated the provisions of Turkish Criminal Code 135-137 on the recording of personal data or TCC 134 on the privacy of private life.

In addition, in the continuation of Article 86 of LIAW;

"1. Pictures of persons who play a role in the political and social life of the country;
2. Pictures showing parades or official ceremonies or general meetings in which the depicted persons participate;
3. Pictures related to daily events and radio and film news.
(Amended third paragraph: 23/1/2008-5728/145 Art.) The provisions of Article 49 of the Code of Obligations and, if applicable, Articles 134, 139 and 140 of the Turkish Criminal Code shall apply to those who violate the provisions of the first paragraph.
(Amended fourth paragraph: 23/1/2008-5728/145 Art.) In cases where publication is permissible according to the provisions of the first and second paragraphs, the provisions of Article 24 of the Turkish Civil Code are reserved."

The regulation is included in this regulation. Within the scope of this regulation, the use of photographs of Mustafa Kemal ATATÜRK is open to everyone.

4. Use of Photographs Generated by Artificial Intelligence

Due to the fact that artificial intelligence is not attributed a personality in Turkish law, that authorship is required for the creation of a work within the scope of LIAW, and that the author can only be a real person, it is not possible to protect the creations created through artificial intelligence as a work.

In addition, since the LIAW recognizes the real person as the author in absolute terms, unless the law is amended, it will not be possible for artificial intelligence to be the author even if artificial intelligence is given a personality. This is because the existing legal regulations prevent this. In this context, the pictures of Mustafa Kemal ATATÜRK produced by artificial intelligence are not considered as works and are open to the use of everyone.

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THE HARMONIZATION PROCESS AWAITING TECHNOLOGY COMPANIES: THE EUROPEAN UNION DIGITAL SERVICES ACT (DSA) AND THE DIGITAL MARKETS ACT (DMA)

I- INTRODUCTION

Developments in science and technology have led to the proliferation of digital platforms all over the world. With the increasing number of users benefiting from digital services, ensuring the security of users, controlling the market power of players in digital markets, and providing a legal basis for competition between actors gain great importance. With the acceleration of digitalization, the local competition law legislation of countries is not sufficient, and it is deemed necessary to provide a single digital market (Digital Single Market) for technology companies to operate in accordance with the law. Another reason for the single digital market is to ensure the protection of consumers who benefit from the services provided by digital actors.

Accordingly, two regulations that will shape Europe's digital future have recently entered into force. These are the Digital Services Act (DSA), which was published in the Official Journal of the European Union on 27.10.2022 and entered into force on 16.11.2022, and the Digital Markets Act (DMA), which was entered into on 01.11.2022 and started to be implemented on 02.05.2023. In this study, the objectives of these two new regulations will be explained to both users and digital market actors, and the importance of harmonization with these laws will be explained in the upcoming period.

II- PURPOSE OF THE DIGITAL SERVICES ACT AND THE DIGITAL MARKETS ACT

The European Union acts as a pioneering regulator in many areas, promulgating various laws, regulations and establishing authorities on a wide range of issues, with the aim of introducing a single regulation governing the global economy and markets. The European Union has demonstrated its regulatory leadership through the General Data Protection Regulation (GDPR), the Markets in Crypto Assets Regulation (MiCA), the European Supply Chain Code (ESC), the European Union Market Surveillance Regulation (MSR), the Corporate Sustainability Reporting Directive (CSRD) and the European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA), European Securities and Markets Authority (ESMA), European Food Safety Authority (EFSA), Anti-Money Laundering Authority (AMLA) (The legislative proposal was made on July 20, 2021 and this authority is not yet active.) by establishing authorities such as the Digital Services Act and the Digital Markets Act. [1] The Digital Services Act and the Digital Markets Act were enacted to ensure a digital order in line with European values and to enable digital actors to operate within a certain framework.

These two laws aim to ensure that the digital market is fair, transparent, and contestable, to create a safer digital space where users' fundamental rights are protected, and to create a level playing field for businesses. [2] While it is necessary for local authorities to regulate at the national level, the European Commission, concerned that this would create confusion and disparities in practice across Europe, has approved and enacted these two legislations.

III- DIGITAL SERVICES ACT (DSA)

3.1. What awaits companies under the Digital Services Act?

Published on October 27, 2022 in the Official Journal of the European Union and entered into force on November 16, 2022, the Digital Services Act will have an impact on online intermediaries and platforms such as online marketplaces, social networks, content sharing platforms, app stores, online travel and accommodation platforms. On the one hand, the Digital Services Act will change the rules in the European Union's existing e-commerce directive, and on the other hand, it will introduce new regulations for digital platforms. It is important to note that the Act balances the responsibilities in the online ecosystem according to the size of the players in this ecosystem and strikes a reasonable balance between the cost of compliance and the size of the platform that will be under obligation. [3]

The Digital Services Act imposes new obligations on market players, which would contradict the purpose of the Law, given that the Act aims to ensure a competitive and fair digital market order. Companies are expected to report on illegal content on their platforms or dangerous third-party content and products. With the Digital Services Act, online platforms will be required to publish the number of active users by February 17, 2023. If the platform has more than 45 million monthly users, which is 10% of the European population, the platform will be qualified by the Commission as a major online platform-online search engine and will be expected to comply with the Digital Services Act within 4 months. Platforms subject to the Digital Services Act will first be required to provide the Commission with a risk assessment for the first year. [4]

It is important to note that the Digital Services Act will not only affect online platforms and online marketplaces established in the European Union. Organizations that are not established in the European Union but provide services in countries within the European Union are also expected to comply with the Act.

In this context, many companies not established in the European Union will be obliged to appoint a legal representative and will benefit from common rules when providing services in the European Union.

With the Digital Service Act, companies that advertise on online platforms will be obliged to transparently disclose to the user that the content presented to the user is an advertisement, for whom the advertisement is displayed, and the parameters used to determine which user the advertisement will be displayed to.

Additional obligations have been introduced for very large online platforms, which will be required to provide information to users on the price of the advertisement and the fee paid to the publisher, and to compile information on the advertisement in a public repository.

Online marketplaces will be expected to retain information on sellers who conclude distance sales contracts with users through their platforms under the "know your business customer" principle. Intermediary service providers will be required to publish an open, transparent and detailed report on the content moderation conducted annually under the Act. The Act requires online platforms providing hosting services to establish a complaint mechanism.

With these mechanisms, user complaints will be resolved quickly and the fight against illegal content and counterfeit products will be more effective. The above-mentioned obligations will not be sufficient to explain all of the obligations introduced under the Digital Services Act.

In this study, we have outlined the general framework of the obligations that come with the Act, and the obligations to which each platform will be subject will only be revealed after a detailed analysis of the Act in question. In the event of a breach of the Digital Services Act, depending on the nature, size and repetition of the breach, the offending undertaking may face a fine of up to 6% of its annual turnover. Accordingly, it would be best for each undertaking/company to identify its obligations under this legislation determine how to comply with these obligations and take action accordingly.

3.2. What the Digital Services Act Brings to Users?

As mentioned at the beginning of the study, the proliferation of digital platforms and the increased likelihood of users facing many negative situations through these platforms make it difficult to ensure users' online security. Accordingly, in order to ensure the digital security of users, it has become a necessity to regulate this emerging area in accordance with the changing conditions.

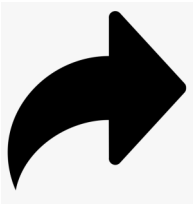
The amendments introduced under the Digital Services Act will ensure that users have a safer experience on online platforms, that companies/entrepreneurs inform users to the maximum extent possible and that a transparent digital environment is ensured.

In particular, it will be ensured that the user's preference is prioritized in the delivery of information content and advertisements offered by very large online platforms and the presence of content that will manipulate the user will be reduced. If users encounter illegal content, there will be mechanisms for them to report it, and if their content is removed from digital platforms, they will have the right to appeal against the decision made by online platforms.

Subjecting all but a very small number of platforms to the obligations set out in the Digital Services Act will facilitate a safe digital environment and reduce the likelihood of users being exposed to manipulative and illegal content.

IV- DIGITAL MARKETS ACT (DMA)

The European Union Digital Markets Act, which entered into force on November 1, 2022 and will be implemented on May 2, 2023, aims to put an end to the unfair practices of companies (such as Google, Amazon, Apple) that act as gatekeepers in the online platform economy.



THE FIRST STEP IS TO DEFINE THE SCOPE OF "MAIN PLATFORM SERVICES" AND TO DETERMINE WHICH COMPANIES WITHIN THIS SCOPE WILL BE CONSIDERED AS "GATEKEEPERS".

In addition, the Digital Markets Act regulates the circumstances in which online platforms will be considered gatekeepers and sets out a number of new obligations to be imposed on them. [5]

While the Digital Services Act concerns a wide range of undertakings, from large-scale platforms to small-scale platforms, the Digital Markets Act is more relevant to large technology firms in Silicon Valley than to small-scale platforms.

The ability of platforms to access and process and enrich the personal data of many users has led some platforms to take control of the digital market.

This prevents new actors from entering the market and makes digital markets less competitive and fair.

The Digital Markets Act concerns gatekeepers that provide "core platform services". The law defines gatekeepers, imposes certain obligations on them and prohibits them from engaging in certain activities.

The first step is to define the scope of "main platform services" and to determine which companies within this scope will be considered as "gatekeepers".

Main platform services can be defined as (i) online brokerage services, (ii) online search engines (iii) online social networking services (iv) video sharing platform services (v) unnumbered communication services (vi) operating systems (vii) cloud computing services and advertising services offered in connection with these services.

Which companies offering these platform services will be considered as gatekeepers will be determined in line with the regulation in the Law. For a company to qualify as a gatekeeper

- European turnover of €7.5 billion or more in the last three financial years, or an average market capitalization of €75 billion or more in the last financial year, and provides main platform services in at least three EU Member States,

- Providing a main platform service with more than 45 million monthly active end users based in the EU and more than 10,000 annual active business users based in the EU in the last financial year,

- The thresholds in the first two points must have been met in the last three financial years.

If a platform determines that it is a gatekeeper, it must notify the Commission. Even if the platform fails to do so, the Commission may make this determination ex officio.

In conjunction with the Digital Markets Act;

- Gatekeepers will not be able to combine the personal data it obtains within the scope of its main platform services with personal data obtained from other services it offers or third-party services.

- Gatekeepers will not be able to prioritize its own product or service over third parties. - Gatekeepers will not be able to require app developers to use their own payment or identification systems to appear in their store.

- Gatekeepers shall not use non-public data about business users to compete with them. The above-mentioned prohibited activities are the prominent prohibitions introduced by the Law, and all prohibited activities will become apparent upon a detailed review of the Digital Markets Law. If the platforms subject to the prohibition do not comply with these prohibitions, the penalty increases from 6% of annual turnover to 10% as stipulated in the Digital Services Act. Some of the obligations foreseen for gatekeepers are as follows:

- Enabling end-users to unsubscribe from services offered by gatekeepers as easily as they subscribe,

- Allowing app developers fair access to the complementary functionalities of smartphones,

- Granting access to marketing or advertising performance data to companies that advertise on their platforms,

- Business users are allowed to present/ promote their offers and enter into contracts with customers outside the gatekeeper. [6]

All of these prohibitions and obligations are prominent prohibitions and obligations in the Digital Markets Act, and platforms subject to the Law should evaluate all prohibitions and obligations regulated under the Law in terms of their platforms and comply with the Law in this context in order to avoid any sanctions.

V- CONCLUSION

As digital platforms play an important role in every aspect of our lives, the control of digital markets is becoming increasingly important. Ensuring the control of digital platforms is extremely important both in terms of ensuring that the actors playing a role in this digital market operate in a competitive and fair environment, preventing the difficulties faced by new actors entering the market, and providing services to users in a secure digital environment.

The regulatory aspect of the European Union has also manifested itself in terms of digital markets and services and the Digital Services Act (DSA) and the Digital Markets Act (DMA) have come into force. While the Digital Services Act concerns many online platforms large and small, the Digital Markets Act is more relevant to technology companies that provide main platform services on a large scale and are called gatekeepers. To avoid any sanctions, it is important for companies to identify the prohibitions and obligations stipulated by the regulations that would affect them and to initiate the compliance process without delay in order to comply with these regulations in this direction.

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IS PARTIAL ENFORCEMENT POSSIBLE? CAN ENFORCEMENT OF ENFORCEMENT BE ENFORCED?

I. CONCEPT OF ENFORCEMENT

Enforcement can be defined as the enforcement of a judgment rendered by a foreign court in another country. Through enforcement, it is possible for an executive, determinative or constitutive judgment to be directly enforceable in Turkish law. In this context, it is possible to say that a judgment rendered by a foreign court becomes enforceable in the Turkish legal system upon the decision to enforce it.

II. ENFORCEMENT DECISION

The enforcement decision is regulated under Article 50 of the Law No. 5718 on Private International Law and Procedural Law. According to the relevant provision;

1. The execution of judgments rendered by foreign courts in civil cases in Türkiye and finalized in accordance with the laws of that state is subject to the issuance of an enforcement decision by the competent Turkish court.
2. An enforcement decision may also be requested for the provisions related to personal rights in criminal judgments of foreign courts.

Therefore, the prerequisites for requesting the enforcement of a judgment are as follows:

a) the judgment must have been rendered by a court of a foreign state,
b) the decision relates to civil proceedings,
c) the decision has become final,
as the "enforcement of a judgment".

III. ESSENTIAL CONDITIONS FOR ENFORCEMENT

The conditions for enforcement are regulated under Article 54 of the Law No. 5718 on Private International Law and Procedural Law. According to the relevant provision;

1. The competent court shall issue an enforcement decision under the following conditions

a) The existence of an agreement based on reciprocity between the Republic of Turkey and the state where the judgment was rendered, or the existence in that state of a legal provision or de facto practice enabling the enforcement of judgments rendered by Turkish courts.
b) The judgment has been rendered in a matter which does not fall within the exclusive jurisdiction of Turkish courts, or, provided that the defendant objects, the judgment has not been rendered by a court of a state which recognizes its jurisdiction even though it has no real relationship with the subject matter of the case or the parties.
c) The judgment is not clearly contrary to public order.
ç) The person against whom enforcement is sought has not been duly summoned or represented before the court which rendered the judgment, or a judgment has been rendered in absentia or in the absence of the person against whom enforcement is sought, in accordance with the laws of that place, and such person has not objected to the Turkish court against the request for enforcement based on one of the above-mentioned issues.

Therefore, the main conditions for requesting the enforcement of a judgment are as follows:

a) there is reciprocity between the country where the judgment was rendered and Turkey,
b) the judgment was not rendered on a matter falling within the exclusive jurisdiction of the Turkish courts and the foreign court did not consider itself competent in such a way as to constitute "excessive jurisdiction",
c) the decision is not manifestly contrary to Turkish public order,
d) the decision was given in compliance with the defendant's rights of defense
as a "good and fair".

IV. WHAT IS THE DIFFERENCE BETWEEN ENFORCEMENT AND RECOGNITION?

Court judgments give rise to two effects: finality and enforceability. Recognition, unlike enforcement, can be characterized as the acceptance of the res judicata force of foreign court judgments in a foreign country, independent of enforceability. Recognition of foreign court judgments that are not enforceable (divorce, nullity of marriage, denial of paternity, etc.) is sufficient. The foreign court judgments that must be enforced are enforcement judgments. Examples of performance judgments are; fulfillment of an act, ordering the performance of an act, doing or not doing something by foreign court judgments. Unlike recognition, performance judgments are both final and enforceable. Therefore, these judgments must be enforced in order to be enforceable in a foreign country.

V. IS PARTIAL ENFORCEMENT POSSIBLE?

Enforcement is expressly regulated under Article 52/1-c of the Law No. 5718 on Private International Law and Procedural Law. According to the relevant provision;

1. Anyone who has a legal interest in the enforcement of the provision may request enforcement. The request for enforcement shall be made by petition. The petition shall be accompanied by as many samples as the number of opposing parties. The following matters shall be included in the petition:

a) The names, surnames and addresses of the party seeking enforcement and of the other party and of their legal representatives and attorneys, if any.
b) The State court from which the judgment subject to enforcement was rendered, the name of the court, the date and number of the judgment and a summary of the judgment.
c) If enforcement is sought for a part of the judgment, the part of the judgment.

The decision, bearing the Basis number 2001/8721 and the Decision number 2002/2586, and dated 22.03.2002, of the 11th Civil Chamber of the Court of Cessation reads as follows: "The plaintiff's attorney ... requested and sued for the partial enforcement of DM 6490 of the judgment of the original court ... The court ... on the grounds that the conditions for enforcement existed, it was decided to enforce the partial enforcement of DM 6490 of the Paderborn State Court's judgment dated 14.10.1991 and numbered 60115/91, which was pronounced on 01.10.1991, regarding the defendant's payment of DM 130,294.09 to the plaintiff. ... it was unanimously decided ... to uphold the judgment by rejecting all appellate objections".

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COMPANY DIRECTORS CAN BE HELD ACCOUNTABLE FOR BREACHING CLIMATE-RELATED LAWS

The global litigation cases related to exposures associated with environmental, social and governance (ESG) have more than doubled since 2015 to over 2,000. Almost the quarter of these cases occurred between 2020 and 2022. These cases have most centered on greenwashing, i.e., a business makes misleading claims about the environmental impact of its products, services or brand. In these cases, compensation has often been sought from company directors.

In February, shareholders consisting of institutional investors with over 12 million shares in the company filed a lawsuit against the global oil supplier Shell`s board of directors at the high court of England and Wales.

The Claimant claims that members of Shell's board are mismanaging climate risk, breaching company law by failing to implement an energy transition strategy that aligns with the landmark 2015 Paris Agreement. It is suggested according to third-party assessments, that, despite this accounting for over 90% of the firm's overall emissions, Shell's strategy excludes short to medium-term targets to cut the emissions from the products it sells.

The aim of the Paris Agreement is to pursue efforts to limit global heating to 1.5 degrees Celsius above pre-industrial levels by slashing greenhouse gas emissions. As the small changes at these thresholds can lead to dramatic shifts in the Earth's entire support system, this target to keep the heating at certain levels is widely regarded as critically important.

The Defendant denied allegations, claiming their directors have complied with their legal duties and have, at all times, acted in the best interests of the company, and arguing that its climate targets are Paris-aligned.

In May, the claim against Shell's directors for mismanaging climate risk dismissed by High Court.

This case was considered a first-of-its-kind lawsuit that could have widespread implications for how other companies plan to cut emissions.

However, legal experts argue that it would be possible to see similar offences created for individual directors, given that the UK's current environmental laws allow regulators to prosecute directors where offences by a company are committed with their consent, connivance or neglect.

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US JUDGE RULES, APPLE AND AMAZON MUST FACE CONSUMER LAWSUIT OVER IPHONE, IPAD PRICES

Amazon is currently facing legal action over its pricing practices, with one lawsuit filed by US residents who purchased iPhones and iPads on the platform since January 2019. The legal action centers around the agreement Apple made with Amazon to discount its products, on the condition that the e-commerce platform reduced the number of third-party Apple resellers. Thus, a judge in Seattle has ruled that Apple and Amazon will face a consumer antitrust lawsuit in a US court.

The lawsuit alleges the tech giants collaborated to drive up the prices of iPhones and iPads sold through Amazon's e-commerce platform by limiting the number of competitive resellers. Steve Berman, a lawyer representing the plaintiffs, has characterized this recent court ruling as a major victory for consumers of Apple products. The lawsuit alleges that Apple reached an agreement with Amazon to offer them product discounts in exchange for reducing the number of third-party Apple resellers on the platform. Prior to this agreement, there were approximately 600 such resellers on Amazon in 2018.

Both firms attempted to have the case dismissed, but now face evidence-gathering and other pretrial procedures. US residents who purchased Apple products on Amazon since January 2019 are among the plaintiffs. İt is reported that Apple's agreement with Amazon limited the number of authorized resellers in an effort to prevent the sale of counterfeit Apple products. Apple's lawyers have referred to this type of agreement as standard practice and legal and stated that the Supreme Court and Ninth Circuit have recognized them as both procompetitive and lawful. In an upcoming legal case, any opposing incentives related to the agreement between Apple and Amazon will be addressed. The complaint is seeking triple damages and other forms of relief, but no specific amount has been specified.

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