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"Harmonisation of the Principles of Insurance Law in Europe (HOPINEU)"

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Module Database

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The below database seeks to highlight the equivalent provisions (if any) under the Turkish Commercial Code and the Principles of European Insurance Contract Law governing pre-contractual information duties of the insurer and insured, aggravation of risk, precautionary measures and multiple insurance.

Principles of European Insurance Contract Law (PEICL)	**Türk Ticaret Kanunu (6102 s.K.)**	**Turkish Commercial Code[1]**
PRE-CONTRACTUAL INFORMATION DUTIES OF THE INSURER		

[1] The English translation of the relevant provisions of the Turkish Commercial Code is taken from "New Turkish Insurance Contract Law – Free Translation of the Provisions of the Turkish Commercial Code Regarding Insurance Contracts" by Dr. Kerim Atamer, Handan Cacina, Seçil Erbay, Dr. Samim Ünan and Mehpare Yücel. The full text of this work is available here: http://www.lawsturkey.com/law/6102-turkish-commercial-code.

Article 2:201 **Provision of Pre-contractual Documents** (1) The insurer shall provide the applicant with a copy of the proposed contract terms as well as a document which includes the following information if relevant: (a) the name and address of the contracting parties, in particular of the head office and the legal form of the insurer and, where appropriate, of the branch concluding the contract or granting the cover; (b) the name and address of the insured and, in the case of life insurance, the beneficiary and the person at risk; (c) the name and address of the insurance agent; (d) the subject matter of the insurance and the risks covered; (e) the sum insured and any deductibles; (f) the amount of the premium and the method of calculating it; (g) when the premium falls due as well as the place and mode of payment; (h) the contract period, including the method of terminating the contract, and the liability period; (i) the right to revoke the application or avoid the contract in accordance with Article 2:303 in the case of non-life insurance and with Article 17:203 in the case of life insurance; (j) that the contract is subject to the PEICL; (k) the existence of an out-of-court complaint and redress mechanism for the applicant	**Aydınlatma yükümlülüğü** **MADDE 1423** (1) Sigortacı ve acentesi, sigorta sözleşmesinin kurulmasından önce, gerekli inceleme süresi de tanınmak şartıyla kurulacak sigorta sözleşmesine ilişkin tüm bilgileri, sigortalının haklarını, sigortalının özel olarak dikkat etmesi gereken hükümleri, gelişmelere bağlı bildirim yükümlülüklerini sigorta ettirene yazılı olarak bildirir. Ayrıca, poliçeden bağımsız olarak sözleşme süresince sigorta ilişkisi bakımından önemli sayılabilecek olayları ve gelişmeleri sigortalıya yazılı olarak açıklar. (2) Aydınlatma açıklamasının verilmemesi hâlinde, sigorta ettiren, sözleşmenin yapılmasına ondört gün içinde itiraz etmemişse, sözleşme poliçede yazılı şartlarla yapılmış olur. Aydınlatma açıklamasının verildiğinin ispatı sigortacıya aittir. (3) Hazine Müsteşarlığı, çeşitli ülkelerin ve özellikle Avrupa Birliğinin düzenlemelerini dikkate alarak, tüketiciyi aydınlatma açıklamasının şeklini ve içeriğini belirler.	**Pre-contractual information duty** **Article 1423** (1) Before the conclusion of the contract and sufficiently in advance for due consideration, the insurer and its agent shall inform in writing the policyholder of all matters related to the insurance contract, the insured's rights, the provisions to which the insured has to pay special attention, notification duties that may arise in the course of the insurance cover. Moreover, the insurer shall, independent of the policy, let know the policyholder during the contract period of the facts and developments that can be of importance to the insurance relationship. (2) If this pre-contractual information duty was not duly fulfilled, the contract shall be deemed as having been concluded in accordance with the terms written in the policy, unless the policyholder objects to the conclusion of the contract within fourteen days. The burden of proving that the pre-contractual information duty has been duly fulfilled shall lie with the insurer. (3) The Undersecretariat of Treasury shall determine the form and contents of the information addressed to the consumer by taking

and the methods of having access to it; (l) the existence of guarantee funds or other compensation arrangements. (2) If possible, this information shall be provided in sufficient time to enable the applicant to consider whether or not to conclude the contract. (3) When the applicant applies for insurance cover on the basis of an application form and/or a questionnaire provided by the insurer, the insurer shall supply the applicant with a copy of the completed documents.		into account the regulations of foreign countries and especially those of the European Union.
Article 2:202 **Duty to Warn about Inconsistencies in the Cover** (1) When concluding the contract, the insurer shall warn the applicant of any inconsistencies between the cover offered and the applicant's requirements of which the insurer is or ought to be aware, taking into consideration the circumstances and mode of contracting and, in particular, whether the applicant was assisted by an independent intermediary. (2) In the event of a breach of para.1: (a) the insurer shall indemnify the policyholder against all losses resulting from the breach of this duty to warn unless the insurer acted without fault, and (b) the policyholder shall be entitled to terminate the contract by written notice given within two months after the breach becomes known to the policyholder. **Article 2:203**		

Duty to Warn about Commencement of Cover If the applicant reasonably but mistakenly believes that the cover commences at the time the application is submitted, and the insurer is or ought to be aware of this belief, the insurer shall warn the applicant immediately that cover will not begin until the contract is concluded and, if applicable, the first premium is paid, unless preliminary cover is granted. If the insurer is in breach of the duty to warn it shall be liable in accordance with Article 2:202 para. 2(a).		
PRE-CONTRACTUAL INFORMATION DUTIES OF THE APPLICANT		
Applicant's Pre-contractual Information Duty **Article 2:101** **Duty of Disclosure** (1) When concluding the contract, the applicant shall inform the insurer of circumstances of which he is or ought to be aware, and which are the subject of clear and precise questions put to him by the insurer. (2) The circumstances referred to in para. 1 include those of which the person to be insured was or should have been aware.	**Beyan yükümlülüğü** **Sözleşmenin yapılmasında Genel olarak** **MADDE 1435** (1) Sigorta ettiren sözleşmenin yapılması sırasında bildiği veya bilmesi gereken tüm önemli hususları sigortacıya bildirmekle yükümlüdür. Sigortacıya bildirilmeyen, eksik veya yanlış bildirilen hususlar, sözleşmenin yapılmamasını veya değişik şartlarda yapılmasını gerektirecek nitelikte ise, önemli kabul edilir. Sigortacı tarafından yazılı veya sözlü olarak sorulan hususlar, aksi ispat edilinceye kadar önemli sayılır.	**Duty of Disclosure** **at the Conclusion of the Contract** **In General** **Article 1435** (1) The policyholder (applicant) shall inform the insurer of all important circumstances of which it is or ought to be aware at the time of conclusion of the contract. Circumstances that are not so disclosed at all or disclosed insufficiently or wrongly to the insurer shall be deemed of importance if they could lead to the non-conclusion of the contract or to its conclusion with different terms (had the insurer known the truth). Circumstances asked by the insurer orally or in writing shall be deemed as important until proof to

		the contrary.
	Yazılı sorular **MADDE 1436** (1) Sigortacı sigorta ettirene, cevaplaması için sorular içeren bir liste vermişse, sunulan listede yer alan sorular dışında kalan hususlara ilişkin olarak sigorta ettirene hiçbir sorumluluk yüklenemez; meğerki, sigorta ettiren önemli bir hususu kötüniyetle saklamış olsun. (2) Sigortacı, liste dışında öğrenmek istediği hususlar varsa bunlar hakkında da soru sorabilir. Söz konusu soruların da yazılı ve açık olması gerekir. Sigorta ettiren bu soruları cevaplamakla yükümlüdür.	**Written Questions** **Article 1436** (1) If the insurer has given to the policyholder a list of questions to be answered, the policyholder shall not be liable for any circumstances remaining outside the scope of the questions contained in that list, unless the policyholder has hidden an important issue in bad faith. (2) The insurer may also ask questions about circumstances not included in the list. These questions have to be in writing and clear. The policyholder has to answer these questions.
	Bağlantı **MADDE 1437** (1) Tazminat ve bedel ödemelerinde, bildirilmeyen veya yanlış bildirilen bir husus ile rizikonun gerçekleşmesi arasındaki bağlantı, 1439 uncu maddede öngörülen kurallar uyarınca dikkate alınır.	**Connection** **Article 1437** (1) As for indemnity and fixed sum payments, the connection between circumstances not disclosed or disclosed incorrectly and the 5aterialization of the risk shall be taken into consideration in accordance with the rules set out in Article 1439.
Article 2:102 **Breach** (1) When the policyholder is in breach of Article 2:101, subject to paras. 2 to 5, the insurer shall be entitled to propose a reasonable variation of the contract or to terminate the contract. To this end the insurer	**Yaptırım** **MADDE 1439** (1) Sigortacı için önemli olan bir husus bildirilmemiş veya yanlış bildirilmiş olduğu takdirde, sigortacı 1440 ıncı maddede belirtilen süre içinde sözleşmeden cayabilir veya prim farkı isteyebilir. İstenilen	**Remedy** **Article 1439** (1) If circumstances of importance to the insurer are not disclosed at all or disclosed incorrectly, the insurer may avoid the

shall give written notice of its intention, accompanied by information on the legal consequences of its decision, within one month after the breach of Article 2:101 becomes known or apparent to it. (2) If the insurer proposes a reasonable variation, the contract shall continue on the basis of the variation proposed, unless the policyholder rejects the proposal within one month of receipt of the notice referred to in para. 1. In that case, the insurer shall be entitled to terminate the contract within one month of receipt of written notice of the policyholder's rejection. (3) The insurer shall not be entitled to terminate the contract if the policyholder is in innocent breach of Article 2:101, unless the insurer proves that it would not have concluded the contract, had it known the information concerned. (4) Termination of the contract shall take effect one month after the written notice referred to in para. 1 has been received by the policyholder. Variation shall take effect in accordance with the agreement of the parties. (5) If an insured event is caused by an element of the risk, which is the subject of negligent non-disclosure or misrepresentation by the policyholder, and occurs before termination or variation takes effect, no insurance money shall be payable if the insurer would not have concluded the contract had it known the information concerned. If, however, the	prim farkının on gün içinde kabul edilmemesi hâlinde, sözleşmeden cayılmış kabul olunur. Önemli olan bir hususun sigorta ettirenin kusuru sonucu öğrenilememiş olması veya sigorta ettiren tarafından önemli sayılmaması durumu değiştirmez. (2) Rizikonun gerçekleşmesinden sonra, sigorta ettirenin ihmali ile beyan yükümlülüğü ihlal edildiği takdirde, bu ihlal tazminatın veya bedelin miktarına yahut rizikonun gerçekleşmesine etki edebilecek nitelikte ise, ihmalin derecesine göre tazminattan indirim yapılır. Sigorta ettirenin kusuru kast derecesinde ise beyan yükümlülüğünün ihlali ile gerçekleşen riziko arasında bağlantı varsa, sigortacının tazminat veya bedel ödeme borcu ortadan kalkar; bağlantı yoksa, sigortacı ödenen primle ödenmesi gereken prim arasındaki oranı dikkate alarak sigorta tazminatını veya bedelini öder.	contract or request additional premium within the period specified in Article 1440. In case the request for additional premium is not accepted within ten days, the insurer shall be deemed to have avoided the contract. The fact that certain important circumstances were not discovered as a result of the policyholder's negligence or were not deemed to be important by the policyholder shall not be taken into consideration. (2) After the materialization of the risk, in case the duty of disclosure was negligently violated by the policyholder and if this violation affected the amount of the indemnity or fixed sum to be paid or was relevant for the materialization of the risk, a deduction from the indemnity shall be made in proportion to the degree of negligence. Where the policyholder acted with intent, the insurer shall be discharged of its obligation to indemnify or to pay a fixed sum if there was a connection between the violation of the duty of disclosure and the materialized risk; if there was no such connection, the insurer shall indemnify or pay the fixed sum proportionally, by taking into consideration the ratio between the premium paid and the

insurer would have concluded the contract at a higher premium or on different terms, the insurance money shall be payable proportionately or in accordance with such terms.	**Caymanın şekli ve süresi** **MADDE 1440** (1) Caymanın, sigorta ettirene bir beyanla yöneltilmesi şarttır. (2) Cayma, onbeş gün içinde sigorta ettirene bildirilir. Bu süre sigortacının bildirim yükümlülüğünün ihlal edilmiş olduğunu öğrendiği tarihten itibaren başlar.	premium which should be paid. **Form of and Time Limit for Avoidance** **Article 1440-** (1) The avoidance must be addressed to the policyholder by way of a declaration. (2) The avoidance must be notified to the policyholder within fifteen days. This period starts to run from the date the insurer became aware of the breach of the duty of disclosure.
Article 2:103 **Exceptions** The sanctions provided for in Article 2:102 shall not apply in respect of (a) a question which was unanswered, or information supplied which was obviously incomplete or incorrect; (b) information which should have been disclosed or information inaccurately supplied, which was not material to a reasonable insurer's decision to enter into the contract at all, or to do so on the agreed terms; (c) information which the insurer led the policyholder to believe did not have to be disclosed; or (d) information of which the insurer was or should have been aware.	**Sigortacı tarafından gerçek durumun bilinmesi** **MADDE 1438** (1) Bildirilmeyen veya yanlış bildirilen bir hususun ya da olgunun gerçek durumu sigortacı tarafından biliniyorsa, sigortacı beyan yükümlülüğünün ihlal edilmiş olduğunu ileri sürerek sözleşmeden cayamaz. İspat yükü sigorta ettirene aittir.	**Knowledge of the Insurer about the Truth** **Article 1438** (1) If the real situation with regards to non-disclosed or incorrectly disclosed circumstances or facts is known to the insurer, it shall not have the right to avoid the contract arguing that the duty of disclosure has been violated. The burden of proof shall lie with the policyholder.
	Cayma hakkının düşmesi **MADDE 1442** (1) Cayma hakkı aşağıdaki hâllerde kullanılamaz: a) Cayma hakkının kullanılmasından açıkça veya zımnen vazgeçilmişse.	**Loss of Right of Avoidance** **Article 1442** (1) The right of avoidance cannot be invoked when:

Article 2:104 **Fraudulent Breach** Without prejudice to the sanctions provided for in Article 2:102, the insurer shall be entitled to avoid the contract and retain the right to any premium due, if it has been led to conclude the contract by the policyholder's fraudulent breach of Article 2:101. Notice of avoidance shall be given to the policyholder in writing within two months after the fraud becomes known to the insurer. **Article 2:105** **Additional Information** Articles 2:102-2:104 shall also apply to any information supplied by a policyholder at the time of concluding the contract in addition to that required by Article 2:101. **Article 2:106** **Genetic Information** This Section shall not apply to the results of genetic tests which are subject to Article 1:208 para. 1	b) Caymaya yol açan ihlale sigortacı sebebiyet vermişse. c) Sigortacı, sorularından bazıları cevapsız bırakıldığı hâlde sözleşmeyi yapmışsa. **Caymanın hükümleri** **MADDE 1441** (1) Cayma hâlinde, sigorta ettiren kasıtlı ise, sigortacı rizikoyu taşıdığı süreye ait primlere hak kazanır.	a) the right of avoidance was waived explicitly or implicitly. b) the insurer has caused the breach giving rise to avoidance. c) the insurer has concluded the contract despite questions left unanswered. **Effects of Avoidance** **Article 1441** (1) In case of avoidance, if the policyholder has acted intentionally, the insurer shall be entitled to the portion of the premium corresponding to the period in which it has carried the risk.
AGGRAVATION OF RISK		
Aggravation of Risk **Article 4:201** **Clauses Concerning Aggravation of Risk** If the insurance contract contains a clause concerning		

aggravation of the risk insured, the clause shall be without effect unless the aggravation of risk in question is material and of a kind specified in the insurance contact.		
Article 4:202 **Duty to Give Notice of an Aggravation of Risk** (1) If a clause concerning aggravation of the risk insured requires notification of an aggravation, notification shall be given by the policyholder, the insured or the beneficiary, as appropriate, provided that the person obliged to give notice was or should have been aware of the existence of the insurance cover and of the aggravation of the risk. Notice by another person shall be effective. (2) If the clause requires notice to be given within a stated period of time, such time shall be reasonable. Notice shall be effective on dispatch. (3) In the event of breach of the duty of notification, the insurer shall not on that ground be entitled to refuse to pay any subsequent loss resulting from an event within the scope of the cover unless the loss was a consequence of the failure to notify the aggravated risk.	**Beyan yükümlülüğü** **Sözleşme süresi içinde** **Genel olarak** **MADDE 1444** (1) Sigorta ettiren, sözleşmenin yapılmasından sonra, sigortacının izni olmadan rizikoyu veya mevcut durumu ağırlaştırarak tazminat tutarının artmasını etkileyici davranış ve işlemlerde bulunamaz. (2) Sigorta ettiren veya onun izniyle başkası, rizikonun gerçekleşme ihtimalini artırıcı veya mevcut durumu ağırlaştırıcı işlemlerde bulunursa yahut sözleşme yapılırken açıkça riziko ağırlaşması olarak kabul edilmiş bulunan hususlardan biri gerçekleşirse derhâl; bu işlemler bilgisi dışında yapılmışsa, bu hususu öğrendiği tarihten itibaren en geç on gün içinde durumu sigortacıya bildirir.	**(Applicant's) Duty of Disclosure** **During The Contract Period** **In General** **Article 1444** (1) After conclusion of the contract, the policyholder shall not accomplish acts or transactions, which would lead to an increase of the amount of indemnity due to aggravation of the risk or current status, without the insurer's prior consent. (2) If the policyholder or another person authorised by the policyholder accomplishes acts or transactions, which increase the probability of the materialisation of the risk or aggravate the current status or if circumstances designated by the parties at the conclusion of the contract as aggravation of the risk are materialised, the policyholder shall notify the insurer immediately or, if these transactions had been concluded without its knowledge, within ten days as of the date of awareness.
Article 4:203 **Termination and Discharge** (1) If the contract provides that, in the event of an aggravation	**Sigortacının hakları** **MADDE 1445** (1) Sigortacı sözleşmenin süresi içinde, rizikonun	**Rights of the Insurer** **Article 1445** (1) During the contract period, the insurer may

of the risk insured the insurer shall be entitled to terminate the contract, such right shall be exercised by written notice to the policyholder within one month of the time when the aggravation becomes known or apparent to the insurer. (2) Cover shall expire one month after termination or, if the policyholder is in intentional breach of the duty under Article 4:202, at the time of termination. (3) If an insured event is caused by an aggravated risk, of which the policyholder is or ought to be aware, before cover has expired, no insurance money shall be payable if the insurer would not have insured the aggravated risk at all. If, however, the insurer would have insured the aggravated risk at a higher premium or on different terms, the insurance money shall be payable proportionately or in accordance with such terms.	gerçekleşmesi veya mevcut durumun ağırlaşması ihtimalini ya da sözleşmede riziko ağırlaşması olarak kabul edilebilecek olayların varlığını öğrendiği takdirde, bu tarihten itibaren bir ay içinde sözleşmeyi feshedebilir veya prim farkı isteyebilir. Farkın on gün içinde kabul edilmemesi hâlinde sözleşme feshedilmiş sayılır. (2) Değişikliklerin yapılmasından önceki duruma dönüldüğü takdirde fesih hakkı kullanılamaz. (3) Süresinde kullanılmayan fesih ve prim farkını isteme hakkı düşer. (4) Rizikonun artmasına, sigortacının menfaati ile ilişkili bir husus, sigortacının sorumlu olduğu bir olay veya insanî bir görevin yerine getirilmesi ve hayat sigortalarında da sigortalının sağlık durumunda meydana gelen değişiklikler sebep olmuşsa, birinci ilâ üçüncü fıkra hükümleri uygulanmaz. (5) Rizikonun gerçekleşmesinden sonra sigorta ettirenin ihmali belirlendiği ve değişikliklere ilişkin beyan yükümlülüğünün ihlal edildiği saptandığı takdirde, söz konusu ihlal tazminat miktarına veya bedele ya da rizikonun gerçekleşmesine etki edebilecek nitelikte ise, ihmalin derecesine göre, tazminattan veya bedelden indirim yapılır. Sigorta ettirenin kastı hâlinde ise meydana gelen değişiklik ile gerçekleşen riziko arasında bağlantı varsa, sigortacı sözleşmeyi feshedebilir; bu durumda sigorta tazminatı	terminate the contract or request additional premium within one month from the date it became aware of the facts increasing the probability of materialisation of the risk or aggravating the current status or of the events designated by the parties at the conclusion of the contract as aggravation of the risk. In case the request for additional premium has not been accepted within ten days, the contract shall be deemed as having been terminated. (2) The right to terminate shall be ineffective if the status *ante quo* is re-established. (3) The right to terminate or to request additional premium shall be forfeited if not used in time. (4) Paragraphs (1) to (3) shall not apply if the aggravation is caused by circumstances relating to the interest of the insurer, an event caused by the insurer, the accomplishment of a humanitarian duty or, in life insurances, the alterations in the health conditions of the insured. (5) After the materialisation of the risk, if the duty of disclosure was negligently violated by the policyholder and if this violation affected the amount of the indemnity or the fixed sum to be paid or was relevant for the materialisation of the risk,

	veya bedeli ödenmez. Bağlantı yoksa, sigortacı ödenen primle ödenmesi gereken prim arasındaki oranı dikkate alarak sigorta tazminatını veya bedelini öder. (6) Sigortacı, rizikonun gerçekleşmesinden önce, sigorta ettirenin beyan yükümlülüğünü kasıtlı olarak ihlal ettiğini öğrenince, birinci fıkraya göre sözleşmeyi feshetse bile, değişikliğin meydana geldiği sigorta dönemine ait prime hak kazanır. (7) Sigortacıya tanınan feshin bildirim süresi veya feshin hüküm ifade etmesi için verilen süre içinde, yapılan değişiklikle bağlantılı olarak rizikonun gerçekleşmesi hâlinde, sigorta tazminatı veya bedeli ödenen primle ödenmesi gereken prim arasındaki oran dikkate alınarak hesaplanır.	a deduction from the indemnity or the fixed sum shall be made in proportion to the degree of negligence. Where the policyholder has acted with intent, the insurer shall be discharged of its obligation to indemnify or to pay a fixed sum if there was a connection between changes made and the risk materialised. If there was no such connection, the insurer shall pay the indemnity or the fixed sum proportionally, by taking into consideration the ratio between the premium paid and the premium that should be paid. (6) If the insurer discovered, before the materialization of the risk, that the policyholder has violated its duty of disclosure intentionally and used its right to terminate the contract in accordance with paragraph (1), it shall nevertheless be entitled to the premium of the current premium period. (7) If the risk did materialise within the time limit provided for the notification of termination or the time limit provided for the termination being effective and in connection with the changes made, the insurance indemnity or the fixed sum shall be paid by taking into account the ratio between

		the premium actually paid and the premium which should be paid.
PRECAUTIONARY MEASURES		
Article 4:101 **Precautionary Measures: Meaning** A precautionary measure means a clause in the insurance contract, whether or not described as a condition precedent to the liability of the insurer, requiring the policyholder or the insured, before the insured event occurs, to perform or not to perform certain acts.		
Article 4:102 **Insurer's Right to Terminate the Contract** (1) A clause which provides that in the event of non-compliance with a precautionary measure the insurer shall be entitled to terminate the contract, shall be without effect unless the policyholder or the insured has breached his obligation with intent to cause the loss or recklessly and with knowledge that the loss would probably result. (2) The right to terminate shall be exercised by written notice to the policyholder within one month of the time when the non-compliance with a precautionary measure becomes known or apparent to the insurer. Cover shall come to an end at the time of termination.	**Sözleşmede öngörülen yükümlülüklerin ihlali** **MADDE 1449** (1) Sigortacıya karşı yerine getirilmesi gereken ve sözleşmeden doğan bir yükümlülüğün ihlali hâlinde, bu Kanunda ve diğer kanunlarda yer alan özel düzenlemeler hariç olmak üzere, sigortacının sözleşmeyi kısmen veya tamamen feshederek ifadan kurtulabileceğine ilişkin hükümler, ihlalde kusur bulunmaması hâlinde sonuç doğurmaz. (2) İhlal kusura dayandığı takdirde, durumun öğrenildiği tarihten itibaren bir ay içinde kullanılmayan fesih hakkı düşer; meğerki, Kanun farklı bir süre öngörmüş olsun. (3) Sigortacı ihlalin, rizikonun gerçekleşmesine ve sigortacının yerine getirmesi gereken edimin kapsamına	**Violation of the Duties Stipulated in the Contract** **Article 1449** (1) Provisions to the effect that the insurer will be discharged from its obligation of performance by terminating the contract entirely or partly in the event that the policyholder is in breach of a contractual duty towards the insurer, shall be ineffective if the breach was not negligent, unless otherwise provided by this Code or other legislation. (2) If the breach was negligent, the right to terminate, which is not used within one month from the date of awareness, is lost , unless a different period is provided in this Code.

Article 4:103 **Discharge of the Insurer's Liability** (1) A clause that non-compliance with a precautionary measure totally or partially exempts the insurer from liability, shall only have effect to the extent that the loss was caused by the non-compliance of the policyholder or insured with intent to cause the loss or recklessly and with knowledge that the loss would probably result. (2) Subject to a clear clause providing for reduction of the insurance money according to the degree of fault, the policyholder or insured, as the case may be, shall be entitled to insurance money in respect of any loss caused by negligent non-compliance with a precautionary measure.	etki etmediği durumlarda, sözleşmeyi feshedemez.	(3) The insurer cannot terminate the contract where the violation had not any effect on the materialization of the risk or the extent of the insurer's obligation to be fulfilled.
MULTIPLE INSURANCE		
Article 8:104 **Multiple Insurance** (1) If the same interest is separately insured by more than one insurer, the insured shall be entitled to claim against any one or more of those insurers to the extent necessary to indemnify losses actually suffered by the insured. (2) The insurer against which a claim is brought shall pay up to the sum insured under its policy, together with the mitigation costs if any, without prejudice to its rights to contribution from any other insurer.	**Birden çok sigorta** **Kural** **MADDE 1465** (1) Aynı menfaatin, aynı rizikolara karşı, aynı süre için, birden çok sigortacıya, aynı veya farklı tarihlerde sigorta ettirilmesi hâlinde sigorta ettirene sigorta bedelinden daha fazlası ödenmez. (2) Birden çok sigortada, sigorta ettiren, sigortacılardan herbirine hem rizikonun gerçekleştiğini hem de aynı menfaat için yapılan diğer sigortaları bildirir. Bu hükme aykırılık hâlinde 1446 ncı madde hükmü uygulanır.	**Multiple Insurance** **The Rule** **Article 1465** (1) If the same interest is insured against the same risk, for the same period by more than one insurer at the same date or at different dates, the policyholder shall not be paid in excess of the insurance value. (2) In case of multiple insurance the policyholder shall notify each insurer of both the materialisation of the

(3) As between insurers, the rights and obligations referred to in para. 2 shall be in proportion to the amounts for which they are separately liable to the insured.		risk and other insurances taken out for the same interest. Article 1446 shall apply to the breach of this provision.
	Müşterek sigorta **MADDE 1466** (1) Bir menfaat birden çok sigortacı tarafından aynı zamanda, aynı süreler için ve aynı rizikolara karşı sigorta edilmişse, yapılan birden çok sigorta sözleşmesinin hepsi, ancak sigorta olunan menfaatin değerine kadar geçerli sayılır. Bu takdirde sigortacılardan her biri, sigorta bedellerinin toplamına göre, sigorta ettiği bedel oranında sorumlu olur. (2) Sözleşmelere göre sigortacılar müteselsilen sorumlu oldukları takdirde, sigortalı, uğradığı zarardan fazla bir para isteyemeyeceği gibi, sigortacılardan her biri yalnız kendi sözleşmesine göre ödemekle yükümlü olduğu bedele kadar sorumlu olur. Bu hâlde ödemede bulunan sigortacının diğer sigortacılara karşı haiz olduğu rücu hakkı, sigortacıların sigortalıya sözleşme hükümlerine göre ödemek zorunda oldukları bedeller oranındadır.	**Co-insurance** **Article 1466** **(**1) If the same interest is insured with more than one insurer at the same date, against the same risk and for the same period, all of the co-insurance contracts shall be deemed valid only up to the value of the insured interest. In such a case, each insurer shall be liable in the proportion that its insured sum bears to the total of the insurance sums. (2) If the insurers are jointly liable according to their contracts, the insured shall not have the right to claim more than its loss and each of the insurers shall be liable up to the sum it has to pay according to its contract. In that case, the insurer who effected payment shall have recourse to the remaining insurers in the proportion of the insurance sums that the insurers have to pay to the insured under their contracts.
	Çifte sigorta **MADDE 1467** (1) Değerinin tamamı sigorta olunan bir menfaat, sonradan aynı veya farklı kişiler tarafından, aynı rizikolara	**Double insurance** **Article 1467** (1) In respect of an interest covered for its full value, the same

	karşı, aynı süreler için sigorta ettirilemez; sigorta ettirilmişse, sigorta ancak aşağıdaki hâl ve şartlarda geçerli sayılır: a) Sonraki ve önceki sigortacılar onay verirlerse; bu takdirde, sigorta sözleşmeleri aynı zamanda yapılmış sayılarak riziko gerçekleştiğinde sigorta bedeli, 1466 ncı maddede gösterilen oranda sigortacılar tarafından ödenir. b) Sigorta ettiren, önceki sigortadan doğan haklarını ikinci sigortacıya devir veya o haklardan feragat etmişse; bu takdirde, devir veya feragatin ikinci sigorta poliçesine yazılması şarttır; yazılmazsa ikinci sigorta sözleşmesi geçersiz sayılır. c) Sonraki sigortacının, ancak önceki sigortacının ödemediği tazminattan sorumluluğu şart kılınmış ise; bu hâlde önceden yapılmış olan sigortanın ikinci sigorta poliçesine yazılması gerekir; yazılmazsa, ikinci sigorta sözleşmesi geçersiz sayılır.	person or other persons cannot subsequently take out insurance against the same risks, for the same periods. If such an insurance was nevertheless taken out, it shall be deemed valid only under the following circumstances and conditions: a) If the subsequent and previous insurers approved. In this case the insurance contracts shall be deemed as concluded at the same time and upon the materialization of the risk the insurance sum shall be paid by the insurers according to the proportions indicated in Article 1446. b) If the policyholder transferred its rights arising out of the previous insurance contract to the subsequent insurer or waived its rights under the previous insurance contract. In this case, the transfer or the waiver must be written on the insurance policy, failing which the subsequent insurance shall be deemed as invalid. c) If the liability of the subsequent insurer was restricted to the part of the loss that is not paid by the previous insurer. In this case, the previous insurance must be annotated on the subsequent insurance policy, failing which the subsequent insurance shall be deemed as invalid.

	Kısmi sigorta **MADDE 1468** (1) Sigorta olunan menfaatin değeri önceki sözleşmeyle tamamen teminat altına alınamamışsa bu menfaat, geri kalan değerine kadar bir veya birkaç defa daha sigorta ettirilebilir. Bu takdirde, o menfaati sonradan sigorta eden sigortacılar, bakiyeden dolayı sözleşmenin yapılış tarihleri sırasıyla sorumlu olurlar. Aynı günde yapılmış olan sözleşmeler, aynı anda yapılmış sayılır.	**Partial Insurance** **Article 1468** (1) If the value of the interest is not covered completely under the previous insurance contract, this interest may be insured under one or several contracts up to the remaining uninsured part. In such a case the insurers who have insured the remaining uninsured part of the interest shall be liable according to the date of their contracts. The contracts concluded on the same day shall be regarded as concluded at the same time.

The below database seeks to highlight the equivalent provisions (if any) under the Principles of European Contract Law (PECL) and the Turkish Code of Obligations & Turkish Civil Code such as general provisions, formation of the contract, validity of the contract, interpretation, contents and effect, performance, non-performance and remedies and prescription.

Principles of European Contract Law (PECL)	**Türk Borçlar Kanunu (6098 s. K.- TBK)/ Türk Medeni Kanunu (4721 s. K.- TMK)**	**Turkish Code of Obligations (No. 6098-TCO)/Turkish Civil Code (No. 4721-TCivC)**
GENERAL PROVISIONS		
Interpretation and Supplementation **Article 1:106** (1) These Principles should be interpreted and developed in accordance with their purposes. In particular, regard should be had to the need to promote good faith and fair dealing, certainty in contractual relationships and uniformity of application.	**Hukukun uygulanması ve kaynakları (TMK)** **Madde 1** (1) Kanun, sözüyle ve özüyle değindiği bütün konularda uygulanır. (2) Kanunda uygulanabilir bir hüküm yoksa, hâkim, örf ve âdet hukukuna göre, bu da yoksa kendisi kanun koyucu olsaydı nasıl bir kural koyacak idiyse ona göre karar verir.	**Application of the law and sources of law (TCivC)** **Article 1** (1) The law applies to all matters for which it contains a provision according to its wording or interpretation. (2) In the absence of an applicable provision in the law, the court shall decide in accordance with customary law and in the absence of customary law, in

(2) Issues within the scope of these Principles but not expressly settled by them are so far as possible to be settled in accordance with the ideas underlying the Principles. Failing this, the legal system applicable by virtue of the rules of private international law is to be applied.	(3) Hâkim, karar verirken bilimsel görüşlerden ve yargı kararlarından yararlanır.	accordance with the rule that it would have made if it had acted as legislator. (3) While making its decision, the court shall follow doctrine and case law.
Good Faith and Fair Dealing **Article 1:201** (1) Each party must act in accordance with good faith and fair dealing. (2) The parties may not exclude or limit this duty.	**Dürüst davranma (TMK)** **Madde 2** (1) Herkes, haklarını kullanırken ve borçlarını yerine getirirken dürüstlük kurallarına uymak zorundadır. (2) Bir hakkın açıkça kötüye kullanılmasını hukuk düzeni korumaz.	**Acting in good faith (TCivC)** **Article 2** (1) Each person must act in good faith in the exercise of his or her rights and in the performance of his or her obligations. (2) Law does not protect manifest abuse of right.
FORMATION		
Conditions for the Conclusion of a Contract **Article 2:101** (1) A contract is concluded if: (a) the parties intend to be legally bound, and (b) they reach a sufficient agreement without any further requirement. (2) A contract need not be concluded or evidenced in writing nor is it subject to any other requirement as to form. The contract may be proved by any means, including witnesses.	**Sözleşmenin kurulması İrade açıklaması- Genel olarak (TBK)** **Madde 1** (1) Sözleşme, tarafların iradelerini karşılıklı ve birbirine uygun olarak açıklamalarıyla kurulur. (2) İrade açıklaması, açık veya örtülü olabilir. **Sözleşmelerin şekli- Genel kural (TBK)** **Madde 12** **(**1) Sözleşmelerin geçerliliği, kanunda aksi öngörülmedikçe, hiçbir şekle bağlı değildir. (2) Kanunda sözleşmeler için öngörülen şekil, kural olarak geçerlilik şeklidir. Öngörülen şekle uyulmaksızın kurulan sözleşmeler hüküm doğurmaz.	**Conclusion of the contract Mutual expression of intent-In general (TCO)** **Article 1** (1) The conclusion of a contract requires concordant and mutual expression of intent by the parties. (2) The expression of intent may be explicit or implied. **Form of contracts-General rule (TCO)** **Article 12** (1) The validity of a contract is not subject to compliance with any particular form unless a particular form is required by the law. (2) In the absence of any provision to the contrary, legal requirements as to the form of a contract constitute a condition of validity. The contract is not valid if such requirements are not satisfied.

Sufficient Agreement **Article 2:103** (1) There is sufficient agreement if the terms: (a) have been sufficiently defined by the parties so that the contract can be enforced, or (b) can be determined under these Principles. (2) However, if one of the parties refuses to conclude a contract unless the parties have agreed on some specific matter, there is no contract unless agreement on that matter has been reached.	**İkinci derecedeki noktalar (TBK)** **Madde 2** (1) Taraflar sözleşmenin esaslı noktalarında uyuşmuşlarsa, ikinci derecedeki noktalar üzerinde durulmamış olsa bile, sözleşme kurulmuş sayılır. (2) İkinci derecedeki noktalarda uyuşulamazsa hâkim, uyuşmazlığı işin özelliğine bakarak karara bağlar. (3) Sözleşmelerin şekline ilişkin hükümler saklıdır.	**Secondary terms (TCO)** **Article 2** (1) Where the parties have agreed on all the essential terms, the contract will be binding although the parties have not discussed the secondary terms. (2) In the event of failure to reach agreement on the secondary terms, the court resolves the dispute with due regard to the nature of the transaction. (3) Provisions regarding the form of the contracts are reserved.
Terms Not Individually Negotiated **Article 2:104** (1) Contract terms which have not been individually negotiated may be invoked against a party who did not know of them only if the party invoking them took reasonable steps to bring them to the other party's attention before or when the contract was concluded. (2) Terms are not brought appropriately to a party's attention by a mere reference to them in a contract document, even if that party signs the document.	**Genel işlem koşulları (TBK)** **Madde 20** (1) Genel işlem koşulları, bir sözleşme yapılırken düzenleyenin, ileride çok sayıdaki benzer sözleşmede kullanmak amacıyla, önceden, tek başına hazırlayarak karşı tarafa sunduğu sözleşme hükümleridir. Bu koşulların, sözleşme metninde veya ekinde yer alması, kapsamı, yazı türü ve şekli, nitelendirmede önem taşımaz. (2) Aynı amaçla düzenlenen sözleşmelerin metinlerinin özdeş olmaması, bu sözleşmelerin içerdiği hükümlerin, genel işlem koşulu sayılmasını engellemez. (3) Genel işlem koşulları içeren sözleşmeye veya ayrı bir sözleşmeye konulan bu koşulların her birinin tartışılarak kabul edildiğine ilişkin kayıtlar, tek başına, onları genel işlem koşulu olmaktan çıkarmaz. (4) Genel işlem koşullarıyla ilgili hükümler, sundukları hizmetleri kanun veya yetkili makamlar tarafından verilen	**Standard contractual terms (TCO)** **Article 20** (1) Standard contractual terms are the terms which are drafted unilaterally in advance with the purpose of being used in similar contracts and which are imposed to the other party. For the qualification of a term as standard term, no regard shall be given to whether these terms are included in the main text of the contract or in its annexes, to their scope, type and form of writing. (2) The fact that the contractual terms which have the same purpose are not drafted in an identical manner is not relevant with regards to their qualification as standard terms. (3) Annotations included in the contract containing standard terms or in a separate contract, which state that the contractual terms have been determined upon negotiation, are insufficient to prevent the

	izinle yürütmekte olan kişi ve kuruluşların hazırladıkları sözleşmelere de, niteliklerine bakılmaksızın uygulanır. **Yazılmamış sayılma (TBK)** **Madde 21** (1) Karşı tarafın menfaatine aykırı genel işlem koşullarının sözleşmenin kapsamına girmesi, sözleşmenin yapılması sırasında düzenleyenin karşı tarafa, bu koşulların varlığı hakkında açıkça bilgi verip, bunların içeriğini öğrenme imkânı sağlamasına ve karşı tarafın da bu koşulları kabul etmesine bağlıdır. Aksi takdirde, genel işlem koşulları yazılmamış sayılır. (2) Sözleşmenin niteliğine ve işin özelliğine yabancı olan genel işlem koşulları da yazılmamış sayılır.	qualification of these terms as standard terms. (4) Rules regarding standard terms apply also to the contracts drafted by entities which carry out their activities under authorization of law or competent authorities regardless of the nature of the contract in question. **Term deemed unwritten (TCO)** **Article 21** (1) Where the standard term is against the interests of the other party, it becomes part of the contract provided that at the time of the conclusion of the contract the drafter has clearly informed the other party on the use of standard term, has given to the other party the opportunity to learn its content and the other party has accepted the term. Otherwise, the standard term is deemed unwritten. (2) Standard terms which are irrelevant with regards to the nature of the contract or the characteristics of the transaction are also deemed unwritten.
VALIDITY		
Initial Impossibility **Article 4:102** A contract is not invalid merely because at the time it was concluded performance of the obligation assumed was impossible, or because a party was not entitled to dispose of the assets to which the contract relates.	**Kesin hükümsüzlük (TBK)** **Madde 27** (1) Kanunun emredici hükümlerine, ahlaka, kamu düzenine, kişilik haklarına aykırı veya konusu imkânsız olan sözleşmeler kesin olarak hükümsüzdür. (2) (…)	**Absolute voidness (TCO)** **Article 27** (1) A contract is void if its terms are against mandatory provisions of law, morality, public order, personality rights or if its subject matter is impossible. (2) (…)
Fraud **Article 4:107**	**Aldatma (TBK)** **Madde 36**	**Fraud (TCO)** **Article 36**

(1) A party may avoid a contract when it has been led to conclude it by the other party's fraudulent representation, whether by words or conduct, or fraudulent non-disclosure of any information which in accordance with good faith and fair dealing it should have disclosed. (2) A party's representation or non-disclosure is fraudulent if it was intended to deceive. (3) In determining whether good faith and fair dealing required that a party disclose particular information, regard should be had to all the circumstances, including: (a) whether the party had special expertise; (b) the cost to it of acquiring the relevant information; (c) whether the other party could reasonably acquire the information for itself; and (d) the apparent importance of the information to the other party. **Third Persons** **Article 4:111:** (1) Where a third person for whose acts a party is responsible, or who with a party's assent is involved in the making of a contract: (…) (c) commits fraud, (…) remedies under this Chapter will be available under the same conditions as if the behaviour or knowledge had been that of the party itself. (2) Where any other third person: (…)	(1) Taraflardan biri, diğerinin aldatması sonucu bir sözleşme yapmışsa, yanılması esaslı olmasa bile, sözleşmeyle bağlı değildir. (2) Üçüncü bir kişinin aldatması sonucu bir sözleşme yapan taraf, sözleşmenin yapıldığı sırada karşı tarafın aldatmayı bilmesi veya bilecek durumda olması hâlinde, sözleşmeyle bağlı değildir.	(1) The party who entered into the contract under the fraud committed by the other party is not bound by the contract even if his or her mistake is not fundamental. (2) The party who entered into the contract under the fraud committed by a third person is not bound by the contract on the condition that the other party knew or should have known the fraud at the time of the conclusion of the contract.

(b) commits fraud, (…) remedies under this Chapter will be available if the party knew or ought to have known of the relevant facts, or at the time of avoidance it has not acted in reliance on the contract.		
Unfair Terms not Individually Negotiated **Article 4:110** (1) A party may avoid a term which has not been individually negotiated if, contrary to the requirements of good faith and fair dealing, it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of that party, taking into account the nature of the performance to be rendered under the contract, all the other terms of the contract and thecircumstances at the time the contract was concluded. (2) This Article does not apply to: (a) a term which defines the main subject matter of the contract, provided the term is in plain and intelligible language; or to (b) the adequacy in value of one party's obligations compared to the value of the obligations of the other party.	**İçerik denetimi (TBK)** **Madde 25** Genel işlem koşullarına, dürüstlük kurallarına aykırı olarak, karşı tarafın aleyhine veya onun durumunu ağırlaştırıcı nitelikte hükümler konulamaz.	**Control of the content of the contract (TCO)** **Article 25** It is forbidden to use standard contractual terms which, contrary to the requirement of good faith, create a disadvantage or cause additional burden for the other party.
Effect of Avoidance **Article 4:115** On avoidance either party may claim restitution of whatever it has supplied under the contract, provided it makes concurrent restitution of whatever it has	**İrade bozukluğunun giderilmesi (TBK)** **Madde 39** (1) Yanılma veya aldatma sebebiyle ya da korkutulma sonucunda sözleşme yapan taraf, yanılma veya aldatmayı öğrendiği ya da korkutmanın	**Effect of defective consent (TCO)** **Article 31** (1) In case the party acting under mistake, fraud or threat neither declares to the other party that he or she is not bound by the contract

received. If restitution cannot be made in kind for any reason, a reasonable sum must be paid for what has been received. **Damages** **Article 4:117** (1) A party who avoids a contract under this Chapter may recover from the other party damages so as to put the avoiding party as nearly as possible into the same position as if it had not concluded the contract, provided that the other party knew or ought to have known of the mistake, fraud, threat or taking of excessive benefit or unfair advantage. (2) If a party has the right to avoid a contract under this Chapter, but does not exercise its right or has lost its right under theprovisions of Articles 4:113 or 4:114, it may recover, subject to paragraph (1), damages limited to the loss caused to it by the mistake, fraud, threat or taking of excessive benefit or unfair advantage. The same measure of damages shall apply when the party was misledby incorrect information in the sense of Article 4:106. (3) In other respects, the damages shall be in accordance with the relevant provisions of Chapter 9, Section 5, with appropriate adaptations.	etkisinin ortadan kalktığı andan başlayarak bir yıl içinde sözleşme ile bağlı olmadığını bildirmez veya verdiği şeyi geri istemezse, sözleşmeyi onamış sayılır. (2) Aldatma veya korkutmadan dolayı bağlayıcılığı olmayan bir sözleşmenin onanmış sayılması, tazminat hakkını ortadan kaldırmaz.	nor seeks restitution of his or her performance within one year beginning from the time the mistake or fraud was discovered or the time the threat was ended, the contract is deemed to have been ratified. (2) The ratification of a contract made voidable by fraud or threat does not exclude the right to claim damages.
INTERPRETATION/CONTENTS AND EFFECTS		
General Rules of Interpretation **Article 5:101**	**Sözleşmelerin yorumu, muvazaalı işlemler (TBK)** **Madde 19**	**Interpretation of contracts, simulation (TCO)** **Article 19**

(1) A contract is to be interpreted according to the common intention of the parties even if this differs from the literal meaning of thewords. (2) If it is established that one party intended the contract to have a particular meaning, and at the time of the conclusion of thecontract the other party could not have been unaware of the first party's intention, the contract is to be interpreted in the way intended by the first party. (3) If an intention cannot be established according to (1) or (2), the contract is to be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances. **Relevant Circumstances Article 5:102** In interpreting the contract, regard shall be had, in particular, to: (a) the circumstances in which it was concluded, including the preliminary negotiations; (b) the conduct of the parties, even subsequent to the conclusion of the contract; (c) the nature and purpose of the contract; (d) the interpretation which has already been given to similar clauses by the parties and the practices they have established between themselves; (e) the meaning commonly given to terms and expressions in the branch of activity concerned and the interpretation similar	(1) Bir sözleşmenin türünün ve içeriğinin belirlenmesinde ve yorumlanmasında, tarafların yanlışlıkla veya gerçek amaçlarını gizlemek için kullandıkları sözcüklere bakılmaksızın, gerçek ve ortak iradeleri esas alınır. (2) (…)	(1) When assessing the type and the terms of a contract, the true and common intention of the parties must be ascertained without regard to wordings the parties may have mistakenly used or may have used to conceal their true intentions. (2) (…)

clausesmay already have received; (f) usages; and (g) good faith and fair dealing. **Simulation** **Article 6:103:** When the parties have concluded an apparent contract which was not intended to reflect their true agreement, as between the parties the true agreement prevails.		
Change of Circumstances **Article 6:111** (1) A party is bound to fulfil its obligations even if performance has become more onerous, whether because the cost of performance has increased or because the value of the performance it receives has diminished. (2) If, however, performance of the contract becomes excessively onerous because of a change of circumstances, the parties are bound to enter into negotiations with a view to adapting the contract or terminating it, provided that: (a) the change of circumstances occurred after the time of conclusion of the contract, (b) the possibility of a change of circumstances was not one which could reasonably have been taken into account at the time of conclusion of the contract, and (c) the risk of the change of circumstances is not one which, according to the contract, the party affected should be required to bear.	**Aşırı ifa güçlüğü (TBK)** **Madde 138** Sözleşmenin yapıldığı sırada taraflarca öngörülmeyen ve öngörülmesi de beklenmeyen olağanüstü bir durum, borçludan kaynaklanmayan bir sebeple ortaya çıkar ve sözleşmenin yapıldığı sırada mevcut olguları, kendisinden ifanın istenmesini dürüstlük kurallarına aykırı düşecek derecede borçlu aleyhine değiştirir ve borçlu da borcunu henüz ifa etmemiş veya ifanın aşırı ölçüde güçleşmesinden doğan haklarını saklı tutarak ifa etmiş olursa borçlu, hâkimden sözleşmenin yeni koşullara uyarlanmasını isteme, bu mümkün olmadığı takdirde sözleşmeden dönme hakkına sahiptir. Sürekli edimli sözleşmelerde borçlu, kural olarak dönme hakkının yerine fesih hakkını kullanır.	**Excessive difficulty of performance (TCO)** **Article 138** In case an event, which was not and could not possibly be foreseen by the parties at the time of the conclusion of the contract and which is not attributable to the obligor changes the circumstances in disfavor of the obligor to such extent that it would be contrary to good faith to request performance and the obligor has not yet perfomed or performed by reserving his or her rights arising from the excessive difficulty of performance, the obligor is entitled to request from the court adaptation of the contract, and if this is not possible, to withdraw from the contract. In continous contracts, as a rule, the obligor can terminate the contract non-retroactively.

(3) If the parties fail to reach agreement within a reasonable period, the court may: (a) terminate the contract at a date and on terms to be determined by the court; or (b) adapt the contract in order to distribute between the parties in a just and equitable manner the losses and gains resulting from the change of circumstances. In either case, the court may award damages for the loss suffered through a party refusing to negotiate or breaking off negotiations contrary to good faith and fair dealing.		
PERFORMANCE		
Time of Performance **Article 7:102** A party has to effect its performance: (a) if a time is fixed by or determinable from the contract, at that time; (b) if a period of time is fixed by or determinable from the contract, at any time within that period unless the circumstances of the case indicate that the other party is to choose the time; (c)in any other case, within a reasonable time after the conclusion of the contract.	**İfa zamanı/ Süreye bağlanmamış borç (TBK)** **Madde 90** İfa zamanı taraflarca kararlaştırılmadıkça veya hukuki ilişkinin özelliğinden anlaşılmadıkça her borç, doğumu anında muaccel olur.	**Time of performance/ Obligations with no time fixed for performance (TCO)** **Article 90** Where the time of performance has not been determined by the parties and cannot be induced from the nature of the legal relationship, the obligation must be perfomed immediately.
Performance by a Third Person **Article 7:106** (1) Except where the contract requires personal performance the obligee cannot refuse performance by a third person if: (a) the third person acts with the assent of the obligor; or	**Şahsen ifa zorunluluğunun olmaması (TBK)** **Madde 83** Borcun, bizzat borçlu tarafından ifa edilmesinde alacaklının menfaati bulunmadıkça borçlu, borcunu şahsen ifa etmekle yükümlü değildir.	**Performance by a third person (TCO)** **Article 83** The obligor is not obliged to perform his or her obligation in person unless the obligee has an interest in the obligor's performance in person.

(b) the third person has a legitimate interest in performance and the obligor has failed to perform or it is clear that it will not perform at the time performance is due. (2) Performance by the third person in accordance with paragraph (1) discharges the obligor.		
Property Not Accepted **Article 7:110** (1) A party who is left in possession of tangible property other than money because of the other party's failure to accept or retake the property must take reasonable steps to protect and preserve the property. (2) The party left in possession may discharge its duty to deliver or return: (a) by depositing the property on reasonable terms with a third person to be held to the order of the other party, and notifying party of this; or (b) by selling the property on reasonable terms after notice to the other party, and paying the net proceeds to that party. (3) Where, however, the property is liable to rapid deterioration or its preservation is unreasonably expensive, the party must take reasonable steps to dispose of it. It may discharge its duty to deliver or return by paying the net proceeds to the other party. (4) The party left in possession is entitled to be reimbursed or to retain out of the proceeds of sale any	**Alacaklının temerrüdü Koşulları (TBK)** **Madde 106** (1) Yapma veya verme edimi gereği gibi kendisine önerilen alacaklı, haklı bir sebep olmaksızın onu kabulden veya borçlunun borcunu ifa edebilmesi için kendisi tarafından yapılması gereken hazırlık fiillerini yapmaktan kaçınırsa, temerrüde düşmüş olur. (2) Alacaklı, müteselsil borçlulardan birine karşı temerrüde düşerse, diğerlerine karşı da temerrüde düşmüş olur. **Tevdi hakkı (TBK)** **Madde 107** (1) Alacaklının temerrüde düşmesi durumunda borçlu, hasar ve giderleri alacaklıya ait olmak üzere, teslim edeceği şeyi tevdi ederek borcundan kurtulabilir. (2) Tevdi yerini, ifa yerindeki hâkim belirler. Bununla birlikte ticari mallar, hâkim kararı olmadan da bir ardiyeye tevdi edilebilir. **Satma hakkı (TBK)** **Madde108** (1) Sözleşmenin konusu olan şeyin niteliği veya işin özelliği tevdi edilmesine uygun düşmez veya teslim edilecek şey bozulabilir ya da bakımı, korunması veya tevdi edilmesi	**Default of the obligee Conditions (TCO)** **Article 91** (1) The obligee is in default if he or she refuses without just cause to accept performance properly offered to him or her or to carry out the preparations he or she is obliged to make to enable the obligor to perform. (2) If the obligee is in default towards one of the solidary obligors, he or she is deemed to be in default towards all of them. **Right to deposit the object (TCO)** **Article 107** (1) Where the obligee is in default, the obligor is entitled to deposit the object at the expense and risk of the obligee and thereby to be released from his or her obligation. (2) The court decides which place should serve as depositary. However, commercial items may be deposited in a warehouse without need for a court decision. **Right to sell the object (TCO)** **Article 108** (1) Where the characteristics of the object or the nature of

expenses reasonably incurred.	önemli bir gideri gerektirir ise, borçlu, alacaklıya önceden ihtarda bulunması koşuluyla, hâkimin izniyle onu açık artırma yoluyla sattırıp bedelini tevdi edebilir. (2) Teslim edilecek şey, borsada kayıtlıysa veya piyasa fiyatı varsa ya da yapılacak gidere oranla değeri az ise, satışın açık artırma yoluyla yapılması zorunlu olmadığı gibi, hâkim, önceden ihtarda bulunma koşulunu aramaksızın satışa izin verebilir. **Tevdi konusunu geri alma (TBK)** **Madde 109** (1) Alacaklı, tevdi edilen şeyi kabul ettiğini açıklamış veya tevdi bir rehnin ortadan kaldırılması sonucunu doğurmuş olmadıkça borçlu, tevdi edilen şeyi geri alabilir. (2) Tevdi edilen şey geri alındığı anda alacak, bütün yan haklarıyla birlikte varlığını sürdürür.	the transaction preclude a deposit, or the object is perishable or gives rise to substantial maintenance or storage costs, after having given notice to the obligee and with the court's authorization, the obligor may sell the object by auction and deposit the sale proceeds. (2) Where the object is registered in the stock exchange or has a market price, or its value is low in proportion to the costs involved, the sale need not be made by auction and the court may authorise the sale to be made without prior notice to the obligee. **Right to take back the object (TCO)** **Article 109** (1) The obligor is entitled to take back the object deposited providing the obligee has not yet declared that he or she accepts it and the deposit has not had the effect of redeeming a pledge. (2) As soon as the deposited object is taken back, the obligee's claim and all accessory rights become effective again.
NON-PERFORMANCE AND REMEDIES		
Excuse Due to an Impediment **Article 8:108** (1) A party's non-performance is excused if it proves that it is due to an impediment beyond its control and that it could not reasonably have been expected to take the	**Borcun ifa edilmemesi/ Giderim borcu (TBK)** **Madde 112** Borç hiç veya gereği gibi ifa edilmezse borçlu, kendisine hiçbir kusurun yüklenemeyeceğini ispat etmedikçe, alacaklının bundan doğan zararını gidermekle yükümlüdür.	**Failure to perform/ Obligation of compensation (TCO)** **Article 112** When the obligation is not performed at all or not perfomed properly, the obligor must compensate the damage of the obligee unless

impediment into account at the time of the conclusion of the contract, or to have avoided or overcome the impediment or its consequences. (2) Where the impediment is only temporary the excuse provided by this article has effect for the period during which the impediment exists. However, if the delay amounts to a fundamental non-performance, the obligee may treat it as such. (3) The non-performing party must ensure that notice of the impediment and of its effect on its ability to perform is received by the other party within a reasonable time after the non-performing party knew or ought to have known of these circumstances. The other party is entitled to damages for any loss resulting from the non-receipt of such notice.	**İfa imkânsızlığı (TBK)** **Madde 136** (1) Borcun ifası borçlunun sorumlu tutulamayacağı sebeplerle imkânsızlaşırsa, borç sona erer. (2) Karşılıklı borç yükleyen sözleşmelerde imkânsızlık sebebiyle borçtan kurtulan borçlu, karşı taraftan almış olduğu edimi sebepsiz zenginleşme hükümleri uyarınca geri vermekle yükümlü olup, henüz kendisine ifa edilmemiş olan edimi isteme hakkını kaybeder. Kanun veya sözleşmeyle borcun ifasından önce doğan hasarın alacaklıya yükletilmiş olduğu durumlar, bu hükmün dışındadır. (3) Borçlu ifanın imkânsızlaştığını alacaklıya gecikmeksizin bildirmez ve zararın artmaması için gerekli önlemleri almazsa, bundan doğan zararları gidermekle yükümlüdür.	he or she can prove that he or she was not at fault. **Impossibility of performance (TCO)** **Article 136** (1) The obligation is extinguished where its performance has become impossible by circumstances not attributable to the obligor. (2) In a bilateral contract, the obligor thus released from his or her obligation must restitute what he or she has already received pursuant to the provisions on unjust enrichment and loses his or her counter-claim to the extent it has not yet been satisfied. This does not apply to cases in which, by law or contractual agreement, the risk of non-performance has been transferred to the obligee. (3) In case the obligor does not notify the impossibility of performance to the obligee without delay and does not take the necessary measures to mitigate the damage he or she is liable for the damage incurred.
Clause Excluding or Restricting Remedies **Article 8:109** Remedies for non-performance may be excluded or restricted unless it would be contrary to good faith and fair dealing to invoke theexclusion or restriction.	**Sorumsuzluk anlaşması (TBK)** **Madde 115** (1) Borçlunun ağır kusurundan sorumlu olmayacağına ilişkin önceden yapılan anlaşma kesin olarak hükümsüzdür. (2) Borçlunun alacaklı ile hizmet sözleşmesinden kaynaklanan herhangi bir borç sebebiyle sorumlu olmayacağına ilişkin olarak önceden yaptığı her türlü anlaşma kesin olarak hükümsüzdür.	**Agreement on exclusion of liability (TCO)** **Article 115** (1) Any agreement aiming to exclude in advance liability for intentional or grossly negligent non-performance is void. (2) Any agreement aiming to exclude in advance liability of the obligor for the obligations arising from an employment contract is void. (3) If the obligation relates to an activity which requires

	(3) Uzmanlığı gerektiren bir hizmet, meslek veya sanat, ancak kanun ya da yetkili makamlar tarafından verilen izinle yürütülebiliyorsa, borçlunun hafif kusurundan sorumlu olmayacağına ilişkin önceden yapılan anlaşma kesin olarak hükümsüzdür.	specialization, and which can only be carried out under authorization of law or competent authorities, any agreement aiming to exclude in advance liability for slight negligence is void.
Right to Terminate the Contract **Article 9:301** (1) A party may terminate the contract if the other party's non-performance is fundamental. (2) In the case of delay the aggrieved party may also terminate the contract under Article 8:106 (3). **Notice Fixing Additional Period for Performance** **Article 8:106** (1) In any case of non-performance the aggrieved party may by notice to the other party allow an additional period of time for performance. (2) During the additional period the aggrieved party may withhold performance of its own reciprocal obligations and may claimdamages, but it may not resort to any other remedy. If it receives notice from the other party that the latter will not perform withinthat period, or if upon expiry of that period due performance has not been made, the aggrieved party may resort to any of the remedies that may be available under chapter 9. (3) If in a case of delay in performance which is not fundamental the aggrieved party has given a notice	**Karşılıklı borç yükleyen sözleşmelerde Süre verilmesi (TBK)** **Madde 123** Karşılıklı borç yükleyen sözleşmelerde, taraflardan biri temerrüde düştüğü takdirde diğeri, borcun ifa edilmesi için uygun bir süre verebilir veya uygun bir süre verilmesini hâkimden isteyebilir. **Süre verilmesini gerektirmeyen durumlar (TBK)** **Madde 124** Aşağıdaki durumlarda süre verilmesine gerek yoktur: 1. Borçlunun içinde bulunduğu durumdan veya tutumundan süre verilmesinin etkisiz olacağı anlaşılıyorsa. 2. Borçlunun temerrüdü sonucunda borcun ifası alacaklı için yararsız kalmışsa. 3. Borcun ifasının, belirli bir zamanda veya belirli bir süre içinde gerçekleşmemesi üzerine, ifanın artık kabul edilmeyeceği sözleşmeden anlaşılıyorsa. **Seçimlik haklar (TBK)** **Madde 125** (1) Temerrüde düşen borçlu, verilen süre içinde, borcunu ifa etmemişse veya süre verilmesini gerektirmeyen bir durum söz konusu ise alacaklı, her zaman borcun ifasını ve gecikme sebebiyle tazminat isteme hakkına sahiptir.	**In bilateral contracts Additional time limit (TCO)** **Article 123** In a bilateral contract, where the obligor is in default, the obligee is entitled to set an appropriate time limit for subsequent performance or to request from the court to set such time limit. **Cases not requiring additional time limit (TCO)** **Article 124** No time limit need to be set: 1. Where it is evident from the conduct of the obligor that a time limit would serve no purpose, 2. Where performance has become pointless for the obligee as a result of the obligor's default; 3. Where it is clear from the contractual terms that the parties intended the performance to take place at or before a precise point in time. **Optional rights (TCO)** **Article 125** (1) If the obligation has not been performed by the end of that time limit or there is no need to give additional time, the obligee may request performance and damages resulting from the delay.

fixing an additional period of time of reasonable length, it may terminate the contract at the end of the period of notice. The aggrieved party may in its notice provide that if the other party does not perform within the period fixed by the notice the contract shall terminate automatically. If theperiod stated is too short, the aggrieved party may terminate, or, as the case may be, the contract shall terminate automatically, only after a reasonable period from the time of the notice.	(2) Alacaklı, ayrıca borcun ifasından ve gecikme tazminatı isteme hakkından vazgeçtiğini hemen bildirerek, borcun ifa edilmemesinden doğan zararın giderilmesini isteyebilir veya sözleşmeden dönebilir. (3) Sözleşmeden dönme hâlinde taraflar, karşılıklı olarak ifa yükümlülüğünden kurtulurlar ve daha önce ifa ettikleri edimleri geri isteyebilirler. Bu durumda borçlu, temerrüde düşmekte kusuru olmadığını ispat edemezse alacaklı, sözleşmenin hükümsüz kalması sebebiyle uğradığı zararın giderilmesini de isteyebilir.	(2) In addition, the obligee may immediately notify to the obligor that he or she requests damages arising from non-performance of the contract or withdraws from the contract, instead of requesting performance and damages for delay. (3) In case of withdrawal from the contract, the parties are released from their mutual obligations and may request restitution of already performed obligations. The obligee can also request damages for voidness of the contract unless the obligor can prove that he or she was not at fault in entering in default.
Right to Damages **Article 9:501** (1) The aggrieved party is entitled to damages for loss caused by the other party's non-performance which is not excused under Article 8:108. (2) The loss for which damages are recoverable includes: (a) non-pecuniary loss; and (b) future loss which is reasonably likely to occur. **General Measure of Damages** **Article 9:502** The general measure of damages is such sum as will put the aggrieved party as nearly as possible into the position in which it would have been if the contract had been duly performed. Such damages cover the loss which the aggrieved party has suffered and the gain of which it has been deprived.	**Borcun ifa edilmemesi Giderim borcu (TBK)** **Madde 112** Borç hiç veya gereği gibi ifa edilmezse borçlu, kendisine hiçbir kusurun yüklenemeyeceğini ispat etmedikçe, alacaklının bundan doğan zararını gidermekle yükümlüdür.	**Failure to perform Obligation of compensation (TCO)** **Article 112** When the obligation is not performed at all or not perfomed properly, the obligor must compensate the damage of the obligee unless he or she can prove that he or she was not at fault.

Foreseeability **Article 9:503** The non-performing party is liable only for loss which it foresaw or could reasonably have foreseen at the time of conclusion of the contract as a likely result of its non-performance, unless the non-performance was intentional or grossly negligent.		
PRESCRIPTION		
General Period **Article 14:201** The general period of prescription is three years. **Period for a Claim Established by Legal Proceedings** **Article 14:202** (1) The period of prescription for a claim established by judgment is ten years. (2) The same applies to a claim established by an arbitral award or other instrument which is enforceable as if it were a judgment.	**On yıllık zamanaşımı (TBK)** **Madde 146** Kanunda aksine bir hüküm bulunmadıkça, her alacak on yıllık zamanaşımına tabidir. **Yeni sürenin başlaması** **Borcun ikrar edilmesi veya karara bağlanması hâlinde (TBK)** **Madde 156** (1) Zamanaşımının kesilmesiyle, yeni bir süre işlemeye başlar. (2) Borç bir senetle ikrar edilmiş veya bir mahkeme ya da hakem kararına bağlanmış ise, yeni süre her zaman on yıldır.	**Prescription of ten years (TCO)** **Article 146** All claims prescribe after ten years unless otherwise provided by law. **Beginning of the new prescriptive period** **In the event of acknowledgment or judgment (TCO)** **Article 156** (1) A new prescriptive period commences as of the date of the interruption of the prescription. (2) If the claim has been acknowledged by public deed or confirmed by court judgment, the new prescriptive period is always ten years.

The below database seeks to highlight the equivalent provisions (if any) of the EU private international law and the Turkish private international law such as conflict of jurisdictions rules, choice of court agreements, conflict of laws rules, refulsa of recognition and enforcement of foreign court decisions.

EU PRIVATE INTERNATIONAL LAW PROVISIONS	TÜRK MiLLETLERARASI ÖZEL HUKUK KURALLARI	TURKISH PRIVATE INTERNATIONAL LAW PROVISIONS
I. CONFLICT OF JURISDICTIONS RULES		

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Brussels I Recast)	**Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanun (5718 s. K. – MÖHUK) / Hukuk Muhakemeleri Kanunu (6100 s. K. – HMK)**	**Code on Private International and Procedural Law (No. 5718 – TCPIL)[2] / Code of Civil Procedure (No. 6100 – TCCP)**
Special Provisions		
Brussels I Recast **SECTION 3 - Jurisdiction in matters relating to insurance** **Article 10** In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7. **Article 11** 1. An insurer domiciled in a Member State may be sued: (a) in the courts of the Member State in which he is domiciled; (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where	**MÖHUK Madde 46 - Sigorta Sözleşmesine İlişkin Davalar** (1) Sigorta sözleşmesinden doğan uyuşmazlıklarda, sigortacının esas işyeri veya sigorta sözleşmesini yapan şubesinin ya da acentasının Türkiye'de bulunduğu yer mahkemesi yetkilidir. Ancak sigorta ettirene, sigortalıya veya lehdara karşı açılacak davalarda yetkili mahkeme, onların Türkiye'deki yerleşim yeri veya mutad meskeni mahkemesidir.	**TCPIL Article 46 - Lawsuits related to Insurance Contracts** (1) Regarding the conflicts arising from insurance contracts the court of the place where the actual work place of the insurer or the branch office or agency that concluded the insurance contract is located in Turkey. Nevertheless the competent court of jurisdiction in lawsuits filed against the policyholder, the insured or the beneficiary is the court of the place of their domicile or habitual residence in Turkey.

[2] For the English translation of the TCPIL: Stephan Wilske and Ismail Esin, Act on Private International and Procedural Law (Act No. 5718), A contribution by the ITA Board of Reporters, (http://jafbase.fr/docAsie/Turquie/Private%20international%20law%20Turkey.pdf).

the claimant is domiciled; or (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer. 2. An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State. **Article 12** In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency. **Article 13** 1. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.		

2. Articles 10, 11 and 12 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted. 3. If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them **Article 14** 1. Without prejudice to Article 13(3), an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary. 2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.		
Choice of Court Agreements		
Brussels I Recast **SECTION 3 - Jurisdiction in matters relating to insurance** **Article 15** The provisions of this Section may be departed from only by an agreement:	**1. Yabancı Mahkemeyi Yetkilendiren Yetki Anlaşmaları:** **MÖHUK Madde 47 - Yetki Anlaşması ve Sınırları** (1) Yer itibariyle yetkinin münhasır yetki esasına göre tayin edilmediği hâllerde, taraflar, aralarındaki	**1. Choice of Court Agreements in Favor of Foreign Courts:** **TCPIL Article 47 - Agreement on Jurisdiction and Limitations** (1) Except in cases where the jurisdiction of a court is determined according to

(1) which is entered into after the dispute has arisen; (2) which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section; (3) which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that Member State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that Member State; (4) which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State; or (5) which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 16. **Article 16** The following are the risks referred to in point 5 of Article 15:	yabancılık unsuru taşıyan ve borç ilişkilerinden doğan uyuşmazlığın yabancı bir devletin mahkemesinde görülmesi konusunda anlaşabilirler. Anlaşma, yazılı delille ispat edilmesi hâlinde geçerli olur. Dava, ancak yabancı mahkemenin kendisini yetkisiz sayması veya Türk mahkemelerinde yetki itirazında bulunulmaması hâlinde yetkili Türk mahkemesinde görülür. (2) 44, 45 ve 46 ncı maddelerde belirlenen mahkemelerin yetkisi tarafların anlaşmasıyla bertaraf edilemez. **2. Türk Mahkemelerini Yetkilendiren Yetki Anlaşmaları:** **MÖHUK Madde 40 - Milletlerarası Yetki** (1) Türk mahkemelerinin milletlerarası yetkisini, iç hukukun yer itibariyle yetki kuralları tayin eder. **HMK Madde 17 - Yetki Sözleşmesi** (1) Tacirler veya kamu tüzel kişileri, aralarında doğmuş veya doğabilecek bir uyuşmazlık hakkında, bir veya birden fazla mahkemeyi sözleşmeyle yetkili kılabilirler. Taraflarca aksi kararlaştırılmadıkça dava sadece sözleşmeyle belirlenen bu mahkemelerde açılır. **HMK Madde 18 - Yetki Sözleşmesinin Geçerlilik Şartları**	exclusive jurisdiction of specific court principles, the parties may agree on jurisdiction of a court of foreign state in a dispute that contains a foreign element and arises from obligatory relations. The agreement is invalid unless it is proved by written evidence. The competent Turkish court shall have jurisdiction only if the foreign court decides that it has no jurisdiction or if a plea as to jurisdiction is not presented in Turkish courts. (2) The competency of courts specified in articles 44, 45, 46 cannot be removed by the parties' agreement. **2. Choice of Court Agreements in Favor of Turkish Courts:** **TCPIL Article 40 - International Jurisdiction** (1) The international jurisdiction of the Turkish courts shall be determined by the domestic jurisdiction rules. **TCCP Article 17 – Choice of Court Agreement** (1) Merchants or public legal entities may confer jurisdiction to one or several courts for an existing or future dispute by signing a choice of court agreement. Unless agreed otherwise, the lawsuit can only be brought before courts determined by the agreement.

(1) any loss of or damage to: (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes; (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft; (2) any liability, other than for bodily injury to passengers or loss of or damage to their baggage: (a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) in so far as, in respect of the latter, the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks; (b) for loss or damage caused by goods in transit as described in point 1(b); (3) any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire; (4) any risk or interest connected with any of those referred to in points 1 to 3;	(1) Tarafların üzerinde serbestçe tasarruf edemeyecekleri konular ile kesin yetki hâllerinde, yetki sözleşmesi yapılamaz. (2) Yetki sözleşmesinin geçerli olabilmesi için yazılı olarak yapılması, uyuşmazlığın kaynaklandığı hukuki ilişkinin belirli veya belirlenebilir olması ve yetkili kılınan mahkeme veya mahkemelerin gösterilmesi şarttır.	**TCCP Article 18 – Conditions of Validity of the Choice of Court Agreement** (1) Parties cannot sign choice of court agreements in subjects which are not in their free disposition and in cases of absolute jurisdiction. (2) To be valid, the choice of court agreement must be in writing, the legal relationship from which the dispute arises must be determined or determinable and the court or courts selected must be designated.

(5) notwithstanding points 1 to 4, all 'large risks' as defined in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II). **SECTION 7 - Prorogation of jurisdiction** **Article 25** 1. If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either: (a) in writing or evidenced in writing; (b) in a form which accords with practices which the parties have established between themselves; or		

(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned. 2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'. 3. The court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between those persons or their rights or obligations under the trust are involved. 4. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 15, 19 or 23, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 24. 5. An agreement conferring jurisdiction which forms part of a contract shall be treated as		

an agreement independent of the other terms of the contract. The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid. **Article 26** 1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 24. 2. In matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the defendant, the court shall, before assuming jurisdiction under paragraph 1, ensure that the defendant is informed of his right to contest the jurisdiction of the court and of the consequences of entering or not entering an appearance.		
II. CONFLICT OF LAWS RULES		

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the Law Applicable to Contractual Obligations (Rome I) / Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the Law Applicable to Non-Contractual Obligations (Rome II)	**Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanun (5718 s. K. – MÖHUK)**	**Code on Private International and Procedural Law (No. 5718 – TCPIL)**
Rome I Article 7 – Insurance Contracts 1. This Article shall apply to contracts referred to in paragraph 2, whether or not the risk covered is situated in a Member State, and to all other insurance contracts covering risks situated inside the territory of the Member States. It shall not apply to reinsurance contracts. 2. An insurance contract covering a large risk as defined in Article 5(d) of the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (16) shall be governed by the law chosen by the parties in accordance with Article 3 of this Regulation.	**MÖHUK Madde 24- Sözleşmeden Doğan Borç İlişkilerinde Uygulanacak Hukuk** (1) Sözleşmeden doğan borç ilişkileri tarafların açık olarak seçtikleri hukuka tâbidir. Sözleşme hükümlerinden veya hâlin şartlarından tereddüde yer vermeyecek biçimde anlaşılabilen hukuk seçimi de geçerlidir. (2) Taraflar, seçilen hukukun sözleşmenin tamamına veya bir kısmına uygulanacağını kararlaştırabilirler. (3) Hukuk seçimi taraflarca her zaman yapılabilir veya değiştirilebilir. Sözleşmenin kurulmasından sonraki hukuk seçimi, üçüncü kişilerin hakları saklı kalmak kaydıyla, geriye etkili olarak geçerlidir. (4) Tarafların hukuk seçimi yapmamış olmaları hâlinde sözleşmeden doğan ilişkiye, o sözleşmeyle en sıkı ilişkili olan hukuk uygulanır. Bu hukuk, karakteristik edim borçlusunun, sözleşmenin	**TCPIL Article 24 – The Applicable Law for Contractual Obligation Relations** (1) The law explicitly designated by the parties shall govern the contractual obligation relations. The designation which can be concluded without hesitation from the provisions of the contract or is understood from the affairs of the case is also valid. (2) The parties may decide that the designated law shall be applied totally or partially to the contract. (3) The designation of the applicable law can any time be realized and amended by the parties. The designation of law after the conclusion of a contract is retrospectively effective with the condition that the rights of third parties' stay reserved. (4) If the parties have not explicitly designated any law, the relation arising from the

To the extent that the applicable law has not been chosen by the parties, the insurance contract shall be governed by the law of the country where the insurer has his habitual residence. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, the law of that other country shall apply. 3. In the case of an insurance contract other than a contract falling within paragraph 2, only the following laws may be chosen by the parties in accordance with Article 3: (a) the law of any Member State where the risk is situated at the time of conclusion of the contract; (b) the law of the country where the policy holder has his habitual residence; (c) in the case of life assurance, the law of the Member State of which the policy holder is a national; (d) for insurance contracts covering risks limited to events occurring in one Member State other than the Member State where the risk is situated, the law of that Member State;	kuruluşu sırasındaki mutad meskeni hukuku, ticarî veya meslekî faaliyetler gereği kurulan sözleşmelerde karakteristik edim borçlusunun işyeri, bulunmadığı takdirde yerleşim yeri hukuku, karakteristik edim borçlusunun birden çok işyeri varsa söz konusu sözleşmeyle en sıkı ilişki içinde bulunan işyeri hukuku olarak kabul edilir. Ancak hâlin bütün şartlarına göre sözleşmeyle daha sıkı ilişkili bir hukukun bulunması hâlinde sözleşme, bu hukuka tâbi olur. **MÖHUK Madde 34/4 – Haksız Fiiller** (4) Haksız fiile veya sigorta sözleşmesine uygulanan hukuk imkân veriyorsa, zarar gören, talebini doğrudan doğruya sorumlunun sigortacısına karşı ileri sürebilir.	contract will be governed by the most connected law to the contract. This law is accepted to be the law of the habitual residence (at the moment of the conclusion of contract) of the debtor of the characteristic performance; the law of the workplace or (in absence of a workplace) the law of the residence of the abovementioned debtor in case the contract is concluded as a result of commercial and professional activities; in case that the debtor has multiple workplaces, the law of the workplace which is the most tightly related to the contract. Nevertheless considering the state of all affairs if there is a law more tightly related to the contract, that particular law shall govern. **TCPIL Article 34/4 – Torts** (4) If the law applied to the tortuous act or to the insurance contract enables, the damaged party may directly make his claim to the insurer of the liable party.

(e) where the policy holder of a contract falling under this paragraph pursues a commercial or industrial activity or a liberal profession and the insurance contract covers two or more risks which relate to those activities and are situated in different Member States, the law of any of the Member States concerned or the law of the country of habitual residence of the policy holder. Where, in the cases set out in points (a), (b) or (e), the Member States referred to grant greater freedom of choice of the law applicable to the insurance contract, the parties may take advantage of that freedom. To the extent that the law applicable has not been chosen by the parties in accordance with this paragraph, such a contract shall be governed by the law of the Member State in which the risk is situated at the time of conclusion of the contract. 4. The following additional rules shall apply to insurance contracts covering risks for which a Member State imposes an obligation to take out insurance: (a) the insurance contract shall not satisfy the obligation to take out		

insurance unless it complies with the specific provisions relating to that insurance laid down by the Member State that imposes the obligation. Where the law of the Member State in which the risk is situated and the law of the Member State imposing the obligation to take out insurance contradict each other, the latter shall prevail; (b) by way of derogation from paragraphs 2 and 3, a Member State may lay down that the insurance contract shall be governed by the law of the Member State that imposes the obligation to take out insurance. 5. For the purposes of paragraph 3, third subparagraph, and paragraph 4, where the contract covers risks situated in more than one Member State, the contract shall be considered as constituting several contracts each relating to only one Member State. 6. For the purposes of this Article, the country in which the risk is situated shall be determined in accordance with Article 2(d) of the Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct		

insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services (17) and, in the case of life assurance, the country in which the risk is situated shall be the country of the commitment within the meaning of Article 1(1)(g) of Directive 2002/83/EC. **Rome I Article 3 – Freedom of Choice** 1. A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract. 2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice made under this Article or of other provisions of this Regulation. Any change in the law to be applied that is made after the conclusion of the contract shall not prejudice its formal validity under Article 11 or adversely affect the rights of third parties.		

3. Where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement. 4. Where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement. 5. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 10, 11 and 13. **Rome II Article 18 - Direct Action Against the Insurer of the Person Liable** The person having suffered damage may bring his or her claim		

directly against the insurer of the person liable to provide compensation if the law applicable to the non-contractual obligation or the law applicable to the insurance contract so provides.		
III. REFUSAL OF RECOGNITION AND ENFORCEMENT OF FOREIGN COURT DECISIONS		
Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Brussels I Recast)	**Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanun (5718 s. K. – MÖHUK)**	**Code on Private International and Procedural Law (No. 5718 – TCPIL)**
Brussels I Recast Chapter III Section 3 - Refusal of Recognition and Enforcement **Subjection 1 - Refusal of Recognition Article 45** 1. On the application of any interested party, the recognition of a judgment shall be refused: (a) if such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed; (b) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent	**MÖHUK Madde 50 – Tenfiz Kararı** (1) Yabancı mahkemelerden hukuk davalarına ilişkin olarak verilmiş ve o devlet kanunlarına göre kesinleşmiş bulunan ilâmların Türkiye'de icra olunabilmesi yetkili Türk mahkemesi tarafından tenfiz kararı verilmesine bağlıdır. (2) Yabancı mahkemelerin ceza ilâmlarında yer alan kişisel haklarla ilgili hükümler hakkında da tenfiz kararı istenebilir. **MÖHUK Madde 54 – Tenfiz Şartları** 1) Yetkili mahkeme tenfiz kararını aşağıdaki şartlar dâhilinde verir:	**TCPIL Article 50 - Enforcement Decision** (1) Enforcement of court decrees rendered by foreign courts in the course of civil lawsuits in Turkey which are final pursuant to the law of that foreign state shall be subject to the enforcement decision of the competent Turkish court. (2) Enforcement decision may also be requested with regard to judgments on personal rights stipulated in the court decrees of foreign criminal courts. **TCPIL Article 54 – Conditions of Enforcement** (1) The competent court shall render enforcement subject to the following conditions:

document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so; c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed; (d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or (e) if the judgment conflicts with: (i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or (ii) Section 6 of Chapter II. 2. In its examination of the grounds of jurisdiction referred to in point (e) of paragraph 1, the court to which the application was submitted shall be bound by the findings of fact on	a) Türkiye Cumhuriyeti ile ilâmın verildiği devlet arasında karşılıklılık esasına dayanan bir anlaşma yahut o devlette Türk mahkemelerinden verilmiş ilâmların tenfizini mümkün kılan bir kanun hükmünün veya fiilî uygulamanın bulunması. b) İlâmın, Türk mahkemelerinin münhasır yetkisine girmeyen bir konuda verilmiş olması veya davalının itiraz etmesi şartıyla ilâmın, dava konusu veya taraflarla gerçek bir ilişkisi bulunmadığı hâlde kendisine yetki tanıyan bir devlet mahkemesince verilmiş olmaması. c) Hükmün kamu düzenine açıkça aykırı bulunmaması. ç) O yer kanunları uyarınca, kendisine karşı tenfiz istenen kişinin hükmü veren mahkemeye usulüne uygun bir şekilde çağrılmamış veya o mahkemede temsil edilmemiş yahut bu kanunlara aykırı bir şekilde gıyabında veya yokluğunda hüküm verilmiş ve bu kişinin yukarıdaki hususlardan birine dayanarak tenfiz istemine karşı Türk mahkemesine itiraz etmemiş olması. **MÖHUK Madde 58 – Tanıma** (1) Yabancı mahkeme ilâmının kesin delil veya kesin hüküm olarak kabul edilebilmesi yabancı ilâmın tenfiz şartlarını taşıdığının mahkemece tespitine bağlıdır. Tanımada 54üncü maddenin	a) Existence of an agreement, on a reciprocal basis between the Republic of Turkey and the state where the court decision is given or a de facto practice or a provision of law enabling the authorization of the execution of final decisions given by a Turkish court in that state, b) The judgment must have been given on matters not falling within the exclusive jurisdiction of the Turkish courts or, in condition of being contested by the defendant, the judgment must not have been given by a state court which has accepted himself competent even if there is not a real relation between the court and the subject or the parties of the lawsuit, c) The court decree shall not openly be contrary to public order, d) The person against whom enforcement is requested was not duly summoned pursuant to the laws of that foreign state or to the court that has given the judgment, or was not represented before that court, or the court decree was not pronounced in his/her absence or by a default judgment in a manner contrary to these laws, and the person has not objected to the exequatur based on the foregoing grounds before the Turkish court. **TCPIL Article 58 – Recognition**

which the court of origin based its jurisdiction. 3. Without prejudice to point (e) of paragraph 1, the jurisdiction of the court of origin may not be reviewed. The test of public policy referred to in point (a) of paragraph 1 may not be applied to the rules relating to jurisdiction. 4. The application for refusal of recognition shall be made in accordance with the procedures provided for in Subsection 2 and, where appropriate, Section 4. **Subsection 2 – Refusal of Enforcement Article 46** On the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist.	birinci fıkrasının (a) bendi uygulanmaz. (2) İhtilâfsız kaza kararlarının tanınması da aynı hükme tâbidir. (3) Yabancı mahkeme ilâmına dayanılarak Türkiye'de idarî bir işlemin yapılmasında da aynı usul uygulanır.	(1) A foreign court decree may serve as a definitive evidence or final judgment, provided that the court decides that the foreign court decree fulfills the conditions of enforcement. Subparagraph (a) of Article 54 shall not apply to recognition. (2) The same article shall apply to the recognition of undisputed court decrees. (3) The same procedure shall apply in concluding an administrative transaction based on a foreign court decree.

The below database seeks to highlight the equivalent provisions (if any) of the Turkish Constitution and the European Treaties regarding the principle of equality.

Türk Anayasası	**Turkish Constitution**	**European Treaties:**
Madde 2 – Türkiye Cumhuriyeti, toplumun huzuru, milli dayanışma ve adalet anlayışı içinde, insan haklarına saygılı, Atatürk milliyetçiliğine bağlı, başlangıçta belirtilen temel ilkelere dayanan,	**ARTICLE 2 -** The Republic of Turkey is a democratic, secular and social state governed by rule of law, within the notions of public peace, national solidarity and justice, respecting human rights, loyal to the	**Preamble TEU:** (Member States) Drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the

demokratik, laik ve sosyal bir hukuk Devletidir.	nationalism of Atatürk, and based on the fundamental tenets set forth in the preamble	human person, freedom, democracy, equality and the rule of law. Confirming their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law. **Art. 2 TEU:** The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.
Madde 10 – Herkes, dil, ırk, renk, cinsiyet, siyasi düşünce, felsefi inanç, din, mezhep ve benzeri sebeplerle ayırım gözetilmeksizin kanun önünde eşittir. (Ek fıkra: 7/5/2004-5170/1 md.) Kadınlar ve erkekler eşit haklara sahiptir. Devlet, bu eşitliğin yaşama geçmesini sağlamakla yükümlüdür. (Ek cümle: 7/5/2010-5982/1 md.) Bu maksatla alınacak tedbirler eşitlik ilkesine aykırı olarak yorumlanamaz. (Ek fıkra: 7/5/2010-5982/1 md.) Çocuklar, yaşlılar, özürlüler, harp ve vazife şehitlerinin dul ve yetimleri ile malul ve gaziler için	**ARTICLE 10-** Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds. (Paragraph added on May 7, 2004; Act No. 5170) Men and women have equal rights. The State has the obligation to ensure that this equality exists in practice. (Sentence added on September 12, 2010; Act No. 5982) Measures taken for this purpose shall not be interpreted as contrary to the principle of equality. (Paragraph added on September 12, 2010; Act No. 5982) Measures to be taken for children, the	**Art. 3.3 TEU:** (the Union) It shall combat social exclusion and discrimination and shall promote social justice and protection, equality between men and women, solidarity between generations and protection of the rights of the child. **Art. 9 TEU:** In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. **Art. 8 TFEU:** In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

alınacak tedbirler eşitlik ilkesine aykırı sayılmaz. Hiçbir kişiye, aileye, zümreye veya sınıfa imtiyaz tanınamaz. Devlet organları ve idare makamları bütün işlemlerinde kanun önünde eşitlik ilkesine uygun olarak hareket etmek zorundadırlar.	elderly, disabled people, widows and orphans of martyrs as well as for the invalid and veterans shall not be considered as violation of the principle of equality. No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceedings	**Art. 10 TFEU:** In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. **Art. 19 TFEU:** Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation
		Art. 21 TEU: The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.
Madde 49 – Çalışma, herkesin hakkı ve ödevidir. (Değişik fıkra: 3/10/2001-4709/19 md.) Devlet,	**ARTICLE 49-** Everyone has the right and duty to work. (As amended on October 3, 2001; Act No. 4709) The State shall take	**Art. 153 TFEU:** the Union shall support and complement the activities of the Member States in the following fields:

çalışanların hayat seviyesini yükseltmek, çalışma hayatını geliştirmek için çalışanları ve işsizleri korumak, çalışmayı desteklemek, işsizliği önlemeye elverişli ekonomik bir ortam yaratmak ve çalışma barışını sağlamak için gerekli tedbirleri alır. **Madde 50 –** Kimse, yaşına, cinsiyetine ve gücüne uymayan işlerde çalıştırılamaz. Küçükler ve kadınlar ile bedeni ve ruhi yetersizliği olanlar çalışma şartları bakımından özel olarak korunurlar. Dinlenmek, çalışanların hakkıdır. Ücretli hafta ve bayram tatili ile ücretli yıllık izin hakları ve şartları kanunla düzenlenir. **Madde 61 –** Devlet harp ve vazife şehitlerinin dul ve yetimleriyle, malül ve gazileri korur ve toplumda kendilerine yaraşır bir hayat seviyesi sağlar. Devlet, sakatların korunmalarını ve toplum hayatına intibaklarını sağlayıcı tedbirleri alır. Yaşlılar, Devletçe korunur, Yaşlılara Devlet yardımı ve sağlanacak diğer haklar ve kolaylıklar kanunla düzenlenir. Devlet, korunmaya muhtaç çocukların topluma kazandırılması için her türlü tedbiri alır. Bu amaçlarla gerekli teşkilat ve tesisleri kurar veya kurdurur.	the necessary measures to raise the standard of living of workers, and to protect workers and the unemployed in order to improve the general conditions of labour, to promote labour, to create suitable economic conditions for prevention of unemployment and to secure labour peace. **ARTICLE 50-** No one shall be required to perform work unsuited to his/her age, sex, and capacity. Minors, women, and physically and mentally disabled persons, shall enjoy special protection with regard to working conditions. All workers have the right to rest and leisure. Rights and conditions relating to paid weekends and holidays, together with paid annual leave, shall be regulated by law. **ARTICLE 61-** The State shall protect the widows and orphans of martyrs of war and duty, together with invalid and war veterans, and ensure that they enjoy a decent standard of living. The State shall take measures to protect the disabled and secure their integration into community life. The aged shall be protected by the State. State assistance to, and other rights and benefits of the aged shall be regulated by law. The State shall take all kinds of measures for social resettlement of children in need of protection. To achieve these aims the State	(i) equality between men and women with regard to labour market opportunities and treatment at work; **Art. 157 TFEU:** 1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. 2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer. Equal pay without discrimination based on sex means: (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement; (b) that pay for work at time rates shall be the same for the same job. 3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value. 4. With a view to ensuring full equality in practice

	shall establish the necessary organizations or facilities, or arrange for their establishment.	between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.