

# AUTOMOTIVE 2022

Contributing editors  
**Patrick Ayad and Lance D Bultena**



**Publisher**

Edward Costelloe  
edward.costelloe@lbresearch.com

**Subscriptions**

Matthew Bridgewater  
matthew.bridgewater@lbresearch.com

**Head of business development**

Adam Sargent  
adam.sargent@gettingthedealthrough.com

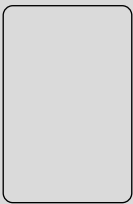
**Published by**

Law Business Research Ltd  
Meridian House, 34-35 Farringdon Street  
London, EC4A 4HL, UK

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© Law Business Research Ltd 2022  
No photocopying without a CLA licence.  
First published 2017  
Sixth edition  
ISBN 978-1-83862-978-6

Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112



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**Contributing editors****Patrick Ayad and Lance D Bultena**Hogan Lovells

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Lexology Getting the Deal Through is delighted to publish the sixth edition of *Automotive*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting the Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Lexology Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Patrick Ayad and Lance D Bultena of Hogan Lovells, for their continued assistance with this volume.

 LEXOLOGY  
**Getting the Deal Through**

London  
July 2022

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# Turkey

Esin Çamlıbel, Naz Esen and Beste Yıldızili Ergül

Turunç

## OVERVIEW

### Market

- 1 | Describe the significance of, and developments in, the automotive industry in the market.

The automotive industry is one of the most significant drivers of Turkish industrial production. With over ten producers, most operating under licence or as joint ventures, over 150 research and development centres, three automotive design and engineering centres, and a production capacity of over two million vehicles per year, Turkey is the 13th largest producer of motor vehicles in the world and the fifth largest in Europe, having grown steadily over the past decade. In terms of actual production, Turkey produced 782,835 cars and 548,808 commercial vehicles in 2021 for a total of 1,331,643 vehicles, of which 937,005 were exported.

As of the end of 2021, there were 25,249,119 vehicles in Turkey, of which 13,710,272 were cars and 11,538,847 commercial vehicles. Retail sales for the same year included 561,853 automobiles and 175,497 light commercial vehicles, which represented an overall decrease of 4.6 per cent compared with 2020. However, there was an increase in the sale of the light commercial vehicles, which is attributed to the expansion e-commerce and delivery services due to the high demand for courier services and logistic companies during the pandemic. A campaign led by public banks for low-interest financing of vehicles also supported the demand and contributed to the increase in sales.

Due to an economic recession, the overall production has decreased by 20 per cent on the first two months of 2022 compared to the first two months of 2021. Similarly, the overall market has decreased by 17 per cent and exports by 14 per cent.

## COMMERCIAL OPERATIONS

### Regulation

- 2 | What is the regulatory framework for manufacture and distribution of automobiles and automobile parts, such as the homologation process as well as vehicle registration and insurance requirements?

The Turkish regulations on vehicle manufacturing have generally been drafted in accordance with United Nations norms and European Union legislation. The primary piece of legislation regulating motor vehicles and their registration is the Highway Traffic Law No. 2918. Pursuant to the Highway Traffic Law, all motor vehicles and their trailers intended to operate on highways are obliged to have a certificate of conformity granted by a certification authority.

For vehicles to obtain a certificate of conformity, the initial step is obtaining type approval. The Ministry of Industry and Technology has authorised Turkish Standards Institute to supervise the homologation process and grant type approval certificates. There are three regulations

pertaining to the conditions for type approval based on vehicle categories: the Regulation on Type Approval of Motor Vehicles and Their Trailers and Type Approvals and Market Surveillance of These Parts, Systems and Separate Technical Units (AB/2018/858), the Regulation on Type Approvals and Inspections of Agricultural and Forestry Vehicles (AB/167/2013), and the Regulation on Type Approvals and Inspections of Two- or Three-Wheel Motor Vehicles and Four-Wheel Motorcycles (AB/168/2013). All three are drafted in accordance with applicable European Union Directives and Regulations of the United Nations Economic Commission for Europe. There are no specific or additional provisions regarding the manufacture of automobile parts. All three regulations on type approvals are applicable to automobile parts as well.

Once a vehicle obtains type approval, a certificate of conformity also needs to be received in order for the vehicle to be operated on highways. The terms and conditions for obtaining the certificate of conformity for highways are regulated by a comprehensive regulation applicable to all types of road vehicles, entitled the Regulation on the Manufacture, Modification and Assembly of Vehicles dated 26 October 2016.

Pursuant to the Highway Traffic Law, all vehicles are obliged to be registered with the traffic registry before they can be operated on highways. With new legislation that came into effect in early 2018, called the Regulation on Carrying Out the Sale, Transfer and Registration Services of Vehicles, public notaries are responsible for the registration of vehicles using an automated system (previously, registrations were undertaken by Traffic Registration Offices).

The Highway Traffic Law also requires that vehicles have compulsory automobile liability insurance to be registered and continue to be operated on highways.

The Regulation on Aftersales Services dated 13 June 2014 includes specific rules for the distribution of automotive parts. Pursuant to this regulation, manufacturers and exporters must continue to supply spare parts to customers.

In practice, the distribution of automobiles and automobile parts is undertaken through dealership agreements, which must be drafted in accordance with the Block Exemption Communiqué on Vertical Agreements in the Motor Vehicle Sector, No. 2017/3 (the Block Exemption Communiqué) issued by the Turkish Competition Authority.

### Development, manufacture and supply

- 3 | How do automotive companies operating in your country generally structure their development, manufacture and supply issues? What are the usual contractual arrangements?

The Turkish automotive industry is engaged in both the manufacture and import of vehicles and spare parts. Primary manufacturers sell vehicles directly or through dealers. On the other hand, importers normally establish a sales network, with key importers establishing both a distribution network for sale (quantitative selective distribution)

and aftersales services (qualitative or – if their market share does not exceed 30 per cent – quantitative selective repairer network).

Primary industry manufacturers in Turkey generally work with various sub-industry (parts) manufacturers for their procurement needs. There are several hundred sub-industry manufacturers for every key industry manufacturer. However, contractual relationships among primary industry manufacturers and sub-industry manufacturers tend to be trade-based only and often short term, mostly lacking any mutual R&D efforts or other deeper collaboration.

## Distribution

4 How are vehicles usually distributed? Are there any special rules for importers, distributors, dealers (including dealer networks) or other distribution partners? How do automotive companies normally resolve restructuring or termination issues with their distribution partners?

In terms of the distribution of vehicles, there are no special rules for importers, distributors or dealers with the exception of sector-specific arrangements under competition legislation. Owing to the requirements of competition rules, importers/manufacturers choose the quantitative selective distribution system to sell vehicles.

In accordance with the requirements of the Block Exemption Communiqué, an agreement between a supplier (ie, manufacturer/importer) and a distributor may have a definite or indefinite term. An agreement with a definite term must remain valid at least five years and each party must accept a provision to notify the other party of its intention not to renew at least six months before the expiration of the agreement. For agreements with indefinite duration, the notice of termination period must be at least two years for both parties. The terms must also allow this two-year notice period to be reduced to no shorter than a period of one year when:

- the supplier is required by law or the agreement to pay appropriate compensation in case it terminates the agreement; or
- the supplier terminates the agreement owing to the reorganisation of a significant portion or the entirety of its distribution system.

## Mergers, acquisitions and joint ventures

5 Are there any particularities for M&A or JV transactions that companies should consider when preparing, negotiating or entering into a deal in the automotive industry?

There are no special provisions required for M&A or JV transactions within the automotive industry, and there are no additional steps to be taken while preparing, negotiating or entering into a deal, with the caveat that competition laws play a significant role in the Turkish automotive industry.

## Incentives and barriers to entry

6 Are there any incentives for investment in the automotive market? Are there barriers to entry into the market? What impact may new entrants into the market have on incumbents?

The incentives provided for investments in various markets are regulated by a Decree of the Council of Ministers entitled the Decision on Government Incentives for Investments, No. 2012/3305. Through a 2013 amendment to this Decision, the automotive sector was designated as a priority sector. Pursuant to this Decision, for an investment in the automotive sector to be entitled to receive an incentive, it must be no less than 200 million lira if for the main industry and no less than 50 million lira for sub-industries. Furthermore, if the investment is no less than 300 million lira, it will be entitled to receive top-priority

incentives. Top-priority incentives provided include, among other things, value added tax and customs duty exemptions, social security support, (partial) corporate tax exemptions and allocation of land free of charge. Incentives are granted individually for each party fulfilling the criteria and new entrants do not affect the incentives that incumbents are entitled to receive. Through an amendment to this Decision dated 28 February 2019, the top-priority incentives mentioned above will be applicable until 31 December 2022.

Furthermore, a recent Presidential decree has accorded government incentives to a consortium called Türkiye'nin Otomobili Girişim Grubu (TOGG) for the domestic production of electric vehicles.

There are no barriers to entry into the automotive market, provided that the new party to the market fulfils all general criteria for investors to establish an industrial enterprise. To increase competition in the local market and in furtherance of Turkey's desire to become a major global competitor in the automotive sector, newcomers to the Turkish market are normally encouraged via the incentives described above.

## PRODUCT SAFETY AND LIABILITY

### Safety and environmental

7 What are the most relevant automotive-related product compliance safety and environmental regulations, and how are they enforced? Are there specific rules for product recalls?

As part of Turkey's EU harmonisation process, new legislation on product compliance safety and the environment has been adopted to conform to EU legislation within the framework of the Turkey-EU Association Council Decision (ACD) No. 1/95 of 6 March 1995, which establishes a Customs Union among EU member states and Turkey. The primary goal of the applicable Turkish legislation is to protect consumers from potentially dangerous and harmful products, and to ensure that businesses place safe and compliant products on the market. The Ministry of Industry and Technology regulates compliance and conducts market surveillance through related regulations implemented by other relevant ministries. The most relevant automotive-related product safety and environmental regulation is the Market Surveillance and Inspection Regulation of Automotive Products dated 22 February 2018, which regulates automotive products through the Ministry of Industry and Technology within the scope of the Law on Product Safety and Technical Regulations, No. 7223.

In accordance with the new regulations brought by the Law on Product Safety and Technical Regulations, No. 7223, any importer or exporter who supply the market with products which are non-compliant with the safety regulations can face administrative fines of up to 681,000 lira, and they will also be liable for the damages caused by their product to any person or goods.

The Ministry of Industry and Technology is responsible for supervising and investigating technical compliance of vehicles with the Market Surveillance and Inspection Regulation of Automotive Products during the market distribution, import, export and assembly processes. While the Regional Directorates carry out market surveillance activities, the central unit of the Ministry of Industry and Technology deals with policy development, programming and monitoring of these surveillance activities. The most significant market surveillance activities carried out by Regional Directorates are product recalls.

### Obligatory recall process

Pursuant to the Market Surveillance and Inspection Regulation of Automotive Products, within the scope of an obligatory recall, if a vehicle is determined non-compliant, the manufacturer must submit a corrective action plan to a Regional Directorate within 30 days and implement

such plan within one year if approved. If the plan is not approved by the Regional Directorate, or the manufacturer fails to submit an appropriate plan or fails to implement the plan, administrative fines of up to 231,540 lira may be imposed on the manufacturer. Extensions will not be granted for implementing the corrective plan unless the malfunction was not the manufacturer's fault.

### Voluntary recall process

If a manufacturer detects non-compliance before an administrative authority does, a voluntary recall procedure must be implemented to avoid administrative fines, which can be substantial. In the event of a voluntary recall, the manufacturer will make a submission to a Regional Directorate including all necessary documentation and make an estimation as to how long it will take to conclude the recall process. The Regional Directorate may grant a maximum of one year for the finalisation of the recall transactions. Extensions will not be granted if the corrective plan's failure to be implemented on time is the fault of the manufacturer. The voluntary recall must be announced on the Ministry of Industry and Technology's website, and separate notices made to vehicle owners including detailed information on recall process, technical non-compliance of the vehicle and contact information of authorised offices. If a vehicle owner does not respond to the notice, a second notice will be made. If the owner fails to respond again, the notice shall be deemed to be duly served.

### Product liability and recall

- 8 Describe the significance of product liability law, and any key issues specifically relevant to the automotive industry. How relevant are class actions or other consumer litigation in product liability, product recall cases, or other contexts relating to the automotive industry?

Product liability issues constitute the largest number of disputes in this sector. Consumers who claim that a vehicle is defective may exercise the general rights they are afforded under the Turkish Law on Consumer Protection, No. 6502. If it becomes apparent that the vehicle is defective, the consumer may exercise one of the following rights:

- rescinding the contract and returning the purchased vehicle;
- requesting a discount from the sales price in proportion to the defect and keeping the purchased vehicle;
- requesting a free of charge repair with all expenses borne by the seller, if the repair does not require extensive expense; or
- requesting replacement of the defective vehicle with a defect-free one, if possible.

The legislation provides a warranty period of two years after the date of sale of a vehicle. If the vehicle contains a manufacturing defect, the consumer may assert the rights listed above, even if the warranty period has passed. Furthermore, certain spare parts may have different statutory warranty periods.

Although recall cases are not very common in Turkey, pursuant to the Market Surveillance and Inspection Regulation of Automotive Products, Regional Directorates of the Ministry of Industry and Technology conduct recall processes for vehicles deemed unsafe or non-compliant with technical regulations. Having said that, separate from the recall process, if a consumer claims that the vehicle is not in compliance with applicable technical regulations, the case is deemed a matter of product liability and examined by consumer courts within the scope of the Turkish Law on Consumer Protection.

Although the Turkish Civil Procedure Code allows a type of class action by associations or other entities on behalf of their members or groups whose interests they represent, in practice, class actions are not common for defective goods in Turkey.

## DISPUTES

### Competition enforcement

- 9 What competition and antitrust issues are specific to, or particularly relevant for, the automotive industry? Is follow-on litigation significant in competition cases?

### Sector-specific rules

Since 1998, the Turkish automotive industry has been regulated by sector-specific rules, with the (latest) Block Exemption Communiqué released in February 2017. These sector-specific rules lay down the conditions to be met for vertical agreements in the automotive industry to benefit from block exemptions from the prohibition on the allocation of markets, interfering with sales conditions and exclusive dealing of article 4 (akin to article 101 of Treaty on the Functioning of the European Union) of the Law on the Protection of the Competition, No. 4054 (the Competition Law). The provisions of the Block Exemption Communiqué apply to vertical agreements concerning the purchase, sale and resale of new motor vehicles; the purchase, sale and resale of spare parts of motor vehicles; and maintenance and repair services.

As long as the market share of the parties to the vertical agreement does not exceed 30 per cent, exclusive distribution systems, quantitative distributions systems or qualitative distribution systems can be concluded. Vertical agreements in which the market share of the parties exceeds 30 per cent benefit from the block exemption only if they adopt the qualitative distribution system. The Block Exemption Communiqué aims to protect distributors from immediate termination by regulating the terms of their agreements and the notice periods for termination. Accordingly, to benefit from the block exemption, the agreement must have a duration of at least five years and both of the parties must accept a provision in the agreement to notify their desire not to renew at least six months before the expiration of the agreement, where the agreement is for an indefinite duration, the notice of termination period must be at least two years for both parties.

### Hardcore restrictions

The Block Exemption Communiqué contains a list of hardcore restrictions applicable to the distribution of vehicles, spare parts and the aftersales market, and is supplemented by a sector-specific guideline. The main restrictions can be summarised as follows:

- restrictions on setting the distributor's resale prices, with the exception of setting maximum and recommended prices;
- restrictions related to the region or customers to which the distributor may sell, with the following exceptions:
  - in the case of an exclusive distribution system, restriction of active sales to an exclusive region or an exclusive customer group allocated by the supplier to itself or to another buyer, provided the restriction does not include sales by customers of the buyer;
  - restriction on sales to final users by a buyer operating at the wholesale level;
  - prohibition of sales by selective distribution system members to unauthorised distributors within the region allocated by the supplier for the operation of the system concerned; and
  - in the case of parts procured for assembly, prohibition on the buyer selling these parts to manufacturing competitors of the supplier;
- restrictions on active or passive sales by selective distribution system members operating at the retail level to final users. However, the supplier is entitled to prohibit a system member from operating at a location where it is not authorised. Furthermore, prevention of sales and purchases between members of the selective distribution system is prohibited; and

- restriction on an authorised service station's freedom to limit its operations to maintenance and repair services, and spare part distribution.

In its regulation of the distribution of spare parts, the Block Exemption Communiqué aims to ensure that authorised distributors, authorised spare part distributors, authorised service stations, independent spare part distributors, private service stations and end users are not forced to depend on the motor vehicle supplier for the procurement of the goods in question, and to allow other suppliers of such goods to be active in the market.

### Non-compete obligation

Non-compete obligations are regulated separately under the Block Exemption Communiqué for the distribution of motor vehicles, for the distribution of spare parts, and for aftersales services. A non-compete obligation is defined as 'any direct or indirect obligation placed on the buyer forcing the buyer to make its purchases of the relevant goods or services in the relevant market, or substitutes thereof, from the supplier or from an undertaking designated by the supplier at a level of over 80 per cent in the new motor vehicle sales market and over 30 per cent in the aftersales market.

For the distribution of motor vehicles, non-compete obligations with a period of a maximum of five years are within the scope of the block exemption. However, the distribution of spare parts and aftersales services do not benefit from the block exemption.

### Investigations in the automotive industry

The automotive industry, including the spare parts sector, is a relatively frequent investigation target of the Turkish Competition Authority (TCA). The first violation decision of the Turkish Competition Board (the Board), a part of the TCA, related to Renault's practices on vertical agreements in 2000. Renault was fined for non-compliance of its distribution agreements with competition rules, fixing the discount rates, prohibiting the use of matching-quality spare parts, and prohibiting fleet sales by authorised dealers to public entities. Two subsequent decisions of the Board against Doğuş Group, which imports and distributes Volkswagen Group brands into Turkey in 2001, and Peugeot in 2004 also related to vertical agreements that were not in line with the requirements of permitted block exemptions.

In its widest investigation of the industry, the TCA initiated an investigation of 23 undertakings active in the automotive sector (both passenger cars and light commercial vehicles) in 2009. The TCA alleged that the undertakings under investigation discussed future pricing policies, stock data, sales targets and sales strategies. According to the Board's decision in 2011, 15 undertakings under investigation violated article 4 of the Competition Law (article 4 is akin to article 101 of Treaty on the Functioning of the European Union). The Board imposed fines on these 15 undertakings totalling approximately 277 million lira. At that time, it was the largest fine ever imposed by the Board. In its decision, the Board emphasised that exchange of future prices or price strategies can be deemed a violation of competition rules. The Board indicated that unless otherwise proven by the investigated undertakings, it is presumed that the undertakings used the exchanged information to coordinate their actions in the market. Exchange of other information such as stock data, sales targets, sales amounts and sales strategies among the undertakings was deemed as complementary to the exchange of future prices and price strategies. The appeals process against the fines was concluded by the end of 2019. The Council of State dismissed the request of 15 undertakings to cancel the fines and approved the Board's decision.

A two-year investigation by the TCA, initiated in early 2020 against 24 car distributors, which included companies such as Ford Otosan,

Mercedes, Volvo, Tofaş and Doğuş was in March 2022. The Board decided that there was no infringement by the undertakings and did not impose a fine.

The length of the appellate process for competition law violations often prevents claims for damages by private action because Turkish courts are unwilling to accept suits for damage claims before the final decision regarding the underlying infringement has been issued. Additionally, it is not possible to bring actions on behalf of multiple claimants in the form of a collective action. Although the Turkish Civil Procedure Code allows a certain type of class action, class actions are not used in practice, which can be considered as a barrier to damage claims by private action.

### Dispute resolution mechanisms

- 10 | What kind of disputes have been experienced in the automotive industry, and how are they usually resolved? Are there any quick solutions along the supply chain available?

The main types of disputes seen in the automotive industry are disputes arising from contractual relations and product liability.

Disputes regarding contractual relations usually arise among main industry manufacturers, sub-industry manufacturers, distributors and dealers. These disputes are usually resolved by litigation. If the infringement of a contract constitutes an emergency that may prejudice a party from exercising a right, such party may file for an interim injunction before filing a case, provided it posts a deposit. After obtaining the court's decision on an interim injunction, related legal proceedings must be initiated within two weeks. The parties are also free to include arbitration and other ADR clauses in their contracts, or agree to such procedures after the dispute has arisen.

Disputes arising from product liability can be divided into two groups: disputes between automotive companies and other legal entities, and disputes between automotive companies and consumers. While product liability disputes between automotive companies and legal entities are resolved by litigation through civil courts, specialised consumer courts oversee consumer disputes. Furthermore, if the claim is for less than 15,430 lira, consumers can apply to consumer arbitration commissions for expedited resolution of the dispute.

### Distressed suppliers

- 11 | What is the process for dealing with distressed suppliers in the automotive industry?

There are no specific provisions for dealing with distressed suppliers in the automotive industry. Having said that, Turkish legislation in general aims to enable distressed suppliers to continue their operations and provide various incentives to improve their financial status. There are various incentives foreseen for small and medium-sized enterprises, from which sub-industry manufacturers can benefit. Such incentives include, but are not limited to, loans with a low interest rate, tax deductions, debt relief and reorganisation.

Furthermore, one of the primary goals of the Turkish Code of Obligations, at the time of inability to perform obligations, is to maintain the continuity of contractual relationships rather than immediate termination. Accordingly, the Turkish Code of Obligations sets forth that in a bilateral contract, if one of the parties is distressed, the other party may grant additional time or request a judge to do the same to enable the distressed party to perform its obligations. In such a case, a claimant can request compensation or termination only if the distressed party cannot fulfil its obligation in the granted time. Having said that, as a default rule, if the rights of a party to a contract are jeopardised due to the other party's inability to perform its obligation arising from the contract, especially if the non-performing party is bankrupt or collection



proceedings against it remain inconclusive, the jeopardised party may refrain from performing its obligations until the performance of the other party is secured without the necessity to grant additional time.

### Intellectual property disputes

- 12 | Are intellectual property disputes significant in the automotive industry? If so, how effectively is industrial intellectual property protected? Are intellectual property disputes easily resolved?

The most significant intellectual property disputes in the automotive industry have traditionally been due to alleged infringements caused by companies that are not original equipment manufacturers (OEMs), which constitute a majority of the market. The new Turkish Industrial Property Law, which entered into force in 2017, adopts a new method specifically for aftermarket and non-OEM parts. Pursuant to this law, if the intended use of a good is indicated, the trademark owner can no longer prevent third parties from using accessories, repair parts and non-OEM goods in good faith, within the natural flow of commercial life.

From a design aspect, protection of vehicle parts is examined in different groups: repair parts (must-fit parts and must-match parts) and equivalent goods. Must-fit parts (engine pistons and the like) are designed in an imperative shape and size for a specific function and cannot be replaced with a different shape. On the other hand, must-match parts (headlights and the like) are visible and mandatory for the original appearance of a design, but not the function. Designs of must-fit parts cannot benefit from protection over design rights and OEMs cannot pursue any claims over must-fit parts manufactured by non-OEMs arising from design rights.

On the other hand, must-match parts can benefit from protection of design rights, and the most significant intellectual property disputes arise from the manufacturing of must-match parts. An exception to this rule is that the use of a must-match part for repair purposes after the part has been in the market for at least three years does not constitute an infringement of design rights. This exception was adopted as a part of Turkey's harmonisation process with European Union legislation.

The Turkish Industrial Property Law also protects non-OEMs with respect to their production of equivalent goods to prevent intellectual property disputes between non-OEMs and OEMs. Pursuant to this law, the use for repair purposes of equivalent goods announced by the Ministry of Industry and Technology does not constitute infringement of design rights even for the first three years of the availability of the goods on the market.

There is no fast-track option for resolving intellectual property disputes. Disputes arising from the infringement of intellectual property rights are examined by specialised civil and criminal courts for intellectual and industrial property rights. The approximate trial period is one to three years, excluding the appeal process, which may take more than two years.

## EMPLOYMENT ISSUES

### Trade unions and work councils

- 13 | Are there specific employment issues that automotive companies should be aware of, such as with trade unions and works councils?

Pursuant to the Turkish Constitution, all employees have right to become members of trade unions without the necessity to obtain permission from their employers. In practice, trade unions actively operate with significant influence in automotive companies. Currently, there are three trade unions whose members include automotive sector employees (in addition to other sectors); namely, Türk Metal, Birleşik

Metal-İş and Özçelik İş. These three unions have a total of approximately 289,315 members; of these, 215,174 are members of Türk Metal.

Provided that a trade union has at least 10 per cent of the employees of the sector as members and its members in the given automotive company constitute a majority of the employees, the union can apply to the Ministry of Labour and Social Security in order to be authorised to sign a collective labour agreement. If the authorisation is granted by the Ministry, a collective labour agreement will be implemented at the company. Collective labour agreements can be in force for up to three years. The negotiation process takes place between the trade union that has the majority in the given automotive company and the Turkish Metal Manufacturers Union, the major employers' union for the automotive sector, if the given automotive factory is a party thereto. If the automotive company is not a member of an employers' union, the representatives of the company take direct part in the negotiation process.

Turkish Labour laws clearly forbid employers to terminate employment relationships due to employees' membership of trade unions. In the event of a company's non-compliance, the employee will be entitled to claim compensation equal no less than one year's wages, in addition to any employment claims the employee is entitled to receive at the time of termination.

## NEW TECHNOLOGIES AND MOBILITY

### Legal developments

- 14 | What are the most important legal developments relating to automotive technological and mobility advances?

Turkish legislation on the manufacturing of vehicles, and the automotive industry in general, is drafted in accordance with United Nations norms and European Union legislation. Furthermore, to ensure compatibility with technical developments in the automotive industry, there have been various recent amendments to Turkish legislation with respect to the manufacturing and repair of vehicles.

The manufacturing of vehicles was regulated by the 2008 Regulation on the Manufacturing, Modification and Assembly of Vehicles until late 2016, when it was replaced with a new regulation with the same name. With the new regulation, provisions relating to electric and hybrid cars were introduced for the first time.

Pursuant to the Motor Vehicles Law in force, electric cars are not subject to motor vehicles tax (MVT) because MVT is calculated based on the cylinder volume of the engine, which electric cars normally do not have. Having said that, pursuant to the Law on the Taxation of Motor Vehicles, MVT is applicable to electric cars too, at the rate of one-quarter of the MVT of gasoline engine vehicles within the same price range and with equivalent engines starting on 1 January 2019. On the other hand, MVT for hybrid cars is subject to the Motor Vehicles Law and is not specifically regulated in any legislation. There are also specific tax discounts foreseen for a special consumption tax for electric and hybrid cars to encourage the use of these new technologies. Although sales of hybrid cars and electric cars are increasing (49,493 hybrid cars and 2,846 electric cars were sold in 2021, compared to 24,431 hybrid cars and 844 electric cars sold in 2020), sales of such vehicles are still negligible in the overall market.

The operation of Uber and similar companies in Turkey was subject to great controversy for a long time in Turkey. To transport passengers in Turkey, a certificate for commercial passenger transfer must be obtained. However, pursuant to the regulation in force, only taxis and passenger vans (minibuses) with a certain number of seats are entitled to obtain this certificate. This created a legal gap and for a period enabled ride hailing companies to operate using commercially licensed vans without being subject to the high tax rates and taxicab licence (that regular taxis incur).



In response to a lawsuit filed by the Union of Taxi Drivers, an Istanbul court ruled in 2019 that the operations of Uber constitute unfair competition between the taxi drivers and Uber operators. Accordingly, the court terminated Uber's commercial activities and prohibited access to Uber services. Uber appealed the decision and in January 2021, the appellate court reversed the judgement. Following the reversal, the Information Technologies and Communications Authority unblocked access to Uber's services, and the company is currently operating in several cities, albeit essentially as a taxi hailing app. Certain other taxi hailing services are currently operating in Turkey too.

## UPDATE AND TRENDS

### Trends and new legislation

15 | Are there other current legal developments, emerging trends or pending legislation relevant to the automotive industry that should be noted?

In November 2017, a consortium composed of five large Turkish companies, which later incorporated a company under the name of Türkiye'nin Otomobili Girişim Grubu (TOGG), announced a new project to manufacture a domestic car designed, engineered and manufactured solely in Turkey. In December 2019, TOGG presented prototypes of several passenger electric vehicles. TOGG announced that in the next 15 years, an investment of 22 billion lira will be made to establish a facility that can manufacture 175,000 cars a year. TOGG has stated that the company will start mass production and enter the market in the first quarter of 2023.

In September 2019, Volkswagen incorporated a subsidiary in Turkey for the purpose of setting up a factory in the Manisa province to produce Volkswagen Passat and Škoda Superb models. Volkswagen announced it was expecting to make an investment of around €1.4 billion in this factory. However, in October 2019, due to political reasons relating to Turkey's involvement in the Syria situation, Volkswagen announced that they had frozen the investment plan. In July 2020, Volkswagen announced that because of the recent developments due to the pandemic, it has decided to revise its investment plans and terminate its plans for expanding its production facilities. In December 2020, Volkswagen initiated liquidation process of its Turkish subsidiary. The liquidation has been completed and the Turkish subsidiary has been closed as of September 2021.

The Turkish Energy Market Regulatory Authority has recently published an extensive draft regulation on the establishment and operation of electric vehicle charging stations for the comments and evaluation of the public. Furthermore, the Union of Chambers of Turkish Engineers and Architects and the Chamber of Electrical Engineers are currently working on a draft regulation setting forth the conditions for the inspection of electric vehicles and charging stations. While these pieces of legislation are not in force yet, they are clear steps in the right decision for the synchronisation of Turkish legislation with technological developments in this area, and an indication that there will be important legal developments in the near future. It is estimated that the number of fully electric vehicles actively used in traffic is around 5,000 in Turkey, increasing from approximately 1,700 electric vehicles in 2020. However, to establish and operate a meaningful system of electric vehicle charging stations, the number of these vehicles must be increased significantly.

In March 2021, Turkish conglomerate Koç Holding and Ford Otosan announced that with an investment of around €2 billion, Ford Otosan plans to establish an integrated production facility to manufacture electric vehicles in Kocaeli. The factory is expected to start its operations in 2022 and to have a capacity of 650,000 commercial vehicles and a battery installation capacity of 130,000 per year.

The Law on Product Safety and Technical Regulations, No. 7223 entered into force as of March 2021, and with it the Law on Preparation

# TURUNÇ

## Esin Çamlıbel

ecamlibel@turunc.av.tr

## Naz Esen

nesen@turunc.av.tr

## Beste Yıldızlı Ergül

byildizli@turunc.av.tr

Teşvikiye Caddesi 19/11  
Teşvikiye 34365, Istanbul  
Turkey  
Tel: +90 212 259 45 36  
Fax: +90 212 259 45 38

Cumhuriyet Bulvarı 140/1  
Alsancak 35210, Izmir  
Turkey  
Tel +90 232 463 49 07  
Fax: +90 232 463 49 09

www.turunc.av.tr

and Implementation of the Technical Legislation on Products, No. 4703, was repealed. Although most relevant provisions have not been changed drastically, the new law has brought requirements for importers and exporters on product liability which holds importers and exporters liable for damages their product causes to any persons or goods. Further, importers and exporters that supply the market with defective products may face fines of up to 681,000 lira.

There is also an ongoing dispute among Turkish scholars regarding the rules to be implemented for autonomous driving and the responsibilities of vehicle owners in the event of accidents. Currently, there is no legislation on autonomous vehicles.

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