Received: 16 April 2026 | Accepted: 05 May 2026
DOI: 10.52898/ijif.2026.3

ORIGINAL ARTICLE

TERMINATION OF EXCHANGE-TRADED FUNDS UNDER TURKISH LAW IN COMPARATIVE PERSPECTIVE

Nilüfer ÖZER ŞEKER

Abstract

Exchange-traded funds (ETFs) are funds established by portfolio management companies under a set of fund rules, the units of which are traded on Borsa İstanbul A.Ş. Although ETFs do not possess separate legal personality, their principal function is to manage a portfolio in accordance with the principle of fiduciary ownership, while their assets constitute a segregated pool of assets composed of the property included in the fund portfolio. This article first examines the definition of ETFs and the legal bases set out in the relevant communiqués, and then evaluates, within the framework of Turkish law, issues relating to the termination of ETFs with reference to Capital Markets Law No. 6362 and the regulatory framework of the Capital Markets Board. It further compares the principal grounds for the termination of ETFs in the United States and the European Union, where such funds are widely used, with the corresponding practices under Turkish law, and, on that basis, discusses possible reform proposals concerning the termination of ETFs.

Keywords

Exchange-Traded Funds (ETFs), Capital Markets Board, Termination of ETFs, Capital Markets Law No. 6362.

JEL Classification

G28, K22.

Authors Notes:

Dr, Sivas Cumhuriyet University,
Faculty of Economics and Administrative Sciences, Department of Business Administration, Commercial Law
ORCID: 0000-0003-1859-1728
nozer@cumhuriyet.edu.tr

This study is derived from Nilüfer ÖZER ŞEKER's master's thesis entitled "LEGAL ASPECT OF SECURITIES INVESTMENT TRUSTS AND EXCHANGE-TRADED FUNDS", completed in 2026 at Erciyes University, Institute of Social Science, Private Law under the supervision of Prof. Dr. Burak ADIGÜZEL.

1. INTRODUCTION

Exchange-Traded Funds (ETFs) are semi-open-end, semi-closed-end funds whose participation shares are traded on stock exchanges as shares, for which the fund founder is under no obligation to purchase the fund participation shares in cash, but which make it possible, at the investor's request, to exchange the shares included in the fund in return for fund participation shares(Dönmez, 2002). However, ETFs have also been considered a hybrid investment vehicle situated between traditional open-end investment funds and closed-end investment funds(Gözbaşı, 2010).

ETFs, which first emerged in the 1990s, have since experienced substantial growth and obtained a significant share of the market. The ETF market has offered significant advantages to investors by enabling them to diversify their investments and by providing low management fees. In addition, this market has also held broad potential in Türkiye for the capital markets and investors in the periods ahead (Borsa İstanbul A.Ş., 2026).

An ETF is an asset, without legal personality, constituted by portfolio management companies through fund rules for the purpose of managing a portfolio on behalf of savers on the basis of fiduciary ownership. The assets of an ETF constitute a segregated pool of assets consisting of the property included in the fund portfolio. Such assets are vested in the founder pursuant to the principles of fiduciary ownership.

It may be stated that the most rapid development of ETFs has occurred in the U.S. markets and that, due to the size of the total investment volume, they hold an important place in the U.S. economy. Nevertheless, in order to set forth how ETFs are defined in the United States, it would be appropriate to examine and include the definitions made by various institutions. The Investment Company Institute (ICI) defines ETFs as "investment companies whose shares are traded on exchanges during the day at market-determined prices" (Antoniewicz & Heinrichs, 2014). The concept of ETFs has been stated in the Global Financial Stability Reports of the International Monetary Fund (IMF) as "an investment fund traded on exchanges." A significant proportion of these funds is structured so as to track the performance of a particular index, such as the S&P 500 (International Monetary Fund [IMF], 2023).

In the United States, the legal basis of ETFs was established by the provisions of the Investment Company Act of 1940 (Investment Company Act of 1940, 1940). Pursuant to this Act, ETFs are generally regarded as "open-end management investment companies". However, they may sometimes also be structured as "unit investment trusts" (Investment Company Institute, 2025). ETFs having the status of open-end investment companies have the authority to issue new shares on a continuous basis (Investment Company Institute, 2025).

Under EU law, the framework governing the establishment and management of investment funds has been laid down by Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to Undertakings for Collective Investment in Transferable Securities (UCITS). In accordance with Article 5 of the said Directive (Directive 2009/65/EC, 2009), a UCITS must either be managed by an authorized management company or operate itself as an authorized investment company.

In Türkiye, ETFs were first regulated, from a legal perspective, by Communiqué Series VII, No. 23. According to the Communiqué, ETFs are defined as funds whose participation shares are traded on stock exchange markets. The fund assets are constituted by authorized participants involved in the establishment and formation process of the fund, through the contribution of securities and cash reflecting the characteristics of the fund portfolio and, in return therefor, the acquisition of fund units (Sermaye Piyasası Kurulu [SPK], 2025) (www.spk.gov.tr).

Under Article 4 of the Communiqué on the Principles Regarding Exchange-Traded Funds (III-

52.2), ETFs are defined as funds whose fund units are traded on Borsa İstanbul A.Ş. (BIST). In these funds, fund units may be created by the delivery of the assets included in the portfolio, or solely by the delivery of cash, in a manner reflecting the characteristics of the fund portfolio. In addition, fund units may also be redeemed.

Under Article 5 of the currently effective Communiqué No. III-52.2, participation certificates have no nominal value. These fund units are maintained in book-entry form. The fund units representing the fund amount are tracked on a customer basis in book-entry form at the Central Securities Depository (Merkezi Kayıt Kuruluşu, MKK). Fund units cannot be issued in printed form or delivered physically. Participation certificates are tracked in accounts maintained with MKK, based on each customer's identity information, the associated account codes, and relevant fund information (Sermaye Piyasası Kurulu [SPK], 2025).

Communiqué No. III-52.2 establishes the procedures and principles for the formation of ETFs, their operating rules, participation certificates, public offerings, and disclosure requirements. Communiqué No. III-52.2 is based on Articles 52 and 54 of the Capital Markets Law No. 6362.

ETFs are a type of fund that tracks a combination of securities traded on the stock exchange (for example, a particular index). The primary advantage of this type of security is that it offers investors instant diversification (Madlem & Edwards, 2002).

This study examines the grounds for terminating ETFs within the framework of Turkish law. It also briefly assesses these termination grounds on a comparative basis, considering United States and European Union regulations. The aim is to outline, in general terms, the similarities and differences in the grounds for terminating ETFs across different legal systems and to evaluate current Turkish regulations from a comparative law perspective.

2. THE GROUNDS FOR THE TERMINATION OF EXCHANGE-TRADED FUNDS

2.1. Grounds For The Termination of Exchange-Traded Funds Under Turkish Law

Regarding the termination of ETFs, the Capital Markets Law does not contain detailed provisions; the relevant regulation is instead set out in Article 28 of the Capital Markets Board's Communiqué on the Principles Regarding Investment Funds (III-52.1). The Communiqué outlines the general principles for the establishment, management, and termination of all securities investment funds. In addition, separate communiqué provisions have been established for funds such as Real Estate Investment Funds (Communiqué No. III-52.3) and Venture Capital Investment Funds (Communiqué No. III-52.4). Each fund has a founder, specifically the relevant portfolio management company, which manages the fund's assets on behalf of the investors. The grounds for the termination of the fund can be explained as follows:

2.1.1. Termination Upon the Expiry of a Definite Term

Under Article 28/1(a) of Communiqué No. III-52.1, an investment fund may be established for a definite term. In the case of funds established for a definite term, liquidation shall commence automatically upon the expiry of the fund's term.

2.1.2. Termination by Giving Notice of Dissolution

Under Article 28/1(b) of Communiqué No. III-52.1, if a fund is established for an indefinite term, the founding portfolio management company may unilaterally terminate the fund by providing at least six months' notice of dissolution after obtaining the favourable opinion of the Capital Markets Board (CMB). If the founder wishes to terminate the fund's operations, it notifies the CMB, obtains the Board's approval, and publicly announces the decision to dissolve the fund. Six months after the publication of this notice, the fund is automatically deemed dissolved, and the liquidation process begins.

2.1.3. Termination upon the Loss of Operating Conditions

Under Article 28/1(c) of Communiqué No. III-52.1, if the founder loses its authority to establish and manage a fund in the capital markets—for example, where the portfolio management company's licence is revoked by the Capital Markets Board—this constitutes a ground for the termination of the fund. This provision establishes that, where the founder legally loses its capacity to manage the fund, the fund can no longer continue its operations.

2.1.4. Termination Due to the Financial Condition of the Founder

Under Article 28/1(ç) of Communiqué No. III-52.1, ETFs are terminated when the founder's financial condition deteriorates to the extent that it is unable to meet its commitments, or when the founder becomes bankrupt or is liquidated. In the event of the founder's bankruptcy, the Capital Markets Board (CMB) takes measures to protect the fund. However, the fund cannot continue with the existing founder.

2.1.5. Termination by Decision of the Capital Markets Board

Under Article 28/1(d) of Communiqué No. III-52.1, termination of the fund may occur where the Capital Markets Board (CMB) determines, in circumstances such as the fund's likely inability to meet its own financial obligations, that the continuation of the fund's activities would not be in the interests of investors. For example, where market conditions render the fund unviable, the CMB may request the liquidation of the fund for the purposes of public interest and investor protection.

Within the framework of the conditions set out above, it is evident that the regulations adopted under Turkish law encompass both voluntary liquidation and compulsory liquidation (such as in cases involving a decision of the Capital Markets Board or the bankruptcy of the founder). The Capital Markets Board's authority under Article 28/1(d) of Communiqué No. III-52.1, which provides for the termination of a fund in the interest of investors, provides a safeguard comparable to regulatory interventions in European Union Member States.

3. GROUNDS FOR TERMINATION IN THE INTERNATIONAL CONTEXT

Within the EU framework, the principal rules governing the establishment, management, and termination of investment funds have been laid down by the UCITS Directive (Directive 2009/65/EC on Undertakings for Collective Investment in Transferable Securities) and the AIFMD (Directive 2011/61/EU) on Alternative Investment Fund Managers (Directive 2009/65/EC, 2009, Directive 2011/61/EU, 2011).

While UCITS covers publicly offered securities funds, AIFMD encompasses all collective investment vehicles outside the scope of UCITS, such as private equity funds and real estate funds. The directives referred to here do not lay down detailed rules directly governing the termination and liquidation of funds. Nevertheless, it is mandatory for the legislation of the Member States of the Union to provide for regulation on this matter (Directive 2009/65/EC, 2009).

Germany has comprehensively transposed the EU fund directives into its domestic law and has regulated the establishment, management, and termination of investment funds through the Kapitalanlagegesetzbuch (KAGB) (German Investment Code) (Geiss & Saulich, 2014).

In Germany, under the contractual fund structure commonly used there (Sondervermögen), the fund does not have legal personality. Such funds constitute a separate patrimony managed by the management company (KVG) on behalf of the investors, meaning that all rights and obligations are exercised by the management company as the legal representative of the fund participants. In such a fund, termination generally occurs through the KVG's termination of the fund (in other words, through the termination of the management agreement). The KAGB grants the KVG the right to terminate the fund subject to certain conditions. In practice, the KVG may declare the termination of the fund by complying with the notice period specified in the fund rules (Cicmil, 2023).

Under German law, the termination of the fund may also arise on grounds such as the fund's total value falling below the prescribed minimum level within a specified period, or the expiry of the period stipulated in the fund rules. In such a case, the KVG or the depositary bank initiates the liquidation process by making the necessary notifications to BaFin (International Monetary Fund [IMF], 2016).

Under French law, investment funds are subject to different structures and rules, namely FCPs (Fonds Commun de Placement) and SICAVs (Sociétés d'Investissement à Capital Variable). Although liquidation procedures differ according to the legal structure concerned, AMF supervision and investor disclosure emerge as the common features. In this context, sectoral studies on the voluntary liquidation of a fund recommend that prior approval and disclosure obligations be included in the liquidity management framework (Darpeix et al., 2021).

In general, a fund's termination may be classified into two categories: compulsory termination and voluntary termination. Grounds for compulsory termination include, inter alia, a decision of the regulatory authority and the bankruptcy of the fund; by contrast, voluntary grounds for termination may arise where, by decision of the fund management or the founder, the economic continuation of the fund has become impossible, or the fund no longer serves any purpose.

In the United States, the procedures and principles governing the termination and liquidation of funds have been laid down under federal law within the framework of the Investment Company Act of 1940 and SEC regulations. Under U.S. capital markets law, the cessation of the operations of investment funds and their liquidation under certain conditions have also been regulated. In this context, the grounds for the termination of funds generally consist of economic reasons, such as poor performance, a decline in assets under management, or the loss of investor interest (Weiner, 2020; Inozemtsev & Simonov, 2016).

In the United States, the general grounds for the termination of ETFs may be listed as follows: the loss of the fund's attractiveness due to returns falling below expectations or an increase in management expenses; the reduction in the size of the fund portfolio as a result of market fluctuations or the inability to attract a sufficient number of new investors; the decrease in the number of participants because the fund's investment strategy fails to attract sufficient demand or falls behind in a competitive market; and other factors, such as legal changes, the restructuring of the fund family (for example, through a merger with another fund), or changes in the strategy of the sponsoring institution (Johnson, 2018).

4. CONCLUSION

With respect to the grounds for termination relating to ETFs, it appears that the Turkish legislative framework adopts an approach centred on the Capital Markets Board (CMB) as the regulatory authority. The approval and guidance of the CMB are of critical importance with regard to the establishment of the fund, the subsequent process, and its termination. In particular, the requirement to obtain the favourable opinion of the CMB in cases of dissolution by decision of the founder is intended to prevent a sudden termination that may run contrary to investors' interests. Moreover, where necessary, the CMB may, acting ex officio and making its own determination (Article 28/1(d) of Communiqué No. III-52.1), prevent the fund from being maintained in a manner contrary to the relevant interests. This may likewise be regarded as a protective mechanism unique to Türkiye, which has no counterpart in U.S. legislation.

The provisions governing the termination of funds under Turkish legislation are similar to those applied in the European Union. For example, grounds such as the expiry of the fund's term, the founder's decision, or the founder's bankruptcy constitute general grounds for termination and are similarly regulated in both the EU and Türkiye.

In Türkiye, the requirement that the founder announce the dissolution upon obtaining the approval of the Capital Markets Board and terminate the fund six months thereafter is consistent with the general investor-protection approach in EU fund law, which emphasizes prior investor information, transparency, and the preservation of investors' redemption rights (Directive 2009/65/EC, 2009; European Securities and Markets Authority [ESMA], 2025; Law of 17 December 2010 relating to undertakings for collective investment, 2010). Under Turkish law, this requirement is expressly made mandatory by communiqué and imposes a minimum notice period of six months on the terminating institution (Yatırım Fonlarına İlişkin Esaslar Tebliği [III-52.1], 2013, art. 28(1)(b)). This may be regarded as strengthening investor protection, in line with ESMA's position that notice periods should be calibrated in the best interests of investors (European Securities and Markets Authority [ESMA], 2025).

The termination and liquidation process, which constitutes the final stage of investment funds, has been regulated in detail in both the United States and Türkiye for the purpose of investor protection. In this regard, there are significant parallels between the U.S. federal framework, namely the Investment Company Act of 1940 and the relevant SEC regulations, and the Turkish capital markets framework, namely Law No. 6362 and the communiqués of the Capital Markets Board. Nevertheless, certain structural and procedural differences remain. In the United States, funds generally exist as separate investment companies and decisions on voluntary liquidation may be taken with relative flexibility, whereas in Türkiye, the lack of independent legal personality for funds and their reliance on a fiduciary ownership structure managed by the founder have resulted in a stricter regulatory framework governing the liquidation process. In this context, fiduciary ownership refers to the legal arrangement whereby fund assets are entrusted to the management company or custodian, which holds and manages these assets exclusively on behalf of and for the benefit of the investors, in accordance with the principles of fiduciary duty. In the United States, the termination of funds is based largely on market-driven and performance-based decisions. In Türkiye, by contrast, capital markets legislation expressly provides for the circumstances in which a fund may be terminated by clearly defining the relevant conditions.

Whether in the United States or in Türkiye, the termination of an investment fund is a process that must be managed with great care. When properly implemented, liquidation is, for investors, merely a planned exit and account-closing procedure; when mismanaged, however, it may lead to a loss of confidence. For this reason, fund managers must act in full compliance with the applicable legislation and with an investor-oriented approach.

The termination criteria for ETFs should be linked to objectively measurable thresholds in accordance with international standards. Upon the termination of a fund, investors should be granted the right to switch to equivalent investment products exempt from taxes and fees. This right would enable investors to preserve their portfolios without incurring sudden losses. In addition, ETF units should be protected as proprietary rights. Accordingly, the investor's rights should be assessed on the basis of property law principles, and intervention in the liquidation process should be permitted only on clear and legally legitimate grounds. Decisions on the termination of ETFs should be reviewed by advisory boards, including investor representatives, and supervised by the Capital Markets Board (CMB). Accordingly, such decisions may be taken objectively.

REFERENCES

Antoniewicz, R., & Heinrichs, J. (2014, September). Understanding exchange-traded funds: How ETFs work. ICI Research Perspective, 20(5). Investment Company Institute.

Borsa İstanbul A.Ş. Ürünler. Erişim tarihi: 1 Nisan 2026, https://www.borsaistanbul.com/piyasalar/pay-piyasasi/urunler

Cicmil, D. (2023). Investing in "Sondervermögen" funds in Germany: An analysis of legal structure, regulatory requirements and performance. Ekonomija: teorija i praksa, 16(3), 126–139. https://doi.org/10.5937/

etp2303126C
Darpeix, P.-E., Même, N., Mosson, N., & Novakovic, M. (2021, October). Overview and inventory of French funds' liquidity management tools: Dynamic view since 2017 and update as at mid-2021 (Working Paper No. 845). Banque de France. https://publications.banque-france.fr/sites/default/files/medias/documents/wp845-en.pdf
Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, 2011 O.J. (L 174) 1–73. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0061
Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), *Official Journal of the European Union L* 302, 32–96 (2009). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0065
Dönmez, Ç. A. (2002). Sermaye Piyasalarımız İçin Yeni Bir Enstüman: Borsa Fonları (Exchange Traded Funds). İMKB Dergisi, 6(23), 15–43.
European Securities and Markets Authority. (2025, April 15). Final report on the guidelines on liquidity management tools of UCITS and open-ended AIFs (ESMA34-1985693317-1160).
Geiss, M. M., & Saulich, K. E. (2014, March 24). The German KAGB—A new era for the alternative investment industry? Securities Regulation & Law Report, 46, 558.
Gözbaşı, O. (2010). Borsa yatırım fonları: performans değerlendirmesi ve analizi, Sosyal Bilimler Enstitüsü, İşletme Anabilim Dalı, Muhasebe ve Finansman Bilim Dalı, Doktora tezi, Erciyes Üniversitesi.
International Monetary Fund. (2016, June). Germany: Financial sector assessment program—Fund management: Regulation, supervision and systemic risk monitoring—Technical note (IMF Country Report No. 16/193). https://www.imf.org/external/pubs/ft/scr/2016/cr16193.pdf
International Monetary Fund. (2023, April). Global Financial Stability Report, April 2023: Safeguarding Financial Stability amid High Inflation and Geopolitical Risks. https://www.imf.org/en/publications/gfsr/issues/2023/04/11/global-financial-stability-report-april-2023
Inozemtsev, E., & Simonov, A. (2016). Closing of mutual funds within management company. *HSE Economic Journal*, 20(2), 311–336. https://elib.hse.ru/eresources/HSE_economic_journal/articles/20_02_06.pdf
Investment Company Institute. (2025, March). Reimagining the 1940 Act: Key recommendations for innovation and investor protection. https://www.ici.org/system/files/2025-03/25-ppr-reimagining-the-40-act.pdf
Johnson, L. P. Q. (2018). Protecting mutual fund investors: An inevitable eclecticism. In W. A. Birdthistle & J. Morley (Eds.), Research handbook on the regulation of mutual funds (pp. 141–163). Edward Elgar Publishing. https://doi.org/10.4337/9781784715052.00013
Law of 17 December 2010 relating to undertakings for collective investment, Mém. A 2010, No. 239 (2010). https://www.cssf.lu/wp-content/uploads/L_171210_UCI.pdf
Madlem, P. W., & Edwards, L. D. (2002). Power investing with basket securities: The investor's guide to exchange-traded funds. St. Lucie Press.
Sermaye Piyasası Kurulu. (SPK). Tanıtım rehberi. Erişim tarihi: 7 Haziran 2025, https://spk.gov.tr/kurumlar/fonlar/yatirim-fonlari/menkul-kiymet-yatirim-fonlari/tanitim-rehberi
Weiner, M. B. (2020). A historical analysis of the Investment Company Act of 1940. Michigan Business & Entrepreneurial Law Review, 10(1), 67–84. https://doi.org/10.36639/mbelr.10.1.historical
Yatırım Fonlarına İlişkin Esaslar Tebliği (III-52.1), Resmî Gazete (9 Temmuz 2013, Sayı: 28702).

How to cite this article: Özer Şeker, N. (2026). Termination of Exchange-Traded Funds Under Turkish Law in Comparative Perspective. *International Journal of Insurance and Finance, 5*(1), 43-49. https://doi.org/10.52898/ijif.2026.3