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WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS

TURKEY: PHASE 3 - FINAL REPORT

REPORT ON THE IMPLEMENTATION AND APPLICATION OF THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND THE 2009 RECOMMENDATIONS ON FURTHER COMBATING BRIBERY

The Working Group on Bribery adopted this report on 17 October 2014.

For further information, please contact France Chain (Tel: +(33-1) 45 24 78 36, E-mail: France.Chain@oecd.org), Kathleen Kao (Tel: +(33-1) 45 24 74 15, E-mail: Kathleen.Kao@oecd.org) or Graeme Gunn (Tel: +(33-1) 45 24 90 14, E-mail: Graeme.Gunn@oecd.org).

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EXECUTIVE SUMMARY

The Phase 3 report on Turkey by the OECD Working Group on Bribery evaluates and makes recommendations on Turkey's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business transactions and related instruments. The report considers country-specific (vertical) issues arising from changes in Turkey's legislative and institutional framework, as well as progress made since Turkey's Phase 2 and 2*bis* evaluations in 2007 and 2009 respectively. The report also focuses on key Group-wide (horizontal) issues, particularly enforcement.

While the Working Group on Bribery welcomes Turkey's efforts to enhance its foreign bribery legislation, it remains seriously concerned about Turkey's low level of enforcement. The Working Group notes that there has not been one foreign bribery conviction in the 11 years since the entry into force of the Convention in Turkey, despite the size of Turkey's economy and its geopolitical importance. Of the ten allegations of foreign bribery that have come to light since 2003, Turkish authorities have taken limited investigative steps in six cases. Of these six cases, one led to an acquittal, two investigations are ongoing pending outstanding MLA requests, and three were terminated at the investigative stage when foreign authorities failed to supply sufficient evidence. Turkey has taken no investigative steps in two cases and was unaware of a further two allegations, although these were publicised in both Turkish and foreign news. The Working Group therefore recommends that Turkey, as a matter of priority, improve its efforts to proactively detect and investigate allegations of foreign bribery by gathering information through more diverse sources. Turkey should also allocate adequate resources to specialised units in the Public Prosecutor's Office and increase engagement between various agencies involved in the detection of foreign bribery, such as the FIU, the tax authority and auditing supervisory bodies.

The Working Group is also troubled by certain deficiencies in Turkey's corporate liability legislation and the absence of enforcement against legal persons since the reestablishment of liability of legal persons in 2009. Turkey has not finalised any cases against legal persons for any offence in the past five years. Turkey's corporate liability framework may not cover state-owned and state-controlled enterprises and is unclear as to whether the prosecution or conviction of a natural person is a necessary basis for sanctioning a legal person. Furthermore, sanctions for legal persons are not sufficiently effective, proportionate and dissuasive. The Working Group recommended clarifying the law and drawing the attention of prosecutors to the importance of effectively enforcing the corporate liability provisions.

The Working Group is encouraged by the abolition of controversial legal provisions affecting independence of the judicial system and the fact that Law 6545 does not reintroduce any of the controversial aspects of Law 6524. Nevertheless, the Working Group is concerned that foreign bribery investigations and prosecutions may be subject to improper influence by concerns of a political nature. The Working Group will pay special attention to developments in this area and recommends that Turkey safeguard the independence of its judiciary and prosecution authorities and ensure that enforcement of foreign bribery is not affected by considerations prohibited under Article 5 of the Convention.

The report identifies additional areas for improvement. To improve reporting of foreign bribery, it recommends that Turkey ensure adequate protection to whistleblowers, both in the private and public sector. The Working Group also encourages Turkey to focus its awareness-raising initiatives on companies operating in high risk industries and regions.

The report also acknowledges positive developments. The Working Group welcomed legislative progress made by Turkey in strengthening its foreign bribery offence. Turkey has also modified its public procurement rules to prohibit natural and legal persons convicted of foreign bribery from participating in

public tenders. Further, Turkey appears to be cooperating effectively with other Parties in the provision of MLA, having granted MLA in two cases of foreign bribery. Additionally, Turkish tax authorities have been effective in the detection of domestic bribery and could well be an important resource in detection of foreign bribery. Finally, Turkish authorities have improved their awareness-raising efforts targeting public officials.

The report and its recommendations reflect the findings of experts from Russia and Sweden, and was adopted by the Working Group on 17 October 2014. It is based on legislation and other materials provided by Turkey and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its four-day on-site visit to Ankara and Istanbul on 13-16 May 2014, during which the team met representatives of Turkey's public and private sectors, media and civil society. Turkey should report in writing in one year (October 2015) on the following recommendations: (i) progress made to proactively detect, investigate and prosecute foreign bribery, including against legal persons (Recommendation 3(a)-(c)); (ii) steps taken to rectify deficiencies in the legal framework for corporate liability and to enforce it (Recommendation 1); (iii) steps taken to ensure that foreign bribery investigations and prosecutions are not influenced by political considerations (Recommendation 3(d)); and (iv) adoption of measures to better protect whistleblowers (Recommendation 7(b)). The Working Group also invited Turkey to submit a written follow-up report on implementation of all recommendations and follow-up issues within two years (October 2016).

A. INTRODUCTION

1. The on-site visit

1. During 13–16 May 2014, an evaluation team from the OECD Working Group on Bribery in International Business Transactions (the Working Group), composed of lead examiners from Sweden, Russia and members of the OECD Secretariat[1], visited Ankara and Istanbul as part of the Phase 3 evaluation of Turkey's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention), the 2009 Recommendation for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Anti-Bribery Recommendation), and the 2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Tax Recommendation).

2. Before and after the on-site visit, Turkey responded to the Phase 3 questionnaire and supplementary questions, and provided responses to significant requests for information from the evaluation team, including legislation, statistics and questions about enforcement practices. During the on-site visit, the evaluation team met with representatives of key government ministries and agencies, law enforcement authorities, the judiciary, private sector and civil society.[2] The on-site visit was very well organised and well-attended, both by public and private sector representatives as well as civil society. The evaluation team expresses its appreciation to Turkey for its co-operation throughout the evaluation.

2. Summary of the monitoring steps leading to Phase 3

3. In accordance with the regular monitoring procedure that applies to all Parties to the Convention, Turkey has already undergone the following monitoring steps leading up to Phase 3: Phase 1 (November 2004); Phase 2 (December 2007); Phase 2*bis* (June 2009): Phase 2 and Phase 2*bis* Written Follow-Up Report (March 2010). As of Turkey's Phase 2 and 2*bis* Written Follow-Up Review, Turkey had implemented all Phase 2 and Phase 2*bis* recommendations, with the exception of recommendation 5(b), which was deemed partially implemented.

3. Outline of the report

4. This Report is structured as follows: Part B examines Turkey's efforts to implement and enforce the Convention and the 2009 Recommendations, having regard to group-wide and country-specific issues. Particular attention is paid to enforcement efforts and results, and weaknesses identified in previous evaluations. Part C sets out the Working Group's recommendations and issues for follow-up.

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1 Sweden was represented by: **Ms. Anne Due**, Director, Ministry for Foreign affairs, International Trade Policy Department; **Mr. Gunnar Stetler**, Director of Public Prosecution, Swedish National Anti-Corruption Unit and **Mr. Mattias Larsson**, Director of Division for Criminal Law at the Ministry of Justice. Russia was represented by **Mr. Mikhail Vinogradov**, Deputy Director of Department of International Law and Cooperation at the Ministry of Justice and **Mr. Vadim Tarkin**, Counsellor, Federal Financial Monitoring Service (Rosfinmonitoring). The OECD Secretariat was represented by **Ms. France Chain**, Senior Legal Analyst and Co-ordinator of the Phase 3 evaluation of Turkey, **Mr. Graeme Gunn**, Legal Analyst, Anti-Corruption Division and **Ms. Kathleen Kao**, Legal Analyst, Anti-Corruption Division.

2 See Annex 2 for a list of participants.

4. Economic background

5. Turkey is a geopolitically critical country at the crossroads of Europe and Asia. Located in the historic centre of the silk-road connecting China to the Mediterranean Sea, and with ports on both the Mediterranean and Black seas, the country has strategic and economic importance as a conduit between Europe, North Africa, the Middle East and Central Asia. With the 17th largest economy in the world, Turkey is a member of the G-20 and is also in accession talks with the European Union (EU). Turkey is active in regional trade and is a member of several regional and cultural treaty-based organisations that are either partially or entirely aimed toward economic cooperation. Turkey is a member of the Economic Cooperation Organization, the Organization of the Black Sea Economic Cooperation, and the Organisation of Islamic Cooperation. Turkey also has a Customs Union agreement with the EU.

6. Turkey has a large economy by Working Group standards. Based on 2012 GDP, Turkey is the 14th largest economy among the 41 Working Group members.[3] Turkey was the 22nd largest exporter of goods and services among the Working Group in 2012.[4] The Turkish economy has experienced strong export growth since 2000.[5] In 2013, the primary destination of Turkish exports was the EU, which accounted for 42% of all export activity. The EU was followed by Iraq (7.9%), Russia (4.6%), the United States (3.7%), and the United Arab Emirates (3.3%).[6] In recent years, Turkey has begun to increasingly strengthen its economic ties with its eastern neighbours. Trade between Turkey and all 22 members of the Arab League has more than doubled over the past five years to just under USD 35 billion a year.[7] Trade with Iran alone was estimated at USD 14.6 billion in 2013 and USD 6.5 billion in the first half of 2014.[8] These figures are anticipated to increase as Turkey expands its trade with the Middle East and the Far East. Notably, Turkey has dramatically increased trade volume with, and embarked on several major infrastructure projects in, Azerbaijan, Kazakhstan and Turkmenistan.

7. Turkish outward stock of foreign direct investment (FDI) followed similar trends as its exports from 2001-2010. Turkish outward FDI grew 343% in the period of 2001-2010, equivalent to an annualized growth rate of 18%.[9] In 2012, Turkey had the 33rd largest outward FDI stock among members of the Working Group. Turkish outward FDI stock, currently valued at USD 30.5 billon, is 3.89% of GDP.[10] In 2010, 50.5% of Turkish outward FDI stock was directed to the EU. Following the EU at 30.8%, Southeast Europe and the Commonwealth of Independent States (CIS) was the next largest destination of outward Turkish FDI. Of the outward FDI stock in this region, 71.8% was located in Azerbaijan. Recipient countries with over USD 200 million of Turkish outward FDI included: Moldova, Georgia, Kazakhstan and Iran.[11]

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3 International Monetary Fund, World Economic Outlook Database, April 2013.

4 Export statistics at current prices and current exchange rates from UNCTAD, UNCTADStat database.

5 OECD Economic Outlook, May 2013.

6 *Supra*, note 3. Figures were updated by the Turkish Ministry of Justice.

7 BBC, *Turkey agrees to plans for Arab "free trade zone*", 10 June 2010 (available at: http://www.bbc.com/news/10290025). Figures were updated by the Turkish Ministry of Justice.

8 The New York Times, *Iran, Turkey's New Ally?*, 29 December 2013 (available at: http://www.nytimes.com/2013/12/30/opinion/nasr-iran-turkeys-new-ally.html?_r=0). Figures were updated by the Turkish Ministry of Justice.

9 *Investment Country Profile: Turkey*, UNCTAD, February 2012 (based on data from the Central Bank of the Republic of Turkey.

10 UNCTAD, UNCTADStat FDI Database 2012.

11 See *id*.

8. Turkey has a primarily services-based economy, with that broad category representing 57.5% of GDP in 2012. Construction and contracting services represent a significant amount of Turkish domestic and international economic activity. In 2012 the construction sector accounted for 4.4% of Turkish GDP.[12] Although representing a smaller percentage of Turkey's GDP than Turkey's other main sectors[13], Turkey's construction firms are at a higher risk of exposure to foreign bribery, as can be seen from the proportion of foreign bribery allegations involving large-scale infrastructure projects (see Section A.6 below on foreign bribery cases). According to a recent report from the European International Contractors, in 2011, Turkish companies had undertaken almost 6,500 projects in 93 countries, with a total value approaching USD 205 billion.[14] In the first quarter of 2014, Turkey's Ministry of Foreign Affairs estimated the total value of all Turkish contractor projects abroad at more than USD 242 billion, representing a tenfold increase in volume of business since 2007.[15] Turkish construction companies are active in almost every country in the Eurasian market, the top nine markets being, in decreasing share: Russia, Libya, Turkmenistan, Kazakhstan, and Iraq, Qatar, Saudi Arabia, United Arab Emirates and Romania.

9. Turkey also has a crucial position relative to natural resources; its proximity to Azerbaijan, the Caspian and Central Asia, as well as to the Middle East, uniquely situates it as a link between these new producers of mineral resources with the traditional consumer states in Europe and North America.[16] Turkey is involved in various projects aimed at connecting different regions through the construction of oil or gas pipelines.

5. Turkey's foreign bribery risks and approach to corruption

10. Due to Turkey's distinctive geographical location, Turkish companies are exposed to markets presenting potentially high risks of foreign bribery. For instance, in the 2013 Corruption Perception Index (CPI), Azerbaijan came in 127th out of 177 countries, Kazakhstan 140th and Turkmenistan 168th,[17] and are widely recognised as having endemic corruption problems. In the same year, Turkey ranked 53rd out of 177 countries on Transparency International's CPI, an improvement of one rank from 54th in 2012.

11. The Turkish economy is also quite dependent on small and medium sized enterprises (SMEs), including with respect to foreign trade.[18] According to statistics issued in 2013 by the Turkish Statistical

12 Gross Domestic Product in Current Prices by Kind of Main Activity (1998-2012), TurkStat.

13 Turkey's largest sector is manufacturing, which contributed 15.6% of GDP in 2012. Other sectors of the economy contributing more than ten per cent of GDP are transport, storage and communication and retail trade. *See* Gross Domestic Product in Current Prices by Kind of Main Activity (1998-2012), TurkStat.

14 *Turkish Contracting in the International Market*, European International Contractors, 2012 (available at: http://www.eic-federation.eu/media/uploads/newsletter/2012_01_march/tca_mc.pdf). For the same period, the Turkish Ministry of Economy reported that Turkish construction companies had undertaken approximately 6,047 projects in 90 countries, worth a total value of more than USD 191 billion, with the following regional distribution: USD $83 billion in CIS, USD $48 billion the Middle East, USD $39 billion in Africa, USD $39 billion in Europe, USD $6 billion in Asia Pacific and USD $0.9 billion in the United States.

15 Turkish Ministry of Foreign Affairs, *Economic Outlook of Turkey* (available at: http://www.mfa.gov.tr/prospects-and-recent-developments-in-the-turkish-economy.en.mfa).

16 Morris, Chris (2005) *The New Turkey*, Granta Books, pp.203-227.

17 The Transparency International Corruption Perception Index ranks countries according to their perceived level of corruption in the public sector. For more information: www.transparency.org/research/cpi.

18 SMEs are defined as enterprises whose number of employees is less than 250 and annual turnover or annual balance sheets do not exceed 25 million Turkish Liras.

Institute, SMEs constitute 99.9% of the total number of Turkish enterprises,[19] and account for 59.6% of Turkish exports.[20] Turkish business organisations themselves acknowledge that Turkish SMEs commonly suffer from certain weaknesses and constraints, including lack of harmonisation with global standards, low level of cooperation, lack of institutionalisation and level of education and awareness.[21]

12. Starting in December 2013, Turkey experienced a high-profile investigation into, *inter alia*, domestic bribery, money laundering and gold smuggling, implicating officials at the highest levels of government.[22] In the beginning of 2014, the Turkish government was reported as having reassigned several hundred police officers, as well as a number of judges and prosecutors, including those originally involved in the December 2013 investigation. Shortly thereafter, the Turkish Parliament also passed a controversial law that increased the power of the executive over the judiciary[23], although some controversial provisions were subsequently declared unconstitutional by the Constitutional Court. On 1 September 2014, the prosecutor newly assigned to the December 2013 investigation issued a verdict of non-prosecution against 96 persons.[24] The Turkish government's response to the domestic bribery investigation has been largely criticized in international and Turkish media, as well as by several international organisations.[25] Turkey maintains that none of these recent developments have impacted its enforcement of foreign bribery. Risks that political interference may impact foreign bribery investigations and prosecutions remains a serious concern of the Working Group and is further discussed under section B.5.c. of the report.

13. Turkey has developed several anti-corruption strategies and action plans, including the National Action Plan for the Open Government Partnership Initiative, the Prime Ministry's Strategy for Enhancing Transparency and Strengthening the Fight against Corruption, and the Project on Strengthening the Coordination of Anti-Corruption Policies and Practices, which focus largely on domestic bribery and do

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19 Small and Medium Size Enterprises Statistics, 2013, *Turkish Statistical Institute* (available at http://www.turkstat.gov.tr/PreHaberBultenleri.do?id=15881).

20 External Trade Statistics by Enterprise Characteristics, 2011, press release by the Turkish Statistical Institute (available at http://www.turkstat.gov.tr/PreHaberBultenleri.do?id=13141).

21 A report prepared by the Small and Medium Enterprises Development Organization (KOSGEB) entitled "Enhancing the Competitiveness of SMEs in Turkey" (available at: http://www.comcec.org/UserFiles/File/%C3%BClkeraporlar%C4%B1/28_isedak_%C3%BClke_rap/T%C3%BCrkiye.pdf) notes that they usually "lack management capacity and often don't know what they don't know".

22 See "Turkey's Spiralling Corruption Scandal" (available at: http://www.worldcrunch.com/world-affairs/turkey-039-s-spiraling-corruption-scandal-a-timeline-of-events/corruption-scandal-erdogan-ergenekon-akp/c1s14598/#.U58yJCgvjcQ).

23 See "Turkey's president approves law tightening grip on judiciary" (available at: http://www.reuters.com/article/2014/02/26/us-turkey-judiciary-idUSBREA1P1MG20140226?feedType=RSS&feedName=worldNews).

24 See e.g. "Key corruption probe targeting President Erdogan's son dismissed" (available at http://www.hurriyetdailynews.com/key-corruption-probe-targeting-president-erdogans-son-dismissed.aspx?PageID=238&NID=71159&NewsCatID=338); "Prosecutors call Dec 25 operations 'attempt to overthrow gov't'" (available at: http://www.dailysabah.com/politics/2014/09/01/prosecutors-call-dec-25-operations-attempt-to-overthrow-govt); Human Rights Watch report, September 2014, p.26 (available at: http://www.hrw.org/sites/default/files/reports/turkey0914_ForUpload.pdf).

25 *See e.g.*, European Commission Turkey Progress Report 2014. *See also* "Keep your courts independent, EU to tell Turkey", Reuters (available at: http://uk.reuters.com/article/2014/10/07/uk-eu-turkey-idUKKCN0HW1H820141007 and "Turkey's leader accused of jeopardising EU bid after meddling in corruption" at http://www.telegraph.co.uk/news/worldnews/europe/turkey/10535972/Turkeys-leader-accused-of-jeopardising-EU-bid-after-meddling-in-corruption.html).

not appear to substantively address foreign bribery. The Prime Ministry's Strategic Plan for 2011-2015 alludes to foreign bribery only in noting that recent amendments to the Turkish Criminal Code were made, *inter alia*, "in order to […] be in compliance with the international conventions, to enforce the provisions of OECD Bribery Convention". The Project on Strengthening Anti-Corruption, the most relevant of the national programmes, has developed a working group on the "Determination of Risk Areas Open to Corruption as seen from Audit Reports", using data collected from notices, complaints, criminal charges and disciplinary actions taken against public officials to contribute to an assessment of which sectors are more at risk of corruption. Although the initiatives described under this project are commendable, they do not refer to foreign bribery beyond mentioning the Convention.

6. Cases involving the bribery of foreign public officials

14. Since 2000 and the entry into force of the foreign bribery offence, Turkey has finalised only two foreign bribery cases (*Case #1* and an Oil-for-Food case), both of which resulted in the acquittal of the defendants. During the on-site visit, Turkey discussed nine allegations of foreign bribery that have come to light since Turkey ratified the Anti-Bribery Convention in 2000. Four cases have been terminated due to insufficient evidence, two allegations have not resulted in any investigative steps and one case has resulted in an acquittal (*Case #1*). Turkey currently has two on-going investigations (*Cases #2* and *#3*). During the discussions, the evaluation team identified an additional tenth allegation of foreign bribery reported in Turkish media of which the Turkish authorities were unaware. These cases are discussed in more detail below, and are also discussed where relevant throughout this Report. For reasons of confidentiality, only non-identifying information is provided about these cases.

a. Completed case

15. *Case #1 – Military Supply Case*: A Turkish national allegedly paid bribes to a citizen of another Party to the Convention to win contracts to supply goods to a military base. As a result of an investigation in 2009 by the foreign State, the foreign public official pleaded guilty to bribery and money laundering. Upon learning of the allegations, the Turkish Ministry of Justice referred the issue to the Chief Public Prosecutor's Office of Ankara, which launched its own investigation, including sending a mutual legal assistance (MLA) request to the foreign State. The foreign State provided the indictment against the public official, the minutes of the plea negotiations and the court verdict. A certain number of investigative measures, such as interrogation of the suspect, search and seizure, and inquiries into activities of the suspect's company were taken by the Turkish law enforcement authorities. Ultimately, as the Prosecution was not able to prove that the accused did in fact commit the offence with which he was charged, the 4th High Criminal Court of Adana issued a verdict of acquittal.

b. On-going foreign bribery investigations

16. *Case #2 – Real Estate Case*: A Turkish businessman allegedly bribed a high-ranking official in a State not Party to the Convention in relation to the commercial development of real estate. The illicit payment was allegedly made in the form of a political donation by a company controlled by the Turkish citizen, deposited into the client account of a law firm run by a relative of the official. In 2011, a court ruling in the foreign State determined that there was "a very strong probability that the money was paid as a bribe in order to ensure that the defendant companies obtained the benefit of the proposed development" and held the consortium liable for damages. No judgment was issued against the Turkish businessman in the foreign jurisdiction. The Turkish Ministry of Justice referred the issue to the Public Prosecution Office in Ankara in 2009, transferring the file in 2012 to the Gaziantep Public Prosecution Office, which began its own investigation, including sending an MLA request to the foreign State to obtain further evidence. In December 2013, another State Party to the Convention, which had also opened an investigation into the matter, offered to provide assistance by arranging for the prosecutor working on the file to travel to

Gaziantep to meet with Turkish prosecutors. Turkey is thus waiting to receive the proffered assistance. Turkey notes that the investigation is ongoing and it involves one natural person and no legal person.

17. *Case #3 – Construction Case*: In August 2012, allegations surfaced in the media that a Turkish construction company gave a high ranking public official in a State not Party to the Convention a gift worth USD 1.3 million to win a public procurement contract. The Ankara Public Prosecutor's Office opened an investigation into the matter in 2012, but, lacking any "concrete and convincing evidence", decided not to file criminal charges. However, in 2013, Turkey received notice through an MLA request from the foreign State that an investigation was pending against the former high-ranking public official. The Ankara Prosecutor's Office therefore re-initiated the investigation into this matter and has prepared another MLA to be sent to the foreign State. Turkey notes that the investigation involves one natural person and no legal person.

c. Terminated or suspended foreign bribery investigations

18. *Case #4 – Infrastructure Case*: In December 2007, international media published allegations that public officials were bribed in a large-scale infrastructure project in a State not Party to the Convention. The foreign State awarded a EUR 418 million contract to an international consortium, a joint venture between companies from Turkey and another State Party to the Convention. These facts were brought to Turkey's attention in the course of the March 2008 meeting of the Working Group on Bribery, after which the Turkish Ministry of Justice made a denunciation to the Chief Public Prosecutor's Office against the consortium. Following the Ministry's denunciation, the Istanbul Public Prosecutor's Office initiated an investigation. In April 2009, the Istanbul Prosecutor's Office sent an MLA request to the foreign State asking for background information on the case, but the foreign authorities could not provide any evidence. The Istanbul Prosecutor's Office then sent an MLA request to the other State Party to the Convention, but that State also could not provide any documents or information on the matter. Finally, lacking sufficient evidence, the Istanbul prosecution authorities decided to close the investigation in 2012.

19. *Case # 5 – Power Supply Case*: In 2006, allegations surfaced in foreign media that a Turkish multinational firm was involved in an embezzlement scheme through its foreign subsidiary, a private power distribution company. Illicit payments were alleged to have been made as part of a larger embezzlement scheme relating to the provision of electricity in a State not Party to the Convention. In 2006, following a meeting of the Working Group, the Ministry of Justice transmitted the media reports to the Ankara Chief Public Prosecution Office. Ultimately, the Ankara Prosecutor's Office decided against prosecution. In 2008, the matter was again discussed in the Working Group, and the decision for non-prosecution was rescinded on the grounds that the documents (the media reports) constituted new evidence. A new investigation was therefore initiated against nine suspects. During the new investigation, Turkey sought MLA from the foreign State and again decided against prosecution on the grounds that no concrete evidence existed indicating that representatives of a Turkish company had bribed foreign public officials. Turkish officials came to this conclusion based on the determination that the company acting in the foreign State could not be considered a Turkish subsidiary, having been jointly established by a Turkish company with a company from the UK. In 2009, court proceedings in the foreign State resulted in the conviction and sentencing of the two Turkish representatives of the joint enterprise for embezzlement and misuse of duty. Turkey notes that only the natural person, and no legal person, was investigated in this matter.

20. *Case #6 – Electricity Supply Case*: In 2012, two senior executives of a large multi-national allegedly used a Turkish construction company as an intermediary to transmit a bribe to resolve a dispute over the supply of electricity in a State Party to the Convention. An internal company investigation confirmed that company officials used corruptive means and dismissed four executives. Two other States Parties to the Convention were involved. One State Party took only preliminary investigative steps and the stage of proceedings in the second is unknown. The Public Prosecutor's Office of Ankara opened an

investigation into this matter and sent MLA requests to the two relevant foreign jurisdictions to gather evidence in the form of witness statements, bank accounts and other financial records. Based on information from one of the MLA requests, Turkey learned that one of the States Parties had dismissed the proceedings. The Ankara Public Prosecutor's Office then "also decided not to file a criminal case" on the fact that the evidence did not "[lead] up [*sic*] to sufficient suspicion to initiate a criminal case".[26]

d. Allegations that have not resulted in proceedings to date

21. *Allegation #1 – Telecommunications Case*: In 2011, a Turkish telecom company disclosed in a regulatory filing that it had begun an internal investigation into allegations of bribery involving a partially owned subsidiary. The investigation concluded in June 2011 and was not able to substantiate any of the allegations. Turkey notes that as the inquiry conducted by Ernst & Young did not verify the allegations, no investigation by any national law enforcement authorities was ever initiated.

22. *Allegation #2 – Automotive Case*: According to an investigation in another State Party to the Convention, a Turkish subsidiary of a foreign automotive company was found to have made approximately EUR 6 million in payments to third parties in connection with vehicle export transactions, EUR 3.88 million of which were improper payments and gifts given to foreign government officials. These illicit payments were allegedly made to public officials both in Turkey, as well as in numerous foreign jurisdictions, including States Parties to the Convention. Turkey incorrectly categorizes this case as a domestic bribery case because the most serious allegations against the Turkish subsidiary related to the improper payments made to domestic Turkish officials, as reported in Turkish domestic media. In 2010, however, allegations were raised against the foreign parent automotive company and three of its subsidiaries, including a joint venture between the parent company and several Turkish companies. The Turkish joint venture was alleged to have bribed foreign public officials in 22 countries to obtain lucrative government contracts for the sale of its vehicles. In 2010, the foreign parent and the two non-Turkish subsidiaries were charged by another State Party to the Convention and entered into an out-of-court settlement with the foreign authority. Turkey maintains that it was not a Party to the Convention at the time the alleged events in question took place and that the statute of limitations in this case has expired. However, the improper payments allegedly made to the foreign jurisdictions may have occurred as late as in 2006, three years after Turkey's foreign bribery legislation entered into force. Additionally, under Turkish law, domestic bribery has a statutory period of 10 years, but the statute of limitations for foreign bribery is 15 years, and has not yet expired. Turkey has taken no investigative steps in this matter.

23. *Allegation #3 – Airport Case*: In January 2013, allegations surfaced in international and Turkish media that the government of a State not Party to the Convention entered into an unlawful agreement with a consortium of Turkish construction firms over the management of an airport. The Turkish consortium allegedly gave between USD 1.8 and 3 million to high ranking public officials in the foreign State to obtain a contract to manage the airport for five years. After the bribe was paid, the Prime Minister of the foreign State allegedly began a secret campaign to award the airport contract to the company in question. Reportedly, the foreign public official then broke the contract it had with the firm that was currently managing the airport and entered into a new agreement with the Turkish consortium. Turkey indicated during the on-site visit that it was unaware of these allegations. After the on-site visit, the Ministry of Justice sent a letter to the Ministry of Foreign Affairs transmitting information on the allegation.

24. *Allegation #4 – Power Stations Case*: In 2012, Turkish media reported that a Turkish company was banned from participating in public procurement in a foreign State due to allegations of bribe-paying to win a public tender in another State not Party to the Convention. Following the same case, in January 2013, Turkish media reported that one of the high-ranking foreign public officials alleged to have received

[26] Turkey Phase 3 questionnaire, § 1.3.7(vii).

bribes from the Turkish energy company was arrested on charges of accepting bribes. At the on-site, Turkish authorities were unaware of these allegations, but subsequently, the Ministry of Justice sent a letter to the Ministry of Foreign Affairs transmitting the relevant information.

e. Oil-for-Food cases

25. The Oil-for-Food Programme was established by the United Nations (UN) in 1995 to soften the effect of economic sanctions on Iraq by allowing Iraq to sell oil on the world market in exchange for food, medicine, and other humanitarian needs. It was discovered that the Iraqi government, politicians and UN officials were illegally profiting from the programme by accepting bribes and kickbacks. In April 2004, the UN established the Independent Inquiry Committee (IIC) to conduct an independent, high-level inquiry into the administration and management of the UN Oil-for-food Programme. The IIC Report documented a complicated and vast network of alleged illicit surcharges paid to the Iraqi government in connection with oil contracts. The Report lists approximately 139 Turkish companies allegedly involved in illicit payments in the context of the Oil-for-Food Programme.[27]

26. Of the 139 firms noted in the IIC Report, only 2 firms were found to have made promises to pay a bribe. The two firms were prosecuted, but acquitted by the 7th Aggravated Court of Ankara due to the fact that foreign bribery was not criminalised on the date the crimes were committed, the events having taken place prior to the entry into force of Turkey's foreign bribery offence. On appeal, in a decision rendered on 14 February 2013, the Supreme Court upheld the acquittal. For the purpose of this evaluation, Oil-for-Food cases are not counted in the number of investigations and cases.

Commentary

The lead examiners harbour serious concerns regarding the lack of proactivity in detecting and investigating foreign bribery. Given the size of Turkey's economy, its geopolitical importance and the high involvement of Turkish companies in geographical and industrial sectors prone to corruption, the lead examiners are surprised that national law enforcement authorities have initiated investigations into only 6 foreign bribery investigations since the entry into force of Turkey's foreign bribery legislation 14 years ago. The lead examiners have the clear impression that Turkey is still not sufficiently active in detecting, investigating and prosecuting foreign bribery cases, which is a major impediment to effective enforcement of Turkey's foreign bribery offence.

The lead examiners hold the view that efforts must be made to more proactively detect foreign bribery by engaging with relevant public agencies such as MASAK, the Tax Inspection Board, Turkey's network of embassies, the accounting and auditing profession, Turkish media and other stakeholders, as well as offering clear and explicit protection to whistleblowers – aspects which are all further developed in this Report. The lead examiners also recommend that Turkey take a more proactive approach with respect to foreign bribery investigations.

[27] Turkey Phase 2 Report, §§17-19.

B. IMPLEMENTATION AND APPLICATION BY TURKEY OF THE CONVENTION AND THE 2009 RECOMMENDATIONS

27. This part of the report considers the approach of Turkey to key group-wide, cross-cutting (horizontal) issues identified by the Working Group for the evaluation of all Parties subject to Phase 3. Where applicable, consideration is also given to country-specific (vertical) issues arising from progress made by Turkey on weaknesses identified in Phase 2 or 2*bis*, or issues raised by changes in the domestic legislation or institutional framework of Turkey.

1. Foreign bribery offence

28. Turkey's foreign bribery offence in article 252 of the Criminal Code (CC) was amended on 5 July 2012 by Law Number 6352.[28] Overall, the amendments strengthen Turkey's compliance with Article 1 of the Convention. The current offence retains several aspects of the offence that was considered by the Working Group in Phase 2.[29] However, the definition of foreign public official has been broadened to include persons "carrying out a public activity for a foreign country including public institutions and public enterprises"[30] and the new offence expressly establishes that an intermediary may be held liable for bribery.[31] As was the case in Phase 2, the current offence provides for a sentence of imprisonment of between 4 to 12 years and allows for confiscation (see below Sections B.3 on Sanctions and B.4 on Confiscation). Turkey also continues to exclude the effective regret defence from foreign bribery cases[32], a measure which was implemented in response to Phase 2.[33]

29. Article 252 of the CC criminalises foreign and domestic bribery. The foreign bribery offence is comprised primarily of articles 252(1) and (9). Article 252(1) imposes a penalty of imprisonment of 4 to 12 years on any person who provides any undue advantage, directly or through intermediaries, to a public official or to anyone else "to be indicated by" the public official. Article 252(9) applies article 252(1) and all other provisions of article 252 to bribery of a foreign public official and defines this concept. Article 252(3) clarifies that an agreement to bribe is a complete offence, article 252(4) reduces the penalty of imprisonment by half if a bribe is offered but not accepted (the application to foreign bribery is not entirely clear as discussed below) and article 252(5) imposes criminal liability on intermediaries involved in bribery.

a. To offer or promise a bribe

30. It is clear that offering or promising a bribe to a foreign official is a complete offence under Turkish law.[34] However, it is unclear whether article 252(9) or article 252(4) would apply to a bribe

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28 Relevant legislative extracts, including the new foreign bribery offence, are set out in Annex 4.

29 Turkey Phase 2 Report, §§145-171.

30 Article 252(9)(d) of the CC.

31 Article 252(5) of the CC.

32 Article 254 of the CC establishes an effective regret defence for general bribery offences, the application of which does not extend to "persons who bribe foreign public officials" (Article 254(4)). At the on-site visit, judges and prosecutors confirmed that the effective regret defence would not apply even if a bribe was paid through an intermediary.

33 Turkey Phase 2 and *2bis* Written Follow-Up Report, p.23, recommendation 9.

34 Article 252(9) of the CC.

offered or promised to a foreign public official. Article 252(9) refers to a bribe that is "offered or promised" and could apply to cases where an offer is made to a foreign public official since it specifically relates to foreign bribery. The Ministry of Justice and a judge at the on-site visit favoured this interpretation and emphasised that 252(4) relates to domestic bribery only. The Ministry of Justice also reiterated its position after the onsite. Article 252(4) covers the situation where "a person offers or promises [a bribe] but this is not accepted". Confusion arises because article 252(9) operates in light of all preceding provisions (arguably including 252(4)), thus article 252(4) may be the prevailing provision in cases involving an offer of bribery to a foreign official. This alternative interpretation was supported by another judge and a prosecutor during the on-site visit. In any event, the offer or promise of a bribe is clearly covered, in line with the requirements of Article 1 of the Convention. The only difference is that offences against article 252(4) are subject to a lesser penalty than under article 252(9) (see below Section B.3 of this report on Sanctions). For this reason, a follow-up by the Working Group may be necessary to ascertain which provision is applied in practice.

b. Definition of foreign public official

31. Turkey has broadened its definition of foreign public official. In Phase 2, the Working Group agreed to follow up on whether Turkey's definition would cover a foreign official – of a country or a public international organisation – who has not been appointed or elected under law or is not holding a legislative, administrative or judicial office (such as a procurement officer).[35] With respect to government officials, this situation is now clearly covered by the phrase "the persons carrying out a public activity for a foreign country including public institutions and public enterprises" in article 252(9)(d) of the CC. With respect to officials of public international organisations, the situation is covered by the phrase "the officials or representatives of international, or supranational public organisations established on the basis of an international agreement" in article 252(9)(f) of the CC.

c. Advantage for a third party

32. In Turkey's Phase 2 evaluation, the Working Group agreed to follow up on whether the situation where a bribe is for the benefit of a third party, such as a family member, political party or charity, is effectively covered.[36] Article 252(1) of the CC covers bribery to a "public official or anyone else to be indicated by the public official". The phrase "indicated by the public official" was added in 2012 with the intent to expand the scope of liability for bribes paid to third party beneficiaries.

33. However, it is unclear how this aspect of article 252(1) would be applied in practice, including what test would be applied in order to demonstrate that an official "indicated" a beneficiary. For example, it is not clear whether the prosecution would be required to prove that the official actually instructed the bribe payer in relation to the recipient of the bribe. At the on-site visit, Turkish authorities explained using case examples the practical investigative measures that could be taken to prove a link between the foreign official and the beneficiary, such as examining bank records.

d. Qualified and simple bribery

34. In Phases 1 and 2, the Working Group raised concerns about the consequences of the differentiation in Turkey's law between "qualified" and "simple" bribery.[37] Follow-up issues were

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35 Turkey Phase 2 report, follow-up item 17(d)(iv).

36 Turkey Phase 2 report, follow-up items 17(d)(iii).

37 In summary, qualified bribery is to obtain or maintain an undue benefit and simple bribery is to ensure the performance or non-performance of a task.

identified in Phases 1 and 2 on the basis of these concerns: (i) whether bribery to obtain an abuse of discretion in decision-making by a foreign public official is covered; (ii) whether bribery to obtain the use of a foreign public official's position outside his or her authorised competence is covered; and (iii) whether the courts would interpret the offence as covering both qualified and simple bribery.[38] Turkey has addressed these concerns by removing the distinction between qualified and simple bribery and adding a clearer and broader definition of bribery. The amended offence defines bribery as an undue advantage offered or made to a foreign public official "in order to act or refrain from acting in the exercise of [the official's] duties" (article 252(9) of the CC), consistent with the requirements of Article 1 of the Convention.

Commentary

The lead examiners commend Turkey for making amendments to the Criminal Code that strengthen Turkey's compliance with Article 1 of the Convention and address several follow-up issues identified in Phase 2. In the absence of case law to date, the lead examiners recommend that the Working Group follow up as practice develops on (i) the application of articles 252(4) and 252(9) of the Criminal Code to bribes offered or promised to foreign public officials and (ii) the practical application of the phrase "to be indicated" in article 252(1) in relation to bribes provided to a third party beneficiary, such as a family member of an official, a political party or a charity.

2. Responsibility of legal persons

35. In 2005, Turkey repealed its liability of legal persons for acts of foreign bribery with the enactment of its new CC. Consequently, in the context of Turkey's Phase 2 evaluation in 2007, the Working Group recommended that Turkey "urgently re-establish" the liability of legal persons.[39] In January 2009, a draft law was introduced in Parliament to establish the liability of legal persons for acts of foreign bribery. This draft law was discussed during the Phase 2*bis* evaluation of Turkey.[40] Following adoption of the law in June 2009, the Working Group recommended that "in Phase 3, the Working Group […] undertake an assessment of the new legal provisions on corporate liability."[41]

36. Article 43/A of the Code of Misdemeanours (CM), which came into force on 26 June 2009, re-establishes liability of legal persons in Turkey for a limited number of offences, including foreign bribery.[42] Under Turkey's Constitution, since legal persons cannot be held criminally liable,[43] corporate liability is administrative in nature (hence the placement of the provision in the CM). Turkey also refers to article 60 of the CC as providing liability for legal persons; however, this provision only provides for the application of certain sanctions on legal persons in the event of the conviction of a natural person (see also below Section B.2.e. below on sanctions against legal persons).[44] Overall, Turkey's corporate liability regime raises concerns in respect of several requirements under the Convention and 2009 Anti-Bribery Recommendation, notably with respect to the coverage of state-owned and state-controlled enterprises

38 Turkey Phase 2 report, follow-up items 17(d)(i)-(ii).

39 Turkey Phase 2 report, recommendation 14.

40 Turkey Phase 2*bis* Report, §§50-65 and Annex B.

41 Turkey Phase 2 and 2*bis* Written Follow-Up Report, § 3.

42 See Annex 4 for legislative excerpts.

43 Article 38 of Turkey's Constitution provides that "Criminal responsibility shall be personal".

44 Turkey Phase 2 report §179 outlining why article 60 of the CC does not constitute adequate liability of legal persons.

(SOEs and SCEs), the interdependency between proceedings against the natural person and the legal person, the need to establish a benefit of the legal person, and the level of sanctions. Most of these issues were already raised by the Working Group when it considered Turkey's then draft law, at the time of the Phase 2*bis* evaluation. Regrettably, the Working Group's concerns were not taken on board when the law was adopted.

a. Legal entities subject to liability

37. Article 43/A of the CM applies to "a civil legal person". The responses provided by Turkey as to whether this would include Turkish SOEs and SCEs were, at best, unclear, and raise serious doubts as to whether this type of legal person could be prosecuted and sanctioned for foreign bribery.

38. In the responses to the Phase 3 Questionnaire, Turkey indicates that the terminology "civil legal person" is intended to cover private law legal persons, which include "associations, foundations, unions, confederations, political parties, commercial companies (collective, limited, commandite and joint stock companies) and attorney partnerships". Article 43/A of the CM does not, however, apply to companies which are under the audit of the Court of Accounts. Companies that are over 50% state-owned are audited by the Court of Accounts and fall outside the remit of article 43/A. During the on-site visit, representatives of the Ministry of Justice further explained that private law legal persons do not include any company in which the State owns more than 50% of the shares. One representative expressed the view that it would not make sense to impose fines on SOEs or SCEs, as it would amount to "taking money from one pocket of the State to put it in the other", although the Ministry of Justice indicated it did not officially support that view. As of the time of this report, there is no case-law available holding a state-owned or state-controlled legal person liable for any offence.

b. Link between the liability of the natural person and the legal person

39. The 2009 Anti-Bribery Recommendation provides, in its Annex I, some guidance as to how an effective corporate liability system should operate. In particular, it specifies that (i) the liability of legal persons should not be restricted to cases where the natural person who perpetrated the offence is prosecuted or convicted[45], and (ii) the regime should be broad enough to reflect the wide range of decision-making powers in a corporate structure.[46]

(i) Impact of the prosecution or conviction of the natural person

40. Article 43/A of the CM does not expressly state whether a natural person must be identified, prosecuted or convicted in order to proceed against a legal person. However, the wording in article 43/A, as well as explanations provided by the Ministry of Justice, prosecution authorities and judges during the on-site visit raise some doubts that prosecutions against legal persons may take place in the absence of prosecutions and/or convictions against a natural person.

41. The chapeau of article 43/A of the CM states that "the legal person shall also be penalized" [emphasis added], which runs the risk of the provision being interpreted as requiring the conviction of a natural person in order to sanction the legal person.[47] This interpretation was confirmed during discussions

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45 See Section B, paragraph 1 of the 2009 Anti-Bribery Recommendation.

46 *Ibid*, Section B, paragraph 2a. and b.

47 See Turkey Phase 2*bis* Report, § 56.
Note: this provision was only draft law stage at the time of Turkey's Phase 2*bis*. However, article 43/A of the CM, as passed in June 2009, is the same as the draft provision considered by the Working Group at the time of the Phase 2*bis*.

with Ministry of Justice officials, prosecutors and judges at the on-site visit. It appeared clearly from explanations provided that at least a prosecution against a natural person is necessary to proceed against a legal person. This is essentially due to the fact that the competent court to impose administrative fines on legal persons is the one commissioned to try the offences listed under article 43/A. For foreign bribery offences, the criminal courts have competence. Therefore, a criminal procedure must be initiated against a natural person for the case to be brought before the criminal courts. Criminal courts would not be able to hear a case solely seeking to establish the administrative liability of a legal person as provided under article 43/A of the CM.

42. Even more worryingly, certain panellists expressed the view that not only a prosecution, but a conviction of the natural person would be necessary to be able to sanction the legal person. This interpretation may stem from a certain amount of confusion – which was apparent in several discussions with prosecutors, judges and Ministry of Justice representatives at the on-site – between liability of legal persons under article 43/A of the CM, and the possibility of imposing "special security measures" on legal persons under article 60 of the CC, the application of the latter being clearly dependent on the conviction of a natural person (for further discussion on "special security measures" under article 60 of the CC, see also sub-sections B.2.e(ii) and (iv) below).

43. Following the on-site visit, Turkey expressed the view that conviction of the natural person is not a pre-requisite to sanctioning the legal person. According to Turkey, if a natural person is not prosecuted in exceptional circumstances (such as death, pardon or similar reasons), there is no obstacle to imposing an administrative fine on the legal person. As of the time of this review, no legal person has been prosecuted in the absence of proceedings against a natural person.

(ii) Level of authority of the natural person whose conduct may trigger corporate liability

44. Article 43/A provides for liability of the legal person where an offence has been committed by "an organ or a representative of a civil legal person; or; a person, who is not the organ or representative, but undertakes a duty within the scope of that legal person's operational framework". At the time of the Phase 2*bis*, the Turkish authorities explained that the terminology is meant to apply as follows: "organ" denotes any decision-making or supervisory body within the company's structure; "representative" covers any agent of the company who is legally authorised to represent the company, even if not an employee of the company; and "a person […] who undertakes a duty within the scope of that legal person`s operational framework" should be understood as any employee of the company, regardless of his/her position, seniority, type of functions, part-time/full-time employment, etc."[48] This broad interpretation was confirmed during the discussions at the Phase 3 on-site visit, but is, as of the time of this review, not supported by case-law, and will need to be followed up as practice develops. If future court decisions support this interpretation, then the provision would appear very broad in scope, including in its coverage of the foreign bribery acts of any employee.

c. Requirement for a benefit to the legal person

45. Article 43/A provides for corporate liability where the offence has been committed "to the benefit of that legal person" [emphasis added]. This raises questions (1) as to what may be considered a "benefit", as well as (2) regarding liability of legal persons for bribery by an intermediary, including a related legal person.

46. Article 43/A does not provide a definition of what the term "benefit" would include. According to Turkey, court decisions have interpreted the term "benefit" to include any and all kind of financial and

[48] Turkey Phase 2*bis* Report, §65.

non-financial gains which improve the economic or legal status of a legal person. Following the on-site visit, Turkey also argues that, because under article 252 of the CC the offence is constituted with a mere offer or promise, the need to show a benefit for the legal person would not be necessary.

47. However, as already pointed out by the Working Group at the time of the Phase 2*bis*, corporate liability might not apply to the case where a legal person bribes on behalf of a related legal person, such as a subsidiary (including a foreign subsidiary), holding company, or member of the same industrial group, since the act and the benefit cannot be attributed to the same legal person.[49] At the time of the Phase 2*bis*, Turkey expressed the view that it would be possible to prosecute the legal person who bribed on behalf of a related company through complicity provisions.[50] In Phase 3, Turkey linked the responsibility of the legal person for acts of related legal persons back to the responsibility of the natural person, including for bribery through intermediaries. Panellists at the on-site visit indicated that a Turkish company may be liable for foreign bribery committed by its subsidiary, if the subsidiary is opened through Turkish natural persons and these persons commit foreign bribery within the framework of operations of the subsidiary. Following the on-site visit, Turkey provided additional explanations: in Turkey's view, a company would be liable for bribery committed through a related legal person since article 252 of the CC clearly lays out responsibility for bribery through intermediaries, regardless of whether a natural or legal person is involved. There is however no available case law in support of these different interpretations.

d. Proceedings against legal persons in practice

48. Turkey explains that administrative proceedings against legal persons are directly linked to the offences listed under paragraph 1 of article 43/A of the CM. Consequently, all the criminal procedure rules applicable to proceedings against a natural person for a foreign bribery offence also apply in respect of legal persons, including with respect to the statute of limitations, jurisdiction and available investigative tools (see Section B.5 below on Investigation and prosecution of foreign bribery for a more detailed discussion). Turkey's reasoning is that the criminal procedure rules apply because proceedings will necessarily be conducted jointly against natural and legal persons. In the absence of experience of investigation or prosecution of legal persons in foreign bribery cases to date, this should be monitored.

49. As concerns application of corporate liability, Turkey has limited experience in enforcing administrative liability of legal persons for bribery offences. Since the entry into force of article 43/A of the CM in 2009, no legal person has been sanctioned for any offence under article 43/A to date, and only one prosecution has taken place (not in relation to foreign bribery but concerning importation fraud – see below).

50. Regarding investigations, Turkey provided statistical data on files in which both natural and legal persons were investigated together (there are no instances of investigations only into the legal person). Between 2009 and 2013, Turkey reports 3 investigations still ongoing for offences of bribery and money laundering (article 252 and 282 CC), and 5 ongoing investigations for offences of bribery and false accounting (article 252 CC and article 359 of the Tax Procedure Code (TPC)). Over the same period, 18 investigations were completed for offences of bribery and money laundering, and 12 for offences of bribery and false accounting. Only one investigation concerned foreign bribery: in *Case #6 – Electricity Supply Case*, the Ankara Public Prosecutor's Office investigated three natural persons and one legal person. The file was subsequently closed on the basis of insufficient evidence. None of the investigations mentioned above resulted in the prosecution of a legal person. This should be considered in comparison to

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49 Section C of Annex I to the 2009 Anti-Bribery Recommendation asks countries to ensure that "a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to offer, promise or give a bribe to a foreign public official on its behalf."

50 *Ibid.*, §63.

the 10 208 prosecutions against natural persons between 2009-2013 for bribery offences under article 252 of the CC.

51. As of the time of this review, the only prosecution against a legal person under article 43/A is a 2012 case concerning tax fraud on importation, and counterfeiting documents for the importation of cage wire. An indictment was filed against several natural persons and two legal persons in January 2013. As of the time of this review, the proceedings were still ongoing before the 1st Instance Criminal Court of Gebze.

e. Sanctions against legal persons

(i) Monetary sanctions

52. At the time of adoption of article 43/A of the CM, the range of sanctions applicable to legal persons under article 43/A of the CM ranged from TRY 10 000 to 2 million (approx. EUR 3 500 to 700 000).[51] These administrative fines are increased annually and, in 2014, reached TRY 13 827 to 2 765 440 (approx. EUR 4 830 to 966 000). It is questionable whether this would meet the criteria of "effective, proportionate and dissuasive sanctions" under Article 3 of the Anti-Bribery Convention, especially given even the maximum sanction may be considered relatively small for large multinational corporations where the gain from the bribery-tainted contracts may reach several hundred million euros.

53. At the time of the Phase 2*bis*, the Working Group had already raised concerns in respect of the level of sanctions, explaining that "major aspects of the Turkish economy provide opportunities for substantial international business contracts in neighbouring countries, thus necessitating a high maximum monetary sanction: 1. Turkey's unique position as a gateway for doing business in the Middle East and Central Asia; and 2. Turkey's proximity to substantial oil and gas markets in the Caspian and Central Asia." The Report further notes that "the maximum level of sanctions should reflect that Turkey has a very large and successful construction sector, which is active in the region and globally. Companies from this sector often compete for major infrastructure and public works projects, particularly in neighbouring countries."[52]

54. Private sector lawyers interviewed during the on-site visit expressed the view that the low level of sanctions applicable to companies for foreign bribery, as well as the perception that companies run little risk of being prosecuted for foreign bribery, has meant that Turkish companies are not as eager as their counterparts in other countries to put in place compliance mechanisms in this field. By comparison, anti-trust offences carry maximum penalties of up to 10% of the turnover of the company; as a result Turkish corporations are as eager as any of their competitors to develop compliance programmes in that area.

(ii) Confiscation of the bribe and proceeds of bribery

55. Articles 54 and 55 of the CC regulate confiscation of the bribe ("property used for committing an intentional offence") and the proceeds of bribery ("material gain obtained through the commission of an offence"). (See Section B.4 below for a detailed discussion of confiscation.) Article 60 of the CC on "special security measures" provides for the application of articles 54 and 55 to legal persons "in relation to offences committed for the benefit of such entities."[53] In Phase 2*bis*, this was considered problematic as it was interpreted to require the conviction of the natural person who committed the offence. In Phase 3, following the on-site visit, Turkey indicated that the prior conviction of the natural person would not be

51 As of 1 June 2014, 1 Turkish Lira (TRY) = 0.35 euro (EUR) = 0.48 USD.

52 Turkey Phase 2*bis* Report, §59.

53 See legislative extracts in Annex 4.

necessary, and that the conviction of the legal person under article 43/A of the CM would be sufficient to allow for the imposition of confiscation measures on legal persons under articles 54 and 55 of the CC, although no case law was provided in support of this assertion. Turkey has provided no example of confiscation measures imposed on legal persons, whether for foreign bribery or other offences – a deficiency already noted by the Working Group at the time of Turkey's Phase 2*bis* evaluation.[54] The examples provided by Turkey in its responses to the Phase 3 questionnaire only relate to confiscation imposed on natural persons (see also Section B.4 below on Confiscation).

(iii) Debarment and prohibition from receiving public subsidies

56. Debarment from public procurement is not directly pronounced by the criminal courts, but is a necessary resulting effect of foreign bribery convictions. The duration of the exclusion from public procurement for legal persons is unclear, as article 11 of the Public Procurement Law states that it is equivalent to the "term of the sentence". Court decisions are published within 15 days and enter into force upon their publication; public procurement agencies are then obliged to take them into account in procurement decisions. A company that has been sanctioned for (foreign) bribery and applies for public procurement contracts anyway may also be subject to an additional one to two-year exclusion. Similar obligations exist with respect to other forms of public support such as official development assistance and export credits. (See also Section B.11 below on Public advantages.)

(iv) Other sanctions – Dissolution of the entity

57. Article 60 of the CC also foresees the possibility of a "special security measure" in the form of revoking a legal entity's operating licence. This provision does not appear to have ever been imposed on a company in a bribery case. Moreover, the winding up of the legal entity may, depending on the case, be considered inappropriate and disproportionate to the act committed.

f. Related offences of money laundering and false accounting

58. Article 43/A of the CM explicitly states that money laundering is an offence for which legal persons may be held liable. (For further discussion of money laundering issues, see Section B.6 below.)

59. On the other hand, false accounting does not appear to be an offence for which legal persons can be held liable, whether under article 43/A of the CM or article 359 of the TPC. (See Section B.7 below on Accounting for further discussion on liability of legal persons for false accounting offences.)

Commentary

Turkey's corporate liability regime raises concerns in respects of several requirements under the Anti-Bribery Convention and Annex I to the 2009 Anti-Bribery Recommendation. The lead examiners therefore recommend that Turkey amend its law or otherwise expressly clarify that (i) all Turkish legal persons, including state-owned and state-controlled enterprises, can be held liable for foreign bribery; and (ii) legal persons may be held liable for foreign bribery without prior prosecution or conviction of a natural person.

Furthermore, they recommend that the Working Group follow up on the application in practice of article 43/A of the Code of Misdemeanours in particular to ensure that (i) the level of authority of the natural person whose conduct triggers the liability of the legal person is

54 *Ibid.*, §60.

sufficiently flexible to reflect the wide variety of decision-making systems; and (ii) legal persons cannot avoid responsibility by using intermediaries, including related legal persons.

The lead examiners also recommend that Turkey increase the level of sanctions applicable to legal persons for foreign bribery to ensure they are effective, proportionate and dissuasive. They further recommend that Turkey take all necessary measures to ensure that confiscation of the bribe and proceeds of bribery (or monetary sanctions of comparable effect) may be imposed on legal persons without prior conviction of a natural person.

The lead examiners are further concerned that, in spite of the re-establishment of a corporate liability regime in Turkey in 2009, no cases against legal persons have been finalised for any offence over the past five years, only one prosecution is underway (not in a foreign bribery case), and no investigations into legal persons are ongoing in the foreign bribery cases currently under investigation. The lead examiners welcome the general training provided by Turkey to prosecutors and judges on the Anti-Bribery Convention and 2009 Anti-Bribery Recommendation, but consider that more emphasis may wish to be put on the corporate liability issues. They therefore recommend that Turkey promptly draw the attention of prosecutors to the importance of effectively applying liability to legal persons in foreign bribery cases, and provide training on the functioning of corporate liability in Turkey under article 43/A of the CM.

3. Sanctions

60. In Phase 2, the Working Group did not identify any major issues with Turkey's sanctions regime and decided only to follow up on sanctions imposed in foreign bribery cases. Accordingly, this section will primarily address how effective Turkey's sanctions regime appears to be in practice. The primary deficiency appears to be the absence of any monetary penalties as an alternative to an imprisonment sentence. (See also Section B.2.e. above for problems relating to Sanctions against legal persons.)

a. Imprisonment sanctions

61. Turkey's sanctions regime has not changed since Phase 2. Turkish law penalises foreign bribery only in the form of deprivation of liberty and not by any pecuniary sanctions. The newly amended article 252 of the CC, governing the giving and receiving of a bribe, imposes a term of imprisonment of 4 to 12 years for the bribery of a foreign public official, whether directly or through an intermediary. Any persons acting as intermediaries or third party beneficiaries shall also be punished in the same manner as the principle offender. The penalty for giving a bribe is identical to the sanctions imposed on a public official for accepting a bribe.

62. Article 252 contains two provisions that may be read as providing mitigating and aggravating circumstances. Turkish authorities pointed out that in cases of domestic bribery, article 252(4) reduces by half the penalty for someone who offers or promises a bribe in cases where the public official rejects the bribe; thus in cases where the public official does not accept the bribe, the perpetrator would benefit from a reduced penalty of two to six years. However, discussions at the on-site visit revealed confusion among Turkish judges and prosecutors as to the applicability of article 252(4) versus 252(9) in the context of foreign bribery (see above Section B.1. on the foreign bribery offence). Article 252(7) provides for increased sanctions when the public official accepting the bribe belongs to a certain class of officials, such as judges, notaries or auditors.

63. Under Turkish law, short-term penalties of imprisonment (defined by article 49 of the CC as one year or less) may be converted into alternative forms of punishment. However, as the minimum limit for

punishment of foreign bribery is four years (or in cases of reduction, two years), it is not possible under Turkish law to convert the prison sentence into a fine (as governed by article 50 of the CC), defer the prison sentence (as under article 51), suspend the pronouncement of the judgment (article 231-5 of the Criminal Procedure Code (CPC)) or defer the filing of a public action (article 171/4 of the CPC). Further, Turkish law does not provide for plea-bargaining or deferred prosecution. Finally, in foreign bribery cases, defendants cannot avail themselves of the effective regret provision (see above, Section B.1.).

64. Private sector lawyers interviewed during the on-site visit pointed to several aspects of Turkey's sanctions regime that could be improved. Some advocated for the imposition of monetary penalties in addition to custodial penalties. Although pecuniary sanctions are available for certain types of crimes (those categorised as generating illicit gains, such as prostitution or gambling), they are not available for certain economic crimes (such as embezzlement and extortion and bribery offences). Proponents of a monetary penalty remarked that fines have been successful in the punishment of other crimes. The application of monetary penalties to the foreign bribery offence is currently under discussion. When asked whether panellists thought a minimum sanction of four years (with no option of a monetary penalty) might deter companies from self-reporting or dissuade judges from convicting individuals for whom they believed the minimum penalty to be too harsh, panellists responded in the negative to both. Panellists agreed that the primary deterrent in self-reporting was not the range of sanctions, but the necessity of breaking the "chain of trust" between those involved. However, panellists generally agreed that penalties could be considered severe for an economic crime. One legal expert stated that, in his opinion, defendants do not believe that courts will actually impose a prison term of 4 to 12 years (a sentence that is on par with those imposed for some violent crimes) for an economic crime.

65. In the absence of foreign bribery convictions, in Phase 2, the Working Group drew from statistics on active domestic bribery cases for guidance. Since Phase 2, Turkey has provided statistics for only one year on the number of convictions: Turkey reported having 536 prosecutions in 2008, of which 133 resulted in convictions and 120 resulted in acquittals.[55] Lacking more detailed statistics on the nature and level of sanctions imposed, it is still not possible to ascertain whether Turkey's sanctions regime is effective, proportionate and dissuasive in practice.

b. Other sanctions

66. Article 53 of the CC provides for the deprivation of certain rights (such as voting or exercising other political rights or being elected to office). Various other acts[56] prohibit a person convicted of bribing a foreign public official from, *inter alia*, from the following:

- Acting as the administrator or inspector of a legal entity;
- Conducting any profession or trade, which is subject to licensing by a professional organization;
- Acting as a founder, director or manager of a bank;
- Acting as a shareholder, or have qualified shares, of a bank;
- Being an independent auditor of a bank;
- Having qualified shares in the capital of a financial holding company;
- Participating in public procurement (see more in Section B.11. below on Public advantages);

55 Turkey Phase 2 and 2*bis* Written Follow-Up Report, Annex 1.

56 See e.g., the Banking Law No. 5411, the Regulation on Authorization and Activities of Institutions to Perform Independently Auditing at Banks, the Regulation on the Appointment and Activities of Institutions Providing Valuation Services to Banks, the Regulation on the Financial Holding Companies, the Regulation on the Appointment and Activities of Rating Agencies, the Regulation on Support Services Procured by Banks, Law No. 6361 on Financial Leasing, Factoring and Financing Companies and the Law No. 5464 on Bank Cards and Credit Cards.

— Carrying out a public tender (see more in Section B.11. below on Public advantages).

Commentary

The lead examiners are concerned that monetary penalties cannot be applied to natural persons for foreign bribery. This may affect the effective, proportionate and dissuasive character of sanctions in Turkey for the foreign bribery offence. Given that monetary sanctions are a fundamental deterrent for economic offences such as foreign bribery,[57] the lead examiners encourage Turkey to consider making available fines as well as imprisonment as available sanctions in foreign bribery cases against natural persons. They also recommend that the Working Group monitor the application of sanctions in foreign bribery cases as practice develops to ensure that they are effective, proportionate and dissuasive. To this end, they encourage Turkey to maintain detailed statistics on sanctions imposed in foreign bribery cases as they arise.

4. Confiscation of the bribe and the proceeds of bribery

67. In Phase 2, the Working Group did not note any major issues with Turkey's confiscation regime, but recommended that Turkey raise awareness of confiscation and forfeiture among prosecutors.[58] At the time of its Written Follow-Up, Turkey reported that it had issued a circular instructing prosecutors to seek confiscation upon conviction where appropriate. Further, Turkey indicated that it had included the topic of confiscation in foreign bribery cases in training programmes for prosecutors and judges.[59]

a. General confiscation regime

68. Under Turkish law, confiscation may be sought upon conviction. General confiscation principles described in the Criminal Code apply to the offence of foreign bribery, as well as to natural and legal persons (for information on confiscation from legal persons, see Section B.2.e. above). Article 54 of the CC allows for the confiscation of property or goods (not belonging to a third party acting in good faith) used in the commission of an intentional offence or allocated for the purpose of committing an intentional offence. Property that has emerged as result of an offence is also subject to confiscation. Where such property cannot be confiscated because it has been destroyed, disposed of, consumed, or is unavailable for any other reason, a monetary sum equivalent of the value of the property shall be confiscated. Confiscation is discretionary if the confiscation of property used in an offence would lead to more serious consequences than the offence itself and would be unfair. In that case, a court may choose not to order confiscation.

69. Article 55 of the CC allows for confiscation of proceeds of bribery. Material gain, including economic earnings gained as a result of the investment or conversion of such illicit proceeds, obtained through the commission of an intentional offence, forming the subject of an offence or allocated for the commission of an offence are subject to confiscation. Where such assets subject to confiscation cannot be seized or provided to the authorities, a corresponding value can be confiscated.

70. Turkish law also permits seizure of "[m]aterials likely to be useful as means of proof" or the value of property subject to confiscation.[60] In cases where the individual who carries the evidence refuses

57 As noted in earlier reports of the Working Group, such as the Phase 3 of Italy (§§54-60 and recommendation 3a) and New-Zealand (§§39-40 and recommendation 4a).

58 Turkey Phase 2 report, Commentary following §200.

59 Turkey Phase 2 and 2*bis* Written Follow-Up Report, p.25.

60 Article 123 of the CPC.

to surrender it voluntarily, such item or items may be seized by force. Article 127 of the CPC stipulates that law enforcement authorities may seize assets upon a judicial decision or, if there is "peril in delay", upon the written order of the public prosecutor; in cases where it is not possible to reach the public prosecutor, the "superior" of the responsible law enforcement agency may authorize seizure of assets. Turkish authorities may therefore seize the proceeds of bribery in the course of an investigation or prosecution where a decision on confiscation has not yet been rendered.

b. Confiscation in practice

71. As Turkey has not yet obtained a conviction for foreign bribery, Turkish authorities could discuss confiscation only in the context of domestic bribery cases. Prior to the on-site visit, Turkish authorities provided information on two cases of confiscation, both concerning instances of petty bribery in which the accused attempted to bribe a police officer to avoid traffic penalties. In both cases, the bribe was rejected by the public official and a corresponding amount (USD 100 in one case) was confiscated upon conviction of the briber. During the on-site visit, representatives of the judiciary could not recall any instances where the proceeds of a bribe were confiscated from the active briber. Judicial representatives could provide examples only of confiscation of the bribe itself from the hands of the bribe recipient (i.e., the Turkish public official) or a third party, even when specifically asked about confiscation of the illicit gain. The inclination of judges to mention only the confiscation from the hands of the public official affirms the propensity of law enforcement officials to focus on confiscation of the bribe payment itself.

72. Following the on-site visit, Turkey provided statistics on confiscation under article 55(1) CC, governing the confiscation of, *inter alia*, material gain obtained through the commission of an offence. According to this information, in the preceding 5 years, Turkey has confiscated the proceeds of bribery in 11 cases. The amounts confiscated were not provided.

Commentary

The lead examiners note that in the last 5 years, Turkey has confiscated bribe proceeds in only 11 cases. The lead examiners therefore recommend that Turkey draw the attention of judges and prosecutors to the importance of seeking confiscation of the bribe proceeds from the active briber in foreign bribery cases. The lead examiners also recommend that Turkey ensure that confiscation of the bribe proceeds is actually sought upon conviction.

5. Investigation and prosecution of the foreign bribery offence

73. This section reviews Turkey's framework for criminal enforcement of foreign bribery, including the competent law enforcement agencies and their expertise, as well as principles concerning the commencement and termination of foreign bribery investigations and prosecutions. The key issue of independence and conformity with Article 5 of the Convention is also reviewed. Finally, principles of territorial and nationality jurisdiction, as well as statute of limitations are discussed.

a. Enforcement agencies, resources and training

74. Foreign bribery investigations and prosecutions are within the exclusive competence of the Public Prosecutor's Office (PPO). Discussions at the on-site brought to light issues of concern in relation to the level of resources available in the PPOs, as well as training, notably in the police.

(i) Foreign bribery: an exclusive competence of the Public Prosecutor's Office

75. Under article 19 of Law 3628 on Declaration of Property and the Fight against Bribery and Corruption, the PPO has exclusive competence for initiating "directly and in person" any corruption

investigation, including on foreign bribery. The prosecutor is therefore in charge of all aspects of the investigation and prosecution of a foreign bribery case, although he/she may call on the police to provide support if necessary.

76. Specialized bureaus to conduct investigations related to financial crimes (not limited to foreign bribery) have been instituted in the Chief Public Prosecutors' Offices of Ankara, Bakırköy, Batman, Diyarbakır, İstanbul, İstanbul Anadolu, Mersin, and Ordu, with 26 prosecutors assigned to them. Over the period 2009-May 2014, these bureaus have dealt with at least 64 000 economic and financial crime cases.[61] The evaluation team was concerned about the low number of specialised prosecutors dealing with economic and financial crimes in Turkey. Following the on-site visit, Turkey reassured the evaluation team that the figure of 26 persons only represents the heads of these bureaus, and that "many more" prosecutors work in these specialised bureaus – although the exact figure was not provided. In addition, Turkey averred that all 4 443 prosecutors currently in office in Turkey would be competent to to investigate all criminal offences, including foreign bribery. This position is however, questionable in practice, given that foreign bribery investigations demand a specialised skill set. Turkey also points out that the public prosecutors receive the support of agencies such as MASAK (Turkey's FIU), the Tax Administration, as well as specialised bureaus within the Police.

77. In terms of training, a team of experts was established within the Ministry of Justice to conduct seminars for prosecutors and judges specifically on issues relating to the Convention and its implementation in Turkish law. Overall, seminars took place at Court Houses in 6 Turkish provinces and were attended by 254 prosecutors and 314 judges. In addition, in 2013, the High Council of Judges and Prosecutors (HCJP) in coordination with the Justice Academy organised seminars on the more general topics of combating corruption offences or fraud, which were attended by approximately 200 judges and prosecutors altogether.

(ii) The more limited role of the police in foreign bribery cases

78. As noted above, the PPO has exclusive competence for initiating and overseeing foreign bribery investigations. The police do not directly handle foreign bribery investigations, but would be called upon by prosecutors to carry out investigative steps in foreign bribery cases. The police could also potentially uncover instances of foreign bribery in the course of conducting investigations into other offences. Turkey has established police bureaus specialised in economic and financial crime, but does not report providing specific training on foreign bribery to these police authorities. It thus appears necessary to further develop expertise within the police to deal with the particular complexities of foreign bribery in international business transactions, involving potentially intricate corporate structures.

79. With respect to Turkey's police framework, the General Directorate of Security within the Ministry of Interior is responsible for policing activities for all crimes in urban areas. Two specialised departments investigate bribery and related offences: the Department of Anti-Smuggling and Organised Crime (KOM) and its provincial divisions deal with criminal offences committed by organised criminal groups, including domestic and foreign bribery. Criminal offences un-related to organised crimes are under the remit of the Public Order Departments (PODs) within the National Police and its provincial divisions. The Gendarmerie has jurisdiction in areas that do not fall under the jurisdiction of the National Police; namely, non-municipal areas and areas where the National Police is not organised.[62]

80. Although official Regulations identify offences as falling under the responsibility of the KOM versus the PODs, the public prosecutor is the one ultimately responsible for determining which police

61 Statistics are approximate as they only include figures for certain years depending on the regional offices.

62 Turkey Phase 2 report, §107.

department shall be assigned the investigation. Turkey indicates that public prosecutors would generally follow the repartition of tasks as foreseen in the Regulations, with the KOM overseeing foreign bribery investigations committed in an organised way by a criminal organisation, and the PODs overseeing other foreign bribery investigations. In the foreign bribery investigations currently underway, prosecutors indicated that they have not had reason to call on either the KOM or the PODs as the evidence is essentially being sought through MLA requests. In the finalised case (*Case #1 – Military Supply Case*), the PPO relied on the POD to take certain investigative steps such as investigating the contractual situation of the accused in the company involved and the activities of the company, as well as ensuring participation of the accused at the hearing.

Commentary

While the lead examiners note that foreign bribery may be investigated and prosecuted by any Turkish prosecutor, they consider that the existence of specialised prosecutors with adequate training and experience in the field of economic and financial criminality is critical to effective foreign bribery investigations and prosecutions. Thus, they recommend that Turkey ensure that sufficient resources are made available in the specialised Public Prosecutor's Offices responsible for financial and economic crime, and that specialised training is provided for the effective detection, investigation and prosecution of foreign bribery.

Furthermore, considering the role which the police may play in uncovering foreign bribery in the context of police investigations into other offences, as well as in carrying out certain investigative steps in foreign bribery investigations at the request of prosecutors, the lead examiners recommend that Turkey ensure that police are adequately trained and staffed to effectively detect and investigate foreign bribery.

b. Opening and terminating foreign bribery cases, including issues of proactivity

81. Prosecuting authorities may open foreign bribery cases *ex officio*, without the need for a formal complaint, and have a broad range of investigative tools at their disposal. In spite of this, prosecuting authorities have shown insufficient proactivity in detecting foreign bribery allegations to date.

(i) Opening investigations – Sources

82. Article 17 of Law 3628 provides that the PPO may initiate a foreign bribery investigation "ex officio and directly", without the need for any permission or formal complaint. In practice, since Phase 2*bis*, all foreign bribery investigations (see *Cases #1* to *6* in Section A.6. of this Report) were opened following transmissions from the Ministry of Justice to the public prosecutors, based on media reports discussed during the meetings of the OECD Working Group on Bribery. While it is encouraging to learn that allegations of bribery discussed by the Working Group are reported back to the prosecutors for investigation, it is nevertheless concerning that, to date, Turkey proactively detected only one foreign bribery case (*Case #3*).

83. Turkey has nevertheless made efforts to put in place mechanisms for the collection of foreign bribery-related information. The Ministry of Foreign Affairs, the Ministry of Economy and the Ministry of Interior indicate that they consider information "from both foreign media and other official channels" and forward it to the Ministry of Justice, which would then pass it on to the relevant PPO. Collection of media-based information is also reportedly organised at the prosecutorial level. Turkey indicates that public prosecutors are assigned in each province with the duty of following the news in the press, and considering whether such information might be characterised as an offence. In spite of these mechanisms for collecting media reports, Turkish authorities within the PPOs, Ministry of Justice and Ministry of Foreign Affairs

were unaware of *Allegations #3 – Airport Case* and *#4 – Power Station Case*, which were widely reported in international and Turkish media.

(ii) Principle of mandatory prosecution

84. Prosecution in Turkey is governed by the principle of mandatory prosecution (also called "legality principle"). Under article 160 of the CPC, the public prosecutor, upon being informed of the occurrence of an alleged offence, must carry out a preparatory investigation in order to ascertain the identity of the offender and to decide whether it is necessary to institute a public prosecution.[63] In the case of a foreign bribery investigation, the public prosecutor has sole authority on deciding whether to make his investigation either directly or through judicial police officers. The police are obliged to inform the public prosecutor "immediately" of events, detainees, and measures taken, and to execute orders of the prosecutor concerning legal procedures.[64] If the public prosecutor considers that an investigative act that can only be carried out by a judge is necessary, the request is transmitted to the district judge in whose district these acts will be carried out.[65] Once the preliminary investigation is completed, the public prosecutor decides whether a public action is necessary and an indictment should be issued. In this scenario, the final investigation has two stages: the preparation for trial and the trial itself. The object of the final investigation is to examine all the evidence before the court, and to reach a judgement with respect to the guilt of the accused. During this process the public prosecutor presents the case on behalf of the Public.[66] Turkish law does not provide for any possibility of out-of-court settlement or plea-bargaining procedure.

(iii) Investigating foreign bribery cases

85. The Phase 2 report noted that prosecutors have at their disposal a broad range of investigative means for investigating criminal offences such as foreign bribery.[67] Special investigative techniques, including technical surveillance, undercover investigations and telecommunication monitoring and recording, are available for foreign bribery investigations under the CPC.[68] All public and private institutions are obliged to provide information and document requested by judicial authorities. Investigative authorities have the power to compel production of documents and the power to search persons and premises and seize and obtain documents.[69] Following the on-site visit, the evaluation team became aware through the October 2014 EU Commission Report of amendments to CPC provisions relating to the use of certain investigative techniques. Turkey passed Law 6526 ("the Omnibus Law") in February 2014, best known for abolishing the State Security Courts (also known as Specially Empowered Courts), and which could affect the investigation of foreign bribery cases.[70] In brief, it requires "strong suspicions based on solid evidence [emphasis added]" to issue a pre-trial detention order, order searches, seize assets or intercept communications. Interception of communications and use of undercover agents

63 Prosecutors have the discretion not to initiate a case if there are conditions requiring the implementation of effective regret provisions which lift the punishment – a provision no longer applicable to the foreign bribery offence (see Section B.1 on the foreign bribery offence).

64 Article 161/2 of the CPC.

65 Article 162 *Ibid*.

66 Turkey Phase 2 report, §§117-120.

67 See *Ibid*, §126.

68 Article 135 to 140 CPC.

69 Turkey Phase 2 report, §126.

70 Law 6526 on Amending Provisions of the Anti-Terrorism Act, the Code of Criminal Procedure and Other Laws (Official Gazette: 06.03.2014).

further require unanimous approval by a three-member panel of judges. In comments to an EU expert report on the subject, Turkey explains that this is intended to mainly prevent violations of freedom by law enforcement authorities.[71] However, requiring "solid evidence" as a basis for using such investigative measures may render their use problematic in practice: presumably, if a prosecutor already has solid evidence, the indictment could be issued without relying on the use of such investigative techniques. The unanimity requirement is also inconsistent with other CPC provisions under which, for instance, a single judge may impose an imprisonment sentence and a panel of judges may impose life imprisonment by a simple majority. These reforms have raised concerns on the part of civil society in Turkey and abroad[72]; the EU Commission considered that "they risk creating insurmountable problems during the investigation phase."[73]

86. In the foreign bribery cases opened to date by Turkey, investigative steps have essentially consisted of sending out of MLA requests. Proactivity in gathering evidence through other means appears more limited. For example, in *Case #2 – Real Estate Case*, the PPO is relying solely on information provided through MLA by other countries Party to the Convention. In *Case #3 – Construction Case*, Turkish prosecutors reported that, beyond requesting MLA of the foreign public official's State, they had not taken any step in Turkey to, for instance, investigate the Turkish company alleged to have engaged in bribery, as they were unaware of the company's name – information easily accessed in the media.[74] The ongoing investigations into foreign bribery *Cases #5* and *#6* also appear to rely solely on attempts to gather evidence through MLA. The only foreign bribery investigations in which evidence was gathered through means other than MLA concern *Cases #1* and *#4*. In *Case #1*, the foreign State provided MLA to Turkey in the form of the indictment, court decision and minutes of the plea bargaining concerning the foreign public official convicted of receiving the bribe; a certain number of investigative measures were taken (interrogation of the suspect, search and seizure, and inquiries into activities of the suspect's company), but no sufficient evidence could be produced and the person was acquitted. In *Case #4 – Infrastructure Case*, the prosecutor interviewed natural persons and asked Ministry of Finance auditors to audit the company (ultimately, there was insufficient evidence to proceed to the indictment stage). Following the on-site visit, Turkey pointed out that, due to its very nature, evidence relating to foreign bribery is generally found abroad, and that such information is necessary to be able to further the investigation in Turkey. Turkey further points out that the investigations carried out to date generally found that the claims did not reflect the reality of the situation, that the persons summoned by the PPO generally denied the accusations, and that, consequently, the investigations had to be terminated due to insufficient evidence.

Commentary

The lead examiners are seriously concerned about the insufficient proactivity of Turkish authorities in detecting and investigating foreign bribery cases. They recommend that Turkey

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71 Peer Review Report by Italian Judge Luca Perilli, June 2014, on Criminal Justice, p.27 (available at: http://www.avrupa.info.tr/fileadmin/Content/Downloads/PDF/2014_Peer_Review_report_by_Luca_Perilli.pdf).

72 See for instance Turkish Economic and Social Studies Foundation (TESEV), Assessment on Changes regarding the Specially Empowered Judicial System in Turkey, April 2014 (available at: http://www.tesev.org.tr/assets/publications/file/05052014133312.pdf); and
Peer Review Report by Italian Judge Luca Perilli, June 2014, on Criminal Justice (available at: http://www.avrupa.info.tr/fileadmin/Content/Downloads/PDF/2014_Peer_Review_report_by_Luca_Perilli.pdf).

73 See Turkey 2014 Progress Report by the European Commission, 8 October 2014, at p.45 (available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf).

74 See for instance: http://www.eurasianet.org/print/65790

promptly review the different mechanisms already in place for gathering media-based information to ensure they effectively detect allegations of foreign bribery reported in the Turkish and international media. The lead examiners further recommend that Turkey proactively gather information from diverse sources to increase the sources of allegations and to enhance investigations, by engaging with other investigative authorities, such as those involved in anti-money laundering, tax audits, accounting and auditing. Finally, the lead examiners recommend that the Working Group follow up closely on whether Law 6526, which imposes stricter conditions for the use of certain investigative measures, hinders the investigation of foreign bribery cases.

c. Independence and consideration of Article 5 of the Convention

87. This sub-section addresses a number of inter-related issues concerning the independence of Turkish law enforcement authorities and their ability to investigate and prosecute foreign bribery cases, without consideration of the national economic interest, the potential effect upon relations with another State and the identity of the natural or legal persons involved, as prohibited by Article 5 of the Convention and Commentary 27. It discusses recent legislative developments in Turkey affecting the High Council of Judges and Prosecutors (HCJP) and the reorganization of the police. Reference is also made to a high profile, well-publicised domestic bribery investigation. The large-scale reassignments within the police, prosecution and judiciary, as well as certain legislative modifications, have raised concerns from some parts of civil society, private sector lawyers, and the media, both nationally and abroad, regarding the independence of justice. These concerns have also been echoed in other international fora such as the European Commission and the Council of Europe's Venice Commission. While, to date, these developments do not appear to have affected foreign bribery enforcement, they raise questions concerning the effective guarantees of independence and impartiality of law enforcement in Turkey. Turkey affirms that none of the abovementioned circumstances have affected foreign bribery investigations, the nature and scale of reassignments are routine, and independence of law enforcement is adequately protected. As expressed by the Working Group in previous country evaluations, the broader issue of independence of law enforcement, including the protection of prosecutors from external pressure and influence, is essential to ensuring that extraneous political and economic factors do not affect foreign bribery cases.[75]

88. It is important to explain the chronology and context in which the large-scale reassignments and legislative amendments took place, as this has undoubtedly affected perceptions regarding independence and impartiality of law enforcement in Turkey.[76] In December 2013, prosecutors initiated investigations against several high-level officials or their relatives on allegations of, *inter alia*, gold-smuggling, domestic bribery and bid-rigging.[77] The December 2013 operations are viewed by Government allies as a plot by a "parallel state" to discredit and eventually topple the government. On 26 December 2013, the Government

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75 See, for instance, the Phase 3 reports on the Czech Republic (§§97-99), France (§§92-96), Slovenia (§§ 9 and 73-78), South Africa (§§ 80-101) and the Phase 2 Report on Russia (§§127-135).

76 This chronology of events has been widely reported in media around the world. A detailed chronology has also been put together by Professor Giegerich in the context of his Report on the Reform of the High Council of Judges and Public Prosecutors, 30 July 2014, following a Peer Review Mission conducted by an independent expert, in agreement and coordination with the Turkish authorities, in the context of Turkey's negotiations to join the EU (for the complete report, see: http://www.avrupa.info.tr/fileadmin/Content/Downloads/PDF/2014_Peer_Review_report_by_Thomas_Giegerich.pdf).

77 Turkey reports that the complete list of offences the subject of these investigations is as follows: establishing an organisation with the aim of committing an offence, forgery of official documents, bid rigging, causing zoning and housing pollution, violation of the passport law, money laundering, extortion, and domestic bribery.

amended the Bylaw on the Judicial Police, thereby requiring police investigators assisting prosecutors to report those investigations to their superiors, a move criticised in a statement by the HCJP as being contrary to judicial independence.[78] On 27 December, the Council of State suspended the amendment considering it to be contrary to the CPC. The Minister of Justice, in his capacity as President of the HCJP decided on 30 December that any further HCJP public statement should receive his prior approval. In early 2014, several hundreds of police officers, prosecutors and judges were reassigned by way of three decrees issued between 16 January and 11 February 2014. The chief of Turkey's Constitutional Court expressed the view that these large-scale reassignments were undermining the independence of the judiciary.[79] Following the on-site visit, Turkey indicated that the investigations into the domestic bribery case were still ongoing, and that the reassignments had not affected the conduct of proceedings. In September 2014, the Istanbul Chief Prosecutor's Office announced a decision of non-prosecution against 96 suspects allegedly involved in the December 2013 corruption case.[80]

89. Turkey provided many explanations regarding these large-scale reshuffles and Turkish authorities made available figures that differ from those appearing in the media. At the on-site visit, a representative of the HCJP explained that such reassignments routinely occur. In this particular situation, the reassignments were said to have been due in part to the abolition of the Specially Authorised Courts.[81] However, the evaluation team noted that several reassignment decrees were passed before the Bill to abolish these courts was adopted at the end of February 2014, and many of the reassigned prosecutors were not operating in the remit of those courts. Two prior examples were also cited in support of the assertion that such occurrences are not unusual, dating back respectively to 2003, when state security councils were abolished in Turkey, and to 1980, which saw the abolition of martial courts following the coup d'état. According to figures provided by Turkey following the on-site, out of the 222 judges and public prosecutors reassigned by order of the three decrees issued between 16 January and 11 February 2014, 180 were reassigned at their own request. Turkey also asserts that no prosecutors were dismissed by virtue of those decrees. A representative of the HCJP indicated at the on-site three prosecutors and judges were being investigated for violating criminal procedure rules. With respect to police officers, Turkey indicates that a total of 212 police officers were reappointed due to "the need for a more efficient performance system; adoption of a decentralized approach and the changes in the distribution of the duties." Newspaper articles reported the reshuffling of about 350 police officers involved in the corruption enquiries, which were reassigned to traffic police departments and district police stations.[82] On 11 June 2014, the HCJP

78 See e.g., Turkey 2014 Progress Report by the European Commission, 8 October 2014, p.44 (available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf); 27 December 2013 article in Business Insider (available at: http://www.businessinsider.com/turkish-court-blocks-erdogan-attempt-2013-12).

79 See Bloomberg Business Week article of 25 April 2014 (available at: http://www.businessweek.com/news/2014-04-25/turkey-s-top-judge-condemns-crackdown-on-judiciary-probing-graft).

80 See e.g. "Key corruption probe targeting President Erdogan's son dismissed" (available at: http://www.hurriyetdailynews.com/key-corruption-probe-targeting-president-erdogans-son-dismissed.aspx?PageID=238&NID=71159&NewsCatID=338); "Prosecutors call Dec 25 operations 'attempt to overthrow gov't'" (available at: http://www.dailysabah.com/politics/2014/09/01/prosecutors-call-dec-25-operations-attempt-to-overthrow-govt); Human Rights Watch report, September 2014, p.26 (available at: http://www.hrw.org/sites/default/files/reports/turkey0914_ForUpload.pdf).

81 The Specially Authorised Courts were given wide powers to prosecute serious criminal offences, including terrorism, drug trafficking and organised crime. See: http://turkey.setimes.com/en_GB/articles/ses/articles/features/departments/national/2014/02/20/feature-01

82 See the New York Times article of 7 January 2014 (available at: http://www.nytimes.com/2014/01/08/world/europe/turkey-corruption-inquiry.html?_r=0).

released a further decree replacing 2 224 judges and prosecutors and 293 administrative judges employed in judicial bodies.[83] Following the on-site visit, Turkey provided additional data to demonstrate that such figures should not be construed as unusual; the data shows that, between 2011 and 2014, the total number of judges and prosecutors appointed and reappointed in judicial courts yearly is generally around 3 000.

90. On 15 February 2014, Law 6524 was passed by Parliament, amending existing laws on the HCJP, and in particular granting the Minister of Justice, who already heads the HCJP, a stronger role in its decision making. New provisions notably allowed the Minister to appoint the President, Deputy President and Deputy Secretaries-General of the Inspection Board – the body in charge of disciplinary measures against judges and prosecutors.[84] As a result of the passing of this law by the Turkish Parliament in February 2014, the HCJP Secretary-General, Deputy Secretaries-General, Head and Deputy Head of the disciplinary panels, investigating judges and a limited number of administrative personnel were dismissed from their positions in the HCJP, and new staff was subsequently appointed by the Minister of Justice. The dismissed staff members were reassigned to new posts.[85]

91. On 11 April 2014, the Constitutional Court partly overturned Law 6524 with respect to the articles in the law regarding new competences conferred to the Minister of Justice. [86] However, this has not affected the new appointments, and all the members of the HCJP appointed by the Minister in February 2014 have remained in place, in spite of calls on the new members of the HCJP "to ethically resign". The Minister of Justice confirmed that the Constitutional Court's ruling would not have a retrospective effect, and that the recently appointed HCJP members would remain in place. Excerpts of the Constitutional Court decision were provided to the evaluation team following the on-site visit, but did not include the reasoning of the Court explaining why certain articles of Law 6524 were considered unconstitutional. Turkey underlines that the controversial articles should not be any cause for concern, since they have been repealed, and further points out that the main structures and missions, number and duties of chambers have been unaffected by Law 6524. In response to the Constitutional Court decision, Law 6545 was passed on 18 June 2014. The new law does not reintroduce any of the controversial aspects of Law 6524.

92. Prosecutors interviewed at the on-site visit repeatedly stressed that they were not subject to political influence, and that they were appropriately independent. During the on-site visit, representatives of civil society and private sector lawyers voiced serious concerns regarding the independent exercise of justice in Turkey, and expressed the view that the wave of reassignments was "not normal or ordinary" and that the reshuffling had been "extreme". According to them, these movements are the result of internal disputes between two camps in the judiciary representing opposing political factions. Other international institutions, such as the EU and the Council of Europe also voiced some level of concern over the reassignments and Law 6524. [87] In its

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83 See Hurriyet Daily News article of 12 June 2014 (available at: http://www.hurriyetdailynews.com/govt-replaces-more-than-2500-judges-and-prosecutors-in-latest-mass-purge.aspx?pageID=238&nID=67702&NewsCatID=338).

84 Article 6(2)d of law 6524.

85 For details on the exact numbers and titles of staff reappointed, see Professor Giegerich's Report on the Reform of the High Council of Judges and Public Prosecutors, 30 July 2014, at p.12 (available at: http://www.avrupa.info.tr/fileadmin/Content/Downloads/PDF/2014_Peer_Review_report_by_Thomas_Giegerich.pdf).

86 The Constitutional Court also ruled on the contentious issue of Twitter, saying it was illegal for it to be banned in the country.

87 Following the large-scale reassignments, the European Commissioner for Enlargement expressed the view that "the massive reassignments and dismissals in the police, judiciary and the civil service over the last few months are […] a matter of serious concern." The EU Commission also expressed concerns about the draft proposals in Law 6524, considering that the proposed amendments would compromise judicial independence and the separation of powers, and warned Turkey that the law was in violation of the EU

October 2014 Progress Report on Turkey, the European Commission explained that "Legislation adopted in the area of judiciary raised serious concerns as regards judicial independence and impartiality, separation of powers and rule of law. These concerns increased following the reassignments of judges, prosecutors and police working on high-profile anti-corruption cases." It further noted that "As regards anti-corruption, the handling of the December 2013 corruption allegations raised serious concerns that allegations of wrongdoing would not be addressed in a non-discriminatory, transparent and impartial manner." The Commission called on Turkey to adopt "a judicial reform strategy to strengthen the independence, impartiality and efficiency of the Turkish judicial system […] in cooperation with all stakeholders."[88] Following the on-site visit, Turkey strongly affirmed that there is no issue of prosecutorial or judiciary independence in Turkey, and that all investigations relating to foreign bribery cases have been carried out in accordance with Turkish law and Article 5 of the Convention. While the Working Group acknowledges that these reassignments took place in the context of a domestic bribery investigation, and that the controversial articles in Law 6524 have now been repealed, concerns nevertheless remain that political influence over decisions to assign and discipline prosecutors could adversely impact foreign bribery investigations and prosecutions.

Commentary

The lead examiners take note of Turkey's reassurance that the large-scale reassignments of over 2500 law enforcement officials in the first half of 2014 did not affect foreign bribery investigations underway and routinely occur. They are also encouraged to some extent by the resilience of the Turkish constitutional system, which found unconstitutional the controversial articles in Law 6524 granting the executive greater control over the judiciary, and by the fact that Law 6545 does not reintroduce any of the controversial aspects of Law 6524. Nevertheless, they consider that these occurrences could be perceived as attempts to exercise political influence over prosecutorial decisions, which, in turn, may give rise to concerns about the handling of foreign bribery cases without undue political influence.

The lead examiners therefore recommend that Turkey ensure that the exercise of investigative and prosecutorial powers, in particular for the foreign bribery offence, "is not to be subject to improper influence by concerns of a political nature" (Commentary 27 to Article 5 of the Anti-Bribery Convention). In particular, Turkey should take all necessary steps to ensure that any reassignment of police, prosecutors or magistrates in foreign bribery proceedings does not adversely affect the effectiveness of foreign bribery investigations and prosecutions, and is not motivated by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal person involved.

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acquis. (See Euractiv news item of 23 June 2014 at http://www.euractiv.com/video/eu-urges-turkey-restore-judiciary-independence-50848)

The Venice Commission of the Council of Europe also indirectly expressed concern, stating its belief in March 2014 that "if the law is brought to the Constitutional Court, the Venice Commission believes that the Court will play its role of guarantor of the Turkish Constitution and its basic values." (See http://www.hurriyetdailynews.com/venice-commission-urges-turkish-constitutional-court-to-annul-judiciary-bill.aspx?pageID=238&nID=63242&NewsCatID=339 and http://www.upi.com/Top_News/Special/2014/01/15/EU-has-judicial-concerns-with-Turkey/UPI-34421389798136/?spt=rln&or=1)

88 See Turkey 2014 Progress Report by the European Commission, 8 October 2014, at p.62 (available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf).

d. Jurisdiction

93. Territorial jurisdiction is provided under article 8 of the CC.[89] No changes have been made to article 8 since Phase 2, when the Working Group found this provision to be in compliance with the requirements of the Convention.[90]

94. However, substantial changes have been made to nationality jurisdiction since Phase 2.[91] At that time, article 11 of the CC provided that nationality jurisdiction could be exercised by Turkey for all offences carrying a minimum imprisonment penalty of at least one year imprisonment. However, under article 13, foreign bribery (along with several other offences) constituted an exception to this general principle of nationality jurisdiction that required the authorisation of the Minister of Justice. The exception was repealed in June 2009. Article 11 of the CC now applies to the foreign bribery offence, provided that the accused has not been convicted for the same offence in a foreign country and a prosecution is possible in Turkey.[92]

95. In addition, Turkey has introduced article 252(10) in the CC, which creates a new type of jurisdiction for Turkey's foreign bribery offence that applies only to non-Turkish nationals committing bribery outside of Turkey if there is a particular connection to Turkey. This type of jurisdiction exceeds the requirements of the Convention since it concerns commission of foreign bribery by non-Turkish nationals. More specifically, the jurisdiction is applicable if:

- foreign bribery is committed by a foreigner abroad; and
- a Turkish entity (which covers Turkey, a public Turkish institution, a Turkish corporation and a Turkish citizen) is a party; and
- that party is present in Turkey.[93]

e. Statute of limitations

96. Under Turkish law the statute of limitations applicable to an offence is determined by reference to the particular penalty for that offence. The applicable statute of limitations for the foreign bribery offence under article 252(9) is 15 years, as provided in article 66(1)(d) of the CC. Turkey explains that this may be extended to a maximum period of up to 22.5 years in particular circumstances. The statute of limitations is interrupted by any act of procedure and suspended pending the decision of another authority (including foreign authorities). According to panellists interviewed during the on-site visit, the statute of limitations is sufficient for the effective enforcement of bribery offences.

6. Money laundering

97. The Phase 3 evaluation focuses narrowly on aspects of anti-money laundering (AML) that relate to the enforcement of the foreign bribery offence, including foreign bribery as a predicate offence, as well as prevention, detection, and reporting of foreign bribery through anti-money laundering channels. As of the time of this review, Turkey has not detected any foreign bribery as a predicate offence for money laundering through MASAK's activities, including through the analysis of suspicious transaction reports

89 See Annex 4 for relevant legislative excerpts.

90 Turkey Phase 2 report, §131.

91 See *Ibid*., §§132-134.

92 See Annex 4 for relevant legislative excerpts.

93 *Ibid*.

(STRs). Moreover, despite new regulations, Turkish law is still silent on the issue of Politically Exposed Persons (PEPs).

a. The money laundering offence

98. The offence of money laundering has been redefined in article 282 of the CC by Law No. 5237 entitled "Laundering of Assets Acquired from an Offence" by amendments enacted in 2009. Article 282 of the CC establishes the offence of money laundering, which is defined as "transferring [illegally obtained] assets abroad or giving the impression that such assets have been legitimately acquired by concealing the illegitimate source of the assets." The offence of money laundering covers self-laundering.

99. Turkey's new money laundering offence adopts a minimum threshold approach for defining predicate offences. In 2009, following its Third Round FATF Mutual Evaluation Report, which expressed concern that the previous threshold of a minimum penalty of one year for predicate offences was potentially too high, Turkey enacted Law No. 5918 reducing the threshold of predicate offences to a minimum penalty of six months of imprisonment. Turkey notes that this covers a wide range of offences, still including foreign bribery, as well as bid rigging, embezzlement, extortion and others. A conviction for the predicate offence is not necessary for Turkish authorities to proceed with the charge of money laundering. Proceedings for the predicate offence and the money laundering offence may be carried out separately.[94] In principle, investigations for money laundering may lead to investigations into the underlying predicate offence although this has yet to be demonstrated in an investigation into foreign bribery.

100. Since Phase 2, Turkey has raised the term of imprisonment for the offence of money laundering from a range of 2 to 5 years to a range of 3 to 7 years. The offence of money laundering is also punishable by a judicial fine of up to 20 000 days (up to TRY 2 million or approximately EUR 690 000). Any person accepting, purchasing, carrying or using the illegally obtained assets is subject to imprisonment for a term of two to five years. No penalty shall be imposed upon a person who directly enables or facilitates the securing of financial assets by the relevant authorities prior to the commencement of prosecution. Such a provision – essentially an effective regret defence to money laundering – may seriously impact the prosecution of money laundering cases and the enforcement of foreign bribery as a predicate offence. Under article 43/A of the CM, legal persons may also be penalised for money laundering with a fine of between TRY 13 827 to 2 765 440 (approx. EUR 4 830 to 966 000) and through the application of security measures (for Sanctions against legal persons, see Section B.2.e. above).

101. In Phase 2, the Working Group decided to follow up on Turkey's sanctions for money laundering as practice developed.[95] According to the Turkish Ministry of Justice, 15 individuals were convicted of the money laundering offence in 2011, 18 individuals in 2012 and 1 person in 2013.

b. Money laundering statistics and enforcement

102. In Phase 2, the Working Group found the number of investigations and prosecutions of money laundering in Turkey to be relatively low for the size and significance of Turkey's economy and recommended that Turkey analyse the reasons for the low rate of enforcement with a view to increasing the effectiveness of the offence of money laundering in connection with detection of foreign bribery.[96] At the

94 Turkey Phase 2 report, §189.

95 *Ibid*, Commentary following §191.

96 *Ibid*.

time of Turkey's Written Follow-Up, MASAK had taken steps to increase awareness of reporting entities (largely in the form on instructions and circulars) and in the number of STRs.[97]

103. Turkey reports that it still has not opened any foreign bribery investigations based on reports by MASAK. In the years 2009–2012, no money laundering investigations contained a predicate offence of bribery (whether foreign or domestic). In 2013, two investigations conducted and conveyed to PPO by MASAK were predicated on domestic bribery.

c. Detection of foreign bribery through AML measures

104. The central authority in Turkey's AML framework is Mali Suclari Arastirma Kurulu (MASAK), the Turkish Financial Crimes Investigation Board. MASAK was established in 1997 as an independent unit in the Ministry of Finance. The duties and obligations of MASAK are detailed in article 19 of Law No. 5549 on Prevention of Laundering Proceeds of Crime, passed in 2006 codifying the reporting obligations for reporting entities. As Turkey's financial intelligence unit, MASAK is responsible for supervising reporting entities through examiners (such as, *inter alia*, tax inspectors, customs and trade inspectors, sworn-in bank auditors, Banking Regulation and Supervision Agency experts and Capital Markets Board experts), carrying out investigations, and making denunciations to the PPO based on an examination and analysis of such reports. Additionally, MASAK collects and analyses data, disseminates guidelines, and provides periodic trainings for obliged parties and training to auditors. MASAK also has the power to obtain documents and information without any secrecy limitations and are able to share this information with law enforcement.

105. At the time of the Phase 2 evaluation, members of the accounting and legal professions did not have reporting obligations to MASAK, although a draft regulation was in place extending suspicious transaction reporting obligations to accountants, lawyers, non-bank financial institutions and non-financial businesses.[98] The Working Group welcomed the direction of the draft regulation and recommended that Turkey issue the Regulation at the earliest opportunity.[99] The Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Terrorist Financing (RoM) entered into force in 2008, and was most recently amended in June 2014. Accountants and lawyers are now required to report suspicious transactions to MASAK and to undertake customer due diligence (CDD) (see more below). Recommendation 6(a) is thus fully implemented.[100]

106. In Phase 2, the Working Group also recommended that Turkey issue a regulation requiring the provision of feedback and improved guidance to obliged parties. Under the RoM, MASAK is required to provide feedback to reporting entities on their STRs, including information on when such reports are recorded as well as feedback in the form of periodic evaluations of the effectiveness and utility of STRs received. The PPO is likewise required to provide feedback to MASAK on denunciations that result in investigations and the outcomes of court proceedings. As such, the Working Group also considered Recommendation 6(b) to be fully implemented.[101] MASAK representatives at the on-site confirmed that the system of feedback has been operating effectively.

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97 Turkey Phase 2 and 2*bis* Written Follow-Up Report, pp.19-21.

98 Turkey Phase 2 report, §97.

99 *Ibid*., Commentary following §97.

100 Turkey Phase 2 and 2*bis* Written Follow-Up Report, p.17.

101 *Ibid*., p.18.

(i) Customer due diligence and PEPs

107. Turkey's AML framework provides for mandatory CDD in certain situations. The RoM establishes the circumstances under which customer identification and verification (applicable to both natural and legal persons) is required (among others, regardless of the monetary amount when establishing permanent relationships, and where the value of a transaction is equal to or more than TRY 20 000, or approximately EUR 9 500, in a single transaction). The RoM contains provisions relating to the identification and verification of beneficial owners and the obligation to obtain information on the purpose of certain business relationships. Turkey contends that Article 26/A of the RoM provides enhanced CDD. Article 26/A requires that financial institutions shall apply, in proportion to the identified risk, one or more of a number of enhanced measures for high risk transactions and situations. However, article 26/A does not apply to Designated Non-Financial Businesses or Professions (DNFBPs). On the other hand, article 18 of the RoM requires all obliged parties, including DNFBPs, to pay special attention to complex and unusual large transactions, as well as those having no apparent reasonable legitimate and economic purpose, but does not articulate any specific measures beyond obtaining and maintaining adequate information on the purpose of such transactions. This provision demonstrates that DNFBPs are not obligated to conduct a full range of enhanced CDD measures. Following Turkey's latest round of reporting to FATF in June 2014, Turkey issued General Communique No: 5 amending its law to allow for simplified customer identification measures related to transactions falling under Chapter 3 of the RoM. MASAK representatives at the on-site noted that MASAK has not conducted any informal risk analysis to identify risk groups (such as sectors, geographic locations, transactions or relationships).

108. The Regulation of Programme of Compliance with Obligations of Anti-Money Laundering and Combating the Financing of Terrorism (RoC)[102] provides for principles and procedures regarding establishment of compliance program and assignment of compliance officers, but it does not apply to all financial institutions. DNFBPs are exempt from the establishment of compliance programs under the RoC. MASAK explained at the on-site that the reasoning behind this exemption is primarily one of resources as many DNFBPs lack the capacity to institute compliance programs. MASAK representatives at the on-site explained that DNFBPs are still required to produce STRs and conduct CDD under the RoM.

109. Finally, equally, if not more, troubling is the complete absence of any statutory or regulatory measures to address PEPs under Turkish law. This issue remained unresolved during Turkey's most recent follow-up in the FATF, in which Turkey stated that the notion of PEPs does not exist in Turkish AML legislation and can be found only in the individual policy documents of some major banks, which are then sent to MASAK. However, MASAK did not indicate that it does anything with the policy documents received. Moreover, MASAK admitted that not all banks consider PEPs high-risk customers. The RoC provides the only mention of PEPs in Turkey's AML framework, although only to require obliged parties to make note of PEPs in their internal policies.

(ii) Awareness-raising and training

110. In Phase 2, the Working Group also recommended that MASAK provide improved guidance to reporting parties in the form of up-to-date money laundering typologies where foreign bribery is the predicate offence.[103] Turkey reported in its Phase 2 and 2*bis* Written Follow-Up that it had issued a number of guidelines and communiqués, although none covering foreign bribery as a predicate offence. Turkey also reported that MASAK conducted 41 trainings on the Convention in 2008 and 2009 (with a total of over 2000 participants from obliged parties). Although Recommendation 6(b) was deemed fully

102 The RoC also contains provision relating to internal controls and compliance programs (see Section 7(d)).

103 Turkey Phase 2 and 2*bis* Written Follow-Up Report, pp.17-18.

implemented[104], MASAK admits that it still does not have any guidelines or materials specifically relating to foreign bribery. In fact, on a number of occasions, when asked to relate its activities to the enforcement of foreign bribery, MASAK countered that combating foreign bribery is not specifically within its mandate, although it has the capacity to analyse and evaluate foreign bribery as a predicate offence to money laundering. MASAK maintains that, as Turkey's FIU, all instructional materials or trainings it prepares or organizes should be specifically only on Turkey's AML/CFT framework.

111. MASAK reports that in 2013 it conducted eight debriefing sessions on bribery and PEPs for obliged parties (totalling 386 participants), 26 for law enforcement units (totalling 1 288 participants) and 5 for inspection units under MASAK's supervision (totalling 130 participants). According to MASAK, the debriefing sessions on bribery touched upon foreign bribery as a predicate offence to money laundering. The trainings to obliged parties and law enforcement focused on AML/CFT legislation and international standards. The issue of PEPs was addressed only in the context of existing international standards on the subject.

Commentary

> ***Turkey continues to experience a shortage of money laundering cases predicated on foreign and even domestic bribery. Further, while the increase of suspicious transaction reporting is commendable, the lead examiners note with concern that Turkey's anti-money laundering framework still lacks any requirements related to PEPs. The lead examiners thus recommend that Turkey increase its capacity to detect foreign bribery by (i) raising awareness among reporting entities of foreign bribery as a predicate offence to money laundering; (ii) increasing awareness in MASAK on foreign bribery as a predicate offence for money laundering; (iii) encouraging law enforcement to more actively use MASAK as a resource during foreign bribery investigations; and (iv) addressing the issue of politically exposed persons (PEPs) in its anti-money laundering legislation.***

7. Accounting requirements, external audit, and company compliance and ethics programmes

112. This section of the report will examine developments in corporate compliance, internal controls and ethics programmes to prevent and detect foreign bribery among Turkish companies. Having recently incorporated international standards on auditing and financial reporting, Turkish law now imposes reporting obligations on external auditors to report not only up the management chain, but also directly to law enforcement under certain situations. However, Turkey still has yet to detect a foreign bribery case through auditing measures. This may be due in part to the fact that auditors do not actively consider or look for evidence of bribery when conducting independent audits, although Turkish authorities emphasize that auditors are required to look for fraud. Furthermore, companies are not subject to liability in all circumstances under article 359 of the Tax Procedure Code, placing the burden, for the most part, on the individual accountant. Finally, corporate compliance among Turkish companies still widely varies largely depending on their size and accountability under other regulatory schemes.

a. Regulatory and standard-setting bodies

113. Since the Phase 2 evaluation, Turkey has modified its institutional framework for the issuance and regulation of accounting and auditing standards. Previously, standards relating to the maintenance of books and records, as well as the auditing of such books and records, were promulgated and regulated by various different agencies, including the Turkish Audit Standards Board and the Turkish Accounting Standards Board. In 2011, the Kamu Gözetimi Kurumu (KGK), Turkey's Public Oversight, Accounting

104 *Ibid.*, pp.17-19.

and Audit Standards Authority, was established and has the authority to set and issue Turkish accounting and auditing standards, as well as to certify independent auditors and auditing firms. The KGK also performs public oversight in the field of independent audits.

114. The CMB remains the regulatory and supervisory body in charge of the securities markets in Turkey. Independent auditors responsible for auditing publicly held joint stock companies and capital market institutions must meet additional criteria set by the CMB. The CMB is also authorised to impose administrative penalties to auditing firms under its supervision for false accounting offences.

b. The false accounting offence

115. Article 359 of the TPC governs the prohibition of off the books or improperly identified transactions. In Phase 2, the Working Group did not identify any problems with Turkey's false accounting offence, but recommended that Turkey ensure that the penalties for false accounting in practice were effective, proportionate and dissuasive. The Working Group also recommended that Turkey maintain detailed statistics on the sanctions imposed for false accounting under article 359 of the TPC.[105] Since Phase 2, Turkey has increased the range of penalties for offences arising under article 359: these now range from 18 months to 5 years, depending on the violation (in comparison to a range of 6 months to 3 years under previous legislation). The term of imprisonment for the commission of a false accounting offence or the act of concealing books or records is between 18 months to 3 years. Destruction of books or records will result in a term of imprisonment between three to five years. Turkish authorities maintain that article 344 of the TPC provides fines for accounting offences, but in fact, article 344 imposes sanctions only where the commission of an offence under article 359 results in a tax loss. As article 344 relates to tax offences, monetary penalties do not appear to be available for false accounting offences which do not result in tax loss.

116. Turkish law was amended in July 2012 to allow for some types of accounting offences to result in sanctions for legal, as well as natural, persons. Article 359 of the TPC contains no explicit reference to legal persons, nor does it provide for any sanctions other than imprisonment. Additionally, article 43/A of the CM does not list false accounting as one of the offences for which corporations may be held liable (see above Section B.2.f.). Turkey explains that article 344 of the TPC would be applicable to legal persons committing false accounting as defined under article 359 of the TPC. As already noted above, article 344 provides for the imposition of monetary sanctions only for false accounting offences resulting in tax loss. Representatives from the CMB and accounting professions confirmed at the on-site that the Capital Markets Law, on the other hand, does allow for monetary sanctions to be imposed against both individuals and companies, but only for accounting misconduct offences (such as forgery and counterfeiting). Furthermore, as confirmed by on-site panellists, the Capital Markets Law is applicable only to publicly held joint stock companies and capital market institutions (i.e., investment firms), and does not cover all legal persons.[106] Article 112 of the Capital Markets Law provides that those who are legally obliged to keep books and records, but fail to do so, may be sentenced to prison from 6 months up to 2 years and punished with judicial fine up to 5 000 days, i.e. up to approximately TRY 100 000–500 000 (or USD

105 Turkey Phase 2 report, Commentary following §194.

106 See also article 2 of the Capital Markets Law, which states, "Capital market instruments, the issue of these instruments, issuers, those who public offerors, capital market activities, capital market institutions, exchanges and other organised markets where capital market instruments are traded, market operators, Capital Markets Association of Turkey, Appraisal Experts Association of Turkey, central clearing institutions, central securities depositories, the Central Registry Agency and the Capital Markets Board are subject to the provisions of this Law. Private sales of shares of non-public joint stock corporations are outside the scope of this Law".

47,000–235,000) – a relatively low fine for a large corporation.[107] Article 112 also states that those who "[d]raw up wrong or misleading independent audit and assessment reports" (i.e., forgery) shall be penalised according to the related provisions of the Criminal Code (which does not apply to legal persons – see Section B.2. of this Report). However, the corresponding articles in the Criminal Code govern only the falsification of information about companies in public statements or reports and forgery in both official and private documents.

117. Accounting professionals at the on-site visit commented that the sanctions for accounting offences under Turkish law are very wide and could even result in severe monetary penalties or cancellation of a license, but primarily target the accountants and not the companies. They observed penalties against companies are not as dissuasive as those imposed by the KGK and CMB on accounting firms for professional misconduct.

118. Turkey does not maintain statistics on the nature and range of sanctions related to false accounting offences of natural or legal persons despite being recommended to do so in the Phase 2 evaluation. Relating to the number of convictions obtained under article 359 of the TPC, Turkey reports that in 2010, 4 558 individuals were convicted, 5 210 in 2011, 5 457 in 2012 and 7 499 in 2013.

Commentary

The lead examiners echo the concern of the Turkish accounting profession that companies cannot be held liable for the offence of false accounting as defined under article 359 of the Tax Procedure Code. The relevant provisions in the new Capital Markets Law may not sufficiently cover all of the requirements stipulated in Article 8 of the Convention and the 2009 Recommendation prohibiting, for instance, the establishment of off-the-books accounts, the inadequate identification of transactions and the use of false documents (other than audit and assessment reports). The lead examiners therefore recommend that Turkey ensure that both natural and legal persons can be held liable for the full range of conduct described in Art. 8(1) of the Convention, and that sanctions for legal persons are effective, proportionate and dissuasive.

c. Auditing standards

119. Turkey has now fully integrated the International Standards on Auditing (ISAs) into Turkish national standards on auditing, as reflected in the new Commercial Code. Under the new Commercial Code, all capital stock companies must undergo mandatory audits by independent firms. The Commercial Code prescribes four types of audits, including the external audit of joint stock companies as described in article 397/4. In Phase 2, the evaluation team was concerned that non-listed companies, such as SOEs, were not required to submit to external audits regardless of their size and business activity. At the time of the Phase 2 evaluation, a draft bill was before Parliament providing for SOEs to come under the audit remit of the Turkish Court of Accounts, which performs audits of the financial reports and statements of public administrative bodies. The draft bill was not finalised before the adoption of the Phase 2 report.[108] Accordingly, the Working Group recommended that Turkey broaden the categories of companies – particularly certain non-listed companies doing business internationally – subject to external auditing

[107] The daily amount of the judicial fine ranges from TRY 20–100.

[108] Turkey Phase 2 report, §94.

requirements.[109] At the time of Turkey's Written Follow-Up Report, the draft amendments were still not finalised and Recommendation 5(b) was deemed only partially implemented.[110]

120. The Court of Accounts Law governing the audit of companies belonging to the State is now in effect. Such audits do not come under the remit of article 297 of the Commercial Code, but rather under article 6085 of the Court of Accounts Law, which states that the Court of Accounts shall audit the following entities: public administrations within the scope of the central government budget and social security institutions, local governments, joint stock companies established by special laws and with more than 50% of its capital directly or indirectly owned by the public sector and other public administrations (with the exception of professional organisations having a public status), as well as all administrations, organisations, institutions, associations, enterprises and companies affiliated to, or founded by the above-listed administrations, provided the public share is no less than 50%. Turkey still has not taken any legislative steps regarding the second element of Recommendation 5(b) – the extension of audit requirements to certain non-listed companies operating abroad.

d. Detection and reporting of foreign bribery by external auditors

121. Since Phase 2, Turkey has completed its integration of ISAs into national law with the issuance of Communiqué Serial: X No: 22 on "Principles Regarding Independent Auditing Standards in the Capital Markets" in 2011 (Communiqué No. 22). According to Communiqué No. 22, independent auditors have a duty to report any undocumented expense, or an expense unrelated to the ordinary activity of a company, that gives rise to a suspicion of accounting misconduct. Although not explicitly stated in Turkish law, representatives of the accounting profession and Turkish authorities interpret this duty to include the concealment of foreign bribery. Communiqué No. 22 also incorporates into Turkish law ISA 240 and ISA 250, pursuant to which independent auditors must, upon detecting fraud or non-compliance, notify a company's compliance officer or, where the compliance officer is suspected of being involved in the wrongdoing or non-compliance, law enforcement authorities directly. Within a company, where management fails to act, auditors are required to report detection of such misconduct or wrongdoing progressively higher up the ranks of management until – at the very highest level – auditors include their suspicions in the annual report, which is transmitted to the CMB in the case of listed companies. Accounting and auditing professionals at the on-site confirmed that the obligation to report higher up the ranks of management (as articulated in ISA 240), including in the annual report, applies only to material misconduct. If the misconduct is immaterial, the auditor is obliged only to make a complaint to management. Where the CMB receives an annual report containing auditor reports of suspected wrongdoing, it has an obligation under article 279 of the CC to forward such suspicions to the appropriate law enforcement body (see Section B.10 below on reporting obligations of Turkish public officials). Under the obligations stipulated by the ISAs, auditors do not have an obligation to report directly to law enforcement unless the auditor suspects that management is involved in the wrongdoing or non-compliance. However, Turkey attests that under the Law of Certified Public Accountancy and Sworn-in Certified Public Accountancy (Law Number 3568), "facts considered as offenses should be denounced to the competent authorities". When performing audits, auditors do take into consideration internal controls and compliance programmes.

122. Accounting professionals interviewed at the on-site were sceptical about the role of Turkish auditors in detecting foreign bribery. Panellists explained that auditing is a relatively new profession in Turkey and as unlisted SMEs are not subject to audit requirements, generally only large companies are audited. As most large corporations have compliance programmes in place, auditors report that they have

109 *Ibid.*, Commentary following §90.

110 Turkey Phase 2 and 2*bis* Written Follow-Up Report, p. 16.

not detected much non-compliance. Accounting professionals posited that smaller companies might be more prone to misconduct, but admitted to having no experience dealing with as SMEs, as they are not subject to independent audit requirements. Panellists also observed that as many multinational enterprises (MNEs) in Turkey are also subject to the Foreign Corrupt Practices Act and the United Kingdom Anti-Bribery Act, Turkish auditors do not feel as much pressure to conduct forensic auditing.

123. It would appear from discussions with Turkish accountants, as well as with the various supervisory bodies and professional organisations, that external auditors do not generally consider bribery (foreign or domestic) in the performance of independent audits and that awareness of foreign bribery is relatively low in the profession. When the supervisory bodies and professional accounting organisations were asked whether they had undertaken any awareness-raising activities on foreign bribery among auditors, TURMOB was the only entity that indicated that it had. Starting in 2011, TURMOB organised ethics training for auditors and in May 2014, TURMOB began undertaking training sessions relating to foreign bribery for auditors jointly with MASAK. Private sector panellists confirmed attendance at the joint training session. The Prime Ministry Inspection Board also provides regular training to all certified public accountants, but it is unclear whether these trainings include foreign bribery as a topic.

124. To date, Turkey does not appear to be actively detecting bribery through the reports of external auditors. Panellists were unaware of any instances of foreign bribery being detected through auditing.

Commentary

The lead examiners welcome the integration by Turkey of international financial standards into national legislation. Nevertheless, they are concerned that, despite the existence of an adequate legal framework, auditors do not look for any indications of foreign bribery when performing audits. The lead examiners therefore recommend that Turkey remind auditors that fraud (as articulated in Communiqué No. 22) includes instances of foreign bribery. The lead examiners also recommend that Turkey promptly intensify training and awareness-raising activities targeting accounting and auditing professionals (particularly those performing accounting and auditing activities for non-listed companies) on foreign bribery, including red flags to detect foreign bribery, and reporting obligations.

With respect to the scope of companies subject to external audit under Turkish law, lead examiners consider that Phase 2 Recommendation 5(b) remains partially implemented, as Turkish law still does not cover non-listed companies operating abroad. Lead examiners thus reiterate the need for Turkey to address this deficiency in its legal framework.

e. Internal controls, ethics and compliance

125. The 2009 Anti-Bribery Recommendation requires that Member countries encourage their companies to develop internal mechanisms and programmes taking into account the principles described in the Good Practice Guidance on Internal Controls, Ethics and Compliance. In Phase 2, the Working Group issued Recommendation 5(a) requesting that Turkey strengthen efforts to encourage companies, including SMEs operating in foreign markets, to adopt internal company controls specifically addressing foreign bribery.[111] At the time of its Written Follow-Up, Turkey reported that then Undersecretariat for Foreign Trade (now known as the Ministry of Economy) had conducted several awareness-raising seminars targeting private sector on the importance of internal control systems when operating in foreign markets. These seminars included, *inter alia*, discussions on how to operate an internal control system to combat

111 Turkey Phase 2 report, Commentary following §88.

bribery and the importance of encouraging employees to report to the relevant authorities.[112] Turkey further reported that the CMB has promulgated two sets of regulations aimed at "fostering internal control", although neither appears to specifically address the issue of internal controls or company compliance programmes. Finally, Turkey reported that it had adopted International Financial Reporting Standards with respect to SMEs. According to information published on TURMOB's website, Turkish Financial Reporting Standards for SMEs have been effective as of 2013. Recommendation 5(a) was deemed fully implemented.[113]

126. Turkey's anti-money laundering framework also contains specific provisions relating to internal controls and compliance. Article 10 of the RoC requires obliged parties to communicate to MASAK their institutional policies, developed according to the size, volume and nature of the business and determining strategies to the ensure compliance with the anti-money laundering and counter-terrorist financing obligations, including risk management, internal controls and training. Obliged parties are also required to submit information and statistics on training and internal control activities.

127. Turkish business organisations and MNEs at the on-site appeared to have a strong understanding of corporate compliance, although not specifically relating to the risks of foreign bribery in international operations. Professional organisations present at the on-site, including the Turkish Contractors Association (TCA)[114], representing 90% of Turkish contracts undertaken abroad, and the Turkish Industry and Business Association (TUSIAD), the largest Turkish employment organisation, were knowledgeable about the importance of corporate compliance programmes and internal controls. Most were members of Global Compact or other international initiatives, such as the Global Ethics Network and noted that they aspired to hold their members to the norms set by the international community. TUSIAD reported that it had recently published a report on business ethics including a "roadmap" to businesses on how to effectively implement compliance programmes in line with international standards. The TCA mentioned its *Professional Code of Ethics Abided by the Members of the Turkish Contractors Association* ("the TCA Code"), which members are encouraged to adopt. However, the TCA Code does not mention bribery or corruption, nor was the TCA able to provide information on the actual number of members who have adopted and use its Code. Further, awareness-raising activities, such as those undertaken by the Foreign Economic Relations Board targeting Turkish companies investing abroad, do not specifically cover foreign bribery or internal control mechanisms as topics (see also Section B.10 of this Report on Awareness in the private sector). Government agencies appear notably less active than business organisations in raising awareness of the Turkish business community on internal controls and compliance programmes. Only the Prime Ministry Council of Ethics could recall a specific training session on ethical values and internal controls for private companies, but this training did not specifically address the topic of foreign bribery. Most government participants were not aware of the 2009 Good Practice Guidance on Internal Controls, Ethics and Compliance.

128. Despite awareness of corporate compliance standards among listed companies and MNEs, Turkish companies do not appear to feel strongly compelled to have corporate compliance programmes in place. Independent research demonstrated that many large Turkish construction companies operating abroad do not have their own codes of conduct or codes of ethics.[115] Private sector legal experts also

112 Turkey Phase 2 and 2*bis* Written Follow-Up Report, p.16.

113 *Ibid.* at p.15.

114 Also known as the Union of Turkish Contractors (TMB).

115 Independent research conducted prior to the on-site sampled 37 Turkish companies (picked for their size/volume of business, economic importance in Turkish economy and/or international nature of business). Of these 37, only 7 had Codes of Ethics. Of the seven companies that had Codes of Ethics, five contained clear rules or prohibitions against bribe payments (although none mentioned foreign bribery specifically) or other types of gifts and donations. Of the 37 companies, only one definitively had a policy

commented that Turkish companies generally seek advice on compliance only once they initiate business with a foreign counterpart. Discussions at the on-site also suggest that compliance programmes are significantly more important to companies listed on multiple stock exchanges and thus subject to other regulatory frameworks, such as those in the United Kingdom or United States. Non-listed companies do not appear to have the same level of exposure to corporate compliance programmes and internal mechanisms. Both of the SMEs present at the on-site had codes of ethics (which did not mention foreign bribery), but neither appeared to have formal compliance programmes or internal controls in place.

Commentary

The lead examiners recommend that Turkey increase its awareness-raising activities in the private sector of the importance of developing and implementing anti-bribery internal controls and corporate compliance programmes. These efforts should include promoting the 2009 Good Practice Guidance and should consider targeting non-listed Turkish companies (e.g., SMEs) operating in foreign markets. The lead examiners also note that corporate compliance programmes among SMEs is a horizontal issue among Parties to the Convention.

8. Tax measures for combating bribery

129. The issue of tax non-deductibility, including detection of foreign bribery through tax audits, was addressed in Phase 2.[116] At the request of the Working Group, Turkey introduced an express provision on the non-tax-deductibility of bribe payments in 2008, and developed training for its tax officials to detect bribery.

a. The non-tax deductibility of bribes

130. As noted in the Phase 2 and 2*bis* Written Follow-Up Report, Turkey has put in place a provision explicitly denying tax deductibility for bribe payments.[117] Paragraph 4 of the General Communiqué on Corporate Tax No. 3 promulgated in the Official Gazette dated 20 November 2008 states that:

> *As expenses incurred due to lawfully forbidden acts are not in the nature of expenses regarding acquisition and sustaining of commercial gain, it is not possible to deduct these expenses from the income and gains of the institution. Therefore, as the bribery is defined as an offence in article 252 of the Turkish Criminal Code, bribery and any expense related to bribery will not be taken into consideration as expenses in determination of commercial gains subject to taxation.*

b. Awareness, prevention and detection by tax authorities

131. The *Gelir Idaresi Başkanliği* (GIB) is the Turkish tax administration and plays an important role in combating financial crimes, and in particular tax evasion and tax fraud. Tax Offices are responsible for assessing and collecting taxes and identifying activities that include possible breaches of tax law. The GIB also assesses the data stored in its databases so as to make it available for the use of units responsible for tax investigations, and makes reports and recommendations on possible tax offences. In the past, the GIB carried out tax crime investigations through revenue controllers in the administration's head office and tax auditors in regional offices. However, since the creation of the Tax Inspection Board (VDK) in July 2011,

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on the reporting of wrongdoing (although that policy did not clearly state whether a person making such reports would have any protection against retaliation).

116 Turkey Phase 2 report, §§65-74.

117 Turkey Phase 2 and 2*bis* Written Follow-Up Report, §2b and pp. 14-15.

officials responsible for investigating offences have been incorporated in this new agency, although small-scale investigations are still carried out by the GIB through regional Tax Office Directors who report the conclusions of their investigations directly to the prosecution authorities.[118]

132. In Phase 2, Turkey had been recommended to "provide training to tax officials on the detection of bribe payments disguised as legitimate allowable expense". At the time of its Written Follow-Up in 2009, Turkey indicated that, in 2008, it had included the Convention and Tax Recommendation in the regular training of finance inspectors, as well as organised a seminar for tax auditors, with further seminars planned with "all related stakeholders", including tax professionals, certified public accountants and sworn-in certified public accountants and finance academics.[119] Information on the Anti-Bribery Convention was also circulated in the Bulletin issued by the Ministry of Finance.

133. Turkey has pursued these awareness-raising and training efforts since 2009. Training was organised in 2013 on the non-tax deductibility of bribes, as well as on procedures to detect foreign bribery in tax inspections, targeted at 855 tax inspectors. This training is repeated yearly for new and existing employees in the VDK.

134. The VDK has developed its own "OECD Guide for Tax Examiners in Combating Bribery" and circulated it to tax inspectors. This Guide includes the OECD Bribery and Corruption Awareness Handbook for Tax Examiners in both its 2013 and 2009 versions, as well as an additional section on specific legal provisions in Turkey governing the non-tax deductibility of bribes, reporting obligations of tax inspectors to prosecutors, exchange of information with other government agencies, and on double taxation agreements signed by Turkey.

c. Foreign bribery reporting by tax authorities

135. The reporting obligations on tax officials are unchanged since Phase 2.[120] The main responsibility of the VDK is to carry out tax investigations through Tax Inspectors, under the direction of the public prosecutor. While the VDK does not have prosecuting functions, it is the competent authority for the detection and investigation of tax crimes. Where in the course of investigations a Tax Inspector finds evidence of non-tax financial offences, these are reported to the competent investigation authority. Public prosecutors are responsible for conducting and prosecuting all crimes including tax offences. Where any suspicion of possible criminal activity is reported to the Public Prosecutor's Office, prosecutors review the case and may initiate a criminal investigation. Depending on the nature of the suspected offence, prosecutors could instruct the VDK, customs administration or Financial Crimes Investigation Board (the Turkish FIU) to conduct a financial audit, or commence a criminal investigation through the police or other law enforcement agency.[121]

136. Article 279 of the CC provides a general obligation on all Turkish officials to report suspected offences to the competent authorities (see also discussion of this reporting obligation under Section B.10 of this report). Tax officials interviewed during the on-site visit were well aware of this reporting obligation, although they could not recall any instances of reporting suspected foreign or domestic bribery to

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118 See the "Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes" Second Edition (2013), p. 352 (available at: http://www.oecd.org/tax/crime/effective-inter-%20agency-cooperation-report.pdf).

119 Turkey Phase 2 and 2*bis* Written Follow-Up Report, p.14.

120 Turkey Phase 2 report, §70.

121 See "Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes" Second Edition (2013), pp. 352-353.

prosecuting authorities. Following the on-site visit, Turkey indicated that, in the last five years, the VDK transmitted five reports relating to domestic bribery and ten reports concerning embezzlement to the PPO, which triggered judicial investigations. Statistics were also provided which show that the huge majority of reports from the VDK to the PPO concern false accounting offences (over 25 000 reports between 2011 and 2013).

d. Sharing of tax information internationally

137. Turkish tax authorities may exchange information for tax purposes with foreign authorities on the basis of an international instrument providing for mutual assistance (Double Taxation Agreements (DTAs) and Tax Information Exchange Agreements (TIEAs), regional instruments, etc.). Traditionally, such information can only be shared with the authorities responsible for the assessment, collection or the tax related penalties of these taxes. The 2009 Tax Recommendation I.(iii) includes considerations for adding optional language in bilateral tax treaties (referenced in paragraph 12.3 of the former commentary to Article 26 of the OECD Model Tax Convention). The optional language allows for the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters (e.g. to combat foreign bribery). In July 2012, Article 26 of the OECD Model Tax Convention was revised, with the formerly optional language now included within Article 26, paragraph 2.[122] The revised article now expressly states that when the receiving State wishes to use the information for any non-tax purpose (such as foreign bribery investigations), it should (i) specify to the supplying State the non-tax purpose for which it wishes to use the information and (ii) confirm that the receiving State can use the information for such non-tax purpose under its own laws.

138. As of the time of this review, Turkey indicates that it is party to 84 DTAs – 80 of which have entered into force – and 5 TIEAs. At the time of its Phase 2, Turkey indicated that it did not usually include language regarding sharing of tax information for non-tax purposes in its bilateral treaties, but that it would be willing to do so. Such language has now been included in 3 DTAs of Turkey, which represents less than 4% of its bilateral treaties. However, on 3 November 2011, Turkey signed the Convention on Mutual Administrative Assistance in Tax Matters.[123] Article 22.4 of this Convention also allows information received for tax purposes to be used for non-tax purposes and therefore to be passed to law enforcement authorities to be used in criminal investigations (e.g. for foreign bribery) with the permission of the country providing the information. As of September 2014, ratification of this Convention was pending before the Turkish Parliament.

Commentary

The lead examiners welcome the efforts undertaken by Turkey to raise awareness and provide training on the detection of foreign bribery to tax auditors. They recommend that the Working Group follow up on the application of the non-tax-deductibility of bribes in practice, particularly to see whether any of the ongoing foreign bribery investigations and any new investigations lead to the reopening of tax returns. In this respect, the lead examiners encourage the law enforcement authorities to share information on enforcement actions in relation to foreign bribery with the tax administration. They further encourage sharing of

122 See Update to Article 26 of the OECD Model Tax Convention and it Commentary, Approved by the OECD Council on 17 July 2012, available at: http://www.oecd.org/ctp/exchangeofinformation/120718_Article%2026-ENG_no%20cover%20(2).pdf.

123 As of 23 May 2014, the Convention on Mutual Administrative Assistance in Tax Matters has been signed by 66 countries and ratified by 37. (See http://www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf).

information and increased coordination between the Tax Inspection Board and the law enforcement authorities to enhance detection and investigation of foreign bribery.

9. International cooperation

a. Mutual Legal Assistance

139. Turkey's framework for MLA has not changed since Phase 2.[124] As noted in Phase 2, there is no specific law regulating MLA and the framework is guided by the Constitutional principle that "international agreements duly put into effect carry the force of law".[125] Turkey explains that it is able to provide effective legal assistance regarding natural and legal persons pursuant to the bilateral treaties and multilateral conventions on MLA to which Turkey is a party. Turkey reiterated during and after the on-site visit that the Convention and the United Nations Convention against Corruption are sufficient legal bases for providing MLA for the foreign bribery offence. In the absence of an agreement or treaty, Turkey provides MLA pursuant to the principle of reciprocity, on a case-by-case basis and under the supervision of the Turkish Ministry of Justice.[126] The Turkish authorities also provided assurance that there is no legal barrier to Turkey providing MLA in the context of civil or criminal action against a legal person.

140. The central authority for MLA requests in Turkey is the Ministry of Justice, which maintains statistics on MLA requests received by Turkey. Requests sent to the Ministry are first checked for conformity with the conditions of the relevant multilateral convention or bilateral agreement, and then forwarded to the relevant Chief Public Prosecutor's Office to be executed.

141. Turkey explained that, subject to the requesting country providing complete information in its request for MLA, requests are executed within three to four months. Turkey reports that from 2010 to 2014 it received two MLA requests concerning two different foreign bribery cases. Turkey provided assistance in response to both requests:

— One request was made by a Party to the Convention concerning alleged foreign bribery involving a legal person from Turkey (*Allegation #1 – Telecommunications Case* under Section A.6 of this report). Turkey provided a final response to the request within 11 months of the date of the initial request and within 6 months of the receipt of additional information from the requesting country. Turkey explained that five witness statements and a large volume of materials were submitted within six months of the requesting country providing a list of questions to be asked of witnesses. Turkey was unable to provide all requested information because some witnesses were unavailable.

— The other request was also made by a party to the Convention. It concerned allegations of foreign bribery by a Turkish citizen (*Case #2 – Real Estate Case* under Section A.6 of this report). Turkey explains that it provided information to the requesting country within three months of the request.

142. Concerning outgoing MLA requests, the Turkish authorities explained that the Ministry of Justice and judicial authorities have reported no significant challenges with respect to requests made by Turkey for

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124 Turkey Phase 2 Report, §§127-129. As explained in the Phase 2 report, Turkey does not reject legal assistance requests on the ground that the principle of dual criminality is not met, except under certain circumstances such as requests for seizure and confiscation that require coercive measures.

125 Article 90 of the Turkish Constitution.

126 Turkey Phase 1 Report, pp.20-21.

MLA from other states. From 2009 to 2014, Turkey made seven requests for MLA concerning four different foreign bribery matters (*Case #1 – Military Supply Case*, *Case #2 – Real Estate Case*, *Case #4 – Infrastructure Case* and *Case #6 – Electricity Supply Case*, under Section A.6 of this report). Five of these requests were made to Parties to the Convention. Turkey reports that all seven requests have been executed and that responses took between 2 and 15 months.

Commentary

The lead examiners are encouraged that the Ministry of Justice continues to maintain statistics on formal MLA requests received and sent. The lead examiners are also pleased to learn that Turkey has granted MLA assistance in relation to two foreign bribery cases and obtained MLA assistance in relation to four cases.

b. Extradition

143. Turkey's framework for extradition has not changed since Phase 2.[127] Under the Constitution, Turkey cannot extradite a Turkish citizen to a foreign country in relation to any suspected offence.[128] An exception applies if the extradition relates to Turkey's obligations as a party to the International Criminal Court. For cases where extradition is allowable at law, dual criminality is a condition of extradition. As with MLA, the Ministry of Justice is the central authority in respect of extradition requests. Evaluation of extradition involves the Ministry of Justice, the Council of Ministers, the Public Prosecutor's Office and the Courts as competent authorities.

144. As of the time of this review, Turkey has not been requested to extradite in a foreign bribery matter. In Phase 2, Turkish authorities explained that cases are often conveyed to the Turkish judicial authorities for prosecution in the event that an extradition request is rejected due to Turkish citizenship. Since 2011, Turkey has refused 14 extradition requests out of a total 99 requests. Of those 14 refusals, Turkish authorities took enforcement action in 4 cases (the remaining 10 cases were refused on other grounds).

Commentary

The lead examiners recommend that the Working Group follow up as practice develops on the enforcement actions taken by Turkish authorities in foreign bribery cases where Turkey refuses to extradite.

10. Public awareness and the reporting of foreign bribery

145. In Turkey's Phase 2 evaluation, the Working Group determined that lack of awareness was one of the main areas of concern that justified the Phase 2*bis* evaluation. The Working Group issued a number of recommendations concerning awareness-raising[129] and reporting[130] of foreign bribery, which Turkey had fully implemented at the time of the Phase 2 and 2*bis* Written Follow-Up Report. This section of the report discusses Turkey's efforts since Phase 2 to raise awareness in the public and private sectors, facilitate reporting of foreign bribery allegations, and provide whistleblower protection. (Awareness among auditors and corporate compliance measures are discussed in Section B.7 of this report.)

127 Turkey Phase 2 Report, §130.

128 Article 38 of the Constitution and article 18(2) of the CC.

129 See the list of Phase 2 and 2*bis* Recommendations in Annex 1, Recommendations 1a and 1b.

130 See the list of Phase 2 and 2*bis* Recommendations in Annex 1, Recommendation 2a.

a. Prevention, detection, and awareness of foreign bribery

146. Since Turkey's Phase 2*bis* evaluation, Turkish authorities have undertaken a number of awareness-raising initiatives to prevent and detect foreign bribery. All public sector representatives participating in the on-site visit demonstrated knowledge of the Convention, the foreign bribery offence and the obligation to report foreign bribery. Private sector representatives also demonstrated reasonable levels of awareness, including one panellist who made reference to the online information booklet produced by the Ministry of Justice. However, the Turkish authorities have not sufficiently targeted awareness raising activities for businesses operating in high risk sectors and geographic locations. Further, representatives of conglomerates demonstrated a lack of practical experience in combating foreign bribery, which raises concern about whether some Turkish companies have a realistic appreciation of foreign bribery risks.

147. The Ministry for Justice has several webpages dedicated to foreign bribery and, in collaboration with the Ministry of Economy, Ministry of Foreign Affairs, Privatization Administration and Turk Eximbank, published an information booklet on foreign bribery.[131] The booklet and the website include information on the Convention, the foreign bribery offence, reporting obligations for public officials and reporting channels. The Ministry of Justice reports promoting and distributing the booklet through the public sector (including providing copies to the Ministry of Foreign Affairs and Turkish Cooperation and Development Agency) and the private sector (including a reported 5000 copies distributed via the Confederation of Employers of Turkey). While these efforts are commendable, the information would be improved if contact details for reporting foreign bribery to the Chief Public Prosecutor's Office, law enforcement authorities, embassies and consulates were added.

148. Turkey has taken a range of measures to train and raise awareness among the public sector. Since Phase 2*bis*, seminars on foreign bribery have been delivered to over 600 judges and prosecutors across Turkey. The Ministry of Justice has delivered training to the Ministry of Economy, Foreign Economic Relations Board, Ministry of Interior and Ministry of National Education, targeting personnel posted abroad. The Ministry of Foreign Affairs provides information on the Convention to its personnel assigned to foreign missions as part of the Foreign Mission Orientation Course conducted quarterly. The Council of Ethics for Public Service of the Prime Ministry provided ethical training to a large number of public officials (over 30 000 in the past 7 years), which included information on the Convention.

149. While efforts have been made to raise awareness in the private sector, these efforts appear to have been insufficiently focused on companies operating in high risk locations and sectors (see Section A.4 of this report on Economic Background). For example, regional trade activity by Turkish companies has markedly increased, including exceptional growth in some high-corruption-risk destinations such as Libya and Iran where trade activity almost tripled from 2011 to 2012.[132] Concerning businesses sectors, since 2002 there has been a substantial increase in the volume of business conducted by Turkish companies in the construction and contracting sectors, particularly in Eurasia.[133] The five countries in which Turkish construction firms are most active (based on business volume) all scored less than 30 in the 2013

131 The webpage and booklet are available at http://www.uhdigm.adalet.gov.tr/oecd/National_Struggle_1.html.

132 Turkish Ministry of Foreign Affairs, *Economic Outlook of Turkey* (available at: http://www.mfa.gov.tr/prospects-and-recent-developments-in-the-turkish-economy.en.mfa).

133 *Ibid*.

Transparency International's CPI.[134] The recent growth of Turkish conglomerates and their increased activity in high corruption-risk areas necessitates more targeted awareness-raising.

150. Since Phase 2*bis*, the Ministry of Justice conducted awareness raising meetings and seminars with approximately a dozen employer and business associations in Turkey. The Small and Medium Enterprises Development Organisation (KOSGEB), which is affiliated with the Ministry of Industry and Trade, has raised awareness among SMEs through online materials, emails, foreign bribery seminars and brochures. KOSGEB reported that additional awareness raising activities are planned for 2014. The Ministry of Foreign Affairs reiterated during the on-site visit that it encourages Turkish companies operating abroad to report foreign bribery allegations to ambassadors and consulates. Several business organisations mentioned that Turkish embassies provide assistance in relation to market access issues but were not aware of specific assistance for managing corruption risks. Two companies, including an SME, indicated that Turkish embassies are a potential source of assistance in managing corruption risks.

151. Panel discussions with business organisations and companies were particularly well attended. Business organisations explained that they provide information to their member companies about general ethics programs, but only two participants mentioned specific activities dedicated to combating foreign bribery. Business organisations thought that companies are generally aware that the foreign bribery offence applies to their activities abroad.

152. Company representatives demonstrated awareness of the foreign bribery offence and the majority indicated that they have general anti-corruption policies in place. Several companies referred to compliance with United States and United Kingdom legislation as a basis for implementing these policies.[135] However, beyond having formal processes and policies in place, representatives of conglomerates indicated that they had no knowledge of bribe solicitation occurring or actual experience in managing corruption situations. This raises concern about the effectiveness of reporting channels within conglomerates and the effectiveness of anti-corruption policies that are in place. It also raises doubt about whether some Turkish companies are adequately aware of the foreign bribery risks that are faced by their employees.

153. The panel discussion with private sector lawyers was also well attended. Two panellists echoed the view that some Turkish companies have implemented anti-corruption policies for compliance with United States and United Kingdom law (rather than Turkish law). It was explained that Turkish companies tend to seek legal advice on anti-corruption matters only when anti-corruption compliance is raised by a foreign company with which the Turkish company is doing business. This suggests that Turkish companies do not routinely prioritise the need to develop and enforce ethics and compliance measures to prevent and combat foreign bribery risks when conducting international business.

Commentary

The lead examiners commend Turkey's efforts to raise awareness among the public and private sectors. They recommend that Turkey pursue these efforts and more specifically target companies, including SMEs, that conduct business in higher-risk corruption locations and sectors abroad.

134 A score of 0-9 indicates a perception of high corruption and a score of 90-100 indicates a perception of low corruption in the country.

135 Turkish media have also reported on this phenomenon, at least in relation to the United Kingdom legislation: see Aylin Sule Songul, 28 April 2012, *Dunya,*"İngiltere Rüşvet Yasası, Türk şirketleri için risk" (translated internally by the OECD as "UK Bribery Act, the risk for Turkish companies" and available at http://www.dunya.com/ingiltere-rusvet-yasasi-turk-sirketleri-icin-risk-152930h.htm)

b. Reporting of foreign bribery

154. Turkey imposes mandatory reporting by public officials of criminal offences, including foreign bribery. Under article 279(1) of the CC, it is an offence for any public official who becomes aware of an offence "which requires a public investigation and prosecution" to fail to report or delay reporting the offence. The penalty for this offence is imprisonment for 6 months to 2 years and is increased by 50% if committed by a judicial law enforcement officer. In terms of reporting mechanisms, the relevant authority to which reports must be made is the Public Prosecutor's Office; where a crime was committed in a foreign country, it may be reported to Turkish ambassadors or consulates.[136] Turkish authorities indicated that reports may also be submitted to the Ministry of Justice or to BIMER (a public relations service of the Office of the Prime Ministry), who would then make a referral to the Public Prosecutor's Office.

155. Public sector representatives were generally aware of the reporting obligation under the CC and, after the on-site, Turkish authorities demonstrated that the offence has been enforced on at least three occasions.[137] However, no reports about foreign bribery allegations have been made.

156. Turkey's Responses to the Phase 3 Questionnaire explain that the Ministry of Foreign Affairs uses foreign media and other official channels as sources for foreign bribery allegations. During the on-site visit, the Ministry of Foreign Affairs and the Ministry of Economy reiterated that they have mechanisms in place to ensure allegations of foreign bribery are reported to the Turkish authorities. However, the Turkish authorities were not aware of at least two allegations of foreign bribery that involve Turkish companies that had been widely reported in foreign media (*Allegations #3 – Airport Case* and *#4 – Power Station Case*, discussed in Section A.6 of this report). This raises a question about why Turkey's reporting mechanisms did not operate effectively in these instances, particularly given that Turkey has diplomatic missions in both jurisdictions in which the media reports were made and the bribery was alleged to have occurred. Further, the Ministry of Foreign Affairs was unable to provide statistics about the number of reports it has made to Turkish law enforcement authorities and the Ministry of Justice.

157. Turkey also imposes mandatory reporting by all persons of criminal offences. The reporting obligation only applies to offences that are in progress and completed offences if it is possible to limit the consequences of the offence (article 278 of the CC). Failure to report in these circumstances is punishable by imprisonment of up to one year. Although several companies indicated that they were aware of the reporting obligation, one company representative opined that it is not generally adhered to in practice. No reports about foreign bribery allegations have been made pursuant to article 278 of the CC.

Commentary

The lead examiners are concerned that Turkish enforcement authorities were not aware of foreign bribery allegations involving Turkish companies and reported in foreign media. The lead examiners emphasise the importance of effective reporting mechanisms in detecting foreign bribery. The lead examiners recommend that Turkey review, develop and promote appropriate policies and procedures on detection and reporting for the Ministry of Foreign Affairs, Ministry of Economy and other public agencies involved with Turkish companies operating abroad.

136 Article 158 of the CPC.

137 The three cases involved a mayor who failed to report construction pollution, a municipal police officer who failed to report a theft and a judicial law enforcement officer who failed to report an illegal excavation.

c. Whistleblower protection

158. In Turkey's Phase 2 and 2*bis* Written Follow-Up Report, the Working Group assessed that Turkey had taken some steps to improve measures to protect whistleblowers from retaliation.[138] However, despite some improvements, Turkey has not established comprehensive measures to protect public and private sector employees from discriminatory or disciplinary action when an employee reports suspected acts of foreign bribery.[139] Further, the existing laws are not consolidated, making them difficult to access and understand. The lack of whistleblower protection is particularly troubling given that a public official who fails to report a criminal offence may be held criminally liable, as discussed above.

159. Articles 17, 18, 20 and 21 of the Labour Law provide general protection from unjust termination, including express prohibition of termination on the basis that an employee filed a complaint or participated in "proceedings against an employer involving alleged violations of laws" (article 18(c) of the Labour Law). In the event that an employee is subject to "mobbing" (or harassment) in the workplace, article 417 of the Code of Obligations provides general protections by placing an onus on employers to respect employees and ensure they are not subject to abuse. An employee whose professional status or health is damaged due to such harassment is entitled to seek compensation. Turkey explained that the Labour Law applies to both public and private sector workers and all forms of employment contracts, including temporary and short term contracts. Another provision that may relate (although not expressly) to protection of public sector whistleblowers is article 14 of the Regulation on Complaints and Applications of the Public Officials, which requires supervisors to properly handle complaints and applications made by employees.

160. There are three primary gaps in Turkey's whistleblower protection regime. First, the protections in the Labour Law do not apply universally. The protections are only available to permanent employees who have served a minimum of 6 months and who work for an entity that has 30 or more workers (article 18 of the Labour Law). Therefore, employees of many SMEs and employees in their first six months of service are not protected. Second, the existing protections place the onus on the employee to establish a case for unjust termination, a scenario that effectively turns claims of whistleblower retaliation into wrongful termination claims. Finally, the existing protections against harassment are vague and do not appear to provide comprehensive protection against discriminatory action that is taken in retaliation of a report about foreign bribery.

161. Although Turkish authorities indicate that in most cases, they are able to protect the identity of whistleblowers when receiving reports, such protection does not exist in all circumstances. The Ministry of Labour confirmed that identity is kept confidential on request, including in communications with public prosecutors and other authorities. Similarly, the Prime Ministry Inspection Board's online reporting channel offers whistleblowers confidentiality protections (although reports themselves cannot be made anonymously). The Inspection Board explained that out of 620 complaints received, 109 were sent to relevant authorities for further evaluation (none related to foreign bribery). Legislation requires that a whistleblower's identity is protected in reports made to the public prosecutors.[140] However, there is no legislative guarantee that identity must be protected for other types of reports, such as reports made to the

138 Turkey Phase 2 and 2*bis* Written Follow-Up Report, §2b.

139 Paragraph IX(iii) of the 2009 Anti-Bribery Recommendation provides that Member countries should ensure that "appropriate measures are in place to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of bribery of foreign public officials in international business transactions."

140 Article 18 of the law on Asset Declaration and the Fight against Corruption and Bribery.

whistleblower's employer. This creates a risk of inconsistent application of identity protection measures and uncertainty for potential whistleblowers.

162. When asked about whistleblower protections during the on-site, several panellists across the business, legal and civil society panels cited the unlawful termination protections under the Labour Law. Civil society panellists expressed strong concerns about the efficacy of existing protections and referred to a Transparency International study that described the laws as "very weak" and found "a major lack of protection for civil servants who report suspicions of corruption".[141] A company representative also considered the protections inadequate. Another panellist disagreed on the basis that protections exist under witness protection laws and the Labour Law. However, witness protection laws do not specifically protect whistleblowers from retaliatory behaviour by employers; instead they provide protection to witnesses in connection with criminal proceedings.

Commentary

Regarding whistleblower protection, the lead examiners recommend that Turkey ensure that appropriate measures are in place to protect from discriminatory or disciplinary action both public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery, and take steps to raise awareness of these mechanisms.

11. Public advantages

163. In Turkey's Phase 2 evaluation, the Working Group recommended that Turkey establish a mechanism to exclude legal and natural persons from eligibility for public advantages and bolster anti-corruption measures in the context of Official Development Assistance (ODA).[142] These recommendations were considered fully implemented in the Phase 2 and 2*bis* Written Follow-Up Report. The Working Group also agreed to follow up the practical application of anti-bribery procedures implemented by Turkey's export credit agency, Turk Eximbank, which is discussed below.[143]

a. Public procurement

164. Public procurement is regulated and monitored by the Public Procurement Authority, which is an administratively and financially autonomous entity at the central governmental level.[144] Natural and legal persons who are successful in the public procurement process are required to provide a record of criminal history to demonstrate that they are not prohibited from receiving public contracts. Similarly, the Privatization Administration requires parties that bid on privatisation tenders to submit an undertaking that the party has not been convicted for foreign bribery. Prosecutors are required to inform the Public Procurement Authority of any court decisions that exclude parties from participating in public procurement tendering processes. The Public Procurement Authority itself maintains a list of excluded parties; Turkey reports that there were 8 077 excluded persons as of 25 July 2014 (not limited to those convicted for bribery offences). The Public Procurement Authority was aware of the reporting obligations for public officials under article 279 of the CC and explained that it provides training to procurement officers on the

141 See Transparency International, 2011, "Turkey Comparative Indictor-Based Monitoring of Anti-Corruption Progress in EU Accession Countries (CIMAP): Public Administration", pp.24-25 (available at http://archive.transparency.org/regional_pages/europe_central_asia/projects_and_activities/cimap).

142 Turkey Phase 2 Report, §60 & §211.

143 *Ibid.*, §52.

144 *Ibid.*, §204.

foreign bribery offence. Turkish authorities explained during the on-site visit that debarment lists of international financial institutions, such as the World Bank, are not routinely consulted by procurement authorities.

165. Natural persons convicted for foreign bribery and legal persons involved in foreign bribery are excluded from participating in any tender carried out by a wide range of public institutions, pursuant to article 11 of Public Procurement Law 4734.[145] Article 11 states that "those … convicted of … bribing crimes in their country or in a foreign country … cannot participate in any procurement". The Public Procurement Authority and the Ministry of National Defence referred to this exclusion provision during the on-site visit. The exclusion applies to direct and indirect participation, including participation as a sub-contractor and on behalf of another party, and also applies to convictions imposed by foreign jurisdictions. Turkey explained after the on-site visit that the duration of the exclusion "is equal to the term of sentence". However, it is unclear how the duration of exclusion for a legal person involved in foreign bribery would be calculated. Furthermore, Law 4734 does not mention any explicit mechanism for determining the duration of the exclusion, in particular the law itself does not refer to the concept of "the term of sentence" as a basis for calculating the duration of exclusion.

166. There is also an additional exclusion that applies if a person convicted of foreign bribery participates in a public procurement during the "term of sentence". The additional period is "for at least one year and up to two years depending on the nature of the said acts and conducts".[146] Turkey explained that the ministry ultimately responsible for implementing the contract (or another body in certain circumstances[147]) has discretion to impose the additional exclusion of greater than one year and would take into consideration the severity of the offence in determining whether to exercise the discretion.

167. Turkey confirmed during the on-site visit that an increasing percentage of public procurements are conducted outside the scope of Public Procurement Law 4734. For example, procurements related to defence, security or intelligence, and procurements from contracting authorities in foreign countries, are not subject to the general provisions of Law 4734.[148] Turkey provided data after the on-site visit confirming that 23.98% of all public procurements, which equates to 8.7% in pecuniary terms, are not regulated by Law 4734. However, all procurements (whether regulated by Law 4734 or not) are subject to article 11 of Public Procurement Law 4734, which means that all procurements must exclude tenderers convicted of foreign bribery in accordance with the provisions of article 11.[149]

168. The existence of internal controls, ethics and compliance programmes to prevent and detect bribery are not considered by procurement authorities during the tendering process.

Commentary

The lead examiners welcome the adoption by Turkey of rules that exclude natural and legal persons involved in foreign bribery from public procurement, and are encouraged by the

145 See Articles 11, 17 and 58 of Public Procurement Law No. 4734 (available at: http://www1.ihale.gov.tr/english/4734_English.pdf)

146 See article 58 of Public Procurement Law 4734.

147 Turkey explains that the contracting authorities themselves have the discretion if they are not considered subordinate to, or associated with, a ministry. Further, the Ministry of Interior has the discretion for special provincial administrations and municipalities.

148 Article 3 of Public Procurement Law 4734.

149 Article 3 of Law 4734 sets out the types of procurement to which the provisions of the law do not apply but also states that article 3 does not apply to "provisions of penalties and prohibition from tenders".

Public Procurement Authority's practice of maintaining a list of excluded entities. However, the lead examiners recommend that Turkey strengthen its public procurement processes by routinely checking the publicly available debarment lists of international financial institutions in relation to the award of public procurement.

b. Officially supported export credits

169. Turkey's export credit agency, Turk Eximbank, appears to operate fairly well with respect to combating bribery and, as a member of the OECD Working Party on Export Credits and Credit Guarantees, adheres to the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits ("2006 Recommendation"). Turk Eximbank requires applicants to submit an anti-bribery undertaking declaring that the company (including any natural or legal person acting on behalf of the applicant company) has not committed and will not commit foreign bribery in relation to the export of goods or services in the framework of the application. The company must also explicitly declare that it has not been convicted of foreign bribery in the last five years and that there is no existing allegation of foreign bribery involving the company, within Turkey or abroad, and that the company is not listed on current international financial institution debarment lists. Turk Eximbank maintains and consults a list of prohibited companies and routinely consults debarment lists of international financial institutions, international media reports and Turkish embassies abroad. Panellists at the on-site commented that four Turkish companies currently on the World Bank debarment list are not entitled to benefit from Turk Eximbank's products. If an applicant or a client is convicted of foreign bribery, or there is a strong suspicion, Turk Eximbank may reject the application or cancel an existing policy and recover credit already provided. Turkey advised during the on-site visit that, in practice, it has not experienced a situation where these measures have had to be applied to natural or legal persons in relation to foreign bribery.

170. With respect to internal controls and compliance programs, Turk Eximbank's anti-bribery undertaking encourages applicants to develop and apply appropriate management control systems to combat bribery. Turk Eximbank also explained at the on-site visit that if a company is convicted of foreign bribery, Eximbank would require it to implement management control systems before receiving the benefit of Eximbank's products and services. However, the existence of internal controls is not otherwise taken into consideration by Turk Eximbank when assessing applications for export credit.

171. Officials explained during the on-site visit that agent commissions are considered on a case-by-case basis and that no thresholds are set to trigger enhanced due diligence. Officials further explained that export credits are not generally provided in support of agent commissions. Turkey admitted that, in practice, it has not experienced a situation where enhanced due diligence measures have had to be applied with respect to suspicions of foreign bribery. Turk Eximbank staff are provided a short, general training session on foreign bribery. While the training explains Turkey's foreign bribery offence and reporting obligations, it does not provide instruction on detecting bribery and identifying high risk arrangements that may require enhanced due diligence.

172. Turk Eximbank is a public authority; accordingly its employees are subject to the reporting obligations incumbent on Turkish public officials (discussed in Section B.10.b of this report). However, to date, it has yet to experience a situation where a report of foreign bribery has been required. During the on-site visit Turk Eximbank explained that its internal policy is to report suspected foreign bribery to enforcement officials if there is credible evidence of bribery that a court would find to be reasonable and sufficient grounds upon which to base a decision.[150] Eximbank officials explained that internal legal counsel would assist in making such an assessment. Eximbank's internal policy appears to be narrower

[150] This policy is based on the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits recommendation 1(h).

than the reporting obligation imposed by article 279(1) of the CC, which obliges officials to report allegations that would require "a public investigation and prosecution"; however, the policy is consistent with the provisions of the 2006 Recommendation.

Commentary

The lead examiners commend Turkey's export credit agency, Turk Eximbank, for instituting a practice of consulting debarment lists of international financial institutions, media reports and embassy officials. They recommend that Turk Eximbank (i) continue to proactively raise awareness of foreign bribery among its clients and staff and (ii) train its staff on how to detect foreign bribery by conducting adequate due diligence.

c. Official Development Assistance

173. It was noted in Turkey's Phase 2 Report that several institutions are involved in providing the country's development cooperation.[151] The Prime Minister's Office and the Ministry of Foreign Affairs provides policy guidance, while the Turkish Cooperation and Coordination Agency (TIKA) coordinates Turkey's bilateral activities and implements projects in collaboration with other ministries, non-government organisations and the private sector. The Undersecretariat of Treasury and the Ministry of Foreign Affairs manage Turkey's multilateral development cooperation. Other ministries and government agencies implement projects related to their specific area of competence. In 2013, Turkey provided a total of USD 3.3 billion in net ODA.[152] In 2013, the largest recipient regions of Turkish bilateral ODA were the Middle East, North Africa, and South and Central Asia.[153]

174. In Turkey's Phase 2 Report, the Working Group recommended that Turkey systematically include anti-corruption clauses in ODA-funded contracts and implement a mechanism for excluding legal and natural persons previously involved in foreign bribery from participating in contracting opportunities.[154] Turkey had fully implemented these recommendations at the time of the Written Follow-Up[155] and confirmed at the Phase 3 on-site visit that TIKA continues to use anti-corruption clauses in ODA-funded contracts. TIKA is also required to adhere to the Public Procurement Law, which excludes persons convicted of foreign bribery from public contracts (see Section B.11.a of this report on public procurement). TIKA explained on-site that Turkey is preparing a multi-institutional strategy paper on development cooperation. TIKA has proposed that the strategy cover the topic of foreign bribery and corruption prevention in ODA, which Turkey reports has been included in the draft version. However, while TIKA and the Ministry of Foreign Affairs reported raising awareness among staff abroad about the need to conduct due diligence when disbursing ODA, no steps have been taken to ensure due diligence measures are applied, such as by issuing rules or guidelines that encourage staff to check Turkish and international debarment lists. Further, applicant company internal control measures are not taken into consideration in awarding ODA contracts.

Commentary

The lead examiners are pleased that anti-corruption clauses continue to be used in ODA-funded contracts. The lead examiners recommend that Turkey ensure due diligence measures

151 Turkey Phase 2 Report, §53.

152 OECD-DAC statistics, September 2014.

153 *Ibid*.

154 Turkey Phase 2 Report, pp.63-64, recommendation 7.

155 Turkey Phase 2 and 2*bis* Written Follow-Up Report, pp.13-14.

are applied, including consultation of international debarment lists, in the course of providing ODA.

Concerning compliance programmes, the lead examiners recommend that in providing public advantages, including public procurement, export credits and ODA, Turkish authorities routinely take into consideration applicant companies' internal controls, ethics and compliance programmes or measures.

C. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

175. Although the Working Group on Bribery welcomes Turkey's efforts to improve its foreign bribery offence, it remains seriously concerned about Turkey's low level of enforcement of foreign bribery, as well as certain aspects of its corporate liability legislation. Since the entry into force of the foreign bribery offence in Turkey in 2003, only one prosecution has occurred, resulting in an acquittal, and only six foreign bribery investigations have been initiated. The Working Group considers that detection could be improved through enhanced training for law enforcement officials, increased engagement with relevant public agencies, and improved reporting mechanisms such as enhanced whistleblower protections. Further, the Working Group emphasises that Turkey should ensure foreign bribery enforcement is not subject to improper influence of a political nature in a manner contrary to Article 5 of the Convention.

176. Regarding outstanding recommendations since the Phase 2 and 2*bis* written follow-up report in March 2010[156], the Working Group concludes that recommendation 5(b) remains partially implemented.

177. In conclusion, based on this report's findings on Turkey's implementation of the Convention, the 2009 Recommendation and related instruments, the Working Group: (1) makes the recommendations in Part 1 below; and (2) will follow up the issues identified in Part 2 below. The Working Group invites Turkey to submit a report in writing in one year (i.e. by October 2015) on its implementation of Recommendations 1, 3, and 7b, and to submit a written follow-up report in two years (i.e. by October 2016) on its implementation of all recommendations and follow-up issues. The Working Group also invites Turkey to provide detailed information in writing on its foreign bribery-related enforcement actions when it submits its oral and written reports.

1. Recommendations of the Working Group

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery

1. Regarding the liability of legal persons, the Working Group recommends that Turkey:

    a) Amend its law or otherwise expressly clarify that all Turkish legal persons, including state-owned and state-controlled enterprises, can be held liable for foreign bribery [Convention, Article 2];

156 See Annex 1: Phase 2 and 2bis recommendations to Turkey and assessment of implementation by the Working Group on Bribery in 2010.

b) Amend its law or otherwise expressly clarify that legal persons may be held liable for foreign bribery without prior prosecution or conviction of a natural person [Convention, Article 2; 2009 Recommendation, Annex I.B];

c) (i) Increase the level of sanctions applicable to legal persons for foreign bribery to ensure they are effective, proportionate and dissuasive; and (ii) take all necessary measures to ensure that confiscation of the bribe and proceeds of bribery (or monetary sanctions of comparable effect) may be imposed on legal persons without prior conviction of a natural person [Convention, Articles 2 and 3; 2009 Recommendation Annex I.B]; and

d) Enhance the usage of, and train law enforcement authorities on, the corporate liability provisions in foreign bribery cases [Convention, Articles 2 and 5; Commentary 27; 2009 Recommendation Annex I.D].

2. Regarding sanctions and confiscation, the Working Group recommends that Turkey:

a) Consider making fines as well as imprisonment available as sanctions for natural persons in foreign bribery cases [Convention, Article 3; 2009 Recommendation V];

b) Maintain detailed statistics on sanctions imposed in foreign bribery cases as they arise [Convention, Article 3]; and

c) Take further steps, such as through providing guidance and training, to ensure that law enforcement authorities routinely consider confiscation in foreign bribery cases [Convention, Articles 3 and 5; 2009 Recommendation III.ii].

3. Regarding investigation and prosecution of foreign bribery, the Working Group recommends that Turkey:

a) Review its overall approach to enforcement in order to effectively combat foreign bribery [Convention, Article 5; Commentary 27; 2009 Recommendation V. and Annex I.D.];

b) Ensure that sufficient resources and expertise to more effectively detect, investigate and prosecute foreign bribery are made available to (i) Public Prosecutor's Offices, in particular in the specialised Public Prosecutor's Offices responsible for financial and economic crime; and (ii) the police [Convention, Article 5; 2009 Recommendation III.i and Annex I.D.];

c) Take a more proactive approach to the detection of foreign bribery, including by (i) promptly reviewing and improving existing mechanisms for gathering information reported in the media; and (ii) ensuring law enforcement officials engage with other investigative authorities, such as those involved in anti-money laundering, tax audits, accounting and auditing [Convention, Article 5; Commentary 27; 2009 Recommendation V. and Annex I.D.]; and

d) Ensure that investigation and prosecution of foreign bribery is not influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal person involved, and take all necessary steps to ensure that any reassignment of police, prosecutors or magistrates does not adversely affect foreign bribery investigations and prosecutions [Convention, Article 5; Commentary 27].

Recommendations for ensuring effective prevention, detection and reporting of foreign bribery

4. Regarding money laundering, the Working Group recommends that Turkey increase its capacity to detect foreign bribery through money laundering cases, including:

   a) Raise awareness among reporting entities of foreign bribery as a predicate offence to money laundering [Convention, Article 7; 2009 Recommendation III.i];

   b) Increase awareness in MASAK on foreign bribery as a predicate offence to money laundering [Convention, Article 7; 2009 Recommendation III.i];

   c) Encourage law enforcement to more actively use MASAK as a resource in foreign bribery investigations [Convention, Articles 5 and 7; 2009 Recommendation III.i]; and

   d) Address the issue of politically exposed persons (PEPs) in its anti-money laundering legislation [Convention, Article 7; 2009 Recommendation III.i].

5. Regarding accounting, auditing, and internal controls, ethics and compliance, the Working Group recommends that Turkey:

   a) Ensure that both natural and legal persons can be held liable for the full range of conduct described in Article 8(1) of the Convention and ensure that sanctions for this conduct for legal persons are effective, proportionate and dissuasive [Convention, Article 8];

   b) (i) Raise awareness among auditors that foreign bribery is a type of fraud; and (ii) promptly train and raise awareness among accounting and auditing professionals (particularly those providing services to non-listed companies) on foreign bribery, including red flags to detect foreign bribery and reporting obligations [Convention, Article 8; 2009 Recommendation III.i and III.v]; and

   c) Consider broadening the scope of private companies subject to external audit to include non-listed companies operating abroad [Convention, Article 8; 2009 Recommendation X.B; Turkey Phase 2 recommendation 5(b)].

6. With respect to tax-related measures, the Working Group recommends that Turkey

   a) Ensure that law enforcement authorities routinely share information on foreign bribery-related enforcement actions with the tax administration [2009 Recommendation VIII.i; 2009 Tax Recommendation];

   b) Improve sharing of information and coordination between the Tax Inspection Board and the law enforcement authorities to enhance detection and investigation of foreign bribery [2009 Recommendation VIII.i; 2009 Tax Recommendation].

7. Regarding reporting of foreign bribery, the Working Group recommends that Turkey:

   a) Review existing policies and procedures on detection and reporting of foreign bribery for the Ministry of Foreign Affairs, Ministry of Economy and other public agencies involved with Turkish companies operating abroad, and develop and promote more effective reporting policies and procedures [2009 Recommendation III.iv and IX.i-ii]; and

b) Ensure that appropriate measures are in place to protect from discriminatory or disciplinary action both public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery, and take steps to raise awareness of these mechanisms [2009 Recommendation IX.iii].

8. Regarding awareness-raising, the Working Group recommends that Turkey increase awareness-raising efforts in the private sector to (i) specifically target companies, including SMEs, that conduct business in higher-risk corruption locations and sectors abroad; and (ii) highlight the importance of developing and implementing anti-bribery internal controls and corporate compliance programmes, including promoting the 2009 Good Practice Guidance, and consider targeting non-listed Turkish companies (e.g., SMEs) operating abroad [2009 Recommendation III.i and III.v].

9. Regarding public advantages, the Working Group recommends that Turkey:

a) In the awarding of public advantages, including public procurement and ODA funded contracts, and officially supported export credits, take into consideration, where international business transactions are concerned, and as appropriate, applicants' internal controls, ethics and compliance programmes or measures [2009 Recommendation X.C.vi];

b) With respect to public procurement, routinely check the publicly available debarment lists of international financial institutions [Convention, Article 3; 2009 Recommendation XI.i-ii; DAC Recommendation];

c) With respect to export credits, provide training to Turk Eximbank staff on detecting foreign bribery, including through conducting adequate due diligence [2009 Recommendation XII.i; 2006 Export Credit Recommendation]; and

d) With respect to official development assistance (ODA), take steps to ensure that due diligence is carried out prior to the granting of ODA contracts, including by routinely checking international debarment lists [Convention, Article 3; 2009 Recommendation XI.ii].

2. Follow-up by the Working Group

10. The Working Group will follow up the issues below as case law and practice develops:

a) The application of articles 252(4) and 252(9) of the Criminal Code to bribes offered or promised to foreign public officials [Convention, Articles 1 and 3];

b) The application of the phrase "to be indicated" in article 252(1) of the Criminal Code in relation to bribes provided to a third party beneficiary, such as a family member of an official, a political party, or a charity [Convention, Article 1];

c) The application of article 43/A of the Code of Misdemeanours, in particular to ensure that (i) the level of authority of the natural person whose conduct triggers the liability of the legal person is sufficiently flexible to reflect the wide variety of corporate decision-making systems; and (ii) legal persons cannot avoid responsibility by using intermediaries, including related legal persons [Convention, Article 2; 2009 Recommendation Annex I.B];

d) The application of sanctions in foreign bribery cases to ensure that they are effective, proportionate and dissuasive, and the imposition of measures to confiscate the bribe and proceeds of bribery [Convention, Article 3];

e) Whether Law 6526, which imposes stricter conditions for the use of certain investigative measures, hinders the investigation of foreign bribery cases [Convention, Article 5; 2009 Recommendation V and Annex 1.D];

f) The application of the non-tax-deductibility of bribes in practice, particularly to see whether any of the ongoing foreign bribery investigations and any new investigations lead to the reopening of tax returns [2009 Recommendation VIII.i; 2009 Tax Recommendation I.i and ii]; and

g) The enforcement actions taken by Turkish authorities in foreign bribery cases where Turkey refuses a request from another country for extradition [Convention, Article 10].

ANNEX 1: PHASE 2 AND 2*BIS* RECOMMENDATIONS TO TURKEY AND ASSESSMENT OF IMPLEMENTATION BY THE WORKING GROUP ON BRIBERY IN 2010

TABLE OF PHASE 2 RECOMMENDATIONS FOR TURKEY (2007)

	RECOMMENDATIONS	**WRITTEN FOLLOW-UP**
1.	With respect to general awareness raising and training activities to promote effective implementation of the Convention and the 1997 Revised Recommendation, the Working Group recommends that Turkey:	
	a) Urgently establish and implement awareness-raising programmes for (i) public officials, particularly those in contact with Turkish companies operating in foreign markets, including staff involved in official development assistance (ODA)-funded procurement contracting; and (ii) companies, including SMEs, that are active in sectors or geographic locations prone to corruption [Revised Recommendation, paragraphs I, II v) and VI iii)];	Fully implemented
	b) Promptly raise awareness among its foreign representations, including embassy personnel, and ensure that foreign representations disseminate information to Turkish companies and individuals regarding the risks of foreign bribery [Revised Recommendation, paragraph I]; and,	Fully implemented
	c) Make further efforts to raise awareness of the non-tax deductibility of bribes to foreign public officials among tax officials, tax professionals and the private sector, as well as provide training to tax officials on the detection of such payments [Convention, Article 13; Revised Recommendation, paragraph IV; and 1996 Recommendation].	Fully implemented
2.	With respect to the general detection of foreign bribery and related offences, the Working Group recommends that Turkey:	
	a) Issue specific instructions to its foreign representations, including embassy personnel, on the steps to take when credible allegations arise that a Turkish company or individual has bribed or taken steps to bribe a foreign public official, including the reporting of such allegations to the competent authorities in Turkey [Revised Recommendation, paragraph I];	Fully implemented
	b) Provide training for staff involved in ODA-funded procurement contracting on detecting and reporting suspicions of foreign bribery [Revised Recommendation, paragraphs I, II v) and VI iii)];	Fully implemented
	c) Strengthen measures to protect whistleblowers in the public and private sectors from retaliation and retribution by their employers [Revised Recommendation, paragraph I]; and,	Fully implemented
	d) Adopt as soon as possible the Draft Witness Protection Act currently before Parliament [Revised Recommendation, paragraph I].	Fully implemented
3.	Regarding the prevention of foreign bribery in relation to ODA-funded procurement contracting, the Working Group recommends that Turkey: (i) systematically include anti-corruption clauses in ODA-funded contracts; and (ii) consider establishing a mechanism for excluding individuals and companies previously involved in foreign bribery from participating in such contracting opportunities [Revised Recommendation, paragraphs I, II v) and VI iii)].	Fully implemented
4.	With respect to the prevention and detection of foreign bribery through the tax system, the Working Group recommends that Turkey: (i) introduce an express denial of deductibility of bribe payments in the tax law or through another appropriate mechanism that is binding and publicly available; (ii) provide training to tax officials on the detection of bribe payments disguised as legitimate allowable expenses; and (iii) continue to include in existing and future tax treaties the Commentary to article 26(2) of the OECD Model Tax Convention, allowing for the reciprocal sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities in relation to corruption offences [Convention, Article 13; Revised Recommendation, paragraph IV;	Fully implemented

	and 1996 Recommendation].	
5.	Concerning the prevention and detection of foreign bribery through systems for accounting and auditing and internal controls, the Working Group recommends that Turkey:	
	a) Strengthen efforts to encourage companies including SMEs operating in foreign markets to adopt internal company controls, including codes of conduct and where appropriate ethics committees, specifically addressing foreign bribery [Revised Recommendation, paragraph V C]; and,	Fully implemented
	b) Broaden the scope of private companies subject to an external audit to include certain non-listed companies that operate in foreign markets, and broaden the scope of public entities subject to a state audit to include state-owned and controlled companies not subject to an external audit, and agencies involved in official export credit support, public procurement, privatisation, and ODA-funded procurement contracting [Revised Recommendation, paragraphs I and V B].	Partially implemented
6.	Regarding the prevention and detection of foreign bribery through the anti-money laundering system, the Working Group recommends that Turkey:	
	a) Promptly issue the regulation submitted to the Prime Minister's Office for Issuance of a Council of Ministers' Decree establishing suspicious transactions reporting (STR) obligations for accountants and lawyers;	Fully implemented
	b) Promptly issue the regulation drafted by MASAK requiring the provision of feedback to parties that make STRs, and provide improved guidance to reporting parties in the form of up-to-date money; and,	Fully implemented
	c) Assess the reasons for the low number of STRs made to MASAK.	Fully implemented
7.	Concerning the investigation and prosecution of foreign bribery offences, the Working Group recommends that Turkey [Convention, Article 5] intensify and ensure regular training on foreign bribery for the investigative authorities, prosecutors and members of the judiciary.	Fully implemented
8.	Concerning the requirement under article 13(2) of the Criminal Code that the Minister of Justice request the application of "universal jurisdiction" in the specific case where bribery of a foreign public official is committed by a Turkish national or company abroad, the Working Group recommends that Turkey either: (i) eliminate this requirement; or (ii) ensure that the Minister's discretion for requesting such application shall not be influenced by political interests including "the national economic interest, the political effect.	Fully implemented
9.	Regarding the implementation of the offence of bribing a foreign public official under article 252.5 of the new Turkish Criminal Code, the Working Group recommends that Turkey repeal the application of "effective remorse", which has the effect of releasing an offender from liability for a penalty, to the foreign bribery offence [Convention, Article 1].	Fully implemented
10.	With respect to Turkey's repeal of the liability of legal persons for the foreign bribery offence, the Working Group recommends that Turkey urgently re-establish such liability in compliance with Article 2 of the Convention [Convention, Articles 2 and 3.2].	Fully implemented
11.	Regarding sanctions for the foreign bribery offence, the Working Group recommends that Turkey:	
	a) Encourage prosecutors to seek confiscation upon conviction in foreign bribery cases whenever appropriate [Convention, Article 3.3];	Fully implemented
	b) Maintain more detailed statistics on sanctions applied in domestic and foreign bribery cases [Convention, Article 3]; and,	Fully implemented
	c) Consider taking appropriate measures to exclude companies and natural persons convicted of foreign bribery from participating in privatisations, public procurement and ODA-funded public procurement contracting [Convention, Article 3.4; Revised Recommendation, paragraph II v)].	Fully implemented
12.	Regarding fraudulent accounting offences, the Working Group recommends that Turkey: (i) ensure that the penalties imposed for such offences are effective, proportionate and dissuasive; and (ii) compile more detailed statistics on the sanctions imposed for such offences, particularly those under article 359 of the Tax Procedure Code [Convention, Article 8; Revised Recommendation, paragraph V A iii)].	Fully implemented

Follow-up by the Working Group

13. The Working Group will follow up on the issues below, as practice develops:

a) Procedures for combating foreign bribery by Türk Eximbank, including mechanisms for excluding individuals and companies with prior involvement in foreign bribery from participating in official export credit support contracting [Revised Recommendation, paragraphs I and II v)];

b) The investigation of foreign bribery cases, including with regard to: (i) the sharing of competence between the Department of Anti-Smuggling and Organised Crime and the Public Order Department; and (ii) the absence of police authority to undertake an investigation except upon request of the public prosecutors;

c) The number of investigations and prosecutions of the offence of money laundering;

d) Developments regarding whether the following situations are effectively covered by the foreign bribery offence:
   i. Bribery to obtain an abuse of discretion, and bribery to obtain an act or omission that goes beyond the foreign public official's authority;
   ii. "Simplified" bribery (i.e. bribery to ensure the performance or non-performance of a task);
   iii. Bribery where an agreement is reached between the briber and the foreign public official to transmit the bribe directly to a third party, such as a family member, political party or charity;
   iv. The person bribed exercises a public function for a foreign country or a public international organisation, but has not been appointed or elected or is not holding a legislative, executive or judicial office (e.g. an employee involved in awarding public procurement contracts);

e) Sanctions imposed in foreign bribery and money laundering cases [Convention, Articles 3 and 7].

TABLE OF PHASE 2*Bis* RECOMMENDATIONS FOR TURKEY

	RECOMMENDATIONS	**WRITTEN FOLLOW-UP**
1.	Regarding allegations of transnational bribery, the Working Group recommends that Turkey:	
	a) Report in detail in its Phase 2 written follow-up report, which is due in December 2009, on progress in the two ongoing investigations and the United Nations Oil-for-Food Program cases, and continue to inform the Working Group on developments in these cases, for instance, during the Working Group's *tour de table*;	Fully implemented
	b) Maintain contact with the UN Office of Legal Affairs as necessary to ensure the timely receipt of the requested information on allegations in the IIC Final Report concerning Turkish companies, and to discuss the authentication of documentary evidence if necessary following receipt of the relevant information; and,	Fully implemented
	c) Ensure the effective investigation and prosecution of foreign bribery cases by assessing the level of suspicion necessary to open a criminal investigation of such cases, and by limiting the use of inspection boards in foreign bribery cases to assisting the public prosecutors' office in ongoing investigations and collecting information needed to open a criminal investigation when there is not a sufficient suspicion for the public prosecutors.	Fully implemented
2.	Regarding the liability of legal persons for the bribery of foreign public officials, the Working Group:	
	a) Restates the Phase 2 Recommendation to "urgently" re-establish the liability of legal persons in conformity with Article 2, and further recommends that Turkey consider the comments in this report on areas of the Draft Bill on the liability of legal persons that might not comply with the Convention, and those areas that might be an impediment to the effectiveness of the liability of legal persons; and,	Fully implemented
	b) Recommends that once a new law comes into force re-establishing the liability of legal persons for the bribery of foreign public officials, the law undergo a peer review analysis in conjunction with Turkey's Phase 2 written follow-up report, which is due to be given in December 2009, assuming that the law will have been passed by then.	Fully implemented
3.	Regarding efforts by the Turkish Government to raise the awareness of the private sector on the Convention and the offence of bribing a foreign public official, the Working Group recommends that Turkey, while sustaining its recent efforts and providing follow-up where appropriate such as through a mechanism for companies to ask questions about information provided by the Government, increase its awareness-raising efforts vis-à-vis small and medium enterprises, including through collaboration with business associations that represent SMEs.	Fully implemented

ANNEX 2: LIST OF PARTICIPANTS

Government Agencies and Bodies

- Banking Regulation and Supervision Agency
- Capital Markets Board of Turkey
- Financial Crimes Investigation Board
- High Council of Judges and Prosecutors
- Ministry of Customs and Trade
- Ministry of Economy
- Ministry of Finance
- Ministry of Foreign Affairs
- Ministry of Interior
- Ministry of Justice
- Ministry of Labour and Social Security
- Ministry of National Defence
- Prime Ministry Council of Ethics for Public Service
- Prime Ministry Inspection Board
- Prime Ministry Privatization Administration
- Public Oversight - Accounting and Auditing Standards Authority
- Public Procurement Authority
- Small and Medium Enterprises Development Organisation
- Turk Eximbank
- Turkish International Cooperation and Coordination Agency

Law enforcement

- Ankara Police Headquarters
- Istanbul Police Headquarters
- Justice Academy of Turkey
- Financial Crimes Investigation Board
- Public Prosecutor's Office of Ankara
- Public Prosecutor's Office of Court of Cassation
- Public Prosecutor's Office of Istanbul
- 3rd Aggravated Criminal Court of Ankara
- 10th Aggravated Criminal Court of Istanbul
- 2nd Aggravated Criminal Court of Ankara
- 17th Aggravated Criminal Court of Istanbul
- 5th Chamber of the Court of Cassation

Private Sector

Companies

- ASELSAN
- Cargill Agriculture, Food Industry & Trade Inc
- Cengiz Holding
- Coca – Cola Inc
- Doğan Group
- Eczacıbaşı Group
- EksiBirArtıBir Co. Ltd
- Enka Construction and Industry Inc.
- Gama Holding
- Gama Power Systems Engineering and Contracting Inc.
- Hedef Aliance Holding
- Koç Holding
- Limak Holding
- Mercedes Benz
- Polimeks Construction
- Rönesans Construction
- Sabancı Group
- SANKO Holding
- Santesel Health Consultancy and International Trade Co. Ltd
- Siemens
- Star Refinery
- STFA Group
- TAV
- Tekfen
- Turkcell Inc
- Turkish Aerospace Industries
- Turkish Petroleum Corporation
- Yapı Merkezi Construction
- Yenigün İnşaat
- Zorlu Group

Business associations

- Association of Financial Institutions
- Banks Association of Turkey
- Ethics and Reputation Society
- Foreign Economic Relations Board
- International Investors Association of Turkey
- Istanbul Mineral and Metals Exporters' Association
- Turkish Contractors Association
- Turkish Industrialists' and Businessmen's Association

Legal profession and academics

Legal profession

- Elig
- Fırat&İzgi
- Hergüner
- Istanbul Bar Association
- Lawyers Association, Istanbul

Academics

- Istanbul Kültür University, Faculty of Law
- Istanbul Şehir University, Faculty of Law
- Istanbul University, Faculty of Law
- Özyeğin University, Faculty of Law
- Political scientist
- Yeni Yüzyıl University, Faculty of Law

Accounting and auditing profession

- Deloitte
- KPMG
- Union of Chambers of Certified Public Accountants and Sworn-in Certified Public Accountants of Turkey (TURMOB)

Civil Society

- Corporate Governance Association of Turkey
- Foundation for Political, Economic and Social Research (SETA)
- Institute of Strategic Thinking
- Transparency International Turkey
- Turkish Economic and Social Studies Foundation

Media

- Daily Sabah Newspaper
- Turkiye Newspaper
- Yeni Şafak Newspaper
- Radikal Newspaper

ANNEX 3: LIST OF ABBREVIATIONS, TERMS AND ACRONYMS

2006 Recommendation	2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits
2009 Recommendation	2009 Recommendation for Further Combating the Bribery of Foreign Public Officials in International Business Transactions
2009 Tax Recommendation	2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions
AML	Anti-money laundering
CC	Criminal Code
CDD	Customer Due Diligence
CIS	Commonwealth of Independent States
CM	Code of Misdemeanours
CPC	Criminal Procedure Code
CPI	Transparency International's Corruption Perception Index
DNFBPs	Designated Non-Financial Businesses or Professions
DTA	Double Taxation Agreement
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FDI	Foreign direct investment
FIU	Financial Intelligence Unit
GDP	Gross domestic product
GIB	*Gelir Idaresi Başkanliği* (Turkish tax administration)
HCJP	High Council of Judges and Prosecutors
IIC	UN Independent Inquiry Committee
ISA	International Standards on Auditing
KOM	Department of Anti-Smuggling and Organised Crime
KOSGEB	Small and Medium Enterprises Development Organisation
MLA	Mutual legal assistance
MNEs	Multinational Enterprises
NGO	Non-governmental organisation
ODA	Official development assistance
OECD	Organisation for Economic Co-operation and Development
PEPs	Politically Exposed Persons
PODs	Public Order Departments
PPO	Public Prosecutor's Office
RoC	Regulation of Programme of Compliance with Obligations of Anti-Money Laundering and Combating the Financing of Terrorism
RoM	Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Terrorist Financing
SCE	State-controlled enterprise
SMEs	Small and medium-sized enterprises
SOE	State-owned enterprise
STR	Suspicious Transaction Report
TCA	Turkish Contractors Association
The Convention	OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
TIEA	Tax Information Exchange Agreement
TIKA	Turkish Cooperation and Coordination Agency
TPC	Tax Procedure Code
TRY	Turkish Lira
TUSIAD	Turkish Industry and Business Association
UN	United Nations
USD	United States Dollar
VDK	Tax Inspection Board

ANNEX 4: EXCERPTS FROM RELEVANT LEGISLATION

CRIMINAL CODE (2014)

Article 8 – Territorial Jurisdiction

(1) Turkish law shall apply to all criminal offences committed in Turkey. Where a criminal act is partially, or fully, committed in Turkey, or the result of a criminal act occurs in Turkey the offence shall be presumed to have been committed in Turkey.

(2) If the criminal offence is committed:
   a) within Turkish territory, airspace or in Turkish territorial waters;
   b) on the open sea or in the space extending directly above these waters and in, or by using, Turkish sea and air vessels;
   c) in, or by using, Turkish military sea or air vehicles;
   d) on or against a fixed platform erected on the continental shelf or in the economic zone of Turkey;
   e) then this offence is presumed to have been committed in Turkey.

Article 11 – Nationality Jurisdiction

(1) If a Turkish citizen commits an offence in a foreign country that would amount to an offence under Turkish law and that offence is subject to a penalty of imprisonment where the minimum limit is greater than one year, and he is present in Turkey, and upon satisfying the conditions that he has not been convicted for the same offence in a foreign country and a prosecution is possible in Turkey, he shall be subject to a penalty under Turkish law, except in regard as to the offences defined in Article 13.

(2) Where the aforementioned offence is subject to a penalty of imprisonment, the minimum limit of which is less than one year, then criminal proceedings shall only be initiated upon the making of a complaint by a victim or a foreign government. In such a case the complaint must be made within six months of the date the citizen entered Turkey.

Article 54 – Confiscation of Property

(1) On the condition that the property does not belong to any third party acting in good faith, property that is used for committing an intentional offence or is allocated for the purpose of committing an offence, or property that has emerged as a result of an offence shall be confiscated. Property that is prepared for the purpose of committing a crime shall be confiscated, if it presents a danger to public security, public health or public morality.

(2) Where the property defined in section one cannot be confiscated because it has been destroyed, given to another, consumed, or, for any other reason, an amount of money equal to the value of this particular property shall be confiscated.

(3) Where the confiscation of property used in an offence would lead to more serious consequences than the offence itself, and would be unfair, confiscation may not be ordered.

(4) Any property where, the production, possession, usage, transportation, buying and selling of which has constituted an offence, shall be confiscated.

(5) When only a certain part of a property needs to be confiscated, then only that part shall be confiscated, if it is possible to do so without harming the whole, or if it is possible to separate that part of it.

(6) Where property is shared by more than one person, only the share of the person who has taken part in the crime, shall be confiscated.

Article 55 – Confiscation of Gains

(1) Material gain obtained through the commission of an offence, or forming the subject of an offence or obtained for the commission of an offence and the economic earnings obtained as a result of its investment or conversion, shall be confiscated. Confiscation under this section should only be ordered where it is impossible to return the material gain to the victim of the offence.

(2) Where property and material gain which is subject to confiscation cannot be seized or provided to the authorities then value corresponding to such property and gains shall be confiscated.

Article 60 – Security Measures Specific to Legal Entities

(1) Where there has been a conviction in relation to an intentional offense committed for the benefit of a legal entity, which is subject to civil law and operating under the license granted by a public institution, by misusing the permission conferred by such license and through the participation of the organs or representatives of the legal entity, this license shall be cancelled.
(2) The provisions relating to confiscation shall also be applicable to civil legal entities in relation to offenses committed for the benefit of such entities.
(3) Where the application of the provisions in the above paragraphs would lead to more serious consequences than the offense itself, the judge may not impose such measures.
(4) The provisions of this article shall only be applied where specifically stated in the law.

Article 66 – Statute of Limitations

(1) Unless otherwise provided for by law, criminal proceedings shall be discontinued upon the lapse of:
    a) Thirty years for offences requiring a penalty of aggravated life imprisonment,
    b) Twenty-five years for offences requiring a penalty of life imprisonment**,**
    c) Twenty years for offences requiring a penalty of imprisonment of not less than twenty years,
    d) Fifteen years for offences requiring a penalty of imprisonment of more than five years and less than twenty years,
    e) Eight years for offences requiring a penalty of imprisonment of not more than five years or a judicial fine.
(2) […]
(3) In determining the period of limitation, the highest penalty for the qualified version of the offence (on the basis of the existing evidence in the file), shall be taken into account.
(4) In determining the periods in the above sections, the maximum penalty available for a particular offence, as stated in the law, shall be taken into account. In offences where there is an alternative penalty, the penalty of imprisonment is taken as the basis with regard to the limitation period.
(5) In the case of a retrial for the same act, the limitation period for that particular act starts again from the date the court accepts the application for the retrial.
(6) For complete offences, the limitation period shall begin on the day the offence was committed; for attempted offences, on the day when the last act was conducted; for continuous offences, on the day when the continuing act ended; for successive offences, on the commission date of the last offence and for crimes committed against children by their direct-ascendant or persons who have influence upon them, the limitation period shall begin on the day when the child turns eighteen years of age.
(7) There shall be no limitation period for offences regulated under chapter IV, volume II of this statute, which are committed abroad and require penalties of aggravated life imprisonment, life imprisonment or imprisonment of more than ten years.

Article 252 – Bribery (as amended by Law No. 6352)

(1) Any person who provides any undue advantage directly or through intermediaries to a public official or anyone else to be indicated by the public official in order to act or refrain from acting in the exercise of his/her duty shall be sentenced to a penalty of imprisonment for a term of four to twelve years.
(2) Any public official who provides any undue advantage directly or through intermediaries for himself/herself or to anyone else to be indicated by himself/herself in order to act or refrain from acting in the exercise of his/her duty shall also be sentenced to the same penalty stipulated in the first paragraph.
(3) Where the parties agree upon a bribe, they shall be sentenced as if the offence were completed.
(4) In cases where a public official requests a bribe but this is not accepted by the person or a person offers or promises any undue advantage to a public official but this is not accepted by the public official, the penalty imposed in accordance with the provisions of first and second paragraphs shall be decreased by one half.
(5) Any person acting as an intermediary for transferring the offer or the request for bribe to the other party, making the agreement on bribery or providing the bribe to the other party shall be sentenced as principal offender, irrespective of being a public official.
(6) Any third person who has been provided any undue advantage indirectly within the bribery relation or the representative of the legal entity accepting the undue advantage shall be sentenced as principal offender, irrespective of being a public official.

(7) Where the person who receives or requests a bribe or agrees to such is a person in a judicial capacity, an arbitrator, an expert witness, a public notary or a professional financial auditor, the penalty to be imposed shall be increased by one third to one half.

(8) The provisions of this Article shall also apply in the case of providing, offering or promising of any undue advantage, directly or through intermediaries, for persons -irrespective of being a public official- who act on behalf of the legal entities listed below; requesting or accepting bribe by such persons; intermediating to these activities; providing any undue advantage to another person through this relation, in order to act or refrain from acting in the exercise of their duties:
   a) Public professional organisations,
   b) Companies incorporated by the participation of public institutions or public organisations or public professional organisations,
   c) Foundations acting under public institutions or public organisations or public professional organisations,
   d) Associations working in the interest of public,
   e) Cooperatives
   f) Public joint stock companies.

(9) The provisions of this Article shall also be applied in the event that the persons listed below, directly or through intermediaries, are provided, offered or promised any undue advantage, or request or accept such undue advantage in order to act or refrain from acting in the exercise of their duties or to secure or preserve a business activity or any undue advantage due to international commercial transactions:
   a) The elected or appointed public officials in a foreign state,
   b) The judges, jurors or other officials working for international or supranational courts or foreign courts,
   c) International or supranational parliamentarians,
   d) The persons carrying out a public activity for a foreign country including public institutions and public enterprises,
   e) The national or foreign arbitrators assigned within the framework of the arbitration procedure applied for the settlement of a legal dispute,
   f) The officials or representatives of international or supranational public organizations established on the basis of an international agreement.

(10) Where the bribery offence that falls within the scope of paragraph 9 is committed, although by a foreigner abroad, with regard to a dispute to which:
   a) Turkey,
   b) a public institution in Turkey,
   c) a private legal person established in accordance with Turkish legislation,
   d) a Turkish citizen

   is a party, or to perform or not to perform a transaction concerning these institutions or persons, ex-officio investigation and prosecution shall be initiated against the persons who give, offer or promise a bribe; who receive, request, accept the offer or promise of a bribe; who intermediate these; who are provided with any undue advantage due to bribery relation, if they are present in Turkey.

Article 253 – Implementation of Security Measure on Legal Entities

(1) Where a legal entity secures an unjust benefit through the offense of bribery, security measures specific to legal entities shall apply.

Article 278 – Failure to Report an Offence

(1) Any person who fails to report, to the relevant authority, an offence which is in progress shall be sentenced to a penalty of imprisonment for a term of up to one year.

(2) Any person who fails to notify the relevant authority of any offence, which has been committed but where it is still possible to limit its consequences, shall be sentenced according to the provisions of the aforementioned section.

(3) Where the victim is a child (not having yet attained his fifteenth year) a person physically or mentally impaired or a pregnant woman who cannot defend herself as a result of her pregnancy, the penalty to be imposed according to aforementioned sections shall be increased by one half.

Article 279 – Failure by a Public Officer to Report an Offence

(1) Any public officer who fails to report of an offence (which requires a public investigation and prosecution), or delays in reporting such offence, to the relevant authority, after becoming aware of such offence in the course of his duty, shall be sentenced to a penalty of imprisonment for a term of six months to two years.
(2) Where the offence is committed by a judicial law enforcement officer, the penalty to be imposed according to aforementioned section shall be increased by one half.

Article 282 – Money Laundering

(1) A person who transfers abroad the proceeds obtained from an offence requiring a minimum penalty of six months or more imprisonment, or processes such proceeds in various ways in order to conceal the illicit source of such proceeds or to give the impression that they have been legitimately acquired shall be sentenced to imprisonment from three years up to seven years and a judicial fine up to twenty thousand days"
(2) A person who, without participating in the commitment of the offence mentioned in paragraph (1), purchases, acquires, possesses or uses the proceeds which is the subject of that offence knowing the nature of the proceeds shall be sentenced to imprisonment from two years up to five years."
(3) In case this offence is committed by public servants or particular professionals, during the execution of their professions, the sentence to imprisonment shall be increased by half of it.
(4) In case this offence is committed in the context of the activities of a criminal organization designed for the purpose of committing offences, the sentence shall be increased by one fold of it.
(5) With regard to legal persons involved in this offence, security measures pertinent to them are taken.
(6) Before initiating the prosecution procedure, whoever enables the competent authorities to seize the proceeds subject of the offence or facilitates seizing the proceeds by informing competent authorities about where the proceeds are concealed shall not be sentenced under this Article.

CRIMINAL PROCEDURE CODE

Article 127 – Seizure

(1) The seizure may be conducted by the members of the security forces upon the decision of the judge, or if there is peril in delay, upon the written order of the public prosecutor; in cases where it is not possible to reach the public prosecutor, upon the written order of the superior of the security forces.
(2) The open identity of the member of the security forces shall be included in the record of the seizure.
(3) Where a seizure was made without a warrant of a judge, the seizure shall be submitted to the judge who has jurisdiction for his approval within 24 hours. The judge shall reveal his decision within 48 hours from the act of seizure; otherwise the seizure shall be automatically void.
(4) The individual whose goods of his possession or his other property values have been seized, may ask the judge to give an order in this issue at any time.
(5) The seizure shall be notified to the victim, who suffered losses, without any delay.
(6) Seizures within places assigned for military services shall be conducted by the military authorities, upon the request of and with the participation of the public prosecutor.

CODE OF MISDEMEANOURS

Article 43/A – Liability of Legal Persons

(1) Where the act does not constitute a misdemeanour which requires more severe administrative fines; in the case that an organ or a representative of a civil legal person; or; a person, who is not the organ or representative, but undertakes a duty within the scope of that legal person`s operational framework commits the following offences to the benefit of that legal person, the legal person shall also be penalized with an administrative fine of 10,000 (ten thousand) Turkish Lira to 2,000,000 (two million) Turkish Lira:
    a) Offences stated in the Turkish Criminal Code numbered 5237:
        1) Fraud defined in Articles 157 and 158,
        2) Rigging a bid defined in Article 235,
        3) Rigging the performance of fulfillment defined in Article 236,
        4) Bribery defined in Article 252,
        5) Money laundering defined in Article 282,

b) Offence of embezzlement defined in Article 160 of the Banking Code, dated 19/10/2005 and numbered 5411,
c) Offences of smuggling defined in the Code on the Fight against Illegal Smuggling, dated 21/3/2007 and numbered 5607,
d) Offence defined in Appendix article 5 of the Oil Market Law, dated 4/12/2003 and numbered 5015,
e) Offence of financing of terrorism defined in Article 8 of the Code on the Fight against Terrorism, dated 12/14/1991 and numbered 3713.

(2) The court which is commissioned to try the offences stated in paragraph 1, has the jurisdiction over verdicts on administrative fines in accordance with this Article.

PUBLIC PROCUREMENT LAW 4734

Article 11 – ineligibility

The following persons or entities cannot participate in any procurement, directly or indirectly or as a sub-contractor, either on their own account or on behalf of others:

a) (Amendment: 5812/Article 4) Those who have been temporarily or permanently prohibited from participating in public procurements pursuant to provisions of this Law or other laws; and those who have been convicted of the crimes under the scope of Prevention of Terrorism Law No:3713, dated 12.04.1991, or of organized crimes, or of bribing crimes in their own country or in a foreign country,
b) those whom the relevant authorities have been decided that they have been involved in fraudulent bankruptcy,
c) the contracting officers of the contracting entity carrying out the procurement proceedings, and the persons assigned in boards having the same authority,
d) those who are assigned to prepare, execute, complete and approve all procurement proceedings relating to the subject matter of the procurement held by the contracting entity.
e) The spouses, relatives up to third degree and marital relatives up to second degree, and foster children and adopters of those specified under paragraph (c) and (d).
f) The partners and companies of those specified under paragraph (c), (d) and (e) (except for joint stock companies where they are not a member of the board of directors or do not hold more than 10 % of the capital)

The contractors providing consultancy services for the subject matter of the procurement cannot participate in the procurement of such work. Similarly, the contractors of the subject matter of the procurement cannot participate in procurements held for the consultancy services of such work. These prohibitions are also applicable for the companies with which they have a partnership and management relation and for joint stock companies where they own more than half of the capital and for the companies where more than half of the capital is owned by above-mentioned companies.

(Amendment: 4964/Article 8) Whatever their purposes of establishment are, the foundations, associations, unions, funds and other entities included within the body of the contracting entity carrying out the procurement, or related with the contracting entity and the companies to which such entities are partners, cannot participate in the procurement held by these contracting entities.

The tenderers who participate in the tender proceedings despite these prohibitions shall be disqualified, and their tender securities shall be registered as revenue. Moreover, in case the contract is awarded to one of those tenderers due to failure in detecting such situation during evaluation stage, then the tender proceedings shall be cancelled and tender security shall be registered as revenue.

Article 17 – Prohibited Acts or Conducts

The following acts or conducts are prohibited in tender proceedings:

a) to conduct or attempt to conduct procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, malversation, bribery or other actions,
b) to cause confusion among tenderers, to prevent participation, to offer agreement to tenderers or to encourage tenderers to accept such offers, to conduct actions which may influence competition or tender decision,
c) to forge documents or securities, to use forged documents or securities or to attempt these.

d) to submit more than one tender by a tenderer on his own account or on behalf of others, directly or indirectly, as the principal person or as representative of others, apart from where submitting alternative tenders is allowed.
e) to participate in procurement proceedings although prohibited pursuant to Article 11.

Provisions stated in Chapter 4 of this Law shall apply to those who have been involved in these prohibited acts or conducts.

Article 58- Prohibition from participation in tenders

(Amendment:4964/Article 35) Those who are established to be involved in acts and conducts set forth in Article 17, shall be prohibited from participation in any tender carried out by all public institutions and entities including the those specified in the 2nd article and the those listed in 3rd article of this Law, for at least one year and up to two years depending on the nature of the said acts and conducts; and those who do not sign a contract in accordance with the procedures, except for force majeure, although the tender has been awarded to them, shall be prohibited likewise from participation in any tender for at least six months and up to one year. Prohibition decisions shall be taken by the Ministry implementing the contract or by the Ministry which the contracting entity is subordinate to or associated with, by contracting officers of contracting entities which are not considered as subordinate to or associated with any Ministry, and by the Ministry of Internal Affairs in special provincial administrations and in municipalities and in their affiliated associations, institutions and undertakings.

In case legal persons who are subject to prohibition are sole proprietorships, the prohibition decisions shall apply to all of the partners, and in case of companies with shared capital, the prohibition decisions shall apply for partners that are real or legal persons who own more than half of the capital in accordance with the provisions of paragraph 1. Depending on their being real or legal persons, in cases where those who are subject to a prohibition decision are partners to a sole proprietorship, the sole proprietorship shall also be subject to the prohibition decision; and in cases where those who are subject to a prohibition decision are partners to a company with shared capital, the company with shared capital shall also be subject to the prohibition decision provided that they own more than half of the capital.

Those who are established to be involved in these acts and conducts during or after the tender proceedings shall not be allowed by the contracting entity to participate in the current tender as well the subsequent tenders to be carried out by the same contracting entity until the effective date of the prohibition decision.

(Amendment :4964/Article 35) The prohibition decisions shall be made within at most forty-five days following the date which the conducts or acts requiring prohibition has been established. The prohibition decision shall be sent for publication in the Official Gazette within at most fifteen days, and shall become effective on the date of its publication. The decisions shall be followed up by the Public Procurement Authority and those who are prohibited from participation in public procurements shall be recorded.

The contracting entities carrying out the tender proceedings shall be responsible for notifying the relevant or related ministry of any event requiring prohibition from participation.

TAX PROCEDURE CODE

Article 359 – False Accounting

a) Those who;
    1) Cause calculation and accounting frauds in the books and records that are kept or arranged and must be secured and presented according to the tax laws, who open accounts to the names of fictitious persons or to the name of persons who are irrelevant to the transactions shown in the records, or who record the accounts and transactions that should be recorded in the legal entries wholly or in part, to other books, documents or in other accounting media in a manner that results in the reduction of the tax base, and
    2) Falsify or conceal the books, records and documents that are kept or arranged and must be secured and presented according to the tax laws, or draw up documents that contain false and misleading information, or use such documents, shall be sentenced to imprisonment from eighteen months to three years. Despite the fact that their existence is proven by notarization records or by other means, failure to present the books and documents to the persons authorised to tax audit during an audit is deemed as concealment in application of the provisions of this paragraph. Meanwhile, a document which is based on an actual transaction or situation, but which misrepresents the nature of the amount or the amount involved, is considered as a false or misleading document as per its contents.

b) Those who destroy the pages of the books, records or documents that are kept or arranged and must be secured and presented according to the tax laws, or replace the pages of the books with other pages or with no pages at all; those who fraudulently draw up all or a part of the originals and the copies of the documents, or who use such documents, shall be sentenced to imprisonment from three to five years. A fraudulent document is a document that is drawn up to show a transaction or situation that has not taken place, as if such transaction or situation actually took place.
c) Those who print the documents that can only be printed by persons who have signed a special contract with the Ministry of Finance according to the provisions of the present Code, without a contract with the Ministry, or those who use these documents knowingly shall be sentenced to imprisonment from two to five years.

The provisions of this article shall not apply to those who notify the relevant authorities of the situation in accordance with the conditions of remorse listed under Article 371.
The imposition of the penalties mentioned in this Article on the persons who commit tax evasion shall not impede further imposition of the tax loss penalty stated in article 344.

Article 344 –
If loss of tax is caused in case of conditions written in Article 341, tax payer or individual responsible is imposed to one time of the loss of tax penalty.
If loss of tax is caused by acts written in Article 359, three times of the loss of tax penalty is imposed to persons and one time of this penalty is imposed to persons who are complicit.

CAPITAL MARKETS LAW

Article 112 – Irregularities in legal books, accounting records and financial statements and reports
(1) Those who intentionally:
    a) Do not duly keep the books and records they are legally obliged to keep,
    b) b) Do not preserve the books and documents they are legally obliged to preserve throughout the legal period, shall be sentenced to prison from six months up to two years and punished with judicial fine up to five thousand days.
(2) Those who intentionally;
    a) Draw up the financial statements and reports so as not to reflect the truth,
    b) Open accounts contrary to facts,
    c) Commit all kinds of accounting frauds on records,
    d) Draw up wrong or misleading independent audit and assessment reports as well as the responsible managers or members of the board of directors of issuers who provide their drawing up, shall be penalised according to the related provisions of the Law numbered 5237. However, in order to impose a penalty due to the crime of forgery on private documents, the usage of the forged document shall not be stipulated.
    e) Investment firms as well as institutions mentioned in the Fourth Chapter of the Third Section of this Law, shall be regarded as banks or credit institutions with regard to the crimes of hindrance or destruction of the system, deletion or alteration of data, defined in Article 244 of the Law numbered 5237.