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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

**Cancels & replaces the same document of 30 May 2018**

**Phase 3 follow up: additional written report by Turkey**

**Paris, 12-15 June 2018**

**JT03434805**

## PHASE 3 EVALUATION OF TURKEY: ADDITIONAL WRITTEN FOLLOW-UP REPORT

### *Instructions*

*At the time of Turkey's Phase 3 Written Follow-Up Report, the WGB invited Turkey "to report to the Working Group in writing in one year on enforcement action and efforts to further implement recommendations 1a-c, 3d, 4d and 7b."*

*This document seeks to obtain information on the progress Turkey has made in implementing these Phase 3 recommendations, as well as in investigating, prosecuting and sanctioning foreign bribery cases. Turkey is asked to respond to the recommendations as completely as possible.*

*Responses to the question about "action taken" should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.*

*Please submit completed answers to the Secretariat by **Monday, 28 May 2018**.*

**Name of country:** TURKEY

**Date of approval of Phase 3 evaluation report:** October 2014

**Date of information:** 28 May 2018.

### 1. Recommendations of the Working Group

#### **Text of recommendation 1(a):**

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]

#### **Action taken as of the date of the follow-up report to implement this recommendation:**

With a view to implementing the recommendation, the Ministry of Justice Directorate General (DG) for Legislations, DG for Penal Affairs and DG for International Law and Foreign Relations (UHDİGM) have established a working group. The DG for International Law and Foreign Relations, being the coordinating authority responsible for the country implementation of OECD Convention Against Foreign Bribery organized various meetings with the WG and relevant public institutions and organizations on 12 and 14 May 2015, 21-23-25 December 2015 and 06-08-12-14 January 2016 for the purpose of "reviewing the general approach in implementation in order to combat foreign bribery effectively". In these meetings, the working group has examined reports on evaluation phases of the states party to OECD Anti Bribery Convention, and their comparative legal practices concerning the recommendation have been considered. Moreover, judgments of the Court of Cassation concerning the scope of liability of legal persons in the Turkish law have been examined.

As a result of the examination, it has been identified that there is a judgment of the Court of Cassation Civil General Assembly ruling that in the Turkish law, state controlled and state owned enterprises called as State Economic Enterprises (SEEs) are subject to the rules of private law since they engage in commercial activities. The Turkish Judicial Authorities shall take into consideration the judgments of the Court of Cassation Civil General Assembly. According to the Turkish Law, if there is an existing judgment of the Court of Cassation Civil General Assembly on the subject, unless a decision to the contrary is taken, it shall remain in force and shall be binding for all. In other words, in case of a dispute, the subject is referred to the General Assembly and the issue shall be settled by a case-law of the Supreme Court. For this reason, the judgment of the Court of Cassation Civil General Assembly is still valid and binding.

The case law of the Court of Cassation Civil General Assembly dated 22/03/2006 and numbered 2006/412 - 2016/95 stipulates that "State Economic Enterprises (SEEs) are traders for they establish and run commercial enterprises. The fact that its capital is owned by the state and some managerial organs have special appointment procedures does not give such enterprises the status of public law; they are private law legal persons and thus provision of private law shall apply to them". Within this framework, it is explicitly stated in the Turkish law that SEEs are private law legal persons and subject to provision of private law.

On the other hand, Paragraph 1, Article 4 of the Statutory Law no 233 on SEEs regulates that SEEs are legal persons, and pursuant to Paragraph 2 of the same Article, they shall be subject to provisions of private law entities.

As it is known, in the reply to Article 1.1.3(d) of the Questionnaire produced for Turkey's 3rd round of evaluations, it is stated that Article 43/A of the Code of Misdemeanours shall not apply to companies subject to audit of the Court of Accounts. Pursuant to Article 4 of the Decree No 233 Having the Force of Law, SEEs are not subject to provisions of the General Accounting Law or Public Procurement Law or audit of the Court of Accounts. Thus, SEEs fall under the scope of Article 43/A of the Code of Misdemeanours for being private law legal entities by the case law of the Court of Cassation and being subject to provisions of private law.

In light of the above, if the offence of bribery of a foreign public official is committed for the benefit of SEEs, then administrative fine shall be imposed on the SEE in question since SEEs are within the scope of "private law legal persons" in Article 43/A of the Code of Misdemeanours.

On the other hand, the liability of legal persons in terms of the abovementioned Code of Misdemeanours is also regulated under the Tax Procedure Law. Article 333 titled "Liability of Legal Persons" of the Tax Procedure Law No 213 stipulates that, in the administration and liquidation of legal persons, tax penalties to be imposed on those who act against the Tax Law shall be imposed "in the name of legal persons". Thus, liability of legal persons is accepted in our legal system without making any distinction in terms of tax and administrative fines.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 1(b):**

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

(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];

**Action taken as of the date of the follow-up report to implement this recommendation:**

In accordance with Article 43/A titled "liability of legal persons" added on 26/06/2009 with the Law No 5918 to the Code of Misdemeanours No 5326, in case in the case that an organ or a representative of a private law 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.

The working group under the Ministry of Justice and mentioned in the explanations of recommendation 1(a), has reached the following information and conclusions as a result of examining the justification of the said Article and the minutes of the Parliamentary Justice Committee:

The justification of submitting the draft of Article 43/A of the Code of Misdemeanours before the Parliament is as follows:

*"The legal conclusions which are directly or indirectly connected with each other such as the acts of corruption committed through individual or organized criminal organizations, laundering of assets derived from offence, bribery, corruption in private and public sector and liability of legal persons and accession negotiations with the European Union (EU) and the liabilities required to be fulfilled under the scope of international organizations such as the Council of Europe (CoE) and the Organization for Economic Cooperation and Development (OECD), to which we are parties, are overlapping. Furthermore, during the process of EU negotiations, the subject of combating corruption has been addressed in more than one chapters such as "freedom, security and justice", "free movement of capital" and "financial control" and various amendments have been made to the Turkish Criminal Code, Criminal Procedure Code, Code of Misdemeanours and The Law on Adoption after Amendment of the Decree with the Force of Law on the Establishment of Prime Ministry.'*

Firstly, in line with Turkey's fulfillment of its obligations arising from the OECD; *Article 43/A of the Code of Misdemeanours stipulates in particular that the offences are committed to the benefit of a legal person, and with that wording, it is emphasized that in order for a legal person to be imposed an administrative fine, commission of an offence to the benefit of that legal person is sufficient.* Thus, it is clarified in the above mentioned article that administrative fines can be imposed on legal persons without prior prosecution or conviction of a natural person.

On the other hand, second paragraph of the same Article stipulates that; *"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."* This statement is important for the fact that in the text proposed by the government, it is stated that the court which is authorized to impose administrative fines on legal persons is the court which rules on conviction on natural persons; however in the enactment process of the said article, the wording has been amended to "the court

commissioned to try offences has the jurisdiction" and enacted that way. The main reason for the Parliamentary Justice Committee to adopt that opinion is to ensure compliance between the wording and general justification of Article 43/A of the Code of Misdemeanors and our Country's fulfillment of its obligations arising from the OECD.

Parliamentary Justice Committee has amended the term "the court which rules on conviction" during the enactment process for the following reason:

“In the article, the wording of "rules on conviction" requires that in order for a legal person to be penalized with an administrative fine, trial must be finalized with a verdict after the completion of prosecution. This situation reveals that although it has been identified that one of the offences listed in the article has been committed and as a result, there is a benefit to the legal person; in cases where prosecution has not been initiated for any reason or where a prosecution does not lead to a conviction, then a legal person could not be penalized with an administrative fine. The paragraph has been amended in order to prevent that situation from happening.” As it can be seen, the aim of the law makers is to make an arrangement that ensures "holding legal persons responsible for foreign bribery without a need for prosecution or conviction". The justification of the law explicitly confirms this aim.

For this reason, within the scope of the aforementioned explanation by Parliamentary Justice Committee, by establishing in Article 43/A of the Code of Misdemeanors that the court which is authorized to impose administrative fines on legal persons is not the court which "rules on conviction" but the court which is "commissioned to try the offences" and administrative fines can be imposed on legal persons without without prior prosecution or conviction of a natural person.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 1(c):**

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

(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

**Action taken as of the date of the follow-up report to implement this recommendation:**

*In terms of c (i)*, the recommendation in question has been addressed by the above mentioned working group and the practices of countries included in other OECD country reports have also been examined. Moreover, information on amounts of administrative fines imposed on legal persons by

various WGB member countries has been provided after contacting the WGB Secretariat on the subject.

As a result of the examination, our WG has reached a favorable opinion on increasing the amount of administrative fine to be imposed on legal persons for foreign bribery. Works on the subject are ongoing.

*The following explanations can be made in terms of recommendation 1 (c) (ii):*

According to the Turkish legislation, it is possible to confiscate the bribe or proceeds of bribery without prior conviction of a natural person.

According to Paragraph 2 of Article 20 of the Turkish Criminal Code No 5237; *"Penalties shall not be imposed on legal entities. However, security measures prescribed by law to be applied to such in respect of a criminal offence shall be reserved."*

Security measures to be applied to legal persons are regulated under Article 60 of TCC.

According to Article 60 of the Turkish Criminal Code:

*Security measures specific to legal entities*

*"Article 60- (1) Where there has been a conviction in relation to an intentional offence 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 it shall cancel this license.*

*(2) The provisions relating to confiscation shall also be applicable to civil legal entities in relation to offences committed for the benefit of such entities..."*

The first security measure set forth in the Article is "cancellation of operation licence". In order to implement this security measure, conviction is sought for deliberate offences committed to the benefit of legal persons as stated explicitly in the first paragraph.

However; in the second paragraph, it is stated that in order to rule on the security measure of confiscation against legal persons, different from the first paragraph, conviction is not sought. Justification of the said article states that *"...in respect of an offence committed to the benefit of a legal person, if the conditions stated in the confiscation provision are satisfied, then goods and financial interests linked to the offence shall be confiscated"*. Conditions required to rule on confiscation are regulated under Articles 54 and 55 of the Turkish Criminal Code and conviction is not sought in order to effect confiscation within the scope of the said articles.

The justification of Article 54 of the Turkish Criminal Code explicitly states that situation as:

*"The main amendment introduced with the new arrangement is the acceptance of the legal nature of confiscation as a security measure. For that reason, in order to rule on confiscation, the offence must have been committed but there is no requirement of conviction of an individual for that offence."*

In light of the explanations above, “confiscation of the bribe or the proceeds of bribery owned by legal persons without seeking prosecution or conviction of a real person” is possible in the following way:

The bribe money is initially secured and seized by the Public Prosecutor as it constitutes the subject of confiscation of materials pursuant to Article 123 entitled “*Securing and seizure of materials or gains*” of the Criminal Procedure Code. Even if the real person is not convicted because he died or became a fugitive or because the case has been time barred, the bribe money, previously secured by the public prosecutor, shall be confiscated in line with Article 54 of the Turkish Criminal Code.

The proceeds from bribery, in other words all immovables, rights and receivables derived from the offence of bribery, shall be confiscated by a court decision pursuant to Article 128 of the Criminal Procedure Code at the investigation or prosecution stage. If the real person is not convicted because he died or became a fugitive or because the case has been time barred, and if there is sufficient evidence that the offence has been committed, the bribe money, previously secured by the public prosecutor, shall be confiscated in line with Article 55 of the Turkish Criminal Code.

As can be understood from the explanations above, the regulations required by the Recommendation are included in the Turkish legislation on criminal matters. Within this framework, the following Circular with the newest date has been issued to ensure the efficient implementation of the legal regulations.

The Ministry of Justice, DG for Penal Affairs issued a Circular titled "Investigations and Prosecutions concerning International Corruption" dated 20/02/2015 and numbered 157. Paragraph 5 of page three of the same Circular stipulates that in terms of bribery of foreign public officials under the scope of Article 252 of the Turkish Criminal Code and other persons listed in the same article, in case of goods or gains required to be seized or confiscated, provisions of Turkish Criminal Code No 5237, Criminal Procedure Code No 5271, Code of Misdemeanours No 5326 and Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and other legal arrangements shall be taken into account and necessary legal action shall be taken with due diligence.

*Apart from the possibility of confiscating the bribe money or the proceeds of bribery owned by legal persons without seeking the conviction of a real person, administrative fines may also be imposed as a form of monetary sanctions.*

Pursuant to Article 43/A of the Code of Misdemeanours, the monetary sanctions prescribed in the Recommendation can be imposed on legal persons without prior prosecution or conviction of a natural person. For more detailed explanations on the matter, please see Recommendation 1 (b).

For explanations concerning Article 333 entitled “Liability of Legal Persons” of the Tax Procedure Code no. 213, please see the last paragraph of the explanations on Paragraph (a) of **Recommendation 1.**

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 3(d):**

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

(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].

**Action taken as of the date of the follow-up report to implement this recommendation:**

The Ministry of Justice DG for Criminal Matters issued the Circular no. 157, dated 20.02.2015, entitled "Investigations and Prosecutions Concerning International Corruption Cases." On page 2 of the Circular, Article 5 entitled "Implementation of the OECD Anti-bribery Convention" is explicitly emphasized. In line with this article, the following provisions have been made:

Paragraph (1), page 2 of the Circular stipulates that concerning bribery of foreign public officials and other persons listed under Paragraph 9, Article 252 of the Turkish Criminal Code, the investigation shall not be handled by the law enforcement officials, but by public prosecutors, who shall put their utmost efforts in conducting the investigations with care and without delay. Furthermore, UHDİGM shall be regularly informed of the initiation, course and result of the investigations.

This regulation seeks to ensure effective and efficient investigation of the offence of foreign bribery. It also aims to make sure that the investigation is concluded without being subject to any outside influence and that UHDİGM, the coordinating authority for the implementation of the Convention, is regularly informed, as required by the nature of the offence.

Paragraph (3) of the Circular indicates that an international mutual legal assistance request may be drafted to be sent to the relevant country, taking into account that a large part of the evidence related to the offence would be found in the country where the offence was committed. The Paragraph also points out that the requests drafted by the judicial authorities of other countries for the same purpose need to be fulfilled efficiently, expeditiously and by taking into consideration Article 5 of the Convention.

Paragraph (4) of the Circular emphasises that the requests pertaining to investigations, prosecutions and extradition of suspects and accused persons, as well as similar requests of the foreign judicial authorities, shall be carried out. These requests shall be fulfilled in accordance with the provisions of bilateral agreements signed with the relevant state or of multilateral conventions. If none exists, they shall be fulfilled with care and attention within the framework of international precedents and the principle of reciprocity.

This provision allows our public prosecutors to fulfil mutual legal assistance requests concerning the investigation of foreign bribery, regardless of national economic interests or relations with another State, based on bilateral or multilateral agreements, and if none exists within the framework of international precedents and the principle of reciprocity.

Pursuant to Article 18 of the Law No 5235 on the "Establishment, Duties and Capacities of the First

Instance Courts and Regional Courts of Appeal," the chief public prosecutor is responsible for drawing up the division of work and ensuring efficient, coherent and orderly functioning of the Chief Public Prosecutor's Office. Therefore, the chief public prosecutor takes the necessary measures to make sure the public prosecutors, first assigned to look into specific files, remain responsible for these files. Consequently, the public prosecutor, who initiated the investigation on foreign bribery offences, shall be able to remain assigned at that investigation and finalise it.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 4(d):**

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

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

**Action taken as of the date of the follow-up report to implement this recommendation:**

As mentioned in our previous contribution (2017), even though there is not any direct provision for PEP customers in Turkey, the transactions of them require special attention and additional measures are applied in line with the current anti money laundering (AML) legislation in force with a broad interpretation of several articles of:

- Regulation on Program of Compliance with Obligations of Anti-Money Laundering and Combating the Financing of Terrorism (Regulation on Compliance - RoC) (entered into force on 1 March 2009), and
- Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism (Regulation on Measures - RoM). (Entered into force on 1 April 2008)

drawn up on the basis of the Law No.5549 on Prevention of Proceeds of Crime (AML Law).

*1. Regulation on Compliance (RoC)*

Relevant provisions that should be considered as related to PEPs are clarified below:

*Development an Institutional Policy*

Banks, capital markets brokerage houses, insurance and pension companies, and General Directorate of Post (pertaining only to banking activities) are required to develop an institutional policy under the scope of the compliance program considering their business size, business volume and nature of the transactions they conduct. The objective of the institutional policy is to determine the strategies on ensuring the obliged party to comply with the obligations of anti-money laundering and the financing of terrorism, on reducing possible risk to be exposed through assessing their customers, transactions and services with a risk based approach; to determine controls and measures within the institution,

operational rules and responsibilities oriented towards ensuring the obliged party to comply with the above mentioned obligations, and to make the staff of the institution aware of these issues (Article 7 of the RoC).

#### *Establishment a Risk Management Policy*

In addition, according to the Article 11 of the RoC, abovementioned obliged parties should establish a risk management policy under the scope of the institutional policy. The objective of the risk management policy is to define, grade, monitor, assess and reduce the risk possible to be exposed by the obliged parties. And activities related to risk management should cover, among other things, developing risk defining, rating, classifying and assessing methods based on customer risk<sup>1</sup>, service risk and country risk (Article 12(1) of the RoC).

#### *Additional Measures for High-Risk Groups*

Upon the result of risk rating, obliged parties are required to take for the groups defined to be high risk one or more, or all of the additional measures listed in the Article 13(1) of the RoC in accordance with the level of the detected risk in order to ensure minimizing the risk to be undertaken.

#### *Monitoring and Controlling Activities*

It should also be noted that obliged parties should take measures on carrying out monitoring and controlling activities in the context of compliance programme to be developed by them, and minimum monitoring and controlling activities are listed in the Article 15(3) of the RoC.

## *2. Regulation on Measures (RoM)*

All financial institutons are required to conduct enhanced CDD measures listed in the Article 26/A(1) of the RoM, consistent with the identified risk, for transactions within the scope of Articles 18, 20 and 25 and for high risk situations they identify in the framework of risk based approach. Furthermore, obliged parties are required to pay special attention to complex and unusual large transactions and the ones which have no apparent reasonable legitimate and economic purpose (Article 18 of the RoM).

Within these respects, when they face the customer and transaction entailing a high risk they are obliged to take enhanced measures in order to reduce the risk such as:

- Obtaining additional information on the customer and updating more regularly the identification data of customer and beneficial owner,
- Obtaining additional information on the intended nature of the business relationship,
- Obtaining information, to the extent possible, on the source of the asset subject to transaction and source of funds of the customer,
- Obtaining information on the reasons for the transaction,
- Obtaining approval of senior manager to commence or continue business relationship or carry out transaction,
- Conducting enhanced monitoring of the business relationship by increasing the number and

<sup>1</sup> Customer risk means the risk for obliged parties to be abused due to the business field of the customer allowing intensive cash flow, purchasing of valuable goods or international fund transfers to be carried out easily; and due to the acts of customer or those acting on behalf or for the benefit of the customer for money laundering or terrorist financing purposes. (Article 3(1)c of the RoC)

frequency of the controls applied and by selecting the patterns of transactions that needs further examination,

- Requiring that in the establishment of permanent relationship the first financial transaction is carried out through another financial institution subject to customer due diligence principles.

As it is seen, in Turkey relevant measures, such as development of an institutional policy, establishment of a risk management policy, additional measures for high risk groups, monitoring and controlling activities are applied for the risks posed by PEP customers in practice.

In this framework, off-site inspections conducted by MASAK evinces that PEPs are considered as requiring special attention and/or high-risk groups by;

- 68% of banks
- 85% of capital markets brokerage houses, and
- 11% of insurance and pension companies

in their institutional policies.

Besides, MASAK has received 40 STRs about PEPs since 2012 (until April 2018). Moreover, there is an increasing trend on the number of STRs received per year. These are deemed as important indicators which demonstrate the high level awareness of financial sector on PEPs and this reality should be noted.

On the other hand, Turkey will be assessed by the Financial Action Task Force – FATF in the context of 4<sup>th</sup> round mutual evaluations and the evaluation process has just commenced. As it is known, PEPs are covered in Recommendation 12 within the FATF standards and countries' compliance is evaluated in mutual evaluations. The needs of an explicit definition and measures for PEPs in AML/CFT legislation are to be considered as a part of preparation works for technical compliance component of the assessment process.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 7(b):**

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

(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].

**Action taken as of the date of the follow-up report to implement this recommendation:**

- Paragraph 2, Article 18 entitled “Justification of termination with a valid reason” of the Labour

Law no. 4857 contains the provisions which allow employees to issue an administrative or judicial complaint against their employer or to become a party to a case on the same matter, etc. so as to secure their rights. In order for Turkey to carry out its liabilities on “*protecting public and private sector officials who report suspicious acts of foreign bribery to the competent authorities,*” under the OECD Anti-bribery Convention Article 18, Subparagraph (c) of the Labour Law no. 4857 has been amended solely for this purpose by Article 32 of the Law no. 5838, dated 18/02/2009. The expression “or to carry out their liabilities” was added after the expression “in order to secure their rights granted by the law or the convention” in the aforementioned paragraph.

The justification for the amendment introduced by Article 32 of the Law no. 5838, dated 18/02/2009 is as follows:

*Paragraph 2 of the Article entitled “Justification of termination with a valid reason”, contains the provisions which allow employees to issue an administrative or judicial complaint against their employer or to become a party to a case on the same matter, etc. in order to secure their rights.*

*According to Recommendation 2009 IX iii, concerning Article 3 of the OECD Anti-bribery Convention, one of the international responsibilities imposed on Turkey is to prevent the offence of foreign bribery and to investigate and prosecute the offence, once it has been committed, and to apply the regulations pertaining to the protection of the whistleblower in an efficient manner in both the public and private sector.*

*For this reason, in order to ensure coherence in our national legislation and to carry out our international responsibilities, as well as to protect the employee who has carried out his/her legal responsibility to report the offence in good faith, the introduction of this amendment, which is in compliance with Article 22 of the Law no. 4857, was found to be essential.*

- By the Cabinet Decree dated 14/09/2009 and numbered 2009/15428, a provision has been added to Article 14 of the Regulation on Complaints and Applications made by Civil Servants reading as “Civil Servants, who fulfil their obligation to denunciate, shall not be penalized for their denunciation, nor shall their working conditions be aggravated or changes either directly or indirectly.
- In addition to this provision, Article 18 titled “Denunciation of crime” of the Law No 3628 on Declaration of Property and Fighting against Bribe and Corruption reads as; “Denunciations of the crimes listed in the Article above are directly made to the Chief Public Prosecutor’s Office. Upon denunciation, a denunciation report shall be forthwith drawn up and a copy thereof shall be given to the denunciator. In urgent cases and cases where delays may have drawbacks, drawing up of the report can be saved for a better time. The identities of denunciators shall not be disclosed without their consent. If it is found out that the denunciation is unfounded, the identity of the denunciator is disclosed upon request of the person prosecuted.”
- Furthermore, Article 12 titled “Informing of Authorized Bodies” of the Regulation on Ethical Code of Conduct for Public Officials and Rules and Procedures for Application” reads as; “If public officials are requested to act or carry out conduct that are not compatible with the ethical code of conduct as stipulated in this regulation or if they become aware of such acts or conducts during performance of their duties, they shall inform this situation to authorized bodies. Superiors in institutions or organizations shall keep the identity of the informing public official and take necessary measures to protect the informing official from any harm”.

- In order to take steps to raise awareness of the mechanisms regarding the protection of whistleblowers in Turkish Law, several training activities were held by the relevant institutions stated in below:

- In addition to the awareness raising activities we have mentioned in previous follow-up reports, the Justice Academy of Turkey has carried out activities in the last nine *months*.

In the Justice Academy of Turkey, the experts from the DG for International Law and Foreign Relations have provided various trainings to candidate judges and public prosecutors on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and other conventions on combating corruption, including the subject of whistleblower protection. You may find the following information on awareness raising activities:

- 15 December 2017 (49 Candidate Judges and Public Prosecutors received training)
- 19 December 2017 (49 Candidate Judges and Public Prosecutors received training)
- 20 December 2017 (49 Candidate Judges and Public Prosecutors received training)
- 25 December 2017 (49 Candidate Judges and Public Prosecutors received training)
- 28 December 2017 (49 Candidate Judges and Public Prosecutors received training)
- 29 December 2017 (49 Candidate Judges and Public Prosecutors received training)
- 2 January 2018 (49 Candidate Judges and Public Prosecutors received training)
- 4 January 2018 (98 Candidate Judges and Public Prosecutors received training)
- 8 January 2018 (158 Candidate Judges and Public Prosecutors received training)
- 9 January 2018 (59 Candidate Judges and Public Prosecutors received training)
- 15 January 2018 (49 Candidate Judges and Public Prosecutors received training)
- 16 January 2018 (49 Candidate Judges and Public Prosecutors received training)
- 17 January 2018 (98 Candidate Judges and Public Prosecutors received training)
- 19 January 2018 (49 Candidate Judges and Public Prosecutors received training)
- 22 January 2018 (49 Candidate Judges and Public Prosecutors received training)
- 24 January 2018 (49 Candidate Judges and Public Prosecutors received training)
- 12 February 2018 (245 Candidate Judges and Public Prosecutors received training)
- 22 February 2018 (245 Candidate Judges and Public Prosecutors received training)
- 1 March 2018 (255 Candidate Judges and Public Prosecutors received training)
- 8 March 2018 (257 Candidate Judges and Public Prosecutors received training)

In addition to these, it is planned to provide training to 401 Candidate Judges and Public Prosecutors on 2 August 2018.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

## 2. Follow-up by the Working Group

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

### **Text of follow-up item 10(a):**

10 (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];

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

As there is no public lawsuit filed in terms of the offence of foreign bribery since the adoption of the report, it is not possible to make any explanation about this issue.

### **Text of follow-up item 10(b):**

10 (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];

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

As there is no public lawsuit filed in terms of the offence of foreign bribery since the adoption of the report, it is not possible to make any explanation about this issue.

### **Text of follow-up item 10(c):**

10 (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 Follow-up item Annex I.B];

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

As it is known, it is stated in the Article 43/A of Law of Misdemeanors as follows: "Where the act does

not constitute a misdemeanor 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 offence bribery defined in Article 252 to the benefit of that legal person, the legal person shall also be penalized with an administrative fine".

As it is understood from the provisions of the article, the level of authority of the natural person does not affect the liability of the legal person in terms of the offence of bribery. In other words, there is not any criteria determined for the level of authority of the natural person in order to punish the legal person who has a liability.

For this reason, although there is no court decision related with this issue, by taking the provisions of the article into attention, it would be considered for this sub-paragraph to not to be followed-up.

**Text of follow-up item 10(d):**

10 (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];

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

As there is no court decision related with the offence of foreign bribery since the adoption of the report, it is not possible to make any explanation about this follow up issue.

**Text of follow-up item 10(e):**

10 (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 Follow-up item V and Annex 1.D];

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

As it would be understood from the explanations regarding the investigations and allegations included in the Matrix of Turkey, the Law numbered 6526 does not have any negative effect on the continuing of the investigations with regard to foreign bribery. The investigations mostly pending due to the proceedings of MLA have not been completed yet.

**Text of follow-up item 10(f):**

10 (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 Follow-up item VIII.i; 2009 Tax Follow-up item I.i and ii]; and

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

Pursuant to Article 138 of the Tax Procedure Code (VUK), the fact that an investigation of a tax payer has been conducted does not prevent a new investigation of this taxpayer from being launched.

Therefore, in case expenditure for bribery is detected as a result of a questioning or reasoning, “even if the taxpayer has previously been investigated, the expenditure, made by the tax payer may be re-examined and rejected”.

In accordance with the above provision, the process works as follows:

In case the court rules that a taxpayer has committed the offence of bribery and requests the Tax Inspection Board to investigate whether this bribe has been deducted as an expense from the tax, an investigation into the taxpayer is started immediately, (pursuant to VUK, art.138, even if that taxpayer had been previously investigated) and a Tax Examination Report is issued on the rejection of the amount, detected to have been deducted from the tax.

If this finding (the offence of bribery) is made by a Tax Investigation Officer before the trial, the Tax Inspector communicates the situation through a Report directly to the Prosecutor’s Office.

On the other hand, if the Tax Inspector finds out that this amount has been deducted from the tax basis, s/he will reject the expenditure.

Furthermore, even if the investigation regarding the offence of bribery has been started before, Tax Inspection Board would start tax examination about the taxpayer if the public prosecution office requests.

**Text of follow-up item 10(g):**

10 (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].

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

Turkey has not been requested to extradite in a foreign bribery matter since the adoption of this report.

### 3. Foreign Bribery Enforcement Actions

Turkey is invited to provide detailed information on its foreign bribery-related enforcement actions.

To this end, we would kindly ask you to please provide information on:

- The foreign bribery cases mentioned at paras 14-24 of [Turkey's Phase 3 report](#) and at para. 2 of [Turkey's Phase 3 Written Follow-Up Report](#);
- The foreign bribery cases in the Matrix extract, attached as Annexes 1 and 2.

Please update the information contained in these documents and add information on any additional investigations underway or terminated since Phase 3.

Information may be provided below or in a separate document.

#### **Action taken as of the date of the follow-up report:**

##### Allegation 1 – FAVORI LLC (Somalia):

We requested Somalian authorities to provide information for the allegations. However, Somalian authorities did not reply our letter regarding the allegations. Therefore, we wrote letter to the Turkish Ministry of Foreign Affairs in order to obtain information on allegations.

##### Allegation 2 – Karkey Karadeniz Elektrik (Pakistan):

We requested from Pakistan authorities to provide information for the allegations. However, we did not receive any information or reply from Pakistan authorities regarding the allegations. Therefore, we wrote letter to the Turkish Ministry of Foreign Affairs in order to obtain information on allegations.

We will update the WGB on future developments, as soon as we receive any reply.

##### Allegation 3- Property Developers (Turks and Caicos):

Regarding the Real Estate case, Gaziantep Chief Public Prosecutor's Office is conducting an investigation against Cem KINAY. The investigation is still ongoing.

##### Allegation 4- Turkcell/Kcell (Kazakhstan):

In 2011, a Turkish telecom company disclosed in a regulatory filing that it had begun an internal investigation into allegations of bribery.

In fact, Kcell is not Turkcell's direct affiliate and Turkcell has no legal right to make direct or indirect examination on the records of Kcell.

However, upon Turkcell's request, the EU company TeliaSonera, having the major share in Fintur BV, assigned Ernst&Young LLP company with the task of examining the said allegations.

Upon the allegations the independent audit firm Ernst&Young carried out an investigation about the claims.

According to outcome of this investigation, all the allegations are found baseless and false.

Therefore, we request the deletion of this record from the Matrix.

##### Allegation 5-GATE (Azerbaijan and Kazakhstan) – Unaoil case

An official letter was sent to Ministry of Foreign Affairs in order to provide information on the investigation conducted by law enforcement authorities in Azerbaijan and Kazakhstan. We also requested the Ministry of Foreign Affairs to provide information and documents from both mentioned States and also related States mentioned on matrix. Ministry of Foreign Affairs asked information via Turkish Embassies Azerbaijan, Kazakhstan, Australia, Monaco, US and UK. However we couldn't obtain any information to let Turkish authorities to initiate and investigation.

Text of para. 177: 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.

*To this end, we would kindly ask you to please provide information on:*

- *The foreign bribery cases mentioned at paras 14-24 of [Turkey's Phase 3 report](#);*
- *The foreign bribery cases in the Matrix extract here attached.*

*Please update the information contained in these documents and add information on any additional investigations underway or terminated since Phase 3.*

*Information may be provided below or in a separate document.*

**Action taken as of the date of the follow-up report:**

We forward you the foreign bribery-related enforcement actions in a separate document with this report.