(24) JUSTICE, FREEDOM AND SECURITY
BILATERAL SCREENING WITH TURKEY
(13-15 FEBRUARY 2006)

REPLIES TO ISSUES AND QUESTIONS POSED TO THE TURKISH AUTHORITIES BY THE EUROPEAN COMMISSION

MIGRATION/ASYLUM:

Within the framework of the EU harmonization efforts, the Denmark-UK Consortium began implementing a Twinning Project entitled "TR02-JH-03: Support for the Development of an Action Plan to Implement Turkey's Asylum and Migration Strategy" on 8 March 2004.

During the project, all relevant ministries, institutions, organizations, international organizations and non-governmental organizations identified the gaps between the EU acquis and Turkey's current legislation along with the institutional set up for asylum, migration and aliens. The group then formulated a set of recommendations targeting the identified gaps.

In order to transform the recommendations into an action plan, a "Task Force for the Asylum-Migration Action Plan" bringing together officials from relevant Ministries, Institutions and Organizations was established on 2 November 2004. This Task Force convened in November and December 2004 and drafted "Turkey's Action Plan for Asylum and Migration". A draft of the Action Plan was forwarded to participating Turkish Ministries, Institutions and Organizations, as well as to the EU Commission requesting their opinions in written form. The Action Plan was then finalized on the basis of the received opinions.

The Plan was signed and brought into force by the Prime Minister of Turkey on 25 March 2005.

The Plan for Asylum and Migration embodies a set of legislation and development projects supporting the administrative and physical infrastructure relating to Turkey's asylum, migration and aliens system that is to be harmonized with the EU acquis and practices throughout accession negotiations.

The Action Plan can be accessed at the internet web page of the Directorate-General for Security: (www.egm.gov.tr).

Which are currently the precise geographic limitations that Turkey follows in accepting and refusing asylum applications (for instance asylum seekers from Caucasus region, including the regions of the Russian Federation?)

Turkey is party to the 1951 Convention on the Status of Refugees (Geneva Convention) and its 1967 Additional Protocol with "geographical limitation". Thus, the provisions of the Convention apply to those would-be refugees who arrive into the Turkish territory from the "European countries".

According to the current practice, following countries are considered to be "European": Estonia, Latvia, Lithuania, Moldova, Belarus, Ukraine, Russian Federation (including the Asian part), Georgia, Armenia and Azerbaijan. Other countries located farther West on the European continent are also considered as European countries.

Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan are regarded as "non-European."

This distinction is meant to be in line with the overall UN orientations.

According to the Turkish legislation, all the responsibilities concerning refugees stipulated in the 1951 Geneva Convention are assumed and implemented vis-à-vis applicants from "European countries".

Those applicants coming from non-European countries are qualified as asylum-seekers. Responsibilities arising from the Geneva Convention such as international protection as well as other types of protection, non-refoulement principle and other liabilities towards refugees in terms of social assistance, education, employment etc. are assumed and extended by Turkey to asylum-seekers as well. Due to geographical limitation, however, asylum-seekers qualified as refugees are resettled into third countries by UNHCR in collaboration with International Organization for Migration (IOM).

Will the geographic limitation be completely lifted only in 2012 or may this at certain conditions (which ones?) take place earlier?

Turkey is a country extensively affected by the mass population movements in the past. Therefore, lifting the geographical limitation is an issue which should be resolved without giving harm to the economic, social and cultural fabric of Turkey.

Lifting the geographic limitation to the 1951 Convention has been planned to take place in line with the completion of the EU accession negotiations according to 2005 National Plan of Turkey. It is dependent on two developments. These expected developments are as follows:

- Necessary amendments to the legislation and improvements to infrastructure should be materialized.
- EU should display sensitivity in burden-sharing.

Keeping in mind the refugee flows Turkey may encounter upon lifting geographic limitation, the following steps should be achieved with the financial support to be provided supplementary to the Pre-Accession Financial Assistance Programs of EU:

- Establishment of reception, accommodation and return facilities for asylum seekers and founding refugee guesthouses,
- Management of the mentioned facilities,
- Training of the personnel to be recruited for these facilities,
- Setting up of a country of origin and asylum information system,
- Establishment of a Training Academy (Institute),
- Founding of a building for the future asylum unit.

The above-mentioned facilities should be established, equipment provided and investment projects realized to prepare the ground for implementation of the EU acquis. EU countries and other countries with refugee accepting capacity should continue to assume part of the burden with regard to refugees during the transition phase.

Turkey, which has always been subject to intense population flows, should not be left alone to handle issues of asylum and irregular migration on her own.

In case of mass influx towards Turkey, which is usually the first country exposed to such movements due to her geographic location, other states, in particular EU Member States, individually or as partners through UNHCR or through other international institutions are expected to assist Turkey in taking necessary measures in a spirit of fair burden and responsibility sharing.

After the lifting of geographic limitation, UNHCR should continue to work for a certain period of time in the field of resettlement of refugees/asylum-seekers who have been granted this status. UNHCR should also contribute to the integration programs for eligible refugees.

Within this scope Turkey hopes that the EU countries will recognize such concerns and expects a realistic approach and concrete support. Therefore a study should be initiated to reveal a possible burden on Turkey of removing the geographic limitation and implementing the EU acquis on the matter. Such a study should cover the following points:

- determining the likely increase in the number of refugees coming to Turkey following the lifting of the geographic limitation,
- determining locations and calculating costs of reception and accommodation facilities for asylum-seekers, of refugee guesthouses and return centers to be established,
- evaluating cost of the establishment of a training academy for providing regular training to staff employed/to be employed in the field of asylum and migration,
- evaluating financial burden of integration of migrants and refugees into the Turkish society.

A program and protocol should be drawn up by the EU Commission before lifting the geographic limitation in light of the afore-mentioned study for responsibility and burden sharing. Thus, an understanding should be sought and reached with Turkey. A task force consisting of Turkish and EU officials should be formed with respect to burden-sharing. Findings of the task force should be evaluated in relation to a time-frame, approved and implemented by the parties.

A proposal for lifting the geographic limitation may be submitted to the Turkish Grand National Assembly (TGNA) in 2012 in line with the progress and completion of Turkey's negotiations for accession to the EU following the finalization of the above-mentioned projects and the materialization of necessary premises.

What happens to people in need of intenational protection having their asylum application rejected due to geographic limitation? Do you assess the reasons of his/her request? Do you treat the person as any other apprehended illegal migrant?

Turkey extends protection to any individual who is entitled to benefit from it pursuant to international covenants irrespective of their country of origin. Social and medical assistance is also provided within the capacity of Turkey.

Turkey extends protection to persons (asylum-seekers) from "non-European" countries, who have acquired UNHCR's refugee status and allows them to stay in Turkey until they are resettled in a third country. UNHCR, in cooperation with IOM, organizes the resettlement process. Therefore, whether coming from a European or a non-European country each case is taken up and processed according to its own merits. No application is rejected solely on the basis of the fact that the applicant is from a non-European country.

Those asylum seekers in need of international protection having their appplication rejected are eligible for being granted residence permit on humanitarian grounds. Although no direct reference has been made to secondary (subsidiary) protection in Turkish legislation, secondary and other protection methods have been implemented within the context of the Law on Residence and Travel of Aliens in Turkey in line with the spirit of the European Charter of Human Rights and other international treaties to which Turkey is a signatory.

According to the Asylum Regulation of 1994 (amended in 2006 and entitled "**Regulation to Amend the Regulation on the Procedures and the Principles Related to Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to seek Asylum from Another Country")**, asylum-seekers who are not entitled to receive refugee-status may be granted residence permits on humanitarian grounds. Article 6 of this regulation stipulates that "the cases of those whose appeals are definitely rejected are assessed within the framework of the general provisions regarding aliens."

Asylum Applications to Turkey

Between 1994-2005, 40.898 people had applied for being recognized either as a refugee or as an asylum-seeker in Turkey. 11.723 applications are still being processed. 1761 people abandoned their application and returned to their countries of origin. 20.545 applications were accepted and granted the status. 6869 applications, on the other hand were rejected. As of the end of 2005, Turkey issued 11.723 residence permits to those whose applications had been processed either as a refugee or as an asylum-seeker.

Secondary (subsidiary) Protection

In compliance with the relevant UNHCR advisory, Turkey suspended concluding application process of the asylum-seekers from Iraq. 58 Iraqis who had aborted asylum applications, were not returned to Iraq and were allowed to stay in Turkey by granting them secondary (subsidiary) protection in line with the said advisory.

Temporary Protection

Temporary protection is extended to 51.542 Iraqis during Iran-Iraq War between 1980-1988, to 20.000 Bosnians during the civil war in the former Yugoslavia between 1992-1999, to 467.489 Iraqis during the Gulf War of 1990-1991 as well as to 17.746 Kosovars during the war in Kosova in 1999.

Secondary (Subsidiary) Protection Granted On Humanitarian Grounds

The status of asylum seekers whose applications are rejected and their files are closed, are assessed within the context of the Law No 5683 on Residence and Travel of Aliens in Turkey. In 2005, of the 186 foreigners whose applications were rejected, 5 applicants were allowed to stay in Turkey on humanitarian grounds and 3 applicants were allowed to reside in Turkey on the ground that they were married to Turkish citizens.

Individuals enjoying secondary (subsidiary) protection may have access to permanent solution as they are admitted or settled into a third country as refugees with the assistance of UNHCR and/or other international organizations or through voluntary repatriation.

In light of the foregoing, it would be appropriate to state that the Turkish authorities do not treat failed asylum seekers in the same way as any other apprehended illegal migrant.

What are the acts regulating this kind of situations?

The following legislative instruments lay down the clauses and modalities on granting and withdrawing refugee status, residence of refugees and other provisions on asylum.

Convention on the Status of Refugees (Geneva Convention) of 1951,

Additional Protocol to the Geneva Convention of 1967,

Law No: 4104 on Combatant Members of Foreign Armies Seeking Asylum in Turkey,

Law No. 2510 on Settlement,

Law No: 5683 on Residence and Travel of Aliens in Turkey ,

Passport Law No: 5682,

Law No: 4817 on Work Permits of Aliens,

Asylum Regulation No: 6169 of 1994 as amended in 2006.

Before returning an apprehended illegal migrant or a rejected asylum seeker to a country of readmission, how do you manage to assess that the person is not at risk of ill treatment, persecution and death penalty etc. in the country (European Convention of Human Rights)?

Article 3 of the European Convention on Human Rights and Fundamental Freedoms foresees that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Furthermore, Article 14 of the Universal Declaration of Human Rights states: "Everyone has the right to seek and enjoy in other countries asylum from persecution"

In keeping with the principle of "non-refoulement" articulated in Article 33 of the 1951 Geneva Convention on the Status of Refugees, no asylum-seeker whose application is rejected in Turkey is sent back to the country of origin or anywhere else in which the life of this person is endangered.

Persons who are assessed to be under risk of persecution in their countries of origin are not deported, even if they are not qualified to be a refugee or asylum-seeker. The exclusion clauses are restrictively interpreted, individually assessed and resorted to only where there is clear and compelling evidence.

Although currently Turkey does not have her own Country of Origin Information system, in deciding whether the life of an asylum seeker would be in danger when returned to country of origin is strictly and thoroughly investigated before making a final decision on an asylum application. In this sense, Turkish authorities make very close cooperation with UNHCR in deciding on this point. Furthermore, reports and views of the Ministry of Foreign Affairs and relevant governmental agencies as well as some publicly available information are taken into consideration before making a final administrative decision.

To establish a system for Country of Origin Information, a project proposal was submitted to the EU Commission. This project has been revised and resubmitted to the Commission recently with a view to having it included in 2006 financial planning of the EU.

Please describe the system in place to notify the person that he/she has the possibility to lodge an appeal; whether his/her freedom of movement is restricted following the decision of expulsion or if there are cases where the return can be voluntary. What is the maximum length of detention for an apprehended illegal migrant under the law and what happens if the deadline expired?

In case of a negative decision, the applicant may object to this decision within 15 days.

Asylum-seekers are also notified in writing of their legal rights.

Should the applicant object to the decision, the Ministry of Interior allows him/her to reside in Turkey until a decision is made on the objection. The objection request is dealt with by an administrative authority superior to the one that rejected the application. A positive decision on the objection request shall lead to the granting of an asylum seeker/refugee status and the applicant shall be notified accordingly by the relevant governorship.

In the event of a confirmed (upheld) negative administrative decision on asylum request, the applicant may file a cancellation suit before a regional administrative court. As a second step, appeal to the Council of State is possible. Objection demand for cancellation and appeal have a suspensive effect on deportation procedures.

Even if a negative decision is taken on the objection request, the person concerned may be granted residence permit on humanitarian grounds.

Expulsion, within Turkish legislation, is not a judicial procedure. All the removal/expulsion processes are enforced through administrative procedures.

While enforcing the expulsion orders, the articles (Art. 2,3,6 & 8) of "The European Convention on Human Rights" related to fundamental rights are strictly observed.

Since expulsion process does not involve a judicial procedure, aliens subject to deportation are not detained. The aliens to be deported and having no financial means are accommodated at the "Reception Centers for Foreigners". At these centers, the basic humanitarian needs of them are met. They are also provided communication facilities, to reach their families and relatives.

According to Turkish Constitution (Art.125), it is ensured that all the administrative decisions/procedures of the law enforcement institutions can be appealed. Each administrative decison taken by the relevant authorities is subject to judicial scrutiny. It is always possible to appeal a decision concerning an asylum application. Therefore, an "effective remedy" exists against the decisions taken throughout the asylum procedure.

Please specify the current institutional setting in your asylum system (who does what in receiving an asylum application, taking care of collecting any valuable information on the request, deciding on it, managing the appeals, administering the asylum seekers pending the examination of his/her request). Please explain what is and will be the autonomy of those having to take the decision both in the current and in the future institutional setting.

Turkey has furnished a legal ground for the "Regulation on the procedures and principles related to population movements and aliens arriving in Turkey either as individuals or in groups wishing to seek asylum either from Turkey or requesting residence permits in order to seek asylum from another country" (1994 Asylum Regulation), with the Cabinet Decree No 6169 of 30 November 1994. This regulation is amended by the regulation accepted by the Cabinet Decree No 9938 of 16 January 2006.

According to the amended Article 4 of this regulation, "Individual aliens who are either seeking asylum in Turkey or requesting residence permission in order to seek asylum from another country shall apply without delay to the governorship of the place where they are present if they entered Turkey legally; and shall apply without delay to the governorship of the locality where they entered Turkey if they entered illegally."

Article 5 of this regulation sets out that the governorships interview the applicants in accordance with the 1951 Geneva Convention. For interviewing and decision making, personnel will be appointed at the governorships that are authorized to conduct interview or make a decision.

Article 6 of the Regulation stipulates that decisions on the applications of individual aliens who either seek asylum from Turkey or request residence permission in order to seek asylum from another country are concluded by the Ministry of Interior (Directorate-General for Security, Department of Aliens, Frontiers and Asylum) in conformity with the 1951 Geneva Convention pertaining to the Status of Refugees and the Protocol of 31 January 1967 relating to the Status of Refugees and the above-mentioned Regulation.

When it deems necessary, the Ministry of Interior could transfer the decision making authority to the governorships.

The decision taken by the governorship or the Ministry of Interior is communicated to the alien through governorships.

Those aliens whose applications are accepted are accommodated in a guesthouse deemed suitable by the Ministry of Interior or freely reside in a locality determined by the Ministry of Interior.

Those aliens whose applications are not accepted may appeal to the relevant governorship within 15 days.

The statement, other information and documents supporting the claim are submitted by the applicant appealing the decision. The application is sent to the Ministry of Interior by the governorship. Appeal is concluded by the Ministry of Interior and a final decision is notified to the applicant.

The cases of those whose appeals are definitely rejected, are assessed within the framework of the general provisions regarding the aliens.

Turkey informs the United Nations High Commissioner for Refugees (UNHCR) about the applicants coming from outside Europe and ensures that they are registered and interviewed by the said Office. Therefore, while a decision is to be made on the applications, UNHCR's opinion is also taken into consideration, the information contained in the applicant's case is mutually shared and the status of the applicant is collectively debated. Therefore, the decisions of UNHCR and of the Ministry of Interior are harmonized.

In principle, as for the proceedings associated with the applications and for issues such as accommodation, food and lodging, transfer, admission to third countries, provision of passports and visas in particular, cooperation is ensured with UNHCR and other relevant international organizations via the Ministry of Foreign Affairs. The activities concerning the transfer of such aliens, in particular, are carried out in cooperation with the International Organization for Migration (IOM).

Action for Nullity against Administrative Procedure

The applicant may resort to administrative justice procedures in accordance with Article 125 of the Constitution against a secondary negative decision issued by the Ministry of Interior on the appeals case. On the condition that the applicant applies to administrative court procedures against a negative decision of the Ministry of Interior, deportation measure is suspended and the applicant is allowed to remain in the country until a final ruling by administrative courts. The applicant is deported by the relevant governorship if no application is made for exhausting administrative justice procedures or when the administrative court upholds the decision reached by the Ministry of Interior.

Please specify when and how the institutional organization (the distribution of tasks and roles among the various State bodies involved) will change? What are the problems identified with the current organization? Is the decision making process transparent? Does UNHCR or specialized NGOs or lawyers at the request of the asylum applicant have access to the file and know about the reasons of a possible asylum request rejection?

According to the Action Plan, further specialization in the field of asylum and migration is foreseen within the framework of the improvement of the operational capacity of the present institution.

The existing unit will be strengthened and expanded to make sure that asylum procedures are enforced in harmony with the EU acquis and it will:

- make decisions on asylum,
- determine residence and similar status,
- withdraw the status when necessary and decide on deportation,
- develop and implement return programs for those willing to return to their countries,
- shape policies for integration of aliens into the society,
- establish an "Evaluation Board," which will be instrumental in exercising administrative supervision on migration management and protecting the rights of aliens under the procedure, comprising the relevant experts from the ground (practitioners) in order to devise policies and provide coordination among institutions in the field of combating illegal migration and human trafficking, deciding on complex cases and settling possible disputes at the administrative level on migration management.

During the decision-making process with regard to determining the status of asylum seekers/refugees, cooperation with UNHCR is sought and effort is spent to make sure the decisions of UNHCR and those of the national bodies concerning asylum applications are harmonized. With the consent of the applicant, data and information are exchanged between the national bodies and UNHCR.

When an asylum-seeker resorted to judicial appeal process against the final administrative decision regarding his/her application, all the data in his/her file become available to the applicant as well as to his/her attorney.

CO-OPERATION IN THE FIELD OF DRUGS:

Does your country have a National Drugs Strategy/Action Plan that is in line with the EU Drugs Strategy (2005-2012) and EU Action Plan on Drugs (2005-2008)? Is there a budget foreseen for the implementation of the Strategy/Action Plan? Does the Strategy/Action Plan include an element of evaluation?

Turkey has prepared its national strategy on fighting against addictive substances in 1997. The strategy has entered into force by the Decree of the Council of Ministers which specifies the principles of the fight against addictive substances including supply, demand and rehabilitation aspects and also defines the target groups in this field.

During the updating works of the 5-year period strategy for the years 2003-2008, it was underlined that our national strategy should be aligned with the EU strategy for the addictive substances. Within this framework, the "Project for the Establishment of the Turkish National Focal Point for the EMCCDA and Development and Implementation of the National Strategy for Addictive Substances" has been put into force in order to meet the requirements mentioned above.

Since one of the sub-titles of the project is the harmonization of our national strategy with the EU strategy, it has been decided to carry out updating works in line with the project. It has also been decided that the national strategy covering the years between 1997 and 2002 should remain in force until the end of the project.

The works related to the harmonization of our National Strategy with the EU strategy that will be completed by the first quarter of 2006 are still ongoing.

Are there formal arrangements to ensure the cooperation between authorities in the drugs field (e.g. an inter-ministerial drugs group)? Are there arrangements regulation the practical cooperation between law enforcement bodies (e.g. police, border guard, custom) and which format do they take (e.g. Memorandum of Understanding)? Any information on the functioning and outcome of such cooperation would be appreciated.

"Supreme Committee for Monitoring and Steering the Fight against Use of Narcotic Drugs" and "Sub-Committee for Monitoring and Steering the Fight against Use of Narcotic Drugs" were established with the Resolution of the Council of Ministers of 25 July 1997 and No. 97/9700, in order to carry out the activities for fighting against the use of and addiction to narcotic drugs, to determine and to coordinate the measures to be taken. Representatives of 18 institutions and organizations work together in these committees.

Turkey's membership to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), which was established for the purposes of comparable, reliable and objective information gathering, analysis and use thereof in the fields of use of narcotic drugs, addiction and its consequences, was approved as envisaged in the EU Acquis concerning the fight against addictive substances.

TADOC was assigned as the National Focal Point of the EMCDDA to ensure the realization of the membership activities on a continuous basis.

Turkish Monitoring Center for Drugs and Drug Addiction (TUBİM) was established and initiated its activities under the auspices of the TADOC to carry out projects in the fields of narcotic drugs and drug addiction in a longer term under a single umbrella, to ensure and maintain coordination and information exchange among other related institutions and/or organizations, and provide the continuity of bilateral relations with the EMCDDA.

Since the cooperation among the related institutions in different fields is of utmost importance in the fight against narcotic drugs, Institutional Focal Points comprised of members from the institutions in question were established to ensure direct communication and cooperation. Each institutional focal point is represented by two members.

The "Enforcement and Liaison Unit for Fight Against Substance Use" was established under the structure of Narcotics Units of 81 Provincial Divisions of Anti-Smuggling and Organized Crime, affiliated to the Turkish National Police.

On the other hand, two expert committees have been established;

1- Expert Advisory Committee has been given the task to supervise and assess the exempted preparations (the evaluation is for conformity with the requirements of Article 3, paragraph 2, of 1971 Convention concerning abuse liability and recoverability of the psychotropic substances and the evidence available to DG that the preparation may constitute a public health and social problem to an improving country or to a country where it is illicitly traded)

2- Expert Committee on Drug Addiction and Treatment Methods has been given the task to supervise drug addiction and the treatment centers for drug addicts.

Is there a system for the collection drug related data according to the standards of the EMCDDA? Is there a functional focal point for the Reitox network of the EMCDDA and what is the legal status for the focal point?

Data collection is conducted by the institutional and provincial focal points in Turkey. The instruments used by Turkey for the data collection has been harmonized with the instruments used by the EMCDDA. In this vein, a twinning project is carried out with the EU.

Our focal point for the EMCDDA, the Turkish Monitoring Center for Drugs and Drug Addiction (TUBİM) was established as a section under the TADOC. The work to increase the legal status of the said Center is underway.

Is there a system for detecting and analyzing new psychoactive substances? What is the procedure for placing new substances under control?

New psychoactive substances detected through clinical studies and informed by the medical doctors/hospitals involved related treatment, are analyzed by the Scientific Pharmaceutical Consultation Committee which acts under the Ministry of Health. However, there is no specific system for detecting and analyzing new psychoactive substances.

What types of programmes are there for the prevention and the reduction of health related harm associated with drug dependence (e.g. methadone programmes, needle exchange etc.) and how are these programmes regulated?

"Train the Trainers Programme for the Fight against Substance Use" was provided to the personnel of the provincial divisions with the coordination of the Department of Anti-Smuggling and Organized Crime, Ministry of Interior. The said personnel organize training activities for the target groups in the context of the use of narcotic drugs. The experts, participated in this training programme, organize activities such as conferences and panels for students and teachers at high schools and parents of the students, personnel of the General Directorate of Prisons and Detention Houses, and for other audiences upon request, in the field of substance use and addiction. These activities are organized with the support of the experts working in Provincial Directorates of National Education and Health.

These activities also target the people who have never used substances but are in the risk group.

The supply (drug availability) of and demand (drug consumption) for narcotics/psychotropic substances/narcotic precursors manufactured for medical purpose or industrial use is also related with the illicit drug problem.

The Ministry of Health as national authority which is in charge of the licit manufacture, import, export and consumption of narcotics, psychotropic substances and narcotic precursors within the framework of the UN Conventions which Turkey is party, and also regulates the treatment centers, methodologies and programmes for the drug addicts according to the Regulation on Treatment Centers for Drug Addiction including the treatment with methadone, buprenorphin and the other programmes.

CUSTOMS COOPERATION:

What is the organisation of the customs bodies responsible for the prevention, detection and investigation of criminal offences? Please describe:

- Legal status and operational structure
- Specific control procedures
- Co-ordination and co-operation with other involved services (police, border guard, and other services/agencies)

A. Turkish Customs Administration is organized as an Undersecretariat, operates under the Prime Ministry and is responsible to the Minister of State.

The Headquarters is located in Ankara and is the primary unit responsible for the prevention, detection and investigation of criminal offences are:

The Headquarters consists of 4 main Directorates General, 1 Investigation Board, 3 Consultative Bodies and 5 supportive units.

A. 1. Directorate General for Customs Enforcement:

The Directorate General for Customs Enforcement with its regional structure is the main responsible body in prevention, detection and investigation of criminal offences.

As regards the primary function of the Directorate General for Customs Enforcement, the detailed information is as follows:

A. 1.1. Its legal status and powers are based on :

- Decree No: 485 on the organization and responsibilities of Undersecretariat of Customs, particularly Articles 2, 7, 8, 10 and 12.

- Law no: 3944 on the organization of Customs Enforcement Officers and Customs Administrative Officers (1940), which identifies the organization of customs enforcement officers as a **special law enforcement unit** with an authority to keep and use arms in accordance with the duties and arranges the principles and the conditions of the work of customs enforcement and administrative officers,

- Criminal Procedure Law No: 5271, Article No: 164, indicating that Customs Enforcement is a judicial law enforcement authority,

- Anti-Smuggling Law no: 4926, particularly Article 16 which lists the authorities responsible for prevention, monitoring and investigation of smuggling crimes as:

  - Civilian administrators (governors, sub governors),
  - Customs and customs enforcement officers,
  - Police, Gendarmerie and Coast Guards,

- Customs Law no: 4458, particularly Article 34 says that:

  - The entries into and exits from the Turkish Customs Territory are performed through customs gates,

  - Goods brought into the Turkish Customs Territory shall, upon their entry, be subject to customs supervision. They may be subject to control by the customs authority in accordance with the provisions in force.

- Law No: 2313 on the Control of the Psychotropic Substances

- Law no: 2863 on Protection of Cultural and Natural Resources

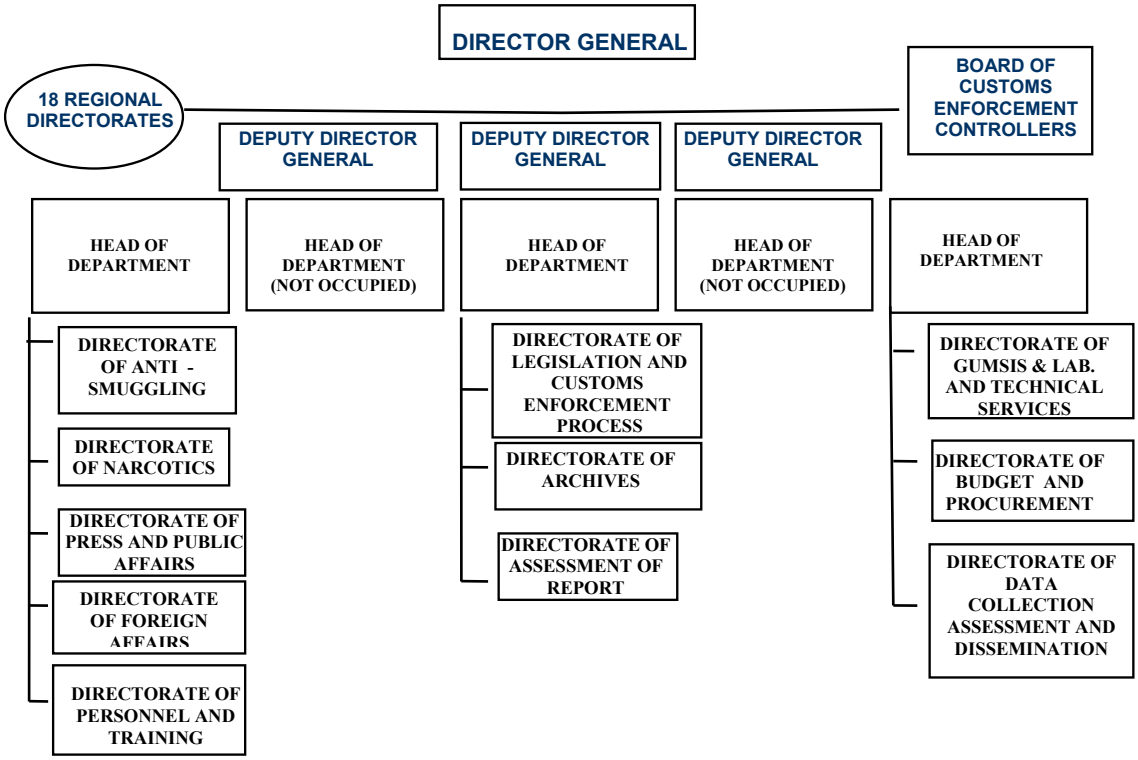
- Law no:6136 on Firearms, Knives, and other Tools

- Sea Commodities Law no:1380

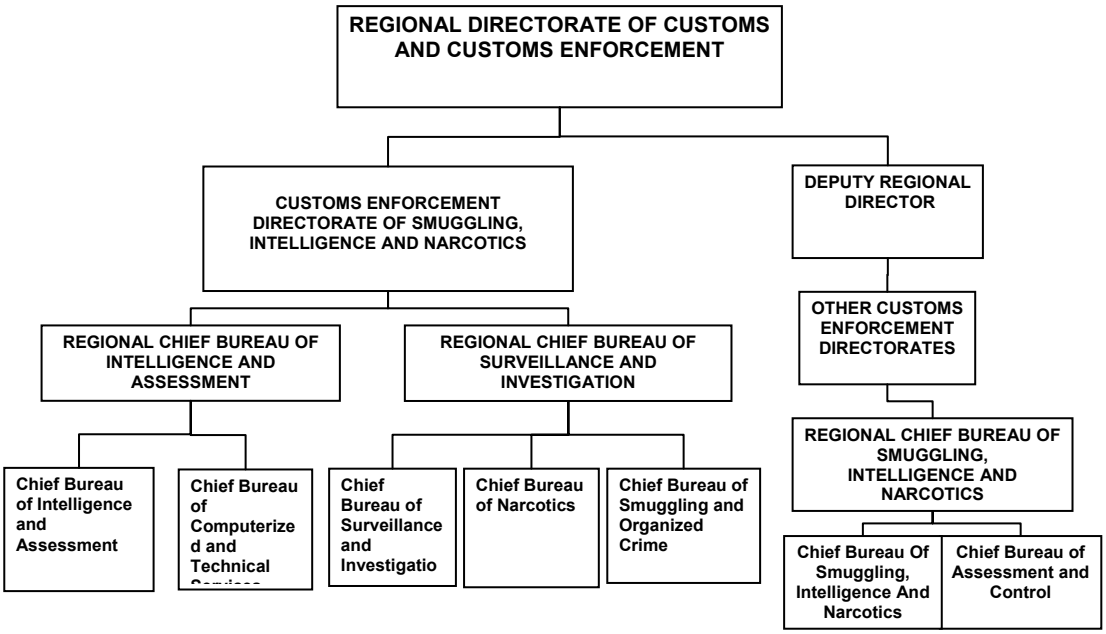
- Other related regulations.

A. 1.2. Structure and its operational units of the Directorate General for Customs Enforcement:

A.1.2.1 Central Structure:



A.1.2.2 Regional Structure:



A.2 Board of Investigation:

The Investigation Board, consisting of 102 Customs investigators including junior investigators, has similar powers as to powers of Directorate General for Customs Enforcement (except not being a judicial law enforcement authority). But it should be underlined that the Board is used case by case and the files should generally be directed or transferred to the Board by the Undersecretary. Being a highest level Investigation unit in Undersecretariat, the Investigation Board deals with complicated cases in which many people or organizations are involved.

In every stages of investigation, the investigators are competent on deposition of any customs officer involved in any customs crime or corruption. (Decree No: 485/ Article:12-f)

They are also competent to:
- require any document related to the investigation,
- inspect all persons, vehicles or goods.

A. 3. Controller Units of the Separate Directorate Generals:

The Controller Units of the Directorate General for Customs, Directorate General for Customs Enforcement and Directorate General for Customs Control have the similar legal powers to prevent, detect and investigate all customs related crimes. But these units operate under the relevant Director Generals and the Directors General have an authority to assess the cases and to decide to transfer any file to their Controller Units or to Investigation Board via the approval of the Undersecretary.

It should be stated that the Undersecretariat has also its Regional Directorates and the current number of these regional directorates is 18. The number of Directorates of Customs and Customs Enforcement operating under the regional directorates is total 143 offices throughout the country.

B. Specific control procedures:

Control Levels:

1-Documentary control, advance collection of documents included (Summary Declaration)
2- Post-control on documentary
3- Physical Examination
4- Post-Clearance Audit
5- Second level supervisory inspection
6- Investigation

C. Co-ordination and co-operation with other involved services (police, border guard, other services/agencies):

• Joint operations & investigations on smuggling in drugs, firearms, people and money laundering are carried out with other law enforcement agencies

• Where necessary, technical equipments in the field of combating organized crimes are used commonly with other law enforcement agencies

• Where possible, customs administration participates as a trainer or trainee in each training courses or other programs held by other agencies

• Laboratories of customs administration or of other agencies are used commonly where needed

• "Sniffer Dogs Training Center" of the Turkish National Police is used by Customs Administration for training of customs enforcement sniffer dogs. Customs Administration has its own Trainers at the Center.

• Gunfire exercises: Annual practices (twice a year) for the entire law enforcement officials of Customs are held in appropriate training centers or polygons of other enforcement agencies (Police, Gendarmerie)

• Participation in TADOC (Turkish Academy on Drugs and Organized Crime - established under Turkish National Police with the support of UNODC) programmes

• Participation of customs enforcement staff to the meetings, workshops, panels, etc. on customs enforcement related issues held by national, regional or international organizations.

Please describe the training of law enforcement customs officers

The types of the training programs to the Customs enforcement officials are stated below:

Type 1: Orientation training which lasts two months when they join to the customs administration in order to let them acquire essential enforcement capabilities, including:

- Customs and Smuggling Legislation
- Foreign Trade Legislation
- Tariff, Origin, Value
- State Organization
- Constitutional Law
- Penal Law
- Criminal Procedures Law and relevant legislation related to judicial powers
- Investigation Techniques
- Public Officers Law
- Computerized Databases
- Turkey EU Relations
- Narcotics
- Illegal Immigration
- Risk Analysis
- Nuclear and radioactive materials
- X-ray operations

Type 2: Specialized training programs on several subjects such as narcotics, smuggling, fraud, counterfeited goods, intelligence, risk analysis for several times throughout their professions

Type 3: Re-training courses

Type 4: Operational courses

Is there an integrated computer system in place?

All the current systems in place (namely, BILGE, GUMSIS, GUVAS) are integrated.

Which databases and registers are in place?

GUVAS (Customs Data Warehouse System)
1. Customs Declaration (Export-Import-Transit)
2. TIR carnet
3. Vehicle Tracing
4. Anti-Smuggling Database (All seizures made by Customs and by joint operations or by other law enforcement agencies)
5. Valuation
6. Suspected vehicles. goods, people (only drivers): Sources: Gendarmerie-police-informants-customs-international (drugs included)

Reference databases

1. International Code list (country, seaports, airports, monetary units...)
2. Registration information over Trader -Ministry of Finance
3. External users including Customs Brokers –Traders-Transporters)
4. Transporters – Info over the administrative records of the companies- IRU via TOBB
5. Inward Processing- Undersecretariat for Foreign Trade
6. National Integrated Tariff System (regime, rates, quotas….)
7. Warehouse and bounded warehouse database

Under consideration: Stolen vehicles + passenger information will be connected to National police database)

Under construction: Vessel and Container pursuit programmes

Which measures are taken to ensure the integrity of customs officers?

Studies are carried out in order to ensure the integrity of the Turkish Customs Administration:

- Turkey is a contracting party to the WCO ARUSHA Declaration on integrity

- Turkish Customs Administration's "Code of Conduct on Integrity in Customs" is published

- Permanent Training Courses have been carried out on Integrity

- Ethics Declaration is signed by all customs staff

- Turkish Customs Administration is taking part in International Forums on Integrity related issues

-Intelligence & Informant Channels are established within the Undersecretariat

- Investigators are authorised to handle the cases.

- All Customs officers are required to submit their declaration of property to the administration periodically. In case of any suspicion, relevant officers are being investigated.

POLICE COOPERATION AND FIGHT AGAINST ORGANISED CRIME (INCL. TRAFFICKING IN HUMAN BEINGS):

How does the coordination between different law enforcement bodies as well as between law enforcement bodies and the judiciary work? Describe your national rules on information exchange between police, customs and other law enforcement bodies.

Since combating organised crime is a multifaceted endeavour, institutions in Turkey from several fields (judiciary, local governments, police, customs administration and related departments in every ministry) contribute their power and efforts to the fight against organised crime.

With respect to some complex cases, upon the demand of public prosecutor, joint working teams that have members from the related institutions are established at central and provincial level to investigate the situation and to assist the collection of evidence concerning organised criminal activities. These investigations are conducted by the Turkish National Police, Gendarmerie, Coast Guard as well as Customs Administration, and coordinated/supervised by public prosecutors.

In addition, monthly meetings are held on a regular basis concerning illicit drug-related organised crimes with the participation of Turkish National Police, Gendarmerie, Coast Guard and Customs Administration.

Turkish National Police and General Command of Gendarmerie use General Information Collection database, which is under the supervision of Ministry of Interior.

At the provincial level, general coordination of public order and security among different law enforcement bodies is provided by Provincial Governor.

Please describe standards for police ethics and oversight structures (including auditing and evaluation)? Does police have independent control and budget powers?

Under the Turkish administration system, governors and district governors are the provincial and district representatives of the Government and the State. They are the highest-ranking executive authorities at provincial level. In their areas of jurisdiction, governors and district governors are mandated to supervise and oversee the law enforcement bodies, including the police force, the gendarmerie and the village guards.

As per their mandate, governors and district governors are responsible for defining security policy, management of the security sector including monitoring of the implementation of security policy and taking corrective action. Nevertheless, their capacity to perform these functions of security sector oversight is bound to institutional capacity. They have limited access to decision making support or the knowledge required for sound decision-making, as well as the limited good governance mechanisms that should underpin this process of decision-making in critical security sector issues. Furthermore, the provincial units within and outside the Office of the Governor are not equipped to support the governor and district governor in security sector oversight.

Governors and district governors are Ministry of Interior staff. A separate General Directorate within the Ministry supports the provincial functions of these appointed staff. The General Directorate of Turkish National Police is hierarchically under the supervision of Ministry of Interior.

Which bi- or multilateral agreements on police cooperation are you a party to? Outline the content of these agreements'?

Turkey is party to numerous bilateral agreements concerning general mutual assistance in criminal matters. These agreements all deal with judicial and police co-operation in general criminal matters and not with organized crime in particular. However, requests for mutual assistance concerning corruption can be made on the basis of existing treaties.

Turkey has concluded bilateral agreements for police cooperation in the fight against organized crime with 48 countries.

As for the multilateral agreements, Turkey has signed and ratified the main international conventions concerning organized crime. (For detailed information please see answer no: 16)

Does your legislation include specific rules on cross-border surveillance and cross-border hot pursuit? If yes, which kind of limits must law enforcement authorities from another country respect when acting within their territory? Are there space/temporal limits? Have the foreign authorities the right to challenge, apprehend and arrest? Are they allowed to carry their weapons?

There is no legislation related to cross border surveillance and cross border hot pursuit.

How does information exchange with law enforcement authorities of other countries work? Are new technologies used in these exchanges? Do they already have a centralised information exchange through a national contact point? Are there any initiatives to allow for wireless communication with police and similar bodies at the other side of the border?

There are four kinds of information channels to exchange information with other law enforcement authorities of other countries. These are;

- Interpol channel,
- Europol channel,
- Liaison Officers channel,
- Information channels provided by bilateral or multilateral agreements.

INTERPOL

Turkey's application for the membership of INTERPOL was admitted on 08 January 1930. Interpol Ankara, which is under the responsibility of General Directorate of Turkish National Police,

- represents all Turkish authorities within Interpol Organization.

- struggles in the area of all kinds of international crimes and provides effective and efficient cooperation between Turkey's and member states' law enforcement agencies,

- takes necessary measures in order to arrest criminals, wanted at international level by Turkish judicial authorities and finalize extradition procedure,

- makes application to the General Secretariat of Interpol in request to issue Red, Green, Yellow, Blue, Black, Modus Operandi Notices, Stolen Goods Bulletins,

- submits all kinds of information and documents, received from General Secretariat of Interpol and Interpol member countries, to the relevant Turkish Authorities,

- informs relevant Turkish authorities of new kinds of international crimes and takes necessary measures to prevent their negative effects.

- harmonizes the relevant Turkish legislation with EU Acquis related with Europol and Sirene.

Interpol Ankara has established the New Interpol Global Communication System I-24/7 and put it into implementation on 22 May 2003. All case officers working in this department are able to use Interpol Dash Board and Interpol Databases;

A- Nominal
B- Stolen Motor Vehicle
C- Stolen Work of Art
D- Lost/Stolen Passports

In addition to that, there are four private networks presented in Interpol Ankara;

- Turkish National Police Wide Area Network (POLNET)
- Interpol Ankara Main Local Area Network
- Interpol Ankara Internet Network
- Interpol I247 Global Communication Network

EUROPOL

In line with the harmonization process with the EU Acquis, Interpol Ankara (Interpol-Europol-Sirene Department, General Directorate of Turkish National Police) is in charge of strengthening international police co-operation and preparation to become member of Europol and Schengen (in the area of SIRENE office activities).

EUROPOL Management was authorized to negotiate and conclude agreements with non-EU States and non-EU related bodies by the Council Decision of Ministers for Justice and Home Affairs dated 27 March 2000. In this respect, Turkey participated to the initial seminar, organized by EUROPOL in 2000. Interpol Department (Interpol Ankara) was designated as the EUROPOL National Contact Point and has been in charge of establishing Europol National Unit and harmonizing the relevant Turkish legislation with EU Acquis related with Europol and Sirene. A new unit was established under the responsibility of Interpol Department as the Europol National Contact Point and the Regulation concerning this unit was approved on 27 May 2002.

It has been transformed to EUROPOL & SIRENE Division under the responsibility of Interpol-Europol-Sirene Department by Ministry of Interior on 23 October 2003.

As the result of negotiations with EUROPOL, it was decided to conduct the frame of co-operation at technical and strategic levels due to the lack legal preparation related to the protection of individuals concerning automatic processing of personal data. The agreement was signed on 18 May 2004 and entered into force on 28 July 2004.

The purpose of this agreement is to enhance the cooperation of the Member States of the European Union, acting through Europol, and the Republic of Turkey in preventing, detecting, suppressing, and investigating serious forms of international crime within the respective competence of each Party, according to their constitutional acts, in particular through the exchange of strategic and technical information. But this agreement does not authorize the transmission of data related to an identified individual or identifiable individuals.

Interpol Department was assigned as the National Bureau by the Ministry of Interior on 06 January 2004, in line with the EU practices and with the contribution of all law enforcement units, to ensure communication, exchange of information and cooperation between Europol, Schengen, Interpol and law enforcement units which will be established within the EU.

LIAISON OFFICERS

There are 5 Turkish liaison officers stationed in France, Denmark, Netherlands, Great Britain and Uzbekistan. There are several liaison officers from 25 countries working in Turkey as well.

Does any police or judicial database exist that contains data on issued and blank passports that are stolen, lost or misappropriated? Do the competent law enforcement authorities of your country exchange such data with the Interpol Stolen Travel Document database? Do the competent law enforcement authorities of your country query the Interpol Stolen Travel Document database?

In Police Network (POLNET), there is a database containing data on blank passports that are stolen, lost or misappropriated. They are periodically transferred to the Interpol Stolen Travel Document database. So far, 481.839 data have been inserted. Turkish law enforcement bodies are able to make queries onto the Interpol Databases via Interpol Ankara.

Interpol databases, possessing data inserted by Turkey are as follows;

- Nominal,
- Stolen motor vehicles,
- Interpol Lost/Stolen Travel Document.

What kind of steps have already been or will be taken in your country, in accordance with national law, to enhance mutual cooperation between national competent authorities in order to combat cross-border vehicle crime? Do your national competent authorities involve, where appropriate and in accordance with national law, the private sector with a view to coordination of information and mutual alignment of activities in this area? What measures have been taken by the national competent authorities in order to prevent abuse and theft of vehicle registration documents?

In the field of cooperation against cross-border vehicle crime, the competent authorities in Turkey are Police, Gendarmerie, Coast Guard and Custom Guard Administration.

In order to enhance the cooperation among different law enforcement bodies;

1. The Vehicle Project System is operated at IT Department of Turkish National Police. The System contains a database concerning stolen vehicle. All authorities have on-line access to this network and able to examine the data through the system.
2. The main vehicle manufacturers send Vehicle Identification Numbers to TNP for each new model.
3. The law enforcement authorities can also utilize the Vehicle Registration Project System. All information regarding the vehicle registration is kept in this system. The officers can check the records on a daily basis.
4. Hologram and cold stamps are applied to registration documents in order to ensure the document safety.

Which national provisions have been taken in the framework of the cooperation agreement to ensure the dissemination of Europol products or information to the relevant operational units and law enforcement forces of Turkey, and to ensure that Europol receives all the relevant information from the field?

As the Europol National Contact Point, Interpol-Europol-Sirene Department is in charge of implementing co-operation agreement, signed between Turkey and Europol. Competent authorities of the Republic of Turkey, responsible for implementation of the Co-operation Agreement between Turkey and Europol, are Directorate-General of Turkish Police, Gendarmerie General Command, Coast Guard Command and Undersecretariat for Customs. Among these law enforcement bodies, Interpol-Europol-Sirene Department of the Turkish National Police has been authorized as the central contact point.

Do you intend to detach a liaison officer to Europol?

Turkish liaison officer stationed in the Netherlands has also been entrusted as the Europol Liaison Officer. However, the officer has not been accredited by Europol and has not been given any working office in Europol premises yet.

How do you foresee to raise awareness of the possibilities and products of Europol among the Turkish law enforcement agencies?

In order to raise the awareness of the possibilities and products of Europol among the Turkish law enforcement bodies, the following subjects/items can be implemented;

- Training issues, joint workshops and exchange of Europol's and member states' experience, (especially for the implementation of current agreement and enhancement of strategical level co-operation to operational level in due time),
- Europol's assistance that may include all kinds of activities, targeting to strengthen the Turkish Europol National Unit and enlighten Turkish law enforcement units on the structure and working procedures of Europol, its sub-directorates, Europol products and any other information that may be useful for Turkey as a candidate country,
- Establishment of a secured communication line between Turkey and Europol, (that will enable the use of databases, exchange of information platforms such as FCIC, KMC and contribution to them by the relevant Turkish law enforcement bodies)
- Establishment of a Liaison Bureau (working office in Europol premises) in Europol Headquarters,
- Participation and contribution to the Europol Working Groups (to which the third parties can participate).

Can you please provide statistics regarding the implementation of the cooperation agreement signed in May 2004 (Volume of information sent to Europol? In which fields of crime? Information or products received? Use made of them?)

So far, we have received 210 incoming and 52 outgoing messages from/to Europol. Amongst the Turkish law enforcement bodies (Gendarmerie, Customs, Coast Guard Command and relevant police departments), we have exchanged totally 964 messages (incoming 123 and outgoing 841).

What are the main elements of your policy dealing with organised crime? Have you adopted a strategy?

The draft strategy of organized crime has been prepared during the implementation phase of strengthening the fight against organized crime Twinning Project and it is expected to be approved by the competent authority in Turkey.

The draft strategy includes following elements;

- Intensified collection and analysis of data regarding organized crime
- Prevention of the expansion of organized crime in the public and the legal private sectors and enhancement of public sensitivity on organized crime.
- Intensifying the prevention of organized crime and reinforcing the partnership between the penal systems and civic society
- Revision and improvement of laws as well as crime fighting and regulatory politics on national and EU level
- Improvement of investigative work with reference to organized crime
- Intensifying international cooperation
- Intensifying preventive measures of the police-authorities
- Track down, freeze, seize and confiscate proceeds of crime
- Intensifying the cooperation of law enforcement agencies and legal authorities on the national and international level.
- Intensifying the combating strategies in the areas of
  - organised crime
  - organised drug related crimes
  - organised economic crimes
  - corruption
  - money laundering
  - absorption of assets

Is there a system allowing for confiscation/seizure of proceeds from crime?

The texts or contents of the relevant articles of the Turkish Criminal Procedural Code are as follows:

Article 123

"An object deemed useful as a means of evidence, or subject to property or asset confiscation, is kept in security.

In cases where the person carrying them refuses to surrender them voluntarily, those items may be seized. "

Article 124 provides that a person possessing the above mentioned object is obliged to present and submit it upon request. If the possessor refuses to surrender the item, disciplinary detention shall apply to him.

However, this provision shall not apply to suspects, accused or persons entitled to refrain from testifying as witnesses.

Article 126 renders the letters and documents immune from seizure, and reads as follows: "Letters and documents communicated between the suspect or accused and those persons entitled to refrain from testifying as witnesses under Articles 45 and 46 may not be seized as long as such items are in the hands of these persons."

Article 127

"1- Law enforcement officials may implement the seizure upon the order of the judge or in cases where delay would be detrimental, upon the written order of public prosecutor.

2- The detailed identity information of the law enforcement officials shall be included in the seizure records.

3- The written order given by public prosecutor shall be submitted to the competent judge for approval within 24 hours. The judge shall give his decision within 48 hours of the seizure; otherwise the legal validity of that seizure shall automatically come to an end.

4- The person who had the seized items in his possession may ask a judge to give an order on this issue at any time.

5- The seizure decision shall be communicated without delay to the person harmed by the seizure.

6- Seizure procedures on military premises shall be conducted by the military authorities at the request and with the participation of the judge or public prosecutor."

Paragraph 1 of article 128 provides for the seizure of immovables, rights and obligations. Bribery offence is counted among the offences within the frame of paragraph 1.

Article 129:

"1-Letters or telegrams or information in writing or documents transmitted by electro-magnetic devices or other communications which are at the post office may be seized by the order of judge, or in cases where delay would be detrimental, by order of the public prosecutor, if it is suspected that these items constitute evidence.

2- The law enforcement officials conducting the seizure upon the judge's or public prosecutor's order can not open the envelopes or packages containing the written items mentioned in paragraph one. Seized items shall be sealed in the presence of the post office employees and shall be immediately delivered to the judge or the public prosecutor who ordered the seizure.

3- The persons to whom the post was addressed shall be informed of the seizure if there is no risk of damaging the course of the investigation.

4- The items which are decided not to be opened, or opened but deemed unnecessary to be kept by the judicial authorities, shall be immediately returned to their addressee.

Article 130:

1. Lawyers' offices can only be searched by a court decision and in connection only with the incident indicated in this decision, under the supervision of the public prosecutor. The president of the bar association or a lawyer representing him shall be present during the search.

2. If the lawyer whose office is searched or the president of the bar association or the lawyer representing him objects to the search in respect of the items to be seized at the end of the search, alleging that those items are related to the professional relationship between the lawyer and his client, those items shall be put in a separate envelope or package and sealed by the persons present, and the peace court judge dealing with criminal matters in the investigation phase, and the trial judge or court in the prosecution phase, shall be asked to give the necessary decision on the matter. If the judge with jurisdiction *ratione loci* establishes that the seized items are covered by the privilege of the lawyer-client relationship, the item seized shall be immediately returned to the lawyer and the records of the seizure shall be destroyed. The decisions provided for in this paragraph shall be given within 24 hours.

3. In cases of seizure at the post office, the procedure provided for in the second paragraph shall apply if the lawyer whose office is searched or the president of the bar association or the lawyer representing him objects.

Article 131:

"(1) Items taken from the suspect or the accused or the victim or third parties in connection with an offence which are no longer needed with regard to the investigation and prosecution shall be returned by the decision of public prosecutor, judge or court on request or of its own motion. Objections may be lodged against decisions to deny such a request.

(2) Where items or assets seized in accordance with Article 128 belong to the persons damaged by the offence and are no longer needed as evidence, they are returned to the owner."

Article 132 provides the protection and disposal of the seized items.

Article 133 stipulates the appointment of curator for the company management.

Search of computers and computer programmes and archives, copying and provisional seizure is provided in Article 134. According to article 134 in investigations concerning crimes where there are no other means of obtaining evidence, at the request of the public prosecutor, judge may decide to search, copy, analyse and transcribe the computers and computer programmes and computer archives used by suspect. If computers, computer programmes and computer archives can not be accessed because the passwords are not known or where the concealed data is not accessible in order to analyse or copy the necessary data, these equipments may be seized. Where the password is retrieved and necessary copies are made, seized equipment shall be returned without delay.

According to article 9 of Law No: 4208, some provisional measures may be taken in the scope of money laundering offence. According to this article;

If there is serious circumstantial evidence about money laundering, the authority to give an order of freezing of claims and rights in banks and non-bank financial institutions as well as in real and other legal persons, including the values existing in deposit boxes; annulling the right of disposition completely or partially; the seizure of property, negotiable instruments, cash and other valuables; holding the assets in custody and taking other precautionary measures on claims and rights, belongs to the Peace Court Magistrate during the preliminary investigation and to the Court during the trial.

Requests for precautionary measures are concluded immediately as a result of evaluation of documents and at the latest within 24 hours.

Public Prosecutors may also decide to freeze claims and rights in cases where it is necessary to avoid delay. Public Prosecutors' Office notifies the Peace Court Magistrate about the decision at the latest within 24 hours. Peace Court Magistrate decides at most within 24 hours whether to approve the decision or not; in case of non-approval, the decision of the Public Prosecutor becomes void.

The search for the property in Turkey and abroad, as well as investigation, determination and appraisal thereof as stated in the paragraph mentioned above shall be carried out by Financial Crimes Investigation Board of Ministry for Finance upon the request of the Public Prosecutor.

When it is apparent that the property mentioned in paragraph 1 is legitimate then the decision on seizure shall not be made and, in case a decision was made it shall be nullified.

In the case that the accused person is convicted the property pertaining to this case shall be confiscated."

Our legislation stipulates the followings in relation with the concept of "sanctions and measures" as regards the duty field of the Savings Deposit Insurance Fund (SDIF-Fund).
Pursuant to Article 15 of the Banks Act, the Fund is responsible and authorized for restructuring and improving financial soundness of the banks and to transfer the shares to third parties of the banks whose control and management and/or possession of the shares have been transferred to it according to the provisions of article 14. Article 14 covers banks, which are found to have made use of the resources to a capital group composed by shareholders in a manner jeopardizing the secure functioning of the bank, losses of which exceed the value of its own funds and require external resources, the weakness of the financial structures of which exceed their commitments and the continuation of the activities of which would threaten the rights of depositors and the security and the stability of the financial system.

Besides, as regards money, property, all kinds of rights and receivables stated in article 15 and article 15(a) of the Banks Act, these money, property, all kinds of rights and receivables the bank majority shareholders have acquired or made third parties acquire can be transferred to the Fund upon resolution of the Fund Board or upon Court decision with the application the Fund.

The Fund is authorized to apply to the court to obtain any injunction including a preliminary injunction and preliminary attachment on properties of such shareholders who directly or indirectly, individually or jointly hold the bank's management and control as well as any other restraining order including prohibition of defendants from travelling abroad which may be deemed to be necessary to protect interests of creditors, without requiring deposition of a collateral (Banks Act, Article 14/5-bc).
(…) are considered as Fund receivable. Such receivables shall be subject to Law No. 6183 on Procedures for Collection of Public Receivables. The Fund shall be authorized to obtain a cautionary attachment on such money, goods, rights or receivables or to put them in custody and take over any such assets, (…) and such assets so taken over shall be set off against the Fund's receivables and/or losses of such banks taken over by the Fund. (Banks Act, Article 15/7-b)

On the other hand, as regards issues related to banking, in case it is determined that, assets are being transferred to third parties however still used by the same persons, these property can be transferred to the SDIF pursuant to Provisional Article 1 of Banks Act No. 4389 as Amended by Act No. 5020.

As regards provisional measures, it is possible to take measures concerning public debtors within the framework of Law No. 6183 on Procedures for Collection of Public Receivables. Within the scope of the said Act, preliminary injunction decision can be made and implemented on the property of public debtors pursuant to article 13 of Law No. 6183 on Procedures for Collection of Public Receivables against the transactions the natural persons and legal entities may realize in order to dispose off or reduce the amount of their debt. The attempts of the debtor for disposing off his/her property will thereby be prevented. Along these lines, for preventing the disposal of the property while performing legal proceedings concerning the bank majority shareholders within the scope of Law No. 6183, a preliminary injunction decision was made first and upon implementation hereof, other legal proceedings were carried-out.

Turkish legislation does not specify the assets, which may be restrained. It depends on the circumstances of the case and the discretion of the competent judge.

Article 133 of the Criminal Procedural Code stipulates the appointment of curator for the company management. There is no specific institution responsible for the administration of the assets and it is made within the framework of general provisions.

However, for the banking sector, Pursuant to article 15 of the Banks Act the Savings Deposit Insurance Fund is responsible to manage the assets seized under this Law.

Article 38 of the Turkish Constitution provides that general confiscation sanction can not be given.

Articles 54 and 55 of the Turkish Criminal Code deal with the concepts of "Confiscation of Property" and "Confiscation of Benefits" respectively. Article 54 of the Code states:

"(1) Provided not belonging to the bona fide third parties, the property used in or allocated for commission of a deliberate offence or derived from crime shall be confiscated provided it doesn't belong to bona fide third parties. The property prepared to be used in the commission of crime is confiscated in case it poses threat to public security, public health or public morals.

(2) Where the property falling within the scope of the first paragraph has been removed, disposed of or consumed, or the confiscation thereof in another way was rendered impossible, money the value of which corresponds to that of such property shall be confiscated.

(3) If it is considered that the confiscation of the property used in committing the offence generates more serious results in comparison to this offence and for this reason it is understood that confiscation of the property violates equity, then the confiscation may not be ordered.

(4) The property whose production, disposition, usage, transportation, purchase and sale constitute a crime shall be confiscated.

(5) When partially confiscation of any article is required, that part shall be confiscated providing that it can be separated without giving any harm to the whole of it.

(6) With regard to the properties belonging to several joint owners, only the share of the person participating to the crime shall be confiscated."

Article 55 reads as follows: **"** (1) "Material benefits derived from or provided for the commission of constituting the subject of crime as well as economic profits arising from the exploitation or conversion thereof shall be confiscated. Giving a confiscation order in accordance with this paragraph requires that material benefits can not be returned to the victims of crime."

(2) When the property or material benefits can not be seized or submitted to the competent authorities, an equivalent value of these assets shall be confiscated.

As it can be seen from the first paragraph of Article 55, not only the material benefits derived from an offence or constituting the subject of an offence but also economical earnings obtained by the evaluation or conversion of these material benefits are confiscated.

The nature of confiscation is explicitly specified as a security measure in articles 54 and 55 of the Turkish Criminal Code and reasoning of the mentioned articles.

What are the existing procedures for combating financing of terrorism and its link with organised crime (proceeds of crime) especially financial crime? Have you adopted a strategy in this area?

Though there is no separate offence of "terrorist financing" in our domestic law system, the offence of "assisting terrorist organizations" is established in Article 7 of Law on Fight Against Terrorism No:3713. In this context, the sentences to those who assist as members of organizations or make propaganda in connection with such organizations are determined and aggravated sentences are applied where assistance is provided to such organizations in the form of buildings, premises, offices or extensions of associations, foundations, political parties, professional or workers' institutions or their affiliates, or in educational institutions or students' dormitories or their extensions.

The offence of "terrorist financing" established in the Draft Law concerning Prevention of Laundering of Proceeds of Crime is as follows;

"Whoever, directly or indirectly, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts shall be sentenced to imprisonment from 1 year up to 5 years and to payment of fine from 150 days up to 1500 days, even if their offences constitute a separate crime. Even if the fund actually not used to carry out terrorist acts, the offender shall be sentenced by the same penalties.

In case a person responsible for management or inspection of a legal body commits above mentioned crimes with this title, the persons committing the act shall be punished by same sanctions and the legal bodies shall be punished by heavy pecuniary sanction between three billion Liras to thirty billion Liras as well.

The fund in the first paragraph of this Article refers to any kind of property, right, lien, income and benefit that can be represented by money or monetary value and the income and benefit resulting from exchanging these to each other."

Due to the fact that separate offence of "terrorist financing" has not been established, it is not included in the predicate offences of money laundering stated in Article 282 of Turkish Criminal Code No:5237. By enacting the Law on Prevention of Laundering of Proceeds of Crime, the offence of terrorist financing will be included in the predicate offences of money laundering crime in accordance with the provision stated in Article 282 of Turkish Penal Code No:5237.

Describe the specific institutions/ bodies/departments/court chambers set up to fight organized crime (including data on staff, budgetary allocations and equipment in this area). How do you ensure special training of law enforcement officers including prosecutors and judges in this area?

Law enforcement authorities in Turkey with respect to the fight against organized crime are Ministry of Interior, Turkish National Police, General Command of Gendarmerie, Command of Coastguard, Ministry of Justice (Prosecution Authorities) and Customs Administration.

Turkey believes that the gradual increase and sophistication of the organized criminal activities all around the world necessitate specially trained law enforcement officers, both nationally and internationally.

With this concern in mind and with the support of the UNODC and the assistance of the US and some EU countries, Turkey has established, in 2001 the Turkish International Academy against Drugs and Organized Crime (TADOC).

Turkey's contribution to TADOC serves as a good example of Turkey's efforts for regional cooperation in the combat against these scourges. The Academy functions as a regional resource center and consultation forum for drug and organized crime related issues. So far, approximately 1100 law enforcement personnel from 49 countries have received training at TADOC. In addition, TADOC organizes seminars and training programs on matters related to illicit drugs and crime, in cooperation with the United States, Germany, Belgium, France, the Netherlands, United Kingdom and Canada.

Members of the domestic law enforcement institutions in the field of organized crime also receive intensive and high standard training. In this context, more than 6.000 law enforcement officers have been trained at TADOC.

In addition to that, every law enforcement agency has its own substantial and regular training programmes for its staff in order to enhance their professional qualifications.

How do you cooperate internationally in fighting organized crime and how do you ensure national coordination in this combat?

Turkey attaches great importance to combating organized crime not only nationally, but also at the international level, as it has become apparent that transnational organized crime can not be prevented by governments acting individually.

Within the UN system, Turkey has signed and ratified the United Nations Conventions against Transnational Organized Crime and its three Protocols. It is considered that the United Nations Convention against Organized Crime and its protocols as well as the establishment and operation of the Conference of the Parties as a cornerstone in the fight against organized crime.

Turkey is also party to certain regional cooperation efforts in the fight against organized crime in the Balkans and Black Sea regions, such as, Stability Pact, the South East European Cooperative Initiative (SECI), and the Black Sea Economic Cooperation (BSEC). Turkey participates actively in the SECI Operations (such as *Containment I, Containment II, Containment III and Containment IV Harmony, Road Show I, II, III Operations*) which target drug trafficking and other types of organized crime.

Turkey has concluded bilateral and multilateral agreements for cooperation against drug trafficking, terrorism and organized crime with 66 countries.

In addition to these bilateral and multilateral agreements, Turkey and the United Kingdom agreed on an Action Plan on drugs and organized crime. The Action Plan aims to enhance cooperation between the two countries' law enforcement authorities. Within action plan, activities such as information sharing, training programs, operational cooperation, and technical assistance are planned to be carried out in the field of drugs and organized crime.

The law enforcement units in Turkey are in close cooperation in combating against drugs smuggling and other types of organized crime. The Ministries of Interior, Justice, Finance, Health, Agriculture, as well as the Customs Administration coordinate their activities against drug trafficking and organized crime at the national level.

Furthermore, the Turkish National Police has established a "Computer-supported urgent intervention system" with some of its regional partners which has facilitated exchange of information on criminal matters in a secure and fast way.

As concerns data retention, how long are communications stored in your country?

According to the Article 137of Turkish Criminal Procedural Code; if the decision is taken that it is not necessary to carry out investigation and prosecution, all the intercepted communications shall be deleted within 15 days.

On the other hand all the intercepted communications which are related to the offence shall be delivered to the court. (Article135)

What is the punishment for leading an organized crime group? How do you define organized crime?

Article 220 of the Turkish Criminal Code, concerning the "foundation of organizations for the purpose of committing crimes" reads as follows:

(1) Those persons founding or leading an organisation for the purpose of committing acts defined as crimes by the law, shall be sentenced to imprisonment of two to six years where the structure of the organisation, number of members as well as its supplies and equipment are suitable for the crimes intended to be committed. An organisation shall be deemed to exist where there are at least three members.

(2) Persons who are members of an organisation founded with the purpose of committing crimes shall be sentenced to imprisonment of one to three years.

(3) If the organisation is armed, the punishment under the foregoing paragraphs shall be increased by one fourth to one half.

(4) If any crimes are actually committed during the activities of the organisation, separate punishments for the crimes in question shall also be imposed.

(5) The leaders of the organisation shall also be regarded as the perpetrators for all the crimes committed during the activities of the organisation.

(6) Even if a person is not a member of the organisation, he/she will be punished, in addition to the crimes committed, for the crime of membership in an organized crime group if he/she has committed these crimes on behalf of the organisation.

(7) Even if a person is not a part of the hierarchy within the organisation, he/she will be punished for the crime of membership in an organized crime group, if he/she knowingly and willingly assists the organisation.

(8) Any person propagating the organisation or its goal shall be sentenced to imprisonment of one to three years. Where this crime is committed through the press and publication, the punishment shall be increased by half.

Trafficking in human beings:

Is trafficking in human beings for sexual or labour exploitation a punishable act according to your national law? What are the penalties that are applicable for such offences? What are the rules for instigation, aiding, abetting and attempt? In which circumstances are the offences concerned punishable by terms of imprisonment with a maximum penalty not less than eight years? Please describe the provisions on liability of and sanctions on legal persons for the offences concerned?

- Trafficking in human beings for purposes of sexual or labour exploitation is punishable according to the Turkish Legislation.

  Turkish Criminal Code (Law No: 5237)

- **Trafficking in human beings**

ARTICLE 80- (1) Whoever recruits, abducts, transports, transfers or harbours a person, by means of using threat, coercion, force, constraint or violence, of abusing power, deception or of benefiting from the position of control over other persons or from the vulnerability of such persons to achieve their consent for the purposes of forced labour or services, slavery or practices similar to slavery or the removal of organs, shall be sentenced to an eight to twelve years of imprisonment and to judicial fine up to an amount corresponding to ten thousand days.

(2) In cases where the acts attempted to for the purposes referred to in paragraph 1 above constituting the offence exist, the consent of the victim is irrelevant.

(3) In cases where those under the age of 18 are recruited, kidnapped, transported or transferred from one place to another or harboured for the purposes mentioned in paragraph 1, the perpetrator shall be punished with penalties provided in paragraph 1, even if none of the instruments of the crime have been involved.

On the other hand, within the scope of discretionary power, a judge may, if he deems necessary, take into account any attenuating and aggravating circumstances linked to the offence.

- **Attempt to Commit an Offence**

ARTICLE 35- (1) A person who acts with the intention of committing crime but fails to perform the acts necessary to commit the crime due to a cause beyond his control, is considered to have attempted to commit crime.

(2) In case of attempt to commit crime, the offender is sentenced to imprisonment from thirteen years to twenty years instead of heavy life imprisonment according to the seriousness of the damage or danger; and imprisonment from nine years to fifteen years instead of life imprisonment. In other cases, the punishment is decreased from one-fourth up to three-fourth.

- **Perpetration**

ARTICLE 37-(1) Each one of the persons who jointly execute the act defined as crime in the law is responsible from its legal consequences as the offender.

(2) Also, a person who uses another person in committing a crime is also responsible as the offender. The punishment of persons who uses a person(s) lacking culpability is increased from one–third up to one half.

- **Solicitation**

ARTICLE 38- (1) A person soliciting another person to commit offence is punished according to the degree of crime committed.

(2) In case of solicitation to commit offence by using the power originating from lineage (antecedent/descendent) relation, the punishment of the soliciting person is increased from one-third to one half. The lineage relation is not sought for increase of punishment pursuant to the provisions of this subsection in case of solicitation of minors to commit offence.

(3) Where the soliciting person is not known, the offender who plays role in identification of the soliciting person, or other accomplice is sentenced to imprisonment from twenty years to twenty-five years instead of heavy life imprisonment and to imprisonment from fifteen years to twenty years the offence requires life imprisonment. In other cases, one-third of the punishment can be abated.

- **Aiding**

ARTICLE 39- (1) A person aiding another person to commit offence is sentenced from fifteen years to twenty years imprisonment if the offence requires heavy life imprisonment; and from ten years to fifteen years imprisonment if the offence requires life imprisonment. In other circumstances half of the punishment is decreased. However in such cases punishment shall not be more than eight years.

(2) A person is kept responsible under the following conditions from commission of offence as the party aiding the offender;

a) To abet a person for commission of an offence or to support his decision to commit offence or to promise aid after commission of offence.
b) To give guidance on how the offence shall be committed or to supply the necessary tools to be used during commission of offence.
c) To facilitate the commission of offence by providing support before or during the commission of the offence.

- By virtue of Article 80 of the Turkish Criminal Code, legal persons shall also be subject to security measures (confiscation of assets etc.) for involvement in human trafficking offence.

- **Safety Measures for Legal Entities**

ARTICLE 60- (1) The permission issued by a public authority under which a corporate body is operating shall be withdrawn should a conviction be rendered for an offence committed intentionally in favour of a legal entity with the participation of its organs or representatives by abusing the power granted by this permission.

(2) The confiscation provisions shall be applied to corporate bodies in such circumstances that the offence is committed in favour of them.

(3) If the implementation of the provisions of the paragraphs above generate more serious results in comparison to the act perpetrated then the judge may not award to these measures.

(4) The provisions of this article shall only be applied for the situations for which the law set forth specifically.

- **Establishing organisations for committing an offence**

ARTICLE 220- (1) Those who establish or direct organisations for the purpose of committing crimes shall be sentenced to imprisonment of two to six years if the structure of the organisation, number of members, equipment and supplies are sufficient to commit the crimes aimed.

(2) Those who become members of the organisations established to commit crimes shall be sentenced to imprisonment of one to three years.

(3) If the organisation is armed the sentenced stated above will be increased from one fourth to a half.

(4) If a crime is committed within the framework of the organisation's activities, these crimes will also be punished.

(5) The heads of the organisations shall also be sentenced as the perpetrators of all crimes committed within the framework of the activities of the organisation.

(6) The person who commits a crime on behalf of the organisation although he is not a member of the organisation shall also be punished for being a member of the organisation.

(7) A person who aids and abets the organisation knowingly and intentionally although he does not belong to the hierarchical structure of the organisation shall be punished as a member of the organisation.

(8) A person who makes propaganda for the organisation or its objectives shall be punished to imprisonment of one to three years of imprisonment. If the said crime is committed through media and press, the sentence will be increased by half.

Do you establish jurisdiction for offences committed outside the national territory?

- The universal jurisdiction norm is recognized by the Turkish Criminal Code on the basis of certain offences and crimes. Included in this norm are migrant smuggling and trafficking in human beings. Even if trafficking in human beings is committed outside the Turkish territory, a foreigner or Turkish offender is still indictable and punishable in Turkey. The Turkish Minister of Justice may request a trial process to be launched in Turkey against an accused person who has already undergone judgment in conjunction with these offences in another country.

Are investigations into or prosecution of the offences concerned dependent on the report or accusation made by the victim?

- Trafficking in human beings is considered to be an offence or a crime against public order. It is indictable. Within this framework, investigations or prosecution are not dependent on the accusations made by victims ("ex officio").

What are the rules concerning assistance to victims?

- As soon as trafficked person is identified by law enforcement authorities, the victim is provided with free of charge counselling in her own language, safe accommodation in shelters, free medical care, psychological and legal assistance, designated lawyer, six months valid and extendable residence permit in Turkey. Her voluntary and safe return is also arranged by the Turkish authorities, jointly with IOM and NGOs. Victims of trafficking are offered practical means and amenities such as shelters. They are treated with a humane approach. In order to extend the scope of existing assistance, further protection measures are envisaged in favour of victims. Victims can claim compensation before the Turkish courts.

Are there any specific provisions regarding particularly vulnerable groups, notably children?

- Article 103 of the Turkish Criminal Code No: 5237 lays down clauses on punishment of sexual abuse on children.

- **Offences against Humanity**

ARTICLE 77- (1) Execution of one of the following acts systematically under a plan against a sector of a community for political, philosophical, racial or religious reasons, creates the legal consequence of an offences against humanity:

a) Felonious homicide,
b) Injury by intention
c) Torturing, infliction of severe suffering, or forcing to live as a slave,
d) To restrict freedom,
e) To subject scientific experiments
f) Sexual harassment, sexual abuse on children,
g) Forced pregnancy
h) Forced prostitution

(2) In case of execution of the act mentioned in paragraph (a) of first subsection, the convict is sentenced to heavy life imprisonment. In case of committing offences listed in other paragraphs, the convict is sentenced to imprisonment not less than eight years. However, for offences of felonious homicide and injury by intention, provisions relating to consecutive offences, taking into consideration of number of victims, are applied.

(3) Legal persons shall also be subject to security measures for involvement in these offences..

(4) These offences are not subject to prescription.

- Besides, Article 278 of the Turkish Criminal Code stipulates that any person who witnesses a criminal act (included offences against minors) is supposed to denounce it to the competent authorities. Otherwise, he is subject to one year imprisonment.

- In cases where those under the age of 18 are recruited, kidnapped, transported or transferred from one place to another or harboured for the purposes of forced labour or services, slavery or practices similar to slavery or the removal of organs, the perpetrator shall be punished with penalties provided in the Article 80 of the Turkish Criminal Code No: 5237, even if none of the instruments of the offence have been involved. Judges may elaborate cases of children according to their degree of vulnerability and may verdict for variable imprisonment. (Pls. see the reply below on the same subject)

Please describe the provisions concerning the sexual exploitation of children and child pornography. How are the offences concerned defined? What penalties are possible? What are the rules concerning liability of and sanctions on legal persons? What are the rules concerning jurisdiction and prosecution?

- Sexual exploitation of children and child pornography: Articles 103, 104, 226 and 227 of the Turkish Criminal Code.

Turkish Criminal Code (Law No: 5237):

- **Sexual abuse of children**

ARTICLE 103– (1) the perpetrator of child abuse shall be imprisoned for a term of three to eight years. Sexual abuse means:

a) any act of sexual nature against a minor who has not completed fifteen years of age or though completed fifteen years who lack the competence to perceive the legal meaning and consequences of such acts,

b) sexual acts against other minors depending on use of force, threat, deception or any by any other reason affecting the will of the child,

(2) Where the sexual assault occurs as a result of insertion of an organ or a similar object into the body, a penalty of imprisonment from eight to fifteen years shall be imposed.

(3) Where the sexual assault is committed by the ascendant, second or third degree blood relative, step father, the person who has adopted the person concerned, guardian, tutor, teacher, caretaker, other persons in charge of providing health services or who bear the obligation for protection or supervision, or through abuse of the service relation, the penalty to be imposed in accordance with the above paragraphs shall be increased by half.

(4) Where the sexual assault is committed against the minors indicated in paragraph 1 (a) as a result of force or treat, the penalty to be imposed in accordance with the above paragraphs shall be increased by half.

(5) Where the force and compulsion used with the aim of sexual assault lead to aggravated consequences of the offence of deliberate wounding, provisions of the offence of deliberate wounding shall apply additionally.

(6) In case the offence results with the distortion of the physical or mental health of the victim, the perpetrator shall be imprisoned to strict life imprisonment.

(7) Where the offence lead the victim to enter vegetative state or die, the perpetrator shall be sentenced to strict life imprisonment.

- **Sexual Intercourse with the immature**

ARTICLE 104 – (1) A person who enters - without any force, threat or deceit - into sexual intercourse with a juvenile who has completed fifteen years of age shall be imprisoned for a term of six months to two years upon complaint.

(2) In case the perpetrator is more than five years older than the victim, the penalty shall be increased by twice irrespective of the presence of a complaint**.**

- **Obscenity**

ARTICLE 226 - 1. a) A person who gives or displays to a child products containing obscene visual, printed or audio material or reads or makes them read or listen to such material,

> **b)** A person who openly shows the content of such material in places accessible or visible to children, or who openly displays them, who exhibits them in a visible manner, who reads or talks about them to children, or who makes children read or talk about the content of such material,
> **c)** A person who presents such products to sale or rent in a manner that reveals the content of the material.
> d) A person who submits to sales, sells or rents such products in places other than specified sales points,
> e) A person who gives or distributes such products along with the sales of other products or services and who therefore gives them free of charge,
> f) A person who publicizes such products shall be sentenced to imprisonment for a term of six months to two years and a judicial fine.

(2) A person who broadcasts or publishes obscene images, printed or audio material or who acts as an intermediary for this purpose shall be sentenced to imprisonment for a term of six months to three years and a judicial fine of up to five thousand days.

(3) A person who exploits children in the production of products including obscene images, printed or audio material shall be sentenced to imprisonment for a term of five to ten years and a judicial fine of up to five thousand days. A person who brings in such material to the country, who duplicates, presents to sales, sells, transfers, stores, exports, keeps in possession or submits to the use of others shall be sentenced to imprisonment for a term of two to five years and a judicial fine of up to five thousand days.

(4) A person who produces, brings in to the country, presents to sales, sells, transfers, stores, exports, avails for the use of others or keeps in possession products containing written material, audio recording or images of sexual acts performed by use of force, with animals, on human corpse, or other unnatural means shall be sentenced to imprisonment for a term of one to four years and a judicial fine of up to five thousand days.

(5) A person who broadcasts or publishes the content of the products stated in paragraphs three and four through press and media or who acts as an intermediary for this purpose or who makes children see, listen to or read such material shall be sentenced to imprisonment for a term of six to ten years and a judicial fine of up to five thousand days.

(6) Legal entities shall also be imposed security measures for these offences.

(7) Excluding paragraph three and provided that access to children is prevented, the provisions of this Article shall not apply to scientific, artistic and literary works

- **Prostitution**

ARTICLE 227 : (1) Who ever encourages a child to prostitution, facilitates such act, who procures or boards them with this purpose, or who acts as an intermediary in child prostitution shall be sentenced from five years up to ten years and fined with an amount corresponding to three thousand days. Actions of preparation for the commitment of this crime shall be sentenced like the committed crime.

(2) Whoever encourages a person to prostitution makes it easier to act such, or who acts as an intermediary in prostitution or provides place for such act shall be sentenced to two years to four years and fined with an amount up to three thousand days. Benefiting from the income of the person to make a living partially or wholly is considered as encouragement to prostitution.

(3) Whoever brings in persons to country with the purpose of prostitution or arranges the departure of persons abroad shall be sentenced according to the paragraphs above.

(4) Punishment given according to the provisions of the paragraphs herein above to whoever directs to, or provide for prostitution of a person by using force or by threatening, using fraud, or benefiting from their despair shall be increased by half up to two-times.

(5) Where above-mentioned crimes are committed by the spouse, ascendant, ascendants by affinity, brother or sister, adoptive parent, guardian, teacher, tutor, attendant other persons who have the responsibility of protection and supervising, or by abusing the power coming from being public officials or services, the punishment to be given shall be increased by one half.

(6) In case these crimes are committed within the framework of activities of a crime organization established for the purpose of committing crimes, the punishment to be given according to the paragraphs above shall be increased by half.

(7) Specific measures are enforced against legal persons for these crimes.

(8) The person who has been forced to prostitution will be provided with treatment or therapy.

- Article 60 of the Turkish Criminal Code states that if a legal entity is involved in offences, its licence shall be withdrawn and its assets shall be confiscated.
  (Pls. See the full text of Article 60 in the first answer)

- Article 220 of the Turkish Criminal Code states conditions and sentences for establishing organisations for committing crime (Pls. See the full text of Article 220 in the first answer)

- Court proceedings on sexual exploitation of children are subject to general provisions of criminal proceeding in Turkey. However, there are specific provisions for children. When a child is heard as witness before the court, his/her statement shall be recorded with audio and video devices.

- At proceedings regarding this offence, a court may avoid requiring medical examination of children and obtaining tissue samples from children. If a child is mature enough to grasp the significance of being a witness and its consequences, his/her comment/opinion may be asked by the court.

- Even if none of the instruments of this offence have been involved, the court may decide to arrest an offender.

- Law enforcement personnel can utilize active techniques of investigation such as electronic surveillance, audio and video recording.

- If the psychological state of a child is negatively affected due to the offence committed, he/she may be heard as witness before the court only once. A judge calls on an expert (of psychology, psychiatrics, medicine or education) to attend the trial proceedings in case a minor victim is seriously traumatized.

JUDICIAL CO-OPERATION IN CRIMINAL MATTERS:

The principle of mutual recognition is a cornerstone of judicial co-operation and it is essential that you recognise and accept this principle. Could you please explain if this poses any problems in your country? If yes, what kind of problems, and how you plan to overcome these obstacles?

According to Article 9 of the Turkish Constitution, "Judicial power shall be exercised by independent courts on behalf of the Turkish Nation". However, Article 90 of the Constitution states that *"once an international agreement has been ratified, it becomes an internal part of the national legal system and can directly be enforced. No appeal to the Constitutional Court can be made with regard to these agreements on the ground that they are unconstitutional"*. Within this context, Turkey is party to several international conventions such as European Convention on the International Validity of Criminal Judgments (since 1.6.1977) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (since 1.2.2005). On the basis of these international conventions, mutual recognition does not pose any problem in the Turkish legal system. On the other hand, in the Turkish legal system there is no automatic recognition process.

What types of measures are foreseen to implement the European Arrest Warrant (e.g. are amendments to the Constitution necessary)?

The Turkish Constitution and the Turkish Criminal Code (TCC) include provisions on extradition.

There is one article which will need to be amended to implement the European Arrest Warrant (EAW) in the Turkish Constitution, namely, Article 38/last paragraph.

Article 38/last paragraph of the Constitution provides that citizens shall not be extradited to a foreign country on account of an offence except under obligations resulting from being a party to the International Criminal Court.

Article 18 of Turkish Criminal Code presents another hurdle with this regard.

Turkish Criminal Code (Law no: 5237, dated September 26, 2004) Article 18 governs extradition:

"Article 18-(1) A foreigner, about whom a prosecution is initiated or who is convicted because of an offence committed or alleged to have been committed in a foreign country, may be extradited on a request for the purpose of carrying out prosecution or executing the sentence. However, if the act based on extradition request is;

a) Not an offence under Turkish law,

b) An offence of political or military nature or an offence of opinion,

c) Against security of the Turkish State, committed to the detriment of a Turkish citizen or a legal person established under Turkish law,

d) Under the jurisdiction of Turkey,

e) Barred or subjected to amnesty,

extradition request shall be refused.

(2) Citizens shall not be extradited to a foreign country except for the obligations arising under being party to the International Criminal Court.

(3) Extradition request shall not be accepted if there is strong suspicion that the person will be tortured or inhumanly treated or punished or prosecuted because of his political opinions or his membership of a particular social group, nationality, religion or race in case of his extradition to the requesting State .

(4) Aggravated felony court of the place where the person is present, shall decide on the extradition request in accordance with this article and the provisions of the relevant international conventions to which Turkey is a party. This decision may be appealed.

(5) If the court finds the extradition request admissible, execution of this decision is on the discretion of the Council of Ministers.

(6) Application of protective measures for requested person may be held under the relevant international conventions to which Turkey is a party.

(7) In case the extradition request is found admissible, detention order may be issued or other protective measures may be taken under the Code of Criminal Procedure.

(8) When extradition is granted, requested person shall be tried or punished only for the offences based on the extradition decision."

What type of measures do you intend to take in preparation of participation in Eurojust (specific new law, revised existing legislation, regulation, soft lax)?

Turkey believes in the importance of combating with trans-national serious organized crime and developing new tools for this aim. Hence, since the very beginning of the Eurojust as a temporary cooperation unit, Turkey takes part in its activities as far as possible. It must be noted that, so far, both sides are satisfied with the ongoing cooperation. Turkey has appointed two contact points within the Ministry of Justice in order to tackle the work which is needed to be done as a candidate country.

At this very stage of Turkey-EU relations, Turkey is aware that new measures have to be taken into account for full participation in Eurojust activities in an active way. This awareness led us to draft a strategy. This strategy targets to improve current cooperation methods with the Eurojust and specifies various short and long-term priorities. This includes enactment of a new law, enhancing legal capacity, improving the quality of human sources and such other necessities. Apart from the judicial authorities, security forces will also be included in its content. As an example to its content; foreign language requirements is another issue to be tackled through this strategy. As mentioned above, preparations are ongoing and after taking the opinions of all related bodies such as the Legislative Department and the International Law Department of the Ministry of Justice, concrete steps will be taken. Therefore, at this stage, it is not possible to indicate particular laws to be amended for this ultimate purpose. However, it might be said that EU Acquis on criminal cooperation matters will be evaluated as a whole in close cooperation with all the relevant units, following this, exact measures will be defined.

Do you foresee any difficulties in your implementation of the agreement between the EU and Iceland and Norway on the application of certain provisions of the Convention of 2000 on Mutual Assistance in Criminal Matters between the Member States of the EU and the 2001 Protocol thereto concerning the signature of the agreements between the EU and the US on extradition and mutual assistance in criminal matters? Do you have any bilateral treaties in force with Iceland, Norway or the United States of America on extradition and mutual assistance in criminal matters?

Turkey has concluded two bilateral agreements in January 1981 with the USA on extradition and mutual assistance, and on the validity of criminal judgments.

There is no bilateral agreement with Iceland and Norway on extradition and mutual assistance. However, since these two countries are parties to the Council of Europe's multilateral instruments in the area of judicial cooperation in criminal matters, namely, *1957 European Convention on Extradition* and *1959 European Convention on Mutual Assistance in Criminal Matters*, Turkey exercises judicial cooperation in criminal matters with Iceland and Norway on the basis of these multilateral conventions concluded in the framework of the Council of Europe.

FIGHT AGAINST TERRORISM:

How do you address the threat of terrorism? Do you have a comprehensive approach or is there a preference for specific measures?

During the last couple of decades, terrorism has emerged as an increasing threat to democracy, rule of law, full enjoyment of human rights and international peace and stability. Combating terrorism became the most important challenge of our times especially after the devastating terrorist attacks in the United States on 11 September 2001.

However, the fight against terrorism is not a new phenomenon and has long been a priority for many States. Turkey, having suffered from various kinds of terrorism for the last thirty years, has always been in the forefront in this fight and is determined to be so.

Terrorism has no particular religion, race, nationality or a specific geographic region. Associating terrorism with any particular religion, religious belief, tradition or national culture is unacceptable. Culture and religion could only serve to the formation of an atmosphere of cooperation and reconciliation, but not conflict. In today's atmosphere, terrorists exploit national and religious values only to lead people towards their goals. Association of terrorism with a particular religion, therefore, is only in the interest of terrorists.

As a secular state with a population whose great majority belongs to the Islamic faith, Turkey works vigorously with the international community for bringing about an atmosphere of common understanding and cooperation based on shared values among nations belonging to different faiths.

Terrorism, whatever its motives are, cannot be tolerated. No objective whatsoever could justify it. Under all circumstances, regardless of the alleged motives, should be condemned unreservedly.

Terrorism is a major violation of one of the most fundamental human rights, the right to life.

Turkey unreservedly denounces and condemns all acts of terror which have been perpetrated all over the world. Turkey believes that, a global approach and international cooperation is required to combat terrorism. All states must act together on a common platform and take concrete and determined steps to eradicate this scourge from the face of the earth. Turkey is determined to play its role in this common endeavour.

We regard the UN as the main forum for establishing the framework of international cooperation in combating terrorism. We believe that full compliance with the provisions of the UN Security Council resolutions and international conventions is vitally important for the struggle against terrorism to succeed.

Turkey is closely cooperating with the Counter-Terrorism Committee that has been formed by resolution 1373 within the UN Security Council. Turkey, for a long time, has also been voluntarily contributing to the budget of the Terrorism Prevention Branch of the UN

Office for Drug Control and Crime Prevention in Vienna. Turkey believes that UNODC and CTC, in coordination, can create a good synergy for strengthening international cooperation in preventing and combating terrorism.

On the other hand, Turkey believes that efforts within other international and regional frameworks can also provide valuable contributions to the endeavours at the UN. In this regard, Turkey is playing its part in international and regional platforms such as NATO, OSCE, Council of Europe, Black Sea Economic Cooperation Organization and South East European Cooperation Initiative. The international community should increase efforts to improve cooperation in combating terrorism within the framework of international and regional initiatives with a view to harmonizing the work of each initiative while paying attention to avoid duplications and to increase efficiency and effectiveness.

In the absence of a global convention, the Security Council Resolutions currently constitute a solid and comprehensive basis for combating terrorism on a universal scale.

It is Turkey's firm belief that full compliance with the provisions of the UN Security Council resolutions and international conventions is vitally important for the struggle against terrorism to succeed.

With this understanding, Turkey became one of the first countries which have become party to all 13 United Nations Conventions and Protocols concerning terrorism. Turkey has also signed Convention for the Suppression of Acts of Nuclear Terrorism and is planning to ratify it as soon as possible.

It is well known that there is a close connection between terrorism and organized crime. Illicit sources such as narcotics and human trafficking, arms smuggling, money laundering or extortion are major revenue sources for terrorist groups. On the other hand, it is also a well known fact that terrorist organizations, beside illegal means, resort to legal means to finance their criminal activities. Now, it has become clear that legal businesses and charitable organizations can also be utilized by terrorists for funding their activities.

Turkey believes that, in order to combat terrorism effectively states must ensure that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts. In addition to that, international instruments relating to terrorism must be duly incorporated into national legislations, which should cover all aspects of terrorism and its linkages with other forms of crime comprehensively.

Adherence to and proper implementation of international instruments especially in the field of extradition and mutual legal assistance is of vital importance in combating terrorism effectively. One of the major difficulties encountered in this respect is the refusal to extradite perpetrators of terrorist acts claiming that the offence in question is of a political nature. Turkey believes that a careful distinction must be made between a political offence and a terrorist crime, since the Security Council resolution 1373 clearly stipulates that claims of political nature should not be recognized as grounds for refusing the extradition of alleged terrorists. The basic obligation to be undertaken by states under the extradition and prosecution regime of international instruments relating to terrorism is to bring perpetrators to justice either through extradition or prosecution before national courts.

On the other hand, lack of cooperation in information and intelligence sharing is an area where progress is needed at international level. The international community should establish an effective international mechanism to share critical information on terrorism related matters.

Turkey's counter-terrorism efforts and national legislation:

As a country which has suffered for long from terrorism, Turkey is well equipped with internal legal instruments required to fight against this universal scourge. Turkey is one of the rarest cases for a country to have an anti-terror law with a definition of terrorism prior to 11 September 2003. Turkish Criminal Code (TCC), Criminal Procedural Code, Law on Fight Against Terrorism (LFAT) No. 3713, Law on Compensation for Damages Arising from Terrorism and Combating Terrorism No. 5233 and Law on Administration of Provinces No. 5442 are principal laws in Turkish legislation concerning terrorism. Planning, preparing, financing, perpetrating and supporting terrorist acts and recruitment for terrorist and criminal organizations are established as serious criminal offences for which numerous articles of the TCC and LFAT provide for heavy punishments. According to LFAT Article 5, sentences pronounced for those who commit the crimes mentioned in Article 169 of the TCC are aggravated by one half for both the freedom-restricting and monetary sanctions, when those crimes are committed for terrorist purposes. Terrorist offences are tried in High Criminal Courts in Turkey and sentences for terrorist offences cannot be commuted or deferred.

Since September 2001, Turkey has also focused its efforts on financing of terrorism and money laundering. Along with TCC and the LFAT, the Law on the Prevention of Money Laundering is one of the basic instruments in Turkish legislation that apply to prevention and suppression of the financing of terrorist acts.

After the September 11 attacks Turkey has ratified the "International Convention for the Suppression of the Financing of Terrorism" and the "International Convention for the Suppression of Terrorist Bombings". In doing so, Turkey has become one of the first countries that ratified all the United Nations conventions on combating terrorism. According to Article 90 of the Turkish Constitution, international agreements which are signed and endorsed by Turkey in accordance with the legal procedures, acquire the force of domestic law.

Meanwhile, there have been major alterations in and additions to the principal laws in Turkey as part of a reform process aimed at the harmonization of the Turkish legislation with the EU Aquis.

The Turkish Criminal Code (TCC) has been revised and updated within this context by the Turkish Grand National Assembly on 26 September 2004. The new TCC has entered into force on 1 June 2005. The new TCC contains as before ample and significant provisions which establish any form of assistance to criminal and terrorist organizations as serious offenses that are subject to heavy punishment.

Below-mentioned 13 UN Conventions and Protocols on Terrorism are signed and ratified by Turkey :

i. International Convention for the Suppression of the Financing of Terrorism, (New York, 9 December 1999) (S) on 27 September 2001, (R) on 28 June 2002.

ii. International Convention for the Suppression of Terrorist Bombings, (New York, 15 December 1997) (S) on 20 May 1999, (R) 30 May 2002.

iii. Convention on the Marking of Plastic Explosives for the Purpose of Detection, (Montreal, 1 March 1991) (S) 7 May 1991, (R) 14 December 1994, (E i F) 21 June 1998.

iv. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, (Rome, 10 March 1988), (R) 6 March 1998, (E i F) 4 June 1998.

v. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, (Rome, 10 March 1988), (R) 6 March 1998, (E i F) 4 June 1998.

vi. Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, (Montreal, 24 February 1988), (S) 27 February 1988, (R) 7 July 1989, (E i F) 6 August 1989.

vii. International Convention against the Taking of Hostages, (New York, 17 December 1979), (R) 15 August 1989.

viii. Convention on the Physical Protection of Nuclear Material, (Vienna, 3 March 1980), (S) 27 August 1983, (R) 27 February 1985, (E i F) 8 February 1987).

ix. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, (New York, 14 December 1973), (R) 11 June 1981.

x. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, (Montreal, 23 September 1971), (S) 5 July 1972, (R) 23 December 1975.

xi. Convention for the Suppression of Unlawful Seizure of Aircraft, (The Hague, 16 December 1970), (S) 16 December 1970, (R) 17 April 1973.

xii. Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo, 14 September 1963, (S) 17 December 1975, (R) 16 March 1976.

xiii. Turkey has signed the International Convention for the Suppression of Acts of Nuclear Terrorism on 14 September 2005 in New York.

We also attach great importance to a close cooperation with the EU and Council of Europe in the field of fighting with terrorism. Below mentioned 2 Council of Europe Convention and Protocol on Terrorism are signed and ratified by Turkey :

i. European Convention for the Suppression of Terrorism (Strasbourg, 27 January 1977), (S) 27 January 1977; (R) 19 May 1981
ii. Protocol amending the European Convention on the Suppression of Terrorism of the Council of Europe (Strasbourg, 15 May 2003), (S) 15 July 2003, (R) 20 May 2005

Turkey has also signed Council of Europe Convention on the Prevention of Terrorism on 19 January 2006 which is still waiting for ratification.

In the context of bilateral cooperation, Turkey has signed bilateral agreements with 52 countries, along with multilateral treaties within the context of fighting against terrorism, organized crime and drug trafficking. All these agreements and protocols are integral part of our national legislation:

-54 agreements with 46 countries
-33 protocols with 21 countries
-Memorandum of understandings with 21 countries

On the other hand, in line with the new NATO command structure, Turkey has instituted a Center of Excellence – Defense Against Terrorism (CoE-DAT) which has started its activities in June 2004 in Ankara. The main goal of this center is to develop concepts concerning the fight against terrorism and to provide training and courses on this issue.

(For more information please see Annex 1 and Annex 2)

How does political co-ordination of counter terrorism effect take place?

Related authorities in Turkey work in cooperation with their counterparts as well as the international and regional institutions.

In this vein, the Ministries of Interior, Justice, National Defence, Foreign Affairs, Finance and the National Intelligence Organization (MIT) coordinate each other and participate actively in the efforts to developing common methods in combating terrorism.

The Supreme Council on Counter Terrorism was founded with a view to taking necessary steps on combating terrorism in line with the rule of law and to advance proposals to the Council of Ministers under the chairmanship of a Minister to be assigned by the Prime Minister.

Secretariat of the Supreme Council on Counter Terrorism is undertaken by the Undersecretary of the Office of the Prime Minister.

(For more information please see Annex 1 and Annex 2)

What national arrangements are in place to ensure strong inter-agency cooperation in the fight against terrorism?

There is no individual arrangement concerning the basis of inter-agency cooperation in the fight against terrorism.

However, the law enforcement authorities in Turkey are in close cooperation. They share with each other the information and the intelligence they obtain in an efficient way.

According to Clause D of the Article 11 of the Provincial Administration Law No. 5442, when governors are unable to prevent or when they foresee that they are incapable of preventing the possible or current events with their own forces; when they find it impossible to implement, or are unable to apply the precautions they have taken with these forces, through the fastest means, they are authorized to seek the help of the Ministry of Internal Affairs and if need be, of the nearest land, naval and air unit forces including the border units of the General Command of Gendarmerie and Armed Forces, to benefit from the subsidiary forces of the other provinces and from the forces appointed for such tasks, and in this context, the military units may be employed in the fight against terrorism.

Besides, Supreme Council on Fight against Terrorism ensures the necessary coordination among the authorities.

The tasks, mandate and responsibilities of the Turkish National Intelligence Organization (MİT), which is subordinate to the Prime Minister, has been defined under the Law no. 2937 on "State Intelligence Services and the Turkish National Intelligence Organization" issued on January 1, 1984.

Although the fundamental executive authority in the field of combating terrorism is the Ministry of Interior, the MİT has been tasked under the Establishment Law no. 2937 to collect nationwide security intelligence on current and potential activities directed towards the security of the Republic of Turkey by internal and external sources. In this context, the MİT which also serves to combating terrorism, has a structure responsible for the production of internal and external intelligence.

Detailed information regarding the foundation, structure and activities of the MİT can be acquired at the www.mit.gov.tr web site.

The MİT works in cooperation and coordination with all the other national institutions acting within the scope and fields of expertise defined under the establishment laws relating to combating terrorism. (complies with article 3 of OJ L 253, 29/09/2005, Council Decision 2005/671 JHA of 20/09/2005)

(For more information please see Annex 1 and Annex 2)

How is information/intelligence in relation to terrorism exchanged with international partners?

Exchange of information / intelligence in relation to terrorism is realized by National Intelligence Organization (MİT), General Directorate of Security and General Command of Gendarmerie in line with the related legislation.

On the other hand, National Intelligence Organization (MİT) is sharing the early warning information that it obtains, with national authorities that have direct connection with INTERPOL.

The MİT also attaches great importance to bilateral and multilateral international cooperation. Within this framework the MİT participates actively in the efforts to developing common methods in combating terrorism as a member of the Special Committee, which unites the security and intelligence services under the NATO platform and which is mostly composed of the services of EU countries. (complies with article 1.1 of OJ L 349, 24/12/2002, Council Decision 2002/996 JHA of 28/11/2002).

As far as the secondary acquis, in addition to the Council Decisions and Council Framework Decisions, is concerned, the role played by the MİT on the national level and its bilateral/multilateral international cooperation with the services of the EU countries is at an efficient level.

When the efforts to improve the role of SITCEN in combating terrorism within the EU and to improve its efficiency within this respect is taken into consideration, the integration process of the MİT, which currently possesses efficient and continuous cooperation mechanisms with nearly all of the services of the EU countries, into the existing and planned EU security structures could be carried out smoothly, (complies with the priorities of the Hague Program, OJ C 053, 03/03/2005, and the Hague Program Action Plan, OJ C 198,12/08/2005).

On the other hand, MASAK is an administrative body. It does not have any law enforcement and prosecution power. Turkish domestic legislation does not allow administrative units directly seize any property of proceeds.

With regard to duties and powers of MASAK (Financial Crimes Investigation Board) in the Law No: 4208;

- to exchange studies and information with the national and international institutions and establishments, to make research and investigations related to dirty money,

- to carry out preliminary investigations in order to determine whether money laundering offences have been committed or not, and if serious circumstantial evidences exist about money laundering, in cooperation with the law enforcement authorities, to request to be implemented the procedures in accordance with the Law No: 4208 and the provisions on search and seizure of the Turkish Criminal Procedure Law,

- to collect and evaluate all the statistical and other kinds of information concerning money laundering offences and, to notify the related parties and competent authorities within

the framework of bilateral and multilateral international agreements to which Turkey is a party,

are stipulated among the duties and powers of the MASAK Presidency.

MASAK which became a member of EGMONT Group in 1998 and as the financial intelligence unit of Turkey, exchanges information with the other financial intelligence units upon request or spontaneously by means of Egmont Secure Web.

On the other hand, it is laid down in the Draft Law that Head of MASAK is directly authorized to sign memorandum of understanding with foreign counterpart units. This ensures that exchange of information is more efficiently and effectively.

Are the law enforcement agencies and security/intelligence services able to make use of special investigative techniques to prevent and combat terrorism? If so, please briefly describe the legal basis etc.

Procedure concerning this issue has been carried out in line with the principles included in the provisions of establishment of the related institutions.

What national crisis management arrangements are in place?

During the emergencies, Crisis Centers are established with the participation of all relevant agencies to ensure the national coordination on 7/24 basis.

On the other hand, in line with Article 11/D of Provincial Administration Law No.5442, governors have certain authorities to employ the subsidiary forces in order to prevent the possible events in the provinces.

In accordance with the Article 120 of the Turkish Constitution, in the event of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence, the Council of Ministers, meeting under the chairmanship of the President of the Republic, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months. Detailed arrangements concerning the execution of the state of emergency is included in the Law of Emergency No.2935.

According to the Article 122 of the Turkish Constitution, the Council of Ministers, under the chairmanship of the President of the Republic, after consultation with the National Security Council, may declare martial law in one or more regions or throughout the country for a period not exceeding six months, in the event of widespread acts of violence which are more dangerous than the cases necessitating a state of emergency and which are aimed at the destruction of the free democratic order or the fundamental rights and freedoms embodied in the Constitution; or in the event of war, the emergence of a situation necessitating war, an uprising, or the spread of violent and strong rebellious actions against the motherland and the Republic, or widespread acts of violence of either internal or external origin threatening the indivisibility of the country and the nation. Issues concerning the execution of the martial law are arranged through the Martial Law No.1402.
(For more information please see Annex 1 and Annex 2)

How does your country comply with the strategic commitment of the EU Counter-Terrorism Strategy-"To combat terrorism globally while respecting human rights, and Europe safer, allowing its citizens to live in freedom, security and justice"?

So far Turkey ratified 13 international agreements regarding combat on terrorism. Turkey has been contributing to the Operation Enduring Freedom, which is initiated by the US after the 9/11 terrorist attacks. Turkey has been actively contributed to the International Security and Assistance Force (ISAF) since its inception. Turkey also actively supports the concept and planning activities regarding combating terrorism that has been carried out under the NATO and participates in NATO-led operations against terrorism. Turkey firmly supports NATO's Mediterranean Dialogue Initiative and offered 33 new military cooperation areas to the Mediterranean Cooperation Program-2005. In addition, Turkey has launched the Center of Excellence Defense Against Terrorism and has been actively taking part in the works of Partnership for Peace (PfP) and Organization for Security and Cooperation of Europe (OSCE). Furthermore, Turkey contributes to other international and regional entities.

Implications of terrorism in all its forms and manifestations for the full enjoyment of all human rights and fundamental freedoms:

Terrorism is an act of violence aimed at eradicating the basic human rights while threatening the public order, security and territorial integrity of States. By its very nature, terrorism is a violation of the right to freedom from fear which is included in the Preamble of the UN Declaration of Human Rights and of its Article 3 asserting everyone's right to life, liberty and security. Furthermore, the perception that human rights could only be violated by States is not in conformity with Article 30 of the said Declaration. Article 30 reads: "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in an activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein." Consequently terrorists also violate human rights, first and foremost the most valuable human right, the right to life.

Within this context, terrorism has a negative impact on the full enjoyment of all human rights and fundamental freedoms. It also has adverse implications on the economic and social development of countries since States have to allocate precious and limited resources, including their human resources, to combat terrorism.

Turkey believes that the States should take necessary measures individually and collectively to prevent and eliminate this threat.

In the last years, terrorism acquired a vast potential of technological means and incomparable destructiveness to reach its objectives. That is why, terrorist attacks of September 11 have further increased the importance of the studies on terrorism and human rights. September 11 and the following attacks ascertained that no country is immune from terrorism. Even though terrorists might operate within the national territories of a country, it is not always possible to carry out terrorist activities without the support of foreign elements located in other countries in the fields of logistics, personnel, financement and training. Therefore, further emphasis should be placed on the responsibility of States supporting terrorism directly or indirectly. Turkey wishes to recall the commitment of each member of international community, arising first and foremost from the UN Charter as well as other international instruments, not to provide a safe haven and not to accord impunity to terrorists.

Associating terrorism with any particular religion, religious belief, tradition or national culture is unacceptable. Culture and religion could only serve to the formation of an atmosphere of cooperation and reconciliation, but not conflict. In today's atmosphere, terrorists exploit national and religious values only to lead people towards their goals. Association of terrorism with a particular religion, therefore, is only in the interest of terrorists. Terrorism, whatever its motives are, cannot be tolerated. No objective whatsoever could justify it.

Turkey believes that regional and international cooperation to combat terrorism, which will also lead to safeguard the basic human right of right to life, is fundamental. To this end, Turkey has been contributing to the codification efforts in this field. She became party to all of the present 12 UN basic international conventions regarding terrorism.

Possible establishment of voluntary fund for the victims of terrorism:

Turkey in principle supports the notion of establishment of a voluntary fund for the victims of terrorism. Such a fund can contribute to securing social peace and stability disrupted by acts of terrorism. It may also serve to alleviate negative psychological impacts of terrorism on affected individuals and communities.

However, in a process leading towards the setting up of a voluntary fund for the victims of terrorism, several issues need to be addressed. The following elements are some of the issues that require a thorough analysis:

- Identifying the beneficiaries of the fund:

The beneficiaries of the fund would be victims of terrorism. The absence of an internationally agreed definition of terrorism and the existence of different approaches to the identification of terrorist organizations can lead to difficulties in deciding who fall under the category of "the victims of terrorism" in some cases.

- Role of national authorities:

In the course of the functioning of the fund, the relevant national authorities should be entitled an appropriate role in the application and investigation processes. The compensation should also be channeled through the relevant national authorities. Moreover, the national authorities should play a role on the steps to be taken for the victims' reintegration into society.

- The degree of the injury and/or damage:

In the distribution of the fund resources, the question of the degree of injury and/or damage should also be given diligent consideration. Can a categorization of the degree of injury and/or damage be contemplated in advance?

<u>Ways and means to rehabilitate the victims of terrorism and their reintegration into society:</u>

The question of the rehabilitation of the victims of terrorism and their reintegration into society is basically regulated by two laws in Turkey.

First, the Anti-Terror Law (Act No: 3713), which is in force since 1991, includes some provisions that offer support for the victims of terrorism and their integration into society.

Article 21 under the title "Assistance to Invalid Persons, Widows and Orphans Entitled to Pension" stipulates that some kind of social security benefits be provided to the victims of terrorism.

Article 22 under the title "Assistance to Other Persons Harmed by Acts of Terrorism" stipulates that:

- Medical expenses for treatment of persons injured by acts of terrorism are covered by the State.
- Assistance is provided by priority from the Fund for Promotion of Mutual Social Assistance and Solidarity to citizens who suffered damage and loss of property due to acts of terrorism.
- Primary and secondary school education expenses of the children of public servants who are victim of terrorism are covered by the State.

Provisions related providing employment opportunities for victims of terrorism is also stipulated in the law.

Second, "the Law on the Compensation of Losses Resulting from Terrorist Acts and the Measures Taken against Terrorism" was approved by the Turkish Parliament on 14 July 2004 and entered into force on 27 July 2004. "Regulation on the Compensation of the Losses Resulting from Terrorism and from the Measures Taken against Terrorism" was adopted by the Council of Ministers in October 2004 related to the implementation of the Law.

A domestic remedy has thereby been established to address the grievances caused by the terror events beginning from 19 July 1987. The Act No 5233 and the Regulation seek to provide satisfactory compensation for the people who were subjected to losses and damages at the time of the incidents.

The Act No 5233 provides compensation for damages to livestock, trees, agricultural products, all property as well as for physical harm to individuals such as injury, disability and death, including the costs for treatment and funerals. The Act No 5233 further covers financial loss of those citizens who could not access their properties.

In this regard, Damage Assessment and Compensation Commissions (Commissions) are established in 76 provinces in compliance with the above-mentioned Law and Regulation. Chaired by Deputy Governors, these Commissions are composed of 6 experts on finance, public works and settlement, agriculture, sanitation, industry, and commerce, who work in each province, as well as a lawyer appointed by the Administrative Board of each Bar.

Approximately 90.000 applications have been filed with the Commissions as of June 2005 and compensations are now being paid after the examination of applications with due emphasis.

(For more information please see Annex 1 and Annex 2)

Please describe existing or planned legislative alignment with the Framework Decision on combating terrorism? How is the legislation implemented in practice?

The work regarding the compliance of the national legislation in respect to combating terrorism with the Framework Decision is in progress.

Recent works in Turkish Legislation on the "Suppression of the Financing of Terrorism" and on the subject of establishment an autonomous crime of the financing of a terrorist act, whether attempted or committed :

On the other hand, there is an ongoing effort by the Ministry of Finance in collaboration with relevant ministries and other government authorities to amend the Law on Fight against Terrorism (Law Nr: 3713 (LFAT)). A working group composed of experts from the Ministries of Justice, Interior, Finance, Foreign Affairs, and the Undersecretariat for Treasury has been established with the mandate of tackling solely with the crime of "terrorist financing" so as to harmonize the Turkish legislation with the UN Convention on Suppression of Terrorism. This Working Group has considered necessary amendments that need to be done in order to meet these requirements and is expected to submit its proposals to the Prime Minister's Office soon which will include specific provisions for criminalizing terrorist financing to be inserted in to the LFAT (Law No:3713).

Commission established within the Ministry of Justice for preparing the amendments regarding the Law numbered 3713 has finalized its task; however draft is not finalized yet. It is under the review at other levels

The Working Group on Terrorist Financing established under Ministry of Finance (Financial Crimes Investigation Board (MASAK)) completed its work and sent "The Draft Law on Amending Law No:3713 on Fight Against Terrorism" to Prime Ministry in 19 August 2005.

With regard to the Draft, Prime Ministry informed MASAK that the Draft Law sent Ministry of Justice to be combined to the work on the Draft Law on Fight against Terrorism which is conducted by Ministry of Justice in order to harmonize the Working Group Draft Law and its work.

On the other hand, "The Law on Organization, Function and Authority of the Financial Crimes Investigation Agency and Prevention of Laundering Proceeds of Crime" submitted to the Parliament in 9 June 2005 has introduced a new autonomous terrorist financing offence whose provision text is as follows;

"Article 7/A, following the Article 7, has been added to the Law No: 3713 on Fight against Terrorism dated April 12, 1991.

Financing of Terrorism Offence

Article 7/A- Whoever, directly or indirectly, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts shall be sentenced to imprisonment from 1 year up to 5 years and to payment of fine from 150 days up to 1500 days, even if their offence constitutes

a separate crime. Even if the fund is actually not used to carry out terrorist acts, the offender shall be sentenced by the same penalties.

If a person responsible for the management or control, in fact and in law, of a legal entity has in that capacity committed an offence stated above, both for the persons committing the acts shall be sentenced by the same penalties and for legal persons security measures pertinent to them shall be taken.

Fund, stated at the paragraph 1 of this Article, shall mean money or all sorts of property, rights, credits, proceeds and benefits and all economic proceeds and benefits derived from conversion of them from one form to another."

The Draft Law is debated at the Parliamentary Sub-Committees.

General principles and rules regarding the decision on seizure are prescribed in Article 127 of the Code of Criminal Procedure. As it will be seen in the text of the Article, judge is the authority to decide on seizure orders, however in an urgent case public prosecutor and law enforcement authorities are competent to carry out seizure. In latter case, written order should be submitted within 24 hours to the competent judge. In addition to Article 127, Article 128 and subsequent Articles stipulate seizure procedure.

These Articles are as follows:

Article 127:

(1) Law enforcement officials may carry out the seizure upon the order of the judge or in cases where delay would be detrimental; the seizure can be made with a written order of the Public Prosecutor.
(2) The detailed identity of the law enforcement officials shall be included in the seizure records.
(3) This written order given by public prosecutor shall be submitted to the judge for approval within 24 hours. The judge shall give his decision within 48 hours of the seizure; otherwise the legal validity of that seizure shall automatically end.
(4) The person who had the seized items in his possession may ask a judge to give an order on this issue at any time.
(5) The seizure shall be notified to the victim without delay.
(6) Seizure procedures on military premises shall be conducted by the military authorities at the request and with the participation of the judge or public prosecutor.

Article 128:

(1) In cases where there is a strong suspicion that the offence subjected to the prosecution or investigation has been committed and following assets proceeded from the offence belonging the suspect or accused, may be seized:

a) Immovable
b) Land, sea or air vehicles
c) Every kind of accounts in banks or financial institutions,
d) Every kind of rights and credits at legal or real persons
e) Valuable papers

f) Partnership interests
g) Content of safe deposit box
h) Other asset values

Even if these immovable, rights, credits and other assets are under the possession of a person other than suspect or accused, seizure procedure still may be carried out.

(2) Provisions of sub paragraph 1 is applicable for the following offences;

a) Offences defined in the Turkish Criminal Code;

1. Genocide and offences against humanity (Articles 76, 77 and 78),
2. Smuggling of migrants and human trafficking (Articles 79 and 80),
3. Burglary (Articles 141 and 142),
4. Raid (Articles 148 and!49),
5. Abuse of confidence (Article 155),
6. Fraud (Articles 157 and 158),
7. Fraudulent bankruptcy (Article 161),
8. Producing and smuggling of drugs and psychotropic substances (Article 188),
9. Money counterfeiting (Article 97),
10. Establishing organisations for the purpose of committing crimes (Article 220),
11. Mischief in tender (Article 235),
12. Involvement in fraudulent act during fulfillment of obligations (Article 236),
13. Embezzlement (Article 247),
14. Malversation (Article 250),
15. Bribery (Article 252),
16. Offences against national security (Articles 302, 303, 304, 305, 306, 307 and 308),
17. Armed organized criminal groups (Article 314) or supply of arms to these criminal groups (Article 315)
18. Offences against State secrets and spying (Articles 328, 329, 330, 331, 333, 334, 335,336,337)

b) Arms smuggling defined in Law No. 6136 on "Fire Arms, Knives and Other Equipment" Article 12)

c) Embezzlement defined in Article 22, sub-paragraphs 3 and 4 of Banks Act

d) Offences requiring imprisonment penalty and defined in Law on Anti- Smuggling

e) Offences defined in Articles 68 and 74 of Law on the Preservation of Cultural and Natural Property

(3) Seizure decision for immovable property is carried out by noting this decision to the Land Registry.

(4) Seizure decision for land, sea and air vehicles is carried out by noting this decision to the concerned registry.

(5) Seizure decision on every kind of accounts in banks or financial institutions is carried out by informing promptly concerned bank or financial institution through technical means of communication. This decision is also notified to the concerned bank or financial

institution. Transactions on accounts for the purpose of rendering the seizure decision ineffective is invalid after the seizure decision was taken.

(6) Seizure decision on partnership interests is carried out by informing promptly concerned company management and commercial registry where the concerned company is registered through technical means of communication. This decision is also notified to the concerned company management and commercial registry directorate where the concerned company is registered

(7) Seizure decision on rights and credits is carried out by informing promptly concerned legal or real person technical means of communication. This decision is also notified to the concerned legal or real person.

(8) In case of breaching seizure decision requirements, Article 289 of the Criminal Code entitled "Abuse of Preservation Duty" is applied.

(9) Seizure decision in accordance with this Article may only be given by judge.

On the freezing and seizure of funds and assets quickly and temporarily in order to investigate the sender, recipient and nature of suspect funds and transactions in order to ensure that they are in no way linked to terrorist activities:

According to the Article 127 of the Turkish Criminal Procedure Law, seizure authority belongs to the judge; if the delay may cause any inconvenience, to the prosecutor and in exceptional circumstances to the security forces upon the written order of security director.

Offence of terrorism financing is not prescribed separately from terrorism offences in Law No 3713. Supporting and abetting of terrorist organizations is punished under Article 7 of the Law No 3713.

Apart from Law No 3713, Article 220/7 of the Turkish Criminal Code stipulates that person who aids and abets the organisation knowingly and intentionally although he does not belong to the hierarchical structure of the organisation shall be punished as a member of the organisation. Article 314/3 regarding the armed criminal organizations makes reference to the Article 220 and states that Article 220 is applicable for the armed criminal organizations.

Text of the related provisions is as follows: Law No. 3713 on Fight against Terrorism;

Article 7. (1) Under reservation of provisions in Articles 3 and 4 and Articles 168, 169, 171, 313, 314 and 315 of the Turkish Criminal Code those who found organizations as specified in Article 1 under any name or who organize and lead activities in such organisations shall be punished with imprisonment of between 5 and 10 years and with a fine of between 200 million and 500 million Turkish liras; those who join these organizations shall be punished with imprisonment of between 3 and 5 years and with a fine of between 100 million and 300 million Turkish liras.

(2) Those who assist as members of organizations constituted in the manner described above or make propaganda in connection with such organizations shall be punished with imprisonment between 1 and 5 years and with a fine between 50 million and 100 million Turkish liras, even if their offence constitutes a separate crime.

(3) Where assistance is provided to such organisations in the form of buildings, premises, offices or extensions of associations, foundations, political parties, professional or

workers' institutions or their affiliates, or in educational institutions or students' dormitories or their extensions the punishments mentioned in paragraph 2 shall be doubled.

(4) In addition, activities of associations, foundations, trade unions and similar institutions found to have supported terrorism shall be banned and the institutions may be closed down by a court's decision. Assets of these institutions will be confiscated.

(5) If the offence of propaganda in connection with an organization as mentioned in paragraph 2 is committed by a periodical as defined in Article 3 of the Press Law No. 5680, its publishers shall be punished additionally with the following amounts of fine: for periodicals issued at less than monthly intervals the fine shall be 90 per cent of the average real sales for the previous month; for printed works that are not periodicals or periodicals that have just entered the market the fine shall be 90 per cent of the monthly sales of the best selling daily periodical. In any case, the fine shall not be less than 100 million Turkish liras. Editors in charge of such periodicals shall be punished with half the sentences awarded to publishers and a sentence of between six months and two years' imprisonment.

In the Article 15 of the Law No:4208 on Prevention of Money Laundering, it is stated that necessary regulations for the implementation of the Law No:4208 on the issues of submitting information, customer identification and suspicious transactions will be set by the regulations issued by the Council of Ministers within six months following the date of promulgation of the said Law.

According to the Regulation issued in accordance with the provision stated above, General Communiqué No:3 on reporting suspicious transaction of terrorist financing and terrorist activity has been issued.

According to the Law No:4208, whoever does not comply with the Decrees of the Council of Ministers and the Communiqués shall be sentenced to imprisonment for from six months up to one year and to heavy fine from twelve million Turkish liras to one hundred twenty million Turkish liras.

Accordingly, it should be pointed out that Communiqué 3 on reporting suspicious transaction of terrorist financing and terrorist activity is a legal binding instrument to comply for all liable parties.

In the Article 2 of the "Law on Organization, Function and Authority of the Financial Crimes Investigation Agency and Prevention of Laundering Proceeds of Crime", which submitted to the Parliament in 09 June 2005, liable parties are designated such as follows;

"Individuals and institutions carrying out activities in the range of banking, insurance, private pension, capital market, money lending and other financial services and postal service and transportation, lottery hall and betting sector; Individuals and institutions carrying on the trade of foreign exchange, real estate, precious stone and metal, jewelry, vehicle, construction equipment, historical arts, art works and antiques or mediating to these activities, and notaries and sports clubs and the other individuals and institutions carrying out activities in the range designated by the Council of Ministers.

Lawyers and accountants will be deal with in the secondary legislation after the Law has entered into force.

It should also be emphasized that casino activities are prohibited currently in Turkey.

Additional information on the implementation of the legislation on financing terorism:

As mentioned above, we have two major international instruments in our hands to suppress the financing of terrorism. First one is Financial Action Task Force, established as an initiative of G-7 now comprising of 27 countries. It started as an organization to combat money laundering. Following the 11 September bombings it included in its mandate to fight against money laundering. It has adopted 8 special recommendations on combating terrorist financing and monitors its implementation.

A very broad definition of money laundering is to conceal the true source and origin of a certain amount of money. For example proceeds of an illegal activity such as drug smuggling can be converted to a legitimate financial source through laundering. It is not possible to estimate the true amount of money that is laundered every year but to say that illegal drug trafficking, just one illegal activity, generates an amount of 400-500 billion dollars annually may give an idea of the amount of money that is needed to be laundered. Once the amount is laundered it becomes a legitimate earning that can be easily used.

Money laundering and financing of terrorism are issues that concern countries at every stage of development. These are global problems not only adversely effect our common security but at the same time harm social structures of countries and disrupt economic life and international financial system.

The other international instrument is the UN Convention for the Suppression of Financing of Terrorism. This Convention drafted by the United Nations criminalizes financing of terrorism. State parties to the Convention are under the obligation to criminalize and declare appropriate punishments to the crime of financing of terrorism as described in the Convention. First time in international criminal law an act before it is committed becomes a crime.

We have also to cite Security Council resolutions adopted under chapter VII of the UN Charter which are binding for international community especially resolution 1373 in this respect. This resolution strengthens the provisions of the Convention by referring to direct or indirect collection of funds, attempt to commit terrorist acts, active and passive support to terrorists.

What is the status of the ratification process of international conventions and instruments in respect to terrorism? What are the practical implications of the ratification?

In accordance with the Article 90 of the Constitution, the ratification of treaties concluded with foreign states and international organizations on behalf of the Republic of Turkey shall be subject to adoption by the Turkish Grand National Assembly by a law approving the ratification.

International agreements duly put into effect carry the force of law. No appeal to the Constitutional Court can be made with regard to these agreements, on the ground that they are unconstitutional. If a dispute between the provisions of the national legislation and

international agreements regarding fundamental rights and freedoms emerges, provisions of the international agreements prevail.

Meanwhile, there have been major alterations in and additions to the principal laws in Turkey as part of a reform process aimed at the harmonization of the Turkish legislation with the EU Aquis.

The Turkish Criminal Code (TCC) has been revised and updated within this context by the Turkish Grand National Assembly on 26 September 2004. The new TCC has entered into force on 1 June 2005. The new TCC contains as before ample and significant provisions which establish any form of assistance to criminal and terrorist organizations as serious offenses that are subject to heavy punishment.

ANNEX: 1

COMBATING THE FINANCING OF TERRORISM:

Actions Taken by Turkey to Combat Financing of Terrorism

Institutional Framework:

Turkey has a long history of combating terrorist activities of all kinds. We have focused on strengthening our efforts on not only in the combating of terrorism but also other closely related jurisdictions such as money laundering. In this respect a board was established in 1997 under the Ministry of Finance in order to coordinate these efforts and increase the pace of the actions taken in these subjects. The Financial Crimes Investigation Board (FCIB-MASAK) has on the board, Inspectors, Auditors, Revenue Comptrollers, Sworn-in Bank Auditors, Treasury Comptrollers and Capital Market Board Experts. In addition, a Coordination Board for Combating Financial Crimes has been established under the Chairmanship of the Undersecretary of Ministry of Finance and consists of the Presidents of the Inspectors Board and the Auditors Board of the Ministry of Finance, Financial Crimes Investigation Board, Board of Sworn-in Bank Auditors and Board of Treasury Comptrollers of the Undersecretariat of Treasury as well as Capital Market Board; together with the General Director of Revenues, General Director of Banking and Exchange, General Director of Legislation of the Ministry of Justice, General Director of Relations with Middle-East, Africa and International Organizations of the Ministry of Foreign Affairs and Head of the Department for Combating Smuggling and Organized Crimes of the General Directorate of Security of the Ministry of Interior.

According to Article 3 of Law No: 4208 on Prevention of Money Laundering the Financial Crimes Investigation Board has the following mandate and accordingly has taken the necessary steps to freeze any accounts of the persons and institutions deemed suspicious with regard to laundering of proceeds of crimes determined in Article 2/A of the Law. In accordance with the Law No:4208, the main duties and powers of the Presidency of Financial Crimes Investigation Board are; to exchange studies and information with the national and international institutions and establishments, to ask for all kinds of information and documents related to money laundering operations from natural persons and corporate bodies, including public institutions and establishments, to investigate the issues conveyed by Public Prosecutors and by the law enforcement authorities on behalf of Public Prosecutors, to conclude the requests of these authorities on determination of money laundering offences, to

apply to the Public Prosecutor's Office for taking precautionary measures on the claims and rights of the suspected person, if there are serious findings and circumstantial evidences about money laundering during research and examination, to propose in order to be decided by the Council of Ministers to put into force the measures to determine and prevent money laundering offences; and to assign banks, non-bank financial institutions and other natural persons and corporate bodies, with the requirement of customer identification, and to inform the Undersecretariat of Treasury of the actions taken, to collect and evaluate all the statistical and other kinds of information concerning money laundering offences and, to notify the related parties and competent authorities within the framework of bilateral and multilateral international agreements to which Turkey is a party.

Legislative Framework:

The current Turkish Legislation is in force regarding offences and powers in relation to terrorism;

1. The principal provisions appear in the Law No:3713 on Fight Against Terrorism which came into force on 12 April 1991. These provisions complement pre-existing measures, which are involved in Turkish Criminal Code.

- According to the Turkish Criminal Code (TCC) and the Law No: 3713 on Fight Against Terrorism, terrorism against Turkish State and aiding, supporting or harbouring terrorist activities are criminalized.
  In accordance with the Article 7 Law No: 3713 on Fight Against Terrorism, the activities of associations, foundations and unions, which are found to have lent support to terrorist movements will be prohibited and they will be dissolved by the decision of the concerned court. All the assets of such institutions will be confiscated.

According to Article 1 of the Law No: 3713, definition of terror is described as follows; The terror is an act perpetrated by any of the methods of extortion, force, violence, intimidation, discouragement, menace and threat by a person or by persons belonging to an organization with a view of changing the nature of the Republic as defined in its Constitution and its political, legal, social, secular and economic order, impairing the indispensable integrity of the State with its country and nation, endangering the existence of the Turkish State and Republic, weakening or annihilating or overtaking the state authority, eliminating the basic rights and freedoms and damaging the internal and external safety, public order or general health of the country.

Terror crimes are determined at the Article 3 of the Law on Fight Against Terrorism and crimes committed for terror purposes are stipulated at the article 4 of the mentioned Law. To be considered as terror crimes, the crimes stated at the article 4 have to be committed with the purpose of the activities mentioned at article 1. In this respect, some of the felonies

committed against the international relations of the State, forces of the State and Security of the State are considered to be terror crimes, however some of them are considered to be crimes committed for the purpose of terrorism. In addition, hinder the transportations vehicles-hijacking aircrafts, smuggling and trading of destructive, killing devices and/or other combustible chemicals, smuggling and trading of firearms and knives, manufacturing and trading of drugs, kidnapping, the crimes regarding the events existed for the announcing of extraordinary situation according to the article 120 of Turkish Constitutional Law are taken apart on the category of crimes committed for the purpose of terrorism.

2. Laundering of proceeds of crimes determined in Article 2/A of the Law No: 4208 on Prevention of Money Laundering is defined as a criminal offence in Article 2/B. If offence of money laundering is committed with the aim of obtaining sources for the offences of terrorism, the penalty of money laundering will be aggravated.

- In accordance with this act, banks and financial institutions are obliged to make customer identification, record keeping, and reporting suspicious transaction when they suspect that the funds are obtained from illegal activities.

- In accordance with the Article 12 of the Regulation Regarding the Implementation of the Law No: 4208 on Prevention of Money Laundering;

  Suspicious Transactions:
  " If there is a suspicion or a suspicious situation that money or convertible assets used in transactions carried out or attempted to be carried out in the name of the financial institutions or through their intermediaries stem from illegal activities, this shall immediately be reported to the Presidency (of the FCIB), after making customer identification."

The suspicious transactions are defined in the Item II/A of the Financial Crimes Investigation Board General Communiqué No:2 as follows.

"Suspicious transaction is the case that there is a suspicion or a suspicious situation in which money or convertible assets used in transaction carried out or attempted to be carried out within the obligors mentioned above or through them, stem from illegal activities."

- Ministry of Finance, Financial Crimes Investigation Boards (FCIB) General Communiqué No:2, published in Official Gazette on 31 December 1997, obliged liable parties reporting suspicious transactions transferring large amounts of money from countries and off-shore centres or to countries or off-shore centres in which

illegal activities like drug trafficking and smuggling, and terrorist organizations exist (Item II/B-2). This Communiqué is an important building block for the suppression of terrorist financing since 1997 in Turkey, which suffers from terrorist activities for two decades.

The steps upon receipt of a suspicious transaction report are provided for in the General Communiqué No:2. Accordingly, the liable parties responsible for reporting suspicious transactions shall fill the Form of Reporting Suspicious Transactions and sent to the FCIB after detecting suspicious transaction. After examining and evaluating the report, if it is required FCIB decides to initiate the money laundering investigation. As a result of this investigation, if adequate evidence, which expose that money laundering offence is committed, is gathered, the case will be forwarded to the Public Prosecutor's Office.

Work On the International Front:

Turkey has been countering, since the 1970s, some very vicious forms of terrorism and has thus been calling on all nations to structure a legal framework for measures to be taken against terrorism. The terrorist attacks of September 11, 2001, once again, evidenced the unacceptable dimensions that terrorism can take, and once again highlighted the need for cooperation among nations combating terrorism. In this respect, the UN Security Council Resolution 1373 of 28 September 2001 is a very strong move forward in reflecting the determination of the international community in the fight against terrorism.

Turkey has a long track record of active involvement and leadership at the UN and on all other fora in adopting efficient and stringent measures for the combating of terrorism.

Turkey is a party to the 12 UN International Conventions articulated for the purpose of combating terrorism.

Turkey also has ongoing efforts in many other contexts such as the work carried out by BM's Vienna Office. After a long process and active participation, Turkey has succeeded in obtaining a common understanding on the link between terrorism and organised crimes. In addition, Turkey has suggested that the International Penal Court include in its jurisdiction the crimes of terrorism. Despite the determined efforts of Turkey and other supporting countries, crimes of terrorism were not included in the Court's jurisdiction, yet as part of the subcommission to define "assault crimes", Turkey has called upon countries to reconsider this issue.

Recently, Turkey signed a series of Council of Europe Conventions, mainly on fighting corruption and other financial abuses indicating our resolve to deal away with any issues that threaten both ours and other financial systems and economies. Among these conventions, The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime ((Strasbourg Convention - ETS 141) aims at countering laundering of the proceeds of all types of crime, including arms dealing and terrorist activities. The convention also provides for some forms of investigative assistance, such as lifting of bank secrecy forwarding of information to another state without a prior request and adoption of common investigative techniques.

ANNEX: 2

TURKEY'S COUNTER-TERRORISM EFFORTS AND NATIONAL MECHANISMS

Having been suffered from terrorism for long years Turkey had put into effect the Law on Fight against Terrorism on 12 April 1991. This Law covers effective provisions for combating terrorism. This law makes reference to the various provisions of Turkish Criminal Code. Related Articles are as follows.

Act No. 3713 Law on Fight against Terrorism

Definition of Terrorism:

Article 1.

(1) Terrorism is any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, it's political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat.

(2) An organization for the purposes of this Law is constituted by two or more persons coming together for a common purpose.

(3) The term "organization" also includes formations, associations, armed associations, gangs or armed gangs as described in the Turkish Criminal Code and in the provisions of special laws.

Terrorist Offenders:

Article 2

(1) Any member of an organization, founded to attain the aims defined in Article 1, who commits a crime in furtherance of these aims, individually or in concert with others, or any member of such an organization, even if he does not commit such a crime, shall be deemed to be a terrorist offender.

(2) Persons who are not members of a terrorist organization, but commit a crime in the name of the organization, are also deemed to be terrorist offenders and shall be subject to the same punishment as members of such organizations.

Terrorist Offences:

Article 3. Offences defined in Articles 125, 131, 146, 147, 148, 149, 156, 168, 171 and 172 of the Turkish Criminal Code are terrorist offences.

Offences committed for terrorist purposes:

Article 4. In applying this Law offences defined in: Articles 145, 150, 151, 152, 153, 154, 155, 169 and the second paragraph of Article 499 of the Turkish Criminal Code and offences defined in Article 9, part (b), (c) and (e) of Law 2845 on the Foundation and Criminal Procedure at State Security Courts are terrorist offences if they are committed for terrorist purposes as described in Article 1.

Act No 3713 makes reference to following provisions of Turkish Criminal Code Numbered 5237 which recently entered into force:

Establishing organisations for the purpose of committing crimes

Article 220-

(1) Those who establish or direct organisations for the purpose of committing crimes shall be sentenced to imprisonment of 2 to 6 years if the structure of the organisation, number of members, equipment and supplies are sufficient to commit the crimes aimed.

(2) Those who become members of the organisations established to commit crimes shall be sentenced to imprisonment of 1 to 3 years.

(3) If the organisation is armed the sentenced stated above will be increased from one fourth to a half.

(4) If a crime is committed within the framework of the organisation's activities, these crimes will also be punished.

(5) The heads of the organisations shall also be sentenced as the perpetrators of all crimes committed within the framework of the activities of the organisation.

(6) The person who commits a crime on behalf of the organisation although he is not a member of the organisation shall also be punished for being a member of the organisation.

(7) A person who aids and abets the organisation knowingly and intentionally although he does not belong to the hierarchical structure of the organisation shall be punished as a member of the organisation.

(8) A person who makes propaganda for the organisation or its objectives shall be punished to imprisonment of one to three years of imprisonment. If the said crime is committed through media and press the sentence will be increased by half.

National mechanisms:

Government authorities that deal with counter-terrorism in Turkey are as follows:

1. Directorate General of Security (Turkish National Police), Ministry of Interior
2. Gendarmerie General Command, Ministry of Interior

3. Coast Guard Command, Ministry of Interior
4. National Intelligence Agency, Prime Ministry

The first three organizations report to the Minister of Interior, whereby The National Intelligence Agency reports directly to the Prime Minister.

There are three main departments in the Directorate General of Security that deal with counter-terrorism: Department of Counter-Terrorism and Operations, Department of Intelligence, Department of Special Forces.

With respect to the judiciary, terrorist offences are tried in the high criminal courts.

Turkish counter-terrorism policy and its basic principles are determined by the Government. National anti terrorism policy is consist of three major tools. These are:

-Use of proportional force according to the size of the threat.

-Public diplomacy is used to prevent public support for terrorists as well as to convince terrorists that they cannot achieve their goals through violence.

-Economic measures are also applied in the fight against financing of terrorism.

It is incumbent upon each and every counter-terrorism organization to operate within the framework of these principles.

Each and every counter-terrorism body acts in the sphere of its specialization and responsibility as determined by Law. The distribution of tasks among counter-terrorism authorities is determined by the founding legislation of these organizations. For example, the main responsibility of the National Intelligence Agency is to submit the intelligence it has obtained to the discretion of relevant law enforcement authorities. While police forces operate in urban settlements, gendarmerie forces can only operate in rural areas. There is an efficient flow of information and coordination between these organizations. The armed forces also contribute to the efforts of police and gendarmerie when needed. The intelligence departments of these organizations meet in periodical meetings held for assessment and coordination purposes.

On the other hand, information relating to transnational terrorist acts and intelligence concerning the threat posed by terrorist organizations, individuals and groups are systematically transmitted to the relevant law enforcement bodies of the concerned countries by the Interpol National Central Bureau (NCB). Countries have direct access to the database of the Interpol General Secretariat, in particular with regard to the forged ID documents that are used or planned to be used in terrorist acts. Therefore, Interpol NCB is one of the most significant information source for the law enforcement bodies of the concerned countries. Interpol NCB also provides information about possible future terrorist attacks in order to enable the concerned countries take preventive measures. Besides, Turkish security authorities closely cooperate with neighbouring countries on a bilateral basis. The National Intelligence Agency also provides early warning on the basis of its bilateral and multilateral relations with the agencies of other countries.

THE SCHENGEN ACQUIS AND IMPLEMENTATION MECHANISM:

At this stage of the accession process it can be considered premature to install SIS II compatible systems as these systems will not have to be operational by the day of accession, but only at the time when internal border controls are lifted. However, we would like to have information about your strategy for putting in place national large-scale IT systems and information Networks (that can be upgraded to be compatible with SIS II at a later stage) for police and immigration purposes in particular at the border, including what is already in place, what is planned and the financial resources allocated for this purpose.

Interpol-Europol-Sirene Department (Turkish National Bureau) is authorized to establish the Europol National Unit and Sirene Office. The administrative capacity will be increased by establishing a unitary centre within a single structure comprising the Europol and Schengen Contact Points (SIRENE Office) and the Interpol Centre enabling a more effective and productive work environment for co-operation and coordination between all law-enforcement units which will take part in this center. And also Schengen Information System Network (SISNET) communication infrastructure is going to be implemented with the Police Network at the General Directorate of Turkish National Police, Ministry of Interior. Guidelines, manuals and training curricula will be prepared for the implementation of Schengen Convention particularly related to SIRENE activities.

VISA POLICY:

Do you have a strategy/timing for harmonization with the EU visa lists?

Following the commitments stated in the National Programme for the Adoption of the *Acquis* (NPAA), Turkey has significantly expedited the process of alignment with the EU *Acquis*, particularly in the fields of EU positive and negative visa lists over the past three years.

Currently, Turkey has already aligned with the EU negative visa list by nearly 75% and with the EU positive list by nearly 60%.

As is known, full alignment with the EU visa lists is one of the binding and applicable part of the Schengen *Acquis* upon accession. Therefore, Turkey envisages to gradually complete its harmonization process in the years ahead.

What is the current number of visa issuing diplomatic posts or consular missions of your country?

Currently **94** Turkish Embassies and **58** Turkish Consulates General issue visas. Additionally Taipei Trade Office and Pristina Coordination Bureau also issue visas.

What types of visas are issued and where (consular structure/at the border)? In which cases are visas issued at the border?

Turkish legislation allows visa issuance both at the Turkish diplomatic/consular missions and at the Turkish borders.

Types of visas issued by the Turkish diplomatic/consular missions are "**Entry Visas**" and "**Transit Visas**". Entry visas may be issued as "single entry", "multiple entry" and "entry with special annotation". Transit visas may be issued as "single transit" and "double transit" visas.

A single entry visa entitles the bearer to enter Turkey and stay for the duration which is already stated on the visa sticker.

A multiple entry visa entitles the bearer unlimited entrance to Turkey for the duration of the validity of the visa. An alien can stay in Turkey for the duration stated on the visa sticker for each entry.

When the applicant's purpose of entry to Turkey is either to work, to study or to carry out a research etc, then this purpose is stated on the visa sticker and this type of visa is called "Entry visa with special annotation".

Transit visas are issued when the aliens' travel itinerary for a third country include passing through Turkey using the land or railways. Turkish legislation does not require the alien to obtain an "Airport Transit Visa" if he is not leaving the airport between his arrival and departure times.

Visas can be issued at the border as well. There are two types of visa issuance at the border.

a) "**Sticker Type of Visas**": Turkish legislation allows the nationals of 35 countries to obtain this visa at the borders. This type of visa is obtained at the designated offices of the Ministry of Finance, prior to the passport control of the border authorities. Sticker type of visa does not guarantee the bearer to enter the Turkish territory. Should the alien fail to meet the necessary entry conditions (such as his name appearing on the entry-ban list or he can not prove the means of subsistence during his stay) his entry will be denied.

b) "**Stamp Type of Visas**": Border authorities, with the permission of the Ministry of Interior Directorate General for Security, can issue, in very exceptional cases, stamp type of visas for aliens who are not nationals of one of the 35 countries mentioned above and who failed to obtain a visa prior to their departure. The alien should meet the necessary entry conditions (as stated above) in order to be issued this type of visa.

   This type of visa is usually issued;
   - if the alien is member of a delegation traveling to Turkey and because of time constraints, was not able obtain a visa prior to his departure,
   - if the alien is a holder of an official passport and traveling for an official purpose,
   - if there is not any Turkish Embassy or Consulate in the alien's country of residence and he has been invited by a Turkish sponsor for business meetings, etc.

Are different fees requested for different types of visas or is a "flat" rate applied? What are the fees applied currently?

At the beginning of each fiscal year, the Ministry of Finance determines the amount of fees to be collected for administrative transactions including the visa fees to be requested at the diplomatic/consular missions and at the borders.

Amount of the fees vary both according to the type of visas issued and to the nationality, on the basis of reciprocity.

Currently, the amounts of the fees, as determined by the Ministry of Finance are as follows:

Single entry: 26 US Dollars,
Single transit: 26 US Dollars,
Double transit: 53 US Dollars,
Multiple entry: 87 US Dollars.

As stated above, Turkish embassies/consulates are instructed to determine the amount of the visa fees on the basis of reciprocity, taking these rates as minimum.

Visa fees collected at the border vary as well. Nationals of 35 countries who can obtain a "sticker type of visa" at the borders are required to pay an amount between 10 Euros-45 Euros depending on the nationality of alien.

Border authorities require a flat rate of 152,40 New Turkish Liras -approximately 90 Euros- as determined by the Ministry of Finance at the beginning of 2006 for the "Stamp Type of Visa" they issue.

What is the average time for processing visa applications? Do you have a maximum processing time provided for by legislation?

Turkish visa legislation does not set out a maximum time for processing the visa applications. If the visa application is not subject to consultation with the central authorities, then it is processed within a couple of working days. This depends on the diplomatic/consular mission's work load.

If the visa application is subject to consultation, then it has to be finalized within 35 working days at the most. Should the central authorities need more time, then the visa applicant has to be informed duly.

Are refusal of visa applications notified (if so, how?) to the applicant, and is the refusal motivated (if so, how detailed are the grounds given?) Is there a possibility of appeal against refusals? (if so, what type of procedure is foreseen: administrative or before a jurisdiction?)

A visa application may be refused, when the applicant fails to meet the necessary conditions as set out in the 8th Article of the Passport Law No: 5682. In this case the applicant is informed verbally. Upon request, he might receive a written confirmation

According to Article 125 of the Turkish Constitution, aliens are entitled to appeal against all actions and acts of administration to the administrative courts. Therefore, in the event of refusal of a visa application or issuance, the applicant may file a suit in the Administrative Court of Ankara. The Court decision can also be appealed.

Are statistics compiled on visas applied for, issued and refused (including at the border)? If so, please submit statistics for 2004 and 2005?

Diplomatic/consular missions keep their records of the visa applications received, visas rejected or issued on monthly and annually basis.

Ministry of Interior keeps the records of the statistical information about the entry – exit and number of visas issued at the border.

Ministry of Finance has the information about the number of stickers issued at the border to the nationals of 35 countries.

Number of visa applications received, visas issued and rejected by the diplomatic/consular missions in 2004 and 2005 are as follows:

2004:

Number of visas applied for:	944.402
Number of visas issued:	586.101
Number of visas rejected:	358.301

2005

Number of visa applied for:	779.179
Number of visas issued:	543.348
Number of visas rejected:	235.831

Number of stamp type of visas issued by the border authorities in 2004 and 2005 are as follows:

2004: 39.558
2005: 67.049

Number of entry refusals by the border authorities in 2004 and 2005 are as follows:

2004: 11.093
2005: 8.008

Number of sticker type of visas issued in **2004** and **2005** in total are approximately 25 million.

EXTERNAL BORDERS:

Which is the authority/service having the main responsibility for border management?

- The overall supervision competence on border management is exercised by the Ministry of Interior. The Ministry of Interior performs this task through governors and their designated deputies.

Which authorities (at Ministerial level) are involved in border management? Which are the services responsible?

- Duties related to the entry and exit of persons at border gates are performed by the General Directorate of Security (Ministry of Interior),
- Duties related to the entry and exit of goods at border gates are performed by the Undersecretariat of Customs ,
- Duties related to border (between the border gates) surveillance of 125 km part of the Iran border and all of 384 km Iraq border are performed by the Gendarmerie General Command (17%) (Ministry of Interior),
- Duties related to border surveillance at other land borders are performed by the Land Forces General Command (83%) (Turkish General Staff),
- Surveillance duties at maritime borders (between the border gates) are performed by the Coast Guard Command (Ministry of Interior).

How is cooperation between the various authorities/services ensured? Are there specific structures/agreements in place to organise such cooperation?

- There is close coordination and cooperation among the aforementioned authorities. At the level of headquarters, it is the Ministry of Interior that ensures a coherent and harmonious functioning of the authorities and services cited above. Moreover, Head of Civilian Administration (Governor or his designated Deputy) in the provinces conducts such cooperation through regular meetings and dissemination of information.

Do you motivate refusals of entry? Is there any appeal procedure foreseen (if so, what type: administrative, judicial?)

- Motivation for refusal of entry by an alien is explainable to him/her at border gates by the relevant personnel. However, alien may ask from the administration (the Ministry of Interior) to be provided with written reasons on denial of entry. Such request is to be replied in a written form.

Do you dispose of reliable statistics on border traffic as well as on refusals of entry? If so, please submit statistics for 2004 and 2005?

	2004	*2005*
ENTRY	**23.970.101**	**28.327.924**
EXIT	**23.834.904**	**27.921.338**
REJECTED	**11.093**	**8.008**