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TABLE OF CONTENTS

DEMOCRACY AND THE RULE OF LAW3
CIVIL SERVICE AND ADMINISTRATIVE LAW8
INTEGRITY12
PUBLIC EXPENDITURE MANAGEMENT AND CONTROL15
PUBLIC PROCUREMENT23

DEMOCRACY AND THE RULE OF LAW

Democracy

The constitutional amendments approved by referendum on 12 September 2010 are a positive step for the democracy.¹ However, they are insufficient. Some human rights and freedom of press issues are a matter of public debate in Turkey and of increasing concern for the European Parliament and European Commission, especially after the recent arrests of journalists and the adoption by the Turkish Parliament's justice commission of a controversial draft law related to freedom of the press, which is set for a plenary debate following the next elections. Other concerns relate to the protection of minority rights, to the controversial decision by the Supreme Electoral Board to exclude some candidates from elections in the south-eastern part of the country and the current 10% electoral threshold. The latter is the source of severe political tension locally. If they persist, they could negatively impact on the progress observed in recent years towards a better democracy.

The 2010 constitutional reform and the electoral period which started *de facto* by mid-2010 have taken public governance reform issues off the policy agenda.

Rule of law

The extent to which the public governance system adequately respects the rule of law (i.e. a set of principles that require a separation of powers between the judicial, executive and legislative branches of government, compliance with the law by government, individuals and economic operators, the proper functioning of the judiciary and the consistent application of fair procedures by the administration) remains a source of concern.

The basic aspects of a state ruled by law are established although the dominant administrative culture tends to be too legalistic and often detrimental to the observance of several principles such as openness, participation, transparency and accountability.

The separation of powers between the executive and the judiciary is sometimes problematic, and the judiciary tends to protect the state more than it protects citizens from the state. Several groups, such

¹ These constitutional amendments provide for: the establishment of an Ombudsman ("public auditorship"); the introduction of the protection of personal data and of children's rights; the reinforcement of the principle of equality before the law; the reinforcement of the role of civilian courts regarding military personnel; the introduction of the right of public servants and public employees to conclude collective agreements; the reinforcement of regulations concerning the abolition of political parties (such decisions are now more difficult and even in such cases the concerned MPs would not lose their seats); the strengthening of the role of the Constitutional Court; the granting of constitutional status to the Economic and Social Council.

as parliamentarians, members of government, the military, top officials and civil servants, continue to enjoy disproportionate privileges and protection.

The oversight function of parliament over the executive is limited. This has received increasing attention by the Parliament (Turkish Grand National Assembly – TGNA), especially in budgetary matters although little progress has been observed. The adoption of the new Law on the Turkish Court of Accounts, which was on the agenda of the TGNA for more than six years, entered into force 1 January 2011, creating a promising step forward as the legal framework for the implementation of the budget reform and external audit are now coherent.

Constitution

Constitutional amendments adopted last year are headed in the right direction. However, the checks and balances system must be strengthened in areas such as the separation of powers, protecting citizens against state abuse, making the administration more service-oriented towards citizens, adopting a new legal framework for administrative procedures, protecting minorities, and protecting freedom of expression and freedom of information. Those constitutionally related public governance changes are fundamental for developing a state that is able to perform well within a European membership context.

There seems to be convergence on the need for a new Constitution at least on behalf of the ruling and main opposition parties. However, views expressed so far on the content of the future Constitution seem to diverge on important issues such as on the type of system, for instance parliamentary versus presidential. In order to be sustainable, the new Constitution will need to be born from a wide political and social consensus.

Parliament

The TGNA has undertaken some initiatives to strengthen its still-limited administrative capacities to perform its main functions of producing legislation and of controlling the executive. A draft of TGNA's new rules of procedure has been prepared but not yet approved. A proposal to create a legislative academy has been drawn up and should be followed up on. In general, the TGNA's oversight function suffers from significant weaknesses which originate in the shortcomings of instruments for scrutiny and more fundamentally in the committee system which is characterised by the limited oversight role of committees and inadequate expert support.

The willingness that has been expressed to strengthen parliamentary oversight of public expenditure, including scrutiny of budget implementation, is to be welcomed. Nevertheless, the capacity of parliament to scrutinise performance programmes and accountability reports as well as external audit reports is still insufficient. The adoption of the new Law on the Turkish Court of Accounts (TCA), which requires TCA to report to TGNA, will create some of the conditions required for closer dialogue and co-operation between the two bodies.

One of the key capacity concerns that TGNA has originates in its human resources policy and management which suffer from a lack of transparency and clarity. The TGNA 2010-2014 strategic development plan addresses several of the main weaknesses of TGNA's organisational and personnel setting. However, it remains to be seen how the above-mentioned proposals will be managed by the new legislature.

Government

The 2010 constitutional reform and the political agenda have, understandably, tended to shift the attention of the government away from horizontal public governance reforms. This has been the case in particular for policy making and co-ordination (including EU co-ordination) systems, administrative procedures and civil service management. However, there has been some progress made in less politically sensitive public governance areas, such as public expenditure management and public procurement. Furthermore, initiatives have been taken which aim at introducing the use of regulatory impact analysis methodology although the capacities of ministries cannot keep up with the demand.

Some important laws are amended frequently. This instability has had a negative impact on legal certainty and on the coherence of the national legal framework, which in turn may have a significant impact on business activity and the judiciary. It further complicates the implementation of laws and policies and may put the compatibility of Turkish norms with the EU *acquis* at risk. The centre of government has a key role to play in this respect by strengthening the overall regulatory and policy-making system. Attention should continue to be devoted to the quality of public services, the reduction of red tape, as well as the development of professionalism and the institutional capacity of the centre of government to perform its key functions.

The initiative has recently been taken by the current government, the parliament and the President to grant the government, for a six-month period, the authority to issue decrees having the force of law. These decrees would allow the government *inter alia* to reform the Council of Ministers, to restructure ministries (for instance, some ministries would be merged, others would be abolished and the hierarchy and the ranking system of state bureaucracy and the procedures which regulate the main human resources management functions in the public administration would be adjusted).

Public administration

The lack of dialogue and openness of the administrative culture reduces the capacity of the government to undertake administrative reforms but also puts the sustainability of reforms at risk. However, the existence of an active civil society and some of its NGOs, has the capacity to bring new ideas and support reforms, and is likely to push for more and better administrative reforms.

There are some concerns about the civil service legislation, which is considered to be out of date in some respects, with a salary system that is too complex and discretionary, recruitment and training systems that have some weaknesses and, above all, the absence of an institution with sufficient power and capacity to ensure the enforcement of homogeneous civil service management standards and the uniform implementation of the personnel rules across the civil service.

Progress has been made in public expenditure management and control, where the development of strategic planning and performance budgeting have been pursued notably through consolidating reform measures. Internal audit continues to progress more slowly, partly due to persistent confusion between the respective roles and responsibilities of internal audit and inspectorate functions. It also seems difficult to design and agree on a structure and mechanism that would actively promote managerial accountability and internal audit. The administration seems committed to reform the system of public procurement, concessions and public-private partnerships with the aim of fully aligning it with EU law. Draft laws have been produced. However, despite this noticeable preparatory work, it seems there is less political support and commitment to reach concrete results in this area. The Ministry of Finance (MoF)

has been assigned responsibility of ensuring the establishment of a coherent policy and sufficient co-ordination of the legislative process with respect to public procurement in order to avoid the initiation of amendments to the legislation from outside the government, which has frequently been the case in the past. This effort materialised with the creation of dedicated unit within the MoF.

Judiciary

Administrative justice continues to be a matter for concern that may weaken the notion of an administration ruled by law. The backlog of cases has been increasing every year, as the number of staff is too small and judicial offices are ill-equipped. Administrative court decisions are difficult to enforce. This problem is partly due to the unclear allocation of responsibilities between the different levels of administration and within related bodies and entities. The system needs to improve the remuneration of judges, personnel management and, especially, the continuous training of administrative judges and officials in judicial offices. For citizens, the justice system as a whole, and the administrative justice system in particular, are regularly rated as one of their greatest concerns.

Anti-corruption

Corruption, especially in the political sphere, remains a concern. No significant change has been observed regarding immunity. Prosecution of high-level officials is rare. No new legislation is on the agenda concerning the financing of political parties and election campaigns. Expectations were raised concerning the creation of a state body with the authority to audit election campaigns, but they did not materialise. However, over the past years, governments have considered the struggle against corruption as a priority and significant progress has been made: the national anti-corruption strategy has been adopted as well as an action plan to support its implementation. The strategy incorporates important preventive provisions and addresses the issue of political corruption. Some initiatives have been taken to raise the awareness of the public and private sectors as well as of NGOs, unions and the media of this national anti-corruption strategy, with a view to increasing support for its implementation.

Recommendations

The strategy to reform the overall public governance system, decided in 2003, started by reforming the Public Finance Management and Control (PFMC) system. This PFMC reform permitted to launch the revitalisation of parts of the public administration system. The new Turkish Government which will emerge following the June elections will have to decide upon *the next strategic steps of the overall reform*:

1. To adopt a new and democratic Constitution (addressing *inter alia* the separation of powers, the role of constitutional institutions, the protection of minorities, the electoral threshold, the protection of human rights and freedoms, etc.) with a fully developed system of checks and balances. The active participation of civil society organisations could contribute to the appropriation of the new Constitution by the entire Turkish civil society.
2. To reform the organisation and functioning of the public administration by introducing a new administrative legal framework (general administrative procedures and reduction of special procedures, delegation of power, further decentralisation, etc.) able to improve the quality of administrative decisions and to make them more predictable and less open to corruption; to make judicial control of administrative decisions more effective and to ensure compliance with

judicial decisions by the administration; to develop a policy to improve the quality and access of public services for citizens, especially in the health and education sectors as well as in social services; to improve the performance of the civil service by amending those provisions of the civil service legal framework which have to be updated and, above all, by strengthening the institutional capacity to manage and enforce this legal framework across the public administration; to ensure the full development of the Ombudsman institution; and to pursue the PFMC and public procurement reforms in order to consolidate their results.

3. The trend to amend legislation frequently and difficulties associated with the implementation of laws and policies suggest that a self-assessment of national systems of production of norms and policies could be beneficial for the next government in order to help shape a reform that will be key for Turkey to perform well in an EU membership context.
4. To fully implement the adopted strategy to fight corruption, including the legislation on immunities and privileges of top officials.
5. To further develop the national system of checks and balances including by strengthening the administrative capacity of the TGNA to fulfil its oversight functions and to monitor the implementation of the PFMC reform and of the new Law on the Turkish Court of Accounts.

CIVIL SERVICE AND ADMINISTRATIVE LAW

Main Developments since the Last Assessment (May 2010)

The political agenda in Turkey during the past year was mainly occupied by constitutional discussions and the related referendum. As a result, since last year the civil service and administrative law have not been subject to relevant changes. The situation in Turkey remains generally the same as reported in previous SIGMA assessments. One exception was the adoption of the new Law on the Turkish Court of Accounts (TCA).

Special prominence should be given to the amendments to the Constitution that were adopted on 7 May 2010 and confirmed by a national referendum held on 12 September 2010. These constitutional amendments can be assessed, in general, as positive but insufficient. They provide for: the establishment of an Ombudsman ("public auditorship"); the introduction of the right to the protection of personal data and of children's rights; the reinforcement of the principle of equality before the law; the reinforcement of the role of civilian courts regarding military personnel; the introduction of the right of public servants and public employees to conclude collective agreements; the reinforcement of regulations concerning the abolition of political parties (such decisions have been made more difficult and even in such cases the concerned MPs would not lose their seats); the strengthening of the role of the Constitutional Court; the granting of constitutional status to the Economic and Social Council.

However, the constitutional amendments did not reduce the threshold for representation in parliament (the 10% rule remains¹); the expected limitations of parliamentary immunity were not included; political representation in the Supreme Council of Judges and Public Prosecutors was not removed; and the risk of politicisation of the judiciary, including of the Constitutional Court, was increased by the amendments. Therefore, since these amendments were not the result of a political consensus, and further changes are still required in order to resolve important issues, new constitutional reforms may be needed soon.

The draft Law on State Secrets – which could help to clarify and improve the effectiveness of the right provided by the Law on the Right of Access to Information – was discussed and passed by the relevant parliamentary committee, but it has not yet been adopted by the Assembly.

¹ A study prepared by TEPAV, a Turkish "think-tank" ("Türkiye'de Seçim Barajına ve Seçim Sistemi Değişikliklerine Yönelik Analizler ve Politika Önerileri - Analyses and Policy Recommendations for Changing the Election Threshold and Election System in Turkey") suggests that the optimal threshold for Turkey is 4%. According to the Resolution 1547 (2007) of the Parliamentary Assembly of the Council of Europe, "in well-established democracies, there should be no thresholds higher than 3% during the parliamentary elections."

(<http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/ERES1547.htm>)

Expectations regarding the adoption of new parliamentary Rules of Procedure, which were drafted and agreed by a working group in which all political factions in parliament participated, were not fulfilled.

The adoption of a general law on administrative procedures has been on the agenda of the government. A draft law has been prepared and disseminated for public discussion but has not been submitted to the parliament.

In April 2011 the parliament approved a law allowing the government, for a period of six months, to adopt decrees having the force of law for restructuring the council of ministers and the ministries. The declared purpose is to increase efficiency and reduce bureaucracy. The government is also allowed to issue decrees for changing several areas of the public service statute (appointment, transfer, recruitment, promotion, dismissal, and retirement). The law was enacted in accordance with article 91 of the Constitution but the timing of the government's initiative is questionable since legislative elections will be held in June 2011. According to several opinions, the objective is to speed up the legislative process in parliament since the decrees, if issued, will be later sent for urgent approval by parliament.

Main Characteristics

Turkey has a mature bureaucracy based on solid state-oriented values (strong hierarchy, professional civil service, conformity, control, etc.), able to cope with established routines and procedures. Modernising this bureaucracy towards new values and attitudes, looking for a results-oriented administration, serving the citizens and the economy, is the challenge.

The current public service system was created in 1965 and since then only minor changes have been introduced. Among issues requiring changes are the need to: narrow the scope of the civil service, including a more precise delimitation of the boundaries between politics and administration; improve the merit-based system for recruitment and management; establishment of a unitary, simpler, transparent and fair salary system; reinforce rights and duties of civil servants; use mobility and training as important human resources management tools; cut favouritism and patronage; eliminate the abuse of temporary appointments as a way of circumventing normal recruitment and promotion procedures; abolish the immunity of civil servants and the permission system for being prosecuted; emphasise impartiality as a fundamental civil service value; regulate the right to strike; remove restrictions on the freedom to unionise; increase social dialogue..Furthermore, a central management unit should be established for preparing and monitoring public service policy and strategy as well as for ensuring common standards in their implementation

The use of the revolving funds for payment of supplements to public servants in some sectors (health, education, regulatory agencies, etc.) remains a practice incompatible with a transparent and fair salary system. In addition it opens the door to undue pressures on civil servants.

Emerging politicisation of the civil service continues to be a matter for concern since it reduces the civil service's professionalism and the impartiality of the administration.

In total there are approximately 2,583,000 public employees in Turkey, of whom approximately 75.2% are in central government, 10.2% in local governments and 14.6% in state enterprises. The geographical and functional distribution of public employees is not balanced throughout the country. Legal restrictions on internal mobility accentuate this problem. It must be stressed, however, that a

reliable central database capable of providing up-to-date and accurate information on public employment does not exist.

In general, ministries have limited capacity and skills for developing an accurate Human Resources Management (HRM). The name of the departments responsible for personnel issues was changed to 'HRM departments', but this change does not reflect relevant change in tasks, duties, responsibilities and skills. Specific support for improving this situation is not being provided. Therefore, these units mainly perform a record keeping function.

The rationalisation of administrative structures and personnel has not been a consistent priority in recent years. Strategic plans have been adopted by almost all public organisations. These plans establish the vision, mission, objectives and goals to be achieved in a specified period of time. However, the existing legal framework does not provide the required managerial flexibility for their implementation. As a result, implementation of strategic plans is slowing down. The recently adopted law authorising the government to adopt decrees having the force of law in areas related to the organisation of ministries may create new impetus in this regard. However it remains to be seen if this power will bring concrete improvements to the situation.

Turkey has a fragmented system of administrative procedures. Such a complex system leads to lengthy and costly procedures, as well as uncertainty and unpredictability of administrative decisions. It also deteriorates trust in public services, violates certain citizens' rights, burdens businesses, negatively impacts on the administrative justice and opens opportunities for corruption. According to *The Global Competitiveness Report 2010-2011*², "inefficient government bureaucracy" is the biggest problem for doing business in Turkey. According to another source³, Turkey ranks 63 out of 183 countries in "starting a business", 137 in "dealing with construction permits" and 115 in "closing a business". "Enforcing contracts" is the area in which Turkey gets its best ranking (26).

No improvements can be reported regarding the long-awaited reform of administrative justice, which has been mentioned repeatedly as requiring in-depth changes.

In spite of the recognition that Turkey is a centralised state with a centralised administration, reforms for decentralisation and deconcentration have stagnated.

The 2010 constitutional amendments are positive but many of them require the adoption of several pieces of legislation in order to make them effective. For instance, the foreseen Law on the Protection of Personal Data, which includes the establishment of an independent supervisory authority, is still missing. The creation of the Ombudsman also requires additional legislation and the allocation of sufficient resources for it to become effective, since the constitutional amendments have increased its role

Concerning the quality of legislation, regulatory impact assessment of new draft laws is carried out, and the Directorate of Law in the Ministry of Justice and the Prime Ministry are in charge of checking their compliance with existing legislation and with the EU *acquis* (with the participation of the Secretariat

² "The Global Competitiveness Report 2010-2011", World Economic Forum
(http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf)

³ "Doing Business 2011", World Bank, available at:
<http://www.doingbusiness.org/~media/FPKM/Doing%20Business/Documents/Annual-Reports/English/DB11-FullReport.pdf>

General for EU Affairs). However, further improvement is required, including with regard to co-operation with parliament.

Reform Capacity

Among other legislation adopted in 2009, laws public finance management and control, freedom of information, and territorial administration have created new opportunities for improving the effectiveness of the public administration and for promoting other management reforms. Special attention should therefore be paid to its implementation.

Without a motivated and service-oriented public civil service, new managerial skills, a capable HRM system and an accurate law on general administrative procedures, other reforms of the governance system will most probably fail or will have little and no sustainable success. Therefore, reforming those areas should be considered a priority.

Change also requires clear institutional leadership and expertise. Both should be clarified and intensified.

Reforming public governance requires visible political support. Sustainable reforms also require enlarged political and social agreement able to ensure continuity. The political culture in Turkey should incorporate values of dialogue and compromise for making reforms happen.

The participation of civil society should be strengthened through reinforced social dialogue. This participation will help to increase the overall quality of policies and to create better conditions for their social acceptance.

Recommendations

- The reform of the civil service, administrative procedures and administrative justice should be placed high on the political and legislative agenda. Responsibilities for leading these processes should be clearly assigned.
- In order to make the 2010 constitutional amendments effective, the required pieces of related legislation should be adopted by the parliament.
- Political dialogue and the effective participation of civil society to boost the necessary reforms should be promoted, as well as social dialogue within the public administration's trade unions.
- Change management, including implementation plans and training, should be considered as a common usual tool for making reforms effective. In this regard, HRM capacity must be developed in line ministries, while the State Personnel Presidency should increase its power and expertise for preparing reforms, and encouraging and co-ordinating their implementation.

INTEGRITY

Main Developments since the Last Assessment (May 2010)

In February 2010 a comprehensive strategy was adopted for enhancing transparency and strengthening the fight against corruption (for the period 2010-2014). In April 2010 the related action plan was also approved. A ministerial committee, composed of the Deputy Prime Minister and four ministers (Minister of Justice, Minister of Interior, Minister of Finance and Minister of Labour and Social Security) and an executive board made up of representatives of public institutions, labour unions and the Turkish Union of Chambers and Stock Exchanges (TOBB), was assigned the responsibility of preparing these documents and monitoring their implementation. The Prime Ministry's Inspection Board provides organisational and technical support for the implementation of the strategy. In addition, 23 working groups involving 242 members (including 43 from NGOs and the private sector) have been established, but apparently the participation of civil society and its role on the executive board and in the implementation of the strategy need to be strengthened. Some questions have also been raised about the large number of working groups. Being more selective and better focused would have been a more suitable approach. On the other hand, it remains to be seen whether the Prime Ministry's Inspection Board has enough capacity for providing the required support to the 23 working groups while also performing its usual functions. The current staff (28 inspectors and 20 assistant inspectors) seems insufficient to provide a substantive support.

The strategy aims to develop preventive and repressive measures against corruption and to improve public governance through increased transparency, accountability and reliability of the public administration. Raising public awareness is another component of the strategy. For the time being it is too early to assess results, as the first phase of the action plan, which took longer than expected, focused on internal planning and preparation of the various actions to be undertaken. Ensuring the clear commitment to the strategy at the political level, the effective engagement of the whole public administration, and the active participation of the private sector are the main challenges to be met.

The government continued its programme of training on ethics, and in September 2010 adopted a regulation on a code of ethics for investigators and auditors. It applies to inspectors, controllers and some auditors, but its scope is vague. This code may be important in terms of promoting and protecting autonomy and ensuring unbiased actions on the part of investigators and auditors when searching for possible cases of fraud or corruption.

In *The Global Competitiveness Report 2010-2011*¹ out of 139 countries, Turkey is ranked 76 for irregular payments and bribes; 83 for judicial independence; 89 for favouritism in decisions of government officials; 54 for transparency of government policymaking; 104 in organised crime; and 79 in ethical behaviour of firms. Corruption was also identified as one of the most problematic factors for doing business.

An OECD report published in March 2010 on Turkey's progress in implementing the OECD Anti-Bribery Convention concluded that Turkey had "undertaken significant awareness-raising training on the offence of bribing a public official"; "adopted several legislative and regulatory provisions...including for protection of whistle-blowers in the private and public sectors, witness protection..."; improved the Code of

¹ "The Global Competitiveness Report 2010-2011", World Economic Forum
(http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf)

Misdemeanors reinstating corporate liability for the offence of foreign bribery; and increased law-enforcement activity. However, a GRECO report of March 2010 emphasised that further improvements were needed for addressing the complexity and deficiencies of the legal framework related to incrimination for bribery and trading in influence.

Corruption cases have increasingly continued to find a place in the media headlines as well as in political debates. These cases relate mainly to public tenders and procurement, local governments, universities and hospitals. The corruption accusations include bribery, mismanagement of tenders, extortion, abuse of contracts, threats, etc. There has been little progress in local corruption cases, which is due in particular to long administrative and judicial investigations. Since most of the cases that were made public related to individuals who were known for their opposition to the current government, concerns were voiced about the possible use of these accusations for political purposes.

No progress has occurred regarding the monitoring and control of funding of political parties and electoral campaigns. The current legislation has been assessed² as insufficient to properly address the problem, but no improvements have been introduced in this regard. Donations to candidates and political parties during periods of general and local elections are roughly controlled – the control exercised by the Constitutional Court is mainly procedural. The responsibility was shifted to the Court of Accounts but it remains to be seen if the new system is effective. The next general elections of 2011 will provide an opportunity to carry out the first check of the effectiveness of the new system.

The previously reported problems concerning the improper use of the immunity of MPs and members of the government, the unjustified protection of civil servants against prosecution, and the secrecy of asset declarations have still not been resolved.

Main Characteristics

When assessed in a long-term perspective, Turkey's progress in policy-making and policy implementation in the fight against corruption has been noticeable.

Over the past decade, the government, the opposition, universities, civil society and the media have started to pay greater attention to the public integrity system. This is visible in the public documents, debates, analyses and reports, monitoring by government agencies, and by policy itself. As a result, public awareness has increased, and the prevention and fight against corruption are perceived as key issues for sustaining a functioning political system and a growing economy, and for reinforcing security (since corruption is sometimes linked to organised crime, money-laundering, and the financing of terrorist and criminal organisations).

However, corruption has been widespread and has continued to be a major problem in the country.

At the political level, the major weaknesses, which have already been identified and reported, remain as follows: the system for controlling the financing of political parties and electoral campaigns is still incomplete and ineffective; a permanent parliamentary ethics commission is missing, as well as a code of conduct for parliamentarians; no progress has been made on limiting the immunities of MPs; members of parliament and of the government are not subject to any restriction after their term of office; a system for declaration of assets exists but control and verification is ineffective; administrative authorisation for the prosecution for corruption of certain groups of officials is still required; there have been few investigations, indictments and sanctions in cases of alleged corruption.

² GRECO, Eval III Rep (2009) 5F, Theme I, adopted March 2010.

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)5_Turkey_One_FR.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)5_Turkey_One_FR.pdf)

The judiciary continues to be rather ineffective, and its independence is insufficiently promoted and protected. The implementation of the 2009 strategy and related action plan for the reform of the judiciary is progressing but at a slow pace. In addition to the abovementioned ranking related to judicial independence, Turkey is also ranked 73 for efficiency of legal framework in settling disputes and 74 for efficiency of legal framework in challenging regulations. This is a sign that that more and better resources are needed to

In the public administration, the lack of transparency and the heavy procedures create conditions and opportunities for corruption. If properly managed and supported by new pieces of legislation increasing transparency – such as, for instance, a general law on administrative procedures -, and by intensive training, the current human resources capacity in the public administration could perform much more effectively.

Reform Capacity

In both the public sphere and civil society, Turkey has acceptable institutional and human resources capacity for modernising the public integrity system. However, the persistent commitment of the government is necessary, and participation and co-ordination should be enhanced and made more effective. Benchmarking could be widely used to better align reforms with good practice. For this purpose, international assistance could be useful in supporting the leading political and administrative reformers.

If properly structured, empowered and co-ordinated so as to increase its effectiveness, the inspection system in Turkey could play a relevant role in fighting corruption. A track record of investigations, indictments and convictions is still lacking. Enforcement capacity therefore needs to be strengthened.

The adopted strategy to enhance transparency and strengthen the fight against corruption provides the momentum for a decisive change in the critical sectors identified. Its implementation is now the main challenge. The same is valid for the judicial reform strategy.

Recommendations

- Efforts should concentrate on implementing the adopted anti-corruption strategy and related action plan;
- A priority should be the tackling of the identified key legal and institutional weaknesses: funding of the political system; MPs', government's and civil servants' immunities; law on general administrative procedures; verification of asset declarations;
- The implementation of the strategy for the reform of the judiciary should be boosted, and results must be visible regarding corruption cases;
- Civil society participation must be enlarged and made more effective;
- Factual reports on progress achieved in the implementation of the different strategies should regularly be prepared and made available to the parliament, civil society and the media.

PUBLIC EXPENDITURE MANAGEMENT AND CONTROL

Main Developments since the Last Assessment (May 2010)

The current macroeconomic context shows that Turkey has been less hit by the recent global financial crisis than the other countries assessed by SIGMA. The IMF staff report for the 2010 Article IV notes that: "Far-reaching reforms and solid macroeconomic policies instituted in the aftermath of Turkey's 2000-01 crisis paid invaluable dividends during the recent global financial crisis". According to the report, the central government overall fiscal deficit increased from 1.9% of GDP in 2008 to 5.5% of GDP in 2009, but is expected to decrease to 3.2% of GDP in 2011.

Since the last assessment, the implementation in Turkey of a performance-oriented budget system has been pursued. The actions undertaken have consisted of consolidating reform measures that were being implemented in the area of **public expenditure management (PEM)**. Thus in 2010 the preparation of performance programmes has been extended to nearly all public administrations, and further training has been undertaken.

Progress in developing **public internal financial control (PIFC)** has been noticed in particular with regard to the development of internal control, which has followed the activity plan that was agreed as part of the twinning project, "Strengthening Public Financial Management and Control Systems in Turkey", together with the parallel implementation and monitoring of action plans prepared by the strategic development units within public institutions. The most visible development has been the preparation of an operational manual on internal control, in addition to training on the concept of internal control. There is an increasing, but not universal, understanding at the working level of the principles of PIFC, as well as a greater willingness to take ownership of such responsibilities. However, there has been only limited development of the implementation of internal audit, where overall staff appointments are similar to those of a year ago, although training has continued and more staff have gained professional qualifications.

In the area of **external audit**, the main development for the Turkish Court of Accounts (TCA) has been the enactment of the new Audit Law, effective since 1 January 2011. The new law represents a major change in the responsibilities of the TCA and is a significant step forward in the public financial management reforms being addressed by the government. This new law has considerably expanded the mandate of the TCA, which now includes: municipalities; public corporations, including those established by municipalities; and EU funds. This mandate had not previously been explicitly mentioned. The responsibilities and the staff of the High Auditing Board of the Prime Ministry have been transferred to the TCA. Staff numbers for the TCA have therefore increased from 1,300 to 1,450. The 58 members of the TCA General Assembly have remained unchanged, but the audit groups have increased from 19 to 21 in order to cover the increased audit mandate.

An important development is that the TCA will now provide audit opinions to the Turkish Grand National Assembly (TGNA) on the financial accounts for each public administration as well as on the activities of "state economic enterprises". It will continue to produce an "opinion" on the General Conformity Statements (the equivalent of an audit opinion on a budget execution report).

Regarding the organisation of the TCA, the post of Secretary General has been repealed and there are now two deputy presidents, one responsible for "audit" and the other for "administration". The

subordinate regulations required to implement the provisions of the Audit Law should be prepared by 31 December 2011. The TCA therefore has to set up 20 committees, which will consider 25 areas for reform.

Main Characteristics

The law governing PEM and PIFC is the Public Financial Management and Control (PFMC) Law. It was enacted in December 2003 and is a public finance framework law. It aims to introduce modern budgeting procedures and requires change in the administrative culture that cannot be expected to take place at short notice. It should not be forgotten that implementing an effective form of performance budgeting would take time in any country and that in Turkey too it will require a continuous effort over a long period.

Regarding **PEM**, the main characteristics of the new budget system introduced by the PFMC law aims at improving transparency and accountability. In particular, it includes: (i) increased responsibilities of line ministries in budgeting; (ii) the development of a multi-year budgeting approach; (iii) the preparation of strategic plans, performance programmes that present performance objectives and targets, and accountability reports (i.e. annual activity reports) by line ministries and other public administrations.

The PFMC Law and other legislation such as the Law and Regulations on Debt Management, issued during the period 2002-2005, and various modernisation measures, such as improvements in fiscal reporting and streamlining of the payment system, have contributed to increased aggregate fiscal discipline.

At the central level, financial management functions are shared by the Ministry of Finance (MoF), who is responsible for budget preparation, budget execution (including administering payment transactions), accounting and reporting, the State Planning Organisation (SPO), responsible, among other duties, for strategic planning, preparing and monitoring the investment programme, and the Undersecretariat of the Treasury, responsible, among other duties, for cash and debt management. There is a close coordination between these three institutions. Nevertheless, the spreading of responsibilities across institutional lines generally imposes a cost on the policymaking process.

In 2006, the MOF budget offices located within line ministries were eliminated. Strategic Development Units (SDU) have been created in each ministry and main agency. The SDUs took over functions previously performed by the MOF budget offices in budget preparation and budget execution. They are responsible for strategic management and planning, establishing performance and quality criteria, coordinating the preparation of the budget and the performance programme, accounting and reporting and internal control, including performing some ex-ante financial controls. SDUs have been staffed with financial specialists and perform effectively their functions in budget preparation and execution. To prepare the budget, they act in coordination with the different departments of their ministry. They prepare the ministry's accountability report on the basis of reports prepared by the spending units of the ministry.

The budget preparation procedure includes: (i) until June, a framing phase to establish initial spending limits that are notified to line ministries and other main agencies to frame their budget preparation; (ii) in July, the preparation of budget requests by line ministries; (iii) in August-September negotiations between line ministries and the MOF, for the recurrent budget, and the SPO, for the investment projects, and finalisation.

The framing phase includes two steps. First, a medium-term programme, which includes macroeconomic policies and targets, is prepared by the SPO and submitted to the Council of Ministers at the end of May. Second, the MoF prepares a medium-term fiscal plan. This plan includes aggregate fiscal targets and expenditure ceilings for public administrations' budget proposals. It is submitted to the High Planning Committee (HPC) in June and published in the *Official Gazette*. It is not reviewed in the Council of Ministers. The key ministries in the social sectors do not participate in the HPC.

The performance programmes give information on the objectives of the budget policy, the expected results, and the activities that will be financed by the budget. However, their role is still weak. The fact that the formats of the annual budget and the performance programmes differ is one of the factors of this weakness. The annual budget includes indicative expenditure forecasts for the two years following the budget year. By contrast, the performance programmes cover only one year. In these programmes, expenditure projections are presented by performance objectives and activities, but these two categories are not included in the budget classification system. The activities may be linked to the administrative classification of the budget. However, the fact that the structure of the performance programmes differs from the budget classification may create avoidable difficulties in preparing and scrutinising both documents.

For the moment, the performance information is not yet fully used to support decision-making. In addition, parliamentary capacity for scrutinising performance programmes and accountability reports is still insufficient.

The budget and the audited appropriation accounts are cash-based. But for financial reporting purposes the central government accounting system is accrual-based. About 70% of International Public Sector Accounting Standards (IPSAS) have been transposed into the national regulations. However, there are still some discrepancies in the published general government accounts and the national accounts that have to be submitted to the European Commission in accordance with to the ESA 95 standards.

Expenditures made from revolving funds accounted for 2.5% of GDP in 2010. There are currently about 2,700 revolving funds. These funds are shown in the budget documents for information only. Revolving funds are used both by public administrations operating under the central government budget, including among other entities 1,041 health care facilities, 87 universities and 932 other funds in the education sector, and by entities which have their own budget, such as the national lottery.

Initially the PFMC Law stipulated that the revolving funds should be eliminated by 2007, but in the 2008, Law no 5793 stipulated that they would be restructured by December 2010 instead of eliminated. For example, the grouping of the revolving funds of the health sector in 81 regional units was considered. However, this restructuring has not yet been implemented.

With regard to **PIFC**¹, the current primary, secondary and tertiary legislation provides a basic framework for management control and for procedures covering internal control. While the MoF is specified by law to be responsible for defining, developing, and harmonising financial management and internal control, a number of other administrations, such as, for example, the Undersecretariat of the State Planning Organisation and the Undersecretariat of the Treasury, are closely involved in this area due to their role in the context of the PIFC system. This means that in Turkey a wider institutional interest exists in the development of PIFC than would occur in other major economies. This wider interest needs to be accommodated in order to ensure ownership and leadership of PIFC at an appropriate level. While the PFMC Law embraces the requirements of PIFC, some elements are unclear. For example, amendments are being proposed that would, *inter alia*, further clarify management responsibilities and improve the scope and definition of internal control.

¹ The concept of internal control set out in the PFMC Law is based on the COSO/INTOSAI framework model¹, which includes internal audit within the scope of internal control. While this is an acceptable approach, it should be recognised that the European Commission defines public internal financial control differently and bases its concept on three pillars: financial management and control (FMC), internal audit, and the introduction of Central Harmonisation Units (CHUs) covering FMC and internal audit. While FMC is included as part of internal control (internal audit excluded), the difference in terminology needs to be understood to avoid potential confusion. Please refer to SIGMA's 2009 assessment of PIFC in Turkey for further details www.sigmaweb.org

There are two central harmonisation units (CHUs), one for financial management and control and one for internal audit. The latter is unusual in the sense that the CHU is a committee made up of civil servants and academics and is referred to as the Internal Audit Co-ordination Board (IACB). This committee is supported by a secretariat. It reports to the MoF. However, there are divided views concerning both its role and the degree of independence that it should have from the MoF. Currently, amendments to the PFMC Law that would affect the future role and position of the IACB, along with its membership, are being discussed.

Among other duties the SDUs are also responsible for setting specific internal control requirements, performing certain *ex ante* financial control checks, preparing accountability reports, and developing internal control compliance systems for their public administrations. In the development of internal controls and action plans, the SDUs co-operate closely with the CHU on FMC in the MoF. In each administration a monitoring and steering board is established, chaired by a deputy head, as well as a preparation group at director level, with co-ordination undertaken by the SDU.

Internal control and internal audit have been established for some years, but the concept of “managerial accountability” is still in an early phase. Management has started to take ownership of these processes, for example in the development of action plans and related regulations setting out the activities that are needed to comply with public internal control standards. The internal control monitoring and steering boards attached to the SDU are responsible for monitoring the development of the internal control system. However, there is still a need for adaptation and enhanced ownership before the new concepts can be fully applied. A change of attitudes towards PIFC is taking place, but it will take some time to fully develop, especially until it is understood that the publication of laws and documentation is insufficient if it is not supported by information on what these laws and documentation mean in practice and if it is not accompanied by the evaluation of operational activities. Ideally, this evaluation should be carried out by internal audit on behalf of management, but this is difficult to envisage as long as managerial accountability is not deeply embedded. The endorsement of the operational manual on internal control (foreseen in 2011) will be significant, as it will be the first time that a comprehensive manual on internal control is available for use by management. This manual will provide a basis on which internal audit will be able to judge the quality of implementation.

Besides the introduction of clearer operational requirements on internal control and planned amendments to the PFMC Law, there is a continuing need to ensure the understanding and acceptance of internal control and internal audit throughout all public institutions. There still appears to be some resistance to embracing the role of internal audit, with a number of institutions having insufficient or no staff appointed to carry out this function. This resistance is partly due to the existence of “inspection” in many public organisations, and apparently there is little or no appreciation of the differences in terms of roles, responsibilities and objectives between “inspection” and internal audit. In addition, there is generally no co-operation between these two activities. With so many bodies in both the central and local administrations, the task of attaining acceptance and, even more, understanding will require the support of an extensive training strategy as well as monitoring co-ordinated by the CHUs for both internal control and internal audit. This task is particularly demanding at regional and local government levels because so far the focus of CHU activity has been at the central level.

Internal control monitoring and steering boards together with strategic development units should be the source of assurance, along with internal audit for the further development of PIFC. However, there is need for continued high-level support from management for the new requirements of internal control and for ongoing practical guidance from the CHU on FMC.

External audit in Turkey is exercised by the supreme audit institution, i.e. the Turkish Court of Accounts (TCA). At the time of writing (April 2011), the official English version of the adopted new Audit Law was not yet available. Under the new Law, the TCA remains financially and operationally independent of the government. The requirements of the PFMC Law made it necessary to also overhaul the TCA law.

The audit mandate has now been brought into line with the PFMC requirements as well as with the need for external audit of the various reports produced by the executive, such as the financial accounts of each public administration as well as the activities of state economic enterprises. The TCA is now facing a challenging moment, as it must adopt its internal regulations (by-laws) and adapt its audit approach to meet the requirements of the new Audit Law. A major staff development programme will be needed to adapt TCA capacities to the new demands.

The TCA is organised as an SAI “court” model, and the new law retains the TCA boards for “judicial” functions. The new Audit Law has introduced concepts that are similar to those of the “office” model of an SAI, such as the “reporting” function (“audit opinions”) and the creation of the two new posts of deputy president, with responsibility for “Audit” and “Administration”.

The TCA has several strengths that will serve it well during the extensive reform process upon which it is currently embarking. The TCA has a long history of constitutional and legal independence, a relatively large, well-educated professional cadre of staff, and legal safeguards for its personnel. At the same time, the TCA will encounter resistance (internal and external) to the extensive reforms that it will need to propose to be able to comply with the new law. The TCA has already identified “change management” as a key activity for its internal purposes, together with “awareness-raising” events for both internal and external stakeholders. These events will also be valuable, as the success of TCA reforms will also be dependent on the general budget reforms. There is also a significant lack of experience of the TCA staff of modern audit approaches and methodologies.

The TCA cannot work in isolation, and improvements will also be needed to continue the reform processes in the public administrations, with regard to the strengthening of both the accounting and reporting systems and the opinions that are to be issued on the accountability reports. Continuous efforts to develop a strong internal control system and an effective internal audit system will therefore also be needed.

Reform Capacity

Experience has shown that the government has reform capacity in the area of **PEM**. As explained above, responsibilities in financial management are split between different institutions, but thanks to formal and informal coordination mechanisms, some key and generally difficult reforms, such as transferring responsibilities in budgeting from the MoF to line ministries, have been implemented successfully. As already noted, the various reform measures have contributed to improve aggregate fiscal discipline.

Workshops on current practices, expectations and experience sharing, in which the heads of SDUs were involved, and professional training sessions for financial services assistant experts, were conducted in 2010. Another programme is planned by the MoF for 2011 for the same audience. To further the understanding of the new requirements of the PFMC law and to support the change of the administrative culture additional seminars could also be considered and addressed to both senior as well as top management.

Reports on planned and achieved performance are being implemented. Nevertheless, these reports are still insufficiently used to support decision-making during the budget preparation and by the TNGA to better scrutinise the budget. In addition, their quality should be improved.

An increased participation of the TGNA in the design of the reforms and the monitoring of their implementation is desirable as it should lead to better governance. Strong political accountability facilitates good governance and the government is forced to be accountable if the institutional system includes checks and balances.

Despite the long-established structure of public institutions and the application of laws within Turkey, there remains a need to reflect both a more modern approach to management and a willingness to adopt new systems as defined in **PIFC**, notably internal audit. There is a risk that further development, especially on internal audit, will be slowed again due to the upcoming elections. There remain underlying problems of scepticism and lack of support on the part of senior management in some areas as well as the ever-present potential for conflict between the well-established inspectorates and emerging internal audit. The lack of a fully professional internal audit CHU adds to these problems. Change is possible, however, and there are areas where the ownership of PIFC is recognised and where moral and practical support is provided by senior management. While in the past year there has been progress in developing internal control and improvements have been made in terms of institutional capacity-building, the long-standing discussion on the role of internal audit vis-à-vis inspection and the need for a workable and sustainable structure for the internal audit CHU audit do raise questions about the real commitment to reform by top and senior management.

The next 12 months will be important in assessing the reform capacity of those involved in daily operations. The new internal control manual will become operational throughout public institutions, and action plan recommendations developed by the SDUs should be monitored by the internal control monitoring and steering boards throughout the administration. The capacity to change and to apply the manual will require time and resources by the CHU for FMC to provide further guidance on the use of the manual. For the time being, there remains a concern for the sustainability of the approaches set out in the PFMC Law with regard to PIFC and managerial accountability across all institutions. It will be important to maintain, and if necessary enhance, the level of training and awareness-raising activities, including dialogue with senior management, to secure commitment and support for the development of PIFC and managerial accountability.

With regard to **external audit**, the Audit Law has placed new obligations on the TCA that will require considerable effort to ensure that they are implemented in a timely, proper and effective manner. There has been a major expansion in TCA responsibilities with regard to both its audit mandate and the requirement to fulfil an “audit reporting” role. The TCA will also continue to fulfil its previous judicial responsibilities, which it has carried out for many years. These developments will require considerable capacity development of staff and TCA members, and it will take time to ensure that everyone has the right balance of knowledge, skills and experience to fulfil their new roles effectively. The TCA therefore regards 2011 as a year of transition, and rightly so.

The TCA’s audits will become “standard-driven” rather than “law-driven”. The two functions will run in parallel under the new Audit Law, but reform implementation processes will need careful planning and co-ordination so that the new processes and mechanisms are fully understood and applied. The TCA will need to constantly reinforce its commitment to change if its ambitious reform programme is to succeed.

Recommendations

The public expenditure management and control reforms in Turkey are heading in the right direction. Nevertheless the development of internal audit tends to be somewhat frozen. However, further actions to consolidate and speed up reforms in this area could be taken. It should however not be forgotten that modernising a budget system takes time in any country. Reforming a budget system is a continuous learning-by-doing process.

With regard to PEM, measures to achieve further progress include:

- Merge - or at least submit simultaneously to the Council of Ministers - the medium-term programme and the medium-term fiscal programme, in order to reinforce the budget preparation procedure and ensure that all ministries are involved in strategic choices with regard to budget policy.

- Conduct needed training to improve the quality of performance programmes and accountability reports.
- In parallel, it will be necessary to pursue actions aimed at aligning more closely the national accounts and the general government transactions' reporting in accordance with the ESA 95 standards.
- Increase the TGNA's capacity for scrutinising the performance programmes and the accountability reports so as to ensure an effective role in the public accountability process. The TGNA should also have instruments for reviewing effectively the reports of the TCA.
- Implement effectively measures to restructure the revolving funds. Provided that their transactions are included in the budget in gross terms, the revolving funds that were set up for cost recovery may be maintained, while the other funds should be eliminated, unless there is a strong case to justify maintaining them.
- In light of the government's intention to develop a performance orientation in budgeting, reinforce the status of the performance programmes. To this end, at least in the medium-term:
- The format of the budget and the performance programmes should be made more comparable. "Performance objectives" (which correspond to what is named "programme" in a programme-budget) and the activities shown in the performance programmes should be also identified in the budget, for example by including these categories in the budget classification system. The performance programmes should cover the same period as the expenditure projections included in the budget (3 years).
- Consider appointing "programme managers", who will be accountable for performance in their areas, with these areas corresponding to the current "performance objectives" of the performance programmes.

With regard to **PIFC**, there appears to be limited enthusiasm from top and senior managers at the budget policy implementation level for embracing the **PIFC** concept and its particular emphasis on managerial accountability and processes embedded in the general operational framework of an organisation. As long as this situation continues, there is likely to be fragmentation in the overall development of internal control and the operation of internal audit.

- There is a need to agree on a suitable institutional structure to ensure the establishment of a permanent CHU for internal audit and to design a mechanism that would actively promote managerial accountability and internal audit. These reforms would be reflected in the amendments to the PFMC Law so as to ensure clarity in the development of PIFC.
- From the above recommendation follows the need to reorganise the CHU for internal audit in order to establish a fully professional CHU.
- The current IACB needs to be reorganised and refocused as a promoter of internal audit to the highest levels of the public administration.
- A promotional campaign should be implemented to increase the understanding and acceptance of managerial accountability; the operational manual on internal control should be endorsed by enhancing the training programmes as well as by improving the quality of certification arrangements for internal audit.

- A programme of awareness-raising events for senior managers should be established concerning the newly introduced requirements for managerial accountability and their objectives and concerning the different roles and benefits of inspection and internal audit.

Concerning **external audit**, the complexity of the task and the risks of failure are high. The TCA should therefore continue to seek external support for the coming years, especially for the adoption of the Strategic Plan and subordinate regulations, which are critical. The TCA might benefit from an external assessment of the proposals in this regard, before they are formally adopted.

- In particular, the introduction of “audit opinions” will require considerable attention to ensure that the requirements of international standards are met.
- The magnitude of changes and the need for new systems to be put in place should not be underestimated. This process will take time and will be best carried out by applying a phased approach over a number of years. An internal, medium-term action plan for developmental needs is required to supplement the new Strategic Plan 2011-2015, followed by the preparation of annual operational work plans. These measures, which are indispensable for the success of the change management, have not been taken yet.

PUBLIC PROCUREMENT

Main Developments Since the Last Assessment (May 2010)

No major changes have been made in the legislative framework for public procurement in Turkey since the 2010 assessment. The legislative framework remains the Public Procurement Law (PPL, Law 4734) and the Public Procurement Contract Law (Law 4735), both of which were adopted in 2002.

The Public Procurement Authority (PPA) has prepared a complete draft for a new public procurement law to replace the PPL, and this draft is intended to be in full compliance with the EC Directives. As a temporary measure, aimed at addressing at least the issues raised by the opening benchmarks for Chapter 5 negotiations, a shorter version of the new draft law has also been prepared, containing 14 amendments. However, neither of these drafts has been adopted by the government or submitted to parliament for approval.

A few amendments affecting public procurement were made by Law 6111/2011, adopted on 16 March 2011, which was designed to amend a large number of laws, including a few articles of the PPL. One important change was the redefinition of the basis for local preference in public procurement. The main criterion is now the origin of the goods (local or foreign) rather than the nationality of the tenderer. If foreign companies are allowed to participate at all (a decision that is left to the contracting authority for procurement below the thresholds), this change has made it possible for them to compete with local companies on a more equal footing, as long as they, too, offer locally produced goods.

The PPA has issued two pieces of secondary legislation, which regulate the use of electronic procurement by contracting authorities and provide some rules for the use of framework agreements concerning supplies, services and works.

No significant progress has been made in the regulation of concessions and public-private partnerships (PPPs). The State Planning Organisation (SPO) finalised a fourth redraft of a new PPP law in early 2010 but, as in the case of the new draft public procurement law, the PPP draft has neither been sent to parliament for approval nor even formally discussed by the government. A new government decree regulating the application of the build-operate-transfer (BOT) law is understood to be ready for adoption.

Contrary to the lack of significant developments in the legislative framework, a number of positive changes have been made to the institutional set-up in the field of public procurement, including in concessions/PPPs.

In order to meet the first opening benchmark for Chapter 5 negotiations, requiring a single contact point for public procurement issues, a special Public Procurement Policy and Co-ordination Unit (PPPCU) was established in June 2010 within the Directorate-General for Budget and Fiscal Control in the Ministry of Finance, in application of Law 5917/2009. The total number of PPPCU staff is now six, after the recent

appointment of the head of the unit (mid-March 2011). Although a number of capacity-building activities for PPPCU staff have been carried out, the effectiveness of the unit as a contact point remains limited, in the first place by the weak foreign language skills of most of its staff. It is also taking time to effectively assert its nominally leading role in public procurement policy-making and co-ordination.

In the SPO, a special department for PPPs was established in the middle of October 2010. Two main functions have now been centralised in this department: (i) drafting of legislation in the area of PPPs, and (ii) appraising PPP projects before they are launched. Currently, the department has eight experts, all of whom are knowledgeable and experienced in the field and eager to move forward with improvements to legislation and practice.

There were no major changes in the structure of the PPA in 2010. The complaints review system has not yet been reorganised, and this reorganisation will only be possible by amending the primary legislation.

An e-procurement platform (EPAK), initially established in the PPA in February 2010, was officially launched in September 2010 and has developed very successfully. By late March 2011, some 22,000 procurement units (several of which may be within a single contracting authority) and 10,000 economic operators had already been registered in the electronic system. The publication of tender documents in the electronic system has become mandatory, along with contract notices. The EU's Common Procurement Vocabulary (CPV) has been translated into Turkish and incorporated into the electronic procurement system. Starting on a pilot basis in March 2011, the technical facilities for submitting tenders by electronic means are being incorporated and will be fully functional by the end of 2011. A help-desk with 30 staff has been established in order to provide information and assistance to contracting authorities and economic operators in using EPAK.

The PPA also increased its training activities in 2010, with a total of some 11,400 participants during the year, and has established formal co-operation with four higher educational institutions in order to raise public procurement skills among contracting authorities and economic operators. Apart from SIGMA, no other EU technical assistance is currently being provided to Turkish public procurement and concessions/PPP institutions.

Main Characteristics

The Public Procurement Law was adopted in 2002. Although it was drafted with a view to reflect the basic principles of public procurement, it does not fully match the EC Directives currently in force. The main discrepancies are related to the provisions for domestic preference, the remedies system, some of the definitions used (concerning concessions in particular), the coverage (there are numerous exceptions to the law), and the conditions for the use of exceptional procedures (negotiated procedure and direct procurement), which are not in line with EU provisions. The Directive on defence and security (2009/81/EC) is not at all reflected.

The PPL still permits domestic preference, in that contracting authorities may apply a price advantage of up to 15% for domestic products. Below the thresholds, contracting authorities may also restrict participation to companies offering domestic products only. In the view of the Turkish authorities, domestic preference is an important instrument for fighting against unemployment as well as for supporting the development of local small and medium-sized enterprises.

The legal framework governing concessions and PPPs is incomplete, partly incoherent with the PPL, and remains highly fragmented. Separate regulations govern different sectors, the main regulation being the law on projects carried out under BOT contracts. According to this law, the selection of contractors is to be regulated by a separate decree, although the provisions in this regard are not very detailed. Furthermore, the recent drafts of the new public procurement and PPP laws prepared by the PPA and SPO are still incomplete with respect to concessions, and will require further harmonisation, with particular attention to the definition of concessions and to the award procedures for concessions and PPPs.

The Ministry of Finance has the responsibility for public procurement policy and co-ordination. The PPA prepares, develops and guides the implementation of the PPL, provides training in public procurement, publishes procurement notices and manages the e-procurement system. It also receives and addresses complaints about the application of the public procurement procedures prescribed by law. Although the PPA itself is an administratively and financially autonomous entity, its role with respect to remedies does not seem to fully comply with the EU requirements, as it constitutes a conflict of interest with the other roles of the PPA. The respective line ministries deal with concessions and PPPs, with the SPO having a supervising and co-ordinating function. There is evidence that relations between the various public procurement institutions at central government level have improved and that a co-ordinating activity in this field is possible, at least once the PPPCU in the Ministry of Finance has gained more experience and confidence.

The contracting authorities covered by the PPL are found at central, regional and local government level. They normally carry out procurement independently, but tendencies have been observed recently towards an increase in the use of centralised purchasing, especially at the level of the provinces. Their skills in public procurement and their ability to prepare and manage contracts is largely a function of their size: while larger contracting authorities typically have adequate know-how and resources, these are less abundant in smaller entities, hence the emphasis of the PPA on further training of officials and on using e-procurement as a tool for facilitating procurement and ensuring its integrity.

As another main means for integrity assurance, contracting authorities are subject to audit and inspection of public procurement as well as of their other administrative functions. Nevertheless, there is anecdotal evidence of integrity issues in construction, health and education related procurement. In the latter, the use of large revolving funds decreases the transparency of public procurement and may affect the choice of procedures. The large number of exceptions from the PPL and the fragmented regulation of concessions and PPPs are also evident sources of concern with respect to integrity.

Reform Capacity

Turkey is a large country with a well developed institutional framework and the capacity to implement any reforms that the government may decide to introduce. However, although the Turkish public procurement system has developed in the right direction since 2002, when the Public Procurement Law was adopted, obvious signs of inertia have been visible over the last twelve months. No high level decisions have been taken yet that would continue the reforms and allow Turkey to comply with all the benchmarks for opening Chapter 5 negotiations.

The National Strategy and Action Plan for Public Procurement – a key opening benchmark for Chapter 5 – has been prepared but has not been adopted, since no timetable has been decided yet for achieving the major objectives of abolishing local preferences and reducing or abolishing exceptions.

Also, the new pieces of public procurement-related legislation mentioned above appear to have been put on hold at the highest political level.

The main reason for this apparent lack of political commitment to move forward with the development of the public procurement system is said to be the general elections that will be held in Turkey on 12 June 2011. The officials concerned expect that important political decisions regarding reforms of the public procurement system and new steps for fulfilment of EU requirements will be taken only in September (after the elections and the summer holidays) by at the earliest.

Notwithstanding this apparent political inertia at the highest level, the departments dealing with public procurement matters in the Ministry of Finance (with the possible exception, at least for the time being, of the PPPCU), the PPA and the SPO appear to have the necessary capacity to continue the reform process, and all of the officials met have demonstrated a strong and clear willingness to do so in the upcoming period. At the time of drafting (early April 2011), it seems that there is no risk that technical staff in any of the central institutions dealing with public procurement will be affected by the elections, which is a good sign in terms of institutional stability and the ability to carry out future reforms.

Recommendations

1. The Action Plan for the development of the procurement system should be updated and should provide clear indicators and deadlines for achieving the specific objectives.
2. Public procurement provisions should be brought into line with the remaining EU requirements, making use of the drafts that have already been prepared:
 - Adoption of a new PPL in order to ensure full compliance with the EC Directives;
 - If a new PPL is delayed, rapid adoption of intermediary amendments of the current PPL in order to bring it into line with Chapter 5 opening benchmarks;
 - Adoption of new legislation on concessions and PPPs, including proper definitions of key concepts and appropriate selection procedures (e.g., by reference to the PPL);
 - Start of the process of transposing the new EC Directive on defence procurement.
3. Assuming that the respective competencies of the various institutions involved (in particular, the PPPCU, PPA and SPO) are very clearly defined, as well as suitable consultation mechanisms, the PPPCU should develop its policy and co-ordination role and exert it in a proactive manner.
4. The organisation of the remedies system should be reviewed.
5. The PPA should continue to expand the scope of training in public procurement so as to fully meet the needs of both contracting authorities and economic operators, and address any integrity issues which may occur.

A. Number of contracting entitiesⁱ (
Central government	8.453	
Regional and local authorities	3.284	
Other (bodies governed by public law)	1.589	
Utilities	N/A	
Total number of contracting entities	13.326	
B1. Awardedⁱⁱ public contracts/Contracting entities	Total (estimated) value (Mio EURO)	Total numberⁱⁱⁱ
Central government	17.486	55.969
Regional and local authorities	9.886	26.047
Other (bodies governed by public law)	3.033	5.960
Utilities	N/A	N/A
Total public contracts awarded	30.406	87.976
B2. Awarded concessions/Contracting entities	N/A	N/A
Central Government	N/A	N/A
Regional and local authorities	N/A	N/A
Other (bodies governed by public law)	N/A	N/A
Utilities	N/A	N/A
Total concessions awarded	N/A	N/A
C1. Awarded public contracts above the EU thresholds^{iv}		
Works ^v	6.599	460
Services ^{vi}	10.302	6.084
Goods ^{vii}	6.536	6.497
Mixed contracts	N/A	N/A
Total public contracts above the EU thresholds	23.437	13.041
C2. Awarded concessions above the EU thresholds	N/A	N/A
Works ^{viii}	N/A	N/A
Services ^{ix}	N/A	N/A
Other	N/A	N/A
Total concessions above the EU thresholds	N/A	N/A
D. Procurement methods used^x (above the national thresholds^{xi})		
Open procedure	16.153	4.072
Restricted procedure	1.354	170
Negotiated procedure with prior publication of a notice	1.167	431
Negotiated procedure without prior publication of a notice ^{xii}	N/A	N/A
Other procedures (competitive dialogue, etc)	3.832	1.190
D1. Low-value procurement (estimated)	12.849	114.588
E. Participation rate (average number of submitted tenders)		
Works	7,02	
Services	3,05	
Goods	5,94	

F. Review procedures		
Number of complaints received	N/a	22.165
Number of rulings issued	N/a	18.445
Number of appeals against rulings of the review body to the Court	N/a	N/c
Number of decisions with interim measures	N/a	8.000

F. A list of 10 biggest procuring entities (name, main activity, (estimated) annual procurement budget):

	NAME OF THE PROCURING ENTITIES	Annual Procurement Budget	Total Value of Contracts Awarded in 2010 (million Euro)
1.	MINISTRY OF NATIONAL DEFENCE ANKARA REGIONAL SUPPLY	N/A	156,31
2.	ISTANBUL DIRECTORATE GENERAL OF ELECTRICAL TRAM AND TROLLEY ENTERPRISES	N/A	147,16
3.	MINISTRY OF NATIONAL DEFENCE ISTANBUL REGIONAL SUPPLY	N/A	83,29
4.	ISTANBUL UNIVERSITY REVOLVING FUNDS	N/A	69,12
5.	EGE UNIVERSITY REVOLVING FUNDS	N/A	41,36
6.	ISTANBUL TREES LANDSCAPE TRAINING SERVICES AND ZOO MANAGEMENT AND TRADE INC.	N/A	34,54
7.	PRIME MINISTRY ADMINISTRATIVE AND FINANCIAL AFFAIRS DEPARTMENT	N/A	26,55
8.	INONU UNIVERSITY TURGUT OZAL MEDICAL CENTRE	N/A	24,76
9.	ISTANBUL CULTURE AND ART PRODUCTS TRADE INC.	N/A	23,83
10.	ISTON ISTANBUL CONCRETE ELEMENTS AND READY MIXED CONCRETE FACTORIES IND. AND TRADE INC.	N/A	11,05

G. A list of 10 biggest public contracts/concessions awarded and/or advertised in 2010 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, time of execution):

G.	SUBJECT OF THE CONTRACT	NAME OF THE AUTHORITY	CONTRACTOR	PROCUREMENT TYPE	PROCUREMENT PROCEDURE	VALUE OF THE CONTRACT (mio Euro)
1.	FUEL OIL	MINISTRY OF NATIONAL DEFENCE	N/A	GOODS	OPEN PROCEDURE	374
2.	20 UNIT VARIOUS PROCUREMENT OF MEDICAL DEVICE	MINISTRY OF NATIONAL DEFENCE	N/A	GOODS	OPEN PROCEDURE	326
3.	PROCUREMENT OF 2010 SUMMER CLOTHING	MINISTRY OF INTERNAL AFFAIRS	N/A	GOODS	3G	322
4.	PROCUREMENT OF 2956 UNIT PERSONNEL	ANKARA METROPOLITAN MUNICIPALITY EGO GENERAL DIRECTORATE	N/A	SERVICES	OPEN PROCEDURE	210
5.	RURAL DIESEL	STATE ECONOMIC ENTERPRISES	N/A	GOODS	OPEN PROCEDURE	174
6.	Combat with Winter conditions	ISTANBUL METROPOLITAN MUNICIPALITY	N/A	SERVICES	OPEN PROCEDURE	154
7.	PROCUREMENT OF BEARING	STATE ECONOMIC ENTERPRISES	N/A	GOODS	OPEN PROCEDURE	116
8.	ASPHALT, PAVEMENT CONSTRUCTION AND MAINTANANCE	IZMIR METROPOLITAN MUNICIPALITY	N/A	WORKS	OPEN PROCEDURE	112
9.	TURKEY ELECTRICTY TRANSMISSION AND IMPROVEMENT PROJECT	STATE ECONOMIC ENTERPRISES	N/A	WORKS	OPEN PROCEDURE	76
10.	PROCUREMENT OF 10 UNIT AMMUNITIONS	MINISTRY OF NATIONAL DEFENCE	N/A	GOODS	OPEN PROCEDURE	67