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DEMOCRACY AND RULE OF LAW

The polarisation of politics, together with the constitutional reform process, has continued to dominate the agenda. With the exception of the political parties' closure, which has been rejected, all other constitutional amendments have been adopted by parliament. All of the constitutional amendments are rather positive for the democratisation process that Turkey needs to pursue on its way towards EU membership. Among the matters for concern is the still weak freedom of the press. In addition, the complex process of constitutional ratification through a referendum makes the future of this constitutional reform uncertain at the time of writing.

Rule of Law

Article 2 of the Constitution stipulates that Turkey is "a democratic, secular and social state governed by the rule of law". Furthermore, Turkey is served by a strong professional public bureaucracy guided by a set of values that tend to ensure neutrality, compliance, conformity and control in decision-making. Therefore, the basic aspects of a state ruled by law are established. However, the separation of powers between the executive and the judiciary is sometimes problematic, and the judicial power tends to protect more the state than it protects the citizen against the state. Furthermore, several groups, such as parliamentarians, members of government, military, top officials and civil servants, enjoy certain privileges and protection that are not necessarily all in line with the principles and values of a democratic state ruled by law. The oversight function of parliament over the executive seems to be a matter of increased attention by parliament, at least as far as budgetary matters are concerned. However, in this area the progress achieved so far in practice remains difficult to observe. In general, the dominant administrative culture tends to be too formalistic and often detrimental to the values and principles of good governance, such as openness, participation, transparency and accountability.

Constitution

The issue of moving from a constitution that was designed at a time when the country was under the control of the military towards a civilian and more democratic constitution needs to be addressed. If adopted, such constitutional reform could create a momentum and eliminate important obstacles to the long-awaited reforms concerning the organisation of the administration and its restructuring as a service to both the state and citizens. It could also create favourable conditions for the adoption of a new legal framework for administrative procedures. However, the ultimate step in the adoption of this reform remains uncertain (May 2010). Even if adopted, it also remains to be seen how the political dispute associated with the constitutional reform and the upcoming electoral period will affect the effectiveness of the reform.

Parliament

Promising initiatives have been taken by parliament to strengthen its capacity to fulfil its main functions of law-making and oversight over the executive. The Strategic Development Plan 2010-2014

that has been produced addresses some key organisational and personnel management issues. However, it is too recent an initiative to enable an assessment of progress in its implementation. A proposal for a new set of rules of procedures has been worked out with the support of the political parties represented in a parliamentary working group set up for this purpose. However, this important reform remains to be adopted by parliament in plenary session. The willingness that has been expressed to strengthen the parliamentary oversight role with regard to public expenditure, including scrutiny of budget implementation, is to be welcomed. However, the capacity of parliament to scrutinise performance monitoring and external audit reports is still insufficient. A closer interactive dialogue and co-operation between parliament and the Turkish Court of Accounts (TCA) are needed. The draft Law on the TCA, tabled five years ago, has been adopted at committee level but has still not passed (May 2010). This deadlock is the main reason for the lack of progress that can be observed with regard to external audit reform.

Government

The political reforms have, understandably, tended to shift the attention of the government away from horizontal public governance reforms. This has been the case in particular for the systems of policy-making and co-ordination, administrative procedures, civil service management, external audit and administrative decentralisation. However, there has been some further reform progress in public governance areas that are traditionally perceived as being less politically sensitive, such as public expenditure management and public procurement. Furthermore, initiatives have been taken which aim at improving the quality of legislation and introduce more widely the use of impact assessment methodology in the regulatory production system. However, important laws have tended to be 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 impact significantly on the business environment. It complicates further the implementation of laws and policies and may put at risk the compatibility of Turkish norms with the *acquis communautaire*. 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 of the institutional capacity of the centre of government to perform its key functions.

Public Administration

The deficit of dialogue and openness of the administrative culture can sometimes reduce the effective capacity of the public administration to carry out necessary reforms and may put at risk the sustainability of public administration reform changes. However, the existence of an active civil society should be noted, and some NGOs, which have a remarkable capacity to bring new ideas and support reformers, are likely to push for more and better administrative reforms.

Some concerns in the civil service area have to do with the legislation, which can be considered to be outdated in some respects, with a salary system that is too complex, 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 common standards and the uniform implementation of the rules across the civil service. However, progress has been made, for instance in the public expenditure management and control area, where the development of strategic planning and performance budgeting has continued to be implemented according to schedule. Internal audit has seen less progress, partly due to confusion between the respective roles of internal audit and inspectorate functions and limited enthusiasm by some top managers. The transition to external audit is challenging from the current basic set-up to the concept of a Supreme Audit Institution compatible with an audit aligned with the

accountability concept as expressed in the Public Finance Management and Control Law. Due to the magnitude of changes required, a phased approach, a commitment to change and considerable resources will be required over a number of years to bring about reform in the TCA. The government seems committed to reform the system of public procurement, concessions and public-private partnerships with the aim of achieving full alignment with EU law. The Ministry of Finance has been assigned responsibilities to ensure the establishment of a coherent policy and to ensure 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 recent past.

Judiciary

Administrative justice is a matter for concern, as was pointed out in Sigma's 2006 and 2008 assessments, and this situation may weaken the notion of an administration ruled by law. The backlog of cases has been increasing every year, as staff are too few and judicial offices are ill-equipped. Administrative court decisions are difficult to enforce, as there is no clear allocation of responsibilities within administrative structures and no indication of liability, despite the inclusion in the penal code of the criminal offence of contempt of court. 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 highest concerns.

Anti-corruption Policy

Corruption remains a concern, especially in the political sphere, even though the cases of prosecution of high-level officials have been rare. No systemic progress can be noted to prevent political corruption through new legislation on the financing of political parties and election campaigns. Expectations have been 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, the governments have considered the struggle against corruption as a priority and progress has been made: the long-awaited national anti-corruption strategy has been adopted. The strategy incorporates important preventive provisions and addresses the issue of political corruption. An action plan has also been adopted. Some initiatives are foreseen 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.

CIVIL SERVICE AND ADMINISTRATIVE LAW

Main Developments since the Last Assessment

In spite of political statements, analyses carried out, reports submitted and proposals developed, no relevant changes can be identified in relation to the general administrative legal framework or the public service in Turkey during the past year. In both sectors the situation remains as previously reported and summarised in the European Commission's 2009 Progress Report on Turkey and in its paper on the Enlargement Strategy and Main Challenges 2009-2010.

Reforms related to the political system continue to be the country's first priority. It is therefore difficult to create a momentum for administrative reforms aimed at improving the legislative framework so as to enable the modernisation of the organisation, functioning and accountability of public institutions and the updating and elaboration of the public service statute in the direction of increased professionalism and EU good governance principles.

Recent developments related to amending the Constitution are, for the time being, producing a mix of expectations. On the one hand, the draft amendments adopted by parliament on 7 May 2010 seem to be an attempt to push for further reforms in the judiciary, to reinforce democratic governance, and to improve the protection of political and individual rights. Reinforcing social dialogue related to public service matters is another positive step, as far as it is possible to assess from the available information. Setting up the Ombudsman and improving the protection of personal data are also matters that the constitutional reform is attempting to address. On the other hand, concerns have been voiced about possible political control over the judiciary, including the Constitutional Court, as a result of some amendments. Furthermore, the political confrontation between the main political parties and the lack of consensus regarding a few, but relevant, amendments have led to a situation in which amendments were approved by only a small majority. Considering that the two-thirds majority needed for the adoption of a law was not reached immediately, a national referendum has been considered as a possibility for the adoption of these amendments. However, a long political and legal battle can also be expected if such a referendum is called by the President.

Recommendations for the adoption of legislation related to the organisation of the administration, general administrative procedures, improvement of the regulation on state secrets, public service statute, simplification and unification of the salary system of public servants, and review of the legislation on political parties, among other issues, have produced no visible results. The same situation can be reported regarding the adoption of the new rules of procedure in parliament; the very positive expectations resulting from the consensus reached within the working group that drafted the new rules have not been confirmed for the time being. A new law on the Turkish Court of Accounts (TCA) is expected to be adopted soon by the plenary in parliament.

Some improvement can be reported in relation to the preparation of strategic plans by public organisations. Almost all public institutions – with the significant exception of the Prime Ministry – have adopted their strategic plans, which were subsequently reviewed by the State Planning Organisation. However, the implementation of these strategies is facing difficulties, for instance with regard to the lack of resources and the managerial legal environment and culture. The

modernisation of the administrative legal framework is a critical factor for the success of these strategies.

In general, in the areas covered by this assessment, reforms are moving at a very slow pace or have even halted.

Main Characteristics

Turkey has a tradition of being served by a strong and professional public bureaucracy guided by a set of sound but traditional values that ensure neutrality, compliance, conformity, and control in decision-making. Therefore, the basic aspects of a state ruled by law have been established.

However, along with a certain degradation of such values due to increasing politicisation, it is visible that the current organisation and public service capacity need to be modernised and better co-ordinated to adjust to the increasing demands of economic and social development, as well as to the requirements of the EU accession process. The current managerial skills and legal framework, as well as staff attitudes and competencies, can hardly cope in an environment that changes very quickly and requires more than formal conformity. Flexibility, accountability, effectiveness, openness, participation, transparency, quality of service delivery, and integrity must be embedded in the administrative culture.

The organisation of public institutions follows a strict hierarchic model characterised by too many control levels, some of which are without any relevant added-value. Power is highly centralised, both with regard to the levels of administration – where the central administration, with more than 75% of public employees, leaves reduced space and capacity for the local administration – and within each public institution – where the decision-making power is an exclusive attribute of the top manager. Attempts to reinforce decentralisation and delegation and to modernise the organisation and functioning of public services have so far produced meager results. Full implementation of the Law no. 5018 on Public Financial Management and Control could have a very positive impact in this respect.

Turkey also has a reasonable administrative legal framework, but it needs to be further completed and modernised. Regulations are usually very detailed – even in primary legislation – and procedures are very formalistic, making them heavy to apply by both the administration and citizens.

The public service is still attractive as an employer. However, this situation is mainly the consequence of life tenure and social protection – very important factors in the context of high and ever-increasing unemployment and the economic crisis – rather than the result of any motivation to serve the public interest, improve career prospects, increase the level of salaries, etc.

The civil service law (Law on State Functionaries) needs to be updated. Some attempts aimed at adopting a new law were launched some years ago, but the issue disappeared from the administrative reform agenda. Proper human resources management tools and capacity, which depend on the existence of a good civil service law, are largely missing. The salary system is also obsolete and too complex. It is not unitary and is unfair, as some functions are paid differently across the administration. Furthermore, the absence of an institution with strong political support and vested with the power, staff and skills to perform as a central management unit capable of ensuring common standards and uniform implementation of the rules is another fundamental cause of the current situation. Training must also be set as a strategic priority.

Administrative justice has been consistently reported as a matter for concern, but no changes have occurred.

Politicisation is increasing in spite of a centralised recruitment system. In fact, the recruitment system is quite fair during the first phase of the recruitment procedure (examination), but it is very vulnerable to patronage and political interference during the interviews carried out by the managers of recruiting institutions.

Reform Capacity

Turkey has good bases – an administrative tradition, a quite stable professional bureaucracy, competencies, research and training capacity, active NGOs, etc. – for developing the administrative legal framework, modernising its civil service system, and introducing a sound human resources management system. Shortcomings have been clearly identified, and a valuable capacity exists for producing analyses and proposals.

However, politicians are not paying enough attention to public administration reform and to the need to fill the gaps related to missing pieces of legislation and to align some pieces of antiquated regulations with EU standards and requirements. At the same time, there seems to be a lack of understanding about the positive impact that some reforms – such as the adoption of a good law on general administrative procedures – could have on improving the protection of citizens' rights and the business environment. The political agenda is too time-consuming. Moreover, confrontation (which is expected to rise due to the coming electoral period in 2011 or even earlier), rather than dialogue and compromise, reduces the effective capacity to carry out necessary reforms, and this situation puts at risk the continuity and sustainability of any possible changes.

Improving conditions for social dialogue and for the involvement of civil society – some NGOs have a remarkable capacity for bringing new ideas and supporting reformers – could help to counterbalance the weak political engagement in developing the public administration in accordance with the needs of the country.

INTEGRITY

Main Developments since the Last Assessment

Good governance and transparency have been considered as priorities by Turkish governments over the past eight years. It must be emphasised that during this period Turkey has made progress in policy-making and implementation in the area of promoting integrity and fighting against corruption. In addition, international commitment has improved through the signature and ratification of a series of important international treaties, including the Council of Europe, OECD and United Nations conventions on corruption. In terms of addressing serious concerns that had previously been indicated, compliance with the OECD and GRECO recommendations has increased, and impressive progress has been recognised in the efforts to combat bribery in international business. Turkish governments have also established various agencies that concentrate in particular on the fight against corruption, such as the Financial Crimes Investigation Board (MASAK).

The Ethics Board for Civil Servants has become more active. According to the information provided by its website¹, since January 2009 the Board has identified seven cases of wrong practices involving top public servants and mayors. In addition, several seminars, conferences and training courses were organised to raise awareness of the corruption phenomenon and its negative impact on social, political and economic life. These activities should be further developed.

The long-awaited and announced national Anti-Corruption Strategy and related Action Plan were finally adopted. The same can be said of the system for monitoring investigations, indictments, prosecutions and convictions so as to assess the impact of anti-corruption measures. It is still too early to evaluate the real impact of the strategy and the monitoring system, but their adoption constitutes a positive step.

Nevertheless, during the past year there has been limited progress in strengthening the legal framework and the institutional framework for the fight against corruption. The slowing down of the pace of reforms, mentioned in previous reports, seems to have been confirmed, with very few exceptions, such as the draft law on the Turkish Court of Accounts, which was finally sent to parliament and now only requires final approval by the plenary.

No effective progress has been registered in areas identified as matters for concern: creation of a permanent ethics commission and adoption of a code of conduct for parliamentarians; introduction of effective control and verification of asset declarations; and abolition of the requirement of administrative authorisation for corruption prosecution regarding specific groups of officials.

¹ www.etik.gov.tr

With regard to limiting the immunity of MPs in corruption-related cases and the creation of a national ombudsman, improvements are expected through the ongoing constitutional reform. It remains to be seen whether this reform will be adopted and how it will be implemented.

Similarly, during 2009 no progress was noted to prevent political corruption through new legislation on the financing of political parties and election campaigns. Expectations that a state body with the authority to audit election campaign financing would be established have not been confirmed.

The Global International Report² scores Turkey's performance as "weak" (2008). Transparency International's Corruption Perceptions Index (CPI) underlined progress (from 3.6 in 2001 to 4.6 in 2008). However, there was a slight decrease to 4.4 in 2009.³

Main Characteristics

Integrity in all spheres of public life (politicians, judiciary, public administration, military) as well as in the private sector remains a matter for concern in Turkey, notwithstanding the slow but visible progress in the specific legal framework and in the capacity of the judiciary and of some sectors of the administration.

Several groups within the public sphere (parliamentarians, members of the government, military, academicians, top officials and public servants) enjoy privileges and protection that are not in line with the principles and values of a state ruled by law. The judiciary is also sometimes mentioned as benefiting from some questionable powers.

Legislation is becoming more consistent and effective, closing the circle around the areas that are more sensitive to corruption. This progress includes the signing of international treaties and conventions. The main shortcomings have been identified and could be remedied provided that sufficient political will is present and that priority is given to these reforms.

The main – and highly relevant – problem that remains unresolved relates to the funding of political parties and elections, which is considered to be one of the major sources of corruption. In fact, this matter remains almost unregulated – or wrongly regulated – considering international and EU standards. The control exercised by the Constitutional Court is recognised as being inadequate. The Court lacks the capacity and qualifications required, and the sources of information for performing its task are insufficient and unreliable.

The capacity of the judiciary to fight corruption is progressing slowly. The insufficient number and skills of judges, prosecutors and clerks, along with the complexity of the legal system, are obstacles to more rapid improvements. In any event, it is expected that the strategy for reforming the judiciary that is now being implemented could help to change this situation.

Concerning the public administration, the professional bureaucracy has a reasonable capacity to improve ethical standards and fight corruption. Hospitals, universities, public procurement and construction are the vulnerable sectors in which the largest number of corruption cases has been reported. In the tax administration and customs, two sectors that are traditionally very exposed to

² <http://report.globalintegrity.org/>

³ Transparency International, *Corruption Perceptions Index*, www.transparency.org

corruption, several preventive and repressive measures have been adopted and are being implemented, with encouraging results. Efforts in these areas must continue, and fiscal transparency needs to be enhanced. Conversely, the increasing politicisation of the public service raises apprehensions about the future.

Turkey has a strong inspection system served by skilled staff who are able to play a relevant role in fighting corruption. However, its organisation needs to be restructured, and its co-ordination and effectiveness developed. For instance, even if the number of reports to MASAK has increased over the past few years, the level of convictions, confiscations, seizures and freezing of assets have not been very high. The lack of effective enforcement capacity and implementation mechanisms remains a matter for serious concern.

Reform Capacity

Turkey has adequate institutional and human resources capacity, in both the public and private sectors, as well as in civil society, to design and adopt the necessary reforms. However, this capacity needs to be mobilised and co-ordinated. For this purpose, participation mechanisms should be made effective and widely used.

Constitutional reform was required as a way and as an opportunity for making decisive changes in the consolidation of democratic values, the rule of law, and a better system of checks and balances. A positive impact on the overall integrity environment could also be expected from this reform. Unfortunately, political disputes about the reform and the upcoming electoral period could affect the direction, social acceptance and effectiveness of constitutional reform.

Creating momentum for placing the right priorities high on the reform agenda is the main concern. Social and economic problems and, especially, political confrontation are distracting the attention of the main actors. The key options for the future – EU accession, for instance – have not been set as the main priorities for the time being.

In such circumstances, the best option seems to be to reinforce the institutional capacity that is already in place to implement and enforce the existing legal framework. The situation will not improve as much as is required, but at least more solid bases will be established for the next step. International assistance could be useful in supporting the leading administrative institutions and in maintaining pressure and a sense of perspective.

PUBLIC EXPENDITURE MANAGEMENT AND CONTROL

Main Developments Since Last Assessment

One of the objectives of the Public Financial Management and Control Law (PFMC) No 5018 is to improve the transparency of public finances. In recent years transparency of public finances has improved significantly based on comprehensive general government accounts. However, quasi-fiscal activities outside the general government sector seem to be gaining momentum again after decreasing in the first half of the 2000s. Over the last year, further progress has been made across most areas associated with **public expenditure management** (PEM) and control. Development of strategic planning and performance budgeting continues to being implemented.

Generally, key staff involved in budget reform are more focused and coordination between the main organisations (Ministry of Finance, Undersecretariat of Treasury and the State Planning Organisation) has improved, with a clearer vision of the way forward.

In the area of **public internal financial control** (PIFC), a gap analysis was carried out by the current twinning partner on the financial management and control project. The analysis covers gaps that need be addressed in the area of financial management and control in order to better comply with the PFMC Law. It also mentions inter-linkages with internal audit and the Internal Audit Coordination Board (IACB). To this end the Ministry of Finance has developed an action plan covering 24 key areas for development over the next three years, which have been the main areas of focus by the administration.

These areas largely reflect the main recommendations set out in SIGMA's 2009 assessment of PIFC. They include:

- A proposed amendment to the PFMC Law to clarify inter alia management responsibilities and ownership, improve the scope and definition of internal control, and clarify the role of the central harmonisation unit (CHU).
- Development of a range of awareness raising and training seminars and workshops, for staff from strategic development units (SDUs), financial services, municipalities and professional associations, and planning meetings for senior and top management.
- The creation of three working groups, consisting of representatives from the pilot ministries (State Planning Organisation, Prime Ministry, Treasury, Ministry of Finance) and the CHU, and facilitated by the twinning partner, to develop operational manuals on risk management, reporting, and monitoring as well as improving the content of accountability reports and internal control assurance statements.

Less progress has been made in the area of internal audit and the total number of internal auditors in the administration has slightly decreased. Substantial gaps remain in the setting up of internal audit units across the administration.

The IACB has been reappointed with new members. The new chairman is the Director General of the Budget and Fiscal Control Directorate. The Board produced its first Annual Report (for 2008), issued a manual on quality assurance and oversaw general training and the further development of five pilot audits through funding from the World Bank. The Annual Report is submitted to the Minister of Finance. The 2009 Annual Report is expected to show improvement in the quality and quantity of audits. Plans are in place for the IACB to meet senior management in key organisations to encourage recognition of the role of internal audit. Plans are also in place for the production by the IACB of new Strategy Paper for internal audit in 2010-2012.

The Association of Public Sector Internal Auditors has continued to support the central harmonisation unit of internal audit (CHU/IA) in developing procedures, undertaking training and awareness raising seminars and producing a technical journal.

Various options have been considered for a revised structure and responsibilities for the CHU/IA and the IACB, but nothing has been finalised. Similar proposals have been put forward for the respective roles of internal audit and the various inspectorates, but no conclusions have been reached.

There have been very few developments since last year in the area of **external audit**. A new president of the Turkish Court of Accounts (TCA) was elected but, more importantly, the new Audit Law now again in parliament has still not been passed (17 May 2010).

Main Characteristics

In the area of **public expenditure management**, the government has embarked on a comprehensive budget reform based on a transition from a system based on strong ex ante controls performed by central agencies towards a performance-based budget system that makes line ministries responsible and accountable. Generally, such a reform entails difficulties and pitfalls. However, for the moment, the government has been successful in implementing the planned reform measures. The Turkish administrative tradition in PEM, the continued centralisation of some key functions such as accounting and cash control, and the screening of investment projects have enabled the State Planning Organisation to limit any possible fiscal risks related to relaxing ex ante centralised controls. The majority of reform measures are being applied according to schedule. There is a wide involvement in the reform process as well as an informal co-ordination mechanism between key actors such as the MoF, the Undersecretariat of the Treasury, and the State Planning Organisation.

However, there are still some discrepancies in the published general governments accounts and the national accounts which have to be submitted to the European Commission according to the ESA 95 standards.

In addition, some key functions in developing accountability and performance-oriented budgeting are still missing. Parliamentary capacity for scrutinising performance monitoring and audit reports is still insufficient. Neither accountability reports nor performance programmes prepared by line ministries and agencies are reviewed by parliamentary committees. However, it seems that the changing role of parliament in the budget process is now recognised as an important issue by the top officials of the Turkish Grand National Assembly (TGNA). Some orientations already adopted by the TGNA such as, for example, the Strategic Plan 2010 – 2014 remain to be implemented. Rules have been elaborated for a Medium-Term Expenditure Framework (MTEF), but decisions on ministries' expenditure ceilings, which frame budget preparation, are reviewed neither by the Council of Ministers nor, more importantly, by

the key ministries of the social sectors. This limits the effectiveness of the MTEF in reinforcing decision-making processes.

The development of **PIFC** has been supported by a range of training activities and by the requirements for key staff in internal control and internal audit to attain qualifications that meet the specific job competences.

For public financial control to be effective, progress in two distinct but related areas is needed: the development and introduction of operational requirements across all public administrations, and an understanding and acceptance of the PIFC concepts within the overall budget implementation and control processes. The implications of the PFMC Law do not seem to have been fully understood yet. For example, the action plan aimed at enhancing the implementation of necessary procedures for financial management and control has not been formally endorsed despite being limited to a few central administrations.

The appointment of internal auditors still appears to be resisted in some organisations, and their role in reporting to senior management is not universally accepted although the appointment of additional staff is foreseen. An issue that still needs to be addressed is the fact that some top managers have not yet given their full backing to the introduction of internal control and internal audit as required by the PFMC law.

This is in part due to a lack of appreciation of the concept of internal control and of the differing responsibilities of internal auditors and inspectors. The CHU internal audit needs to be strengthened through the recruitment of qualified internal auditors and the role of the IACB in separating audit policy from technical issues needs to be reviewed.

Another issue to be addressed is how, in the coming years, to extend and sustain throughout the wider public administration, at both the central and the local levels, the knowledge acquired through the different support projects. This will require more capacity in the CHU and a substantial training structure. The internal control sections of the Strategic Development Units, some of which having yet to complete plans for developing internal control within their own organisations, need to be enhanced. There is still some resistance in sharing experiences between, and sometimes within organisations. In addition, internal auditors require more practical experience and general training beyond that available from the current project.

The respective roles and responsibilities of internal audit and the inspectorates need to be defined and delineated in order to clarify existing confusion and to avoid overlap of activities. These two areas need to be reinforced individually. However, in designing future EU support for financial inspection and internal audit, careful consideration should be given to how separate support projects could be combined to create a holistic approach to evaluation of systems and performance programmes and to combating corruption.

In the area of **external audit**, the Turkish Supreme Audit Institution is independent from the three classic branches of government, namely, the executive, legislature and judiciary. However, the current TCA Law is not aligned with the requirements of the PFMC Law, which creates serious uncertainty over the TCA's mandate and scope. The executive is modernising financial management more rapidly than the TCA, which will face a lag in auditing the executive when, its mandate is finally brought into line with the PFMC requirements.

The TCA's audit mandate was drastically expanded through the new reform introduced by the PFMC Law in which the TCA mandate is also defined. Further amendments seem to have been included in the revised draft law of the TCA now (again) before parliament. Thus the draft law foresees the extension of the TCA audit mandate to include bodies previously outside its scope such as, for example, the Central and other State Banks and municipalities. The previous role and staff of the Prime Ministry High Auditing Board will be incorporated into the TCA. The co-operation and the requirement that the TGNA reacts to TCA audit reports will be included in the draft law.

Although the TCA is adequately staffed in numbers, staff competences are in line with the TCA's traditional audit approach. A major staff development programme will be needed to adapt capacities to new demands. Recognition is made in the TCAs Strategic Plan (2009-2013) that, on top of several strengths (e.g. a deep-rooted history based on 145 years of constitutional and legal independence; the sufficient safeguards granted to professional personnel), some features impede further development. Amongst several weaknesses one can note the resistance to change, the lack of experience with regard to modern audit approaches, the lack of personnel motivation, and the absence of a culture of collective study and teamwork.

Regarding the audit of EU funds, the Turkish government has chosen to place the Audit Authority (AA) for the Instrument for Pre-accession Assistance (IPA) in the hands of the Treasury controllers, as they are deemed to function sufficiently independently from the National Fund and the Implementing Agency. This solution is frequently applied in many EU countries. However, there seems to be a major misconception in the TCA that, following the establishment of the AA within the Treasury, the TCA has no authority to audit EU Funds Management. The AA's audit objective is to verify the effective and sound functioning of the management and control systems. This activity has to be undertaken regularly and reported to the European Commission and the Competent Accrediting Officer. The AA also has to give its opinion on the closure of IPA programmes. According to generally accepted audit standards, a Supreme Audit Institution should have the authority to audit all public and statutory funds and resources. The SAIs' audit of EU funds management has a different objective in that it aims to inform parliament about the country's overall implementation of IPA funds, including the co-financing part of the funds. In principle this means that the TCA should also audit the activities of the AA. This is also frequently done in many EU countries.

Reform Capacity

In the area of **public expenditure management**, the capacity to design sound fiscal policies is good, and enhancements have been regularly implemented in recent years. An increased participation of parliament in budget decision-making could nevertheless lend additional weight to the reforms. Strong political accountability facilitates good governance, but the government is forced to be accountable if the institutional system includes checks and balances. The need for this seems to be recognised in parliament but the project aiming to change the role of parliament is still at an early stage.

There appears to be limited enthusiasm from top 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. This impetus from the top level will take some time to fully develop, suggesting that the current timetable for completing PIFC implementation by 2011 remains optimistic.

In addition, it will be necessary to ensure that EU support given to the core institutions involved in budget preparation, execution and internal control (Ministry of Finance, Undersecretariat of Treasury, the State Planning Organisation and the Prime Ministry) is extended beyond these institutions in order to ensure that new approaches are also transferred to the rest of the administration.

The difficulty in passing the new draft law of the Turkish Court of Accounts, which has been in parliament since 2005, has paralysed the **external audit** modus operandi of the reform and the necessary reorientation towards external audit that matches the good practice of Supreme Audit Institutions in the EU. Pursuing the initiated reform process within the TCA and in co-operation with stakeholders will be of utmost importance.

The transition is challenging: it involves moving from the current basic set-up (court model, collective decision-making, with a judicial function) to a SAI compatible with an audit aligned with the accountability concept as expressed in the PFMC Law. This model is derived from the Anglo-Saxon model and it requires more of a “standard-driven audit” than the TCA’s current “law-driven audit”. Both concepts are different but, as international practice shows, not incompatible. The transfer of the principles from one concept to the other has to be managed carefully and the transition is challenging. The TCA needs to find its way for ensuring that its audit methodology meets the requirements of the new financial management and accountability system.

The magnitude of change and the need to put new systems in place should not be underestimated. This will take time and will be best carried out by applying a phased approach over a number of years. This will require commitment to change, considerable attention and the TCA’s resources.

PUBLIC PROCUREMENT

Main Developments Since Last Assessment

Main developments since last year In terms of legislative or institutional development, and if only viewed through the adoption of new pieces of procurement or concession legislation, Few significant changes in the public procurement system can be reported since the 2009 assessment report. Only one important legislative action has been taken, namely the adoption of Law 5917, 25 June 2009, through which the Ministry of Finance has been assigned the responsibilities and powers to ensure the implementation of a coherent policy in all areas related to public procurement, and to coordinate the future negotiations on chapter 5 – public procurement. Therefore, for more detailed guidance on the current legislative and institutional situation, reference is made to the 2009 SIGMA Assessment Report and to the 2008 SIGMA Peer Review Report.

- A new draft unified public procurement law has been prepared by the Public Procurement Authority (PPA). This draft PPL, which will replace PPL 4734, was reviewed and commented on by both SIGMA and DG Internal Market at the beginning of 2010. The draft PPL, which aims to transpose the EC directives 2004/17 and 18, covers both the classical sector and utilities as well as concession contracts. The adoption of this draft unified law is only foreseen in a mid-term perspective (2011);
- Therefore, as a temporary measure (adoption in 2010), the PPA has prepared a number of amendments to the existing PPL 4734 in order to enhance alignment with the *acquis* in the areas of scope, exclusions, definitions, and thresholds.
- The authorities have expressed their intention to improve the functionality of the PPA by revising its general organisational structure and to create a special Procurement Advisory Board chaired by the president of PPA.
- A reorganisation of the complaint review system has been decided and will lead to changes both in the review organisation and in the procedure;
- As part of the draft National Strategy, the government has decided to transpose the new EC Directive on defence procurement.
- A new draft law (4th version) for public private partnerships (PPPs) was prepared by the State Planning Organisation (SPO) during the first quarter of 2010 but the existing fragmented legal structure remains in place. SIGMA has commented on the draft PPP law;
- A decision has been taken to establish a PPP policy and support unit within the SPO; it will be responsible for a number of key policy, monitoring and support functions;

Main Characteristics

A number of actions aimed at developing the systems for public procurement and PPP/concessions were taken during 2009 and the first quarter of 2010. Some are in line with the conclusions and recommendations made by SIGMA and the EC (Assessment and Progress Reports). An additional aspect of reforms has been the Government's decision to elaborate a National Strategy and Action Plan on Public Procurement, a key opening benchmark for chapter 5 on public procurement. This work started in 2009 but accelerated at the beginning of 2010, with the aim of obtaining a decision by the Council during 2010.

The government seems today to be strongly committed to reforming the systems of public procurement, concessions and PPPs, in order to achieve full alignment with EC law and meet European standards. However, in parallel, the magnitude, the complexity and the variety of interests within the administration and the political sphere complicates and risks delaying the reform process.

The main problems identified in the current unified draft PPL relate to its coverage, because of the need to remove exclusions but also definitions, the inclusion of concessions other than those covered by the draft PPP law, and insufficient design of the procedures for low value procurement. The structure of the draft PPL could also be improved and made more user-friendly.

The PPA's current organisation needs to be adapted to a new external reality arising from the introduction of e-procurement and the other new instruments of the EC Directives, such as frameworks, and by the important work needed to increase professionalisation throughout the procurement community.

The review system is not aligned with the *acquis* and is a cumbersome activity for the PPA, occupying a lot of its resources. It needs to be changed in the future.

Reform Capacity

As already mentioned, the government seems committed to reforming the public procurement, concessions and PPPs systems, with the aim of achieving full alignment with EC law, meeting European standards, and not least, meeting the opening benchmarks for chapter 5. However, at the same time the magnitude, the complexity and the variation of interests within the administration and the political sphere complicates and risks delaying the reform process. Examples abound of good legal initiatives, such as the (e.g previous draft on utilities procurement; lengthy process on drafting a concession/PPP law), blocked in the legislative process. In conclusion, a strong focal coordinating point within the government for managing and controlling the legislative process is needed. It is hoped that the Ministry of Finance, with the adoption of Law 5917, 25 June 2009, can shoulder this coordination responsibility as well as play the role of guardian of the procurement legislative process.

The Public Procurement Authority (PPA) has in recent years become a stable and strong institution and has already largely contributed to the establishment of a modern public procurement system. In general, it has the capacity to monitor procurement legislation effectively. However, it needs to be reorganised in order to improve its functionality and be better adapted to a new reality arising from the introduction of e-procurement, framework agreements and other new procedures and instruments introduced by the EC Directives. A reconsidering of the existing system for review and remedies is also needed.

The State Planning Organisation (SPO) has the capacity and is the 'natural' body to which the coordinating and supporting functions for the regulation and monitoring of public private partnerships (PPPs) should be assigned. It is therefore important that these responsibilities are clarified by the future PPP law.

PROCUREMENT/CONCESSIONS STATISTICS for 2009ⁱ

A. Number of contracting entitiesⁱⁱ		
Central government		6.390
Regional and local authorities		2.431
Other (bodies governed by public law)		1.120
Utilities		N/A
Total number of contracting entities		9.941
B1. Awardedⁱⁱⁱ public contracts/Contracting entities	Total (estimated) value (Mio EURO)	Total number^{iv}
Central government	14.644	60.939
Regional and local authorities	8.807	25.482
Other (bodies governed by public law)	8.431	11.721
Utilities	N/A	N/A
Total public contracts awarded	31.882	98.142
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^v		
Works ^{vi}	8.709	4.81
Services ^{vii}	9.695	4.859
Goods ^{viii}	6.361	5.002
Mixed contracts	N/A	N/A
Total public contracts above the EU thresholds	24.764	10.342
C2. Awarded concessions above the EU thresholds	N/A	N/A
Works ^{ix}	N/A	N/A
Services ^x	N/A	N/A
Other	N/A	N/A
Total concessions above the EU thresholds	N/A	N/A
D. Procurement methods used^{xi} (above the national thresholds^{xii})		
Open procedure	18.682	4.869
Restricted procedure	700	66
Negotiated procedure with prior publication of a notice	2.214	567
Negotiated procedure without prior publication of a notice ^{xiii}	N/A	N/A
Other procedures (competitive dialogue, etc)	3.439	1.097
D1. Low- value procurement (estimated)	11.241	124.229
E. Participation rate (average number of submitted tenders)		
Works	4,74	
Services	2,60	
Goods	8,27	

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 2008
1.	REPUBLIC OF TURKEY PRIME MINISTRY HOUSING DEVELOPMENT ADMINISTRATION	N/A	1.925,91
2.	MINISTRY OF NATIONAL DEFENCE	N/A	1.078,80
3.	REPUBLIC OF TURKEY GENERAL DIRECTORATE OF HIGHWAYS DIVISION OF ESTIMATION & SPECIFICATION	N/A	441,93
4.	ISTANBUL METROPOLITAN MUNICIPALITY DIRECTORATE OF TENER AFFAIRS	N/A	290,71
5.	DIRECTORATE GENERAL OF WATER AND CANALIZATION ADMINISTRATION OF ISTANBUL	N/A	270,23
6.	GENERAL DIRECTORATE OF TURKISH COAL MINES	N/A	269,04
7.	IZMIR METROPOLITAN MUNICIPALITY	N/A	210,63
8.	ISTANBUL DIRECTORATE GENERAL OF ELECTRICAL TRAM AND TROLLEY ENTERPRISES	N/A	180,97
9.	TURKISH STATE RAILWAYS	N/A	178,44
10.	ANKARA METROPOLITAN MUNICIPALITY CONSTRUCTION DEPARTMENT	N/A	142,24

G. A list of 10 biggest public contracts/concessions awarded and/or advertised in 2009 (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.	LABORATORY SERVICE PROCUREMENT OTHER THAN HOSPITAL FOR THE TEST RESULTS (46.350 TESTS)	MINISTRY OF HEALTH BURSA STATE HOSPITAL	HİPOKRAT LAB.SCREENİNG CENTER	SERVICE	OPEN PROCEDURE	370
2.	PROCUREMENT OF MEDICINE AND SERUM (349)	BURSA ŞEVKET YILMAZ HOSPITAL	ANKARA BEŞER PHARMACEUTICAL WAREHOUSE	GOODS	OPEN PROCEDURE	200
3.	TEST, MEASURING AND METERING DEVICES	TEİAŞ GOODS MANAGEMENT AND TRADE DEPARTMENT	MEVAG TEKNİK TİC.VESAN.A.Ş.	GOODS	3G	198
4.	MAKRO ELİZA KIT DEVICE	MURADIYE STATE	ASER HEALTH INSTRUMENTS	GOODS	OPEN PROCEDURE	183

	PROCUREMENT 62.000 TEST	HOSPITAL	AND EQUIPMENT			
5.	NATURAL GAS COMBINED CONVERSION PLANTDIRECTORATE 5 NO FUEL OİL (350.000 bin ton)	EÜAŞ GOODS MANAGEMENT AND TRADE DEPARTMENT	PETROL OFİSİ A.Ş.GENERAL DIRECTORATE	GOODS	OPEN PROCEDURE	166
6.	KIRSAL MOTORİN (188.000.000 litre)	TCDD STATE RAILWAYS	TP PETROL DAĞITIM	GOODS	OPEN PROCEDURE	155
7.	CONSTRUCTION OF İSTANBUL METRO	İSTANBUL METROPOLITAN MUNICIPALITY	GÜLERMAK AĞRI SANAYİ İNŞAAT VE TAAHHÜT	WORKS	OPEN PROCEDURE	148
8.	DRINKING WATER PIPES AND ACCESORRIES	YEŞİLOVA MUNICIPALITY	PLASTSU PLASTİK SANAYİ VE TİCARET LTD. ŞTİ	GOODS	OPEN PROCEDURE	145
9.	Kadıköy-Kartal PUBLIC RAILWAY TRANSPORTATION SYSTEM PROCUREMENT OF METRO VEHICLES	İSTANBUL METROPOLITAN MUNICIPALITY	Construcciones Y Auxıllar De Ferrocarriles S.a	GOODS	OPEN PROCEDURE	143
10.	ANKARA İLİ MÜCAVİR ALANLARI İÇERİSİNDEKİ MUHTELİF CADDE VE BULVARLARA B.S.K ,MODİFİYE EDİLMİŞ BİTÜM	ANKARA METROPOLITAN MUNICIPALITY	SÖĞÜT İNŞAAT TAAHHÜT PETROL MADENCİLİK GIDA NAK.İÇ VE DIŞ TİC.LTD. ŞTİ.	WORKS	OPEN PROCEDURE	142

ⁱ Statistics should cover contracts awarded in the period 1 January 2009 – 31 December 2009

ⁱⁱ As for 31 December 2009

ⁱⁱⁱ Statistics should refer to contracts awarded (based on contract award notices), if not available, please give the data on contracts advertised (based on contract notices)

^{iv} Please indicate whether the data include the low value contracts

^v Please indicate whether the data include contracts awarded by the utilities sector

^{vi} above 5.150.000€

^{vii} above 137.000€ for public institutions, 412.000€ for utilities

^{viii} above 137.000€ for public institutions, 412.000€ for utilities

^{ix} above 5.150.000€

^x above 137.000€

^{xi} Both for public contracts and concessions

^{xii} Including contracts above EU thresholds

^{xiii} Including single-source procurement