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**TURKEY 2009 PROGRESS REPORT**

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TO THE EUROPEAN PARLIAMENT AND THE COUNCIL**

**Enlargement Strategy and Main Challenges 2009-2010**

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# COMMISSION STAFF WORKING DOCUMENT

## Turkey 2009 Progress Report

### 1. INTRODUCTION

#### 1.1. Preface

Following the conclusions of the Luxembourg European Council in December 1997, the Commission has reported regularly to the Council and the Parliament.

This report on progress made by Turkey in preparing for EU membership largely follows the same structure as in previous years. The report:

- briefly describes the relations between Turkey and the Union;
- analyses the situation in Turkey in terms of the political criteria for membership;
- analyses the situation in Turkey on the basis of the economic criteria for membership;
- reviews Turkey's capacity to assume the obligations of membership, that is, the *acquis* expressed in the Treaties, the secondary legislation, and the policies of the Union.

The period covered by this report is from early October 2008 to mid-September 2009. Progress is measured on the basis of decisions taken, legislation adopted and measures implemented. As a rule, legislation or measures which are under preparation or awaiting Parliamentary approval have not been taken into account. This approach ensures equal treatment across all reports and permits an objective assessment.

The report is based on information gathered and analysed by the Commission. In addition, many sources have been used, including contributions from the government of Turkey, the EU Member States, European Parliament reports<sup>1</sup>, and information from various international and non-governmental organisations.

The Commission draws detailed conclusions regarding Turkey in its separate communication on enlargement<sup>2</sup>, based on the technical analysis contained in this report.

#### 1.2. Context

The Helsinki European Council of December 1999 granted the status of candidate country to Turkey. Accession negotiations with Turkey were opened in October 2005.

The Association Agreement between Turkey and the then EEC was signed in 1963 and entered in force in December 1964. Turkey and the EU formed a customs union in 1995.

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<sup>1</sup> The rapporteur for Turkey is Mrs. Oomen-Ruijten.

<sup>2</sup> Enlargement Strategy and Main Challenges 2009-2010 (COM(2009)533 of 14.10.2009).

### 1.3. Relations between the EU and Turkey

**Accession negotiations** with Turkey continued. During the preparatory analytical phase the level of preparedness to start negotiations on individual chapters has been assessed on the basis of screening reports. Of a total of 33 screening reports, one has still to be delivered by the Commission to the Council whilst nine are being discussed in the Council.

So far, negotiations have been opened on eleven chapters (*Science and Research Enterprise and industry, Statistics, Financial Control, Trans-European Networks, Consumer and health protection, Intellectual property law, Company law, Information society and media, free movement of capital and taxation*) one of which (*Science and Research*) was provisionally closed. The December 2006 Council decision<sup>3</sup> remains in force.

The **enhanced political dialogue** between the EU and Turkey has continued. Political dialogue meetings were held in March 2009 at ministerial level and in February and July 2009 at political director level. These meetings focused on the main challenges faced by Turkey in terms of the Copenhagen political criteria and reviewed progress being made towards fulfilment of Accession Partnership priorities. Foreign policy issues related to regional areas of common interest to the EU and Turkey, such as Iraq, Iran, the Middle East and the Caucasus, were also regularly discussed. A number of high-level visits from Turkey to the European institutions took place during the reporting period.

The EC-Turkey **customs union** contributed to a further increase in bilateral EU-Turkey trade, which exceeded €100 billion in 2008, thereby making Turkey the EU's seventh biggest trading partner. Almost half of Turkey's total trade is with the EU. The EU asked Turkey to remove all remaining restrictions on the free movement of goods, including restrictions on means of transport regarding Cyprus. A number of Turkey's commitments on removing technical barriers to trade such as import licences, restrictions on import of goods from third countries in free circulation in the EU, State aid, enforcement of intellectual property rights and the use of safeguard measures remain unfulfilled. No progress can be reported concerning Turkey's longstanding ban on imports of live bovine animals, beef meat and other animal products.

The EU provides guidance to the authorities on reform priorities through the **Accession Partnership**, adopted in February 2008. Progress on these reform priorities is encouraged and monitored through the bodies set up under the Association Agreement. The Association Committee met in March 2009, the Association Council in May 2009. Eight sectoral sub-committees have been held since November 2008.

Turkey recently accepted to resume formal negotiations on an EC-Turkey readmission agreement.

As regards **financial assistance**, some €567 million have been earmarked for Turkey from the Instrument for Pre-accession Assistance (IPA) in 2009. The Multi-Annual Indicative Planning Document 2009-2011, which provides the strategic multi-annual framework for all programmes at national level (covering all five IPA components), was adopted by the

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<sup>3</sup> The decision sets out that negotiations will not be opened on eight chapters relevant to Turkey's restrictions regarding the Republic of Cyprus and no chapter will be provisionally closed until the Commission confirms that Turkey has fully implemented the Additional Protocol to the Association Agreement.

Commission on 29 July 2009. Support continues to focus on institutions directly concerned by political reforms in the judiciary and the law enforcement services, on the adoption and implementation of the *acquis communautaire* in priority areas, on economic and social development, and on rural development. In addition, Turkey is benefiting from a series of regional and horizontal programmes under IPA.

EU financial support has been provided to **civil society** development under the Civil Society Facility, in particular to enhance civil society organisations' administrative and communication skills, social dialogue and inclusion, culture, gender, children and regional issues. Under the Civil society dialogue Turkey's participation in EU programmes has been co-financed and projects in areas such as media, youth, academic institutions, local authorities, cultural organisations/centres and civil society organisations have been supported.

In the context of the IPA **crisis response package**, Turkey benefits from €52.5 million of IPA national funds via a special Turkey window for multi-beneficiary programmes. The window supports energy efficiency investments, renewables and the EU harmonisation activities of the SMEs. The country also benefits from multi-beneficiary funds to strengthen banking sector supervision.

Assistance under IPA is implemented through decentralised management, meaning that assistance is managed by the Turkish authorities as a result of an accreditation process carried out by the Commission. Between October 2008 and July 2009, Turkey has obtained management responsibility for IPA components I-IV and relevant Financing Agreements for the implementation of programmes have been signed. The legal basis for IPA implementation was completed in December 2008 with the notification of the ratification of the IPA Framework Agreement. Turkey needs to complete preparations for the transfer of management responsibility under the rural development component (V), vigorously address system weaknesses including regarding monitoring and further improve the quality and efficiency of the project and programme cycles.

## **2. POLITICAL CRITERIA**

This section examines progress made by Turkey towards meeting the Copenhagen political criteria, which require stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. It also monitors the respect for international obligations, regional cooperation, and good neighbourly relations with enlargement countries and Member States.

### **2.1. Democracy and the rule of law**

Investigations into the alleged criminal network Ergenekon continued. Charges include attempting to overthrow the government and to instigate armed riots. Ammunition and weapons were discovered in the course of the investigation. A first trial, which started in October 2008, is ongoing. A second indictment, covering 56 suspects including three retired generals and a former commander of the gendarmerie, was submitted to court in March 2009. A third indictment covering 52 suspects was presented to the Court in July. The cases concerning these two indictments are discussed in one single trial, which started in July 2009 and is ongoing. This is the first case in Turkey to probe into a coup attempt and the most extensive investigation ever on an alleged criminal network aiming at destabilising the democratic institutions. Furthermore, for the first time a former Chief of Staff testified

voluntarily as a witness. Concerns have been raised about effective judicial guarantees for all the suspects (*see the section on the judicial system*).

The case for closure of the Democratic Society Party (DTP), which was opened in November 2007 by the Chief Public Prosecutor of the Court of Cassation, is still pending before the Constitutional Court. The party is accused of engaging in activities against the unity and integrity of the country. The DTP is represented in parliament with 20 members from the South-Eastern region of the country. On 14 March 2009 the Venice Commission of the Council of Europe published its opinion on the Turkish legislation governing the closure of political parties. It concluded that Articles 68 and 69 of the Constitution and the relevant provisions of the Law on Political Parties form a system which, as a whole, is incompatible with Article 11 of the European Convention on Human Rights (right to freedom of assembly and association)<sup>4</sup>. The Turkish authorities have not yet amended the legislation accordingly.

*Overall*, the investigation of the alleged criminal network Ergenekon has led to serious criminal charges, involving military officers. This case is an opportunity for Turkey to strengthen confidence in the proper functioning of its democratic institutions and the rule of law. It is important that proceedings in this context fully respect the due process of law, in particular the rights of the defendants. Turkey still needs to bring its legislation on political parties in line with European standards.

### *Constitution*

The political and societal debate on constitutional reform continued. There is a growing awareness in the country that Turkey's Constitution, drafted in the aftermath of the 1980 military coup, needs to be amended in order to allow further democratisation in a number of areas and give stronger guarantees of fundamental freedoms in line with EU standards. These include, for example, rules on political parties, institution of an Ombudsman, use of languages other than Turkish and enhancement of trade union rights.

However, no consensus could be reached between political parties on constitutional reform. There was no follow-up to the draft constitutional reforms prepared in 2008 by a group of academics. Despite numerous announcements, the government did not put forward any proposal for amending the Constitution, nor did it propose any methodological approach, based on consultation, to that end.

### *Parliament*

In March 2009 parliament established a consultative Committee on Equal Opportunities for Men and Women (*see the section on women's rights*).

However, work on improving parliament's rules of procedure has yet to be completed. A draft proposal was finalised in February by the Consensus Committee on Rules of Procedure.

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<sup>4</sup> The Venice Commission found that the situation in Turkey differs from common European practice in the following respects: (a) there is a long list of substantive criteria applicable to the constitutionality of political parties, which go beyond the criteria recognised as legitimate by the European Court of Human Rights and the Venice Commission; (b) there is a procedure for initiating decisions on prohibition or dissolution of parties which makes this more arbitrary and less subject to democratic control than in other European countries and (c) there is a tradition of applying the rules on party closure to an extent that has no parallel in any other European country and which demonstrates that this is not regarded as an extraordinary measure, but as a structural and operative part of the Constitution.

## *President*

Against the background of a confrontational political climate between the main political parties, the President made efforts to promote dialogue between political parties and civil society as well as sound operation of the State bodies. He repeatedly recalled the importance of Turkey's accession process and called for an acceleration of EU-related reforms. The President continued to play an active role in foreign policy and travelled extensively abroad. His trip to Iraq, the first of a Turkish President for 33 years, contributed to a positive atmosphere as regards the Kurdish issue (*see the section on the East and South East*).

## *Government*

The government, reshuffled following the March municipal elections, expressed its commitment to the EU accession process and to political reforms. In December 2008 it adopted the national programme for the adoption of the *acquis* (NPAA), as required by the Accession Partnership.

In January 2009, for the first time since the beginning of accession negotiations, the government appointed a full-time EU Chief Negotiator, with the status of State Minister. He streamlined preparations and improved inter-ministerial coordination as regards accession negotiations. Furthermore, he convened meetings with stakeholders, including civil society, thus promoting participation in, and a better understanding of the negotiation process.

The European Union Secretariat-General (EUSG), Turkey's main coordination body for EU affairs, was placed under the EU Chief Negotiator. The latter prepared a law, adopted in June, granting the EUSG wider and clearer responsibilities. The staff has increased substantially, and a new Secretary General has been appointed. The new structure is expected to enable the EUSG to function more effectively.

The Reform Monitoring Group – made up of the Ministers of Foreign Affairs, State Minister and EU Negotiator, Justice and the Interior –met more regularly, i.e. every two months, after the Cabinet reshuffle. The Group provided strong support to the process of reforms.

However, these efforts need to translate into more concrete progress. Despite the government's strong popular mandate and large majority in parliament, overall limited concrete progress was made on political reforms.

As regards *local government*, elections of municipal, special provincial administration (SPA) and village and neighbourhood councils were held throughout Turkey on 29 March 2009. The elections were free and fair, with a voter turn-out of over 85%, underscoring the electorate's trust in the electoral process.

However, in the run-up to the elections, the Supreme Electoral Board took a number of controversial decisions on the documents required in order to be eligible to vote, on voting for the persons with disabilities and on the ban on headscarves for ballot-box observers. The number of women elected mayors was very low<sup>5</sup> (*see the section on women's rights*).

No progress has been made on devolution of powers to local governments, especially on establishing operational city councils, which are seen as a platform to enhance public

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<sup>5</sup> Most of them were supported by the DTP.



participation in local government, and improving democratic governance mechanisms, again to enhance public participation.

Transparency systems, particularly internal and external audits of local governments, are vital for enhanced accountability. Some municipalities are reluctant to grant citizens access to municipal decisions, in particular concerning development plans. In this context, in December 2008 the Board on Access to Information filed a complaint with the public prosecutor about rejections of requests for information by the Ankara metropolitan municipality.

*Overall*, free and fair municipal elections took place throughout the country. As regards EU-related reforms, the decision to appoint a full-time Chief Negotiator and the adoption of the national programme were positive developments. However, little progress can be reported on effective implementation of political and constitutional reforms. The lack of dialogue and of a spirit of compromise between political parties is having a negative impact in this respect. As regards local government, most issues, including devolution of powers and strengthening of local governance mechanisms, have yet to be addressed.

#### *Public administration*

As regards reform of public administration, in July 2009 the Council of Ministers issued a regulation establishing the principles and procedures for the administration to deliver better public services to citizens. They focus on enhancing e-services and information, establishing services standards and taking measures for the disabled. 170 regulations have been simplified and 421 administrative documents were eliminated.

However, a number of key challenges remain, such as reducing red tape, developing regulatory impact assessments (RIA), establishing administrative procedures, enhancing transparency and improving policy-making and coordination systems.

Implementation of the Public Financial Management and Control (PFMC) Law remains cause for concern. Establishment of an effective and operational internal audit system, in the form of autonomous units within all State institutions, remained incomplete. In this context, strategy development units, which are pillars of financial management and policy-making, need to be strengthened.

Little progress has been made concerning the civil service system. A civil service reform is necessary in order to modernise human resources management and further develop a coherent personnel policy framework, based on transparency, accountability, political and merit-based career perspectives. The reform of the civil service should also include legal guarantees to avoid politicisation of the appointment and promotion system where appropriate.

In December 2008 the Constitutional Court annulled the Law aimed at establishing an Ombudsman, who would act as a link between the State administrations and citizens (*see the section on promotion of human rights*).

*Overall*, little progress has been made on public administration reform. Considerable further efforts are needed, in particular on the modernisation of civil service. Reducing red tape and promoting administrative simplification, as well as further developing a professional, independent, accountable, transparent and merit-based civil service remain priorities.

#### *Civilian oversight of security forces*

In June 2009 Parliament passed legislation providing for civilian courts to try military personnel in peacetime for crimes subject to Heavy Penal Court jurisdiction under article 250 of the Code of Criminal Procedure, including in the event of attempted coups d'état, crimes affecting national security and organised crime. Furthermore, the new legislation lifted the remaining powers of military courts to try civilians in peacetime, thus aligning Turkey with EU practices. The main opposition party CHP appealed to the Constitutional Court for annulment of the new legislation. The case is pending.

The government amended the Regulation on the Organisation and Duties of the Gendarmerie in March 2009. The new regulation clarifies the powers of the police and gendarmerie in urban and rural areas. It is now being implemented, under the responsibility of Governors.

However, there have been allegations of senior members of the armed forces being involved in anti-government activities. A total of 19 retired military officers – including five former generals – and five serving officers have been accused of crimes including an attempted coup d'état in the Ergenekon case (*see above*). An investigation into extra-judicial executions in the South-East in the 1990's led to the arrest of a Gendarmerie serving colonel, along with six other people.

The judicial practice on the jurisdiction of military courts needs to comply with EU practice. A trial against two non-commissioned officers and an informant of the terrorist group PKK on the Şemdinli case<sup>6</sup> has been pending since the Court of Cassation quashed a first-instance civil court conviction to a total of 39 years' imprisonment and transferred the case under the jurisdiction of the military court. The accused remain free – pending trial – further to the decision of the Van military court (*see section on the judicial system*).

The armed forces have continued to exercise undue political influence via formal and informal mechanisms. Senior members of the armed forces have expressed on a large number of occasions their views on domestic and foreign policy issues going beyond their remit, including on Cyprus, ethnicity, the South-East, secularism, political parties and other non-military matters. On a number of occasions, the General Staff reacted publicly to politicians and media reports. During a press briefing in April, the Chief of General Staff made comments on the Ergenekon case and on the indictment, thus putting the judiciary under pressure. Some senior members of the armed forces lent support to military personnel standing trial.

No change has been made to the Turkish Armed Forces Internal Service Law or to the Law on the National Security Council. These define the roles and duties of the Turkish military and grant the military wide room for manoeuvre by providing a broad definition of national security. The 1997 EMASYA secret protocol on security, public order and assistance units remains in force<sup>7</sup>.

No progress has been made on strengthening legislative oversight of the military budget and expenditure. Likewise, the Defence Industry Support Fund (SSDF), from which most procurement projects are financed, is still an extra-budgetary fund excluded from parliamentary scrutiny. Parliament has no mandate to develop security and defence policies.

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<sup>6</sup> The defendants are accused of the November 2005 bombing that killed one person and injured others in the town of Şemdinli in Southeast Turkey.

<sup>7</sup> The protocol allows military operations to be carried out for internal security reasons under certain conditions without a request from the civilian authorities.

As regards auditing, under the Constitution the Court of Auditors can carry out external *ex-post* audits of military expenditure. However, these audits are based on accounting records and take the form of desk reviews. Auditors are not allowed to conduct on-the-spot checks. Moreover, the court remains unable to audit movable assets belonging to the military, pending adoption of the draft Law on the Court of Auditors. Last year, the Court of Auditors decided that it has a mandate to audit the SSDF. However, implementation has not yet started.

Concerning internal auditing, the 2003 Public Financial Management and Control Law, which provides for internal audits of security institutions, has not been implemented yet.

*Overall*, some progress has been made, in particular on limiting the jurisdiction of military courts. However, senior members of the armed forces have made statements on issues going beyond their remit, and full parliamentary oversight of defence expenditure needs to be ensured. The alleged involvement of military personnel in anti-government activities, disclosed by the investigation on Ergenekon, raises serious concerns.

### *Judicial system*

The government approved the judicial reform strategy in August 2009. This is a positive step, both in terms of the consultative process<sup>8</sup> followed before its approval but also because its content broadly provides the right direction for reforms. The strategy is comprehensive and covers issues related to the independence, impartiality, efficiency and effectiveness of the judiciary, enhancement of its professionalism, the management system and measures to enhance confidence in the judiciary, to facilitate access to justice and to improve the penitentiary system. An action plan to implement the strategy has also been approved.

Some progress was made in hiring judicial staff. On 1 May 2009 there were a total of 7,081 judges (6,914 on 1 May 2008) and 4,040 prosecutors (3,917 on 1 May 2008).

However, the overall number of vacancies for judges and prosecutors remains significant, i.e. 3,875 on 1 May 2009 (4,166 on 1 May 2008).

Concerns remain about the independence, impartiality and efficiency of the judiciary. As regards *independence*, there has been no progress on the composition of the High Council of Judges and Prosecutors<sup>9</sup> or on the reporting lines of judicial inspectors<sup>10</sup>. Under a 2007 regulation, judicial inspectors can request a court order authorising interception of telephone calls by members of the judiciary. The Şemdinli case is pending (*see the section on civilian oversight of security forces*). The dismissal of the civilian prosecutor previously in charge of the case, together with the handling of the case to date, raised questions about the independence of the High Council<sup>11</sup>.

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<sup>8</sup> The Ministry of Justice presented a draft strategy in spring 2008, further to which consultations with stakeholders, including civil society, took place. Judges and prosecutors, including the High Courts, discussed the draft strategy on a number of occasions.

<sup>9</sup> The composition of the High Council is not representative of the judiciary as a whole; only senior members of the Court of Cassation and of the Council of State are members of this Council.

<sup>10</sup> The judicial inspectors, who are responsible for evaluating the performance of judges and prosecutors, are attached to the ministry, not to the High Council.

<sup>11</sup> The civilian prosecutor in this case published the indictment in 2006. It included accusations against high-ranking military commanders. The General Staff criticised the indictment and urged those bearing constitutional responsibility to take action. The High Council of Judges and Prosecutors took the dismissal decision in April 2006.

Senior members of the judiciary, of the military and of an association of judges and prosecutors have made statements which are likely to put the *impartiality* of the judiciary at risk in important cases. With respect to the *efficiency* of the judiciary, the regional courts of appeal have not been established yet. By law, they should have been in operation by June 2007. A final decision on their number and seats and on the timely provision of the material and human resources necessary for their operations has yet to be taken.

High-profile cases raised concerns about the quality of the investigations. Furthermore, there is a need to improve the working relationship between the police and the gendarmerie on the one hand and the judiciary on the other. Reports by civil society organisations and statements by witnesses, in particular regarding the alleged criminal network Ergenekon, the murder of three Protestants in Malatya and the murder of Turkish-Armenian journalist Hrant Dink cases, highlighted these concerns in specific cases. As regards the latter case in particular, a report from the Prime Ministry Inspection Board questioned the security forces' role prior to the murder. According to the report, the security forces appeared to refrain from taking action after having received credible information about death threats against Mr Dink. The trials in Istanbul, Samsun and Trabzon on this murder are continuing, but have not been merged, as has been requested by the lawyers representing the family of Mr Dink.

There have been reports of violations of procedural rights of the accused in the judicial proceedings regarding the alleged criminal network Ergenekon. There have also been a large number of leaks of information collected in the context of this case, against which court cases have been opened (*see the section on freedom of expression*).

Members of the judiciary reportedly do not limit pre-trial detention to circumstances where it is strictly necessary in the public interest. This adds to the overcrowding of prisons, where more than half of the inmates await trial. Judges appear to be hesitant to implement probation as an alternative to imprisonment while there are problems with effectively monitoring people released on probation. There are concerns as regards *juvenile justice* (*see the section on children's rights*).

*Overall*, some progress has been made in the area of the judiciary. The adoption by the government of the judicial reform strategy following a process of consultation with all stakeholders is a positive step. The measures taken to increase staff and funding are also positive. However, these efforts need to be continued, and concerns remain with regard to the independence, impartiality and effectiveness of the judiciary, such as the composition of the High Council of Judges and Prosecutors and the establishment of the regional courts of appeal.

#### *Anti-corruption policy*

Limited progress has been made in fighting corruption. In June, Parliament adopted a law to amend the Penal Code and the Code of Misdemeanours. This is to take account of GRECO recommendations, align with international conventions and to implement the requirements of the OECD Bribery Convention and the recommendations of the Financial Action Task Force (FATF) concerning the prevention of money-laundering. The law strengthens the legislative framework as regards the liability of legal persons, prevention of money-laundering and foreign bribery.

The government, under the coordination of the Prime Ministry Inspection Board with the participation of other State institutions carried out a broad consultation with stakeholders, including NGOs, with a view to preparing a national anti-corruption strategy.

The ministerial commission established to enhance good governance and transparency has hardly taken any political initiative in anti-corruption issues.

In the context of a fraud case against the charity association Deniz Feneri in Germany last year, the Turkish prosecution continued the investigation in Turkey. Assets of the main suspects have been frozen in Turkey. However, no indictment has been submitted to the court.

For the first time, the Ethics Board for Civil Servants published four decisions, in 2009, concerning non-compliance with ethics rules by public officials, including an elected mayor and managers of public companies.

However, no progress has been made on extending the ethics rules to academics, military personnel and the judiciary.

There has been no progress on limiting the immunity of Members of Parliament as regards corruption-related cases. The opposition supports measures in this respect. Parliament needs to establish a permanent ethics commission to deal with complaints and allegations. There is no code of conduct for Members of Parliament. Moreover, objective criteria should be established to define the conditions under which immunity could be lifted. The lack of control and verification of asset declarations remains a weak point in protecting the integrity system in parliament and government.

No progress has been made on adoption of legislation on the financing of political parties and election campaigns, which would increase transparency. There is no state body with the authority to audit election campaign financing.

There has been no progress towards adoption of the new legislation on the Court of Auditors, which envisages the re-structuring and strengthening of the court.

*Overall*, the legislative framework designed to prevent corruption has been improved. However, corruption remains prevalent in many areas. Turkey needs to finalise an anti-corruption strategy and to develop a track record of investigations, indictments, prosecutions and convictions.

## **2.2. Human rights and the protection of minorities**

### *Observance of international human rights law*

As for **ratification of human rights instruments**, Parliament ratified the UN Convention on the Rights of Persons with Disabilities, which entered into force on 18 December 2008. The Optional Protocol to this Convention was signed in September 2009.

Following a government decision in September 2009, the ratification of the Optional Protocol to the UN Convention against Torture (OPCAT) is now pending before Parliament. This Protocol requires parties to designate or establish an independent national preventive mechanism for monitoring places of detention.

Turkey has not ratified three additional Protocols to the European Convention on Human Rights (ECHR)<sup>12</sup>.

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<sup>12</sup> Protocols 4, 7 and 12.

During the reporting period, the **European Court of Human Rights** (ECtHR) delivered a total of 381 judgments finding that Turkey had violated the ECHR. The court concluded that there had been a violation of the right to a fair trial and/or the right to liberty and security in about one third of these cases. Most of the events on which the judgments are based date back to the 1990s or before the new Turkish Criminal Code (TCC) or Criminal Procedure Code were enacted. The majority of the new applications to the ECtHR refer to the right to a fair trial and protection of property rights. A further 11% refer to freedom of expression and 5% to the prohibition of torture. Overall, there were more applications to the ECtHR against Turkey.

Turkey continued to make progress on the execution of ECtHR judgments. All pecuniary compensation was paid on time, totalling €5.2 million in 2008.

However, implementation of ECtHR judgments requiring legislative measures is delayed, sometimes for several years. The non-implementation of the Hulki Güneş, Göçmen and Söylemez judgements results in the deprivation of liberty of the defendants for several years without due process of law. A legislative amendment is required to remedy this situation. Furthermore, Turkey has not adopted legal measures to prevent repetitive prosecution and conviction of conscientious objectors. Other cases awaiting legislative measures by Turkey concern control of the activities of security forces, effective remedies against abuse and restrictions on freedom of expression.

In the Cyprus v. Turkey case, the issue of missing persons and the restrictions on the property rights of Greek Cypriots living permanently in the northern part of Cyprus remain pending. The compensation mechanism put in place to address the property rights of displaced persons fulfils, in principle, the requirements laid down by the ECtHR and has continued to receive requests for compensation. In its decision of 28 July 2009 the Court took note of the friendly settlement of the case *Alexandrou v. Turkey* brokered by the Turkish Cypriot Immovable Property Commission and expressed satisfaction that the settlement is based on respect for human rights as defined in the Convention or its Protocols. However, the ECtHR has not assessed whether the available remedy is effective for all relevant issues. Turkey has not yet fully implemented the ECtHR judgments on the Loizidou and Xenides-Arestis cases.

Several State bodies share the task of **promotion and enforcement of human rights**. These include the Human Rights Presidency under the Prime Minister's office and the Human Rights Boards (931 in all). These bodies have the tasks of visiting places of detention (including State-sponsored social services) and of reviewing allegations of human rights violations. Overall, the number of applications to these bodies has increased substantially. Human rights training for public officials, judges, public prosecutors and police officers continued. In-service and on-the-job training for the gendarmerie includes training on human rights and was supplemented by specialist training on techniques to review allegations of human rights violations.

At parliament level, the Human Rights Investigation Committee established four sub-committees on: torture, ill treatment and prisons; freedom of thought, expression, religion and conscience; economic and social rights (including children's rights); and harmonisation of legislation with the EU *acquis*. The committee also issued several reports on specific human rights cases.

However, some human rights defenders have continued to face criminal proceedings in relation to their work. Lack of resources, independence and public awareness are hampering the smooth operation of human rights institutions. Discussions on the creation of a new

National Human Rights Institution to address these shortcomings have not been finalised. The government signalled its commitment to this process. The Ombudsman Law adopted in 2006 was annulled by the Constitutional Court on the grounds that the Constitution does not allow such an institution to be affiliated to parliament. Establishment of the Ombudsman therefore requires an amendment to the Turkish Constitution. However, the necessary consensus was not secured in parliament.

*Overall*, there was some progress on observance of international human rights law. However, implementation of some ECtHR judgments requiring legislative amendments has been outstanding for several years. Further efforts are needed to strengthening the institutional framework on human rights, in particular as regards the establishment of an independent human rights institution and of an Ombudsman. The ratification of the OPCAT is overdue.

### *Civil and political rights*

The government pursued its efforts to ensure compliance with the legal safeguards to prevent **torture and ill-treatment**. Training for health personnel, judges and prosecutors on effective investigation and documentation of torture and ill-treatment cases was stepped up in 2008, with a view to implementation of the Istanbul Protocol<sup>13</sup> in Turkey. Efforts to equip police and gendarmerie statement-taking rooms with audio- and video-recording systems continued.

Preparations for an independent national mechanism to investigate citizens' complaints that will cover the police, gendarmerie and coastguard services were completed in June. A decision by the Minister of the Interior is now awaited before finalisation of the draft law establishing this body and subsequent submission to parliament.

The Council of Europe's Committee for the Prevention of Torture (CPT)<sup>14</sup> carried out a comprehensive mission to Turkey in June 2009. This visit was important to review the government's zero tolerance policy, as human rights NGOs had received more allegations of torture and ill-treatment in recent years. The CPT paid particular attention to the treatment of persons detained by law enforcement agencies (the police and gendarmerie) and to the conditions under which illegal immigrants are held in detention centres for foreigners. The CPT also examined in detail various issues related to prisons, including the activities and healthcare services offered to prisoners. Prompt authorisation to publish the report on this 2009 visit would contribute to highlighting the government's commitment to the zero tolerance policy on torture and ill-treatment<sup>15</sup>.

Ratification of OPCAT has been pending since 2005 (*see Observance of international human rights law*).

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<sup>13</sup> Istanbul Protocol: Manual on the effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, submitted to the United Nations Human Rights Commissioner for Human Rights, 9 August 1999.

<sup>14</sup> The role of the CPT is to examine the treatment of persons deprived of their liberty in the 47 Member States of the Council of Europe. After each visit, the CPT sends a confidential report containing its conclusions and recommendations to the State concerned. The State can then decide whether to authorise publication of the CPT report.

<sup>15</sup> All CPT reports on Turkey have been published so far. However, publication of some of them was delayed in the past.

Counter-cases are frequently initiated by law enforcement bodies against persons who allege torture or ill-treatment. Such legal proceedings might result in deterring complaints. There is evidence that such cases are treated expeditiously by Turkish courts.

No forensic medical doctors are recognised by courts, apart from the Forensic Medicine Council, which is under the Ministry of Justice. This *de facto* monopoly prevents development of effective and independent forensic services in the country. Furthermore, lawyers should be allowed to attend forensic examinations in case the doctor requests a law enforcement officer to be present during the examination for security reasons.

As concerns **the fight against impunity** for human rights violations, sixty officials held responsible for the death in custody of Engin Çeber in 2008 were indicted. The trial on this case started in January 2009 and is still in progress.

However, there is a need to step up efforts to reduce impunity for human rights violations. The report on torture and ill-treatment by the parliamentary Human Rights Investigation Committee, adopted in January, notes that none of the 35 lawsuits filed against 431 members of the Istanbul police for ill-treatment or torture resulted in a conviction<sup>16</sup>. The committee concluded that this leads to suspicions about the effectiveness of proceedings initiated against law enforcement agents. According to the same report, only 2% of police officers are subject to disciplinary sanctions as a result of an administrative investigation of allegations of torture or ill-treatment. The committee concluded that such investigations should not be carried out by fellow police officers.

The four police officers standing trial for ‘killing outside legitimate self-defence’ Ahmet Kaymaz and his 12 year-old son Uğur in November 2004 were acquitted by the Court of Cassation in June. The Kaymaz family appealed to the ECtHR.

*Overall*, while the Turkish legal framework includes a comprehensive set of safeguards against torture and ill-treatment, efforts to implement it and fully apply the government's zero-tolerance policy have been limited. Allegations of torture and ill-treatment, and impunity for perpetrators are still a cause for great concern, and need to become a priority area for remedial action by the Turkish authorities. In order to assess accurately progress in this area it would be helpful that the Turkish authorities authorise promptly the publication of the Council of Europe's Committee for the Prevention of Torture (CPT) report.

**Access to justice** was relatively easier in urban areas, where detainees have had access to a lawyer immediately after detention. However, there have been problems in rural areas, in particular in the South-East, where defendants have not had access to a lawyer on terms equivalent to those in urban areas. Similarly, children from 15 to 18 years of age detained under the anti-terror law for participating in demonstrations have not always had access to a lawyer immediately after detention. Overall, effective legal assistance is limited and a number of criminal defendants remain unrepresented. Defendants' awareness on the availability of free legal assistance needs to be raised.

Turkey has been pursuing an ambitious **prison** reform programme for a number of years, which has brought improvements to prison conditions and infrastructure. Further progress was made on implementation of this programme, by constructing new prisons and closing a

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<sup>16</sup> By January 2009, 64 persons had been acquitted, 290 cases resulted in no prosecution and proceedings were continuing against 76 police officers.



number of small outdated prisons. There are four centres which provide pre-service and in-service training for prison staff. A fifth is under construction and will be completed by the end of the year. Recruitment of 6,000 additional staff for prisons started in July, with the aim of completing the process by the end of the year<sup>17</sup>.

However, implementation of the prison reform programme is uneven. For example, it is difficult to implement in small prisons, which have inadequate resources. The current understaffing of prisons adds to these difficulties, as it prevents for example the organisation of communal activities or rehabilitation programmes for prisoners. This is the case in high-security F-type prisons, which still lack communal activities for inmates.

The rapid increase in the number of inmates, which has doubled in a few years, led to a growing overcrowding problem<sup>18</sup>. Furthermore, the high proportion of prisoners on pre-trial detention has still to be addressed<sup>19</sup> (*see the section on the judicial system*).

The national framework for prison monitoring falls short of the requirements of OPCAT (*see the section on torture and ill-treatment*). There are concerns as regards imprisoned juveniles (*see the section on children's rights*).

A new procedure has been established in order to ease restrictions on the use of languages other than Turkish on the phone. Visiting arrangements provided by law are more restrictive than required on any reasonable security grounds.

There have been cases where serious illnesses that require continuous treatment have not been considered grounds for release. Healthcare/psychiatric resources are inadequate. The ratio of one doctor to 250 prisoners, which is necessary to allow proper medical care in prisons, is not achieved in Turkey. There have been reported cases of ill-treatment by prison staff (*see the section on impunity*).

*Overall*, some progress was made on improving training and infrastructure, and recruiting additional prison staff. However, the problem of overcrowding and the high proportion of prisoners in pre-trial detention remain to be addressed.

As regards **freedom of expression**, article 301 of the Turkish Criminal Code (TCC) is no longer used systematically to restrict freedom of expression. Revision of this article led to a significant decline in prosecutions compared with previous years<sup>20</sup>.

The Constitutional Court annulled the provisions of the Anti-Terror Law making media owners liable for publishing terrorist propaganda or praise of terrorism, further to the case brought by the former President in 2006.

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<sup>17</sup> On 10 July 2009, the total number of vacancies was 8,121 out of a total staff of 27,021.

<sup>18</sup> On 10 July 2009, the total prison population was 112,066 compared with a total prison capacity of 90,558.

<sup>19</sup> On 10 July 2009, 53% of inmates were in pre-trial detention.

<sup>20</sup> The amendments to article 301 entered into force on 8 May 2008. These amendments introduced amongst other a permission requirement by the Minister of Justice in order to launch a criminal investigation on the basis of article 301. Further to the entry into force of the revised article the Minister reviewed 914 pending cases (either at the prosecution or trial phase) and authorised in total 77 criminal investigations to continue (i.e. 8% of the cases referred to him). Furthermore, the Minister of Justice reviewed 210 investigations initiated after the entry into force of the amendments to article 301 on 8 May 2008, out of which he granted permission to eight criminal investigations to continue (i.e. 3% of the cases referred to him).

A petition signed by 200 Turkish intellectuals to denounce ‘the denial of the Great Catastrophe that the Ottoman Armenians were subjected to in 1915 [...]’ and to apologise to the Armenians was launched on the internet. About 30,000 signatures were collected for this campaign, which sparked a wide debate, including in mainstream media<sup>21</sup>. Furthermore, intense debates took place in the media on other topics perceived as sensitive by Turkish public opinion, such as the Kurdish issue, minority rights in general, the role of the military and Atatürk’s legacy.

However, the Turkish legal framework still fails to provide sufficient guarantees for exercising freedom of expression and, as a result, is often interpreted in a restrictive way by public prosecutors and judges. There are still some prosecutions and convictions based on Article 301. Furthermore, a number of other provisions of the Turkish Criminal Code are used to restrict freedom of expression, particularly as regards offences against dignity (Articles 125 to 131 of the TCC), public order (Articles 214, 216, 217, 218, 220), state security (Article 305), the constitutional order (Articles 312 and 314) and obscenity (Article 226). In addition, prosecutions and convictions continue on the basis of Article 318 of the TCC (on discouraging people from military service), the Law on Crimes against Atatürk, and the Law on Accepting and Applying the Turkish Alphabet<sup>22</sup>. This legal uncertainty puts journalists, writers, publishers, politicians, academics and others at risk of investigation, prosecution, conviction and imprisonment and could therefore result in self-censorship.

The amendments to the Anti-Terror Law, which were adopted in June 2006 in response to the escalation of terrorism, resulted in the suspension of several periodicals. The Constitutional Court rejected the case, introduced by the former President in 2006, against the provisions of the Anti-Terror Law allowing Prosecutors to ban publications for a period of fifteen days to one month.

There are two tax-related procedures opened against the leading national media group Doğan Media Holding. The high fines imposed by the revenue authority potentially undermine the economic viability of the Group and therefore affect *freedom of the press* in practice. There is a need to uphold the principles of proportionality and of fairness in these tax-related procedures.

Several civil procedures have been filed by politicians for violations of their personal rights by publishers, journalists, writers or other politicians. The General Staff initiated cases on disclosure of prohibited information with regard to the incidents which took place in the South-East. Journalists face frequent prosecutions for breaches of the confidentiality of investigations or attempts to influence a fair trial (respectively Articles 285 and 288 of the TCC). Certain media outlets requesting journalist accreditations were discriminated against. Senior political leaders called for a boycott of newspapers and television channels owned by the Doğan Media Holding.

Frequent website bans continue to be a cause for concern. Judicial and administrative decisions block the entire website instead of filtering out unwanted content. YouTube has

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<sup>21</sup> A non-prosecution decision was issued in January 2009 against those who launched the campaign. However, this decision was overruled by the Sincan 1<sup>st</sup> Heavy Penal Court on 2 March 2009. The appeal brought by the Ministry of Justice against this decision with the Court of Cassation is currently ongoing.

<sup>22</sup> Under this law, only letters which are in the Turkish alphabet may be used.

been banned since May 2008. Court cases are pending against Facebook, Google Sites and other sites.

*Overall*, there is an increasingly open and free debate in Turkish society, including on issues traditionally perceived as sensitive. Article 301 of the Turkish Criminal Code is no longer used systematically to restrict freedom of expression. However, there are prosecutions and convictions based on a number of other articles of the criminal Code. Turkish law does not sufficiently guarantee freedom of expression in line with the ECHR and the ECtHR case law. Political pressures on the media and legal uncertainties affect freedom of the press in practice.

Further efforts were made with a view to implementing the legal framework on **freedom of assembly**. A circular issued by the Ministry of the Interior in November 2008 (*see the section on torture and ill-treatment*) stressed the need for correct implementation of apprehension and detention procedures, in particular to prevent disproportionate use of force by security forces. Police officers on duty during demonstrations carry visible numbers on their helmets in order to facilitate identification in the event of police brutality. This measure is now applicable nationwide.

However, improving the difficult working conditions in the Turkish national police, including with the aid of training, would be needed in order to address the issue of use of force during demonstrations. Furthermore, certain provision in the Law on the Duties and Legal Powers of the Police, adopted in 2007, raise concerns about protection of the right to life. Difficulties with implementation of this law are still being reported. There have been cases of ill-treatment during routine identity checks. Judicial and administrative investigations against members of the security forces who are involved in excessive use of force are not carried out effectively (*see the section on impunity*).

*Newroz* (the Kurdish New Year) and 1 May demonstrations, which were marred by police violence in previous years, took place peacefully in most places during the reporting period. However, demonstrations in the South-East of the country continued to be marked by violence. Investigation and video-taping of NGOs' activities by security forces are still being reported, especially in the East and South-East of the country.

As regards **freedom of association**, the number of associations and their membership continued to increase. The first elections to the Foundations Council were held in December 2008. The new Foundations Council decided that the level of assets required for establishing new foundations should be lowered considerably, thus further relaxing the conditions for establishing a foundation.

The Council of State annulled a circular restricting university professors' right of association. The circular issued in November 2008 by the Higher Board of Education prevented faculty members from taking up duties in professional organisations, foundations or associations without endorsement by their university.

The Court of Cassation ruled against the closure of the lesbian, gay, bisexual, transgender and transvestite (LGBT) Lambda Istanbul Solidarity Association in April.

However, the court's ruling made the legality of the association conditional on not "*encouraging lesbian, gay, bisexual, transvestite and transsexual behaviour with the aim of spreading such sexual orientations*"; this is not compatible with the EU's rejection of homophobia and its anti-discrimination standards. Furthermore, a closure case was launched against the Özgür-Der Association for Freedom of Thought and Right to Education. It is

based on a press statement issued by the association in November 2008 in which it expressed its opposition to the national security classes offered by military officers in schools. A judicial investigation is in progress against the Istanbul-branch of the Human Rights Association. Both these closure cases were initiated by a complaint by the Istanbul Governorate.

Some legal provisions place an undue burden on the operations of associations. There are high fines or severe punishments for failing to comply with the Law on Associations<sup>23</sup>. The legal obligation to notify authorities before receiving financial support from abroad places a burden on associations. Negative portrayal in certain media and at times disproportionate inspections of NGOs receiving funds from abroad, including EC funds, remain a further cause for concern.

Problems with registration of associations and foundations, in particular local representations of international NGOs, are still being reported. At least two other cases regarding major foreign NGOs (International Crisis Group and the Raoul Wallenberg Institute) have been pending for more than a year.

Trade unions continue to face obstacles in exercising their right to organise public demonstrations. Police intervention has not always been limited to cases where a genuine threat of public order was apparent.

There is no progress to report on amendment of the legal provision on the closure of political parties (*see also the section on democracy and the rule of law*).

*Overall*, the legal framework on associations is broadly in line with European standards. However, considerable progress needs to be made as regards its implementation, as associations still face disproportionate scrutiny of their activities, which in some cases has led to judicial proceedings.

There is a growing awareness in public institutions and in the public at large about the crucial role played by **civil society organisations**, including in the accession process

However, some difficulties encountered with the consultation procedures reflect the lack of trust between State institutions and civil society organisations. The legal framework for collection of donations and tax exemptions for NGOs needs to be strengthened, in line with EU good practice, to improve NGOs' financial sustainability.

Concerning **freedom of religion**, freedom of worship continues to be generally respected. Implementation of the Law on Foundations adopted in February 2008 proceeded smoothly over the reporting period (*see the sections on the right to property and freedom of association*). There has been some progress on obtaining work permits for foreign clergy who wish to work in Turkey. In particular, the Ecumenical Patriarchate's applications for work permits were answered positively in December 2008. The Turkish authorities, including representatives of the Ministries of Foreign Affairs and of the Interior, visited non-Muslim religious communities in spring 2009 to discuss their problems while in summer representatives of these communities met with the Prime Minister.

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<sup>23</sup> In the event of failure to keep the necessary records of an association, the executives of the association are liable to imprisonment of between three months and one year.

In December 2008 the Minister of Culture participated in the opening of the first Alevi Institute and apologised to the Alevis for past sufferings caused by the State. In January 2009 the Prime Minister attended an Alevi fast-breaking ceremony for the second consecutive year. The government held workshops aimed at discussing openly problems and expectations of the Alevis; this effort was received positively by the Alevi community. The public service broadcaster screened a number of programmes on the Alevi Muharram<sup>24</sup> celebrations. In another symbolic gesture, the Ministry of Culture started discussions to establish in the Madimak Hotel in Sivas a cultural centre in memory of the victims of the 1993 events<sup>25</sup>. Three municipal councils recognised Cem houses as places of worship and granted them the same financial advantages as mosques. Administrative courts in Antalya, Ankara and Istanbul ruled that Alevi students should be exempted from attending the mandatory religion and ethics course. A similar ruling by the Izmir administrative court was confirmed by the Council of State.

However, under Article 24 of the Turkish Constitution and Article 12 of the national education basic law, religious culture and ethics classes remain compulsory in primary and secondary education. In October 2007 the ECtHR found that these classes did not just give a general overview of religions but provided specific instruction in the guiding principles of the Muslim faith, including its cultural rights. The court requested Turkey to bring its education system and domestic legislation into line with Article 2 of Protocol 1 to the ECHR. Implementation of this judgment is still pending before the Council of Europe Committee of Ministers.

Non-Muslim communities – as organised structures of religious groups – still face problems due to lack of legal personality. Restrictions on the training of clergy remain. Turkish legislation does not provide for private higher religious education for these communities and there are no such opportunities in the public education system. The Halki (Heybeliada) Greek Orthodox seminary remains closed, although its re-opening was widely debated over the reporting period. The Armenian Patriarchate's proposal to open a university department for the Armenian language and clergy has been pending for a number of years. The Syriacs can provide only informal training, outside any officially established schools. Despite the progress made on obtaining work permits for foreign clergy who wish to work in Turkey, overall procedures remain cumbersome.

The Ecumenical Patriarch is not free to use the ecclesiastical title 'Ecumenical' on all occasions. In June 2007 the Court of Cassation ruled that persons who participate and are elected in religious elections held in the Patriarchate should be Turkish citizens and be employed in Turkey at the time of the elections. However, Turkish and foreign nationals should be treated equally as regards their ability to exercise their right to freedom of religion by participating in the life of organised religious communities in accordance with the ECHR and the case law of the ECtHR.

Personal documents, such as ID cards, still include information on religion, leaving potential for discriminatory practices.

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<sup>24</sup> Muharram is the first month of the Islamic calendar.

<sup>25</sup> On 2 July 1993 a mob besieged the Madimak Hotel in Sivas that was hosting a Pir Sultan Abdal culture festival. The hotel was set on fire, resulting in the death of 37 people – mostly Alevi writers, poets and artists participating in the festival.

Regarding places of worship, non-Muslim religious communities report frequent discrimination and administrative uncertainty: applications to authorities for allocation of places of worship are refused and existing Protestant churches and Jehovah's witnesses' prayer halls face court cases. Two cases regarding Alevi places of worship (Cem houses) are pending before the courts, one of them before the Council of State. Despite the recognition by three municipal councils of three Cem houses as places of worship, the overall policy of not recognising such houses as places of worship has not changed.

Members of minority religious groups have claimed that their worship activities are monitored and recorded by security forces. The Federation of the Alevi Bektashi Associations filed a petition against three newspapers for publishing derogatory and discriminatory material against Alevis. Attacks and threats against non-Muslim clergy and places of worship have been reported in a number of provinces. A Turkish Bible Society bookshop in the southern city of Adana was vandalised for the second time in February. Missionaries are widely perceived as a threat to the integrity of the country and to the Muslim religion. A court case against two missionaries in Silivri continued; it was also expanded after the Ministry of Justice allowed judicial proceedings under Article 301 of the Criminal Code. The court case concerning the killing of three Protestants in Malatya in April 2007 is still in progress.

Judicial proceedings against conscientious objectors on religious grounds have continued. Public statements on the right to conscientious objection have led to convictions. Cases against Jehovah's witnesses regarding conscientious objection are pending before the ECtHR<sup>26</sup> (*see the section on observance of international human rights law*).

*Overall*, implementation of the law on foundations has been smooth (*see the section on property rights*). The Government has undertaken a dialogue with the Alevi and non-Muslim religious communities. However, their specific problems have yet to be addressed. Attacks against minority religions still occur. A legal framework in line with the ECHR has yet to be established, so that all non-Muslim religious communities and Alevi community can function without undue constraints, including as regards training of clergy. Further efforts are needed to create an environment conducive to full respect of freedom of religion in practice.

#### *Economic and social rights*

As regards **women's rights**, a consultative parliamentary Committee on Equal Opportunities for Men and Women was established by law in March 2009. It monitors developments on gender equality, gives opinions on draft laws and proposes steps to align Turkish legislation and practice with international agreements. It also examines complaints about violations of equality between women and men and gender-based discrimination.

A legislative amendment granted public servants employed under labour contracts the right to paid maternity leave of 16 weeks, the same as for public servants, plus the possibility to return to the same post, if they apply for it, at the end of their maternity leave. The preliminary results of the 2008 Turkey Demographic and Health Survey show an improvement in mother and child health indicators over the last five years<sup>27</sup>, even though regional disparities persist.

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<sup>26</sup> Applications 43965/04, 5260/07 and 14017/08.

<sup>27</sup> There has been a 13% increase in pre-natal care provided by health personnel, giving 93% coverage. The rate of deliveries assisted by health personnel has increased by 8%, to 90% overall coverage.

Awareness-raising activities and gender sensitivity training programmes for public service and health personnel have continued. In April 2009 a protocol was signed between the Directorate-General for Women's Status and the Ministry of Justice with a view to training prosecutors and judges on violence against women. Women's NGOs launched campaigns to increase female participation in local elections, such as the '50/50 equality' campaign simultaneously with the European Women's Lobby's '50/50 no modern European democracy without gender equality' campaign.

However, gender equality remains a major challenge in Turkey and a gender equality body as required by the *acquis* has yet to be established (*see chapter 19 – Social policy and employment*).

Political representation of women, at both national and regional levels, is very low. The local elections held on 29 March 2009 did not change this: there are only two female mayors at provincial capital level and seventeen at district town level. Overall, despite the pre-electoral rhetoric, political parties did not place a sufficient number of female candidates in electable positions. Finally, the Law on Political Parties and the statutes of the parties contain no provisions that could lead in practice to adequate political representation of Turkish women.

Women's participation in the labour market is still very low<sup>28</sup>. Women entering the labour market are likely to be employed in the informal sector; this makes their situation fragile. Overall, women earn less than men for work of equal value.

Women's access to education is the lowest among the EU Member States and OECD countries. The good results on reducing the gender gap in primary education need to be sustained and improved, in particular by ensuring that girls continue to attend school and by identifying and addressing school drop-outs (*see the section on children's rights*).

Domestic violence, honour killings and early and forced marriages are still serious problems. The report on national research on domestic violence against women<sup>29</sup> illustrated the gravity of the problem: 39% of the women said that they had been victims of physical violence and 15% victims of sexual abuse. One out of every four women had been injured as a result of physical or sexual violence. Furthermore, the poll found that 48.5% of the victims had told no-one about the abuse, while only 4% had sought help from the police and a mere 1% refuge in State-run shelters. Most Turkish women are still not fully aware of their rights and significant further efforts are needed in this regard.

In June 2009 the European Court of Human Rights published its chamber judgment in the *Opuz v. Turkey* case<sup>30</sup>. It held unanimously that there had been a violation of (a) Article 2 (right to life) of the ECHR; (b) Article 3 (prohibition of torture and of inhuman and degrading treatment); and (c) Article 14 (prohibition of discrimination), read in conjunction with Articles 2 and 3, on account of the fact that the violence suffered by the applicant and her

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<sup>28</sup> A marginal increase was observed in women's participation in the labour market at the end of 2008/beginning of 2009 compared with the same period the year before. However, this marginal increase needs to be put in the context of the global economic and financial crisis and the ensuing reduction of overall employment.

<sup>29</sup> This government-sponsored research was conducted as part of an EU-funded project in the summer of 2008 on a sample of 12,795 women. A summary of the report is published on the website of the Directorate-General on the Status of Women.

<sup>30</sup> Application No 33401/02 concerning the Turkish authorities' failure to protect the applicant and her mother from domestic violence.

mother had been gender-based, which amounted to a form of discrimination against women, especially bearing in mind that, in cases of domestic violence in Turkey, the general passivity of the judicial system and impunity enjoyed by aggressors mainly affected women.

Women's organisations report that family courts take a long time to issue restraining orders to protect women facing the threat of violence under the Law on Protection of the Family. This undermines the effectiveness of the law and leads to further victimisation of women.

There are only 54 shelters for female victims of domestic violence. This is much lower than provided for by the law<sup>31</sup> or required by the actual needs, both in terms of number of shelters and overall bed capacity. The availability and accessibility of intermediate protection and prevention services needs to be strengthened to meet the demand.

After an initial improvement in cooperation between public institutions, brought about by the Prime Ministerial circular on combating honour killings and domestic violence against women, concerns arose about this issue over the reporting period. The local coordination boards<sup>32</sup> envisaged in the circular from the Ministry of the Interior have not been established as provided under the law. There is reportedly lack of awareness among law enforcement forces and public administrations of the Ministry of the Interior's circular on violence against women and children.

There is a lack of an effective dialogue of the civil society organisations with the government on gender-related issues.

*Overall*, the legal framework guaranteeing women's rights and gender equality is broadly in place. However, further significant efforts are needed to turn the legal framework into reality and to narrow the gap between men and women in economic participation and opportunity, political empowerment and access to education. Domestic violence, honour killings and early and forced marriages remain serious problems in some areas of the country. There is a need for further training and awareness-raising on women's rights and gender equality, for both men and women.

With respect to **children's rights**, the gender gap in primary education was halved from 2.3% in 2007/2008 to approximately 1% in 2008/2009. The number of children in pre-school education increased by 14% from 2007 to 2008, taking the overall pre-school education rate up to 33%. The number of teachers in pre-school education also increased by 14% from 2007 to 2008. The e-school system enables the Ministry of National Education to identify and reach children who are out of school at any given time.

According to preliminary results from the 2008 Turkey Demographic and Health Survey, infant, child and under-five mortality rates have decreased. The infant mortality rate was measured as 1.7% in 2003–2008, a 47% decrease compared with 1998–2003.

Under the 2005 Law on Child Protection, child courts need to be established in all 81 provinces of the country. The number of such courts increased this year to 73 from 40 last

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<sup>31</sup> The 2005 Law on Municipalities provides for establishment of shelters for women in municipalities with a population of 50,000 or more.

<sup>32</sup> Under the circular, these boards should be established at local level and include representatives of the Governorate, police, gendarmerie, municipality, local religious office, universities and NGOs. They are expected to contribute to avoiding crimes in the name of honour and custom.



year. These are located in 33 out of the 81 provinces in the country. Child Heavy criminal courts for handling more serious charges exist only in 7 provinces.

However, the poverty rate of children under 15 years of age increased by 0.9% to 26.1% in 2007. In rural areas the rate is as high as 42%.

Regional disparities in primary school enrolment persist: there is a difference of more than 10% between some western and eastern parts of the country. As regards continuation to secondary school, the net enrolment rate drops from 96.5 % at primary school<sup>33</sup> to 58.5% at secondary school.

No progress can be reported on combating child labour, as the capacity of the national institutions responsible remains weak. There is no effective inspection system. An integrated approach with well established structures and adequate resources to eradicate child labour has yet to be adopted.

As regards *juvenile justice*, under the 2005 Law on Child Protection all Turkish citizens up to 18 years of age are considered children and enjoy children's rights. However, amendments to the 2006 Anti-Terror Law, in particular regarding Articles 220 and 314 of the Criminal Code, provide that children between fifteen and eighteen years of age can be tried as adults. In practice, the number of cases lodged against children in this age group on the basis of the amended Articles 220 and 314 of the Criminal Code has increased considerably. For instance, minors participating in demonstrations, particularly in the South-East, face charges of 'membership of a terrorist organisation' and, hence, disproportionate, long prison sentences. Judgments are often based on statements by police officers and are not backed by firm evidence. Children have been allegedly ill-treated after their arrest and before being taken to the prosecutor and have been prevented from seeing their lawyer during that time. The absence of child prosecutors at the child courts and the conditions of imprisonment have also been criticised. Finally, the psychological assessments of children cannot be properly prepared due to the shortage of competent staff.

There are concerns about imprisoned juveniles, the majority of whom are in pre-trial detention in adult prisons<sup>34</sup>, due to limited capacities of Juvenile Reformatories. The physical conditions and the quality of the services provided in juvenile detention centres need to be improved. More effective use of the probation system should reduce the number of children in prison.

*Overall*, efforts need to be further stepped up in all areas related to children's rights, including administrative capacity, health, education, the juvenile justice system and child labour. Cases of juveniles tried as adults and facing disproportionate sentences raise serious concerns.

As regards **socially vulnerable persons and/or persons with disabilities**, Turkey ratified the UN Convention on the Rights of Persons with Disabilities in December. Several publicly funded projects have been initiated to address the problems of persons with disabilities.

However, mental health is an area of concern. The CPT stressed the need for legislative reforms to safeguard the rights of mentally ill patients, in particular to ensure that they are

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<sup>33</sup> This rate was approximately 97% last year. The difference is mainly due to a change of statistical methods used by the Ministry of National Education to collect data.

<sup>34</sup> On 10 July 2009, there were 2,678 juveniles in prison, of whom 282 had been convicted.

given the opportunity to consent to or refuse treatment, either personally or via a guardian. Courts and mental health institutions are not adequately applying the provisions in the Civil Code on involuntary placement in mental health institutions. Further efforts are needed as regards treatment programmes, physical infrastructure and training. There is no independent body in Turkey to carry out inspections of mental health institutions.

There are no comprehensive data on persons with a disability and on conditions of care for mentally ill persons. Community-based services, as an alternative to institutionalised services, are not sufficiently developed. People with physical disabilities have problems in gaining access to services, mainly due to physical barriers and lack of awareness. Disabled persons were not provided with adequate facilities during the local elections and the Supreme Board of Elections (YSK) took two decisions which had negative repercussions on the exercise of voting rights by the disabled.

As regards **labour rights and trade unions**, the reinstatement of 1 May as ‘Labour and Solidarity Day’ and a public holiday and the decision to allow trade unions to demonstrate (in small numbers) on Taksim Square in Istanbul were two symbolic steps, as trade union rights had been curtailed in Turkey after the 1980 military coup.

However, the efforts to reform trade union legislation did not bear fruit. The current legal framework – including the constitutional provisions on trade union rights – is not in line with EU standards and ILO Conventions, in particular as regards the right to organise, the right to strike and the right to bargain collectively, for either the private or public sectors (*see chapter 19 – Social policy and employment*). There have been reports of restrictions on exercise of existing trade union rights (*see the section on Freedom of association*) and of dismissals due to trade union membership. Social dialogue in Turkey is weak. Overall, the percentage of workers benefiting from collective labour agreements is low.

Members of the Confederation of Public Employees Trade Unions (KESK), which is an affiliate of the European Trade Unions Confederation, were arrested in the context of an anti-terror operation (*see the section on Situation in the East and South-East*).

The principle of **anti-discrimination** is enshrined in the Constitution and upheld in several laws. The Government raised public awareness on anti-discrimination and decided that the first lecture of the school year should cover this issue.

However, the legal framework is not adequately aligned with the EU *acquis* (*see chapter 19 – Social policy and employment*). There have been several cases of discrimination at the workplace, where LGBT employees have been fired because of their sexual orientation. Provisions of the Turkish Criminal Code on ‘public exhibitionism’ and ‘offences against public morality’ are sometimes used to discriminate against LGBT people. The Law on Misdemeanours is often used to impose fines against transgender persons.

Homophobia has resulted in cases of physical and sexual violence. The killing of several transsexuals and transvestites is a worrying development. Courts have applied the principle of ‘unjust provocation’ in favour of perpetrators of crimes against transsexuals and transvestites.

The Turkish armed forces have a health regulation which defines homosexuality as a ‘psychosexual’ illness and identifies homosexuals as unfit for military service. Conscripts who declare their homosexuality have to provide photographic proof. A small number have had to undergo humiliating medical examinations.

With respect to **property rights**, implementation of the Law on Foundations continued smoothly throughout the reporting period. The deadline for submission of applications for the restitution of properties registered under figurative or fictitious names, or in the name of the Treasury or of the Directorate-General for Foundations to non-Muslim foundations was 27 August 2009. Overall, 1,393 applications were submitted that are currently being evaluated by the Regional Directorates for Foundations. Under the Law on Foundations, a non-Muslim community foundation acquired two immovable properties through donation. Representatives of the Turkish authorities met members of non-Muslim community foundations and visited Mor Gabriel monastery to discuss property-related matters.

However, neither the Law on Foundations nor other legal provisions address the issues of (a) properties seized and sold to third parties or (b) properties of foundations merged before the new legislation was adopted.

Syriacs continue to face difficulties in relation to property. A number of court cases are in progress concerning both private individuals and religious institutions. In particular, the Mor Gabriel Syriac Orthodox monastery has faced problems with land ownership. A number of court cases continued throughout the reporting period related to: new administrative borders between the monastery and neighbouring villages following cadastre work; Treasury claims that land used by the monastery belongs to the State; and claims by the Forestry Department that public forest areas are enclosed within the monastery's external walls. The local judicial authorities brought a criminal case against the monastery for 'occupying' this forest area. The monastery claims that the land belongs to it and that it has in its possession administrative and tax documents substantiating its claims. All cases are on-going.

In March 2009 the ECtHR ruled that Turkey had violated the property rights of a Greek Orthodox church on the island of Bozcaada (Tenedos). It held unanimously that the refusal by the Turkish courts to register the immovable property of the applicant foundation in the land registry in its name was in violation of Article 1 of Protocol No 1 to the ECHR. In the same vein, the ECtHR found Turkey in violation of Article 1 of Protocol No 1 (property rights) in two Armenian Foundation cases. Turkey has executed the latter judgement of the ECtHR.

Problems encountered by Greek nationals in inheriting and registering property continue to be reported, in particular as regards, inter alia, the application by the Turkish authorities of the amended Land Registry Law. With respect to that issue, the ECtHR held that there had been a violation of Article 1 of Protocol 1 (peaceful enjoyment of possessions) to the ECHR and ordered either the return of the property or the financial compensation of the applicants.

*Overall*, the Law on Foundations has been implemented smoothly over the reporting period. However, it does not address the issues of properties seized and sold to third parties or of properties of foundations merged before the new legislation was adopted. Turkey needs to ensure full respect of the property rights of all non-Muslim religious communities.

#### *Minority rights, cultural rights and protection of minorities*

A debate on minority-related issues has developed in the country. Several reports by academics and NGOs have been published, in particular on education and discrimination in education. Work is under way to remove discriminatory language from textbooks.

However, Turkey's approach to minority rights remains restrictive. While Turkey is a party to the UN International Covenant on Civil and Political Rights, its reservations regarding the rights of minorities and its reservation concerning the UN Covenant on Economic, Social and

Cultural Rights regarding the right to education are causes for concern. Turkey has not signed the Council of Europe Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages.

There is a need for a dialogue between Turkey and the OSCE High Commissioner on National Minorities including on the participation of minorities in public life and broadcasting in minority languages. This would facilitate Turkey's further alignment with international standards and best practice in EU Member States.

The Greek minority continues to encounter problems with education and property rights, including on the islands of Gökçeada (Imvros) and Bozcaada (Tenedos). Management of minority schools, including the dual presidency<sup>35</sup>, remains an issue, pending an implementing regulation.

The distribution in schools of the documentary '*Sarı Gelin –Blonde Bride: the Truth behind the Armenian Issue*' was suspended by the Ministry of National Education following complaints by the Armenian community about what it considered discriminatory education offered to school children. However, the documentary was not withdrawn from schools and the decision whether to disseminate and show it was left to individual education authorities.

Following the Israeli military intervention in Gaza in December 2008 there have been instances of hate speech against the Jewish community. After the latter expressed its concerns and complained about the inadequacy of the current legal provisions regarding hate speech, both the President and the Prime Minister publicly condemned anti-Semitism.

*Overall*, full respect for and protection of language, culture and fundamental rights, in accordance with European standards have yet to be fully achieved. Turkey made limited efforts to enhance tolerance or promote inclusiveness vis-à-vis minorities.

As regards **cultural rights**, in January 2009 TRT – the public service broadcaster – started operating channel TRT-6, broadcasting in Kurdish 24 hours a day. In September the Higher Education Board's (YÖK) endorsed the application from a Turkish University (Artuklu University in Mardin) to establish a "Living Languages Institute" which would provide post graduate education in Kurdish and other languages spoken in the country. The public radio network started to broadcast in Armenian in March 2009.

At the inauguration ceremony of TRT-6, the Prime Minister spoke a few words in Kurdish. During the local election campaign, politicians and political parties used Kurdish in political activities. Although the use of any language other than Turkish in political life is illegal under the Law on Elections and Political Parties, in most such cases no legal action was launched. Most court cases brought against Kurdish politicians for using the Kurdish language, for example for sending invitations or holiday greetings or for municipal activities, ended in acquittals, although the prosecutors have lodged appeals in most of the cases. Governorships in several cities in the Southeast have started offering public services in Kurdish.

However, criminal convictions against DTP members for using the Kurdish language in political life are pending. In July 2009, the Deputy Chief Prosecutor of the Court of Cassation, who is in charge of political parties, applied for the removal of the parliamentary immunity of

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<sup>35</sup> (The deputy head of these schools is a Muslim representing the Ministry of Education and has more powers than the head)

several DTP members. The charges include using the Kurdish language in Parliament. Following his dismissal in 2007 for providing municipal services in Kurdish, the same mayor was elected in Sur (Central Diyarbakir). However, a criminal case is pending against him based on the same charges.

Restrictions laid down in the Law on the Radio and Television Supreme Council (RTÜK) apply to private local and regional TV and radio programmes. Educational programmes teaching the Kurdish language are not allowed. Political debates or general entertainment programmes in Kurdish are virtually impossible on private television channels. Several court cases and investigations against GÜN TV – the only private TV channel currently broadcasting in Kurdish – are in progress, in connection with the wording of Kurdish songs, the coverage of the municipal election campaign and other programmes.

Children whose mother tongue is not Turkish cannot learn their mother tongue in the Turkish State school system. As regards university education, the ECtHR ruled against Turkey regarding the application lodged by 18 university students, who were suspended from Afyon Kocatepe University for demanding elective courses in Kurdish. The court ruled that the students' right to education had been violated.

No measures have been taken to facilitate access to public services for non-speakers of Turkish. While interpretation is possible under the current legislation, it is not consistently applied in practice. Using the Kurdish language in prisons may be problematic, with the situation varying between prison administrations (*see also sections on prisons*).

As regards **Roma**, no steps have been taken to amend the Law on the Movement and Residence of Aliens, which authorises the Ministry of the Interior to expel stateless and non-Turkish gypsies and aliens that are not bound to the Turkish culture, thus promoting discrimination against Roma. Turkey has yet to establish a strategy to address the problems facing the Roma population and provide it with adequate legal protection. Turkey is not participating in the 2005-2015 international initiative "The Decade of Roma Inclusion", despite calls on the government to do so by the Roma community.

Roma face social exclusion and marginalisation in access to education, discrimination in health services, exclusion from job opportunities, difficulties in gaining access to personal documentation and exclusion from participation in public affairs and public life. As regards housing, the Roma population continued to face demolition of Roma districts under urban renewal programmes in various towns. The findings of the inquiry by the Prime Ministry's Human Rights Commission into the demolitions of the Roma neighbourhood in Istanbul's Sulukule district, which started in spring 2008, have yet to be published. At the end of his visit to Turkey, the Council of Europe Commissioner for Human Rights acknowledged the efforts made by the Turkish authorities to upgrade the living standards in the historic area of Sulukule. However, he expressed concern at the process of relocation of the Roma, as some evictions had occurred without making alternative accommodation available for the families concerned, contrary to Council of Europe human rights standards.

*Overall*, Turkey has made some progress on cultural rights, especially in the form of starting the Kurdish-language TV channel TRT 6. However, restrictions remain, particularly on use of languages other than Turkish in private TV and radio broadcasting, political life, education and contacts with public services. The legal framework on the use of languages other than Turkish is open to restrictive interpretations and implementation is inconsistent. There has

been no progress in the situation of the Roma, who frequently face discriminatory treatment. Demolitions of Roma districts without provision of alternative housing continue.

### **Situation in the East and South-East**

During the reporting period Turkey faced continuous terrorist violence resulting in loss of life, despite a relative reduction of violence from the end of 2008. In December 2008 the European Union reaffirmed its support to Turkey in the fight against terrorism, which must be conducted with due regard for human rights, fundamental freedoms and international law.

The visit of the President to Iraq and the Turkish *rapprochement* with the Kurdish Regional Government (KRG) contributed to creating a positive atmosphere around a possible solution to the Kurdish issue. A vibrant domestic debate developed on this subject, involving public and political authorities, including the opposition and civil society. In summer, the government launched a broad consultation with the view to solve the Kurdish issue through peaceful means and announced a comprehensive plan to this end, but did not reveal yet any detail on the substance.

The government's plan, announced in May 2008, to complete the South-East Anatolia project (GAP) and hence contribute to the socio-economic development of the region continued with the allocation of additional resources. According to official sources, the GAP's share in total public investments increased to 12% in 2008 (7.2 in 2007). Investments on irrigation, road transport, health and education were given priority. The GAP Administration's headquarters moved from Ankara to the South-eastern town of Şanlıurfa. A monitoring, evaluation and reporting mechanism specific to the GAP was announced but not yet established.

Contrary to previous years, the *Newroz* celebrations in March 2009 passed by peacefully overall. Governorates in the region gave permission for celebrations. There were no major confrontations between the police and demonstrators.

In June parliament adopted a Law on the De-mining of the Turkish-Syrian Border whereby anti-personnel and anti-tank mines will be cleared in the next five years under the supervision of the Ministry of Defence, and if necessary following public procurement procedures. Under certain conditions, the law also introduces the possibility for private companies to carry out de-mining in return for the right to farm the land for up to 44 years after de-mining is completed. The opposition party CHP argued that this measure is contrary to Turkey's national interests and referred the act to the Constitutional Court. In July, the Constitutional Court accepted the case and decided to suspend part of the law provisionally. This should however not affect de-mining operations.

However, the use made of the anti-terror legislation, which provides a wide definition of terrorism, has resulted in undue restrictions on the exercise of fundamental freedoms, such as freedom of expression and freedom of association, in the region. In several instances, the law has been used to punish non-violent opinions, in particular on the Kurdish issue. Since April 2009 the police arrested several hundreds DTP members and executives for alleged membership of the terrorist structure KCK. A similar anti-terror operation was carried out against members of trade unions KESK and Eğitim Sen for alleged membership of PKK ; 22 of them remain in pre-trial detention. In February, a criminal court in Diyarbakir sentenced a DTP Member of Parliament to 18 months in prison for several speeches. Other DTP Members of Parliament are charged with violating the Anti-terror Law and received a summons to appear before court.

Landmines remain a security concern for both military personnel and civilians. There were casualties among civilians and security forces caused by explosions of anti-personnel landmines. Under the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (the ‘Ottawa Convention’), Turkey has undertaken to destroy all anti-personnel mines in mined areas as soon as possible, but not later than 1 March 2014.

No steps have been taken to abolish the system of village guards. There have been reports of human rights violations by village guards during their fight against terrorism. There were reports that new village guards were recruited during the local election campaign.

*Overall*, despite continuing terrorist violence, the government has opened a wide-ranging public debate -covering cultural, political and economic matters- on the Kurdish issue. It is crucial that this debate be followed by concrete measures. The Law on the de-mining of the Syrian Border is another positive step. However, the broad interpretation of anti-terror legislation has resulted in undue restrictions on the exercise of fundamental rights. The village guard system still needs to be phased out.

#### *Refugees and internally displaced persons (IDPs)*

The process of compensation of losses due to terrorism and the fight against terrorism continued to make progress. So far, about 50% of the total number of received applications (361 000) have been processed and completed. Of these, about two third have been accepted. Due to lack of resources and the heavy workload of the Damage Assessment Commissions, progress on assessment and payment of compensation has been slow.

The situation of IDPs in urban areas remains a cause for concern. IDPs suffer from economic and social marginalisation and have little or no access to social, educational and health services. The return of IDPs is prevented by a number of factors, mainly the poor security situation and existing land mines, lack of basic infrastructure and of capital, limited job opportunities and the threat posed by the village guard system.

The government’s efforts to establish a national strategy to address the situation of IDPs, based on a pilot action plan for the Van district, have yet to be finalised. In this context, the insufficient institutional capacity of the department responsible for IDPs in the Ministry of the Interior remains a challenge. There is a need to involve civil society further in the development of IDP policies.

Asylum-seekers face a range of limitations on their access to procedural rights in detention. Key priorities in the field of asylum remain fair, equal and consistent access to asylum procedures for everyone (including in airport transit areas), access to legal aid and to UNHCR staff, reduction of the waiting time for asylum procedures and access to judicial review of decisions. Lack of access to asylum procedures has led to instances of illegal deportation or refusal of entry.

*Overall*, compensation of internally displaced persons (IDPs) has continued. However, the government lacks an overall national strategy to address the IDP issue and needs to step up efforts to address IDPs' needs.

### **2.3. Regional issues and international obligations**

#### *Cyprus*

Turkey continued to express public support for fully fledged negotiations between the leaders of the Greek-Cypriot and Turkish-Cypriot communities under the good offices of the UN Secretary-General aimed at a fair, comprehensive and viable settlement of the Cyprus problem within the UN framework, in accordance with the relevant UN Security Council resolutions and in line with the principles on which the Union is founded. However, as underlined by the Council conclusions of 8 December 2008, and in line with the negotiating framework, Turkey is expected to support actively the ongoing negotiations and to take practical steps to contribute to creating a climate favourable to a fair, comprehensive and viable settlement of the Cyprus problem within the UN framework, in accordance with the relevant UN SC resolutions and in line with the principles on which the Union is founded.

The EU will continue to follow up and review progress made on issues covered by the Declaration of 21 September 2005, in accordance with the Council Conclusions of 11 December 2006.

Since the Council's decision of December 2006, Turkey has made no progress towards fully implementing the Additional Protocol to the Association Agreement and has kept its ports closed to vessels from the Republic of Cyprus despite several calls by the EU<sup>36</sup>. As pointed out by the December 2008 Council conclusions it is now urgent that Turkey fulfils its obligation to ensure full, non-discriminatory implementation of the Additional Protocol.

Turkey has made no progress on normalising bilateral relations with the Republic of Cyprus. It continues to veto Cyprus's membership of several international organisations and arrangements such as the Wassenaar Agreement on the Code of Conduct on Arms Exports and on Dual-Use Goods. Civilian vessels prospecting for oil on behalf of the Republic of Cyprus were hindered by the Turkish navy on several occasions during the reporting period.

#### *Peaceful settlement of border disputes*

Turkey and Greece have continued their efforts to improve their bilateral relations. The 41st round of exploratory talks was held in December 2008 in Istanbul. Progress, however, has been limited. Exploratory talks have been continuing since 2002.

The threat of *casus belli* in response to the possible extension of Greek territorial waters made in the resolution adopted by the Turkish Grand National Assembly in 1995 still remains. According to the Council conclusions of December 2008, 'Turkey needs to commit unequivocally to good neighbourly relations and to the peaceful settlement of disputes in accordance with the United Nations Charter, having recourse, if necessary, to the International Court of Justice. In this context, the Union urges the avoidance of any kind of threat, source of friction or action which could damage good neighbourly relations and the peaceful settlement of disputes.'

A considerable number of formal complaints were made by Greece about continued violations of its airspace by Turkey, including flights over Greek islands.

#### *Regional cooperation*

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<sup>36</sup> Declaration of 21 September 2005 by the EC, Council Conclusions of December 2006, 2007 and 2008.



Turkey remains actively involved in regional initiatives, including the South-East European Cooperation Process (SEECP) and the Regional Cooperation Council (RCC). Since June 2009 Turkey has been holding the one-year rotating SEECP Chairmanship.

**Bilateral relations with other enlargement countries and other neighbouring Member States** have been developing positively. Turkey continues to play a positive role in the *Western Balkans*. Relations with *Bulgaria* remained positive.

As regards the **International Criminal Court (ICC)**, see *Chapter 31 – Common Foreign and Security Policy*.

### **3. ECONOMIC CRITERIA**

In examining the economic developments in Turkey, the Commission's approach was guided by the conclusions of the European Council in Copenhagen in June 1993, which stated that membership of the Union requires the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union.

#### **3.1. The existence of a functioning market economy**

##### *Economic policy essentials*

The government submitted both the Pre-accession Economic Programme (PEP, 2009-2011) and the Medium-Term Plan (MTP, 2010-2012) after a delay of several months, thus maintaining the fiscal path uncertain. The government's MTP, which was announced in mid-September 2009, has taken into consideration both the current global crisis conditions and the improvements that are yet to come. The effectiveness of the various stimulus packages introduced in late 2008 and the first half of 2009 could benefit from a stronger fiscal anchor, a more credible framework and better communication and coordination. This will be even more important when growth resumes, and Turkey needs to present a credible and timely exit strategy from the current fiscal stimulus. *Overall*, under challenging circumstances consensus on economic policy essentials has been preserved; however, confidence in the government's economic policy stance could benefit from better planning, coordination and communication.

##### *Macroeconomic stability*

The negative effects of the global crisis on Turkey have gradually become evident. However, almost all economic indicators as of mid-2009 show that the economic contraction is bottoming out after it peaked in the first quarter of 2009. In 2008, the Turkish economy grew by 0.9% year-on-year, down from 4.7% in 2007. The contraction was particularly sharp in the last quarter of 2008 and in the first quarter of 2009, as GDP shrank by respectively 6.5% and 14.3% year-on-year. The pace of decline slowed sharply in the second quarter of 2009, to 7% year-on-year, and consequently the economy contracted by 10.6% in the year to the first half of 2009. The crisis affected adversely almost all sectors of the economy. The industry was particularly hit by a large fall in domestic and mainly in external demand, including for cars and electrical appliances. The downward trend in industrial production began to slow down as of March 2009. Consumer and business confidence, as well as capacity utilisation in industry started to show some positive signals since the end of the first quarter. On the demand side, private consumption and particularly private investment were affected severely by the crisis. In 2008, private consumption rose by a meagre 0.3% year-on-year, while private investment fell by 4% year-on-year. In the first half of 2009, the slowdown in investment accelerated

sharply, and private investment fell by as much as 32.5%. Public consumption was supported by the fiscal stimulus packages and rose from 1.9% in 2008 to 2.7% in the first half of 2009. Private consumption started to respond to the fiscal expansion as it recovered strongly in the second quarter of 2009 and declined by 1.2% year-on-year compared with a 10.2% fall in the first quarter. Exports fell by 10.6% in the first half of 2009 following a 2.3% rise in 2008. Imports fell further, from -3.8% in 2008 to -25.9% year-on-year in the first half of this year. Stocks showed a sharp depletion and fell by 5% in the year to the first half of 2009. *Overall*, following the outbreak of the global economic crisis the Turkish economy has contracted sharply, in particular in the first semester of 2009, as a result of a combined and severe drop in domestic and mainly in external demand.

The current account went through a major adjustment as a result of a sharp drop in energy prices and very weak imports, due to lower domestic demand. Once considered as the main risk to the economy, given the implicit high financing needs, the current account deficit has become less of a concern. In the year to July 2009 the current account deficit stood at about 1.5% of GDP, and shows an improvement of some €18 billion from the level of €23 billion in the year to July 2008. However, a continuation of the recent increase in oil prices in US dollar terms may put pressure on the current account in the coming months. In spite of the fall in global liquidity, Turkey continued to have sufficient access to international capital markets, and was able to comfortably service its external obligations. During the reporting period, portfolio inflows virtually dried up and FDI was almost halved although they remained sizeable at roughly 1% of GDP. Despite the decline in economic activity rollover ratios of private sector external debt remained satisfactory and outperformed all market expectations in the year to September 2009. Furthermore, net errors and omissions, which is the balancing item of the balance of payments that is traditionally used for unaccounted flows in foreign currency, reached a cumulative €10 billion and covered a large part of the external financing needs. These errors and omissions apparently mainly reflect capital repatriation by residents, which was facilitated by a law adopted by the Turkish government at the end of 2008. Turkey's external debt declined by about 5% in nominal terms from the last quarter of 2008 until the first quarter of 2009 and currently amounts to about 40% of GDP. Private external debt represents two thirds of the total debt and is also on a declining trend. International reserves fell by about 5% to €50 billion, and still cover about 5 months of imports. *Overall*, external imbalances were reduced significantly, and access to external finance remained open for both the public and private sectors.

Due to the economic slowdown, the unemployment rate rose sharply from about 9.5% in mid-2008 to 13% by mid-2009. Unemployment was much higher among the young (about 24% of the age group 15-24). Long-term unemployed accounted for more than half of job-seekers. The employment rate went down by about 1 percentage point to about 42.5% by June 2009. Female employment also started to rise in 2008, but remains particularly low at less than 24% of total working-age population in June 2009. The agricultural sector is characterised by many unpaid family workers. This leads to a statistically lower rate of unemployment, but suggests large pockets of underemployment in this sector and in the economy at large. The working age population is growing by about 600,000 people every year, which implies significant challenges to the labour market absorption capacity, in particular in the current crisis context. In spite of recent initiatives, job creation remains difficult partly due to labour market rigidities and the skills mismatch between labour demand and supply. *Overall*, labour market conditions became increasingly challenging and the unemployment rate increased sharply in tandem with the sharp contraction in economic activity.

Annual inflation fell to 5.3% in August 2009 from 11.8% a year earlier, broadly in line with the inflation targets, and partly due to lower energy prices and shrinking domestic demand. Excluding unprocessed food and energy, underlying core inflation fell to 2% by August 2009. In addition, the foreign exchange pass-through has so far been minimal even though the Turkish lira depreciated considerably – by about 15% vis-à-vis the euro – in the first quarter of 2009. The Central Bank of Turkey (CBT) maintained the formal inflation targeting regime, which was adopted in January 2006, and appears to better anchor inflationary expectations than in previous years, largely helped by the domestic environment. The CBT acted in a timely and appropriate way by easing the policy rate by a cumulative 950 base points to 7.25% (in the period November 2009-September 2009) - which brought interest rates to unprecedented low levels - and by adding liquidity in the financial system. Credit to the private sector remained almost flat at around 28% of GDP, and is therefore not seen as a significant threat to price stability. *Overall*, price stability improved significantly, despite the considerable depreciation of the Turkish lira, mainly because pressures stemming from energy inputs and previously buoyant economic activity eased drastically.

The fiscal stance was loosened significantly, and the budget deficit amounted to 2.2% of GDP in 2008 (ESA95, April 2009 fiscal notification), thereby missing the 2008 fiscal target by over 1 percentage point. In the first eight months of 2009, revenues in the central budget were almost flat year-on-year, and spending was up 21% year-on-year, as the government introduced various fiscal stimulus packages. Part of the stimulus measures was outright current spending (i.e. around the date of local elections) in the form of increased transfers to households and local administrations, while others such as the tax relief and the investment schemes were better targeted at combating the crisis effects. Essentially, the tax relief consisted of lower or zero taxes for vehicles, white goods, furniture and IT equipment for a period of three months ending in June (which was subsequently extended until the end of September 2009). The cash deficit reached about 3% of the projected GDP in the period from January to August 2009, compared to a small surplus in the same period of 2008. Public debt (ESA95 definition) which had dramatically decreased in previous years as a result of the drastic fiscal consolidation pursued since the 2001 crisis remained broadly stable at 39.5% of GDP in the year to December 2008, but went up by almost 10% in nominal terms in the first half of 2009. The budget of 2009, as announced in the September 2009 medium-term programme, foresees a widening of the cash deficit to 6.6% of GDP. Moreover, the government increased the Treasury's borrowing limit by almost five times. *Overall*, although the anti-crisis measures may have cushioned the economic downturn, they could put benefits from previous years of fiscal consolidation and overall medium-term fiscal sustainability at risk.

Some key elements to enhance the accountability, efficiency and transparency of the budgeting process are still lacking. In particular, the earlier announced unification of all tax administration functions under the Revenue Administration has not been implemented. This unification would strengthen audit capacity and would facilitate increased use of standard risk-based audit techniques thereby enhancing transparency and providing significant support towards reducing informality. In addition, an off-budget fund has been created to finance losses in the agriculture sector. *Overall*, measures to increase fiscal transparency were put on hold and even reversed.

Over the past several years, Turkey had successfully implemented a strong stabilisation programme and the resilience of the Turkish economy benefited from in-depth structural reforms in many key areas, including banking, enterprise restructuring and privatisation, education and energy. Although the ongoing financial crisis has severely hit the Turkish real

economy, the earlier regulatory and supervisory reforms are paying off and a full-fledged financial crisis has been avoided so far. However, the lack of more solid and credible fiscal anchors, in combination with the spending increases introduced since early 2009 to address the consequences of the crisis have increased uncertainty and may adversely affect the economic recovery. Fiscal consolidation has been reversed due to the ongoing crisis and the fiscal stimulus measures. *Overall*, although the current policy mix has proven broadly effective in the past months, macroeconomic stability remains vulnerable in the absence of stronger fiscal anchors.

#### *Interplay of market forces*

The private sector's share of GDP remained virtually constant at almost 89% in mid-2009. The Privatisation Administration completed the tender process for the privatisation of four regional electricity distribution networks, whereas one of them was suspended by the Council of State and another one failed due to the inability of contractors to secure financing. No progress can be reported in the privatisation of state-owned banks. The total volume of privatisation revenue reached €4.92 billion in 2008 (about 1.5% of GDP). In the first half of 2009, the privatisation revenue fell by about 42% and amounted to €1.6 billion. *Overall*, some progress has been made in improving the interplay of market forces. Privatisation has advanced, albeit at a slower pace due to the worsening external environment.

#### *Market entry and exit*

In 2008, the number of newly established firms decreased by 6%. During the same period, the number of firms which were closed down increased by 40%. Market entry in banking and capital markets remained restricted to mergers and acquisitions as new licenses have not been issued. Sectoral restrictions on foreign ownership continued to exist in various areas, including maritime transport, civil aviation, ground handling, road transport, radio and TV broadcasting, energy, accountancy and education. In the field of business environment, there was some improvement with regard to procedures to start up new business. A regulation was also published in order to accelerate customs procedures in some areas. However, licensing procedures, market exit, and the efficiency of bankruptcy proceedings are still cumbersome. Licensing procedures are relatively lengthy. For example 25 different procedures are needed in order to build a warehouse including getting licences and permits, completing necessary notifications and inspections and obtaining utility connections. Market exit is difficult as closing a business takes 3.3 years on average. The efficiency of bankruptcy proceedings is low: claimants recover only 20.2% of their claims from insolvent firms. *Overall*, market entry has benefited from the adoption of new legislation, while there are still obstacles in market exit. Restrictions on foreign ownership persist in some sectors.

#### *Legal system*

A reasonably well functioning legal system, including in the area of property rights, has been in place for several years. However, real estate acquisition by foreigners is still subject to some restrictions. No major progress has been made over the last year. However, a draft Judicial Reform Strategy Action Plan has been disclosed by the government in mid-2009 and sets clear priorities about the scope and targets of the ongoing reform. Registering a property requires six procedures and takes six days in Turkey. Enforcing commercial contracts remains a lengthy process, which needs 35 procedures and takes 420 days on average. The specialisation of commercial court judges appears insufficient, leading to lengthy court proceedings. The expert witness system continues to function as a parallel judiciary system,

without improving overall quality. Use of out-of-court dispute-settlement mechanisms remains low. *Overall* the legal environment, and in particular court procedures, pose practical challenges and create obstacles to a better business environment.

#### *Financial sector development*

The banking sector has shown remarkable resilience to the global financial crisis, largely due to major improvements in the regulatory and supervisory framework made in previous years. The financial sector's risk ratios remained robust. The sector benefited from the central bank's liquidity measures and some easing of regulations governing loan classification and provisioning requirements. The capital adequacy ratio stood at a solid 18% by mid-2009, substantially higher than the EU legal requirement of 12%. Non-performing loans increased marginally to about 4.9% by mid-2009 from 3.0% a year earlier, and stress tests by the regulator show that the sector is sound and adapts well to the new challenges, in part through a wide-scale purchasing of debt instruments offered by the Treasury. The banking sector, by far the largest part of the financial sector, increased its share from 70% to 77%. The relative size of the insurance sector decreased slightly to 2.6%, about the same size as that of the mutual funds. Domestic private banks had a 34.5% share in total assets, whereas the share of foreign banks reached 37.4% taking into account foreigners' investments in the stock exchange, which corresponds to 17.5% of banking sector assets. Financial intermediation improved in 2008, in particular in the banking sector, but weakened substantially in the first half of 2009. Since the Istanbul Stock Exchange fell considerably during 2008, total stock market capitalisation decreased from €195.3 billion (39.6% of GDP) to € 84.6 billion (19.1% of GDP). Concentration in the banking sector remained broadly stable, as the share of top-five and top-ten banks in the banking sector were 60% and 83%, respectively. *Overall*, under difficult crisis circumstances, the financial sector has shown remarkable resilience thanks to earlier reforms.

### **3.2. The capacity to cope with competitive pressure and market forces within the Union**

#### *Existence of a functioning market economy*

Macroeconomic stability has been tested and has been broadly preserved during the reporting period, in spite of the harsh economic recession. Financial markets stress and the absence of fiscal anchors added some uncertainty to the business environment but at the same time underlined the economy's improved shock resilience. The investment climate has been adversely affected by the global economic and financial crisis, in particular in the absence of a consistent and coherent medium-term policy framework. *Overall*, the unfolding of the crisis did not jeopardise the functioning of market mechanisms and Turkey continues to be a functioning market economy.

#### *Human and physical capital*

The quality of education remains an important problem in Turkey, although the results are improving. The net enrolment rate in compulsory education (8 years) increased by almost 10% to over 97%. The net enrolment rate in secondary education also increased, from 56% to 58%. The net enrolment rate in universities increased from 19% to 20% but remains low by international standards. Little progress has been made in correcting the mismatch between

supply and demand of skills on the labour markets, which largely stem from inadequate education and training.

Total investment slightly increased as a share of GDP from 21.5% in 2007 to 22.1% in 2008, but has declined significantly in the reporting period as private investment collapsed due to the crisis. On the other hand, as a result of the fiscal stimulus package, public investment has increased by around 25% in annual terms in the first quarter of 2009. FDI inflows held out relatively well in the first four months of 2009 helped by privatisation of the electricity grid and declined by about 40% compared to a year earlier. At the same time, their composition improved as more than two thirds went into utilities and manufacturing. The domestic savings rate increased from 15.6% of GDP in 2007 to 16.4% in 2008, in particular because of the positive impact of the change in stocks (1.8% of GDP). For many years infrastructure investment has been hampered by the need to consolidate public finances and the failure to cut lower-priority spending. Inadequate infrastructure is increasingly affecting economic activity. However, in 2007 and 2008 some, albeit modest, progress can be reported for infrastructure, in particular in the area of roads and oil pipelines. Most importantly, the Nabucco intergovernmental agreement was signed in July. Nabucco is a natural gas pipeline project which will bring natural gas from the Caspian region and the Middle East to Turkey and Europe, and is of strategic importance for the energy security of both Turkey and the EU. A high-speed rail line between Ankara and Eskisehir became operational during the reporting period. Implementation of the National Development Plan (2007-2013), and in particular of the South-eastern Anatolia Project, suffered from falling investor interest due to the current exceptional crisis circumstances. *Overall*, some progress was made in upgrading the country's human and physical capital, although the economic crisis represents a new challenge to this process. The signature of the Nabucco natural gas intergovernmental agreement represents an important economic and strategic development.

#### *Sectoral and enterprise structure*

The independence of regulatory and surveillance agencies has been largely preserved. Market liberalisation has not been advanced in agriculture, whereas some progress has been made in energy. The sectoral shift from agriculture to the services and industry sectors appears to have been temporarily reversed due to the slowdown in economic activity. The share of agriculture in overall employment increased from 24.0% to 24.6% between December 2007 and December 2008. The share of services also increased from 49.5% to 50.2%. On the other hand, both the industry (from 21.0% to 19.7%) and construction (from 5.5% to 5.4%) sectors experienced a decline in their relative shares of total employment.

The quality and publication frequency of data on small and medium-sized enterprises (SME) remained poor. Various new initiatives have been launched to improve the access of SME to finance. However, the share of SME in total banking sector loans decreased from 27.7% in December 2007 to 22.8% in February 2009. Informality remains widespread throughout all corporate sectors, particularly amongst SME. Turkey adopted a comprehensive action plan to combat the informal economy. The authorities approved new legislation in May 2009, which allows the SME support organisation KOSGEB to provide assistance not only to manufacturing SME but also to enterprises that are active in trade and services, while a new guarantee fund for SME was part of the stimulus packages and aimed at alleviating the impact of the current crisis on SME finances. *Overall*, in spite of various new initiatives by the Turkish government, the economic crisis is complicating the access of SME to finance and slowing down the sectoral transformation of the Turkish economy.

### *State influence on competitiveness*

There has been no tangible progress in the field of state aid. As transparency in the decision making process remains low, it is difficult to assess the rationale and consistency of the individual decisions taken. In addition, the size of state aid and its importance in some key sectors increased substantially following the introduction of the various fiscal stimulus packages. Transparency in the corporate sector has improved and accounting standards have been upgraded, although the adoption of the Commercial Code has again been postponed. The absence of transparent monitoring of state aid and of supporting policies to reduce distortion continued to have an adverse effect on competition and competitiveness in the economy. Public procurement policies continued to be undermined by exceptions to the regulatory framework. *Overall*, state intervention continued to lack transparency, which may have negatively affected competition and competitiveness.

### *Economic integration with the EU*

The openness of the Turkish economy, as measured by the total value of exports of goods and services as a percentage of GDP, amounted to about 48% of GDP in 2008, almost unchanged from 2007. Exports to the EU rose by only 5% in 2008, whereas exports to other countries, mainly Turkey's neighbours in the east and the south, rose by 49%. Only 48% of Turkey's exports went to the EU, compared to 56% a year earlier. Imports from the European Union rose by only 9% in 2008 whereas imports from other countries rose by 25%. EU share in Turkey's trade varies slightly from year to year, depending on numerous factors, including commodity price trends and exchange rate movements. Nevertheless, the decline in the EU share in 2008 is probably related to the relatively more drastic impact of the global crisis on demand in EU markets. As a result, Turkey became less dependent on European Union markets and diversified parts of its trade towards other neighbouring countries. FDI inflows to Turkey originating from EU member states remained very significant, and proportionally grew from 75% of the total in 2008 to 88% in the first five months of 2009, thus illustrating the strong economic interdependence between the EU and Turkey. *Overall*, trade and economic integration with the EU remained high. Turkey showed remarkable flexibility and diversified its trade towards new markets, thereby partly alleviating the impact of the crisis.

Based on the scant information on real wage developments, it appears that unit labour costs have increased broadly at a similar pace as labour productivity. Indicators of export price competitiveness have improved significantly as the Turkish lira weakened considerably vis-à-vis the euro and the US dollar. In the year to September 2009, the exchange rate of the lira depreciated by 15% against a basket of 50% US dollar and 50% euro in nominal terms. In real effective terms, corrected for both, producer and consumer price developments, the lira weakened by 13%. *Overall*, Turkey made significant gains to price and cost competitiveness vis-à-vis its main trading partners.

## **4. ABILITY TO ASSUME THE OBLIGATIONS OF MEMBERSHIP**

This section examines Turkey's ability to assume the obligations of membership – that is, the *acquis* as expressed in the Treaties, the secondary legislation, and the policies of the Union. It also analyses Turkey's administrative capacity to implement the *acquis*. The analysis is structured in accordance with the list of 33 *acquis* chapters. In each sector, Commission's assessment covers progress achieved during the reporting period, and summarises the country's overall level of preparations.

#### 4.1. Chapter 1: Free movement of goods

Limited progress can be reported towards alignment on **general principles**. The legislation on standardisation in foreign trade, adopted in 2009, further reduced the list of items subject to conformity assessment upon import. However, the new legislation introduced without any prior notification restrictions on goods from third countries in free circulation in the EU and created barriers to trade. Such goods are subject to conformity assessment procedures based on documentation, and if necessary on physical checks at the customs, thus delaying and sometimes inhibiting access to the Turkish market.

Technical barriers to trade persist, both in the old approach area, such as on pharmaceuticals, chemicals, foodstuffs and textiles, and in the non-harmonised area, since Turkey has yet to introduce the mutual recognition principle into its legal order. Licences remain necessary for goods considered old, renovated or faulty and for second-hand motor vehicles. Licences are sometimes refused without justification. This creates a de-facto ban of imports of these goods which violates the EU-Turkey Customs Union.

In the case of **horizontal measures**, some progress can be reported. On *standardisation*, adoption of European standards by the Turkish Standards Institute (TSE) has continued. So far the TSE has adopted a total of 15,406 standards of the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (CENELEC). It has also adopted 350 standards of the European Telecommunication Standards Institute (ETSI). The overall rate of harmonisation with European standards rose to 98.79% from 97.4% last year. The TSE is running 86 operational committees. However, the revised law reflecting the new structure of the TSE meeting the requirements for full membership of CEN/CENELEC has not yet been adopted.

As regards *conformity assessment*, further progress was made on notified bodies. Turkey now has twelve notified bodies, compared with six in 2008, covering lifts, appliances burning gaseous fuels, construction products (cement), pressure vessels, recreational craft, toys, personal protective equipment and machinery.

Some progress can be reported on *accreditation*. TURKAK (the Turkish Accreditation Agency) is a member of European Accreditation Cooperation (EA) and a signatory of seven EA multilateral agreements. It is also a member of the International Accreditation Forum (IAF) and has a mutual recognition agreement with International Laboratory Accreditation Cooperation (ILAC). The number of TURKAK accreditations rose to 397, a significant increase of 61% since last year. TURKAK is the authority for monitoring good laboratory practice. The revised law aiming at further harmonising TURKAK's structure with the European accreditation system has not yet been adopted.

Some progress can be reported in the area of legal *metrology*. For instruments outside the scope of the measuring instruments regulation, legislation on the type-approval of measures and measuring instruments was issued. The body for implementing the instruments regulation is not yet in place.

Limited progress can be reported on *market surveillance*. A common method for accurate and consistent data gathering is not yet in place. Considering the size of the country, higher operational budgets and more extensive surveillance activities are required, taking into account risk analysis. The visibility of surveillance actions remains low. Continuous training is needed, including on the legal aspects of surveillance actions and on the testing of a number of product categories. Coordination between the central and local offices of individual



surveillance agencies often remains problematic. Coordination between agencies is also insufficient, notably as regards databases.

Overall, alignment of horizontal measures is advanced. However, further efforts are needed to ensure effective market surveillance and additional alignment on standardisation and accreditation.

Further progress was made with regard to the **old approach *acquis***. Further alignment was achieved in the areas of motor vehicles and emissions from motor vehicles, licensing and pricing of pharmaceuticals, pre-packaging and labelling of pharmaceuticals for human use, packaging waste, dangerous substances and the inventory of chemicals and cosmetics. However, Turkey has not addressed the problem of regulatory data protection and the authorisation system for generic medicines for which marketing authorisation was applied before 1 January 2005. Despite maintaining a moratorium on so-called pending generics applications<sup>37</sup>, Turkey's rules, including the amended regulation on the licensing of medicinal products for human use, adopted in April 2009, have not provided legal certainty with regard to regulatory data exclusivity. Turkey is violating Customs Union obligations in this area. The control certificate and obligatory sampling requirements imposed by the Ministry of Agriculture on imported alcoholic beverages remain in force. Alignment with the old approach *acquis* is advanced, but further efforts are needed to complete it.

Limited progress has been made on the **new approach product legislation**, as alignment in this area was already advanced. The Ministry of Industry and Trade adopted measures transposing the revised Machinery Directive, which will enter into force in December 2009, and amended its electromagnetic compatibility regulation. The ministry issued a regulation on maintenance and operation of lifts. The Information and Communication Technologies Authority (ex-Telecommunications Authority) issued an amending regulation on radio and telecommunication terminal equipment and a communiqué regarding publication of technical characteristics for interfaces. Harmonised standards on the same subject were also published. The Ministry of Health updated technical specifications on toys containing magnets and the Ministry of Public Works and Settlement updated technical specifications on construction products.

Regarding **procedural measures**, no progress can be reported.

The Under-Secretariat of Foreign Trade has been applying Regulation 339/93/EC in practice, by means of communiqués, even though it has not yet been transposed into Turkey's national legislation.

There has been no progress in the **non-harmonised area**. The mutual recognition principle has yet to be introduced into the Turkish trade regulations. The Ministry of Public Works and Settlement issued a regulation in June 2009 on criteria for affixing the G mark applying to construction products in the non-harmonised area, already introduced in the legislation adopted in December 2006. As of 1 July 2010, all construction products that are in the non-harmonised area such as pipes, door coverings, sockets etc. will have to enter Turkey with the G mark affixed next to any probable national markings. Products coming from the EU are subject to the same requirement. Products originating from third countries, including those put into free circulation in the EU and re-exported to Turkey, would need to go through

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<sup>37</sup> Generic applications submitted until 1 January 2005 and referring to original reference products registered in the Customs Union during the period from 1 January 2001 to 1 January 2005.

conformity assessment checks in Turkey. The Turkish G mark introduces a new technical barrier to trade which is contrary to the Customs Union provisions.

'Free movement of goods' is one of the eight chapters covered by the conclusions on Turkey adopted by the Council (General Affairs and External Relations) on 11 December 2006 and endorsed by the European Council on 14/15 December 2006. As long as restrictions remain in place on the free movement of goods carried by vessels and aircraft registered in Cyprus or whose last port of call was in Cyprus, Turkey will not be in a position fully to implement the *acquis* relating to this chapter.

### *Conclusion*

Limited progress can be reported in this chapter. Legislative alignment is quite advanced, but further efforts are required in a number of areas. Moreover, trade has been increasingly hampered by technical barriers related to conformity assessment and standardisation. Significant shortcomings exist in market surveillance, including in inter-agency cooperation. Turkey needs fully to implement Decision 1/95 in the area of free movement of goods, in particular by abolishing the remaining import licences and the restrictions on imports of used motor vehicles, by introducing the mutual recognition principle into its national legislation and by harmonising the data protection provisions for pharmaceutical products.

## **4.2. Chapter 2: Freedom of movement for workers**

With regard to **access to the labour market**, the legislation on work permits for foreigners has been pending in parliament since 2007, after former President Sezer vetoed the law.

Turkey is not yet ready to participate in the **EURES** (European employment services) network due to the weak IT infrastructure and electronic job-matching services of the Turkish Employment Agency (İŞKUR).

Some progress has been made with **coordination of social security systems**. The social security institution continued to improve its knowledge on and capacity for coordination of social security systems, with the aid of EU-funded projects.

There are no developments as regards the **European health insurance card**.

### *Conclusion*

Little progress has been made in the area of freedom of movement for workers. Alignment is at an early stage.

## **4.3. Chapter 3: Right of establishment and freedom to provide services**

Limited progress can be reported on the right of establishment and freedom to provide services.

No developments can be reported in connection with the **right of establishment**. The detailed alignment strategy required by the Accession Partnership has not yet been prepared. Firms already established in a Member State are still subject to registration, licence or authorisation requirements. Other requirements incompatible with the *acquis* are still in place, such as gender, nationality, residence and disproportionate language requirements along with the 'one-office' rule for pharmacists.

There have been no new developments as regards **freedom to provide cross-border services**. Registration, licence or authorisation requirements incompatible with the *acquis* still exist. Service-providers already established in a Member State are subject to such requirements before they can obtain work and residence permits. No steps have been taken to align with the Services Directive. A new regulation has introduced a nationality requirement for environmental engineers combined with compulsory membership of the Union of Chambers of Engineers and Architects, which is not in line with the *acquis*.

Obstacles to exercising the right of establishment and freedom to provide services have not been identified and no structure for identifying such obstacles has been set up. Alignment in the areas of establishment and services is at an early stage.

No progress can be reported on **postal services**. A draft Postal Law, prepared in 2006 and amended recently, has not yet been adopted. The existing legal monopoly (reserved service, irrespective of weight limits) has not been phased out and no independent regulatory authority has been set up.

In the absence of appropriate accounting methods for reserved and non-reserved services and of separation of accounts, the accounting system lacks transparency.

No progress can be reported on **mutual recognition of professional qualifications** and its differentiation from the recognition of academic qualifications. The current administrative structures allow the recognition of academic qualifications only. Reciprocal recognition still applies to a number of regulated professions. Nationality and language requirements persist. A new regulation subjects the provision of consultancy services by geophysical engineers to a nationality requirement. Similarly, another regulation prevents chemical engineers from providing services to public authorities and courts unless they are Turkish citizens. A contact point for implementation of Directive 2005/36/EC on the recognition of professional qualifications has yet to be designated.

No progress can be reported with implementation of the directives on lawyers, toxic products and commercial agents.

‘The right of establishment and freedom to provide services’ is one of the eight chapters covered by the conclusions on Turkey adopted by the Council (General Affairs and External Relations) on 11 December 2006 and endorsed by the European Council on 14/15 December 2006. As long as restrictions remain in place on the free movement of goods carried by vessels and aircraft registered in Cyprus or whose last port of call was in Cyprus, Turkey will not be in a position fully to implement the *acquis* relating to this chapter.

### *Conclusion*

Overall, in the areas of services and establishment, alignment is at an early stage. No progress has been recorded in the field of postal services, nor on mutual recognition of professional qualifications.

## **4.4. Chapter 4: Free movement of capital**

Some progress can be reported in **capital movements and payments**. The Council of Ministers amended the communiqué on protection of the Turkish lira and abolished the requirements for the Central Bank to identify convertible currencies and to regulate transactions in such currencies. This amendment has made it possible for financial institutions

to perform foreign exchange transactions and to open deposit accounts in all currencies, which was not the case before for some Member States' currencies. Further relaxation followed in July 2008, this time as regards the rules on credit related to commercial transactions. In January 2009 measures were taken to ease the domestic asset-holding requirements applicable to the technical reserves of insurance companies. Turkey amended its legislation on foreign currency loans. As a result, companies are now allowed to take out foreign exchange loans with local banks without any restriction on maturity or amount. However, Turkey abolished the right of natural persons to conclude foreign-exchange-indexed loans.

The Turkish legislation in the field of real estate acquisition by foreigners remains inconsistent with Article 56 of the Treaty establishing the European Community. Turkey adopted a new implementing regulation which introduced discriminatory measures and additional restrictions on acquisition of real estate by companies established in Turkey with foreign capital. There was no progress on real estate acquisition by foreign physical and legal persons (established in other countries). Following the opening of this chapter in the negotiations, Turkey has yet to present an action plan for gradual liberalisation of acquisition of real estate by foreigners in line with the *acquis* or to demonstrate that it has made significant progress towards gradual liberalisation, two key components for the accession negotiations on this chapter.

There has been no progress towards removing restrictions affecting foreign direct investment originating from the EU, as provided for in the Accession Partnership. Sectoral investment restrictions are still in place, such as on radio and TV broadcasting, energy, transport and education. Little progress can be reported on the Accession Partnership priority requiring Turkey further to align its **payment systems** legislation with the *acquis*. The Central Bank adopted an implementing regulation which requires banks to use IBAN (international bank account numbers) for both national payments in Turkish lira and cross-border transfers in euros to accounts in the European Economic Area.

Progress in the **fight against money-laundering** remains uneven. During the reporting period Turkey moved ahead with aligning its legislation with the *acquis* and with the recommendations made by the Financial Action Task Force (FATF). The Turkish authorities prepared an action plan to tighten up enforcement of the Law on the Prevention of Laundering Proceeds of Crime and adopted a number of regulations to implement this law. Turkey introduced a requirement to establish compliance programmes for banks, capital market brokerages, postal services, insurers and pension companies. Further implementing regulations have been introduced covering types of suspicious transactions and customer identification. The Financial Crimes Investigation Board (MASAK) issued supplementary guidelines. In February 2009 Turkey submitted to the FATF its first follow-up report after adoption of the FATF's third-round mutual evaluation report (MER) in 2007. This report describes the measures taken by Turkey to address the deficiencies identified in the MER. Turkey signed memoranda of understanding on exchange of information with five more countries (Albania, the former Yugoslav Republic of Macedonia, Georgia, Romania and Syria).

The November 2008 Law on the Recovery of Certain Assets to the National Economy applied until 30 September 2009. This law caught the attention of the FATF, because of concerns that it might undermine existing measures to counter money-laundering and financing of terrorism. Turkey needs to introduce further measures to prevent money-laundering and financing of terrorism as a result of transactions under this law.

Turkey made some, albeit uneven, progress with regard to its administrative capacity to implement and enforce properly the relevant legislation in all areas related to anti-money-laundering. The number of suspicious transactions reported to MASAK has increased considerably, from 2,946 in 2007 to 4,924 in 2008. Most of the reports stem from the banking sector, which remains the main source of money-laundering, although the non-banking sector is also important. As for the financing of terrorism, 228 suspicious transactions were reported in 2008, compared with 144 in 2007. Prosecutions were sought in 42 cases (43 in 2007), of which 34 were brought before courts (22 in 2007). MASAK issued guidelines for banks, capital market brokerages, insurers and pension companies on compliance with their obligations. MASAK also published guidelines for non-profit organisations on prevention of terrorist financing.

MASAK continues to organise training for examiners, judges, prosecutors and obliged parties. Further efforts are needed to improve the anti-money-laundering skills of the judiciary and law enforcement bodies and the mechanisms to combat financing of terrorism. Turkey has signed, but not yet ratified, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198).

### *Conclusion*

Overall, there has been some progress on free movement of capital. Turkey submitted to the Commission action plans on capital movements and payments and on anti-money-laundering which led to opening of this chapter of the negotiations. Turkey made progress on liberalisation of its insurance legislation. However, alignment with the *acquis* on capital movements and payments remains limited. There are still obstacles to acquisition of real estate by foreigners and a new implementing regulation has placed additional discriminatory restrictions on foreign capital companies. Sectoral restrictions are still affecting foreign direct investment from the EU. Progress was uneven on measures to counter money-laundering and financing of terrorism, where Turkey's administrative and enforcement capacity is not up to the required level yet.

## **4.5. Chapter 5: Public procurement**

There has been no progress on the **general principles** of public procurement. The 15% price advantage for domestic bidders remains in the legislation and was strengthened by a Prime Ministry circular issued in December 2008 which encouraged procuring entities to grant this advantage to tenderers offering Turkish goods and services. In 2008 the advantage clause was used in 10% of all tenders and 15% of tenders open to foreign bidders. Following the circular, this increased to 13.7% of all tenders in the first quarter of 2009 worth €1 billion, a substantial increase in financial terms.

A number of additional derogations from the Public Procurement Law (PPL) concerning goods and services for public institutions have been adopted and all purchases for research and development projects are exempted from the law. The Public Procurement Authority published a report indicating that procurement under such exclusions increased by 31.8% in 2008. The value of procurements covered by exclusions more than doubled in the first quarter of 2009 and state undertakings' monopolies for supplying certain goods and services were confirmed.

Limited progress has been made on the **award of public contracts**. Information on public tenders is widely available, including on the internet, ensuring a high response. A legislative

amendment in 2008 introduced the concepts of electronic auction, dynamic purchasing system and prior notice and extended the scope of framework agreements, as recommended by the EU directives. The amendment was followed by implementing regulations in March 2009. However, Turkey's public procurement legislation is still not in line with the *acquis* in various respects. Utilities continue to be subject to the classical public procurement procedures without covering the private sector enjoying special or exclusive rights. There is no coherent legal framework for the award of concessions and public-private partnerships, although comprehensive draft laws were presented and discussed more than two years ago on these areas. The 2009 thresholds and financial limits for procurement remain above EC levels. An alignment strategy on public procurement has not yet been submitted.

Good progress can be reported regarding **administrative capacity**. The Public Procurement Authority and the State Planning Organisation have adequate administrative capacity. Some institutional changes are currently underway. The Public Procurement Authority (PPA) has been reorganised to separate its advisory and review functions, to increase its independence and to reduce the risk of conflicts of interest. The Ministry of Finance has been appointed to steer public procurement policy and ensure its coherence, despite being short-staffed. A legal provision now confirms this responsibility for formulation procurement policies and ensuring coordination among state institutions in drafting related laws, thus meeting a key requirement of the accession negotiations.

As regards other stakeholders (contracting entities and economic operators), market functionality and competitiveness are satisfactory in most sectors.

Limited progress can be reported on alignment with the **Remedies** Directives. The amendment in 2008 marked the start of a standstill to facilitate operation of the complaints mechanism. However, contrary to EC case law, the amendment ruled out the possibility of appealing against tenders annulled by the procuring entity.

### *Conclusion*

Some progress can be reported in this chapter, in particular with regards to the attribution of administrative responsibilities and alignment with the Remedies Directives. Some contracting authorities indicate good procurement practices. However, implementation needs to be enhanced. The comprehensive strategy for the reforms necessary to ensure legislative alignment and institutional capacity-building is still outstanding. Minor improvements have been made to the legislation. The increasing number of derogations from the general provisions and of domestic preferences are moving Turkey away from the *acquis*, thus reducing competition and efficiency in public tenders.

## **4.6. Chapter 6: Company law**

Little progress can be reported on **company law**. The Turkish Commercial Code (TCC) and the Law on the Entry into Force and Implementation of the TCC have been pending in parliament for almost three years. Without adoption of the TCC, electronic disclosure of and access to company information is not possible, nor is electronic company registration operational. Adoption of other draft laws, including amendments to the Capital Markets Law concerning domestic mergers and divisions of public limited liability companies, the exercise of certain rights of shareholders in publicly held companies and takeover bids, is contingent on the entry into force of the TCC.

Little progress can be reported in the area of **corporate accounting**. The Turkish Accounting Standards Board (TASB) published several interpretations and revisions of a number of international accounting standards (IAS). The standards adopted apply to listed companies. The Capital Markets Board of Turkey imposes an obligation on listed companies to publish their yearly and quarterly financial statements in compliance with the IAS and the international financial reporting standards in the format applicable in the EU. The obligation applies only to listed companies. The majority of companies in Turkey are, however, non-listed.

The Banking Regulation and Supervision Agency adopted an updated circular on the consolidated financial tables for banking in order to align them with the EU *acquis*. In accordance with the circular, the financial tables of all subsidiaries, whether financial or not, will be presented in the parent bank's consolidated financial table.

The TASB has recruited five junior accounting standards experts. Nevertheless, its administrative capacity remains weak.

No progress can be reported on **auditing**. The regulatory framework is still being prepared. A public oversight body for statutory auditors and audit firms has yet to be established.

#### *Conclusion*

Overall, no substantial progress can be noted in the reporting period. The new TCC has not yet been adopted.

#### **4.7. Chapter 7: Intellectual property law**

Little progress has been made in the area of **copyright and neighbouring rights**. The Directorate-General for Copyrights (DGCC) in the Ministry of Culture and Tourism (MoCT) conducted an inspection of the collecting societies. Following the signing of a cooperation protocol between four collecting societies in the music sector, licensing agreements have been signed with hotels and broadcasters. Coordination and cooperation between the IPR-related bodies has further improved. Piracy of books and other media, such as CDs and DVDs, as well as copyright and related rights infringements of non-tangible goods remains widespread. Turkey's enforcement capacity is still lagging behind.

Some progress can be reported concerning the legislative framework for **industrial property rights**. The Turkish Patent Institute (TPI) published several amendments to the regulations implementing the legislation on patents, geographical indications and industrial designs to follow up studies led by the Prime Ministry on administrative simplification and reduction of bureaucracy.

Several members of the TPI staff have received specialised training on language and legal issues. No constructive dialogue could be established between the TPI and IPR holders and their representatives. Issues linked to bad faith and similar trademarks and industrial design remain unresolved.

The Ministry of Health published an amending regulation on the licensing of pharmaceuticals for human use in April 2009. The regulation does not contribute to providing legal certainty on the issue of regulatory data exclusivity, because it codifies the requirements for combination products in a way which is not in line with the *acquis* on fixed combinations. The new regulation increases the number of documents that need to be submitted with the

application for market authorisation and makes market authorisation more cumbersome. In general, the regulation increases the margin of discretion of the Ministry of Health when it comes to issuing the market authorisation and regulatory data exclusivity.

As regards **enforcement**, the high-level Intellectual and Industrial Property Coordination Board, co-chaired by the Ministry of Industry and Trade and the Ministry of Culture, met twice, in November 2008 and February 2009. Its purpose is to foster cooperation between relevant institutions in order to improve the level of IPR protection. However, the IPR-holders were not appropriately represented at the meetings. The Turkish police force, the body in charge of IPR enforcement, conducted successful operations to fight piracy during the reporting period. However, piracy and counterfeiting remain major challenges. The fact that enforcement bodies do not have the authority to conduct *ex-officio* investigations in the area of industrial property rights - currently proceedings are initiated solely upon complaint - is a serious weakness. Border controls are weak, in particular with regard to *ex-officio* seizures. The Turkish government needs to step up its efforts to address this issue in cooperation with the IPR society.

In July 2008 the Turkish Constitutional Court annulled the criminal provisions of the trademarks decree, pointing out that trademarks infringements could not be punished under the existing legislation. The reason behind this court decision was that only parliamentary laws – not decrees – can regulate crimes and punishments. To fill the legal vacuum, the parliament adopted in January 2009 a new law proposed by the government.

However, due to the time which it took to adopt the new law and the ensuing gap in the legislation, around 3,357 accused were acquitted in 2,861 counterfeiting cases before the specialised IPR criminal courts in Ankara, Istanbul and Izmir alone. Such legal vacuum constitutes a breach of article 61 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) which requires WTO members to adopt criminal enforcement provisions at least for cases of trademark violations.

The above-mentioned gap in criminal sanctions for IPR crimes also affected criminal enforcement of other industrial property rights, like patents, industrial designs and geographical indications, which has been seriously weakened in Turkey. Sanctions for infringements of the above IPR were applicable only until 31 December 2008. As a consequence, since 1 January 2009, the courts have been granting acquittals. The new draft laws regulating criminal sanctions for infringements of patents, industrial designs and geographical indications were submitted to the parliament in April 2009 and are still pending there.

So far Turkey has shown no willingness to move towards establishing a dialogue on IPR proposed by the Commission in April 2008. Establishment of an IPR dialogue with the Commission and successful engagement of Turkey in it is one of the benchmarks for closing this chapter of the accession negotiations.

### *Conclusion*

Overall, alignment with the *acquis* is relatively advanced. Coordination and cooperation between the IPR-related public bodies and their specialisation have improved. However, enforcement remains insufficient. Adoption of the aligned and updated laws regulating intellectual and industrial property rights, including criminal sanctions, is crucial. Serious deficiencies persist in industrial property rights, in particular with implementation and



enforcement. Turkey needs to address these in close cooperation with the IPR-holders. Engaging in an IPR dialogue, as suggested by the Commission, is crucial.

#### **4.8. Chapter 8: Competition Policy**

Turkey made further progress in the field of **anti-trust**. In the case of State aid little progress can be reported.

In February 2009 the Competition Authority adopted legislation on fines for cartels and on immunity from and reduction of fines in cartel cases where undertakings cooperate with the Competition Authority. A special unit was established within the authority to implement the leniency regulation and respond to requests for information from those wishing to benefit from it. Transposition of the *acquis* on horizontal cooperation agreements and the *de minimis* rules is still pending.

The Competition Authority's satisfactory level of administrative and operational independence, backed by its strong emphasis on staff training, contributes to its high administrative capacity. The authority has a clear track record on implementation of the competition rules.

Regarding the enforcement record of the Competition Authority, in 2008 fines were imposed in 3 cases involving anti-competitive agreements or abuse of a dominant position. The total amount of fines imposed by the authority increased by 57% in 2008 compared with the previous year. The authority concluded 57 negative clearance and individual exemption cases (i.e. notified cases that were accepted) while 65 cases were opened. In the first half of 2009 the authority has been active mainly in the sectors of chemicals and medicine, as well as in iron and steel and imposed fines in 2 cases. Establishment of a special chamber in the Council of State accelerated reviews of competition decisions. The number of appeals introduced decreased by 13.5%.

No progress can be reported on alignment of the rules concerning public undertakings and undertakings holding exclusive and special rights.

No **State aid** legislation was adopted nor was an operationally independent authority established to monitor State aid. Progress was made as regards State aid to the steel industry when Turkey submitted a revised "National Restructuring Plan" for the steel sector in June 2009.

#### *Conclusion*

Overall, Turkey shows a high level of alignment in the field of anti-trust, including its merger control rules. Turkey continued to enforce the competition rules effectively. The Competition Authority has a satisfactory level of administrative and operational independence. No further legal alignment in the area of State aid can be reported and the long-awaited state aid law is still pending. There is still a need to implement the EU discipline on State aid in the steel sector, as part of Turkey's commitment under the ECSC Free Trade Agreement. Alignment in this chapter is not complete.

#### **4.9. Chapter 9: Financial Services**

Little progress can be reported in the areas of **banks and financial conglomerates**. The Banking Regulatory and Supervisory Authority (BRSA) took some measures to counter the negative impact of the global financial crisis and asked banks to retain profits in order to

strengthen their capital base. The BRSA also introduced temporary provisions to make it easier for banks to restructure real-sector loans. Parliament adopted legislation requiring the Central Bank to delete the credit history of loan customers if they repay their debt to the banking sector after a default. Turkey introduced a target capital adequacy ratio (12%), liquidity regulations and changes in the accounting principles for securities. Operational risk was added to the calculation of capital requirements and draft credit risk-management standards were prepared. However, implementation of the Basel II Accord has not moved forward.

The BRSA signed three new memoranda of understanding, one with the Luxembourg financial supervisory authority, one with the Central Bank of the United Arab Emirates and another with the Lebanese Banking Supervision Committee, bringing the total number signed to 19. The supervisory and enforcement capacity of the BRSA has been reinforced by means of a newly-developed information system-based tool and by improving the existing systems. With a view to coordination, the BRSA clarified the rules for consolidated supervision of financial institutions which are supervised by separate regulatory authorities. The organisational structure of the BRSA and the duties of individual departments have been reviewed and four new departments have been established.

Turkey's legislation is partially aligned with the *acquis* on banks and financial conglomerates.

Some progress has been made in the fields of **insurance and occupational pensions**. A new Cabinet decree allowed ships and yachts registered in Turkey to take out insurance cover not only from Turkish but also from foreign insurance companies established abroad. The Treasury published an implementing regulation which clarified the minimum requirements for members of the insurance arbitration committee. Another implementing regulation laid down standards for provision of compulsory and optional insurance cover linked to retail loans. The Treasury adopted a new implementing regulation and started actuarial supervision of special pension schemes operated by foundations and associations. As for tariff liberalisation in the compulsory third party motor liability insurance, the Treasury increased the upper limit on approved tariffs from + 20% to +100%. Furthermore, the insurance arbitration committee has become operational and 37 insurance companies participated in the new arbitration mechanism for the non-court settlement of disputes between consumers and services providers.

However, prudential and supervisory standards in both banking and the non-bank financial sector were not strengthened. There has been no progress towards establishing an independent regulatory and supervisory authority in the insurance and occupational pension sector, falling short of another priority of the Accession Partnership. Turkey largely fulfils the requirements on **financial market infrastructure**, but alignment remains partial in the case of insurance.

There has been some progress on securities markets and investment services. The Capital Markets Board (CMB) published a communiqué on listing requirements for debt instruments, which consolidated seven existing communiqués and introduced exchangeable bonds as a new type of instrument. The CMB revised its communiqué on the disclosure of material events with a view to harmonising the legislative framework with the *acquis*. The communiqué enabled companies to postpone disclosure of material events. It also harmonised the rules for notification of acquisitions or disposals of major holdings in listed companies in accordance with the Transparency Directive. The CMB adopted a communiqué to regulate new instruments (warrants and shares without voting rights) that could be issued in the future. It also published a communiqué allowing establishment of listed companies for infrastructure investment, which are expected to help to finance public infrastructure investment projects.

Further communiqués have been issued relating to the internal auditing systems of brokerages, to documentation and recording in intermediary activities and in intermediation in the trading of derivative instruments, to investment trusts, mutual funds, infrastructure real-estate investment trusts and venture-capital investment trusts, to utilisation of collateral deposited by brokerages and to the terms and conditions governing book-entry recording of dematerialised capital market instruments.

No progress has been made as regards **securities markets and investment services** (the Markets in Financial Instruments Directive (MIFID), investor compensation schemes, prospectuses, market abuse and undertakings for collective investments in transferable securities (UCITS)).

Turkey's legislation is partially aligned with the *acquis* in the areas of securities markets and investment services.

### *Conclusion*

Overall, some progress has been made in the area of financial services. Turkey's legislation is partially aligned with the *acquis* in all three sub-areas of financial services.

'Financial Services' is one of the eight chapters covered by the conclusions on Turkey adopted by the Council (General Affairs and External Relations) on 11 December 2006 and endorsed by the European Council on 14/15 December 2006. As long as restrictions remain in place on the free movement of goods carried by vessels and aircraft registered in Cyprus or whose last port of call was in Cyprus, Turkey will not be in a position fully to implement the *acquis* relating to this chapter.

## **4.10. Chapter 10: Information society and media**

Progress can be reported in the field of **electronic communications and information technologies**. The penetration rate of mobile subscribers is 89%, as of August 2009. Further private investments were made in the fixed and mobile network infrastructure<sup>38</sup>. The number of broadband subscribers reached 6.2 million by the second quarter of 2009 but the share of alternative operators in the broadband and fixed telephony market remains low.

The Electronic Communications Law n° 5809 was adopted in November 2008. This is a significant step towards aligning Turkey's regulatory framework with the EU *acquis*, notably as regards the authorisation rules and the tasks of the regulator. Following the enactment of the Law, the Telecommunications Authority adopted By-Laws, which provide for further alignment with the electronic communications *acquis*. The amendments to the law have the potential to create the conditions for competition on the fixed telephony market.

Progress can be reported as regards competitive safeguards in the mobile market. Interconnection charges on the mobile market were lowered by 30% during the reporting period. Furthermore, a total of 6.2 million numbers were ported by August 2009, after the introduction of number portability in November 2008. Number portability for the fixed telephony market was introduced in September 2009. Three mobile operators were granted 3G service licences and started to provide services as of July 2009.

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<sup>38</sup> €628 million were invested in the fixed network infrastructure. € 1.190 million were invested in the mobile network infrastructure.

Tax on internet services was reduced from 15% to 5%.

However, the Electronic Communications Law is not in line with the *acquis*, in particular the provisions on universal service obligations, and as regards the scope of authorisation rules, which does not apply to existing concession agreements. Furthermore, the Significant Market Player regime (SMP) and market analysis procedures lack a firm legal basis in the Electronic Communications Law. A detailed review of primary and secondary legislation against the requirements of the *acquis* would enable to identify remaining shortcomings in the legislation on electronic communications

A number of issues remain to be tackled to unlock competition on the fixed telephony and internet broadband markets. Licensing conditions for local telephony are now operational but problems remain as regards numbering plans and interconnection rates. It is critical to improve interconnection conditions in voice and broadband markets and to stimulate competition in these strategic markets. Clarification of the distribution of tasks between the Telecommunications Authority and the Competition Authority is needed. The principles of cost-accounting and accounting separation are not fully applied by dominant operators on the mobile market. High taxation on communication services unrelated to administrative costs for regulating the sector remains a problem.

As regards **information society services**, Turkey's legal framework is well aligned with the *acquis* on network security obligations and cybercrime. However, Turkey is not a party to the European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access. Turkey's legislation on e-commerce and the Electronic Signature Directive is not in line with the *acquis*. Some websites are frequently blocked by court order, highlighting the need for stronger guarantees of respect of freedom of expression with regard to access to the internet (*see the section on freedom of expression*).

As regards **audiovisual policy**, the public broadcaster (Turkish Radio Television, TRT) launched a 24-hour Kurdish TV channel (TRT 6) and radio station. TRT also started broadcasting for half an hour twice a day in Armenian (*see the section on cultural rights under Section I of this report*). The effectiveness of the Radio and Television Supreme Council (RTÜK) was strengthened. All decisions taken by RTÜK are published on its website and a forum for consultation with broadcasters has been established. A roadmap on digital switchover was adopted, in line with the objective set by the European Commission for the Member States. RTÜK allowed prospective internet protocol television operators to launch test transmissions.

However, there has been no development in alignment with the *acquis*. The Law on the Establishment of Radio and Television Enterprises and their Broadcasts is still posing problems in terms of definitions, jurisdiction, freedom of reception and retransmission, non-discrimination on the grounds of nationality, promotion of European and independent works, major events and restrictions on the share of foreign capital and television enterprises. As regards administration of the broadcasting sector, RTÜK has not reallocated frequencies, which is damaging the broadcasting industry. Moreover, more than a dozen TV channels were shut down for allegedly operating without licences, although their application had been pending for several years. Time and content limitations continue for private channels broadcasting in languages other than Turkish as does the translation requirement (*see the sections on political criteria and cultural rights*). According to the broadcasters the restrictions make broadcasting in Kurdish technically difficult and commercially non-viable. As a result in 2009, only one TV and two radio stations broadcasted in Kurdish although in total six private broadcasters have licences.

## *Conclusion*

Overall, in the area of electronic communications, progress can be reported towards aligning Turkey's national legislation with the EU framework. However, the adoption and implementation of secondary legislation are key to ensure an effective impact of the primary law on the market. The competitive situation, notably in the fixed telephony and internet/broadband markets, has not improved and this highlights the need for effective implementation of regulatory obligations. This is primarily the tasks for an independent regulatory authority. There has been little progress in the area of audiovisual policy.

### **4.11. Chapter 11: Agriculture**

Limited progress can be reported on legislative alignment with the common agricultural policy (CAP). No progress can be reported towards the announced restructuring of the Ministry of Agriculture and Rural Affairs, although an outline for its future organisational structure exists.

There has been limited progress with **horizontal issues**. Good progress can be reported only on implementation of the Farm Accountancy Data Network (FADN). The legal framework for the FADN has been consolidated by corresponding implementing legislation which, together with successful testing of a pilot FADN system in nine provinces, creates the right conditions for setting up a comprehensive FADN system. Progress in the area of agricultural statistics, in particular in the preparation of the strategy paper, remains low. No recent progress can be reported towards preparing a strategy to develop a land identification system and farmers' register in line with the EU requirements.

The growing importance of agricultural support instruments linked to production remained a cause for concern. The government's decision to scrap the direct income support system marked a major shift in Turkish agricultural policy away from the reformed CAP. Deficiency payments linked to specific sectors became since 2009 the main instrument of financial support to Turkish agriculture. A significant change in policy took place in the hazelnuts sector, with the elimination of intervention purchases by Turkish Grain Board (TMO). Support to producers is replaced by coupled payments, marking a move away from price support measures. Turkey persists with banning imports of beef, live bovine animals and derivate products originating in the EU. This is in breach of the bilateral obligations under the trade agreement for agricultural products. Removal of this and other technical barriers to trade remains a key component for the accession negotiations on this chapter.

Concerning the common market organisation progress has been limited to the adoption of implementing legislations on the purchase and sales of cereals and on the purchase of rice/paddy rice. By this measure the TMO will have approximated to a certain extent the national legislation to Commission regulations on the matter.

As regards **rural development**, Turkey has made further progress with IPARD (Instrument for Pre-Accession Assistance Rural Development) programming, as well as setting-up of a functioning monitoring and evaluation system for IPARD and related legislation has been adopted. The IPARD Agency has been established. The implementing legislation specifying the tasks of the service units and human resources policies of the IPARD Agency has been adopted. However, too limited efforts regarding recruitment and training of personnel have been observed so far. Further efforts are still needed to set up all the structures, necessary for implementing IPARD funds on the basis of decentralised management without ex-ante control, since the national accreditation of these structures has been delayed for more than one

year. As a consequence, this prevents the Commission from starting the procedures for conferral of management which can only be launched subsequent to national accreditation. No progress has been recorded on the preparation of a National Rural Development Plan, which should complement the EU's IPARD support to Turkey.

No progress has been observed on **quality policy** and only limited progress took place on **organic farming**. As regards quality policy, Turkey has been working on revision of the Law on Geographical Indications. Current legislation in this area has some key differences with the relevant *acquis* and there is scope for further alignment. As regards organic farming, Turkey has submitted additional information to the Commission supporting its requests to be included in the equivalency list of the third countries for imports of organic products to the EU.

‘Agriculture and rural development’ is one of the eight chapters covered by the conclusions on Turkey adopted by the Council (General Affairs and External Relations) on 11 December 2006 and endorsed by the European Council on 14/15 December 2006. As long as restrictions remain in place on the free movement of goods carried by vessels and aircraft registered in Cyprus or whose last port of call was in Cyprus, Turkey will not be in a position fully to implement the *acquis* relating to this chapter.

### *Conclusion*

Overall, alignment with the *acquis* remains limited. Current agricultural support policies and strategic policy-making are increasingly dissociated from the CAP, while the slipping timetable for accreditation of the IPARD structures reveals difficulties in setting-up functioning administrative and organisational structures and procedures for the management of rural development funds in line with EU standards. Technical barriers to trade in bovine products, in breach of bilateral commitments, remain an urgent issue. Progress in the preparation of strategies in the fields of agricultural statistics and land/farmer's registers remains slow. Overall, progress has been limited in this area.

## **4.12. Chapter 12: Food safety, veterinary and phytosanitary policy**

Turkey's progress on transposition and implementation of the food safety *acquis* remained limited. The Framework Law on food, veterinary, feed, hygiene and official controls, which is a key element for the accession negotiations on this chapter, has not yet been adopted.

As regards **veterinary policy**, limited progress was observed on transposition and implementation of the *acquis*. However, legislative alignment on import control systems has yet to be completed. The border inspection post (BIP) at Sabiha Gokcen airport in Istanbul is not fully operational. Problems with directing consignments from Ataturk airport have not been solved. Construction of three land BIPs and two at seaports has been completed, but they are still not in operation.

Turkey continued its efforts to bring the system for identification of bovines and registration of their movements fully into line with the *acquis*. The system has been strengthened in terms of the registry of holdings, animal markets and slaughterhouses and of control of movements. Implementing legislation on identification and registration of ovine and caprine animals has been published and will apply with effect from January 2010. However, implementation in the field has not yet started. An adequate identification and registration system for bovine, ovine and caprine animals is a key element in the accession negotiations on this chapter. No progress can be reported on control of commercial movements of pets.

Turkey continued its efforts to combat animal diseases. The main focus was on foot-and-mouth disease (FMD). As a result of intensive vaccination and stricter control of animal movements between Thrace and Anatolia, there have been no FMD outbreaks in Thrace and the number in Anatolia has considerably decreased. There were no outbreaks of avian influenza in the reporting period. Nevertheless, Turkey continued its awareness campaigns. The Regulation to combat new castle disease and the Regulation on compartmentalisation for declaring disease-free status have entered into force. Turkey continued its efforts to secure brucellosis- and tuberculosis-free status in Thrace. Regulations to combat brucellosis and bovine tuberculosis have entered into force. However, no progress has been observed on the ground. Legislation on animal health controls has not yet been completed. No progress can be reported as regards transmissible spongiform encephalopathy (TSE). Turkey continued timely notification of animal diseases in line with its international obligations.

Turkey introduced improved procedures to implement and follow up the national residue monitoring plan and to control veterinary medicinal products. Certain substances which have to be controlled in order to meet the requirements of the *acquis* have been added to the national legislation. Nevertheless, some important aspects are still missing, in particular as regards laboratories and the inclusion of all substances.

No progress has been observed on financing veterinary inspections and controls. Import requirements for live animals and animal products are still not in line with EU practices. The *de facto* beef ban is still in place (*see Chapter 11*). Turkey has made no progress on animal welfare and zootechnical issues.

Limited progress can be reported as regards the **placing on the market of food and feed**. The hygiene package, which is a key element of the accession negotiations on this chapter, has not yet been transposed. Hygiene guidelines have been prepared and have started to be applied in various sectors. A communiqué on microbiological criteria entered into force. However, further adjustments are needed to complete transposition in this field. The tasks of different departments and institutions are still unclear and lead to problems with official controls. Intensive training programmes have brought improvements in the administrative capacity. The current inspection system has been evaluated with a view to accreditation of the services. However, no significant progress has been observed in the field. The Regulation establishing the National Food Reference Laboratory has entered into force. Annual inspection and monitoring programmes have been implemented and their scope has been extended. The classification of agri-food establishments, which is a key element of the accession negotiations on this chapter, has been completed by Turkey. Its alignment with the *acquis* remains to be confirmed. No substantial action has been taken to bring agri-food establishments into compliance with the EU hygiene requirements. No progress has been observed on animal by-products.

Further advances were made on alignment and implementation of the legislation on labelling, presentation and advertising, food additives and purity criteria, extraction solvents, quick-frozen foodstuffs, food for particular nutritional uses, irradiated food and mineral waters.

Transposition of the measures on flavourings, food supplements, novel food and genetically modified organisms (GMOs) has not been completed. Limited progress has been observed in the area of materials to come into contact with food.

Concerning general **food safety** policy, Turkey's national rapid alert system for food and feed has been improved to ensure effective follow-up of notifications. However, the number of notifications received, particularly on aflatoxin, remains significantly high.

No progress has been observed with regard to **specific rules for feed** and animal by-products.

Progress on **phytosanitary policy** has remained limited. Alignment has progressed for plant protection products. A Regulation concerning the sale of plant protection products on prescription, a Regulation on recording and monitoring chemicals to be used for plant production and a Regulation concerning the placing of plant protection products on the market have entered into force. A communiqué regulating registration, import, production and use of biological agents has entered into force. Preparatory work has started on establishment of a pilot-scale plant passport system.

Progress has been limited in the case of seed and propagating materials. Variety registration and seed certification software system has been established. No developments can be reported on implementation of international phytosanitary agreements.

### *Conclusion*

Overall, limited progress has been observed in the area of food safety, veterinary and phytosanitary policy. Efforts continued, but transposition and implementation of the *acquis* in this area is still at an early stage. Strengthening administrative structures remains pivotal for continuing alignment under this chapter.

### **4.13. Chapter 13: Fisheries**

No significant progress has been made with alignment with the fisheries *acquis*. The amended Law on Fisheries has still not been adopted. There has been no progress on reorganisation of the administrative structures necessary for consistent implementation of the common fisheries policy. Responsibility for fisheries is still spread between various ministries and different departments within the Ministry of Agriculture and Rural Affairs (MARA).

There has been some progress on **resource and fleet management**. Four new port offices were established, bringing the total up to 34. The Fisheries Information System (FIS) has been improved, but is not yet fully functional; further progress is needed with regard to the collection of catch and landing data. A fleet register number has been assigned to each vessel. All vessels have been registered with the FIS and all procedures related to vessels have been carried out via this system. Registration of logbooks in the FIS has started. Quota applications related to baby clam have been monitored by the FIS on a pilot scale. Alignment of the legislation regarding the tonnage measurement of vessels between 15m and 24m long and vessels smaller than 15m has been completed. However, a four-year transition period for vessels between 15m and 24m has been granted for implementation. No progress can be reported on stock assessment and data collection is still patchy and incomplete with regard to the major fish stocks in the Black Sea.

No progress has been made on **structural action, inspection and control, market policy and state aid**.

As regards **international agreements**, Turkey introduced an individual quota system for blue-fin tuna in order to distribute the total quota it had been given by the International Commission for the Conservation of Atlantic Tunas (ICCAT). Turkey has formally objected to the size of its quota, but it has nevertheless given a commitment to abide by it and other provisions of the multi-annual recovery plan for Eastern blue-fin tuna. Further measures to comply with ICCAT commitments are therefore needed.



'Fisheries' is one of the eight chapters covered by the conclusions on Turkey adopted by the Council (General Affairs and External Relations) on 11 December 2006 and endorsed by the European Council on 14/15 December 2006. As long as restrictions remain in place on the free movement of goods carried by vessels and aircraft registered in Cyprus or whose last port of call was in Cyprus, Turkey will not be in a position fully to implement the *acquis* relating to this chapter.

### *Conclusion*

Overall, some progress has been made on resource and fleet management and implementation of international agreements. However, no progress has been made on legislative alignment in this chapter. Turkey has not yet established the administrative structures necessary to implement the common fisheries policy.

#### **4.14. Chapter 14: Transport policy**

Some progress has been made on **road transport**. Turkey has issued a second decree aiming at a more effective facilitation of the fleet renewal scheme and phasing out old vehicles. Turkey is close to becoming a party to the European Agreement on the International Carriage of Dangerous Goods by Road (ADR). The Directorate-General for Land Transport (DGLT) has increased the capacity of the unit responsible for the implementing regulation. However, inspection capacity is still limited for the ADR. Turkey has completed the task of establishing inspection facilities for roadworthiness tests on motor vehicles. However, DGLT lacks the necessary monitoring and control capacity which calls for comprehensive technical training for the staff. Licensing and certification of professional competence have been completed for international road transport operators and are close to completion for domestic operators. Little progress was made towards meeting the EU technical requirements in the field of road transport, in particular for introduction of digital tachographs, which will be obligatory with effect from June 2010. Turkey has not yet designated the authority responsible for implementation of digital tachographs. Alignment in the road transport sector is generally advanced.

No progress can be reported towards effective alignment with the *acquis* on **rail transport**. Although drafting of the railways reform package has been finalised, there is no progress regarding its adoption. Preparedness in this sector remains at a very early stage.

Turkey has no **inland waterways transport** covered by the *acquis*.

Limited progress was made on **air transport**. A new Regulation on carriage of liquids on aircraft was adopted. Implementation is still in the pilot phase, which started at Antalya international airport. In the light of the experience gained, the system will be extended to all airports in Turkey. The capacity of the Directorate-General for Civil Aviation (DGCA) in the field of aircraft maintenance has been improved. Based on its accreditation by the European Aviation Safety Agency (EASA), the DGCA is issuing approvals for maintenance organisations in line with EU standards. Relations with the EASA have been put on a formal footing by a working arrangement signed on 7 July 2009. Turkey became a party to the Montreal Convention.

Further discussions on a horizontal aviation agreement took place in June 2009 and have to be pursued as a matter of priority in view of recognising Community designation, a fundamental requirement under Community law. In this respect, Turkey has yet to develop a clear strategy for the progressive alignment to the *acquis* on the Single European Sky, including aspects

related to civil-military coordination. The involvement of Turkey into the Pan-European dimension of SESAR is finally ensured.

Air traffic management is suffering from a lack of regional cooperation. The lack of communications between air traffic control centres in Turkey and the Republic of Cyprus continues seriously to compromise air safety in the Nicosia flight information region. A technical solution has been submitted by the Commission and Eurocontrol and an agreement needs to be reached between the parties involved without delay.

In the field of **maritime transport**, little progress can be reported. Despite years of consultation, the maritime safety framework law has not been adopted. Legislation on roll-on/roll-off passenger ships has been amended to meet the voyage data recorders (VDR) requirements of the International Maritime Organisation (IMO). The Regulation on seafarers has been further amended. The technical capacity for education and training of the seafarer's is lagging behind. A new Regulation on tonnage measurement has been implemented. Preparations for improving the institutional capacity to prevent pollution from ships, along with emergency response capacity, have not yet been launched.

There has been some progress on preparing regulations on SOLAS-78, SOLAS-88 and Marpol Annexes III and IV. Detention rates of Turkish vessels dropped further (to 5.7% in 2008). Turkey has moved to the white list of the Paris Memorandum of Understanding. No progress on maritime security can be reported. Alignment is advanced on maritime safety. The rules on market access and ship registration are not in line with the acquis. No particular development can be reported in the areas of **combined transport and satellite navigation**.

No progress has been made on state aid. There is no established institution or legal framework in Turkey to regulate State aid.

Transport policy<sup>7</sup> is one of the eight chapters covered by the conclusions on Turkey adopted by the Council (General Affairs and External Relations) on 11 December 2006 and endorsed by the European Council on 14/15 December 2006. As long as restrictions remain in place on the free movement of goods carried by vessels and aircraft registered in Cyprus or whose last port of call was in Cyprus, Turkey will not be in a position fully to implement the *acquis* relating to this chapter.

### *Conclusion*

Limited progress has been made on alignment in the transport sector. In the case of road transport, further alignment has been observed. However, the implementation capacity is still lagging behind and Turkey must give priority to implementation of the digital tachograph in particular. No progress can be reported in the rail sector. There has been limited progress on air transport. The lack of communications between air traffic control centres in Turkey and the Republic of Cyprus continues seriously to compromise air safety. Turkey remains outside the efforts to integrate European airspace. Progress in the maritime sector has been limited, the move of Turkey to the white list of the Paris MoU confirms Turkey's good performance as a flag state. The institutional capacity for prevention of pollution and emergency response should be improved. In both the air and maritime sectors, no progress has been made towards becoming a party to international conventions.

#### 4.15. Chapter 15: Energy

In the field of **security of supply**, some progress can be reported. An intergovernmental agreement on the Nabucco pipeline project was signed in July 2009. However, the agency which would facilitate oil stockholding arrangements has not been established.

Regarding the **internal energy market**, significant progress can be reported on electricity. Turkey has successfully engaged in a comprehensive reform of its electricity market and is gradually opening it to competition. Turkey took a major step towards creating a sound economic and financial basis for the electricity sector by introducing a cost-based pricing mechanism for the State-owned energy companies by mid-2008. Implementing regulations on ancillary services and a new balancing and settlement regulation were adopted for the electricity market. A new balancing and settlement regulation was adopted, but is not yet implemented. Following adoption of the cost-based pricing mechanism last year, quarterly adjustments were applied to electricity retail prices. The threshold for eligible consumers was further reduced to 480,000 kWh, equivalent to opening 50% of the market. During the reporting period, eleven generation plants with a total installed capacity of 140 MW were privatised. Privatisation of distribution assets through a block sale by using the sale method of 100% of shares continued and privatisation of two of the regional distribution facilities was completed. For two other regions the process is in its final stage. The electricity theft and loss rate is around 14%.

Limited progress can be reported on the natural gas sector. Positive developments took place, in the form of concession of gas distribution to private companies in several regions. However, most issues concerning the market structure, the unbundling of the transmission activities from supply activities and the rules for access to the network remain pending. The procedure for transfer of a 4 bcm import contract from BOTAS to the private sector has proved inefficient to create wholesale gas trade activities and has mainly benefited the leading gas exporter. The increasing discrepancy between the Natural Gas Market Law and developments on the market calls for substantial revision of the law. Natural gas infrastructure was further expanded and now covers 80% of the country. Sixty-four cities are connected to the gas grid. Investments in gas storage are being prepared and should help to balance demand and supply.

Negotiations started in September 2009 on Turkey's accession to the Energy Community Treaty. Both for the internal market in electricity and gas, renewable energy sources and energy efficiency, but also as regards energy related environmental issues, the accession of Turkey to Energy Community will be of particular relevance.

There have been no developments in the field of **state aid**. A number of draft laws with a view to establishing an authority for monitoring state aid were submitted to parliament but subsequently withdrawn.

Good progress can be reported on **renewable energy**. Implementing regulations were adopted on wind energy (clarifying technical evaluation of applications for licences for wind-based power) and on use of geothermal resources. In the reporting period, six geothermal fields suitable for electricity generation were privatised. By the end of 2008 Turkey was producing 17% of its electricity from renewable energy sources. The revised strategy paper for the electricity sector set a target of producing 25% of the country's electricity from renewable sources by the end of 2020 and installing 20,000 MW of wind power capacity by the same year. Considering that electricity consumption is expected to double by the same date, this objective will require significant efforts.

In the case of **energy efficiency**, some progress can be reported. Implementing regulations on the energy performance and insulation of buildings were adopted. Further implementing regulations were also adopted on efficient use of energy and energy resources and on the energy efficiency of small and medium-sized enterprises. Efforts to raise public awareness of energy efficiency as a means to enhance energy security and combat climate change need to be continued and framework legislation must still be brought into line with *acquis* requirements.

Limited progress can be reported on **nuclear energy, nuclear safety and radiation protection**. Turkey has not finalised the tender procedure for selection of the contractor to build its first nuclear power plant, which will have an installed capacity of 4,800 MW. The single offer is being assessed and will be submitted to the Council of Ministers for approval. Implementing regulations on special principles and design principles for the safety of nuclear power plants were adopted. Regarding research reactors, implementing regulations on special principles for safety, notification and reporting of extraordinary incidents, registration and reporting were adopted. Based on Turkish declarations, it is supposed that the *acquis* on control of high-activity sealed radioactive sources and orphan sources has been transposed. An implementing regulation on nuclear power plant sites was also adopted. However, the Turkish Atomic Energy Agency (TAEK) continues to perform both the regulatory functions and its operational tasks. Turkey is not participating in the Community programme on nuclear safety and radiation protection. Nor has it acceded to the Joint Convention on the Safety of Spent Fuel Management and Radioactive Waste Management.

### *Conclusion*

There has been some, but uneven, progress in the energy sector. Developments on renewable energy, energy efficiency and the electricity market have been encouraging. However, in the cases of natural gas, nuclear energy, nuclear safety and radiation protection Turkey needs to implement its legislation and strategies.

## **4.16. Chapter 16: Taxation**

There has been uneven progress on **indirect taxation**. Turkey's value-added tax legislation is partially aligned with the *acquis*. Further alignment of the structure, exemptions, special schemes and application of reduced rates is needed, with particular regard to the application of different VAT rates on wholesale and retail sales.

As regards excise duties, some progress can be reported, in the form of adoption of an action plan on 18 May 2009 setting clear milestones with a view to gradual full elimination of discriminatory taxation on alcoholic beverages and imported tobacco. However, the discrepancies between the Turkish legislation and the *acquis* on the structure of excise duty on tobacco and tobacco products remain unchanged. Turkey applies *ad valorem* rates and has no element of specific excise duties. The Tobacco Fund remains discriminatory. It sets a special duty on imported tobacco and cigarettes only, which is not applied to domestic products. As regards alcoholic beverages, significant progress can be reported. In connection with the action plan of 18 May 2009, the proportional taxation was fully eliminated by a government decree adopted on 6 April 2009 with effect from 14 April 2009 and new specific duty rates were set within clear milestones mutually accepted in view of full elimination of remaining discriminatory taxation. Turkey has not yet introduced any duty-suspension arrangement for domestic movements and fiscal warehouses.

There has been some progress on **direct taxation**. The tax burden on the minimum wage was reduced and the income tax brackets were increased. The Income Tax Law is being revised. Turkey will need to avoid introducing any measures contrary to the principles of the Code of Conduct for Business Taxation.

Further progress can be reported in the field of **administrative cooperation and mutual assistance**. The taxpayer call centre, taxpayer service centre and large taxpayer office established in the revenue administration are fully operational. Positive developments can be reported in the fight against the informal economy. An action plan for combating the unregistered economy was enacted, with action to be taken by 2010. It includes a VAT refund risk-analysis project and an e-customs system for cross-checks on people involved in VAT fraud. The revenue administration is responsible for monitoring and assessing the activities set out in this action plan.

Turkey has made further progress on **operational capacity and computerisation**. Computerisation of the provincial tax offices was completed and the tax administration is developing IT systems with a view to interconnectivity between the Turkish IT systems and those of the EU and its Member States.

### *Conclusion*

There has been progress towards legislative alignment in this chapter, in particular towards reducing the discriminatory taxation on alcoholic beverages. Turkey's tax system largely follows the structure of the EU *acquis* in the fields of VAT, excise duties and direct taxation. However, several discrepancies need to be addressed before achieving full alignment. Modernisation of the tax administration has continued, improving the service to taxpayers and increasing revenue. There have been positive developments in the fight against the informal economy.

## **4.17. Chapter 17: Economic and Monetary Union**

There has been some progress on **monetary policy**. The Under-Secretariat of the Treasury published an implementing regulation which allows insurance, reinsurance and private companies to present not only domestic but also foreign securities as collateral to fulfil their technical reserve requirements. This was a positive development in the direction of prohibition of privileged access for the public sector to financial markets. The Central Bank adopted several measures to ensure liquidity on the financial markets. Turkey's legislation is not yet sufficiently aligned with the *acquis* in this area. The statute of the Central Bank does not yet ensure its full independence. The government and the Central Bank continue to set the inflation target jointly. The national currency was renamed, reverting to Turkish lira, and new banknotes and coins were introduced with effect from 1 January 2009. This follows a transition period after introduction of the new Turkish lira in January 2005.

Some progress can be reported on **economic policy**. Turkey submitted the pre-accession economic programme for 2009-2011 to the Commission, albeit after a delay due to the ongoing negotiations with the IMF on a new stand-by arrangement. Macroeconomic stability was broadly preserved in spite of the global economic and financial crisis. The swift response of the authorities, which relaxed both the monetary and fiscal policies, helped mitigate some of the negative effects of the downturn. To address the global financial and economic crisis, the government adopted several fiscal and stimulus measures, mainly consisting of consumption tax cuts, tax incentives for large investments and investments in certain regions and sectors, zero-interest loans to SMEs, inducements for Turks to repatriate savings held

abroad and incentives to increase employment. The parliament adopted a law allowing the use of the Unemployment Insurance Fund for infrastructure investments, in particular in the South-East Anatolia region, while introducing some measures to encourage job creation. At the same time, the fiscal relaxation may put at risk benefits of fiscal consolidation from previous years, if they are not withdrawn in timely fashion. The absence of credible fiscal plans added some uncertainty to the investment climate. Structural reforms continued, in particular privatisation in the energy sector, albeit at a slower pace due to the challenging environment. Formulation and implementation of economic policy remained fragmented until the Cabinet reshuffle, which centralised a significant number of institutions and functions under a single Deputy Prime Minister.

### *Conclusion*

Some progress has been made on economic and monetary policy. The macroeconomic policy framework reflected the changing global economic conditions. Alignment with the *acquis* in the field of monetary policy remains incomplete. There are still shortcomings in the legal framework, for instance as regards the full independence of the Central Bank, prohibition of monetary financing of the public sector and prohibition of privileged access for the public sector to financial markets.

## **4.18. Chapter 18: Statistics**

Good progress has been made on **statistical infrastructure**. The official statistics programme for 2007-2011 was further updated. Progress can be reported on the coordination role of the Turkish Statistical Institute (Turkstat) and on improving its administrative capacity. The Turkish Statistical Law was revised. It now requires all statistical stakeholders to provide data to Turkstat, introducing a new provision of administrative fines for non-compliance with this obligation. Another provision introduced the passive confidentiality principle for the dissemination of foreign trade data. Furthermore Turkstat signed co-operation protocols with the Council of Higher Education and the Ministry of Health. Some progress has been made on **classifications and registers**. Activities started on business demography. The changeover to NACE Rev. 2 (Statistical Classification of Economic Activities in the European Communities) is under way. However, Turkey has not yet submitted a detailed description on progress made in setting up the statistical farm register, which is a key element for the accession negotiations in this chapter.

Good progress has been made on **sector statistics**. A working group on government accounts was established. It aims at compiling harmonised tables on general government accounts and fiscal notification. Turkey also made further progress on timely production of key national accounts indicators in accordance with the European System of Accounts (ESA95). However, Turkey has not yet submitted a detailed description of the methodology used for compiling national accounts, which is a key element for the accession negotiations in this chapter. As regards agricultural statistics, Turkey published the results of three new surveys on farm structure, crop production and animal production. Some progress has been made regarding the accession partnership priority which requires Turkey to align the methodology and organisational set-up for providing agriculture statistics in line with EU requirements. As for population and migration statistics, Turkey started to publish population data on a yearly basis and established a national education database. In the case of public health statistics, Turkey adopted a new death certificate to improve the quality of causes of death statistics. In the area of business statistics Turkstat further improved short-term statistics.

### *Conclusion*

Good progress has been made in the area of statistics. The Statistics Law was revised and Turkstat took further steps to improve coordination of the statistical system. Good progress has been achieved on sector statistics, in particular on social and business statistics. Further efforts are needed on national accounts and agricultural statistics and on the statistical farm register.

#### 4.19. Chapter 19: Social Policy and Employment

There is no progress to report regarding transposition of the *acquis* on **labour law**. The limited scope of the Labour Law<sup>39</sup> and transposition of a number of directives remain to be addressed. The administrative capacity of the Ministry of Labour and Social Security and its affiliated institutions is not yet sufficient. Some efforts were made to combat child labour, but further resources are needed to address this persisting problem. In the area of labour law, Turkey is not yet sufficiently prepared.

Some progress has been made in the area of **health and safety at work**. Expertise on the *acquis* improved as a result of training and awareness-raising activities. However, the lack of legislation to transpose Framework Directive on the safety and health of workers at work is a major shortcoming. Amongst other issues, employees in the public sector are still not covered by the health and safety legislation. The system for collecting data on occupational diseases and accidents needs to be further strengthened. According to the latest official statistics, 80,602 occupational accidents occurred in 2007<sup>40</sup>. Accidents in the informal sector go unreported. As regards administrative capacity, the Labour Inspection Board was strengthened, including by means of training and recruitment of extra staff. However, the inspector per employee ratio is inadequate to guarantee effective monitoring of implementation of the legislation<sup>41</sup>. Preparations in this area are ongoing.

There has been little progress in the **social dialogue**. The reinstatement of 1 May as ‘Labour and Solidarity Day’ after 28 years was an encouraging step. The reform of trade union legislation is pending for several years. Full trade union rights have not yet been established in Turkey. The current legal framework is not in line with EU standards and ILO Conventions, in particular as regards the right to organise, the right to strike and the right to bargain collectively, for both the private and public sectors. The ILO Committee of experts called upon Turkey to adopt these reforms and suggested the organisation of a high-level bipartite mission to assist the government. Social dialogue, at cross-industry, sector and corporate level, remains generally weak. Overall, the percentage of workers benefiting from collective labour agreements is low<sup>42</sup>. The channels for tripartite social dialogue, in particular the Economic and Social Council, need to be strengthened. In the area of social dialogue, Turkey is not yet sufficiently prepared.

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<sup>39</sup> The Labour Law does not apply, *inter alia*, to businesses or enterprises in agriculture and forestry which employ fewer than 50 workers, to apprentices and to trades and crafts businesses employing fewer than three persons.

<sup>40</sup> The incidence of accidents is highest in manufacturing of metal products (except machinery). Fatal cases of silicosis caused by poor working conditions in jeans sandblasting workshops continued to occur.

<sup>41</sup> There are 591 labour inspectors, of whom 306 are social inspectors and 285 are health and safety inspectors. The number of employees is around 19,500,000 (excluding civil servants). That gives a ratio of around one inspector for every 32,994 workers. The ILO standard is one inspector for every 20,000 workers in transition economies.

<sup>42</sup> The collective agreements concluded in 2007 and 2008 cover a total of 694,474 workers out of 21,194,000 in employment (i.e. 3%).

There has been some progress on **employment policy**, in particular to reduce the negative effects of the economic and financial crisis. A number of individual measures to stimulate employment, among other the extension of short-term work duration by six months, was adopted in August 2009. This complements the incentives for employment creation already adopted in 2008 under the "Employment package". In the absence of an overall employment strategy, the impact has to be seen. The fight against the informal economy has been given a higher profile. The government adopted an action plan which combines a series of incentives and legal sanctions. However, the action plan lacks measurable targets and indicators and the method of measuring undeclared work still has to be further developed. The employment rate and labour force participation remain low, although the latter increased for the first time in years<sup>43</sup> (see *Economic criteria*). The labour market deteriorated, against the background of the economic and financial crisis. The unemployment rate rose rapidly to 13.6% in the second quarter of 2009, especially youth unemployment. The latter reached 24.9% for the second quarter of 2009. As a result, demand for the services of the Turkish Employment Agency (ISKUR) increased rapidly. However, this was not met by a proportionate increase in human resources. The law on Turkey's participation in the PROGRESS Community Programme has entered into force. No progress can be reported towards finalisation of the Joint Assessment Paper on Employment Priority Policies (JAP). Preparations in this area are at an early stage.

There has been good progress on the preparations for the **European Social Fund (ESF)**. The operating structure established under the Ministry of Labour and Social Security, which is responsible for management of the IPA operational programme on human resources development, has recruited additional personnel and provided training. The process to confer powers on Turkish authorities for decentralised management of the IPA management and control system has been finalised and a related financing agreement has been signed. Actions on promotion of female, youth and registered employment, on lifelong learning activities and on increasing girls' school enrolment rates will be supported in the framework of the IPA operational programme on human resources development. Preparations in this area are on track.

There has been little progress in the field of **social inclusion**. The percentage of the population at risk of poverty is very high. According to the latest (2007) Poverty Survey, 18.56% of Turkey's population live below the poverty line, a slight increase since 2006. People living in rural areas are at considerably greater risk of poverty than urban dwellers. Poverty is also high among the working population, especially among casual/ seasonal workers, unpaid family workers, the self-employed and those in subsistence agriculture. Because social transfers are lacking, children are at disproportionate risk of poverty. The national mechanisms for monitoring poverty and social inclusion are weak. No progress can be reported towards the finalisation of the Joint Social Protection and Social Inclusion Memorandum (JIM). Preparations in this area are at an early stage.

There has been no progress in the field of **social protection**. The percentage of people covered by social security is slightly below 80% and has been declining. Efficient planning, coordination and provision of social protection, social assistance and social services are still lacking. Often this results in arbitrary delivery of services and benefits, without objective and transparent criteria<sup>44</sup>. The draft law on social assistance and payments without premiums is

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<sup>43</sup> 41.7% and 46.39% respectively.

<sup>44</sup> The report of the State Supervision Board (DDK) acknowledges these problems, and recommends a better definition of types and amounts of social assistance, together with a definition of poverty; and



expected to address these issues, but has still not been adopted. The impact of the recent social security reform on the socially excluded is not yet clear. Preparations in this area are at an early stage.

There has been no progress on **anti-discrimination**. There is no definition in law of direct and indirect discrimination. The *acquis* concerning discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation has not yet been transposed. There is still no Equality body in Turkey, as required by the *acquis*. Dialogue with non-governmental operators in this area needs to be improved. Preparations in this area are not very advanced.

Some progress can be reported in the field of **equal opportunities**. A Parliamentary Commission on Equal Opportunities for Men and Women was established (*see Political criteria – Economic and social rights*). This will monitor developments in the field of gender equality, give opinions on draft laws and determine the legislative work needed to align with the international agreements to which Turkey is a party. It will also examine claims of violations of equality between women and men and gender-based discrimination, which are referred to it by the Presidency of parliament. Turkey adopted a national action plan for gender equality for 2008-2013, but it contains no information on human or financial resources. However, women's participation in the labour market remains the lowest among EU Member States and OECD countries. The gender pay gap persists<sup>45</sup>. There is still no Equality body in Turkey, as required by the *acquis*. Preparations in this area are on track.

### *Conclusion*

Overall, Turkey made limited progress in the field of social policy and employment. The establishment of a Parliamentary Commission on Equal Opportunities for Men and Women is a positive step. Preparations for participation in the European Social Fund have accelerated. However, the legislation on labour law, health and safety at work and on anti-discrimination is not in line with EU standards. There has been no progress towards achieving full trade union rights in line with EU standards and ILO Conventions. Women's participation in the labour market is very low. Efforts to combat undeclared work need to be stepped up. A substantial proportion of the population is at risk of poverty, especially children. Due attention needs to be paid to the finalisation of the Joint Social Protection and Social Inclusion Memorandum and of the Joint Assessment Paper on Employment Priority Policies. The administrative capacity for effective implementation of the *acquis* in the area of social policy and employment needs to be improved.

## **4.20. Chapter 20: Enterprise and Industrial Policy**

Turkey made further progress with regard to **enterprise and industrial policy principles**. It has prepared an industrial strategy document for 2009-2013 following EU policy principles. The process of preparation and reaching agreement on this document and its action plan needs to be completed allowing industrial policy subsequently to be implemented. The Ministry of Industry and Trade established an entrepreneur information system, including extensive data on companies and sectors and providing a solid basis for policy analysis and design. The

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suggests the unification of various institutions in this field under one roof, and establishment of a common database.

<sup>45</sup> According to the ILO report entitled 'Global Employment Trends for Women' (March 2009), in Turkey men employed in manufacturing earn twice as much as women.

Coordination Council for Improvement of the Investment Environment (YOIKK), a key public-private initiative contributing to improving the business environment, continued its work and adopted its third action plan, now covering 2009. A government action plan to address the informal economy was adopted in February 2009. This includes specific measures and incentives in favour of registered companies operating in the formal economy. It also includes enforcement measures against unregistered activities and awareness-raising to build public and institutional consensus. There are some modest signs that Turkey is planning to improve the follow-up to and monitoring of policy strategies and action plans, e.g. by issuing quarterly progress reports on the YOIKK action plans and appointing additional dedicated staff to monitor implementation of the industrial strategy.

There was some improvement in the business environment, including procedures for starting a business and a regulation to speed up customs procedures. However, licensing procedures, market exit and bankruptcy proceedings remain cumbersome. Various crisis-response packages have been adopted by the government, introducing different types of tax advantages for industry and SMEs. Furthermore, in response to the economic crisis, a regulation on short work was adopted to help companies to keep working during the crisis instead of closing down or laying off workers.

Some progress was made with **enterprise and industrial policy instruments**. New loan programmes were extended by the Small and Medium-sized Industry Development Organisation (KOSGEB). KOSGEB's mandate was extended to all enterprises, including the services sector, by an amendment to the law establishing the organisation. Ratification of the Competitiveness and Innovation Programme (CIP) was completed in January 2009. There has been a notable increase in R&D spending, with a rising share from the private sector. No further progress has been made towards completing alignment with Directive 2000/35 on combating late payment in commercial transactions.

Some progress has been made in **sector policies**. The Ministry of Industry and Trade prepared a strategy for the automobile sector. Turkey revised its national restructuring plan for the steel industry. The revised plan focuses in particular on companies benefiting from State aid rather than the entire sector.

### *Conclusion*

Turkey has made further progress on this chapter, in particular in preparing a new industrial strategy and new sectoral strategies, which now need to be completed and published. There is also wider availability of enterprise and industrial policy support instruments and some improvements in the business environment. The follow-up to and monitoring of policy strategies and action plans have improved modestly, but need further strengthening. Overall, Turkey has achieved a sufficient level of alignment with the *acquis* in the field of enterprise and industrial policy.

## **4.21. Chapter 21: Trans European Networks**

Progress was made in the area of **transport networks**. The Ministry of Transport issued its strategic plan for 2009–2013. The priorities are in line with the recommendations made in the transport infrastructure needs assessment (TINA). Preparations are being made for projects and are well advanced for core network projects. However, a master plan for long-term investment has not yet been prepared. Substantial progress is awaited on development of a reliable system of transport data classified by type of transport infrastructure.

In the area of **energy networks**, the European Community is supporting preparations for projects to create a stronger competitive electricity and gas market in the EU and improve security of supply. In July 2009 Turkey signed the Intergovernmental Agreement on the Nabucco gas pipeline. This project is an important strategic step towards closer energy cooperation between the EU, Turkey and other States in the region as well as towards the diversification of energy sources. The timely completion of the Southern Gas corridor, through notably the swift implementation of the Nabucco Intergovernmental Agreement, remains one of the EU's highest energy security priorities. The objective of the agreement is to set a common regulatory framework and facilitate the necessary investment decisions.

Technical preparations to bring into operation the Turkey-Greece-Italy interconnector natural gas pipeline are continuing.

As regards electricity networks, links are in place with Bulgaria, Syria, Iraq, Iran, Azerbaijan and Georgia. Preparations for Turkey's synchronisation with the UCTE (Union for the Coordination of Transmission of Electricity) European power network are at an advanced stage. Turkey is giving priority to a number of projects contributing to completion of priority links 4 (Greece-Balkan countries UCTE system) and 9 (Mediterranean electricity ring) in the EU projects of European interest. The Babaeski (Turkey) – Filippi (Greece) line is now fully operational.

Some progress can be reported in the area of **telecommunications networks**. Turkey has become a participant in the information and communication technologies policy support programme under the Competitiveness and Innovation Framework Programme.

### *Conclusion*

Turkey has made some progress in the area of trans-European networks. In particular, it has signed the inter-governmental agreement on the establishment of the Nabucco pipeline. However, further efforts are still needed for the clear definition of the core network priority projects and for the development of reliable transport data classified by type of transport infrastructure.

## **4.22. Chapter 22: Regional Policy and Coordination of Structural Instruments**

Some progress was made with regard to the **legislative framework**. Turkey's IPA Framework Agreement entered into force in December 2008, providing the legal basis for implementation of IPA assistance in Turkey (including the EU Cohesion Policy precursor components III and IV of IPA). A Prime Ministry circular on the official appointment of institutions under IPA including the formal appointment of the Strategic Coordinator under components III and IV needs to be completed. Implementing legislation on support for projects and activities from development agencies entered into force in November 2008.

Progress was made with the **institutional framework**. Turkey finalised the institutional set-up and procedures for implementation of components III and IV of IPA in a satisfactory way. This resulted in management of both components being conferred to Turkey in July 2009 on the basis of certain conditions that the Turkish authorities need to fulfil in a given time period. This allowed for the signing of financing agreements for all programmes but the Transport Operational Programme in August/September; the latter was delayed for lack of mature projects. The State Planning Organisation, as the IPA strategic coordinator, established a technical committee made up of representatives of the operating structures (OS) and the horizontal institutions involved in management of IPA funds (e.g. the national authorising

officer (NAO)/Treasury, the Central Finance and Contracts Unit (CFCU) and the national IPA coordinator). The committee meets every three months to ensure smooth implementation of all four operational programmes (on transport, the environment, regional competitiveness and human resources development).

Development agencies (DA) are now established in all provisional NUTS II-type regions. A total budget of nearly €125 million has been earmarked for the development agencies in the 2009 national budget. Relevant local and regional stakeholders are involved in establishing the budgets of individual DAs, but not in selecting the provinces to host the DAs. The selection criteria are unclear and the process is not sufficiently transparent.

Limited progress was made as regards **administrative capacity**. Training and technical assistance to strengthen central institutions involved in IPA implementation has continued. The NAO office has been reorganised, in line with Commission recommendations, and new staff were hired. However, the key across-the-board risk threatening implementation of all operational programmes remains the need for more efficient cooperation between the CFCU and the ministries designated as operating structures, for further strengthening the institutional capacity of the institutions involved and for an acceleration of programme and project implementation including more rapid tendering and contracting. Administrative capacity at regional level remains weak.

Some progress was made with regard to **programming** and programme implementation. A solid project pipeline has been built up for the environment OP. Also, calls for proposals under the regional competitiveness OP and the human resources development OP have created a good basis for absorbing the funds available under these programmes. Participation by regional and local stakeholders was significantly enhanced by the call for proposals procedures and by involving municipalities in developing environmental projects. The transport OP has seen little success in the preparation for implementation. Preparations for the single major high speed rail infrastructure project have been severely delayed. The Turkish authorities and the Commission are actively seeking alternative projects sufficiently mature and consistent with the programme strategy.

In the cases of **monitoring and evaluation**, limited progress was made. Further work was done by the working group bringing together operating structures and the State Planning Organisation on development of the integrated management information system (MIS). Sector monitoring committees for all the OPs continued meeting on schedule.

In the area of **financial management and control**, limited progress was made. Currently, these tasks are managed on a temporary basis by the CFCU. Appropriate units to deal with financial management and control aspects have been nominally established in each line Ministry, but the staff to be trained and appointed to them are currently working on other aspects of the project cycle (programming, preparation of terms of reference, etc). The processes for building capacity within the Operating Structures must be significantly accelerated with a view to capacitate these structures to take up responsibilities for tendering, contracting financial management and control from the CFCU by mid-2011 at the latest.

### *Conclusion*

Turkey made some progress on this chapter. This took the form, in particular, of finalisation of the legislative and institutional framework for implementation of IPA components III and IV and of involvement of local and regional stakeholders in preparing the project pipeline and setting up further development agencies. Further strengthening of administrative capacity is

needed at all levels. Turkey has to strengthen the project pipeline further, notably in the transport sector, in order not to lose IPA funds. Establishment of the MIS to support management and supervision of IPA measures needs to be finalised. Overall, Turkey's alignment with the *acquis* in this chapter remains limited.

#### 4.23. Chapter 23: Judiciary and fundamental rights

There has been some progress on the **judiciary** (*see also under political criteria – part I of the report*).

As regards the *independence* of the judiciary, concerns remain with regard to the procedure laid down in the Law on judges and prosecutors for the selection of candidate judges and prosecutors. The main feature of the criticism is that the criteria used for this selection are open to subjective interpretation. The case launched by two opposition parties with the Constitutional court for annulment of certain provisions of the legislation is still pending.

There has been no progress on the composition of the High Council of Judges and Prosecutors<sup>46</sup> or on the reporting lines of judicial inspectors<sup>47</sup>. The Semdinli case, transferred to the Van military court following a decision by the Court of Cassation, is still pending. In 2006, the civilian prosecutor previously in charge of the case was dismissed from office by the High Council of Judges and Prosecutors. This disproportionate decision raised questions about the independence of the High Council<sup>48</sup>.

On occasions senior members of the judiciary, of the military and of an association of judges and prosecutors made statements which are likely to be perceived as pressure on individual courts and members of the judiciary, putting thus the *impartiality* of the judiciary at risk in important cases.

In relation to the *professionalism and competence* of the judiciary, training of judges and prosecutors<sup>49</sup> and prison staff carried out by the Ministry of Justice and the Justice Academy continued. A new Director of the Justice Academy has been appointed. However, the Justice Academy has still not developed into a strong and independent training provider for the entire magistracy, including at regional level.

As regards the *efficiency* of the judiciary, the national judicial network project (UYAP<sup>50</sup>) has had positive results on court proceedings. Lawyers are also reportedly using the system increasingly since March 2007; however, problems accessing the system are reported in small cities. Mediation as an alternative to resolve disputes is not used widely; this points to the need to raise awareness amongst the judicial actors and the public concerned. Provisions of

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<sup>46</sup> The composition of the High Council is not representative of the judiciary as a whole; only senior members of the Court of Cassation and of the Council of State are members of this Council.

<sup>47</sup> The judicial inspectors, who are responsible for evaluating the performance of judges and prosecutors, are attached to the ministry, not to the High Council.

<sup>48</sup> The Semdinli case concerns the bombing in November 2005 that killed one person and injured others in the town of Semdinli in Southeast Turkey. The civilian prosecutor in this case published the indictment in March 2006. It included accusations against high-ranking military commanders. The General Staff criticised the indictment and urged those bearing constitutional responsibility to take action. The High Council of Judges and Prosecutors took the dismissal decision in April 2006.

<sup>49</sup> This involves a two-year pre-service and continuous in-service training.

<sup>50</sup> UYAP is an information system, an e-justice system.

the Criminal Procedure Code such as return of the indictment and cross-examination have not been used sufficiently in practice.

On 1 May 2009 there were a total of 7,081 judges (6,914 on 1 May 2008) and 4,040 prosecutors (3,917 on 1 May 2008). On the same day, the total number of vacant posts for judges and prosecutors remained high: 3,875 as compared to 4,166 on 1 May 2008. In 2008, a total of 470 judges and prosecutors were appointed after completing their training at the Justice Academy. In the same year, after three competitions, 1,390 candidate civil judges and 167 candidate administrative judges entered the Justice Academy. Another 200 followed in the first half of 2009. 2,000 auxiliary staff was recruited in 2008. Overall, despite progress made in hiring judicial staff, the number of vacancies within the judiciary remains significant.

There have been no developments on the establishment of the regional courts of appeal. Under the law, these should have been operational by June 2007. A final decision on their number and seats and on the timely provision of the material and human resources necessary for their operations has yet to be taken.

The government approved the *judicial reform strategy* in August 2009. This is a positive step ahead both in terms of the consultative process followed before its approval but also of its content that broadly provides for the right direction for reforms. The Ministry of Justice had presented a draft strategy in spring 2008, further to which consultations with stakeholders, including civil society, took place. Judges and prosecutors, including the High Courts, discussed the draft strategy on a number of occasions. The draft was also posted on the website of the ministry for comments. The strategy is comprehensive and covers issues related to the independence, impartiality, efficiency and effectiveness of the judiciary, enhancement of its professionalism, the management system and measures to enhance confidence in the judiciary, to facilitate access to justice and to improve the penitentiary system. An action plan to implement the strategy has also been approved.

*(See also 2.1. Democracy and the rule of law)*

Limited progress can be reported on **anti-corruption** (*see also under political criteria – part I of the report*). The new law amending the Criminal Code and the Code of Misdemeanours takes into account the GRECO recommendations, aligns Turkish legislation with international conventions and implements the requirements of the OECD Bribery Convention together with the recommendations of the Financial Action Task Force (FATF) concerning the prevention of money-laundering.

The government, under the coordination of the Prime Ministry Inspection Board with the participation of other State institutions, carried out a broad consultation with stakeholders, including NGOs, with a view to preparing a national anti-corruption strategy.

In the context of a fraud case against the charity association Deniz Feneri in Germany last year, the Turkish prosecution continued the investigation in Turkey. Assets of the main suspects have been frozen in Turkey. No indictment has been submitted to the courts.

A seminar took place on “Methods to Combat and Prevent Corruption” bringing together local and international academics, experts and officials to discuss the methods and measures for the prevention of, and fight against corruption. Discussions focused on methods to combat corruption at both national and international level, investigation methods, awareness raising activities, financing of political parties and the role of the civil society, in particular the media and NGOs.

No progress has been made on adoption of legislation on the financing of political parties and election campaigns, which would increase transparency. There is no state body with the authority to audit election campaign financing.

*(See also 2.1: Democracy and the rule of law)*

As regards **fundamental rights**, there has been some progress (*see also under political criteria and chapter 19: Social policy and employment*)).

Turkey expressed its formal intent to take part in the work of the EU Fundamental Rights Agency. There have been no developments on the *institutions* monitoring and promoting human rights, which lack independence and resources. As regards the establishment of the ombudsman, in December 2008 the Constitutional court ruled that the establishment of institutions not explicitly mentioned in the Constitution would distort the integrity of the administration and that parliament had no legislative power to establish such an institution. The necessary Constitutional amendment for the establishment of the ombudsman has yet to be adopted.

As regards *prohibition of torture and inhuman or degrading treatment or punishment*, the government made limited efforts to ensure compliance with the legal safeguards to prevent torture and ill-treatment. Allegations of torture and ill-treatment and impunity of perpetrators remain causes of concern. Pending ratification of the Optional Protocol to the UN Convention against torture, there is no independent national preventive mechanism in place for monitoring places of detention.

With regard to *respect for private and family life* and, in particular, *the right to protection of personal data*, Turkey needs to align its legislation with the data protection *acquis*, in particular Directive 95/46/EC, and, in that context, to set up a fully independent data protection supervisory authority. Turkey also needs to ratify both the CoE Convention for the protection of individuals with regard to automatic processing of personal data (CETS No 108) and the additional protocol to it on supervisory authorities and trans-border data flow (CETS No 181). Wiretapping has reportedly been used extensively and records of it published in the press.

In the area of *freedom of thought, conscience and religion*, the government has undertaken a dialogue with both the Alevis and the non-Muslim religious communities. However, their specific problems still have to be addressed. A legal framework in line with the ECHR has yet to be established, which would enable the Alevis and the non-Muslim religious communities to function without undue constraints.

Regarding *freedom of expression, including freedom and pluralism of the media*, article 301 of the Turkish Criminal Code is no longer used systematically to restrict freedom of expression. However, there are prosecutions based on a number of other articles of the Criminal Code. There are insufficient guarantees in Turkish law to exercise freedom of expression in line with the ECHR and the ECtHR case law. Political pressures on the media and legal uncertainties affect freedom of the press in practice.

As regards *freedom of assembly and association, including the right to form political parties and the right to establish trade unions*, the legal framework on associations is broadly in line

with European standards<sup>51</sup>. However, associations face disproportionate scrutiny of their activities which in some cases has led to judicial proceedings. There is no progress on amendments to the legal provisions on the closure of political parties.

As regards *treatment of socially vulnerable and disabled persons and the principle of non-discrimination*, in December 2008 Turkey ratified the UN Convention on the rights of persons with disabilities. However, people with physical disabilities have problems in accessing services mainly due to physical barriers and lack of awareness. Mental health is an area of concern and there is no independent body in Turkey to carry out inspections of mental health institutions.

Anti-discrimination is enshrined in the Constitution and upheld in several laws. However the legal framework is not adequately aligned with the EU *acquis* (see chapter 19 – *Social policy and employment*). Provisions of the Turkish Criminal Code on "public exhibitionism" and "offence against public morality" are sometimes used to discriminate against the lesbian, gay, bi-sexual, transvestite and transgender (LGBT) community. Homophobia has resulted in cases of physical and sexual violence while courts have on occasions applied the principle of "unjust provocation" in favour of perpetrators of crimes against transsexuals and transvestites.

With regard to the *right to education*, the gender gap in primary education was halved from 2.3% in 2007/2008 to approximately 1% in 2008/2009. The number of children in pre-school education increased by 14% from 2007 to 2008, taking the overall pre-school education rate up to 33%. The number of teachers in pre-school education also increased by 14% from 2007 to 2008. The e-school system enables the Ministry of National Education to identify and reach children who are out of school at any given time. However, regional disparities in primary school enrolment persist: there is a difference of more than 10% between some western and eastern parts of the country. As regards continuation to secondary school, the net enrolment rate drops from 96.5 % at primary school<sup>52</sup> to 58.5% at secondary school.

On the *right to property*, the Law on Foundations of February 2008 has been implemented smoothly over the reporting period. However, this law does not address the issues of properties seized and sold to third parties or of properties of foundations merged before the new legislation was adopted. Syriacs continue to face difficulties in relation to property. A number of court cases are in progress concerning both private individuals and religious institutions. In particular, the Mor Gabriel Syriac Orthodox monastery has faced problems with land ownership. Turkey needs to ensure full respect of the property rights of all non-Muslim religious communities.

With regard to *gender equality and women's rights*, the legal framework is broadly in place (see chapter 19 – *Social policy and employment*). However, very limited progress has been made to date and further significant efforts are needed to turn the legal framework into reality and to narrow the gap between men and women in economic participation and opportunity, political empowerment and access to education. Domestic violence, honour killings and early and forced marriages remain serious problems in some areas of the country. There is a need for further training and awareness-raising on women's rights and gender equality, for both men and women.

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<sup>51</sup> This does not refer to trade unions: the current Turkish legislation on the right to organise, to bargain collectively and to strike does not meet EU standards (see chapter 19 *Social policy and employment*).

<sup>52</sup> This rate was approximately 97% last year. The difference of approximately half a percentage point is mainly due to a change of statistical methods used by the Ministry of National Education to collect data.



As regards the *rights of the child*, efforts need to be further stepped up in all areas including administrative capacity, health indicators, education, the juvenile justice system and child labour. Cases of children between 15 and 18 years of age tried as adults and facing disproportionate sentences raise serious concerns.

With regard to *liberty and security* and the *right to a fair trial*, access to justice was relatively easier in urban areas while there have been problems in rural areas, in particular in the South-East. Children from 15 to 18 years of age detained under the anti-terror law for participating in demonstrations have not had access to a lawyer immediately after detention. Overall, effective legal assistance is limited and a number of criminal defendants remain unrepresented. Defendants' awareness of the availability of free legal assistance needs to be raised.

As regards *minority rights and cultural rights*, Turkey has made some progress, especially in the form of launching the Kurdish-language TV channel TRT 6. However, restrictions remain, particularly on use of languages other than Turkish in private TV and radio broadcasting, in political life, in education and contacts with public services. The legal framework on the use of languages other than Turkish is open to restrictive interpretations and implementation is inconsistent. There has been no progress in the situation of the Roma, who frequently face discriminatory treatment, while demolitions of their districts without provision of alternative housing are continuing.

Overall, there has been some progress as regards the *judiciary*. The adoption by the government of the judicial reform strategy following a process of consultation with all stakeholders is a positive step. The measures taken to increase staff and resources are also positive and need to be continued. However, concerns with particular regard to the independence, impartiality and effectiveness of the judiciary have yet to be addressed. With respect to *anti-corruption*, there has been limited progress on strengthening the legislation and institutional set-up to fight corruption that remains prevalent in many areas. The adoption of effective implementation of the national anti-corruption strategy will be crucial. With regard to *fundamental rights*, there has been some progress, in particular on cultural rights. On several areas the government has started to take the initiative, thus contributing to the creation of an atmosphere conducive to addressing issues. However, these efforts need to be continued, in order to ensure full respect of fundamental rights as guaranteed by the ECHR and the case law of the ECtHR.

#### **4.24. Chapter 24: Justice, Freedom and Security**

Limited progress can be reported in the field of **migration and asylum**. In October 2008 a Development and Implementation Office on Asylum and Migration Legislation and Administrative Capacity was set up. This office reports to the Under-Secretary of the Ministry of the Interior (MoI) and carries out studies, projects and needs analyses on the legislative and administrative structure for integrated border management (IBM) in line with the national action plan on asylum and migration and with the national action plan on adoption of the *acquis* (NPAA). The resources of this office are very limited compared with its tasks.

The Task Force for Asylum and Migration plays a key role in ensuring uniform implementation of existing legislation. Under the coordination of the new bureau, the task force met for the first time since summer 2007 in May 2009.

No major legislative developments can be reported in this area. As a result of adoption of the new Law on Social Insurance and General Health Insurance, access for asylum-seekers and

refugees to the Social Solidarity Fund has been limited. However, according to the MoI, the needs of asylum-seekers were met from the budget of the MoI's Department for Aliens, Borders and Security.

Turkey remains a very important transit and destination country for irregular migration. In 2008, 65,737 illegal immigrants were apprehended by Turkish law enforcement agencies, followed by another 15,701 in the first six months of 2009. This figure shows a slight increase in comparison with 2007 (when the total was 64,290). The number of smugglers apprehended also increased, from 1,242 in 2007 to 1,305 in 2008, the vast majority (1,235) still being Turkish citizens. The capacity of the accommodation for illegal migrants remains low, although two new units were inaugurated with capacity for an additional 290 persons<sup>53</sup>, thus raising the total to 2,881.

With 11,248 new asylum seekers in 2008 the number nearly doubled in comparison to 2007 (5,831 new asylum seekers). Out of the 11,248 applicants 6,877 are Iraqis, 1,997 Iranians, 1,571 Afghans, 396 Somalis and 407 citizens of other nations. In comparison to 2007 these figures show an increase of 210% for Afghans, 194% for Iraqis and 15% for Iranians while the figure for Somalis decreased by 145%. The Turkish government spent the equivalent of USD 1.1 million in 2008 to cover the basic needs of all asylum seekers – recognised refugees and “temporary asylum seekers” or “guests”.

Work is progressing on setting up the country of origin information and asylum case-management systems.

The Turkish authorities have started screening apprehended illegal migrants, although not in a consistent manner, in order to identify persons in need of protection.

High migration inflows are putting pressure on the Turkish asylum and migration system. Hence, reorganisation of this system and conclusion of readmission agreements with source countries remain of key importance. Turkey continued to negotiate readmission agreements with Pakistan, Iran and Libya. No further progress was made on the readmission agreement with Afghanistan during the reporting period. Concluding negotiations on an EC readmission agreement with Turkey is a priority for the EU. Turkey recently accepted to resume formal negotiations blocked since December 2006. Until the EC readmission agreement with Turkey is concluded, and in line with the conclusions of the European Council, already existing bilateral agreements should be implemented.

Turkey maintains the geographical limitation on the 1951 Convention relating to the Status of Refugees and the related 1967 Protocol. High-quality preparatory studies and an adequate set-up with sufficient capacity to cater for the large number of persons registered every year are lacking. Limited progress was made on establishing a network of six centres for reception, screening and accommodation of refugees and asylum-seekers, two centres for illegal migrants and a new set of procedures and management rules for these centres. Specific training curricula for asylum and migration staff and a mechanism to keep the trained staff in the system are missing.

Key priorities in the field of asylum remain fair, equal and consistent access to asylum procedures for everyone (including in airport transit areas), access to legal aid and to UNHCR staff, reduction of the waiting time for asylum procedures and access to judicial review of decisions.

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<sup>53</sup> Bitlis with capacity for 150 on 5 December 2008 and Adana for 140 persons on 13 March 2009.

The continuing obligation to pay high residence permit fees (*'icamet'*) every six months prevents refugees recognised by UNHCR from departing to a resettlement country unless the outstanding amounts and overstay fines since their arrival in Turkey are paid. The requirement to pay the fee might also apply to highly vulnerable individuals or unaccompanied minors, who have no legal means to obtain that sum.

There has been little progress on **visa policy**. Turkey does not apply a uniform policy towards all EU citizens as regards the visa obligation. Currently, citizens of 15 EU Member States are required to hold a visa to enter Turkey. This visa can be obtained at the Turkish borders and, depending on the nationality of the applicant, will be valid for a duration of one to three months, and for one or several entries. Citizens of the other 12 Member States are exempted from the visa obligation for a short stay of up to 90 days.

Turkey continues to voluntarily align further with the positive and negative EU visa lists; in that regard, it has granted visa exemption to citizens of Brunei Darussalam in April 2009. In the interest of a regional approach, Turkey maintains a visa-free regime for citizens of some South-Eastern European countries. Recently, it concluded a bilateral visa exemption agreement with Kosovo.

Sticker- and stamp-type visas are still issued at borders. Introduction of airport transit visas and of the new Turkish visa stickers with higher security features is still pending. Turkey needs to continue its efforts to improve the security features of visas, passports and travel documents to ultimately align them with the EU security features and standards. In particular, the introduction of biometric identifiers in these documents is important. Likewise, the improvement of security features of residence permits is crucial.

Common training sessions have been organised on visa and passport procedures for current and would-be consular staff of the Ministry of Foreign Affairs, with the participation of relevant staff from the Ministry of the Interior. However, the training did not focus enough on document security issues. Since May 2009 most of the Turkish representations abroad have been connected to *'Konsolosluk.net'*, the Ministry of Foreign Affairs database on persons banned from entering Turkey. This is also interlinked with *'Polnet'*, the police database in order to share information with a view to more secure and faster processing of the applications.

In the case of **external borders and Schengen**, limited progress has been achieved. Following establishment of the new bureau on asylum and migration, the Task Force on External Borders was restructured and, since January 2009, has been meeting every two months. Modernisation of the border crossing points (BCPs) continued. The specialised department on border security studies within the Police Academy started up with 48 students.

Limited progress has been achieved in the implementation of the National Action Plan on IBM and in the definition of a clear roadmap. An official mechanism to monitor implementation of the plan is also missing. Efficient and coordinated risk analysis at the borders, along with quality management units at the border agencies, are important.

Cooperation between the agencies involved in border management is weak, in particular between the police and the customs enforcement authorities. Further steps need to be taken to establish a new civilian, non-military, border law enforcement body under the Ministry of the Interior to perform border control tasks. In the light of the flows of illegal migration via Turkey, good border cooperation with neighbouring countries is essential. Turkey has shown efforts with a view to conclude a working arrangement with FRONTEX.

No progress can be reported on **judicial cooperation in criminal and civil matters**. During the reporting period 1,761 requests for mutual legal assistance on criminal matters were received by Turkey, of which 251 were processed. A further 1,898 requests falling within the ambit of judicial cooperation on civil matters were received in the same period and 662 of them were processed. The number of Turkish officials appointed as contact points increased from two to five. Turkey has not yet signed the Council of Europe Convention against Cybercrime. No steps have been taken to sign a cooperation agreement with EUROJUST.

Turkey is party to all the main conventions on **police cooperation** and contributes actively to such cooperation at regional and international levels. The code of ethics adopted in line with international standards has now been introduced into the training programmes for law enforcement agents. A Regulation on reviewing and redrafting the mandate of the police and gendarmerie within the borders of provincial and district municipalities was published in March 2009. Turkey signed two additional bilateral agreements on police cooperation, one with Lebanon in November 2008 and one with Spain in April 2009. However, due to the lack of adequate legislation on personal data protection, international cooperation in this field and an operational agreement with Europol remain difficult.

Limited progress has been made in the **fight against organised crime**. The Regulation implementing the Witness Protection Law was adopted in November 2008. The ratification of two implementing regulations is underway. Witness protection programmes are currently being implemented. A Department for Witness Protection was established within the Turkish police force in June 2008. The capacity of the special unit dealing with criminal proceedings within the Department for Combating Smuggling and Organised Crime has been enhanced.

There has been progress on establishing of the legal framework for a nationwide DNA and fingerprint database and investment in forensics has increased. The strategy against organised crime, in line with EU best practice, needs to be updated and followed up by a specific action plan. The quality and reliability of statistics on law enforcement in this field are crucial.

Some progress can be reported on combating human trafficking. Turkey signed the Council of Europe Convention on Action against Trafficking in Human Beings in March 2009. In 2008 a total of 253 traffickers were arrested and 120 victims identified, while as of August 2009, 258 traffickers have been arrested and 67 victims identified. Following the 2005 amendment of the Penal Code introducing tougher penalties for human trafficking, the number of prosecutions against traffickers continued to increase. In 2008 a total of 273 suspected traffickers were prosecuted, a significant increase from 160 suspected traffickers prosecuted in 2007. Institutional capacity to combat human trafficking was further strengthened, in particular by means of training for judges, prosecutors and law enforcement officers. The National Task Force on Combating Human Trafficking, coordinated by the Ministry of Foreign Affairs (MoFA), continued to meet regularly. Voluntary return of victims is provided for in co-operation with IOM, NGOs, law enforcement bodies and relevant institutions in source countries (543 cases between 2005 – 2008, of which 78 in 2008).

However, it is important to improve the task force's structure and powers. A coherent statistical system for monitoring human trafficking is not available. Furthermore, according to the available official statistics, there has been a decrease in identification and referral of trafficked persons to protection and support mechanisms.

No major legislative developments took place in this area during the reporting period. Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings is still pending. Adoption of the second National Action Plan on Combating Human

Trafficking has been pending for the last two years. The sustainability of the 157 free emergency helpline, currently operated by the International Organisation for Migration (IOM), and its transfer to relevant public authorities remain to be urgently addressed. Sustainable funding for the two centres for victims of trafficking in Ankara and Istanbul which are managed by civil society organisations is not guaranteed. Turkey also needs to step up efforts on the prevention side and as regards the protection of victims of trafficking. (*For the fight against money laundering see Chapter 4*).

As regards the **fight against terrorism**, implementing legislation has been adopted to identify transactions suspected of being related to terrorist financing. The Financial Crimes Investigation Board (MASAK) received 228 reports of suspicious transactions in 2008 compared with 144 in 2007. A Counter-terrorism Troika took place in September allowing for an exchange of views and for a better mutual understanding of Turkey's and the EU's concerns. However, Turkey has not ratified the International Convention for the Suppression of Acts of Nuclear Terrorism and the Council of Europe Convention on the Prevention of Terrorism. Compliance with the nine special recommendations by the FATF (Financial Action Task Force) on financing of terrorism, particularly on freezing and confiscation of terrorist assets and on wire transfers, is limited.

Some progress can be reported in the **fight against drugs**. The coordination board and scientific committee continued to meet on a quarterly basis. A number of action plans have been adopted at provincial level, in Aksaray, Edirne, Kırıkkale, Kırklareli, Kütahya, Osmaniye, Sakarya, Sinop, Tunceli, Yozgat and Kastamonu. In November 2008, the parliamentary commission on the fight against drugs and on drug demand reduction published a report which made a set of recommendations concerning the institutional and legislative framework. In total eight seizures, including amongst others 39,191 kg of hashish and 15,447 kg of heroin were made by Turkish law enforcement bodies and joint action on controlled delivery continued.

In October 2008 the National Reitox Focal Point was upgraded to a division attached directly to the Department for Combating Smuggling and Organised Crime of the Turkish police. However, its human resources capacity is relatively weak and it still lacks an autonomous budget. The agreement concerning the participation of Turkey in the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) has not been ratified. A balanced approach between drugs supply reduction and demand reduction has not been achieved. Prevention, treatment and rehabilitation facilities need to be further developed.

Some progress was made on **customs cooperation**. The Under-Secretariat for Customs made efforts to strengthen its administrative and operational capacity, but little progress was made towards substantially decreasing the rate of physical inspections, thus hampering implementation of a risk management system aligned with EU requirements. Efforts were made to achieve IT interconnectivity with the EU systems on transit (NCTS) and tariffs (TARIC and the quota and surveillance system), but the Under-Secretariat has not adopted an IT strategy.

The efforts made to improve the training of customs officers in regional offices were insufficient to ensure uniform enforcement of the customs rules. Turkey has been one of the main suppliers of counterfeit products seized by EU customs authorities and lacks enforcement capacity for IPR controls on both imports and exports.

*For counterfeiting of the euro please see chapter 32.*

## Conclusion

Some, but uneven progress was made in the area of justice, freedom and security. Turkey has achieved limited progress on external borders and Schengen. Limited progress can also be reported in the field of migration and asylum. In the face of a sharp increase in asylum seekers efforts need to continue to reorganise the system. As to the EC-Turkey readmission agreement, Turkey recently accepted to resume formal negotiations blocked since December 2006. Turkey has shown efforts with a view to conclude a working arrangement with FRONTEX. There has been little progress on visa policy and none on judicial cooperation in criminal and civil matters.

### 4.25. Chapter 25: Science and Research

Good progress can be reported on science and research policy. Three Regulations on R&D support programmes were updated to increase the effectiveness of the existing support programmes for SMEs, entrepreneurs working in the fields of innovation and high technologies and international research cooperation activities by industry.

A Minister of State has been appointed to coordinate all stakeholders involved in R&D policy-making and all the institutions under various ministries. The national level of R&D support has increased sharply over the last few years and has been maintained despite the economic crisis. In particular, an additional €100 million were allocated to the Scientific and Technological Research Council (Tübitak) in 2009, thus increasing its 2009 budget by 36%. The **administrative capacity** of the Scientific and Technological Research Council (Tübitak) has been reinforced by recruiting new staff, enabling Turkey to attend more frequently the 7th Framework Programme governance bodies. Turkey has also a very well functioning National Contact Point Network.

A special issue of Tübitak's magazine was devoted to Darwin and the evolution theory in June 2009, thus ending the controversy that followed the decision to postpone the publication of a special issue on this subject in March.

Turkish participation in the **7th Framework Programme** for research and technological development (FP7) improved. The most successful areas include information communication technologies, nano-materials, transport, food, biotechnology and security. The Action Plan established for 2007-2008 has proven to be very useful to improve information sharing on research opportunities under the FP7 and to increase awareness on the importance of engaging in research with the EU. The discussions with the Commission to update the Action Plan for 2009-2010 started, after Turkey sent its draft proposal in August 2009.

The procedure to associate Turkey to the Seventh *Euratom Research Framework Programme* (2007-2013) has been launched based on the authorisation from the Council on the draft Science & Technology (S&T) agreement, with the objective to make the association effective as from 2010.

Active cooperation with the Joint Research Centre (JRC) continued in the form of participation by Turkish researchers in JRC workshops, high-level meetings, involvement in JRC projects and networks and secondment of Turkish researchers to JRC institutions.

Concerning integration into the **European Research Area (ERA)**, Turkey is an observer in the EU Scientific and Technical Research Committee (Crest) and has nominated observers in the other ERA governance bodies. Turkey has taken several measures at national level, in particular with mobility of researchers and investment in research, which contribute to the

objectives of the European Research Area. In addition, Turkey is actively participating in other European initiatives including Cooperation in the field of scientific and technical research (COST), the European Space Agency (ESA), the European Science Foundation (ESF), the Competitiveness and Innovation Programme (CIP), the European Molecular Biology Conference (EMBC) and EUREKA. In EUREKA, Turkey ranked 12th in 2008 out of the 38 member countries, up from 28th place in 2007. Turkey is well embedded in the EU's international cooperation activities, such as research coordination with the Western Balkan countries, Eastern Europe, Central Asian countries, the Black Sea region and the Mediterranean countries. The success rate of Turkish students and scientists in obtaining Marie Curie grants has increased.

Turkey is participating in the Eurostars *Article 169 Initiative*, which aims to support cooperative research and development projects by SMEs working in the fields of innovation and high technologies.

As decided at the 18th meeting of the Supreme Council for Science and Technology in December 2008, a coordination committee was established to encourage and facilitate mobility of international researchers for long-term stays or permanent settlement in Turkey.

### *Conclusion*

Overall, good progress has been achieved in terms of preparation for EU accession and integration into the European Research Area. The success rate for Turkey's participation in the 7th Framework Programme is increasing. However, there is still room for improvement.

## **4.26. Chapter 26: Education and Culture**

As regards **education, training and youth**, there was good progress over the reporting period.

The Lifelong Learning and Youth in Action Programmes continued to attract grant applications far exceeding the available budget. For the decentralised actions alone, the Turkish National Agency received, under the last budgetary period, more than 7000 applications for projects and individual mobilities and signed more than 2000 grant agreements with beneficiaries. Wide geographic coverage was once again achieved. The timely payment of Turkey's contribution enabled the programme so start smoothly. The law aiming at improving the administrative capacity of the National Agency was adopted by Parliament. Turkey continued progress in relation to the EU common benchmarks for the Education and Training 2010 work programme and improved its performance on all benchmarks, including the participation of adults in lifelong learning. Participation in early childhood education has also continued to increase. Turkey has already reached the EU benchmark as regards the cumulative growth since the year 2000 in the number of mathematics, science and technology graduates, which was above the EU average. In the other areas, Turkey performs far below EU average, but has made significant progress since 2000.

The government promotion of girls' education through country-wide campaigns contributed to a significant reduction of the gender gap in primary and secondary education. Between 2007 and 2008, the gender gap in primary education has been halved to 1% point and has decreased by a fifth to 4 percentage points in secondary education. However, high regional disparities remain in access to education, both for boys and - even more - for girls.

In the area of higher education, twenty-three new universities were established, although most of them need proper facilities and teaching staff. Turkey is at an advanced stage of implementing the Bologna process. However, no procedures for recognition of prior learning are in place either at the national or at the institutional/programme level. Future challenges include also the development of an external quality assurance system and widening the access to higher education.

The Council of Higher Education decided to abolish the coefficient system, which was applied to the university entrance and placement exam scores for the graduates of vocational and technical secondary schools since 1998. The new system, to be in effect as from 2010, is expected to give graduates of vocational and technical secondary schools equal opportunities to enter higher education. This is likely to increase the enrolment rate in vocational secondary education. However, the quality of the vocational secondary education still needs to be improved despite the interventions in the last decade.

The quality of the vocational secondary education still needs to be improved despite the interventions in the past decade. Under the coordination of the Vocational Qualifications Authority (VQA), centres for ‘sectoral occupational standards development, skill and knowledge testing and certification’ were established and started to develop occupational standards and infrastructure for knowledge and skills tests in cooperation with relevant NGOs and private-sector organisations. Turkey needs to continue its efforts to establish a national qualifications system applying to all types of education, training and qualifications and linked to the European Qualification Framework.

There has also been limited progress in the area of **culture**. Turkey continued to participate in the Community’s Culture Programme. Preparations for Istanbul as the 2010 European Capital of Culture also continued, despite the resignations of key members of the executive committee. The schedule of events for 2010 has now been finalised.

Turkey has signed, but not yet ratified, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

### *Conclusion*

There has been some progress, in particular in the area of education, where the gender gap decreased further and Turkey continued to improve its performance in relation to the EU common benchmarks. Turkey needs to sustain its efforts in the area of education and culture.

## **4.27. Chapter 27: Environment**

Good progress can be reported on **horizontal legislation**. Turkey has ratified the Kyoto Protocol. The Environmental Impact Assessment (EIA) Directive has been transposed to a large degree. However, procedures for public and transboundary consultations have not been fully aligned. Some articles of the Environment Law, related to the exclusion of petroleum, geothermal resources and mine exploration from environmental impact assessment, has been cancelled by the Constitutional Court in order to improve environmental protection. Turkey is not a party to the Espoo and Aarhus Conventions. The Emissions Trading Directive has not been transposed. A greenhouse gas emission trading scheme has not yet been established. Transposition of the Strategic Environmental Assessment (SEA) Directive is at an early stage. There has been no progress on transposition of the *acquis* on environmental liability, public participation and public access to environmental information. Nor has Turkey yet started negotiations on the memorandum of understanding on its participation in the Community civil protection financial instrument.



Limited progress can be reported on **air quality**. Turkey has adopted legislation on the air quality framework legislation and daughter directives, but its alignment with the *acquis* remains to be confirmed. However, the administrative capacity for implementation of the directive on regional air quality is not sufficient. The clean air centre in Marmara has not yet been established. Some progress can be reported on the trade of ozone depleting substances and the legislation related to sulphur content of certain liquid fuels. No progress has been made legislation related to the *acquis* on emissions of volatile organic compounds and national emission ceilings.

Limited progress can be reported in the field of **waste management**. New legislation on packaging waste was adopted. As regards implementation, there have been complaints by EU companies about the implications of the by-law, adopted last year, restricting use of certain hazardous substances in electrical and electronic equipment. They argue that the new legislation is creating difficulties for trade. No progress has been made regarding the directives on landfill and mining waste.

There has been no progress in the area of **water quality**. The overall level of alignment remains low. The institutional framework for water management is not organised on a river basin basis. Transboundary consultations on water issues are at a very early stage.

No progress can be reported on **nature protection**. The continuing loss of habitats is a cause for concern. The list of potential Natura 2000 sites has not yet been compiled. Adoption of a framework law on nature protection and implementing legislation on birds and habitats has again been postponed. A national biodiversity strategy and action plan remain to be adopted. Legislation in policy areas linked to nature protection requires particular attention.

Limited progress can be reported regarding **industrial pollution control and risk management**. Turkey has aligned with some provisions of the Seveso II Directive and with the Large Combustion Plants and Waste Incineration Directives. However, the overall level of transposition and implementation capacity remain low. Introduction of an integrated permit system is at an early stage.

There has been good progress in the field of **chemicals**. The legislation on signing the Stockholm Convention on Persistent Organic Pollutants has been adopted. By-laws were adopted on: the inventory and control of chemicals; compilation and distribution of safety data-sheets relating to dangerous substances and preparations; restriction of production, placing on the market and use of certain dangerous substances and preparations; and classification, packaging and labelling of dangerous substances and preparations. However, the overall level of transposition remains low. The capacity is insufficient for effective implementation.

No progress can be reported on **genetically modified organisms**.

Alignment in the field of **noise** is well advanced. Preparation of noise maps and action plans is at an early stage.

Some progress has been made in the area of **administrative capacity**. A by-law was adopted to enhance environmental protection by defining procedures and principles for environmental inspectorates, environmental management departments and certified inspection companies to increase the effectiveness of the environmental inspection system. However, although the Directorate-General for State Hydraulic Works has now been attached to the Ministry of the Environment and Forestry, its objectives have still not been streamlined with those of the ministry. No progress has been made towards establishing a national environment agency.

Responsibility for nature protection is not clearly defined between the various competent institutions. Administrative capacity needs further strengthening, including coordination between the relevant authorities at all levels. Mainstreaming environmental protection into other policy areas and ensuring that new investments comply with the environmental *acquis* are at an early stage. Some of the existing legislation, such as the Mining Law, the Law establishing the Directorate-General for State Hydraulic Works and the tourism legislation, are still a major concern for natural areas.

### *Conclusion*

Turkey has made progress in the field of chemicals and on horizontal legislation by signing the Kyoto Protocol. Some progress can be reported on waste, air quality, industrial pollution and risk management and chemicals. However, the overall level of alignment remains insufficient. Turkey has made no progress in the areas of water quality, nature protection and GMOs. Non-establishment of fully fledged EIA procedures is hampering further improvements in implementation and enforcement of the EIA Directive.

## **4.28. Chapter 28: Consumer and Health Protection**

Turkey has made little progress in the field of **consumer protection**.

The consumer movement continues to be weak. Cooperation and partnership between the existing NGOs are limited and NGOs suffer from lack of funds. Their relationship with State bodies is weak. They are not sufficiently taken into consideration by the government as a stakeholder. Preparations in this area are underway.

Little progress has been made on *product safety-related issues*. The Regulation on market surveillance of products has been amended in order to harmonise the safety testing practices of different market surveillance authorities. However, preventing measures against unsafe products are applied at minimum. Effectiveness of market surveillance activities need to be increased and the concept of risky products need to be studied in the public opinion. The revision of the general product safety legislation is outstanding. This is a key element for the accession negotiations on this chapter. Preparations in this area are on track.

In the area of *non-safety-related issues*, drafting of the consumer protection law has been finalised. This is a key element for the accession negotiations on this chapter. The Regulation on the principles and implementing rules for commercial advertisements and promotion was amended to prevent misleading and confusing advertisements and regulate campaigns to promote bank credits. However, the number of legally qualified staff in the Ministry of Industry and Trade continues to lag behind. There is no follow-up to decisions by the advisory Consumer Council. Courts and arbitration committees do not always interpret and comprehend consumer legislation consistently. Specialisation of the arbitration committees is still low. Overall, coordination and cooperation between related stakeholders is neither sufficient nor consistent. Nevertheless, preparations in this area are on track.

In the field of **public health**, Turkey has made some progress.

Good progress has been made in the area of *tobacco*. Legal alignment with the *acquis* concerning tobacco products, especially as regards tar yields and oral tobacco, was completed. This is a key element for the accession negotiations on this chapter. Complete alignment with the *acquis* on tobacco advertising will be achieved through a by-law. Implementation of the tobacco *acquis* is advanced and administrative capacity is being built up. Turkey has signed

on 29 May 2009 a licence agreement to use EU pictorial warnings on tobacco products. In addition, Turkey's efforts towards smoke-free environments resulted in a comprehensive smoking ban in bars, pubs, hotels, clubs, cafes and restaurants as of 19 July 2009. Preparations in this area are advanced.

In the field of *communicable diseases*, Turkey has made some progress. With regard to enforcement of the legislation, the field epidemiologists were trained on early detection and control measures on specific diseases. Progress was made on establishment of an electronic network by providing technical training and installing equipment in clinical microbiology laboratories. An early warning and response system for intestinal diseases has been developed on a trial basis with a view to extension to the rest of the country. Some progress has been made on alignment by amending the national strategic plan for 2009-2013 on strengthening surveillance and control of communicable diseases, which lays down the principles and procedures for the administrative structures to that end. These include committees and commissions that will serve as planning, monitoring and evaluation bodies to ensure efficient coordination and implementation of control measures and surveillance. No progress can be reported on establishment of a National Institute of Public Health. A draft law on this subject has yet to be adopted. Preparations in this area are well on track.

Turkey has made good progress as regards *blood*. A by-law laid down the standards and specifications for a quality system for blood collection, storage and transfusion units. Legal alignment in this field is advancing well, but the administrative capacity for implementation of the legislation needs further strengthening. Preparations in this area are on track.

No progress can be reported in the field of *tissues and cells*. Preparations to make TÜRKÖK, the National Cell Coordination Centre, operational are underway. Preparations in this area have started.

Little progress can be reported on *mental health*. A joint working group has been established together with the Ministry of Health and Social Services and the Child Protection Agency. The group is working with the WHO on a community-based service delivery model. However, Turkey still has limited resources in the field of mental health. Establishment of community-based services as an alternative to institutionalisation is crucial. Specific efforts are needed to provide for health care tailored to children and young people in this field. The mental health action plan has yet to be finalised. Preparations in this area are at an early stage.

Some progress can be reported in the area of *socio-economic determinants of health*. The preliminary results of the 2008 Turkey Demographic and Health Survey revealed that the over-65 age group has reached its highest level ever. The fertility rate has dropped to 2.15 from 4.33 between 1978 and 2008. In terms of access to health services, 92% of mothers received some antenatal care during their last pregnancy and 90% of births were delivered in a hospital or health centre. Progress can be reported in cancer control. The national cancer control programme has set clear milestones for 2009-2015 on preventing and fighting breast and cervical cancers. It envisages screening 70% of the population by 2012. However, the age to start cervical cancer screening (as proposed in the national screening standards) does not match the age range advocated in the Council Recommendation on cancer screening. In addition to screening standards on breast and cervical cancer, national screening standards for colorectal cancer have also been published and community-based screening has started. The National Cancer Institute has not yet been established. Preparations in these areas are ongoing.

## Conclusion

Overall, some progress has been made on consumer and health protection. A satisfactory level of legal alignment has been reached. In the area of consumer protection, more efforts remain necessary, in particular on non-safety-related issues and to ensure due enforcement of consumer protection in general. In the area of public health, some progress can be reported, in particular on tobacco control and on strengthening the administrative capacity on communicable diseases. Preparations are underway to complete alignment with the *acquis* on blood and blood components, and tissues and cells. However, the institutional capacity necessary for legislative approximation and implementation in the field of public health is not fully in place.

### 4.29. Chapter 29: Customs Union

Some progress can be reported in the field of **customs legislation**. Turkey adopted a new customs law and aligned its legislation further with the modernised EC Customs Code. The Turkish Customs Administration now needs to adopt implementing rules in order to make the law applicable. The legislation on IPR has been improved although it is not yet fully aligned with the *acquis*. The law on free zones was amended to include free-trade zones in Turkey's customs territory. Nevertheless, alignment with the *acquis* is still incomplete, because operations in free-trade zones are not fully subject to customs procedures and the new law stipulates exemptions that do not exist in the *acquis* for goods that can be consumed or used in the free zones. No progress can be reported on Turkey's duty relief legislation, which provides for duty-free shops at entry points and is not fully in line with Turkey's Customs Union obligations. Implementing provisions have been issued on post-clearance examination and control of risky procedures. The inward processing arrangements were aligned with the EU *acquis*, by prohibiting drawback in connection with importation of materials originating from third countries for production of processed agricultural products to be exported to the EU.

Some progress was made on **administrative and operational capacity**. Turkey's enforcement capacity was strengthened by purchasing equipment (scanners) and recruiting officers. Nevertheless, use of the risk-analysis system could be further improved and physical checks are still performed too often. Particular efforts are necessary to enforce intellectual property rights for imports and exports, since Turkey remains one of the main sources of counterfeit products seized by EU customs authorities.

The import and export declarations procedure is fully automated. Progress has been made towards IT interconnectivity with EU systems, as projects to develop the new computerised transit system and tariff-related systems (TARIC and the quota and surveillance systems) have been advancing. Turkey has continued to increase the level of automation of the customs administration, despite the absence of a formal IT strategy.

A protocol on exchanges of pre-shipment information was signed between Turkey and Russia. Customs cooperation agreements with Syria and South Africa were ratified.

'Customs Union' is one of the eight chapters covered by the conclusions on Turkey adopted by the Council (General Affairs and External Relations) on 11 December 2006 and endorsed by the European Council on 14/15 December 2006. As long as restrictions remain in place on the free movement of goods carried by vessels and aircraft registered in Cyprus or whose last

port of call was in Cyprus, Turkey will not be in a position fully to implement the *acquis* relating to this chapter.

### *Conclusion*

Turkey has achieved a high level of alignment in the field of customs legislation, thanks to its Customs Union with the EU. Nevertheless, further alignment with the EU *acquis* is still needed in some areas, such as free-trade zones, intellectual property rights and customs duty relief. Duty-free sales of products covered by the Customs Union at entry points have to be abolished. Turkey has made progress on administrative capacity, but efforts would be required to make greater use of simplified procedures and risk-based controls in order to reduce the number of physical controls and release human resources whilst facilitating legitimate trade. The fight against counterfeit goods remains a cause for concern. Particular efforts to enforce intellectual, industrial and commercial property rights are important.

### **4.30. Chapter 30: External Relations**

Limited progress can be reported in the field of the **common commercial policy**.

Turkey's alignment with the EC's common commercial policy is high. However, since 1 January 2009, the communiqués on standardisation in foreign trade as part of Turkey's new import arrangements placed restrictions on goods originating from third countries but in free circulation in the EU and which are exported to Turkey under ATR certificates. Such goods are subject to conformity assessment procedures based on documentation or physical checks at customs posts, hence delaying and inhibiting access to the Turkish market. Furthermore, Turkey adopted legislation requiring imported textile and clothing products to obtain a certificate from the Turkish Textile Exporters Association. These two measures have distorted bilateral trade relations, in addition to the unresolved infringements of the Customs Union legislation. Moreover, the increased use of the *erga-omnes* safeguard instrument over the last years negatively affects trade relations with the EU. Very limited progress can be reported on alignment of the Turkish general system of preferences (GSP). The geographic and product coverage of the Turkish system still needs to be aligned with the EU's GSP.

The level of coordination with the EU within the World Trade Organisation has, by and large, been satisfactory, although there is still room for improvement in some areas of the Doha Development Agenda, notably the agriculture negotiations and trade facilitation. To a certain extent, the same applies to Turkey's positions in the OECD.

There has been some progress with medium- and long-term export credits to companies. No progress has been made on dual-use goods controls.

No further progress can be reported on **bilateral agreements with third countries**. The level of alignment with the EC's bilateral agreements remained satisfactory. Turkey signed free-trade agreements with Montenegro, Serbia and Chile.

Turkey made some progress in the fields of **development policy** and **humanitarian aid**. The amount of official development aid granted by Turkey totalled some €557 million in 2008, which is 0.1 % of GDP. The level of alignment has remained satisfactory in this field.

'External relations' is one of the eight chapters covered by the conclusions on Turkey adopted by the Council (General Affairs and External Relations) on 11 December 2006 and endorsed by the European Council on 14/15 December 2006. As long as restrictions remain in place on the free movement of goods carried by vessels and aircraft registered in Cyprus or whose last

port of call was in Cyprus, Turkey will not be in a position fully to implement the *acquis* relating to this chapter.

### *Conclusion*

Although Turkey has achieved a high level of alignment in this area, owing to the Customs Union, it has not completed alignment, particularly with regard to coordination of positions in the WTO. A number of longstanding trade irritants remain unresolved and continue to disrupt proper functioning of the Customs Union.

#### **4.31. Chapter 31: Foreign, security and defence policy**

The regular **political dialogue** between the EU and Turkey continued to cover international issues of common interest, including Iraq, Iran, the South Caucasus, Pakistan, Afghanistan, the Middle-East peace process and the Balkans. (*Concerning neighbourly relations with other enlargement countries and Member States, see the section on the political criteria.*)

Concerning relations with *Iraq*, the cross-border terrorist activities of the PKK, listed on the EU list of terrorist organisations, continue to pose a security challenge to Turkey. Turkey maintained close official contacts with Iraqi authorities, including with the Kurdistan regional government. Overall, bilateral relations continued to improve. High-level bilateral meetings intensified. The Iraqi President attended the 5th World Water Forum in Istanbul in March 2009. The Turkish President paid an official visit to Iraq in March, the first of its kind for 33 years. Turkey played an important role in efforts to ease tensions between Iraq and Syria.

As for relations with *Iran*, Turkey sees Iran as an important partner in the region, not only bilaterally, but also with respect to regional stability. Turkey supports the EU position on Iran's nuclear programme. During a meeting with his Iranian counterpart in Tehran in March, the Turkish President called for Iran to play a constructive role in the region and – on the nuclear dispute – to seize the opportunities offered by the international community.

As regards relations with the *Southern Caucasus*, following the visit by the Turkish President to Armenia in September 2008, the two countries increased the number of working and high-level bilateral meetings and moved significantly towards normalising their bilateral relations. In August, the two parties agreed to complete domestic political consultations within six weeks with a view to preparing the signature and ratification of two protocols addressing the establishment of diplomatic relations and the development of bilateral relations. During the reporting period Turkey kept its land border with Armenia closed.

Turkey continued its constructive role in the *Middle-East peace process*. Until December 2008, Turkey mediated indirect talks between Israel and Syria, which halted following the Gaza conflict in January 2009. Turkey, has expressed its willingness to continue mediation efforts, but the parties have not agreed to resume talks. During the Gaza conflict Turkey expressed strong concerns on Israel's military operations, and played an active role to reach a ceasefire. Turkey continues to contribute to stabilisation in *Lebanon*, through diplomatic activities and its participation in UNIFIL.

Turkey continued its valuable efforts to bring *Afghanistan* and *Pakistan* closer. Turkey remains engaged in NATO's International Security Assistance Force (ISAF) and is contributing to civil and military capacity-building. Turkey convened a number of trilateral summits with Afghanistan and Pakistan, which have sometimes also included other neighbouring countries, and has offered to host the fourth Regional Conference on

Afghanistan (RECCA) next year. Furthermore, Turkey has been a regular participant in the Special Envoys' meetings (with US and European envoys to the region).

Turkey is continuing to intensify its relations with African countries, including the process of opening 15 new embassies in Africa. Following Parliament's authorisation in February 2009, Turkey sent a vessel to the Gulf of Aden to join the UN-led international anti-piracy coalition.

Turkey's broad alignment with **common foreign and security policy** (CFSP) statements, declarations and démarches continued. Turkey aligned itself with 99 CFSP declarations from a total of 128 declarations adopted by the EU during the reporting period. Turkey did not follow the EU position expressed in statements concerning some Africa-related issues and in declarations concerning for example Uzbekistan, Syria, Iran and Yemen.

No particular developments can be reported as regards *restrictive measures*.

Concerning *non-proliferation* of weapons of mass destruction, Turkey is party to all the existing international arrangements.

Turkey has not aligned itself with the EU position on membership of certain suppliers' groups, such as the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (*for dual-use goods, see Chapter 30 – External relations*).

With regard to cooperation with *international organisations*, Turkey has not signed the statute of the International Criminal Court. Turkey will continue holding a non-permanent seat in the UN Security Council until 2010. The second forum of the UN-backed Alliance of Civilisations, a 2005 joint initiative by Turkey and Spain, was held in Istanbul in April.

There have been no particular developments with regard to *security measures* (*classified information*).

Within the framework of the **European security and defence policy** (ESDP), Turkey is continuing to contribute to the EU-led military mission in Bosnia and Herzegovina (EUFOR/ALTHEA). Turkey is also contributing to EUPM, the EU-led police mission in Bosnia and Herzegovina and to the EULEX mission in Kosovo. Turkey wishes to enhance cooperation on ESDP, while stressing its discontent with its status within this framework, due to the stalemate over conclusion of a bilateral security agreement with the EU and over the administrative arrangements with the European Defence Agency.

However, in the area of EU-NATO relations beyond the 'Berlin plus' arrangements, Turkey continues to object to EU-NATO cooperation which would involve all EU Member States. This creates problems for EU-NATO cooperation, notably in the context of civilian ESDP missions.

### *Conclusion*

Turkey's alignment with the EU's common foreign and security policy continued. Turkey has continued to develop a positive role contributing to stabilisation in regions such as the South Caucasus and the Middle East. Turkey has strengthened its diplomatic relations with Iraq, including contacts with the Kurdish regional government. Diplomatic efforts to normalise relations with Armenia have moved forward significantly.

Turkey is contributing substantially to ESDP and seeking greater involvement in ESDP activities. However, Turkey objects to EU-NATO cooperation which would involve all EU Member States. Turkey has not aligned with the EU position on membership of the Wassenaar Arrangement.

#### 4.32. Chapter 32: Financial Control

Limited progress has been made in the area of **public internal financial control** (PIFC), where alignment with the *acquis* is advanced. The current primary and implementing legislation was amended in 2008 and now meets the basic requirements to implement PIFC. A number of pieces of implementing legislation were approved in the course of 2009<sup>54</sup>. The Ministry of Finance has now registered 803 internal auditors in 209 administrations, all trained and certified. More financial officers have been employed in budget spending units and there are now 461 expert financial officers in the central government administration<sup>55</sup>.

However, the 2002 PIFC policy paper and the related action plan remain to be updated, especially in relation to the roles of internal audit and inspection and of the Internal Audit Coordination Board and the central harmonisation unit (CHU) for internal audits. The location of the CHU still has to be decided to ensure optimum development of the public internal audit profession. Staffing of internal audit units needs to be addressed. The steering role of the Ministry of Finance in the reform process must still be strengthened.

No progress can be reported on **external audit**. The Law on External Audit, extending the scope of the Turkish Court of Auditors (CoA) and aligning the CoA with the relevant international standards, was sent to parliament in 2005. It has yet to be adopted.

There has been little progress on the **protection of the EU's financial interests**. Concerning assessments and investigations of suspected fraud cases, cooperation between the European Anti-Fraud Office (OLAF) and the Prime Ministry Inspection Board (PMIB) can be regarded as good. However, a formal appointment of the PMIB as Anti-Fraud Cooperation Structure (AFCOS) is yet outstanding and its operational independence has to be further developed. A legal basis in national law for AFCOS is still required, involving not only the PMIB but also establishment of a network able to operate across the board to address prevention, detection and follow-up issues.

There have been no developments with regard to the implementation of the Convention on the Protection of the European Communities' Financial Interests (PIF Convention) and its Protocols. Monitoring by the Turkish authorities of actual application of the Convention remains insufficient.

Significant progress can be reported on **protection of the euro against counterfeiting**. 'New' was removed from 'new Turkish lira' with effect from 1 January 2009. As part of the re-minting exercise, Turkey redesigned Turkish coins to eliminate similarities with euro coins. However, institutions serving as the national analysis centre, national coin analysis centre and national central office have not yet been officially appointed to ensure institutionalisation and

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<sup>54</sup> Action plan guide for harmonisation with public internal control standards (4 February 2009); Principles and procedures for cancellation of public internal auditor certificates (13 January 2009); and communiqué on procedures and principles regarding selection of internal auditor candidates (5 April 2009).

<sup>55</sup> Also 231 candidates who have passed the examination for positions as expert financial services assistants are entitled to be appointed in strategy development units (SDUs) of public administrations.



sustainable cooperation with EU institutions. Sanctions against credit institutions which fail to withdraw counterfeits from circulation and against medals and tokens similar to euro coins are missing from the legislation.

#### *Conclusion*

Overall, limited progress can be reported in the area of financial control, in which alignment is fairly advanced. Legislation implementing the public financial management and control (PFMC) law is in place, but a number of amendments relating to internal control are still missing and revision of the PIFC policy paper and action plan has not been completed. The External Audit Law, which would bring external audits into line with relevant international standards, has not yet been adopted. The anti-fraud cooperation structure remains to be developed. In a very significant development, Turkey has redesigned and re-minted Turkish coins in order to eliminate similarities with euro coins.

### **4.33. Chapter 33: Financial and Budgetary Provisions**

Further progress was made in this chapter. The basic principles and institutions underlying Turkey's customs policy, VAT system and national accounts and GNI calculations are largely in line with the EU's **own resources** system. Alignment with the relevant chapters of the *acquis* (on customs, taxation, statistics and financial control) has continued, in particular as regards the European System of Accounts (ESA 95).

The own resources *acquis* is directly applicable upon membership and therefore does not require transposition. However, coordination structures and implementing rules need to be established to ensure correct calculation, collection, payment and control of own resources and reporting to the EU for implementation of the own resources rules. Stronger **administrative capacity** will also be needed, particularly in the areas of agriculture, customs, taxation, statistics and financial control. Effective instruments have to be established to fight customs duty and VAT fraud in order to protect the EU's financial interests.

#### *Conclusion*

The *acquis* in this area is directly applicable upon accession. Turkey's alignment with the basic principles and institutions of the *acquis* is well advanced. In due course, however, effective coordination structures, administrative capacity and implementing rules will need to be established. Preparations in this area are at an early stage.

## STATISTICAL ANNEX

### STATISTICAL DATA (as of 14 September 2009)

#### Turkey

<b>Basic data</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Population (thousand)		65 787	66 889	67 896	68 838	69 770	70 692	71 610	72 520	69 689b	70 586
Total area of the country (km <sup>2</sup> )	1)	783 562	783 562	783 562	783 562	783 562	783 562	783 562	783 562	783 562	783 562

<b>National accounts</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Gross domestic product (GDP) (million national currency)		104 596	166 658	240 224	350 476	454 781	559 033	648 932	758 391	843 178	950 098
GDP (million euro)		233 424	289 446	219 816	243 570	269 322	314 304	387 655	419 013	472 879	501 109
GDP (euro per capita)		3 684	4 504	3 375	3 690	4 027	4 640	5 652	6 036	6 731b	7 050
GDP (in Purchasing Power Standards (PPS) per capita)		7 000.0	7 600.0	7 000.0	7 000.0	7 000.0	8 100.0	9 100.0	10 100.0e	11 100b	11 400.0e
SI: GDP (in PPS per capita, EU-27=100)		39.1	39.9	35.5	34.3	33.9	37.3	40.4	42.5	44.7b	45.5e
SI: Growth rate of GDP (national currency, at constant prices, % change on previous year)		-3.4	6.8	-5.7	6.2	5.3	9.4	8.4	6.9	4.7	0.9
SI: Employment growth (national accounts, % change on previous year)		2.1	-0.4e	-1.0e	-1.8e	-1.0e	3.0e	1.4e	1.3e	1.1e	1.8e
Labour productivity growth: GDP growth per person employed (% change on previous year)		-5.4	7.2e	-4.7e	8.1e	6.3e	6.1e	6.9e	5.5e	3.3e	-0.9e
SI: Unit labour cost growth (national accounts, % change on previous year)		26.4	:	:	:	:	:	:	:	:	:
SI: Labour productivity (GDP in PPS per person employed, EU-27=100)		48.8	53.1e	48.9e	48.9e	49.5e	53.8e	57.9e	61.8e	62.9e	64.0e
Gross value added by main sectors (%)											
Agriculture		10.7	10.8	9.4	11.4	11.1	10.7	10.6	9.4	8.5	8.5
Industry		25.4	24.6	23.8	23.2	23.5	23.0	23.0	22.9	22.3	21.9
Construction		5.6	5.4	4.7	4.6	4.5	5.0	5.0	5.4	5.4	5.2
Services		58.3	59.2	62.1	60.8	60.8	61.3	61.3	62.4	63.7	64.4
Final consumption expenditure, as a share of GDP (%)		80.7	82.2	80.8	80.8	83.5	83.2	83.5	82.9	83.7	82.6
Gross fixed capital formation, as a share of GDP (%)		18.9	20.4	15.9	16.7	17.0	20.3	21.0	22.3	21.8	19.9
Changes in inventories, as a share of GDP (%)		0.2	0.4	-0.9	0.9	0.6	-1.0	-1.0	-0.2	-0.4	1.9
Exports of goods and services, relative to GDP (%)		19.4	20.1	27.4	25.2	23.0	23.6	21.9	22.7	22.3	23.9
Imports of goods and services, relative to GDP (%)		19.3	23.1	23.3	23.6	24.0	26.2	25.4	27.6	27.5	28.4

<b>Industry</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Industrial production volume index (2000=100)		:	100.0	91.3	99.9	108.7	119.3	128.7	136.3	143.6	140.5

<b>Inflation rate</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
SI: Consumer price index (CPI), (total, % change on previous year)		64.9	54.9	54.4	45.0	25.3	10.6	8.2	9.6	8.8	10.4

<b>Balance of payments</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Balance of payments: current account total (million euro)		-868	-10 741	4 198	-662	-6 643	-11 601	-17 794	-25 401	-27 547	-28 233
Balance of payments current account: trade balance (million euro)		-9 168	-23 882	-3 755	-6 758	-11 925	-18 278	-26 516	-32 607	-34 079	-36 080

Balance of payments current account: net services (million euro)		7 039	12 316	10 201	8 339	9 292	10 288	12 276	11 015	10 112	11 906
Balance of payments current account: net income (million euro)		-3 319	-4 333	-5 583	-4 816	-4 912	-4 509	-4 722	-5 329	-5 212	-5 423
Balance of payments current account: net current transfers (million euro)		4 580	5 158	3 335	2 573	902	898	1 169	1 520	1 632	1 364
of which government transfers (million euro)		330	221	224	526	257	252	485	495	590	495
Net foreign direct investment (FDI) (million euro)		129	121	3 188	1 013	1 107	1 612	7 208	15 184	14 665	10 615
Foreign direct investment (FDI) abroad (million euro)		-605	-942	-555	-185	-441	-627	-855	-736	-1 537	-1 758
of which FDI of the reporting economy in EU-27 countries (million euro)		:	:	:	:	:	:	:	:	:	0
Foreign direct investment (FDI) in the reporting economy (million euro)		735	1 063	3 743	1 198	1 548	2 239	8 063	15 920	16 202	12 373
of which FDI of EU-27 countries in the reporting economy (million euro)		:	:	:	:	:	:	:	:	:	2

<b>Public finance</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
General government deficit/surplus, relative to GDP (%)		:	:	-33.0	-12.9	-11.3	-4.5	-0.6	-0.1	-1.2	:
SI: General government debt, relative to GDP (%)		:	42.9	77.6	73.7	67.3	59.2	52.3	46.1	39.4	:

<b>Financial indicators</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Gross foreign debt of the whole economy, relative to GDP (%)		41.7	44.7	57.7	56.2	47.3	41.2	35.2	39.4	38.4	:
Gross foreign debt of the whole economy, relative to total exports (%)		214.3	222.4	210.4	222.8	205.5	175.0	161.1	173.7	172.1	:
Money supply: M1 (banknotes, coins, overnight deposits, million euro)	2)	8 635	12 205	8 965	9 291	13 188	15 762	38 978	38 616	44 644	39 927
Money supply: M2 (M1 plus deposits with maturity up to two years, million euro)	3)	41 324	51 591	37 253	36 325	47 398	59 415	150 152	160 193	201 366	203 840
Money supply: M3 (M2 plus marketable instruments, million euro)	4)	42 950	54 207	38 973	38 041	50 488	63 411	164 302	171 832	215 308	214 473
Total credit by monetary financial institutions to residents (consolidated) (million euro)		30 856	44 492	26 977	20 035	29 025	43 328	83 772	100 358	140 157	138 301
Interest rates: day-to-day money rate, per annum (%)		79.8	56.0	95.5	49.6	36.1	22.0	15.1	15.8	17.3	16.1
Lending interest rate (one year), per annum (%)	5)	86.1	51.2	78.8	53.7	42.8	29.1	23.8	19.0	20.1	19.7
Deposit interest rate (one year), per annum (%)	6)	85.5	38.2	62.2	53.9	40.3	23.6	19.9	21.5	22.3	22.9
euro exchange rates: average of period - 1 euro = ... national currency		0.447	0.575	1.102	1.440	1.695	1.777	1.677	1.809	1.789e	1.896
Effective exchange rate index (2000=100)		121.4e	100.0	46.8e	40.1e	40.4e	39.3e	43.6e	39.1e	44.5e	:
Value of reserve assets (including gold) (million euro)		24 253	25 331	22 660	26 949	28 134	27 654	44 277	48 116	52 058	52 442

<b>External trade</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Value of imports: all goods, all partners (million euro)		38 351	59 444	46 256	54 478	60 163	78 528	93 410	111 096	123 959	136 438
Value of exports: all goods, all partners (million euro)		24 964	30 182	35 062	38 137	41 679	50 891	58 849	68 020	78 126	89 522
Trade balance: all goods, all partners (million euro)		-13 387	-29 263	-11 194	-16 341	-18 484	-27 637	-34 560	-43 076	-45 833	-46 917
Terms of trade (export price index / import price index, 1998=100)	7)	112.6	103.0	100.7	100.1	100.0	102.0	99.3	96.0	103.5	96.9
Share of exports to EU-27 countries in value of total exports (%)		58.0	56.4	56.0	56.6	58.0	57.9	56.4	56.1	56.3	47.9
Share of imports from EU-27 countries in value of total imports (%)		55.4	52.4	47.9	49.8	50.6	49.3	45.2	42.6	40.3	37.0

<b>Demography</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Natural growth rate: natural change (births minus deaths) (per 1000 inhabitants)		15.4	14.1	13.7	13.5	13.2	12.9	12.6	12.6p	12.8	:
Infant mortality rate: deaths of children under one year of age per 1000 live births		34.9	31.5	28.4	25.6	23.1	20.9	18.9	17.5	16.7	16.0

Life expectancy at birth: male (years)		68.7	69.0	69.4	69.8	70.1	70.5	70.9	71.1	71.2	71.4
Life expectancy at birth: female (years)		72.8	73.1	73.5	73.9	74.3	74.6	75.0	75.3	75.6	75.8

<b>Labour market</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Economic activity rate (15-64): share of population aged 15-64 that is economically active (%)		55.2	52.4	52.3	52.3	51.1	51.5	51.3	51.1	49.8	50.6
SI: Employment rate (15-64): share of population aged 15-64 that is in employment (%)		50.8	48.9	47.8	46.7	45.5	46.1	45.9	45.9	44.6	44.9
Share of male population aged 15-64 that is in employment (%)		72.7	71.7	69.3	66.9	65.9	67.9	68.2	68.0	66.8	66.6
Share of female population aged 15-64 that is in employment (%)		28.9	26.2	26.3	26.6	25.2	24.3	23.7	23.8	22.8	23.5
SI: Employment rate of older workers (55-64): share of population aged 55-64 that is in employment (%)		39.3	36.4	35.9	35.3	32.7	33.1	30.8	30.1	27.1	27.4
Employment by main sectors (%)											
Agriculture		40.2	36.0	37.6	34.9	33.9	34.0	29.5	27.3	23.5	23.7
Industry		17.2	17.7	17.5	18.5	18.2	18.3	19.4	19.7	20.8	21.0
Construction		6.2	6.3	5.2	4.5	4.6	4.7	5.3	5.7	5.9	5.9
Services		36.5	40.0	39.7	42.1	43.4	43.0	45.8	47.3	49.8	49.5
SI: Unemployment rate: share of labour force that is unemployed (%)		7.7	6.5	8.4	10.3	10.5	10.3	10.3	9.9	10.3	11.0
Share of male labour force that is unemployed (%)		7.7	6.6	8.7	10.7	10.7	10.5	10.3	9.7	10.0	10.7
Share of female labour force that is unemployed (%)		7.6	6.3	7.5	9.4	10.1	9.7	10.3	10.3	11.0	11.6
Unemployment rate of persons < 25 years: share of labour force aged <25 that is unemployed (%)		15.0	13.1	16.2	19.2	20.5	19.7	19.3	18.7	20.0	20.5
SI: Long-term unemployment rate: share of labour force that is long-term unemployed (%)		2.1	1.3	1.7	2.9	2.5	4.0	4.1	3.5	3.1	2.9

<b>Social cohesion</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Average nominal monthly wages and salaries (national currency)		:	:	:	372.1	492.0	529.4	595.4	:	:	:
Index of real wages and salaries (index of nominal wages and salaries divided by the CPI) (2000=100)		:	:	:	:	:	:	:	:	:	:
SI: Early school-leavers: share of population aged 18-24 having not completed upper secondary education and not currently in education or training (%)		:	58.8	57.3	54.8	53.0	54.6	51.3	50.0	47.8	46.1

<b>Standard of living</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Number of passenger cars per 1000 population	8)	61.9	66.1	66.8	66.8	67.4	76.4	80.6	84.7	92.9b	96.3
Number of subscriptions to cellular mobile telephone services per 1000 population		116.8	225.2	269.5	338.8	399.7	491.0	609.0	726.2	889.3b	932.5

<b>Infrastructure</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Density of railway network (lines in operation, per 1000 km <sup>2</sup> )		11.1	11.1	11.1	11.0	11.1	11.1	11.1	11.1	11.1	11.1
Length of motorways (thousand km)		1.7	1.8	1.9	1.9	1.9	1.9	1.8	2.0	2.0	2.0

<b>Innovation and research</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
SI: Spending on human resources (public expenditure on education) relative to GDP (%)		2.7	2.6	2.3	2.8	3.0	3.0	3.1	3.0	3.3	3.0
SI: Gross domestic expenditure on research & development, relative to GDP (%)		0.6	0.6	0.7	0.7	0.6	0.7	0.8	0.8	0.7	:
SI: Percentage of households who have Internet access at home (%)		:	:	:	:	:	7.0	8.0	:	18.9	24.5

<b>Environment</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
SI: Total greenhouse gases emissions, CO2 equivalent (tons, 1990=100)		151.0	165.0	154.0	159.0	168.0	174.0	184.0	196.0	219.0	:

SI: Energy intensity of the economy (kg of oil equivalent per 1000 euro GDP 2004)		290.9	295.2	293.2	286.8	291.5	279.2	267.1	273.3	282.0	:
SI: Share of renewable energy in electricity consumption (%)		29.5	24.3	19.1	25.6	25.2	30.9	24.7	25.5	19.1	17.3p
SI: Road freight transport as a share of total inland freight transport (modal split of freight transport) (%)		94.8	94.3	95.3	95.5	94.6	94.4	94.4e	94.3	:	:

<b>Energy</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Primary production of all energy products (thousand TOE)		27 659	26 047	24 576	24 281	23 783	24 332	24 549	26 580	27 453	:
Primary production of crude oil (thousand TOE)		3 087	2 887	2 679	2 564	2 494	2 389	2 395	2 284	2 241	:
Primary production of hard coal and lignite (thousand TOE)		13 284	12 487	12 282	11 360	10 777	10 532	11 213	13 087	14 797	:
Primary production of natural gas (thousand TOE)		665	582	284	344	510	644	816	839	827	:
Net imports of all energy products (thousand TOE)		46 028	54 291	49 536	54 234	60 505	63 232	67 266	73 256	80 596	:
Gross inland energy consumption (thousand TOE)		74 275	80 500	75 402	78 331	83 826	87 818	91 074	99 642	107 625	:
Electricity generation (thousand GWh)		116.4	124.9	122.7	129.4	140.6	150.7	162.0	176.3	191.6	198.6

<b>Agriculture</b>	Note	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Agricultural production volume index of goods and services (producer prices, previous year=100)		94.7	104.2	93.3	108.5	98.0	101.6	106.9	:	:	:
Total utilised agricultural area (thousand hectare)		39 180	38 757	40 967	41 196	40 645	41 210	41 223	40 496	39 505	39 073
Livestock: cattle (thousand heads, end of period)	9)	11 054	10 761	10 548	9 803	9 788	10 069	10 526	10 871	11 037	10 860
Livestock: pigs (thousand heads, end of period)		3	3	3	4	7	4	2	1	2	2
Livestock: sheep and goats (thousand heads, end of period)		38 030	35 693	33 994	31 954	32 203	31 811	31 822	32 260	31 749	29 568
Production and utilisation of milk on the farm (total whole milk, thousand tonnes)		:	:	:	:	:	:	:	:	:	:
Crop production: cereals (including rice) (thousand tonnes, harvested production)		28 749	32 108	29 426	30 686	30 658	33 957	36 471	34 642	29 256	29 287
Crop production: sugar beet (thousand tonnes, harvested production)		17 102	18 821	12 633	16 523	12 623	13 517	15 181	14 452	12 415	15 488
Crop production: vegetables (thousand tonnes, harvested production)		22 083	22 357	21 930	23 698	24 018	23 215	24 320	24 017	25 676	27 214

SI = Structural indicators

: = not available

p = provisional value

e = estimated value

b = break in series

- 1) Including lakes.
- 2) Before December 2005, M1 included currency in circulation and demand deposits (TRY). From December 2005 onwards, M1 includes currency in circulation and demand deposits (TRY, FX).
- 3) Before December 2005, M2 included M1 and time deposits (TRY). From December 2005 onwards, M2 includes M1 and time deposits (TRY, FX).
- 4) Before December 2005, M3 included M2 and official deposits (time/demand). From December 2005 onwards, M3 includes M2, funds received from repo transactions and money market funds (B type liquid funds).
- 5) Averages of monthly data, lending to enterprises for more than one year.
- 6) Averages of monthly data, up to one year or longer.
- 7) Calculated on the basis of ISIC Rev.3, base year 2003 as Paasche index.
- 8) From 2004 onwards, data source is the General Directorate of Public Security.
- 9) Excluding the number of buffaloes.