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TABLE OF CONTENTS

DEMOCRACY AND THE RULE OF LAW

Democracy

The constitutional amendments[1] approved by referendum on 12 September 2010 represented a positive step forward for democracy in Turkey. However, they have proved to be insufficient. Some human rights and freedom of press issues, including the arrest of journalists, continue to be a matter of public debate in Turkey and of concern for the European Parliament and European Commission. Other concerns relate, *inter alia*, to the protection of minority rights, especially in the southeastern part of the country, where severe political tension persists.

A successful constitutional reform and progress with the above-mentioned tensions would constitute decisive steps towards increased democracy, but so far remain unachieved. Together with the arrest of the former chief of staff of the armed forces in early 2012, these challenges have not helped depolarise the public debate, which, in turn, has virtually removed public governance reform issues from the national policy agenda.

Rule of Law

A state ruled by law signifies, *inter alia*, the adoption of a set of principles requiring a separation of powers between the judicial, executive and legislative branches of Government; compliance with the law by Government, individuals and economic operators; proper functioning of the judiciary; and consistent application of fair procedures by the administration. In this respect, the basic aspects of a state ruled by law have been established in Turkey. However, the extent to which the public governance system respects in practice this definition of the rule of law remains a source of concern. The dominant administrative culture, which tends to be formalistic, hierarchical and highly centralised, is often detrimental to the observance of principles such as openness, participation, transparency and accountability.

The separation of powers between the executive and the judiciary is sometimes problematic, and the judiciary in Turkey has tended to protect the state more than it has protected citizens from the state. The capacity of Parliament to properly exercise its function of oversight over the executive is limited and needs to be significantly strengthened. Several groups, such as parliamentarians, members of Government, and top officials and civil servants, have continued to enjoy disproportionate protection.

Important laws are amended frequently. This instability has a negative impact on legal certainty and on the coherence of the legal framework, which in turn may have a significant impact on business activity and on the judiciary. This incoherence may also complicate the implementation of laws and

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

policies and may put at risk the compatibility of Turkish norms with the EU a*cquis*. The Centre of Government has a key role to play in the required strengthening of the overall regulatory and policy making system.

On 18 January 2012, the Government announced a package of numerous, although modest, reforms to the Penal Code that are headed in the right direction. This package has been forwarded to Parliament, and among its objectives are the restriction of the grounds on which pre-trial detention is permitted (such detention could last up to 10 years) and the streamlining of the judicial process so as to enable early hearings of pre-trial detention cases. It is too soon to assess this initiative.

The use of "decrees having the force of laws" (based on Law N° 6223) to regulate matters relating to the public administration has been declared by the Constitutional Court to be in conformity with the Constitution. However, the lack of consultation -- including with Parliament -- that accompanies such a non-inclusive approach may lead to difficulties. In the future these difficulties may become apparent when it comes to the full implementation of the decrees. Several recently adopted decrees having the force of law have already been amended and new decrees adopted, a situation that does not favour legal certainty and smooth implementation. Several appeals concerning such decrees have been filed with the Constitutional Court; the cases are still pending at the time of writing. Furthermore, according to the Constitution (article 91), these decrees will have to be discussed "with priority and urgency" in the Turkish Grand National Assembly (TGNA).

Constitution

Although the constitutional amendments adopted in September 2010 are a positive step forward towards better public governance, the checks-and-balances system must be strengthened in areas such as the separation of powers, protection of citizens against state abuse, strengthening of the public administration's service-oriented relationship with citizens, adoption of a new legal framework for administrative procedures, decentralisation, protection of minorities, and protection of the freedoms of expression and of the right to information. Furthermore, the Constitution should provide the foundations for a neutral, professional, merit-based and service-oriented public administration. These constitutionally-related public governance changes are fundamental for developing a state that is able to perform well, including in an EU membership context.

A consensus has been reached, on behalf of the ruling and opposition parties represented in Parliament, at least on the need for a new constitution to replace the current one adopted in 1982 under the military regime. However, the views expressed so far on the content of the future constitution continue to diverge on such important issues as the type of system to be adopted, for instance parliamentarian versus presidential. In order to be sustainable, the new constitution will need to be the result of a wider political and social consensus, which remains to be built.

The Government has begun a process of consultation on the new constitution, which started after the June 2011 elections, when the Prime Minister expressed the willingness to build a large consensus for reform in Parliament. However, so far the outcome of this process remains unclear, as the indications of co-operation between the political parties represented in Parliament remain slight.

Parliament

The Turkish Grand National Assembly (TGNA) has undertaken several initiatives in line with the "options for change" identified by the TGNA/SIGMA Peer Review, aimed at strengthening its capacities, which are still limited, so as to better perform its main functions of producing legislation and controlling the executive.

A draft of the TGNA's new rules of procedure is under preparation. Such a revision will have a critical role to play in the implementation of the TGNA's ambitious 2010-2014 Strategic Development Plan.

The proposal to create a parliamentary legislative academy has been approved. Once operational, this academy will contribute to the strengthening of expertise on the legislative, oversight and scrutiny functions of Parliament. For the moment, the TGNA's oversight function suffers from significant weaknesses originating in the shortcomings of instruments for scrutiny and more fundamentally in the committee system, which is characterised by the limited oversight role of committees. However, some progress has been made in terms of capacity to review budgetary drafts submitted by the Government. The implementation of the new Law on the Turkish Court of Accounts (TCA), which entered into force in 1 January 2011, has constituted a promising step forward, as the legal framework for the implementation of budget reform and external audit is now coherent, requiring the TCA to report to the TGNA, and this coherent framework will create some of the conditions required for closer dialogue and co-operation between the two bodies.

The willingness that has been expressed to strengthen parliamentary oversight of public expenditure, including the scrutiny of budget implementation, is to be welcomed. The capacity of Parliament to scrutinise performance programmes and accountability reports as well as external audit reports is nevertheless still inadequate.

One of the key capacity concerns that the TGNA has identified originates in its human resources policy and management, which suffer from a lack of transparency and clarity. Some progress has been made in this area, including in manpower planning, and the Strategic Development Plan addresses several of the main weaknesses of the TGNA's organisational and human resources framework.

Government

Constitutional reform and the political agenda have, understandably, tended to shift the attention of the Government away from horizontal public governance reforms. This tendency has been the case for policy making and co-ordination systems, administrative procedures, and the civil service system and management. However, progress has been made in several public governance areas that are less politically sensitive, such as budget execution, debt management and public procurement.

The 2011 initiative of the previous Government, the previous Parliament and the President has granted the Government that was established after the June 2011 elections the authority to issue decrees having the force of law for a six-month period. These decrees have allowed the Government, *inter alia*, to restructure ministries. For instance, some ministries have been merged and some agencies have been transformed into ministries. The hierarchy and the ranking system of the state bureaucracy, together with the procedures regulating some human resources management functions in the public administration, have been adjusted.

The programme of the Government that was presented to the TGNA on 13 July 2011 included a commitment to pass laws that would, *inter alia*, settle legal disputes through mediators, establish an ombudsman, simplify judicial procedures, and provide assistance to needy citizens in undertaking legal actions.

Attention should continue to be devoted by the Government to improving the quality of public services as well as fostering the development of professionalism and strengthening the institutional capacity of the Centre of Government to perform its key functions.

Public Administration

The lack of dialogue and openness of the administrative culture reduces the capacity to undertake administrative reforms, and it also puts at risk the sustainability of reforms. However, the existence

of a dynamic civil society and of respected NGOs should mean that new ideas and support for more and better administrative reforms will be provided in the future.

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

Another reform, initiated by the Decree having the force of law No. 1/523, concerns remuneration in the public service, with one of the objectives being the implementation of the principle “equal pay for equal work”. Although it is much too early to evaluate the impact of such an important reform on ministries and agencies, some bodies may have to face new challenges in the future, including the recruitment of qualified staff.

Further implementation has continued in public expenditure management and control, where the development of strategic planning and performance budgeting have been pursued, notably consolidating reform measures. However, internal audit continues to suffer from the persistent confusion between the respective objectives, roles and responsibilities of internal audit and inspectorate functions. Difficulties have also been encountered in the design of a structure and mechanism to actively promote managerial accountability and internal audit.

The authorities seem to be committed to reforming the system of public procurement, concessions and public-private partnerships, with the aim of fully aligning it with EU law. A couple of years ago, several draft laws were prepared. However, there is apparently less political support and commitment to reach concrete results in this area. The Ministry of Finance (MoF) has been assigned the responsibility of ensuring the establishment of a coherent policy and co-ordination of the legislative process with respect to public procurement.

Administrative Justice

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

National Anti-Corruption Strategy

Corruption, especially in the political sphere, remains a problem. No significant change has been observed regarding the excessive immunity of certain public officials. The prosecution of high-level officials is rare. No new legislation has been adopted concerning the financing of political parties and electoral campaigns. However, in recent years, the different governments have considered the fight against corruption as a priority, and significant progress has been made in this area: the National Anti-Corruption Strategy was adopted as well as an Action Plan to support its implementation. The Strategy incorporates important preventive provisions and addresses the issue of political corruption. Some initiatives have been taken to raise the awareness of the public, the private sector as well as NGOs, unions and the media of this National Anti-Corruption Strategy, with a view to increasing support for its implementation. However, implementation of the Strategy appears to have slowed down.

A draft law redefines 'the crime' of bribery to comply with the recommendations to Turkey of the Group of States against Corruption (GRECO) of the Council of Europe. If the draft law is passed, bribery will no longer be classified as misconduct but as a crime. It will also establish punishment for public officials engaged in bribery, which could go up to 12 years of imprisonment. This draft law is pending for debate in the parliamentary Commission on Justice.

Recommendations

To Turkey

The ongoing constitutional reform offers a unique opportunity to address at the highest level some of the key public governance challenges that Turkey is facing. It may also induce a new momentum for reforms in the coming years. The new constitution will have to properly address, *inter alia*, the separation of powers, the role of constitutional institutions (including Parliament, the ombudsman, the Constitutional Court, the judiciary, the Court of Accounts), the notion of the public administration as a service to the citizens, the protection of minorities, the electoral threshold, and the protection of human rights and freedoms within a fully developed system of checks and balances. The active participation of civil society and its organisations should contribute to the necessary appropriation of the new constitution by the entire civil society.

In parallel, initiatives should be taken to:

- Introduce a new administrative legal framework (general administrative procedures and reduced number of special procedures, delegation of power, decentralisation, etc.);
- Increase the effectiveness of the judicial control of administrative decisions and ensure the compliance of the administration with judicial decisions;
- Review the legal framework of the civil service and strengthen the institutional capacity to manage and enforce this legal framework across the public administration; and
- Pursue the public financial management and control (PFMC) and public procurement reforms in order to consolidate their results.

The adopted National Anti-Corruption Strategy should be fully implemented, including the strengthening of dedicated resources. The legislation on the immunities and privileges of top officials should be revised so as to reduce disproportionate protection.

CIVIL SERVICE AND ADMINISTRATIVE LAW

Main Developments since Last Assessment (May 2011)

Parliament passed the Authorisation Law on 3 May 2011, enabling the Government, during a six-month period, to adopt decree-laws concerning public administration. Thirty-five decree-laws were adopted, most of them on administrative organisation issues (creation of new ministries, reform of the distribution of competences among ministries, reform of existing ministerial structures, etc.). The power to enact decree-laws with the force of a law is established and regulated by Articles 87 and 91 of the Constitution. In accordance with the Constitution, these decrees were submitted to the Parliament on the day of their publication. In spite of the fact that they have to be discussed with priority and urgency, the decree-laws are still waiting in the committees.

Some of those decree-laws affect the civil service's legal framework. Changes have been made intending to homogenise remuneration across the civil service, in order to facilitate the redeployment and voluntary mobility of civil servants. It is a step forward but it is too early to assess its real impact and practice. The so-called revolving funds are still used in some sectors, a practice which risks distorting the principle of "equal pay for equal work" when used for paying supplements to public servants of the related sectors, which is incompatible with a unitary, transparent and fair salary system. It must, however, be stressed that efforts are being made for better regulating the revolving-funds. A comprehensive draft law is being prepared and a specific regulation for the Ministry of Health was adopted on 19 July 2011. The aim is to reduce the number of existing revolving-funds and to standardise their organisation and administration.

Decree-law 632 of 4 June 2011, allows current temporary contractual public employees to be granted civil service status at a similar level in the hierarchy. These employees have been contracted through a competitive recruitment process but there are some concerns as temporary contracting is often misused, including for hiring managerial staff. Concerns exist that this decree-law authorises the circumvention of the adequate recruitment procedures, thus further increasing the risk of politicisation of the civil service and weakening of the merit system.

Conversely, some positive modifications have been introduced into the system by the decree-laws: all disciplinary sanctions are now subject to judicial review (Law no. 6111); collective bargaining and the ensuing collective agreements have been reformulated as a right of civil servants, so obliging the state to comply with them; a mediation body, the Conciliation Board, has been set up to arbitrate in disputes (Amending Law on the Law on Public Employee's Unions, published on 11 April 2012).

The immunity of civil servants remains excessive, leading to serious abuse of authority and violations of fundamental rights. The 2011 amendments to the Law on the National Intelligence Organisation requires the Prime Minister's authorisation to conduct investigations involving members of the intelligence services as well as of public officials to whom the Prime Minister has assigned certain special tasks. As this provision is vaguely drafted, in practice it is not clear how investigations of politically sensitive cases are to be conducted.

The drafting of a new Constitution to replace that of 1982 was undertaken subsequent to the 12 June 2011 elections. A Parliamentary Constitutional Reconciliation Commission (AUK), whose membership embraces the entire parliamentary political spectrum, has started work to prepare the new

constitutional text. For the sake of consensus, the AUK is to take decisions unanimously, even if this might slow down the constitutional process.

Two additional chambers have been added to the Council of State, which is the supreme administrative court. This is an effort for improving the effectiveness of the administrative justice. However, this reform is still insufficient as in-depth changes have been requested for many years in order to better protect legality and to provide greater justice to the citizens.

No significant improvement can be reported in the administrative procedure legal framework, which continues to be a source of important concern.

Main Characteristics

The Turkish bureaucracy is strong and solidly rooted in a constitutional secular state. The administrative culture is formalistic, strongly hierarchical and authoritarian. It is also highly centralised. The prevalent values are obedience and control, which are an asset as they guarantee a certain degree of efficiency. However, the state administration appears to be fragmented, ineffective and opaque, and has considerable difficulties adapting to the new needs of a rapidly evolving, dynamic Turkish society. Inefficient Government bureaucracy is identified as the second most problematic factor for doing business in Turkey.[2]

Those characteristics are at the root of many shortcomings. They partly explain the limited capacity of the administration to secure the full implementation of many public programmes. In order to remedy this, a certain orientation towards strategic planning was introduced a few years ago in ministries and public organisations, which have produced meagre results due, among others, to poor managerial capabilities in the state administration. Attempts by the Directorate of Laws and Decrees, within the Prime Minister's Office (PMO), to monitor the transposition of the EU *acquis*, have improved certain managerial skills in those institutions involved (Ministries of EU Affairs, Justice and the Prime Ministry), but process management and co-ordination still need to be improved.

The civil service remains substantially governed by the 1965 Law. According to this law there are four categories of public employees: civil servants, contractual employees, temporary employees and labourers.

Public employment is steadily increasing in Turkey. According to the data provided to the OECD, the number of employees under the general employment framework (GEF) was 1,586,451 in 2000; 1,686,689 in 2005; 1,776,412 in 2010. In March 2012 the number of civil servants was 1,856,942. Considering the number of civil servants, contracted personnel and workers, in 2011, the total employment was 2,272,234. The main concern does not lie with the total number of personnel working in the public sector (which is below the OECD average), but with the rational dissemination and deployment of the workforce among the public agencies, and between the centre and the periphery field units of the administrative system.[3]

The need for a new law on public service has been discussed several times but a non-systematic approach has continued to prevail. As a consequence, important issues are not being addressed in a comprehensive manner, the system is losing unity and it is becoming more complex. The following issues can be highlighted (non-exhaustive): narrowing the scope of the civil service, including a clear delimitation of the boundaries between politics and administration; improving the merit-based system for recruitment and management; establishing a new salary system which must be unitary,

2 "The Global Competitiveness Report 2011–2012", http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf.

3 General Government employment across levels of government: central level: 87.81%; sub-central level: 12.89% (*Government at a Glance*, OECD, 2011).

simpler, transparent and fair; reinforcing the rights and duties of civil servants; using mobility and training as important human resource management tools; cutting favouritism and patronage; eliminating the abuse of temporary appointments as a way of circumventing normal recruitment and promotion procedures; abolishing the immunity of civil servants and the permission system for being prosecuted; emphasising impartiality as a fundamental civil service value. In particular, establishing an effective central management unit for preparing and monitoring public service policy and strategy, as well as for ensuring common standards in their implementation, is of paramount importance for achieving a successful and sustainable reform in this field.

The recruitment system has shortcomings, even if it was reformed in 1999 when the "state examination" was made mandatory. Although the state examination is reputed to be rigorous, it still remains mostly based on knowledge rather than on testing skills. In addition, the oral interview phase afterwards is open to abuse and patronage, putting the merit system at risk. Furthermore, temporary appointments have become normal practice for filling managerial positions which subsequently become permanent within a certain period of time. The proliferation of these recruitments is detrimental to the merit system and increases significantly the risk of further politicisation.

Civil servants have a right to unionise, but they do not yet have the right to strike. Striking is forbidden in general in the civil service, which goes against international ILO standards.

The civil servants' training system needs to be developed in order to become a useful tool for accompanying organisational change. Accurate and systematised data on training is not available, putting into evidence the insufficient approach to the subject.

Civil servants' breaches of integrity and corruption still remain a concern. A positive step in the prevention of corruption was the establishment of the Public Service Ethics Board, which has raised awareness and provided guidance in addressing ethical dilemmas. It also conducts investigations and inquiries on possible ethical violations and decides on these. However, the results are still insufficient and the available data is not updated. The webpage of the Ethics Board only mentions six decisions in 2009 and one in 2010. The publication of these decisions has been cancelled following a decision of the Constitutional Court.

The boundaries between politics and the administration have become increasingly blurred and political decisions tend to substitute technical administrative decisions. Appointments of senior officials are more and more frequently based on political connections.

The Turkish administration does not have a proper central capacity for public service policy design or for ensuring common human resource management standards, as the State Personnel Presidency at the Prime Ministry lacks the necessary legal powers in spite of the improvements made by the Law no. 6111 and the Decree-law no. 662. Ministries have limited capacities and skills for developing a modernised HRM system, the staffing information system is insufficient, and personnel data is too dispersed (and unshared) across institutions.

The administrative decision-making process jeopardises legal certainty and predictability, as it is often haphazard, complex and costly. In addition, it negatively impacts on the administrative justice and opens opportunities for corruption. The fragmented old-fashioned system of administrative procedures needs to be reformed. A general single law on administrative procedures and the abrogation of many of the existing special procedures would contribute to improving legal certainty and the rule of law.

Personal data protection, even if guaranteed by the Constitution (Article 20), needs to be further developed through an ordinary law. The current legislation on access to information is insufficient to guarantee transparency in the public administration because it has too many exceptions to the "right

to know". A draft Law on State Secrets aimed at clarifying access to public documents and at limiting the restrictions for accessing them was examined by the relevant parliamentary committee, but has not yet been adopted.

An Ombudsman institution has been established by constitutional amendment, but the statute law for the institution remains to be passed. According to the Constitution (Article 74), the Ombudsman will examine "complaints on the functioning of the administration".

Reform Capacity

Although the Turkish state has good potential capacities to reform, the country has yet to make substantial efforts to strengthen its political and operational will to reform. Without a motivated and service-oriented public civil service, new managerial skills, a capable HRM system, and an accurate law on general administrative procedures, other reforms of the governance system will most probably fail or will have little or no sustainable success. Therefore, reforming these areas should be considered a priority.

The current distribution of power and responsibilities within the governance system in Turkey suggests that the PMO has a crucial role to play in promoting, preparing and monitoring these reforms. For this purpose its capacity needs to be strengthened.

The preparation of a new Constitution should be seen as an opportunity for enhancing a comprehensive constitutional framework for reinforcing the democratic values and principles of good governance.

Finally, the decrease in the number of people in support of EU accession contributes to both decreasing the political pressure for public governance reforms and decreasing the potential for EU accession to be a key driver of reform.

Recommendations

To Turkey

- Launch a general review of the 1965 Law that rules the civil service. The same should be done regarding the salary system. The practice of successively amending it has significantly reduced its coherence and, regardless of that, the legislation requires further modernisation.

- Complete the legislation needed for the implementation of the constitutional reform of 2010, particularly the Law on the Ombudsman. It will contribute to improving transparency in the activity of public institutions and will reinforce the protection of citizen's rights.

- Adopt an accurate law on state secrets. The aim should be to promote transparency and openness through a better balance of the legislation aiming at protecting state secrets, the protection of personal data and the right to access to public information.

- Approve a law on general administrative procedures and prepare an implementation plan. This will contribute to the simplification of the administrative legal environment, increasing trust in public administration, improving the business environment and facilitating administrative justice. It will also enhance transparency, and therefore reduce opportunities for corruption.

- Prepare a comprehensive reform of the administrative justice. It is a fundamental pillar for the protection of citizens' rights towards a still power-centred administration.

- Improve the power, resources and skills of the central management capacity in charge of civil service – currently the PMO – in order to reinforce its policy making and monitoring roles across the whole public administration. In addition, develop the overall managerial capacities in public services, principally through a comprehensive training programme.

INTEGRITY

Main Developments Since the Last Assessments (May 2011)

No major developments in Turkey's public integrity framework have occurred since the last assessment in 2011. Integrity occupies an important place in the public debate, mainly due to the action of universities, civil society organisations and the media, pointing in particular to the need to increase anti-corruption efforts in politics, the judiciary and business. Notwithstanding this interest, no visible progress of any real significance has been made during the past year in increasing integrity or fighting corruption in Turkey.

Some activity has nevertheless been reported with regard to the adopted Strategy for Enhancing Transparency and Strengthening the Fight Against Corruption (2010-2014) and its related Action Plan. The Executive Board for implementation of the Strategy has held 25 meetings, reviewed 25 reports prepared by its working groups, and adopted decisions concerning 23 measures. The working groups have been requested to continue work on these measures. For the time being, these activities have not yet produced visible results in terms of improving the integrity environment.

In spite of some institutional and procedural arrangements for financial auditing of political parties introduced by the Law on the Establishment and Proceedings of the Constitutional Court, which entered into force on 3 April 2011, the legal loopholes related to the financing of political activities has continues to be a matter of concern, as it opens up opportunities for political corruption.

Some improvements have been made regarding irregular payments and bribes as well in the transparency of Government policy making.[4] However, the most recent Corruption Perceptions Index (2011)[5] ranked Turkey 61st (out of 178 countries), down from 56th (out of 182 countries) in 2010.

In 2011, the Ethics Board for Public Servants organised ethics training in which 5,944 public officials representing 56 public institutions participated. A total of 5,944 public officials attended these training courses. The Ethics Board also conducted investigations and inquiries on cases that it had received. In 2011, it rendered 73 decisions, nine of which concluded that ethical violations had been committed by public servants.

Main Characteristics

The fight against corruption has continued to be a key issue in Turkey, and social and political awareness of this activity is increasing. The country has a wide system of inspection, which in the future could also serve as a basic institutional set-up for the prevention and fight against corruption. For this purpose, better co-ordination and improved skills will be necessary.

4 According to *The Global Competitiveness Report 2011-2012*, World Economic Forum, at: http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf.

5 http://cpi.transparency.org/cpi2011/results/

An Ethics Board for Public Servants has existed since 2004. Its activity aims in particular to raise awareness of the negative impact of corruption and to promote ethics in the public service. For this purpose, it organises training courses and seminars and celebrates Ethics Week (between 25 and 31 May). The Ethics Board also conducts investigations and inquiries based on the claims that it has received.

The 2010-2014 Strategy for Increasing Transparency and Strengthening the Fight Against Corruption ("Anti-Corruption Strategy") and its related Action Plan, developed by a ministerial committee[6] and an executive board,[7] were approved by the Council of Ministers in 2010. These documents provide a solid framework for strategic action in this area, but the results are not meeting expectations. The Executive Board proposed activities on 28 corruption-related issues, but these activities have produced limited results. The capacity of the Prime Ministry's Inspection Board is perceived as insufficient, in particular in terms of the number of staff, to ensure the required follow-up of proposals.

At the political level, the public integrity framework has several shortcomings that are reducing the capacity and legitimacy of politicians in the fight against corruption.

The Law on Political Parties[8] -- which also regulates their financing -- needs to be modernised, and the funding of electoral campaigns needs to be more specifically regulated. The subject is currently being studied in the Ministry of Justice. New institutional arrangements concerning the Constitutional Court and the Turkish Court of Accounts have been made, with the aim of improving auditing capacity with regard to political financing. However, the legal framework is incomplete, and the necessary skills for dealing with the specificities of this financing are not in place. With regard to the financing of political parties, the current control is quite formalistic. In practice, an effective and comprehensive control of political financing needs to be developed and implemented.[9]

These weaknesses were also mentioned in the GRECO Third Round Evaluation Report (March 2010),[10] which pointed out that political party candidates, independent candidates for election, and elected representatives were not subject to the financial regulations on transparency that applied to political parties in this domain. This failure to apply the regulations to these groups creates the risk of losing control over donations and other resources. In addition, there are no obligations for these groups to report possible conflicts of interest. For the moment, Turkey has not yet fulfilled its obligations to address GRECO's agreed recommendations.

The immunity of parliamentarians and Government members (as well as other senior public officials) remains excessive: they are not subject to any restrictions subsequent to their term of office; a system for declaring assets exists, but control and verification are ineffective and lack transparency; administrative authorisation is still required for the prosecution for corruption of certain groups of officials; at this level, effective investigations, indictments or sanctions in cases of alleged corruption are very rare, if any. Therefore, the public perception is that corruption is widespread at the political level and that parliamentary immunity is sometimes used to obstruct the fight against corruption.

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6 The Committee is composed of the Deputy Prime Minister and four ministers (Minister of Justice, Minister of Interior, Minister of Finance and Minister of Labour and Social Security).

7 The Executive Board comprises representatives of public institutions, labour unions and the Turkish Union of Chambers and Stock Exchanges (TOBB).

8 Law No. 2820 on Political Parties of 22 April 1983.

9 See *Sustainable Governance Indicators 2011*, Bertelsmann Stiftung, at: http://www.sgi-network.org/pdf/SGI11_Turkey.pdf.

10 http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)5_Turkey_Two_EN.pdf

The independence and effectiveness of the judiciary also raise concerns. The constitutional reform of 2010 represented a slight improvement in terms of the independence of the judiciary, but important weaknesses remain in legislation and in practice. The new High Council of Judges and Prosecutors of Turkey (HCJP) is meant to be independent from the executive. However, concerns have been voiced in this regard, as the Minister of Justice presides over the HCJP and the Undersecretary of Justice is also a member. The constitution guarantees tenure to judges and prosecutors, but the HCJP controls their careers through appointments, transfers, promotions, reprimands and performance assessments in such a way that their independence may be compromised. Since the independence of the judiciary and of the prosecutorial services is not fully guaranteed in practice, the repression of corruption becomes haphazard and inconsistent, especially as far as the political sphere is concerned.

The judiciary is overloaded with work and delays are excessive. According to the statistics of the Ministry of Justice, the number of cases in the courts increased from 5,553,378 in 2001 to 6,619,412 in 2010. The number of cases referred to the Office of the Attorney General increased from 2,913,335 in 2001 to 6,760,676 in 2010. The number of investigations, prosecutions and convictions seems low[11] in comparison with alleged cases of corruption and bribery. Judges and prosecutors often lack the proper skills and training for dealing with corruption-related cases. The number of prosecutors and judges has only slightly increased since 2002. The number of cases per judge increased from 951 in 2001 to 1,064 in 2010. However, it must be stressed that in recent years there has been a gradual decline in trial duration: from 450 days in 2004 to 266 days (in criminal courts) in 2010. Additional reforms aiming to increase the effectiveness of the judiciary are being prepared.

The criminalisation of corruption remains vague. The GRECO Third Round Evaluation Report[12] pointed out that the legislation should be thoroughly reviewed to clearly establish what kind of conduct constitutes bribery. In particular, some of the most important shortcomings concern the definition of the concept of bribery offences, which excludes corrupt behaviour without an agreement between the parties or without a breach of duty by the public official. Draft amendments to the Penal Code and other reforms of the judiciary included in the 3rd Judiciary Reform Package are being discussed.

Transparency in the public administration is still a long-term goal that will require continuous efforts. The 2004 Law on Freedom of Access to Information has contributed to widening the “right to know”, but the current Law on Data Protection severely limits access to information of public interest by providing unreasonable exceptions to information disclosure. A reform of the mainly secretive state confidentiality regulations is still pending in the form of a draft Law on State Secrets, which the Turkish Grand National Assembly (TGNA) is scheduled to debate in the near future.

Reform Capacity

The institutional arrangements for leading and co-ordinating the efforts to prevent and fight corruption are potentially effective, but they are not working effectively in practice. The TGNA is not sufficiently involved in the prevention of corruption. The existing inspectorates of various kinds are not adequately focused, as the systemic approach to preventing corruption is not being properly implemented. Accountability and reporting lines are also not well established or at the least they are ineffective. Transparency in the public administration is low.

11 No precise data is available.

12 http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)5_Turkey_One_EN.pdf

In summary, the reform capacity of the state is reasonably good, but the political resolve to address the remaining key issues seems to be limited to anti-corruption rhetoric. There is no clear driver for increasing transparency or promoting integrity in the public sphere. Although the internal demand for action is high, this need does not seem to be heeded, and external pressure, mainly from an EU integration point of view, does not seem to be a real motivating factor.

Recommendations

To Turkey

- Priority should be given to the implementation of the adopted Anti-Corruption Strategy and its Action Plan. Decisive action needs to be taken in this regard; the capacity of the institutions involved in this implementation need to be strengthened and the results of the Action Plan should be made public.

- In order to address the identified weaknesses related to political financing, priority should be given to regulating the immunity of parliamentarians, members of the Government and senior public officials and to the verification of asset declarations. Turkey has agreed to resolve these issues within the GRECO evaluation context, but no results are visible so far. The ongoing process of adopting a new constitution should provide an opportunity for launching reforms in these areas.

PUBLIC EXPENDITURE MANAGEMENT AND CONTROL

Main Developments

Supported by favourable economic developments, Turkey has achieved a good degree of aggregate fiscal discipline (in the IMF's 2011 article IV review, the fiscal deficit was forecasted to be approximately 1% of GDP in 2011-2012).

Since the last assessment, the Turkish Government has reinforced the implementation of the past initiatives in the area of **Public Expenditure Management (PEM)** and, notably, all line ministries and main public agencies have prepared performance programmes and accountability reports. Some amendments to the regulatory and legal framework have been made, including: *i)* a decree which sets out the principles and procedures for the Public Electronic Settlement System (PESS), published in the *Official Gazette* in June 2011; *ii)* a decree having force of law issued in November 2011 which amended the budget preparation calendar stipulated in the Public Financial Management and Control (PFMC) Law (Law no. 5018).

However, the revision of the budget preparation calendar, which moves the budget discussions from summer to autumn, can be considered as a step backwards with regard to line ministries' responsibilities in budget management.

Concerning the revolving funds, a new chart of accounts and the integration of transactions concerning these funds into the Government financial management information have been prepared, for implementation in 2012.

In order to ensure the compliance of the inclusion of the capital expenditures in the budget drafts of the central Government public agencies with the planned sectoral and economic distribution, the control procedures, which were manually carried out between the Ministry of Development and Ministry of Finance, started to be performed electronically in October 2011.

Progress in **Public Internal Financial Control (PIFC)** reform has been variable since last year. The Central Harmonisation Unit on Financial Management and Control (CHU-FMC) has provided, with the assistance of a twinning project, further methodological support for the implementation of internal control throughout the administration. It has also analysed some 2,500 action plans on internal control prepared by strategic development units and published the results on its website.

Proposals have been prepared by the Ministry of Finance to amend the Public Financial Management and Control (PFMC) Law, with a view to further clarifying the responsibilities of public administrations with regard to *ex ante* financial control and managerial accountability in particular, as well as further defining the tasks of the CHU-FMC. A by-law on Working Procedures and Principles of Internal Auditors was also drafted to ensure the establishment of internal audit units in a coherent way throughout the public administrations covered by the PFMC Law. None of these proposals has yet been passed (March 2012). Another proposal refers to a decree with the force of law aimed at clarifying the role of the Internal Audit Co-ordination Board (IACB), along with its membership, but due to the lack of consensus this draft has also not been passed.

The "Quality Assurance and Development Programme for Internal Audit" was formally adopted by the Internal Audit Co-ordination Board, but there has not been any progress in the development of internal audit (IA). The number of internal audit staff is slightly lower than it was previously. The number of IA reports has been significantly reduced, from some 1,000 reports for 2010 to a likely 700 for 2011.

In accordance with the reform priorities that were established following the elections in 2011, the Ministry of Finance has reorganised its organisational structures related to tax collection. A single Tax Inspection Board, reporting directly to the minister, has been created and includes the former Finance Inspection Board, the Tax Inspectors Board, the Revenue Controller and the tax auditors. The objective of this reorganisation is to strengthen tax collection through tax audits of private sector companies and large taxpayers. This Board reports directly to the Minister of Finance. The Minister can request investigations and audits of the Ministry of Finance expenditure, consulting tasks, etc. It remains to be seen if this new organisation is complementary with the objective and remit of the internal audit service of the Ministry of Finance.

The Prime Ministry Inspection Board was formally appointed as the single contact point for OLAF (i.e. as the Anti-Fraud Co-ordination Service – AFCOS) concerning EU funds in Turkey. This co-ordination includes the responsibility to examine, investigate or ensure that other relevant institutions carry out investigations on allegations of the illegal use of EU financial resources. It also ensures co-operation with international institutions in this area.

With regard to **external audit**, 2011 was the first year of transition for the Turkish Court of Accounts (TCA) in its alignment with the new Audit Law, in force since 19 December 2010. The institution has undertaken a considerable amount of work to ensure that the provisions of the law are applied. It formally published the regulations required in order to provide underlying support for the powers that the law grants to the TCA. Areas of incompatibility with other laws and regulations are being identified. The TCA adopted the *Regularity Audit Manual* and drafted the *Performance Audit (Economy, Efficiency and Effectiveness) Manual* as well as the *Manual for the Audit of Performance Indicators*.

The TCA Law was amended to enable the establishment of the Audit Development and Training Centre. This amendment was needed in order to provide support during the major change that the TCA has just started to undergo. This Centre will ensure the training of all TCA staff and TCA members. For the areas falling under its mandate, it will also provide training activities and organise courses, seminars and conferences for other public administrations, and contribute to the preparation and delivery of training activities organised by other public institutions.

The TCA working group has prepared a draft Strategic Plan, which sets out a development model for the expanded role and responsibilities of the TCA. This plan is currently with the top management for consideration of the TCA's priorities.

To enable the TCA to undertake its new responsibilities for regularity audits, two new boards have become operational: the Report Evaluation Board (REB) and the Audit Planning and Co-ordination Board. The REB carries out the final evaluation of TCA reports before they are issued. The Audit Planning and Co-ordination Board's main task is to prepare the mid-term Strategic Audit Plan, to finalise the annual Audit Work Plan, and to report on the TCA's execution of audits.

The TCA has also made progress in developing software to assist with audit and audit management and in setting out the business processes for regularity audits; the first regularity audits under the new law, carried out in 2011, will be finalised in May 2012.

Main Characteristics

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

Regarding **PEM**, the main characteristics include: i) increased responsibilities of line ministries in budgeting; ii) development of a multi-year budgeting approach; iii) preparation of strategic plans and performance programmes, which present performance objectives and targets, and accountability reports (i.e. annual activity reports); iv) improved cash management, with the implementation of a Treasury Single Account; and v) implementation of accrual accounting. These reform measures are similar to reforms implemented in many other OECD member countries over the last two decades.

Budget Process

Financial management functions are shared among three entities: the Ministry of Finance, the Ministry of Development (MoD) and the Under-secretariat of the Treasury, which reports to the Deputy Prime Minister for Economic and Financial Affairs. Good co-ordination for macroeconomic management has been established between these entities. To frame budget preparation, a Medium-term Programme, including macroeconomic policies and targets, is first of all prepared by the MoD and submitted to the Council of Ministers. Secondly, the Ministry of Finance prepares a Medium-term Fiscal Plan, including expenditure ceilings by line ministry and main budget administration. This plan is submitted to the High Planning Committee (HPC) in September instead of June, as initially stipulated in the PFMC Law. In fact, since 2009 the HPC meeting to decide on the Medium-term Fiscal Plan has been held later than foreseen in the legislation (prior to the recent changes). According to the Government, the changing economic environment makes it difficult to forecast fiscal aggregates in advance. This is understandable under special circumstances, but the legalisation and the resultant perpetuation of such a calendar pose problems. Under the new budget preparation calendar, line ministries will have only two weeks to prepare their budget requests, although some information exchange is likely to also occur earlier. The Medium-term Fiscal Plan is not reviewed by the Council of Ministers. The key ministries of the social sectors (e.g. the Ministry of National Education and the Ministry of Health) do not participate in the HPC, which may limit the effectiveness of the Medium-term Fiscal Plan.

Strategic Development Units

All public administrations within the scope of the general budget and all special budget administrations have a strategic development unit (SDU) staffed by financial specialists. The SDUs carry out functions previously performed (until 2006) by the Ministry of Finance budget offices in budget preparation and budget execution. They are responsible for strategic planning, establishment of performance targets and quality criteria, co-ordination of the preparation of the budget and the performance programme, reporting, and internal control including some *ex ante* financial controls. Annual SDU meetings are held, which allow participants to share experience and review the Public Finance Management (PFM) processes with the Ministry of Finance. However, there are still occasional information gaps between central budget organisations and line ministries. For instance, even the recent changes to the budget calendar were not communicated sufficiently.

Strategic Plans, Performance Programmes and Accountability Reports

Five-year strategic plans have been prepared by all ministries, main agencies, provinces, and the largest municipalities. Every ministry and main agency also prepares an annual performance programme and accountability reports. However, such activities have not had an in-depth influence on the budgeting approach. The performance programmes, which present policies and expected results, aim to be in line with the strategic plans. However, the fact that they are only information documents and are structured in a different manner than the budget limits their function in the budget process. The budget includes forward estimates presented at the same level of detail as the annual budget outlays. However, the performance programmes only cover one year, whereas one of the objectives of a multi-year budgeting approach should be to plan policy changes and progress in performance over a period of several years.

Parliamentary / Executive Relationship

Parliamentary capacity for scrutinising performance programmes and accountability reports has increased in recent years but is still insufficient. This problem is becoming more and more acute, since the number of documents submitted to the Plan and Budget Committee will increase considerably following the implementation of the Law on the Turkish Court of Accounts, which has been in force since the December 2010. Budget discussions in Parliament are hindered by the fact that some of the documents (e.g. performance programmes) are sent to Parliament too late to be used in the budget process.

There seems to be some analytical capacity in the Government to prepare and analyse policies, at least in the three co-ordinating entities. However, the Government does not provide detailed calculations of the fiscal impacts of new policies and legislation, despite the requirement of the PFMC Law to prepare at least three-year estimations of fiscal impacts.

Budget Management and Management of Public Investments

The capital and recurrent budgets are prepared in separate processes. This arrangement may increase difficulties in using performance information in budget discussions and in the development of a programmatic budget approach, as a programme encompasses both recurrent and capital expenditures. Within a sector, the line ministry performance programmes are prepared concurrently by the line ministry and its dependent main agencies, all of which deal directly with the Ministry of Finance for budget preparation. Such arrangements risk hindering budget policy co-ordination at the sectoral level.

Scope of the State Budget

The coverage of the budget documents is fairly comprehensive. Data on extra-budgetary and revolving funds are annexed to these documents. Expenditures financed by loans are included in the budget, but IPA funds are not. The Treasury Single Account (TSA) is operational, and its efficiency will improve with the implementation of the PESS.

Accounting and Reporting

The budget and the appropriation accounts are cash-based, but the central Government accounting system is accrual-based for financial reporting purposes. About 70% of International Public Sector Accounting Standards (IPSAS) have been transposed in the national regulations, and 50% of those standards have been effectively implemented. Accrual information does not play any significant role in internal management, but it is used for reporting to international institutions according to the Government Finance Statistics Manual (GFSM) and European System Accounts (ESA) 95 standards.

Wide institutional interest in the development of PIFC

With regard to **PIFC**[13] **--** the current primary, secondary and tertiary legislation provides a basic framework for management control and for procedures related to internal control. The Ministry of Finance has prime responsibility for its development, although other administrations, such as the Ministry of Development (formerly the State Planning Organisation) and the Under-secretariat of the Treasury, are closely involved due to their role in the context of the PIFC system. This arrangement means that there is wider institutional interest in the development of PIFC. This wider interest needs to be accommodated in order to ensure ownership and leadership of PIFC at an appropriate level.

While the PFMC Law contains the PIFC requirements, some amendments have been proposed by the Ministry of Finance. For example, amendments are being proposed that would, *inter alia*, further clarify management responsibilities and components of internal control as well as clarify the role and responsibilities of the Internal Audit Co-ordination Board (IACB), together with changes in its membership. The draft decree with the force of law was prepared by the IACB and confirmed by the Minister of Finance, but has not been passed. This draft decree reduced the number of representatives on the IACB from the Ministry of Finance, which would therefore have had less influence in the decision-making process if the draft decree had been passed. The amendments referring to the Working Procedures and Principles of Internal Auditors were also drafted by the IACB and sent to the Prime Ministry with the signature of the Minister of Finance. These amendments aim to ensure that internal audit units are established in a coherent way within institutions. At the time of writing, this draft has still not been published.

Managerial accountability

The PFMC Law has brought significant changes to budget preparation and budget execution, which are closely linked to financial management and control. These changes mean that the delegation of responsibilities and managerial accountability, introduced by the PFMC Law in 2003, have increased the responsibility of heads of spending-units for the proper use of public funds. Although this law has been in force for nearly 10 years, the Ministry of Finance is still considered to be the ministry responsible for both developing and implementing financial management across the public administration. This situation can be interpreted as indicating a lack of ownership by budget-units to take responsibility for the implementation of FMC in their ministries and to thereby demonstrate accountability.

Central Harmonisation Units

There are two CHUs: for financial management and control (FMC) and internal audit. There is also a unit for training which supports both CHUs. The fact that the CHU-FMC has a relatively small number of staff has had an impact on its capacity to analyse and report on all of the information that is available in such a large country as Turkey. The CHU for Internal Audit is unusual in the sense that it is in fact a committee, referred to as the Internal Audit Co-ordination Board (IACB). This committee is comprised of civil servants and academics, who are elected for a period of five years. The members do not have not sufficient hands-on experience of internal audit. This committee reports to the Minister of Finance and is supported by a secretariat, which is called the CHU on Internal Audit. In

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

the remainder of this assessment report, any reference to the CHU-IA is understood to be a reference to the IACB.

Relationship between the Central Harmonisation Unit on FMC and the Strategic Development Units

The SDU units mentioned in the PEM section above implement the rules that have been set, for example by the CHU-FMC. Among other duties, the SDUs in public administrations are also responsible for setting specific internal control requirements relevant to their administration's specifics. They are, *inter alia*, responsible for *ex ante* control checks, accountability reports and internal control compliance systems, but the staffing levels, especially the number of staff in financial service units in special budget administrations, and the staff skills in SDUs are inadequate for the required tasks. Obligatory training needs have been specified in regulations, and training is currently being delivered. With so many bodies in both central and local administrations, securing acceptance and, even more important, an understanding of what is required for the full implementation of internal control will require support. A set of comprehensive training needs assessments and strategies for addressing the further implementation of internal control in the various areas of the administration aims to provide such support. Where applicable, staff transferred from inspection units will require particular training in internal audit methodology and working practices, which differ from the methodology and practices of inspection. The SDUs in the Prime Ministry, Ministry of Finance, Ministry of Development and Under-secretariat of the Treasury operate closely with the CHU-FMC.

The PFMC Law has established the concepts of internal control and internal audit, but the concept of "managerial accountability" is still in an early phase. The internal control monitoring and steering boards attached to the SDUs are responsible for monitoring the development of the internal control system. The senior management has started to take ownership of these processes, for example in the development of action plans and additional draft regulations setting out the activities that are needed to comply with public internal control standards.

The previous target date set by the CHU-FMC for the full introduction of internal control and internal audit was mid-2011, although in certain identified cases a longer period was exceptionally accepted. The development of the FMC manual has helped to clarify more specific types of controls that need to be in place for the full introduction of internal control. A new target date has not been set.

The twinning project, "Strengthening Public Financial Management and Control Systems in Turkey", completed in May 2011 its programme of support to the CHU-FMC with respect to the SDUs of three pilot institutions: Ministry of Finance, Ministry of Development and Undersecretariat of the Treasury. The CHU-FMC drafted two manuals with the assistance of this project. The operational *FMC Manual* provides guidance for the use of the SDUs, and the *Central Harmonisation Handbook* provides methodological guidance on FMC for the CHU itself. The original aim to publish these manuals in 2011 was not achieved, and it is now foreseen to issue them in 2012. The project also organised awareness-raising activities, training in key aspects of internal control, including seminars for senior management and SDUs, study visits and high-level workshops. It also introduced the notion of risk management and focused on risk assessment for SDUs with regard to their *ex ante* checks, in addition to those carried out within spending-units.

If the Ministry of Finance's endorsement of the operational manual on internal control for the SDUs throughout the administration and of the handbook for the CHU-FMC is confirmed, this will mean that for the first time a comprehensive manual on internal control will be available for use by managers. This manual will then also provide a basis on which internal audit will be able to judge the quality of implementation of internal control.

Internal Audit

The PFMC Law establishes functionally independent internal audit (IA) units throughout the administration, but the application of the law is inconsistent in this regard. In some cases, IA is established under top management (undersecretary), while in other cases it is established on the same reporting line as inspection units. The inspection services report directly to the minister and some other inspection services report to the top management. The current lack of coherent application of the law with regard to IA units is likely to have an adverse impact on staff motivation, as internal auditors do not receive the support of top management for their development.

There has been resistance to the development of IA, and a significant number of administrations have not yet appointed internal auditors. Even where they have been appointed, staffing levels are inadequate. This resistance is partly due to the existence of "inspection" in many public organisations, and apparently there is little or no appreciation of the differences between "inspection" and internal audit in terms of roles, responsibilities and objectives.

First year of transition for the Turkish Court of Accounts

In Turkey, the **external audit** function is exercised by the supreme audit institution, the Turkish Court of Accounts (TCA). With the new TCA Law, in force since 19 December 2010, the TCA has become a "collegiate" SAI, but it has retained its judicial decision-making powers with regard to "public losses" whenever such cases were identified during its audits. The TCA has financial, functional and institutional independence and a broad audit mandate, including all public administrations and accounts. The law provided for new audit approaches, and the TCA undertakes regularity audits (financial and compliance audits) and performance audits ("Economy, Efficiency and Effectiveness" and the audit of the performance indicators of public administrations). The TCA has satisfactory access to documents and records, and it is to undertake audits in accordance with internationally accepted auditing standards. It publishes its reports and submits them directly to the Turkish Grand National Assembly.

The Report Evaluation Board is a formal body within the institution that contributes to the quality assurance system of the TCA. It provides an opinion of the TCA reports before they are issued. The Audit Planning and Co-ordination Board ensures the institution's overall medium-term planning and provides advice on its annual work plan. Its role is to monitor, evaluate and co-ordinate the implementation of audit plans and work programmes. It is also responsible for preparing the TCA's accountability report.

The TCA has established its internal regulatory framework for the functioning of the institution in accordance with the recent law. Through a well-managed process, the TCA has been able to focus on laying the groundwork for the effective introduction of its expanded responsibilities under the TCA Law within the time frame of the legal transitional arrangements. The TCA recognises that the reforms will be ongoing; for example, it plans to review and revise its audit methodology, taking into account the experience of its first year of implementation and the various IT initiatives. At the same time, the TCA will need to fulfil its continuing judicial role.

Strategic Development Plan and Accountability Report

The draft Strategic Plan of the TCA was developed, with extensive internal and external consultations, in order to provide guidance in implementing this framework. With the support of a World Bank project, which started in January 2012, this draft Strategic Plan will be further elaborated to enable the TCA management to establish priorities for the coming period.

The TCA, like every other public administration within the scope of the general budget, forwards its Strategic Plan to the Ministry of Development for endorsement. It also sends its Accountability

Report to the Ministry of Finance for incorporation into the Comprehensive Accountability Report that is forwarded by the Ministry of Finance, through the TCA, to the Turkish Grand National Assembly (TGNA). These requirements have an impact on the independence of the TCA, which is also obliged to forward these important documents separately to the TGNA. The TCA nevertheless submits its budget directly to the TGNA.

Capacity-building programme

The TCA has more than 1,400 well-educated staff, but its capacity-building programme will need to be developed further in order to equip its staff with the skills, competences and understanding necessary for effective delivery of the reformed TCA role and responsibilities. By furthering the establishment of the Audit Development and Training Centre and liaising with external stakeholders and potential partners, the TCA will make a significant contribution to the Government's implementation of its training priorities.

Contribution to the strengthening of public accountability

The TCA is effectively independent of the Government. However, to ensure the success of its change management programme, the public administration will also need to complete the introduction of public financial management and control systems throughout the Government, including the establishment of effective internal audit units. At the same time, the TGNA will need to review the TCA reports, which will significantly increase in number as from 2012 as a consequence of the recent law.

Reform Capacity

Increased capacity of the TGNA is needed

Experience has shown that the Government has reform capacity in the area of **Public Expenditure Management (PEM)**. Some key, and generally difficult, reforms have been implemented, such as the transfer of responsibilities for budgeting from the Ministry of Finance to line ministries. The recent reforms have created the basis for developing a policy and performance-oriented approach to budgeting. The implementation of an effective form of performance budgeting takes time in any country, but it also depends on the external demand for change. In this respect, increased participation of the TGNA in budget decision -making and in the review of planned and actual performance will be needed. Strengthening the capacity of Parliament, both in reviewing the documentation on performance and in fully implementing the new TCA Law will be crucial to encouraging further efforts that will make the PEM reforms increasingly effective. The World Bank is currently providing the TGNA with some support in this respect.

Commitment and political support is needed to keep up with the pace of reform implementation

Over the past 12 months there have been some developments in introducing reforms to meet the requirements of **Public Internal Financial Control (PIFC)**, including the procedures mentioned above to supplement those introduced since the PFMC Law was enacted in 2003. However, progress has been slower than was expected, especially with regard to the appointment of internal auditors in all major administrations.

The development of PIFC has been supported by a range of training activities and by the requirements for staff in internal control and internal audit to attain the qualifications that meet the specific job functions. The twinning project was helpful in describing the essence of FMC through the development of the manuals. The project ended in May 2011, and it remains to be seen whether these documents will be endorsed by the Ministry of Finance for their official use throughout the

administration so as to ensure the necessary impact on FMC. A new World Bank training project on internal audit is about to start. This project will help to increase the capacity of internal audit, especially with its support to the evaluation of internal audit units, in accordance with the Quality Assurance and Development Programme.

Serious challenges remain for the successful application of PIFC. There are underlying problems of scepticism and lack of support in some areas on the part of senior management as well as the ever-present potential for conflict between the well-established inspectorates and the emerging internal audit. The slow development of internal audit, and the absence of a permanent CHU for internal audit and of a fully professional Internal Audit Co-ordination Board in the area of internal audit, adds to these problems. In the past year some progress has been achieved in developing internal control, and improvements have been made in terms of institutional capacity-building. However, the long-standing discussion on the role of internal audit *vis-à-vis* inspection, the need for a workable and sustainable structure for the internal audit CHU, and the unaccepted amendments to the PFMC Law raise questions about the real political commitment to reform as well as the commitment of top and senior management.

The Turkish public sector is large and complex, with long-established traditions, and it will still take several years to meet the reform objectives. The focus on the reform of central public administrations is useful; local administrations can be addressed at a later stage. Such sequencing helps to ensure that attention is paid to the priority areas for reform. Continuing support and practical guidance will be needed from the two CHUs, amongst others, and from the steering boards overseeing the SDUs and the implementation of internal control. The external audit carried out by the Turkish Court of Accounts will also provide valuable information on reform progress. However, a greater degree of political will and explicit ownership of senior management across the administration will be required to ensure success in the area of PIFC.

A continuous dialogue is necessary between the TGNA, the Government and public administrations, as they need to be fully committed to the reform programme. The PIFC reform is just one of many policy initiatives throughout the Government; it therefore must become a high priority on the agenda if it is going to succeed.

External audit – The nature and extent of the reforms being introduced by the TCA represent a significant shift from its previous role. The law under which the TCA now operates has brought a major change and, as with any major institutional reform programme, the possible resistance, from internal and external sources, will need to be addressed. The TCA will therefore have to clearly demonstrate, in particular, the positive impact of the reforms on improving transparency and accountability in the governance of the public administration as a whole. The TCA can do this by means of its new methodology and consequently the new types of reports that it will be producing. This will in turn help to maintain TCA staff motivation and commitment to the reform processes.

The year 2011 was a year of transition for the TCA, and it will now need to focus on its key priorities for 2012 and onwards. Success in meeting these priorities will again require considerable efforts by TCA management and staff, as well as the constant reinforcement of the TCA's overall commitment to change. The reform processes across the Government are complex, and the extent and nature of the reforms suggest that there is a significant risk that some reforms will not be accomplished. Support will therefore be required from the Government and the TGNA, including through the EU accession process.

A World Bank technical assistance project started in January 2012 to provide support for the further elaboration of the draft Strategic Development Plan.

Recommendations

To Turkey

For Public Expenditure Management

To render the tools that are already in place more effective for the development of performance-oriented budgeting, the Government should consider the following actions:

- Return to the budget preparation calendar stipulated in the initial PFMC Law or find ways of systematically involving line ministries prior to the preparation of the medium-term fiscal plan. In addition, the medium-term programme and the medium-term fiscal plan should be submitted at the same time to the Council of Ministers so that it is involved in the review of the medium-term fiscal plan.

- Present expenditure outlays in the budget according to the programme classification used in the performance programmes.

- Extend the duration of the performance programmes to cover the same period as the expenditure projections included in the budget (three years) and give to ministries a more systematic role in providing strategic inputs to the medium-term planning documents.

- Set up an inter-ministerial committee to review the quality of the performance programme and accountability reports; the link between the accountability reports and strategic plans could also be strengthened.

Parliament needs to support the increasing role of the Plan and Budget Committee by strengthening the capacity, including specialisation, of the committee's support staff and by optimising the flow and analyses of various documents to the committee in view of its growing workload.

For Public Internal Financial Control

- To minimise the risk of fragmentation in the development of PIFC and of a permanent CHU for internal audit and fully operational IA units, the discussions regarding amendments to the PFMC Law need to be concluded quickly. Signs that the system does not work as intended have to be addressed by the Ministry of Finance.

- The FMC manual and the CHU-FMC handbook need to be adopted quickly in order to show commitment to compliance with the rule of law. Once these tasks have been carried out, a promotional campaign by the CHU-FMC aimed at all levels of management across the administration should be launched, setting out the rationale for the changes, together with a reminder of the objectives of PIFC reforms, including enhanced managerial accountability.

- To improve the effectiveness of SDUs, vacancies need to be filled, additional financial specialists need to be trained, and the activities of the SDUs regarding *ex ante* controls need to be reviewed so as to introduce a risk-based approach. This review will enable them to make a more efficient use of their limited resources. The SDUs must continue to advance in a co-ordinated way within their administrations, and the CHU-FMC will need to ensure that the progress achieved under the twinning project is sustained and developed beyond the pilot institutions that participated in the project.

- Political commitment and a determined effort by top management throughout the administration are required to ensure that IA units are adequately established in all specified

administrations. Additional internal audit staff have to be recruited in order to address the gaps and shortfalls of existing IA units. The potential overlap between the activities of the various inspection units and those of IA units in the administration needs to be addressed to ensure that the financial control, inspection and internal audit functions of the various units are undertaken in an efficient and effective manner.

For External Audit

- The Turkish Court of Accounts (TCA) is undergoing an important overhaul of its traditional way of working. It has just started the process of moving from a court model with judicial powers to an audit system performing audits in accordance with internationally accepted auditing standards. This programme is ambitious, and to meet this challenge the TCA should seek external support from institutions experienced in introducing such strategic reforms in order to ensure that international standards are achieved and that the objectives of the reforms are maintained.

- The capacity-development programme for TCA staff will need to evolve, and attention should be given to the establishment of the Audit Development and Training Centre. An assessment of training needs for all staff would help to ensure that the training programme is properly targeted. Particular attention is required for the training of TCA staff in the audit of accrual accounts in preparation for its introduction into the public accounting system.

- The TCA will need to further enhance its liaison arrangements with the TGNA, in particular to ensure that the TGNA is fully equipped to review TCA audit reports. Without effective review, the impact of TCA reforms on public accountability will be diminished, with a possible reduction of TCA staff motivation.

- In view of the impact of reforms on governmental processes, a communications strategy would assist the TCA in keeping both external and internal stakeholders informed of these significant developments. Such a strategy would also help to overcome any resistance to the reforms.

- In addition to its audit work plans, the TCA will need to prepare an internal, medium-term action plan to supplement the Strategic Plan 2011-2015 as well as annual operational work plans focusing on institutional development.

PUBLIC PROCUREMENT

Main Developments Since the Last Assessment (May 2011)

There has been some progress in the public procurement system in Turkey, although not in terms of formal alignment with the EU Directives, in that no major changes have been made to the legislative framework since the 2011 assessment. The National Strategy and Action Plan for Public Procurement draft has still not been adopted, despite being ready in draft since more than two years. The main issues remain the same: the need to address exemptions and domestic preference. A few items of secondary legislation have been amended with the intent to provide clarifications on some current issues. No significant progress has been made in the regulation of concessions and public-private partnerships (PPPs), nor of utilities. However, several developments have taken place in the institutional set-up.

The Public Procurement Policy and Co-ordination Unit in the Ministry of Finance has seen an increase in the skill level of its staff in terms of both foreign language capabilities and professional experience.

The nine members (including the chair and the deputy chair) of the board of the Public Procurement Authority (PPA) will from now on (next time in April 2012) be appointed by the Council of Ministers upon proposal of the Ministry of Finance. The PPA board's main role now is to rule on appeals from tenderers and it is no longer involved in the day-to-day operations of the PPA, which fall under the responsibility of its president, who is also the chair of the board. The administrative routines for dealing with appeals in the PPA have been improved but the apparent conflict of interest within the PPA (regulatory and operational activities vs. review of appeals) remains a clear weakness of the remedies system. A new *ad hoc* regulatory affairs committee has been established within the PPA to review all the provisions of the redrafts of the Public Procurement Law (PPL) prepared in 2010 and to add new amendments if appropriate for reaching full compliance with the EU Directives.

The former State Planning Organisation (SPO) has become the Ministry of Development but no major changes appear to have resulted from this modification concerning public procurement in the fields of concessions and public-private partnerships.

These different developments illustrate the general changes in the public administration that have taken place in the second half of 2011. Decrees to this effect were adopted in the middle of 2011 and put into effect successively, leading to the restructuring of many public institutions, including the Ministry of Finance. Amendments to the Civil Service Law came into effect late 2011 to increase the uniformity of the status and employment conditions of professional staff in public sector institutions. As a consequence, according to several senior officials interviewed for the assessment, it is already easier to engage and retain competent candidates in fields and institutions which traditionally had more difficulty attracting good professionals, like public procurement.

Steady progress has been made in the development of the e-procurement platform (EKAP). In a parallel development, new data warehousing facilities are being prepared with the objective to allow immediate recording and automatic reporting of public procurement statistics as well as carrying out analysis and research.

Main Characteristics

The legislative framework for public procurement in Turkey remains the Public Procurement Law (PPL, Law 4734) and the Public Procurement Contract Law (Law 4735), both of which were originally adopted in 2002. Drafted with a view to reflect commonly accepted basic principles of public procurement, the PPL does not fully match the EU Directives currently in force.

The PPL applies to contracts for goods, services and works, although concession contracts are excluded (see separate paragraph on concessions/PPPs below).

The public procurement regime covers budget institutions, entities of special provincial administrations and local municipalities, social security funds and public institutions that have been assigned public duties but does not use the definitions of contracting authorities or entities included in the EU Directives.

There are numerous exceptions to the law, some of them clearly not in line with EU provisions. Certain exceptions from the general requirements of the PPL cover cases where the PPL itself regulates public procurement more strictly or more extensively than what the EU Directives require, like the case of state owned enterprises. By themselves, some of these exceptions may therefore not necessarily be in direct contradiction with the EU Directives. However, they indicate that, compared with the requirements of the EU Directives, the PPL itself is unnecessarily prescriptive and wide in its coverage. A large number of exceptions is also administratively complex to handle and may send the wrong signals to the public procurement community.

Unlike the EU Directives, the PPL covers all publicly owned commercial undertakings, including the ones not operating in the utilities sector. However, unless financed directly from the state budget or covered by a Treasury guarantee, all procurement of goods or services for their principal activities below a threshold of about EUR 2,26 million (TRY 5,372,854) is excluded from the PPL. The inclusion of public undertakings that have exclusively commercial operations and must cope with the market pressure (other than those which carry out “relevant activities” under the EU Directives) in the definition of contracting authorities is not required by the EU Directives and does not necessarily contribute to improving public procurement at large but has the potential to create difficulties in the daily activities of the entities concerned. On the other hand, contrary to the Utilities Directive, the public procurement legislation does not cover private sector entities operating in the utilities sector on the basis of special or exclusive rights granted by a competent authority.

Concerning utilities, the PPL itself does not contain specific provisions; instead, the general rule is that “enterprises, establishments and corporations who carry out activities in the energy, water, transport and telecommunication sectors are outside the scope of the Law” (PPL Art. 2). Nevertheless, in the absence, for the time being, of a special law on utilities, Interim article 4 of the PPL provides that “The enterprises, institutions and corporations which carry out activities in energy, water, transport and telecommunication sectors…until their special laws enter into force…shall be subject to other provisions of this Law for procurement of goods, services and works…” As a result, utilities are currently subject to the same procurement regime as the public sector at large, without the benefit of the more flexible procedures offered by the Utilities Directive.

Their own purchases of, for example, the energy that they distribute appear to be exempted, like in Directive 17/2004/EC. On the other hand, the Directive allows an exemption also of contracts for commercial activities in a competitive market or for activities which are not covered by the Directive and the PPL does not fully reflect this distinction. Yet again, the many Turkish utilities that fall within the category of state-owned enterprises can make use of the general EUR 2,26 million threshold mentioned above. This threshold is more than five times higher than the one for goods in the Utilities Directive.

Other exclusions are tailored for certain specific goods, suppliers or contracting authorities, without any clear correspondence to the possibilities or limitations set out in the Directives. Among them, one finds e.g. goods or services from or for the benefit of certain agricultural and forestry establishments, restoration of cultural property or rehabilitation of natural heritage sites, goods and services for certain national and international sports events, etc.

This being said, for many the exclusions mentioned, special procurement principles and procedures have to be prepared by the relevant institutions under the supervision of the PPA, as provided for by Interim Article 4 of the PPL. However, the actual effect of this requirement remains unclear, and the normal approach would be to avoid the need for any such specific legislation, instead ensuring that the PPL is clear and comprehensive enough, while not more restrictive than required by the Directives.

Special exclusions are provided in the PPL for the state's defence and security needs. In the case of institutions reporting to the Ministry of Interior, it is clear that non-defence procurement is done according to the PPL and that procurement under the exclusions is also strictly regulated. This also applies to the armed forces under the Ministry of Defence. However, no formal efforts appear to have been made to transpose Directive 2009/81/EC (defence procurement) to date. Although this Directive was issued after the publication of the opening benchmarks for Chapter 5 negotiations, it will have to be reflected in coming redrafts of the PPL.

The PPL still permits domestic preference in that contracting authorities may apply a price advantage of up to 15% for domestic products. Below the thresholds, contracting authorities may also restrict participation to domestic companies and products. The main criterion when using the preference is the origin (local or foreign) for goods and the nationality of the tenderer for works and services. The possibility to use domestic preference is used in about 1 % of the total number of contracts above the national thresholds, although the share by value is higher. The rate of preference is sometimes less than the 15 % allowed. It may be noted that the decision taken in 1995 to establish a Customs Union between the European Union and Turkey foresaw that negotiations on the mutual opening of the Parties' respective Government procurement markets would start immediately. However, this has not happened yet.

In the absence of any agreement, the use of domestic preference by Turkey is mirrored by the exclusion of Turkish economic operators from some of the EU public procurement markets. This is different from the situation of the other candidate countries and the potential candidates, which all enjoy better access to the European Union market.

The legal framework governing concessions and PPP**s** is still incomplete, partly incoherent with the PPL, and remains highly fragmented. Separate regulations govern different sectors, the main regulation being the law on projects carried out under BOT contracts and a decree, revised in the middle of 2011, regulating the application of this law. A new PPP Law that would improve alignment with the EU Directives remains ready in draft but has not yet been formally discussed at Government level. Nevertheless, both the BOT Law and the decree as well as the drafts of the new Public Procurement and PPP Laws would require further attention to the definition and the legal status of concessions.

The Ministry of Finance has the responsibility for public procurement policy and co-ordination through the unit set up for the purpose in the Directorate-General of Budget and Fiscal Control. Public procurement matters in the EU accession process (Chapter 5) is dealt with by the EU and Foreign Affairs Directorate of the Ministry.

The PPA prepares, develops and guides the implementation of the PPL, provides training in public procurement; publishes procurement notices and manages the e-procurement system. It also

receives and addresses complaints about the application of the public procurement procedures prescribed by law. Staff numbers have remained relatively constant at around 250, with the vast majority having at least an undergraduate degree, as demanded from experts working in the Government institutions.

Under the PPL, public procurement related complaints have to be made to the contracting authority in the first instance. Any ruling by the contracting authority can then be appealed against to the PPA. The PPA's decisions on appeals can be further appealed in the competent courts. For public procurement outside the scope of the PPL, the Turkish courts are directly competent for dealing with complaints.

The PPA is an autonomous entity. Its handling of complaints is administratively separated from its other activities. In its capacity as the appeals review body, the PPA board has the support of specialised staff in the PPA who document cases and prepare decisions. Various measures have been introduced to ensure the integrity of the complaints review process. As an example, cases are randomly allocated to support staff, data access is restricted, the use of paperless review procedures allows automatic integrity controls to be used, while creating an audit trail of the process, and the handling of information requests and responses is highly formalised. Nevertheless, the PPA's role with respect to remedies constitutes a conflict of interest with its other roles, especially the one of guiding the implementation of all the procurement legislation, and therefore creates the appearance of a lack of independence. Consequently, the current set-up does not seem to fully comply with the EU requirements.

The electronic public procurement platform (EKAP) operated by the PPA continues to be developed. In addition to the features in place last year, it now also allows procurement plans and tender documents to be prepared online. The EKAP help-desk (call centre) has now 34 staff providing advice and assistance to contracting authorities and economic operators. Facilities have been put into place to provide classroom training for contracting authority staff.

PPA remains committed to improving public procurement skills among contracting authorities and economic operators. It is expected that the number of persons trained will to rise again after a decline by more than 60 %, from 11,400 in 2010 to 4,400 in 2012 – a low figure in comparison with the more than 30,000 contracting authorities in the country. Added focus has been put on reaching SMEs and sole traders. In consultation with the PPA and other parties concerned, the IPA 2009 project ''Training in Public Procurement for Western Balkans and Turkey'' supporting public procurement training in the region has worked on customising SIGMA's comprehensive public procurement manual for the IPA countries, which will be used for training contracting authorities and economic operators from the end of March 2012 onwards. The manual and other guidelines will be published in electronic format on PPA's web site by that time.

Apart from SIGMA and the IPA project mentioned, no EU technical assistance is currently being provided to Turkish public procurement and concessions/PPP institutions at central Government level, nor to contracting authorities.

The respective line ministries are in charge of preparing and carrying out concessions and PPP operations, with the Ministry of Development (ex-SPO) having a supervising and co-ordinating function in the area of PPPs. The special department for PPPs remains in charge of *i)* drafting legislation in the area of PPPs, except for the awarding procedure which is left to be regulated within PPL; and *ii)* appraising PPP projects before they are formally reviewed and approved. Its 8 staff members are well qualified but are seeking to raise their competence in the appraisal of complex operations and to become more familiar with EU practices.

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

Contracting authorities are subject to inspection of public procurement as well as of their other administrative functions. General developments in this field are presented in other assessments.

Reform Capacity

Turkey is a large country with a well-developed institutional framework and the capacity to implement any reforms that the Government may decide to introduce. Although no high-level decisions have been taken in recent years that would continue substantive reforms and allow Turkey to comply with all the benchmarks for opening Chapter 5 negotiations, the competent authorities maintain their efforts to review and update the drafts of the necessary amendments to the current laws and regulations. The draft National Strategy and Action Plan for Public Procurement – a key opening benchmark for Chapter 5 – remains ready for adoption subject to decisions on e.g. the timetable for achieving the major objectives of phasing out domestic preference and reducing the number of exemptions. Such measures have their rightful place not only in the context of European Union accession but also in the general development of the Republic of Turkey into a competitive economy active in the global market.

The departments dealing with public procurement matters in the Ministry of Finance, the PPA and the Ministry of Development appear to have the necessary capacity to continue working on the development of the public procurement system and have confirmed their political mandate to do so. It then becomes all the more important that the highest organs of the State take the formal decisions necessary for the reform process to go ahead.

Recommendations

To Turkey

- The Action Plan for the development of the procurement system should be finalised, with clear indicators and deadlines for achieving the various objectives, especially concerning exemptions and domestic preference.

- Public procurement provisions should be brought into line with the remaining EU requirements, making use of the drafts that have already been prepared:

  - Adoption of a new PPL in order to ensure full compliance with the EU Directives;

  - If a new PPL is delayed, rapid adoption of intermediary amendments of the current PPL in order to bring it into line with Chapter 5 opening benchmarks;

  - Adoption of new legislation on concessions and PPPs, including proper definitions of key concepts and appropriate award procedures (e.g. by reference to the PPL);

  - Initial work on transposing the new EC Directive on defence procurement.

- The organisation of the remedies system should be reviewed.

- The PPA should expand the scope of training in public procurement so as to fully meet the needs of both contracting authorities and economic operators, and address any integrity issues which may occur.

PROCUREMENT/CONCESSIONS STATISTICS for 2011[1]

Number of contracting entities[2]		
Central Government	8.530	
Regional and local authorities	4.713	
Other (bodies governed by public law)	1.335	
Utilities	n/a	
Total number of contracting entities	14.578	
Awarded[3] public contracts/Contracting entities	**Total (estimated) value (Mio EURO)**	**Total number[4]**
Central Government	14.989	60.252
Regional and local authorities	8.387	34.586
Other (bodies governed by public law)	9.030	42.088
Utilities	n/a	n/a
Total public contracts awarded	32.406	136.926
Awarded concessions/Contracting entities		
Central Government		
Regional and local authorities		
Other (bodies governed by public law)		
Utilities		
Total concessions awarded		
Awarded public contracts above the EU thresholds[5]	20.192	17.250
Works[6]	9.204	862
Services[7]	6.128	7.957
Goods[8]	4.860	8.431
Mixed contracts	n/a	n/a
Total public contracts above the EU thresholds	20.192	17.250
Awarded concessions above the EU thresholds		
Works[9]		
Services[10]		
Other		
Total concessions above the EU thresholds		
Procurement methods used11 (above the national thresholds12)	15.659	5.961
Open procedure	12.540	5.250
Restricted procedure	2.313	291
Negotiated procedure with prior publication of a notice	31	6
Negotiated procedure without prior publication of a notice[13]	775	414
Other procedures (competitive dialogue, etc)	n/a	n/a
Low- value procurement *(estimated)*	5.063[14]	
Participation rate (average number of submitted tenders)		
Works		6,26
Services		3,08
Goods		3,89
Review procedures		
Number of complaint received		4.670
Number of complaint treated		4.392
Number appealed to the Court		723
Number of decisions with interim measures		60

Note: Data delivered by the PPA

[14] Procurements below the limits described in the article 22 (d) of PPL.

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

	Name of the Procuring Entities	Total Value of Contracts Awarded in 2011 (million Euro)	Annual Procurement Budget
1	Housing Development Administration of Turkey	1.902	N/A
2	Ministry of Transport, Maritime Affairs and Communications, DG Construction of Railways, Ports and Airports	993	N/A
3	Turkish Coal and Mine Management Company	813	N/A
4	Directorate General of Turkish State Railways	721	N/A
5	Ministry of National Defence	691	N/A
6	Directorate General of Istanbul Water and Sewerage Administration	502	N/A
7	Ministry of National Defence	496	N/A
8	Istanbul Metropolitan Municipality	472	N/A
9	ISTON INC-Istanbul Concrete Elements and Ready Mixed Concrete Factories INC	403	N/A
10	Ministry of Transport, Maritime Affairs and Communications, DG Construction of Railways, Ports and Airports	369	N/A

A list of the 10 biggest public contracts/concessions awarded and/or advertised in 2011 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, and time of execution):

	Name of the Procuring Entities	Subject of the Contract	Contractor	Procurement Type	Total Value of Contracts Awarded in 2011 (Euro)
1	Ministry of Transport, Maritime Affairs and Communications	CR3	N/A	Works	993.044.053
2	Turkish Coal and Mine Management Company	Production of coal	N/A	Services	647.045.454
3	Directorate General of Turkish State Railways	Railway displacement	N/A	Works	272.906.174
4	Electricity Generation Company	Service Procurements	N/A	Services	271.063.853
5	Directorate General of Turkish State Railways	181.500.000 Liter diesel fuel	N/A	Goods	204.892.573
6	ISTON INC-Istanbul Concrete Elements and Ready Mixed Concrete Factories INC	Production and post-production services of paving stone, curb, urban furniture, RPC	N/A	Services	197.149.407

		and prefabricated elements			
7	ISTON INC-Istanbul Concrete Elements and Ready Mixed Concrete Factories INC	Post-production loading services for concrete, reinforced concrete pipe, paving stone, curb, various concrete, concrete reinforced elements	N/A	Services	182.697.966
8	Ministry of Transport, Maritime Affairs and Communications	Infrastructure construction of railway linkage	N/A	Works	138.528.502
9	Directorate General of Highways	Road construction	N/A	Works	112.243.130
10	Ministry of Transport, Maritime Affairs and Communications	Harbour construction	N/A	Works	99.817.898

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[4] The data does not contain the procurements made under the article 22 (direct procurement) of PPL.

[5] The data contains also some of the contracts awarded by the utilities sector.

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[11] Only for public contracts

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