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ASSESSMENT

TURKEY

APRIL 2013

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ASSESSMENT PRIORITIES

Negotiations with Turkey on European Union (EU) accession started in 2005. In the early stage of the process, public administration and public governance reforms were high on the political agenda and progresses could be observed in several horizontal reform areas. More recently, a slowdown in reforms has been observed. Progress on the EU agenda has also stalled for domestic and external reasons. In order to keep the accession process on track in a supportive and complementary way, the 'positive agenda' was launched in May 2012. This initiative is designed to promote reforms, including political ones.

It was agreed with the European Commission (EC) that the 2013 SIGMA assessment of Turkey should focus on [External Audit](#), in particular as it is one of the closing benchmarks of Chapter 32 on Financial Control and since 2012 was a period of change in Turkey's external audit system. More specifically, SIGMA was asked to study how external audit operates in practice now in Turkey and how the Turkish Court of Account's reports are submitted to the Turkish Grand National Assembly. A special focus is put on the new reporting requirements outlined in the Turkish Court of Account Law No. 6085 and the impact of the amending law 6353.

The assessment is presented in a thematic report, including a brief description of the state of play and recent developments. The overall assessment is followed by a more detailed analysis and conclusions. The assessment was undertaken with reference to the SIGMA baselines for this area of public governance.

The amending Law passed in July 2012 contradicts, in part, the December 2010 Turkish Court of Account (TCA) Law. It also narrows the scope of the TCA's audit mandate. The legal context remains uncertain while this issue is resolved.

EXTERNAL AUDIT

TURKEY

APRIL 2013

1. State of play and main developments since last assessment

1.1. State of play

The Constitution¹ establishes the Turkish Court of Accounts (TCA) to audit public administrations on behalf of the Turkish Grand National Assembly (TGNA), to submit the “Statement of General Conformity” on the implementation of the state budget, and to “Report on the Audit of State Economic Enterprises” annually to the TGNA. The TCA also assists the Constitutional Court (CC) in auditing political parties.

All matters related to the functioning of the TCA are regulated by law². The modernising legal framework was in place from December 2010 when, in July 2012, an amending law³ changed the audit remit and particular operating processes of the TCA. This resulted in the TCA not being able to implement all the changes that it had initiated since December 2010. A subsequent decision by the CC has annulled *parts* of the amending law but this decision has not yet been published in the Official Gazette and thus is not yet binding. This assessment takes into account the legal framework in force.

1.2. Main developments since last assessment

The TCA Law⁴ was enacted in December 2010. In July 2012 the TGNA approved an amending Law⁵ which amended one article of the TCA Law⁶ by: attaching limitations to the scope of the TCA to undertake regularity and performance audits; re-affirming the priority of compliance audit; and introducing formal mediation procedures before finalising the audit reports, in cases where there is disagreement between the TCA and the auditee. The amendment poses a major challenge to the TCA because it opens the door for interpretation of its meaning and, as a consequence, it has an impact on the TCA’s work. Planning for the audit of the 2012 accounts is underway, taking into account the provisions of the amending Law⁷.

2. Analysis

Introduction to the TCA

The TCA in the context of public sector reform

While the TCA was entrenched in the Constitution of 1924 and preserved in subsequent Constitutions, its role and responsibilities have evolved over time. Its long-standing history, however, has an impact in reforming the institution⁸. The Public Financial Management and Control (PFMC) Law No. 5018 was enacted in December 2003 within the framework of public sector reform and all state revenues, expenditures and liabilities were included within the scope of the budget and, therefore, within the TCA’s remit. TCA Law No. 6085 (December, 2010) transformed the TCA into an institution focusing on regularity audit, performance audit and evaluation of financial systems, taking a holistic view of the auditing of the final accounts of the institution rather than inspecting individual transactions to identify “public loss”.

While the TCA is financially and operationally independent from the Government, it must take into account the budget and financial management reform packages underway throughout the Turkish public

¹ The Constitution: Articles 160, 164, 165 and 69.

² State Economic Enterprises Law No. 3346; PFMC Law No. 5018 (2003); TCA Law No. 6085 (Dec 2010); and amending Law No. 6353 (July 2012).

³ Law No. 6353.

⁴ TCA law No. 6085.

⁵ Law No. 6353.

⁶ TCA Law No. 6085, Article 35, “General principles of auditing” – the only article amended through the amending law.

⁷ Law No. 6353.

⁸ SWOT analysis of TCAs Draft 2013-17 Strategic Plan – not yet publicly available.

administration. The PFMC Law considerably re-organised PFMC systems in public administrations. Of particular relevance to the TCA has been the establishment of Internal Audit units in the major public entities. This reform is ongoing. Training is provided to internal auditors, including seminars and 'Certified Government Auditing Professional' training provided by the Internal Audit Coordination Board (IACB), with support from the World Bank. In addition, Internal Audit reports are submitted to senior management of public entities and these reports have increased in number in recent years as staff numbers and experience have grown. Inspection Units also continue to operate within public administrations. The TCA is aware of the need to safeguard against duplication of the work it undertakes with the work of Internal Audit and Inspection Units.

In 2012, the TCA further developed its draft 2013-17 strategic plan, building on its 2009-13 strategic plan. The TCA prepared this document as one of the budget users implementing the requirements of PFMC Law No 5018. The draft plan enables the TCA's management to establish the main aims, priorities, objectives and activities of the TCA for the five year period 2013-17. Due to the impact of Law No. 6353, the finalisation of the draft plan has not yet proceeded. The TCA has also developed a draft audit strategy (which is an internal strategic document) to complement the provisions of the draft strategic plan.

Type and structure of the Supreme Audit Institution (SAI)

The TCA has a "collegiate" structure with judicial powers and is not subject to administrative supervision. The TCA president governs the institution and is responsible for its overall functioning and performance. The two deputy presidents are assisted by eight heads of departments, who are selected from among the professional staff. The TCA also comprises eight chambers with judicial responsibilities and a further seven boards responsible for progressing audit work, judicial issues and staffing matters. The TCA chief prosecutor provides reports to the prosecutors and they provide the relevant chambers with formal "opinions" on judicial findings by audit teams. These form the basis of judicial reports supporting findings related to "public loss" as defined by the PFMC law No. 5018⁹.

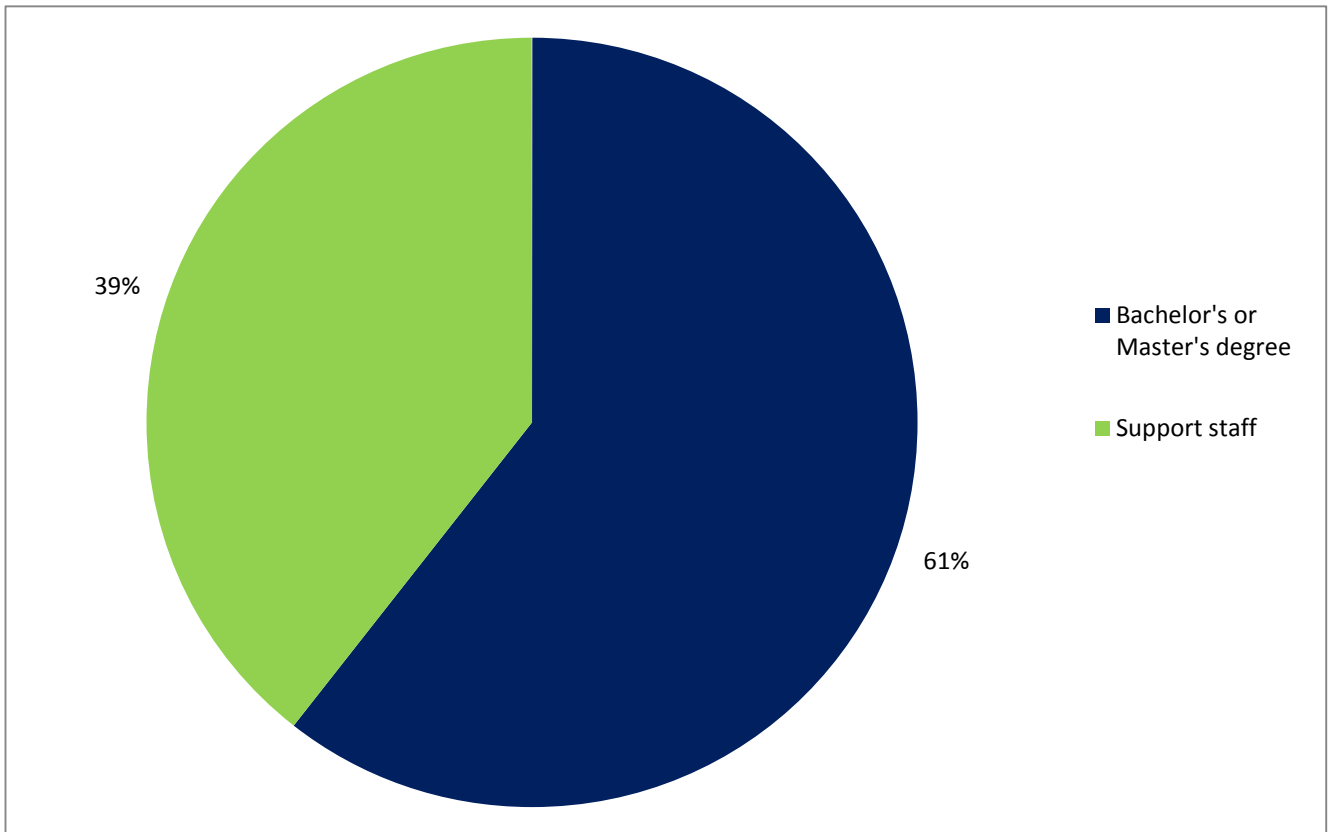
Size and budget of the SAI, number of staff

At the end of 2011, the TCA employed 1 469 staff, of which 890 are professional staff with a bachelor's or master's degree, and the remainder are support staff¹⁰. An additional 45 professional staff are currently being recruited.

⁹ PFMC Law No. 5018, Article 71.

¹⁰ Source TCA statistics.

Figure 1. Turkish Court of Accounts staff



Source: Turkish Court of Accounts

Audit staff are appointed by the TCA President after passing a competitive, two-stage, externally provided examination and following an interview by a TCA commission.

The total budget of the TCA in 2011 was 142 million Turkish liras (EUR 61 million) of which 63% was for personnel expenses. Expenditure in 2011 represented approximately 85% of the approved budget¹¹.

The SAI should have clear authority to audit satisfactorily all public and statutory funds and resources, bodies and entities, including EU resources.

The TCA's audit mandate covers 4 127¹² public and statutory funds and resources, including municipal enterprises and state economic enterprises as well as European Union funds¹³. The TCA completed the planned audits in 2012, in keeping with the timetable, and finalised the audit reports, including the contradiction process with the auditees. During 2012, the TCA audited 73% of the central public administrations, representing 99% of central budget expenditures. The audits also covered 8% of the local administrations, representing 76% of their total budget expenditures, as well as the two social security institutions and all 97 state economic enterprises. All in all, the TCA therefore undertook 504 audits in 2012, representing 97% of all budgeted expenditures¹⁴. The TCA submitted the "Report on State Economic Enterprises" and the associated individual audit reports to the TGNA, in accordance with the Constitution. However, although the TCA had presented the audit reports for all other audits to auditees for clearance, owing to the enactment of Law No. 6353, the TCA concluded not to adopt the audit reports and they have therefore not been presented to the TGNA.

¹¹ TCA Accountability Report 2011, which is the last one available at the time of the assessment.

¹² Source TCAs statistics.

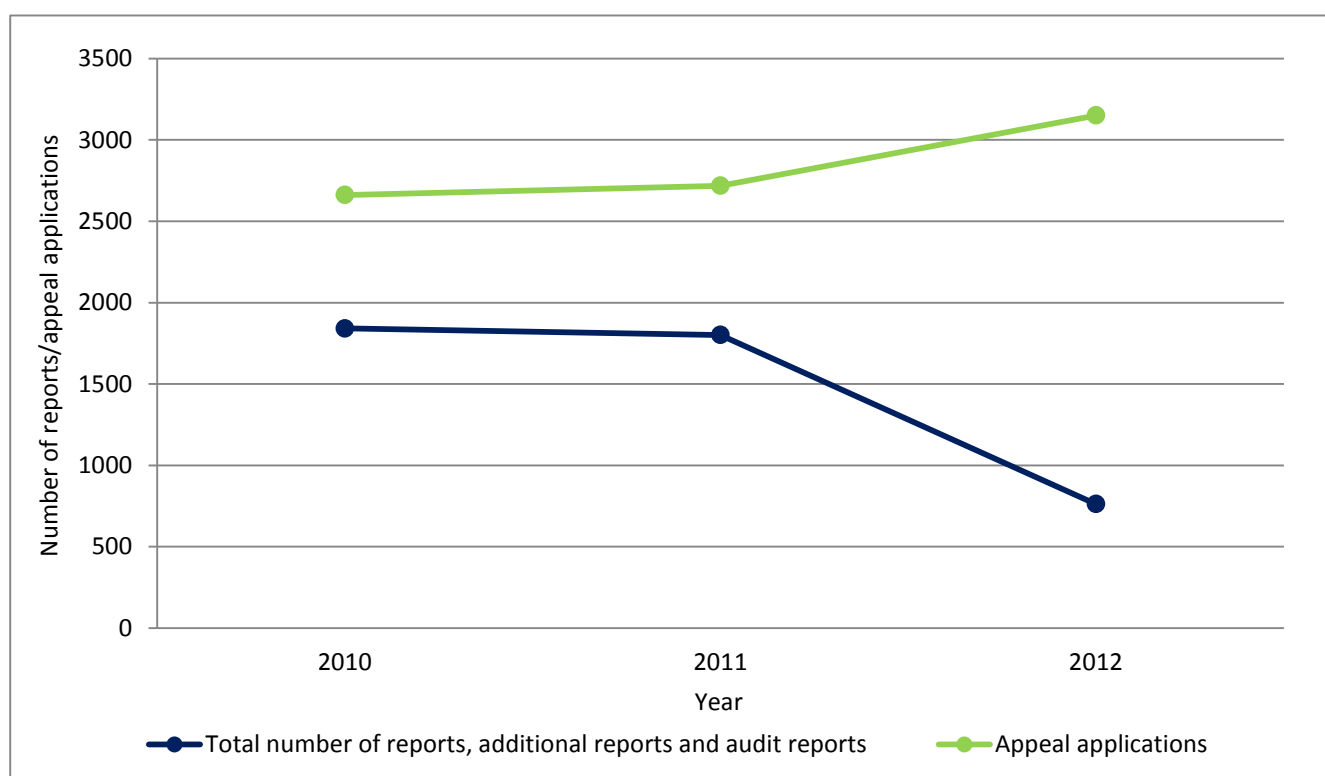
¹³ TCA Law Article 4.

¹⁴ Source TCA Statistics on audited public entities.

The TCA is able to communicate directly with all responsible institutions and officials subject to audit and may examine any ledgers, reports and supporting documents needed for its audits¹⁵. The draft Audit Strategy¹⁶ sets a target for all accounts to be audited in 2017, but this draft has not yet been adopted. No methodology has been developed to ensure that all accounts within the mandate are audited on a regular basis, nor is there an approved internal methodology for statistical sampling.

The TCA chief prosecutor is responsible for ensuring that “public loss” and legality issues raised by audit groups are formally considered within the TCA. The chief prosecutor submits a report to one of the eight TCA Chambers which, after holding a hearing for all parties, approves the “Opinion” and (when necessary) issues a “Writ”. Opinions can be contested through an appeals process. The relevant authorities have the right to collect money judged to have been ‘lost’ by the public administration concerned. Criminal acts are reported immediately to the Turkish Chief Prosecutor’s Office and action is initiated through the public courts. Issues normally arise in the procurement area and from incorrect payments of salaries and per diems. Judicial reports are not presented to the TGNA. The number of judicial “Opinions” has fallen from 1 800 in 2011 to 762 in 2012, while the number of “Letters of Appeal” increased from 2 700 to 3 138.¹⁷ The decrease of judicial “Opinions” is said to be due to leaving resources available for new regularity audits according to Law 6085. Information on the recovery of funds is not yet available within the TCA.

Figure 2. **Reports, additional reports and appeal applications submitted to the Chief Prosecutor’s Office**



Source: Turkish Court of Accounts

The TCA has the necessary powers to audit all public and statutory funds and resources, including municipal enterprises, state economic enterprises and EU funds.

¹⁵ TCA Law Article 6.

¹⁶ Draft dated May 2012.

¹⁷ Source TCA Statistics.

The type of audit work performed should cover the full range of regularity and performance audits set out in international SAI standards.

Law No. 6085 empowers the TCA to undertake, among others, regularity (financial and compliance) and performance audits (“Economy, Efficiency and Effectiveness” and the audit of performance indicators). In 2011, audit work for the financial accounts was planned on the basis of Law No. 6085, with audit reports being prepared for submission to the TGNA in 2012. Whilst the TCA law 6085 allows for auditing according to international standards, Law No. 6353 has limited the remit of the TCA regarding regularity and performance audit, which leads to a conflict between existing laws and ambiguity of the types of audits it is mandated to carry out.

These audit reports were presented to auditees for clearance but, owing to the enactment of Law No. 6353 in July 2012, the TCA concluded not to adopt the audit reports and they were not presented to the TGNA. The TCA is planning the audits of 2012 statements in accordance with the current laws, i.e. limiting its activities regarding regularity and performance audits.

While Law no 6085 gives the TCA the mandate to carry out the full range of regularity and performance audit, Law No. 6353 has led to some legal uncertainty concerning the precise authority of the TCA to undertake these audits. In view of this uncertainty and the TCA’s conclusion not to submit certain reports required under Law No. 6085 to the TGNA, it is currently unable to carry out the full range of audit work required by international auditing standards.

The SAI should have the necessary operational and functional independence required to fulfil its tasks.

The TCA is the constitutional authority responsible for auditing, on behalf of the TGNA, all public administrations’ revenues financed by the central government budget, social security institutions, local administrations and state economic enterprises. Its operating costs are financed by a separate budget, which it prepares and submits to the TGNA without intervention by the executive. The president of the TCA authorises expenditure from this approved budget.

The International Organisation of Supreme Audit Institutions (INTOSAI) Mexico Declaration (ISSAI 10)¹⁸ provides for a refined benchmark to assess an SAI’s operational and functional independence. The TCA fulfils the eight principles on SAI independence as follows: 1) its President is elected by the TGNA for a period of five years and may serve a second term; 2) its two Deputy Presidents are appointed by the president from among TCA members and have the status of Chamber Chairmen; 3) it has the necessary access to information within its mandate; 4) it has the right and obligation to report to the TGNA; 5) it decides independently on the content, timing and publishing of its reports and it follows up its audit findings as part of subsequent audits; 6) it has a reasonable level of autonomy on financial, managerial and administrative issues; 7) its budget appropriation is reviewed by the TGNA without interference from the Executive; and 8) its accounts are audited by a commission appointed by the TGNA. In principle, therefore, the Constitution¹⁹, relevant Articles²⁰ of Law No. 6085 and supporting regulations provide sufficient independence to the TCA, operating on behalf of the TGNA.

However, Law No. 6353, which limits the authority of the TCA to carry out audits mandated under TCA Law No. 6085, has impacted on the independence of TCA in deciding on the scope of its activities and by establishing a mediation commission to resolve disagreements about audit reports between the TCA and public administrations.²¹ The CC has considered an appeal against the provisions of Law No. 6353, but the decision has not yet been published in the Official Gazette.

¹⁸ www.intosai.org.

¹⁹ Constitution, Article 160.

²⁰ TCA Law No. 6085: Articles 3, 4, 5, 9, 13, 14, 22, 41, 43, 45, 62, 63 and 79.

²¹ Law No. 6353, Article 35 (2).

The enactment of Law No. 6353 has had an impact on the independence of the TCA by limiting its responsibilities in implementing international auditing standards. In principle, TCA meets the requirements of the INTOSAI Mexico Declaration, but the current legal situation has led to ambiguity about the current responsibilities of the TCA and the limitation of the TCA to carry out regularity audit and performance audit.

The annual and other reports of the SAI should be prepared in a fair, factual and timely manner.

The TCA has established two boards: the Report Evaluation Board (REB)²² and the Audit Planning and Coordination Board (APCB)²³. The REB contributes to the assessment of audit reports before issue to ensure that quality is maintained. The APCB oversees the TCA's overall medium-term planning and annual work plan. It monitors and co-ordinates the implementation of audit plans and work programmes.

There is, however, some concern on the part of stakeholders, including the TGNA, that audit reports are presented in a technical way that does not provide sufficient, useful information to enable users of the reports to decide what remedial action and decision is required. Also, differing legal interpretations between the TCA and public entities may not always be satisfactorily resolved between them, which makes it very difficult for users to understand precisely what the problems are and how these conflicting views should be resolved. The TCA considers that the adjudication process²⁴ provides sufficient safeguards.

The "TCA's Audit Strategy: Quality Control in Audit" seminar held in October 2012 provided TCA staff with an international perspective on modern quality assurance processes for SAIs and reinforced the importance the TCA attaches to developing an "Audit Quality Assurance Manual" by 2014. The draft audit strategy also sets targets regarding the reliability of TCA reports. The draft Strategic Plan 2013-17 includes objectives to develop effective communication with the TGNA, public administrations and other stakeholders²⁵.

In addition to the audit reports submitted to the auditees²⁶, the TCA Law No. 6085²⁷ requires the TCA to submit five main reports annually to the TGNA. "Other reports" may also be submitted to the TGNA²⁸. The President of the TCA shall also publish these reports within 15 days of submission to TGNA²⁹. In addition, the President of the TGNA may request audits by the TCA, who should give them priority consideration³⁰. Due to the uncertainty arising from the amending Law No. 6353, only two reports were submitted to the TGNA in 2012: the "Statement of General Conformity" and the "Auditing and Reporting of State Economic Enterprises", both of which are required under the Constitution. The reports not submitted in 2012 were the "External Audit General Evaluation Report", the "Accountability General Evaluation Report", and the "Financial Statistics Evaluation Report".

In principle, the TCA prepares its reports in a fair, factual and timely manner. However, more discussion is needed with auditees as audits are finalised about the remedial actions necessary that would be most suitable and cost-effective. This would help to ensure more effective action by auditees. Similarly, a more user-friendly presentation of findings and recommendations in audit reports would assist all stakeholders, including lay readers, in understanding the key issues and actions required.

²² TCA Law No 6085:Articles 11 (f) and 28.

²³ TCA Law No 6085:Articles 11 and 31.

²⁴ TCA Law No. 6085: Article 50.

²⁵ TCA draft Strategic Plan 2013 -2017, Aim 5.

²⁶ TCA Law No. 6085: Article 37.

²⁷ TCA Law 6085: Articles 37, 39, 40, 41, 43.

²⁸ TCA Law 6085: Article 42.

²⁹ TCA Law 6085: Article 44.

³⁰ TCA Law 6085: Article 45.

The work of the SAI should effectively be considered by parliament, e.g. by a designated committee that also reports on its own findings.

TCA reports covering the audit of state economic enterprises are presented to the State Enterprises Committee of the TGNA. These reports are examined and discussed in accordance with long-standing hearing procedures. While the TCA presented the “General Conformity Statement” to the TGNA, no procedures exist for formal discharge by the TGNA of the Executive. However, the TGNA approves the “General Conformity Statement” and the draft budget for the following year, which in itself provides an element of political discharge. The other three reports required under Law No. 6085 and the underlying reports of TCA regularity and performance audits have not been submitted to the TGNA, owing to the uncertainty of the TCA’s mandate to carry out such audits arising from amending Law No. 6353. Discussions between the TCA and the TGNA have taken place and the reports on state economic enterprises are subject to TGNA scrutiny.

The TGNA uses the constitutionally required reports submitted by TCA. Whilst respecting the TCA’s independence and whilst recognising the knowledge and auditing experience of the TCA, early agreement is necessary between the TGNA and the TCA on the type of analysis expected and the content of all the reports to be submitted to the TGNA under Law No. 6085.

The SAI should adopt and implement, to the extent possible, internationally and generally recognised auditing standards compatible with EU requirements.

TCA Law No. 6085 was enacted In December 2010, some seven years after PFMC Law 5018 which had initiated major PFMC reforms in public administrations. TCA Law 6085 explicitly requires the TCA to carry out audits according to international standards. The TCA regarded 2011 as a year of transition in which it completed an ambitious programme to prepare the by-laws and regulations needed to ensure compatibility with international standards, a principle reinforced in the draft audit strategy. For the second half of 2011, the TCA began to carry out its new responsibilities for regularity audit of the 2011 public administration financial accounts, alongside the judicial approach. Audits included systems assessments, risk assessments and the sampling of transactions, using appropriate IT support. Progress has further been made in some key areas, such as in the training and the development of staff³¹, which is important to build understanding of the new role and responsibilities of the TCA and to ensure they are embedded throughout the institution.

Auditing according to international standards has begun but the impact of the amending Law has led to uncertainty about the future. The TCA Law provided it with authority to establish a modern audit approach that meets international auditing standards. This was a promising step forward for the TCA in that it provided coherence with the broader reform processes in public administrations. The amending Law No. 6353 has, however, impacted on the TCA reform processes.

The SAI should be aware of the requirements of the EU accession process.

The TCA is an active member of the Network of Candidate and Potential Candidate Countries. It is an observer at the Contact Committee established amongst EU Member State SAIs and is a member of the European Organisation of Supreme Audit Institutions (it was a member of the Governing Board for two periods during 2006-12). The TCA was a founding member of the Economic Cooperation Organisation of SAIs. It has the mandate for auditing EU funds³² as well as the Audit Authority.

The TCA is an active participant in international SAI institutions and co-operates with other SAIs in Europe and beyond. In undertaking its audit mandate, the TCA is aware of the requirements of the EU accession process.

³¹ Source TCAs staff training programme.

³² Law no 6083, Article 4.2.