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**Regular Report**  
**on**  
**Turkey's**  
**progress towards accession**

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## A. INTRODUCTION

### 1. Preface

The European Council in Cardiff in June 1998 noted that the Commission would present a report on Turkey based on Article 28 of the Association Agreement and the conclusions of the Luxembourg European Council of December 1997. The Commission presented its first Regular Report on Turkey in October 1998, together with the Regular Reports for the other candidate countries.

The Helsinki European Council meeting in December 1999 concluded that:

*"Turkey is a candidate State destined to join the Union on the basis of the same criteria as applied to the other candidate States. Building on the existing European Strategy, Turkey, like other candidate States, will benefit from a pre-accession strategy to stimulate and support its reforms."*

As part of the pre-accession strategy, the Commission reports regularly to the European Council on progress made by each of the candidate countries in preparing for membership. Consequently, the Commission has published a series of yearly Regular Reports on Turkey, covering the years 1998 to 2003.

The Copenhagen European Council meeting in December 2002 concluded that:

*"The Union encourages Turkey to pursue energetically its reform process. If the European Council in December 2004, on the basis of a report and a recommendation from the Commission, decides that Turkey fulfils the Copenhagen political criteria, the European Union will open accession negotiations with Turkey without delay."*

In its Strategy Paper "Continuing enlargement", which accompanied the 2003 Regular Reports, the Commission stated that:

*"The Commission will next year assess the progress made by Turkey towards meeting the accession criteria as requested by the Copenhagen European Council. The Commission will issue a report and a recommendation before the end of October 2004 on whether Turkey fulfils the Copenhagen political criteria. This should allow the European Council to decide, at its meeting in December 2004, on the possible opening of accession negotiations with Turkey."*

The Brussels European Council meeting in June 2004 concluded that:

*"The Union reaffirms its commitment that if the European Council decides in December 2004, on the basis of a report and recommendation from the Commission, that Turkey fulfils the Copenhagen political criteria, the EU will open accession negotiations with Turkey without delay."*

The Commission has prepared this Regular Report with a view to the Brussels European Council in December 2004.

The structure followed for this Regular Report is largely the same as that used in previous years. The Report:

- describes the relations between Turkey and the Union, in particular in the framework of the Association Agreement;
- analyses the situation in respect of the political criteria set by the 1993 Copenhagen European Council (democracy, rule of law, human rights, protection of minorities);
- assesses Turkey’s situation and prospects in respect of the economic criteria defined by the Copenhagen European Council (a functioning market economy and the capacity to cope with competitive pressures and market forces within the Union);
- addresses the question of Turkey’s capacity to assume the obligations of membership, that is, the *acquis* as expressed in the Treaties, the secondary legislation, and the policies of the Union. In this part, special attention is paid to nuclear safety standards, which were emphasised by the Cologne and Helsinki European Councils. This part includes not only the alignment of legislation, but also the development of the judicial and administrative capacity necessary to implement and enforce the *acquis*. The European Council stressed the importance of this latter aspect at its meeting in Madrid in 1995 and on a number of subsequent occasions, most recently in Brussels in June 2004. At Madrid, the European Council stressed that the candidate countries must adjust their administrative structures, so as to create the conditions for the harmonious integration of these States. The Brussels European Council emphasised the importance for Turkey of ensuring decisive progress in the full and timely implementation of reforms at all levels of the administration.

This Report takes into consideration progress since the 2003 Regular Report. It covers the period until 31 August 2004. In some particular cases, however, measures taken after that date might be mentioned. It looks at whether planned reforms referred to in the 2003 Regular Report have been carried out and examines new initiatives. In addition, this Report provides an overall assessment of the situation for each of the aspects under consideration.

Furthermore, in view of the fact that the 2004 Regular Report provides the basis on which the Commission formulates its recommendation as to whether Turkey fulfils the Copenhagen political criteria, this Report includes an evaluation of Turkey’s track record as regards the political criteria since the Helsinki European Council meeting in December 1999. As regards the economic criteria, the report also provides a dynamic, forward-looking evaluation of Turkey’s economic performance.

The Report contains a separate section examining briefly the extent to which Turkey has addressed the Accession Partnership priorities.

As in previous Reports, “progress” has been measured on the basis of decisions actually taken, legislation actually adopted, international conventions actually ratified (with due

attention being given to implementation), and measures actually implemented. As a rule, legislation or measures which are in various stages of either preparation or Parliamentary approval have not been taken into account. This approach ensures equal treatment for all the candidate countries and permits an objective assessment of each country in terms of their concrete progress in preparing for accession.

The Report draws on numerous sources of information. Turkey has been invited to provide information on progress made in preparations for membership since the publication of the last Regular Report. The information it has provided within the framework of the Association Agreement, the National Programme for the Adoption of the *Acquis*, and various peer reviews that have taken place to assess its administrative capacity in a number of areas, have served as additional sources. Council deliberations and European Parliament reports and resolutions have been taken into account in drafting the Report.<sup>1</sup> The Commission has also drawn on assessments made by various international organisations, in particular the contributions of the Council of Europe, the OSCE, the international financial institutions, and non-governmental organisations.

## **2. Relations between the EU and Turkey**

### *Recent developments in bilateral relations*

During the last year, the pre-accession strategy has continued to be implemented. Enhanced political dialogue has continued under the Italian, Irish and Dutch presidencies. Among the items discussed were the political reforms in Turkey, human rights, Cyprus and the peaceful settlement of disputes. Views were also exchanged on wider international issues such as European Security and Defence Policy, the Southern Caucasus, the Western Balkans, the Middle East Peace Process, Iraq, Iran, Afghanistan and effective multilateralism.

The process of legislative scrutiny carried out in the framework of the sub-committees of the Association Agreement has continued and intensified following the conclusions of the Copenhagen European Council. This process focused on precise sector issues. Its purpose is to guide Turkey through the requirements for implementation of the *acquis*, including administrative capacity and enforcement. An enhanced programme of working groups, TAIEX seminars and technical meetings on specific subjects supplemented the work of the sub-committees.

The participation of Turkey in the Community programmes is continuously being intensified and extended on the basis of the Framework Agreement from 2002, which allows Turkey to participate in eleven programmes and agencies (Enterprise & SMEs, the 6th Framework Programme on Research, Combating Discrimination, Combating Social Exclusion, Gender Equality, Incentive Measures in the field of Employment, Community

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<sup>1</sup> For the European Parliament the rapporteur during the reporting period was Mr Arie Oostlander.

Action in the field of Public Health and eContent) open to candidate countries, including three since the last Association Council (Fiscalis 2007, Customs 2007 and IDA, the Community programme in the field of electronic interchange of data between administrations). Common work continues on further extension of cooperation to additional programmes, in particular in the areas of education and culture. Preparations are well advanced for participation in Leonardo da Vinci II, Socrates II and Youth. With regard to Turkish participation in Community agencies, Turkey continues its participation in the European Environment Agency (EEA) on the basis of the agreement signed in January 2003. Also, cooperation with the European Monitoring Centre for Drugs and Drug Addiction is continuing, while preparation of the relevant agreement for full participation is in its final stage. Discussions are under way on possible ways to establish cooperation between Turkey and the new European Aviation Safety Agency (EASA).

The Association Agreement has continued to work reasonably well. The Association Council met in May and an Association Committee meeting was held in March. The Joint Parliamentary Committee comprising representatives of Turkey and European Parliament met in December 2003 and in April 2004. The Joint Consultative Committee with the Economic and Social Committee met in October 2003 and in May 2004.

The European Council of 17-18 June 2004 invited Turkey to conclude negotiations with the Commission on behalf of the Community and its 25 Member States on the adaptation of the Ankara Agreement to take account of the accession of the new Member States. The Commission transmitted subsequently to the Turkish authorities the draft protocol required for the adaptation of this agreement, which could not yet be signed. Pending signature, Turkey has not extended the Customs Union to the Republic of Cyprus.

Certain improvements in the functioning of the Customs Union have taken place, and co-operation between the Commission and Turkey has further progressed, in particular concerning technical regulation of products. However, the level of litigation remains significant, due to Turkey's failure to implement several commitments taken under Decision 1/95. As a consequence, an action plan for the widening and the deepening of the Customs Union could not be agreed. The negotiations in view of reaching an agreement on services and public procurement have continued in 2003 and 2004 albeit at a slower pace. Turkey's failure to align its government procurement legislation constitutes a significant hurdle for these negotiations. The Association Council Decision concerning the implementation of competition rules could not be signed because the Turkish State Aids Monitoring Authority is not established.

Trade in agricultural products is regulated by Decision 1/98 of the Association Council, but is hindered in particular by the Turkish ban on imports of most live animals and meat products from the EU, which is not in line with Turkey's international obligations. Discussions in view of adapting Decision 1/98, after accession of the 10 new Member States, have been concluding at technical level, but are subject to procedural delays on the Turkish side.

The ECSC-Turkey Free trade agreement (Decision 1/97 of the Association Council) is being implemented smoothly.

A revised Accession Partnership was adopted by the Council in May 2003. More details on this instrument can be found in Part D of this report.

A revised National Programme for the Adoption of the *Acquis* was adopted in July 2003. Both the Accession Partnership and the National Programme for the Adoption of the *Acquis* are revised on a regular basis to take account of progress made and to allow for new priorities to be set.

The share of the European Community (EU-25) in Turkey's foreign trade has continued to increase in 2003, for a second consecutive year. Total trade in goods with the EU-25 in 2003 was 11.5% up on 2002 and accounted for 54.7% of Turkey's overall trade. In 2003, exports to the EU-25 were 12.8% up on 2002, accounting for 58.1% (€22.7 billion) of Turkey's total export sales. Its main industrial exports to the EU-25 were apparel, textiles, vehicles and automotive parts. Turkey's main agricultural exports to the EU-25 were fruits and nuts, which allowed Turkey to have surplus in trade of agricultural products. In 2003, imports from the EU-25 were up by 10.6% on 2002, accounting for 52.4% (€30.6 billion) of Turkey's total imports. Its main industrial imports were machinery, chemicals, iron and steel. Its main agricultural imports were cereals.

Currently there are two anti-dumping procedures against Turkey, one of which is under review. No new anti-dumping or other trade defence measures were taken in 2003, nor investigations initiated. In March 2004 a safeguard investigation (*erga omnes*) was initiated on imports of farmed salmon. In April the EU adopted a definitive safeguard measure on imports of preserved citrus fruits, *erga omnes*.

#### *Community assistance*

There is a pre-accession instrument dedicated to assist Turkey: the pre-accession financial assistance programme for Turkey adopted by the Council in December 2001. The procedures for programming and implementing this programme now largely mirror those of the Phare programme. The support provided by the pre-accession financial assistance programme is focused on the Accession Partnership priorities which are intended to help Turkey meet the criteria for membership.

Like the Phare programme, this programme provides support for institution building, investment to strengthen the regulatory infrastructure needed to ensure compliance with the *acquis*, and investment in economic and social cohesion. This support comprises co-financing for technical assistance, twinning (*see below*) and investment-support projects, to help Turkey with its efforts to adopt the *acquis* and strengthen the institutions necessary for implementing and enforcing the *acquis*. The pre-accession financial assistance programme is also intended to help Turkey develop the mechanisms and institutions to promote economic and social cohesion; it is supported by a limited number of measures (investment and grant schemes) with a regional or thematic focus. It may also support activities which in the other candidate countries would be financed by ISPA or SAPARD.

The decentralised implementation system was formally accredited by Commission Decision in October 2003. There was a delay until June 2004 before the system was operational also for the management of grant schemes whilst the authorities recruited the necessary human resources for the management of such schemes. However, the system is now fully operational for all pre-accession programmes. A number of MEDA projects are still ongoing in Turkey and are generally managed by the Commission through its Delegation in Ankara.

Between 1995 and 2003, €1098 million was committed to various programmes in Turkey. The 2004 Programme for Turkey consists of an allocation of €235.6 million for the National Programme. The 2004 programme focuses on the following priorities:

- Addressing the Copenhagen political criteria: significant support will be provided to the Human Rights Presidency in the Office of the Prime Minister to promote the recently adopted reform packages. In addition there are activities to help establish intermediate courts of appeal, promote civil society and provide support to the establishment of an ombudsman. This work is complemented by other activities elsewhere in the programme which have an impact on the political priorities of the Accession Partnership, such as those activities helping improve the operational standards of the gendarmerie, the promotion of social dialogue and the intensification of efforts to improve the situation in south-east Turkey (€18.9 million).
- Approximation to the *acquis*: a significant effort will be made to continue to improve market surveillance and conformity assessment systems, adopt EU standards in the fields of good laboratory practice, harmonise legislation in the field of biocides and water and improve the regime for special waste and noise management. Support will also be provided to align Turkey's legislative frameworks on intellectual property rights, consumer protection, capital markets with those of the EU. Initial steps will be taken to prepare for assimilation of the agriculture *acquis* in a way which is complementary to the ongoing World Bank agricultural reform implementation programme in Turkey (€31.8 million).
- Strengthening public administration: the programme includes projects to strengthen the capacity of the customs administration, tax administration, food safety and control, epidemiological surveillance, management of road transport and control of the frequency performance of the Turkish electricity system. In addition projects in the social field will help improve social dialogue arrangements in Turkey, improve the fight against child labour and provide a second phase for an ongoing cancer screening programme (€56.5 million).
- Justice and home affairs: the programme continues support to help implement Turkey's national strategies on asylum and migration and integrated border management. Other projects will help ensure protection and justice for children in the judicial system and establish a national probation service which can develop non-custodial sentences for certain criminals. Developing the capacity of the gendarmerie continues the process begun in 2002/3 of moving towards a judicial system where convictions are secured on the basis of evidence and not on the extraction of



confessions, and promotes the professionalisation of this law enforcement agency (€11.4 million).

- Economic and social cohesion: this priority targets the under-developed provisional NUTS II regions of Konya (provinces of Konya and Karaman), Kayseri (provinces of Kayseri, Sivas and Yozgat), Malatya (provinces of Malatya, Bingöl, Elazığ and Tunceli) and Ağrı (provinces of Ağrı, Iğdir, Kars and Ardahan). Funding is also provided through the National Programme for the Turkish contribution to the cross-border cooperation programmes with Greece and Bulgaria (€77.5 million).

The programme also includes capacity building for the National Aid Coordinator secretariat (primarily in project preparation, to improve their capacity to design pre-accession assistance programmes) and co-financing for Turkey's contribution for participation in the Sixth Framework Programme and the Community education programmes (Socrates, Leonardo and Youth).

Although Turkey is not a beneficiary under the Phare Regulation, the country's participation in Phare multi-country programmes, such as TAIEX, is sought as far as possible through its own pre-accession financial assistance envelope. TAIEX activities have been significantly increased in Turkey in 2004. Seminars, workshops and bilateral meetings have taken place in support of legislative scrutiny and the overall pre-accession process. Further TAIEX activities are planned for 2005.

Overall the impact of Community assistance to Turkey is increasingly positive. The EU has provided significant resources in a number of important areas such as basic education, training, environmental infrastructure, reproductive health and macro-economic adjustment. These highly visible pre-2002 activities are now complemented by a wide range of activities supported under the pre-accession financial assistance programme. The Joint Monitoring Committee met for the first time in December 2003. It considered an independent evaluation report which concluded that the pre-accession programmes generally displayed adequate effectiveness (i.e. ability to meet their intended purpose). Their efficiency, on the other hand, could be improved with better organisation of responsibilities among ministries and increased availability of staff in the respective beneficiaries. Furthermore, the impact and sustainability of the programmes is often reliant on action by the Turkish government, either to develop strategies or enact legislation.

The Commission has also sought a high degree of complementarity between the pre-accession financial assistance programme and the ongoing reform programmes supported by the international financial institutions, particularly the World Bank, in areas such as education, regulatory reform and public procurement.

Turkey is also a major beneficiary of assistance from the European Investment Bank (EIB). The country was able to benefit from up to five different mandates and facilities in 2003: the EuroMed II Lending Mandate for Mediterranean countries, the Mediterranean Partnership Facility, the Special Action Mandate for Turkey, the Turkey Earthquake Reconstruction and Rehabilitation Assistance Facility (which expired at the end of 2003)

and the Pre-Accession Facility. In total Turkey received loan financing worth €1.955 million from 1992 to 2002. In 2003 around €600 million was granted by the EIB for major investment projects. For the period from 2004, and following the enlargement in May, the EIB's external lending mandate has been reviewed. Turkey is no longer included in the EuroMed II Lending Mandate but in a new geographical mandate – the South-eastern Neighbours mandate. Turkey is a full participant in the EIB's Facility for Euro-Mediterranean Investment and Partnership which provides technical assistance for the design of projects and reforms in different economic sectors.

### *Twinning*

One of the main challenges facing the candidate countries is the need to strengthen their administrative and judicial capacity to implement and enforce the *acquis*. As of 1998, the European Commission began to mobilise significant human and financial resources to help them with this process, using the mechanism of twinning administrations and agencies.

The twinning process makes the vast body of Member States' public sector expertise available to the candidate countries through the long-term secondment of civil servants and accompanying short-term expert missions and training.

Furthermore, the candidate countries can draw on Member States' expertise through "Twinning light", an exchange of expertise mechanism to support projects of limited scope.

For Turkey, 30 projects have been delivered over the period 2002-2003. Twinning will again be an important element under the 2004 programme, contributing to the results of 22 projects. These span a broad range of sectors, the most numerous being in the area of justice and home affairs. In addition, twinning projects are planned in the fields of the internal market, agriculture, environment, transport, the financial sector (including financial control) and customs.

## **B. CRITERIA FOR MEMBERSHIP**

### **1. Enhanced political dialogue and political criteria**

The political criteria for accession to be met by the candidate countries, as laid down by the Copenhagen European Council in June 1993, stipulate that these countries must have achieved “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.”<sup>2</sup>

In its 1998 Regular Report on Turkey, the Commission concluded:

*“On the political side, the evaluation highlights certain anomalies in the functioning of the public authorities, persistent human rights violations and major shortcomings in the treatment of minorities. The lack of civilian control of the army gives cause for concern. This is reflected by the major role played by the army in political life through the national security council. A civil, non-military solution must be found to the situation in south-east Turkey, particularly since many of the violations of civil and political rights observed in the country are connected in one way or another with this issue. The Commission acknowledges the Turkish government's commitment to combat human rights violations in the country but this has not so far had any significant effect in practice. The process of democratic reform on which Turkey embarked in 1995 must continue.*

*In addition to resolving these problems, Turkey must make a constructive contribution to the settlement of all disputes with various neighbouring countries by peaceful means in accordance with international law.”*

In its 2003 Regular Report, the Commission found that:

*“Over the past year the Turkish government has shown great determination in accelerating the pace of reforms, which have brought far-reaching changes to the political and legal system. It has also taken important steps to ensure their effective implementation, in order to allow Turkish citizens to enjoy fundamental freedoms and human rights in line with European standards. Four major packages of political reform have been adopted, introducing changes to different areas of legislation. Some of the reforms carry great political significance as they impinge upon sensitive issues in the Turkish context, such as freedom of expression, freedom of*

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<sup>2</sup> In the meantime, through the entry into force of the Treaty of Amsterdam in May 1999, the political criteria defined at Copenhagen have been essentially enshrined as a constitutional principle in the Treaty on European Union. Article 6(1) of the consolidated Treaty on European Union reads: “The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law.” Accordingly, Article 49 of the consolidated Treaty stipulates that “Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union.” These principles were emphasised in the Charter of Fundamental Rights of the European Union, that was proclaimed at the Nice European Council in December 2000.

*demonstration, cultural rights and civilian control of the military. Many priorities under the political criteria in the revised Accession Partnership have been addressed.*

*Progress is being made in streamlining the functioning of public administration and government. The government has, in particular, started reforms with a view to promoting a more transparent management of human resources in the public service. This also serves to strengthen the fight against corruption.*

*The duties, powers and functioning of the National Security Council (NSC) have been substantially amended, bringing the framework of civil-military relations closer to practice in EU Member States. The role of the Secretary General of the NSC has been reviewed and its executive powers have been abolished. There are still representatives of the NSC in civilian boards such as the High Audio Visual Board (RTÜK) and the High Education Board (YÖK). Full parliamentary control over military expenditures must be ensured both in terms of approving the budget and in terms of auditing.*

*More efforts are still needed to enhance the efficiency and the independence of the judiciary. Already, the judicial system has been strengthened with the establishment of a new system of family courts. The competence of military courts to try civilians has been abolished. Positive changes have been made to the system of State Security Courts, in particular the abolition of incommunicado detention. However, the functioning of these courts still needs to be brought fully in line with European standards in particular with the rights of the defence and the principle of a fair trial.*

*On the ground, implementation of the reforms is uneven. In some cases, executive and judicial bodies entrusted with the implementation of the political reforms relating to fundamental freedoms adopted by Parliament have narrowed the scope of these reforms by establishing restrictive conditions, hindering the objectives initially pursued. The government has recognised that the reforms are not being put into practice systematically and has set up a Reform Monitoring Group in order to ensure their implementation.*

*Turkey has ratified the Civil Law Convention on Corruption, so that on 1 January 2004 it will become a member of the Council of Europe's Group of States against corruption (GRECO). However, in spite of several initiatives, corruption remains at a persistently high level and affects many spheres of public life.*

*Turkey has ratified major international as well as European Conventions such as the International Covenant on Civil and Political Rights, on Social and Economic Rights and Protocol 6 of the European Convention on Human Rights.*

*It is, however, of great concern that Turkey has not executed many judgments of the ECtHR, by means of ensuring payment of just satisfaction or reversing decisions made in contravention of the ECHR. One example is the Loizidou case, as it is now five years since the EctHR ruled on this matter.*

*The fight against torture and ill-treatment has been strengthened and the Turkish legal system has come closer to European standards in this respect. The scale of torture has declined but there are still reports about specific cases, which continues to cause concern.*

*The reform of the prison system has continued and rights of detainees have been improved. In practice, the right of access to a lawyer is not always ensured.*

*The possibility of retrial has been introduced but in practice few cases have been subject to retrial. In the case of Zana and others, retrial has so far largely resulted in a repetition of the previous trial, leading to persistent concerns about the respect for the rights of the defence.*

*The adoption of the reform packages has led to the lifting of several legal restrictions on the exercise of freedom of expression. The enforcement of the revised provisions of the Penal Code has led to many acquittals although cases against persons expressing non-violent opinion continue to occur. A number of persons imprisoned for non-violent expression of opinion, under provisions that have now been abolished, have been released.*

*Notable progress has been achieved in the area of freedom of demonstration and peaceful assembly where several restrictions have been lifted. Nevertheless, in some cases of peaceful demonstration, the authorities have made a disproportionate use of force.*

*As regards freedom of association, some restrictions have been eased, but associations still experience cumbersome procedures. Cases of prosecution against associations and particularly human rights defenders continue to occur.*

*The law on political parties has been amended to make closure of parties more difficult. However, HADEP has been banned by the Constitutional Court and DEHAP is facing proceedings with a view to its closure.*

*Concerning freedom of religion, the changes introduced by the reform packages have not yet produced the desired effects. Executive bodies continue to adopt a very restrictive interpretation of the relevant provisions, so that religious freedom is subject to serious limitations as compared with European standards. This is particularly the case for the absence of legal personality, education and training of ecclesiastic personnel, and full enjoyment of property rights of religious communities.*

*Measures have been taken to lift the ban on radio and TV broadcasting and education in languages other than Turkish. So far, the reforms adopted in these areas have produced little practical effect.*

*The lifting of the state of emergency in the Southeast has in general eased tensions amongst the population. There has been greater tolerance of cultural events. The programme for the return to villages proceeds at a very slow pace. Serious efforts*

*are needed to address the problems of internally displaced persons and the socio-economic development of the region in a comprehensive fashion and of cultural rights in general.*

*In the conclusions of the Thessaloniki European Council, and the Accession Partnership, Turkey is encouraged to strongly support the efforts of the UN Secretary General towards a settlement of the Cyprus problem. Turkey has expressed its support on different occasions for a settlement to the Cyprus problem. Turkey has indicated that an agreement aiming to establish a customs union with the northern part of Cyprus will not come into effect.*

*Relations between Turkey and Greece have continued to improve. Efforts are continuing to put in effect new confidence building measures. Exploratory contacts on the Aegean between the two foreign ministries have also continued.*

*Turkey decided to give its agreement as a NATO member to the modalities of participation of non-EU European allies in EU-led operations using NATO assets. This has solved a problem which had hitherto hindered the effective launch of the European Security and Defence Policy.*

*Overall, in the past 12 months Turkey has made further impressive legislative efforts which constitute significant progress towards achieving compliance with the Copenhagen political criteria. Turkey should address the outstanding issues highlighted in this report, with particular attention to the strengthening of the independence and the functioning of the judiciary, the overall framework for the exercise of fundamental freedoms (association, expression and religion), further alignment of civil-military relations with European practice, the situation in the Southeast and cultural rights. Turkey should ensure full and effective implementation of reforms to ensure that Turkish citizens can enjoy human rights and fundamental freedoms in line with European standards.*

*Furthermore, Turkey should provide determined support for efforts to achieve a comprehensive settlement of the Cyprus problem.”*

The section below provides an assessment of developments in Turkey, seen from the perspective of the Copenhagen political criteria, including the overall functioning of the country's executive and its judicial system. Such developments are in many ways closely linked to developments regarding its ability to implement the *acquis*, in particular in the domain of justice and home affairs. Specific information on the development of Turkey's ability to implement the *acquis* in the field of justice and home affairs can be found in the relevant section (*Chapter 24 - Co-operation in the field of justice and home affairs*) of part of this Report.

## **1.1 Developments since the Helsinki European Council**

The decision of the European Council in Helsinki in December 1999 that Turkey is a candidate for membership has proved to be a robust catalyst for Turkey to embark upon a

process of far-reaching constitutional and legislative reforms. Following decades of sporadic progress and partly because of a political consolidation after the 2002 elections, there has been a substantial institutional convergence in Turkey towards European standards. Political reforms have introduced changes ranging from improved civil liberties and human rights to enhanced civilian control of the military. Civil society has grown stronger. The reform process has clearly addressed major issues and, importantly, highlighted a growing consensus in favour of liberal democracy.

A Department for EU affairs was set up in 2000 to co-ordinate all Turkey's policies related to the pre-accession process. A National Plan for the Adoption of the Acquis was adopted in 2001 and revised in 2003. Political reforms in line with the Accession Partnership have been introduced by means of a series of constitutional and legislative changes adopted over a period of three years (2001-2004). There have been two major constitutional reforms, in 2001 and 2004, and eight legislative packages adopted by Parliament between February 2002 and July 2004. Numerous other laws, regulations, decrees and circulars detailing how these reforms should be implemented were issued. In the past few years, the Turkish government has undertaken efforts to ensure effective implementation of the reforms. The Reform Monitoring Group, a body set up under the chairmanship of the deputy Prime Minister responsible for human rights, was established to supervise the reforms across the board and to solve practical problems. This body has in particular tried to overcome bureaucratic inertia and bottlenecks, including in the provinces. As regards *democracy and the rule of law*, following some unsuccessful attempts of the previous years, the prospect of public administration reform received new impetus in early 2002. An Action Plan was adopted, which sets out proposals for a major overhaul of the public management system and the restructuring of the relationships between central government, provincial authorities and municipalities. A series of laws reforming public administration and local government were adopted by Parliament in July 2004 although subsequently vetoed by the President.

Civilian control of the military has been strengthened. The duties, functioning and composition of the National Security Council were changed. As part of the constitutional amendments, the NSC was made an advisory body with no executive powers and with a majority of civilians. In August 2004, a civilian was for the first time appointed Secretary General of the National Security Council. In order to enhance budgetary transparency the Court of Auditors was granted permission to audit military and defence expenditures. Extra-budgetary funds have been included in the general budget allowing for full parliamentary control. Military representatives in civilian bodies such as the High Education Board and the High Audio-Visual Board have been removed. The competence of military courts was narrowed and they will no longer try civilians for offences related to criticizing the military service. The government has increasingly asserted its control over the military. Although the process of aligning civil-military relations with EU practice is underway, the Armed Forces in Turkey continue to exercise influence through a series of informal channels.

Important changes have been made to the judicial system. The principle of the primacy of international and European human rights conventions over domestic law was enshrined in the Constitution. State Security Courts were abolished and some of their competencies

were transferred to newly created Regional Serious Felony Courts. Parliament adopted a new Civil Code and a new Penal Code, which will enter into force in April 2005. A draft new Code of Criminal Procedure and draft Laws on the Establishment of the Judicial Police and on the Execution of Punishments remain to be adopted. Other structural changes included the creation of Intermediate Courts of Appeal and a family courts system throughout the country. There has been progress in aligning the rights of the defence with the relevant European standards. A Justice Academy was established and training on international law and human rights for judges and prosecutors has intensified. The higher courts, such as the Court of Cassation, have delivered judgements applying the amended provisions adopted by the various packages of political reforms. Nonetheless, there is sometimes still a restrictive interpretation of the reforms, in particular by prosecutors.

Turkey has ratified the OECD Convention on Combating Bribery, the UN Convention Against Corruption, Council of Europe Civil Law and the Criminal Law Conventions on Corruption and the Convention on money laundering. Since 1 January 2004, Turkey has been a member of the Council of Europe's Group of States against corruption (GRECO). A number of anti-corruption measures have been adopted, in particular in establishing ethical rules for public servants. A Parliamentary report about corruption cases involving former members of the government was published in July 2003. Despite these legislative developments, corruption remains a very serious problem in almost all areas of the economy and public affairs.

As regards *human rights and the protection of minorities*, Turkey has signed and/or ratified several international conventions such as the International Covenant on Civil and Political Rights and the International Covenant on Social and Cultural Rights, albeit with reservations. Constitutional amendments were introduced allowing for the signature of the Rome Statute of the International Criminal Court.

Turkey has made increased efforts since 2002 to comply with the decisions of the European Court of Human Rights (ECtHR). The possibility of retrial in civil and criminal cases in which the ECtHR has found violations was introduced. Retrials have taken place and led to a number of acquittals. The case of Leyla Zana and colleagues is emblematic of the difficulties experienced by the different branches of the judiciary when it comes to the interpretation of the reforms.

Based on the fact that Turkey has clearly demonstrated its commitment and ability to fulfil its statutory obligations as a Council of Europe member, the Parliamentary Assembly of the Council of Europe decided in June 2004 to end the monitoring procedure opened since 1996. Turkey will however be subject to a post-monitoring procedure, which will focus on a number of areas pertaining to Turkey's obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

The death penalty was abolished in all circumstances according to Protocol N°13 to the ECHR which was signed in January 2004. Turkey also ratified Protocol N°6 to the ECHR



and any remaining reference to the death penalty in existing Turkish legislation was removed.

With respect to the enforcement of human rights, a number of bodies have been established such as the Human Rights Presidency, the Human Rights Boards and the Human Rights Office within the Ministry of Interior. The Human Rights Committee of Parliament has conducted several investigations leading to the publication of several general as well as special reports. However, the impact of these bodies on the ground is as yet very limited.

Concerning *civil and political rights* more specifically, considerable efforts have been made to strengthen the fight against torture and ill-treatment, in particular through abolishing incommunicado detention and improving the rules for pre-trial detention, access to a lawyer and medical examinations. Nonetheless, on the ground, detainees are not always made aware of their rights by the law enforcement bodies. The authorities have adopted a zero tolerance policy towards torture and legislative measures have been adopted to limit the de facto impunity of the perpetrators of torture. Under the new Penal Code such perpetrators will be more severely punished. Although torture is no longer systematic, numerous cases of ill-treatment including torture still continue to occur and further efforts will be required to eradicate such practice.

Since 2000, the prison system has improved significantly. Institutions such as the Enforcement Judges and Monitoring Boards have been established with a view to enhancing detainees' rights. A number of recommendations of the Committee for the Prevention of Torture have been implemented.

Since 2001, several changes have been made to enhance the general framework for the exercise of fundamental freedoms. The scope of these freedoms has been extended. Various laws, including the Anti-Terror Law, have been amended, lifting several legal restrictions on the exercise of freedom of expression. The situation of people sentenced for non-violent expression of opinion is now being addressed and several persons sentenced under the old provisions were acquitted or released. At the same time, numerous provisions in different laws can still be interpreted to unduly restrict freedom of expression and prosecutors continue to open criminal proceedings against those expressing non violent opinion.

Constitutional amendments have strengthened the freedom of the press. Press freedom was further improved via the adoption of a new Press Law which abrogates sanctions such as the closure of publications, the halting of distribution and the confiscation of printing machines. However, the frequency of prosecutions against journalists is a cause of concern.

Amendments to the Law on Public Meetings and Demonstrations have led to the lifting of several restrictions on the exercise of freedom of association and peaceful assembly. If adopted, the new Law on Associations, which was initially passed by Parliament in July 2004 and vetoed by the President, will be significant in terms of reducing the possibility of state interference in the activities of associations. New institutions such as the

Department for Associations have contributed to the transfer of competencies previously falling under the responsibility of the police to civilians. Measures were taken to end the systematic recording of all meetings and demonstrations and to prevent and punish the disproportionate use of force by security forces. Reports suggest, however, that human rights defenders, including human rights associations, are still subject to harassment by judicial means.

The Law on Political Parties was amended, limiting the possibility for parties to be dissolved. However, in the last five years, two important political parties were banned, including the main opposition party in 2001. Several provisions of the law fall short of European standards.

As regards freedom of religion, although freedom of religious belief is guaranteed in the Constitution and freedom to worship is largely unhampered, non-Muslim religious communities continue to experience problems related to legal personality, property rights, training of clergy, schools and internal management..

As regards *economic and social freedoms*, the principle of equality of men and women has been strengthened. Under the new Penal Code, perpetrators of “honour killings” should be punished with life imprisonment, virginity tests will be prohibited unless formally authorised by a judge or a prosecutor, and sexual assault in marriage will qualify as a criminal offence. However, on the ground, violence against women remains a serious problem.

Children’s rights were strengthened through the ratification of the relevant international conventions, legislative adjustments as well as other practical measures. However, child labour remains an issue of serious concern.

Significant constraints remain on the right to organise and the right to collective bargaining, including the right to strike. Turkey has still not accepted Article 5 (“right to organise”) and Article 6 (“right to bargain collectively” including the right to strike) of the European Social Charter. Although an Economic and Social Council was formally established in 2000 with a view to promoting social dialogue, such dialogue remains weak.

Regarding *minority rights, cultural rights and the protection of minorities*, the Constitution was amended to lift the ban on the use of the Kurdish language. Changes were introduced after some delay allowing radio and TV broadcasting in languages and dialects other than Turkish including Kurdish and the possibility to teach such languages was introduced. Subsequently, Kurdish language courses have opened and television and radio broadcasting in several different languages, such as Kurdish, Arabic and Bosnian, has begun. There has also been greater tolerance towards the use of Kurdish during cultural events in the Southeast. While such progress is significant, there are still considerable restrictions on the exercise of cultural rights, including in the areas of broadcasting and education.

The state of emergency, which had been in force for 15 years in some provinces of the Southeast, was completely lifted in 2002. Provisions used to limit pre-trial detention rights under emergency rule were amended. Work has started in co-operation with international organizations in order to address the weaknesses of Turkey's programme aimed at returning internally displaced persons to their villages. However, no integrated strategy aimed at reducing regional disparities and addressing the economic, social and cultural needs of the local population has yet been adopted. A Law on Compensation of Losses Resulting from Terrorist Acts was adopted in July 2004. The Law on Social Reinsertion, which provided partial amnesty for people previously involved in activities of illegal organisations has had limited impact. The security situation in the Southeast has considerably improved since 1999, although there have recently been a number of incidents which resulted in casualties. On the ground, the situation of internally displaced persons remains critical. A number of obstacles, including the village guard system and the absence of basic infrastructure, currently prevent displaced people from returning to their villages.

On the *enhanced political dialogue*, Turkish foreign policy has evolved significantly. Since 1999, relations with Greece have developed positively. A series of bilateral agreements have been signed and several confidence building measures have been adopted. A series of exploratory talks have taken place in the recent period.

As regards Cyprus, the issue of the division of the island and the initiatives related to its reunification have been high on the political agenda throughout the last few years. On several occasions, the Turkish government expressed its support for efforts to find a comprehensive settlement to the Cyprus problem through the continuation of the UN Secretary General mission of good offices, although until 2003, it was difficult to discern a clear position. In the past year, in a significant policy shift, Turkey has actively supported the efforts of the UN Secretary General to achieve a settlement of the Cyprus problem. Turkey supported the Annan Plan on a comprehensive solution of the Cyprus problem and the subsequent referendum which took place on the island.

## **1.2 Democracy and the Rule of Law**

### *The parliament*

There has been one parliamentary election since 1999. A clear majority emerged from the November 2002 elections for the AK Party, which enjoys an absolute majority in Parliament. The activities of Parliament have been dominated by political and economic reforms. Since 1999, the Constitution has been amended several times.

Currently, there are 368 AKP, 168 CHP, 4 DYP, and 9 independent deputies in the parliament.

There has been a strong consensus between the government party and the main opposition party (CHP) on the policy of pursuing accession to the EU, meaning that many EU related reforms have been adopted by a large majority. The package of

constitutional amendments of May was adopted with 457 votes in favour, many more than the 367 requirement. Similarly, the AKP and the CHP deputies worked closely in the Parliamentary Committees dealing with the reform of the Turkish Penal Code.

Since the previous Regular Report, Parliament has adopted a number of EU related reforms, related to both the Copenhagen political criteria and the European Community *acquis*. Examples include the Law on the Right to Information (9 October 2003), the Law on the abolition of some of the articles of the Law on NSC and NSC General Secretariat (10 December 2003), the Law on Public Financial Management and Control (10 December 2003), the Law Amending the Law on Banking (12 December 2003), the Law Amending the Law on the Establishment, Duties and Trial Procedures of Juvenile Courts (7 January 2004), the 8<sup>th</sup> Harmonization Package implementing the Constitutional Amendments of May 2004 (June 2004), the amendments to the Law on Public Employees Trade Unions, the Law on Social Insurance (June 2004), the new Law on Associations (July 2004), the legislative package Reforming Public Administration (July 2004), the Law on Compensation of Losses Resulting from Terrorist Acts (July 2004), the new Penal Code (September 2004) and the Law establishing the Intermediate Courts of Appeal (September 2004).

Between October 2003 and July 2004, the Turkish Grand National Assembly adopted a total of 261 new laws. The work of Parliamentary Committees has been central to this process. The EU Harmonization Committee, which was established in April 2003 to work as a consultative body in the pre-accession process, has given its opinion on numerous pieces of legislation. The Committee invited representatives of the European Commission and of the Council of Europe to some of its discussions, such as on the draft Turkish Penal Code and the Local Administration Law.

The Parliamentary Committee on Human Rights, which monitors the developments in human rights issues, has continued its work in the reporting period (*see point 1.3 Human rights and the protection of minorities*).

### *The executive*

The three-party coalition government which had ruled Turkey since 1999 was, following the early elections in November 2002, replaced by a one-party government. In the last two years, Turkey has enjoyed greater stability, overcoming the consequences of the two serious financial crises of 2000 and 2001. Political and economic reforms received new impetus because of the determination of the government to meet the Copenhagen criteria.

During the last year, the government has clearly given priority to working for the opening of negotiations for accession to the European Union. EU related reforms and their implementation has been a permanent item on the weekly agenda of the Council of Ministers since December 2003. A Deputy Prime Minister has been appointed to report to the Council on progress in implementing the National Programme for Adoption of the *Acquis*. The cabinet has also received regular briefings about the state of play of the implementation of the reforms.

In order to support the implementation of the human rights reforms, the government set up a Reform Monitoring Group in September 2003 (*see point 1.3 Human rights and the protection of minorities*).

The European Union Secretariat General continues to play an important coordinating role as regards the alignment with and implementation of EU norms and standards as well as programming of financial cooperation in support of these objectives. There is some concern that the human and administrative resources of the EUSG are not sufficient to fulfil its mandate.

In the reporting period the President of the Republic exercised his right of veto eight times, in particular in areas connected to reforms of public administration and education. The President continued to chair the NSC and also chaired the extraordinary state summits on Cyprus.

Parliament adopted in June and July 2004 a package on the reform of the public administration. This includes in particular a Framework Law on Public Sector Reform, a Law on Special Provincial Administration, as well as a Law on Municipalities and Metropolitan Municipalities.

Taken together, the purpose of the four laws is to reform the division of competences and duties between the four levels of administration (central, provincial, metropolitan and municipal) and to improve performance. In principle, this wide ranging and ambitious reform aims to convert the country's centralised, hierarchical and secretive administrative system into a decentralized, participatory, transparent, responsive and accountable model. If successful, this would contribute to modernise Turkey's administrative culture. The broad thrust of the reform is in line with the need to upgrade the public administration to modern standards and practices. A successful reform would underpin Turkey's future EU accession efforts. Nonetheless, it is important that such a challenging set of reforms is both feasible and sustainable. In particular, an impact analysis, an implementation plan and a budgetary and fiscal framework are needed.

Apart from the law on Metropolitan Municipalities, the reforms could not enter into force as several articles under these laws were vetoed by the President on the grounds that they violate the relevant constitutional provisions, in particular those related to the unitary character of the public administration. As a result, Parliament will have to review the legislation.

#### *National Security Council*

Since 1999, civilian control of the military has been strengthened. The constitutional and legal framework has been amended to clarify the position of the armed forces versus the civilian authorities. A number of changes have been introduced over the last year to strengthen civilian control of the military with a view to aligning it with practice in EU member States.

As regards the duties, functioning and composition of the National Security Council, a Regulation was adopted in January 2004 implementing previous legislative changes of July 2003. The new Regulation abrogates the far-reaching executive powers of the Secretariat of the National Security Council to follow up, on behalf of the President and the Prime Minister, any recommendation made by this body. In particular, the regulation implements the provision which abrogated the following: *“the Ministries, public institutions and organizations and private legal persons shall submit regularly, or when requested, non-classified and classified information and documents needed by the Secretariat General of the NSC”*.

Under the abovementioned Regulation, the office of the Secretariat General of the NSC is transformed into a body serving the purely consultative function of the NSC. Its role is now limited to the definition of the agenda. The Secretariat is no longer able to conduct national security investigations on its own initiative. It no longer manages directly the special funds allocated to it which are now under the exclusive control of the prime minister. Further changes concern the internal restructuring of the NSC, with a substantial staff reduction and the abolition of some units. In August 2004, a senior diplomat was appointed as the first civilian Secretary General of the NSC by the President upon the proposal of the Prime Minister in accordance with the changes introduced in July 2003. Under the new Regulation, the frequency of the NSC meetings has been reduced to once every two months, except when it is convened on the request of the Prime Minister or directly by the President. Over the last period, this rule has been respected. Legislation that came into force in December abolished the secret status of decrees governing the activities of the NSC General Secretariat.

Measures have been adopted enhancing the transparency of military and defence expenditure. As regards ensuring control by the civilian authorities over military expenditure two significant reforms have been adopted.

Firstly, in December 2003 the Law on Public Financial Management and Control was amended to allow the inclusion of extra-budgetary funds in the budgets of the relevant administration i.e. Defence Ministry as of 1 January 2005 and the dissolution of these funds by 31 December 2007. This relates in particular to the Defence Industry Support Fund (SSDF) which is used for major arms procurement purchases and which is expected to reach US\$1.3 billion in 2004. The abovementioned provisions have also contributed to strengthening the role of the Under Secretariat for Defence in defining budgetary appropriations in the field of military expenditures.

Secondly, new provisions were adopted concerning the ex post audit of military and defence expenditure. A regulation was adopted in February enabling the Court of Auditors, on the request of the President of Parliament, to audit military and defence expenditures. A constitutional amendment adopted in May 2004 deletes the exemption of the *“state property in possession of the Armed Forces in accordance with the principles of secrecy necessitated by national defence”* from the control of the Court of Auditors. Appropriate enabling legislation will be needed to allow this important reform to be applied in practice.

Through recent constitutional and legislative changes, the member of the Higher Education Board (YÖK), who was selected by the Chief of General Staff was removed. Similarly, a member appointed by the Secretary General of the National Security Council has been removed from the High Audio-Visual Board (RTÜK).

Defence expenditure has been reduced. According to recent data, education spending is for the first time higher than defence spending. The 2004 budget figures indicate that, while defence spending is US\$5.6 billion, or 2.59% of GNP, education spending is US\$6.7 billion, or 3.06% of GNP.

Despite the abovementioned developments, there are still provisions on the basis of which the military continues to enjoy a degree of autonomy. As regards the institutional framework, there are legal and administrative structures which are not accountable to the civilian structures. Civilians can be tried before military courts for certain crimes.

The role and the duties of the Armed Forces in Turkey are defined in several legal provisions. Depending on their interpretation, some of these provisions taken together could potentially provide the military with a wide margin of manoeuvre. This is particularly the case for Article 35 and Article 85/1 of the Turkish Armed Forces Internal Service Law, which defines the duties of the Turkish armed forces as to protect and preserve the Turkish Republic on the basis of the principles referred to in the preamble of the Constitution, including territorial integrity, secularism and republicanism.

It is also the case for article 2a of the National Security Council Law which defines national security in such broad terms that it could, if necessary, be interpreted as covering almost every policy area.

The armed forces in Turkey continue to exercise influence through a series of informal mechanisms. On various occasions, military members of the NSC expressed their opinion on political, social and foreign policy matters in public speeches, briefings or statements to the media and declarations.

Overall, reforms over the last year concerning the functioning of the NSC have further shifted the balance of civil-military relations towards the civilians and encouraged public debate in this area.

Apart from formal reforms to the legal and institutional framework, it is important that the civilian authorities fully exercise their supervisory functions in practice, in particular as regards the formulation of the national security strategy and its implementation, especially concerning relations with neighbouring countries, as well as the control of the defence budget.

### *The judicial system*

Since 1999, some important improvements have been made to the Turkish judicial system. The State Security Courts have been abolished and replaced by Regional Serious Felony Courts (also referred to as Heavy Penal Courts). New specialised courts have been

set up in order to improve the efficiency of the judicial system. Legal amendments have improved the rights of defence. A Justice Academy has been established and training on international law and human rights for judges and prosecutors has been intensified. Judges and prosecutors have a considerable role to play in the implementation of the reforms.

In June 2004, on request of the President of the Constitutional Court, the Venice Commission of the Council of Europe gave its opinion on a draft constitutional amendment aimed at reforming the Constitutional Court.

As part of the package of constitutional amendments adopted in May 2004, the State Security Courts were abolished. Jurisdiction over most of the crimes falling within the competence of the State Security Courts – principally organised crime, drug trafficking and terrorist offences – has been transferred to newly-created regional Serious Felony Courts. Some crimes formerly heard by the State Security Courts, notably under Article 312 of the Penal Code, have been transferred to the jurisdiction of the existing Serious Felony Courts. The rules of procedure applying by the Regional Serious Felony Courts are identical to those applied by other Serious Felony Courts save that the former courts exercise jurisdiction over a wider geographic area and the maximum period which can elapse between detention and charge is forty-eight rather than twenty-four hours. The office of the Chief Public Prosecutor for State Security Courts was also abolished; prosecutions before the Regional Serious Felony Court are handled by the office of the Chief Public Prosecutor. Suspects before both types of Serious Felony Courts enjoy identical rights, including the right to consult a lawyer as soon as they are taken into custody.

The package of constitutional amendments adopted in May 2004 also revised Article 90 of the Constitution, enshrining the principle of the supremacy of international and European treaties ratified by Turkey over domestic legislation. Where there is conflict between international agreements concerning human rights and national legislation, the Turkish courts will have to apply the international agreements.

A new Penal Code was adopted in September 2004, replacing the 80 years old existing Penal Code. In general, the Code adopts modern European standards in line with the recent developments of criminal law in many European countries. It strengthens sanctions against certain human rights violations and introduces new offences reflecting recent developments in international criminal law such as genocide and crimes against humanity, discrimination and abuse of personal data (*detailed assessment of the legislation is given in section 1.3 Human rights and the protection of minorities*).

The Justice Academy, which was legally established in July 2003, started to operate. The Academy is responsible for training both candidate judges and prosecutors as well as for the continuing training of serving judges and prosecutors. The Academy also provides training for Ministry of Justice personnel, lawyers and notaries. Between January and July 2004, the Academy trained 210 candidate judges and prosecutors. In September 2004, the Academy will start training a further 239 candidate judges and prosecutors and will provide continuing training for 660 judges and prosecutors. As well as Turkish law



and legal procedure, the training will cover the European Convention on Human Rights, EU law and languages.

The Law on Establishing the Intermediate Courts of Appeal was approved by the National Assembly in September 2004 but will come into force only upon the enactment of several related laws, such as the new Penal Code and the draft new Criminal Procedure Code, the latter of which is currently before the National Assembly. The establishment of the Courts of Appeal will substantially reduce the case load of the Court of Cassation and enable it to concentrate on its function of providing guidance to the lower courts on points of law of general public importance.

Two expert advisory missions on the functioning of the judicial system took place in September-October 2003 and in July 2004 respectively. The second advisory mission found that significant progress had been made since the first visit. The Ministry of Justice had followed up on the recommendations produced by the October mission by organising meetings with judges and public prosecutors from throughout Turkey to discuss the suggestions contained in the report. The Ministry has presented a plan of action for implementing many of the suggestions in the report. Moreover, in order to stimulate public debate, the Ministry has posted the report on its website and invited comments from lawyers and NGOs. Many of the recommendations are reflected in the draft Code of Criminal Procedure. The Ministry of Justice has started work on a number of other measures to improve equality of arms between prosecution and defence.

The Law on Notification was amended in March 2004. The amendment provides that written notification to suspects and witnesses in trials will be valid even if the person notified is not found at the given address. This amendment is intended to shorten trials and to prevent prosecutions failing because they exceed the statute of limitation.

The Regulation on Apprehension, Detention and Statement Taking was amended in January 2004 so as to extend the rights of detainees. The medical examination of detained persons must now take place without the presence of the police or gendarmerie unless the doctor requests their presence.

The Law on Juvenile Courts was amended in January 2004 to provide for the establishment of juvenile courts in all cities with a population exceeding 100,000 persons. Currently, however, only 16 juvenile courts have been established.

The Commercial Code was amended in April 2004 so as to establish specialised courts to hear maritime cases.

The Law on Family Courts was amended in April 2004 in order to exclude from the jurisdiction of the Family Courts all non-family law matters. Moreover, the revised law allows unmarried judges, judges without children and judges under 30 to serve in the Family Courts. There are currently one hundred and twenty family courts.

In March 2004, a new Regulation on Legal Aid was adopted, which extends the scope of legal aid to cover court costs.

As regards the functioning of the judiciary, in general trials last for long periods and are subject to repeated adjournments. There has been a reduction in the average trial period in the Serious Felony Courts, the Criminal Courts of First Instance and the Juvenile Courts. Following an increase in the number of civil courts from 3 217 in 2002 to 3 358 in 2003, the average number of cases before each court decreased from 616 in 2002 to 604 in 2003. The average trial period before the Commercial Courts decreased from 434 days in 2002 to 417 in 2003, while the average trial period before the General Civil Courts decreased slightly from 242 days in 2002 to 240 days in 2003. In order to increase the efficiency of the court system, during the reporting period 136 courthouses with an inadequate caseload were closed and 511 judges and prosecutors transferred to work in other courthouses.

The number of judges and prosecutors during the reporting period has remained largely stable; there are currently 9 629 posts available for judges and prosecutors, of which 8 970 have been filled and 659 remain open. The salaries of judges and public prosecutors, although still low, were increased in May 2004 by 27% for junior judges and prosecutors and between 10% and 15% for more senior judges and prosecutors.

The National Judicial Network Project has continued to progress. All judges and prosecutors and all courtrooms have been provided with computers and have received information technology training.

During 2003-2004, all judges and prosecutors received training on the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the case law of the European Court of Human Rights (ECtHR). Moreover, seminars were held throughout Turkey for judges and prosecutors on *inter alia* EU law, judicial co-operation, intellectual property rights, juvenile criminal justice and organised crime. The Ministry of Justice distributed to courts throughout Turkey a manual on the case-law of the European Court of Human Rights and seven handbooks on human rights, including the right to a fair trial and the prohibition of torture. A study on the legal changes introduced by the seven reform packages was also distributed to judges, public prosecutors and law enforcement officials.

Judges and prosecutors have a considerable role to play in the implementation of political reforms. Courts have continued to apply the reforms. The higher courts, such as the Court of Cassation, have delivered judgements applying the amended provisions adopted by the various packages of political reforms. These judgements will guide the lower courts in the application of the reformed legislation. The Court of Cassation has delivered important judgements applying the reforms concerning the use of the Kurdish language<sup>3</sup>, re-trial<sup>4</sup>, torture and freedom of expression<sup>5</sup>.

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<sup>3</sup> Judgement of the Court of Cassation of 22 December 2003 overruling the judgement of the Van Criminal Court of Peace of 10 December 2003 and Judgement of the Court of Cassation of 17 July 2004 overruling the judgement of the Şanlıurfa Criminal Court of 2002.

<sup>4</sup> Judgement of the Court of Cassation of 14 July 2004 overruling the judgement of the State Security Court of 30 March 2004 in the case Zana and colleagues.

Since 1 January 2004, more than 100 judgements have been recorded in which judges and prosecutors have applied the ECHR and the case-law of the ECtHR; these cases resulted mainly in acquittals.

As regards prosecutions brought under Articles 159, 169 and 312 of the Penal Code and Article 7 of the Anti-Terror Law, the courts have in many cases acquitted defendants prosecuted under these Articles. The courts have quashed the convictions of persons convicted under Article 8 of the Anti-Terror Law and have reviewed convictions under Article 169 of the Penal Code. However, in some cases in which publications were confiscated under Article 8 of the Anti-Terror Law, the courts have used other Articles to prolong the confiscation order despite the repeal of Article 8.

So far as prosecutions are concerned, public prosecutors are responsible for supervising all phases of criminal proceedings. However, in practice, they often exercise little or no supervision over police and gendarmerie officers during the investigation of a crime, in part due to their heavy workload. Consequently, many cases come to trial with inadequate preparation. Moreover, prosecutors are reluctant to discontinue evidently unmeritorious cases, in part because they are concerned about possible criticism from judicial inspectors. In 2004, the Ministry of Justice addressed this problem by amending the bye-law concerning the judicial inspectors to allow prosecutors greater discretion to withdraw unmeritorious cases.

Following the adoption of the Law on Associations, judges are no longer prohibited from forming professional organisations. However, the draft law to establish an association of judges has not yet been adopted.

The principle of the independence of the judiciary is enshrined in the Turkish Constitution but it is to a certain extent undermined by several other Constitutional provisions. The Constitution provides that judges and prosecutors shall be attached to the Ministry of Justice in so far as their administrative functions are concerned. Moreover, appointment, promotion, discipline and, broadly speaking, the careers of all judges and prosecutors are determined by the High Council of Judges and Prosecutors, which is chaired by the Minister of Justice and of which the Under-Secretary of the Ministry of Justice is also a member. The possibility of removal and transfer to less attractive regions of Turkey by the High Council may influence judges' attitudes and decisions. Furthermore, the High Council does not have its own secretariat and budget and its premises are inside the Ministry of Justice building. The High Council is entirely dependent upon a personnel directorate and inspection board of the Ministry of Justice for its administrative tasks.

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<sup>5</sup> Judgement of the Court of Cassation of 15 July 2004 in the Erdal Taş case overruling the judgement of a lower court which had convicted a journalist on the basis of Art. 312 of the Penal Code. In its judgement, the Court held the principle that freedom of expression entails the right to criticize.

### *Anti-corruption measures*

Disagreement concerning the government's anti-corruption policies played a big role in the financial crisis that erupted in February 2001. Since then, Turkey has ratified major international and European conventions in the area. Several anti-corruption measures have been adopted. In July 2003 a Parliamentary report about corruption cases involving former members of the government was published.

In the last year, some further progress has been achieved in adopting anti-corruption measures. However, surveys continue to indicate that corruption remains a very serious problem in Turkey.

Turkey has signed the UN Convention against corruption and ratified the Council of Europe Criminal Law Convention on Corruption. In January 2004, Turkey joined the Group of States against Corruption (GRECO), which monitors compliance with European anti-corruption standards.

Some progress was made in increasing transparency, with the adoption of the Law on the Foundation of an Ethical Board for Public Servants in May 2004. This law provides for the establishment of an Ethical Board for Public Servants. The Parliamentary Anti-Corruption Committee, which issued its 1,200-page-long report in July 2003, met to discuss the report in November 2003. The report analyses the definition, domains and motives of corruption and proposes general solutions to fight corruption. Furthermore, it examines in detail the areas of banking, customs, energy, construction, tender proceedings, transportation, national defence, local administration, health, social security, privatisation, agriculture, tourism, associations, universities and the activities of certain Ministries such as the Ministry of Justice and the Ministry of Interior. The Report also listed the acts of corruption and irregularities as well as the responsibilities of the related officials.

Subsequently, the Anti-Corruption Committee proposed parliamentary inquiries into the dealings of 25 former government ministers, including former prime ministers and asked that their parliamentary immunity be lifted. In December 2003 the Parliament adopted proposals to open investigations into corruption allegations against a former Prime Minister as well as against several other ministers. The Parliamentary Investigation Committee concluded that it was necessary to bring the former State Ministers before the High Tribunal and Parliament endorsed this with a vote in July 2004.

A technical committee to assist the Parliamentary Committee for Action Plan on Enhancing Transparency and Good Governance in the Public Sector was set up in January 2004. The committee, composed of representatives of various ministries and chaired by the Prime Ministry Inspection Board and composed of the Ministries of Justice, Interior, Finance, the Treasury and the State Planning Organization started to operate.

The scope of Parliamentary immunity has been identified as one of the problems in the context of corruption in Turkish public life. In spite of frequent debate, no development can be reported in limiting the scope of Parliamentary immunity. A temporary

Parliamentary Investigation Committee on Parliamentary Immunity established in June 2003 submitted its report in January 2004. The Report concluded that parliamentary immunity should be retained in its present form until the issue is taken up together with other structural reforms.

The efficiency and effectiveness of various governmental, parliamentary and other bodies established to combat corruption remain a matter of concern. The consistency of the policies and the degree of co-ordination and co-operation is weak. Turkey is encouraged to set up an independent anti-corruption body and to adopt the anti-corruption law. Furthermore, dialogue between the government, public administration and civil society needs to be strengthened and a Code of Ethics for public servants and elected officials should be developed. In addition more action should be taken to raise public awareness of corruption as a serious criminal offence. Continuous support at the highest political level for the fight against corruption would be welcome.

### **1.3 Human rights and the protection of minorities**

Since 1999 Turkey adopted two constitutional reforms and eight legislative reform packages. The most recent May 2004 constitutional reform addresses a number of issues related to human rights. These include: eradicating all remaining death penalty provisions; strengthening gender equality; broadening freedom of the press; aligning the judiciary with European standards; and establishing the supremacy of international agreements in the area of fundamental freedoms over internal legislation. In September 2004 Turkey adopted a new Penal Code, which will have positive effects on a number of areas related to human rights, particularly women's rights, discrimination and torture. Furthermore, a new Press Law was adopted in June 2004 and in July 2004 a new Law on Associations and a Law on Compensation of Losses Resulting from Terrorist Acts were adopted. A number of regulations and circulars have also been issued by the authorities in order to enable the implementation of legislation.

Turkey has acceded to a significant number of **international human rights instruments** since 1999, both within the UN framework and within the framework of the Council of Europe, of which it has been a member since 1949: the UN Covenant on Civil and Political Rights and the UN International Covenant on Social and Economic Rights (although with reservations); Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) on the abolition of the death penalty; UN Convention on the Elimination of All Forms of Racial Discrimination; the European Convention on the Exercise of Children's Rights and the Optional Protocol to the UN Convention on the Elimination of Discrimination against Women. Moreover, a constitutional amendment has established the supremacy of international agreements in the area of fundamental freedoms over internal legislation.

Turkey has made further progress with regard to international conventions on human rights since the last Regular Report. Protocol No. 13 to the ECHR, concerning the abolition of the death penalty in all circumstances, was signed in January 2004. The First Optional Protocol to the International Covenant on Civil and Political Rights, providing

for recourse procedures that extend the right of petition to individuals, was signed in February 2004. In April 2004 Turkey signed the Second Optional Protocol on the abolition of the death penalty. Turkey ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in October 2003.

Turkey has not signed the Framework Convention for the Protection of National Minorities or the Revised European Social Charter. The Constitution now enables Turkey to accede to the Statute of the International Criminal Court, but it has not yet done so.

Acknowledging the progress achieved by Turkey since 2001 in the area of constitutional and legislative reforms, in June 2004 the Parliamentary Assembly of the Council of Europe lifted the monitoring procedure on Turkey which had been applied since 1996. Turkey will be subject to a post-monitoring procedure, which will focus on a number of areas pertaining to Turkey's obligations under the ECHR.

Turkey has made progress since 1999 in relation to the execution of **judgements of the European Court of Human Rights** (ECtHR), particularly over the last year. The payment of just satisfaction was made in the Loizidou case and provisions enabling retrial of cases following judgements of the ECtHR have been introduced. This allowed for the re-trial of Leyla Zana and the other former DEP parliamentarians. Turkey must nevertheless still implement a significant number of other decisions of the Court.

Since October 2003, the European Court of Human Rights (ECtHR) has delivered 161 judgements concerning Turkey. On 132 occasions the Court found that Turkey had violated the ECHR, and 23 friendly settlements were concluded. In 2 cases, it was found that Turkey was not in violation of the ECHR. During this period, 2 934 new applications regarding Turkey were made to the ECtHR<sup>6</sup>.

The constitutional amendment of May 2004 establishing the supremacy of international agreements in the area of human rights reinforces the Turkish judiciary's capacity to give direct effect to the ECHR. The impact of this change on the judiciary will need to be monitored. According to official sources, since January 2004 over 100 judgements made reference to the ECHR and the case-law of the ECtHR and resulted mainly in acquittals.

As regards the Loizidou case<sup>7</sup>, in December 2003 Turkey paid the just satisfaction awarded by the Court in 1998. Other aspects of this judgement, such as the restoration of rights and property, remain unresolved. The friendly settlement in the case of the Institut de Prêtres français<sup>8</sup> dating from 2000 has yet to be executed. Efforts are currently underway to establish an association in whose name the right to usufruct may be

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<sup>6</sup> During the same period the number of applications from larger member states of the European Union ranged from 547 to 3 054, the number of judgements ranged from 7 to 98 and the number of violations ranged from 7 to 73.

<sup>7</sup> Case of Loizidou vs. Turkey (Application no 15318/89).

<sup>8</sup> Case of Institut de Prêtres français vs. Turkey (Application no 26308/95).

registered on behalf of the Institut. Although considerable improvements have been made, Turkey has not yet taken all the measures necessary to comply with a group of 34 judgements related to violations of the right to freedom of expression (*see section on freedom of expression*). Turkey has also made further progress in executing 55 judgements relating to abuses committed by the security forces, although some measures remain outstanding (*see section on torture and ill-treatment below*). As regards the execution of five judgements relating to the dissolution of political parties, no new developments can be reported.

In the case of Cyprus against Turkey<sup>9</sup> the Council of Europe pursued its supervision of Turkey's execution of the numerous issues raised by the judgement of the Court, recently focusing on the issue of Greek Cypriot missing persons and the right to education of Greek Cypriots living in the north.

As regards provisions enabling retrial in the light of ECtHR decisions, the Turkish courts have received nineteen applications to start retrial procedures. In four cases, the crimes in respect of which the original charges were brought no longer exist and the consequences of the convictions were erased, thus precluding the need for a re-trial. Of the remaining fifteen cases, seven have resulted in an acquittal, one in a conviction which was subsequently reversed on appeal, and one in a partial acquittal and partial conviction. Six cases are pending before the courts.

In its judgement delivered on 14 July 2004 relating to the re-trial of the former Democratic Party (DEP) members of Parliament (Sadak, Zana, Dicle and Dogan<sup>10</sup>), the Court of Cassation overruled the 30 March 2004 judgement of the State Security Court, which had upheld the original conviction. Prior to this, in June 2004, the Court of Cassation had suspended the execution of the applicants' sentence and ordered their release upon the request of the Chief Prosecutor. A further retrial will commence in October 2004.

Provisions enabling retrial still do not apply to cases that were pending before the ECtHR prior to 4 February 2003, which includes the case of Öcalan<sup>11</sup>. As the Court has indicated, the most appropriate form of redress would be to ensure that, where applicable, the applicants are given a retrial by an independent court.

In June 2004 the Parliamentary Assembly of the Council of Europe noted that notwithstanding the progress made, there remained a significant number of cases where the ECtHR decisions had not been implemented and adopted a resolution encouraging Turkey to comply with these judgements.

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<sup>9</sup> Case of Cyprus vs. Turkey (Application no 25781/94).

<sup>10</sup> Case of Sadak, Zana, Dicle, Dogan vs. Turkey (Applications no 29900/96 to 29903/96).

<sup>11</sup> Case of Öcalan vs. Turkey (Application no 46221/99).

With regard to the **promotion and enforcement of human rights**, Turkey has established a number of bodies since 1999 such as the Reform Monitoring Group, the Human Rights Presidency, the provincial and sub-provincial Human Rights Boards, the Human Rights Advisory Committee and several investigation boards. This reflects a new approach in developing a constructive relationship between human rights organizations and the Turkish State. However, the impact of these bodies has as yet been very limited.

Since January 2004, the Human Rights Presidency has intensified its work to raise awareness on human rights, process complaints and address specific cases. Individuals are now able to register complaints of human rights abuses by completing a form with a list of questions inspired by the ECHR, which can be posted in complaint boxes. At the local level, the number of provincial and sub-provincial Human Rights Boards increased from 859 to 931. A regulation published in November 2003 removes representatives of the security forces from these Boards and facilitates greater participation by civil society representatives.

However, the Human Rights Presidency has not yet succeeded in having a nationwide impact; some Boards have received no applications and some have never convened meetings. According to official statistics, 388 individuals filed complaints of human rights violations from January to June 2004. Their complaints concerned *inter alia* torture and ill-treatment and the right to liberty and security. The independence of the Boards has been brought into question, in particular because they are chaired by Governors and include participation from the Governors' administrations. Consequently, two major Turkish human rights NGOs, the Human Rights Association and Mazlum-der, still refuse to participate in the work of these Boards.

Since its establishment in September 2003, the Reform Monitoring Group has examined a number of human rights violations and exerted influence to resolve specific problems raised by foreign embassies and NGOs. Another monitoring body, the Human Rights Advisory Committee, which is composed of representatives from the authorities and civil society, has held a number of exchanges, but in practice its impact has been limited.

The Parliamentary Human Rights Investigation Committee continued to collect complaints on human rights violations and requested that the relevant authorities follow up and redress the situation when necessary. It received 791 complaints between October 2003 and June 2004; of these 322 have been dealt with. The Committee is also providing procedural advice to citizens who would like to apply to the ECtHR following the exhaustion of domestic remedies. The Committee has adopted two reports on issues related to the human rights situation.

The gendarmerie's Human Rights Violations Investigation and Assessment Centre has started functioning and as of August 2004 had received 339 applications. In February 2004 the Ministry of the Interior established a human rights Investigation Office whose function will include the inspection of police stations.

With regard to training on human rights, the Turkish authorities have pursued a number of programmes targeting relevant personnel in the Ministry of the Interior, Ministry of



Justice, the gendarmerie and the police. The implementation of the European Commission-Council of Europe joint initiative has allowed for the training of 225 trainers, responsible for training over 9,000 judges and prosecutors. The Human Rights Presidency has benefited from training on the promotion of human rights awareness.

As regards the **fight against discrimination**, progress since 1999 has been limited. However, the new Penal Code criminalises discrimination on various grounds, including, gender, ethnicity, race, religion, marital status, political ideas, philosophical beliefs and trade union membership. Additional Protocol No.12 to the ECHR on the general prohibition of discrimination by public authorities has not been ratified.

Despite the adoption of a new Labour Law in 2003, which recognises the principle of equal treatment in employment, Turkey still lacks legislation against discrimination on the basis of all prohibited grounds, such as racial and ethnic origin, religion or belief, age, sexual orientation and disability (*see also Chapter 13 – Social policy and employment*). The first periodic report under the UN Convention on the Elimination of All Forms of Racial Discrimination, which was due in October 2003, has still not been received by the UN.

#### *Civil and political rights*

Turkey has abolished the **death penalty** in all circumstances. Protocol No. 6 to the ECHR on the abolition of the death penalty except in times of war or the imminent threat of war entered into force in December 2003.

Protocol No. 13 to the ECHR concerning the abolition of the death penalty in all circumstances was signed in January 2004. Any remaining references to the death penalty were removed from Turkish legislation as part of the May 2004 constitutional amendments.

With regard to the **prevention of torture and ill-treatment**, most of the legislative and administrative framework required to combat torture and ill-treatment has been put in place since 2002, when the government declared its intention to pursue a zero-tolerance policy against torture. In accordance with various legislative amendments, pre-trial detention procedures have been aligned with European standards; sentences for torture and ill-treatment can no longer be suspended or converted into fines; and the requirement to obtain permission from superiors to open investigations against public officials has been lifted. Although many of the recommendations of the Council of Europe's Committee for the Prevention of Torture and Ill-treatment (CPT) and the relevant UN bodies have been acted upon, a number have still not been followed up by the Turkish authorities. Turkey still needs to pursue vigorously its efforts to combat torture and other forms of ill-treatment by law enforcement officials.

Recent measures include a further amendment to the Regulation on Apprehension, Detention and Statement Taking in January 2004, which strengthened the rights of detainees. Medical examinations of detained persons are now to be carried out without the presence of the security forces, except when the doctor requires otherwise and the

custody register and the suspects' rights form were improved. In October 2003 the Council of State clarified that detainees' medical examination reports should not be copied to law enforcement officers. In April 2004 the Turkish Medical Association issued a guideline stating that disciplinary penalties should be brought against doctors who discriminate on the basis of gender, race, nationality, or for any other reason, during medical checks and treatment. Pocket-sized cards setting out a suspect's rights, including his right to see a lawyer, have been distributed to police officers, who have been instructed to read the rights to a suspect immediately upon arrest. Enlarged versions of the cards have been displayed in police stations. The card also reminds police officers that breaching a suspect's rights makes them liable for the financial compensation due. The new Penal Code increases sentences for perpetrators of torture and foresees life imprisonment in cases where the victim has died.

An April 2004 circular calls on all law enforcement officials to avoid methods that may engender allegations of ill-treatment of detained persons, such as sleep deprivation, prolonged standing and threats and blindfolding. In October 2003, a circular was issued instructing public prosecutors to carry out, in person, investigations regarding allegations of torture and ill-treatment, which should be considered as priority cases. The amendment to the Military Criminal Code and the Law on the Establishment and Trial Procedures of Military Courts in January 2004 aligned the detention procedures of the military courts with those of other courts.

The Government's policy of zero tolerance and its serious efforts to implement the legislative reforms have led to a decline in instances of torture. In the first six months of 2004 the Turkish Human Rights Association received 692 complaints related to torture, a 29% decrease on the first six months of 2003. However, the number of complaints of torture outside of formal detention centres has increased considerably as compared with 2003. Of the total human rights violations claims received by the Human Rights Presidency between January and June 2004, a significant proportion related to "torture and ill-treatment", indicating that such practice remains a problem.

As regards the fight against impunity, according to official statistics, of 2 454 law enforcement agents who were tried in 2003 in relation to allegations of torture or ill-treatment, 1 357 were acquitted and of the 854 defendants that were convicted, 138 were imprisoned. In February 2004, the Minister of the Interior issued a circular aimed at ensuring the attendance of the accused at trials concerning torture or ill-treatment. In some cases, defendants had been able to avoid attending trial for many years, thus causing their cases to exceed the statute of limitation. Concerns remain that despite reforms prosecutors are not always promptly and adequately conducting investigations against public officials accused of torture.

In July 2004 the Court of Cassation overruled a judgement concerning the prison sentence given in 2002 to four policemen found guilty of torture on the grounds that the sanction (11 months and 20 days suspended prison sentence) did not adequately reflect the gravity of the offence. Further to this decision a retrial of these policemen will take place.

In March 2004 the CPT published its report, together with the response of the Turkish Government, following its field visits to the South and Southeast of Turkey in September 2003. The report notes a considerable improvement in detention facilities and in the treatment of people in custody. The use of torture methods such as suspension by the arms and electric shocks is now very rare, although in some police headquarters such methods were reported. Less detectable methods of torture or ill-treatment still occur.

Notwithstanding the January 2004 Regulation, there are still reports of detainees being seen by a doctor in the presence of enforcement officials without the prior request of the doctor. Moreover, the requirement to transmit the medical report to the authorities concerned, without providing copies to law enforcement officials, is also not always met.

In order to help address a lack of forensic experts trained in detecting torture and ill-treatment, a project is currently underway to train 2 500 doctors who work in the western part of Turkey. The training is in accordance with the Forensic Medicine Institution's "Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment" and the Istanbul Protocol. In order to improve the quality of medical examinations, the Forensic Medicine Institute has started to move forensic medicine examination rooms from courthouses to hospitals and health centres.

NGOs have reported that access to a lawyer during pre-trial detention is improving. Official sources indicate that individuals are more inclined to exercise this right; of those accused of crimes related to the State Security Courts in the first quarter of 2004, 46% requested and were given access to their lawyers, whereas the figure for the same period in 2003 was 28%. However, such access varies throughout the country. While the CPT report indicates instances of the security forces discouraging detainees from requesting a lawyer, or not informing them of their right, NGOs have suggested that many individuals may not be inclined to exercise this right even when it is offered because they might fear, for example, that to request a lawyer could be seen as an admission of guilt. While there has been an improvement in informing relatives when suspects are held in custody, this obligation is reportedly still not always respected.

There are still reports of arbitrary detentions, disappearances, abductions, and at least one alleged extra-judicial execution. Some of these cases are under investigation by the Turkish authorities. Prosecutors still require permission to open investigations against members of the security forces when extra-judicial killings and disappearances are alleged.

Following allegations of "systematic" torture in Turkey the Commission undertook a fact finding mission in September 2004 in order to carry out a further check on the situation vis-à-vis torture and ill-treatment in Turkey. This mission enabled the Commission to confirm that the Government is seriously pursuing its policy of zero tolerance in the fight against torture; however, numerous cases of ill-treatment including torture still continue to occur and further efforts will be required to eradicate such practices. The Turkish authorities could further tackle this problem through the establishment of a system of independent monitoring of detention facilities, in line with the recommendations of the UN and the CPT.

With regard to the **prison system** the situation has improved significantly since 1999. Institutions such as the Enforcement Judges and Monitoring Boards have been set up and a number of recommendations of the CPT have been implemented.

According to official sources, as of December 2003, there were 64 296 persons in prisons and detention houses, of whom 37 056 were convicted prisoners and 27 240 were prisoners detained on remand.

These sources state that there are currently no hunger strikers on “death fasts” in prisons, although NGOs report that some convicts remain on “death fast”. In September 2004 a delegation of judges from the ECtHR, accompanied by medical experts, conducted a fact-finding mission to Turkey in relation to applications from around 50 detainees allegedly suffering the after effects of being on long-term “death fast”. An investigation is presently being carried out by the Izmir Prosecutor’s office following allegations of systematic torture of juveniles in Buca Prison.

Regarding the court cases related to the December 2000 operations to transfer prisoners to the new F-type prisons, in March 2004 a court found that the state had been at fault with regard to the death of a prisoner during these operations. The court considered that these operations had not been well planned and the use of force had been excessive. Current conditions of detention in F type prisons are considered to be of a high standard, although the isolation of prisoners remains a serious problem.

The now 131 Monitoring Boards continued to carry out inspections. Their work focuses on living conditions, health, food, education and the rehabilitation of prisoners. In the period January to August 2004 the Monitoring Boards made 1 193 recommendations, of which 451 were acted upon. The Monitoring Boards’ composition does not currently include a significant representation from civil society and their reports are confidential.

As of May 2004, the 140 Enforcement Judges had received 11 923 complaints on actions taken in respect to prisoners and detainees since the establishment of the system in 2001. Of the applications, 3 659 have been accepted and acted upon, 319 have been partially accepted and acted upon and 7 945 have been rejected by the Enforcement Judges. A large number of the applications (5 554) concerned disciplinary punishments. In December 2003, the Ministry of Justice issued a circular clarifying that complaints to Enforcement Judges should be forwarded without any prior screening. The training of Enforcement Judges has, to date, been inadequate.

NGOs have reported that visitors continue to sometimes encounter difficulties meeting prisoners, although intimidating searches have ceased. A circular was issued in June 2004 reminding the gendarmerie that lawyers entering prisons should only be searched if they activate a metal detector and that searches are to be carried out respectfully. There are also reports of prisoners not receiving appropriate medical treatment.

With regard to **freedom of expression**, the situation of people sentenced for the non-violent expression of opinion is now being addressed. Since 2002, the Penal Code, the Anti-Terror Law and the Press Law have been amended to remove restrictions, resulting

in a reduction in the number of prosecutions and convictions in cases related to freedom of expression. Nevertheless, there are still a significant number of cases where non-violent expression of opinion is being prosecuted and punished. In the field of broadcasting, radio and television broadcasting in languages and dialects other than Turkish, including Kurdish, has begun.

According to official figures, there has been a decrease in the number of cases filed by public prosecutors and in the conviction rate pertaining to alleged breaches of reformed Articles 159 (“insulting the state and the state institutions”), 169 (“adding and abetting terrorist organizations”) and 312 (“incitement to racial, ethnic or religious enmity”) of the Penal Code and Article 7 of the Anti-Terror Law (“propaganda in connection with the (terrorist) organisation in a way that encourages the resort to violence or other terrorist means”) between 2001 and 2003. Moreover, all those who had been convicted under the now repealed Article 8 of the Anti-Terror Law (“propaganda against the indivisible unity of the state”), have been released from prison and, where applicable, prison sentences have been shortened following the amendment to Article 159. According to official figures, as of April 2004, 2 204 persons have been acquitted as a result of the implementation of the amended provisions by the State Security Courts. As of May 2004, there were 5 809 persons detained for terrorist-related crimes, as compared to 8 657 in 2000, 8 298 in 2001, 7 745 in 2002 and 6 137 in 2003.

Since January 2004, 103 judgements have contained a reference to Article 10 of the ECHR, which led to acquittals. In a recent case of a journalist convicted under Article 312 of the Penal Code, the Court of Cassation overturned the ruling, stating that individuals have the right to support views different from those of the majority and criticise the established order. Despite these positive cases, non-violent expression of opinion is still being prosecuted and punished in Turkey. Moreover when convictions are overturned in line with the amended legislation, full legal redress, such as the restoration of civil and political rights and the deletion of criminal records, is not always guaranteed. The impact of the reforms has not been uniform throughout the country.

The amended articles of the Penal Code and Anti-Terror Law, as well as other provisions, are still used to prosecute and convict those who exercise their freedom of expression. In some cases, prosecutors have reviewed convictions based on the repealed Article 8 of the Anti-Terror Law in order to examine whether the indictment contains grounds to re-convict under alternative provisions. Moreover, numerous legislative and administrative provisions that predate the current reform process could still be used to convict those expressing non-violent opinion.

The revised Article 159 continues to be used to prosecute those who criticise the state institutions in a way that is not in line with the approach of the ECtHR. In assessing freedom of expression cases, the judiciary should consider whether the expression incites violence, armed rebellion or enmity, what the capacity of the individual or group is to influence the public and what kind of opportunity the target of the expression has to respond.

On the basis of an initial analysis, the new Penal Code, adopted in September 2004, narrows the scope of some articles that have been used to convict those expressing non-violent opinion. The new Article 216 (which largely corresponds with the current 312) states that individuals can be convicted under this article only if their “incitement to enmity and hatred” constitutes a “clear and close danger”. Article 305, which penalises those who receive pecuniary benefits from abroad for “activities in contravention of fundamental national interests” has also been limited in scope as compared with Article 127 in the current Code. However, it is of concern that in the accompanying reasoning, the examples of activities which could be considered in contravention of national interests go well beyond what would be acceptable under the ECHR. The minimum sentence for defamation is reduced in the new Code. Other relevant articles, such as the current 159 and a provision criminalising religious personnel for criticising the state, appear virtually unaltered in the new Code and the penalty for discouraging people from performing military service has been increased.

Overall the new Penal Code provides limited progress on freedom of expression. Articles that have been frequently used to restrict freedom of expression and have been assessed as potentially conflicting with Article 10 of the ECHR, have been maintained or changed only slightly. The implementation of the new Code will have to be closely followed in order to assess its effect in practice.

In June 2004, the Committee of Ministers of the Council of Europe adopted an Interim Resolution on freedom of expression in which it welcomed the many general measures, including the relevant constitutional reforms, recently adopted. It encouraged Turkey to take further steps towards bringing its domestic legislation in line with Article 10 of the ECHR and to further enhance the direct effect of the ECHR and of the judgements of the ECtHR in the interpretation of Turkish law. The resolution notes in particular that violations of freedom of expression found as a result of the application of Article 6 of the Anti-Terror Law (which criminalises *inter alia* the printing or publication of “leaflets and declarations of terrorist organisations”) have yet to be specifically addressed.

As regards **freedom of the press**, notable progress has been made, although further efforts are required to address outstanding issues. Article 30 of the Constitution regarding the protection of printing facilities has been amended so that the confiscation or seizure of the printing equipment of a publishing house is no longer allowed in any circumstances. The new Press Law adopted in June 2004 represents a significant step towards increasing press freedom. Under the new law, the right of journalists not to disclose their sources is strengthened; the right to reply and correction is reinforced; prison sentences are largely replaced by fines; sanctions such as the closure of publications, halting distribution and confiscating printing machines are removed; and the possibility to confiscate printed materials, such as books and periodicals, has been reduced. Moreover, foreigners will now be able to edit or own Turkish publications. However, Article 19, which states that those who publish information concerning ongoing court proceedings shall be punished with a heavy fine, has been criticised for being excessive.

Despite a decrease in sanctions in the new law, fines still constitute an excessive burden, especially on local media. Such fines might contribute to the closure of publications or the continuation of self-censorship, which is particularly widespread at the regional and local level. In addition to the restrictions on freedom of expression foreseen in Article 10 of the ECHR, the law includes a reference to 'state secrets'.

Recent reports indicate that the majority of cases against journalists are not brought on the basis of the Press Law. The provisions most commonly used to prosecute the media are still Articles 159, 169 and 312 of the Penal Code and Articles 6 and 7 of the Anti-Terror Law. Official sources stress the considerable decrease in the number of cases resulting in sanctions. However, whether or not conviction is likely, the regularity with which cases are filed against members of the press represents a significant deterrent to freedom of expression through the media.

Notwithstanding the reduction in convictions, journalists, writers and publishers continue to be sentenced for reasons that contravene the standards of the ECHR. In June 2004, the Turkish Press Council expressed its concern at a recent spate of excessive fines that had been imposed on journalists. Moreover, individuals have been recently imprisoned following the expression of opinion through the press. For example, a journalist was sent to prison in May 2004 on the basis of the 1951 Law on Crimes Against Atatürk.

According to the Turkish Publishers Association, 43 books were banned and 37 writers and 17 publishers were put on trial in 2003. At least 18 books were banned in the first six months of 2004.

In the field of **broadcasting** there has been significant progress and previously adopted measures were implemented. The first broadcasts in languages and dialects other than Turkish were aired on radio and television by state broadcasting corporation TRT in June 2004. Broadcasts in Bosnian, Arabic, Circasian and the Kurdish dialects of Kirmançi and Zaza are ongoing<sup>12</sup>. These broadcasts consist of news headlines, documentary, music and sports programmes. Other minorities have reportedly expressed an interest in broadcasts in their languages.

A new regulation was published in January 2004 which established the possibility for private national television and radio channels, in addition to the state broadcaster TRT, to broadcast in languages other than Turkish. This regulation opens the decisions of the High Audio Visual Board (RTÜK) to judicial appeal and removes the requirement that presenters wear 'modern' clothing. Notwithstanding these improvements the regulation is still rather restrictive. It sets strict time limits for broadcasts in other languages (for television, four hours per week, not exceeding 45 minutes per day and for radio, five hours per week, not exceeding 60 minutes per day). Local and regional broadcasting is made conditional on the completion of an audience profile by RTÜK. Previous

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<sup>12</sup> The population of Turkish citizens of Kurdish origin is an estimated 15-20 million. The ethnically Bosnian population is estimated at 1 million and the Circasians 3 million. There are no available estimates of the ethnically Arab population.

restrictions imposed on broadcasters, including the requirement to respect the principle of “the indivisible unity of the state”, remain unchanged. The ban on children’s programmes is maintained.

Some local private television and radio broadcasters have applied to RTÜK to broadcast in Kurdish. Although the broadcasters have not yet been granted permission it has been reported that these applications will be assessed favourably. None of the national private television channels are reported to have applied to RTÜK for broadcasting in languages other than Turkish.

As regards the Broadcasting Law (RTÜK Law), this is still frequently invoked by RTÜK in order to impose heavy penalties, including fines and the suspension or cancellation of the broadcasting license. For example, in March 2004 RTÜK ordered the closure for 30 days of ART TV, a local television channel broadcasting from Diyarbakir, on the grounds that it had violated “the principle of the indivisible unity of the state” when, in August 2003, it broadcast two Kurdish love songs. If this broadcaster is closed for a second time, its licence will be revoked. On a separate occasion, the government successfully challenged RTÜK’s decision to impose sanctions on a private radio station which had broadcast a song in Kurdish. A further liberalisation of the legislation and a clearer alignment of RTÜK’s policy with the spirit of the reform process would obviate the need for government intervention in such cases.

As regards **freedom of association**, several legislative reforms undertaken since 1999 have lifted a number of restrictions. The recently adopted new Law on Associations is important in reducing the possibility for state interference in the activities of associations. A new Department of Associations has been established within the Ministry of the Interior to perform tasks that had previously been entrusted to the Director General of Security. Notwithstanding these important developments, civil society, in particular human rights defenders, continues to encounter significant restrictions in practice.

The new Law on Associations was adopted by Parliament in July 2004, although the law is not in force due to a Presidential veto. The new law addresses a number of the concerns related to the current law. Limitations on the establishment of associations on the basis of race, ethnicity, religion, sect, region, or any other minority group are removed with the new law. Although constitutional prohibitions which could be used to restrict the establishment of certain kinds of association are invoked in the new law, recent practice suggests that associations are increasingly permitted to open, even when established on the basis of currently prohibited categories.

In addition, the new law removes the requirement to seek prior permission to open branches abroad, join foreign bodies or hold meetings with foreigners. The law also lifts all restrictions on student associations; removes the requirement to inform local government officials of general assembly meetings; and allows for the establishment of temporary and informal platforms or networks for all civil society organisations. Moreover, the law requires that governors issue warnings prior to taking legal action against associations and the security forces are no longer allowed on an association’s premises without a court order.



The new law also permits associations to conduct joint projects with, and receive financial support from, other associations and public institutions and removes the requirement to seek prior permission to receive funds from abroad. However, these are the provisions that have been vetoed by the President on the grounds that they are not in line with the Constitution.

The requirement that associations produce a statute and act only within the field specified therein has been maintained. Such provisions have been used to obstruct the establishment and functioning of associations. However, under the new law, associations acting outside the scope of their statute will receive a fine and will no longer be subject to dissolution.

A regulation will be published in order to provide detailed information concerning the application of the law. This regulation, as well as its implementation in practice, will need to be examined closely in order to ascertain whether full alignment with Article 11 (“Freedom of assembly and association”) of the ECHR has been achieved.

Since it was established in August 2003, the new Department of Associations has gradually taken over responsibilities for associations from the Directorate General of Security in 74 of the 81 provinces, including Ankara, but not Istanbul. Although NGOs have reported that dialogue with the authorities is more open than in the past, these changes have not yet had a significant effect in practice.

The Ministry of the Interior issued a circular in June 2004 instructing the local authorities to deal with demonstrations, marches and press conferences in a way that does not impinge on the rights of peaceful assembly and avoids placing restrictions on the organisers that are not in accordance with the Law on Public Meetings and Demonstration Marches. The circular emphasises that NGOs’ activities should not be subject to video recording unless there is a request from the authorities. Moreover, provided that civil society organisations’ public press statements fulfil a number of conditions, such as being less than one hour long and not obstructing traffic or daily life, they will no longer fall under this law. Nonetheless, existing administrative provisions could still allow Governors to restrict public activities in the interest of public order or to regulate the use of slogans and the text on banners. In August 2004 the Ministry of the Interior issued a further circular aimed at both preventing and ensuring the appropriate sanctions for the use of disproportionate force by members of the security forces. The circular encourages Governors to treat this matter as a priority, conduct appropriate studies and ensure disciplinary action is taken where necessary.

In May 2004 the Directorate General for Foundations issued a circular, which introduced the restrictive requirement that all foundations, including religious foundations, seek permission prior to submitting applications to participate in projects funded by international organisations, including the European Commission.

On international cooperation of associations and foundations, a circular was adopted in January 2004 which clarifies the necessary requirements for obtaining permission to open branches of foreign associations and foundations in Turkey, and for other international

activities and cooperation. Permission is granted on a temporary basis and it is up to the authorities to decide whether the organisations intending to cooperate share similar goals. Moreover, the requirements include annual reporting to the authorities on all the activities covered. Public meetings with the participation of foreigners require notification to the Directorate General of Security. In practice, some NGOs have continued to face problems as a consequence of their relations with organisations located abroad.

A Kurdish association, the Kurdish Writers' Association, was established in Diyarbakir in February 2004. This was made possible despite an explicit restriction in the current Law on Associations preventing the establishment of an association on the basis of race, ethnicity, religion, sect, region or any other minority group. However, since then charges were brought against this association on the grounds that it held a meeting with representatives of the European Commission without seeking prior permission and the court case is currently ongoing. The association comprises 49 Kurdish writers, poets or translators from various professions, including teachers, municipality officers, students, private sector workers and the retired (*see section on cultural rights*).

While acquittal rates are significantly higher than in the past, human rights defenders, including NGOs and lawyers, continue to be subjected to considerable judicial harassment, as illustrated by the number of open investigations and court cases brought against them. For example, between October 2003 and August 2004, 98 court cases and investigations were launched against the Turkish Human Rights Association and 58 are currently ongoing. The majority of these are related to press conferences, which, until June 2004, were treated by the authorities under the Law on Public Meetings and Demonstration Marches, which allows for the attendance of the police.

With respect to peaceful assembly, official figures indicate that public demonstrations are subject to fewer restrictions than in the past: in the first eight months of 2004 12 demonstrations were prohibited or postponed as compared with 41 in 2003, 95 in 2002 and 141 in 2001. Demonstrations and public meetings are closely monitored by the security forces and cases of intimidation, excessive use of force and detention are still reported. NGOs have indicated that in the first seven months of 2004 the number of detentions related to demonstrations have significantly increased as compared to 2003. Press conferences and other activities organised by NGOs are routinely subject to videotaping by the local police, especially in the Southeast. This includes in many instances the videotaping of participants' identification cards. Those who do not present their identification are often placed in custody.

As regards political parties, no developments can be reported since the last Regular Report. Despite the January 2003 amendments to the Law on Political Parties, which made it more difficult to close political parties, closure cases relating to the Turkish Communist Party (TKP), the Rights and Freedoms Party (HAK-PAR) and the Democratic People's Party (DEHAP) continue. These cases are still pending before the Constitutional Court. In November 2003 the ECtHR found that Turkey had violated Article 11 of the ECHR when it dissolved the Socialist Party of Turkey in November 1998.

With respect to **freedom of religion**, although freedom of religious belief is guaranteed in the Constitution and freedom to worship is largely unhampered, non-Muslim religious communities<sup>13</sup> continue to encounter obstacles. They lack legal personality, face restricted property rights and interference in the management of their foundations, and are not allowed to train clergy. Appropriate legislation should be adopted in order to remedy these difficulties.

Following the September 2003 joint appeal of four major Christian communities to solve outstanding problems, a dialogue was initiated by the authorities in early 2004. However, this has so far not produced practical results.

A circular was adopted in December 2003 allowing for the recognition of a change of religious identity on the basis of a simple declaration.

A Regulation on the Methods and Principles of the Boards of Non-Muslim Religious Foundations was adopted in June 2004. This Regulation seeks to address the problems with respect to elections to the boards of foundations, which if not held, or not held on time, can threaten their existence and lead to the confiscation of their properties. Due to the scarcity of religious minorities in certain areas, the new Regulation provides, in principle, for the enlargement of the geographical area within which elections may be held, but only to the adjacent province. Such a restriction, coupled with the fact that this limited enlargement is granted only at the discretion of the local authorities, means that in practice a number of foundations will still not be able to hold elections.

Religious foundations continue to be subject to the interference of the Directorate General for Foundations, which is able to dissolve the foundations, seize their properties, dismiss their trustees without a judicial decision and intervene in the management of their assets and accountancy.

As regards property rights, of the 2 234 applications for registration of property in line with the January 2003 Regulation, 287 have been accepted. Applications could only be made by the 160 minority foundations listed in the Regulation. Given the religious communities' lack of a legal status, their existing properties are permanently at risk of being confiscated and attempts to recover property by judicial means encounter numerous obstacles. For example, the authorities have initiated legal proceedings aimed at confiscating the Greek Orthodox orphanage on the island of Büyükada near Istanbul. A number of non-Muslim religious communities are not entitled to establish foundations, including the Catholic and Protestant communities, and are thus deprived of the right to register, acquire and dispose of property.

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<sup>13</sup> The unofficial estimated populations are: 60 000 Armenian Orthodox Christians; 20 000 Jews; 20 000 Roman Catholics; 20 000 Syriac Orthodox Christians; 3000 Greek Orthodox Christians; 2500 Protestants; 2000 Syriac Catholics; 2000 Armenian Catholics; 500 Armenian Protestants; and 300 Chaldean Catholics.

Efforts have been made to ensure that places of worship other than mosques are granted permission to open. However, technical requirements have been invoked to prevent a number of churches from registering. The longstanding application of the Protestant church in Diyarbakir to register as a place of worship was refused in May 2004. Requests to restore churches continue to be subject to slow and cumbersome authorisation procedures. For example, the Panagia Greek Orthodox Church, which was affected by the bombing of the British consulate in November 2003, has still not been granted authorisation to carry out repairs.

A procedure for the reversal of the expropriation of a Bahai place of worship in Edirne was successfully finalised in December 2003, although the community has since reported administrative obstacles when seeking permission to make renovations to their property.

The ban on the training of clergy remains. Non-Muslim religious minorities are thus likely to encounter difficulties in sustaining their communities beyond the current generation. The Greek Orthodox Halki (Heybeliada) seminary, which has been closed since 1971, has still not been reopened. Nationality criteria restrict the ability of non-Turkish clergy to work for certain churches, such as the Syriac or Chaldean. Public use of the ecclesiastical title of Ecumenical Patriarch is still banned and the election of the heads of some religious minority churches is still subject to strict conditions. Non-Turkish Christian clergy continue to experience difficulties with respect to the granting and renewal of visas and residence and work permits.

Religious textbooks have been redrafted in order to address the concerns of Christian minorities. However, clergymen and graduates from theological colleges continue to be prevented from teaching religion in existing schools run by minorities.

Christians are still sometimes subject to police surveillance in Turkey, as illustrated by the presence of policemen during Protestant religious services who, in some instances, check the congregation's identity cards. However, the possibility for legal redress is increasing. For instance, in April 2004 the presenter of a local television news was convicted for inciting hostility towards Turkish Protestants in Ankara and his case is currently before the Court of Cassation.

In November 2003, the office of the Directorate General for Religious Affairs (Diyanet) in Antakya (Southeast) established a multi-religious committee aimed at developing a harmonious relationship between Muslims, Christians and Jews.

As far as the situation of non-Sunni Muslim minorities is concerned, there has been no change in their status. Alevis<sup>14</sup> are not officially recognised as a religious community, they often experience difficulties in opening places of worship and compulsory religious instruction in schools fails to acknowledge non-Sunni identities. The parents of an Alevi child have a case regarding compulsory religious education pending before the ECtHR. Most Alevis claim that as a secular state Turkey should treat all religions equally and

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<sup>14</sup> Estimated population of 12-20 million.

should not directly support one particular religion (the Sunnis) as it currently does through the Diyanet.

### *Economic and social rights*

With respect to **gender equality**, a number of reforms have strengthened the principle of equality between men and women. Article 10 of the Constitution now includes the provision that men and women shall have equal rights and that the state has the duty to ensure that this equality is put into practice. The new Penal Code is generally progressive in terms of women's rights, addressing such crimes as "honour killings", sexual assault and virginity testing.. Despite legal and practical initiatives to tackle the problem of discrimination and domestic violence this remains a major problem. Sustained efforts will be required to ensure that women take an equal place in society.

The new Penal Code envisages life imprisonment for crimes against life that are motivated by "tradition and customs" and it is foreseen that this provision will be applied in cases of so-called "honour killings". Sexual assault within marriage can lead to legal investigation and prosecution if the victim lodges a complaint. The code foresees slight increases in prison sentences for polygamy and non-registration of religious marriages. As regards virginity testing, the new Code foresees a prison sentence for those ordering and conducting such tests in the absence of a court order. However, contrary to the request of women's NGOs, the consent of the woman on whom the test is to be conducted is still not required.

A circular was issued in January 2004 by the Office of the Prime Minister with a view to ensuring gender equality when recruiting for the public services. Limited progress was made on the adoption of legislation aimed at guaranteeing the effective prohibition of discrimination in employment (*see also Chapter 13 - Social policy and employment*).

Many women are subjected to various forms of physical and psychological violence within the family. These include, sexual abuse, forced and often early marriages, unofficial religious marriages, polygamy, trafficking and "honour killings". Violence against women perpetrated by security officials during detention is reportedly diminishing.

There is an increased awareness of violence against women and some pressure is being exerted to oppose it. In March 2004 a judge sentenced the perpetrator of an "honour killing" in Sanilurfa to life imprisonment and implicated family members were given long prison sentences. In February 2004, the Diyanet instructed imams and preachers to speak out against "honour killings" during the Friday prayers. This followed a previous Diyanet instruction in January 2004 to no longer conduct unofficial religious marriages without a prior civil marriage.

Diyanet is also actively trying to promote the role of women within Islam and appoint women as Muftis. In addition, the interior design of mosques is being altered to facilitate women's participation in religious ceremonies.

The 1998 Law on the Protection of the Family has a limited scope and has not been adequately implemented. In the context of domestic violence, security forces often fail to investigate women's complaints. Women's NGOs have emphasised the need to provide shelters and counselling centres for women as current government provision is considered insufficient (currently there are only 9 centres). The Law on Municipalities, adopted by Parliament in July 2004, requires municipalities where the population is greater than 50 000 to provide shelters for women and children.

Women remain vulnerable to discriminatory practices, due largely to a lack of education and high illiteracy rate (19% of women in Turkey are illiterate and in the Southeast this figure is considerably higher). In some provinces of the Southeast, 62% of girls are reportedly enrolling in primary education and 50% in secondary. The widespread practice of the non-registration of girls in some parts of the Southeast contributes to this situation. Moreover, the portrayal of women in school text books reinforces such discrimination.

A regulation extending civil servants' maternity leave to 16 weeks (in line with provisions of the 2003 Labour Law) was adopted in July 2004. However, Turkey has not yet accepted Article 8 of the European Social Charter on the right of employed women to the protection of maternity.

A law that would establish the Directorate General for the Status and Problems of Women, which has been awaited for almost ten years, has still not been adopted. As a result, this department's functioning has been significantly hampered. For example, it is unable to appoint permanent staff or participate in international activities.

Women are underrepresented in elected bodies and government (4% of members of Parliament and one Minister). At the 2004 local elections, only 25 female mayors were elected in comparison to 3 209 male mayors. The alignment of the internal code of the Parliament with the provision lifting the ban on the wearing of trousers by female civil servants has not yet taken place.

As regards the **rights of disabled people**, in July 2004 a circular was issued stating that at least 3% of the staff in public institutions with more than 50 employees should be disabled and/or ex-convicts. According to official sources, there has been a significant increase in the recruitment of disabled persons since last year. However, Turkey has still not accepted Article 15 of the European Social Charter on the rights of disabled persons.

With respect to **children's rights**, despite accession to the ILO Convention on the Elimination of Worst Forms of Child Labour and amendments to the legislation in this area, child labour is still a significant problem. The right to education of children, in particular girls, is not respected and the issue of street children remains serious in some regions.

According to the ILO, the number of working children aged between 6 and 15 years has decreased. This is due to the increase in the age of compulsory schooling to 15 and the successful implementation of the ILO-IPEC programme on the fight against child labour. Turkey has ratified ILO Conventions No. 138 on the minimum age for child labour and

Convention No. 182 on the worst forms of child labour. However, the Labour Law of May 2003, which prohibits the employment of children under the age of 15 does not apply to certain sectors, such as sea and air transport or agricultural businesses with less than 50 employees.

Turkey incorporated a number of provisions of the *acquis* on young people at work into its legislation through the 2003 Labour Law and related regulations adopted in April and June 2004. Turkey has still not accepted Article 7 (“the right of children and young persons to protection”) and Article 17 (“the right of mothers and children to social and economic protection”) of the European Social Charter.

School attendance is particularly low in rural areas in the Southeast. Moreover, children born in unofficial religious marriages are often not admitted to schools because they have no official “identity”. In June 2003 the government embarked on an education campaign with UNICEF aimed at promoting the education of girls, whose attendance in primary education is 7% lower than that of boys. This programme has already had a positive effect in increasing girls’ enrolment in a number of Southeast provinces.

The issue of street children remains serious and their number is reportedly increasing.

The periodic report on the implementation of the UN Convention on the Rights of the Child, which was due in May 2002 has still not yet been received by the UN. There are concerns that an article in the new Penal Code – which foresees prison sentences for juveniles aged 15 to 17 who have engaged in consensual sexual relations – might be in breach of this Convention.

With respect to **trade unions**, significant constraints remain on the right to organise and the right to collective bargaining, including the right to strike and Turkey still falls short of ILO standards. In general, Turkey needs to strengthen social dialogue at all levels and develop a culture of social partnership.

Turkey has not yet accepted Article 5 (“right to organise”) and Article 6 (“right to bargain collectively” including the right to strike) of the European Social Charter. The June 2001 Law on Public Employees’ Trade Unions limits the right to organise for certain groups of employees and does not include the right to strike and collective bargaining. Amendments adopted in June 2004 simplify procedures related to union membership, but do not address these issues. As for the private sector, membership procedures are cumbersome and costly. In order for a trade union to be eligible for collective bargaining it must organise at least 50% of workers within a company and 10% of workers within the relevant sector nationwide.

There have been several cases of restrictions on trade union rights such as the cancellation or postponement of demonstrations and strikes, as illustrated in particular in the tyre and glass sectors.

Minority rights, cultural rights and the protection of minorities

According to the Turkish authorities, under the 1923 Treaty of Lausanne, minorities in Turkey consist only of non-Muslim communities. The minorities usually associated by the authorities with the Treaty of Lausanne are Jews, Armenians and Greeks. However, there are other communities in Turkey, including the Kurds. In this context, Turkey's reservations to the UN Covenant on Civil and Political Rights and the UN Covenant on Economic, Social and Cultural Rights regarding the right to education and the rights of minorities are of concern, as they could be used to prevent further progress in the protection of minority rights.

The 2003 visit of the OSCE High Commissioner on National Minorities to Ankara with the aim of starting a dialogue on the situation of national minorities has not yet been followed up. The OSCE High Commissioner on National Minorities could play a valuable role in assisting Turkey to move towards full compliance with modern international standards on the treatment of minorities.

As stated above, Turkey has not signed the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority languages. It has not yet ratified the Additional Protocol No. 12 to the ECHR on the general prohibition of discrimination by public authorities.

In January 2004 the government abolished the "Secondary Committee for Minorities" established with a secret decree in 1962 in order to carry out security surveillance on minorities. A new institutional body, the "Minority Issues Assessment Board" was set up in order to address the problems of non-Muslim minorities. The Board is composed of representatives of the Ministries of Interior, Education, Foreign Affairs and the Ministry of State responsible for the Directorate General of Foundations. However, the department for minorities established within the Security Directorate of the Ministry of the Interior is still responsible for relations with minorities. Minorities continue to be subject to certain discriminatory practices. Members of minority communities reportedly face difficulties in acceding to senior administrative and military positions.

The history books for the 2003-2004 school year still portray minorities as untrustworthy, traitorous and harmful to the state. However, the authorities have started to review discriminatory language in schoolbooks and, in March 2004, a Regulation was issued in which it is stated that school text books should not discriminate on the basis of race, religion, gender, language, ethnicity, philosophical belief, or religion.

The dialogue with the authorities on the issue of the dual presidency in the Jewish, Greek and Armenian schools (the deputy head of these schools is a Muslim representing the Ministry of Education and has more powers than the head) is ongoing. In May 2004 the Ministry of Education stated that children with mothers from the minority could also attend these schools (previously only those with fathers from the minority could attend). However, the declaration by parents of their minority status will be subject to an assessment by the Ministry of Education. The Greek community has encountered problems obtaining the approval of new teaching materials and the recognition of teachers trained abroad. Moreover, in contravention of the 2003 Labour Law and in contrast with the situation of their colleagues of Turkish origin, Greek minority teachers



are only permitted to teach in one school. The Armenian community has expressed its concern regarding the inadequacy of the teaching of the Armenian language.

Non-Muslim minorities not usually associated by the authorities with the Treaty of Lausanne, such as the Syriacs, are still not permitted to establish schools. The Greek origin minority on the island of Gökçeada (Imvros) has encountered difficulties regarding the re-opening of its schools and the current land registry, which has reportedly not been based on fair and transparent procedures and has led to the confiscation of properties.

Legislation preventing Roma<sup>15</sup> from entering Turkey as immigrants is still in force. However, in December 2003 a circular on the Law on Citizenship removed the requirement to state on the citizenship application whether the applicant is a “gypsy”. Roma are reportedly socially excluded and experience difficulties in accessing adequate housing.

As regards the protection of **cultural rights**, there has been important progress since 1999. The Constitution has been amended lifting the ban on the use of languages other than Turkish. Legislative changes have been introduced allowing for radio/TV broadcasting in, and teaching of, languages other than Turkish, including Kurdish (*see also above on broadcasting*). Both broadcasting and teaching began in 2004. More generally, the authorities have shown greater tolerance towards the use of Kurdish. Despite the progress that has been made, there are still considerable restrictions on the exercise of cultural rights.

A Regulation entitled Teaching in Different Languages and Dialects Traditionally Used by Turkish Citizens in their Daily Lives entered into force in December 2003. This allowed for the first time private courses in Kurdish. Six private schools started teaching Kurdish (Kirmanci dialect) in Van, Batman and Şanlıurfa in April 2004, in Diyarbakir and Adana in August 2004 and in Istanbul in October 2004. These schools do not receive financial support from the state and there are restrictions concerning, in particular, the curriculum, the appointment of teachers, the timetable and the attendees. Notably, students must have completed basic education and therefore will be older than 15.

There has been a greater tolerance towards the use of the Kurdish language and the expression of Kurdish culture in its different forms. The Newroz celebrations (marking the beginning of the spring) were authorised and only minor incidents were reported. In December 2003, the Court of Cassation overruled a decision of a local court in Van which had banned the use of posters in the Kurdish language. The Court of Cassation considered that the ban contravened previously adopted legislative amendments.

There have been no changes to the electoral system, which, because of the 10% threshold that political parties are required to reach, makes it difficult for minorities to gain representation in Parliament. There are still restrictions on the use of languages other than Turkish by political parties. NGOs have indicated that a number of individuals were

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<sup>15</sup> The Roma population is an estimated 500 000.

prosecuted for speaking Kurdish during the campaign for the March 2004 local elections and there have been recent cases where Kurdish politicians were convicted. However, in July 2004 (*see also section on the Judiciary*), the Court of Cassation overruled a judgement, which had sentenced a politician to 6 months imprisonment for using Kurdish during a press conference.

Overall the **situation in the East and Southeast** of the country, where people of Kurdish origin mostly live, has continued to improve gradually since 1999, both in terms of security and the enjoyment of fundamental freedoms. The emergency rule has been lifted and the return of the internally displaced persons (IDPs) has continued. Nevertheless, the situation of IDPs remains critical.

A Law on Compensation of Losses Resulting from Terrorist Acts was adopted in July 2004. This represents recognition of the need to compensate those in the Southeast who have suffered material damages since the beginning of the Emergency Rule period (19 July 1987). Although the criteria on which applications will be accepted and assessed may allow for the possibility of restricting considerably the scope of the law, provision is made for judicial recourse.

Despite a general improvement in the situation in the Southeast, the security threat has increased since the Kongra-Gel (formerly PKK) announced the end of the ceasefire in June 2004. Terrorist activities and clashes between Kongra-Gel militants and the Turkish military have been reported.

In March 2004 the Constitutional Court re-established the right of judicial recourse through administrative courts, against Governors' decisions taken during the period of emergency rule. The 2003 Law on Integration to Society, offered the possibility for those persons involved in the activities of illegal organisations who have laid down their arms to reintegrate during a six month period ending in February 2004. The law did not yield significant results. According to official sources, during this period 4 101 applications were made and, of these, 2 800 were from individuals already in prison. Only 1 301 persons applied to the authorities spontaneously. A total of 1 300 persons have so far benefited from the law and were released or received a reduced sentence.

The situation of internally displaced persons (IDPs) is still critical, with many living in precarious conditions. Turkey began a dialogue with international organisations in view of addressing the weaknesses of the "Return to Village and Rehabilitation Programme" which were highlighted by the UN Secretary General's Special Representative for Displaced Persons following his visit to Turkey in 2002. The Turkish government is preparing a survey as a first step in following up on these recommendations.

There have been approximately 1 500 applications to the ECtHR on this subject. In June 2004, the ECtHR<sup>16</sup> found that Turkey had violated Article 1 of Protocol No. 1 ("protection of property"), Article 8 ("right to respect for family life and home") and

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<sup>16</sup> Application nos. 8803-8811/02, 8813/02 and 8815-8819/02 (ECtHR).

Article 13 (“right to an effective remedy”) of the ECHR in the case of Turkish citizens trying to return to their village in the Tunceli region (Southeast).

According to official sources, since January 2003, 124 218 IDPs (approximately one third of the official total of 350 000) have returned to their villages. NGOs suggest that the number of displaced persons is much greater than official statistics indicate (the total number is estimated at 3 million).

The return of IDPs is hampered by the relative economic underdevelopment of the East and Southeast. The major outstanding obstacles preventing IDPs from returning to their villages are the government sponsored village guard system; the problem of landmines; the absence of basic infrastructure; and the lack of capital and employment opportunities. Public servants who were sent to the West of Turkey during the emergency rule period because it was considered too risky for them to work in the Southeast have reportedly not yet been given an opportunity to return. The discretionary power of each provincial Governor also plays a crucial role in the implementation of the legal and administrative provisions regulating return.

Very few Syriac origin citizens have attempted to return from abroad, in particular, because they face harassment from the village guards and the gendarmerie. The issue of the village guards remains unresolved. Notwithstanding the judicial procedures against village guards involved in murders, official figures state that 58 416 village guards are still on duty (as opposed to 58 551 last year). Moreover, although the Turkish authorities state that no village guards have been appointed since 2000, NGOs suggest that new village guards have been recruited in response to the increasing number of clashes between security forces and illegal armed groups. In many cases, authorisation to return to villages is reportedly conditional on the willingness of the returnees to serve as village guards. A petition containing over 30 000 signatures protesting against the village guard system was registered with the Petitions Committee in the Parliament in October 2003.

#### **1.4 Cyprus**

The Cyprus issue has dominated EU-Turkey relations since 1999. This issue has been discussed with the Turkish authorities regularly over the past years as part of the enhanced political dialogue at different levels. On several occasions, the Turkish government expressed its support for efforts to find a comprehensive settlement to the Cyprus problem through the continuation of the UN Secretary General mission of good offices. However, in practice, until 2003, this support varied and it was difficult to discern a clear position about the Cyprus problem.

In the last year, the Turkish government has been active and constructive in its efforts to find a comprehensive settlement of the Cyprus problem. At the invitation of the UN Secretary General, the Turkish Prime Minister participated alongside his counterpart from Greece to the negotiations in Bürgenstock with both Cypriot communities at the end of March 2004. Turkey supported the final plan presented by the UN Secretary General in March 2004. Turkey also supported the referendum, calling the Turkish Cypriot

community to a yes vote to the plan. The majority of the Turkish Cypriot community approved the plan but it was rejected by a majority of the Greek Cypriot community. On 1 May 2004, the Republic of Cyprus became member of the European Union as a divided island. The European Council of Brussels on 17 and 18 June 2004 welcomed the positive contribution of the Turkish government to the efforts of the UN Secretary General to achieve a comprehensive settlement of the Cyprus problem.

In May 2004, Turkey published a Decree extending the benefits of the EC-Turkey Customs Union Agreement to all EU member States except Cyprus. On 2 October, Turkey published a new decree adding Cyprus to the list of countries to which the Customs Union provisions apply. The European Council of 17-18 June 2004 invited Turkey to conclude negotiations with the Commission on behalf of the Community and its 25 Member States on the adaptation of the Ankara Agreement to take account of the accession of the new Member States. The Commission transmitted subsequently to the Turkish authorities the draft protocol required for the adaptation of this agreement.

### **1.5 Peaceful settlement of border disputes**

Bilateral relations between Turkey and Greece have dramatically improved since 1999. A policy of rapprochement was initiated in the summer of 1999 following the earthquake which hit Istanbul. This policy has contributed to the signature of numerous bilateral agreements in a variety of different areas as well as to the adoption of several confidence-building measures. Joint economic and industrial projects have been started. Exploratory talks have started in April 2002.

In the last year, bilateral relations have continued to evolve positively. The Turkish Prime Minister paid an official visit to Athens in May. As a result of the implementation of a series of confidence-building measures both governments are taking steps in view of a gradual and balanced reduction of military expenses. There have been 26 meetings at the level of under-secretaries of both countries in the framework of the exploratory talks launched in 2002. In accordance with the Helsinki European Council conclusions of December 1999, the upcoming December European Council will review the situation.

Turkey and Greece agreed in December 2003 to build a highway connecting the Greek border to Istanbul and signed an agreement for the prevention of double taxation.

During his official visit to Athens in May 2004, the Turkish Prime Minister paid a private visit to Western Thrace where he called on the Turkish-speaking Muslim minority to contribute to Greece's prosperity.

In May 2004, the Turkish General Staff highlighted that any unresolved issues should be settled in line with the *acquis* and referred to the International Court of Justice.

## 1.6 General evaluation

When the European Council of December 1999 decided that Turkey is a candidate for accession, Turkey was considered to have the basic features of a democratic system while at the same time displaying serious shortcomings in terms of human rights and protection of minorities. In 2002, the Commission noted in its Regular Report that the decision on the candidate status of Turkey had encouraged the country to make noticeable progress with the adoption of a series of fundamental, but still limited, reforms. At that time, it was clear that most of those measures had yet to be implemented and that many other issues required to meet the Copenhagen political criteria had yet to be addressed. On that basis, the European Council decided in December 2002 to re-examine Turkey's fulfilment of the political criteria at the end of 2004.

Political reforms, in line with the priorities in the Accession Partnership, have been introduced by means of a series of constitutional and legislative changes adopted over a period of three years (2001-2004). There have been two major constitutional reforms in 2001 and 2004 and eight legislative packages were adopted by Parliament between February 2002 and July 2004. New codes have been adopted, including a Civil Code and a Penal Code. Numerous other laws, regulations, decrees and circulars outlining the application of these reforms were issued. The government undertook major steps to achieve better implementation of the reforms. The Reform Monitoring Group, a body set up under the chairmanship of the deputy Prime Minister responsible for Human Rights, was established to supervise the reforms across the board and to solve practical problems. Significant progress took place also on the ground; however, the implementation of reforms remains uneven.

On civil-military relations, the government has increasingly asserted its control over the military. In order to enhance budgetary transparency the Court of Auditors was granted permission to audit military and defence expenditures. Extra-budgetary funds have been included in the general budget, allowing for full parliamentary control. In August 2004, for the first time a civilian was appointed Secretary General of the National Security Council. The process of fully aligning civil-military relations with EU practice is underway; nevertheless, the armed forces in Turkey continue to exercise influence through a series of informal mechanisms.

The independence and efficiency of the judiciary were strengthened, State Security Courts were abolished and some of their competencies were transferred to the newly-created Serious Felony Courts. The legislation to establish Intermediate Courts of Appeal was recently adopted, but the draft new Code of Criminal Procedure, the draft Laws on the Establishment of the Judicial Police and on the Execution of Punishments still await adoption.

Since 1 January 2004, Turkey has been a member of the Council of Europe's Group of States Against Corruption (GRECO). A number of anti-corruption measures have been adopted, in particular by establishing ethical rules for public servants. However, despite these legislative developments, corruption remains a serious problem in almost all areas of the economy and public affairs.

Concerning the general framework for the respect of human rights and the exercise of fundamental freedoms, Turkey has acceded to most relevant international and European conventions and the principle of the supremacy of these international human rights conventions over domestic law was enshrined in the Constitution. Since 2002 Turkey has increased its efforts to execute decisions of the European Court of Human Rights. Higher judicial bodies such as the Court of Cassation have issued a number of judgments interpreting the reforms in accordance with the standards of the European Court, including in cases related to the use of the Kurdish language, torture and freedom of expression. Retrials have taken place, leading to a number of acquittals. Leyla Zana and her former colleagues, who were released from prison in June 2004, are to face a further retrial, following a decision by the Court of Cassation.

The death penalty was abolished in all circumstances according to Protocol No 13 to the European Convention on Human Rights, which Turkey signed in January 2004. Remaining references to the death penalty in existing legislation were removed. Further efforts have been made to strengthen the fight against torture and ill-treatment, including provisions in the new Penal Code. Pre-trial detention procedures have been aligned with European standards, although detainees are not always made aware of their rights by law enforcement officers. The authorities have adopted a zero tolerance policy towards torture and a number of perpetrators of torture have been punished. Torture is no longer systematic, but numerous cases of ill-treatment including torture still continue to occur and further efforts will be required to eradicate such practices.

As regards freedom of expression, the situation has improved significantly, but several problems remain. The situation of individuals sentenced for non-violent expression of opinion is now being addressed and several persons sentenced under the old provisions were either acquitted or released. Constitutional amendments and a new press law have increased press freedoms. The new law abrogates sanctions such as the closure of publications, the halting of distribution and the confiscation of printing machines. However, in a number of cases journalists and other citizens expressing non-violent opinion continue to be prosecuted. The new Penal Code provides only limited progress as regards freedom of expression.

If adopted, the new Law on Associations, initially passed in July 2004 and then vetoed by the President, will be significant in terms of reducing the possibility of state interference in the activities of associations and will contribute towards the strengthening of civil society. Despite measures taken to ease restrictions on demonstrations, there are still reports of the use of disproportionate force against demonstrators.

Although freedom of religious belief is guaranteed by the Constitution, and freedom to worship is largely unhampered, non-Muslim religious communities continue to experience difficulties connected with legal personality, property rights, training of clergy, schools and internal management. Appropriate legislation could remedy these difficulties. Alevis are still not recognised as a Muslim minority.

As regards economic and social rights, the principle of gender equality has been strengthened in the Civil Code and the Constitution. Under the new Penal Code,

perpetrators of “honour killings” should be sentenced to life imprisonment, virginity tests will be prohibited without a court order and sexual assault in marriage will qualify as a criminal offence. The situation of women is still unsatisfactory; discrimination and violence against women, including “honour killings”, remain a major problem. Children’s rights were strengthened, but child labour remains an issue of serious concern. Trade union rights still fall short of ILO standards.

As far as the protection of minorities and the exercise of cultural rights are concerned, the Constitution was amended to lift the ban on the use of Kurdish and other languages. Several Kurdish language schools recently opened in the Southeast of Turkey. Broadcasting in Kurdish and other languages and dialects is now permitted and broadcasts have started, although on a restricted scale. There has been greater tolerance for the expression of Kurdish culture in its different forms. The measures adopted in the area of cultural rights represent only a starting point. There are still considerable restrictions, in particular in the area of broadcasting and education in minority languages.

The state of emergency, which had been in force for 15 years in some provinces of the Southeast, was completely lifted in 2002. Provisions used to restrict pre-trial detention rights under emergency rule were amended. Turkey began a dialogue with a number of international organisations, including the Commission, on the question of internally displaced persons. A Law on Compensation of Losses Resulting from Terrorist Acts was approved. Although work is underway to define a more systematic approach towards the region, no integrated strategy with a view to reducing regional disparities and addressing the economic, social and cultural needs of the local population has yet been adopted. The return of internally displaced persons in the Southeast has been limited and hampered by the village guard system and by a lack of material support. Future measures should address specifically the recommendations of the UN Secretary General’s Special Representative for Displaced Persons.

In conclusion, Turkey has achieved significant legislative progress in many areas, through further reform packages, constitutional changes and the adoption of a new Penal Code, and in particular in those identified as priorities in last year’s report and in the Accession Partnership. Important progress was made in the implementation of political reforms, but these need to be further consolidated and broadened. This applies to the strengthening and full implementation of provisions related to the respect of fundamental freedoms and protection of human rights, including women’s rights, trade union rights, minority rights and problems faced by non-Muslim religious communities. Civilian control over the military needs to be asserted, and law enforcement and judicial practice aligned with the spirit of the reforms. The fight against corruption should be pursued. The policy of zero tolerance towards torture should be reinforced through determined efforts at all levels of the Turkish state. The normalisation of the situation in the Southeast should be pursued through the return of displaced persons, a strategy for socio-economic development and the establishment of conditions for the full enjoyment of rights and freedoms by the Kurds.

The changes to the Turkish political and legal system over the past years are part of a longer process and it will take time before the spirit of the reforms is fully reflected in the

attitudes of executive and judicial bodies, at all levels and throughout the country. A steady determination will be required in order to tackle outstanding challenges and overcome bureaucratic hurdles. Political reform will continue to be closely monitored.

As regards the enhanced political dialogue, relations with Greece developed positively. A series of bilateral agreements were signed and several confidence building measures adopted. A process of exploratory talks has continued. On Cyprus, over the last year Turkey has supported and continues to support the efforts of the UN Secretary General to achieve a comprehensive settlement of the Cyprus problem. The European Council of June 2004 invited Turkey to conclude negotiations with the Commission on behalf of the Community and its 25 Member States on the adaptation of the Ankara Agreement to take account of the accession of the new Member States. The Commission expects a positive reply to the draft protocol on the necessary adaptations transmitted to Turkey in July 2004.



## **2. Economic criteria**

### **2.1 Introduction**

In its 1989 Opinion on Turkey's application for EU membership, the Commission concluded:

*“Turkey’s economic and political situation, ... , does not convince it that the adjustment problems which would confront Turkey if it were to accede to the Community could be overcome in the medium term”.*

In its 2003 Regular Report, the Commission found that:

*“Turkey has significantly improved the functioning of its market economy, while macroeconomic imbalances remain. Further decisive steps towards macroeconomic stability and structural reforms will also enhance the Turkish capacity to cope with competitive pressure and market forces within the Union”.*

In examining economic developments in Turkey since the first Regular Report, the Commission's approach has been guided by the June 1993 conclusions of the Copenhagen European Council, which stated that membership of the Union requires:

- the existence of a functioning market economy;
- the capacity to cope with competitive pressure and market forces within the Union.

In the analysis below, the Commission has followed the methodology applied in the previous annual Regular Reports. The analysis in this year's Regular Report takes stock of developments since 1999.

### **2.2 Summary of economic developments since 1999**

*Economic stability and predictability has improved with the sustained recovery since the crises in 1999 and 2001. Economic growth has been strong in the second half of the reporting period although the two sharp output contractions in 1999 and 2001 resulted in relatively low average growth for the whole period 1999-2003. In view of these strong demand swings, the current account remained relatively balanced. One of the most important achievements has been the marked reduction in inflation, which came down from 65% in 1999 to single-digit rates in mid-2004. The costs of the two crises caused a significant deterioration in public finances in the first half of the reporting period. Since then, the situation of public finances has improved, although the imbalances are still significant. The monetary framework was in line with the disinflation objective. The exchange rate regime shifted from a free floating system to a crawling peg and back to a free floating system again. Due to strong changes in inflation and exchange rates, the real effective exchange rate experienced important swings, with strong appreciation during*

the crawling peg period, sharp depreciation after the switch to free floating and renewed appreciation during 2002 and 2003.

<b>Turkey - Main Economic Trends</b> (as of 1 September 2004)							
		1999	2000	2001	2002	2003	2004 latest
Real GDP growth rate	%	-4.7	7.4	-7.5	7.8	5.8	10.6 1st qu.
Inflation rate <sup>a</sup>							
- annual average	%	64.2	57.3	57.6	46.7	25.3	11.2 Jan-Aug.
- Dec.-on-Dec.	%	68.8	39.0	68.5	29.7	18.4	10.0 Aug.
Unemployment rate (LFS definition)	%	7.7	6.5	8.3	10.3	9.0	12.4 1st quarter
General government budget balance	% of GDP	-18.9	-6.1	-29.8	-12.6	-8.8p	:
Current account balance	% of GDP	-0.7	-4.9	2.3	-0.9	-2.8	:
	million	-1261	-10631	3785	-1769	-5994	-8165 Jan.-July <sup>b</sup>
	ECU/Euro						
Gross foreign debt of the whole economy	% of exports of goods and services	206.3	201.8	203.2	194.8	:	:
	million	82915B	105170	110882	107534	:	:
	ECU/Euro						
Foreign direct investment inflow (balance of payments data)	% of GDP	0.1	0.1	1.9	0.5	0	:
	million	125	137	3046	908	68p	1466 Jan.-July <sup>b</sup>
	ECU/Euro						

Source: Eurostat, if not indicated otherwise; a Index not yet harmonised. b Source: Central Bank of Turkey.  
p= provisional figures. B= break in series.

*Turkey's institutional and regulatory setup underwent substantial modernisation. Key regulatory and supervisory institutions, such as the Turkish Central Bank and the Banking Regulation and Supervision Agency, gained independence. In addition, the regulatory framework of important markets, such as the financial sector, was aligned on international standards. State interference has been reduced, for example, by winding down political influence on the state banks, and by liberalising important markets, such as electricity, telecommunication, sugar, tobacco and petroleum. Price distortions have been reduced by cutting down the price support scheme in agriculture and introducing a direct income support system. The efficiency of the public sector has been improved, by starting to reform public services, by modernising the tax system and by improving the transparency of Turkey's public sector accounting. Furthermore, the Turkish authorities tried to facilitate the inflow of FDI by removing legal and bureaucratic hurdles.*

Despite recent improvements, social and economic conditions are still affected by the two crises. GDP per capita in purchasing power standards has not yet reached pre-crisis levels, as it fell from nearly 30% of the EU-25 average in 1999 to 26% in 2001 and has only recovered to 27% in 2003. Labour market imbalances have widened as a result of low growth and low job creation, while the working-age population continued to increase by 2% annually. In the light of the insufficient labour demand, the employment rate of persons of working age (15-64) declined from 50.8% in 1999 to 45.5% in 2003. Furthermore, the unemployment rate increased from 7.7% in 1999 to 12.4% in the first quarter of 2004. Youth unemployment has increased from 15% in 1999 to 20.5% in 2003. However, despite the marked deterioration in the economic situation of a large part of the Turkish population, absolute poverty is rare in Turkey. Traditionally, strong family ties and the widespread existence of informal casual work are important factors in this respect. However, the number of persons in danger of falling below the poverty threshold has increased, reaching a risk-of-poverty rate of 25%. As a result of the export-driven recovery, regional growth differentials have increased, favouring export-oriented regions.

<b>Turkey - Main Indicators of Economic Structure (2003)</b>		
Population (average)	Million	70.71 e
GDP per head	€ PPS	5800
	% of EU-25 average	27
Share of agriculture in:		
- gross value added	% of total	11.5
- employment	% of total	33.9
Gross fixed capital formation	% of GDP	17.7
Gross foreign debt of the whole economy	% of GDP	56.1
Exports of goods and services	% of GDP	28.6
Stock of foreign direct investment	Million €	:
	€ per head	:
Employment rate	% of 25-64 age group	45.5
Long-term unemployment rate	% of labour force	2.5
Source: Eurostat		

### 2.3 Assessment in terms of the Copenhagen criteria

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

The existence of a functioning market economy requires both prices, and trade, to be liberalised and an enforceable legal system, including property rights, to be in place. Macroeconomic stability and consensus about economic policy enhance the performance of a market economy. A well-developed financial sector and the absence of any significant barriers to market entry and exit improve the efficiency of the economy.

*The broad consensus about the essentials of economic policy has improved.* In 1999, the Turkish authorities had already embarked on a reform programme to bring down chronically high inflation and to rebalance public finances. However, the reform progress had been hampered by differing priorities within the coalition government. The 2001 financial crisis revealed key vulnerabilities in the Turkish economy and prepared the ground for a more encompassing reform project, “Turkey’s transition programme”, aimed at eliminating political interference and focusing on crucial weaknesses, such as the banking sector and public finances. Early elections in November 2002 resulted in the formation of a new one-party government, which continued the reform path. This institutional and regulatory modernisation process benefits from substantial financial and technical support from the IMF and the World Bank. The Pre-accession Economic Programmes presented since 2001 illustrate the transition from previously short-term-oriented *ad hoc* policy decisions towards a more medium-term-oriented and rule-based policy approach. However, the dispersal of economic responsibilities between five different ministries impedes the efficiency of policy formulation, coordination, and implementation.

*Economic stability has significantly improved in the second half of the reporting period.* The period since 1999 is characterised by very distinct stages: in 1999 and 2001, Turkey experienced two recessions: the first in 1999 was to a large extent the result of external shocks, such as the Russian crisis and the devastating earthquakes in Turkey’s industrial heartland. The crisis in 2001 was mainly triggered by domestic factors, such as accumulated weaknesses in the financial sector, which drove numerous banks close to bankruptcy. Both crises led to sharp declines in economic activity, only interrupted by a temporary recovery in 2000. However, since early 2002 a strong and increasingly broad-based recovery has been gaining ground in the economy. It is underpinned by a more general stabilisation of the economy and economic policy. The average economic growth of only 1.6% during the last five years masks this very uneven pattern. Between the first quarter of 2002 and of 2004, economic growth reached 7.1% annually. Gross fixed investment was particularly volatile: driven particularly by weak construction, on average it declined annually by 6%. As a result, the share of investment in GDP fell from 25.7% in 1999 to 19.7% in 2003. However, investment in equipment has developed much better, especially since 2002, when it accelerated sharply. The main source of growth were exports of goods and services, which increased by 8.9% on average during the period. Private consumption, which accounts for some 65% of GDP, increased on average by about only 0.4% per year, reflecting weak growth in real wages and a sharp decline in labour force participation. The need to maintain fiscal discipline kept real growth of public consumption low, at 1.4% on average during the period. The first phase of the recovery was mainly driven by exports of goods and services. In 2003, domestic demand components, such as gross fixed investment, increasingly contributed to the recovery.

*The current account adjusted rapidly after the 2001 crisis.* The strong fluctuations in domestic demand translated into wide swings of commodity imports, whereas exports of goods showed a significantly more stable profile. The resulting trade deficit remained relatively low during most of the period, but peaked at 11.2% of GDP in 2000, when strong domestic demand and a rapid decline in interest rates triggered an import boom. On the other hand, substantial surpluses in tourism and workers’ remittances strengthened

the external balances. As a result, the current account showed a deficit of 4.9% of GDP in 2000. The financial crisis in 2001, and with it the sharp fall in domestic and import demand, led to a current account surplus of 2.3% of GDP. The subsequent recovery from the crisis led again to a current account deficit, which moderately widened from 0.9% of GDP in 2002 to 2.8% in 2003. During the first half of 2004, a marked further deterioration in the external balance took place. Foreign direct investment did not play any significant role in financing the current account deficit.

*The labour market situation has deteriorated during the last 5 years.* Registered employment has declined by about 600 000 persons overall since 1999. At the same time, the working-age population increased by 4.6 million persons. This led to a marked decline in the employment rate, from 50.9% in 1999 to 45.5% in 2003, and a corresponding rise in unemployment, from 7.7% of the labour force in 1999 to 10.5% in 2003. Youth unemployment increased from some 15% in 1999 to 20.5% in 2003. Despite strong growth since 2002, this trend has also continued, albeit at a slower pace, in more recent years, as the previous crises still exert their delayed effects on labour markets. In contrast to previous recoveries, strong economic growth has not, so far, led to higher employment, but to an increase in labour productivity and in working time, to more than 50 hours a week for urban employees. However, to a certain degree, there might have been a transfer of economic activities to the informal sector. At the same time, the number of regular employees has expanded significantly over the past 5 years, whereas in particular the number of occasional employees and unpaid family workers fell over the period as a whole. As a result, the share of regular employees in total employment was around 43% in 2003, up from around 39% in 2000. The declining degree of responsiveness of employment to output growth and the increasing share of young and well educated persons in unemployment point to an increasing share of structural unemployment, resulting from a mismatch in labour force qualifications. The insufficient funding of the educational system and an insufficient adjustment of the educational profile to actual labour market requirements might play an important role in this respect. Another important factor with a bearing on the labour market in general and wage developments in particular has been weak domestic demand and the strength of the Turkish currency during much of the last 5 years. In order to maintain international competitiveness, many enterprises improved efficiency and kept wage growth very low, leading to a decline in real terms. In rural areas, unemployment had remained relatively low before the 2001 crisis, at around 4-5% on average, but it increased afterwards, reaching 6.5% in 2003. In urban areas, unemployment rates rose from 11.4% in 1999 to 13.8% in 2003.

*Inflation has declined significantly.* During the 1990s, short-term-oriented public spending led to chronically high inflation, reaching a peak of 105% in 1994 and remaining at a level of some 80% afterwards. The IMF-supported disinflation programme of 1999 had some initial success and led to a 12-month inflation rate of 33% in February 2001. However, the sharp depreciation in 2001 led to renewed inflationary pressure, bringing back annual average inflation to around 55% in 2001. After the petering out of the depreciation impulse, inflationary pressures have continued to decline, reaching one-digit levels in mid-2004. During the first half of 2004, consumer price inflation was 12%, compared to the same period the year before. Reaching the year-end target of 12% thus

looks very likely. Core inflation was around 8% in the first half of 2004. The main factors behind the success in the disinflation process have been a strict fiscal policy, limiting growth of public sector wages, the switch from backward to forward-looking wage indexation, the strength of the Turkish currency and increasing credibility of the price stability objective of the Turkish central bank.

*Monetary and exchange rate policy was in recent years geared to disinflation.* In 1999, the Turkish authorities introduced a crawling peg exchange rate regime as a nominal anchor. Monetary policy was subordinated to this exchange rate policy, with strict limits on domestic monetary aggregates. However, by the end of 2000, deteriorated market confidence in the disinflation programme led to high capital outflows, creating major liquidity problems in the Turkish financial sector. Therefore, in February 2001, the government switched back to a system of freely floating exchange rates. Within a few weeks, the exchange rate depreciated by more than 50% and strengthened only in spring 2002, based on increased confidence in the stabilisation programme. Since mid-2002, the nominal exchange rate has remained relatively stable, and has appreciated in real terms. It thereby supported the anti-inflation strategy of the Turkish authorities. Building on the recent success in stabilising the economy and financial markets, the Turkish authorities are presently preparing the switch to a formal inflation-targeting regime

*More recently there has been significant progress in reducing fiscal imbalances.* Previously, loose fiscal policy, resulting from frequently changing governments and unexpected fiscal shocks from the earthquakes and the banking crisis, led to a major deterioration of public finances in 1999 and 2001. In 2001, bailing out the banking sector, and taking account of the costs of agricultural support, resulted in a deficit of 29.8% of GDP,<sup>17</sup> compared to 6.1% the year before. However, since then, significantly improved fiscal discipline has brought general government deficits down to 12.7% of GDP in 2002 and 8.7% in 2003. Turkey has achieved considerable primary surpluses (government balance without interest payments) of more than 7% of GDP in ESA 95 terms during most of the period. This is a considerable achievement, in particular when compared to previous economic stabilisation efforts. Local government and social security funds together had only a limited impact on the overall fiscal balance, reducing the general government net borrowing by up to 1 percentage point. In order to achieve those substantial primary surpluses, public expenditures, such as wages and investment, have been restrained and tax rates have been increased. Tax exemptions have been removed and measures to reduce tax evasion and to increase the efficiency of the tax administration have been adopted. As a result, the share of total revenues in GDP increased (from 24% in 1999 to 26% in 2003 according to GFS, the accounting standard of the IMF). The biggest contribution came from increases in indirect taxes. Non-interest expenditure remained largely constant at around 20% of GDP. Despite the impressive performance in achieving the fiscal targets, many of the measures are one-off in nature. On the expenditure side in particular, linear spending cuts and retaining public

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<sup>17</sup> According to European accounting standards, the European Standard of Accounts, ESA 95. The figures under this methodology can differ appreciably from budgetary figures under different accounting standards, such as the GFS methodology of the International Monetary Fund

investment have been important elements in achieving the fiscal targets. The fiscal costs stemming from the earthquakes and the banking crisis have resulted in a sharp increase in Turkey's debt ratio, to 67% in 1999 and to 105% in 2001. Since then, the debt ratio has declined markedly, reaching 87% of GDP in 2003, but it is still characterised by high shares of debt in foreign currency and debt linked to short-term interest rates. This significant reduction is partly due to the substantial primary surpluses, but it is also a result of strong nominal GDP growth. During the last year and a half, the structure of the debt has become more shock-resilient by shifting towards longer maturities and towards TKL denomination. Despite this achievement, Turkey's debt sustainability is exposed to fluctuations in exchange rates and interest rates.

*The transparency of public sector accounting and the efficiency of tax administration have improved.* During the last 5 years, important progress has been achieved in aligning the legislation of public procurement, financial management and financial control with international standards. The reforms led to the establishment of a public procurement agency and an office for debt and risk management. Furthermore, previously extra-budgetary funds have been integrated into the public sector and so far unrecorded financial transactions, such as the duty losses of state banks, have been treated in a more transparent way. During recent years, the more than 60 extra-budgetary funds dealing with quasi-fiscal activities, such as the support price fund, have been reduced to only five. A new budget management and control law concerning public internal financial control was adopted in December 2003 and will enter into force on 1 January 2005.

*The macroeconomic policy mix has been adjusted towards a broader reform approach.* The policy mix of the 1999 disinflation programme already contained key elements for Turkey's economic consolidation, such as fiscal discipline, public sector reform and a modernisation of Turkey's regulatory and institutional framework. However, insufficient implementation of the programme during 2000-2001 eroded the credibility of the reform effort and contributed to the 2001 crisis. The subsequent stabilisation programme for strengthening the Turkish economy extended the scope of the reform programme, by putting greater emphasis on reducing political interference and eliminating financial sector vulnerabilities. The crawling peg exchange rate regime has been replaced by a free floating system, cutting the external nominal anchor but also eliminating an important source of financial market distortions. Furthermore, efforts to reduce fiscal imbalances have been intensified, and the regulatory and institutional framework has been further aligned with international standards. This programme benefits from substantial support from IMF and the World Bank. Overall, the policy mix after 2001 has significantly improved economic stability by reducing political interference, by addressing financial sector vulnerabilities and by reducing economic uncertainty by bringing down notoriously high inflation. In particular, strengthened fiscal discipline has helped to lower inflationary expectations and to improve debt sustainability. However, public sector borrowing is still crowding out private investment.

*The free interplay of market forces has been extended.* The process of liberalisation and deregulation, against a long tradition of state intervention in the market economy, started in the 1980s, but remained limited in scope. During the last 5 years, important progress has been made in reducing political interference and in establishing the necessary legal

and institutional framework for a modern, rule-based economy. The independence of the central bank has been increased. Furthermore, important markets, such as electricity, sugar and tobacco, have been liberalised and independent regulatory and surveillance institutions have been established in the areas of telecommunications, energy, and tobacco and alcohol. Furthermore, liberalisation of the petroleum market has been adopted and will take effect in January 2005.

*Price distortions have been reduced.* The system of agricultural support prices, which had led to major distortions in the price structure, has been replaced by a direct income support system. Prices for tobacco and sugar are now determined by supply and demand instead of by state purchasing agencies. Prices of certain utilities, such as electricity, gas and oil products, remain regulated. These goods continue to benefit from subsidies as part the government's attempt to shelter lower income groups from the social costs of the economic consolidation programme. Nevertheless, the share of administrated prices in the CPI basket has declined from some 24% in 1999 to 17% in 2003.

*The private sector accounts for some 80% of Turkey's economy.* The share of the state sector is on aggregate quite small: in value added, state-owned enterprises and state banks amounted in 2003 to 7% of GDP, while government services accounted for another 13% of GDP. Despite the overall limited significance of state enterprises, these entities still play an important role in some key sectors, such as banking or basic industries. In the banking sector, one third of the sector's assets are state-owned. In the manufacturing sector, fully state-owned enterprises still account for about one fifth of the sector's value added and for about 12% of the sector's employment. In many cases, these enterprises are overstaffed and inefficient. Prices are only partly cost-recovering. As these enterprises are mainly producing inputs to the manufacturing sector, price distortions spread through the whole economy. During the last 5 years, employment in state-owned enterprises, including the banking sector, has declined from some 500 000 persons, or 2.5% of total employment, in 1999 to some 430 000 persons (2% of total employment) in 2003.

*Progress in privatisation has remained rather limited.* Privatisation revenues during that period amounted to only about €3.6 billion (1.7% of Turkey's GDP in 2003). Net revenues from privatisation were even lower, given the considerable costs of preparing the companies for privatisation. During the last 5 years, the state has fully withdrawn from some network industries, such as petrol distribution, or certain food processing activities, such as the production of milk and dairy products, alcoholic beverages, etc. Furthermore, it has reduced its presence in a series of other sectors, such as textiles, iron and steel, wood and paper production, tourism, etc. The most notable privatisations have been the sale of the petrol distribution company, POAS, and the sale of the alcohol production branch of TEKEL. The by far most significant measure in this context was the sale of mobile phone licences, resulting in revenues amounting to €2.2 billion or 1% of GDP. However, in a key sector of State activity, the banking sector, privatisation is still in a preparatory phase. Also, other important privatisation projects are still pending, such as the privatisation of the telecommunication company, TURK TELEKOM, the Turkish Airlines, THY, and the Electricity Distributing Company, TEDAS. One important reason for the limited progress had been insufficient political determination on the part of previous governments, whereas the current government appears to be more open to



privatisation. Furthermore, in many cases, adopting the necessary primary and secondary legislation proved to be a cumbersome and time-consuming process. For example, the Constitution had to be amended to allow the privatisation of energy companies, and, to prepare for the privatisation of companies in the electricity, gas, sugar and tobacco sectors, the regulation of those sectors has been liberalised.

*Barriers to market entry and exit have come down but still impede domestic competition.* Although the higher number of market entries and exits, accounting for about 10% of the number of existing enterprises, indicates high flexibility, certain markets are still protected by existing legislation or absent implementing legislation. Bureaucratic procedures are still an important hurdle, especially for SMEs without substantial financial resources and legal expertise. Bank lending to those enterprises has remained very low, reflecting the crowding out through public sector borrowing requirements, insufficient mechanisms for taking collaterals into account, underdeveloped accounting practices among companies not listed on the stock exchange and weak commercial jurisdiction. Furthermore, real interest rates are still very high, forcing enterprises to finance investment through retained profits. However, important progress has been achieved in opening up markets of former state dominance, such as for electricity, gas, tobacco, alcohol and sugar. Furthermore, company registration procedures were simplified and streamlined by a law adopted in June 2003.

The legal system necessary for a functioning market economy is largely in place, but the commercial judiciary is a serious bottleneck in implementing laws and enforcing contracts. Slow and bureaucratic procedures are an important impediment to the rule of law in Turkey. Time lags between the adoption of framework legislation and the actual implementing regulations are very long and hamper the effectiveness and predictability of the legal system. In particular, insufficient staffing and training of the commercial judiciary personnel leads to long procedures and legal uncertainty. Implementation of intellectual property rights is weak. The insufficient functioning of existing implementing and enforcing legislation as well as of the commercial judiciary are major impediments to foreign investment.

*The financial sector has become sounder but is still underdeveloped.* The size of the Turkish financial sector is relatively small and is dominated by the banking sector, whose assets account for some 70% of GDP. Lending to the private sector is very limited. After the 2001 crisis, private sector lending declined from some 18% of GDP in 1999 to 15% in 2002, but it had recovered to some 17% by the end of 2003. On the other hand, the share of securities has increased to 30% of the sector's assets, of which 90% are government debt titles. As a result of the financial crisis and of stricter surveillance and prudential standards, the number of banks has declined from 75 in January 1999 to 49 in mid-2004. 20 non-viable banks were transferred to the Savings Deposit Insurance Fund (SDIF), a public institution dealing with non-viable banks. Subsequently, 19 out of these 20 banks have been either dissolved or merged with other banks. The largest seven banks account for 75% of total assets, of which the three state-owned banks for nearly 30%. The latter are strongly involved in financing public sector borrowing, holding 45% of the banking system's government debt portfolio. Many of the important private banks are part of family-owned enterprise groups. As a result of complex ownership structures,

compliance of those companies with prudential and transparency standards is sometimes difficult to assess. Their lending inside the enterprise group is not always in line with market principles or prudential standards. The share of foreign banks is still very limited, with less than 7% of total assets. Overall, the sector appears to have recovered from the 2001 crisis. The share of non-performing loans, which had increased from 9.7% in December 1999 to 29.3% in December 2001, has again declined to 11.5%. Profitability of the banking sector is still relatively low, with a return on assets of 2.3% in 2003, but is making considerable strides.

*The role of the non-banking financial sector is relatively limited.* The non-banking financial sector assets account for some 4% of GDP. The insurance sector, presently comprising 70 insurance companies, rose significantly in previous years from quite low levels. Gross premium incomes amounted to 1.4% of GDP in 2003. The Istanbul Stock Exchange trades the stocks of some 300 companies. Since the 2001 crisis, its market capitalisation has decreased markedly. Yet, it currently accounts for a relatively high 29% of GDP.

*The last 5 years saw a marked improvement in banking sector regulation and supervision.* Although the financial sector reform had already started before the 2001 crisis, with the adoption of a new Banking Law in 1999 and the establishment of the Banking Regulation and Supervision Agency (BRSA) in 2000, the financial crisis led to a significant acceleration and widening of the reform. Regulations on accounting standards, dealing with risk management, internal control, and bad loan provisioning, and on the measurement and assessment of capital adequacy ratios and own funds, etc., have been aligned with international standards, and further amendments to the banking law are under preparation. For instance, the 2002 regulation on accounting standards aligned the Turkish system on the International Accounting Standard (IAS). Furthermore, the regulations on the establishment and operation of banks have been amended and incentives for mergers and acquisitions in the financial sector have been adopted. Auditing standards have been modernised. The independence of the BRSA has been confirmed and its responsibilities have been widened. However, the recent discovery of a bank with a capital gap of nearly 2% of GDP indicates the need for further tightening of banking surveillance. As another step towards aligning the banking sector regulation with international standards, the full state guarantee on deposit had been limited to TRL 50 billion (about € 29 000) by July 2004. The non-banking financial sector's supervision is currently located at the Treasury, but is planned to be transferred to the Banking Regulation and Supervision Agency (BRSA) on 1 January 2005.

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

The ability to fulfil this criterion depends on the existence of a market economy and a stable macroeconomic framework, allowing economic agents to make decisions in a climate of predictability. It also requires a sufficient amount of human and physical capital, including infrastructure. State enterprises need to be restructured and enterprises need to invest to improve their efficiency. Furthermore, the more access enterprises have

to outside finance and the more successful they are at restructuring and innovating, the greater will be their capacity to adapt. Overall, an economy will be better able to take on the obligations of membership the higher the degree of economic integration it achieves with the Union before accession. Both the volume and the range of products traded with EU Member States provide evidence of such integration.

*Macroeconomic stability has strengthened and economic reforms are slowly gaining ground.* However, the economy is still particularly exposed to negative repercussions from international financial crises and the pace of economic reform has still to gain the critical mass needed to give a significant lift to the performance and efficiency of the economy.

*Education levels have been improving from a low level.* Available data indicate progress in the education levels of the Turkish population. Adult literacy rates as well as gross enrolment rates in primary and secondary schooling have risen. Also, the educational attainment level of the labour force has further increased towards higher education. Turkey's strong population growth requires sufficient budgetary resources for meeting the increasing needs in the education sector. In particular, basic education in rural areas is adversely affected by resource shortages. Due to the fact that budgetary expenditure is largely crowded out by debt servicing, annual public spending on education has been at around 4% of GDP during 1999-2003. But in spite of these severe fiscal constraints, important efforts to upgrade education have been made. In the 2004 budget proposal, education expenditures have been exempted from the linear spending cuts. Increased importance has been devoted to human capital in the National Development Plan adopted in December 2003. Furthermore, Turkey is continuing to implement a series of education projects with international assistance. Besides, the educational content does not sufficiently match skill demand in the labour markets. Investment in research and development has remained quite low at 0.6% of GDP in recent years. Due to considerable efforts, R&D expenditures have doubled since 1990 as a percentage of GDP to just over 0.6%. Universities account for around two thirds of Turkish R&D expenditures, whereas the share of R&D in the business sector is comparably low.

*The growth of the capital stock started to accelerate, but FDI has remained limited.* In 2003, gross fixed investment increased by 10% and further accelerated in the first quarter of 2004. This rebound followed average annual declines of just under 6% during the previous five years. Over the entire period and also in the recent years of the recovery, investment in machinery and equipment has developed much more strongly than investment in construction, which continued its decline. The rebound has been driven by increasing macroeconomic stability and has occurred against the backdrop of a series of potential crises, including the Iraq crisis at the beginning of 2003 and the terrorist attacks at the end of the year. However, at 17.7%, the current share of gross fixed investment in GDP was still lower in 2003 than its pre-2001 crisis level, due to a significant fall in the share of investment in construction and despite a rising share in investment in equipment. In recent years, annual inflows of foreign direct investment (FDI) have amounted to less than 0.5% of GDP. The accumulated stock of FDI accounts for about 10% of GDP. Despite a liberal legislative framework and attempts to improve the investment environment, including the newly established Investment Advisory Council, businesses

operating in Turkey are particularly hampered by complex bureaucracy and judicial inefficiency or inadequate protection of intellectual property rights. Insufficient economic stability and predictability has been a further deterrent to foreign investment. However, a FDI law has been adopted in 2003, and other efforts have been made by the Turkish authorities to increase the transparency in and effectiveness of business.

*Infrastructure is fairly developed but investment has been limited and uneven.* The risks to business associated with transport infrastructure are moderate, with the weakest link being the rail network. Road, port and air facilities are fairly developed, but improvements have been minor because of tight financing constraints. The highway network was extended between 1999 and 2003 by 143 km, or 8% of its 1999 length. Telecoms links are adequate, but plans to privatise the national telecoms provider, Turk Telekom (TT), have been repeatedly postponed, thus also delaying possible investment provided by a strategic private investor. Recent moves to reform the energy sector are designed to reduce the risk of recurrent electricity shortages. Other infrastructure facilities, such as gas and oil pipelines, have been extended.

*Enterprise restructuring accelerated in the aftermath of the financial crisis but has slowed somewhat in 2003-2004.* As a result of structural reforms in the banking sector, agriculture and the energy sector, the restructuring of enterprises accelerated significantly in 2001-2002. Tighter banking supervision and the ensuing reduction of connected lending had started to force the restructuring of enterprises in conglomerates. Deregulation in the agricultural and energy sectors has resulted in the break-up of former State institutions and the establishment of several joint stock companies. In state-owned enterprises, redundant labour is being reduced. Declining budgetary support is forcing these companies to increase productivity and to align prices with the real cost situation. The postponement of reforming the railway system has resulted in a considerable aging of the existing infrastructure and the huge operative losses are a considerable budgetary burden.

*The transition from an agricultural to a service-oriented economy has continued.* In line with international trends, Turkey is experiencing a decline in the importance of the agricultural sector, while the service sector is gaining weight. The share of the agricultural sector in total gross value added declined by around 3 percentage points to 11.5% in 2003. The combined share of manufacturing and construction remained largely unchanged, while the share of the service sector rose to above 60%, mainly driven by rising shares of transport and communication and government services. A similar pattern can be observed in terms of employment, although the share of employment in agriculture is still high. During 1999-2003, employment in the agricultural sector declined from 40% in 1999 to 34% in 2003, while the share of employment in the service sector rose from 35.1% in 1997 to over 40% in 2003.

*Small and very small enterprises are the stabilising core of the Turkish economy.* Despite the importance of big export-oriented companies and large state-owned enterprises, small and medium-sized enterprises provide important overall stability for the Turkish economy. Although they account for only about 30% of value added in manufacturing, they represent some 60% of the sector's employment. About half of employment in SMEs

in the manufacturing sector is in micro-enterprises with fewer than 10 employees. These mainly family-owned enterprises fulfil an important shock-absorbing function for the Turkish economy, as their small scale makes them particularly flexible in finding new business fields in a rapidly changing environment. As a result of a narrow capital market and the crowding out of private investment by the public sector financing requirement, private enterprises have limited access to credit. Most likely, many of these enterprises will face difficulties in aligning with EU standards, such as labour regulations, social, health and environmental standards.

*State interference in the economy has declined.* Deregulation of important markets, such as agriculture, energy and telecommunications, has led to a significant reduction in state interference. Independent regulatory agencies have been established, replacing state regulation. However, the introduction of accurate state-aid monitoring in line with EU standards would improve the transparency and hence the overall implementation record.

*Trade and investment integration with the EU has remained at a high level.* After a sharp increase in openness to trade during the 1980s and the early 1990s, Turkey's trade integration with the rest of the world has remained rather constant, with exports and imports of goods and services staying at slightly above 50% of GDP. When preparing the establishment of the Customs Union between the EU and Turkey, trade restrictions were dismantled gradually, which led to a marked increase in bilateral trade. The share of Turkey's merchandise exports to the EU in total merchandise exports rose from 48% in 1999 to 55.4% in 2003. However, partly due to rising oil prices, the share of Turkish merchandise imports from the EU declined in that period, from over 51% of total imports to 50.2% in 2003. The decline in imports was halted in mid-2002, which proves that it is largely related to the economic crises in 1999 and 2001, reducing significantly imports of machinery and consumer durables, which are usually coming from the EU-15. Around two thirds of total FDI inflows over the period have originated from the EU. Turkey's foreign trade protection, as measured by the simple average of the most-favoured nation (MFN) tariff rate, amounted in 2004 to 13.4% on imports from MFN countries and 9.8% on imports from the EU.

*The commodity composition of exports has continued to shift towards higher value added.* On the export side, the share of industrial goods has increased from 87.6% in 1999 to over 90% in 2003, mainly due to a considerable increase in exports of motor vehicles, from 4.3% to 12.3%, while the share of textiles has remained largely constant in absolute terms and has declined in relative terms from 38.4% of total merchandise exports to 30.8%. The share of agricultural commodities has declined from 11% to 7.7%. The changes in the commodity composition of merchandise imports largely reflect weak domestic demand in the 2001-2003 period and the increase in oil prices. The share of investment goods and industrial inputs, such as metal products and machinery, has declined from over 20% to just 15%, while the share of crude oil has almost doubled to around 11%.

*Price competitiveness of Turkish exports has been maintained despite a volatile exchange rate.* It deteriorated considerably during 2000, when the combination of a pre-announced crawling peg and persistently high domestic inflation led to a marked appreciation of the

real exchange rate. As a result, Turkey lost market shares on important export markets, while imports were booming. The sharp depreciation - after the free floating in February 2001- and the gain in price competitiveness has eroded in 2003-2004. Unit labour cost-based real effective exchange rates (REER) fell by over 25% following the 2001 financial crisis, before picking up by around 10% in 2003 to reach pre-crisis levels in 2004. Labour productivity followed a similar trend. After decelerating in 2001, reflecting weak capital accumulation and low output growth, the robust growth - accompanied with strong investment - recorded in 2003-2004 is taking labour productivity back to its 2000 levels.

## **2.4 General evaluation**

Turkey has made further considerable progress towards being a functioning market economy, in particular by reducing its macroeconomic imbalances. Turkey should also be able to cope with competitive pressure and market forces within the Union, provided that it firmly maintains its stabilisation policy and takes further decisive steps towards structural reforms.

Economic stability and predictability have been substantially improved since the 2001 economic crisis. Previously high inflation has come down to historic lows, political interference has been reduced and the institutional and regulatory framework has been brought closer to international standards. Thus, an important change towards a stable and rule-based economy has taken place. Key economic vulnerabilities, such as financial sector imbalances, have been tackled. Financial sector supervision has been strengthened. As a result, the shock resilience of the Turkish economy has significantly increased. Important progress has been achieved in increasing the transparency and efficiency of public administration, including public finances. Furthermore, important steps have been taken in facilitating the inflow of FDI and in improving the legal framework for privatisation.

In order to transform the current positive dynamics into sustained growth and stability, it is of crucial importance to continue the ongoing reform process. Maintaining a stability-oriented economic policy is a key element in this respect. In particular, fiscal imbalances have to be reduced and the disinflation process has to be maintained. The business climate would be improved by streamlining administrative procedures and strengthening the rule of law. Improving the efficiency of the commercial judiciary is of particular importance in this context. The banking sector's surveillance and prudential rules should continue to be aligned with international standards. The privatisation of state-owned banks and enterprises should be accelerated. Sufficient public and private investment and devoting particular attention to education are important to increase the competitiveness and the growth potential of the economy. The inflow of foreign direct investment has to be encouraged by removing remaining barriers.

### 3. Ability to assume the obligations of membership

This section addresses the question of Turkey's ability to assume the obligations of membership – that is, the legal and institutional framework, known as the *acquis*, by means of which the Union implements its objectives. Alongside an evaluation of relevant developments since the 2003 Regular Report, this section seeks to provide an overall assessment of Turkey's ability to assume the obligations of membership, and of what remains to be done.

This section is structured in accordance with the list of 29 *acquis* chapters, and incorporates an assessment of Turkey's administrative capacity to implement the *acquis* in its various aspects.

In December 1995, the Madrid European Council remarked on the need to create the conditions for the gradual, harmonious integration of the candidate countries, particularly through the adjustment of their administrative structures. Taking up this theme, in Agenda 2000 the Commission underlined the importance of effectively incorporating Community legislation into national legislation, and the even greater importance of implementing it properly in the field, via the appropriate administrative and judicial structures. This is an essential precondition for creating the mutual trust indispensable for future membership.

The Brussels European Council in June 2004 underlined again the importance for Turkey of ensuring decisive progress in the full and timely implementation of reforms at all levels of the administration. Building on the assessment of Turkey's administrative capacity provided in the 2003 Regular Report, the present Report seeks to add further depth and detail, focusing on the main administrative structures required for implementing the various aspects of the *acquis*.

In its 1998 Report, the Commission concluded:

*"Turkey has shown its ability to adopt and implement the bulk of the legislation stipulated in the Customs Union Decision by the deadlines. It must now show a similar determination in those sectors where the obligations have not been met on time. It has already begun the process of alignment on Community laws in most of the areas identified in the European strategy, though much remains to be done, particularly in the field of the internal market (including public contracts), agriculture and the environment. In sectors coming under neither the customs union nor the European strategy, Turkey still has a long way to go regarding the adoption of the acquis."*

*While Turkey has undeniably shown that it has the administrative and legal capacity to apply the acquis in the context of the customs union, it is not possible at this stage to offer an opinion on its future capacity regarding other areas of the acquis which have not yet been transposed."*

In the 2003 Regular Report, the Commission found that:

*“Turkey’s alignment has progressed in most areas but remains at an early stage for many chapters. It is most advanced in chapters related to the EC-Turkey Customs Union but in this respect it is not fully meeting its obligations. Alignment is also more advanced in areas where other international obligations exist which are similar to the acquis. Further legislative work is required in all areas, and Turkey should focus on implementing its National Programme for the Adoption of the Acquis, in line with the Accession Partnership priorities, more consistently across all chapters. Also, new legislation should not move away from the acquis.*

*On the free movement of goods Turkey has made progress, particularly on sector-specific legislation, but substantial efforts are needed in terms of both alignment and implementation of the New and Old Approach legislation on product safety and product specifications, as regards both industrial and processed food products, including food safety. There has been only limited progress in establishing conformity assessment and market surveillance mechanisms and institutions, and the system of legal metrology needs to be reinforced. Through amendments to the public procurement law, Turkey has reduced the level of compliance with the acquis. In the short term, Turkey should seek to adopt instruments to remove technical barriers to trade. Much work remains to be done to ensure correct implementation of the acquis and compliance with the obligations ensuing from the Customs Union Decision applicable on 31 December 2000.*

*On free movement of persons, there has been some progress in the reporting period, mainly in the area of free movement of workers, but Turkey's alignment remains limited. With regard to the free movement of services, Turkey has made some progress in relation to the banking sector, and to investment services and securities markets. In the field of professional services, limited progress has been made. In the insurance sector, a substantial effort is needed to harmonise legislation with the acquis and to strengthen administrative capacity. Efforts to adopt legislation concerning data protection should be continued and further legislation concerning information-society services should be adopted in accordance with the acquis. On free movement of capital the alignment with the acquis is progressing, notably as regards the liberalisation of capital movements, but further efforts are necessary.*

*Despite the measures taken in previous years, alignment in the field of company law, including intellectual and industrial property rights, remains limited. Both legislative and enforcement measures are needed to tackle piracy and infringements of intellectual and industrial property rights. On competition, efforts are needed to strengthen the provisions for state aid monitoring and to establish a state aid monitoring authority.*

*As regards agriculture, some progress has been made in the veterinary and phytosanitary fields particularly as regards animal disease control, identification and registration of bovine animals and harmful organisms related to potatoes. Further substantial efforts aimed at increasing administrative capacity and upgrading control and inspection systems, and the upgrading of food processing establishments, will be required if full compliance is to be achieved in these sectors.*



*A strategy for rural development should be put in place. In the area of fisheries, limited progress has been made but some preparatory work, especially in the area of inspection and control, has been completed. However, the alignment of key legislation with the acquis and the institutional reform still lie ahead.*

*On transport, progress remains very limited. In certain sectors, particularly road transport and maritime safety, the level of alignment achieved relates to the transposition of various international conventions. Substantial efforts are needed in the area of maritime safety and on road and rail transport. Limited progress has been achieved on taxation, both in terms of legislation and administrative capacity. As regards legislation, further alignment is required on VAT, where due attention should be paid to the scope of exemptions and application of reduced rates. As for excise, although some approximation of alcohol and tobacco duties has been achieved, the applied duties are still lower than the EU minimums. Turkey also needs to implement the duty-suspension movement regime.*

*Turkey has made some progress in all statistical areas, but more efforts are needed in order to meet the main requirements as regards alignment. The existing legislation needs to be brought into line with the acquis in order to implement the fundamental principles of impartiality and reliability of data, transparency of statistics and confidentiality of personal data. On social policy and employment, Turkey has made some progress. Administrative capacity has been strengthened and measures have been adopted to promote gender equality in the field of labour law and on employment policy. Further efforts are required in the field of social dialogue and health and safety. As regards energy, significant progress has been achieved via the adoption of various provisions implementing the framework laws on electricity and gas markets. Alignment in the areas of energy efficiency and renewables has also progressed. In all energy fields, further efforts are needed to ensure completion of alignment.*

*On industrial policy, Turkey has made progress in the field of public sector reform, as well as with the adoption of a new foreign direct investment law. Further efforts are required to restructure state-owned enterprises. Steel industry restructuring remains a high priority. Turkey has made some progress as regards small and medium-sized enterprise policy. The introduction of simplified procedures to register and establish a company is a positive development. Turkey is well endowed with technology development centres. Turkey's full association with the Sixth Framework Programme demonstrates positive engagement in science and research, although Turkey's participation in EU programmes has only recently begun. Turkey should increase levels of investment in science and research. Some progress has been achieved in the area of education and training. Turkey should increase efforts to complete its preparation for participation in the three Community programmes, and ensure that measures are being implemented.*

*Despite some progress, legislative alignment with the telecommunications acquis is still insufficient and further efforts are necessary, particularly with regard to universal service, numbering, leased lines and data protection. Implementation and*

*enforcement of the existing legislation should be improved. Considerable efforts are needed to liberalise the market for postal services. Turkey has made legislative progress on culture and audio-visual policy, in particular, through authorising broadcasts in languages other than Turkish. However, further substantial efforts are required to align with the acquis and Turkey is encouraged to adopt implementing measures on broadcasting in other languages.*

*In the field of regional policy, some progress has been achieved since the last regular report but considerable efforts are still necessary to ensure implementation of regional policy at central and regional level. Appropriate institutions need to be created and endowed with adequate human and financial resources. In the environmental area, Turkey has made limited progress in a number of areas, and overall the level of alignment with the acquis remains low in most areas. Greater efforts are needed as regards both legislation and implementation on all aspects of environment policy.*

*Alignment of consumer and health protection has progressed, notably with the adoption of a framework law. However, an effective safety surveillance regime should be established and adequate resources are needed to ensure a high level of consumer protection. In adopting initial strategies for alignment in the area of justice and home affairs, Turkey has made important progress. Co-operation has improved in many fields, such as the fight against illegal migration and organised crime. Turkey should start implementing the strategies already adopted and intensify its efforts to align its legal and institutional framework. Turkey should start to negotiate a readmission agreement with the EU.*

*In the customs union chapter, the following outstanding issues should be given priority: legislation on customs control; counterfeit and pirated goods; cultural goods and non-customs legislation relevant to the application of customs provisions on free zones and customs procedures with economic impact. Administrative capacity has been improved, but Turkey should continue to strengthen inter-institutional co-operation, post-clearance audits and border control, in order to achieve satisfactory implementation and enforcement of the aligned legislation.*

*Turkey has made very limited progress on external relations, where long outstanding obligations, particularly in the area of the Generalised System of Preferences, remain to be fulfilled. In the context of bilateral agreements, Turkey should continue its efforts to conclude free trade agreements with partners with whom the EU has such arrangements. In the field of the common foreign and security policy, Turkey's policy has largely continued to position itself along the lines of that of the EU. Turkey should ensure that its national policies and practice conform to the EU's common positions, and should ensure that all sanctions and restrictive measures can be duly implemented.*

*Due to the delay in passing the Public Financial Management and Financial Control Law, little progress has been made on financial control. Turkey should adopt this law*

*and focus on improving budget transparency and accounting standards and implementing the new budget code structure.*

*In many fields implementation is weak. Administrative capacity in different areas needs to be strengthened to ensure that the *acquis* is implemented and enforced effectively. In some cases, administrative reform should entail the establishment of new structures, for example in the field of state aid and regional development. Where new regulatory bodies have been set up, their autonomy should be assured and they should be provided with sufficient staff and financial resources.*

### **3.1 Chapters of the *acquis***

As indicated, the following review of Turkey's ability to assume the obligations of membership has been structured in accordance with the list of 29 *acquis* chapters. Accordingly, this section opens with an assessment of progress relating to the cornerstones of the internal market which are known as the "four freedoms", and continues with a systematic review of progress on each of the chapters, covering all aspects of the *acquis*, including sectoral policies, economic and fiscal affairs, regional policy, environment, justice and home affairs, external policies, and financial questions.

#### ***Chapter 1: Free movement of goods***

The principle of the free movement of goods implies that products must be traded freely from one part of the Union to another. In a number of sectors this general principle is complemented by a harmonised regulatory framework, following the "old approach" (imposing precise product specifications) or the "new approach" (imposing general product requirements). The transposition of harmonised European product legislation represents the largest part of the *acquis* under this chapter. In addition, sufficient administrative capacity to apply horizontal and procedural measures in areas such as standardisation, certification and market surveillance is essential. This chapter also covers detailed EU rules on public procurement, requiring specialised implementing bodies.

#### ***Progress since the last Regular Report***

Since the last Regular Report, Turkey has made further progress in the area of free movement of goods, in particular in terms of alignment of sector-specific legislation.

Significant developments can be reported in the area of **horizontal and procedural measures**. In the area of *standardisation*, the Turkish Standards Institute (TSE) has continued to adopt CEN/CENELEC and ETSI<sup>18</sup> standards. With the transposition of

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<sup>18</sup> CEN: European Committee for Standardisation, CENELEC: European Committee for Electrotechnical Standardisation, ETSI : European Telecommunication Standards Institute

additional *New Approach Directives* and other harmonised EC legislation, the number of mandatory standards decreased from 1,150 to less than 500 over the reporting period.

The TSE has been restructured, and has concentrated its standardisation activities on the transposition of the European and international standards and on the objective of achieving full membership of CEN/CENELEC. Its role in pre-market control stemming from mandatory applications has therefore been reduced.

As regards *accreditation and conformity assessment*, the Ministry of Health published guidelines for the appointment of conformity assessment bodies in the areas of medical devices, in-vitro diagnostic and active implantable medical devices. The Ministry of Public Works and Settlement has done the same for the construction products Directive. The Ministries of Telecommunications and of Industry and Trade have drawn up lists of potential notified bodies in their areas of responsibilities.

The Turkish Accreditation Agency TÜRKAK has accredited 24 bodies. However, it has not yet signed a multilateral agreement (MLA) with the European Co-operation for Accreditation multilateral agreement (EA). Its accreditations are therefore not recognised in the EU.

The Ministry of Industry and Trade adopted a regulation governing the principles and procedures of market surveillance in May 2003. The Regulation defines the principles of inspection and sanctions to be imposed and the duties and responsibilities of the inspectors. Accordingly, 15 priority provinces have been selected by the Ministry as pilot areas and the activities are planned to cover all 81 provinces by the end of 2007. Training activities on market surveillance took place and an information network has been created among the provincial offices in Ankara, Izmir and Istanbul.

The relevant Ministries have adopted or started to implement a market surveillance strategy on toys, medical devices and detergents, personal protective equipment, construction products and, for the latter, some inspectors were trained. The Undersecretariat of Maritime Affairs is also implementing market surveillance activities in its areas of responsibility.

As regards **sector-specific legislation**, in the fields covered by the *New Approach*, new legislation has been adopted to achieve further alignment in the area of personal protective equipment, in vitro diagnostic medical devices and non-automatic weighing instruments. In the fields covered by the *Old Approach*, new legislation has been adopted with the aim of completing the alignment in the areas of motor vehicles and their trailers, fertilisers and medicinal products for human use.

Regarding food safety and foodstuffs legislation (*see also Chapter 7 – Agriculture*), limited progress was made on the adoption of food safety legislation, notably on chocolate and chocolate products, food additives and honey. Analysis methods have been established for genetically modified foods and are being implemented in one laboratory.

As concerns the *acquis* in other areas, no significant development can be noted concerning firearms and cultural goods.

No progress can be recorded concerning the **non-harmonised areas**, including the introduction of mutual recognition clauses in the national legislation.

Regarding technical barriers to trade, the Under-secretariat of Foreign Trade (UFT) issued in February 2004 a communiqué simplifying the procedures for the import of products bearing CE marking. In accordance with this legislation, toys, medical devices and in vitro medical devices and products falling under the machinery, LVD and EMC Directives and bearing CE marking are entitled to enter the Turkish market freely with no further check on the technical dossiers. Only in the event of serious suspicion regarding the minimum safety requirements of the product can the competent authority ask for the submission of a technical file or any further details. This shifts the burden of control entirely onto market surveillance inside the country and therefore requires an effective market surveillance system, which is not yet in place.

However, there is evidence of incomplete implementation of the communiqué. Immediately after the adoption of the communiqué, the customs authorities, claiming that they were not able to assess the risks related to the minimum safety requirements, repeatedly sent products for further inspection to the TSE.

Technical barriers to trade are also reported for products not bearing CE marking, such as porcelain tableware, and products in non harmonised areas.

As regards **public procurement**, the Turkish Public Procurement Law was amended in April 2004. The thresholds and financial limits have been revised and raised above EC levels on the basis of the wholesale price index for 2003. Other amendments made in 2004 have widened the discrepancies between the national legislation and the *acquis*.

In July 2004 the Parliament adopted a Law on Preserving Cultural and Natural Resources, excluding the procurement of goods and services for the restoration and restitution projects of natural resources, management of projects of street rehabilitation, preservation, transportation and excavation.

Regarding administrative capacity, the Public Procurement Agency (PPA) has been organising training activities for its staff as well as for procuring entities. 35,000 tenders were announced in 2003, both in accordance with and using the procedures of the new law. Concerning these tenders, the PPA received 729 complaints.

### *Overall assessment*

Even though further harmonisation was achieved over the reporting period, alignment with the *acquis* on free movement of goods remains incomplete and the obligations deriving from Customs Union regarding the elimination of technical barriers to trade, which were already due by the end of 2000, have not been fulfilled.

In particular, and despite recent progress, there are still justified complaints regarding technical barriers to trade. The TSE's role concerning import controls and burdensome

requirements regarding documentation and testing should be further reduced and procedures simplified.

Concerning horizontal and procedural measures, the basic legislation providing a framework for the new and global approach is already in place and implemented.

Concerning standardisation, the reduction of mandatory standards since the last Report is a remarkable positive step. The TSE is responsible for the preparation and publication of standards and provides services in the areas of industrial metrology and calibration, conformity assessment and certification. It is an affiliate member of both CEN and CENELEC. The steps taken by the TSE in order to restructure and change its objective and strategy from its mandatory certification practices to EU compatible practices, and hence towards full membership of CEN/CENELEC, are also positive. These need to be pursued.

Turkey has taken further steps to establish conformity assessment and market surveillance structures as regards both the regulatory aspects and implementation. There is, however, still a need for substantial administrative strengthening and restructuring of the relevant governmental institutions for the actual implementation of the *New and Global approach Directives*.

In the area of accreditation, the Turkish Accreditation Authority (TÜRKAK) has considerably increased its accreditation activities, together with its efficiency. Conformity assessment users, however, still seek accreditation from EU bodies, as TÜRKAK is not a signatory to the multilateral agreement of European cooperation for Accreditation (EA). TÜRKAK should therefore apply to EA for peer evaluation. It lacks trained and experienced local assessors. In order to ensure sustainability, the number and the expertise of Turkish assessors need to be increased. Conformity assessment bodies have difficulties in achieving acceptable traceability and reliability. The number of accredited calibration facilities is not sufficient to address the whole market. Furthermore, there is no culture of cooperation and a lack of proficiency testing and inter-laboratory comparison schemes.

The Market Surveillance Coordination Board of Turkey coordinates the establishment of a market surveillance system in Turkey. It has already taken certain advisory decisions on the establishment of Turkey's overall strategy concerning market surveillance and its implementation.

Although there has been progress in laying down the necessary components of a conformity assessment and market surveillance system, practical implementation is still a cause for concern.

In the area of metrology, uncertainty calculations and inter-laboratory comparisons should be carried out. Industrial and scientific metrology is better organised than legal metrology.

The Turkish legislation is not yet harmonised with the *acquis* on product safety and on safety checks at external borders.

In the area of sector-specific legislation, there is a fair degree of alignment for products covered by the *Old Approach*, in particular concerning motor vehicles, and recent progress concerning fertilisers. The legislation concerning pharmaceutical, medicinal products for veterinary use, cosmetics and chemicals is still not in line with the *acquis*.

In particular, the overall trade regime for pharmaceuticals remains problematical. Turkey continued to fail to align its legislation to the *acquis* in matters concerning data protection/data exclusivity, which should have been done by 1 January 2001 under the EC-Turkey Customs Union. As a result, Turkey does not provide for any data protection / data exclusivity. Turkey should urgently adopt the relevant legislation in line with the *acquis* and its implementation should be pursued without further delay.

Concerning food safety, appropriate measures have to be taken in the area of additives in order to prevent the excessive contamination of aflatoxin in hazelnuts and dried figs and of sulphites in some fruits and vegetables. Additional staff and training facilities on the standardisation of sampling and testing procedures are still needed. Although some training courses were held for inspectors on HACCP and Good Manufacturing Practice principles, further training on auditing techniques is still required. Efforts to harmonise and implement the food legislation in line with the *acquis* should continue. Closer cooperation and data exchange via a computerised network between the headquarters of the Ministry of Agriculture and Rural Affairs in Ankara and its provincial directorates are required for the proper monitoring of Rapid Alert System for Food and Feed (RASFF). The accreditation of laboratories should be speeded up. Irradiation facilities should be improved, legislation should be brought into line with the *acquis* and proper analysis of irradiated foods should be performed. Current practices of pre-market approval in the area of foodstuffs will have to be dismantled

In sectors covered by the *New Approach*, the transposition of the directives regarding and packaging waste and cableway installations is still pending and alignment of already transposed legislation remains to be confirmed in several areas.

In terms of implementation of the *New Approach Directives*, especially with regard to imports, cooperation between the Under-secretariat for Foreign Trade, the Customs Administration and the technical Ministries should be improved.

In the non-harmonised area, substantial work still remains to be done as regards the identification of barriers to the free movement of goods, the implementation of the mutual recognition principle and the adoption of legislation to implement the accompanying instruments in this area. The screening of Turkish legislation for elements in conflict with the principle of free movement of goods should start without delay.

Market access problems for alcoholic beverages remain, even after the privatisation of the former State Monopoly, TEKEL. The conditions for competition in the alcoholic beverages sector are still not satisfactory. Repeated changes in secondary legislation have further reduced legal certainty and predictability of market conditions. Problems stem from the primary legislation of 2001, which contains a number of provisions in

contradiction with the Customs Union and WTO obligations of Turkey. This legislation should be amended urgently in order to ensure a level playing field for all market players.

As to public procurement, the current Law still reserves tenders for locally-established bidders and preferences in favour of Turkish bidders. In addition, a large number of procuring entities are exempted from the scope of the Law. Moreover, since 2003 bidding periods have been reduced considerably. The 2004 amendments have entailed restrictions in competition and full transparency, such as higher thresholds for contract award notices to be published or lack of information on criteria used for contract awards. All these new restrictions deviate from the *acquis*. The utilities sector and public works concessions are not covered by the Public Procurement Law. Turkey should therefore align conflicting conditions without delay.

With the amendment of the Public Procurement Law in August 2003, the Public Procurement Agency has the role of publishing procurement bulletins and establishing electronic bulletins and subscription systems. Furthermore, the PPA has been providing training to its own staff as well as the procuring authorities. In order to enhance the administrative capacity in the area of public procurement and to ensure transparent application of the new public procurement regime in Turkey, further investments are necessary for the procurement authority and the procuring entities.

### *Conclusion*

Overall, Turkey's transposition of the *acquis* is advancing steadily but far more efforts are needed in particular for the proper implementation of legislation.

Turkey should speed up its efforts on the adoption of instruments aimed at removing technical barriers to trade and to ensure correct implementation of the *acquis* and compliance with the obligations arising from the Customs Union. This applies in particular to the screening of the legislation to remove measures incompatible with the principle of free movement of goods, as well as the introduction of mutual recognition clause, and to the overdue legislation in relation to pharmaceuticals which should also be aligned with the *acquis* without delay. The first initiatives on the establishment of market surveillance systems are positive steps. However, Turkey should step up and extend these activities rapidly.

Turkey should refrain from introducing new technical specifications differing from those of the EU. It should end non-transparent and discriminatory public procurement practices, avoid adopting any new provision diverging further from the European legislation, and align the procurement regime with the *acquis*. It should adopt data exclusivity provisions for pharmaceuticals without delay, in order to put an end to discrimination among different market players. Further efforts are needed to improve alignment and administrative capacity in the area of food safety.



## *Chapter 2: Free movement of persons*

The *acquis* under this chapter provides for non-discriminatory treatment of workers who are legally employed in a country other than their country of origin. This includes the possibility of cumulating or transferring social security rights, which requires administrative co-operation between Member States. In order to facilitate the practice of certain professions, the *acquis* also includes specific rules concerning mutual recognition of qualifications and diplomas; for certain professions a harmonised training curriculum must be followed in order to be able to have the qualification automatically recognised in an EU Member State. Furthermore, this area also covers the residence and voting rights of EU citizens in any Member State.

### *Progress since the last Regular Report*

Little progress has taken place in this chapter over the reporting period.

No progress can be reported in the areas of mutual recognition of professional qualifications, citizens' rights or the future coordination of social security systems.

Concerning the **free movement of workers**, two implementing regulations on work permits for foreign citizens were adopted in September 2003 and April 2004

As regards administrative capacity, a project to modernise the Public Employment Services is in progress. No other developments can be reported.

### *Overall assessment*

Turkey still has to put in place the legislative basis to handle the recognition of academic diplomas and professional qualifications. There are still nationality, residence and language clauses which will need to be abolished. The legislation has to be brought up to standard as regards compliance with the minimum training requirements for the professions and with specific Directives on coordination of training (six health professions plus architects) and the recognition of qualifications Directives (for the same professions plus those covered by the General System and the two lawyers Directives).

Administrative capacity has to be considerably strengthened, including the establishment of a national occupational standards agency, particularly in order to be able to handle requests for recognition of qualifications from the current Member States.

Turkey still needs to review several laws and the role of professional organisations in order to eliminate restrictions on the free movement of foreign workers. The Public Employment Services should be properly strengthened and trained in view of a possible future inclusion in the EURES (European Employment Services) network.

With respect to coordination of social security systems, Turkey should continue its efforts to reform its social security system and strengthen administrative capacity.

## *Conclusion*

Alignment with the *acquis* is at an early stage.

Turkey has still to undertake extensive work to harmonise its legislation and to strengthen institutions in all areas covered in this chapter.

### ***Chapter 3: Freedom to provide services***

Under this chapter, Member States must ensure that the right of establishment and the freedom to provide services anywhere in the EU is not hampered by national legislation. In some sectors, the *acquis* prescribes harmonised rules which must be respected if the internal market is to function; this concerns mainly the financial sector (banking, insurance, investment services and securities markets) but also some specific professions (craftsmen, traders, farmers, commercial agents). Harmonised rules concerning personal data protection and certain information society services must also be respected.

#### *Progress since the last Regular Report*

Since the last Regular Report, Turkey has made some progress, in particular in the areas of banking and securities.

No development can be recorded as regards the right of establishment or freedom to provide non-financial services.

In the field of **financial services**, some progress has been made in the banking and securities sectors.

During the reporting period, substantial amendments were made to the Banking Law in December 2003. These are primarily intended to accelerate the collection of funds from the shareholders of insolvent banks. Furthermore it makes the embezzlement of banks' funds an offence related with money laundering. To accelerate the collection of funds from insolvent banks, the Savings Deposit Insurance Fund (SDIF) was legally and operationally separated from the Banking Regulatory and Supervisory Agency (BRSA). The BRSA's collection responsibilities were transferred to the SDIF. In addition, the BRSA adopted a decision in October 2003 which excludes all shareholders whose stake in an insolvent bank exceeds 10%, and as well as bank's board members, managers and their relatives from the scope of the state guarantee on savings deposits. With this decision, the BRSA also redefined the premium payment scheme for the deposit insurance.

A number of revisions in accounting standards for banks were adopted in December 2003. This new accounting legislation, which has been effective since January 2004, includes sub-accounts for derivatives. Furthermore, the new rules determine accounting principles for the forward purchase and sale of assets and for revenues and losses from the sale of securities.

As for securities, in December 2003 the Capital Market Board (CMB) amended legislation on the principles of registration and the sale of shares. The purpose of this amendment is to protect investors from sharp falls in the price of stocks following initial public offerings. Moreover, the time period for which intermediary institutions have to keep documents related to customers' securities transactions was extended to 5 years by an amendment in the communiqué on document and book-keeping systems for intermediary activities.

The CMB amended the communiqué on the principles of cumulative voting in general assembly meetings of joint stock companies. Following this amendment, companies that are publicly held but not listed and which have more than 500 shareholders are required to implement a cumulative voting system if requested by shareholders. To improve the transparency of capital markets, the disclosure principles setting obligatory standards of information regarding the legal framework governing and the financial situation of intermediaries were adopted in January 2004. In March 2004, the CMB adopted implementing legislation to make the Turkish Derivatives Exchange operational. In November 2003, the CMB published a communiqué on accounting and financial reporting standards for capital markets. This legislation, consisting of 33 international financial reporting standards, will be effective as of January 2005.

The CMB amended several communiqués in July 2004 for further alignment with the *acquis*. With those amendments, the CMB revised the regulations on the public disclosure of material events and the exemptions from information publishing requirements. Finally, the obligatory use of financial intermediaries was introduced for the initial public offering of certain transferable securities.

In its supervisory role for capital markets, the CMB applied to the Public Prosecutor's Office to start legal proceedings for violations of the Capital Market Law in 33 cases. Furthermore, the licence of 1 brokerage firm has been withdrawn. For 18 natural persons and 15 legal entities, the CMB imposed fines for violating the standards and principles governing intermediary activities, public disclosure and financial statements.

In the field of *insurance*, there were no developments to report.

There has been no progress to report concerning **personal data protection** during the reporting period. Regarding **information society regulations**, a law on electronic signatures was adopted in January 2004.

### *Overall assessment*

As regards the right of establishment and freedom to provide non-financial services, substantial legal restrictions exist which exclude foreigners from the market. With certain services, Turkish legislation goes even further, barring them from being provided by foreign nationals even if the company they represent is established in Turkey. Turkey still needs to make substantial efforts to align its legislation with the *acquis* in this respect.

In the field of financial services, further steps have been taken with a view to harmonising legislation with the *acquis*, except in insurance. From a formal point of view access to financial markets is largely free to foreign operators. The low level of alignment in insurance services is a matter of concern.

Following the failure to detect at an earlier stage the embezzlement of funds from banks previously owned by the Uzan Group, the BRSA was heavily criticised regarding its management and lack of administrative capacity to monitor and implement prudential standards. To avoid similar cases in the future and to ensure a well functioning banking sector, the independence of the BRSA should be fully respected by the government and all other stakeholders. Recent governmental efforts to establish a uniform organisational structure for all independent regulatory authorities by adopting framework legislation raise concerns about potential political interventions in the operations of the BRSA.

The BRSA's decision, which annuls the blanket state guarantee on deposits and limits the deposit insurance to the initial TRL 50 billion (approximately €28,000) of each deposit, has entered into force in July 2004. This decision aims to align the Turkish deposit guarantee scheme with the *acquis*.

As for administrative capacity, the BRSA's staff is at present composed of 73 managers, 177 experts and 67 administrative staff. The body is financed through contributions paid by banks based on their balance sheet total for the preceding year. It conducts yearly inspections of each bank in Turkey. In 2003, a total of 170 on-site inspections were carried out, the reports of which are published on the BRSA website.

In the field of investment services, the progress made in aligning Turkish legislation with the relevant EU- and international standards is a positive development.

The amendment to the communiqué on principles of registration and sale of shares is a positive contribution to aligning the conditions for price stabilisation of financial instruments with the relevant *acquis*. The extension of the time period for keeping documents related to financial transactions to 5 years is another improvement. Further steps have been taken to align the existing regulatory framework through amendments in the communiqués concerning information publishing requirements, exemptions from publishing requirements, and the registration of securities.

Regarding capital adequacy requirements for investment firms and credit institutions, Turkey has more conservative legislation than the EU. The scope of the investor compensation scheme fails to cover losses from instruments other than equities and does not cover financial instruments other than those offered by financial intermediaries. The scheme needs to be aligned with the relevant *acquis*. Moreover, some effort is still needed to align the rules on public offerings with EU standards.

Concerning transparency requirements, the adoption of a communiqué in compliance with international financial reporting standards is an improvement. However, the requirements for company prospectuses still need to be aligned, in particular as regards information on debt instruments and forward-looking statements.

The rules on undertakings for collective investment in transferable securities (UCITS) need further alignment with the relevant *acquis*. With regard to market abuse, Turkey should make substantial efforts to align the rules on insider dealing and market manipulation with the relevant *acquis*. Concerning financial intermediation, commercial banks established in Turkey can only engage in equity trading at the stock exchange through their subsidiary brokerage firms.

As regards administrative capacity, the CMB, as the autonomous and self-financing regulatory authority, has a seven-member Board and a total staff of 449 (22 executives, 218 professional experts, 32 IT staff and 170 auxiliary staff). It continues to chair the Emerging Markets Committee of International Organisation of Securities Commissions. The CMB has also been participating in the Capital Market Regulatory and Supervisory Consultative Group as a member since September 2002.

In the insurance field, the overall level of alignment with the *acquis* is very limited and market-access restrictions for foreigners are still in place. Prudential standards are not in line with EU rules and international norms. The accounting principles and financial statistics collected from local insurance companies are not in line with EU standards. The re-insurance monopoly and ex-ante tariff controls are still in place. As a result of the low level of harmonisation between Turkish insurance legislation and the relevant *acquis*, standards of monitoring and supervision are inadequate.

The insurance sector is regulated and overseen by the Undersecretariat of the Treasury. The General Directorate of Insurance (GDI) is responsible for preparing and implementing legislation as well as for off-site monitoring, while the Insurance Surveillance Board conducts on-site monitoring. The GDI has a total staff of 58 persons. The Insurance Surveillance Board is composed of a total of 72 staff.

Framework legislation, determining the main principles for the insurance sector, should be adopted urgently. The Insurance Surveillance Board, which is directly linked to the Undersecretariat of the Treasury, does not have operational independence. The existing regulatory and supervisory authorities should be re-structured and substantially strengthened to meet the need for proper implementation of the legislation once it has been aligned.

As regards the protection of personal data, Turkey should proceed with the adoption of the corresponding law and ensure that it is fully in line with the *acquis*, including the establishment of an independent data protection supervisory authority. In the field of information society regulations, the adoption of the electronic signature law is a positive step. However, further effort is still required to ensure full alignment with the *acquis*.

### *Conclusion*

Overall alignment with the *acquis* appears limited.

In the field of non-financial services, the low level of alignment and market-access restrictions mean that substantial efforts are required to harmonise legislation with the

relevant *acquis*. A multitude of administrative and legal barriers to the free provision of services need to be eliminated. As regards financial services, the alignment process in the insurance sector should be started urgently, while the already positive efforts to harmonise legislation should be continued. The administrative capacity of the insurance supervisory bodies needs to be improved. Turkey should continue to ensure the legal and operational independence of the supervisory authorities for financial markets. The current efforts to adopt legislation in accordance with the *acquis* on personal data protection should be completed and a fully independent supervisory authority on data protection established. The legislation covering information society regulations needs to be aligned further with the *acquis*.

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

Member States must remove all restrictions in national law on the movement of capital between themselves, but also with third countries (with some exceptions), and adopt EU rules to guarantee the proper functioning of cross-border payments and transfers of all forms of capital. The *acquis* also includes harmonised rules on payment systems. The money laundering directives establish money laundering as a criminal offence. They require financial institutions to identify and know their customers, keep appropriate records and report any suspicions of money laundering. The directives also address the activities of auditors, external accountants, notaries and lawyers, casinos, real estate agents and certain dealers in high-value items involving large cash transactions. Adequate enforcement capacity is required.

#### ***Progress since the last Regular Report***

Since the last Regular Report, limited developments have taken place.

In the field of **capital movements and payments**, no legislative development can be reported.

In relation to **payment systems**, the Central Bank issued a modified operational rule book for the operation of the TIC-RTGS (Turkish Interbank Clearing – Real Time Gross Settlement), effective since March 2004.

As regards the **fight against money laundering**, no progress can be reported.

#### ***Overall assessment***

Concerning capital movements and payments, sectoral legislation continues to include substantial limitations on foreign ownership, particularly as regards civil aviation, maritime transport, radio and television broadcasting, telecommunications, mining, and energy. Efforts are required to lift barriers to access in sectors where restrictions remain.

As regards institutional investors, the insurance law and the implementing legislation on investment in foreign assets do not contain any *de jure* restrictions. However, these assets may still not be used to constitute compulsory reserves.

The main public authority responsible for FDI matters is the General Directorate of Foreign Investment within the Undersecretariat of the Treasury. Ten inter-ministerial technical committees were established in the framework of the “Reform Program for the Improvement of the Investment Environment in Turkey”. However, the results of efforts to facilitate FDI in Turkey remain very limited.

Regarding payment systems the need to transpose all the *acquis* into Turkish law remains. An out-of court redress scheme needs to be established to settle disputes between banks and their customers.

Turkey needs to introduce more effective measures to combat money laundering. The results of fight against money laundering in terms of freezing, confiscation and convictions are limited. Full compliance with the Financial Action Task Force (FATF) standards remains to be achieved. The Financial Crimes Investigation Board is the responsible public authority. However, in some cases the FCIB can ask the Enforcement Department of the Capital Markets Board to investigate monetary crimes on its behalf. Overall, there is a need to upgrade the FCIB’s information system and investigation procedures (*see also Chapter 24 - Justice and home affairs*).

### *Conclusion*

Turkey’s overall alignment with the *acquis* under this chapter is limited.

Turkey should accelerate efforts to improve the legal, regulatory, and administrative framework for investment. The *acquis* on payments systems, on the fight against money laundering, as well as the FATF standards, need to be transposed and implemented. The necessary administrative capacity should be improved. The remaining restrictions on foreign ownership in certain sectors also seem anachronistic and unjustified, and may contribute to limiting the inflow of FDI.

### *Chapter 5: Company law*

Under this chapter, Member States must adopt and apply harmonised rules required for the proper operation of companies in the internal market. They concern five legislative fields: company law in the strict sense, accounting law, intellectual property rights, industrial property rights, and the recognition and enforcement of judgments in civil and commercial matters and contractual obligations.

#### *Progress since the last Regular Report*

Since the last Regular Report, Turkey has made progress in the field of company law and of intellectual and industrial property rights.

Regarding **company law**, an amendment to the Turkish Commercial Code, aimed at simplifying the procedures for setting up a company in parallel with the provisions of the new Foreign Direct Investment Law, entered into force in 2003. The number of steps for establishing a company was reduced from 19 to 3.

The Capital Market Board (CMB) issued a communiqué on Principles of Mergers of publicly held joint-stock corporations whose shares have been offered to the public or which are considered to have been offered to the public in 2003.

The CMB published a communiqué concerning **accounting** and financial reporting standards in capital markets in November 2003. This legislation, consisting of 33 international financial reporting standards, will be effective as of January 2005.

As regards the administrative capacity of the Turkish Accounting Standards Board (ASB), an Implementing Regulation on the Principles and Procedures pertaining to the works of ASB has been published in March 2004.

In the **intellectual and industrial property rights (IPR)** area, amendments to the Law on Intellectual and Artistic Works came into force in March 2004. The purposes of the Law are to prevent piracy and to solve conflicts between collecting societies and users. This Law includes, inter alia, provisions on internet service providers' liability and on the protection of *sui generis* database.

In March 2004, the Turkish national police issued a communiqué to implement the above Law. According to the communiqué, a specific and exclusive investigation and enforcement team for IPR piracy crimes will be established in major cities. This team will coordinate and cooperate with the Anti-Smuggling and Organised Crime Branch of the national police, where required. So far, only the Ankara team has started operating. Accordingly, pirate books, CDs and DVDs have become considerably less visible in Ankara.

Until March, special anti-piracy commissions had conducted raids, particularly in Ankara and Istanbul. The security forces (the police, municipal police and gendarmerie) then started conducting *ex officio* seizures of non-banderolled products in open areas. Implementation of the rules by Ankara security department officers is improving.

The decision on accession to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations and the Berne Convention for the Protection of Literary and Artistic Works was published in the Official Gazette in October 2003. The conclusion of the internal process of ratification enabled Turkey to become party to the Rome Convention on 8 April 2004.

In the industrial property rights field, ratification of the Hague Convention on the International Registration of Industrial Designs and the Trademark Law Treaty was completed in April 2004.

The Law on the Establishment and Duties of the Turkish Patent Institute, replacing the former Decree-Law with the same title, was adopted in November 2003. This Law increases legal certainty.

A Law amending patent protection entered into force in June 2004. The purpose of the Law is to improve the functioning of IPR courts by converting them from commercial courts to civil courts, regularising criminal sanctions and increasing judicial discretion



with regard to criminal punishment. However, at the same time, the scope of patent rights was reduced as regards experiments related to marketing authorisation. Enforcement possibilities for the rightholders were also reduced, as they will not be able to obtain courts' judgements against counterfeiters in the long period between application and final patent granting.

The Law on the Protection of Topographies of Integrated Circuits came into force in April 2004.

The Turkish Constitutional Court annulled Article 165 of the Patent Decree–Law that restricted remedies against a registered utility model, unless it had previously been opposed before the Turkish Patent Institute.

The **Regulation replacing the Brussels Convention** on mutual recognition and enforcement of foreign judgments in civil and commercial matters will be directly applicable upon accession, and accession to the **Rome Convention** will only be possible upon accession to the EU. (*see also Chapter 24 - Justice and home affairs*).

Administrative capacity in company law has continued to develop during the period, in particular through the training provided by the Capital Market Board. Training of judges and prosecutors and training activities organised by the Ministry of Culture and Tourism with the participation of collective societies and IPR lawyers for Istanbul and Ankara security forces on how to implement anti-piracy rules have continued. In addition, the TPI is continuing general public awareness-raising campaigns in many universities and chambers of commerce.

After the assignment of trained judges to specialised IPR courts in Istanbul, Ankara and Izmir in October 2003, the courts became operational as of December 2003.

### *Overall assessment*

The alignment work in company law as such needs to be accelerated to produce results in legislation and enforcement. In particular, a revision of the Turkish Commercial Code is a priority.

Concerning accounting, the Turkish Accounting Standards Board has been functioning under the Capital Market Board (CMB) on the legal basis of the additional Article 1 of the CMB Law. The new implementing regulation on the Principles and Procedures pertaining to the works of ASB is insufficient to establish a satisfactory regulatory framework.

As regards intellectual property rights, the determination shown to curb piracy is proving effective and should therefore continue. Similar determination, including measures at borders, is needed to stop counterfeiting also, since counterfeiting of well-known trade marks, industrial designs and patented products remains a serious problem in Turkey. Action to combat counterfeiting in Turkey is very costly, burdensome and lengthy for

owners of rights or their representatives as they have to pay fees for keeping the seized goods in warehouses in addition to custodian fees until the case ends.

Enforcement is further hampered by difficulties in obtaining search and seizure orders for counterfeited products from lower criminal courts and public prosecutors. Differing legal practices persist. Uniform application of the rules should be ensured for similar cases.

Manuals and implementation guidelines may be helpful in ensuring uniform practices and increasing legal predictability. Training should be enhanced at all levels to improve IPR understanding and specialisation of prosecutors, judges, police and customs officers.

Neither the number of specialised IPR courts nor the number of trained judges and prosecutors are yet sufficient considering the huge number of IPR infringement cases.

The process of accession to the WIPO Copyrights Treaty and the WIPO Performances and Phonograms Treaty is still pending.

Both industrial property and intellectual property rights legislation need to be further aligned to comply with EC directives and international requirements and to ensure effective implementation.

Turkey should pay attention to misleading trade marks, industrial designs and utility models' applications and registrations.

With respect to the Brussels Regulation and the Rome Convention, Turkey should designate the relevant courts or other authorities to ensure swift implementation of these provisions.

### *Conclusion*

Overall, alignment in the field of company law as such and effective enforcement of intellectual and industrial property rights remains limited.

Turkey has to ensure the application of appropriate and timely remedies, deterrent sanctions and functioning border control measures in line with the EC Directive on the enforcement of intellectual property rights. Action against counterfeiting and piracy, strengthening administrative capacity, improving coordination and cooperation among enforcement and administrative bodies such as customs, police, judiciary, the TPI and the Ministry of Culture and Tourism together with training, should remain the priorities. General and specific awareness rising campaigns need to be intensified and focused on the dangers of the counterfeit products, the illegality of piracy and counterfeiting and civil and criminal sanctions.

### *Chapter 6: Competition policy*

The competition *acquis* covers both anti-trust and State aid control policies. It includes rules and procedures to combat anti-competitive behaviour by companies (restrictive

agreements between undertakings and abuse of dominant position), and to prevent governments from granting state aid which distorts competition in the Internal Market. Generally, the competition rules are directly applicable in the whole Union, and Member States must cooperate fully with the Commission in enforcing these rules.

### *Progress since the last Regular Report*

Since the last Regular Report, some progress has been achieved in the field of competition.

Concerning **anti-trust**, only limited legislative alignment can be recorded. The Competition Board adopted a communiqué, effective from 31 December 2004, increasing the administrative fines provided for in the law on the Protection of Competition.

Some progress has been achieved in the enforcement of anti-trust rules. In 2003, the Competition Authority imposed fines in 13 cases out of 303 cases concluded. The Competition Board imposed conditions on 9 mergers and acquisitions out of a total of 69 merger cases approved in 2003.

In 2004, in the judicial review process, only 21 cases out of 196 were concluded by the Supreme Court which acts as a first instance court. A large number of cases are still pending after appeals.

Concerning administrative capacity, the Turkish competition authority is quite well staffed and puts efforts on the training of its staff.

No progress has been made on the adoption of **state aid** legislation, or on the establishment of a state aid monitoring authority.

Regarding steel, Turkey requested the prolongation of the period in which restructuring aid may be granted to the steel industry under specific conditions defined in the 1996 ECSC Turkey Trade Agreement. The Turkish authorities have to submit an acceptable national restructuring programme for the steel sector providing appropriately detailed information and individual business plans for all companies involved in the restructuring process.

### *Overall assessment*

Generally, Turkey's anti-trust legislation appears to be largely modelled on the main principles of Community anti-trust rules. As regards secondary legislation, Turkey has introduced many of the block exemption regulations. Further alignment is necessary, in particular in view of the Community's evolving policies on vertical restraints and horizontal cooperation agreements.

The Turkish Competition Authority started operating in 1997. It consists of an eleven-member board and has a total staff of 316, of whom 84 have university degrees, responsible for competition investigations, assessment of mergers and acquisitions,

exemptions and negative clearance. Apart from these, there are six examination experts mainly responsible for decisions of the Turkish Competition Board who assist with their reasoning, four lawyers mainly responsible for dealing with cases before the Council of State and four assistant experts on research. The Competition Authority is an independent authority, but recent governmental efforts to establish a uniform organisational structure for all independent regulatory authorities by adopting framework legislation raise concerns about potential political intervention in the operations of the Competition Authority.

The delays encountered in the handling of appealed cases in the Supreme Administrative Court are a matter for concern. The amendments made in the Competition Act last year are expected to increase the enforcement effectiveness of the competition rules. However, only €500,000 out of €60 million which the Competition Authority imposed as fine has been collected since 1998. This reveals the urgent need to strengthen the administrative capacity of the Supreme Administrative Court in order to improve the quality and speed of the appeal process.

The Competition Authority is the sole body responsible for the enforcement of anti-trust rules. However, all public authorities, including Parliament, should ensure that competition is not distorted through the adoption of legislation or administrative decisions. The existing legal barriers stemming from both primary and secondary legislation cause serious distortions of competition. Remarks by the Competition Authority should be taken into consideration in the drafting of all types of legislation that may have an impact on competition.

As a matter of urgency, public authorities should prepare amendments to sectoral legislation, which currently includes anti-competitive provisions, and should associate the Competition Authority fully in this process.

During the privatisation process, competition aspects should play an important role, in particular where dominant positions exist. Privatisation models that ensure a high level of competition in the respective sector in the post-privatisation period should be designed.

Effective coordination between the Competition Authority and sectoral regulatory authorities such as the Energy Markets Regulatory Authority, and the Banking Regulatory and Supervisory Agency, should be ensured.

No progress has been made on the adoption of state aid legislation or on the establishment of an operationally independent state aid monitoring authority. The lack of progress on this key question is hindering the implementation of a state aid control regime, resulting in potential distortions of competition in markets via the allocation of public aid. It is also a major factor delaying the adoption of an Association Council decision on the implementation of competition rules, despite the fact that Turkey is committed under the Customs Union and the ECSC Turkey Trade Agreement to align with the EU *acquis* in the state aid sector.

Competition conditions in the alcoholic beverages sector are still not satisfactory. Problems stem from the primary legislation of 2001, which contains a number of provisions in contradiction with the Customs Union and WTO obligations of Turkey. This legislation should be amended urgently in order to ensure a level playing field for all market actors.

Major efforts concerning alignment in the adjustment of state monopolies and companies having exclusive and special rights are needed.

### *Conclusion*

In the field of anti-trust rules, harmonisation with the *acquis* appears reasonably well advanced. However, the state aid framework Law has not been adopted, and therefore, there is no alignment with the EC Treaty rules on state aid control.

Major efforts concerning alignment in the adjustment of state monopolies and companies having exclusive and special rights are needed. An efficient enforcement of all competition rules must be ensured and the role of the Competition Authority in the economic policy-making process needs to be strengthened considerably. Turkey should urgently adopt legislation concerning state aid monitoring, which is in compliance with EC state aid rules, and establish an operationally independent state aid monitoring authority.

### *Chapter 7: Agriculture*

The agricultural chapter covers a large number of binding rules, many of which are directly applicable. The proper application of these rules and their effective enforcement by an efficient public administration are essential for the functioning of the Common Agricultural Policy. This includes the setting up of management systems such as a paying agency and the Integrated Administration and Control System, and also the capacity to implement rural development actions. EU membership requires integration into the common market organisation for a range of agricultural products, including arable crops, sugar, animal products and specialised crops. Lastly, this chapter covers detailed rules in the veterinary field, which are essential for safeguarding animal health and food safety in the internal market, as well as in the phytosanitary field, including issues such as the quality of seed, plant protection material and harmful organisms.

### *Progress since the last Regular Report*

In the agriculture sector, little progress can be reported since the last Regular Report.

Agriculture remains one of the most important sectors in the Turkish economy. In 2003<sup>19</sup>, its contribution to the total GDP accounted for 12.2%. Since 1983, the share of agriculture has declined from 21.4% to 12.2% in 2003.

In terms of employment, the agriculture sector represented about 33% of the whole labour force in 2003<sup>20</sup> (including forestry, hunting and fisheries), equivalent to some 7 million workers as compared to 35% in 2001 and 34% in 2002. The number of agricultural holdings decreased by 25% over the last ten years; from 4 million in 1991 to 3 million in 2001. The 2001 census also recorded an average farm size of around 6 ha and indicated that about 65% of farmers have less than 5 ha of land. Only 6% of holdings are larger than 20 ha.<sup>21</sup>

In 2003, overall agricultural trade<sup>22</sup> between Turkey and the EU saw a small increase. Turkey's exports to the EU-15 grew from €1,995 million in 2002 to €2,036 million, while its imports from the Community increased from €965 million in 2002 to €1,027 million. EU-15 imports were again dominated by fruit and nuts (though these were down again on the previous year), followed by vegetable and fruit preparations. Key areas of EU-15 exports were tobacco, cereals and animal and vegetable fats.

The limited levels of agricultural trade between Turkey and the 10 new Members States fell somewhat, with Turkey maintaining its relatively large surplus (exports €126 million; imports €29 million).

A number of complaints have been received from EU companies concerning technical barriers to trade and infringements of the Customs Union or Association Agreement. A ban on imports of livestock and meat products remained in place. The ban on certain energy drinks had been lifted by the adoption of a new communiqué in March 2004.

Turkey is currently implementing a programme to restructure the farm sector and public support. The government developed the Agricultural Reform Implementation Project (ARIP) with support from the World Bank; it was originally designed for the period 2001-2004, but is planned to be continued also in 2005. The main purpose of the project is to phase out production and input-based support and to replace it by an area-based income support scheme. It has the following objectives: (a) to phase out the unsustainable and distorted system of subsidies for fertilizers, credit and price supports, which disproportionately benefited large farmers and cost about US\$5 billion a year; (b) to privatise most state-owned cooperatives in order to reduce government involvement in

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<sup>19</sup> The source for all agricultural statistics is EUROSTAT unless otherwise specified.

<sup>20</sup> National Labour Force survey (LSF) data, not yet harmonised with the EC's LFS. Agricultural employment is defined in LFS terms as economically active persons who earn a significant part of their income from agriculture.

<sup>21</sup> The figures from the 2001 census are not in line with the information on the total agricultural area.

<sup>22</sup> Source of trade figures: WTO definition of agricultural products, figures from EUROSTAT COMEXT.

the marketing and processing of agricultural products; (c) to introduce a unified national programme of direct income support (DIS) and (d) to encourage farmers to change from hazelnut and tobacco production to alternative crops in certain regions of Turkey (crop substitution programme).

The reform process is still far from complete, but it has had some positive impact, for example on the level of the most trade distorting types of support.

#### Horizontal issues

No progress can be reported concerning the alignment on the *acquis* with regard to the establishment of a paying agency, the Integrated Administration and Control System (IACS), and the Farm Accountancy Data Network.

As regards quality policy and organic farming, good progress has been made and Turkey is moving towards an EU-type system. Organic farming issues are being dealt with mainly by a new department for alternative agricultural production techniques established within the Ministry of Agriculture and Rural Affairs.

#### Common Market Organisations

Implementation of most common market organisations mechanisms has in general not started yet.

For fruit and vegetables, Turkey already applies marketing standards similar to the EU system at the export stage. Turkey is considering how and when to apply them on the domestic market.

Concerning producer organisations in general, the Law on Agriculture producer Unions designed to encourage the establishment of producer groups has been adopted by Parliament and published on 6 July 2004. However, this regulation was adopted without account having been taken of Commission advice, and it is hard to see how it will achieve its principal stated aim.<sup>7</sup>

#### Rural development and forestry

Although initial steps are being taken in the context of the national development plan, little progress can be reported regarding rural development. No comprehensive rural development strategy has been elaborated yet. However, a number of individual rural development projects have already been carried out or are being implemented by the Ministry of Agriculture and Rural Affairs covering activities such as irrigation, land improvement, village road construction, forest road construction, provision of drinking water and afforestation.

Regarding forestry the government has identified the main elements of the “National Forestry Programme”.

#### Veterinary and phytosanitary issues, including food safety

Regarding the *veterinary area*, limited legislative progress has been made. Turkey amended the Law on Animal Health and Surveillance in January 2004. This modification created the legal bases for banning the administration of certain substances to animals and imposing sanctions in this regard; it also upgraded the control performance of the Veterinary Service, including the implementation of residue monitoring plans. Most of these efforts will have the direct consequence on the fulfilment of the requirement of the Union before authorising Turkey as a third country to export certain products of animal origin to the EU market.

Turkey has made an important effort on *animal health*. Surveillance programmes have been adopted for BSE, scrapie, FMD and PPR (*Peste des petits ruminants*). Vaccinations are carried out against FMD, brucellosis, sheep and goat pox, PPR, anthrax, rabies and Newcastle disease. A communiqué was adopted on the compulsory notification of animal diseases in April 2004.

As recommended by the Union, Turkey has started to set up a system of identification of bovines and registration of their movements. The system is in its first phase of development (ear tagging of bovines) and needs to be further developed. As of August 2004, 9.5 million bovine animals have been ear-tagged and registered, and 1.5 million animal holdings have been registered. Progress has been made in the zootechnical field (herdbooks). The strategy for the identification of sheep and goats (around 25 million) is under consideration.

On *animal welfare* “the Protection of Animals Law” was adopted and published in the Official Gazette on 1 July 2004.

As regards *public health*, two communiqués were published: (a) one prohibiting hormones and similar materials for animals which have a value as foodstuffs (in June 2003) and (b) one prohibiting bovine somatotrophine hormone (in July 2003). Implementation started in the reporting period.

In the *phytosanitary area*, some progress has been made in transposition and implementation of the phytosanitary *acquis*, notably on chemical fertilizers, as well as the secondary legislation. As for plant health-harmful organisms, the Plant Health Regulations, which are the Turkish equivalent of the basic Council Directive 2000/29/EC date back to 1991 and were amended in 2003. In the field of plant protection products, the directive on prohibition of placing on the market and use of plant protection products containing certain active substances has been transposed.

The law on protection of breeders’ rights on plant varieties was also approved and published in January 2004. In total 207 new plant varieties have been registered. With this Law, Turkey has finalised the necessary steps for application to the International Convention for the protection of new varieties of plants (UPOV).

In 2003, 79 inspectors out of 377 have been trained in plant quarantine inspection techniques.



A plant hygiene action plan on avoiding aflatoxin contamination has been prepared. As regards pesticides, a communiqué was adopted in December 2003 prohibiting the placing on the market and use of plant protection products containing certain active substances. However, excessive contamination of aflatoxin in hazelnuts and dried figs and of sulphites in some fruits and vegetables requires further appropriate measures and a strict monitoring.

As regards *food safety* (see also chapter 1, Free movement of goods), some progress has been made. Laboratory capacity for control of pesticide residues in foodstuffs of plant origin has been increased both in term of staffing and equipment. However, analyses are conducted for a very limited range of active substances.

### *Overall assessment*

Turkey should continue the alignment process and build up the necessary administrative capacity in order to set up the basic requirements for implementation of the *acquis*.

For the agriculture part of the chapter, as already stated in the 2003 Report, the creation of a rural development strategy, aimed at the restructuring of the agriculture sector and the development of rural areas, should be the main priority. Turkey should also be encouraged to continue its efforts in the organic farming and quality policy sectors, including the accreditation and strengthening of control and certification bodies.

For the veterinary and phytosanitary part, Turkey should continue its efforts on reinforcing its administrative and control capacity to be in line with the *acquis*. Concerning animal health, significant progress in this key area should become a high priority. Turkey has to elaborate and implement a global strategy for eradication of the main animal diseases. Contingency plans for International Office of Epizootics (OIE) lists A and B disease control or eradication need to be completed. The current border inspection control system does not comply with the system used by the EU Member States. Turkey is encouraged to continue efforts for the upgrading of the border inspection posts.

The registration of producers and other operators in the sector covered by the EU plant health *acquis* has started recently. In the review of the border inspection posts, Turkey should secure the control of trade flows of plants and plant products at land and sea borders. Pesticide residue inspections are not in harmony with EU practice. The implementing Regulation on forest reproductive material and its enforcement will be the competence of the Ministry of Environment, while the rest of the seeds legislation will be the competence of the Ministry of Agriculture.

Turkey is encouraged to upgrade its laboratory infrastructure and efforts on administrative and control capacity should be continued.

Concerning food safety, implementation and in particular sampling and analysis, need to be aligned with EU practice. Turkey is encouraged to establish a risk analysis system. Technical and hygienic conditions in food processing establishments should be improved.

Competencies are often shared between different Ministries or departments within the Ministry of Agriculture and Rural Affairs. This leads to unclear responsibilities or conflicts of competencies and does not contribute to efficient administration. Therefore, the Ministry of Agriculture and Rural Affairs should clarify the competencies within the Ministry and strengthen its capacity to implement reforms and the *acquis*.

### *Conclusion*

The overall level of alignment with the *acquis* in the agriculture chapter is limited.

The main priority for the agricultural sector is the implementation of a rural development strategy. As regards the veterinary, phytosanitary and food issues, transposition and implementation of the *acquis* require substantial efforts to achieve full compliance. Special attention should be paid to elaborating a strategy for eradication of animal disease and the strengthening and upgrading of the control systems.

### *Chapter 8: Fisheries*

The *acquis* on fisheries consists of regulations, which do not require transposition into national legislation. However, it requires the introduction of measures to prepare the administration and the operators for participation in the Common Fisheries Policy (in the areas of market policy, resource and fleet management, inspection and control, structural actions and state aid). In some cases, existing fisheries agreements or conventions with third countries or international organisations need to be adapted.

### *Progress since the last Regular Report*

Since the last Regular Report, Turkey has made no substantial progress concerning the alignment of its legislation with the *acquis*.

No progress can be reported with regard to resource and fleet management, inspection and control, structural actions and state aid.

As regards **market policy**, the amendment to the implementing regulation on fishery wholesale and retail sales markets was published in the Official Gazette on 14 July 2004. The amendment envisages stricter hygiene, storage, transportation and sales standards for new wholesale and retail sales markets.

With regard to **international fisheries agreements**, Turkey has become a full member of the International Commission for the Conservation of Atlantic Tuna (ICCAT) in September 2003. Turkey is already a member of several regional and international organisations, the General Fisheries Commission for the Mediterranean, the European Inland Fisheries Advisory Commission and EUROFISH.

A number of fishery products cooperatives have been merged into a Central Union. Producer organisations play an important role in the stabilisation of market prices and the uniform application of marketing standards.

The administrative structures of the fisheries sector remain spread across several departments of the Ministry of Agriculture and different state bodies.

### *Overall assessment*

Turkey should increase its efforts concerning resource management and the strengthening of the necessary inspection and control capacities. The licensing and registration of fishing and aquaculture activities should also be further improved. The existing fishing vessel register, and the data collection and statistical system need to be revised and strengthened in order to comply with EU standards.

The monitoring and reporting of catches, landings and fishing activities are insufficient. Fishery officers are not based at fishing ports and the fragmented institutional structure and division of responsibilities do not contribute to effective administration. Enforcement surveillance, inspection and control activities are entrusted to both the Ministry of Agriculture and Regional Affairs and the Coast Guard (under the Ministry of Internal Affairs) and are rather ineffective due to a lack of sufficient human and technical resources as well as insufficient legal provisions. There is also a lack of adequate scientific research and monitoring data and no stock assessment of key targeted species.

In the area of market policy, there is very limited intervention by the State in controlling supply, prices and withdrawals from the market. Producer organisations can play an important role in ensuring better management of market policy and resources in Turkey.

### *Conclusion*

Overall alignment with the *acquis* appears limited, as well as the application of the existing regulations.

Turkey should increase its efforts concerning the conservation of fish stocks, resource management and the modernisation of production and marketing structures. Major efforts are necessary to improve the administrative structures and the strengthening of the necessary inspection and control capacities.

## ***Chapter 9: Transport policy***

EU transport legislation aims at improving the functioning of the internal market by promoting efficient environment- and user-friendly transport services. The transport *acquis* covers the sectors of road transport, railways, aviation, maritime transport and inland waterways. It covers technical and safety standards, social standards, and market liberalisation in the context of the European Single Transport Market.

### *Progress since the last Regular Report*

Since the previous Report, there has been some progress concerning alignment with the *acquis* and the strengthening of administrative capacity.

As regards the **Trans-European Transport Networks**, preparations for a Transport Infrastructure Needs Assessment (TINA) study for Turkey are currently being undertaken. This study will serve as the basis for the identification of the future network.

As concerns **land transport**, some progress has been made in the development of *road transport* legislation in line with the *acquis*. Following the adoption of the Road Transport Framework Law in July 2003, a road transport regulation was adopted in February 2004, setting forth implementing rules as concerns road transport activities, including licensing procedures, and setting out the rights and obligations of road transport operators and vehicle requirements.

Regarding *railways*, some progress can be reported. An ambitious Rail Transport Action Plan for the restructuring of the railway sector by 2008, which also sets out a road map for legislative alignment with the revised railways *acquis*, was adopted.

As regards **air transport**, no progress can be reported on legislative alignment with the *acquis*. Some Turkish air carriers started scheduled domestic flights including to and from Istanbul, contributing to the end of the State-owned operator's de facto monopoly in the domestic scheduled flights.

Regarding **maritime transport**, some progress can be reported. An ambitious five year Maritime Transport Action Plan for the enhancement of maritime safety was adopted in December 2003. This Action Plan sets out a road map for legislative alignment with the maritime safety *acquis*, measures aimed at strengthening administrative structures in the area of flag State and port State control and training and equipment needs. Implementing legislation on classification societies and port reception facilities was adopted in October 2003 and March 2004 respectively. The Maritime Administration has recruited some 80 new staff as Port State Control and Flag State Implementation officers.

According to statistics for 2003, under the Paris Memorandum of Understanding, the percentage of Turkish flag vessels detained following port State control was 17.5%, a further decrease compared to the two previous years (2002: 18.8%; 2001: 24.5%). This compares with an average for EU-flagged vessels of 2.76% in 2003. Turkey still remains on the black list, in the very high-risk category, of the Paris Memorandum of Understanding.

### *Overall assessment*

As regards Trans-European Transport Network, Turkey started preparing a programme with a view to identifying the main transport infrastructure needs in Turkey and the related transport network projects, in coherence with the TEN-T guidelines. Turkey's current national infrastructure plans date from the 1980s. Several ministries and agencies are responsible for transport infrastructure matters and there is a great need for improved co-ordination. Turkey must develop a new national infrastructure plan as well as capacity for country-wide planning of the national infrastructure, in order to properly implement the future network and the management and programming of future Community support for infrastructure development.

In the land transport sector, Turkey has started to address the important problem of the growing gap between the international and domestic parts of the road sector and has started in some areas to introduce the more stringent international rules to the domestic sector as well. Following a gap analysis, a plan for legislative alignment has been developed, which needs to be implemented. Progress has been made in the implementation of the *acquis* on access to the profession, the transport of dangerous goods (in international transport only) and on safety *acquis* (seat belts, roadworthiness tests). Improving road safety should be a priority, as Turkey's accident rates are 6 times higher than that of the EU, resulting in a very high death toll and economic losses. Effective implementation and enforcement of legislation is not yet ensured.

The staff and capacity of the Ministry of Transport need to be strengthened substantially. Regarding the social road transport *acquis*, the Ministry of Transport has too few qualified staff either for market monitoring or for implementation and enforcement of the licensing regime. This is particularly important for the domestic goods transport market, which is considerable in size and has never been regulated. More and better-trained experts are also needed to ensure the effective application and implementation of technical standards. The Ministry of Transport plays a key role in the road transport sector. However, responsibilities in relation to the implementation of road transport and traffic legislation are scattered over more than 10 other Ministries and authorities having a role in the implementation of the road transport *acquis*. This makes proper planning and coordination of activities difficult. Mechanisms for establishing more effective coordination among the Ministries and streamlined decision making should be developed.

Concerning the rail sector, the adoption of the action plan constitutes a good preliminary step to starting the alignment of Turkish legislation with the revised railways *acquis*. In this plan, special attention is paid to the restructuring of the entire railway sector, including the reorganisation of the railway administration in line with the *acquis*. Priority must be given to setting up the necessary legislative and institutional framework for rail sector restructuring in accordance with the *acquis*. As a first step towards bringing the railway sector into line with the *acquis* the plan focuses on restructuring the State railway company TCDD, unbundling ports and railways and opening the railway market to competition for freight. Subsidies paid to railway operations need to be defined in terms of a public sector obligation and covered by a public sector contract. Particular attention must also be given to the rapid modernisation of the rail infrastructure.

As regards air transport, Turkey must improve its alignment with the *acquis*, which remains very limited. Existing legislative and especially administrative practices aimed at protecting the position of flag carrier Turkish Airlines should be revised.

On maritime safety, the adoption of a comprehensive action plan covering the 2004-2008 period provides a good basis for the transposition of substantial parts of the *acquis* and the improvement of the maritime sector. The new implementing legislation on classification societies aims at ensuring their more effective monitoring.

Given that Turkey is still on the black list of the Secretariat of the Paris Memorandum of Understanding on Port State Control, improving the flag State performance of the

Turkish fleet remains a priority issue. Considerable efforts are necessary to decrease the detention rates. There are still a number of Turkish flagged ships on the Commission's list of ships that are currently banned under the new European maritime safety rules. The quality and quantity of port State control must also be improved. In the Undersecretariat of Maritime Affairs, further recruitment and training of new flag State implementation and port State control officers would contribute to the development of the necessary implementation capacity. Turkey should pay attention to the necessary upgrading of port reception facilities.

No developments can be reported concerning the elimination of existing restrictions applied to Cyprus-flagged vessels and vessels serving the Cyprus trade. Market access to coastal trade remains restricted solely to Turkish-flagged vessels. Turkey should lift existing restrictions applied to Cyprus-flagged vessels and vessels serving the Cyprus trade.

### *Conclusion*

Alignment of Turkish legislation with the Community transport *acquis* remains limited.

Efforts have focused on the development of comprehensive sub-sectoral action plans for further transposition of the *acquis* and better implementation and enforcement. Due attention must be paid to the consistency of such individual plans at sub-sector level with overall transport sector planning. Legislative and institutional reforms are needed to restructure the entire rail sector in line with the *acquis*. The adoption of international agreements and rules, in particular in the fields of maritime safety and road transport, should be complemented by the transposition of the relevant *acquis*. Besides the need for further legislative alignment, due emphasis must be given to the implementation and enforcement capacity of the relevant administrations, in particular in the road transport sector.

### *Chapter 10: Taxation*

The *acquis* on taxation covers extensively the area of indirect taxation, as concerns VAT (value-added tax) and excise duties. It lays down definitions and principles of VAT, while excise duties on energy products, tobacco products and alcoholic beverages are subject to EU directives as concerns the structures of the duties, the levels of minimum rates and the holding and movement of excisable goods. As concerns direct taxation, the *acquis* covers some aspects of corporate taxes and aims mainly at removing obstacles to cross-border activities between enterprises. Finally, the Community legislation in the area of administrative cooperation and mutual assistance provides tools to avoid intra-Community tax evasion and tax avoidance for both direct and indirect taxation.

### *Progress since the last Regular Report*

Since the last Regular Report, progress with regard to both legislation and administrative capacity has been limited.

Concerning **indirect taxation**, no progress can be reported in the area of *VAT*. On *excise duties*, Turkey has introduced a specific duty on cigarettes, differentiated per content of oriental tobacco. This is contrary to the *acquis*, as it introduces a *de facto* discrimination against imported products. Turkey has also introduced a minimum duty level on alcoholic products, which is, however, also not in line with the *acquis* requirements, in that the specific duty becomes applicable only if it is higher than the *ad valorem* duty. In addition, the new duty is based on the type of drink and not on its alcoholic content, as required in the EU *acquis*. This results in discrimination against imported products, which are taxed at higher rates than comparable domestic products with similar alcohol content.

No progress can be reported in the field of direct taxation or administrative cooperation and mutual assistance.

With regard to administrative capacity, an analysis of the Tax Administration's gaps and shortcomings has been conducted, taking the Fiscal Blueprints as benchmarks. Furthermore, efforts focusing on the introduction of information technology in local tax offices have continued. A project aimed at introducing computerisation of 138 tax offices (in addition to 155 offices already automated) is ongoing. A new project to extend the taxpayers' database to all tax offices and to upgrade its functionalities has started in April 2004.

### *Overall assessment*

Regarding indirect taxation, while a VAT system has been in place since 1985, substantial efforts will be needed to achieve full alignment with the *acquis* in a number of areas, including the scope of exempt transactions, the scope and level of the reduced rates applied (Turkey currently applies two reduced rates, one of which is set below the required 5%), and special schemes. As regards excise duties, further alignment is necessary, in particular as regards the discriminatory structure of the duties on alcoholic products and cigarettes, as well as the level of rates applied to cigarettes. Turkey should also lay the foundations – both from the legislative and administrative points of view – for the timely implementation of the duty suspension regime for domestic movements and fiscal warehouses, in order to tackle more effectively risks of fraud. The operations of the Tobacco Fund, which collects a special duty on imported tobacco and cigarettes, are discriminatory and should cease.

Further efforts are needed to ensure alignment with the *acquis* in the field of direct taxation. As concerns the Code of Conduct for business taxation, Turkey should refrain from introducing any tax measures not in line with the principles of the Code.

With respect to administrative capacity, although some progress was made on strengthening the tax administration, in particular in relation to the introduction of IT facilities in tax offices, additional and sustained efforts are needed. Taking the outcomes of the Gap Analysis into consideration, the Tax Administration should set out a modernisation strategy, in order to increase voluntary taxpayer compliance and to ensure proper implementation and enforcement of the *acquis*. Turkey needs in particular to

address the issue of tax evasion, enhance audit capacity and implement other measures to fight the widespread informal economy.

### *Conclusion*

The Turkish fiscal regime is partially aligned with the *acquis*, both concerning indirect and direct taxation.

Substantial further legislative alignment is required in all areas of the *acquis*, with, as a matter of urgency, the elimination of discriminatory tax regimes on cigarettes and alcoholic beverages. On VAT, particular progress should be made as concerns the scope of exemptions and the applied rates. Regarding excise duty, discriminatory features should be eliminated from legislation and alignment should be ensured on the level of rates, in particular on cigarettes. Turkey should also make further efforts to ensure alignment in the area of direct taxation. Concerning administrative capacity, Turkey should continue its efforts to modernise the tax administration and strengthen its capacity to improve tax collection and enhance taxpayer compliance.

### ***Chapter 11: Economic and Monetary Union***

EU legislation on Economic and Monetary Union (EMU) contains specific rules requiring the independence of central banks in Member States, prohibiting direct financing of the public sector by the central banks and prohibiting privileged access to financial institutions by the public sector. These rules must have been implemented by the date of accession. Upon accession, new Member States will be expected to coordinate their economic policies and will be subject to the provisions of the Stability and Growth Pact and the Statute of the European System of Central Banks. They are also committed to work towards compliance with the criteria laid down in the Treaty for adopting the euro. Until they adopt the euro, they will participate in Economic and Monetary Union as a Member State with a derogation and shall treat the exchange rate of their currency as a matter of common concern.

#### *Progress since the last Regular Report*

Since the last Regular Report, Turkey has made no progress with adopting the EMU-related *acquis*, covering direct public financing by the central bank, the prohibition of privileged access of the public sector to financial institutions or the independence of the Central Bank.

#### *Overall assessment*

Turkey has made a major step forward in 2001, by amending the Central Bank Law, and increasing independence of the Central Bank of Turkey. However, some further alignment is necessary. The inflation target is being set in agreement with the Government. Necessary amendments still need to be made for full alignment in the area of personal and institutional independence, in particular concerning the dismissal of the



Central Bank governor and the length of the term of the Board. Also, the possibility of a judicial review of a decision to dismiss its members should be considered. Financial independence should be reinforced by allowing the Central Bank to charge fees on its operations for the Treasury. The prohibition of direct public sector financing by the central bank, is provided for by the Central Bank Law. In this respect, the necessary safeguards should be in place as regards the central bank's possible involvement in the financing of the Savings Deposit Insurance Funds as well as in "lending of last resort" operations.

The Central Bank Law generally prohibits direct financing to the public sector. However, the exceptions, which permit the Central Bank to finance state expenditure on banks taken over by the Savings Deposit Insurance Funds, are still valid.

As regards the prohibition of privileged access of the public sector to financial institutions, insurance companies must set aside compulsory reserves proportional to the volume of premiums collected. However, foreign assets may not be taken into account, which discourages insurance companies from investing abroad. This restriction effectively gives the public sector privileged access to financial institutions, since the Turkish domestic financial markets are dominated by government debt paper.

### *Conclusion*

Turkey's overall alignment concerning the EMU *acquis* is limited.

The independence of the Central Bank should be further strengthened, particularly on the determination of the inflation target, on in the area of personal and institutional independence. Provisions allowing direct financing of the public sector by the Central Bank should be removed.

### *Chapter 12: Statistics*

The *acquis* in the field of statistics requires the adoption of basic principles such as impartiality, reliability, transparency, confidentiality of individual data and dissemination of official statistics. It also covers methodology, classifications and procedures for data compilation in various areas such as macro-economic and price statistics, business statistics, transport statistics, external trade statistics, demographic and social statistics, agricultural statistics, environment statistics, science and technology statistics and regional statistics. The focal point of the statistical system of a country is the National Statistical Institute, which acts as the reference point for the methodology, production and dissemination of statistical information.

### *Progress since the last Regular Report*

Turkey has made steady progress over the past year.

Concerning **statistical infrastructure** a decision was taken to establish 6 new Regional Statistical Offices in order to have one office for each Nomenclature of Territorial Units

for Statistics (NUTS) 2-digit region and the corresponding measures concerning infrastructure and staffing were taken.

As regards **classifications**, the Turkish version of Statistical Classification of Economic Activities in the European Community Revision 1.1 is now available and used for the business register. The Classification of Products by Activity 2002 was published. The Community Industrial and Services Nomenclature has been adapted to national needs by adding 2 digits. Social classifications have been applied in the relevant surveys.

As regards **sector statistics**, in the field of *demographic and social statistics*, final detailed results of the 2000 population census were published. In migration statistics, data on residence and working permits have been collected in cooperation with the Ministry of Interior. The survey on income and living conditions is implemented in 2004 according to EU methodology.

In the area of *regional statistics* a regional classification aligned with NUTS was approved. A recalculation of data according to the new breakdown is under way.

In the area of *macro-economic statistics*, some progress in National Accounts for the implementation of the European System of Account (ESA 95) has been achieved by using new statistical sources, such as the 2003 General Census of Businesses and the new household income and consumption expenditure survey.

As regards *business statistics*, the business register is being established based on NACE Rev. 1.1. For short-term statistics some indicators have been collected for the industry and construction sectors. A survey on information and communication technology is being carried out in 2004.

In the area of *transport statistics* no substantial developments have taken place during the reporting period.

Concerning *external trade statistics*, there is already a good level of compliance achieved for EXTRASTAT, the system measuring trade with Third Countries. For INTRASTAT, the system measuring trade among Member States, some studies of practices in Member States have taken place.

In *agricultural statistics*, the farm register has been set up based on the 2001 General Agriculture Census as well as its updating procedures.

### *Overall assessment*

As regards statistical infrastructure, the new Statistical Law is still pending. Once adopted, a major step in the harmonisation of the legal basis will be achieved. The new law should also aim at strengthening the co-ordination role of the State Institute for Statistics (SIS) within the Turkish statistical system, determine the principle of confidentiality of individual data, regulate planning activities and dissemination policy and define the appointment procedures for the President of the SIS.

In order to face the challenges of adopting the *acquis* on statistics, administrative capacity needs further strengthening. The regional offices need more and better-qualified staff. Training is, therefore, important and should be followed up by the SIS.

As regards classifications, the SIS needs to continue and finalise the harmonisation exercise. This includes the development of a classification server.

In the area of macro-economic statistics, the main challenge still ahead of the SIS is the move from the UN System of National Accounts (SNA 1968) to the European System of Accounts (ESA 1995). Better co-operation between the Ministry of Finance, the Central Bank, the Under-Secretary for the Treasury and the SIS is a pre-requisite for improving government finance statistics. Conceptual studies which are available need to be implemented into practice for all areas of macro-economic statistics. This also includes the provision of basic data from other areas such as business statistics.

Turkey has been incorporated in some areas into the data collection mechanisms of the European Statistical System. The SIS is setting up the relevant tools to bring the official statistics into line with European Community requirements. However, in the areas of demographic and social statistics, regional statistics, macro-economic statistics, business statistics, transport statistics, external trade statistics and agriculture statistics substantial efforts are still needed.

### *Conclusion*

Turkey's alignment with the *acquis* in the area of statistics is limited.

The adoption of the new statistical law should be given priority. Substantial efforts are needed to progress towards alignment to the *acquis* in all main areas for statistical development (business statistics, social statistics, agricultural statistics and macro-economic statistics, trade statistics, regional statistics and environment statistics).

### ***Chapter 13: Social policy and employment***

The *acquis* in the social field includes minimum standards in areas such as labour law, equal treatment of women and men in employment and social security, and health and safety at work. Specific binding rules have also been developed in public health (on tobacco control and surveillance and control of communicable diseases) and recently also with respect to non-discrimination on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation. The European Social Fund (ESF) is the main financial instrument through which the EU supports the implementation of its Employment Strategy and contributes to social inclusion efforts (implementation rules are covered under Chapter 21, which deals with all structural instruments). The Member States participate in social dialogue at European level and in EU policy processes in the areas of employment policy, social inclusion and social protection.

### *Progress since the last Regular Report*

Since the last Regular Report, Turkey has made progress on social policy and employment, in particular as regards transposition of health and safety at work legislation.

Further to the adoption of the **labour law** in May 2003 several implementing regulations have been issued. The implementing regulations concerning working time, overtime work and special procedures for shift workers came into force in April 2004. The regulation on occupational health and safety in temporary or fixed-term employment was published in May 2004. The regulation on the employment of children and young workers, aimed at transposing the *acquis* on the protection of young people at work, came into force in April 2004. The regulation defines the minimum ages for different types of work, appropriate areas and conditions for work and responsibilities of the employer and of the State. The regulation on arduous and hazardous work entered into force in June 2004. The institutional and administrative capacity of the Child Bureau has been strengthened.

As regards **equal treatment of women and men**, the constitutional amendments adopted by the Parliament in May 2004 introduced the following provision: “*Men and women shall have equal rights. The State has the duty to ensure that this equality is put into practice*”. Further to the new Labour Law, additional implementing regulations were adopted in July 2004 and August 2004 on working conditions of pregnant and breastfeeding women and on working conditions of women in night shifts, which aim to bring Turkish legislation in line with the Directive on the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. A new law was issued in July 2004 which entitles civil servants to paid maternity leave of sixteen weeks.

In the area of **health and safety at work**, several regulations have been issued with the aim of transposing the relevant *acquis*. A regulation aiming at the transposition of the Framework Directive entered into force in December 2003. Additional regulations referring to minimum health and safety requirements on vibrations, noise, safety and health signs, working with display screen equipment, construction sites, chemical substances, explosive atmospheres, biological agents, carcinogenic and mutagenic substances, asbestos, manual handling, use of personal protective equipment, workplace, mineral extracting industries through drilling, surface mines and quarries and use of work equipment were adopted in December 2003, February 2004 and June 2004. The majority of these regulations entered into force on the day of their publication, except the ones on vibration, noise and asbestos, which will come into force gradually.

As regards **social dialogue**, the regulation setting out rules and procedures for the functioning of the ‘Tripartite Advisory Board’ entered into force in April 2004. The Board, composed of representatives from the government, trade union confederations, the main employers’ union and the public employees’ union, met for the first time in May 2004. The Board has the tasks of advising on matters of working life, of fostering cooperation and compromise-seeking among the parties and of monitoring legislative

developments in this area. Amendments to the Public Employees' Trade Union Act were adopted in June 2004 with a view to simplify procedures for membership.

In the field of **public health**, Turkey has signed the global Framework Convention on Tobacco Control (FCTC). A regulation on the notification of communicable diseases was published in February 2004 and will enter into force in January 2005. Turkey has become a member of the disease notification and information networks of Euvacnet, Dipnet and Hepnet set up by the EU Member States for disease notification and sharing of information. As regards the fight against HIV/AIDS, Turkey continues to be a low-prevalence country and has developed national strategies to prevent its spread. Additional resources were committed to the health sector, with an allocation of 3.2% of the overall 2004 state budget (2.42% in 2003) to the Ministry of Health.

With regard to **employment policy**, average unemployment in 2003 stood at 9.0%, compared with 10.3% in 2002. Female unemployment was 7.3% in 2003, whereas male unemployment was 9.5%. The overall employment rate in 2002 stood at 45.5% and has been declining since 2000. The female employment rate is particularly low at 25.5%; the male employment rate has fallen from over 70% in 2000 to 65.5% in 2002. The Turkish Employment Organisation (IŞKUR) is continuing its efforts to improve its institutional capacity. Work has started between the Commission and the Turkish authorities (under the co-ordination of IŞKUR) on the drafting of the Joint Assessment Paper of Employment Policy Priorities.

With regard to **social inclusion**, a circular issued in July 2004 obliges the public institutions with more than 50 employees to have at least 3% of its staff composed of disabled persons or ex-convicts.

As regards **social protection**, an amendment to the Social Security Act of June 2004 ensures that the minimum premium contribution would always be calculated on the basis of the minimum wage. An amendment to the law on free health services for the poorest - broadening the scope of such services- was adopted in July 2004.

As regards the fight against **discrimination**, no developments can be reported.

Concerning the administrative capacity of the Ministry of Labour and Social Security, qualified personnel were recruited. The preliminary results of the quality management system introduced can be considered a step towards the improvement of the organisational structure.

### *Overall assessment*

In the field of labour law, notwithstanding the good progress made, further efforts to transpose and align with the relevant *acquis* and to ensure effective implementation and application are needed.

Turkey needs to address a number of shortcomings in the transposition of some Directives, including among others the directives on collective redundancies, transfer of

undertakings, information on individual employment conditions and the protection of employees in the event of insolvency. In particular, the provisions on information and consultation of workers concerning the Directives on transfer of undertakings and collective redundancies are still to be transposed. In addition, certain sectors or categories of businesses (for example, agricultural businesses with fewer than 50 employees) are excluded from the scope of application of the Labour Law. This is not in line with the *acquis*. The sectoral working time Directives and the Directives on European Works Council and posting of workers remain to be transposed. Turkey also needs to prepare for the adoption of the recent *acquis* (namely the Directive supplementing the statute of the European Company and the European Cooperative Society as well as the Information and Consultation Directive). Particular attention should be given to ensuring effective implementation and enforcement of the new Labour Law.

Turkey should continue its efforts on combating child labour. Legislation concerning child labour should be fully aligned and also include provisions to protect children working in sectors currently not covered, such as agriculture (*see also Section B.1.3 – Human rights and the protection of minorities*).

Concerning equal treatment of women and men, Turkey has made some progress with the adoption of the new Labour Law, the introduction of the constitutional amendment, and the adoption of implementing regulations. Further alignment will be required in particular concerning parental leave, equal pay, access to employment, burden of proof and statutory and occupational social security. In addition, the scope of the labour law will have to be extended to cover sectors and enterprises that are currently excluded. The Law establishing a Directorate-General for the Status and Problems of Women still needs to be adopted. Further efforts are needed to improve gender equality in economic and social life and to ensure effective enforcement of the relevant legislation (*see also Section B.1.3 – Human rights and the protection of minorities*).

In the field of health and safety at work, Turkey has made considerable progress to bring its legislation into line with the *acquis*, although some further adjustments will be necessary in order to achieve full transposition. The scope of the Turkish legislation should be extended to cover the public sector, and the regulations on asbestos and noise should be adapted to cover the current status of the *acquis* in those fields. Intensive efforts to ensure implementation of the *acquis*, including through information, awareness-raising and training, will be required. Strengthening the capacity of the 637 labour inspectors and involving the social partners in the overall implementation of well-being at work should remain priorities.

With regard to social dialogue, Turkey should urgently establish full trade union rights. In particular, restrictive thresholds for trade unions to be eligible for collective bargaining, restrictive provisions relating to the right to strike and collective bargaining for public-sector employees, and limitations for certain public employees to join trade unions should be abolished. As already reported in the 2003 Regular Report, there is a strong need to develop and strengthen bipartite social dialogue, especially in the private sector, where it remains virtually non-existent. The percentage of the labour force covered by collective agreements remains extremely low. At national level, in order to

improve the performance of the Economic and Social Council on the consultation of social partners, some structural reforms should be implemented, including the reduction of the currently predominant position of the Government's representatives. The private sector, public authorities and social partners need to show their commitment to social dialogue and take the necessary measures to remove obstacles and improve its functioning (*see also Section B.1.3 – Human rights and the protection of minorities*).

With regard to public health, a national communicable disease surveillance and control plan should be developed. A revision of legislation relating to communicable diseases surveillance and control is required to align with the principles and methodology of the Community network for the epidemiological surveillance and control of communicable diseases. Significant capacity-building efforts are needed in order to ensure incorporation into the EU system of surveillance and control of communicable diseases. The EU legislation on tobacco, blood and tissues and cells has to be transposed. Measures should be taken for improving the health status of the population, which remains well below the EU average. Discrepancies in the health status of the population, inequitable access to health care, inefficient use of resources and poor management of the services continue to be the main problems in this sector. While financial resources for health have increased, efforts in this respect should be sustained.

Regarding employment, Turkey should continue its efforts to develop a national employment policy in line with the European Employment Strategy. Very low activity and employment rates, in particular of women, high levels of youth unemployment, the large size of the informal economy and the strong rural/urban labour market divide remain the main challenges. The work on the Joint Assessment Paper (JAP) should be pursued with vigour as a step to align Turkish policies with the EU and to identify the challenges the country is facing in the employment field. Pre-accession assistance in the area of social and economic cohesion should underpin this work and address gaps and weaknesses identified in the JAP.

A national integrated strategy on promoting social inclusion, taking into account the EU objectives, still needs to be developed. Data on monetary poverty included in the 2002 'Household Income and Consumption Expenditure Survey' point at a deterioration of indicators since 1994. While the risk of poverty rate before all transfers is lower (31%) than the average of EU Member States, the role of the social protection system in alleviating poverty is still very limited. As a result, the risk of poverty rate including all transfers (25%) is significantly higher than the EU average of 15% in 2001.

Existing structures to promote social inclusion are highly dispersed and there is insufficient coordination of activities. It is important to promote an integrated approach mobilising various governmental bodies and all relevant stakeholders in the process. Efforts to bring social statistics on poverty and social exclusion into line with the EU's commonly agreed indicators on social inclusion should continue. Work still remains to be done in particular to improve the situation of disabled people. More importance should be given to strengthening central and decentralised structures and facilities for disabled people, including improving access to education for children with disabilities (*see also political criteria*). Joint work between Turkey and the Commission on the drafting of a

Joint Memorandum on Social Inclusion (JIM) to identify key challenges and relevant policy responses to promote social inclusion is due to start in the last quarter of 2004. In the field of social protection, the Government should pursue its ongoing efforts aimed at bringing about a reform of the social security system. Its main current weaknesses remain the lack of financial stability, the presence of a large informal sector and administrative and management problems. Efforts currently undertaken to upgrade the administrative capacity of the social security institutions are also strongly encouraged.

As regards the fight against discrimination, the Labour Law includes a number of general provisions relating to non-discrimination and equal treatment. However, further efforts are needed for a full transposition of the Employment Equality and Racial Equality Directives. The non-employment aspects of the Racial Equality Directive in particular have not been transposed; this concerns also the need to establish an Equality Body. Significant challenges remain with regard to the effective implementation and enforcement of anti-discrimination provisions (*see also Section B.1.3 – Human rights and the protection of minorities*).

Turkey has still not signed the 1996 Revised European Social Charter.

### *Conclusion*

The process of bringing Turkey's legislation into line with the *acquis* has started in a positive manner but is still incomplete. Further substantial efforts are still required on both the legislative and administrative sides.

Turkey should further pursue its efforts, particularly in areas related to labour law, gender equality, anti-discrimination, social dialogue and social protection. Progress is needed to improve the health status of the population, which is well below the EU average, and financial resources devoted to health need to be increased. Turkey should continue its efforts to develop a national employment strategy in line with the European Employment Strategy, and promoting social inclusion should be considered as a priority. Above all, the main challenge for Turkey in this chapter is related to the full implementation and enforcement of the *acquis* on the ground. Turkey must concentrate efforts on this as a matter of priority. Strengthening of administrative capacity should continue.

### ***Chapter 14: Energy***

EU energy policy objectives include the improvement of competitiveness, security of energy supplies and protection of the environment. The energy *acquis* consists of rules and policies, notably regarding competition and State aid (including in the coal sector), the internal energy market (for example, opening up of the electricity and gas markets, promotion of renewable energy sources, crisis management and oil stock security obligations), energy efficiency and nuclear energy.



### *Progress since the last Regular Report*

Since the last Regular Report, Turkey has made some progress in adopting the Community energy *acquis*.

Progress can be reported on the **security of supply**, including oil stocks. A New Petroleum Law, adopted in December 2003, envisages advancing legal alignment with the oil stocks *acquis*. In addition, the Law empowers the Energy Market Regulatory Authority (EMRA) to regulate and supervise the petroleum products market. EMRA is also a member of the Commission that will oversee implementation of the oil stockholding requirements of the Law.

In order to strengthen its security of energy supply, Turkey has continued its efforts to diversify resources and routes and to strengthen its role as a transit country for oil and gas from the Caspian Basin and the Middle East to the EU. Following a Turkey-Greece agreement for the construction of a gas interconnector of February 2003, BOTAS and DEPA, the Turkish and Greek gas companies, signed a natural gas sales and purchase agreement in December 2003. Construction of the interconnector is planned to start in 2004 and should be completed in 2006. In addition, Turkey has supported the planned “Nabucco” gas pipeline project (Turkey-Bulgaria-Romania-Hungary-Austria) for which the Caspian Basin, including Iran, could also be a supplier and is collaborating with the Mashreq countries in the project to bring natural gas from Egypt, Syria and eventually, when conditions permit, from Iraq to the EU. Regarding oil, the construction of the Baku-Tbilisi-Ceyhan pipeline progressed further with a view to being operational by 2005.

As regards **competitiveness and the internal energy market**, in March 2004, the High Planning Council adopted an *electricity sector* strategy paper with a road map aiming at sector reform, including privatisation. Privatisation of generation assets is envisaged to start in 2006, while for the distribution sector it is planned to be completed by mid 2006. The strategy also entails a further market opening plan as follows: current market opening of 28% (eligible customers being those consuming more than 7.8 GWh per annum) remains until the beginning of 2009. After 2009, and in the light of developments in security of supply, the market will gradually be opened up in order to reach 100% market opening by 2011. Regarding legislation, steps have focused on further improvement of implementing legislation on the Electricity Market Law, including licensing and tariffs regulations. Despite the 2003 initiative launched by the electricity distribution company (TEDAS) to tackle the problem of unpaid bills, losses in distribution (technical losses and theft) remain high at approximately 20% of the electricity generated in 2003. The target for 2004 is to reduce the loss to 18%.

With a view to integrating physically into the internal energy market and ensuring future synchronous interconnection of the Turkish power system with the western European electricity networks, the construction of the Babaeski–Filippi (Greece) link, planned to be operational by the end of 2006, has progressed further.

Regarding the *gas sector*, two distributors, formerly owned and operated by BOTAS, have been privatised under the Natural Gas Market Law. Further privatisation of gas

distributors is planned in various cities where gas has been newly introduced. Similarly to electricity, progress on legislation focused on further refinement of existing (implementing) legislation. The level of domestic gas market opening remained at 80% (eligible customers being those consuming more than 1 million cm/year). However, BOTAS keeps its current monopoly position regarding domestic supplies, (international) trade, transmission and storage activities. In this context, the Natural Gas Market Law requires BOTAS, since 2003, to conduct tenders to transfer to other market players its existing contractual obligations pertaining to natural gas purchases and sales, until its imports fall to 20% of annual consumption (the so-called “gas release programme”). No tangible progress has been made to date.

In December 2003, Turkey signed the Athens Memorandum designed to create Regional Electricity and Gas Markets in South East Europe along the lines of internal energy market principles. Partner countries are currently developing this Memorandum into a legally binding Energy Community in South East Europe.

As regards administrative capacity, the tasks of forty staff members of the sector regulator EMRA (Energy Market Regulatory Authority) have moved, as a result of the new activities under the new Petroleum Law, to the authority’s new petroleum department.

As regards **energy efficiency** some progress has been made with the adoption of a comprehensive energy efficiency strategy by the government. No specific progress has been made with regard to **renewable energy**.

Regarding solid fuels and **nuclear energy**, no particular development can be reported. Turkey does not operate any nuclear power plants.

There is one research reactor ITU-TRR, 250 kV, TRIGA II type at the Istanbul Technical Institute put into operation in 1979. Two more research reactors (TR-1, TR-2) were shut down in 1977 and 1995 respectively. A radioactive waste processing facility has been operating since 1989 in Cekmece.

### *Overall assessment*

As regards security of supply, the new Petroleum Law represents a step forward towards alignment with the oil stocks *acquis*. Turkey holds 90 days of emergency oil stocks in accordance with requirements of the International Energy Agency. Compliance of these quantities with the *acquis* remains to be confirmed.

The recent electricity sector strategy paper will be a tool to tackle the remaining fundamental problems in the sector and should thus be fully and timely implemented. This includes, *inter alia*, the disputed build–operate–transfer and transfer–of–operating–rights contracts (generation and distribution) for which the guaranteed prices must be adapted to Turkey's current legal framework and the established time table for the phasing out of these subsidies should be implemented. The financial discipline in energy companies, including the collection rate of electricity bills, should be substantially

improved, the regulation prohibiting cross-subsidies should be effectively implemented and a timeframe for the phasing out of these subsidies should be established. In order to achieve proper functioning of a competitive electricity market in line with the *acquis*, further legislative and administrative steps need to be taken. The dominant position of the state trading company in the wholesale market should be adjusted, the current restrictions for cross-border trading should be removed and the existing long-term power purchase agreements should be tackled. Further market opening steps should continue to be taken, including with a view to the market opening schedules envisaged for the creation of the an Energy Community (Electricity and Gas) in South East Europe. Turkey is encouraged, given its physical interconnection with the internal electricity market, to pursue its efforts towards synchronous connection of its power system with the Western European electricity transmission networks.

Turkey should continue the reform of the gas sector, including privatisation. In this respect, the delay in the implementation of the first phase of the envisaged gas release programme (requirement to pull out of certain anti-competitive gas sales) creates uncertainty in the market, in particular among possible investors. A concrete strategy for the proper implementation of this ambitious programme remains to be developed. Alignment with the *acquis* needs to be completed, while effective market opening should be ensured. In this context, BOTAS's monopoly position should be adjusted. Furthermore, BOTAS should ensure account unbundling and adopt a programme for legal unbundling as required by the *acquis*. A timeframe for the removal of cross-subsidies should be developed. The development of the appropriate legal and financial framework permitting fair and transparent gas transit conditions will enable Turkey to play a major role as a gas transit country to the EU.

Turkey is strengthening its position as an energy transit country, including through the development of projects of common interest the guidelines for Trans European energy Networks. It is increasing its role as transit country for gas from Russian, the Caspian sea region and the Middle-East, including through the development of the Nabucco gas pipeline, and for electricity through improving the interconnection with its neighbouring countries. Turkey is encouraged to continue its efforts to improve its gas and electricity interconnections, which are essential in order to meet the needs of the internal market, to strengthen the security of supply and also the future Energy Community in South East Europe.

Following the increasing awareness in the EU on the need to protect energy infrastructures from malicious acts, Turkey will be expected to actively participate in all initiatives that the EU may take in view of a stronger security in the energy sector.

The administrative capacity of the electricity, gas and petroleum markets regulator, EMRA, needs to be strengthened, including in terms of the number of qualified staff. Monitoring the activities of TEIAS and BOTAS, the state-owned electricity and gas network operators, remains a key task for the regulator.

The level and nature of state aid to the hard coal industry continues to require attention. Compliance with the relevant *acquis* needs to be ensured.

Turkey's performance on energy efficiency and the promotion of renewable energy sources has so far been weak. Financial resources to underpin activities in this area remain limited. The energy intensity of the Turkish economy is high and the potential for the use of renewable energy sources remains underused. Despite the progress already achieved in legislative approximation concerning energy efficiency, further efforts are necessary to achieve full compliance with the *acquis*. Timely adoption of the Energy Efficiency Law will be instrumental to completing alignment. The new energy efficiency strategy sets out a schedule towards alignment with the energy efficiency *acquis* and will help, if properly implemented, to further exploit Turkey's significant energy efficiency potential. Similarly to energy efficiency, an overall strategy for the promotion of renewable energy in Turkey should be developed. Turkey should adopt a Renewable Energy Law. Furthermore, Turkey should increase its efforts to make good use of its important potential for renewable energy sources and set ambitious targets.

Energy efficiency measures and activities are carried out by the National Energy Efficiency Conservation Centre, which is under the responsibility of the Ministry of Energy. Its current status needs reviewing and, if necessary, modifying in order to ensure more effective horizontal coordination among all the relevant sectors, including energy, construction, transport, industry and environment. The institutional conditions for renewable energy sources need to be improved.

On nuclear energy, Turkey will need to ensure compliance with Euratom requirements and procedures. In this respect, due attention should continue to be given to preparing for the implementation of Euratom safeguards by persons or undertakings operating nuclear installations or storing nuclear material, such as universities, hospitals and medical practices. It is recalled that Turkey has signed a safeguards agreement with the IAEA which entered into force in 1981 and it has also ratified an Additional Protocol to the Agreement, which entered into force in July 2001.

### *Conclusion*

Although Turkey has made progress with respect to adopting the Community *acquis* and is trying to accelerate its effective implementation, its overall alignment remains limited and uneven across the different areas of energy policy.

Further efforts are necessary, throughout the sector, to align with the *acquis* and to ensure effective implementation and enforcement of the legislation. Sector restructuring including privatisation and the elimination of price distortions, should continue with a view ultimately to achieving competitive energy markets, in line with the *acquis*. Turkey will play a pivotal role in diversifying resources and routes for oil and gas transit from neighbouring countries to the EU. Further efforts are needed to ensure completion of alignment, effective implementation, and enforcement of the national legislation and strengthening of administrative capacities in the nuclear field.

## ***Chapter 15: Industrial policy***<sup>23</sup>

EU industrial policy seeks to enhance industrial competitiveness and rates of employment, whilst operating in markets open to international competition. Its aim is to speed up adjustment to structural change, encouraging an environment favourable to initiative and to the development of businesses throughout the Community. EU industrial policy mainly consists of policy principles and horizontal and sectoral industrial policy communications. An important element of any industrial policy is controlling state aid and ensuring the compatibility of support schemes with EU rules (*see also Chapter 6 – Competition*).

### *Progress since the last Regular Report*

Since the last regular report, Turkey has made some progress in this chapter.

With regard to **industrial strategy**, it has made some progress. The Turkish Government adopted its *Industrial Policy for Turkey*, which is a medium-term policy paper laying down a general framework for industrial policy. It covers the present situation, the institutional framework, objectives, policies and related measures, in particular for the manufacturing industry. The main objective of industrial policy in Turkey is to increase competitiveness and productivity to promote and maintain sustainable growth, based on an outward oriented approach to face increased global competition. Turkey presented the implementation report on this policy in July 2004.

As regards **restructuring and privatisation**, very limited progress has been made. With respect to public-sector reform, the government continued to address the problem of overstaffing in state-owned enterprises. By December 2003, 25,074 surplus public sector workers had retired or been transferred to other state institutions.

Although an ambitious privatisation target of €1,850 million was set in 2003, privatisation receipts amounted to only €226 million. The government tried to privatise the alcohol and tobacco production facilities of TEKEL separately. While the sale of its alcohol production facilities was completed in February 2004, the privatisation of TEKEL's tobacco factories was cancelled since the highest bid received was deemed inadequate. Furthermore, although the tendering process for the block sale of the Turkish state's 65.76% stake in the TUPRAS petroleum refining company was concluded for a sum of €1,147 million, the deal was blocked by a court decision in May 2004. This decision was appealed by the Privatisation Administration. The Supreme Administrative Court decided in favour of the local administrative court's decision. As a result the privatisation process has been blocked until the Supreme Administrative Court gives its final decision on the sale of TUPRAS.

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<sup>23</sup> Developments concerning industrial policy should be seen in relation to overall enterprise policy, including SME policy (*see also Chapter 16 - Small and medium-sized enterprises*).

During the reporting period, the state-owned mobile phone operator (*Aycell*) was merged by government decision with one of Turkey's private mobile operators. Furthermore, a law concerning the privatisation of Turk Telekom was adopted in June 2004. This law annulled the previous provision which had limited foreign investors' eventual share up to 45% after privatisation. There has been no progress concerning the restructuring of the Turkish steel industry.

As regards foreign direct investment, the necessary development of the legislative framework has not taken place and FDI flows remained at a low level in the reporting period. A first meeting of the "Investor Advisory Council", repeatedly postponed since the initial proposal more than two years ago, was held in March 2004. This is an initiative of the World Bank based on a scheme applied in other countries under which national administrators consult with high-level representatives of foreign investors. A law on mining was adopted in May 2004. The new *mining* law, which incorporates the previous regulations under a single framework, defines more clear and strict procedures for the cancellation of mining licenses. This aims to increase protection of licensee rights of investors. Furthermore, the new law eases bureaucratic requirements of application for mining license and extends geographical scope of mining areas which were previously inaccessible (*see also Chapter 22 – Environment*).

### *Overall assessment*

Turkish industrial policy remains largely in conformity with the principles of EC industrial policy. While the adoption of the industrial strategy policy is a positive step, effective implementation, including benchmarking, remains weak.

Concerning foreign direct investment, substantial restrictions still exist on ownership by foreigners in some sectors. Although Turkey adopted a framework FDI law in June 2003 designed to simplify procedures, other legislation still needed to be harmonised in the fields of public procurement, taxation, intellectual property rights, anti-trust policy, monitoring of state aid and the adjustment of state monopolies. Moreover, the proper implementation of this legislation, as well as clarity, transparency and legal certainty in the judicial system, are as essential for the encouragement of foreign investment as simplifying bureaucratic procedures. The government also initiated the "Reform Program for the Improvement of the Investment Environment in Turkey". Under this programme, ten inter-ministerial technical committees comprising public and private sector representatives have proposed a substantial number of amendments in a number of legislative instruments affecting the investment environment. The actual follow-up by the government of this work and the concrete results achieved were limited.

Current governmental efforts to establish a uniform organisational structure for all independent regulatory authorities via the adoption of framework legislation raise concerns about potential political intervention in the operations of such authorities.

The Turkish steel industry suffers structural problems that need to be dealt with both at national level and individual business level. Turkey's production of long products is almost twice its domestic needs, whereas flat rolled products scarcely meet half of

domestic demand. Turkey's iron and steel industry has been handicapped by this imbalance in long/flat production.

The transitional period allowed under the ECSC-Turkey Free Trade Agreement for granting subsidies to the Turkish steel sector expired in August 2001. The Turkish authorities have asked the European Union to extend the period for which public aid can be granted to steel companies for restructuring. Accordingly, the EU has required the Turkish authorities to prepare a national restructuring plan (NRP) and individual business plans for all companies that need to be involved in the restructuring process. Strategic decisions have still to be taken on these issues. In this context the establishment of an operationally independent state aid authority is crucial (*see also Chapter 6 - Competition policy*).

### *Conclusion*

There is a certain alignment with the principles of industrial policy of the EU.

Implementation and coordination among different government bodies need further improvement. Further effort is needed to restructure and privatise state-owned enterprises, in particular state-owned banks. The restructuring of the steel industry continues to be of concern and needs to be addressed with high priority. Turkey should adopt legislation on state-aid monitoring and establish an operationally independent state-aid monitoring authority. Despite the ambitious target set by the government, the actual level of privatisation remains well below potential. Turkey should accelerate efforts to improve the legal, regulatory, and administrative framework for investment.

### *Chapter 16: Small and medium-sized enterprises<sup>24</sup>*

EU SME policy aims to improve the formulation and coordination of enterprise policy across the internal market with a view to supporting the development of SMEs. In doing so, it seeks to improve the overall business environment in which SMEs operate. SME policy consists largely of consultation forums and Community programmes, as well as communications, recommendations and exchanges of best practices.

#### *Progress since the last Regular Report*

Since the last Regular report, Turkey has made some progress in following the approach of the EU SME policy.

Some progress has been made on **SME policy** by the adoption of an SME Strategy and Action Plan by the Turkish Government in November 2003. The strategy document is a medium-term policy paper drawing a general framework for SMEs in line with the

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<sup>24</sup> Developments concerning SME policy should be seen in relation to the overall enterprise policy, including Industrial policy (see chapter 15 – Industrial policy).

enterprise and entrepreneurship policy of the EC, such as the European Charter for Small Enterprises and the Multiannual Programme for Enterprise and Entrepreneurship. It includes an Action Plan for the implementation of the strategy.

In July 2004, the Government established an Advisory Committee for the monitoring and evaluation of the SME Strategy and Action Plan. However, participation in this purely consultative committee is limited to public or semi-public bodies, and the private sector is underrepresented.

There has been some progress on the simplification of the **business environment**. Following the restructuring process at SME support institutions, such as the Small and medium-sized industry development organisation, KOSGEB, and the Turkish Scientific and Technological Research Council, TUBITAK, the application procedures for SME support schemes have been considerably simplified and reduced, e.g. the required documents for KOSGEB incentives have been reduced from 48 to 5 on average.

Turkey launched the “e-Transformation Turkey” project, which contains several actions on information society strategy, technical infrastructure and information security, education and human resources, legislative infrastructure, standards, e-Government and e-commerce. These actions are all aimed at facilitating the access and operations of SMEs in the areas concerned.

Within the framework of the Multiannual Programme for Enterprises and Entrepreneurship, where Turkey has participated fully since 2003, nine Euro Info Centres (EICs) have been opened in Turkey to provide SMEs with a first stop shop on EU matters. The Innovation Relay Centre (IRC) network has also been extended to Turkey with the opening of two centres, which would act as a catalyst for SMEs on technology transfer and R&D activities. The establishment of websites for the Multiannual Programme for Enterprises and Entrepreneurship and the 6th Framework Programme is an important step for the transparency and dissemination of information concerning Community programmes in Turkey.

Turkey has made significant progress on access to finance for SMEs, based on the improvement in macroeconomic conditions. Many public and private banks have launched special SME loan facilities, some of them funded by national and international donors. The Turkish Government signed a €250 million loan facility agreement with the EIB and a \$300 million facility with the World Bank to support SMEs. The chambers of Commerce Association, TOBB and KOSGEB transferred €120 million to public banks. This money will be used for extending credits to SMEs. The Istanbul Stock Exchange launched two new markets for SMEs, the Second National Market and the New Economy Market. Private banks in general have started to look at SMEs as clients, due to reduced activity in trading government bonds after the considerable decrease in interest rates.

There are no new developments regarding the **SME definition**, which is not yet in line with the *acquis*.



### *Overall assessment*

Although registration procedures have already been simplified, the amount of documentation and the costs required to establish a company remain unduly high. Turkey should make more effort to improve services for SMEs, online services in particular. This should not only cover information provision, but also alleviate administrative procedures, such as application for incentives, public tenders, etc.

The establishment of websites is an important step for the transparency and dissemination of information concerning Community programmes in Turkey. The IRCs, EICs and BCs will play a key role in the establishment of efficient business support services in Turkey.

While the creation of the Advisory Committee for the monitoring and evaluation of SME Strategy and Action Plan is a positive development, Turkey should ensure greater involvement of the private sector in the formulation of its SME policy.

The young entrepreneur promotion and entrepreneurship counselling programmes are positive initiatives to develop a stronger entrepreneurship culture.

Further efforts are needed to improve the business climate for SMEs. While business expectation surveys indicate optimism on SMEs for higher turnover and domestic demand, there is pessimism on employment and investment. Furthermore, high energy costs, lack of working capital and high tax rates remain major obstacles for Turkish SMEs.

Although KOSGEB revised its support mechanisms and increased the number of SME support incentives from 8 to 38, these schemes still cover only the manufacturing sector; disbursement of incentives is high, with 90% of available funds being used. The transparency of award procedures for these incentives needs improvement.

The exemption or reduction in certain obligations, such as social security and tax payments for R&D activities in technology development zones, is positive for innovative small enterprises and start-ups. The new inflationary accounting system for tax purposes is also important progress for SMEs.

However, still high real interest rates and short maturities remain serious constraints for SMEs in their access to credits.

Furthermore, the insufficient functioning of the commercial judiciary is another important impediment to SMEs.

Turkey should align its SME definition with the recommendations of the Commission.

### *Conclusion*

Turkey's policy towards SMEs is broadly in line with the principles and objectives of EU enterprise policy.

The improved access to finance for small enterprises due to public efforts and the improved macroeconomic environment is a positive development. Further efforts are needed to improve the business environment as well as access to finance. Delays in the treatment of commercial court cases are another important impediment to the development of SMEs. Although the adoption of an SME Strategy and Action Plan is an important step for Turkish SMEs, Turkey should establish a monitoring and evaluation mechanism including full private sector participation. Turkey still needs to align its SME definition on the relevant Commission recommendations.

### ***Chapter 17: Science and research***

Due to its specificity, the *acquis* in the field of science and research does not require any transposition into national legislation. Implementation capacity does not relate to the application and enforcement of legal provisions but rather to the existence of the necessary conditions for effective participation in the Framework Programmes. In order to ensure the successful implementation of the *acquis* in this domain, and in particular successful association with the Framework Programmes, Turkey will need to create the necessary implementing capacities in the field of research and technological development, including an increase in personnel related to Framework Programmes' activities.

#### ***Progress since the last Regular Report***

Since the last Regular Report, some progress has been made.

Turkey continues to be associated with the Sixth EC Framework Programme for Research and Technological Development.

An amendment to the law of the Turkish Scientific and Technical Research Council (TUBITAK), giving temporary authority to the prime minister to appoint the president and science council members of TUBITAK, entered into force in December 2003. Based on this amendment, the prime minister appointed six members, whose posts had been vacant since September 2003, to the science council. These six members in turn appointed the president of the council. However, the main opposition party brought the matter before the Constitutional Court, which suspended implementation of the amendment.

A decree regulating the procedure for procurement of goods and services by TUBITAK and its institutions for research and technological development purposes was ratified by the cabinet and published in the Turkish Official Gazette in April 2004.

The Ministry of Finance issued a regulation in April 2004, regulating the financial and accounting problems encountered by public institutions, universities in particular, concerning the use of EU funds under the Sixth Framework Programme for research and technological development.

TUBITAK initiated a support programme, namely “The Career Programme”, which aims to encourage young researchers who have just completed their doctorate studies and are at the beginning of their career to become scientists. Moreover, TUBITAK continued to provide financial support for international scientific meetings, for the encouragement of international scientific publications and for project applicants under the Sixth Framework Programme. The Turkish Technology Development Foundation continued to provide financial support for technology development projects. The budget of TUBITAK has increased by 35% in 2004 due to an increase in its activities.

Following Turkey’s representation in the Joint Research Centre’s board of governors and Turkey’s participation in the Sixth Framework Programme, a number of Turkish scientists started to benefit from the research opportunities offered by the Joint Research Centre. Currently, twelve Turkish partner institutions co-operate with eight research networks of the Joint Research Centre of the Commission.

### *Overall assessment*

The framework for cooperation in the field of science and research, including National Contact Points, has been established. Representatives from Turkey participate as observers in programme committee meetings under the Sixth Framework Programme.

Under the calls for proposals launched under the Sixth Framework Programme so far, the success rate of Turkish applicants has been low. It is vital to take further significant steps to increase both the quantity and quality of Turkish participation in the Sixth Framework Programme.

Available statistics continue to indicate that the level of gross domestic expenditure in research and development as a percentage of GDP is low, still around one third of the EU average. Similarly, the number of researchers continues to be very low. Universities (76, of which 53 state universities) and public research institutions (17 national research institutions) remain the main catalysts in scientific and research activities. Turkey needs to focus further efforts on increasing expenditure in research and development and strengthening the role of the private sector and SMEs in research and technology activities. Increasing the focus on benefiting more from the Sixth Framework Programme is also expected to contribute to these efforts.

However, Turkey figured relatively highly as regards the number of publications in international periodicals, from 1991 to 1998. Turkey rose from 39<sup>th</sup> place to 25<sup>th</sup> place for the number of publications in the Science Citation Index.

### *Conclusion*

Turkey’s capacity in the area of science and research remains limited, but it is devoting continuous efforts to increase its participation in the research and development Programmes and activities.

Turkey should make efforts to further reinforce the research-related administrative capacity and infrastructure, so as to ensure successful association with the Sixth Framework Programme as well as effective participation in the European Research Area. Administrative and management problems within TUBITAK, which is one of the most important players in Turkey in the field of science and research, need to be addressed.

### ***Chapter 18: Education and training***

Education, training and youth are primarily the responsibility of the Member States. The EC Treaty provides that the Community will contribute to the development of quality education and implement a vocational training policy that supports and supplements the action of Member States. The *acquis* consists of a Directive on education of the children of migrant workers, and of action programmes and recommendations. Member States need to have the necessary implementing capacity in place to participate effectively in the Community programmes related to this chapter (Leonardo da Vinci, Socrates and Youth).

#### *Progress since the last Regular Report*

Some progress has been achieved in the area of education and training since the last Regular Report.

Considerable progress has been made by the Turkish National Authorities and the Turkish National Agency concerning the participation in **Community Programmes**, Socrates, Leonardo da Vinci and Youth. Turkey has completed the necessary preparatory measures and participates fully in the programmes since April 2004. The Turkish National Agency has developed its implementation capacity in terms of both staff and infrastructure and first experiences of programme implementation have been largely satisfactory.

A law concerning the **education of the children of migrant workers** is being implemented.

As regards **reforming the education and training system**, there has been impressive progress in the enrolment of girls, particularly in the south-eastern regions and eastern Anatolia, with the support of UNICEF and EU-funded education programmes. The Ministry of National Education adopted standard curricula based on the International Standard Classification of Education with the support of EU-funded vocational education and training (VET) programmes, which cover both the initial, as well as continuing education throughout a person's life, such as formal and non-formal education.

An amendment to the Constitution was introduced in May 2004 as regards the composition of the Board of the Council for Higher Education. As a result of this the General Staff will no longer be authorized to appoint a representative to the Board.

### *Overall assessment*

The start of participation of Turkey in the Community Programmes and the performance of the Turkish National Agency are on the whole satisfactory. However, continuing efforts are required to consolidate the achievements of the first period and ensure the highest standards of coordination and management of Community Programmes.

Investment in education measured as a share of GDP is still below the EU average (*see also section B.2. - Economic criteria*). Early school-leaving rates continue to be very high. Despite impressive progress gender disparities in education in Turkey are still significant, particularly in the south-eastern regions and eastern Anatolia.

At present, the Turkish Government relies on a heavily centralised management structure, which also applies to general and vocational education. The 81 provinces headed by a Governor mostly play an administrative role with limited decision-making power. However, the Government adopted “The Local Administration Reform Package” aimed at decentralisation in certain sectors, including general education and vocational training. It seeks to bring closer to the regional level some responsibilities regarding education and training. This process should be accompanied by the strengthening of regional services and the involvement of the social partners. It will also involve the need to change the management culture of public administrators and the modernisation of their working methods.

A law of 1997 provides for compulsory pre-school education for disabled children, but the attendance rate of such children remains extremely low. Turkey needs to make substantial efforts to provide facilities and to convince concerned families to send their disabled children to school.

In order to facilitate school attendance for children from poorer families, the Ministry of National Education has distributed textbooks free of charge at the basic education level in the school year 2003/2004. This has contributed to increased attendance rates.

Existing legislation providing tax incentives for private donors wishing to support education has resulted in 277 new schools and the refurbishment of 200 with the help of private contributions.

In the field of higher education the Higher Education Council is responsible for controlling the compatibility of the education programmes with the fundamental principles contained in the Law on Higher Education, and enjoys broad disciplinary powers concerning rectors and faculties. This highly centralised structure prevents universities from having sufficient academic, administrative and financial autonomy and from being more labour market-oriented. Existing limitations on access to higher education for the graduates of vocational education and training schools have led to a decline in enrolment in vocational education and training and have not reversed the trend towards general education. The involvement of the social partners in the definition of vocational education policies remains limited.

Participation in lifelong learning is very low. Therefore all obstacles that make lifelong learning, including university education, difficult should be removed.

### *Conclusion*

Turkey should continue to participate in the three Community programmes. Further development work is necessary to enable it to benefit fully from the Community Programmes.

Turkey should continue its reform efforts in education and training. With a view to making universities more labour-market oriented, the coordinating role of the High Education Council should be re-examined. Turkey also needs to enhance links between labour market and education.

### *Chapter 19: Telecommunications and information technologies*

The *acquis* in the field of telecommunications is aimed at the elimination of obstacles to the effective operation of the Single Market in telecommunications services and networks, and the achievement of universally available modern services. A new regulatory framework on electronic communications was adopted by the EU in 2002. As regards postal services, the objective is to implement the Single Market by opening up the sector to competition in a gradual and controlled way, within a regulatory framework which assures a universal service.

#### *Progress since the last Regular Report*

Since the last Regular Report, very limited progress has been made.

Concerning **telecommunications**, limited progress has been achieved in *acquis* alignment although the remaining monopoly rights of the state-owned incumbent operator, Turk Telecom, were legally abolished at the end of 2003, including those concerning national and international voice telephony and the establishment and operation of telecommunication infrastructure. In principle therefore, the telecommunication markets has been open to new entrants since January 2004 and this has led the Telecommunication Authority into an intensive work programme. Generally, the measures needed to facilitate market entry emerged afterwards and, although much progress has been made, there are still obstacles hindering new entrants. Implementing legislation was adopted, including on numbering, co-location and facility sharing. The regulation on telecommunications services was amended in April 2004.

Following the market opening in fixed telephony, the Telecommunications Authority issued seven licences for data transmission services over fixed lines.

Other telecommunications licences granted in 2003 include one for global mobile personal communications by satellite, one for satellite platform services and one for satellite telecommunications services. With the additional 10 licences issued in 2003, there are 96 internet service providers on, the market.

Penetration of mobile services has increased to 39%. The total GSM market has reached 27.9 million users. The Bill concerning the merger of the latest two market entrants was approved by Parliament in January 2004. The merger was completed in February 2004. The new company has about 4.5 million subscribers representing 15% of the total market.

In the field of administrative capacity the human resources situation has been improving due to the training and recruitment of new staff. Currently, the Telecommunications Authority has 454 employees of which 60 deal directly with regulatory tasks.

As regards **postal services** very limited progress can be noted concerning the need for a new and modern regulatory system for the Turkish postal market.

### *Overall assessment*

The full liberalisation of the telecommunications services is expected to pave the way for the proliferation of telecommunications services while causing a decline in prices, in particular in international voice telephony through voice over Internet protocol, as well as quality enhancement. Further efforts are essential to complete the telecommunications regulatory framework and ensure effective implementation and enforcement. Implementing legislation in various fundamental areas, including leased lines, carrier selection and carrier pre-selection, number portability, local loop unbundling and universal service is still not in place.

Liberalising measures are likely to be more effective if the government adopts a generally lower cost approach to the sector, which is compatible with the acquis. At present, licence fees are excessive in relation to the administrative costs of the sector and abnormally high and discriminatory taxes have been imposed on mobile telephony.

As regards fixed telephony, Turk Telecom serves 19 million subscribers and has a 27% penetration rate. The penetration rates for access to the Internet and cable television connection are still relatively low at around 8% each. Although the fixed voice and satellite services markets in Turkey are already open to competition, they are still under a de facto monopoly of Turk Telecom. Despite the increased number of service providers, broadband access remains limited.

More effective implementation of legislation, in particular in relation to licensing and tariffs, is still essential to create a competitive environment in the sector. The implementation of the single European emergency call number “112” is still limited to calls to public hospitals.

Concerning administrative capacity, the Telecommunications Authority’s role in the market will increase in importance after full market liberalisation. This will require larger numbers of competent staff, in particular specialised in economic regulatory matters. The growing workload may require the recruitment of additional staff with appropriate qualifications.

The adoption of a comprehensive programme for the liberalisation of postal services is needed to allow the start of legislative and institutional alignment. An independent national regulatory authority for the postal market needs to be established. Major and sustained efforts are needed in this area to fully comply with the *acquis*.

### *Conclusion*

There is a certain level of alignment with the *acquis*.

Full market liberalisation, including the removal of the *de jure* monopoly of Turk Telecom on voice telephony and infrastructure, was achieved at the end of 2003 in legal terms. Further efforts, however, are essential to complete the regulatory framework and to effectively implement and enforce the rules in relation to the large powerful companies that dominate the market at present. The necessary implementing legislation has not been fully adopted yet. The progress achieved in some markets, such as mobile telephony or internet service provision, could not be achieved in all telecommunication services. Therefore, Turkey needs to take further steps in order to achieve genuine competition in all telecommunication markets. Very limited progress has been made as regards postal services.

### *Chapter 20: Culture and audiovisual policy*

This chapter requires legislative alignment with the Television without Frontiers Directive which creates the conditions for the free movement of television broadcasts within the EU. It includes basic common requirements concerning jurisdiction, advertising, major events, the promotion of European works, the protection of minors and public order, and the right of reply. The chapter also includes the community programmes Culture 2000, Media Plus and Media Training.

### *Progress since the last Regular Report*

In the area of **audiovisual policy**, Turkey has made some progress since the last Regular Report. A new regulation concerning Radio and Television Broadcasts in Languages and Dialects traditionally used by Turkish Citizens entered into force in January 2004, replacing a regulation of 2002 that was never implemented. The new regulation extends to nationwide TV and radio the possibility of broadcasting in languages other than Turkish. Previously only the public service broadcaster (TRT) was permitted to do so. However, such broadcasts can only cover news, music and cultural programmes for adults and broadcasting time is limited. Local and regional broadcasters will only be able to apply to broadcast in other languages at a later stage, following completion of a survey on the use of local languages in all regions of Turkey, to be carried out under the supervision of the regulatory body (RTÜK) (*see also Section B.1 – Political Criteria*).

The Constitutional Court has still not decided on the 2002 appeal by President Sezer, asking for suspension of the enforcement of two articles of the Law on Establishment of Radio and Television Enterprises and their Broadcast, as amended in the framework of



the third reform package of that year. The contested provisions concerned the appointment of members of the Supreme Council and the maximum quota of shares owned by broadcasting corporations.

In the area of **culture**, Turkey has expressed interest in participating in the Culture 2000 programme and negotiations are under way with a view to its participation in 2005.

### *Overall assessment*

The Regulation Concerning Radio and Television Broadcasts in Languages and Dialects used traditionally by Turkish Citizens is a step towards the basic principles enshrined in the *acquis*. However, the regulation has not been fully implemented with further measures needed for its application. Turkey's level of alignment with the *acquis* in this chapter remains limited to some provisions concerning advertising. The Law on the Establishment of Radio and Television Enterprises and their Broadcast still poses major problems in terms of definitions, jurisdiction, freedom of reception, discrimination on the grounds of nationality, major events, promotion of European and independent works, advertising and tele-shopping, protection of minors, and restrictions on the share of foreign capital in radio and television enterprises.

Despite broadcasting legislation which 10 years ago abandoned the State television monopoly and created a strong regulatory body (RTÜK), there is still no stable, transparent and effective regulatory framework in Turkey: radio and television stations pre-existed the regulatory framework and the regulatory authority has not yet been in a position to re-allocate frequencies and review the existing temporary licences. The RTÜK also has strong sanctioning powers but they seem rather ineffective, even in the limited field of content regulation where they are used. The independence of the Regulatory body should be strengthened.

### *Conclusion*

Turkey is partly aligned with the *acquis* in audiovisual policy.

Whilst Turkey's alignment with the *acquis* in this chapter remains limited, some progress has been made towards its transposition through adoption and implementation of the regulation concerning Radio and Television Broadcasts in Languages and Dialects used traditionally by Turkish Citizens, albeit with restrictions. Broadcast in languages other than Turkish has started and the process needs to be further consolidated. Substantial efforts are still required to bring Turkish legislation and implementation into line with the *acquis*. The strengthening administrative capacity should continue. Turkey is encouraged to continue with, and effectively implement, its legislative reforms.

### ***Chapter 21: Regional policy and coordination of structural instruments***

The *acquis* under this chapter consists mostly of framework and implementing regulations, which do not require transposition into national legislation. They define the rules for drawing up, approving and implementing Structural Funds programmes and

Cohesion Fund actions. These programmes are negotiated and agreed with the Commission, but implementation is the responsibility of the Member States. It should be noted that the Structural Funds regulations will be revised by the end of 2006 at the latest. It is essential that Member States respect Community legislation in general, for example in the areas of public procurement, competition and environment, when selecting and implementing projects, and have the necessary institutional structures in place to ensure implementation in a sound and cost-effective manner from the point of view of both management and financial control.

### *Progress since the last Regular Report*

Since the last Regular Report, very limited developments are to be reported in the area of regional policy and coordination of structural instruments.

On **territorial organisation** no developments are to be reported. As regards the **legislative framework**, there have been some improvements in the areas of environment (*see also Chapter 22 – Environment*) and financial control (*see also Chapter 28 – Financial control*).

Concerning **institutional structures**, and pending the establishment of fully operational regional development agencies, the State Planning Organisation (SPO) has in some regions established service unions between the provinces that form a provisional NUTS II unit. These encompass a partnership of provincial and municipal administrations in order to provide regional management structures for the implementation of regional development programmes. A total of four service unions are operational in those NUTS II regions where EC-funded regional development projects are being implemented.

As regards the preparation of **programming**, Turkey's preliminary National Development Plan (2004-2006) was approved in December 2003 and presented to the Commission. With a view to the introduction of the partnership principle seen in European regional development programmes, Turkey made efforts to consult other partners in the preparation of the plan.

Concerning **monitoring and evaluation**, April 2004 saw the establishment of a new department at the State Planning Organisation specifically responsible for the monitoring and evaluation of regional development programmes. The **financial management and control** regime should see improvements as a result of the new Public Financial Management and Control Law (*see also Chapter 28 – Financial control*).

Substantial developments have taken place in the field of regional **statistics**, chief amongst which is the establishment of regional statistical offices in each of the provisional NUTS II regions. Turkey has started to establish a database for regional data based on the provisional NUTS classification (*see also Chapter 12 – Statistics*).

### *Overall assessment*

Turkey needs to make substantial efforts to establish the necessary framework and structures for the implementation of the Structural and Cohesion Funds. Despite improvements such as the creation of service unions, regional statistical offices and the preparation of a draft law on the establishment of regional development agencies, there is little concrete progress to report concerning the creation of dedicated structures for the implementation of such measures. With the exception of the authority for the development of the Greater Anatolia Project, which has a regional office in the south-east, there are no other planning and implementing structures outside Ankara.

Regional development structures at regional level remain weak. Turkey needs to establish the bodies and mechanisms needed to implement the *acquis* under this chapter. Adequate capacity to implement regional policy needs to be established at central and regional level. At regional level, service unions cannot replace dedicated structures for implementing structural funds. The precise tasks and responsibilities of the service unions in relation to the implementation of regional programmes have not been defined. Structures still need to be designed and set up for monitoring and evaluation, along with financial management and control. As mentioned in the 2003 Regular Report, structures for effective coordination, rather than merely consultation, between the SPO and other line ministries concerned by regional development have yet to be put in place.

With regard to programming, effective involvement of all relevant stakeholders should be ensured (regional and local as well as social and economic partners), including the private sector. Any individual regional plans will have to form a coherent whole with the strategy of the national plan for the development of the regions. Although the preliminary National Development Plan constitutes an important step in programming the economic and social cohesion element of EC pre-accession assistance, considerable work needs to be done before the plan can be considered as meeting the requirements of a Development Plan in the sense of the Structural Funds regulation.

### *Conclusion*

As stated above, the *acquis* in this area does not, in general, require transposition. Nevertheless, Turkey still has substantial ground to cover in aligning itself with the EU in the field of regional policy and the use of structural instruments.

Considerable efforts are still necessary to develop sufficient capacity to implement regional policy at central and regional level, and the necessary institutions need to be created and endowed with adequate human and financial resources.

### ***Chapter 22: Environment***

Community environment policy aims to promote sustainable development and protect the environment for present and future generations. It is based on the integration of environmental protection into other Community policies, preventive action, the polluter pays principle, fighting environmental damage at source and shared responsibility. The

*acquis* comprises over 200 legal acts covering horizontal legislation, water and air pollution, management of waste and chemicals, biotechnology, nature protection, industrial pollution and risk management, noise and radiation protection. Ensuring compliance with the *acquis* requires significant investment, but also brings significant benefits for public health and reduces costly damage to forests, buildings, landscapes and fisheries. A strong and well-equipped administration at national, regional and local level is imperative for the application and enforcement of the environment *acquis*.

### *Progress since the last Regular Report*

Since last year's Regular Report, some progress has been made with regard to transposition.

As regards **integration of environmental issues into other policies**, no particular developments can be reported.

In the field of **horizontal legislation**, limited progress can be reported. A new regulation on environmental impact assessment and a law and an implementing regulation on access to information were adopted. Turkey ratified the United Nations Framework Convention on Climate Change.

As regards **air quality**, limited progress can be reported. A regulation on the quality of petrol and diesel fuels and legislation on the availability of consumer information on fuel economy and CO<sub>2</sub> emissions of new passenger cars were adopted. In addition, a communiqué on the quality of petrol and diesel fuels was enacted in June 2004. A regulation on precautionary measures against emissions from engines using diesel and pressurised petrol gases was amended.

In the area of **waste management**, some progress can be reported. A law was adopted on pollution abatement inherited from disposal and transboundary movements of hazardous waste in the Mediterranean Sea. Also, legislation was adopted on packaging waste, construction waste including excavation soil and rubble control, waste oils, and on management of waste collection facilities in ports and harbours, and on batteries and accumulators.

As regards **water quality**, very limited progress can be reported. A regulation was adopted on the protection of water resources against nitrates.

In **nature protection**, limited progress can be reported. An amendment of the Implementing Regulation on the implementation of the CITES Convention was adopted.

No developments can be reported as regards industrial pollution and risk management.

In the field of **genetically modified organisms**, no particular developments can be reported. As regards **chemicals**, limited progress can be reported, as a decree on prohibition of use and marketing of pesticides and similar products was adopted. A regulation was adopted on the establishment, management and inspection of laboratories

that plan to breed test animals and carry out tests for scientific and other purposes. No progress can be reported as regards **noise**.

As regards **nuclear safety and radiation protection**, limited progress can be reported. A regulation on the waste produced from the use of radioactive substances was adopted (*see also Chapter 14 – Energy*).

Turkey took some measures to strengthen its **administrative capacity** as a result of merging the Ministry of Environment and Ministry of Forest in 2003. However, there has been very limited progress in enhancing the overall administrative capacity, including addressing the issue of overlapping responsibilities and implementation. A regulation has been adopted on the establishment of a special commission to provide scientific support on environment issues.

### *Overall assessment*

With regard to horizontal legislation, the new environmental impact assessment regulation appears to be more in line with the *acquis*. However, a number of issues such as transboundary impact assessment and time allocated for public consultation require further attention. As applications need to be processed in a short period of time, this may have an impact on the quality of the assessments. Implementation of horizontal legislation still requires significant further efforts. Turkey has not yet ratified the Kyoto Protocol.

In the field of air quality, further legislation needs to be adopted and steps taken to start implementation, including upgrading of air quality monitoring.

Although legislation in the field of waste management is to some degree advanced, further efforts are needed to prepare a national strategy and waste management plan.

As regards water quality, further efforts are needed to transpose and implement the *acquis*, including a new framework law on the management of water resources in line with the water framework Directive. Cross-border cooperation needs to be stepped up with the neighbouring countries in this regard.

Despite the adoption of a number of regulations on nature protection, the level of legal harmonisation remains very low. A framework law on nature protection and implementing legislation on birds and habitats need to be adopted. The continuing loss of habitats is a cause of concern. Implementation and enforcement of legislation needs to be improved. Special attention needs to be paid to legislation in other policy areas having a link with nature protection.

As regards industrial pollution and risk management, legal alignment and implementation require significant further efforts.

With regard to chemicals and genetically modified organisms, further efforts are needed. Implementing measures need to be taken, such as establishing inventories.

As regards noise, legal alignment and implementation require further efforts.

In the field of nuclear safety and radiation protection, further efforts are needed as regards legislative alignment. Steps need to be taken to enhance implementation.

Turkey needs to take steps to integrate environmental protection requirements into the definition and implementation of all other policies, and to promote sustainable development.

The establishment of an integrated Ministry of the Environment and Forestry is a positive step in relation to administrative capacity. However, it appears that this integration has not yet been effective in enhancing implementation. There are overlaps in competencies between different ministries and institutions, and therefore further efforts are needed. Special attention should be given to the administrative setup at different levels of the country under the newly proposed local administrative reform law. The overall planning, implementation and enforcement of environmental legislation is a major concern. Significant efforts towards effective implementation of environmental legislation, especially recruitment and training of specialised staff and the purchase of equipment, are needed.

Considerable investments need to be secured, including in the medium term, to ensure implementation of the environment *acquis*. In this context, it needs to be stressed that all new investments should comply with the EU environment *acquis*.

### *Conclusion*

Despite some progress, the overall level of transposition of the environment *acquis* remains low. Moreover, weaknesses in implementation and enforcement are still sources of major concern.

In order to make progress towards the *acquis*, further efforts are needed with regard to transposition and implementation, particularly in the areas of horizontal legislation, air quality, waste management, water quality, nature protection, industrial pollution and risk management. Particular attention is also needed to strengthen administrative capacity and coordination mechanisms between the authorities involved in the implementation of environment policy. Considerable investments need to be secured, also in the medium term.

### ***Chapter 23: Consumers and health protection***

The *acquis* covers protection of the economic interests of consumers (concerning misleading and comparative advertising, price indication, consumer credit, unfair contract terms, distance and doorstep selling, package travel, timeshare, injunctions for the protection of consumers' interests, certain aspects of the sale of consumer goods and associated guarantees and distance marketing of consumer financial services) as well as the general safety of goods (liability for defective products, dangerous imitations and general product safety). EU Member States need to effectively enforce the *acquis* through

appropriate judicial and out-of-court dispute resolution mechanisms and administrative systems, including market surveillance and a role for consumer organisations.

### *Progress since the last Regular Report*

Since the last Regular Report, Turkey has made further efforts to implement and effectively enforce the new Consumer Law all over Turkey.

Following the adoption of the framework law on consumer protection in June 2003, together with the 16 implementing regulations, both in the safety and non-safety-related areas, implementation of such legislation has started.

Concerning **safety-related measures**, no new legislative developments can be recorded. The revised directive on general product safety has not been fully transposed yet.

As regards **market surveillance**, the Ministry of Health has prepared its market surveillance strategy on toys, medical devices and detergents. The Ministry of Public Works and Settlement prepared and started implementing a market surveillance strategy on construction products (*see also Chapter 1 – Free Movement of Goods*).

The unit of controllers within the Directorate General responsible for Consumer Protection in the Ministry of Industry and Trade investigated 276 firms, of which 150 led to legal proceedings (on doorstep and distance selling, timeshare, after-sales services, guarantees and labelling on household appliances, textile and fuel consumption of new cars, and on general product safety within the framework of the law on the preparation and implementation of technical legislation on products).

On **non-safety-related measures**, enforcement continued on the basis of the recent law and regulations in the areas of advertising, doorstep and distance selling, package travel, unfair contract terms, timeshare property, indication of prices, guarantees, credit sales, consumer credit and injunctions. On injunctions, although the consumer organisations have been granted *locus standi* (the right to bring a legal action), full alignment has not been achieved yet.

One of the most important developments within the new law was to grant legally binding status to the decisions of the arbitration committees for disputes under a certain amount. In 2003, 31,582 consumer complaints were made to 931 arbitration committees all over Turkey. 86% of the decisions were reported as in favour of the consumers.

In addition to four specialised consumer courts operating in Istanbul, Ankara and İzmir, a new specialised consumer court has been established in Adana, which will soon be operational.

Since the last Regular Report, the Turkish authorities have placed additional emphasis on enforcement and implementation of the new law through the organisation of intensive training especially targeted at the arbitration committee members, organising a total of 36 training seminars in all 81 provinces.

To raise awareness of consumer protection issues, 34 television and radio programmes have been devoted to the new consumer law and its regulations during the reporting period.

Within the framework of the regulation on misleading and comparative advertisements, the Board of Advertisement continued to monitor advertisements, including secret advertisements, and to examine consumer claims against misleading advertisements. It convenes at least once a month, bringing together representatives from public institutions, universities, professional chambers and consumer organisations. In the reporting period, approximately €2.3 million in fines was collected in 134 cases.

Regarding consultative structures, the Consumer Council met in March 2004 to discuss the details of implementing provisions concerning the financial support to be given to consumer organisations by the Ministry, as provided for under the new law. It was decided to form a working group consisting of the representatives of consumer organisations, universities, professional chambers and public institutions to finalise the relevant regulation.

### *Overall assessment*

The legislative work carried out by Turkey on aligning with the *acquis* in the field of safety and non-safety-related measures was followed up by further efforts to implement and enforce the consumer protection legislation.

With regard to non-safety-related measures, the level of alignment with the *acquis* is progressing and Turkey should make efforts to ensure full alignment. The new directive on distance marketing of consumer financial services still needs to be transposed.

In the area of safety-related measures, the directive on liability for defective products has been transposed. This also covers additional rules laying down liability for defective services. However, the directive still has to be fully aligned. The framework law on consumer protection and the act on technical legislation relating to products aim at implementing the EC Directive on dangerous imitations. The same laws contain provisions relating to dangerous products. However, Turkish legislation is not yet in line with the relevant *acquis* on dangerous products, *i.e.* the Directive on general product safety.

Turkey has taken further steps to establish market surveillance infrastructure both from the perspective of legislation, regulation and implementation. However, administrative strengthening and reorganisation is needed for effective implementation. Turkey was repeatedly encouraged to become a member of TRAPEX (Transitional Rapid Exchange of information on dangers arising from use of dangerous products) to prepare for access to the RAPEX system. Turkey's information network would appear to be in need of upgrading to join RAPEX.



The arbitration committees, which play a crucial role in the settlement of disputes, have been strengthened through intensive training seminars on the new consumer law and regulations.

The role of the consumer organisations has been developed by granting *locus standi* (the right to bring a legal action) and by ensuring involvement in the discussions concerning the definition of the rules for granting financial support to consumer organisations by the Ministry.

### *Conclusion*

The level of alignment with the *acquis* is uneven throughout the different aspects of consumer protection.

Although the first initiatives to establish market surveillance systems are positive steps, Turkey should continue to put in place a fully developed, functioning and effective market surveillance system. Turkey should extend market surveillance activities in order to ensure an appropriate level of consumer protection throughout the country. Turkey should continue its efforts in order to fully transpose the product liability directive. Turkey is encouraged to continue to increase the protection of consumer rights via the establishment and efficient functioning of further specialised courts and the strengthening of consumer organisations and arbitration committees.

### *Chapter 24: Co-operation in the field of justice and home affairs*

EU policies in the area of justice and home affairs aim to maintain and further develop the Union as an area of freedom, security and justice. On issues such as border control, visas, migration, asylum, drug trafficking and money laundering, combating organised crime, the fight against terrorism, fraud and corruption, police and judicial co-operation, customs co-operation, data protection and the mutual recognition of court judgements, as well as human rights legal instruments, Member States need to be equipped to ensure they achieve adequate and acceptable standards of implementation. Administrative capacity must be up to these standards by the date of accession. Furthermore, an independent, reliable, and efficient judiciary and police organisation are also of paramount importance. The most developed part of this chapter concerns the Schengen *acquis*, which entails the lifting of internal border controls in the EU. However, substantial parts of this *acquis* do not apply upon accession of a new Member State, but only later, after a separate Council Decision.

#### *Progress since the last Regular Report*

Further progress has been made since the last Regular Report.

On **data protection**, not much progress can be reported. However, the new Criminal Code introduces the crime of collection and use of personal data for purposes other than defined by law.

Regarding **visa policy**, Turkey has continued alignment with the EU negative visa list and introduced a visa requirement for citizens of Azerbaijan in November 2003. This brings down the discrepancy between the EU visa obligations list and that of Turkey to six countries. Concerning efforts to align with the EU positive list, a visa exemption agreement for ordinary passports between Turkey and Brazil entered into force in July 2004. Some development has taken place in the area of **Schengen** requirements. A national office which will act as a central authority in line with the Schengen Convention, and as a contact point for Europol and OLAF was established within the Interpol Department of the Directorate General for Security in March 2004.

On **external borders**, work has begun on drawing up a National Action Plan to implement the Integrated Border Management Strategy adopted in 2003. In March 2004 a co-operation protocol concerning border management was signed between Bulgaria and Turkey. The Bulgarian border police and Turkish coastguard will work together to prevent violations of the two countries' territorial waters and exclusive economic zones. Information exchange on suspect ships will also become more active. In June 2004 a ministerial decision was issued setting up a Projects Directorate for Integrated Border Management within the Ministry of Interior. This Directorate will be responsible for the implementation of projects regarding the establishment of a border police corps in Turkey.

With regard to **migration**, work has begun on drawing up a National Action Plan to implement the migration strategy adopted in 2003. In March 2004 Turkey agreed to open negotiations with the European Community concerning a readmission agreement. Negotiations are expected to start in autumn 2004. Turkey signed a readmission agreement with Kyrgyzstan in May 2003; implementation has not yet begun. A readmission agreement with Romania was concluded in January 2004. Negotiations for readmission agreement are underway with Bulgaria, Libya, Uzbekistan and Ukraine. As regards the implementation of the readmission protocol between Turkey and Greece, the first meeting of the Co-ordination committee established under the readmission protocol was held in July 2004. Given difficulties encountered in implementation, the Parties agreed to take measures to implement the protocol more effectively and to convene further meetings at expert level.

In June 2004 Turkey ratified the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which Turkey had signed in 1999. In October 2003 Turkey ratified the Agreement on the legal status, privileges and immunities of the International Organisation for Migration (IOM) in Turkey, which grants the IOM legal status and facilitates its operations in Turkey. Turkey continued to participate in the activities of the Centre for information, discussion and exchange on the crossing of frontiers and immigration and its Early Warning System. Negotiations have continued concerning the conclusion of a Joint Action Programme on Illegal Migration between the EU and Turkey.

The Coast Guard Command has increased surveillance at the entrance point of Aegean and Mediterranean territorial waters against illegal migration. The number of coast guard

boats was increased from 52 to 83 and the number of personnel was increased from 2,726 to 3,396. In 2003 937 prosecutions were brought concerning smuggling illegal migrants.

In 2000 and 2001, almost 100,000 illegal migrants were apprehended each year in Turkey. More recently, Turkish authorities report that intensified efforts against illegal migration appear to have diverted migration flows away from Turkey. The number of illegal migrants apprehended decreased to approximately 83,000 in 2002 and 56,000 in 2003. The Turkish authorities apprehended 26,680 illegal migrants between January and July 2004. Altogether 1,157 Turkish and foreign organisers of illegal migration were arrested in 2002, 937 in 2003 and 468 in the first six months of 2004.

The Law on Work Permits for Foreigners entered into force in October 2003. The effect of the law is that work permits are now issued only by the Ministry of Labour and Social Security, rather than several different bodies as previously.

In the area of **asylum**, work has started on drawing up a National Action Plan to implement the asylum strategy adopted in 2003. The Ministry of Interior issued an internal directive on the handling of asylum applications, which is meant to serve as a bridge between the current asylum regulation and the new asylum law that Turkey aims to adopt in 2005. The new directive reflects in general a positive, protection-oriented approach and incorporates the minimum standards of the new *acquis* on asylum procedures. It also introduces an “accelerated procedure” for several categories of asylum applicants, as well as lifting the ten day time limit for applications. However, lack of clarity on the steps to be followed under the “accelerated procedure” raises concerns.

In general, Turkey faced a slight decrease in arrivals of asylum seekers. However, there was a significant increase in applicants for asylum from Africa, mainly from Somalia, Sudan, Eritrea and Ethiopia. There is still a large caseload from previous years, mainly Iranians (70%). Although there are very few new applicants from Iraq, many applications submitted in previous years have not yet been finalised. In January 2004 the Turkish government reached a broad agreement with the UNHCR and the authorities in Iraq on the return of Turkish refugees from Northern Iraq.

Turkey applies the principle of non-refoulement to aliens at its borders. Applications for asylum are handled in co-operation with UNHCR. However, there are reports that aliens who are apprehended away from the border are not always permitted to submit an application for asylum, as they are considered to have acted in bad faith; the UNHCR encounters difficulty in gaining access to such persons while in detention.

Although UNHCR continues to bear the principal responsibility for meeting the material needs of non-European refugees and applicants for asylum, the Turkish authorities continued to provide direct aid in the form of cash, food, clothing, health services and heating material. Non-European asylum applicants receive medical assistance from UNHCR while they are waiting for their application to be decided; if they are granted the status of temporary asylum seeker, they are then entitled to use state health care facilities. The children of applicants for asylum have the right to attend Turkish primary schools.

Turkey continued with the training activities on asylum issues in co-operation with UNHCR. During 2003 and the first half of 2004, UNHCR organised several seminars for Turkish officials. In addition, 527 police officers were trained in international and national law on asylum and migration, and international best practice. Training was provided in October 2003 for Ministry of Justice personnel, including judges and prosecutors, on International Refugee Law.

In the area of **police co-operation and the fight against organised crime**, Turkey ratified the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition of the Palermo Convention (2000 UN Convention against Transnational Organized Crime) in February 2004. Turkey signed a co-operation agreement with Europol in May 2004, which will enhance co-operation in fighting serious forms of organised crime. Although the agreement does not allow the exchange of personal data, it constitutes a significant step forward. Bilateral police co-operation agreements have been ratified between, on the one hand, Turkey and, on the other hand, Poland, Germany, Finland, and South Africa. Turkey appointed a contact point to participate as an observer in the EU Crime Prevention Network.

A substantial training programme for the police and jandarma “Police, professionalism and the public” was implemented with the Council of Europe. The curricula of the police and jandarma vocational schools were revised in the light of the Council of Europe’s advice. The jandarma adopted a “Model Training Programme for Human Rights”. Training of crime scene investigation officers aimed to improve the ability of police officers to collect and assess evidence.

The installation of the AFIS (automatic fingerprint investigation system) continued and has now been completed in 47 provinces. Five new police colleges were opened as well as two new directorates of police criminal laboratories.

The Turkish authorities arrested 143 members of organised human trafficking gangs in the first seven months of 2004 compared to 1,149 in 2003. 42 court cases involving 99 victims and 149 suspects were before the serious felony courts in the first three months of 2004. A National Action Plan on Combating Trafficking in Human Beings, approved in March 2003, is being implemented. The Ministry of Interior has distributed to all relevant authorities a guidebook on the fight against trafficking in persons. A specialised expert unit dealing with trafficking cases was established by the Ministry of the Interior in January 2004. Its aim is to ensure better dialogue and co-ordination between the police and other relevant authorities.

The Ministry of Interior and the Gendarmerie signed agreements with an NGO to improve assistance to victims of trafficking. A shelter for victims of trafficking started to operate in Istanbul in August 2004. The Prime Ministry identified 937 associations as responsible for providing assistance to victims of trafficking on the basis of the Law on the Fund for Social Aid and Solidarity.

A directive was adopted in January 2004 providing that victims of trafficking are entitled to medical treatment free of charge. In April 2004, the Ministry of Interior authorised the

governorates to extend temporary residence permits for up to six months for victims of trafficking. Residence permits may be extended further if necessary. A new Road Transportation law and regulation were adopted providing for carrier sanctions against carriers detected smuggling or trafficking migrants.

A Memorandum of Understanding was signed with Belarus in July 2004 to enhance co-operation in combating trafficking in persons.

With regard to the **fight against terrorism**, Turkey strengthened its international cooperation through protocols and action plans with EU Member States (Finland, the United Kingdom, Germany and Poland) as well as through the entry into force of an agreement with Uzbekistan and the establishment of a joint working group with India. In order to implement decrees adopted pursuant to UN Security Council Resolutions on the suppression of financing of terrorism, the Turkish authorities froze the assets of 43 institutions and persons in 2002 and 20 institutions and persons in 2003; in total, the assets of 187 entities are currently frozen in Turkey under these decrees.

Regarding the **fight against fraud and corruption**, in December 2003 Turkey signed the United Nations Convention against Corruption. In August 2004, the Undersecretary for Customs adopted a code of conduct concerning bribery. On 29 March 2004, Turkey ratified the Council of Europe Criminal Law Convention on Corruption, having acceded to the Group of States against Corruption (GRECO) which monitors compliance with Council of Europe anti-corruption standards, on 1 January 2004.

In February 2003 the OECD Working Group on Bribery completed its phase I evaluation of Turkey's implementation of the OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions; the Group found that implementing legislation conformed to the standards under the Convention. However, concern was expressed that the definition of "foreign public official" was not wide enough.

The Law on Electronic Signature entered into force in July 2004. A Law concerning the Foundation of an Ethics Board for Public Employees entered into force in June 2004. The Law provides for the establishment of an Ethics Board which will supervise the ethical conduct of public officials. The Board will have powers concerning declarations of property and assets by public employees, and will be able to investigate complaints from citizens. The law encompasses all public officials except the President, Members of Parliament and Ministers.

The report of the Parliamentary Anti-Corruption Commission, issued in July 2003, was discussed at the Parliament in November 2003. The report analyses corruption in detail in all sectors of the Turkish government and society. Subsequently, the Anti-Corruption Commission proposed parliamentary inquiries into the activities of 25 former government ministers. In July 2004, the National Assembly voted to authorise the High Tribunal to try four former government ministers. No development can be reported concerning the issue of changes to the extent of parliamentary immunity. The total number of court cases

for persons with immunity is twenty-seven. Thirteen of these cases are related to corruption. (See also Section B.1.2 – *Democracy and the rule of law*).

The law on the right to information was adopted in October 2003. In January 2004, the Prime Ministry issued a circular to facilitate the implementation of this law. The law creates a general right of access to public information and thus represents an important step in improving transparency of public administration.

Various investigations were carried out regarding some judges on charges of corruption. Three judges were dismissed in January 2004 by the High Council of Judges and Prosecutors. In July 2004, disciplinary sanctions for 11 judges and transfer of four have been requested by the inspectors of the Ministry of Justice in the framework of a new investigation.

Authorities reported that in 2003, 3,005 prosecutions were brought concerning embezzlement, extortion and bribery, 17,562 prosecutions were brought for forgery of documents, 56 prosecutions were brought concerning the declaration of assets and combating bribery and corruption and 52 prosecutions were brought under the law amending laws on money laundering and on public servants making a total of 20,675 prosecutions. This compares to 20,281 prosecutions for the same offences in 2002. In 2003, 18,526 fraud and corruption cases were concluded, resulting in 12,454 convictions.

In the area of the **fight against drugs**, Turkey ratified the EU-Turkey Agreement on Precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances in April 2004. The agreement entered into force in August 2004. No progress can be reported concerning alignment of the national drug strategy with the EU Drug Strategy. Negotiations for Turkey to participate as an observer in the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) have been concluded and the Agreement initialled in August 2004. Turkey became a member of the Major Donors Group of the United Nations Office on Drugs and Crime in 2004. In December 2003, Turkey ratified a co-operation agreement with Pakistan regarding the fight against international illicit trafficking in narcotic drugs and psychotropic substances in accordance with international conventions.

Turkey has not agreed to the establishment of a mini-Dublin Group in Ankara; Turkey has notified the central Dublin Group that it wishes to become a member. The guidelines for co-operation in the Dublin Group are currently under review.

Furthermore, a number of successful operations were carried out by the Turkish National Police and the Gendarmerie aimed at fighting against drugs trafficking and record seizures of drugs were made.

In the field of **money laundering**, Turkey ratified the Council of Europe Criminal Law Convention on Corruption in January 2004, which provides for the criminalisation of the laundering of proceeds deriving from corruption offences. A new Banking Law was adopted in December 2003 which widened the scope of predicate offences for money laundering and increased the limitation period for money laundering offences. Turkey

ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in September 2004. The number of suspicious transactions reported to MASAK (Financial Intelligence Unit) was 180 in 2003, compared to 194 in 2002. MASAK carried out 192 preliminary investigations in 2003, compared to 155 in 2002. Prosecutions were brought in 31 cases, compared to 17 cases in 2002. MASAK and the Turkish Union of Bankers published guidelines on the fight against money laundering and terrorist financing for the banking sector.

With regard to **customs co-operation**, the Directorate General of Customs Enforcement, together with the Scientific and Technical Research Council is implementing a comprehensive improvement of infrastructure at border gates. Communications between customs gates and Ankara have been strengthened, closed circuit television and a recognition system for number plates for vehicles has been introduced at some gates and x-ray systems for vehicles and containers have been introduced at some gates. The introduction of x-ray systems led to several substantial drugs seizures during the reporting period.

In the area of **judicial co-operation in criminal and civil matters**, the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters was ratified by Turkey in August 2004. Turkey has continued to implement the National Action Plan on judicial co-operation adopted in 2003; a training manual on judicial co-operation was published by the Ministry of Justice in 2004. A number of judges have received training on international child abduction during 2004. The Ministry of Justice has noted that participation in the European Judicial Network has helped it to deal with requests for extradition, which are increasing in number, more quickly. The Ministry of Justice signed a protocol with Yeditepe University in 2004 to enable judges and prosecutors to undergo English language training in order to improve international co-operation. The Justice Academy started to operate and has admitted its first students.

**Progress as regards human rights instruments** is described in *Section B.1.3 – Human rights and the protection of minorities*.

#### *Overall assessment*

On data protection (*see also Chapter 3 – Freedom to provide services*), Turkey is invited to accelerate the adoption of the draft law on protection of personal data in the light of advice provided by the European Commission and the Council of Europe. Turkey is also invited to ratify the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, signed by Turkey in 1981. As reported in previous years, the need to establish an independent data protection supervisory authority is of utmost significance for further progress in this field.

With regard to visa policy, Turkey is encouraged to continue alignment with the EU visa lists as well as to align with EU practices concerning the issue of visas. Turkey needs to improve the capacity of its consular services abroad to detect false documents.

As regards external borders, Turkey is invited to complete work on drawing up the National Action Plan to implement the Integrated Border Management Strategy, which was adopted in 2003. Turkey should continue to work towards creating a non-military professional corps of border guards.

In the area of migration, negotiations on a readmission agreement with the EU are expected to start soon. Turkey should also continue its efforts to conclude readmission agreements with third countries. The Joint Action Programme on Illegal Migration between the EU and Turkey should be concluded as soon as possible. Turkey is invited to complete work on drawing up the National Action Plan to implement the migration strategy adopted in 2003. The establishment of a specialised, civilian authority for migration issues will be an important component of this plan. The legislative framework with regard to handling migration including admission of third country nationals for employment and for study purposes, status of third-country nationals residing on a long-term basis as well as family reunification needs to be fully aligned with the *acquis*. Concerning administrative capacity, Turkey has continued to achieve progress concerning the fight against illegal migration through improved co-operation among authorities as well as with Member States and third countries.

With regard to asylum, the agreement with the UNHCR represents a step forward. Despite the geographical limitation to the 1951 Geneva Convention, the policy of non-refoulement continued. The legislative framework with regard to asylum needs to be revised so as to ensure the full implementation of the 1951 Convention and the EU *acquis*. In this context, the lifting of the geographical limitation to the 1951 Convention remains an issue of utmost significance. Turkey is also encouraged to make full use of the available international expertise in the development of its new national asylum law and institutions. Turkey is invited to complete work on the National Action Plan to implement the strategy on asylum, adopted in 2003. In this respect, refugee status determination capacity should be developed and a specialised civilian authority for asylum should be established. Turkey is also encouraged to enhance its efforts to improve reception conditions.

In the areas of police co-operation and fight against organised crime, criminal investigation methods and forensic capacity in investigations still need to be improved. Lack of co-operation and co-ordination between the law enforcement authorities hampers an efficient and effective fight against organised crime. There is a need to improve the production of statistics on law enforcement, risk analysis and performance indicators, to develop crime prevention strategies in line with EU best practices, to establish a national police ethics code in line with the Council of Europe code, and to end the practice whereby *jandarma* escort prisoners to court appearances. Turkey should establish a national Strategy against organised crime. Despite legislative alignment, further work on implementation is necessary concerning trafficking in human beings. Turkey experiences major difficulties in the area of victim protection and rehabilitation. Public information campaigns are necessary and initiatives in line with the Brussels Declaration need to be developed.



With regard to the fight against terrorism, Turkey should provide the widest possible range of assistance to other countries' law enforcement and regulatory authorities for terrorist financing investigations and ensure that entities, in particular non profit organisations, cannot be misused to finance terrorism.

As for the fight against fraud and corruption, the ratification of the Council of Europe Criminal Law Convention on Corruption, Turkey's membership of GRECO and the signature of the UN Convention against Corruption are significant developments. Nonetheless, corruption still remains a serious problem requiring major efforts both in legislative and institutional aspects. The efficiency and effectiveness of various governmental, parliamentary and other bodies established to combat corruption remain a matter of concern. The consistency of the policies and the degree of co-ordination and co-operation is weak. Turkey is invited to set up an independent anti-corruption body and to adopt the anti-corruption law. Furthermore, the dialogue between the government, public administration and civil society needs to be strengthened and a Code of Ethics both for public servants and elected officials should be developed. In addition more action should be taken to raise public awareness of corruption as a serious criminal offence. Continuous support on the highest political level for the fight against corruption would be welcome.

With regard to the fight against drugs, Turkey's geographic location requires intensive focus on this issue. The initialling of the agreement to enable Turkey to participate as an observer in the EMCDDA is welcomed. Turkey is expected to strengthen further its national drug co-ordination mechanism. Furthermore, Turkey needs to revise its National Drugs Strategy, adopted in 1997, so as to bring it into line with the EU Drug Strategy. Turkey is invited to sign the 1995 Council of Europe Agreement on Illicit Traffic by Sea, implementing Article 17 of the 1995 UN Vienna Convention against Illicit Traffic in Narcotic Drug and Psychotropic Substances. The establishment of a mini-Dublin Group in Ankara on drug-related issues is recommended once more.

As regards money laundering, Turkey should speed up the process of reviewing the 1996 Act on Prevention of Money Laundering with the aim of extending the scope of predicate offences in line with the *acquis*.

As far as customs co-operation is concerned, inter-agency co-operation needs to be enhanced. The introduction of mobile surveillance units and development of risk analysis using the existing customs co-operation agreements with neighbouring countries and others should be taken forward.

In the area of judicial co-operation in criminal and civil matters, following the adoption of the law concerning courts of appeals, Turkey is invited to take steps to establish these courts. Turkey is also invited to continue work on the recommendations of the 2003 EU advisory visit concerning the Turkish judicial system.

In order to ensure adequate implementation of the relevant international conventions and bilateral agreements to which Turkey has acceded, there is a need to increase the number of judges and public prosecutors.

## *Conclusion*

Since the last Regular Report, Turkey continued to make further progress in aligning its legislation with the *acquis* and EU practices in the area of Justice and Home Affairs, and the Turkish legislation is aligned to a certain extent with the EU *acquis*.

Nevertheless, progress is needed in a number of important areas, such as the reform of the judiciary, the fight against corruption, intensified and active co-operation with the European Union on illegal migration and in fighting trafficking and the lifting of the geographic limitation to the 1951 Geneva Convention on refugees. Further steps should be taken to improve co-ordination and co-operation among relevant institutions.

## ***Chapter 25: Customs union***

The Customs union *acquis* consists almost exclusively of legislation which is directly binding on the Member States and does not require transposition into national law. It includes the Community's Customs Code and its implementing provisions; the Combined Nomenclature, Common Customs Tariff and provisions on tariff classification, customs duty relief, duty suspensions and certain tariff quotas; and other provisions such as those on customs control of counterfeit and pirated goods, drugs precursors and cultural goods, and mutual administrative assistance in customs matters, Community agreements in the areas concerned, including transit. Member States must ensure that the necessary enforcement capacity, including links to the relevant EC computerised customs systems, is in place.

As far as the functioning of the EC-Turkey Customs Union is concerned see also Chapter 1 – Free movement of goods and Chapter 26 – External relations.

### *Progress since the last Regular Report*

Since the last Regular Report, some progress has been made in this area.

As regards the alignment of Turkey's legislation with the **customs** *acquis* some progress can be recorded during the reporting period.

Turkey ratified the amendment to the UN-ECE Conventions on Temporary Admission of Private Road Vehicles and Border Controls on Goods in February 2004. The WCO Istanbul Convention was ratified by Parliament in March 2004. Furthermore, in April 2004 Parliament ratified the agreement between the EU and Turkey on Precursors and Chemicals Frequently Used in Illegal Production of Narcotics and Psychotropic Substances, which was signed in February 2003.

Regarding free zones, apart from the adoption of a tax law in January 2004, which extends the Ministry of Finance's tax auditing competence to companies established in free-trade zones, no progress can be recorded (*see also Chapter 10 – Taxation*).

In May 2004, the Turkish Council of Ministers adopted a decree extending the Customs Union provisions to the new Member States except the Republic of Cyprus. On 2 October, Turkey published a new decree adding Cyprus to the list of countries to which the Customs Union provisions apply.

The **administrative and operational capacity** of the Undersecretariat of Customs continued to be strengthened during the reporting period.

Turkey made substantial progress in the field of origin and origin controls. Control powers of customs officials were strengthened. Through the improved application of origin rules and controls in the bi-lateral framework concerning the origin regime of agricultural products alignment with EC-rules has progressed.

The automation of 16 regional directorates and 66 customs offices was completed in the framework of the Customs Modernisation Project (GIMOP). Around 50% of customs entries are now processed electronically via the computerised import, export and national transit entry-processing system (BILGE).

The electronic vehicle monitoring system, which was developed in 2001, was interconnected with the Ministry of Transport and the International Transporters Association in order to establish a network with the Customs Authority and to facilitate data transfer. The system became operational at Turkey's western border posts as of January 2004.

Implementation of the GÜMSIS (Security Systems for Customs Checkpoints) project launched in November 2001 to improve control equipment at customs posts is ongoing; under this project, X-ray scanners and nuclear radiation detectors have been installed at several locations. In view of the size of the country and of the investment needed these efforts will go on for a number of years before being completed.

A protocol was signed on the exchange of trade statistics between the Customs Administration and the State Institute of Statistics in February 2004. A cooperation protocol on combating smuggling was signed with the Gendarmerie. The implementing legislation for the Anti-smuggling Law was published in November 2003. This legislation provides for clearer customs enforcement principles and procedures.

There was no progress to report on ethics, anti-corruption measures and training.

Agreements on mutual administrative assistance in customs matters were concluded with Belgium, Azerbaijan, Moldova and Syria. The Turkish Customs has signed a Memorandum of Understanding on "Advance Exchange of Data Project" with Bulgarian Customs which allows for data-sharing at the joint border crossing points.

The publication in June of the Decree referring to the EC customs territory as composed of 24 Member States constitutes a deviation from the *acquis*.

### *Overall assessment*

The overall level of alignment in the customs area is high. The improvements in the field of origin and origin controls are an important step forward.

As regards free trade zones, the lack of alignment of provisions outside the customs code remains. Although the tax law adopted in January 2004 is an improvement as regards tax auditing of companies established in free trade zones, more efforts are needed to solve problems in the application of non-customs legislation relevant to the application of customs provisions.

Although the number of suspension decisions by the Customs Administration concerning counterfeit/pirated goods has been increasing considerably since 2000, substantial efforts are still needed to align the customs control rules on the protection of intellectual property rights. The coordination between the customs enforcement authorities, and other relevant public authorities (i.e. the Ministry of Culture, Turkish Patent Institute, Turkish police force and IPR courts) should be improved. Cooperation at the border with Bulgaria, including data-sharing, could be further enhanced.

Regarding administrative capacity, the Customs Modernisation Project improved the overall level of automation infrastructure. The total amount of arms seized by customs reflects this improvement. Although the introduction of the computerised import, export and national transit entry-processing system (BILGE) accelerates the implementation of customs procedures, the system is not yet compatible with EC systems such as the integrated tariff (TARIC) or new computerised transit system (NCTS). Turkey is encouraged to continue the modernisation of the customs services and to strengthen the administrative structure.

### *Conclusion*

Alignment is advanced with some exceptions in certain specific areas. Turkey continued to strengthen administrative capacity, including computerisation.

While Turkey has almost fully aligned its legislation in this area with the 1999 and some later *acquis*, several outstanding issues still need to be addressed. The alignment with the Community Customs Code, and Implementing Provisions adopted in 2001 and 2002, and with non-customs legislation applied in free-trade zones is still a matter of concern. The level of IPR enforcement in customs control remains weak and needs to be improved substantially. The recent efforts on computerisation of border posts and interconnectivity with the EC systems should be continued.

### ***Chapter 26: External relations***

The *acquis* in this field consists mainly of directly binding EU legislation which does not require transposition into national law. This EU legislation results from the Community's multilateral and bilateral commercial commitments, as well as from a number of autonomous preferential trade measures. In addition, Turkey is to align fully to the EC

Common External Tariff for all products covered by the Customs Union. In the area of humanitarian aid and development policy, an applicant country will need to comply with EU legislation and international commitments in this field and ensure capacity to participate in the EU's development and humanitarian policies.

### *Progress since the last Regular Report*

Since the last Regular Report, some progress has been made.

With regard to **commercial policy**, the Turkish government in August and September 2004 respectively, adopted two decrees aligning the Turkish System of Preferences to the EC Generalised System of Preferences. This constitutes a significant progress to adopt the *acquis*.

The EU and Turkey, in the context of their structured bilateral dialogue, have continued efforts to cooperate with a view to achieving an ambitious as well as balanced outcome of the Doha Development Agenda negotiations. In particular, ongoing discussions address Turkey's self-declared "developing" country status and the need for all WTO Members to improve trade opportunities for the least developed countries.

However, the level of coordination and cooperation in GATS and Doha Development Agenda negotiations should be further improved, with a view to facilitating the future consolidation of Turkey's GATS commitments with those of the EU.

Concerning **bilateral agreements with third countries**, Turkey signed a free trade agreement (FTA) with Morocco in April 2004. This FTA contains provisions on industrial goods similar to the ones in the EU's Association Agreement with Morocco. A free trade agreement with the Palestinian Authority was signed in July 2004. Although Turkey initiated negotiations with Egypt, Jordan, Syria, and Tunisia, discussions could not be completed during the reporting period. Moreover, Turkey proposed to initiate free trade negotiations to Algeria, Mexico and South Africa. However, these countries have not yet replied positively.

No developments can be reported regarding medium- and long-term export credits to companies.

As regards the control of dual-use goods, a communiqué setting out an ex-ante permission system for the export of goods that could be used in developing weapons of mass destruction was adopted in December 2003. Turkey started to implement the "catch-all" principle in export controls of dual use goods.

In the field of **development aid** and **humanitarian aid**, Turkey's official aid figures have shown a steady decrease over the last four years. According to Turkey's State Institute of Statistics, the total value of official aid decreased from €444.9 million in 1999 to €115.5 million in 2003. The primary beneficiaries of Turkish official aid were Central Asian countries, northern Cyprus, the Russian Federation, and Ukraine.

### *Overall assessment*

The overall level of alignment in external commercial policy is relatively high due to the obligations set out in Association Council Decision 1/95.

While Turkey has coordinated its positions with the EU within the World Trade Organisation, notably in relation to GATS and Doha Development Agenda negotiations, this cooperation should still be enhanced and improved.

Turkey's General System of Preferences has been almost fully harmonised in September 2004 with the EC GSP regime, although with an almost four-year delay as the transition period for full alignment expired in December 2000. This constitutes a positive step forward. However, its special incentive for the protection of labour rights and its special drug arrangements still display differences with the EU system.

The signing of a free trade agreement with Morocco and the Palestinian Authority is a positive development. Turkey should pursue free trade negotiations with other countries, which have signed a FTA with the EU. However, in some cases Turkey has been unable to initiate these negotiations despite her efforts.

After the enlargement of the EU in May, the free trade agreements with the eight new Member States (i.e. Hungary, Lithuania, Estonia, the Czech Republic, Slovakia, Slovenia, Latvia, and Poland) ceased to apply. As regards export credits to companies, Turkey still needs to align its legislation with the *acquis*.

In the field of dual-use goods the recent legislation requires advance permission from the Undersecretariat of Foreign Trade for the export of goods which could be used for weapons of mass destruction. This ex-ante permission system will be implemented for goods if they are not covered by the Wassenaar List or the Australian Group Chemical Precursors List. The licence would be granted for the exportation of the type of goods which are already covered by those lists.

Turkey's administrative capacity related to customs services is addressed under the chapter on Customs Union (*see also Chapter 25 - Customs Union*).

### *Conclusion*

Turkey has made further progress and has reached an overall fair level of alignment in this area. The steps taken aligning the Turkish System of Preferences to the EC Generalised System of Preferences constitute a significant progress in this respect.

Outstanding obligations and the Customs Union Decision still remain to be fulfilled. Concerning bilateral agreements with third countries, Turkey should continue its efforts to conclude free trade agreements. However, Turkey's difficulties in this respect are recognised.

## ***Chapter 27: Common foreign and security policy***

The *acquis* related to the common foreign and security policy (CFSP) is based on legal acts under the second and, indirectly, the first pillar including legally binding international agreements. It is also based on political declarations and agreements to conduct political dialogue in the framework of the CFSP, to align with EU statements, and to apply sanctions and restrictive measures where required.

### *Progress since the last Regular Report*

Since the last Regular Report, Turkey has broadly continued to position its foreign and security policy in line with that of the European Union.

The regular enhanced **political dialogue** established as part of the accession strategy with Turkey has continued during the reporting period with exchanges of views on international issues, such as Southern Caucasus, Western Balkans, the Middle East Process, the Mediterranean and Middle East regions, Iraq, Iran, Afghanistan and effective multilateralism. As in the previous year Turkey confirmed its interest in common foreign and security policy (CFSP). Turkey has shown a keen interest to continue active participation in political dialogue with the EU including ESDP (European Security and Defence Policy) developments. It has actively participated in the exchanges in this context with the EU and, for ESDP, in the EU + 5 format (i.e. meetings of the EU with non-EU European NATO members). Turkey participated in all relevant meetings including at Political Director, European Correspondent and Working Group level.

As in the previous year, Turkey's record of alignment with **EU sanctions and restrictive measures, statements, declarations and demarches**, demonstrated the considerable extent of common EU-Turkey views. In particular, Turkey has aligned itself with all EU declarations calling on the government of Iran to conclude and implement urgently and unconditionally the Nuclear Non-Proliferation Treaty and its Nuclear Safeguards Agreement with the IAEA, together with the Additional Protocol.

Turkey continued its participation in the Barcelona Process to further promote good neighbourly relations, encourage political stability, reinforce the solution of human rights issues and support democratic developments.

Since its inception in 2003, following in particular the conclusion of the Berlin plus-agreement on EU-NATO cooperation in crisis management, Turkey has taken an active interest in the development of the ESDP and ESDP crisis operations in the Balkans. Turkey has contributed forces to both EU police missions in Bosnia and Herzegovina and FYROM. Turkey has a proven potential to participate in international peacekeeping and it has a long history as a supporter of UN peacekeeping. In 2003 it participated in seven UN peace keeping operations, including Kosovo and Afghanistan, and in the NATO KFOR, SFOR and Afghanistan missions.

Turkey is an important actor in promoting stability and security in its region (Balkans, Caucasus, Mediterranean and the Middle East) and has taken a number of relevant

initiatives. The Turkish armed forces assumed the command of the South-Eastern Europe Peacekeeping Force for two years starting in July 2003. Turkey continues to participate actively in regional cooperation fora, such as the Council of the Black Sea States. Turkey has played a leading role in the launching of major initiatives such as the Southeastern European Cooperation Process (SEEC) and the Multinational Peace Force Southeast Europe (MPFSEE) / South-eastern Europe Brigade (SEEBRIG). It has also supported efforts of the Stability Pact for Southeastern Europe and the Southeast European Cooperative Initiative (SECI). Turkey promotes cooperation around the Black Sea including the Black Sea Economic Cooperation Organisation and the BLACKSEAFOR which entered into force in November.

Bilateral relations between Turkey and Greece have continued to evolve positively. Up to 25 bilateral agreements have been concluded to this date in various fields such as trade, tourism, environment, culture, energy, transportation and security related issues. The Turkish Prime minister made the first official visit to Greece in May 2004 in 16 years. Turkey and Greece have cooperated in security and logistic arrangements in preparation for the 2004 Athens Olympic Games. Turkey unilaterally cancelled all national military exercises in the Aegean planned for the summer of 2004, due to the upcoming Olympic Games. The agreements signed in September 2003 concerning civil air traffic over the Aegean came into force as of December 2003. As a result of the implementation of a series of confidence-building measures both governments are taking steps with a view to a gradual and balanced reduction of military expenses. There have been 26 meetings at under-secretary level in the framework of the exploratory talks launched in 2002. Turkey and Greece agreed in December 2004 to build a highway connecting the Greek border to Istanbul and signed an agreement for the prevention of double taxation.

Turkey continues to support the road map for the Middle Eastern peace process. It has taken an active stance in contributing to the efforts to achieve peace and stability in the Middle East. At the request of both Israel and the Palestinian Authority, Turkey also participates in the Temporary International Presence in Hebron (TIPH). In December 2003, Turkey declared that it would provide further economic and humanitarian assistance to the Palestinians.

Turkey participated as a “democratic partner” in the G-8 Summit held in Sea Island in June 2004 and has assumed the co-chairmanship, along with Italy and Yemen, of the Democracy Assistance Dialogue, one of the mechanisms created within the scope of the Broader Middle East and Northern Africa initiative.

Bilateral relations with Iran and Syria developed well including in the area of cooperation against terror. Steady improvement in bilateral relations with Syria has been recorded as a result of the first official visit by a Syrian President to Turkey in 50 years. This has led to the conclusion of various agreements in economic, trade, tourism, aviation and maritime area. Several Ministerial visits to Iran, including the Turkish Prime Minister’s visit to Tehran in July 2004, served to stimulate bilateral cooperation in economic, transportation, energy, construction and culture-related areas.



Turkey's border with Armenia is still closed. However, there seems to be rising public awareness of the benefits of reopening the border and preparations for enabling goods transit from third countries. Charter service started in October 2003 to provide air transportation from Istanbul to Yerevan. The Turkish minister of communications stated in February 2004 that the reopening of the railway between the two countries would benefit to the eastern Anatolian economy. A trilateral meeting took place for the first time at the level of foreign ministers between Turkey, Armenia and Azerbaijan in the margins of the NATO summit held in Istanbul in June 2004. Turkey has made a positive contribution to regional stability in the Southern Caucasian by its attitude towards the political changes in Georgia as well as the situation in Adjara.

During the reporting period, Turkey continued to play an important role in the international campaign against terrorism. Turkey signed anti-terrorist cooperation agreements with Pakistan in January 2004, and with Syria, Uzbekistan and Israel in December 2004, plus an agreement on security cooperation with Mongolia.

Although Turkey has not yet signed the Statute of the International Criminal Court, constitutional amendments adopted in May are a positive development with a view to becoming party to the Statute of the International Criminal Court.

The Turkish Government announced in November its decision not to send troops to Iraq. Turkey has an important role as the principal base for humanitarian assistance from the international community to Iraq, but also deploys diplomatic efforts at multilateral level for its stabilisation as suggested by its initiatives to organise meetings of Iraq's neighbouring countries. In July 2004, Turkey withdrew its military observers from northern Iraq, where they had been deployed since 1997.

Turkey participates in the Bonn process for the reconstruction of Afghanistan. Turkey continues to contribute 256 military personnel and three helicopters to the ISAF force. A former Turkish Foreign Minister has been appointed as the civil representative of the NATO Secretary General to Afghanistan. Turkey has undertaken a number of reconstruction projects in the fields of education, health and agriculture and has contributed US\$5 million over the past two years to the reconstruction effort in this country. Turkey recently declared an additional pledge of US\$5 million for an upcoming period of three years.

Turkey hosted the 31<sup>st</sup> session of the Islamic Conference of Foreign Ministers in Istanbul in June and a Turkish citizen was elected Secretary General.

### *Overall assessment*

With respect to the CSFP, despite its overall satisfactory record, Turkey aligns itself with significantly fewer EU declarations than the other candidate countries. This was particularly the case with declarations on issues related to Turkey's neighbourhood (Georgia, Azerbaijan, Iraq, Ukraine), to certain Muslim countries and on human rights and democracy. Turkey is sometimes hesitant to align itself to EU positions on issues

touching its vital foreign policy and security interests. This is in marked difference to the conduct of all other candidate, associated and SAP countries.

Turkey's 2003 voting patterns in the United Nations, of which it is a founding member, leads to a similar conclusion. Turkey has voted in line with the EU positions to a large extent. Divergences mainly related to human rights issues and to the Middle East. The Turkish MFA has an administrative set-up basically compatible with EU CFSP structures. It is, however, unclear whether the MFA has actually established permanent Political Director's and European Correspondent's posts. The Turkish MFA is connected to the ACN information system through which the EU communicates with the associated partners within the CFSP.

Turkey's participation in the ESDP presents certain difficulties. In terms of regional political dialogue, Turkey continues to participate actively in several regional cooperation fora. Turkey is an important actor in promoting stability and security in its region (Balkans, Caucasus, Mediterranean and the Middle East) and has taken a number of initiatives within this role.

Turkey has sought to improve its bilateral relations with neighbouring countries, in particular with Syria. Relations with Greece have continued to improve with contacts between foreign ministers as well as the visit of the Turkish PM to Greece. Although the border with Armenia still remains closed, the existing dialogue between Turkish, Azeri and Armenian authorities is a positive step to pave the way to a solution. Bilateral relations with Iran and in particular with Syria have continued to develop.

### *Conclusion*

Overall, Turkey's foreign policy has broadly continued to position itself along the lines of that of the European Union.

Turkey should focus further efforts on ensuring that its foreign policy orientation remains in line with the Union's developing foreign and security policy, and on finalising the development of the necessary administrative structures. In particular, Turkey should ensure that its national policies and practice conform to the EU's common positions, should defend these positions in international fora, and should ensure that all sanctions and restrictive measures can be duly implemented. Turkey should also continue to promote stability and security in its region, namely the Balkans, Caucasus, Eastern Mediterranean and the Middle East. In that context, the efforts of Turkey to improve and deepen its relations with the neighbouring countries are welcome. Turkey also continues to have an important role to play in the effort to stabilise Iraq.

### *Chapter 28: Financial control*

The *acquis* under this chapter consists mostly of general internationally agreed and EU compliant principles of public internal financial control that need to be transposed into the control and audit systems of the entire public sector. In particular, the *acquis* requires the existence of effective and transparent financial management and control systems;

functionally independent internal audit systems; central harmonisation units for these two fields, responsible for the co-ordination and harmonisation of methodologies; an independent external audit of the public internal financial control systems in the public sector (Supreme Audit Institution); an appropriate financial control mechanism for EU funds; and the administrative capacity to give effective and equivalent protection to EC financial interests.

### *Progress since the last Regular Report*

Since last year's Report, further progress can be reported in the financial control area.

Concerning **public internal financial control**, Turkey has made significant progress with the adoption of the Public Financial Management and Control Law in December 2003. However, it will come into effect only gradually over a transition period ending in 2007.

This Law has also led to positive developments in the field of **external audit**. It introduced a clear separation of audit duties between budget centres, the Ministry of Finance and the Court of Accounts, and extended external audit to the remaining extra-budgetary funds. An amendment to the Constitution in May 2004 eliminated the principle of confidentiality in the audit of state property acquired for military purposes.

In the area of **control of EU pre-accession funding and future structural action expenditure**, Turkey has established administrative structures to manage pre-accession funds within the *ex ante* Decentralised Implementation System (DIS). The system became operational following the EC's accreditation of these bodies for the management of EU funds (excluding grant schemes) in October 2003 and for grant schemes in June 2004.

There has been progress in the **protection of the financial interests of the European Communities** with the adoption of the Public Financial Management and Financial Control Law mentioned above.

No progress can be reported concerning the protection of the euro against counterfeiting.

### *Overall assessment*

The adoption of the Public Financial Management and Control Law (PFMCL) is a significant step forward in the field of public financial control, even though full implementation will not be ensured before 2008.

Establishing a modern public finance system, the PFMCL envisages a gradual elimination of extra-budgetary funds and collection of income, expenditure, assets and liabilities for all public spending centres under a single national budget. It also provides a framework of responsibility and accountability for all relevant actors within public finance management. It will also allow a gradual transition from a fully centralised to a decentralised system of financial management and control. Furthermore, it introduces

reporting requirements for public administration activities and aims at developing a public accounting system in accordance with international accounting standards.

Significant differences between Turkey's public management and control structures and those seen in EU countries remain. Although PFMCL reforms the public financial management and control systems of Turkey in line with modern public financial management concepts and EU practices, some weaknesses in implementation, in particular as regards inter-ministerial coordination, are a matter of concern. The main actors, namely the State Planning Organisation, the Treasury and the Ministry of Finance, will need to maintain effective cooperation if transformation of the financial management system is to be effective.

Implementing legislation relating to the new Law now needs to be completed. The Law provides for an internal audit coordination board which would function as an independent central harmonisation unit to guide the process of introducing functionally independent internal audit. This board has still to be established. Implementing legislation relating to issues such as manuals for internal audit and financial management and control, as well as the establishment of an internal audit charter and a code of ethics has still to be developed.

The PFMCL includes provisions which facilitate the alignment of external audit with international audit standards. The Law authorises the Turkish Court of Accounts (TCA) to conduct financial, performance and compliance audits of all public administrations in accordance with international auditing standards. It also gradually eliminates the *ex ante* control function of the TCA.

The 2003 Regular Report noted the steps taken to expand the scope of the TCA in terms of external audit. Auditing procedures to give effect to this were established through implementing legislation during 2004. The May 2004 amendment of the Constitution was another positive development enhancing transparency in the public sector as it eliminated the principle of confidentiality in the audit of state property acquired for military purposes. However, since the PFMCL has expanded the scope of the TCA and abolished its *ex ante* financial control function, the legal base of the TCA will need to be amended.

There has been progress concerning the protection of the financial interests of the European Communities with the adoption of the PFMCL. Nevertheless, Turkey should reinforce these initiatives by setting up an anti-fraud coordination unit charged with the treatment of cases of suspected fraud and other irregularities affecting pre-accession assistance, as well as the notification of these irregularities to the Commission (*see also Chapter 24 – Justice and home affairs*).

### *Conclusion*

Overall, only modest steps have been taken in transposing the *acquis* and adopting international practice in this field.

With the enactment of the Public Financial Management and Control Law, Turkey has made significant progress in the legislative field since the last Regular Report. For effective implementation of the new legislation, Turkey should concentrate its efforts on the establishment of relevant administrative structures and the adoption of the revised Charter of the Turkish Court of Accounts. Furthermore, Turkey should reinforce its capacity to protect the financial interests of the EC, important for the management both of pre-accession assistance and of the future Structural and agricultural Funds.

For the time being, the former system is *de facto* still in force with all the problems indicated in the previous Regular Reports as the new Law will be fully implemented only at the end of the transition period. It is therefore difficult at this stage to assess the administrative capacity for the implementation of the new legal framework.

### *Chapter 29: Financial and budgetary provisions*

The *acquis* in this field covers the rules concerning the financial resources necessary for the funding of the EU budget ('own resources'). These own resources are made up mainly from contributions from Member States based on traditional own resources from customs and agricultural duties and sugar levies; a resource based on VAT; and a resource based on the level of gross national income (GNI). Member States must put in place the appropriate administrative capacity to adequately coordinate and ensure the correct calculation, collection, payment and control of own resources and reporting to the EU in order to comply with the own resources rules. The *acquis* in this area is directly binding and does not require transposition into national law.

### *Progress since the last Regular Report*

Some legislative progress has been made since the last Regular Report.

There has been important progress in the field of **national budget formulation and execution** with the adoption of the Public Financial Management and Control Law in December 2003. The Law assembles income, expenditure, assets and liabilities for all public-spending centres under a single national budget and gradually eliminates extra budgetary funds. It reduces the fragmentation in budget execution and policy coordination.

No developments can be reported with regard to the **application of the own resources system**.

### *Overall assessment*

The adoption of the Public Financial Management and Control Law should reduce the degree of fragmentation in financial management between different administrative units headed by different ministers. By defining the roles of the three main bodies involved in budget preparation and execution, namely the Ministry of Finance, the Treasury and the State Planning Organisation, the Law confers primary responsibility for determining and

coordinating public finance policies on the Ministry of Finance. However, although the Law thereby ensures the integration of financial management to a certain extent, it also confirms continuance of a system dependent upon three separate bodies. It therefore remains to be seen whether the intended integration can be maintained in practice. Turkey should seek to address these concerns whilst adopting the implementing legislation provided for in the Law.

On the other hand, the Law also envisages a more devolved system. It provides ministries and spending agencies with more authority than before and encourages their participation in both the budget preparation and execution phases. Overall the newly established structure and the clearer definition of roles enhance the transparency of public financial management. The Law reduces the fragmentation in budget execution mentioned above. It will lead to the elimination of special appropriations and accounts, and gives authority to the Ministry of Finance to collect all revenues.

To improve its accounting system, Turkey issued a Regulation on General Government Accounting in November 2003 which established the basis for a common accounting and reporting system in all general government institutions. Furthermore, the Public Financial Management and Control Law authorised the Ministry of Finance to establish an accrual-based accounting system. The Ministry issued a Circular on Accrual-Based Accounting in February 2004 to define the application of such a system in individual government departments. This Circular was complementary to the Circular on Analytical Budget Classification issued in relation to the 2003 financial year Budget Law. General government departments submitted their 2004 budgets electronically in line with the analytical budget classification. These are positive developments; however, they should be extended to local administrations, social security institutions and other bodies with special budgets. Furthermore, Turkey has started to establish new administrative structures such as the Departments of Internal Audit and Ex Ante Control, which were provided for in the Public Financial Management and Control Law. Effective functioning of these bodies should be ensured by providing adequate training to their staff and issuing implementing legislation without delay. Turkey should advance its efforts for strengthening and reforming tax administration so as to enhance the collection of tax revenues and voluntary taxpayer compliance.

As far as the underlying policy areas affecting the own resources system are concerned, the institutions necessary for application of this system already exist and are performing the relevant activities, such as collecting customs duties, managing the statistical system for gross national income (GNI) and VAT resource-based calculations, and managing the VAT collection system. Additional alignment and capacity building will be necessary for the proper calculation of the VAT and GNI resources. In this context, Turkey needs to adopt a new statistical law in line with EU standards, continue establishing the mechanisms for the proper implementation of ESA95, and align macroeconomic statistics further with the *acquis*, in particular as regards GNI estimates, harmonised consumer price indices, short-term indicators, and balance of payments and social statistics. A coordination unit responsible for administrative preparations related to the own resources system will need to be established in due course.

As regards traditional own resources, Turkish customs legislation is largely in line with the 1999 *acquis*, but Turkey should make further efforts to align and enforce legislation. Also with regard to the control of future EC own resources, Turkey should reinforce instruments intended to combat VAT and customs duty fraud.

In addition to the need for central coordination of the proper collection, monitoring, payment and control of funds to and from the EC budget, administrative capacity should continue to be strengthened in the context of the relevant policy areas described elsewhere in this Report, such as agriculture, customs, taxation, statistics and financial control.

### *Conclusion*

As stated above, the *acquis* in this area does not require transposition. Nevertheless, further efforts will be needed both in legislative terms and in terms of implementation, such as the adoption of the statistical law and the restructuring of tax administration respectively.

## **3.2 General evaluation**

Turkey's alignment has progressed in many areas but remains at an early stage for most chapters. Further work is required in all areas, new legislation should not move away from the *acquis*, and discrimination against non-Turkish service providers, or products should be discontinued. Administrative capacity needs to be reinforced. Moreover no Member State should be excluded from the mutual benefits deriving from the alignment with the *acquis*.

On the *free movement of goods*, overall transposition of the *acquis* is advancing steadily, but is not complete, while implementation remains uneven. There has been progress in the area of horizontal and procedural measures, and sector specific legislation, in particular in new approach areas, where substantial progress has taken place concerning conformity assessment and market surveillance. The public procurement Law still contains discrepancies with the *acquis*. Turkey should speed up the efforts to remove technical barriers to trade, and to increase compliance with the Decision 1/95 of the Association Council establishing the Customs Union, and to take the necessary steps to implement free circulation of products in the non-harmonised areas.

No progress has taken place concerning the *free movement of persons*, and overall legislative alignment is still at a very early stage. The administrative capacity needs thorough upgrading. Concerning the *freedom to provide services*, some progress could be recorded for financial services, except for insurance, but no development took place in the area of non-financial services. Market access restrictions are in place in particular in the area of non-financial services. In the field of professional services, no progress has been made since the previous Report. The alignment with the *acquis* on personal data protection needs to be achieved. An authority dealing with personal data protection should be established and the independence of the existing financial services supervisory

authorities should be safeguarded. Limitations for foreigners should also be lifted. Alignment remains limited with the *acquis* on the *free movement of capital*. The priority should be the adoption of anti-money laundering provisions, and the removal of restrictions to investment by foreigners. Improvements in this area would contribute to facilitate inflow of foreign direct investment.

In the area of *company law*, the alignment with the *acquis* remains very limited. However, important efforts have been undertaken to fight piracy with regards protection of intellectual and industrial property rights, but insufficient administrative capacity prevents remains a constraint. Concerning *competition policy*, the alignment with the *acquis* on anti-trust legislation is significant and progress continues in a satisfactory manner. On the contrary, alignment with state aid *acquis* is very limited, in spite of its inclusion in the Customs Union. The adoption of the state aid Law and the establishment of the state aid monitoring authority are crucial issues. Further efforts are also necessary to prepare an acceptable restructuring programme for the steel sector.

Little progress can be recorded since the previous Report in the area of *agriculture*, and overall alignment with the *acquis* remains limited. Progress has taken place concerning in particular veterinary, phytosanitary and food, but transposition and administrative capacity are still insufficient to ensure effective implementation. Rural development, eradication of animal diseases and upgrading of the Administrations concerned should be regarded as priorities. Progress has been very limited concerning *fisheries*. It is necessary to increase the efforts concerning resources management, as well as to reinforce the inspection and control capacities.

Some progress could be recorded in all *transport* modes, excepted air transport, but overall alignment remains limited and all modes present problematic issues. Concerning in particular maritime transport, the detention rate remains much higher than the EU average, and Turkey remains in the black list of the secretariat of the Paris Memorandum of Understanding on Port State controls. Cypriot vessels or vessels having landed in Cyprus are still not allowed in Turkish ports. Transposition of the *acquis* should take place in parallel with adherence to international agreements. The staff and capacity of the Ministry of Transport needs to be strengthened substantially.

As regards *taxation*, there has been limited progress in the area of *indirect taxation*, while no progress could be reported on direct taxation, or administrative co-operation. Overall, the Turkish fiscal regime remains partly aligned with the *acquis*, and important efforts remain necessary on all areas under this chapter. Alignment is necessary in particular concerning VAT, the scope of exemptions and applied rates. With regards to indirect taxation, excise duties should not penalise imported products. Also, administrative capacity requires a substantial strengthening, in particular to improve tax collection.

No progress can be recorded concerning *economic and monetary union* since the previous Report, and the overall level of alignment is limited. The most important issues to be addressed are the independence of the central bank and the remaining possibilities of privileged access to the financial sector to finance the budget.



In the area of *statistics*, there has been steady progress, but the alignment remains still limited. Therefore substantial efforts are still needed concerning statistical development. To this end, the new Statistical Law should be given priority. On *social policy and employment*, progress has been made since the last report, in particular as concerns health and safety at work. Nevertheless, the main problematic areas remain gender equality, labour law, anti discrimination, and social dialogue. Enforcement and full implementation of the legislation also appear as major challenges.

Turkey has made some progress in the *energy* chapter, while the degree of alignment remains limited and uneven across the different areas covered by the *acquis*. Effective implementation of the *acquis* requires a reinforcement of the administrative capacity. Sector restructuring including privatisation and the elimination of price distortions should continue.

In the area of *industrial policy*, there is a large alignment with the EC principles of *industrial policy*. Turkey has adopted an industrial strategy, but privatisation and restructuring are not progressing as planned. Steel sector and state owned banks in particular needs to be restructured. Despite progress in the framework legislation, foreign direct investment remains low. Concerning *small and medium sided enterprises*, access to finance has improved, and the Turkish policy is broadly in line with the EU enterprise policy. Nevertheless, further efforts remain necessary to improve SMEs' access to finance, and the business environment. In particular, a more effective treatment of the commercial court cases should be ensured. The definition of SME used by Turkey is not in line with the relevant Commission recommendations.

Some progress has been made in the area of *science and research*. The framework for co-operation is established, and representatives of Turkey participate as observers in the Committees preparing the 6<sup>th</sup> Framework Programme. To achieve full and effective participation to the Framework Programme requires that Turkey further upgrades its research-related administrative capacity. Similarly, some progress has been achieved concerning *education and training*, especially concerning the enrolment of girls in less favoured regions. The participation of Turkey to the EC programmes is satisfactory, but the investment remains below the EU average. Reforms and reinforcement of the training and education policies and institutions should continue, including the role of the High Education Board (YÖK), and the links between the labour market and the education should be improved.

In the *telecommunications* sector, fixed telephony services has been fully liberalised in 2004, and competition in internet services market has increased. There is overall a certain level of alignment with the *acquis*, but since the previous Report, very limited further progress has been made. Further efforts are in particular necessary to complete the legal framework and effectively implement the rules, including an adequate empowerment of the Telecom Authority, and to ensure an adequate level of competition in all telecommunication services.

Turkey's alignment with the *acquis* in *culture and audiovisual policy* remains limited, but some progress has been made through adoption of the regulation concerning radio and

television broadcasts in languages and dialects used traditionally by Turkish citizens. The regulation has started to be implemented and broadcasts in Kurdish and other languages have started on national and regional basis. However, the conditions attached the regulation are still restrictive and substantial efforts continue to be necessary to achieve alignment with the *acquis*.

The *acquis* concerning *regional policy* is relevant for the implementation of Structural and Cohesion Funds. Very limited development has been made and the overall level of alignment with the *acquis* is limited. Substantial efforts would therefore be necessary to make appropriate use of the EU's structural instruments. Necessary institutions need to be created and administrative capacity to be reinforced.

Some progress has taken place concerning the *environment*, and the administrative capacity has been reinforced. However, the overall transposition of the environment *acquis* remains low. Administrative capacity needs further reinforcement and improved co-ordination among the administrations involved. The most intense efforts are needed for horizontal legislation, air and water quality, waste management, nature protection, industrial pollution and risk management.

In the area of *consumers and health protection*, efforts to align with the *acquis* have continued, in particular concerning market surveillance. Overall alignment is uneven throughout the different components of consumers protection, and is more advanced concerning non-safety related measures. The efforts to ensure an effective transposition and implementation of the *acquis* on product liability and to improve administrative capacity should be pursued.

Turkey has continued to make efforts to align with the *acquis* in the area of *justice and home affairs*. Nevertheless, progress is required in important areas such as the reform of the judiciary and the fight against corruption. Co-operation both at national level among all relevant administrative bodies and with the EU should be improved on issues such as illegal migration and trafficking, including through the negotiation of a readmission agreement. The geographic limitation to the Geneva Convention on refugees should be lifted and co-operation among the relevant institutions should be improved.

Concerning the *acquis* in the area of *customs union*, there has been some progress since the previous Regular Report, the administrative capacity has been further strengthened and the overall level alignment is high, with exceptions in specific areas. The alignment of non-customs provisions applied in free zones continues to diverge from the *acquis* and need to be corrected. The overall level of alignment concerning *external relations* is already high, and some further progress has taken place. The adoption of most of the EC Generalised System of Preferences in particular is a welcome development. Certain discrepancies with the *acquis* still exist, concerning special regimes under the GSP, and other derive from the difficulties met in the negotiations with certain third Countries. Turkey is encouraged to continue its efforts in this area. As regards, *common foreign and security policy*, Turkey's foreign policy continues to be broadly in line with that of the EU, though less so when Turkey's neighbouring countries are concerned. Turkey's track record could be improved by ensuring a higher alignment with EU positions in

international fora, and by ensuring the applicability of the sanctions or restrictive measures agreed.

Some progress can be reported since last year's Report regarding *financial control*. In particular, the adoption of the Public Financial Management and Control Law constitutes a significant step but the law will only be entirely implemented as from 2008. Turkey should further reinforce its administration and the capacity to protect the financial interests of the EC. In addition, significant progress has taken place concerning national budget formulation and execution, in the area of *financial and budgetary provisions*. However, there has been no improvement in the application of provisions on own resources. Further efforts are therefore necessary concerning the adoption of the necessary legislation and its implementation.

Implementation of legislation formally aligned with the *acquis* continues to be insufficient. Administrative capacity in most areas needs to be strengthened to ensure that the *acquis* is implemented and enforced effectively. In some cases, administrative reform should entail the establishment of new structures, for example in the field of state aid and regional development. Where regulatory bodies have been set up, they should be adequately empowered to perform their tasks, including adequate staffing and resources, and to ensure that their decisions are enforced. To this end, their autonomy should be safeguarded. Improved co-operation between the Commission and the Turkish administration in areas such as conformity assessment should be extended to other areas.

## C. CONCLUSION

When the European Council of December 1999 decided that Turkey is a candidate for accession, Turkey was considered to have the basic features of a democratic system while at the same time displaying serious shortcomings in terms of human rights and protection of minorities. In 2002, the Commission noted in its Regular Report that the decision on the candidate status of Turkey had encouraged the country to make noticeable progress with the adoption of a series of fundamental, but still limited, reforms. At that time, it was clear that most of those measures had yet to be implemented and that many other issues required to meet the Copenhagen political criteria had yet to be addressed. On that basis, the European Council decided in December 2002 to re-examine Turkey's fulfilment of the political criteria at the end of 2004.

Political reforms, in line with the priorities in the Accession Partnership, have been introduced by means of a series of constitutional and legislative changes adopted over a period of three years (2001-2004). There have been two major constitutional reforms in 2001 and 2004 and eight legislative packages were adopted by Parliament between February 2002 and July 2004. New codes have been adopted, including a Civil Code and a Penal Code. Numerous other laws, regulations, decrees and circulars outlining the application of these reforms were issued. The government undertook major steps to achieve better implementation of the reforms. The Reform Monitoring Group, a body set up under the chairmanship of the deputy Prime Minister responsible for Human Rights, was established to supervise the reforms across the board and to solve practical problems. Significant progress took place also on the ground; however, the implementation of reforms remains uneven.

On civil-military relations, the government has increasingly asserted its control over the military. In order to enhance budgetary transparency the Court of Auditors was granted permission to audit military and defence expenditures. Extra-budgetary funds have been included in the general budget, allowing for full parliamentary control. In August 2004, for the first time a civilian was appointed Secretary General of the National Security Council. The process of fully aligning civil-military relations with EU practice is underway; nevertheless, the armed forces in Turkey continue to exercise influence through a series of informal mechanisms.

The independence and efficiency of the judiciary were strengthened, State Security Courts were abolished and some of their competencies were transferred to the newly-created Serious Felony Courts. The legislation to establish Intermediate Courts of Appeal was recently adopted, but the draft new Code of Criminal Procedure, the draft Laws on the Establishment of the Judicial Police and on the Execution of Punishments still await adoption.

Since 1 January 2004, Turkey has been a member of the Council of Europe's Group of States Against Corruption (GRECO). A number of anti-corruption measures have been adopted, in particular by establishing ethical rules for public servants. However, despite these legislative developments, corruption remains a serious problem in almost all areas of the economy and public affairs.

Concerning the general framework for the respect of human rights and the exercise of fundamental freedoms, Turkey has acceded to most relevant international and European conventions and the principle of the supremacy of these international human rights conventions over domestic law was enshrined in the Constitution. Since 2002 Turkey has increased its efforts to execute decisions of the European Court of Human Rights. Higher judicial bodies such as the Court of Cassation have issued a number of judgments interpreting the reforms in accordance with the standards of the European Court, including in cases related to the use of the Kurdish language, torture and freedom of expression. Retrials have taken place, leading to a number of acquittals. Leyla Zana and her former colleagues, who were released from prison in June 2004, are to face a further retrial, following a decision by the Court of Cassation.

The death penalty was abolished in all circumstances according to Protocol No 13 to the European Convention on Human Rights, which Turkey signed in January 2004. Remaining references to the death penalty in existing legislation were removed. Further efforts have been made to strengthen the fight against torture and ill-treatment, including provisions in the new Penal Code. Pre-trial detention procedures have been aligned with European standards, although detainees are not always made aware of their rights by law enforcement officers. The authorities have adopted a zero tolerance policy towards torture and a number of perpetrators of torture have been punished. Torture is no longer systematic, but numerous cases of ill-treatment including torture still continue to occur and further efforts will be required to eradicate such practices.

As regards freedom of expression, the situation has improved significantly, but several problems remain. The situation of individuals sentenced for non-violent expression of opinion is now being addressed and several persons sentenced under the old provisions were either acquitted or released. Constitutional amendments and a new press law have increased press freedoms. The new law abrogates sanctions such as the closure of publications, the halting of distribution and the confiscation of printing machines. However, in a number of cases journalists and other citizens expressing non-violent opinion continue to be prosecuted. The new Penal Code provides only limited progress as regards freedom of expression.

If adopted, the new Law on Associations, initially passed in July 2004 and then vetoed by the President, will be significant in terms of reducing the possibility of state interference in the activities of associations and will contribute towards the strengthening of civil society. Despite measures taken to ease restrictions on demonstrations, there are still reports of the use of disproportionate force against demonstrators.

Although freedom of religious belief is guaranteed by the Constitution, and freedom to worship is largely unhampered, non-Muslim religious communities continue to experience difficulties connected with legal personality, property rights, training of clergy, schools and internal management. Appropriate legislation could remedy these difficulties. Alevis are still not recognised as a Muslim minority.

As regards economic and social rights, the principle of gender equality has been strengthened in the Civil Code and the Constitution. Under the new Penal Code,

perpetrators of “honour killings” should be sentenced to life imprisonment, virginity tests will be prohibited without a court order and sexual assault in marriage will qualify as a criminal offence. The situation of women is still unsatisfactory; discrimination and violence against women, including “honour killings”, remain a major problem. Children’s rights were strengthened, but child labour remains an issue of serious concern. Trade union rights still fall short of ILO standards.

As far as the protection of minorities and the exercise of cultural rights are concerned, the Constitution was amended to lift the ban on the use of Kurdish and other languages. Several Kurdish language schools recently opened in the Southeast of Turkey. Broadcasting in Kurdish and other languages and dialects is now permitted and broadcasts have started, although on a restricted scale. There has been greater tolerance for the expression of Kurdish culture in its different forms. The measures adopted in the area of cultural rights represent only a starting point. There are still considerable restrictions, in particular in the area of broadcasting and education in minority languages.

The state of emergency, which had been in force for 15 years in some provinces of the Southeast, was completely lifted in 2002. Provisions used to restrict pre-trial detention rights under emergency rule were amended. Turkey began a dialogue with a number of international organisations, including the Commission, on the question of internally displaced persons. A Law on Compensation of Losses Resulting from Terrorist Acts was approved. Although work is underway to define a more systematic approach towards the region, no integrated strategy with a view to reducing regional disparities and addressing the economic, social and cultural needs of the local population has yet been adopted. The return of internally displaced persons in the Southeast has been limited and hampered by the village guard system and by a lack of material support. Future measures should address specifically the recommendations of the UN Secretary General’s Special Representative for Displaced Persons.

In conclusion, Turkey has achieved significant legislative progress in many areas, through further reform packages, constitutional changes and the adoption of a new Penal Code, and in particular in those identified as priorities in last year’s report and in the Accession Partnership. Important progress was made in the implementation of political reforms, but these need to be further consolidated and broadened. This applies to the strengthening and full implementation of provisions related to the respect of fundamental freedoms and protection of human rights, including women’s rights, trade union rights, minority rights and problems faced by non-Muslim religious communities. Civilian control over the military needs to be asserted, and law enforcement and judicial practice aligned with the spirit of the reforms. The fight against corruption should be pursued. The policy of zero tolerance towards torture should be reinforced through determined efforts at all levels of the Turkish state. The normalisation of the situation in the Southeast should be pursued through the return of displaced persons, a strategy for socio-economic development and the establishment of conditions for the full enjoyment of rights and freedoms by the Kurds.

The changes to the Turkish political and legal system over the past years are part of a longer process and it will take time before the spirit of the reforms is fully reflected in the

attitudes of executive and judicial bodies, at all levels and throughout the country. A steady determination will be required in order to tackle outstanding challenges and overcome bureaucratic hurdles. Political reform will continue to be closely monitored.

As regards the enhanced political dialogue, relations with Greece developed positively. A series of bilateral agreements were signed and several confidence building measures adopted. A process of exploratory talks has continued. On Cyprus, over the last year Turkey has supported and continues to support the efforts of the UN Secretary General to achieve a comprehensive settlement of the Cyprus problem. The European Council of June 2004 invited Turkey to conclude negotiations with the Commission on behalf of the Community and its 25 Member States on the adaptation of the Ankara Agreement to take account of the accession of the new Member States. The Commission expects a positive reply to the draft protocol on the necessary adaptations transmitted to Turkey in July 2004.

Turkey has made further considerable progress towards being a functioning market economy, in particular by reducing its macroeconomic imbalances. Turkey should also be able to cope with competitive pressure and market forces within the Union, provided that it firmly maintains its stabilisation policy and takes further decisive steps towards structural reforms.

Economic stability and predictability have been substantially improved since the 2001 economic crisis. Previously high inflation has come down to historic lows, political interference has been reduced and the institutional and regulatory framework has been brought closer to international standards. Thus, an important change towards a stable and rule-based economy has taken place. Key economic vulnerabilities, such as financial sector imbalances, have been tackled. Financial sector supervision has been strengthened. As a result, the shock resilience of the Turkish economy has significantly increased. Important progress has been achieved in increasing the transparency and efficiency of public administration, including public finances. Furthermore, important steps have been taken in facilitating the inflow of FDI and in improving the legal framework for privatisation.

In order to transform the current positive dynamics into sustained growth and stability, it is of crucial importance to continue the ongoing reform process. Maintaining a stability-oriented economic policy is a key element in this respect. In particular, fiscal imbalances have to be reduced and the disinflation process has to be maintained. The business climate would be improved by streamlining administrative procedures and strengthening the rule of law. Improving the efficiency of the commercial judiciary is of particular importance in this context. The banking sector's surveillance and prudential rules should continue to be aligned with international standards. The privatisation of state-owned banks and enterprises should be accelerated. Sufficient public and private investment and devoting particular attention to education are important to increase the competitiveness and the growth potential of the economy. The inflow of foreign direct investment has to be encouraged by removing remaining barriers.

Turkey's alignment has progressed in many areas but remains at an early stage for most chapters. Further work is required in all areas, new legislation should not move away from the *acquis*, and discrimination against non-Turkish service providers, or products should be discontinued. Administrative capacity needs to be reinforced. Moreover no Member State should be excluded from the mutual benefits deriving from the alignment with the *acquis*.

On the *free movement of goods*, overall transposition of the *acquis* is advancing steadily, but is not complete, while implementation remains uneven. There has been progress in the area of horizontal and procedural measures, and sector specific legislation, in particular in new approach areas, where substantial progress has taken place concerning conformity assessment and market surveillance. The public procurement Law still contains discrepancies with the *acquis*. Turkey should speed up the efforts to remove technical barriers to trade, and to increase compliance with the Decision 1/95 of the Association Council establishing the Customs Union, and to take the necessary steps to implement free circulation of products in the non-harmonised areas.

No progress has taken place concerning the *free movement of persons*, and overall legislative alignment is still at a very early stage. The administrative capacity needs thorough upgrading. Concerning the *freedom to provide services*, some progress could be recorded for financial services, except for insurance, but no development took place in the area of non-financial services. Market access restrictions are in place in particular in the area of non-financial services. In the field of professional services, no progress has been made since the previous Report. The alignment with the *acquis* on personal data protection needs to be achieved. An authority dealing with personal data protection should be established and the independence of the existing financial services supervisory authorities should be safeguarded. Limitations for foreigners should also be lifted. Alignment remains limited with the *acquis* on the *free movement of capital*. The priority should be the adoption of anti-money laundering provisions, and the removal of restrictions to investment by foreigners. Improvements in this area would contribute to facilitate inflow of foreign direct investment.

In the area of *company law*, the alignment with the *acquis* remains very limited. However, important efforts have been undertaken to fight piracy with regards protection of intellectual and industrial property rights, but insufficient administrative capacity prevents remains a constraint. Concerning *competition policy*, the alignment with the *acquis* on anti-trust legislation is significant and progress continues in a satisfactory manner. On the contrary, alignment with state aid *acquis* is very limited, in spite of its inclusion in the Customs Union. The adoption of the state aid Law and the establishment of the state aid monitoring authority are crucial issues. Further efforts are also necessary to prepare an acceptable restructuring programme for the steel sector.

Little progress can be recorded since the previous Report in the area of *agriculture*, and overall alignment with the *acquis* remains limited. Progress has taken place concerning in particular veterinary, phytosanitary and food, but transposition and administrative capacity are still insufficient to ensure effective implementation. Rural development, eradication of animal diseases and upgrading of the Administrations concerned should be



regarded as priorities. Progress has been very limited concerning *fisheries*. It is necessary to increase the efforts concerning resources management, as well as to reinforce the inspection and control capacities.

Some progress could be recorded in all *transport* modes, excepted air transport, but overall alignment remains limited and all modes present problematic issues. Concerning in particular maritime transport, the detention rate remains much higher than the EU average, and Turkey remains in the black list of the secretariat of the Paris Memorandum of Understanding on Port State controls. Cypriot vessels or vessels having landed in Cyprus are still not allowed in Turkish ports. Transposition of the *acquis* should take place in parallel with adherence to international agreements. The staff and capacity of the Ministry of Transport needs to be strengthened substantially.

As regards *taxation*, there has been limited progress in the area of *indirect taxation*, while no progress could be reported on direct taxation, or administrative co-operation. Overall, the Turkish fiscal regime remains partly aligned with the *acquis*, and important efforts remain necessary on all areas under this chapter. Alignment is necessary in particular concerning VAT, the scope of exemptions and applied rates. With regards to indirect taxation, excise duties should not penalise imported products. Also, administrative capacity requires a substantial strengthening, in particular to improve tax collection.

No progress can be recorded concerning *economic and monetary union* since the previous Report, and the overall level of alignment is limited. The most important issues to be addressed are the independence of the central bank and the remaining possibilities of privileged access to the financial sector to finance the budget.

In the area of *statistics*, there has been steady progress, but the alignment remains still limited. Therefore substantial efforts are still needed concerning statistical development. To this end, the new Statistical Law should be given priority. On *social policy and employment*, progress has been made since the last report, in particular as concerns health and safety at work. Nevertheless, the main problematic areas remain gender equality, labour law, anti discrimination, and social dialogue. Enforcement and full implementation of the legislation also appear as major challenges.

Turkey has made some progress in the *energy* chapter, while the degree of alignment remains limited and uneven across the different areas covered by the *acquis*. Effective implementation of the *acquis* requires a reinforcement of the administrative capacity. Sector restructuring including privatisation and the elimination of price distortions should continue.

In the area of *industrial policy*, there is a large alignment with the EC principles of *industrial policy*. Turkey has adopted an industrial strategy, but privatisation and restructuring are not progressing as planned. Steel sector and state owned banks in particular needs to be restructured. Despite progress in the framework legislation, foreign direct investment remains low. Concerning *small and medium sided enterprises*, access to finance has improved, and the Turkish policy is broadly in line with the EU enterprise policy. Nevertheless, further efforts remain necessary to improve SMEs' access to

finance, and the business environment. In particular, a more effective treatment of the commercial court cases should be ensured. The definition of SME used by Turkey is not in line with the relevant Commission recommendations.

Some progress has been made in the area of *science and research*. The framework for co-operation is established, and representatives of Turkey participate as observers in the Committees preparing the 6<sup>th</sup> Framework Programme. To achieve full and effective participation to the Framework Programme requires that Turkey further upgrades its research-related administrative capacity. Similarly, some progress has been achieved concerning *education and training*, especially concerning the enrolment of girls in less favoured regions. The participation of Turkey to the EC programmes is satisfactory, but the investment remains below the EU average. Reforms and reinforcement of the training and education policies and institutions should continue, including the role of the High Education Board (YÖK), and the links between the labour market and the education should be improved.

In the *telecommunications* sector, fixed telephony services has been fully liberalised in 2004, and competition in internet services market has increased. There is overall a certain level of alignment with the *acquis*, but since the previous Report, very limited further progress has been made. Further efforts are in particular necessary to complete the legal framework and effectively implement the rules, including an adequate empowerment of the Telecom Authority, and to ensure an adequate level of competition in all telecommunication services.

Turkey's alignment with the *acquis in culture and audiovisual policy* remains limited, but some progress has been made through adoption of the regulation concerning radio and television broadcasts in languages and dialects used traditionally by Turkish citizens. The regulation has started to be implemented and broadcasts in Kurdish and other languages have started on national and regional basis. However, the conditions attached the regulation are still restrictive and substantial efforts continue to be necessary to achieve alignment with the *acquis*.

The *acquis concerning regional policy* is relevant for the implementation of Structural and Cohesion Funds. Very limited development has been made and the overall level of alignment with the *acquis* is limited. Substantial efforts would therefore be necessary to make appropriate use of the EU's structural instruments. Necessary institutions need to be created and administrative capacity to be reinforced.

Some progress has taken place concerning the *environment*, and the administrative capacity has been reinforced. However, the overall transposition of the environment *acquis* remains low. Administrative capacity needs further reinforcement and improved co-ordination among the administrations involved. The most intense efforts are needed for horizontal legislation, air and water quality, waste management, nature protection, industrial pollution and risk management.

In the area of *consumers and health protection*, efforts to align with the *acquis* have continued, in particular concerning market surveillance. Overall alignment is uneven

throughout the different components of consumers protection, and is more advanced concerning non-safety related measures. The efforts to ensure an effective transposition and implementation of the *acquis* on product liability and to improve administrative capacity should be pursued.

Turkey has continued to make efforts to align with the *acquis* in the area of *justice and home affairs*. Nevertheless, progress is required in important areas such as the reform of the judiciary and the fight against corruption. Co-operation both at national level among all relevant administrative bodies and with the EU should be improved on issues such as illegal migration and trafficking, including through the negotiation of a readmission agreement. The geographic limitation to the Geneva Convention on refugees should be lifted and co-operation among the relevant institutions should be improved.

Concerning the *acquis* in the area of *customs union*, there has been some progress since the previous Regular Report, the administrative capacity has been further strengthened and the overall level alignment is high, with exceptions in specific areas. The alignment of non-customs provisions applied in free zones continues to diverge from the *acquis* and need to be corrected. The overall level of alignment concerning *external relations* is already high, and some further progress has taken place. The adoption of most of the EC Generalised System of Preferences in particular is a welcome development. Certain discrepancies with the *acquis* still exist, concerning special regimes under the GSP, and other derive from the difficulties met in the negotiations with certain third Countries. Turkey is encouraged to continue its efforts in this area. As regards, *common foreign and security policy*, Turkey's foreign policy continues to be broadly in line with that of the EU, though less so when Turkey's neighbouring countries are concerned. Turkey's track record could be improved by ensuring a higher alignment with EU positions in international fora, and by ensuring the applicability of the sanctions or restrictive measures agreed.

Some progress can be reported since last year's Report regarding *financial control*. In particular, the adoption of the Public Financial Management and Control Law constitutes a significant step but the law will only be entirely implemented as from 2008. Turkey should further reinforce its administration and the capacity to protect the financial interests of the EC. In addition, significant progress has taken place concerning national budget formulation and execution, in the area of *financial and budgetary provisions*. However, there has been no improvement in the application of provisions on own resources. Further efforts are therefore necessary concerning the adoption of the necessary legislation and its implementation.

Implementation of legislation formally aligned with the *acquis* continues to be insufficient. Administrative capacity in most areas needs to be strengthened to ensure that the *acquis* is implemented and enforced effectively. In some cases, administrative reform should entail the establishment of new structures, for example in the field of state aid and regional development. Where regulatory bodies have been set up, they should be adequately empowered to perform their tasks, including adequate staffing and resources, and to ensure that their decisions are enforced. To this end, their autonomy should be

safeguarded. Improved co-operation between the Commission and the Turkish administration in areas such as conformity assessment should be extended to other areas.

#### D. ACCESSION PARTNERSHIP: GLOBAL ASSESSMENT

Turkey's progress and overall state of preparation in respect of the Copenhagen criteria has been examined and conclusions drawn above. The present section assesses briefly the overall extent to which the priorities of the Accession Partnership have been met.

A revised Accession Partnership was adopted by the Council in May 2003.<sup>25</sup> The purpose of the Accession Partnership is to assist the Turkish authorities in their efforts to meet the accession criteria, with particular emphasis on the political criteria. It covers in detail the priorities for accession preparations, in particular implementing the *acquis*, and forms the basis for programming pre-accession assistance from Community funds.

Turkey has continued to address the priorities defined by the revised Accession Partnership. Overall, progress has been made, but substantial efforts are still necessary to complete the tasks foreseen. For a considerable number of these priorities, the government will benefit from EU assistance, as projects directly related to these priorities have been included in the 2004 national programme (see more details in part A.2 of this report).

With regard to the priorities concerning the **enhanced political dialogue and political criteria**, significant legislative progress has been achieved in particular in those areas identified as priorities in last year's report. Important progress was also achieved in terms of implementation. Deficiencies remain and it is clear that political reform needs to be further consolidated and broadened.

On Cyprus, over the last year Turkey has supported the efforts of the UN Secretary General to achieve a *comprehensive settlement of the Cyprus problem*. As regards the principle of *peaceful settlement of border disputes*, relations with Greece developed positively. A series of bilateral agreements were signed and several confidence building measures adopted. A process of exploratory talks has continued.

Turkey has acceded to most of the relevant *international and European conventions*, although in some instances with significant reservations, and has increased its efforts to execute *decisions of the European Court of Human Rights* (ECtHR). Protocol No. 6 to the European Convention on Human Rights (ECHR) was ratified and Protocol No 13, concerning the abolition of the death penalty in all circumstances, was signed in January 2004. Any remaining reference to the death penalty in existing legislation was removed.

Further efforts have been made to strengthen the *fight against torture and ill-treatment*. The authorities pursue a zero tolerance policy towards torture and there have been cases where perpetrators of torture have been punished. A number of recommendations of the Council of Europe's Committee for the Prevention of Torture have been implemented. Pre-trial detention procedures have been aligned with European standards. Nonetheless,

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<sup>25</sup> Council decision 2003/398/EC of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey (OJ L 145, 12.6.2003, p 40).

on the ground, *detainees* are still not always made aware of their rights by the law enforcement bodies and prosecutors are not always promptly and adequately conducting investigations against public officials accused of torture. Continued efforts will be necessary to eradicate these methods, including the consistent imposition of appropriate sanctions on the perpetrators of torture and ill-treatment.

Significant progress has been achieved in aligning the overall framework for the exercise of *fundamental freedoms* with European standards. The principle of *equality of men and women* has been strengthened and provisions allowing reduced sentences for so-called “honour killings” have been removed. A new penal code introduces further alignment in particular in relation to women’s rights, non-discrimination and the fight against torture and ill-treatment.

Constitutional amendments and a new press law have strengthened *freedom of the press*. The situation as regards freedom of expression has improved significantly, but several problems remain and in a number of cases journalists and other citizens expressing non-violent opinion continue to be prosecuted. The situation of people sentenced for *non-violent expression of opinion* is now being addressed in line with the repeal or amendment of certain legislation. Retrials have taken place in line with ECtHR judgements and several persons sentenced under the old provisions were either acquitted or released. However, provisions enabling retrial still do not apply to all relevant ECtHR judgements.

A new *Law on Associations* was passed by Parliament and vetoed by the President. If adopted, it will reduce the possibility of state interference in the activities of associations and contribute to the strengthening of civil society. While the systematic video recording of NGOs’ activities and the disproportionate use of force against demonstrators are both still reported, the authorities have recently taken steps aimed at combating such practices. Although they are less frequently convicted, human rights defenders are still often subject to judicial harassment

While *freedom of religious belief* is guaranteed in the Constitution, non-Muslim religious communities continue to experience serious problems, including difficulties connected with legal personality, property rights, training of clergy, schools and internal management, which could be remedied through the adoption of appropriate legislation. Alevi are still not recognised as a Muslim minority.

There has been progress in the implementation of reforms concerning *cultural rights*. Kurdish language classes recently began in several private language schools in the Southeast of Turkey. Broadcasting in Kurdish and other languages and dialects other than Turkish is now permitted, if under restrictive conditions, and such broadcasts have started. There has been greater tolerance for cultural events using the Kurdish language in the Southeast and for the expression of Kurdish culture in its different forms. The measures adopted in the area of cultural rights represent only a starting point as considerable restrictions remain. In this regard, Turkey’s reservations to UN human rights covenants on the right to education and protection of minorities are of concern.

Budgetary transparency has been enhanced. The Court of Auditors was granted permission to audit military and defence expenditures. Extra-budgetary funds have been included in the general budget allowing for full parliamentary control. For the first time, a civilian has been appointed to the position of Secretary General of the *National Security Council* in August 2004. However, the armed forces continue to exercise influence through informal mechanisms.

As regards the *strengthening of the independence and the efficiency of the judiciary*, State Security Courts have been abolished and some of their competencies have been transferred to newly created Serious Felony Courts. The principle of the primacy of international and European conventions over domestic law as regards human rights has been enshrined in the Constitution. Higher judicial bodies such as the Court of Cassation have issued a number of judgments interpreting the reforms in accordance with the standards of the ECtHR. Such practice will require further consolidation throughout the judiciary. Legislation was adopted to establish Intermediate Courts of Appeal.

The *prison system* has continued to improve although isolation in high security prisons remains a serious problem. The training of enforcement judges has, to date, been inadequate.

The Turkish authorities have pursued a number of *training programmes on human rights* targeting relevant personnel in the Ministry of the Interior, Ministry of Justice, the gendarmerie and the police. A Justice Academy has been established and training on international law and human rights for judges and prosecutors has been intensified. During 2003-2004, all judges and prosecutors received training on the ECHR and the case law of the ECtHR in the context of a European Commission-Council of Europe joint initiative.

Turkey began a dialogue with a number of international organisations, including the Commission, on the question of *internally displaced persons*. A law on the compensation of damages incurred by the victims of terrorism was approved. Although work has started to define a more systematic approach towards the Southeast, no integrated strategy with a view to reducing regional disparities and addressing the economic, social and cultural needs of the local population has yet been adopted. The return of internally displaced persons to the Southeast has been limited and hampered by the village guard system, landmines and a lack of material support. Future measures need to address specifically the recommendations of the UN Secretary General's Special Representative for Displaced Persons.

The short term priorities relating to the **economic criteria** have been partially met. The current disinflation programme continues to be implemented effectively while reforms in the financial sector have also continued. The legislative framework to facilitate foreign direct investment has improved, and the dialogue with the EU on macroeconomic issues is satisfactory. However, further work is necessary as regards privatisation. Efforts are taking place to address the informal economy and the reforms of the agricultural sector have continued.

Concerning the **ability to assume the obligations of membership**, there has been progress in meeting the short terms priorities in a number of chapters. The legal work to complete the free circulation of goods has progressed but is not yet completed. However, as regards competition, there has been no progress in the establishment of a state aid monitoring authority.

As regards the **medium-term priorities** identified in the 2003 Accession Partnership, Turkey has continued to address certain issues relating to the economic criteria, the free movement of capital, taxation, economic and monetary union, energy and justice and home affairs.

Progress on the issues identified as priorities in the Accession Partnership is discussed in more detail in other parts of this report, notably in part B.3 of this report: *Ability to assume the obligations of membership*. The revised Accession Partnership follows the same structure as the Regular Report.

The revised Accession Partnership continues to be a main tool guiding Turkey's work on preparation for accession to the EU. Implementation of the Accession Partnership needs to continue. It should be given the necessary political attention and should help Turkey to set its legislative and institution-building agenda.



## ANNEXES

## Annex I

### Human rights conventions ratified by the candidate countries

(as at end of September 2004)

Adherence to following conventions and protocols	Bulgaria	Romania	Turkey
ECHR (European Convention on Human Rights)	✓	✓	✓
Protocol 1 (right of property)	✓	✓	✓
Protocol 4 (freedom movement et al.)	✓	✓	
Protocol 6 (death penalty)	✓	✓	✓
Protocol 7 (ne bis in idem)	✓	✓	
European Convention for the Prevention of Torture	✓	✓	✓
European Social Charter	n/a	n/a	✓
Revised European Social Charter	✓	✓	
Framework Convention for National Minorities	✓	✓	
<b>ICCPR</b> (International Covenant on Civil and Political Rights)	✓	✓	✓
Optional Protocol to the ICCPR (right of individual communication)	✓	✓	
Second Optional Protocol to ICCPR (death penalty)	✓	✓	
<b>ICESCR</b> (International Covenant on Economic, Social and Cultural rights)	✓	✓	✓
<b>CAT</b> (Convention against Torture)	✓	✓	✓
<b>CERD</b> (Convention on the Elimination of All Forms of Racial Discrimination)	✓	✓	✓
<b>CEDAW</b> (Convention on the Elimination of All Forms of Discrimination against Women)	✓	✓	✓
Optional Protocol to the CEDAW			
<b>CRC</b> (Convention on the Rights of the Child)	✓	✓	✓

## Annex II

### Statistical annex

	1999	2000	2001	2002	2003
<b>Basic data</b>	<b>in 1000</b>				
Population (average)	66,293 E	67,420E	68,529E	69,626E	70,712E
Total area	769.604	769.604	769.604	769.604	769.604

<b>National accounts</b>	<b>1000 Mio Turkish Lira</b>				
Gross domestic product at current prices	77.415. 272	124.583.4 58	178.412.4 38	277.574.0 57	359.762.9 26
	<b>1000 Mio ECU/euro</b>				
Gross domestic product at current prices	173,1	216,7	161,8	192,8	212,3
	<b>in ECU/Euro</b>				
Gross domestic product per capita a) at current prices	2.690	3.210	2.360	2.770	3.000
	<b>% change over the previous year</b>				
Gross domestic product at constant prices	-4,7	7,4	-7,5	7,9	5.8F
Employment growth	2,5	-3,8	-0,3	-1,7	:
Labour productivity growth f)	:	:	-6,5	8,8	6,1
Unit labour cost growth	:	:	-4,6	:	:
	<b>in Purchasing Power Standards</b>				
Gross domestic product per capita a) at current prices	5.480	5.990	5.350	5.690	5.930
	<b>in % of EU-25 average</b>				
GDP per capita a) at current prices in PPS	29,8	30,6	26,4	27.3F	27.1F
	<b>in % of EU-15 average</b>				
Labour productivity (GDP per person employed in PPS) f)	34,3	37.6F	33.6F	35.8F	36.4F
Structure of production	<b>% change over the previous year</b>				
- Agriculture	14,5	13,6	11,3	11,2	11,5
- Industry (excluding construction)	22,0	22,6	24,2	24,5	24,2
- Construction	5,3	5,0	4,9	4,0	3,4
- Services	58,2	58,8	59,6	60,2	60,9
Structure of expenditure	<b>as % of Gross Domestic Product</b>				
- Final consumption expenditure	87,4	85,6	86,3	80,7	82,3
- household and NPISH	72,3	71,5	72,0	66,7	68,5
- general government	15,2	14,1	14,2	14,0	13,8
- Gross fixed capital formation	21,9	22,4	18,2	16,7	17,7
- Stock variation	-5,6	-0,5	-6,8	4,3	4,4
- Exports of goods and services	23,2	24,1	33,7	28,8	28,6
- Imports of goods and services	26,9	31,5	31,3	30,5	33,0

<b>Inflation rate</b>	<b>% change over the previous year</b>				
Consumer price index c)	64,2	57,3	57,6	46,7	25,3

<b>Balance of payments</b>	<b>in Mio ECU/euro</b>				
-Current account	-1.261	-10.631	3.785	-1.769	-5.994
-Trade balance	-9.837	-24.263	-5.066	-8.815	-12.247
<i>Exports of goods</i>	27.062	33.262	38.385	42.287	41.761
<i>Imports of goods</i>	36.899	57.525	43.451	51.102	61.248
-Net services	7.025	12.308	10.194	8.189	7.873
-Net income	-3.319	-4.333	-5.583	-4.835	-4.817
-Net current transfers	4.856	5.657	4.246	3.693	3.197
- of which: <i>government transfers</i>	340	232	231	527	269
- FDI (net) inflows	125	137	3046	908P	68P

<b>Public finance</b>	<b>in % of Gross Domestic Product</b>				
General government deficit/surplus	-18,9	-6,1	-29,8	-12,6	-8.8P
General government debt	67,4	57,4	105,2	94,3	87.4P

<b>Financial indicators</b>	<b>in % of Gross Domestic Product</b>				
Gross foreign debt of the whole economy	47,9	48,5	68,5	56,1	:
	<b>as % of exports</b>				
Gross foreign debt of the whole economy	206,3	201,8	203,2	194,8	:
Monetary aggregates d)	<b>1000 Mio ECU/euro</b>				
- M1	8,6	12,1	9,0	9,1	13,0
- M2	41,1	51,1	37,2	35,6	46,7
- M3	42,7	53,7	38,9	37,3	49,7
Total credit d)	30,7	44,1	26,9	19,6	28,6
Average short-term interest rates	<b>% per annum</b>				
- Day-to-day money rate	73,5	56,8	89,7	49,5	36,1
- Lending rate	86,1	51,2	78,8	53,7	42,8
- Deposit rate	78,4	47,2	74,7	50,5	37,7
ECU/EUR exchange rates	<b>(1ECU/euro=..Turkish Lira)</b>				
- Average of period	447.237	574.816	1.102.430	1.439.680	1.694.851
- End of period	544.641	624.267	1.269.500	1.738.000	1.771.638
	<b>1995=100</b>				
- Effective exchange rate index	13,0	9,6	5,2	4,0	3,5
Reserve assets	<b>Mio ECU/euro</b>				
- Reserve assets (including gold)	24.280	25.077	22.647	26.744	27.819
- Reserve assets (excluding gold)	23.225	23.986	21.478	25.562	26.616

<b>External trade</b>	<b>Mio ECU/euro</b>				
Trade balance	-13.387	-29.262	-11.172	-16.341	-19.487
Exports	24.964	30.182	35.071	38.137	41.761
Imports	38.351	59.444	46.243	54.478	61.248
	<b>previous year=100</b>				
Terms of trade	98,7	91,5	97,7	99,4	103,1
	<b>as % of total</b>				
Exports with EU-15	54,0	52,2	51,4	51,5	51,8
Imports with EU-15	52,6	48,8	44,2	45,5	45,6

<b>Demography a)</b>	<b>per 1000 of population</b>				
Natural growth rate	15.5E	15.1E	14.6E	14.2E	13.9E
Net migration rate (including corrections)	1.5E	1.5E	1.5E	1.4E	1.4E
	<b>per 1000 live-births</b>				
Infant mortality rate	43.3E	41.9E	40.6E	39.4E	38.3E
Life expectancy :	<b>at birth</b>				
Males:	65.6E	65.8E	66.0E	66.2E	66.4E
Females:	70.2E	70.4E	70.6E	70.9E	71.0E

<b>Labour market (Labour Force Survey) e)</b>	<b>as % of the total population of the same age group</b>				
Economic activity rate (15-64)	55,1	52.4B	52,3	52,3	51,1
Employment rate (15-64), total	50,8	48.9B	47,8	46,7	45,5
Employment rate (15-64), males	72,7	71.7B	69,3	66,9	65,9
Employment rate (15-64), females	28,9	26.2B	26,3	26,6	25,2
	<b>as % of the total population of the same age group</b>				
Employment rate of older workers (55-64)	39,3	36.4B	35,9	35,3	32,7
Average employment by NACE branches	<b>in % of total employment</b>				
- Agriculture and forestry	40,2	36.0B	37,6	34,9	33,9
- Industry (excluding construction)	17,2	17.7B	17,5	18,5	18,2
- Construction	6,2	6.3B	5,2	4,5	4,6

- Services	36,5	40B	39,7	42,1	43,4
	<b>in % of total</b>				
Unemployment rate, total	7,7	6.5B	8,3	10,3	9,0
Unemployment rate, males	7,7	6.6B	8,7	10,7	9,5
Unemployment rate, females	7,6	6.3B	7,5	9,4	7,3
Unemployment rate of persons < 25 years	15,0	13.1B	16,2	19,2	20,5
Long-term unemployment rate	2,1	1.2B	1,6	3,0	2,5

<b>Social cohesion</b>	<b>ratio of top quintile to lowest quintile</b>				
Inequality of income distribution	:	:	:	11,2	:
	<b>% of population aged 18-24</b>				
Early school-leavers	:	:	:	:	:
	<b>as % of the total population of the same age group</b>				
Children aged 0-17 living in jobless households	:	:	:	:	:
Persons aged 18-59 living in jobless households	:	:	:	:	:

<b>Standard of living</b>	<b>per 1000 inhabitants a)</b>				
Number of cars	61,4	65,5	66,1	66,1	66,5
Main telephone lines	272,3	272,6	275,5	271,7	267,5
Number of subscriptions to cellular mobile services	114,1	221,9	284,2	335,0	394,4

<b>Infrastructure</b>	<b>in km per 1000 km<sup>2</sup></b>				
Railway network	11,3	11,3	11,3	11,3	11,3
	<b>km</b>				
Length of motorways	1.749	1.773	1851 P	1851 P	1881 P

<b>Industry and agriculture</b>	<b>previous year=100</b>				
Industrial production volume indices	96,2	106,1	91,3	109,5	108,7
Gross agricultural production volume indices	94,7	104,2	93,3	108,3	97,9

<b>Innovation and research</b>	<b>as % of GDP</b>				
Spending on Human Resources (public expenditure on education)	3,5	3,7	:	:	:
	<b>as % of GDP</b>				
Gross domestic expenditure on Research & Development	0,6	:	:	:	:
	<b>per 1000 inhabitants</b>				
Level of Internet access - households	:	:	:	:	:

<b>Environment</b>	<b>tonnes CO2 equivalent per capita</b>				
Total greenhouse gases emissions	155,2	165,3	165,0	:	:
	<b>kg of oil equivalent per 1000 euro of GDP</b>				
Energy intensity of the economy	491	497	503	477	:
	<b>as % of total electricity consumption</b>				
Share of renewable energy	29,5	24,3	19,1	25,7	:
	<b>as % of total freight transport</b>				
Modal split of freight transport	94,8	94,3	95,3	95,4	:

P=provisional figures

E=estimated data

B=break in series

F=forecast

a) Figures have been calculated using the population figures from National Accounts, which may differ from those used in demographic statistics.

b) Data refers to ISIC Rev. 2.

c) For Turkey the national consumer price index is given, which is not strictly comparable with the interim HICPs.

d) For 2002: value at the end of November.

e) 1999 data: armetical average of 2nd and 3rd quarter survey. 2000 - 2003 data: 2<sup>nd</sup> quarter survey. Data revised according to the 2000 Population Census results.

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f) 'Labour productivity growth' is calculated from GDP at constant price Euros, while the structural indicator 'Labour productivity (in % of EU15)' is calculated from current price figures in PPS.

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## Methodological Notes

### Basic data

*Population:* Estimates are based on available data on de facto population (instead of residential population).

### Finance

*Public finance:* The general government deficit / surplus refers to the national accounts concept of consolidated general government net borrowing / net lending (EDP B.9) of ESA95. General government debt is defined as consolidated gross debt at end-year nominal value.

*Gross foreign debt* is of the whole economy, covering both short- and long-term, but excluding equity investment and money market instruments. The source for stock of outstanding debt is OECD, while the source of GDP is Eurostat. For the ratio of gross foreign debt to exports, the national accounts definition of exports of goods and services is used (source: Eurostat).

*Monetary aggregates* are monthly stock data, as reported to Eurostat. Generally, M1 means notes and coin in circulation plus sight deposits. M2 means M1 plus time deposits. M2Y means M2 plus residents' FX deposits (sight and time). M3 means M2 plus official deposits. M3Y means M3 plus residents' FX deposits. MFI loans to residents and residents' deposits with MFIs are transmitted to Eurostat as general government and other resident sectors breakdown.

*Interest rates:* Annual average rates based on monthly series reported to Eurostat. Lending rates refer to bank lending to enterprises for up to 1 year and over 1 year; lending to households as consumer credits and for house purchase with maturities up to 1 year. Deposit rates refer to bank deposits with an agreed maturity of up to 1 month, 3 months, 6 months and one year or longer. Lending rates and deposit rates are transmitted to Eurostat as new business and outstanding rates. Day-to-day money rates are overnight interbank rates. In addition to day-to-day money rate, 3-month T-bill rates are also transmitted. Central Bank interest rates refer to discount rate, repo/intervention rate and advance rate as transmitted to Eurostat. Yield on medium and long-term government bonds, index of share prices and monthly share turnover in Istanbul Stock Exchange is also transmitted to Eurostat.

*Exchange rates:* ECU exchange rates are those that were officially notified to DG ECFIN until 1 January 1999, when the ECU was replaced by the euro. Euro exchange rates are reference rates of the European Central Bank. The index of effective exchange rates (1994=100), as reported to Eurostat, is weighted by %50 USD+%50 EURO. The effective exchange rate index (real), as reported to Eurostat, is weighted by major trading partners.

*Reserve assets* are end-year stock data, as reported to Eurostat. They are defined as the sum of central bank holdings of gold, foreign exchange, SDRs, reserve position in the IMF, and other claims on non-residents. Gold is valued at market price, quarterly.

### External trade

*Imports and exports (current prices).* The data are based upon the "special trade" system, according to which, external trade comprises goods crossing the customs border of the country. Value of external trade turnover includes the market value of the goods and the additional costs (freight, insurance etc.). *Trade Classification.* Merchandise trade flows should be using the commodity classification according to the Combined Nomenclature (CN).

FOB means that all costs incurred in transport up to the customs frontier are charged to the seller. CIF means that the purchaser pays the additional costs.

Imports are recorded on CIF basis, exports on FOB basis.

*Imports and exports with EU-15.* Data declared by the Republic of Turkey.

### **Labour market**

*Economic activity rate (ILO Methodology).* Percentage of labour force in the total population aged 15-64. This rate is derived from LFS (Labour Force Survey) observing the following ILO definitions and recommendations:

Labour force: employed and unemployed persons according to the ILO definitions stated below.

The employed: all persons aged 15-64, who during the reference period worked at least one hour for wage or salary or other remuneration as employees, entrepreneurs, members of co-operatives or contributing family workers. Members of armed forces (excluding residents of military barracks) and women on child-care leave are included. Residents of schools, dormitories, kindergartens, rest homes for elderly persons, special hospitals, military barracks and recreation quarters for officers are excluded.

The unemployed: all persons aged 15+, who concurrently meet all three conditions of the ILO definition for being classified as the unemployed: (i) have no work, (ii) are actively seeking a job and (iii) are ready to take up a job within a fortnight.

*Unemployment rate (by ILO methodology).* Percentage of the unemployed in labour force. This rate is derived from LFS (Labour Force Survey) observing the ILO definitions and recommendations (see ILO definitions above).

*Average employment by NACE branches.* This indicator is derived observing the ILO definitions and recommendations.

Main concepts and definitions, periodicity, timeliness and quality of the Labour Force Survey in Turkey are fully compliant with EU from the beginning of 2004. The survey was also harmonized with EU in terms of main concepts and definitions before 2004.

Source: Long term unemployment rate: Eurostat; Unemployment rate total, males, females: 1999 national LFS, 2000-2003 Eurostat. All other indicators: national LFS.

### **Standard of living**

*Number of cars.* Passenger car: road motor vehicle, other than a motor cycle, intended for the carriage of passengers and designed to seat no more than nine persons (including the driver).

The term "passenger car" therefore covers microcars (need no permit to be driven), taxis and hired passenger cars, provided that they have less than ten seats. This category may also include pick-ups.

*Telephone subscribers.* Mobile and hand phones subscribers are not included.

### **Infrastructure**

*Railway network.* All railways in a given area. This does not include stretches of road or water even if rolling stock should be conveyed over such routes; e.g. by wagon-carrying trailers or ferries. Lines solely used for tourist purposes during the season are excluded as are railways constructed solely to serve mines; forests or other industrial or agricultural undertakings and which are not open to public traffic. The data considers the construction length of railways.

*Length of motorways.* Road, specially designed and built for motor traffic, which does not serve properties bordering on it, and which:



(a) is provided, except at special points or temporarily, with separate carriageways for the two directions of traffic, separated from each other, either by a dividing strip not intended for traffic, or exceptionally by other means;

(b) does not cross at level with any road, railway or tramway track, or footpath;

(c) is specially sign-posted as a motorway and is reserved for specific categories of road motor vehicles.

Entry and exit lanes of motorways are included irrespectively of the location of the signposts. Urban motorways are also included.

#### Industry and agriculture

*Industrial production volume indices.* Industrial production covers mining and quarrying, manufacturing and electricity, gas, steam and water supply (according to the ISIC Rev. 3 Classification Sections C, D, and E).

*Gross agricultural production volume indices.* Gross agricultural production volume indices are calculated in constant prices of 1993. The quarter indices are calculation on the basis of the previous quarter.

#### Innovation and research

*Total public expenditure on education* includes direct public expenditure on educational institutions, public subsidies to other private entities for education matters (e.g. subsidies to companies or labour market organisations that operate apprenticeship programmes) and public subsidies to households such as scholarships and loans to students for tuition fees and student living costs. Educational institutions are defined as entities that provide instructional services to individuals or education-related services to individuals and other educational institutions.

Data are collected through the joint UNESCO-OECD-EUROSTAT data collection (UOE) questionnaires on educational finance.

*Gross domestic expenditure on R&D (GERD)* is composed of: Business enterprise expenditure in R&D (BERD), Higher Education expenditure in R&D (HERD), Government expenditure in R&D (GOVERD) and Private Non-profit expenditure in R&D (PNRD).

The figures relating to GDP are compiled in accordance with ESA '95. Where GDP data using ESA '95 were missing, the year on year growth rates of GDP in the ESA '79 system were applied retrospectively to the years for which data were missing in the ESA '95 national accounts database.

Indicators are calculated using current ECU/EUR.

*Internet access of households:* Annual data on percentages of households with Internet access at home compiled via household surveys (telephone interviews).

#### Environment

*Total greenhouse gases emissions:* This indicator shows trends in anthropogenic emissions of the greenhouse gases: carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O), methane (CH<sub>4</sub>) and three halocarbons, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF<sub>6</sub>), weighted by their global warming potentials (GWP). The GWP relates to the ability of the different gases to contribute to global warming over a 100 year time horizon. GWPs are provided by the Intergovernmental Panel on Climate Change. The figures are given in CO<sub>2</sub> equivalents. Greenhouse gaseous emission estimations are made by using Tier 1 approach of Intergovernmental Panel on Climate Change (IPCC) Guidelines. Anthropogenic emissions of carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O), methane (CH<sub>4</sub>), nitrogen oxides (NO<sub>x</sub>), carbon

monoxide (CO), NMVOC emissions are being calculated for the energy production, industrial processes, fuel combustion and agricultural facilities. Beside these sulphur dioxide (SO<sub>2</sub>) and particulate matter emissions are being calculated by using factors in IPCC and CORINAIR methodologies for industrial sector. Emissions of halocarbons which are hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF<sub>6</sub>), have not been calculated yet due to lack of data.

Energy intensity of the economy The energy intensity ratio is the result of dividing the Gross Inland Consumption by the GDP. Since Gross Inland Consumption is measured in kgoe (kilogram of oil equivalent) and GDP in 1000 EUR, this ratio is measured in kgoe per 1000 EUR.

The Gross Inland Consumption of Energy is calculated as the sum of the Gross Inland Consumption of the five types of energy: coal, electricity, oil, natural gas and renewable energy sources. In addition, each of these figures is calculated as an aggregation of different data on production, storage, trade (imports/exports) and consumption/use of energy. The GDP figures are taken at constant prices to avoid the impact of inflation, base year 1995 (ESA95).

Share of renewable energy: This indicator measures the contribution of electricity produced from renewable energy sources to the national electricity consumption. It is a ratio between the electricity produced from renewable energy sources and the gross national electricity consumption calculated for a calendar year.

The main definitions involved in this indicator are the following:

1. Renewable energy sources: renewable non-fossil energy sources (wind, solar, geothermal, hydro and biomass/wastes)
2. Electricity produced from renewable energy sources : it comprises the electricity generation from hydro plants (excluding pumping), wind, solar, geothermal and electricity from biomass/wastes. Biomass/wastes electricity comprises electricity generated from burning of wood/wood wastes and other solid wastes of renewable nature (straw, black liquor), municipal solid waste incineration, biogas (incl. landfill, sewage, farm gas) and liquid biofuels.
3. Gross national electricity consumption : it comprises the total gross national electricity generation from all fuels (including autoproduction), plus electricity imports, minus exports.

These data have been traditionally compiled by Eurostat through the annual Joint Questionnaires (joint, because they are shared by Eurostat and the International Energy Agency) following a well established and harmonised methodology.

Modal split of freight transport: Percentage share of road in total inland freight transport (road, rail and inland waterways), tonne-km.

### **Sources**

Total area, External trade, Demography, Labour market, Standard of living, Infrastructure, Industry and agriculture: National sources. Other indicators: Eurostat.