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BUSINESS INTEGRITY COUNTRY AGENDA TURKEY

BUSINESS INTEGRITY COUNTRY AGENDA-TURKEY



Transparency International is the global civil society organization leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

TI-Turkey (Uluslararası Şeffaflık Derneği) was founded in 2008 by voluntary efforts. The association aims to set the rule of transparency, integrity and accountability principles in all segments of the society for the democratic, social, and economic development of the country. TI-Turkey predicated on collaboration of public sector, businesses, unions, universities, professional chambers, and non-governmental organizations in the scope of its anti-corruption efforts. It expects legibility, integrity, legal conformity, accountability, and traceability from all individuals and institutions in society who constitutes the social structure and/or holds public power, and conducts its activities within the frame of these principles.

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ABBREVIATIONS

EU	European Union
AGIT	Organization for Security and Co-Operation in Europe
AKP	Justice and Development Party
BDDK	Banking Regulation and Supervision Agency
BEDK	Right to Information Assessment Board
BIMER	Prime Ministry Communications Center
BIST	Istanbul Stock Exchange
BM	United Nations
BTK	The Information and Communication Technologies Authority
CDP	Carbon Disclosure Project
CHP	Republican People's Party
CMB	Capital Market Board
CMK	Turkish Criminal Procedure Code
WB	World Bank
FDI	Foreign Direct Investment
EBRD	European Bank for Reconstruction and Development
ECM	Emerging Companies Market
EIRIS	Ethical Investment Research Services Limited
EKAP	Electronic Public Procurement Platform
EPDK	Energy Community Regulatory Board
IHDI	Inequality-adjusted Human Development Index
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
GRECO	The Group of States Against Corruption
GDP	Gross Domestic Product
HDP	Democratic Party of the Peoples
HDR	Human Development Report
HSYK	The Supreme Board of Judges and Prosecutors
ICC	The International Chamber of Commerce
IFF	The Institute of International Finance
IIA	The Institute of Internal Auditors
ISO	Istanbul Chamber of Industry
KAP	Public Disclosure Platform
KGK	Public Oversight Accounting and Auditing Standards Authority
KOSGEB	Small and Medium Sized Industry Development Organization
KOI	Public Private Partnership
KOM	Turkish National Police Anti-Smuggling and Organized Crime Department
LPG	Liquefied Petroleum Gases
MASAK	The Financial Crime Investigation Board
MEDEL	Magistrats Européens pour la Démocratie et les Libertés
MERSIS	Central Registration System
MHP	Nationalist Movement Party
MKK	Central Securities Depository of Turkey

MUSIAD	Independent Industrialists' and Businessmen's Association
OECD	Organization for Economic Co-operation and Development
OECD SIGMA	Support for Improvement in Governance and Management
OHAL	State of Emergency
OTV	Special Consumption Tax
RTÜK	Radio and Television Supreme Council
SELDI	South East Leadership and Development Initiative
SME	Micro, Small and Medium-sized Enterprise
SMMM	Independent Accountant and Financial Advisor
STK	Non Governmental Organization (NGO)
T.C.	Turkish Republic
TBB	The Bank Association of Turkey
TBMM	The Grand National Assembly of Turkey
TCC	Turkish Commercial Code
TCK	Turkish Criminal Code
TCMB	The Central Bank of the Republic of Turkish
TEID	Ethics and Reputation Society
TEPAV	The Economic Policy Research Foundation of Turkey
TESEV	Turkish Economic and Social Studies Foundation
TFRS	Turkish Financial Reporting Standards
TKYD	Turkish Institutional Investment Managers' Associations
TMS	Turkish Accounting Standards
TOBB	The Union of Chambers and Commodity Exchange of Turkish
TOKI	The Housing Development Administration
TOU	Pre-assessment Reconciliations
TRL	Turkish Lira
TRT	Turkish Radio and Television Corporation
TSPB	Turkish Capital Market Associations
TSO	Chamber of Commerce and Industry
TUFE	Consumer Price Index
TURKSTAT	Turkish Statistical Institute
TURMOB	Union of Chambers of Certified Public Accountants Turkey
TUSIAD	Turkish Industry and Business Association
TYSAP	Strengthening Anti-Corruption Practices in Turkey
UFRS	International Financial Reporting Standards
UNCAC	The United Nations Convention Against Corruption
UNDP	United Nations Development Program
UFE	Production Price Index
VAT	Value Added Tax
VIMER	Tax Communication Center
WEF	World Economic Forum
YARSAV	The Association of Judges and Prosecutors
YEPP	National Renewable Energy Action Plan for Turkey
YKTS	Registration of Liable and Tracking System
YMM	Certified Public Accountant
YSK	Supreme Election Board

METHODOLOGY OF BUSINESS INTEGRITY COUNTRY AGENDA (BICA)

| 1 | THE ROLE OF BUSINESS INTEGRITY IN FIGHTING CORRUPTION

Companies are often seen as the supply side of the corruption equation, using corrupt payments to gain undue advantages (e.g. in public tenders). But companies can also be victims; victims of weak governance in countries where doing business with integrity may result in losing contracts to corrupt competitors, and victims of extortion requests by corrupt public officials or other business partners. Thus, countering corruption in and from the business sector must target both perspectives: the demand side (i.e. public sector) but also the supply side (i.e. business sector).

These two perspectives are also often captured in definitions of business integrity. For example, Transparency International defines business integrity as “*adherence to globally - recognized ethical standards, compliance with both the spirit and letter of the law and regulations, and promotion of responsible core values (e.g. honesty, fairness and trustworthiness).*”¹ This shows that business integrity, in the broadest sense, encompasses the full range of good business practices commonly associated with corporate social responsibility. More narrowly, it reflects a commitment to abide by minimum legal requirements and norms of ethical business conduct. Organizations that act with integrity follow the law and ethical norms, treat their employees, customers, and business partners fairly and respectfully, abide by their commitments, and generally conduct their affairs in a socially responsible manner.

In an *anti - corruption* context, business integrity means conducting business in a manner that avoids bribery and other corrupt acts that undermine the operation of and public confidence in the marketplace.²

For this reason, the various influencing factors need to be understood first.

Addressing the demand side, there are two aspects that should be considered:

- the *environment* that is set by the public sector for companies to do business, as well as
- the public sector’s *interactions* with the business sector.

First, it is important to assess which (corruption - related) laws and regulations are provided by the public sector and how they are enforced. Second, companies also engage with the public sector in their day-to-day operations, such as obtaining operating licenses and other public services (e.g. electricity, communication), paying taxes, enforcing contracts, etc. These processes provide risks for business integrity as well. For example, high discretionary power in granting operating licenses to companies can result in extortion requests by public servants.

In addition, businesses (i.e. supply side) have their own responsibility to act with integrity. Following the notion of corporate social responsibility, companies do not only need to comply

¹ Transparency International, Policy Position, Building Corporate Integrity Systems to Address Corruption Risks, #4/2009.

² Adopted from United Nations Office on Drugs and Crime, A Resource Guide on State Measures for Strengthening Corporate Integrity, 2013

with laws and regulations; it is increasingly expected to also adhere to globally - recognized ethical standards, expectations from society (that might even go beyond the law) as part of their business activities. Assessing whether companies implement anti - corruption ethics & compliance programs within their own operations, promote integrity in their supply chain, whether they publically report on their anti - corruption endeavors, or whether they engage in collective action initiatives with their peers or other stakeholders is therefore also relevant to understand where a country stands on business integrity.

There is a strong interdependency between these two perspectives. While it has been shown that most business managers disapprove of corrupt practices, the perception often prevails that acting against corruption will either result in a short - term loss of opportunity or that corruption is seen as a necessity of doing business. When faced with winning an important contract, obtaining permission to open a new business or renewing an operating license, existing environmental factors may challenge companies to conduct their operations with integrity or even voluntarily adhere to good practice standards.³ It is therefore important to look at both stakeholder groups, the public sector, and the business sector, and understand what each of them is contributing to a situation in which companies do business in a clean and fair manner.

In summary, assessing business integrity from a country's perspective has to go beyond the traditional focus of laws & regulations 'on paper' and their application 'in practice'; it also includes actions by companies themselves which demonstrate their willingness to share responsibility for countering corruption (e.g. through participation in collective action initiatives or public reporting of their anti - corruption program). Without such a comprehensive understanding, reform agendas to improve how companies operate will not be successful.

| 2 | WHY A NEW BUSINESS ASSESSMENT TOOL?

Traditionally, assessment efforts on a country level have focused primarily on understanding the major corruption - related factors within the public sector. Well known comprehensive analytical frameworks include Transparency International's National Integrity Studies or Global Integrity Country Scorecards (among others). These frameworks are in-depth assessment of the current status of integrity and anti - corruption in the public sector or society at large (involving also other stakeholders).

As of today, there is no comprehensive framework targeted at reducing corruption in the business sector. TI's Business Integrity Country Agenda (BICA) seeks to fill this gap. BICA is the first comprehensive analysis framework which specifically assesses efforts by all stakeholders to reduce corruption in and from the private sector at a country level.

³ Adopted from HUMBOLDT - VIADRINA School of Governance, *Motivating Business to Counter Corruption: A Practitioner Handbook on Anti - Corruption Incentives and Sanctions*, 2013.

	Comprehensive analytical frameworks	Rating and index systems	Further assessments
Targeted at assessing corruption in the PUBLIC SECTOR or at the entire country level	<ul style="list-style-type: none"> • NIS 	<ul style="list-style-type: none"> • CPI • Defense Anti - Corruption Index – Government • WGI • WB Doing Business Index 	<ul style="list-style-type: none"> • OECD Country Progress Reports • UNCAC Reviews • Etc.
Targeted at assessing corruption in the BUSINESS SECTOR	<ul style="list-style-type: none"> • BICA 	<ul style="list-style-type: none"> • TRAC • Defense Anti - Corruption Index – Companies • Business Integrity Index • TRACE Global Business Bribery Risk Index • WEF Competitiveness Index 	

3 | BICA - TURKEY

While Turkey's rating is dropping in corruption indexes and the big credit rating institutions emphasize the importance of institutional strength for Turkey's growth, BICA - Turkey's major objective is to propose a reform agenda which seeks to improve the business integrity environment in the country and ultimately reduce corruption in the country's business sector. To achieve this, BICA - Turkey will not only assess thematic areas that influence the regulatory and societal environment in which companies are operating but also the way companies contribute themselves to do business with integrity. Through this, BICA - Turkey offers a comprehensive and therefore unique approach for gathering all the relevant information to provide a credible foundation for action.

Based on this evidence, BICA - Turkey will;

- help identify major challenges of business integrity within a country and, thus, provide credible information for advocacy activities;
- engage stakeholders in a shared diagnosis of the situation;
- act as a baseline against which progress can be subsequently measured.

A variety of stakeholders, such as government, regulatory as well as law enforcement bodies, investors, business associations, other civil society organizations, and business themselves, will benefit from BICA - Turkey in two principal ways: as an approach to broadly frame and analyze the issue of business integrity from their country's perspective; and as a multi - stakeholder process for discussing and driving change.

| 4 | METHODOLOGY

The BICA assessment framework recognizes three key stakeholder groups, public sector, business sector and civil society that contribute to an environment enabling the business sector to act with integrity and accountability. These three stakeholders are assessed as such:

1. **Public Sector Behavior:** *Assessment of a country's laws and practices in preventing, reducing and responding to corruption in the private sector*
2. **Private Sector Behavior:** *Assessment of a country's Private Sector efforts in preventing, reducing and responding to corruption in the private sector*
3. **Civil Society Behavior:** *Assessment of the country's civil society efforts in preventing, reducing and responding to corruption in the private sector*

Each of the three assessment areas are broken down into thematic areas. Thematic areas describe a comprehensive topic, such as Public Procurement or Whistleblowing. Each thematic area is then further broken down into key indicators that needs to be considered. For each indicator, a scoring question is asked and assessment criteria, references and proposed data are specified for how to answer that question.

The preparation of BICA consisted of a desk study of relevant existing information and tools, an analysis of corporate anti - corruption measures with the help of TI's Transparency in Reporting on Anticorruption (TRAC) tool and expert interviews to provide a reliable, coherent and objective study.

BICA - Turkey started with the desk research on thematic areas. BICA indicators were improved with the feedback and comments of the National Advisory Group (NAG) composed of experts. Some indicators were added or removed when it is deemed necessary in Turkey's context. After determining all indicators, the researchers visited 43 institutions from the public sector, private sector and civil society and conducted interviews using the BICA assessment.

BICA - Turkey also conducted an analysis of transparency in corporate reporting using the methodology of TRAC for 58 companies in BIST 50 (Istanbul Stock Exchange) and in BIST Sustainability Index that updated Transparency International - Turkey's "Transparency in Corporate Reporting: A study on 100 companies in Istanbul Stock Exchange".⁴ Companies' transparency is measured based on corporate reporting in three areas:

Transparency International approaches the practices of corporate reporting from the perspective of transparency in its study of "Transparency in Corporate Reporting". The transparency in corporate reporting is assessed based on three main components:

- Anti-corruption policies and programs
- Organizational transparency including information on ownership of subsidiary companies
- Country by country reporting

⁴ See <http://www.seffaflik.org/wp-content/uploads/2015/03/Kurumsal-Raporlamada-%C5%9Eeffafl%C4%B1k.pdf>

BICA - Turkey uses Transparency International's TRAC methodology without making any changes in order to present a comparable picture of Turkish business sector with other countries. According to this methodology, a survey of 26 questions are applied using the corporate websites of companies. The questions in the analysis (please see details in the Annex - 1) is categorized under these three components:

(1) <i>Anti-corruption policies and programs</i>	(13 Questions)
(2) <i>Organizational transparency</i>	(8 Questions)
(3) <i>Country by country reporting</i>	(5 Questions)

Anti-corruption policies and programs include policies and procedures that a company applies both in its internal organization and in relations with its stakeholders in line with the principles and values it has set out to prevent corruption. The existence and scope of these programs, which draws the road map for companies to combat corruption, is important for disclosing the company's awareness and determination in this matter. In this respect, there are 13 questions that analyze information about companies' anti - corruption programs.

Organizational Transparency examines the information about subsidiaries, affiliates or joint ventures, and other companies in the group in their consolidated financial statements. This section is important not only to hold the parent company accountable but also its affiliated companies. This section contains a total of 8 questions.

Country by country reporting is an analysis on a country - by - country basis of the basic financial data, in particular the income and the tax paid by a company over investments such as subsidiaries, partnerships or direct subsidiaries established abroad. The accountability of companies is sustained by reporting not only in countries where they are established but also in countries where they operate. There are 5 questions in this section.

The survey of 58 companies has been completed through a desk research between 1 December 2016 and 31 January 2017. It examined The survey included examinations of corporate web pages, statements, financial, corporate and activity reports, compliance reports that include corporate governance principles, credit rating reports, reports on subsidiaries and affiliates, sustainability reports, codes of ethics, codes of conduct, investor presentations, meeting notes, managers' opinions, press announcements.

Transparency International Turkey believes that corporate reporting on transparency and anti - corruption is a crucial element in maintaining good corporate governance and reducing corruption. Thus, this analysis concentrates only on corporate reporting on transparency and anti - corruption within company policies and processes. In conducting the research, TI-Turkey did not investigate the veracity or completeness of the published information and did not make any judgement about the integrity of the information or practices disclosed. For example, it does not take into account whether the company's ethical rules, which are published on the corporate Internet page, are effectively implemented by the company. Likewise, if a company states that it publishes the "full list of affiliated companies", this list has been recognized and evaluated accordingly. The research is concerned only with the transparency of corporate reporting made publicly by companies, in other words, the extent to which information is made available to the public, and it does not analyze whether this information reflects the truth or not. In other words, the research assesses the extent of the publicly shared information on corporate websites, rather than examining whether companies maintain such practices or not.

Since these 58 companies listed on Istanbul Stock Exchange (BIST) 50 Index and in BIST Sustainability Index have different structures such as those with affiliations abroad or no affiliations abroad, operating domestically or internationally, a general average score calculation and ranking has not been included. For this reason, 58 companies listed on the BIST 50 Index and BIST Sustainability Index have been divided into three groups according to the status of their subsidiaries and foreign operations. Group A: includes 38 companies, both domestic and international. They are analyzed based on the three sections described above. 14 subsidiaries in Group B were exempted from the national reporting section since they have only domestic subsidiaries. The six companies that make up Group C are examined only on the transparency of their anti - corruption program since they have no subsidiaries, thus, they are exempted from the other two sections. When comparing the average scores of companies, a comparison between companies within the same group will yield more accurate results.

In scoring, each question is answered as “yes, explained” or “no, unexplained” and given a score of 1 for each “yes” and 0 for each “no”.

The questions numbered 1, 4, 6, 7, 8, 11, and 12 in the first section and questions in the second and third sections are evaluated at half-point intervals. In the first two sections, the scores for each question were summed separately for each sections. In the country-by-country reporting section, the average score of companies’ affiliations operating in each country composed the score for each relevant question. For example, if a company operates in 25 countries but makes statements only about the revenues in 4 countries, it obtains a score of “0,16” out of 1.00 points calculated as $(1,00 \times 4) / 25$ for the relevant question.

The total score of a company taken from each section is determined by calculating over 100 points. For example, the score of a company with a score of “3.5” for the first section out of the total of 13 questions is calculated by $(100 \times 3.5) / 13$ rounded to the closest whole number, which is 27 in the example.

The general average score of the companies was obtained by dividing the total number of points received from each department by the number of departments, excluding the exempted departments. For example, the average score of a Group B company that is rated in two parts; If the company got “30” from the first part and “40” from the second part, it is calculated as “35” according to the $(30 + 40) / 2$ equations. Weighting has not been used to calculate the average scores; the number of questions in the individual sections have no bearing on the final score.

The first draft of BICA - Turkey assessment was written based on interviews, desk research and the update of Transparency in Corporate Reporting. This draft was then submitted to the NAG to receive their comments and feedback. During the revision process, additional interviews were conducted in light of NAG’s feedback. Moreover, a workshop on BICA was organized with private sector participation in order to ask their opinions about BICA - Turkey’s first draft. As can be seen from the stages of BICA assessment, the BICA - Turkey assessment is not a mere mathematical calculation of all indicators, but a comprehensive analysis of all relevant stakeholders’ contribution to transparency and integrity in interaction.

While the final responsibility of BICA assessment belongs to the authors, the NAG plays a very important role in discussing the findings and ensures their validity and plausibility.

The BICA assessment indicators comprise a general question and a set of follow - up guiding criteria to be answered with information and evidence to obtain the final scoring.

- A numerical scale of a 0 to 100 score is used.
- The minimum value indicates the absence of the elements assessed and the highest number all elements, based on the follow - up questions.

A representation of the responses to the questions and the scoring scale is provided below.



| 5 | THE STRUCTURE OF THE REPORT

The report starts with the summary of BICA assessment. It continues with detailed assessment that analyzes public sector, private sector and civil society respectively. In the section of private sector, there is also an analysis of transparency in corporate reporting of these 58 companies and their scores.

It then ends with recommendations and a reform agenda.

EXECUTIVE SUMMARY

Business Integrity Country Agenda - Turkey (BICA Turkey) is the first comprehensive analysis that examines in detail the contribution of all stakeholders to transparency adopting a broad perspective on transparency, integrity and accountability in the business world. While analyzes carried out to date examine the reasons leading to corruption in public and private sectors separately, BICA Turkey identifies the contributions and shortcomings of the business sector, public institutions and civil society that which have major responsibilities in the fight against corruption.

This analysis which is the most comprehensive report in Turkey on transparency practices of business and public sector not only detects obstacles in the way of transparency and integrity in the Business World but also aims to strengthen all stakeholders by establishing a comprehensive reform agenda and actively engaging the main stakeholders of the transparency system with advocacy activities.

This analysis assesses the three main stakeholders that are public, private and civil society actors, in mutual interaction and examines not only the legal framework in which companies operate but also the contributions of companies to well - known global ethical standards and their initiatives to promote these values among stakeholders.

The main theme of the analysis is that anti-corruption legislation in the business sector in Turkey has strengthened with the harmonization of law with the European Union legislation and the legislation is generally satisfactory with deterrent penalties. Nevertheless, the prevailing public opinion remains that corruption often goes unpunished because of the lack of sanctions for a number of cases and bribery and corruption cases that have been dropped due to lack of grounds for legal action. Although legislation is considered satisfactory, the lack of private sector corruption in the legal definition of corruption is a major drawback. The regulations for publicly traded companies also need to be extended to cover the entirety of the private sector in its scope. Moreover, because higher degrees of compliance is observed when regulations are in place, participation in anti-corruption actions should not be left voluntary. Legal arrangements should be made to establish anti-corruption systems in order to ensure active participation of the private sector in the fight against corruption.

The lack of legislation regulating the protection of whistleblowers in Turkey is an important shortcoming. There is a need for a new arrangement that provides protection for private sector employees similar to the existing legislation for public sector personnel

Financial and human capacity of supervisory institutions are at a sufficient level, but there is room for improvement. For a more effective and efficient supervision, a higher degree of autonomy needs to be given to institutions and merit-based staffing decisions need to be implemented to prevent politicization of these institutions.

The rule of law is the most crucial point to promote transparency, accountability and integrity in the private sector. The trust in justice and the rule of law has dwindled in recent years due to the various issues with separation of powers. In order to reinforce the value of integrity among all stakeholders the restoration of the rule of law and trust in justice is *sine qua non* and all stakeholders need to contribute to this agenda.

As Turkey has a stronger voice in international trade and the global economy with its increasing economic growth, integrity and ethical values are being more widely recognized among large corporations, medium and large-scale companies with international investors, and

especially publicly traded companies. These actors are adopting more transparent, honest and accountable corporate policies within the supply chain and in their public relations. Corporate reporting in such companies has improved significantly in recent years with the increasing importance given to ethical values and fight against corruption; it has reached international standards in some companies. Nevertheless, the lack of statements of directors on the fight against corruption, training about anti - corruption for all employees are among main areas that should be developed. Another point that needs to be improved in corporate reporting is the country by country reporting of companies in Turkey parallel to the rest of the world. Country by country reporting, in other words, the declaration of basic financial data from country to country that is promoted by Transparency International in the world is a crucial tool for avoiding tax evasion and preventing capital flight from poor countries.

The study consists not only of interviews with representatives from the public and private sectors and the civil society, but also an analysis of 58 companies that are listed on Istanbul Stock Exchange (BIST) 50 Index and in BIST Sustainability Index based on their reporting of anticorruption policies and programs, organizational transparency including their subsidiaries, and country by country reporting.

As can be seen from the table, the organizational transparency scores of the 58 companies in the analysis are higher than other measures. Country-by-country reporting scores are significantly at a lower level, reflecting worldwide trends. The number of companies that set good examples in the fight against corruption indicates that willingness to fight corruption is a sufficient condition for robust anti-corruption policies.

Table. Average of Companies Listed on BIST – 50 Index and BIST Sustainability Index

	Anti-corruption Programs	Organizational Transparency	Country-by-Country Reporting
BIST 50 Index (50 companies)	62	84	18
BIST Sustainability Index (42 companies)	73	85	20
BIST 50 Index & BIST Sustainability Index (58 companies)	62	84	19
BIST 50 Index U BIST Sustainability Index (34 companies)	75	84	20

Source: Transparency International Turkey

Organizational transparency scores for both the BIST-50 and BIST Sustainability Index companies are at a respectable level with 84. However, the country-by-country reporting scores are respectively 18 and 19.

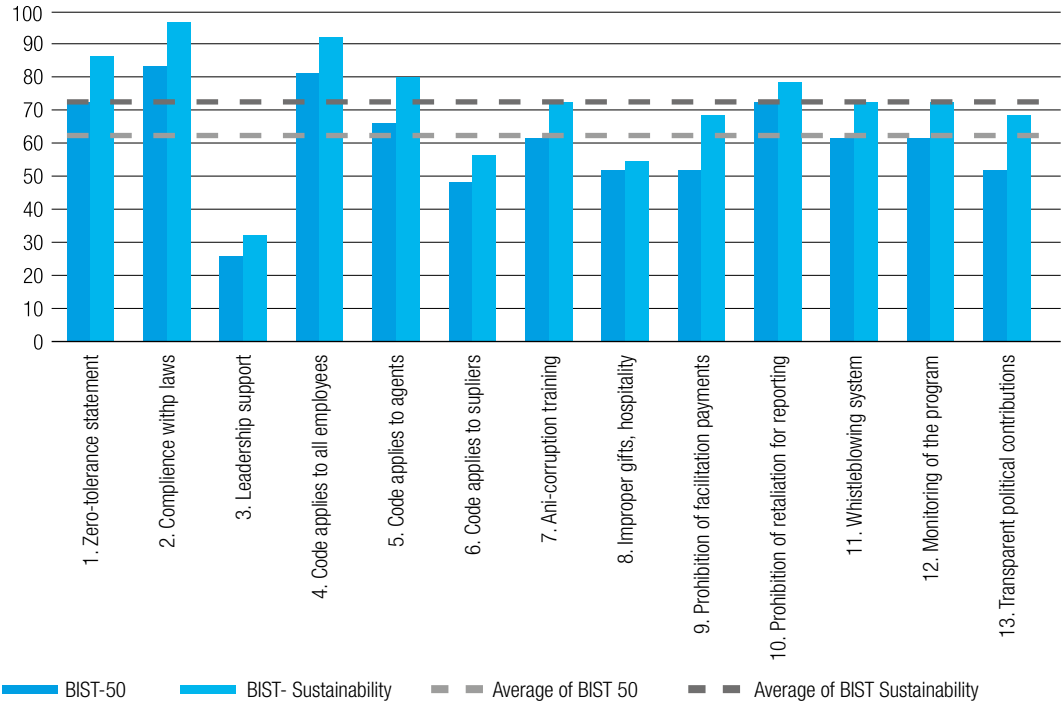
The results of the research show that BIST-50 companies show an average performance in terms of reporting their anti-corruption programs in a transparent manner with a score of 63. Considering that the average score was 70 in the 2014 study done by Transparency International on 100 publicly traded multinational companies around the world using the same methodology, the need for a more transparent reporting scheme for anti-corruption policies becomes evident. The fact that the average score for all the companies in this category is 62 reveals the deficiencies of the Turkish private sector; in an environment in which publicly-traded companies perform at an average level in reporting in anti-corruption policies, it is difficult to expect small and medium-scale enterprises, which comprise the clear majority of the private sector, to follow by example.

Our analyses reveal that several publicly-traded companies do not publicly report on their anti-corruption policies. To illustrate, 6 companies out of the 58 in the study have received a score

of “o” in this category, which is strikingly high. The highest score in reporting on anti-corruption programs is on the sub-category of “compliance” with 84 points in the BIST-50 Index and 98 points in the BIST Sustainability Index. In that regard, it is advisable that further legislation is made in a way that actively involves companies in a proactive manner. Again, looking at the average scores, the study reveals that companies can implement anti-corruption programs which engage managers and employees in an inclusive fashion, especially in measures against retaliation. Inclusion of executives and employees in anti-corruption programs for the companies in both Indexes, and the relatively high scores they have received (second highest sub-category scores overall) should be considered positive developments.

BIST Sustainability Index companies overall performed better than BIST-50 companies in the “compliance” sub-category, which can be seen from the graph. Only 1 company in the BIST Sustainability Index has received a score of “o.” On the other hand, even though conditions relating to gifts, travel, and hospitality are clearly defined for companies traded on the Istanbul Stock Exchange, 12 companies traded on the BIST 50 Index and 4 on the BIST Sustainability Index received a score of “o” in that category.

Graphic. Average Scores of the Companies Listed on BIST – 50 Index and BIST Sustainability Index According to Their Anti-corruption Program



Source: Transparency International Turkey

During the evaluations, we have noticed that a few companies have not specified maximum amounts as limits for gift-giving purposes and that the amounts allowed were left unclear with explanations like “appropriate amounts.” As such, it is noteworthy that the low overall scores in the areas of facilitation payments and gifts, travel, and hospitality expenses reveal risky transactions that are prone to corruption. The sub-category that most companies received a score of “o” is executive disclosure against corruption. In this category, only 13 companies have declarations from executives that they stand against corrupt behavior, indicating a failure to “tone at the top.” The adoption of anti-corruption practices in the private sector by the highest-level representatives of the company and their explicit expression against corruption is

an essential practice for all levels of institutional structure. The clear majority of the companies in the study have performed poorly in this category; there are only 16 companies in the BIST -50 Index that have formulated training programs to combat corruption and to improve ethical understanding in the corporate structure. Among these, only 7 companies have developed policies that include senior executives in their anti-corruption training programs.

The most important shortcoming in terms of organizational transparency is that companies do not disclose their operations in fully-consolidated foreign subsidiaries; 20 companies out of the 58 in the study have satisfactory reports in this category. There are striking shortcomings in the category of country-by-country reporting; 38 companies do not declare income taxes, 28 companies do not report pre-tax incomes from foreign operations, 32 companies do not report capital expenditures and 22 companies do not declare their total income on a national basis.

The fact that micro, small and medium sized enterprises (SMEs) that constitute 99.8 - 99.9% of the total enterprises are disinterested in issues such as transparency, public disclosure, anti-corruption, ethical principles demonstrates that there is a lot of work that needs to be done. A similar situation can also be observed in medium sized enterprises with international partners and in big family businesses. However, in recent years, there have been efforts to generate company charters or ethical principles that have been shared on corporate websites. The research team has observed a reluctance to comply with the 13 elements that comprise the anti-corruption program in the micro and small-scale enterprises they have interviewed in preparation of this report.

BICA Turkey considers large-scale companies as pioneers in promoting transparency among all stakeholders. Since anti-corruption policies and programs can be applied through a top-down approach in internal operations and in the fight against corruption, it is extremely important that large scale companies with a capacity for implementation promote these values among all stakeholders. Such actions will contribute to the sustainability and growth of SMEs, which are the building block of the private sector, by promoting corporate governance principles in the supply chain and by effectively controlling the implementation of anti-corruption practices.

Another important finding that the research team has detected through the interviews and analysis is that the capacity of civil society, which is one of the main stakeholders of integrity system, is insufficient to actively carry out the role of monitoring on public and private sectors in Turkey and should be strengthened by both legislation and financial support. Civil society organizations as an indispensable stakeholder of democratic countries will pave the way of improvement of business integrity by informing public with trainings, organizations, activities and publications. The contribution of media, which is an indisputable actor of democratic and developed societies is crucial to business integrity with rights to freedom of expressions and free press.

We aimed to establish a reliable action plan by approaching integrity in the business sector by consulting private, public and civil society actors that are the three main stakeholders of integrity system and we will work to initiate a change that will strengthen transparency and integrity and, finally, entire Turkey.

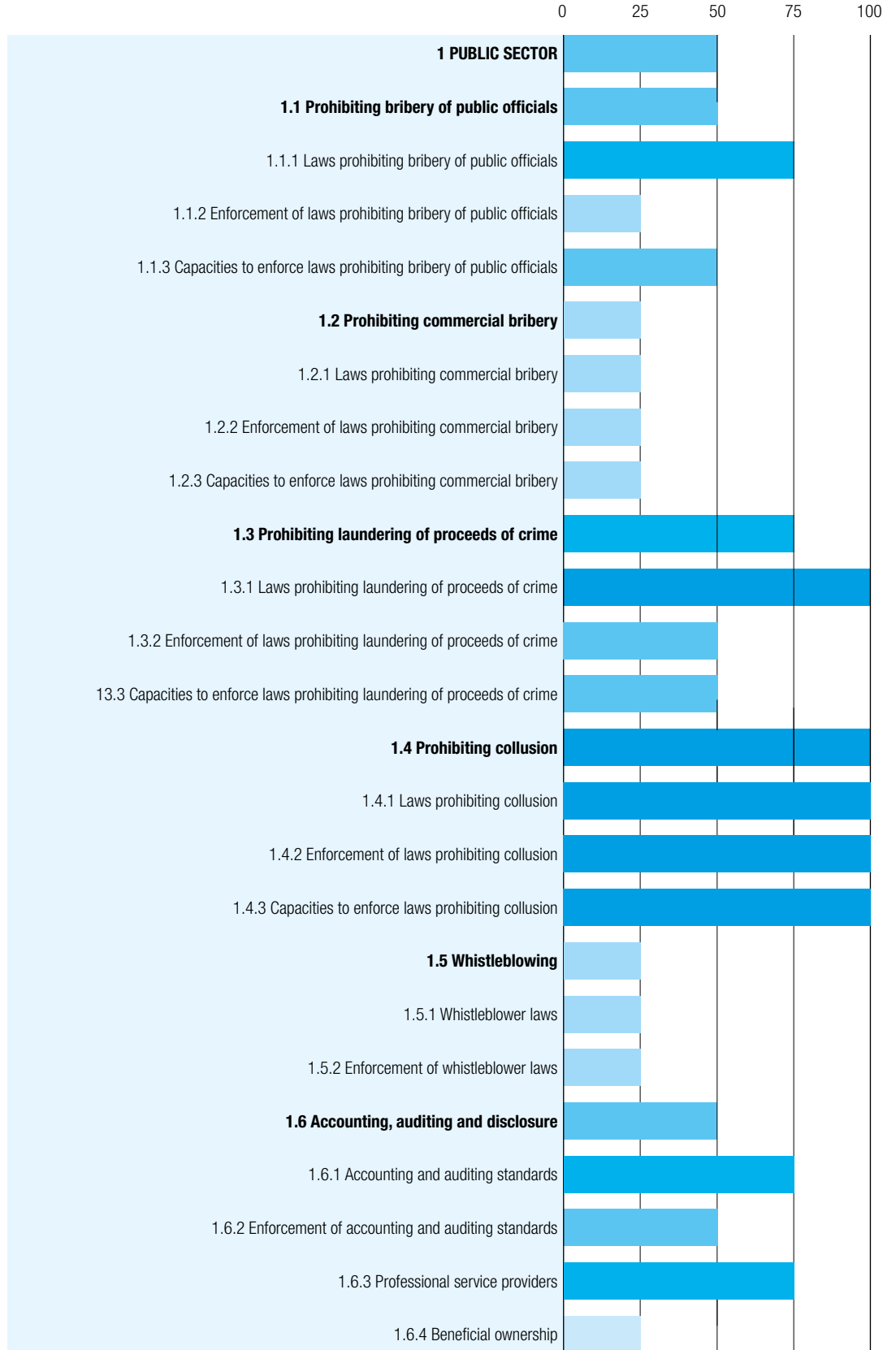
| 1 | PUBLIC SECTOR ASSESSMENT

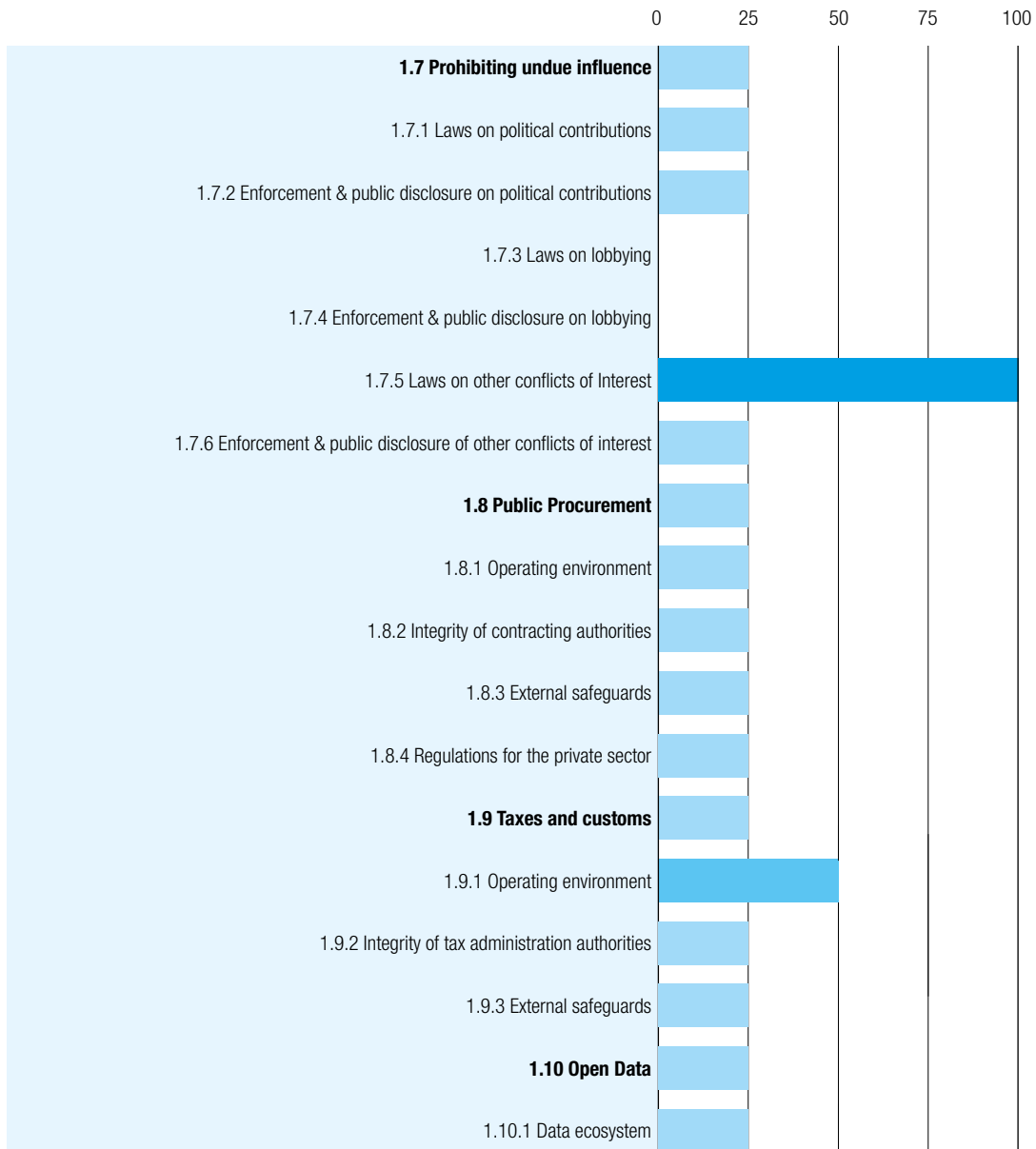
The legislation concerning transparency in the business sector has been further improved in Turkey by the laws enacted in the harmonization process with the EU and with the introduction of new autonomous institutions especially after the 2002 economic crisis. Thus, a stronger and more effective institutional structure has been built.

As the public sector assessment shows, the legislative framework in Turkey in the area of bribery, laundering proceeds of crime, anti-competitive acts, accounting and auditing, tax and customs is largely consistent with international standards. However, legislation on commercial bribery, whistleblowing, financing political parties and election campaigns, lobbying and open data is not satisfactory and needs to be developed in order to make business sector more transparent. Some of the laws enacted in the process of harmonization with the EU have rolled back due to amendments, such as the Public Procurement Law and the articles that pave the way of arbitrary decision-making needs to be changed.

Confirmed as well with the interviews we had with all stakeholders of this project while institutions that have relatively more autonomy work more efficiently and monitors, more effectively (such as Turkish Competition Authority, Public Oversight, Accounting and Auditing Standards Authority, Financial Crimes Investigation Board), institutions that have lost their autonomy with the growing influence of the executive on public sector have weaker monitoring and do not play an effective role in order to sustain transparent and integrity. However, the most important element that affects the entire integrity system and spreads ethical values among stakeholders is the justice system.

As shown in many surveys and studies, the trust in justice and rule of law have been greatly damaged in Turkey in recent years. In order to conduct an effective fight against corruption, the rule of law and trust in justice should be reestablished as soon as possible.





| 2 | PRIVATE SECTOR ASSESSMENT

According to the statistics in the Turkish economy, over three million businesses operate in different sectors and at different scales, nationally and internationally. SMEs constitute more than 99.8% -99.9% of these enterprises, which is similar to the world. On the other hand, micro-scale enterprises account for 93.5% of the total number of enterprises operating in the economy, with a net annual sales of one million TL and less than ten employees.

Concerning partnership structures of enterprises, it can be seen that most of the SMEs have family structures and sole proprietorship while large-scale enterprises are composed of limited and joint-stock companies. Companies foreign capital also make partnerships more with medium or big-scale enterprises.

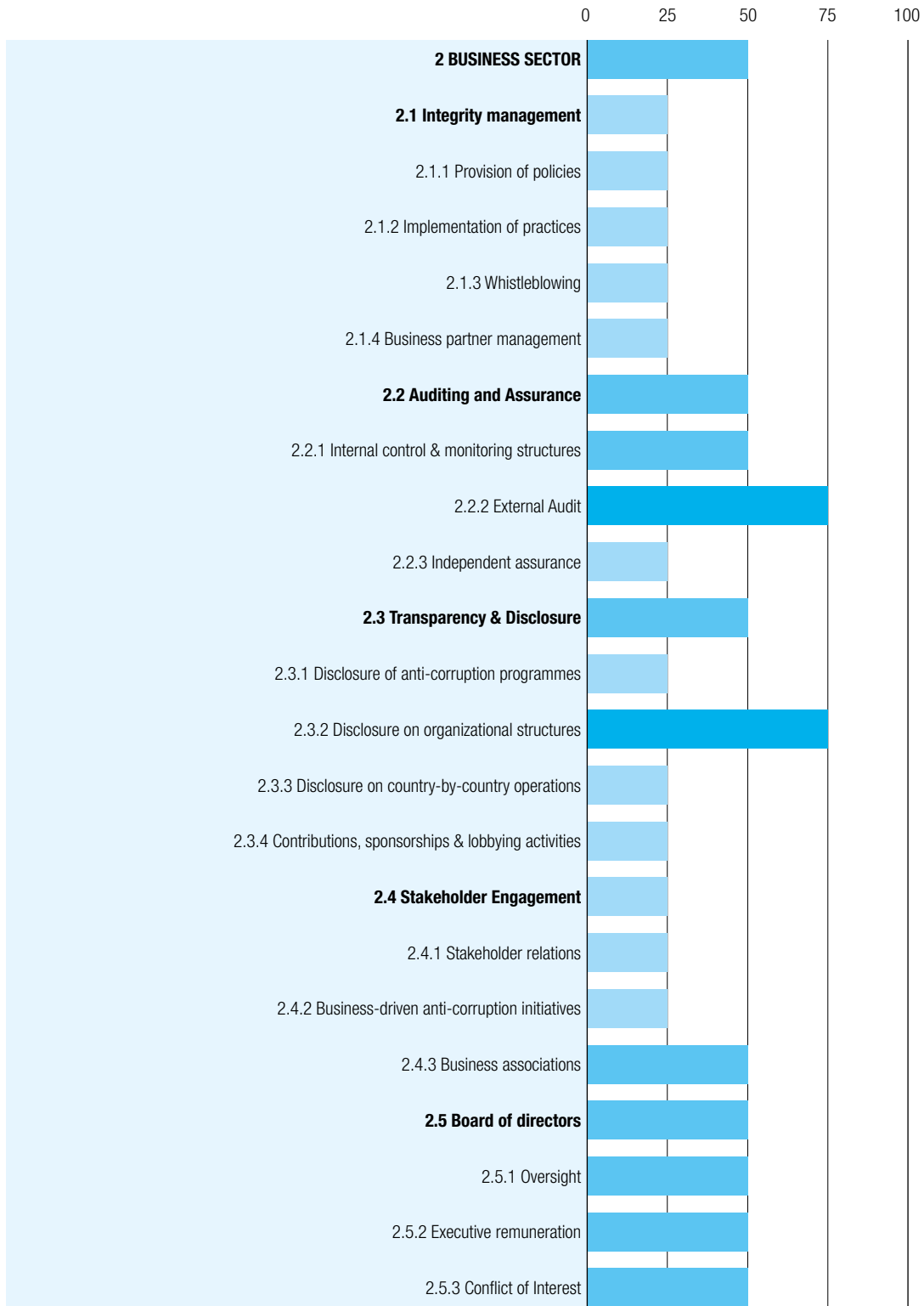
The Turkish Commercial Code (6102) emphasizes concepts of corporate governance principles such as fairness / equity, transparency, accountability and responsibility for the business sector in Turkey composed mainly of family companies. Many of its articles emphasizes the principle of “integrity”, “accountability” and working with these principles. Emphasizing the transparency and reliability of disclosure of financial statements based on the “true and fair view” principle, it holds managers and persons responsible for the management of the company responsible to conduct businesses honestly.

While companies are trying to maintain their sustainability in line with laws and the changing conditions of global and national markets, they seek to increase their profit, market share and market value. In this respect, it can be observed that the enterprises that aim to change scale, especially to grow into medium or big-scale, began to establish their internal principles with regard to anti-corruption policies in the framework of corporate governance principles and apply their code of conduct in the fight against corruption. In this respect, corporate governance is not an aim in itself but an instrument to sustain confidence and sustainability for companies in the market.

In addition, the fact that a company adopts the aim of sustainability and share sustainability reports with the public demonstrates that it acknowledges its responsibilities not only to their shareholders but also to all their stakeholders.

In the world we live in, and especially in the business sector, it is no more possible for businesses to sustain their competitiveness or keep them at their current level, focusing solely on economic returns. It is undeniable that the level of prosperity grows in countries with companies that adopt and implement requirements of the industry 4.0, share information in the name of transparency, invested in the future considering the expectations of their stakeholders and do not ignore risks related to their business.

As the results of Business Integrity Country Agenda-Turkey display, the improvement in legislation and implementations and integration of international standards into business sector will contribute to the development of Turkish business sector.

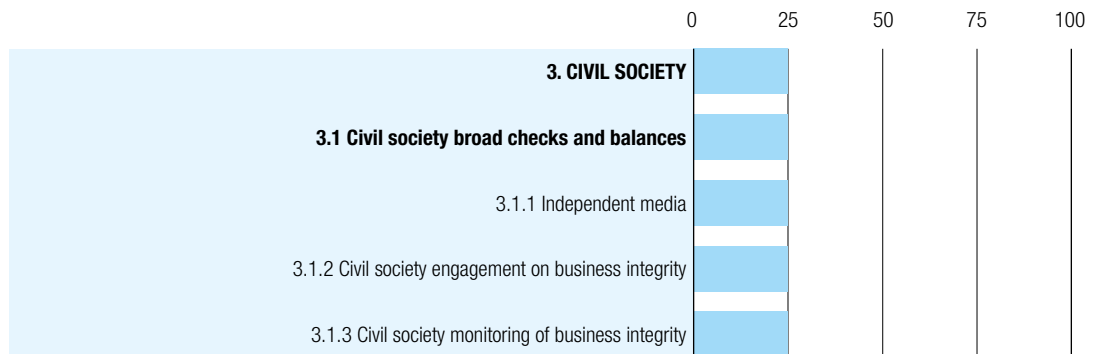


| 3 | CIVIL SOCIETY ASSESSMENT

It is necessary to develop and implement an understanding of cooperation between the public and private sector and non-governmental organizations in accordance with principles of inclusivity and participation in order to promote business ethics and to minimize corrupt behavior. Although CSOs working in the field have created a vast body of knowledge and possess the expertise, experience, and data, their activities and the ability to reach a wider audience remain limited. One of the ways in which Business Integrity System can be strengthened is to transfer this accumulated knowledge to private sector representatives and to synthesize the knowledge with their experience. In this context, cooperation and collaboration of the private sector and the civil society in evaluation and advocacy activities is central to creating rapid improvements in many areas. The transformation of the integrity system into a strong and widely accepted structure will ensure institutionalization of applications that will serve the interests of all stakeholders

One of the main pillars in the fight against corruption is the independent and free media. Just like CSOs, the media also needs to be a part of the oversight mechanism and perform its duties as an independent observer. To that end, the difficulties that the Turkish media is facing prevents us from improving the understanding of business ethics. The conflict of interest that is borne from the ownership structures of the media and cross-ownership and political pressure prevent the media from contributing adequately to the fight against corruption. Political polarization, even in matters such as corruption and ethics that all sections of the society should share common sense and sensitivity, is creating artificial obstacles for both the private sector and CSOs.

The legal framework for civil society organizations needs to be reformulated to encourage people to focus on creating solutions in a collective fashion. There should be no obstacles in the way of the use of constitutional rights and freedoms that guarantee participation in civil society activities. This should be established as a precondition for CSOs reaching and mobilizing all segments of the society in their fields of work.



**BUSINESS INTEGRITY
COUNTRY AGENDA-TURKEY**



COUNTRY CONTEXT

POPULATION, POLITICS, ECONOMIC CONTEXT & Others...

POPULATION

Turkey has a population of 78,741,053 people in 2015¹. The population projection predicts that its population will reach out to 84,247,088 in 2023 and to 94,585,000 in 2050 by compounded annual growth rate (CAGR) %1.35 for eight years and 0.43% seventeen years respectively.² The CAGR for fifty years between 1935 and 1985 was 2.31% and 2.38% between 1950 and 2000 whereas it will be 0.67% between 2000 and 2050.

The population is aging as well since the median age which was 30.1 in 2012 will rise to 34 in 2023 and 40.2 in 2050. The composition of the population based on age is changing in behalf of 65+ age by years and its share in total population increased to 8.2% from 4% between 1965 and 2015. Population distribution by gender is almost equal for man and woman with 50.2% and 49.8% for last ten years.

The overwhelming majority of population lives in urban centers (population is more than 20,000 people) as 87.2% of population is located in urban centers whereas 12.8% of population live in towns and villages in 2014. Istanbul is the most populous city of Turkey with 18.6% (14,657,434 people) of total population in 2015. Ankara, the capital of Turkey, is the second populous city with 6.7% of population (5,270,575 people). It is followed by Izmir with 5.3% (4,168,415 people), Bursa with 3.6% (2,842,547 people) and Antalya with 2.9% (2,288,456 people) of population.

POLITICAL CONTEXT

Turkey is a centralized unitary state with a multi-party democracy. It is governed by a parliamentary system in which the prime minister is the head of the executive, the president acts as the head of state. However, the president of Republic has important political and appointive functions.³

The term of the Grand National Assembly of Turkey is four years and consists of 550 deputies. Currently, the Parliament contains four parties: the AKP (Justice and Development Party, *Adalet ve Kalkınma Partisi*), the CHP (Republican People's Party, *Cumhuriyet Halk Partisi*), MHP (Nationalistic Action Party, *Milliyetçi Hareket Partisi*) and HDP (People's Democracy Party, *Halkların Demokrasi Partisi*) with 317, 133, 59 and 40 deputies respectively including one independent.

Turkey passed from single-party regime to multi-party regime in 1946. Turkish democratization faced several setbacks as the civilian politics suffered from military tutelage that intervened directly into politics by two coup d'états in 1960 and 1980. However, the country was able to maintain multiparty political competition with relatively free and fair elections.

¹ Turkish Statistic Institute, www.tuik.gov.tr, Results of Population Censuses, 1935-2000 and results of Address Based Population Registration System, 2007-2015

² TÜİK, Nüfus Projeksiyonları 2013 – 2075, Haber Bülteni, 14 Şubat 2013, Sayı: 15844 <http://www.tuik.gov.tr/PreHaber-Bultenleri.do?id=15844>

³ Özbudun, E. (1988). The Status of the President of the Republic under the Constitution of 1982: Presidentialism or Parliamentarism? In: Metin Heper and Ahmet Evin (eds), *State, Democracy and the Military: Turkey in the 1980s* (37-46). Berlin: Walter de Gruyter.

Since 2002, the AKP governs the country as a single-party government. Turkish democracy is classified as an illiberal democracy identified as “partly free” by Freedom House Project⁴ or as a hybrid regime⁵ oscillating between competitive authoritarianism and liberal democracy. In recent years, the AKP government receives serious critiques about its drift into competitive authoritarianism detaching away from liberal democratic principles with backsliding in freedom of expression, freedom of media, freedom of assembly, the rule of law.⁶

The decreased pluralism give way to contentious movements and political tensions among which Gezi protests that took place in 2013 have been the biggest and most well-known in recent years⁷ until hand coup attempt in July 15, 2016. On the other hand, Turkey is in customs union with the EU since 1994 and in the process of holding accession negotiations since October 2005.

ECONOMIC INDICATORS OF TURKEY

Growth

Turkey is one of the largest upper middle-income partners of the World Bank Group (WBG) and a member of Organization for Economic Co-operation and Development (OECD) and ranks as 18th largest economy in the world of its USD 718.2 billion Gross Domestic Product (GDP) in 2015.

The GDP levels augmented to USD 800 billion in 2014 up from USD 265 billion in 2000. The GDP per capita rose to USD 10,404 in 2014 up from USD 4,565 in the given period.⁸ Nevertheless Turkish economy could not show the same performance in 2015 and GDP decreased to almost USD 720 billion through 10% in dollar basis due to devaluation on TL. Even though a significant shrinkage in GDP occurred in 2015 Turkey has been one of the fastest growing country among G20, OECD and European countries through its growth rates in GDP in 2015.⁹

Different growth rate of sectors as agriculture, industry, services and construction influence economic growth rate in different way. Growth rate of GDP in 2015 announced 4% and agriculture, industry and services sectors have contributed 0.7%, 1% and 2.2% respectively to this GDP whereas construction sector has limited effect.¹⁰ For the recent years except 2015 especially construction sector’s development have locomotive role in economic growth rate.

⁴ <https://freedomhouse.org/country/turkey> , access 20 June 2016

⁵ Öniş, Ziya. “Turkey’s Two Elections: The AKP Comes Back.” *Journal of Democracy* 27.2 (2016): 141-154.

⁶ Öniş, Ziya. “Turkey’s Two Elections: The AKP Comes Back.” *Journal of Democracy* 27.2 (2016): 141-154; Esen, Berk, and Sebnem Gumuscu. “Rising competitive authoritarianism in Turkey.” *Third World Quarterly* (2016): 1-26; Özbudun, Ergun. “Turkey’s judiciary and the drift toward competitive authoritarianism.” *The International Spectator* 50.2 (2015): 42-55.

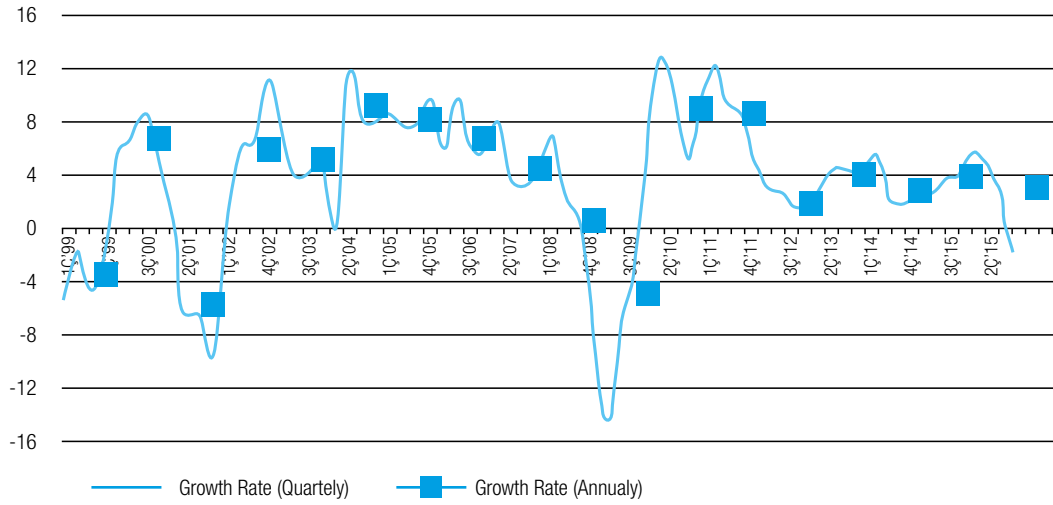
⁷ Aktar, Cengiz. “Resources and shortcomings of pluralism in today’s Turkey Gezi Park protests in the light of pluralism.” *Philosophy & Social Criticism* 41.4-5 (2015): 465-471.

⁸ Turkish statistical institute, IMG, World Bank

⁹ Ministry of Finance, Annual Economic Report - 2015, Ankara, January 2016, p.3

¹⁰ T.İş Bankası, “Ekonomik Büyüme – 2015 4.Çeyrek”, İktisadi Araştırmalar Bölümü, 31 Mart 2016 https://ekonomi.isbank.com.tr/UserFiles/pdf/gsyh_2015q4.pdf

Graph 1. Growth Rates of Turkish Economy



Source: TURKSTAT, CBTR

Inflation

Inflation is a chronic problem of Turkish economy since many years. Responsible authority from price stability and inflation rate is Central Bank of the Republic of Turkey (CBRT). It is defined on its official website as “The primary objective of the Bank is to achieve and maintain price stability.”¹¹ According to its point of view; “Low inflation is among the prerequisites of achieving long-term economic objectives. Therefore, maintaining price stability would be the chief contribution by the CBRT to policies aiming at economic growth and employment. Ultimately, not only do stable prices help economic agents make relatively well-informed decisions, thereby enhancing the efficiency of resource allocation, but also the reduction in the inflation premium due to low inflation levels reduces real interest rates, thereby supporting investment.”¹²

Mostly three indexes are important and following indicators for Turkish economy such as Consumer Prices Index (CPI - TUFİE), Producer Price Index (PPI - UFE) and Core Inflation Rate.

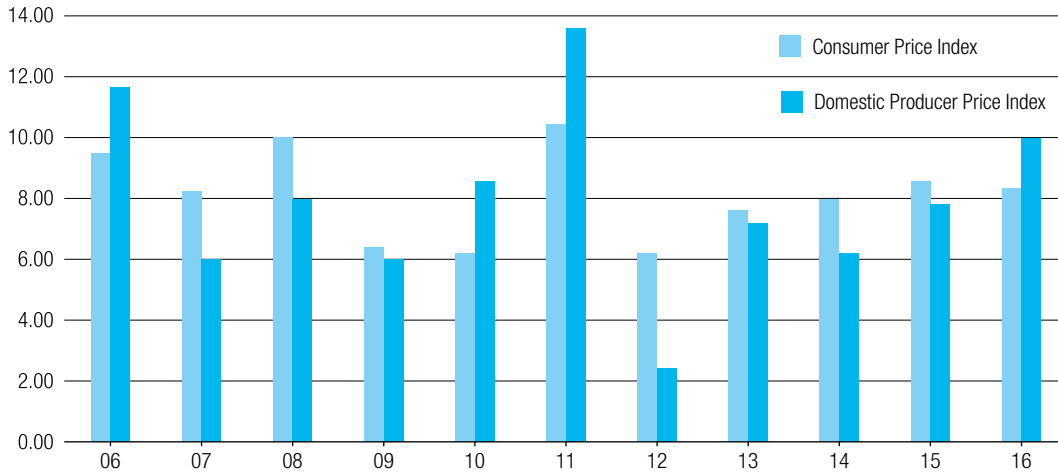
In 2011 the CPI reached 10.45% through an unexpected growth rate. Thanks to some good management methods of CBRT it came under 10% for last 4 years and decreased to 8.53% in 2016 (8.81% in 2015). Reasons behind of this augmentation are ongoing rise in food prices as well as the lagged effects of the Turkish Lira (TRL) depreciation and increasing in petroleum prices in international market throughout 2015.¹³ PPI is announced 9.94% for 2016 (5.71% in 2015) and the same reasons such as ongoing rise in petroleum prices and devaluation of Turkish Lira are valid for increase of PPI too.

¹¹ www.tcmb.gov.tr

¹² <http://tcmb.gov.tr/wps/wcm/connect/TCMB+EN/TCMB+EN/Main+Menu/MONETARY+POLICY/PRICE+STABILITY>

¹³ TCMB, Aralık Ayı Fiyat Gelişmeleri, 4 Ocak 2017, <http://tcmb.gov.tr/wps/wcm/connect/717cafc1-8c85-451b-980d-ab6b-2c86c238/afiyataralik2016.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE717cafc1-8c85-451b-980d-ab6b2c86c238>

Graphic 2. Inflation Rate in Turkey Between 2006 – 2016



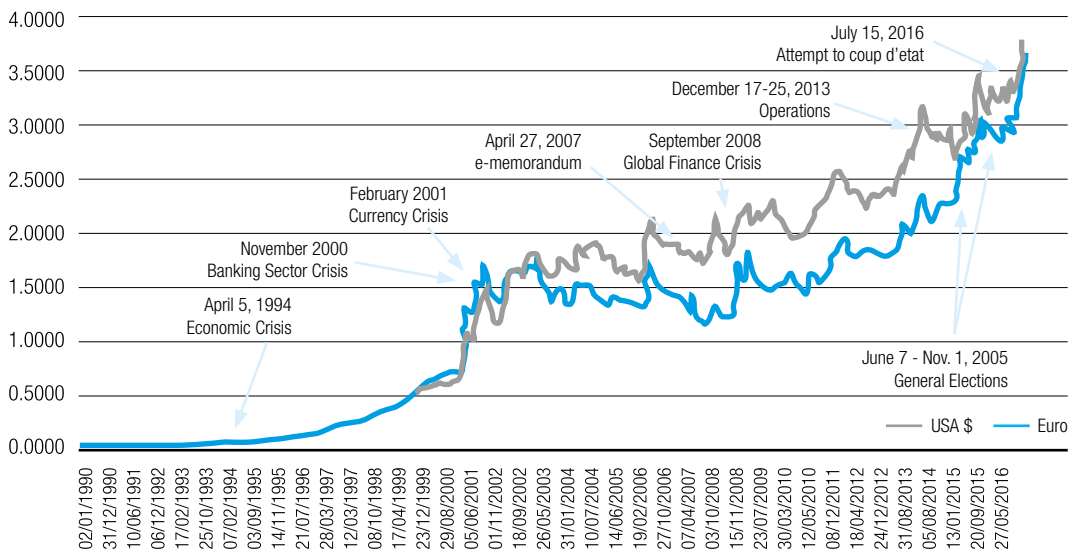
Source: TURKSTAT

CBRT forecasted the annual inflation rate at 7.5%, 6% and 5% for 2016, 2017 and 2018 respectively. However due to negative effect of attempt to coup d'état movement, increase in domestic food prices as well as petroleum prices in international markets, devaluation of Turkish Lira on inflation rates CBRT could not be successful to reaching inflation target of 7.5% for 2016.

Foreign Exchanges

After the November 2000 banking crisis and February 2001 currency crisis, Turkish economy made significant progress due to its stringent fiscal policy and structural reforms propelled by the IMF programs and Turkey's integration into the EU. Turkey abandoned the currency peg and passing through to free float in exchange regime in February 2001.¹⁴

Graphic 3. Changes in Euro and USD Between 1990 and 2016 and Important Events



Source: CBTR, Asuman Sönmez

¹⁴ Leigh Daniel and Rossi Marco, "Exchange Rate Pass-Through in Turkey", IMF Working Paper, WP/02/204, 2002

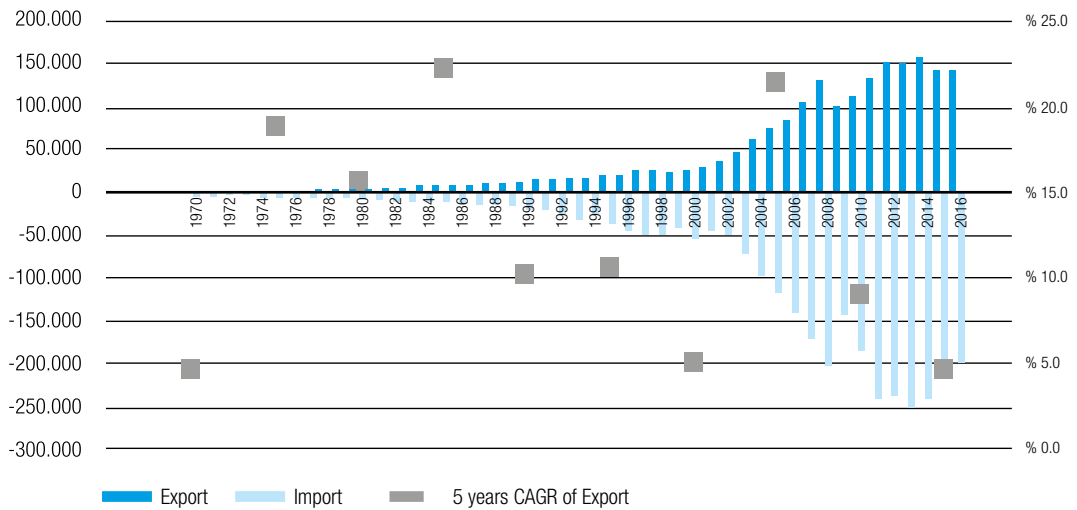
US dollar and Euro are mostly used currencies in business life just like the world. As the Graphic 3 shows; two currencies are directly influenced from any kind of economic and politic turbulences and events. On the other hand sharp fluctuation on these currencies has significant effect on inflation rate too.

Foreign Trade

Turkey rose to USD 351 billion foreign trade volume in 2015 registered USD 143.8 billion from export and USD 207.2 billion from import. The mentioned figures realized almost the same level in 2016 Share of export in the volume around 40% for last 50 years and realized 42% in 2016. Even though export shows increase year by year balance of trade is growing faster than export due to high import rate of Turkey. Proportion of import covered by export is 72% in 2016 which means increase in export volume is highly depend on import. In other words Turkey needs to import some raw materials and equipments in order to be able to export its products.

On the other hand one of the major short-coming of Turkish economy is the limited investment in high-tech technologies and low capacity to generate added value through research, design, marketing and branding.

Graphic 4. Development of Foreign Trade in Turkish Economy



Source: TURKSTAT

Turkey's biggest trade partner is European countries with 52.7% in foreign trade volume consist of EU (28 countries) with 40.6% and other European countries with 12%. This distribution rate is valid for in export and import as well and European countries' share recorded as 54.3% of total export and 51.5% of import in 2015. Breakdown of weight of European countries is EU (28 countries) with 44.5% and other European countries with 9.8% in export and 38% and 13.6% in import respectively. In the light of the statistics it is obvious that Europe play a vital role in Turkish foreign trade volume. Germany and England were most important countries of 16.7% share from export while Chine and Germany were in import of 22.3% in 2015. Other significant share has to OECD countries with 50.4% in total foreign trade volume in respect of selected country groups.

64,752 companies as exporter and 68,561 as importer realized total foreign trade volume in 2015.¹⁵ According to their scale SMEs had share of 95% both in export and import while large-sized 5% in terms of number of company. Even though number of SMEs is higher than large-sized companies' share of SMEs in export is 55.1% in 2015 while 37.7% in import. Export and import volume per company in SMEs realized TRL 3.5 million in 2015 while TRL 79.8 million in export and TRL 121.6 million in import for large-sized companies.¹⁶ However, their share in foreign trade has increased over the years.

In respect of sectors; main product groups and sectors such as automotive (15.8%), ready-made clothing (12.7%), chemistry (11.8%), electric and electronic (7.9%) and steel (7.4%) have around 55% share in total export volume for recent years.¹⁷ Main product groups and sectors such as manufacturing industry (80.5%), mining and quarrying (13.3%) and agriculture and forestry (3.5%) have approximately 97% share in total export volume for recent years. On the other hand; composition of import according to commodity groups is capital goods (16.8%), intermediate goods (69.2%) and consumer goods (13.8) in 2015.¹⁸

Balance of Payment & Current Account

Balance of Payments is sum of 4 items such as Foreign Trade Balance, Services, Primary and Secondary Incomes. Main sub-item in Services is travel revenue which contains tourism incomes while Investment Incomes for Primary Incomes including interest payments.

Current Account (C/A) deficit realized USD 29.4 billion at the end of March 2016 while it announced USD 32.2 billion for 2015 and these volumes are 4.2% and 4.5% of GDP respectively.¹⁹ Main driver of the contraction was the improvement in the foreign trade balance in this quarter.²⁰ Conversely the positive effect of the services balance on the C/A deficit weakened due to the decline in net travel revenues which include tourism incomes and expenses.

As the indicators displayed below show that foreign trade deficit has one of the main role on C/A deficit. For example foreign trade deficit of USD 105.6 billion in 2011 which is highest volume announced for all years affected negatively C/A at that year as well and highest deficit volume recorded at 2011 with USD 74.4 billion at C/A which is equal 9.6% of GDP.²¹

¹⁵ TÜİK, Küçük ve Orta Büyüklükteki Girişimler 2016, Haber Bülteni, 25 Kasım 2016, Sayı: 21540

¹⁶ TÜİK, Küçük ve Orta Büyüklükteki Girişimler 2016, Haber Bülteni, 25 Kasım 2016, Sayı: 21540

¹⁷ Turkish Export Assembly, <http://www.tim.org.tr/tr/ihracat-rakamlari.html>

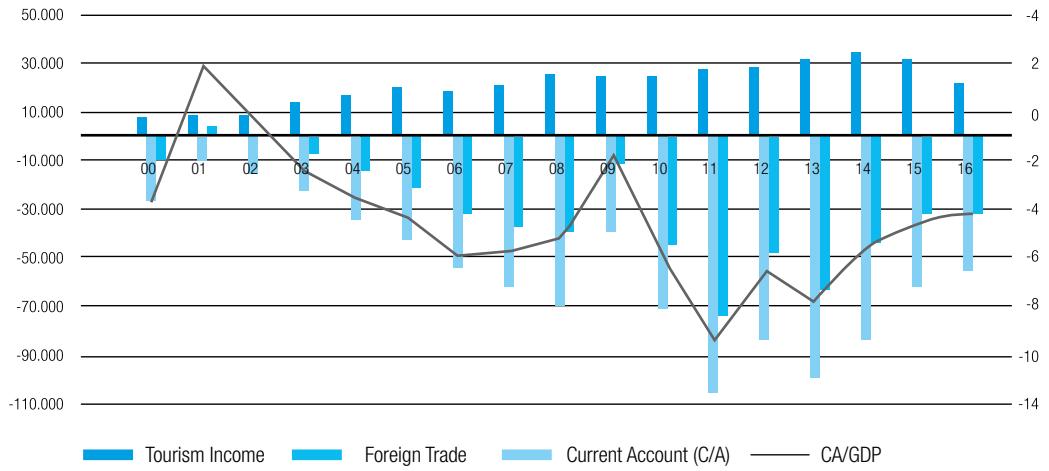
¹⁸ Turkey Statistical Institute, <http://www.kalkinma.gov.tr/Pages/TemelEkonomikGostergeler.aspx>

¹⁹ <http://www.tcmb.gov.tr/wps/wcm/connect/TCMB+TR/TCMB+TR/Main+Menu/Istatistikler/Odemeler+Dengesi+ve+Ilgili+Istatistikler/Odemeler+Dengesi+Istatistikleri/Odemeler+Dengesi+Gelismeleri>

²⁰ CB, Balance of Payment Report 2016 – I, Ankara, p.4

²¹ <http://www.tcmb.gov.tr/wps/wcm/connect/TCMB+TR/TCMB+TR/Main+Menu/Para+Politikasi/Interaktif+Grafikler/Cari+islemler+dengesi>

Graphic 5. Changes in Current Account and Related Items



Sources: TURKSTAT, CBTR

Tourism income especially from foreigners is another important figure for C/A too. Turkey registered almost USD 31.5 billion revenues from tourism by declining 8.3% compared with previous year. 80.1% of this revenue came from foreigners in 2015. Due to terrorist attacks and political problem between Turkey and Russia, tourism income sharply declined in 2016 and expectation is about USD 22 billion for this year.

Debt of Public & Private Sectors

Total Gross Debt Stock reached USD 570 billion in the first 9 months of 2016. Domestic debt stock 27% of gross debt stock is USD 154 billion while foreign is USD 416.7 billion with its 73% share. Private sector has significant share in Gross Debt Stock through 70.5% and its debt reached USD 293.7 billion while public sector's is USD 112 billion.²² Rate of Total Gross Debt Stock / GDP recorded as 49% in the same period while Net Gross Debt Stock / GDP is 30% through USD 259 billion. As the Graphic 6 shows below, Total Public Gross Debt Stock amount of Turkey grew approximately 7.5 folds between 1990 – 2015 while GDP 3.6 folds and could not increase as much as Debt Stock's.

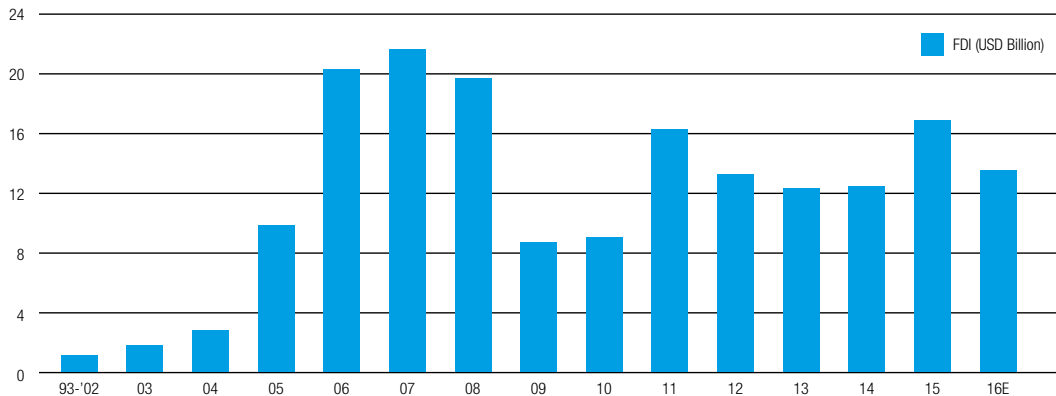
²² <https://www.hazine.gov.tr/tr-TR/Istatistik-Sunum-Sayfasi?mid=59&cid=12>

sectors in investment and they respond almost 70% of total volume of private investments in 2015. The economic reforms enhanced the role of private sector in the economy, encouraged foreign direct investment (FDI), constructed a more resilient financial sector and developed a more sound social security system. After the economic crisis, the legal framework changed in order to attract foreign investors and increase the collaboration between foreign companies and domestic enterprises. In line with OECD guidelines, Turkey lifted pro-entry screening requirements for foreign companies with Foreign Direct Investment Law No. 4875 (June 2003) and generated a legal framework for equal competition generating equal duties and privileges for foreign and domestic enterprises. Foreign enterprises can launch freely their businesses. Moreover, flexible exchange rate policies and liberal import regulation are set in force to promote foreign investment. Tax and non-tax incentives are implemented to augment foreign investment such as customs, VAT exemption on some imported goods, attribution of free land, and energy support for priority regions.²⁵

Turkey has four types of incentives to draw foreign investment: a) general investment incentives regime b) incentives for large-scale investments c) region and sector-based incentives d) incentives for strategic investments.²⁶ According to Institute of International Finance (IIF) data; Capital net outflows will hit approximately USD 500 billion in 2016, lower than the exodus of USD 755 billion in 2015 and the IIF expects total capital flows to emerging markets (EMs), including direct investment and other flows, of USD 602 billion in 2016, up from USD 292 billion in 2015.²⁷

Turkey is 2nd biggest reformer among OECD countries in terms of its restrictions on FDI since 1997 according to OECD FDI Regulatory Restrictiveness Index 1997-2015.²⁸ The economic reforms in the aftermath of 2001 and 2002 crisis energized FDI in Turkey. Turkey received about USD 151 billion FDI between 2006 and 2015 whereas its average FDI between 1996 and 2005 was around USD 2.3 billion. The net FDI hit its peak with USD 22 billion in 2007. Turkey registered of USD 3.8 billion FDI in the first half of 2016 showing 46% decline according to same period of last year²⁹

Graphic 7. Development of Foreign Trade Investment



Source: Ministry of Development

²⁵ Doing Business in Turkey , PwC Türkiye, <http://www.pwc.com.tr/en/publications/arastirmalar/pdf/doing-business-in-turkey.pdf>

²⁶ Doing Business in Turkey , PwC Türkiye, <http://www.pwc.com.tr/en/publications/arastirmalar/pdf/doing-business-in-turkey.pdf>

²⁷ <http://www.ft.com/cms/s/3/3c92afd8-fd7d-11e5-b3f6-11d5706b613b.html#axzz4FQ8UfNZn>

²⁸ <http://www.invest.gov.tr/en-US/investmentguide/Pages/10Reasons.aspx>

²⁹ YASED, Uluslararası Doğrudan Yatırım Analizi, <http://www.yased.org.tr/tr/yayinlar-ve-raporlar/uluslararasi-dogrudan-yatirim-analizi>

As the Graphic 7 shows that Turkey recorded almost same FDI inflow of USD 16.8 billion in 2015 again after drop off period between 2012 and 2014 due to the weakening currency, turmoil in the Middle East concerns over political stability. Moreover according to FDI Confidence Index prepared by A.T. Kearney in 2014 Turkey was ranked 24th country among 25 countries where the foreign investors willing to make investment.³⁰

Net FDI inflows remain less than 2% of Turkey's GDP between 2002 and 2016 which is below the level of other upper-middle incomes countries such as China, Russia, Mexico, and Poland.³¹ Consequently CAGR of FDI between 2003 and 2015 realized approximately 19% despite of local and international economic and politic developments for recent years.

Distribution of FDI into Turkey is capital investments 68.5% and real estate 25% in 2015. the FDI steered into services sector away from manufacturing sector from 2001 to 2011. The FDI's role in manufacturing and in services sector was 94.3 % and 7.5% in 2002 and share of the sectors changed in behalf of services sector during twelve years. The FDI's part in services sector increased to 50% but decreased to 49.8% in 2011.³² For recent data services sector is the leading sector with a share of 52.6% of the gross capital inflows (USD 11.9 billion) and the remaining share of 47% belongs to industrial sector in 2015.³³ Finance and insurance is the leading sub sector in services with 29.8% and manufacturing sector is with 34.7% for industry in 2015. The structural reforms that enhanced the development of financial sectors became an attractive sector for FDI in the last decade.

According to the regional breakdown (excluding real estate purchased by non-residents), Europe is the main source of FDI with a share of 80%, followed by Asian countries and America with 16% and 4% respectively.³⁴ Netherlands, Austria and UK were the major source countries for FDI inflows to Turkey in 2015 respectively.

Main reason behind of increase in FDI to Turkey is business-friendly environment with an average of 7.5 days (which is 6.5 days according to 2015 – 2016 Report³⁵) to set up a company in Turkey whereas the average in OECD members is more than 15 days according to World Bank Doing Business Report 2014 - 2015.³⁶

Foreign control rate of enterprises is 13.8% in Turkey and the number of companies with foreign capital increased to 46,800 in 2015³⁷ from 42,150 in 2014 and 49,933 first half of 2016.³⁸ This number is an indicator of high development in FDI to Turkey for 12 years since same number was 3,095 companies in 2004.³⁹ Moreover number of companies with foreign capital was 21,823 between 1954 and 2009 and almost doubled in 6 years.⁴⁰ Distribution of the companies with

³⁰ Durgan Selma, Türkiye'nin Doğrudan Yabancı Yatırım Potansiyelinin Çekim Modeli Kullanılarak Belirlenmesi, Uzmanlık Tezi, T.C. Kalkınma Bakanlığı, Nisan 2016

³¹ <http://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS>

³² ŞİT, Mustafa. ŞİT, Ahmet. Türkiye'de Doğrudan Yabancı Sermayenin Sektörel Dağılımı: Hizmetler Sektörü Üzerine Bir Değerlendirme, Sosyal Bilimler Dergisi, Cilt 3 - Sayı 5, Haziran 2013, s.47

³³ International Investors Association, International Direct Investment Evaluation Report (2016-Q1), p.2, 2016

³⁴ International Investors Association, International Direct Investment 2015 Year-End Evaluation Report (February 2016), p.4, 2016

³⁵ <http://www.rekabet.gov.tr/tr-TR/Rekabet-Yazisi/Kuresel-Rekabet-Edebilirlik-Endeksi-2015-2016-Raporu>

³⁶ World Bank, Doing Business 2016, 13th Edition, Washington USA, 2016, p.241

³⁷ <http://www.invest.gov.tr/en-US/sectors/Pages/BPOAndContactCenter.aspx>

³⁸ http://www.ekonomi.gov.tr/portal/faces/home/yatirim/uluslararasıYatirim/uluslararası-dogrudan-yatirim?_afLoop=1213845828946655#!%40%40%3F_afrLoop%3D1213845828946655%26_adf.ctrl-state%3De79lf85bl_170

³⁹ Başbakanlık Hazine Müsteşarlığı, Yabancı Sermaye Raporu, Ankara, 2005, p.2

⁴⁰ Ministry of Economy, Uluslar arası Doğrudan Yatırımlar 2014 Yılı Raporu, Ankara, 2015, p.18

foreign investment according to establishment type is 34,878 new companies, 6,297 joint ventures and 975 branches while legal status of the companies is 78.7% limited company, 19.1% incorporation and 2.2% other status in 2014.

Services sector has significant share in total number of with foreign capital over 70% for recent years while manufacturing has around 13-15% and construction at 9%. 56.4% of foreign-controlled production in manufacturing industry is more focused in the activities with medium-high technology whereas its share on high technologies remains at 4.4%.⁴¹ The first five countries that control these foreign enterprises are Netherlands, United Kingdom, Germany, USA and France.

PRIVATIZATION

As being one of the fundamental tools of the free market economy, privatization has been on Turkey's agenda since 1984.⁴² Privatization in Turkey, aims to minimize state involvement in economic activities and relieve the financial burden of State Economic Enterprises (SEE) on the national budget. Another aim is contemplating the development of capital markets and the re-channeling of resources towards new investments.⁴³ In these objectives the principles, procedures, authorized agencies and other issues regarding privatization are all set out in the Privatization Law No. 4046, dated 1994. The methods indicated below are main methods for privatization activities and companies within the privatization portfolio are privatized through the use of one or more of the methods;⁴⁴

- **Sale:** Transfer of the ownership of companies in full or partially, or transfer of shares of these companies through domestic or international public offerings, block sales to real and/or legal entities, block sales including deferred public offerings, sales to employees, sales on the stock exchanges by standard or special orders, sales to investment funds and/or securities investment partnerships by taking into consideration the prevailing conditions of the companies.
- Lease: Grant of the right of use of all or some of the assets of the companies for a defined period of time.
- Grant of Operational Rights
- Establishment of Property Rights other than Ownership
- Profit Sharing Model and other Legal Dispositions Depending on the Nature of the Business.

Turkey have been taken into 270 companies, 114 establishment, 22 incomplete plants, 8 toll motorways, 2 Bosphorus Bridges, 1 service unit and 929 real estates and 6 ports the privatization portfolio to 2012 from 1985 and privatization activities continued after 2012 too. Turkey registered almost USD 67 billion total privatization income which was registered USD 46 billion privatization income between 1986 and 2012 while USD 21.4 billion between 2013 and 2016. In other words Turkey generated approximately USD 67.5 billion income from its privatization rally between 1985 and 2016. 2013 is extraordinary year in respect of privatization revenue through USD 12.5 billion.

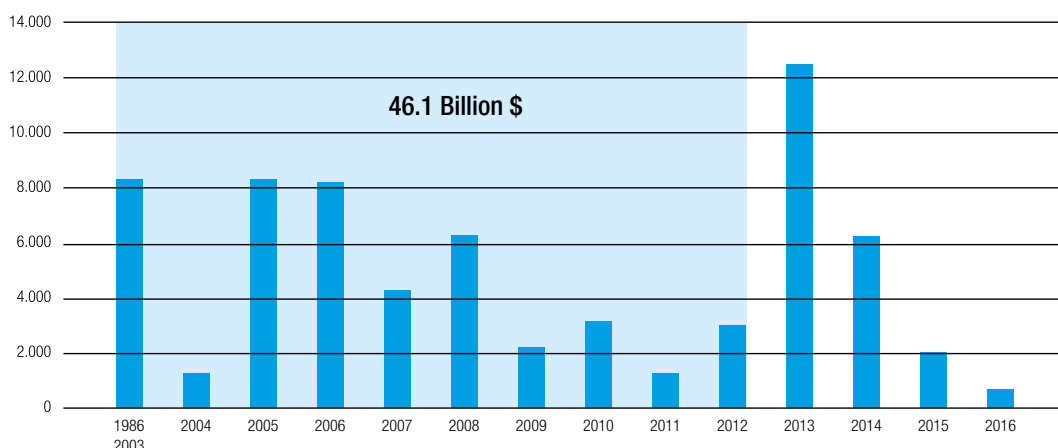
⁴¹ Yabancı Kontrollü Girişim İstatistikleri, 2014 <http://www.tuik.gov.tr/PreHaberBultenleri.do?id=21796>

⁴² Republic of Turkey Prime Ministry, Privatization Administration, Privatization in Turkey, p.1

⁴³ Republic of Turkey Prime Ministry, Privatization Administration, Privatization in Turkey, p.1

⁴⁴ Republic of Turkey Prime Ministry, Privatization Administration, Privatization in Turkey, p.2

Graphic 8. Privatization Revenues of Turkey (billion \$)



Source: Republic of Turkey Prime Ministry Privatization Administration

Breakdown of income according to privatization method is 49% facility and asset sales, 33% block sales, 14% public offerings and 4% sales on the stock exchanges by standard or special orders.⁴⁵

Due to high energy import volume of USD 54.9 billion which take a big part from Turkey's current account deficit and have 6.9% share of GDP⁴⁶ Turkey is trying to accelerate privatization especially in energy market in recent years. With the privatization of energy generation, Turkey also created a more competitive energy market. Private entities in the sector increased to 75% in 2015 from 32% in 2002.

The Petroleum Pipeline Corporation's (BOTAŞ) dominates the market with limited participation of private operators.

The public sector has a significant share in electricity generation as well. In order to privatize the electricity distribution grids, the government published National Renewable Energy Action Plan (NREAP) in February 2014 with the support of the EBRD which can be identified as a road map for between 2013 and 2023. Policy makers in Turkey aim to privatize remaining public sector power plants with the exception of big hydroelectric power plant.

Employment & Unemployment & Wages

Population of Turkey over 15 ages is about 59 million and almost 30.5 million people as a labor force and 27.6 million of it works in different sectors in Turkey. In October 2016, Turkey's employment rate was 46.2% and remained below the OECD average.⁴⁷ Employment participation rate is realized 52.4% in October 2016 and the rate for men and women is 72.1% and 33.1% respectively.

Breakdown of employees according to sector; agriculture sector employs one-fifth of the country's working population. Distribution of employees is about 19.5% in agriculture, 19.4% in industry, 61.2% services (including construction of 7.6%) in May 2016.⁴⁸

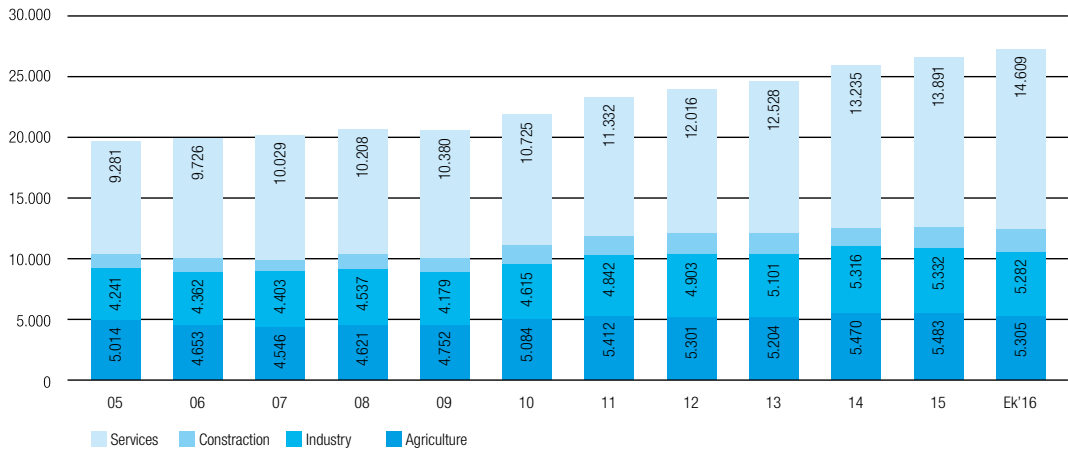
⁴⁵ http://www.oib.gov.tr/program/uygulamalar/yillara_gore.htm

⁴⁶ Document of The European Bank for Reconstruction and Development, Strategy for Turkey as Approved by the Board of Directors at its meeting on 14 October 2015

⁴⁷ How does Turkey Compare? Employment Outlook 2015 <https://www.oecd.org/turkey/Employment-Outlook-Turkey-EN.pdf>

⁴⁸ TURKSTAT, www.tuik.gov.tr

Graphic 9. Distribution of Employees According to Sectors



Source: TURKSTAT

According to the data of October 2016, the distribution of employees by gender for the 31 million workforce is, 21 million (%31) male and 10 million (%33) female. Among the 27.3 million workers, 19 million (%69) are male and 8 million (%30) are female.

The number of people working in sectors other than agriculture (5.3 million people), programming and publishing activities, finance and insurance activities in Turkey is 13.9 million in 2015. Approximately 99.8% of the respondents are working in companies with 250 employees, and 96.6% are working in 5.5 million companies with 1-19 employees.

Distribution of persons employed out of 27.3 million workers according to their status in the company are 4.4% of employers, 16.6% of self-employed, 11.2% are family members who work for free and 67.8% of paid worker in October 2016.⁴⁹

Between 2005 and 2016, unemployment in Turkey fell down to 8% which was an ensuing consequence of rise in prosperity during this period. With the slowing of economic growth, Turkey's employment rate exceeded 10% recently and reached its highest rate of 11.8% in October 2016.⁵⁰ Breakdown of 3.6 million of unemployed people according to gender basis is 56.7% men and 43.3% women.

Youth unemployment is on a rising path at 18.6% in February 2016 but still stays lower than its peak of 24% in 2009. The share of young people not in employment, education or training (the NEET rate) is over 24% in the 15-24 age groups which is more than OECD average. Unemployment rate for young people between the 15-24 ages group is rose from 19% to 21% in October 2016 too. Especially graduated young people face unemployment problem.

The statutory net minimum wage was increased by the government from TRL 1,000 to TRL 1,404 per month (gross TRL 1,778) and is affected 6.5 million employees according to December 2016 data⁵¹. On the other hand according to 2014 yearly data, monthly average gross wage was TRL 2,207 and this wage is TRL 2,215 for men while TRL 2,188 for women.

⁴⁹ TURKSTAT, İstihdam edilenlerin yıllara göre işteki durumu, http://www.tuik.gov.tr/PreTablo.do?alt_id=1007

⁵⁰ http://www.tuik.gov.tr/PreTablo.do?alt_id=1007

⁵¹ <http://www.reel piyasalar.com/Haber/ekonomi/20862/asgari-ucretle-calisan-isci-sayisi;6-5-milyona-yaklasti.html>

Sectors & Companies

According to recent statistics, number of companies in Turkish economy is around 3.5 million⁵² and 2,689,894 of these companies operate except programming and broadcasting activities and financial and insurance activities in 2015.⁵³

Micro, small and medium sized enterprises (SMEs) has almost 99.8% share in total number and crucial role in Turkish economy. On the other hand 99.5% of total companies are in micro scale in Turkey.

A particular regulation has been adopted on definition, qualification and classification of SMEs in 2005 which brought harmonization with the EU definition and revised on November 2012.⁵⁴ According to regulation the scales of enterprises are defined according to the “annual turnover” and “number of workers”.⁵⁵ However annual turnover has priority among them.

Table 1. Definition of SMEs in Turkey

Criteria	Micro-sized Enterprise	Small-sized Enterprise	Medium-sized Enterprise
Number of Worker	< 10	< 50	< 250
Annual Turnover	≤ TRL 1 million	≤ TRL 8 million	≤ TRL 40 million
Annual Assets	≤ TRL 1 million	≤ TRL 8 million	≤ TRL 40 million

As the Table 1 shows, companies with less than 250 workers and annual turnover does not exceed TRL 40 million (around Euro 10 million) are defined as SMEs in Turkey.

SMEs are very important for Turkish economy like other countries and can be defined as milestones of economy since 73.5% of total employment, 54.1% of all wages and salaries, 62% of total turnover, 53.5% of added value and 55% of gross investment in material goods belong to the SMEs.⁵⁶ They also significant role in foreign trade for recent years and increase their share in export and import. Almost 37.7% of total imports and 55.1% of total exports were realized by SMEs in 2015. 92.3% of export realized by SMEs consists from manufacturing sector products. The clothing sector constituted 16% (14.5% in 2014⁵⁷) of SMEs' exports followed by the base metal and textile industries with 10.1% (12.1% in 2014) and 9.2% (in 10.3%) respectively.⁵⁸

In order to develop SMEs and their share in value added production and increase the contribution of SMEs to Turkey's economic growth, 5 strategic areas were specified by Turkish government and it can be listed as; increasing competitiveness, enhancing export capacities, special emphasis be given to SMEs while improving business and investment environments, enhancing Research & Development (R&D) and innovation capacities and facilitating access to finance.⁵⁹

⁵² TÜİK, İş Kayıtlarına Göre Girişim Sayıları 2013; Yıllık Avrupa KOBİ'leri Raporu 2013/2014, KOSGEB KSEP 2015

⁵³ TÜİK, Küçük ve Orta Büyüklükteki Girişim İstatistikleri, 2016, Haber Bülteni, 25 Kasım 2016, Sayı: 21540 <http://www.tuik.gov.tr/PdfGetir.do?id=21540>

⁵⁴ “Küçük ve Orta Büyüklükteki İşletmelerin Tanımı, Nitelikleri ve Sınıflandırılması Hakkında Yönetmelik”, Resmi Gazete, Tarih: 04.11.2012, Sayı: 790

⁵⁵ Demirer Hatun, KOBİ'lerle ilgili 3ncü Büyükelçiler Forumu Konuşması, 16.11.2015, <http://www.manama.be.mfa.gov.tr/ShowSpeech.aspx?ID=6829>

⁵⁶ TÜİK, Küçük ve Orta Büyüklükteki Girişim İstatistikleri, 2016, Haber Bülteni, 25 Kasım 2016, Sayı: 21540

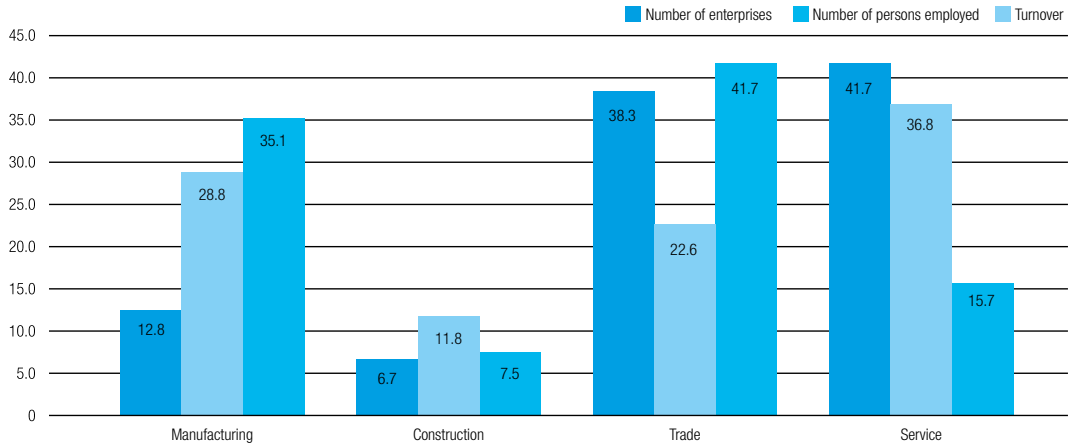
⁵⁷ Demirer Hatun, KOBİ'lerle ilgili 3ncü Büyükelçiler Forumu Konuşması, 16.11.2015, <http://www.manama.be.mfa.gov.tr/ShowSpeech.aspx?ID=6829>

⁵⁸ TÜİK, Küçük ve Orta Büyüklükteki Girişim İstatistikleri, 2016, Haber Bülteni, 25 Kasım 2016, Sayı: 21540

⁵⁹ Demirer Hatun, KOBİ'lerle ilgili 3ncü Büyükelçiler Forumu Konuşması, 16.11.2015, <http://www.manama.be.mfa.gov.tr/ShowSpeech.aspx?ID=6829>

According to breakdown of sectors industry, trade, services and construction are main sectors that the companies operating in 2015.⁶⁰ As the Graphic 10 shows below services sector is initial sector both in number of enterprise and workers while trade in turnover.

Graphic 10. Breakdown of Number of Enterprises, Employees and Turnover According to Sectors (%)

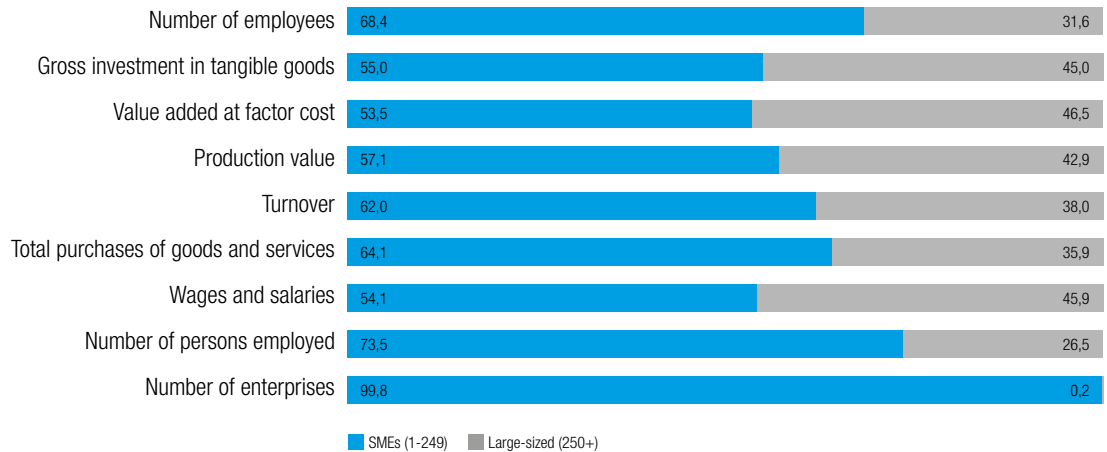


Source: TURKSTAT

The statistics 39.2% of the active enterprises operate in service sector, 15.4% in transportation and storage sector and 12.4% in industry as first three sectors.⁶¹ In contrast with less share of industry in number basis, the sector is leading provider in employment and in value added productions.

Large-sized enterprises with more than 250 people and TRL 40 million turnover they have significant role in Turkish economy even though they have very low number compared with SMEs' and their share in total is approximately 0.02%.

Graphic 11. Share of the Companies According to Their Sizes (%)



Source: TURKSTAT

Beside breakdown of companies according to scale and sector, another significant classification is company legal status. Most of the companies belong to one person in Turkey since there is no partnership culture in Turkish people. This tradition reflects on business life practices and most of the newly founded firms establish as single-owned firm. As an example

⁶⁰ UIK, Haber Bülteni, Yıllık Sanayi ve Hizmet İstatistikleri 2015, Sayı: 21528, 2016, <http://www.tuik.gov.tr/PreHaberBultenleri.do?id=21529>

⁶¹ TUIK, Haber Bülteni, Girişimcilik 2014, Sayı: 21529, 2016, <http://www.tuik.gov.tr/PreHaberBultenleri.do?id=2152>

74.8% of newly founded enterprises are single-owned firms while 16.5% are limited liability in 2014.⁶² Distribution of employees out of 27.3 million workers according to their status in the company are 4.4% of employers, 16.6% of self-employed and 11.2% are family members who work for free.⁶³

According to 2016 statistics, there are 49,933 firms with foreign capital and 6,524 domestic firms with international investment.⁶⁴ In total, over 56,000 international companies operate in Turkey. Foreign firms operate more in retail and wholesale trade, renting of private property and activities and manufacturing sector. In manufacturing sector, foreign firms operate in chemical products and production, textile production, food and drink production and manufacturing of tobacco. These 56,000 firms are located respectively in Istanbul (29,970), Antalya (4,814), Ankara (2,751) and Izmir (2,308).

In respect of importance of sectors, manufacturing, wholesale and retail trade (including repair of motor vehicles & motorcycles), transportation and storage, construction and accommodation and food service activities are initial sector for Turkish economy in different parameters. In 2015, these five mentioned sectors have 82% of number of total companies of 2.7 million while 76% of 13.9 million employee meeting 40% of total employed people of 26.6 million.

Wholesale and retail trade (including repair of motor vehicles & motorcycles), has 35.2% share in total companies of 3.5 million and 35.2% of 2.7 million companies operating sectors except programming and broadcasting activities and financial and insurance activities and initial sector in respect of number of companies and turnover. The sector meets 22.6% of 13.9 million employees in 2.7 million companies in 2015 as well.

Manufacturing sector contributes to employment by 26.4%, it creates the highest share of overall value added factor cost with 36.3%, production value with 43.3% and gross investment in tangible goods with 27.8% even though its share is around 12.5% in number of total companies of 2.7 million which are operate the sectors except programming and broadcasting activities and financial and insurance activities. Export volume of the sector announced USD 107.7 billion decreasing 1.1% and met 75.7% of total export of Turkey.⁶⁵ It also became a sector of attraction for FDI mustering USD 4.1 billion in 2015.

The construction sector is another locomotive sector for Turkish economy and accepted as one of the leading and driving sectors thanks to its close relationships with the other sectors.⁶⁶ The sector developed at considerable speed as currently 43 of the top 250 international construction firms are Turkish.⁶⁷

As the Graphic 12 shows below the construction sector has significant share in respect of employment since it contributes to 13% of 13.9 million people working in 2.7 million companies is working in the sector. It also has 12.3% of total production value following manufacturing while gross 12% in investment in tangible goods following manufacturing and wholesale and retail trade.

⁶² TUIK, Haber Bülteni, Girişimcilik 2014, Sayı: 21529, 2016 , <http://www.tuik.gov.tr/PreHaberBultenleri.do?id=21529>

⁶³ TURKSTAT, İstihdam edilenlerin yıllara göre işteki durumu, http://www.tuik.gov.tr/PreTablo.do?alt_id=1007

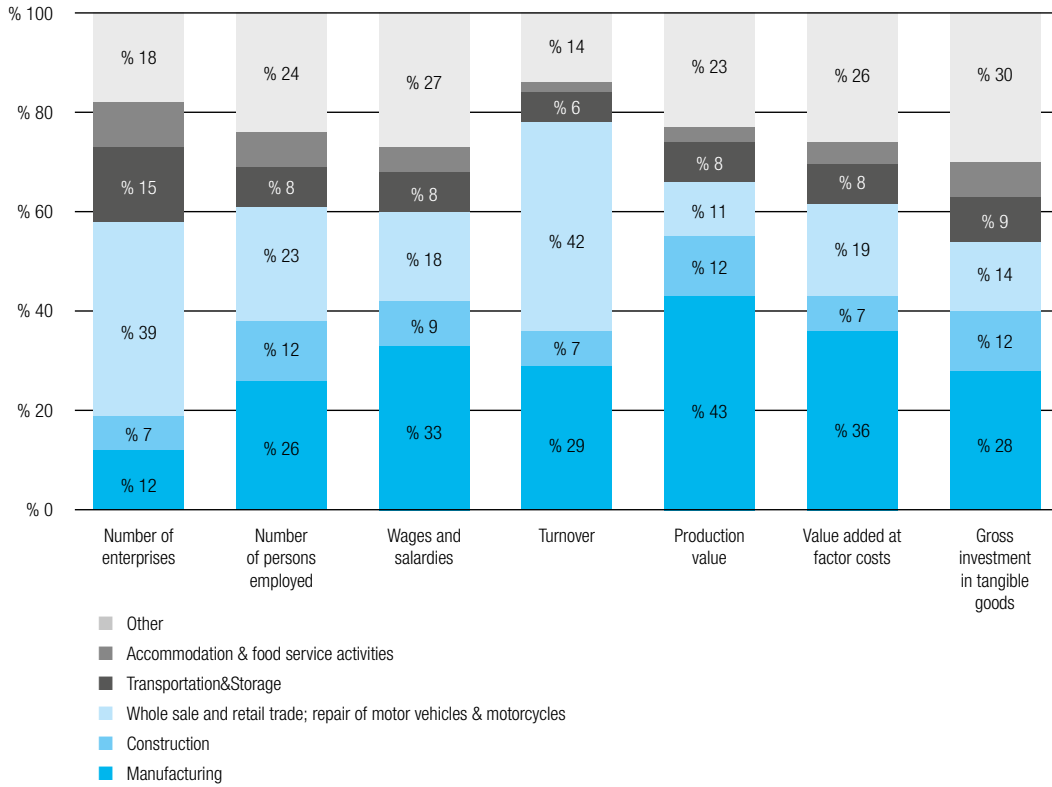
⁶⁴ <http://www.ekonomi.gov.tr/portal/content/conn/UCM/uuid/dDocName:EK-226930>

⁶⁵ <http://www.tim.org.tr/tr/ihracat-rakamlari.html>

⁶⁶ Çoban Orhan, Üstündağ, Emine, Çoban Ayşe, "The Structural Analysis of Construction Sector of Turkey and Its Effect on The Selected Macroeconomic Indicators", Copernican Journal of Finance & Accounting, 2015, Vol.4, Issue 1, p.28

⁶⁷ <http://www.ekonomi.gov.tr/portal/content/conn/UCM/uuid/dDocName:EK-226930>

Graphic 12. Breakdown of Employees According Sectors (2015)



Source: TURKSTAT

Turkey also has a strong automatic sector with design abilities, increased production and manufacturing capacity. Its annual capacity of vehicle production rose sharply from 374,000 in 2002 to over 1.3 million units in 2015 with a CAGR around 10% for the same period (2002 - 2015). This capacity made Turkey the 15th largest automatic manufacturer in the world and 5th largest in Europe excluding Russia.⁶⁸ The sector has been first in export and recording foreign trade surplus for ten years and it set a new record via its exports of 992,000 vehicles in 2015.⁶⁹ Germany, France, Italy, the UK and Spain are initial destinations in export. The sector realized of USD 23.9 billion export income in 2016 increasing 12.9% in dollar terms.⁷⁰ Export income of the sector is USD 107.7 billion decreasing 1.1% in 2016 which is 75.7% of total export of Turkish.⁷¹

Turkey also became stronger in chemical sector as the 2nd largest producer in Europe, the 7th largest in the world and 2nd largest net importer of petrochemicals in the world.⁷² The sector realized of USD 13.9 billion export income in 2016.

Machinery is the 2nd largest export industry of Turkey that account for 3.7% of Turkey' total exports to more than 200 countries. Turkey is a major manufacturer of machinery as the total export value of the machinery industry increased to 5.3 billion in 2016.

Almost 3,558 companies including 750 international companies operates and 129,900 people

⁶⁸ <http://www.otohaber.com.tr/haberler/2016/12/30/devler-liginde-olacagiz>

⁶⁹ <http://www.yenicaggazetesi.com.tr/otomotiv-23-milyar-ihracata-odaklandi-129858h.htm>

⁷⁰ <http://www.tim.org.tr/tr/ihracat-rakamlari.html>

⁷¹ <http://www.tim.org.tr/tr/ihracat-rakamlari.html>

⁷² <http://www.invest.gov.tr/tr-TR/sectors/Pages/Sectors.aspx>

work in mining and quarrying sector in Turkey according to 2015 data. The sector registered almost TRL 8.4 million turnover per company which is second highest volume following electricity, gas, steam and air conditioning supply (except programming and broadcasting activities and financial and insurance activities). Export volume of the sector is USD 3.8 billion and its share in total export 2.7% in 2016.

Shortly with the economic progress, Turkey turned into a manufacturer of high-quality consumer goods, it is the world's eight-biggest food producer and one of most popular destination for tourism despite terrorist attacks in 2016.⁷³

Tourism is another sector with its significant effect on GDP as well as current account (C/A) of Turkey. Turkey. Tourism sector registered about USD 210.8 billion tourism incomes between 2006 and 2015 from 238.7 million foreign visitors.⁷⁴ Average expenditure per tourist is about USD 720 for the same period. Most of tourist generating countries are European countries mainly Germany, England, Russia, and recently Iran and Middle East countries. Expectation about tourism income for 2016 is not as good as 2015 figures due to negative effect of politic problems with Russia, terrorist attacks to Turkey and finally attempt to coup d'état movement on July. Therefore expectation for 2016 is 25 million tourist (24 million in November 2016⁷⁵) and USD 22 billion tourism income which is almost equal with 2008's figures.

As another significant sector is agriculture and livestock breeding for Turkish economy and it has 7% share in GDP.⁷⁶ Share of the sector of 10.1 in 2000 decreased to 7% in 2015 whereas income increased to USD 58 billion from 27.4 billion. Turkey is considered to be 7th largest agricultural producer of the world in the field of agriculture and food with its favorable geographical conditions and climate, large arable lands, and abundant water supplies.⁷⁷ Turkey is largest producer for some product such as hazelnuts, dried figs, sultanas/raisins and dried apricots. On the other hand Turkey is one of the largest honey producers of the world. Milk and honey production reached 18.6 million tons and 107,665 tons in 2015 respectively.⁷⁸

Totals of 38.6 million tons of cereal crops, 28.5 million tons of vegetables, 17.5 million tons of fruit, 2 million tons of poultry, and 1.1 million tons of red meat are another significant amounts of agriculture sector. Turkey has an estimated total of 11,000 plant species, whereas the total number of species in Europe is 11,500.⁷⁹ Turkey aims to be among the top five overall producers globally and Turkey's vision for its centenary in 2023 includes other ambitious goals are reaching USD 150 billion gross agricultural domestic product and USD 40 billion agricultural exports, creating 8.5 million hectare irrigable area (from 5.4 million), ranking number one in fisheries as compared with the EU.⁸⁰ The sector's export realized to USD 16.1 billion (88% agricultural products, 12% livestock and animal products) through 3.4% decline in 2016 and met 11.3% of total export of Turkey.

Total assets of Turkish financial services sector including stock exchanges of about USD 270

⁷³ <http://www.economist.com/news/special-report/21689874-turkey-performing-well-below-its-potential-erdoganomics>

⁷⁴ <http://yigm.kulturturizm.gov.tr/TR,72942/turizm-gelir-gider-ve-ortalama-harcama.html>

⁷⁵ <http://www.ktbayirimisletmeler.gov.tr/TR,9854/sinir-giris-cikis-istatistikleri.html>

⁷⁶ Gıda, Tarım ve Hayvancılık Bakanlığı, <http://www.tarim.gov.tr/SGB/Belgeler/Veriler/GSYIH.xlsx>

⁷⁷ <http://www.invest.gov.tr/en-US/sectors/Pages/Agriculture.aspx>

⁷⁸ TÜİK, Hayvansal Üretim İstatistikleri, Aralık 2015, Haber Bülteni, Sayı: 21822, Tarih: 04 Şubat 2016, <http://www.tuik.gov.tr/HbPrint.do?id=21822>

⁷⁹ <http://www.invest.gov.tr/en-US/sectors/Pages/Agriculture.aspx>

⁸⁰ <http://www.invest.gov.tr/en-US/sectors/Pages/Agriculture.aspx>

billion market value exceeded USD 1 trillion which means almost 1.8 fold bigger than GDP.⁸¹ Turkey has a bank-oriented economic and financial market structure. Therefore financial services sector is mainly dominated by banks and their participations. Following to Banking Sector Crises in 2000 and Currency Crises in 2001, the structural reforms (Banking Sector Reconstruction Program) has been taken in practice in May 2001 and they strengthened the resilience of financial sector.

52 banks with different scale are operating in Turkey. 34 of them is saving banks while 13 development and investment and 5 participation banks.⁸² The share of private investment prevails over that of public investment and only 3 banks are belongs to public. Almost 198,000 people work in these banks. 15 banks are listed on Istanbul Stock Exchange. The banking sector's total assets reached about USD 800 billion and GDP divided by total assets is 1.21 in 2015. On the other hand the sector plays a pivotal role in financial sector and meets over than 60% of overall Turkish financial services. Insurance is one of the highly growing sectors in financial services sector with almost USD 35 billion total assets in 2015 which represents 4% of financial services sector⁸³. Leasing, factoring and finance companies' are other significant financial services sector intermediaries and their total assets reached almost USD 32 billion in 2015 and growing by 192% in TRL terms.⁸⁴

INFORMAL ECONOMY

Informal economy which can be also called as the hidden economy, illegal economy, black economy, cash economy, informal sector, underground economy or unobservable economy is still main problem of Turkey and it covers a higher place in economy compared to E27 and 34 OECD countries through 28.7% rate.⁸⁵ On the other hand, informal economy can be also considered as a reason behind low productivity of companies, underemployment, less competitiveness power of sectors, unfair income distribution for Turkish economic system. Negative effects of informal economy on Turkish business sector have been indicated on almost each Development Plans and Medium Term Programs of Turkey and lately 10th Development Plan (2014 – 2018) of Turkey. Size of the informal economy in Turkey is 32.1% according to Friedrich Schneider's estimations while the average 18% in 2002.⁸⁶

Table 2. *The Size of Informal Economy in Turkey*

Indicator	Current	2014	2015	2016	2017	2018
Informal Economy / GDP	26.5%	26.0%	25.0%	24.0%	20.0%	21.5%
Number of Informal Worker / Total Employment (in non-agricultural sector)	22.0%	22.0%	20.0%	19.0%	18.0%	17.0%
Number of Recorded Actual Taxpayer (mn)	4.9	5.0	5.1	5.2	5.3	5.4

Source: 10th Development Plan (2014 – 2018) of Turkey

⁸¹ <http://www.bloomberght.com/haberler/haber/1791007-bddkakben-bankacilik-sektorunun-aktif-buyuklugu-yaklasik-2-trilyon-lira>

⁸² Türkiye Bankalar Birliği, Türkiye'de Bankacılık Sistemi Banka, Şube ve Çalışan Bilgileri Eylül 2016, İstanbul

⁸³ <http://www.sigortagundem.com/haber/rakamlarla-sigorta-sektoru/1041374>

⁸⁴ <http://www.fkb.org.tr/kurumsal-iletisim/duyurular/finansal-kurumlar-birligi-2015-sonuclarini-acikladi%E2%80%A6>

⁸⁵ <http://www.hurriyet.com.tr/turkiye-kayitdisi-ekonomide-birinci-40041686>

⁸⁶ Presidency of Revenue Administration, Action Plan of Strategy for Fight Against The Informal Economy (2008-2009), April 2009, p.5

The Plan aims to decrease 500 bp in Informal Economy / GDP rate until 2018 as well as Number of Informal Worker / Total Employment (in non-agricultural sector) rate increasing number of taxpayers to 5.4 million from 4.9 million.⁸⁷

It is very well-known reality that tax revenue has significant share in public finance. The mentioned share is over 90% in most of the developed countries while 70% in developing countries. The low level of this rate in developing countries shows how informal economy is fundamental problem for them.⁸⁸ Tax revenue rate of Turkey in its total revenue budget has been realized as 84% in 2015⁸⁹ and it is projected 84% for 2016 too.⁹⁰

Informal employment which is linked with the informal economy is still one of the most important economic and social problems of Turkey just like all countries around the world too. The mentioned issue is more important since informal rate is around 33.6% in total workforce in 2015 (20.6% in non-agriculture)⁹¹ for Turkey than other countries since it is projected that income tax will take around 19-20% share in total revenue budget in 2016.⁹² Breakdown of informal employment rate according to sectors was 81.2% in agriculture, 19.1% in industry and 20.1% in services sectors in 2015.

The OECD lists Turkey as the country with lowest rates of transition from informal to formal work among major emerging economies and notes that workers in Turkey face a larger wage premium working from informality to formality while gaining a very large earning penalty by moving from formal to informal jobs.⁹³ Thanks to taken precautions and stable economic programs, unregistered employment displayed a downward trend with 32.1% at the beginning in 2016 down from 52.1% in 2002.⁹⁴ More intensive investigation, incentives for social security coverage, increased coordination between institutions overseeing employment, growing scale of enterprises and increase in education contributed to the shrinkage of informal economy.⁹⁵

Agriculture is the main sector with workers working without social security. Mostly family members work in their own field as self employed and/or non-paid family worker without social security while remaining workforce is daily free earner. Another problem in agriculture sector is workforce lost year by year besides being formal or informal.

⁸⁷ Gelirler İdaresi Başkanlığı, 10. Kalkınma Planı (2014 – 2018), Kayıtdışı Ekonominin Azaltılması Programı Eylem Planı, Jan 2015

⁸⁸ <http://www.ekodialog.com/konular/kayitdisiekonomi.html>

⁸⁹ “2015 Bütçe gerçekleştirmeleri açıklandı”, 15.01.2016, http://www.economyturk.com/2015-butce-gerceklesmeleri-aciklandi_1919.html

⁹⁰ “Türkiye’nin 2016 bütçe geliri ne kadar?”, 25.10.2015, <http://www.memurlar.net/haber/543491/>

⁹¹ http://www.sgk.gov.tr/wps/portal/sgk/tr/calisan/kayitdisi_istihdam/kayitdisi_istihdam_oranlari/kayitdisi_istihdam_orani

⁹² <http://www.bumko.gov.tr/TR,6354/2016-butce-gelirlerinin-dagilimi-resim.html>, 31.10.2016

⁹³ OECD, OECD Employment Outlook 2015, p.21, 25, 29

⁹⁴ <http://www.turkstat.gov.tr/PreHaberBultenleri.do?id=21577>

⁹⁵ BETAM (2014), Ekonomik Konjonktür ve Kayıt Dışı İstihdamın Gelişimi

CURRENT ECONOMIC REFORMS

Marked by high inflation, budget deficit and high interest rates, Turkish economy suffered from chronic instability and fell into a deep economic crisis in 2001. This crisis led the government to pass and implement a number of vital reforms encouraged by the IMF stand-by agreement. The post-2001 reforms targeted mainly three areas of economy: regulatory system, privatization, fiscal and monetary policy.⁹⁶ These reforms accelerated the privatization of government assets, liberalized the energy and telecommunication markets, facilitated the entry of FDI into the market, expanded the autonomy of financial organizations, increased the transparency and disclosure of public companies and restructured the banking sector. The fiscal and monetary reforms put into place a tighter monetary and fiscal policy to restore the credibility of new monetary regime setting a free-floating Turkish Lira and independence of financial and market regulatory entities.

While Turkey reaped the benefits of these economic reforms until 2007 with rapid economic growth, increased productivity and a more sound financial sector and economic activity. The government loses its lust for reform after 2007.⁹⁷ Due to slowing economic growth, increasing inflation after 2007, high current budget deficit and foreign debt, Turkey is vulnerable to external shocks. There are serious concerns as well on the taming autonomy of the Central Bank because of government pressure to implement a more loose monetary policy playing out interest rates. Moreover, the government downscaled much of the independence of the Public Procurement Agency and eight other market regulatory entities. The IMF encourage Turkey to put into force structural reforms to decrease external balance and enhance output growth such as tightening monetary policy, improving labor market, increasing domestic saving rate.⁹⁸

The dependence on foreign investments constitutes a risk as Morgan Stanley listed Turkey in 2013 as one of the “Fragile Five” with rise of a downturn. Turkey was able to achieve 4 percent annual growth in 2015. However, there are concerns about the ability of Turkish economy to sustain this growth rate thanks to FDI due to the foreign capital outflow in emerging markets and the geopolitical risks notably in the Middle East. World Banks considers the rising unpredictability, the lack of transparency in business environment and decreasing trust in key institutions as a deterrent of domestic and foreign investors.

Recently, Turkish government announced its plan to boost economic growth: judicial and administrative reforms that include complying the public procurement law with the EU rules, developing a patent law, simplifying licenses to launch new business, facilitating business licenses in the energy sector.⁹⁹ Unless reforms are put into practice, consumption-driven growth will continue with the rise in current account deficit and growing unemployment.¹⁰⁰

⁹⁶ Duygu Uçkun and Mark Doerr, *Emerging Markets: Theory & Practice / Turkey’s Reforms Post 2001 Crisis*

⁹⁷ Daron Acemoglu and Murat Ucer. *The Ups and Downs of Turkish Growth, 2002-2015: Political Dynamics, the European Union and the Institutional Slide*; (2015). “Fragile or Favored? Prospects for Turkey’s Economy in 2015”. Bipartisan Policy Center. National Security Programme.

⁹⁸ IMF <http://www.imf.org/external/pubs/ft/survey/so/2016/caro42516b.htm>

⁹⁹ <http://www.hurriyetdailynews.com/turkish-govt-to-speed-up-economic-reforms-revise-public-procurement-law-deputy-pm.aspx?pageID=238&nID=95159&NewsCatID=344>

¹⁰⁰ <http://www.ft.com/cms/s/0/1686d146-190e-11e6-bb7d-ee563a5a1cc1.html>

SIGNIFICANT INDICES

Turkey is listing in different subjects, different indexes with different ranks in global world. United Nations Development Program has been publishing Human Development Index for 25 years and Turkey was ranking 72th out of 188 countries in 2014 which was 69th in 2013 and 92nd in 2011. However, it is still below the EU average of 0.867 and the OECD average 0.882. Unfair conditions in education, employment and wage are the main reasons behind of low rank.¹⁰¹

Turkey's Inequality-adjusted Human Development Index (IHDI) that takes into account inequalities in health, education and income is 0.641 which 15.8 % lower than its nominal HDI.¹⁰²

According to World Bank's Doing Business 2017 Report, Turkey ranks 69 among 190 countries which revised to 63 from 55 in 2016 due to changes in report's methodology.¹⁰³ The insufficiencies in reaching electricity and bank loans lower its ranking whereas sufficiency in doing business increases its ranking.

In Global Competitiveness 2015 - 2016 Report, Turkey ranks 51st among 140 countries while it was 45th among 144 countries in 2014 – 2015 Report¹⁰⁴ due to inefficient government bureaucracy, policy instability, inadequately educated workforce, tax rates and difficulties in access to finance. On the other hand, Turkey's ranking in all three sub-indices of the Global Competitiveness Index, which consists of three sub-indices such as Essential Requirements, Activity Boosters and Innovation and Diversity Factors, showed a decline when compared with the 2014-2015 report. It is striking that in the Business World Development Level and Innovation, which are particularly valuable for the development of the economy, Turkey's ranking has declined from 50 to 58 and from 56 to 60. In addition, on Intellectual Property Rights, which is a matter of great importance for foreign investors to invest in countries, Turkey's ranking declined by 10 and ranked 82nd among 140 countries.

According to Index of Economic Freedom prepared by Heritage Foundation and Wall Street Journal Turkey is listed 79. in 2016 while it was 70. in 2015 among 178 countries.¹⁰⁵ The Index consists of 4 categories as Rule of Law (Property Rights, Freedom From Corruption), Limited Government (Government Spending, Fiscal Freedom), Regulatory Efficiency (Business Freedom, Labor Freedom, Monetary Freedom) and Open Markets (Trade Freedom, Investment Freedom, Financial Freedom)¹⁰⁶ and the only subtitle Turkey could increase its rate is Business Freedom.

¹⁰¹ <http://www.hurriyet.com.tr/insani-gelisme-endeksinde-turkiye-188-ulke-arasinda-72nci-sirada-40026979>

¹⁰² <http://www.tr.undp.org/content/turkey/tr/home/presscenter/pressreleases/2015/12/14/turkey-ranks-72th-in-human-development-index-hdi-.html>

¹⁰³ <http://www.bloomberght.com/haberler/haber/1935139-dunya-bankasi-is-yapma-kolayligi-raporunu-acikladi>

¹⁰⁴ <http://www.rekabet.gov.tr/TR/Rekabet-Yazisi/Kuresel-Rekabet-Edebilirlilik-Endeksi-2015-2016-Raporu>

¹⁰⁵ <http://www.heritage.org/index/country/turkey>

¹⁰⁶ <http://t24.com.tr/yazarlar/vedat-ozdan/2015-ekonomik-ozgurluk-endeksinde-urdunden-32-sira-gerideyiz,11552>

Table 3. Ranks of Turkey in Selected Indices

	2009	2010	2011	2012	2013	2014	2015	2016
World Bank Ease of Doing Business Index	63	60	68	72	69	51	63	69
UNCTAD World Investment Report FDI Inflow Ranking	30	29	26	24	22	22	22	22
AT Kearney FDI Confidence Index	-	23	-	13	-	24	22	-
WEF Global Competitiveness Index	61	61	59	43	44	45	51	55
Index of Economic Freedom	88	74	75	74	68	64	70	79
IMD Global Competitiveness Index	47	48	39	38	37	40	40	38
Transparency International Corruption Perceptions Index	61	56	61	54	53	64	66	75

Source: WB, UNCTAD, A.T. Kearney, WEF, Index of Economic Freedom, IMD, TI

As the Table 3 shows, rank of Turkey decreased almost all indexes in 2016. According to OECD Turkey Report Turkey needs to emphasis on policies and activities which will reduce inflation rates, increase domestic savings, enhance woman participation to business life and rise FDI urgently.¹⁰⁷

¹⁰⁷ <http://www.oecd.org/newsroom/turkish-turkey-challenging-times-call-for-pushing-ahead-with-economic-reform.htm>

1.1

PUAN

50

PROHIBITING BRIBERY OF PUBLIC OFFICIALS

1.1.1

SCORE

75

Laws prohibiting bribery of public officials

Scoring Question:

Do the country's laws prohibit bribery of national and foreign public officials?

The bribery offense is introduced into the section “Offenses Against Nation and State and Final Provisions” of the Turkish Criminal Code (TCC) No. 5237 and regulated between the articles 252 and 254. While the first paragraph of the article 251 defines the bribery payer (active bribery) as “any person who secures, directly or through other persons, an undue advantage to a public official or another person indicated by the public official to perform or not to perform a task with regard to his duty”, the second paragraph defines the bribery taker (passive bribery) as “any public official who secures, directly or through other persons, an undue advantage to himself or another person indicated by the public official to perform or not to perform a task with regard to his duty”. These offenses shall be punished with imprisonment from five years to twelve years. GRECO (Group of States Against Corruption) finds the article 252 sufficient to judge both the basic bribery (that do not require an act contrary to the duty) and the qualified bribery (for an act contrary to the duty) and considers it as comprehensive enough to judge one-sided bribery crime acts such as bribery proposal, bribery promise or bribery demands.¹⁰⁸ However, the same report underlines that although the condition of agreement for the bribery offense had been lifted, the term “agreement” is still stated in the text of the article as an aggravating cause.¹⁰⁹ The Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Turkey emphasizes that it is unclear how the act of “indication” will be assessed in practice in order to demonstrate that an official “indicated” a beneficiary.¹¹⁰

According to the article 252 of TCC, one of the acting parts of bribery offense should be “public official”. Public official is defined in the article 6/1-c of the TCC as: “the person who participates in the execution of public activity by appointment or election, or in any form, permanently, periodically or temporarily”. The article 252 of TCC broadens this definition. With its 8 paragraph; occupational organizations in the character of public entity, corporations established in association of public institutions or organizations or occupational organizations in the character of public entity, foundations acting within the body of public institutions or organizations or occupational organizations in the character of public entity, public benefit associations, cooperatives and open joint stock companies will be also liable for bribery offense.

¹⁰⁸ Avrupa Konseyi Yolsuzluğa Karşı Devletler Grubu , III. Değerlendirme Aşaması İkinci Türkiye Uygunluk Raporu, 24-28 March 2014, Greco RC-III (2013) 27E, p.3-6, [https://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)27_Second_Turkey_TR.pdf](https://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)27_Second_Turkey_TR.pdf)

¹⁰⁹ Tarhan, R. Bülent. “Rüşvetin anlaşması mı olur?”, Güncel Hukuk Dergisi, April 2015.

¹¹⁰ “Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Turkey,” OECD, October 2014, p.17. <http://www.oecd.org/daf/anti-bribery/TurkeyPhase3ReportEN.pdf>

The article 29 and 30 of law No. 6257 Civil Servants' Act and the article 15 of the Regulation on Ethical Code of Conduct for Public Officials and Procedures and Principles of Application forbid that public officials admit presents directly or by intermediaries or obtain a profit from the institutions under their supervision. According to the article 3 of the law 3628 on Declaration of Property and Fight Against Bribery and Corruption, gifts that will be admitted within the context of international relations shall be registered and notified to the entitled entity if they are over a certain value, (more than the total of ten months' minimum wage 10x360 euro).¹¹¹ Gifts below this value are sent to Public Officials Ethics Board. Public Officials Ethics Board is responsible to determine the scope of gifts that can be received and it is entitled to ask the list of gifts accepted by senior public officials at the end of each year. However, although there is an ongoing debate, it is unanimously accepted in the doctrine of criminal law that admission of gifts with low economic value is not regarded as a crime of bribery¹¹². The same opinion is also defended in other countries such as Italy and Germany.

In the United States, the upper limit of the gift that the president and his/her spouse can receive from foreign delegations is \$375. While accepting a gift that exceeds this value, they need to get permission from the Congress. The limit of gifts that US citizens can give to federal government employees is \$20, and gifts that exceed \$50 from the same source cannot be received in the same year. There is also a limit for government employees in hospitality which is \$20. It is forbidden to accept gifts, hospitality or interest that would affect the decisions of officials in the United Kingdom. Comparatively, the limit for gifts admissible by public officials is very high. The Regulation on Ethical Code of Conduct and Application Procedures and Principles issued by Public Officials Ethics Board determined the prohibited and non-prohibited gifts that can be received (article 15) but did not specify the upper limits for gifts.

Facilitation payments are payments that are given to accelerate works and they are generally widely accepted in society. While the concept of "facilitation payment" is not stated in the legislation on bribery in Turkey, there are other regulations in the legislation that prohibit such payments. According to the article 252 of the TCC, the act of providing benefits as a requirement of duty also includes facilitation payments and is a criminal offense. Turkey has not received any criticism from GRECO or OECD reports in this matter.

According to the article 60 of TCC No. 5237, the penal responsibility of a legal entity is possible only when real person's offense is established by law and the offense is carried out in the advantage of legal entities. These offenses can result in measures such as invalidation of license granted by a public authority or seizure of goods belonging to a legal entity. According to the article 20 of TCC, a "penalty" cannot be applied to legal entities, only security measures can be applied. Thus, these two measures are not penalties in technical terms. With the article 43/A added to the Code of Misdemeanors No. 5236, the liability of legal persons is accepted involving the bribery offense and if the offense is committed in the benefit of a legal entity, an administrative fine of 16,409 TL to 3,282,503 TL can be applied.

The bribery offenses committed in relation to foreign officials are also regulated in Turkey and the Council of Ministers approved "the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" on 9.3.2000 with the decision numbered 2000/385. With the paragraph 9 of the article 252, the benefits from officials or representatives of international or supranational organizations are judged according to anti-corruption legislation.

¹¹¹ Net Minimum Wage in 2017 in Turkey including a reduction of minimum living allowance is 1,404,06 Turkish Liras (TL). This amount is about 360 euros (1 TL ≈ 3.91) (as of February 10, 2017).

¹¹² Tezcan, Durmuş; Mustafa Ruhan Erdem; R. Murat Önok. *Teorik ve Pratik Ceza Özel Hukuku*, 13. Edition, Ankara, 2016, p. 1073.

According to Turkish Tax Law, it is not possible to apply tax reductions for bribery payments to Turkish or foreign officials.

With the article 252 of the TCC, leniency clause is established and if the bribery payer or the recipient of payment informs the investigating authorities about the bribe before the initiation of an investigation, he/she shall not be punished for bribery offense. A person who gives bribery to foreign domestic officials cannot benefit from the leniency clause. The phrase “before the situation has been learned by official authorities” led to criticisms: if there is no investigation initiated in accordance with the provisions of the Code of Criminal Procedure, it will be possible to prevent the effective application of leniency clause, claiming that the case was already known by public authorities.¹¹³

Although it is not defined as a bribery, “trading in influence” based on the article 18 of the United Nations Convention against Corruption and “abuse of functions” based on the article 19 of this convention are accepted as corruption. Although these offenses are regulated in the articles 255 and 257 of the TCC, the fact that these offenses are not covered by the Law No. 3628 on Declaration of Property and Fight Against Bribery and Corruption is a shortcoming in the legislation on corruption. Likewise, “involvement in fraudulent act” during fulfillment of obligations is not counted as an offense in the law No. 3628.

SCORE 25

1.1.2

Enforcement of laws prohibiting bribery of public officials

Scoring Question:

Are sanctions and incentives applied in practice to deter bribery of public officials?

There is no special public prosecution office that deals with bribery and corruption offenses. Special prosecution office for corruption is not common also in the world on the grounds that it is contrary to principles of ‘natural judge’ and ‘judicial unity’. In order to ensure and facilitate cooperation with the judicial system in France in matters related to money laundering and similar offenses; police, gendarmerie and treasury representatives hold offices in the TRACFIN (Treatment of Information and Action against Illicit Financial Circuits, *Traité du renseignement et contre les financiers clandestins*) in France.

According to the article 19 of the law 3628 on Declaration of Property and Fight against Bribery and Corruption, when public prosecutor learns that the bribery offence is committed, he/she starts investigation about culprits directly and personally and s/he shall report the situation to the supervisor with appointment power and the authorities listed in Article 8.¹¹⁴ If the investi-

¹¹³ Ibid., p. 1074.

¹¹⁴ The authorities listed in article 8 are: a) The Presidency of the Grand National Assembly of Turkey for the members of the Grand National Assembly of Turkey and the Council of Ministers, b) The authority which has the records and document reports concerning personnel matters for staff working with public institutions and organisations, c) Relevant Ministry for the General Directors, boards of directors and auditors of institutions, enterprises, agencies and organisations, d) President judge for department heads and members of supreme courts, e) Ministry of Justice for notaries, f) The authority powered to appoint for civil servants and servants of other institutions and organisations, g) Institution and association general directorate for those working with Turkish Aeronautical Association and Turkish Red Crescent Society, h) (Repealed: 24/6/1995 – Decree Law - 557/Art. 21) i) The authority which they had to make declaration when they were in their posts for those who have left their posts, j) Supreme Court of Appeal, Chief Public Prosecutor’s Office for political parties’ chairmen, k) Organisations which conduct the audits of cooperatives and unions for cooperative and union chairmen, members of boards of directors and general directors, l) Ministry of Finance and Customs for certified public accountants, m) Ministry of Interior for members of general management and central inspection boards of Turkish Aeronautical Association, Turkish Red Crescent Society and Public welfare associations, and the Provincial

gation of bribery is initiated by inspectors or other administrative investigators within the administration, the information documents obtained by them and any other evidence, if any, shall be forwarded immediately and without delay to the competent office of public prosecutor. According to the investigation procedures, should the Chief Public Prosecutor find indications verifying the denunciation when s/he starts the investigation, s/he shall require the culprit to make a property declaration; in case s/he obtains evidence and indications showing that the unjustly acquired property is smuggled, s/he shall require the culprit's relatives by blood and marriage up to the second degree and his/her daughter-in-law and son-in-law to make a property declaration. The declaration of property must be submitted to the public prosecutor within seven days beginning with the date of notification to the culprit and other relevant people. But it is difficult to say that the legal follow-up regulations under this law have been made effectively. Firstly, declarations of property are not open to the public. Secondly, if the declaration is untrue, they should be punished with imprisonment from 6 months to 3 years (Article 10), provided that the act does not constitute a serious offense. However, it is not possible to come across any judgments in this regard. If there is a strong suspicion that the crime has been committed and if there is evidence that the money or property has been illegally acquired, public prosecutor may request from the charged court or civil court where money or property are located to take measures concerning money or property. For those who commit such acts or their accomplices, the provisions of the law 4483 on the Prosecution of Civil Servants and Public Officials will not be applied. However, the authorization procedure from administrative authorities still applies to ministers, undersecretaries, district governors and governors. According to the Law on Municipalities No. 5393, it is necessary to receive authorization from the Ministry of Internal Affairs for investigation or prosecution of a crime related to the duties of municipal organs or their members (Article 47 of Municipality Law No. 5393). These exceptions and authorization mechanism create a bureaucratic impunity for the prosecution of corruption offenses.

According to Criminal Procedure Law No. 5271, public prosecution or the charged courts can take special measures such as "confiscation of immobile properties, rights and incomes" (article 128), "locating, listening and recording of correspondence" (Article 135), "monitoring with technical devices" (article 140) and "forced confiscation under warrant" (article 248) to conduct a reasonable investigation. However, the mentioned measures cannot be applied to undersecretaries, the governors and district governors. Special investigation and prosecution procedures also apply to judges, prosecutors, regulatory and supervisory bodies such as their president, members and other personnel due to the duties or titles. The impartiality and functioning of criminal courts of peace set up in 2014, which were to decide on these measures received very serious public criticisms.

The bribery offense is prosecuted in the heavy penal courts and is tried for an imprisonment between four to twelve years. According to the paragraph 7 of the article 252, if the person who receives or requests a bribe or agrees to such an act is an arbitrator, an expert witness, a public notary or a professional financial auditor, the penalty to be imposed shall be increased by one third to one half. As the scope of penalties display, the penalty of bribery offense is dissuasive. The statute of limitation according to the article 66 of TCC is 15 years. The terms that end or restart the statute of limitation is regulated in the TCC.

The active enforcement of relevant authorities with regard to bribery and corruption cases are not sufficient. It is commonly accepted that corruption is pervasive in Turkey. In the Corruption

Governorships for branch directors thereof, n) Governors for the Members of Provincial Councils, Mayors for the Members of Municipal Councils, Ministry of Interior for Mayors, o) The authority charged with personnel matters of their organisations for those final authorities which must declare property, p) The biggest civilian authority of the place for newspaper-owner real persons, and members of boards of directors and auditors of newspaper-owner companies, responsible managers, editorial writers and columnists, r) Foundations General Directorate for those who have posts in the administrative organs of foundations.

Perception Index of the Transparency International which assesses the perception of corruption in public sector, Turkey ranked 54th out of 176 countries in 2012 but declined to 75th rank out of 176 countries in 2016. In 2015 study of Transparency International-Turkey on “Corruption in Turkey: Why, How and Where”, 28% of respondents state that they faced bribery requests in the last two years.¹¹⁵ In 2016 study of Transparency International-Turkey on “Corruption in Turkey: Why, How and Where”, the percentage of those who do not answer and answer positively to paying irregular payments to accede to basic social services exceeds 20%. 26% of respondents answer positively to the question “Did you or any acquaintance have to make illicit payments or give gifts to the officers in following institutions during last 12 months?”¹¹⁶. In the Global Corruption Barometer Turkey 2016 study, a majority of respondents consider government members (41%), Parliament (40%), tax officials (39%) and the representatives of government (38%) as the most corrupt institutions.¹¹⁷ The services for which respondents pay most of the bribes are unemployment benefits (23%) courts for a legal cause (20%) and public high schools (18%).

The Corruption Assessment Report of TESEV and SELDI in 2014 on Turkey reveals that 82% of participants acknowledges the existence of corruption in Turkey, 13% of those who interact with public officials state that they experience pressure to engage in corrupt practices and 15,1% of respondents say that they give bribes.¹¹⁸ Regarding the spread of corrupt practices among public sector employees, big companies and private sector rank first (48%), customs ranks second (47%), public sector ranks third (45%), municipalities ranks fourth (44%) and the Prime Ministry ranks fifth (40%). 50% of participants believe that most/all public officials are involved in corruption practices, only 13% of them believe that none of the public officials are involved in corruption of practices. Public officials who are presumed to be involved in corruption are: police officers (13%) municipality officials (12%), tax officials (11%), municipality councilors (11%) and custom officials (10%).¹¹⁹

In addition to these studies, our interviews also revealed that major factor that cultivates the perception about the pervasiveness of corruption is the impunity and the distrust toward judicial system. In particular, the fact that corruption cases including senior level governors and watched closely by public results with no-prosecution and no-penalty feeds this perception. The prosecution of corruption cases at national and local level especially when governments change, translates these cases into a tool of political revenge and seriously damages the fight against corruption.

National Integrity System Assessment of Transparency International-Turkey evaluates efficient operation of public institutions, compliance with good governance and effectiveness in the fight against corruption. This study demonstrates that judiciary has a “weak” role in monitoring of the executive and in corruption cases. It draws attention to the fact that government, bureaucracy and non-independent judiciary constitutes an obstacle to the effective prosecution of these cases. This study recommends to accord common competences to specific courts

¹¹⁵ “Türkiye’de Yolsuzluk: Neden, Nasıl ve Nerede?” , Uluslararası Şeffaflık Derneği, March 2015, <http://www.seffaflik.org/wp-content/uploads/2015/04/Kamuoyu-Arastirmasi-Sonuc-Kitapcigi.pdf>. For English version “Corruption in Turkey: Why? How? Where?”, Uluslararası Şeffaflık Derneği, March 2015, http://www.seffaflik.org/wp-content/uploads/2015/04/Corruption-in-Turkey_Public-Opinion-Survey-Results.pdf.

¹¹⁶ Uluslararası Şeffaflık Derneği. Türkiye’de Yolsuzluk: Neden, Nasıl ve Nerede?, March 2016, <http://www.seffaflik.org/wp-content/uploads/2016/03/Uluslararası%20Şeffaflık%20Derneği>. For English version “Corruption in Turkey: Why? How? Where?”, Uluslararası Şeffaflık Derneği, March 2016, http://www.seffaflik.org/wp-content/uploads/2016/03/ENG_Uluslararası%20Şeffaflık%20Derneği.

¹¹⁷ “Global Corruption Barometer,” Transparency International, 2016, <http://www.transparency.org/gcb2016/country/?country=turkey>

¹¹⁸ Yolsuzluk ve Yolsuzlukla Mücadele Değerlendirme Raporu (Corruption Assessment Report for Turkey), TESEV and SELDI, December 2014, http://selidi.net/fileadmin/public/PDF/Publications/CAR_Turkey/CAR_Turkey_English_Final2.pdf. See English version: <http://tesev.org.tr/en/yayin/corruption-assessment-report-for-turkey/>.

¹¹⁹ “Corruption Perceptions Index,” Transparency International, 2015, <http://www.transparency.org/country#TUR>.

making them responsible for several provinces in order to strengthen the judiciary in the fight against corruption. It also criticizes that prosecutors' promotion or assignments are used as a reward-penalty mechanism; transfer of cases by chief prosecutor and its undersecretaries, although they do not have competence to intervene in cases.¹²⁰ These kinds of intervention can affect corruption cases especially for those involving political suspects. The report of Turkish Association of Judges and Prosecutors (*Yargıçlar ve Savcılar Birliği*, YARSAV) attracts attention to the working conditions of prosecutors, deterioration of their independence, faltering quality of court decisions due to work overload on judges and prosecutors and lack of time and conditions for a fair judgement.¹²¹ The European Magistrates for Democracy and Liberty (MEDEL) describes the inference of the executive over judiciary in Turkey as: "When inquiries of prosecutors or trials in court are becoming dangerous for spheres of political power, their reaction can be removal of the prosecutor or judge from the case, from the office or from the city; disciplinary or criminal measures against judges or prosecutors; and an amendment of the law".¹²²

The immunities of deputies and senior public officials in Turkey are a serious impediment to the effective investigation and prosecution of corruption cases. Despite the fact that the Report of the Turkish Grand National Assembly (*Türkiye Büyük Millet Meclisi*, TBMM) on Corruption written in 2003 advised to put limitation on immunity of deputies for corruption crimes, there has been no progress to date. In the 1946 Japan Constitution, 1947 Italy Constitution and French Constitution after 1992 amendment, immunity is only applied as a measure against arrest and detention.¹²³ According to international agreements, deputies can be immune from investigations and prosecution especially with regard to corruption crimes. Although it is possible to remove legislative immunity, there are many problems in this regard when considering Turkish practice:

- i There are no criteria for the removal of immunity;
- ii There are no rules to generate a timetable and accelerate the process
- iii In practice, lifting of immunities are left in suspension without making any assessment in majority of cases;
- iv Number of files in which immunity is removed is proportionally too low, the majority of these files are related to opposition parties, and many of them are political offenses.¹²⁴

The fact that corruption cases involving international networks such as *Deniz Feneri* and *Rıza Sarraf*, that are closely observed by the public and have been subjected to serious investigations abroad, has not resulted in penal sanctions in Turkey, raises doubts about the efficiency and deterrence of the justice system in the fight against corruption and bribery. Huge public interest drawn by these cases is a sign that public conscience about corruption and bribery is not relieved. In the study of Transparency International-Turkey in 2016, "Corruption in Turkey: Why, How and Where?", among the reasons that cause corruption, immunities and impunity with regard to corruption ranks first (7.21/10), deficiencies in public awareness ranks second (7.06/10). 82% of participants think that the private sector has an impact on judicial regulations and public operations by giving bribe, gifts etc.¹²⁵

¹²⁰ Türkiye Şeffaflık Sistemi Analizi, Uluslararası Şeffaflık Derneği, April 2016 <http://www.seffaflik.org/wp-content/uploads/2016/04/NIS-Booklet-TR.pdf>. For English version, National Integrity System Assessment – Turkey, Uluslararası Şeffaflık Derneği, April 2016, <http://en.seffaflik.org/wp-content/uploads/2016/04/NIS-REPORT-EN.pdf>.

¹²¹ YARSAV Yargıda çalışma koşulları raporu <http://yarsav.org.tr/resimler/filemanager/yargi.pdf> p.18-19.

¹²² Avrupa Yargıçlar Ve Savcılar Birliği (MEDEL) Gözlem Raporu, <http://yarsav.org.tr/index.php?p=295#.WCXc3v197IU>.

¹²³ Tarhan, R. Bülent. "Yargı İmtiyazı Cenneti (mi)", *Radikal*, 24. 11. 2004, <http://www.radikal.com.tr/yorum/yargi-imi-yazi-cenneti-mi-729551>.

¹²⁴ Bayraktar, Köksal; Serap Keskin Kızıroğlu; Hamide Zafer; Hasan Sınar; R. Murat Önok; R. Barış Erman; Sulhi Dönmezer; Sahir Erman. *Nazari ve Tatbiki Ceza Hukuku*, Volume I, 14. Edition, Istanbul, 2016, p. 380; Aktaş, Kadir. "Türkiye Büyük Millet Meclisi Uygulamasında Yasama Dokunulmazlığı", *TBB Dergisi*, 2006, 67, p. 367-369.

¹²⁵ Uluslararası Şeffaflık Derneği. Türkiye'de Yolsuzluk: Neden, Nasıl ve Nerede?, March 2016.

Turkey's compliance and implementation of the OECD Anti-Corruption Convention is weak. The Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Turkey emphasizes that growing influence of the executive on judiciary can affect bribery cases' investigation and prosecution including foreign officials.¹²⁶ The 11th Report titled "Exporting Corruption", that assesses countries' compliance with the OECD Anti-Corruption Convention reviews Turkey's implementation of OECD Anti-Corruption Convention as "weak or none enforcement". For more effective implementation, this report underlines that it is necessary to limit the effect of the executive on the judiciary, investigate bribery offenses involving foreigners more actively and efficiently, introduce punishments for companies to prevent foreign bribery, share decisions of courts including bribery charges against foreigners with the public, improve the legislation protecting whistleblowers in public and private sector and train public and private sectors representatives to raise awareness in this regard.¹²⁷

In our interviews with private sector representatives, we observe that there is a widespread belief in Turkey that it is rare that companies are charged for bribery offense. Some interviewees note that it is more likely that cases involving foreign public officials are subject to bribery charges. According to the article 60 of the TCC, the penal responsibility of a legal entity is possible only when real person's crime is established by law and the offense is carried out in the advantage of legal entities. These crimes can result in measures such as invalidation of license granted by a public authority; seizure of the goods that are used in the implementation of bribery charges. According to the article 20 of the TCC, "penalty" cannot be applied to legal entities, only security measures can be applied. These measures are not penalties in technical terms. With the article 43/A added to the Code of Misdemeanors numbered 5236, the liability of legal persons are accepted involving the bribery offense. If the offense is committed in the benefit of a legal entity, an administrative fine of 16,409 TL to 3,282.503 TL can be applied. However, according to the OECD, Turkey is the 18th biggest economy with 720 billion dollars GDP in 2015. The public and private sector realized 2,6 trillion TL investment. Considering the volume of investments, administrative fines are not proportionate and dissuasive for these offenses. Moreover, penalties are not applied effectively has been applied using this articles.

The dependency between the responsibility of a real person and that of a legal person is an important problem in Turkey. Criminal Courts do not have the authority to conduct a case to investigate the administrative responsibility of a legal entity in accordance with Article 43/A of the Code of Misdemeanors. In accordance with the provisions of article 20 of the TCC mentioned above, the monetary penalty applied to legal entities pursuant to Article 43/A of the Code of Misdemeanors is "administrative sanction" and its enforcement is not within the competence of criminal justice. The obligation to prove the benefit of a legal entity also weakens the enforcement of the law. The article 43/A of the Code of Misdemeanors covers "civil legal entities". Thus, the institutions that belong to state and governed by the state are exempt from this law. Institutions with 50% or more shares belonging to state are under the investigation of the Court of Accounts. Furthermore, the fact that the Municipal Economic Entities or those who provide services to municipalities such as Taxation Resolution Commission are exempt from the Court of Accounts investigation for public expenditures makes them vulnerable to the risk of corruption. A law that investigates civil and public legal entities without connecting it to the responsibility of a real person needs to be established in Turkey. This law should also clarify how the judges and prosecutors will implement the requirements defined in the law.

Legal entities are not subject to investigation without the determination of the real person's responsibility in Turkey. Especially in the case of investigations involving Public Economic Enti-

¹²⁶ OECD. Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Turkey, p.18.

¹²⁷ Transparency International. Exporting Corruption, 2014, http://www.transparency.org/exporting_corruption/Turkey#sthash.GGhHG09j.dpuf.

ties, the perception “taking money from one pocket of the State to put it in the other” prevails as the response of a judge from Turkey to the commission that prepared the Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Turkey reflects.¹²⁸ In addition, the responsible organs for the offense of bribery is indicated in the article 43/A in the Code of Misdemeanors as “an organ or a representative of a civil legal person; or; a person, who is not the organ or representative, but undertakes a duty within the scope of that legal person’s operational framework”. However, the United Nations Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption indicating “anybody that work in a civil legal entity” assigns liability to all workers not only executives.¹²⁹ The OECD 2009 report recommends to revise the law in line to judge the liability of all the decision makes.¹³⁰

According to the statistics provided by the Ministry of Justice for The Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Turkey, there are 3 ongoing investigations for the offense of bribery and money laundering between 2009 and 2013, 5 ongoing investigations for bribery and false accounting. Between 2009 and 2013, 18 investigations for the offense of bribery and money laundering and 12 investigations for the bribery and false accounting are completed. Only one of these investigations involved foreign bribery and was closed due to insufficient evidence. None of the investigations resulted with the prosecution of a legal entity.

According to 2015 statistics of the Ministry of Justice, public prosecutors gave 5,637 decisions for the bribery offenses on the basis of the TCC, article 252. 2,239 cases out of these 5,637 decisions are resulted with no-prosecution while a public case was opened for 2,014 cases. 1,153 cases are resulted with a decision of rejection of venue, 26 with decision of lack of jurisdiction, 208 with merger and 7 with the transfer to another bureau. There is no decision on the basis of security measures about the legal entities according to the article 253 of the TCC. 108 decisions are made with regard to leniency clause on the basis of the article 254 of the TCC. Among these decisions, 44 cases resulted with no prosecution decision and 44 resulted with opening of a public case. 17 decisions resulted with a decision of rejection of venue and 3 with the merger decision.¹³¹

According to 2015 statistics, in cases that opened on the basis of article 252 of the TCC, 1,810 people committed a crime and among those persons, 1,777 are Turkish citizens and 33 are foreigners. In cases that are opened according to the article 252 of the TCC, no measures are applied to legal entities. No measures are applied as well to legal entities on the basis of article 253 of the TCC. 20 persons benefited from the leniency clause.¹³² 2015 statistics also show that 359 people have been punished by imprisonment according to the article 252. 354 of them are Turkish citizens while 5 are foreigners. None of the legal entities have been imposed by security measures according to the article 253. 4 persons are punished by imprisonment on the basis of leniency clause of the article 254. All of these persons are Turkish citizens.¹³³ For bribery offenses, 27 persons were punished by judicial and administrative fines. All of these persons are

¹²⁸ “Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Turkey,” OECD, October 2014, p.18. <http://www.oecd.org/daf/anti-bribery/TurkeyPhase3ReportEN.pdf>.

¹²⁹ Kolcuoğlu Umut, “Özel sektörde rüşvet suçu”, <http://www.dunya.com/gundem/ozel-sektorde-rusvet-sucu-haberi-327634>.

¹³⁰ OECD. Turkey: Phase 2bis Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions, 2009, http://www.uhdigm.adalet.gov.tr/oecd/inceleme_raporlari/Phase_2bis_report.pdf.

¹³¹ T.C. Adalet Bakanlığı Adli Sicil Ve İstatistik Genel Müdürlüğü, Adalet istatistikleri 2015, <http://www.adlisicil.adalet.gov.tr/pdf/2015-YILI%20FAAL%20B0YETRAPORU.PDF>, p.60

¹³² Ibid., p.96

¹³³ Ibid., p.119

Turkish citizens. None of the legal entities are imposed administrative fines.¹³⁴ The fact that legal entities have not been subject to security measures displays that the enforcement of the bribery offense is not sufficient with regard to legal entities.

2011 Bribe Payers Index that surveyed 3,016 business executives in 28 leading economies including Turkey ranks the likelihood of companies to win business abroad by paying bribes. In recent 2011 survey, Turkey ranks 19th out of 28 countries.¹³⁵ Thus, the inclination of companies in Turkey to pay bribes to win business abroad is high. Sectors that pay mostly bribes to win business abroad is: public works contracts and construction sector, utilities; real estate, property, legal and business services; oil and gas; and mining. Therefore, more efficient monitoring and dissuasive sanctions are required to judge corruption in public and private sector.

Security forces in Turkey play an important role in the fight against corruption in Turkey. However, their role is more effective in certain areas rather than big cases including senior officials. In our interviews with lawyers, it was stated that security forces conduct more corruption operations compared to public prosecutors because of the workload on prosecution authorities. Thus, the prosecution office should be endowed with a more effective human and financial capacity to fight against corruption. According to 2015 Report of Turkish National Police Anti-Smuggling and Organized Crime Department (*Emniyet Genel Müdürlüğü Kaçakçılık ve Organize Suçlarla Mücadele Daire Başkanlığı*, KOM), 133 planned operations of corruption are organized. 45 of them are about the bribery offense while most of them are about judicial operations, municipalities and irregularities in the health sector.¹³⁶ Inspection Boards in Turkey contributed extensively to these cases.

One of the important factors hindering the fight against corruption is the widespread acceptance of payments such as gifts and hospitality that can be a tool of corruption. Since they are ingrained in traditions and customs, people do not perceive such payments as a tool of corruption and do not feel the need to complain. Coupled with the widespread perception corruption and the distrust toward the judiciary, a lot of cases that need to be investigated are not even complained. The practices that are ingrained in traditions and customs but can turn into a catalyst of corruption should be clearly defined in laws to change these established habits. The effective enforcement of laws will be an educational tool to direct people toward correct behavior by raising awareness about transparency and integrity.

1.1.3

SCORE

50

Capacities to enforce laws prohibiting bribery of public officials

Scoring Question:

Do relevant public authorities possess adequate capacities for enforcing laws prohibiting bribery of public officials?

There has been a significant decline in the rule of law and trust in judiciary in Turkey in recent years. While Turkey ranked 68th out of 97 countries in 2012, it dropped down to 99th out of 113 countries in 2016 in World Justice Project Rule of Law Index. It had relatively better ranks in 2012 in fundamental rights (76/97), regulatory enforcement (38/99), civil justice (44/97) and criminal

¹³⁴ Ibid.,128

¹³⁵ “Bribe Payers Index”, Transparency International, 2011, http://www.transparency.org/bpi2011/in_detail

¹³⁶ Emniyet Genel Müdürlüğü Kaçakçılık ve Organize Suçlarla Mücadele Daire Başkanlığı. Kaçakçılık ve Organize Suçlarla Mücadele 2015 Raporu, June 2016, Ankara, KOM, <http://www.kom.pol.tr/Documents/Raporlar/2015tur.pdf>.

justice (71/97) but declined in all these categories in 2016 and ranked 105th in fundamental rights, 84th in regulatory enforcement, 86th in civil justice and 75th in criminal justice. Investigation and prosecution of corruption is also affected by these declining levels in the rule of law. While Turkey ranked second out of 13 countries in Eastern Europe and Central Asia and 35th globally out of 99 countries in 2014, it declined to the 4th rank in 2016 out of 13 among Eastern Europe and Central Asia countries and 58th globally out of 113 countries in World Justice Project Rule of Law Index.¹³⁷ According to 2016 Global Corruption Barometer, %36 of participants in Turkey think that most/all judges and prosecutors are corrupt, 46% of participants think that business is most/extremely corrupt and believe that rich people use their power for their interests on government so that there should be stricter policies.

According to the article 17 of the law 3628 on Declaration of Property and Fight against Bribery and Corruption, there are no trial and investigation privileges for public officials except for district governors, governors and undersecretaries regarding offenses involving misappropriation, corruption, bribery, extortion, undue influence in tenders. In other words, this law provides the capacity to investigate corruption. However, it does not cover the abuse of functions, trading in influence, involvement in collusive act and laundering proceeds of crime. In addition, it sets special administrative requirements for many public servants including district governors, governors and undersecretaries due to their positions. The article 267 of the TCC which regulates defamation is also perceived as a possible risk to retaliate against complainant regarding corruption. Added to the fear of retaliation, impunity and lack of confidence in the justice system; it hinders the effective detection, investigation and prosecution of criminals regarding corruption cases especially when senior executives are concerned.

In order to completely abolish the privileges of public officers for investigation and prosecution procedures, the second paragraph of the article 17 of the law No. 3628 that give prosecution privileges to governors, undersecretaries and district governors, the provisions of the third paragraph of the article stipulating “*The provisions of the law related to the defendants subject to special investigation and prosecution procedures due to their duties or titles are reserved*” should be abrogated. The amendment into the article 83 of the Constitution should be introduced to abrogate investigation and prosecution privileges for corruption cases.¹³⁸ Funded by the European Union, the Council of Europe, Turkish authorities with the support of Prime Ministry Inspection Board, Strengthening Anti-Corruption Practices Project in Turkey (*Türkiye’de Yolsuzlukla Mücadele Uygulamalarının Güçlendirilmesi Projesi, TYSAP*)- which is not still put into force- emphasizes the importance of semi-autonomy that will be accorded to inspectors in order to start investigations without taking any orders. Functional independence that will be accorded to inspectors and investigation standards defined by this project will increase the efficiency, objectivity and credibility of administrative investigations. In our interviews with lawyers, they noted that the discretion of the bureaucrats is influential in receiving administrative authorization for investigation and they are concerned about protecting their positions or retaliations in case of giving any authorization. Thus, required authorizations are generally taken when administrations change, thus, cases are shelved for a while.

Public Officials Ethics Board is established in order to spread transparency, accountability, impartialities and ethical norms. This institution issues regulations, gives ethics trainings and monitors the implementation. It has investigation and monitoring competences but has no enforcement power. It is composed of 17 officers including Ethics Board with 11 members. It conducts reviews and investigations about the violations of ethnic codes gathering necessary information and evidence about public officers who have at least general manager or equal status. It

¹³⁷ See Rule of Law Index, World Justice Project, 2012, http://worldjusticeproject.org/sites/default/files/WJP_Index_Report_2012.pdf Rule of Law Index, World Justice Project, 2016, <http://data.worldjusticeproject.org/#/groups/TUR>.

¹³⁸ Tarhan, R. Bulent. “Yargı imtiyazı cenneti (mi?)”.

does not conduct investigations about the President of Republic, members of the Parliament, members of the Council of Ministers, members of Turkish military, judiciary and university, public officers who are in ethics board and who do not have general manager or its equal status and for cases in courts. It received 126 applications and 16 of them were about corruption/irregularities in 2015. 79 of applications are rejected for violation of procedures; no violation of ethical codes is detected in 27 of them. In only 7 cases, violation of ethical codes could be detected. 13 of entire cases are transferred to 2016.¹³⁹ National Integrity System Assessment-Turkey 2016 highlights that that the number of assessments conducted by the Public Officials Ethics Board and its enforcement capacity remain low compared to the number of applications and the fact that the Board has limited competence to enforce its decisions reduces its monitoring power.¹⁴⁰

The fight against bribery and corruption in Turkey is seriously damaged by 17-25 December corruption operations and its use as a tool for political polarization. These investigations resulted in non-prosecution and no one is punished as a result of these investigations. In the scope of state of Emergency implemented after the coup attempt on 15 July 2016, 2 Judges of the Constitutional Court and 5 members of the High Council of Judges and Prosecutors (*Hakimler ve Savcılar Yüksek Kurulu*, HSYK) are arrested and HSYK dismissed 2,847 judges and prosecutors. The speed and extent of dismissed judges and prosecutors made the President of Venice Commission question whether their right to fair and impartial trial is respected.¹⁴¹

The oft-made changes in judicial system without stakeholder participation reduce the efficiency of Turkish criminal justice. The fact that trials take too long is an impediment to accede to justice. In the aftermath of 2010 Referendum, 17-25 December corruption operations and the attempt to coup d'état on 15 July 2016, the growing influence of the executive on HSYK raised concerns about the independence and capacity of law authorities to investigate and prosecute corruption and bribery cases.

The deficiencies in justice and the rule of law is the major factor in the spread of corruption culture in Turkey. In the study of Transparency International-Turkey in 2016 "Corruption in Turkey: Why? How? Where?", %71 of respondents answered no to the question "Did you make any legal complaints if you have been asked to make illegal payments or give gifts in the last one year?" and 26% of respondents said that making a legal complaint would no help, 19% of them said that he/she I was afraid to get a negative reaction. In the question "could you evaluate the impact of the factors I will read to you as the reasons of corruption by rating them with a value between 1 and 10?" immunities and the impunity with regard to corruption ranked first with 7.21 points.¹⁴² As this survey shows, impunity and distrust toward the justice system are major factors obstructing the fight against corruption.

In 2014, 865 cases per judge and 1,385 cases per prosecutor are filed. The number of cases in the Public Prosecutor Office is 3,347,772 and the average day of review for a case is 99 days. The average day of trying a case in the first instance criminal courts in which the bribery and corruption cases are prosecuted is 231 days.¹⁴³ Due to the heavy processing of the justice system, the statute of limitations can obstruct handling of corruption and bribery cases in Turkey. Like in the UK, abolishing statute of limitations can strengthen the capacity of law enforcement authorities in corruption. cases¹⁴⁴ In our interviews with lawyers, it is noted that the procedure to

¹³⁹ T.C. Başbakanlık Kamu Görevlileri Etik Kurulu. Kamu Görevlileri Etik Kurulu 2015 Yılı Faaliyet Raporu, Ankara, 2015, <http://www.etik.gov.tr/Raporlar.aspx?id=1>.

¹⁴⁰ Uluslararası Şeffaflık Derneği. Türkiye Şeffaflık Sistemi Analizi.

¹⁴¹ Council of Europe. Turkey - Rule of Law - statement of the President Buquicchio, 18.07.2016, <http://www.venice.coe.int/webforms/events/default.aspx?id=2266>.

¹⁴² Uluslararası Şeffaflık Derneği. Türkiye'de Yolsuzluk: Neden, Nasıl ve Nerede?, March 2015.

¹⁴³ T.C. Adalet Bakanlığı. Adalet Bakanlığı Stratejik Planı 2015-2019, Ankara, p.47, <http://www.adalet.gov.tr/Bakanlik/StratejikPlan/Stratejik-Plan-2015-2019.pdf>.

¹⁴⁴ Interview with Bülent Tarhan, Prime Ministry Inspection Board Ex-Chief Inspector, Ankara, 9 September 2016.

ask administrative authorization and application to administrative courts in case of rejection of authorization requests obstructs the judicial process in cases related to public officers and four or five years on average pass by before the trial begins.

Although the capacity of institutions that play an important role in the fight against corruption (such as Inspection Boards, Turkish National Police Anti-Smuggling and Organized Crime Department, Financial Crimes Investigation Board, Capital Markets Board, Banking Regulation and Supervision Agency, Public Prosecution Office) is generally sufficient, a coordination plan needs to be established to empower the fight against corruption. The recommendations in Strengthening Anti-Corruption Practices Project in Turkey can guide this coordination as it elaborates on administrative investigations and reporting standards. Although its main task is not the fight against corruption, Financial Crimes Investigation Board (*Mali Suçları Araştırma Kurulu*, MASAK) has an important role in detecting corruption by pursuing capital flows. Information-sharing via electronic system and the ability of access to this database by security forces and MASAK facilitated the fight against corruption.

The fact that municipal enterprises are outside the competence of the Turkish Court of Accounts is a major deficiency in the fight against corruption. There is a widely-shared perception among public that municipalities are involved in corruption. In the study of Transparency-International-Turkey in 2015 “Corruption in Turkey: Why? How? and Where?” municipalities ranked first among institutions in which corruption is prevalent and respondents face irregular payment or gifts requests.¹⁴⁵ In the 2016 version of this study, municipalities ranked third.¹⁴⁶ In TESEV and SELDI’s Corruption Assessment Report, among the institutions in which corruption is widespread, municipalities rank fourth.¹⁴⁷ Turkish Court of Accounts filed charges against 28 municipalities as a result of the investigations between 2004 and 2014.¹⁴⁸

National Integrity System Assessment Report prepared by Transparency International-Turkey discusses the strengths and weaknesses of Turkish Court of Accounts and underlines it has necessary human and financial capacity to monitor the public institutions. Public and private sector representatives we interviewed point out that the Turkish Court of Accounts have become dysfunctional with its decreasing competences. In addition, they note that Turkish Court of Accounts applies intensive investigation in some institutions while ignoring others due to the influence of the executive. This perception reflects the growing politicization in Turkish Court of Accounts. Some of our interviewees noted that the audits of Turkish Court of Accounts are not taken seriously as much as before by institutions.

The fact that Turkish Court of Accounts has both jurisdiction and supervision power and it conducts as well performance audits draws often criticisms from governments. Considering these criticisms, Turkish Court of Accounts can be designed as a Supreme Court of Accounts in its full terms in accordance with international standards turning into an auditing body able to perform performance audits.¹⁴⁹ Turkish Court of Accounts needs to be reformed to ensure a more efficient monitoring of public institutions due to its shortcomings such as inability to cooperate with the legislative, politicization in recruitment, potential influence upon members of Turkish Court of Accounts by Parliament’s Planning and Budget Commission, lack of competences to conduct performance audits in line with the principles of efficiency, economy and productivity.¹⁵⁰

¹⁴⁵ Uluslararası Şeffaflık Derneği. Türkiye’de Yolsuzluk: Neden, Nasıl ve Nerede?, March 2015, p.18-19.

¹⁴⁶ Uluslararası Şeffaflık Derneği, “Türkiye’de Yolsuzluk: Neden, Nasıl ve Nerede?”, March 2015.

¹⁴⁷ TESEV. Yolsuzluk ve Yolsuzlukla Mücadele Değerlendirme Raporu, December 2014.

¹⁴⁸ The response of Turkish Parliament’s Deputy Chairman, Sadık Yakut to the question submitted by CHP Deputy, Alaattin Yüksel. See Uluslararası Şeffaflık Derneği. Türkiye’de Yolsuzluk: Neden, Nasıl ve Nerede?, March 2015, p.19.

¹⁴⁹ Interview with Bülent Tarhan.

¹⁵⁰ Uluslararası Şeffaflık Derneği. Türkiye Şeffaflık Sistemi Analizi, April 2016, p. 156-169.

1.2

SCORE 25

PROHIBITING COMMERCIAL BRIBERY

1.2.1

SCORE 25

Laws prohibiting commercial bribery

Scoring Question:

Do the country's laws prohibit commercial bribery?

Concerning legislation on commercial bribery, Turkey is behind the USA, UK, France, Germany, Brazil, South Africa.¹⁵¹ As aforementioned, with the 8 paragraph of the article 252 of the TCC, joint venture companies and state enterprises can be subject to bribery offense that is committed in private sector due to commercial relations; but there is no legislation regulating commercial bribery for other companies. If the benefit of legal entities is proved, a monetary fine from 16.409 TL to 3,282,503 TL can be applied according to the article 43/A of the Code of Misdemeanors no. 5326. There is a common perception in Turkey that the bribery is specific to public sector's interests, thus, the bribery offense can be committed in relation to public sector. The representatives in the Ministry of Justice also hold this common perception. According to the legislation in Turkey, bribe giving or bribe taking by only those who operate on behalf of publicly-held joint venture companies are considered as a bribery offense.¹⁵² Bribe giving and bribe taking in relation to common law joint venture companies and limited liability corporations are not subject to bribery offense.

According to TEID 2016 Corruption Perception Study, 43% of workers in private sector think that occupation is common in private sector. This number increases to 55% among business executives. 70% of middle and senior-level executives state that the most common ethic violation is to give money or gifts in order to accelerate business.¹⁵³ In the Corruption Assessment Report of TESEV and SELDI in 2014, big business and private sector rank first among the most corrupted institutions.¹⁵⁴ According to 2014 study of Turkish Industry and Business Association (*Türk Sanayicileri ve İş Adamları Derneği*, TÜSİAD) on "Perception of Business Sector on Corruption", 36% of respondents think that corruption is quite/extremely frequent and 37% of them think that its scope is quite/extremely high. The highest perception of corruption is in construction sector. 46% of respondents think that corruption will increase. The study also puts forward the shortcomings of private sector in producing policies in the fight against corruption. 46% of companies do not have ethical codes.¹⁵⁵ As it will be explained in detail in the section on private sector of this report, even in publicly-held companies traded in Istanbul Stock Exchange, it is difficult to find a comprehensive and detailed document about the fight against corruption. 60% of re-

¹⁵¹ Interview with Tayfun Zaman, TEID General Secretary, Istanbul, 19 January 2017.

¹⁵² İlikay, Begüm Biçer. "Türk Yargısında Artarak Görülen Vakıa: Şirket Yöneticisinin Güveni Kötüye Kullanması", *Mondaq*, October 2016, <http://www.mondaq.com/turkey/x/534604/Corporate+Crime/Trk+Yargsnda+Artarak+Grlen+Vaka+irket+Yneticisinin+Gveni+Ktye+Kullanması>.

¹⁵³ Etik ve İtibar Derneği. TEİD Yolsuzluk Algı Araştırması Raporu, May 2016, <http://www.teid.org/wp-content/uploads/2016/10/TE%C4%B0D-Yolsuzluk-Alg%C4%B1-Ara%C5%9Ft%C4%B1rmas%C4%B1-Raporu.pdf>.

¹⁵⁴ TESEV. Yolsuzluk ve Yolsuzlukla Mücadele Değerlendirme Raporu, December 2014.

¹⁵⁵ TUSIAD. İş Dünyası Bakış Açısıyla Yolsuzluk: Algı ve Politika Önerileri, 2014, tusiad.org/tr/tum/item/download/8235_b47b444e91dcff91616d7c876531f176.

spondents acknowledge that they would not denounce corruption. One of its major reasons is the absence of a legal whistleblowing mechanism (30%) and the belief that it would not help even if they denounce (12%). Especially among small and middle-sized enterprises in Turkey, there is a common perception that gifts, travel vouchers, hospitality are a kind of commission payouts.

The Second Compliance Report on Turkey of GRECO underlines that there is a lack of legislation on commercial bribery.¹⁵⁶ OECD 2014 Turkey report draws attention to the fact that Turkey needs regulations to investigate legal entities reflecting the responsibility of all decision-makers in legal entities.¹⁵⁷ This kind of legislation will contribute to the sustainability of enterprises distinguishing corporate entity from the benefits of company owners.

Turkey needs a legislation that clearly defines penalties for corporations and real persons holding third parties that corporations work with responsible for corruption. The Foreign Corrupt Practices Act in the United States and the Anti-Bribery Act in the United Kingdom are exemplary in this respect. According to these laws, it is the companies' responsibility to build an institutional structure that does not give way to corruption. Thus, the law on commercial bribery can guide Turkish private sector to comply with international standards.

In recent years, corruption in business and breach of trust (Article 155 of the TCC) known as "white collar offenses" are included in the decisions in the Court of Cassation but they are not able to judge properly briber giver and bribery taker in private sector.¹⁵⁸ Moreover, the scope of this offenses is not sufficient to compensate the damage of private sector and does not correspond to the needs of private sector.¹⁵⁹ OECD and GRECO reports highlight the needs for a bribery legislation encompassing private sector and ask the member countries to pass necessary laws and regulating to judge commercial bribery. The 7 and 8 articles of the Council of Europe Criminal Law Convention on Corruption advise member states to establish necessary regulations for active and passive bribery in the private sector including all workers and decision-makers in companies.

1.2.2

SCORE 25

Enforcement of laws prohibiting commercial bribery

Scoring Question:

Are sanctions and incentives applied in practice to deter commercial bribery?

According to the 8 paragraph of the article 252 of the TCC, joint venture companies and state enterprises can be subject to bribery offense that is committed in private sector due to commercial relations. But as mentioned in the part 1.1.2. on enforcement of laws prohibiting bribery of public officials section, no legal entity has been imposed measures according to the article 252 and 253. Lawyers we interviewed also confirm that the application of measures to legal entities according to the article 43/A of the Code of Misdemeanors is not very common.

¹⁵⁶ Avrupa Konseyi Yolsuzluğa Karşı Devletler Grubu. III. Değerlendirme Aşaması İkinci Türkiye Uygunluk Raporu, Greco RC-III (2013) 27E, 24-28 March 2014, p.9.

¹⁵⁷ OECD. Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Turkey, p.18-19.

¹⁵⁸ İlikay, Begüm Biçer. "Türk Yargısında Artarak Görülen Vakıa: Şirket Yöneticisinin Güveni Kötüye Kullanması".

¹⁵⁹ Interview with Tayfun Zaman.

According to the article 17 of the Public Procurement Law, the corporations that commit forbidden acts (bribery, extortion, use of undue influence) can be given the prohibition to participate in tenders. According to the 2015 Annual Operations Report of the Public Procurement Agency, there were 4,928 prohibition records in 2015 and the list of active prohibition contains 8,401 prohibition records as of 31.12.2015.¹⁶⁰ But how many of these prohibition records are given as a result of the article 17 is not stated in the 2015 Annual Operations Report of Public Procurement Agency,

1.2.3

SCORE 25

Capacities to enforce laws prohibiting commercial bribery

Scoring Question:

Do relevant public authorities possess adequate capacities for enforcing laws prohibiting commercial bribery?

According to the article 252 of the TCC No. 5237, those who operate in the name of publicly-held joint ventures can be a subject of bribery offense. But as mentioned above, it is not common to apply measures to legal entities. Moreover, there is no public authority guidance or monitoring about the procedures that will help corporations in the fight against bribery and corporations.

In addition, according to the article 17 of Public Procurement Law, corporations that commit prohibited acts (bribery, extortion, use of undue influence) can be given a decision of prohibition related to participation in public tenders for a term up to two years but not less than one year according to the quality of this act. Corporations that do not make a proper contract in line with established procedures other than force majeure can be prohibited from participating in public tenders for a term not less than six months.

¹⁶⁰ Kamu İhale Kurumu. 2015 Faaliyet Raporu, Ankara, p.37, http://www2.ihale.gov.tr/duyurular2012/2015_Faaliyet_Raporu.pdf.

1.3

SCORE 75

PROHIBITING LAUNDERING OF PROCEEDS OF CRIME

1.3.1

SCORE 100

Laws prohibiting laundering of proceeds of crime

Scoring Question:

Do the country's laws prohibit laundering of proceeds of crime?

It is possible to separate legislation on the prohibition of laundering proceeds of crime as national legislation and international legislation. National legislation consists of legislation for the prohibition of laundering proceeds of crime and regulations governing the enforcement of these laws. Main laws are:¹⁶¹

- Law No. 5549 on Prevention of Laundering Proceeds of Crime,
- Law No. 4208 on Prevention of Money Laundering
- Turkish Criminal Code No. 5237
- Code of Misdemeanors No. 5326
- Banking Law No. 5411

Main regulations in national legislation are:

- Regulation on measures to prevent laundering proceeds of crime and terrorist financing
- Regulation on compliance with obligations to prevent laundering proceeds of crime and terrorist financing
- Regulation on investigation of the crime of laundering
- Regulation on the delay of operations regarding prevention of laundering proceeds of crime and terrorist financing

The last paragraph of the article 90 of the Constitution stipulates that “*international agreements duly put into effect carry the force of law*”. Thus, international agreements concerning prohibition of laundering proceeds of crime carry the force of national law. International agreements and advisory groups that Turkey is a party are as follows:

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (Vienne Convention)
- United Nations Convention against Transnational Organized Crime and the Protocols There-to (Palermo Convention)
- Financial Action Task Force (FATF) Recommendations 2012
- FATF Methodology (February 2013)
- EU Directives No. 2005/60

¹⁶¹ MASAK. Aklama Suçu Ulusal Mevzuat, <http://www.masak.gov.tr/tr/content/aklama-sucu-ulusal-mevzuat/52>.

- Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering
- Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering
- Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime
- Council decision of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information
- Joint Action of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime
- Basel Statement on Prevention of criminal use of the banking system for the purpose of money-laundering
- BASEL - Customer due diligence for banks - consultative document
- Wolfsberg Statement on Monitoring Screening and Searching in September 2003
- Wolfsberg Anti-Money Laundering Principles for Correspondent Banking in November 2002
- Wolfsberg Anti-Money Laundering Principles for Private Banking revised in May 2002

TCK 282 regulates “laundering of assets acquired as a result of offense”. According to the first paragraph of this article “ Any person who takes away the assets acquired as a result of an offense which requires minimum six months or more punishment of imprisonment, or carries them or carries them to a foreign country with various transactions in order to hide illegal source of these assets and gives the impression that they are acquired in the lawful manner, is punished with imprisonment from three to seven years and also imposed two years to five years, and also imposed punitive fine up to twenty thousand days” and the second paragraph stipulates “A person who, without participating in the commitment of the offence mentioned in paragraph (1), purchases, acquires, possesses or uses the proceeds which is the subject of that offence knowing the nature of the proceeds shall be sentenced to imprisonment from two years up to five years.”. If this crime is committed by a public official or any competent person during the operations of his/her duty, the penalty of imprisonment is increased by one half. If this offense is committed in the framework of organized crime, the punishment is increased by one fold. Security measures are implemented in case of legal entities. The article 282 also sets liability for anyone who facilitates or informs the authorities on laundering of assets acquired as a result of offense will not be accused of this crime. The laundering of proceeds of crime can be committed in the framework of bribery, embezzlement or other offenses. In order to open an investigation on laundering of proceeds of crime, it is not necessary that other offenses are in trial the investigations can be conducted separately.¹⁶²

According to the Law No. 5549 on Prevention of Laundering Proceeds of Crime, hiding the illegal purposes of the asset; transforming or transferring the asset; hiding its source, its situation, its place, its right to carry or property; acquiring, possessing or using the asset knowing the it is acquired as proceeds of crime or participating in, facilitating or recommending these offenses are considered as a crime. In the second article of the law on Prevention of Laundering

¹⁶² OECD. Turkey Phase 2 Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Revised Recommendation on Combating Bribery in International Business Transactions, the OECD Working Group on Bribery in International Business Transactions, 7 December 2007, §189.<http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/39862163.pdf>.

dering Proceeds of Crime, obliged parties are counted as those who operate in the field of banking, insurance, individual pension, capital markets, money lending and other financial services, postal service and transportation, lotteries and bets, those who deal with exchange, real estate, precious stones and metals, jewelry, all kinds of transportation vehicles, construction machines, historical artifacts, art works, antiques or intermediaries in these operations; notaries, sports clubs and those operating in other fields determined by the Council of Ministers. According to the 4 article of the regulation on the prevention of laundering proceeds of crime and terrorist financing on 9 January 2008, these obliged parties are enlarged and articulated as follows: Banks, Institutions other than banks who have the authority to issue bank cards or credit cards, authorized exchange offices given in legislation on foreign exchange, money lenders, financing and factoring companies within the scope of legislation on money lending, capital markets brokers, portfolio management companies, investment fund managers, investment partnerships, insurance, reinsurance and pension companies, insurance and reinsurance brokers, financial leasing companies, institutions furnishing settlement and custody services within the framework of capital markets legislation, Presidency of Istanbul Gold Exchange pertaining only to its custody service, general directorate of post and cargo companies, assets management companies, dealers of precious metals, stones and jewelries, Directorate General of Turkish Mint pertaining only to its activities of minting gold coins, precious metals exchange intermediaries, those who buy and sell immovables for trading purposes and intermediaries of these transactions, dealers of any kind of sea, air and land transportation vehicles including construction machines, dealers and auctioneers of historical artifacts, antiques and works of art, those who operate in the field of lotteries and betting including Turkish National Lottery Administration, Turkish Jockey Club and Football Pools Organization Directorate, Sports Clubs, Public notaries, Freelance lawyers pertaining only to functions within the scope of paragraph 2 in Article 35 of Law No. 1136 on Lawyers such as trading of immovables, establishing, managing and transferring companies, foundations and associations (provided that these functions are not contrary, in terms of right of defending, to provisions of other laws), certified general accountants, certified public accountants and sworn-in certified public accountants operating without being attached to an employer, independent audit institutions authorized to conduct audit in financial markets. With the 27450 numbered amendment to the regulation on the prevention of laundering proceeds of crime and terrorist financing in 2010, abroad branches, agencies, representatives, commercial representatives and similar affiliated units of obliged parties whose head offices are in Turkey shall implement the provisions of this Regulation to the extent that the legislation and competent authorities of the country where they are located permit.

The fourth article of law on prevention of laundering proceeds of crime force the obliged parties to report suspicious transactions to MASAK in case that there is any information, suspicion or reasonable grounds to suspect that the asset, which is subject to transactions within or through the obliged parties, is acquired through illegal ways or used for illegal purposes. In case the obliged parties do not complete these obligations, it will be punished with an administrative fine of 5,000 TL by MASAK. If the obliged party is a bank, finance company, factoring company, money lender, financial leasing company, insurance and reinsurance company, pension company, capital market institution or bureau de change, administrative fine shall be applied two-folds. The employee who does not fulfill the obligation shall be punished with administrative fine of 2,000 TL. Those who violate the obligations stated in articles 4, 7 and 8 of this Law shall be sentenced to imprisonment from one year to three years and to judicial fine up to five thousand days. Security measures peculiar to legal persons shall be adjudicated due to this offence.

Persons, institutions and organizations who fail to comply with the obligations of electronic notification specified in Article 9/A of this Law shall be punished with an administrative fine of 10,000 TL by MASAK for each failure to comply. The total amount of administrative fine applied in this regard in one year cannot exceed 250,000 TL. For each failure, the total amount of ad-

ministrative fines applied within the year of the violation pursuant to first three paragraphs of the article cannot exceed 10,000,000 TL for obliged parties that will be punished with a twofold fine pursuant to Paragraph 1, and 1,000,000 TL for other obliged parties. If the obliged parties subject to upper limit make the same kind of failure in the following year, the limit shall be applied twofold. Those who fail to comply with the obligations stated in Paragraph (2) of articles 4, 7 and 8 of this Law shall be sentenced to imprisonment from one year to three years and to judicial fine up to five thousand days. Security measures peculiar to legal persons shall be adjudicated because of this offence.

According to the 7 paragraph of Article 17 of the Code of Misdemeanors No. 5326; administrative fines shall be applied by determining the rates in accordance with the provisions of Repeated Section 298 of the Tax Procedure Law No: 213 dated 4.1.1961 from the beginning of each calendar year. Accordingly, administrative penalties for violations for the years 2014-2017 are indicated in the following table:¹⁶³

Table 4: Administrative Penalties for Violations for The Years 2014-2017

Those who will pay administrative fines	For violations in 2006 and the years before (TL)	For violations in 2014(TL)	For violations in 2015(TL)	For violations in 2016 (TL)	For violations in 2017 (TL)
Responsible (Law No. 5549, article 3, 4/1, 5, 6, 13 / 1,33)	5,000	8,796	9,685	10,225	10,616
	-	1,000,000(*)	1,101,100(*)	1,162,540(*)	1,207,060(*)
Responsible (double fine) (Law No. 5549, article 3, 4/1, 5, 6, 13/1,3)	10,000	17,592	19,370	20,450	21,232
	-	10,000,000(*)	11,011,000(*)	11,625,410(*)	12,070,660(*)
Real Persons, Institutions and Legal Entities (Electronic Notification) (Law No. 5549, article 9/A, 13/4)	-	10,000	11,011	11,625	12,070
	-	250,000(**)	275,270(**)	290,630(**)	301,760(**)

(*)The sum of penalties to be imposed for the year in which the infringement is made cannot exceed this amount for each obligation. If there is a breach of the same kind of obligation in the following year before the upper limit penalty is imposed, these fines shall be applied in twofold.

(**) This amount cannot exceed the sum of administrative penalty to be applied within one year for the electronic notification obligation.

According to the article 15 “In the transactions requiring customer identification which are conducted within or through the obliged parties, if anyone who acts in his/her own name but for the benefit of other person does not inform the obliged parties, in writing, of the person for the benefit of whom he/she acts before carrying out the transactions, he/she shall be sentenced to imprisonment from six months to one year or to judicial fine up to five thousand days”. In case no explanations are made or false or misleading explanation is made upon the request of relevant authorities, values carried along by the travelers shall be sequestered by the Customs Administration. The Custom Administration shall impose an administrative fine equal to one tenth of the amount carried along on travelers for not disclosing and one tenth of the difference between the value carried along and the value disclosed on travelers for false disclosure. Besides, the case shall be considered as suspicious and shall be conveyed to MASAK and other relevant authorities. The provisions of this paragraph shall not apply to the differences up to one thousand and five hundred Turkish Liras. In cases where there is strong suspicion that the offences of money laundering and financing of terrorism are committed, the asset values may be seized in accordance with the procedure in Article 128 of Criminal Procedure Law No. 5271. Public Prosecutor can also take seizure decision in urgent cases. Seizure applied without the judicial decision shall be submitted for the approval of the judge on duty in twenty-four hours at the latest. The judge shall decide on whether it will be approved in twenty-four hours at the latest. The decision of Public Prosecutor’s Office shall be invalid in case of non-approval. With

¹⁶³ See MASAK Yaptırımlar, <http://www.masak.gov.tr/tr/content/yaptirimlar/88>

the amendment to the article 128 on 21.02.2014 with 6256 numbered law, a report relating to proceeds of crime must be received in order to give a seizure decision under this article.

According to the 29806 numbered Law on the Restructuring of Certain Receivables on 19 August 2016; cash, gold, marketable securities or other capital market instruments that are unrecorded assets out of Turkey but brought from abroad and reported to Turkish authorities will benefit from a voluntary disclosure program without any additional tax burden. There is no obligation for banks to report suspicious transactions to MASAK. These assets will not be subject to investigation according to tax, custom, laundering of proceeds of crime or capital markets laws. This law raised eyebrows among many experts about its motivating quality for laundering proceeds of crime.¹⁶⁴ These kinds of administrative implementations render the comprehensive legislation on laundering proceeds of crime ineffective.

SCORE 50

1.3.2

Enforcement of laws prohibiting laundering of proceeds of crime

Scoring Question:

Are sanctions and incentives applied in practice to deter the laundering of proceeds of crime?

Turkey is open to illegal money flows due to the extent of its shadow economy (%27, 2 of its GDP in 2014)¹⁶⁵ and its role as a bridge between Asia and Europe. 58% of foreign investment from Turkey is directed to Europe, 26% to Eurasia, 11% to Africa, 3% to Middle East-Gulf and the remaining 32% goes to Asia-Pacific countries.¹⁶⁶ Turkey is a member of the Financial Action Task Force (FATF) and is responsible to adopt and implement necessary regulations and compliance programs in order to prevent laundering proceeds of crime.

After FATF put Turkey in the grey list in 2012, Turkey adopted serious legislation with regard to prevention of laundering proceeds of crime and terrorist financing and made a significant progress in customer due diligence, beneficial owner and risky areas. Turkey's legislation on the prevention of laundering proceeds of crime and terrorist financing is composed of Law no. 6415 on the Prevention of the Financing of Terrorism, Law No. 5549 on Prevention of Laundering Proceeds of Crime, the article 282 of the 5237 numbered Turkish Criminal Code, Anti-Terror law no. 3713, the Regulation on the Proceeds and Principles Regarding the Implementation of Law in the Prevention of the Financing of Terrorism, General Communiqué of Suspicious Transaction Reporting Regarding Terrorist Financing issued by MASAK, General Communiqué No: 6, Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism (RoM). Turkey ratified Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism on 18 February 2016. According to the report of FATF in October 2014, Turkey's compliance is sufficient and it is removed from the regular follow-up process.¹⁶⁷

¹⁶⁴ Gürses, Uğur. "Varlık barışı değil aklama mütarekesi", *Hürriyet.com*, 2.07.2016, http://sosyal.hurriyet.com.tr/yazar/ugur-gurses_526/varlik-barisi-degil-aklama-mutarekesi_40125224; Özyıldız, Hakan. "Bir garip varlık barışı", *Paraanaliz.com*, 27.06.2016, <http://www.paraanaliz.com/turkiye/hakan-ozyildiz-yazdi-bir-garip-varlik-barisi-h12407.html>; Uluslararası Şeffaflık Derneği. 7 soruda Varlık Barışı, <http://www.seffalik.org/wp-content/uploads/2016/08/Varlik-Barisi-7-Soru.png>.

¹⁶⁵ Schneider, Friedrich. "Size and Development of the Shadow Economy of 31 European and 5 Other OECD Countries from 2003 to 2014: Different Developments?", *Journal of Self-Governance & Management Economics*, 2015, (3) 4: 7-29.

¹⁶⁶ Dış Ekonomik İlişkiler Kurulu (DEİK). DEİK and Deloitte Yurtdışı Yatırım Endeksi, İstanbul 2016, p.9, https://www.deik.org.tr/Konseylcerik/6633/2016_Yurtd%C4%B1%C5%9F%C4%B1_Yat%C4%B1r%C4%B1m_Endeksi.html.

¹⁶⁷ 15th Follow-Up Report Mutual Evaluation of Turkey, The Financial Action Task Force (FATF), October 2014, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/Turkey-FUR-2014.pdf>

The 15th Follow-Up Report of the FATF detects these shortcomings in the legislation on the prevention of laundering proceeds of crime and terrorist financing:

1. There are deficiencies in many areas relating to the freezing of funds in accordance with the United Nations Security Council Resolutions;
2. Not all elements required by the relevant UN conventions appear to be covered, in particular; possession and possibly also use in the article 282 of the TCC that is limited to transfer abroad;
3. Unclear articulation between the money laundering (ML) offence (Article 282) and the provisions of Article 165 of the TCC entitled 'Purchasing and acquiring illicit property';
4. Deficiencies in customer due diligence requirement, in case of suspicion of money laundering or terrorist financing;
5. Article 26.2 of the Regulation on Measures regarding Prevention of Laundering Proceeds of Crime and Financing of Terroris provides that simplified due diligence should be totally removed, more provisions for requiring the identification of beneficial owner are needed;
6. Measures for enhanced customer due diligence for sensitive countries, sensitive business and higher risk customers, are only contained in non-mandatory and unenforceable guidelines;
7. Exemption of requirements for identification for transactions carried out with central and local public administrations, state economic enterprises, quasi-public institutions, banks and participation banks are overly broad;
8. Need of progress in the freezing of the assets of natural and legal persons designated by the UN pursuant to United Nations Security Council Resolution 1267 and its successor resolutions;
9. Turkey has not implemented anti-money laundering / countering the financing of terrorism measures concerning establishment of customer relationships with PEPs (politically exposed persons);
10. There is no requirement to pay particular attention where branches and subsidiaries are in countries which do not or insufficiently apply the FATF Recommendations;
11. There is no requirement to apply the higher of the two countries' standards; There is no requirement to inform supervisors when a foreign branch or subsidiary is unable to observe appropriate anti-money laundering / countering the financing of terrorism measures due to host country restrictions, the need of more staff in MASAK informed about laws and their implementation;
12. There is no obligation to declare the real beneficial owner or the natural persons who ultimately control legal persons to the Trade Registry or to other government authorities,
13. No consideration has been given to establishing an asset forfeiture fund or to sharing confiscated assets with a foreign country after coordinated international action;
14. There are no arrangements for coordinating seizure or confiscation actions with other countries., There is no specific measure in place for the supervision of financial institutions with their obligations on wire transfers, law administrative sanctions in these cases.

According to the data provided by the Ministry of Justice to FATF Committee, since 2007, the Court of Cassation has confirmed the convictions of 8 persons.¹⁶⁸ Since the entry into force of Law no. 6415 on the Prevention of the Financing of Terrorism, 41 investigations were conducted

¹⁶⁸ Ibid., p.8.

and 18 cases were prosecuted on the basis of Article 4 of the law.¹⁶⁹ According to the data provided by the ministry of Justice to the 2014 OECD Committee, 15 individuals were convicted of money laundering offence in 2011, 18 individuals in 2012 and 1 person in 2013. In the years 2009–2012, no money laundering investigations contained a predicate offence of bribery (whether foreign or domestic).¹⁷⁰

In 2013, two investigations that were conducted by MASAK and submitted to public prosecutor were predicated on domestic bribery.¹⁷¹ According to the 2015 statistics of the Ministry of Justice, 1,307 decisions are given by the Public Prosecutor Office during investigations according to the article 282 of the TCC, 585 of them resulted with opening of a public court, 519 with decision of no-prosecution, 128 with decision of rejection of venue, 7 with decision of no-competence and 68 with the decision of merger.¹⁷² Measures defined in the article 282 of the TCC are imposed upon 412 people and 4 legal entities. Among these people, 4 of them are foreign and the rest are Turkish citizens.¹⁷³ 65 people are convicted according to the article 282 in criminal courts. All of them are real persons with Turkish citizenship and none of them are legal entities.¹⁷⁴ 23 people are sentenced to imprisonment and all of them are Turkish citizens.¹⁷⁵ 2014 OECD Report on Turkey recommends that investigations concerning laundering proceeds of bribery is low and legislation on laundering proceeds of crime needs measures concerning politically exposed persons.¹⁷⁶

In Basel 2016 report, Turkey became the third worst-case country in Europe and Central Asia when FATF criteria about money laundering were considered.¹⁷⁷

1.3.3

SCORE **50**

Capacities to enforce laws prohibiting laundering of proceeds of crime

Scoring Question:

Are adequate enforcement capacities available for enforcing laws prohibiting laundering of proceeds of crime?

The judicial authorities cooperate with MASAK concerning the offense of laundering proceeds of crime. MASAK executes several duties and responsibilities such as fighting against laundering proceeds of crime and terrorist financing, collecting and analyzing suspicious transaction reports concerning these offenses and submitting them to judiciary if necessary, conducting investigation about laundering proceeds of crime, monitoring the obliged parties and training and informing their compliance departments. In 2015, regarding the implementation of the article 9/A of the law on prevention laundering proceeds of crime and terrorist financing, “Regulation on Procedures and Principles Regarding the Financial Crimes Investigation Board Electronic Notification System” entered into force accelerating electronic exchange of information

¹⁶⁹ Ibid., p.17.

¹⁷⁰ OECD. Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Turkey, p.38.

¹⁷¹ Ibid.

¹⁷² T.C. Adalet Bakanlığı Adli Sicil ve İstatistik Genel Müdürlüğü. Adalet İstatistikleri, Ankara, 2015, p.59.

¹⁷³ Ibid., p.97.

¹⁷⁴ Ibid., p.111.

¹⁷⁵ Ibid. p.120.

¹⁷⁶ OECD. Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Turkey.

¹⁷⁷ Basel Institute on Governance. Basel AML Index 2016 Report, 2016, https://index.baselgovernance.org/sites/index/documents/Basel_AML_Index_Report_2016.pdf.

in MASAK. The law on prevention of laundering of proceeds of crime set the requirements for customer due diligence, operations requiring customer due diligence and their financial limits, suspicious transaction reports about the sources of assets and their usage. MASAK prepares guidelines, training and conferences about suspicious transaction reports. MASAK has also competences to receive necessary information and documents from the obliged parties, examine and share them in order to implement the law.¹⁷⁸

MASAK has 232 personnel and 122 out of this personnel are financial experts and junior experts, 17 out of them are revenue experts and junior experts. 4 of them are tax inspectors and 2 of them are state revenue junior experts. MASAK received 74,863 notices composed of 74,221 suspicious transaction reports, 239 judicial demands, 403 individual and corporate denunciations in 2015. Considering its workload, the number of experts is insufficient. The majority of suspicious transaction reports belong to banks. The obligations and monitoring upon the banks are sufficient as observed from the number of suspicious transactions. The majority of suspicious transactions reports, 66,719 in 2015, belong to banks. Money lenders, financing and factoring companies within the scope of legislation on money lending come after banks with 2,597 suspicious transaction reports. Public notaries, certified general accountants, certified public accountants, those who operate in the field of lotteries and betting, dealers of precious metals, stones and jewelries have not submitted any suspicious transaction reports. Certified general accountants and public accountants we interviewed noted that MASAK is a closed entity that is not perceived as accessible by accountants. Moreover, if certified accountants submit suspicious transaction reports, they would lose their client. Furthermore, they underlined that the oft-made tax regulations known as tax amnesties are used to improve balance sheets. Hence, effective monitoring of suspicious transactions reports is affected by deficiencies in transparency and integrity in public sector.

Public prosecution offices, courts or judiciary authorities like HSYK submitted 239 demands to MASAK concerning investigations of laundering proceeds of crime, terrorist financing and investigation of asset values as proceeds of crime according to the article 128 of Criminal Procedure Law No. 5271. MASAK opened 166 files as a result of denunciations and suspicious transactions reports and concluded 114 cases. 3,962 people are investigated as a result of these cases. Only 2 of them are related to corruption and 1 to bribery. MASAK provided information about 5,482 people to institutions within the scope of intelligence. In these investigations, 217 people are investigated in relation to corruption. Concerning laundering of proceeds of crime according to the article 282 of the TCC, MASAK sent 98 files for direct investigation and 40 of them are concluded. As a result of investigation of laundering of proceeds of crime, MASAK filed criminal complaints about 385 people. In the framework of the article 5 of the prevention of terrorist financing no.6415, freezing decisions are implemented for 34 real persons and 5 legal entities. As a result of applications from other countries for freezing assets, the Council of Ministers has given 2 decisions. One of them is about 2 real persons and the other is about 5 real persons and 7 legal entities. As a result of the article 128, 84 demands have been made for report related to proceeds of crime and 82 reports are concluded within three months including reports left from the previous year.

According to the report of the Turkish National Police Department of Anti-Smuggling and Organized Crime, there were 14,525 events and 28,914 suspects regarding financial crimes in 2015. 226 planned operations have been organized in 2015 concerning financial crimes. 2,645 events related to the fight against proceeds of crime resulted in seizure in 2015 including 6,6 million TL, 1,728 vehicles and 43 immovables.¹⁷⁹

¹⁷⁸ MASAK. 2015 Faaliyet Raporu, Ankara, 2015, http://www.masak.gov.tr/userfiles/file/2015_Faaliyet_Raporu.pdf.

¹⁷⁹ Emniyet Genel Müdürlüğü Kaçakçılık ve Organize Suçlarla Mücadele Daire Başkanlığı. 2015 Kaçakçılık ve Organize Suçlarla Mücadele Raporu, June 2016, Ankara, <http://www.kom.pol.tr/Documents/Raporlar/2015tur.pdf>.

In order to deal with financial crimes such as laundering proceeds of crime; judges and prosecutors need to be specialized to conduct a more efficient prosecution. The lack of specialization of judges and their verdicts based on reports of legal experts have been subject to criticisms.¹⁸⁰ The decision of seizure and confiscation of assets require an administrative report and a court verdict. The long-trial in courts and the fact that administrative report of MASAK is received in three months create opportunities for suspects to hide, transfer or dissimulate the proceeds of crime. Since assets can be hidden in this period; seizure or confiscation cannot be completed efficiently. The EU notes that while Turkey's strategic cooperation with EUROPOL in 2014 is a positive step, the seizure or confiscation of assets as a result of international cooperation is very rare.¹⁸¹

While financial entities are obliged to comply with the requirements of the law on laundering of proceeds of crime and terrorist financing, there is no obligation to establish an internal auditing for non-financial businesses. According to FATF recommendations, non-financial jobs and businesses require a more efficient monitoring, internal auditing and responsibility to report suspicious transactions. The Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Turkey underlines that compliance programs and internal auditing in Turkish private sector needs to be supported with consciousness raising training and programs.¹⁸²

As mentioned in the part of 1.2.1. on laws prohibiting commercial bribery, TEID's survey shows that senior executives are under heavy pressure concerning corrupt practices compared to normal employees. Since the prosecution of legal entities is only possible with the prosecution of real persons according to the article 43/A of the Code of Misdemeanors, the legislation puts pressure on senior executives while beneficial owners, shareholders who can be responsible, accomplice or encouraging laundering proceeds of crime can benefit from the void in the legislation and escape from legal responsibility.¹⁸³ In Turkey, corrupt acts of shareholders and executives can go unpunished hiding behind the corporate veil.¹⁸⁴ Moreover, the lack of necessary requirements for declaration of beneficial owner is an impediment to investigate all suspects in an encompassing manner. Besides, according to the 43/A of the Code of Misdemeanors, the administrative fine for legal entities changes from 16.409 TL to 3.282.503 TL. In comparison with the shadow economy of Turkey (%27.2 of GDP in 2014),¹⁸⁵ this fine is not proportionate and dissuasive. Turkey needs regulations that should hold all parties under the risk of corruption accountable.

¹⁸⁰ Çetinkaya, Orçun. "Turkey: Business Crimes Litigation in Turkey: Trends And Outlook", 17 December 2015, *Mondaq*, <http://www.mondaq.com/turkey/x/452610/Crime/Business+Crimes+Litigation+In+Turkey+Trends+And+Outlook>.

¹⁸¹ Avrupa Komisyonu, 2015 yılı Türkiye Raporu, SWD (2015) 216, Brüksel, 10.11.2015, p.20.

¹⁸² OECD. Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Turkey, p.39-40.

¹⁸³ Çetinkaya, Orçun. "Turkey: Business Crimes Litigation in Turkey: Trends and Outlook".

¹⁸⁴ Ibid.

¹⁸⁵ Schneider, Friedrich. "Size and Development of the Shadow Economy of 31 European and 5 Other OECD Countries from 2003 to 2014: Different Developments?".

1.4

SCORE **100**

PROHIBITING COLLUSION

1.4.1

SCORE **100**

Laws prohibiting collusion

Scoring Question:

Do the country's laws prohibit collusion?

The article 167 of the Constitution in Turkey accords to the state the duty and responsibility to ensure free market rules and prevent monopolistic and cartel behavior. The Act on the Protection of Competition No.4054 sets the legal framework for a fair and free competition in the market. Its first article defines its agenda as “to prevent agreements, decisions and practices preventing, distorting or restricting competition in markets for goods and services, and the abuse of dominance by the undertakings dominant in the market, and to ensure the protection of competition by performing the necessary regulations and supervisions to this end”. Collusive acts are also included in the article 235 of the TCC as “undue influence in tenders” and shall be punished with a penalty of imprisonment from three to seven years. Turkish Competition Authority is charged (*Rekabet Kurumu*) with issuing necessary regulations and conduct monitoring.

The Act on the Protection of Competition No.4054 regulates principally monopolistic behaviors, mergers and acquisitions. According to the article 4 of the act “Agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited.” This article is in compliance with the article 101 of the Treaty on the Functioning of the European Union. No limit has been set regarding the limits of cartels according a broad power to the Competition Authority to detect agreements, concerted practices and decisions that “have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services”. Thus, the act of collusion is prohibited in Turkish national legislation. The article 4 also includes “the presumption of concerted practices”, thus, enterprises under investigation by Turkish Competition Authority should prove their innocence related to suspicion about concerted practices even if no agreement exists. The article 4 also establishes liability, thus, each of the parties may relieve itself of the responsibility by proving their disengagement in concerted practices based on economic or rational facts. According to the article 5 of the Act on the Protection of Competition, parties may be exempt from these regulation in case their acts ensure new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services, benefit consumers, does not obstruct competition in a significant part of the relevant market, does not limit competition to achieve goals defined in the law.¹⁸⁶

¹⁸⁶ See 4054 sayılı Rekabetin Korunması Hakkında Kanun, <http://www.rekabet.gov.tr/tr-TR/Sayfalar/4054-Sayili-Kanun>.

In order to enhance active cooperation and leniency clause that will facilitate the detection of concerted practices with the help of legal entities and workers, the Regulation on Active Cooperation for the Purpose of Discovery of Cartels and Monetary Fines on 15 February 2009 is adopted. In order to clarify leniency clause and its implementation, “Guideline Regarding the Regulation on Active Cooperation For The Purpose Of Discovery of Cartels” is published on 19 April 2013.¹⁸⁷

SCORE **100**

1.4.2

Enforcement of laws prohibiting collusion

Scoring Question:

Are sanctions and incentives applied in practice to deter collusive practices?

Turkish Competition Authority is responsible for overseeing and monitoring the implementation of the Act on the Protection of Competition and it gives authorization to continue tenders, mergers or acquisition acts. In line with the articles 4, 6, and 7, the Competition Board can impose an administrative fine by one in thousands of annual gross revenues on natural and legal persons having the nature of an undertaking and on associations of undertakings or members of such associations. An administrative fine up to five percent of the penalty can be also imposed on managers or employees of the undertaking or association of undertakings who have a decisive influence on the relevant violation. The Competition Board does not have plea bargain arrangement. The board can issue administrative fines but not criminal penalties. The undue influence in tenders by the way of concerted practices can be punished according to the article 235 of the TCC. Price manipulation can be punished up to two years of imprisonment according to the article 237 of the TCC.

The administrative decisions on penalties of the Competition Board were tried until 2012 in Turkish Council of State. With the amendment introduced in 2012, administrative decisions are tried in Ankara Administrative Courts. Between 1997 and 2015, the number of cases including the Board is 2,559 and 156 of them are opened in 2015. The Competition Board acts effectively in the monitoring of the Act on the Protection of Competition. For example, it imposed on 12 banks 1,1 billion TL administrative fine for creating cartels by increasing interest rates.¹⁸⁸ In 2015, it gave 158 decisions about the merger, acquisition and privatization, 89 decisions about collusion, concerted practices and abuse of dominant position, 60 decisions about horizontal and vertical agreement about collusion and concerted practices.¹⁸⁹

¹⁸⁷ Rekabet Kurumu. Kartellerin Ortaya Çıkarılması Amacıyla Aktif İşbirliği Yapılmasına Dair Yönetmeliğin Açıklanmasına İlişkin Kılavuz <http://www.rekabet.gov.tr/File/?path=ROOT%2F1%2FDocuments%2FBa%C5%9Fvuru+Rehberi%2Fpismanl%C4%B1kk%C4%B1lavuz.pdf>.

¹⁸⁸ “Bu bankalardan kredi çektiyse 115 bin lira tazminat alabileceksiniz!”, *Indigodergisi.com*, 3 November 2016, <https://indigodergisi.com/2016/11/bankalardan-kredi-tazminat/>.

¹⁸⁹ Rekabet Kurumu. 2015 Faaliyet Raporu, Ankara, 2015, http://www.rekabet.gov.tr/File/?path=ROOT%2F1%2FDocuments%2FFaaliyet+Raporlar%C4%B1%2F17yillik_rapor.pdf.

1.4.3

Capacities to enforce laws prohibiting collusion

Scoring Question:

Are adequate enforcement capacities available for enforcing laws prohibiting collusion?

The Competition Board is a public legal entity and has administrative and financial autonomy. The Competition Board is composed of presidency, main service departments, supplementary service department and consultancy department and operates within the Ministry of Customs and Trade. The Act on the Protection of Competition not only applies to private enterprises and real persons but also to public enterprises. The Competition Authority has 340 personnel in 2015.

Legislation on competition develops and improves with the decisions of the Competition Board. The Competition Board gives administrative fines similar to those given by the EU legislation.¹⁹⁰ Some decisions of the Competition Board are criticized for applying lower evidential standards that should be improved setting higher standards of proof in order to make competition legislation more understandable and stable.¹⁹¹ The Competition Board has large competences concerning on-the-spot inspection. Limits should be set on these competences in order to prevent their potential abuse.¹⁹² Moreover, some decisions of Turkish Competition Board are criticized for failing to comply with the meeting and decision quorum requirements in its recent decision-making process as these kinds of procedural deviations may affect the interests of private sector.¹⁹³

One of the biggest problems with regard to the supervision and oversight of the Act on the Protection of Competition is that some companies do not regard the provision of benefits from other companies as a disruptive action against free competition so that such actions are not denounced. In order to stimulate and protect free competition, conscious-raising trainings should be organized in private sector and effective investigations should be implemented to enhance free market mechanisms.

¹⁹⁰ Practice Guide by ELIG, Attorneys-at-Law. "Turkey: Secondary Legislation and Board Precedents", *Mondaq*, 15 Ocak 2015, http://www.mondaq.com/ac/content.asp?content_id=1542.

¹⁹¹ İkiler, Bora. "Turkey: Presumption of Concerted Practice In Turkey: Going Back To The Old Days?", *Mondaq*, 20 September 2016, <http://www.mondaq.com/turkey/x/528288/Trade+Regulation+Practices/Presumption+Of+Concerted+Practice+In+Turkey+Going+Back+To+The+Old+Days>; Gürkaynak, Göneng; K. Korhan Yıldırım; Hakan Özgökçen; Buğra Aydın. "Türk Rekabet Hukukunda Uyumlu Eylemlerin İspatı Odaklı İspat Tartışmaları", *Rekabet Dergisi*, 2011, 12(4): 75-125, <http://www.acarindex.com/dosyalar/makale/acarindex-1423911163.pdf>.

¹⁹² Balki, Bahadır; Sera Erzene Yıldız. "Powers During Dawn Raids: Does The Turkish Competition Authority Exceed Its Powers?", *Mondaq*, 19 September 2016, <http://www.mondaq.com/turkey/x/526568/Antitrust+Competition/Powers+during+Dawn+Raids+Does+the+Turkish+Competition+Authority+Exceed+its+Powers>.

¹⁹³ Balki, Bahadır; Ayberk Kurt. "Turkey: Questioning Legitimacy of Turkish Competition Board's Recent Decisions", *Mondaq*, 3 November 2016, http://www.mondaq.com/turkey/x/540482/Antitrust+Competition/Questioning+Legitimacy+Of+Turkish+Competition+Boards+Recent+Decisions#_ftn2.

1.5

SCORE 25

WHISTLEBLOWING

1.5.1

SCORE 25

Whistleblower laws

Scoring Question:

Do the country's laws provide for protection to public and private sector whistleblowers regarding corruption?

Witness Protection Law No. 5276 dated 5 January 2008 privileges the fight against terrorism while the fight against bribery and corruption remains in the second plan. According to the article 3 of the Witness Protection Law, witness protection measures are applied for offenses necessitating life sentence in solitary confinement without parole, life sentence or imprisonment for ten years or more, offences committed in a formation established with the purpose to commit acts that are characterized as offence by the Law, or offences committed in a terrorist formation for which minimum two year or longer period of imprisonment are set. Since the lower limit of imprisonment in bribery offense is four years according to the article 252 of the TCC, it is not possible to benefit from the Witness Protection Law with regard to bribery acts other than those committed in an organization.

Whistleblowing mechanisms are regulated in countries' legislation with dedicated laws, sectoral laws (such as anti-corruption laws, competition laws, law on accountancy), laws specific to public officers and laws protecting whistleblowers in the private sector.

G20 Anti-Corruption Action Plan Protection of Whistleblowers identifies trends across countries' legislation ensuring whistleblower protection as: protection and remedies, use of incentives to encourage reporting, procedures and prescribed channels for facilitating the reporting of suspected acts of corruption, effective protection mechanisms, awareness raising, communication and training, barriers to whistleblowing. G20 Compendium of Best Practices and Guiding Principles for legislation on the protection of whistleblowers emphasizes these principles to ensure an effective whistleblower mechanism:

- Clear legislation and an effective institutional framework are in place to protect from discriminatory or disciplinary action employees who disclose in good faith and on reasonable grounds certain suspected acts of wrongdoing or corruption to competent authorities.
- The legislation provides a clear definition of the scope of protected disclosures and of the persons afforded protection under the law.
- The legislation ensures that the protection afforded to whistleblowers is robust and comprehensive.
- The legislation clearly defines the procedures and prescribed channels for facilitating the reporting of suspected acts of corruption, and encourages the use of protective and easily accessible whistleblowing channels.
- The legislation ensures that effective protection mechanisms are in place, including by entrusting a specific body that is accountable and empowered with the responsibility of receiving and investigating complaints of retaliation and/or improper investigation, and by providing for a full range of remedies.

- Implementation of whistleblower protection legislation is supported by awareness-raising, communication, training and periodic evaluation of the effectiveness of the framework of protection.

According to the article 4 of the Witness Protection Law, if the relatives of people under witness protection, their integrity or property are in heavy or serious danger requiring their protection; the fiancé, husband/wife even if there is no relation of marriage anymore, their blood kin or lineal kin, or secondary kin can be protected via Witness Protection Law. The article 5 of the Law stipulates witness protection measures: furnishing with new ID, address, documents, get the right to hearing without the presence of those entitled to being in court or changing its voice and outlook, putting in a penal institution or detention house according to their situation, providing physical protection, giving temporary financial aid, if the witness is working, getting education, changing its place and school, providing another place to move in, providing another place to live in another country in line with international treaties and reciprocity principle, providing physical surgery changing physical appearance and furnishing with new ID documents. Witness protection measures can be retrieved if the witness provides misinformation about the case or does not declare information he/she is presumed to know, if he/she is convicted for lying or slandering about the event that enabled him/her to benefit from the Witness Protection Law, if he/she gives misleading information and behaves in contrary to witness protection measures and if reasons that led to take witness protection measures do not exist anymore.

1.5.2

SCORE 25

Enforcement of whistleblower laws

Scoring Question:

To what extent does the public sector enforce the laws protecting whistleblowers in the public and private sector?

Witness protection measures are given by the public prosecutor office during investigation or by the public prosecutor and courts during prosecution upon the request from witnesses. During the decision-making process of witness protection measures, security forces and other departments' reports are taken into account. Witness Protection Board is responsible for monitoring and overseeing Witness Protection Law. The Board works within the Ministry of Internal Affairs and is composed of relevant members defined by the law. EU Commission appreciates the signing of memorandum of understanding between Turkish National police and judiciary but underlines the need to clarify cooperation strategy between these institutions.¹⁹⁴

In our interviews, it is pointed out that the institutions that keep the identity information of whistleblowers and send this information to other institutions to determine the reliability of the whistleblower have to take additional measures to keep the witness information confidential. In addition, control measures should be taken to identify whistleblower's credibility and a properly functioning investigation phase should be established between law enforcement agencies to ensure that witness protection program is not used as a means for punishing some people for the purposes of revenge. The offenses included in the Witness Protection Law must be enlarged to include corruption cases.

Witness protection program is used in entire Turkey with the foundation of Witness Protection Departments in every province. According to data of Turkish National Police, 7 people in 2008,

¹⁹⁴ Avrupa Komisyonu, 2015 yılı Türkiye Raporu.

42 in 2009, 20 in 2010, 90 in 2011, 87 in 2012 and 27 in 2013 benefited from the Witness Protection Law and witness protection measures are applied for 273 people including 105 witnesses, 168 relatives of witnesses.¹⁹⁵ Due to witness protection measures, 145 witnesses and relatives of witness moved around to other places, the ID of 109 witnesses changed and the physical appearance of 12 witnesses changed with aesthetic operations. In addition to the Witness Protection Law, whistle blower mechanisms in public institutions are weak. Strengthening Anti-Corruption Practices Project in Turkey offers measures to make whistleblower mechanisms more effective and functional using modern techniques and emphasizes the importance of modern technology to facilitate the anonymity of whistleblower and accessibility to whistle blowing mechanisms. It is expected that this project's recommendations will be put into effect by the Prime Ministry as soon as possible.

Public Officials Ethics Board received 126 applications in 2015 and 16 of them examine allegations of corruption/irregularity. Compared to the size of public sector in Turkey, the number of applications is very small. In the Strategy of Strengthening Transparency and Strengthening Anti-Corruption (2010-2014) proposed in 2010, an article was designed on necessary regulations to protect those who report corrupt acts in public institutions, private sector and non-governmental organizations to competent authorities However, no progress has been made in this regard due to the suspension of this strategy.

There is also a loophole in legislation regarding retaliation as there is no policy on this issue. In our interviews with lawyers, it was pointed out that many of the whistleblowers are in risk of not being protected or pressed by changing administrations especially after the elections. In addition, if the information provided by whistleblower is not proved, it can be interpreted as an insult to public officers and can lead to retaliation against whistleblower. Therefore, the Witness Protection Law needs to set retaliatory measures for a more effective protection of whistleblowers in the public and private sector.

1.6

SCORE 50

ACCOUNTING, AUDITING & DISCLOSURE

1.6.1

SCORE 75

Accounting and auditing standards

Scoring Question:

Does the country's accounting & auditing regulatory framework adhere to internationally recognized standards (e.g. IFRS)?

Turkish Commercial Code (TCC) numbered 6102, enacted in 2012, emphasizes corporate governance principles, transparency and equal competition and makes it compulsory for companies meeting certain criteria to comply with Turkish Accounting Standards (TFRS). *The Public Oversight, Accounting and Auditing Standards Authority (Kamu Gözetimi, Muhasebe ve Denetim Standartları Kurumu, KGK)* established in 2011 has competences to set Turkish Accounting and Audit Standards, publish them, ensure their quality, license independent auditors and independent

¹⁹⁵ "Emniyetten "tanık koruma" açıklaması", *Cnnturk.com*, 04.10.2013, <http://www.cnnturk.com/2013/turkiye/10/04/emniyetten-tanik-koruma-aciklamasi/725889.0/index.html>.

auditing institutions. Companies determined by the KGK are obliged to apply TFRS in their individual and consolidated financial statements.¹⁹⁶ Turkish Accounting Standards are in conformity with International Financial Reporting Standards (IFRS).

Turkish Commercial Code is in line with international standards. It accords to the Council of Ministers the authority to determine companies subject to independent auditing. The Council of Ministers identifies companies that are subject to independent auditing each year, and the scope of independent control is gradually enlarged over time to comply with the EU acquis. Turkish Commercial Code No. 6102 sets its main agenda as to develop a corporate governance approach with international standards, promote private capital and publicly-traded activities and create transparency in management.

Annual financial reports of enterprises determined by the Decree of the Council of Ministers, investment funds and housing and asset financing funds are subject to independent auditing (Article 397 of Turkish Commercial Code numbered 6102). The six-month interim financial statements of investment companies, collective investment companies, mortgage financing institutions, capital market instruments, stock exchanges and/or joint-stock companies that are traded in stock markets or in other organized markets are subject to financial reporting standards issued by the KGK.¹⁹⁷

The auditing of public interest entities is only conducted by independent auditors. Publicly-traded companies, banks, insurance, reinsurance and pension companies, factoring companies, financing companies, financial leasing companies, asset management companies, pension funds, issuers and capital market institutions and their fields of activity, transaction volumes, are obliged to apply Turkish Accounting Standards (the Decree-Law on the Organization and Duties of the Public Oversight, Accounting and Auditing Standards Authority numbered 660) as they are related to public interest.

Companies that are obliged to apply TFRS according to the article 1534 of the Turkish Commercial Code no 6102 are: capital market instruments traded in the stock exchange or in another organized market according to the Capital Markets Law, brokerage entities, portfolio management companies and other companies included in the scope of consolidation, banks and their subsidiaries defined in the article 3 of the Banking Law, insurance and reinsurance companies defined in the Insurance Law dated 3.6.2007 and numbered 5684.

Independent auditing conducted according to the capital market legislation also apply Turkish Auditing Standards (Articles 14 and 36 of the Capital Markets Law No. 6328).¹⁹⁸ Moreover, there are ongoing activities to comply the financial statements of SMEs with TFRS. KGK issued a communiqué about accounting standards for SMEs. This communiqué defines SMEs as companies that are not obliged to accountable to public and as companies that issue general financial accounts for general purposes of external users. The owners who are not in the executive board of companies, current or potential loan lenders and credit rating agencies can be counted as external users.

According to the article 178/1 of the Law No. 5362 on Professional Organizations of Craftsmen and Tradesmen, tradesmen in the first group prepare their books according to the balance-sheet principle in line with the article 177 of Tax Procedure Law,¹⁹⁹ tradesmen in the second group keep their books in line with their operating accounts.²⁰⁰

¹⁹⁶ See KGK Kurul Kararı: http://www.kgk.gov.tr/contents/files/Pdf/Kurul_Karar%C4%B1-degisikliklerislenmis.pdf.

¹⁹⁷ T.C. Sermaye Piyasası Kurulu. Bağımsız Denetim Faaliyeti, <http://spk.gov.tr/indexcont.aspx?action=show-page&menuid=6&pid=9&subid=1&submenuheader=null#konu3>.

¹⁹⁸ Ibid.

¹⁹⁹ 213 sayılı Vergi Usul Kanunu, *Resmî Gazete*, No: 10703 – 10705, Date: 10.01.1961.

²⁰⁰ Kumkale, Rüknettin. “Ticari işletme ve esnaf işletmesi ayrımı”, *Dunya.com*, 17 February 2015, <http://www.dunya.com/kose-yazisi/ticari-isletme-ve-esnaf-isletmesi-ayrimi/22980>.

For all the companies, unlawful and irregular transactions are accepted as null. Moreover, the unlawful and irregular financial accounts of companies subject to audit are accepted as undone and the activity reports of their executive boards are null.

All companies no matter their company status, their size, the number of their members are obliged to register their financial accounts even though they have different bookkeeping methods. Publicly-traded companies under the regulations of Istanbul Stock Exchange have to publish their records on their websites.

The OECD Guidelines for Multinational Enterprises put emphasis upon incentivizing companies for risk management, internal auditing and legal compliance system: “Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.”²⁰¹

In order to fight against corruption, companies should “adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices that prevent the establishment of “off the books” or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.”²⁰² “Anti-Corruption Rules” drafted by International Chamber of Commerce (ICC) encourage the private sector to implement institutional policies on business partners, political and charitable contributions and sponsorships, hospitality, entertainment, facilitating payments, conflicts of interest, human resources, financial and accounting standards.²⁰³

Independent auditing service in Turkey has been strengthened by the Turkish Commercial Code numbered 6102. Shareholders can demand the appointment of an auditor to the company on the basis of conflict of interests. Companies that are subject to independent auditing are audited by independent auditors and independent audit institutions authorized by the KGK. Nevertheless, independent auditors conducting audits of public interest affiliates²⁰⁴ are obliged to prepare annual transparency reports, submit this to the KGK and publish them on their websites. According to the KGK legislation, these reports examine the legal and operational structure of the company, their quality assurance system and ongoing training processes. Auditors also monitor the compliance of financial statements with TFRS.

Internal auditing in Turkey is more common among large companies, companies with international investment and publicly-traded companies. The auditor is elected by the general assembly of the company, and the group auditor of the holding is elected at the general assembly of the parent company before the end of operating period. Selected auditors are registered in the trade registry and published it in the Turkish Trade Registry Gazette by the Board of Directors. If there is any doubt about the impartiality of selected auditor, the court of first instance at the place where the company’s headquarters is located may appoint another auditor.

²⁰¹ OECD. OECD Çok Uluslu Şirketler Rehberi, http://www.ekonomi.gov.tr/portal/content/conn/UCM/path/Contribution%20Folders/web/Yat%4b1r%4b1m/Yurtd%4b1c59f%4b1na%20Yat%4b1r%4b1m/ekler/oecd_CUSR_TR_tercume_PDF.pdf?lve.

²⁰² Ibid.

²⁰³ Milletlerarası Ticaret Odası, ICC Yolsuzlukla Mücadele Kuralları, 2011, http://icc.tobb.org.tr/docs/2015/ICC_yolsuzluklarla%20mucadele.pdf.

²⁰⁴ Public interest entities described in the first paragraph (4) of Article 4 of the Independent Auditing Regulation determined by KGK are as follows: public companies, banks, insurance, insurance and pension companies, factoring companies, finance companies, leasing companies, asset management companies, pension funds as they are significantly related to the public according to the issuers and capital market institutions defined in the Capital Markets Law no.6362 dated 6/12/2012 and their fields of activity, transaction volumes, number of employees employed and similar measures.

Auditor is selected among people and/or partners authorized by the KGK and capital companies carrying the title of certified public accountant or sworn-in certified public accountant according to the Law No. 3568 on the Independent Accountancy, Certified Public Accountancy and Chartered Accountancy (article 400 of the Turkish Commercial Code).

Auditor cannot have any ties with the company subject to auditing. Auditor asks for all necessary information and documents necessary to conduct a proper audit from the board of directors. Auditor is responsible to disclose his/her opinion on the assessment of the board of directors regarding the financial status of the company and the group. This opinion explains the sustainability of the company and the group, its future development, its financial status. It observes the compliance with TFRS.

Auditor may give a negative opinion if he/she has reservations. If financial statements contain irregularities that can be corrected by the board of the company and if these irregularities are not comprehensive and major changes, auditor can give a limited positive opinion. If there are irregularities in the company's books that will not allow a proper auditing, auditor may refrain from giving opinions by explaining its reasons. Any reservation results in negative opinion. In case of negative opinion, the board of directors invites the general board to the meeting within four working days from the date of submission of the written opinion and this general board elects a new board. Within six months, the new board of directors prepares financial statements in compliance with the law and standards and submits them to the general assembly with the audit report (Article 403 of the Turkish Commercial Code).

Auditors are responsible for damaging the company due to negligence of their obligations and damages can be awarded up to 100,000 TL for each audit and up to 300,000 TL for corporations traded on the stock exchange (Article 400 of the Turkish Commercial Code).

Moreover, not only publicly-held companies but also those attracting international investment have to keep financial accounts in line with international standards (like ISA) and have to share their accounts with public. The companies traded in Istanbul Stock Exchange have to publish their 6 months and 12 months accounts subject to auditing and their 3 months and 9 months accounts that are not subject to auditing in Public Disclosure Platform (*Kamu Aydınlatma Platformu*, KAP).

1.6.2

SCORE 50

Enforcement of accounting and auditing standards

Scoring Question:

Is the adherence of the country's accounting & auditing regulatory framework enforced in practice?

The Ministry of Finance issued regulations based on the article 175 and the duplicated article 257 of Tax Procedure Law No.213 with the general communiqué about the application of accounting system No. 21447 dated 26.12.1992, these regulations are about:

- Fundamental concepts of accounting;
- Declaration of accounting policies;
- Principles of financial statements;
- Categorization and presentation of financial statements;
- Uniform accounting plan and its operation.

In the article 353 of the Tax Procedure law No.213, there is a special punishment for irregularities in uniform accounting plan as “those who do not comply with accounting standards, uniform accounting plan and rules and procedures about financial statement and rules and standards of producing of computer apps for accounting shall be punished with special irregularity punishment for 5.000,00 TL.”²⁰⁵

The ministry of Finance and other institutions apply penalties for irregularities in financial statements and incompliance with TFRS.

The first external auditing of publicly-traded companies began in 1989 and spread into banking, Finance Corporation, assurance companies, companies operating in energy sector.²⁰⁶ Financial statements of companies with international capital, publicly-traded companies and companies operating in Istanbul Stock Exchange are more properly kept. But in SMEs that compose 99.9% of Turkish economy, there are irregularities and informality even though their financial statements are being monitored by the Ministry of Finance.

The benefits of TFRS for SMEs are the ability to make business information comparable, increase the reliability of financial statements, facilitate the transition to IFRS, sustain financing, reduce the complexity of accounting system and institutionalize SMEs increasing their role in global market.²⁰⁷ Difficulties that may arise in the application of TFRS for SMEs are the lack of experts, additional financial burden, weak institutional structure, compliance problems with tax laws, unregistered economy and the difficulty of understanding its software applications.²⁰⁸

In case of illegal financial statements, administrative fines are imposed regardless of partnership structure and size of companies.

The fraud and forgery in financial statements, accounts and financial documents are regulated in the article 359 of Tax Procedure Law No.213. According to the article 359:

- 1) *Those who commit fraud in accounts and accounting records, those who open accounts for unreal persons or on behalf of unrelated persons or those who register required accounts and transactions in order to reduce the tax base in other books, documents or other records other than relevant books;*
- 2) *Those who tamper with books, records and documents, or who conceal or mislead the contents or use those documents shall be sentenced to eighteen months and up to three years in prison.*

Moreover, according to tax laws, those who tamper with books, records and documents, those who prepare false accounting books and those who provide fake documents shall be sentenced to prison between three to five years. Legal entities who act against the tax legislation are sentenced to tax fines on their behalf (Tax Procedure Law, article 333). The penalties in the article 359 and other laws, tax evasion fine and irregularity fines can be subject to separate investigations and cannot be merged (Tax Procedure Law, article 340).

Tax evasion is defined in the article 341 as “tax warrant is not paid on time or it is partial paid because the taxpayer or the responsible person does not fulfill its taxpaying duties on time or fall

²⁰⁵ TOLUEN Yeminli Mali Müşavirlik, Denetim, Danışmanlık, <http://www.toluenymm.com/mukellef-panosu/263-vergi-incelemeleri-sonucunda-tek-duzen-hesap-planina-uyulmadi-gi-gerekcesiyle-kesilen-ozel-usulsuzluk-cezalarina-yargi-onayi>.

²⁰⁶ Seçkin, Gönen; Uzay Şaban. “Türkiye’de Bağımsız Denetim Kuruluşlarının Görünümü”, Erciyes Üniversitesi, http://iibf.erciyes.edu.tr/akademi/mh/suzay/Denetim_Kuruluslari.pdf.

²⁰⁷ Bozdemir, Enver. “KOBİ’ler İçin Türkiye Finansal Raporlama Standartının Uygulama Sürecine İlişkin Tespit Ve Değerlendirmeler”, *Uluslararası İktisadi ve İdari İncelemeler Dergisi*, 2014, 12: 85-108.

²⁰⁸ Ibid.

short of fulfilling them". In the case of tax evasion due to fraud and forgery in accounts, the penalty is applied three folds. It is applied one fold to the participants of such acts. The penalty for tax evasion is implemented as fifty percent for financial statements that are issued after the legal period except for tax investigation period or those who are issued after its submission to appraisal commission.

The list of persons and institutions paying the highest tax are open to public. The oft-made tax amnesties and restructuring of tax payments decrease tax awareness in Turkey. This situation also influences the competition in the private sector.

Turkey has an unfair tax system. Almost two-thirds (63,38%) of tax revenues, excluding social security contributions, are derived from indirect taxes. In other words, an important part of the tax burden comes from by indirect taxes. Turkey ranks the 27th among 35 countries of OECD in terms of tax revenue to GDP.²⁰⁹ As we will explain in more detail in the 1.9 Tax and Customs section, it is common among especially SMEs to provide invoices with a lower Value Added Tax (VAT) and make tax evasion. Companies that do not pay taxes are rewarded rather than punished by tax amnesties while companies that pay taxes in spite of rising costs are not rewarded at all.

Concerning enforcement of the law, fines and sanctions are defined in the law but real and legal persons that receive these sanctions and fines are imposed are not shared with public to protect taxpayers' credibility.

SCORE **75**

1.6.3

Professional service providers

Scoring Question:

Are the country's professional service providers (for accounting, auditing, rating or other related advisory services) required to comply with internationally recognized standards?

The development of the accountancy profession in Turkey is influenced significantly by the development of tax laws and regulations.²¹⁰ For this reason, accounting, for many companies, means to be accountable to tax authorities.

According to studies conducted on accountants in Turkey, accountants have a negative view on the application of IFRS to SMEs.²¹¹ Its reasons are stated as additional cost of work, difficulty to learn and implement the standards, and incompatibility of the charts. Another reason that makes IFRS more difficult to implement is the tax-oriented perspective of SMES toward accountants.²¹² The liability of accountants for the use of misleading documents has been criticized for

²⁰⁹ Uluslararası Şeffaflık Derneği. Türkiye'de Dolaylı Vergiler ve Vergi Adaleti, 2016, <http://www.seffaflik.org/wp-content/uploads/2017/02/Turkiyede-dolayli-ve-dolaysiz-vergi.pdf>.

²¹⁰ Cooke, T. E.; T. Çürük. "Accounting in Turkey with reference to the particular problems of lease transactions", *European Accounting Review*, 116, 5 (2): 339-359.

²¹¹ Erdoğan, Murat; Engin Dinç. "Türkiye Muhasebe Standartları ve Muhasebe Meslek Mensuplarının Bilgi Düzeylerinin İncelenmesi", *Muhasebe ve Denetim Bakış Dergisi*, 2009, 43: 154-169; Fidan, Meral Erol; Hasan Cinit. "Muhasebe Meslek Mensuplarının Mesleki Tecrübeleri ile Muhasebe Standartlarına Yönelik Algıları Arasındaki İlişki Üzerine Bir Araştırma: Marmara Bölgesi Örneği", *Muhasebe ve Finansman Dergisi*, October 2013: 1-25.

²¹² Arsoy, Aylin Poroy; Tuba Bora. "KOBİ Muhasebe Standartlarının Gelişimi ve Türkiye Uygulaması Üzerine Bir Araştırma", *Muhasebe ve Finansman Dergisi*, 2012, 56: 17-28.

punishing professional accountants while protecting business owners.²¹³ The size of informal economy in Turkey is also an important obstacle for accountants to do their jobs properly.

The accountants are licensed by the Union of Chambers of Certified Public Accountants in Turkey (*Türkiye Serbest Muhasebeci, Mali Müşavirler ve Yeminli Mali Müşavirler Odaları Birliği*, TÜRMOB) that set the professional standards. In order to prevent unfair competition in accounting, TÜRMOB determined mandatory standards for a quality accountant profession.

The independent auditing in Turkey is executed by independent auditing institutions and independent auditors that are licensed by KGK. KGK gives license to people who are selected among certified accountants and sworn-in certified accountants. In order to be an independent auditor, the title of public accountant, certified public accountant and sworn-in public accountant is required (Turkish Commercial Code Article 400 and Decree Law No. 660).

Especially during bankruptcy periods, all eyes are turned to auditors and audit companies. Some studies display that ownership and family control in developing markets are influential in selecting auditors.²¹⁴ While companies with more diverse ownership structure demand higher quality auditing, companies with a significant relationship between ownership structure and family firms want to work with lower quality auditors and audit firms. A study on 33 firms under financial pressure in the manufacturing sector traded in Istanbul Stock Exchange between 1998 and 2006, reveals that auditors failed to disclose a proper opinion in the previous year before the bankruptcy.²¹⁵

Independent auditors monitor whether financial statements and financial information are in line with standards, audit books, registers and documents implementing independent auditing techniques and report their assessment.²¹⁶ Auditors and independent auditing institutions execute their function within the framework of legislation and independently from public institutions and companies.

KGK attributes a registry number to each auditors and auditing institutions and those who are not registered are not authorized to conduct auditing. KGK can also apply administrative penalties such as fines, suspension of operations, invalidation of license or its suspension. These fines are registered in registry electronically and up-to-date information about this registry is shared with public on its website (Regulation on Independent Auditing article 17).

According to the KGK 2015 Annual Report, as of 31 December 2015, the number of registered independent auditing firms was 196. In total, 2,085 auditors were assigned to these 196 auditing companies, 943 of which were responsible auditors. A total of 314 independent auditing firms and independent auditors, 179 of which were independent auditing firms and 135 were independent auditors, conducted auditing in 2015.²¹⁷

There are criticisms about the inability to establish independent audit firms jointly by sworn-in certified accountants and general public accountant in Turkey, necessity to establish independent auditing firms as a capital company in order to be authorized by the KGK, liability of inde-

²¹³ Gökçe, Hüseyin. "TURMOB Başkanı Prof. Dr. Cemal Yükselen ile Söyleşi", 28.11.2016, *Dünya Gazetesi*, p.13, <http://www.turmob.org.tr/Attachment.aspx?param=2IDREYITixZdnsc29laoYUhfduUxvezAdq9sLVcZ1NmDn-q10fxHgCT8ZWdljemWkLXjv8uZEQJo=>.

²¹⁴ Darmadi, Salim. "Ownership concentration, family control, and auditor choice: Evidence from an emerging market", *Asian Review of Accounting*, 2016, 24 (1): 19-42.

²¹⁵ Adiloğlu, Burcu; Bengü Vuran. "A Multicriterion Decision Support Methodology for Audit Opinions: the Case of Audit Reports of Distressed Firms in Turkey", *The International Business & Economics Research Journal*, 2011, 10 (12): 37-47.

²¹⁶ Bağimsız Denetim Yönetmeliği, Resmi Gazete, Number: 28509, Date: 26.12.2012

²¹⁷ Kamu Gözetimi, Muhasebe ve Denetim Standartları Kurumu. 2015 Faaliyet Raporu, Ankara, p.74-75, http://kgk.gov.tr/Portalv2Uploads/files/DynamicContentFiles/YillikFaaliyetRaporlari/KGK_Faaliyet_Raporu_2015.pdf.

pendent auditing firms for damages caused by auditors even though these auditors had already left their job in the relevant auditing firm.²¹⁸

Turkish Commercial Code No. 6102 and the KGK introduced audit firm rotation in line with ethical principles. According to the “Announcement Regarding the Calculation of Rotation Periods” of the KGK dated 9.10.2014, if the same auditor conducts auditing for a total of seven years consecutively, new auditors and auditing companies must be assigned.

1.6.4

SCORE 25

Beneficial ownership

Scoring Question:

Do the country's laws require public information on the beneficial ownership for companies, trusts and other legal structures?

The beneficial owner is the real person who owns, control, enjoys the benefits of a resource (real estate, company, funds etc.) that generates an income. This term is mainly used to separate registered legal owners, trustees, directors of a company from the real persons who ultimately have the right to possess and enjoy the incomes generated by the company. The registration of beneficial owners and generating a database about beneficial ownership play a vital role in pursuing illegal capital outflow and punishing real beneficial owner.²¹⁹ Panama documents and its ensuing scandals in the last year displayed the pervasive usage of shell companies and offshore accounts for laundering proceeds of crime and showed once more the importance of regulations for beneficial ownership in the fight against corruption.

There is no obligation to declare beneficial ownership and no database of beneficial ownership in Turkey. Only 5335 numbered Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism defines beneficial owner as “*natural person(s) who ultimately control(s) or own(s) natural person who carry out a transaction within an obliged party, or the natural persons, legal persons or unincorporated organizations on whose behalf a transaction is being conducted within an obliged party*” and highlights the need to take measures in order to reveal the information about beneficial ownership in laundering proceeds of crime.

Every company in Turkey has to apply and make a trade registration with an advertisement in the Turkish Trade Registry Gazette. However, the Directorate of Trade Registry has no competency to verify information; thus, information in the Trade Registry can be untrue and the can be inconsistencies between registration and information in Turkish Trade Registry Gazette.²²⁰

Access to beneficial owner information is easier for companies and their partners that are publicly traded and/or traded in Istanbul Stock Exchange since these companies are obliged to inform the public and their declarations must be announced in their annual reports, corporate internet sites and KAP. Regarding investment funds, the Article 31 of the Communiqué on Principles of Investment Funds states:

²¹⁸ Ak, Bülent. “Denetim Mesleğinin Ülkemizdeki Serüveni, Yaşanan Sorunlar ve Çözüm Önerileri”, İzmir Yeminli Mali Müşavirler Odası, January - February 2016, 130: 38-51, <http://www.izmirymmo.org.tr/usercontent/images/130-sayi-dergi-ocak-subat-2016.pdf>.

²¹⁹ See Glossary of Transparency International: https://www.transparency.org/glossary/term/beneficial_ownership

²²⁰ Zıngıl, Özlem. Gerçek Lehtarın Şeffaflığı, 2015, İstanbul: Uluslararası Şeffaflık Derneği, <http://www.seffaflik.org/wp-content/uploads/2015/02/BO-T%C3%BCrkiye.pdf>.

(1) Founder and manager notify to portfolio custodian in writing both the names, addresses and rates of participation of issuers and persons listed in the third paragraph of Article 17 of this Communiqué and other information required for performance by portfolio custodian of its obligations arising out of the Law, in January every year and in case of changes therein, within six business days following the date of change.

(2) The Board may, if deemed necessary, ask for information about funds, without being bound by the periods set forth in this Communiqué.

(3) Upon occurrence of extraordinary events such as war, natural disasters, economic crisis, collapse of communication systems, or closure of market, marketplace and platform of portfolio assets, failures in computer systems, or emergence of significant information that may affect the company's financial situation, the founder's board of directors may take a decision about determination of valuation principles. In this case, valuation principles are required to be inserted in the decisions book including their justifications and notified to the Board and the portfolio custodian. Furthermore, public is also informed about these events.

(4) It is in the responsibility of the founder to completely publish all information and documents required to be announced in PDP, and to ensure accuracy of them, and to keep them updated.²²¹

The Members of G-20 accepted in 2014 “High-Level Principles on Beneficial Ownership Transparency”, thus, the transparency of beneficial ownership turned into a requirement to sustain financial transparency. Transparency International prepared a technical guide about the legislation of beneficial ownership in July 2015²²² and launched a study about the harmonization of countries' legislation with the requirements of beneficial ownership. The study of Transparency-International-Turkey in 2015 on “Transparency of Beneficial Ownership in Turkey” underlines that identification of beneficial owner is easier for financial institutions as they apply due diligence to their customers. Concerning legal entities, financial institutions in Turkey are obliged to identify owners possessing 25% of their shares or the one that lead their clients or corporate status.

Turkish enforcement authorities have limited access to information during the prosecution and punishment of beneficial owners because of the void in the legislation about beneficial ownership. MASAK conducts research in the framework of the prevention of laundering proceeds of crime and terrorist financing. Transparency International-Turkey recommends to make obligatory the information on beneficial ownership for high-risk persons or companies and declaration of additional information when beneficial owner are PEPs.

²²¹ Sermaye Piyasası Kurulu. Yatırım Fonlarına İlişkin Esaslar Tebliği, article 17.

²²² See Martini, Maíra. Technical Guide Implementing the G20 Beneficial Ownership Principles, Transparency International, 2015 http://files.transparency.org/content/download/1929/12727/file/2015_ImplementationG20BOPPrinciples_EN.pdf.

1.7

SCORE 25

PROHIBITING UNDUE INFLUENCE

1.7.1

SCORE 25

Laws on political contributions

Scoring Question:

Is undue influence in the form of political contributions from the private sector to political parties and/or individual candidates prohibited by law?

Direct public funding is only available for political parties in Turkey. There is no direct public funding for election campaigns and candidates of parliament, local or presidency elections. While this direct public funding compose the 90% of political parties' resources, it declined to 50% for three parties (AKP, CHP and MHP) recently.²²³ An appropriation to be paid by the Treasury is allocated to political parties and is paid by the current year's general budget revenues.

With the amendment in 2014, the threshold for direct public funding in parliament elections declined from 7% to 3% and the aid foreseen cannot be less than 1,000,000 TL. The previous 7% threshold that caused an unfair distribution of direct public funding until 2015 led to an aid monopoly at the hand of AKP, CHP and MHP.²²⁴ Kurdish political movement that received 6,5% of the votes and entered into parliament as independents because of 10% electoral threshold could not receive any of direct public funding. On 1 November 2015 general elections, direct public funding to be distributed to eligible political parties that passed 3% threshold is allocated in proportion to the amount of state aid to the party that passed 10% electoral threshold. This distribution is not fair and equal and an equitable distribution needs to allocate state aid in proportion to their votes.²²⁵ Moreover, this 3% threshold is still undermining the capacity of new and alternative parties in the political arena and prevents an equal political competition. The amount foreseen is set in the budget of the Ministry of Finance each year on September and allocated in the first ten days of the January. Planned and paid direct public funding is set in consolidated budgets of the Ministry of Finance and can be followed in its statistics. Since its statistics are published in every quarter of the year, this amount of appropriation can be viewed by public. There can be small differences in the planned and paid public funding due to tax and other accounts. Global Integrity Index finds the distribution of direct public funding in Turkey satisfactorily transparent.²²⁶

According to the article 61 of the Political Parties Law No. 2820, political parties can sustain funding from these sources: subscription fees from new members and membership fees; fees from deputies, special fees from deputies, mayors, local council members and candidates to

²²³ Gençkaya, Ömer Faruk; Umut Gündüz; Damla Cihangir-Tetik. *Siyasetin Finansmanı ve Şeffaflık*, 2016, İstanbul: Uluslararası Şeffaflık Derneği, p.28, http://www.seffaflik.org/wp-content/uploads/2015/03/siyasetin-finansman%C4%B1-rapor_Ocak-2016.pdf.

²²⁴ Toker, Çiğdem. "Üç Partiye 538 Milyon TL Akacak", *Cumhuriyet.com*, 18 October 2014, http://www.cumhuriyet.com.tr/koseyazisi/131699/Uc_Partije_538_Milyon_TL_Akacak.html.

²²⁵ Gençkaya, Ömer Faruk. *Siyasetin ve Seçim Kampanyalarının Finansmanı: Rekabet, Şeffaflık ve Hesap Verebilirlik*, Demokrasi Barometresi, Analiz Raporu No:4, İstanbul: Denge ve Denetleme Ağı, 2015, p.19.

²²⁶ Global Integrity. *Money, Politics and Transparency*, <https://data.moneypoliticaltransparency.org/countries/TR/>.

local councils, resources from party flags, pennants and similar materials, selling their published documents, resources from activities organized by the party, resources from the party's properties, party identification card fees, fees from party books, receipts and papers and donations. Political parties and candidates to presidential elections cannot get financial aid from foreign sources such as foreign countries, international organizations, foreign real or legal entities. Political parties are closed permanently in such a case according to the article 69 of the 1982 Constitution. However, there is no similar regulation in local and parliament elections.

According to article 67 of the Political Parties law numbered 2820, political parties cannot be involved in trade activities, borrow loans and debts. Article 67 states that political parties can obtain goods from real and legal entities pointed at first and third paragraphs of the article 66 in order to meet their needs. This kind of regulation is lacking in Presidential Elections Law No. 6721. There are no similar regulations for candidates in local and parliament elections either.

Resources and expenditures of political parties must be in compliance with their goals. Political parties' resources are exempt from any kinds of tax and fees. Their accounts are monitored by the Constitutional Court by the help of Turkish Court of Accounts. The amendments made by the 611 numbered omnibus bill reduced the supervision capacity of the Constitutional Court and reduced it to a technical monitoring.²²⁷

The report of Transparency International-Turkey entitled "Transparency and Integrity in Political Financing" highlights that with the amendments introduced in the article 74 by the omnibus bill No.6111, violations and irregularities in political financing are likely to increase: "monitoring that is executed in line with the law cannot be conducted in a manner to narrow the activities that are considered useful or to control its appropriateness" and "political parties can realize any expenditures that are considered appropriate to realize their political activities". These changes generated the opportunity for political parties to open any kind of tenders for their procurement of services, goods or facilities; to use irrelevant receipts in case the real receipts of expenditures are lost or burned and to use irrelevant receipts provided by people who are not member of the political party.²²⁸

Turkish legislation has void with regard to electoral campaigns' financing except Presidential Elections law no.6721. Even though the Constitution regulates that the finances of electoral campaigns and their methods is determined by law (article 69), no regulation exists apart from propaganda, membership fees and Supreme Election Council (*Yüksek Seçim Kurulu*, YSK) elections financing (article 11, 50-66,181-186 of the Law No.298; article 21 of the Law No. 2839 and article 10 and 13 of the Law No.2972).²²⁹

There is no upper limit for the expenditures of political parties and individual candidates during elections. Checks and Balances Network's (*Denge ve Denetleme Ağı*) Report entitled "Political and Elections Campaigns Financing: Competition, Transparency and Accountability" draws attention to the fact that the lack of upper limit in expenditures lead politicians toward illegal financing resources and vote-buying through certain activities (concert, activities) and make it easier to distract public opinion veering public attention into irrelevant issues.²³⁰ The lack of upper limit in expenditures coupled with the void in legislation for third-party contributions makes political financing vulnerable to the use of undue influence and corruption. Legislation is also

²²⁷ Gençkaya, Ömer Faruk; Umut Gündüz; Damla Cihangir-Tetik. *Siyasetin Finansmanı ve Şeffaflık*, p.31-32.

²²⁸ Ibid.

²²⁹ Gençkaya, Ömer Faruk. *Cumhurbaşkanı Seçim Kampanyası: Adiliet, Şeffaflık ve Hesap Verebilirlik*, İstanbul: Denge ve Denetleme Ağı, Analiz Raporu No: 2, 2014, p.15.

²³⁰ Gençkaya, Ömer Faruk. *Siyasetin ve Seçim Kampanyalarının Finansmanı: Rekabet, Şeffaflık ve Hesap Verebilirlik*, p.43.

lacking concerning political financing rules for independent candidates. Regarding influence of third parties on elections campaigns, there are rules about their influence on broadcasting and public opinion surveys (article 55/B of the Law No 298).

Concerning donations, Political Parties Law introduced bans on public institutions and associations. According to the article 66:

“General and annexed budget agencies, local administrations and neighborhood representatives, state economic enterprises, banks and other institutions established by special law, institutions, administrations, undertakings, banks that are not considered to be state economic enterprise but part of their capital belongs to state cannot donate in any way movable or immovable property or cash or right and cannot leave the use of these properties or rights free of charge; they cannot use any competences other than the provisions of the law that are related to transfer of in-kind contributions.”

If there are no other provisions in special laws; public professional organizations, labor unions, employers’ associations and their higher bodies, organizations, foundations and cooperatives can provide financial aid and donations to political parties. Real and legal persons outside these institutions cannot give financial and in-kind donations to political parties more than 2,000 TL in the same year or enable political parties’ access to airtime. This amount is regulated every year. The upper limit of donations to political parties in 2014 was 31,917 TL. But there are no regulations on donations from real and legal persons in local and parliament elections. Political Parties law No.2820 and Presidential Elections Law No. 6721 ban anonymous contributions. But there is no similar regulation in this matter in local and parliament elections. There is no regulation on contributions to individual candidates either.

Presidential Elections Law set no limits on donations. In presidential elections, candidates cannot receive donations or contributions from legal bodies other than donations and contributions from their supporters. The candidate cannot accept in-kind contributions and financial aid that pass the monthly gross salary of the highest civil servant for each round. With a decision on 6 June 2016, YSK authorized political parties to make election campaigns in favor of their candidates.²³¹ Another decision on 2 July 2014 authorized political parties to support their political candidates paying advertisement costs without any obligation to report them and without any limits. This regulation stifles fair and equal competition privileging economically powerful political parties and candidates.

In-kind contributions to political parties are not properly set in political parties’ accounts. The reason is that political parties do not use receipts or vouchers in practice to document in-kind contributions.²³²

In the final accounts of political parties, political parties should annex the lists of immovable property and movable property whose worth is over 1,000 TL, securities and all equities acquired by the political party during the same accounting period, as well as the date and manner in which they have been acquired should be indicated (article 74 of Political Parties Law No.2820). Thus, in-kind contributions over 1,000 TL should be documented. In the law on the Establishment and Rules of Procedure of the Constitutional Court No. 6216, there is no regulation under the title of “Financial Supervision of Political Parties”. This kind of regulation is lacking for individual candidates in local and parliament elections either.

²³¹ Yüksek Seçim Kurulu Kararı. No:2913, 6.6.2014, <http://www.ysk.gov.tr/ysk/content/conn/YSKUCM/path/Contribution%20Folders/Kararlar/2014-2913.pdf>.

²³² Global Integrity. Money, Politics and Transparency.

According to the provisions of elections bans in the Law No. 298 on Basic Principles of Elections and Electoral Registry, public officials have to be impartial and cannot give donations and contributions to candidates. It is forbidden to use or make use of tools and equipment under their control for electoral campaigns (Article 62-63). Despite these bans, it is very common to use state resources including state television named as Turkish Radio and Television Corporation (*Türkiye Radyo Televizyon Kurumu*, TRT) for elections campaigns and these violations are widely reported in the media during electoral periods. Prime Minister, ministers and deputies cannot use public vehicles and facilities during electoral periods and public officials cannot participate in their electoral campaigns (article 65). It is forbidden to organize official inaugurations and meting concurrent with campaign activities in order to use public vehicles and facilities and public officials cannot participate in campaign activities (article 66). State, annexed budget administrations, offices and institutions connected to municipalities, state economic enterprises, institutions and associations founded by state and public officials and servants in other public legal entities cannot distribute electoral advertisements (article 62/2). It is forbidden to use state offices, legal public entities and institutions connected to them, institutions and associated owned directly or indirectly by the state or public legal entities, associations working in public interests whose resources or opportunities are provided by the law and foundations that benefit from public funding and special tax exemptions, public professional organizations and producers' associations, cooperatives, banks and syndicates as electoral bureaus (article 51/A). Closed meetings cannot be organized in sacred places, schools, military buildings and facilities, military areas such as barracks, headquarters, encampments and other areas in use of public services (article 51). It is forbidden to make propaganda by sending verbal, written, video messages to e-mails, cellphones or telephones (article 55/2). From the first day of elections to the day following voting, it is forbidden to make political broadcasting using advertisement, sports and vehicles inside or outside the city, rail vehicles in air, land, navy (article 61/2). Activities in which these bans are not implemented are “*National holidays, independence days, meetings, entertainment and farewell occasions of the President and of foreign Presidents and Prime Ministers and their ministers, inaugurations of the judicial years and universities and of international organizations and fairs and evidently in natural disasters*” (additional article 6). In order to ensure impartiality in elections, the Minister of Justice, of Internal Affairs and of Transportation resigns prior to parliament elections. If it is snap elections, independents from inside or outside the Parliament are assigned to these ministries following five days prior to the decision (article 114 of the Constitution). However, these bans are more attentively and strictly applied during official campaign period, it widely common to use state resources in the entire electoral period. Observation Report on 1 November 2015 elections of OSCE (Organization for Security and Co-operation in Europe) Office for Democratic Institutions and Human Right notes that electoral bans are applied more strictly during official propaganda period while these bans are more flexible during entire electoral campaign period and this obstructs a fair and equitable competition during entire electoral period.²³³ Moreover, the fact that state television, TRT, makes the propaganda of ruling party all the time not just during electoral period impedes equal and fair political competition. The fact that the majority of reports issued by the Radio and Television Supreme Council (*Radyo ve Televizyon Üst Kurulu*, RTÜK) for 7 June 2015 elections are in the name of TRT is one of the biggest indicators that public resources are not used impartially during electoral periods.²³⁴ In addition, the fact that broadcasting period allocated to opposition parties is very low compared to the party in government is criticized by opposition parties.²³⁵ Violation of elec-

²³³ Demokratik Kurumlar ve İnsan Hakları Bürosu. Türkiye Cumhuriyeti 1 Kasım 2015 Milletvekili Erken Seçimleri AGİT/DKİHB Sınırlı Seçim Gözlem Heyeti Sonuç Raporu, Varşova, 28 January 2016, p.11, <http://www.osce.org/tr/odihr/elections/turkey/223231?download=true>.

²³⁴ “YSK’dan En Çok Rapor TRT’ye, Ama En Çok Ceza TGRT’ye”, *BİA Haber Merkezi*, 9 July 2015, <http://bianet.org/bianet/medya/165902-ysk-dan-en-cok-rapor-trt-ye-ama-en-cok-ceza-tgtr-ye>.

²³⁵ “TRT’nin ayırdığı süreler tepki”, *Hürriyet.com*, 27 October 2015, <http://www.hurriyet.com.tr/trtnin-ayirdigi-surel->

toral bans by the ruling party/parties renders the inspections and monitoring institutions ineffective damaging the rule of law, credibility of law and legal operation of the system.

The report of Transparency International-Turkey examining violations of the 7 June 2015 electoral period identified 26 violations in five major areas: conducting election campaigns using public funds; buying votes, distributing gifts for propaganda purposes; violations of prohibitions concerning civil servants, prime ministers, ministers and members of parliament; violations of bans on activities that should not be organized during election periods; breach of electoral security and violation of bans regarding an impartial electoral period.²³⁶

Violations and irregularities in public finance affect also negatively political financing. Checks and Balances Network's report on 1 November 2015 general elections indicate these irregularities as:

- High electoral threshold;
- Deficiencies in fair and equal distribution of state aid;
- TRT's loss of independence of and non-efficient supervision of RTUK due to the way of their appointment;
- Use of state resources for electoral campaigns;
- Affecting voters' preferences with social policies;
- Influencing public procurement by the biased relations between politics and business and/or politics and media;
- Overuse of advertisement spots at the hand of municipalities by the party in power;
- Gender gap in candidacy and political financing.

In our interviews, there were also claims that election equipment was bought and distributed by businessmen in order to benefit from the supported candidates, and that companies record these expenditures by providing irregular documents in their financial statements. This situation illustrates that political financing is affected by problems in the operation of public system. Therefore, structural reforms needed in public sector have a key role in ensuring transparency and accountability in political financing.

The second evaluation report of GRECO on Turkey gives these recommendations in order to ensure transparency in political financing:

- to ensure that annual accounts of political parties include a) income received and expenditure incurred individually by elected representatives and candidates of political parties for political activities linked to their party, including electoral campaigning, and b) as appropriate, the accounts of entities related, to political parties or otherwise under their control;
- to take appropriate measures to ensure that annual accounts of political parties provide more detailed and comprehensive information on income and expenditure, including the introduction of a standardized format backed up by common accountancy principles, as well as the provision of guidance to parties by the monitoring body;
- to ensure that annual accounts of political parties and monitoring reports of the supervisory body are made easily accessible to the public, within timeframes to be specified by law;

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²³⁶ Uluslararası Şeffaflık Derneği. 7 Haziran 2015 Milletvekili Genel Seçimi Dönemine İlişkin İhlaller ve Yüksek Seçim Kurulu, 2015, <http://www.seffaflik.org/wp-content/uploads/2015/06/secim-rapor-SMALL.pdf>.

- to regulate transparency in the financing of parliamentary, presidential and local election campaigns of political parties and candidates and, specifically, to find ways of increasing the transparency of contributions by third parties;
- to require political parties and election candidates to regularly disclose all individual donations (including of a non-monetary nature) they receive above a certain value, indicating the nature and value of each donation as well as the identity of the donor, including during the electoral campaign period;
- to introduce independent auditing of party accounts by certified experts;
- to complete the supervision of the party accounts with specific monitoring of the campaign financing of parties and candidates, to be effected during and/or shortly after presidential, parliamentary and local elections;
- to ensure more substantial, pro-active and swift monitoring of political financing, including investigation of financing irregularities and closer cooperation with the law enforcement authorities;
- to increase the financial and personnel resources dedicated to the control of political financing;
- to introduce effective, proportionate and dissuasive sanctions for infringements of yet-to-be established regulations concerning election campaign funding of political parties and candidates.

“Draft Bill on the Amendment of Certain Laws for the Purpose of Ensuring Transparency in the Financing of Elections” that takes into account GRECO recommendations was prepared by the government but left in the shelves due to upcoming elections. In response to GRECO criticisms, the capacity of a special unit – the “24th Group Presidency” in the Court of Accounts that is charged with conducting financial audit of political parties was increased but loopholes in legislation on political parties are not still fulfilled. Thus, Second Interim Compliance Report on Turkey of GRECO concludes transparency in political financing in Turkey is “globally unsatisfactory” and in need of tangible progress.²³⁷

1.7.2

SCORE **25**

Enforcement & public disclosure on political contributions

Scoring Question:

Is the prohibition of undue influence in the form of political contributions from the private sector to political parties and/or individual candidates monitored in practice?

There are two principal public authorities charged with monitoring and supervision of political financing: Constitutional Court and YSK. While the Constitutional Court is responsible for monitoring political financing, YSK is responsible to organize a transparent and fair electoral period and has the competence to monitor and render final decisions on all complaints, objections and corruption cases.

The Constitutional Court examines political parties’ asset acquisitions, revenues and expenditures. Political parties are responsible to send their financial accounts until the month of June

²³⁷ Avrupa Konseyi Yolsuzluğa Karşı Devletler Grubu, III. Değerlendirme Aşaması İkinci Türkiye Uygunluk Raporu, Greco RC-III (2013) 27E, 24-28 March 2014, p. 6-9.

to the Constitutional Court and to the Prosecutor of the Court of Account. Political parties organize their final accounts and the lists of revenues and expenditures using a balance sheet. Political parties do not have to send other documents for their electoral financing. Political parties do not have to report their electoral spending in monthly or quarter periods and do not have to send them to the Constitutional Court for these periods. Political parties have to keep these documents for five years following the first monitoring decision of the Constitutional Court. The Constitutional Court has the competence to ask any time from political parties to document their financial statements and to use Turkish Court of Accounts for financial monitoring. It can determine a regent directly or from their own members or a judge from local administrative and civil justice. It can commission as well a sworn expert.²³⁸

Candidates in presidential elections can hire lawyers and qualified accountants in line with the provisions of on Certified Public Accountancy and Sworn-in Certified Public Accountancy Law (article 14/8). Circular that determines rules and procedures for contributions, donations and declaration of wealth regarding presidential candidates in the 2014 Presidential Elections indicates the form of declaration of wealth, its content, its confirmation, the form and content of vouchers, their publications, receipt of contributions and donations, their registration, spending, transfer of the unspent money to the Treasury.

In presidential elections, information and documents of electoral accounts are submitted to the YSK in ten days following the declaration of final elections results. But these information and documents cover only official propaganda period which is one month. The lack of reporting obligation for financial accounts apart from this period is an important impediment to transparency in political financing. There is no obligation for individual candidates in local and parliament elections to submit their financial statement or send their financial documents to a supervisory body.

The Constitutional Court has authority to transfer immobile and mobiles assets acquired in contrary to the law to the Treasury. Immobile assets are transferred into cash within the period determined by the Court.

According to the article 116 of the Political Parties Law No.2820, those who give donations, loans or debts contrary to the law and party responsible who accepts this donation, loans and credit is punished by imprisonment of up to one year. Candidates, nominees for candidates, the party responsible who receive foreign contributions such as donations, aid from foreign states, from international organizations, from real and legal persons are punished by imprisonment of at least one year up to three years. Information and documents regarding electoral accounts in presidential elections are submitted to the YSK in ten days following the declaration of final results and YSK detects irregularities in a month.

Political party financing is not detailed and exhaustive in Turkey. According to the Corruption Survey of Transparency-International-Turkey in 2015, 50% of participants think that political parties are among the most corrupt institutions.²³⁹ There are no standards specific to financial statements of political parties in Turkey and accounting standards used by political parties are far from transparent. The fact that in-kind contributions and personal donations are not properly registered is an obstacle to transparency. The Constitutional Court implements financial audits monitoring whether revenues and expenditures are in line with the law but this financial auditing is not detailed due to many loopholes in the law. One of the criticisms of the GRECO on political financing is the deficiency of political parties to register contributions they received for their candidates in their own name.

²³⁸ See 2820 sayılı Siyasi Partiler Kanunu, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2820.pdf>.

²³⁹ "Türkiye'de Yolsuzluk: Neden, Nasıl ve Nerede?", Uluslararası Şeffaflık Derneği, March 2015, <http://www.seffaflik.org/wp-content/uploads/2015/04/Kamuoyu-Arastirmasi-Sonuc-Kitapcigi.pdf>, p.17.

There are many loopholes in the law that undermine transparency and accountability like individual candidates are not obliged to report their electoral campaigns, political parties do not have to keep separate reports for their electoral campaigns or to declare their financial accounts periodically, candidates do not have to report their expenditures out of their pockets. The scope of shadow economy is another obstacle that prevents transparency in political financing.

According to the article 2/a of the Law on the Declaration of Property, the fight against Bribery and Corruption No.3628, elected candidates and other candidates are obliged to submit their property declaration in one or two months (article 6/b,c,d,f) during holding and leaving the office and when “there is a significant change in property” to authorities defined by the law. However, this property declaration is not transparent since it is kept in secret. Transparency International-Turkey asked parliamentary candidates to declare property in public on 7 June 2015 Parliament Elections with the support of civil society organizations. 39 parliamentary candidates declared their properties as a result of this campaign. The Law on Presidential Elections obliges candidates to declare their property in public. Transparency International-Turkey highlights that declarations of properties should be in line with international standards and should report the details about properties of candidates’ children and their shares in enterprises.²⁴⁰ The declaration of property for all politicians and their first-line kin is necessary to ensure transparency in political financing.

The loopholes in the legislation of political financing also undermine the supervision and monitoring capacity of enforcement authorities. The report of Transparency-International Turkey on Political Financing and Corruption highlights that financial monitoring is limited, the monitoring of revenues and expenditures are reduced to a technical supervision and the amendment to the article 74 of the Political Parties Law by the Omnibus law limits an efficient monitoring.²⁴¹ Checks and Balances Network proposed to set up a web network encompassing all cities and districts into which political parties can upload their revenues and expenditures.²⁴²

It is widely accepted among public and political parties that the use of public resources for political financing is not punished by enforcement authorities.²⁴³ In order to facilitate the enforcement of the law, Transparency-International Turkey recommends attributing supervisory competences to one organ, to the Constitutional Court or to the YSK.

According to the survey of Global Integrity Index on 123 decisions covering 69 audits of Turkish political parties using Constitutional Court’s webpage, 45 irregularities are detected regarding the provisions of the Political Parties Law No.2820. These irregularities stem from two reasons: undocumented expenditures and delay of financial reports or non-submission contrary to the article 74.²⁴⁴ Parties’ monitoring reports are declared too late by the Constitutional Court preventing their accountability. According to the research of Transparency International Turkey on Constitutional Court’s reports for the period 2001-2015, 608 monitoring reports have been published since 2003 and even if there is acceleration after 2011 monitoring, the average period of monitoring on party accounts is over 3 years.²⁴⁵ Among the reasons of this delay can be stated the workload of the Constitutional Court and of Turkish Court of Accounts, correspondences

²⁴⁰ Uluslararası Şeffaflık Derneği, *Siyasetin Finansmanı ve Şeffaflık*, İstanbul, 2016, p.55.

²⁴¹ *Ibid.*, p.31-32.

²⁴² Denge ve Denetleme Ağı. Seçim Kampanyası Finansmanı Değerlendirme Raporu 1 Kasım 2015 Genel Seçimleri, *Demokrasi Barometresi Analiz Raporu No:5*, December 2015, p.13.

²⁴³ *Ibid.*, p.10.

²⁴⁴ Global Integrity. *Money, Politics and Transparency*.

²⁴⁵ Gençkaya, Ömer Faruk; Umut Gündüz; Damla Cihangir-Tetik. *Siyasetin Finansmanı ve Şeffaflık*, p.32-34

between institutions, submission of final accounts by political parties in June, lack of personnel in the department of the Court of Accounts charged with monitoring of political financing.²⁴⁶

In order to enhance transparency, integrity and accountability; independence and impartiality of enforcement authorities need to be reinforced. As aforementioned, the increased influence of the executive on HSYK and the reshuffle of Constitutional Court judges overshadow the independence and impartiality of the judiciary. The monitoring and enforcement of YSK on violations during electoral period is weak. For example, there were 35 applications concerning violations during 2014 presidential elections, YSK rejected all of them. The fact that YSK decisions cannot be submitted to courts is contrary to transparency and integrity principle. In addition, penalties given by YSK for violations of propaganda and advertisement rules during electoral periods are not dissuasive. YSK is not also transparent regarding the right to information. Out of 26 applications of Transparency International-Turkey to YSK using the right to information, YSK only responded to two of them in which it referred to the legislation instead of properly answering the question.²⁴⁷

Political parties do not have to share their electoral campaign expenditures with the public. They can declare their revenues and expenditures using their own initiatives. Due to the loopholes in the legislation, political parties' accounts are not transparent regarding in-kind and financial donations, contributions, expenditures from individual resources. Political parties indicate the value of their entire donations in their consolidated budgets but their sources from real and legal persons are not indicated. The lack of upper limit in party expenditures dissimulates the relations with interests groups and increases the opportunity to use illegal money during electoral period.

It is very common among Turkish citizens to ask deputies to find jobs or to use undue influence. It can even be said that politicians who refuse to use their influence for relatives, acquaintances or for their electorate are not favorably regarded and considered as "useless". However, in international standards both patronage (political favoritism) and nepotism (favoring spouse, friends, relatives) are considered as corrupt acts and prohibited. Giving gifts, promising to give benefits or promising benefits for individuals in order to influence their voting preferences in elections or referendum is considered as "electoral fraud" in international standards and this can cause election results to be null and void.²⁴⁸ Electoral preferences are affected not only by candidates but also by party organizations in Turkey using these kinds of promises and gifts. These habits that can lead to corruption are cultivated by both loopholes in the law and these common practices. Comprehensive legislation and effective enforcement should change these habits.

The Ministry of Finance publishes direct public funding allocation to political parties in its consolidated budget and declares in public with its statistics. The decisions of the Constitutional Court about financial monitoring of political parties are published in Official Gazette and declared in public via its web page but this declaration is about general accounts but does not provide its details.

²⁴⁶ Ibid.

²⁴⁷ Ibid., p.69.

²⁴⁸ Tarhan, R. Bülent. TEPAV Yolsuzlukla Mücadele Konferansı, 6 December 2006, http://www.tepav.org.tr/upload/files/haber/1255439499r1472.R.Bulent_Tarhan_Konusma_Metni.pdf.

1.7.3

SCORE

0

Laws on lobbying

Scoring Question:

Is undue influence in the form of lobbying by the private sector prohibited by law?

The Capital Markets Board established regulations for publicly-held companies, although there is no obligation for non-traded companies to declare their donations publicly. In publicly-traded companies, provisions must be set in the main contract of association and the limits for donations must be determined by the general assembly of the partnership. Limits on donations can be determined by the general assembly if it is not mentioned in the main contract. The Capital Markets Board can set an upper limit on donations. Contributions made by publicly-traded companies during the relevant accounting period are added to distributable profit. The declaration of donations and contributions is mandatory under the regulations of the Capital Markets Board and it should be disclosed for shareholders at the ordinary general meeting.

There is no regulation on lobbying in Turkish legislation. In the United States, lobbying and legislation on lobbying is very developed. Lobbying is closely related to participatory democracy, although it insinuates more special interests and corruption. Lobbies aim to affect governments through advocacy activities for certain policies and decisions. In the United States, lobbying information and lobbying spending are regularly shared with public. Lobbying can also lead to the manipulation of politics by economically powerful lobbying organizations since lobbies are associated with interest groups. However, it is widely accepted in democratization theories that a participatory democracy with strong civil society organizations will produce ideas, rhetoric and actions that will produce the common good against special interest politics.

1.7.4

SCORE

0

Enforcement of laws on lobbying

Scoring Question:

Is the prohibition of undue influence during lobbying activities by private sector monitored in practice?

While civil society organizations are reinforced with Turkey's integration process into the EU, the lack of legislation on lobbying in Turkey is a major loophole in the way to transparency reducing the capacity to monitor properly conflicts of interests. Since the concept of "lobbying" is commonly used in Turkey for interest groups that work against national interests, the law on lobbying law can be established as "advocacy law" to convince the public. The law on lobbying should give a proper definition of lobbyists, determine the purposes of lobbyists and include an official registration system for lobbyists. Moreover, lobbyists need to declare the information about their employment, their purposes and clients, their advocacy activities and their expenditures openly and regularly. There should be a legislative webpage that reports time, meetings and the subject of communication between lobbyists and policy-maker. There should be a cooling period for at least two years for the high-level public officials who leave their position in the government or bureaucracy and this should be monitored accordingly.

A supervisory body needs to be established with independent, efficient and good resources that will manage lobbying records, guide individuals and institutions and monitor violations. A database should be compiled on this subject and shared with public in an accessible and machine-readable way.

SCORE **100**

1.7.5

Laws on conflict of interest

Scoring Question:

Do the country's laws prevent conflict of interest between private and public sector that can lead to undue influence?

The use of undue influence is regulated in the article 255 of TCC and this article is consistent with international standards. According to this article, the public official shall be punished with imprisonment of up to five years and a fine of up to five thousand days if he or she, directly or through the use of intermediaries, obtains an interest for himself or another person by attempting to gain an unfair advantage. If the person is a public official, the period of imprisonment shall be increased by one half. The person who benefits from undue influence is punished by imprisonment of one year up to three years. However, in Turkish practices, nepotism (favoring spouse, friend, relatives) find widespread acceptance and there is significant number of demands directed to public officials and politicians for nepotism. According to the 2016 Study of Transparency International-Turkey "Corruption in Turkey: Why, How and Where", 75% of respondents state that personal connections are very effective to handle the process in public institutions.²⁴⁹ It is difficult to receive complaints and apply sanctions in this regard since it is based on public acceptance.

Public Servants Law No. 657 attributes to public officers the duty of integrity and loyalty and notes that public officers are selected promoted and dismissed according to the principle of merit. There is no specific article in the Public Servants Law No. 657 about conflict of interest. The concept of "conflict of interest" entered into legislation with "the Regulation on the Principles of Ethnical Behavior of Public Officials and Application Procedures and Essentials". According to the law on Public Servants No 657, public servants cannot execute functions related to trade or guilds, cannot assume positions in commercial and industrial institutions, cannot be a commercial representative or commercial agent or a shareholder in a business or limited partnership (article 28). The same article also states that public officers cannot open office, bureau, clinic or similar places in order to execute their duties; cannot work for real persons, legal persons or in a workplace belonging to professional organizations with public status or graduate schools belonging to foundations. Public servants can be a member in housing cooperatives or consumer cooperatives and can assume duties in their executive boards.

According to Public Servants Law No. 657, public servants are prohibited to ask for presents directly or indirectly or accept presents as a benefit of their duties even it is not realized during the execution of their duties. They cannot ask and accept loans from businessmen (article 29). According to the law on Declaration of Property, Bribery and the fight against Corruption No. 3628, it is necessary to hand over gifts above a certain limit to institutions (article 3). Public officers are prohibited to receive a benefit from an institution under his/her supervisions directly or by the hand of an intermediary related to his duty (Public Servants Law no. 657 article 30).

²⁴⁹ Uluslararası Şeffaflık Derneği. Türkiye'de Yolsuzluk: Neden, Nasıl ve Nerede?, March 2016, p.22.

The relationship of public officers with private sector is also regulated in special laws. With Law on the Establishment of Radio and Television Enterprises, Members of the Supreme Council and their relatives by blood or by marriage up to and including to those third degree, provisions of Law No. 5846 of Intellectual and Works of Art being reserved, shall not enter into any commitments pertaining to the function and powers of the Supreme Council within the field of radio and television services, shall not be partners or managers in private radio and television enterprises and in the enterprises that have direct or indirect partnership affiliation with these companies (article 9). According to the law on Capital Market Board No. 2499, unless authorized by a special law, neither any member of the Board nor the Board Chairman may accept employment in another public or private entity, be involved in commercial business, perform his/her profession independently, give a lecture in consideration of a fee or assume a role in any examination or similar tasks or acquire an interest in any undertaking. The Board Chairman and the members shall transfer or sell any shares and participation certificates of mutual funds the portfolio of which contains shares that they own before assuming their duties, to non-related individuals or who are more distant than 3rd degree blood relatives or 2nd degree non-blood relatives according to the legal definition of such individuals. Members who do not abide by this rule within 30 days will be considered as having resigned from their positions in the Board. The Board Chairman or members cannot work as managers of foundations, cooperatives and similar entities (article 20).

According to c,d,f paragraphs of article 11 of the Public Procurement law No. 4734, - the following persons or authorities cannot participate in any procurement, directly or indirectly or as a sub-contractor, either on their own account or on behalf of others:

- Contracting officers of the contracting authority carrying out the procurement proceedings, and the persons assigned in boards having the same authority,
- Those who are assigned to prepare, execute, complete and approve all procurement proceedings relating to the subject matter of the procurement held by the contracting authority,
- Spouses, relatives up to third degree and marital relatives up to second degree, and foster children and adopters of those specified under paragraph (c) and (d),
- Partners and companies of those specified under paragraph (c), (d) and (e) (except for joint stock companies where they are not a member of the board of directors or do not hold more than 10 % of the capital).

According to the Municipal Law No.5393, mayor may not engage, directly or indirectly, in brokerage or representation activity or enter into contract with the municipality or its subsidiaries during the office period or subsequent two years. As for the Council members, this period is specified as office period plus subsequent one year (article 28). According to the Law on Banking No. 5411, excluding activities like scientific courses and conferences and the copyrights which do not constitute an obstacle for performing their primary duties, Board chairman or members cannot accept employment in another public or private entity except for their official duties within the body of the Agency; involve in commercial business; work as managers of societies, foundations, cooperatives and similar entities; perform his/her profession independently; acquire shares in an undertaking operating in a sector or area in which the Agency is authorized to regulate and supervise; or serve as an arbitrator or expert witness (article 86). Those who violate this law are also punished according to the article 4 of the law No. 2531 on the Jobs Prohibited to those who have Left a Position in the Public Sector. The article 115 stipulates that excluding activities like scientific publications, courses and conferences and the copyrights which do not constitute an obstacle for carrying out their primary duties, Fund Board chairman or members cannot accept employment in another public or private entity except for their official

duties within the body of the Fund; involve in commercial business; work as managers of societies, foundations, cooperatives and similar entities; perform his/her profession independently; acquire shares in the institutions covered by this Law or their direct or indirect partnerships; or serve as a referee or expert witness. The Fund Board members who violate the provisions of this paragraph shall be subjected to the penalties set out in Article 4 of the Law No. 2531 on the Jobs Prohibited to those who have Left a Position in the Public Sector.

Similar prohibitions are also available for the members of Energy Market Regulatory Authority (*Enerji Piyasası Düzenleme Kurulu*, EPDK), Information and Communication Technologies Authority (*Bilgi Teknolojileri ve İletişim Kurumu*, BTK) and Competition Board. They cannot as well assume positions for two years in the sectors under their supervision.

According to the law no. 2531 on the Jobs Prohibited to those who have Left a Position in the Public Sector, unless otherwise provided by law, former government officials are prohibited (for a period of three years from the date of their retirement or resignation from acting as broker, representative or consultant, directly or indirectly, towards government agency(ies) that they have served in the last two years before their date of retirement or resignation, with regards to the activities falling within the scope of their past duty. There are exemptions in the article 3 including reserve officers, pharmacists, doctors and dentist. Those who violate these prohibitions are given a penalty of imprisonment for a term of six months to two years and a judicial fine of at least 10,000 TL (article 4).

In addition to all these; According to the Regulation on the Declaration of Property, parties obliged to submit declarations of property are:

- a) Public officials taking up duty in all kinds of elections and members of the Council of Ministers, who are appointed from outside the Parliament,
- b) Notaries,
- c) General directorate and central inspection board members of Turkish Aeronautical Association and those serving in the central boards and general directorate of *Türk Kuşu* and of Turkish Red Crescent Society and branch directors thereof,
- d) Civil servants in public service who are being paid salary, wage and allowance at general and added budget departments, provincial special administrations, municipalities and affiliated organizations and subsidiary organizations thereof, public economic enterprises (state economic agencies and public economic organizations) and affiliated establishments, subsidiaries and businesses, public service institutions and organizations established by special laws or powers granted by special laws and subsidiary organizations or commissions thereof, other public officials which are not workers and members of boards of directors and auditors,
- e) Those who are employed in professional organizations with public status and the members of their management and supervisory board,
- f) Political parties' chairmen, those serving in administrative organs of foundations, chairmen of cooperatives and unions thereof, members of boards of directors and general directors, certified public accountants, public welfare associations' executives and auditors,
- g) Real persons who own newspapers, members of the boards of directors and auditors of newspaper-owner companies, responsible managers, editorial writers and columnists must declare their properties.
- h) Those who must declare their properties pursuant to Special Laws are also subject to the provisions of this Act.

Spouses of the persons covered above must declare their property separately. In this case, each of the spouses shall declare their property and children under their custody. According to the article 13 of the Regulation on the Declaration of Property, public officials must deliver each gift or grant in the form of a gift that exceeds the amount of ten-month net minimum wage to their respective institutions within one month from the date they receive it from any real or legal persons or organizations, from foreign states, international organizations in line with international protocol courtesy standards or for any other reason.

SCORE 25

1.7.6

Enforcement of laws on conflicts of interest

Scoring Question:

Is the prohibition of conflict of interest between private and public sector that can lead to undue influence monitored in practice?

The Regulations on the Ethical Codes of Public Officers and Rules and Procedures of Application applies to all public officials but there is no institutions charged with monitoring this regulation. Public Officials Ethics Board is charged with monitoring ethical behavior, examining violations and submitting them to relevant authorities. It also examines declarations of property in conformity with the law no.3628. It can determine limits for receiving presents and demand the lists of presents in the end of the year from public officials who are in the position of general manager or its equals. However, an important part of public institutions remains outside the competences of Public Officials Ethics Board. These institutions are: the President of Republic, members of Parliament, members of the Council of Minister, members of Turkish military, judiciary and universities, administrations in the general budget and annexed budget, state economic enterprises, all the personnel including council, president of High Education Council and members of the institutions with revolving funds, local institutions and their associations, councils, high councils, institutions, institutes, enterprises, undertakings, funds with legal public personalities. According to the Ethics Board's 2015 Annual Report, the Board received 126 applications, but rejected 97 of them for procedural violations.²⁵⁰ The number of rejected applications is much higher than the number of accepted applications. Board decisions remain often dysfunctional and are not even published in the Official Gazette.

The 2015 report of OECD-SIGMA on Turkish Public Administration recommends increasing the duties and responsibilities of Public Officials Ethics Board to enforce its monitoring power. It also recommends to the Council of Ministers to apply merit-based appointment in high-level executive positions.²⁵¹

Ethics Board examines the declarations of properties in accordance with the Law No. 3628 on Fight against Bribery and Corruption. However, property declarations are not examined comparably due to deficiencies in internal control process. Objective inspection, measurement, determination and evaluation methods should be set in the law and regulations to enable comparison and cross-checking in declaration of properties.²⁵² Inspectors should be endowed with the power of access to institutions to examine declarations of properties and forms of declara-

²⁵⁰ T.C Başbakanlık Kamu Görevlileri Etik Kurulu. 2015 Faaliyet Raporu, Ankara, 2015, p. 9-12.

²⁵¹ OECD-SIGMA. Baseline Measurement Report: The Principles of Public Administration, Turkey, April 2015, p.51-53, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-Turkey.pdf>.

²⁵² Tarhan, R. Bülent. TEPAV Yolsuzlukla Mücadele Konferansı, 6 December 2006.

tion of properties should be issued indicating the reasons for changes in property declarations, sources of the increase, and if necessary, borrowing and acquisition procedures.²⁵³

The law No. 2531 on the Jobs Prohibited to those who have Left a Position in the Public Sector enacted in 1981 is insufficient in regulating the dimensions of relations between public, private sector and civil society. According to the article 2 of this law, those who leave their duty “shall not be entitled to take part in jobs directly or indirectly in matters related to their offices, administrations, institutions and established fields of duty and activity for three years starting from the date of their withdrawal from the offices, administrations, institutions and organizations they serve in the previous two years from the date they left , cannot enter into contracts, cannot make brokerage and representation”. In this way, the law blocks the career of public officials and does not allow them to perform their profession for three years. Moreover, the law does not punish public officials who acquired a place in the private sector by means of abuse and undue influence in the relevant institutions which are under their control.²⁵⁴ In addition, the punishment in the Law is applied to the person, ignoring the private entity that gains benefits by utilizing the position of the public officer. However, there is no enforcement authority that monitors the transfers between public and private sector. Public authorities we interviewed noted as well that imposition of penalties on public officers in line with this law is not very likely.

For violations concerning the laws on conflict of interests; warning, condemnations and the penalty to stop monthly payment or career set back can be applied according to Public Servants’ Law No. 657. These decisions can be submitted to administrative courts. But conflicts of interests are not monitored effectively.

The article 12/2/e of the United Nations Convention against Corruption notes that that certain restrictions should be imposed for transition from careers in the public sector to private sector on public officers after their resignation or retirement. The Report of the Commission of TBMM on Corruption stresses that for senior officials “who took position in institutions and organizations of the private sector, there should be restrictions on their authority concerning demands, transactions and decisions concerning the public administrations in which they worked and sanctions should be imposed in case of violations of the law including removal from the job”.²⁵⁵

In the OECD 2015 survey concerning conflict of interests and whistle-blower protections in Turkey, the executive received 58 points which is slightly over the middle level and the legislative and judiciary received 50 points.²⁵⁶

²⁵³ Ibid.

²⁵⁴ Interview with Bülent Tarhan.

²⁵⁵ Tarhan, R. Bülent; Ömer Faruk Gençkaya; Ergin Ergül; Kemal Özsemerci; Hakan Özbaran. Yolsuzlukla Mücadele TBMM Raporu “Bir Olgu Olarak Yolsuzluk: Nedenler, Etkiler Ve Çözüm Önerileri”, Türkiye Ekonomi Politikaları Araştırma Vakfı: Ankara, p.143.

²⁵⁶ OECD. Government at a Glance: 2015 Country Fact Sheet, 2015, <https://www.oecd.org/gov/Turkey.pdf>

1.8

SCORE 25

INTEGRITY MANAGEMENT

1.8.1

SCORE 25

PUBLIC PROCUREMENT

Scoring Question:

To what extent do the country's public procurement processes ensure that contracts are awarded in a fair and impartial manner?

Public procurement legislation is based upon State Procurement Law No. 2886 that was put into force in 1984, Public Procurement law No.4734 and Public Procurement Contracts Law No. 4735 that were put into force in 2003. Although the Public Procurement Law No. 4734 originally promoted international standards and transparent practices, it has rolled back over time due to changes and non-transparent practices.

It is possible to realize many operations via Electronic Public Procurement Platform (*Elektronik Kamu Alımları Platformu*, EKAP) which is under the supervision of Public Procurement Authority: provision of need assessment report, tender documents, tender notices, tender advertisements, publications of tender notices, documents for pre-qualification advertisements using e-signature, registration of documents, uploading bidding envelope, receiving bidding assessment reports, making inquiries about participation and qualification conditions, inquiries about those prohibited from participation in tenders, notification of public procurement results and their advertisement during the contracting process, registration of agreement, signature of the contact, registration and updating of work increase/work decreases/difference in costs/payment, annulment of contracts, registration of work experience document and its updating.²⁵⁷ All the procurement notices in line with the article 13 of the Public Procurement Law No.4734 are also published on EKAP. According to the 2015 Annual Report of the Public Procurement Authority, there are 479,995 users registered in EKAP and its webpage is visited daily by 92,370 times.²⁵⁸ It is also possible to make applications for complaints, accede to decisions of the Public Procurement Authority, court verdicts, transfer of contracts and make inquiries about required documents and decisions of the Public Procurement Authority via EKAP. Moreover, the procurement process of goods within the scope of framework agreements, submission of tenders and their assessments are realized on EKAP and its monitoring is executed by the Public Procurement Authority. In addition to EKAP, initial advertisements about tenders, tender notices, adjustments in tender notices, annulment of notices and results are published in the Bulletin of Public Procurement.

While the Public Procurement Law No. 4734 limited the arbitrary decision-making filling the loopholes of State Procurement Law No. 2886, it underwent 150 amendments by more than 30 law and regulations.²⁵⁹ Arbitrary decision-making and lack of supervision in public procurement

²⁵⁷ 2015 Faaliyet Raporu, Kamu İhale Kurumu, p.43-44, http://www2.ihale.gov.tr/duyurular2012/2015_Faaliyet_Raporu.pdf.

²⁵⁸ *Ibid.*, p. 44.

²⁵⁹ Gürakar, Esra Çeviker. *Politics of Favoritism in Public Procurement in Turkey: Reconfigurations of Dependency Networks in the AKP Era*, New York: Palgrave Macmillan, 2016, p.5.

increased with amendments introduced in the article on exceptions in the Public Procurement Law. While there were only 5 exceptions when the Public Procurement Law No. 4734 was firstly put into force, it has more than 20 exception articles in its last version. Oft-made changes in public procurement legislation reduced the reliability and stability of public procurement system.²⁶⁰ Broad definition of exceptions renders the public procurement system in Turkey vulnerable to corruption. For example, if the procurement of goods and services by state economic enterprises or by enterprises whose more than 50% share belongs to the state value less than 7,726,990 TL, they are within the scope of exceptions.

In the EU directives, commercial enterprises are not subject to the tender legislation. Companies related to public services are subject to a separate directive. In this framework, State Economic Enterprises must be exempted from the Public Procurement Law No. 4734. Businesses operating in water, energy, transport and post services (even if they are in the private sector) must be subject to the public services directive under certain conditions.²⁶¹

The Housing Development projects of the Housing Development Administration (*Toplu Konut İdaresi Başkanlığı*, TOKİ) that realizes big investments are included in the article on exceptions by the article 68/c. Moreover, energy and transport sectors that include big projects are within the scope of the article on exceptions. Many public institutions that make big-scale public procurements are also included within the scope of exceptions that are applied in a transparent and accountable way and these public procurements are realized with a limited competition and without monitoring by an external authority.

Open procedures and restricted procedures are the fundamental public procurement procedures. Other procurement procedures (direct procurement and negotiated procedure) can be used only in case of special conditions defined by the law. But with the deviation of the law from its main purpose in recent years, direct procurement procedure began to be used more often. While the number of procurements with open procedure was 100,820 in 2015, it declined to 65,016 in 2014. The number of public procurements based on the article on exceptions rose to 58,680 while it was 41,157.²⁶² The increase in the number of public procurements based on the article on exceptions and applied with other procedures rather than open procedure displays that public procurement system is diverted from transparent, accountable and competitive process.

According to a study that considers the data of Turkish Statistical Institute (*Türkiye İstatistik Kurumu*, TÜİK), public procurement and national income and public procurement data between 2010 and 2012, 44% of public expenditures are executed outside the Public Procurement Law No.4734.²⁶³ A recent study that examines the implementation of restricted procedure which is the limited version of public procurement with open procedure for the period 2005-2011 in Turkish construction sector demonstrates that more often use of restricted procedures for public procurements after the 2008 amendment in the Public Procurement Law No. 4734 increased the costs and the possibility of winning the tenders by enterprises close to the party in power.²⁶⁴

²⁶⁰ Toker, Çiğdem. "Kamu İhale Reformuymuş!", 23 September 2015, *Cumhuriyet.com*, http://www.cumhuriyet.com.tr/koseyazisi/374749/Kamu_ihale_reformuymus_.html.

²⁶¹ Emek, Uğur. "Kamu Sermayeli İşletmelerin Kamu İhale Kanunu Karşısındaki Durumu", *İktisat İşletme ve Finans*, 2003, 18 (207): 74-81.

²⁶² Gürakar, Esra Çeviker. *Politics of Favoritism in Public Procurement in Turkey: Reconfigurations of Dependency Networks in the AKP Era*, p.6.

²⁶³ Mustafa Sönmez, *Uluslararası Şeffaflık Derneği 2016 Şeffaflık Ödülleri Konferansı*, 9 December 2016.

²⁶⁴ Meyersson, Erik; Esra Gürakar. "State Discretion, Political Connections and Public Procurement: Evidence from Turkey," 31 March 2016, <https://erikmeyersson.com/research/>.

The public procurement law No. 4734 set an “estimated cost-price investigation” excluding the value added tax for the contracting entity instead of previously implemented price investigation based on “presumed cost”. The contracting entity determines the estimated cost which is kept in secret until the end of tender procedures. Estimated cost enables a better assessment for tenders. But the contracting entities generally determine their estimated cost without taking into account tenders which are above or below the estimated cost, thus, tenderers are more interested in submitting tenders close to the estimated cost investigation of the contracting entity rather than conducting a detailed investigation of costs that will consider technical and financial costs.²⁶⁵ The contracting entities are not willing to take into consideration the costs that arise from repairs, efficiency, productivity, quality and technical costs in line with the principle of “economically most advantageous tender”. This prevents the realization of projects in an efficient and productive manner.²⁶⁶

Moreover, the law assigns the competence of rejection of abnormally low tenders to tender commissions. Due to broad competences assigned to tender commissions with regard to evaluation and rejection of tenders, there were cases in which tender commissions used these competences to privilege their favorite tenders eliminating others.²⁶⁷ Public Procurement Authority limited this arbitrariness issuing communiqués and regulations about the rejection of abnormally low tenders.

Furthermore, international participation in tenders is decreasing. The share of tenders open to international competition declined to 63% in 2013 while it was 68% in 2008.²⁶⁸ Moreover, the share of international tenders in which price advantage for local tenderers is used increased to 40% in recent years while it was 15% in 2008. Restrictions on international competition can obstruct open competition in public procurement leading to corrupt relations between domestic tenderers and contracting entities.²⁶⁹

Transparency and integrity in public tenders are also influenced by the improvements and deficiencies in other areas of public sector. For example, since there is no ethical law that put deputies under obligation concerning the possession of commercial business or taking part in its partnership as shareholders; enterprises related to deputies can participate in public tenders and corrupted relations between politics and business can arise. Winning of public tenders by enterprises that are related to deputies raises concerns about transparency and the quality of open competition in public tenders.²⁷⁰

A big deficiency in public procurement system in Turkey is that public-private partnership implementations such as “Build - Operate - Transfer”, “Build-Operate”, “Built-rent”, transfer of prerogatives or operating rights are left outside the scope of Public Procurement Law and the supervision of the Public Procurement Authority. Projects that require big investments are realized with these schemes and the decision-making process of the contracting entities are not transparent, fair and accountable in these projects. 72 agreements are concluded between 2008 and 2013 with a worth of 52,8 trillion euros. These types of partnerships composed 67%

²⁶⁵ Kaplan, Sami. “İdeal Bir Kamu İhale Kanunu ve İdeal Bir Kamu İhale Kurumu ve Kurulu Nasıl Olmalıdır? Fonksiyonel Bir Model Çalışması”, *Maliye Dergisi*, January-June 2012, 162, p.30.

²⁶⁶ *Ibid.*, p.31-32.

²⁶⁷ Emek, Uğur; Muhittin Acar, “Public Procurement in Infrastructure: The Case of Turkey”, *Government Favouritism in Europe: the Anticorruption Report*, Volume 3, Opladen- Berlin- Toronto: Barbara Budrich Publishers, 2015, p.87.

²⁶⁸ *Ibid.*, p.89.

²⁶⁹ *Ibid.*

²⁷⁰ Toker, Çiğdem. “Bakan Soylu'nun Sigorta Şirketi”, *Cumhuriyet.com*, 15 October 2016, http://www.cumhuriyet.com.tr/koseyazisi/616475/Bakan_Soylu_nun_sigorta_sirketi.html.

of public procurement implementations costs between 2008 and 2013.²⁷¹ This number shows that big projects which are outside the scope of Public Procurement Law are realized more by these partnerships. Tenderers can only protest these decisions by opening cases that last for years. The fact that 17 agreements out of these 72 agreements that is worth 43,2 billion euro composing 82% of entire value of public procurement implementations are given to media groups that are purported to be in close relationship with the political power raises concerns about the patronage between tenderers and the government.²⁷² Many criticisms are also raised about the non-transparent operation of procurement process, granted guarantees, duration of project and treasury guaranty for large scale projects in public-private partnerships.²⁷³ The high passage fees paid by people in large-scale projects (such as Osman Gazi Bridge, Yavuz Sultan Selim Bridge) is a sign that tenders are not concluded with reasonable and efficient price investigations and they are a reflection of deficiencies in public procurement system with regard to transparency, integrity and accountability.

Those who have been convicted of crime of bribery in its own country or in a foreign country, those who have been prohibited temporarily or permanently from participating in public procurements in accordance with this Law and the provisions of other laws; those who have been convicted of crimes mentioned in Anti-Terror Law No. 3713 and organized crimes, those who are convicted of fraudulent bankruptcy are prohibited from participating in public procurement directly or indirectly or as sub-contractors or as subcontractors in the name of others (article 11 of Public Procurement Law no.4734). The law also takes precautions regarding conflict of interests. Contracting officers of the contracting entity carrying out procurement proceedings, people assigned to boards having the same authority, those who are assigned to prepare, execute, complete and approve all procurement proceedings related to the subject of the procurement held by the contracting entity, spouses, relatives up to third degree and marital relatives up to second degree, foster children and adopters of those specified under paragraph (c) and (d), partners and companies of those specified under paragraph (c), (d) and (e) (except for joint stock companies where they are not a member of the board of directors or do not hold more than 10% of the capital), contractors providing consultancy services for the subject of the procurement cannot participate in the procurement of such work (article 11 of Public Procurement Law no.4734).

Similarly, contractors related to the subject of the procurement cannot participate in procurements or give consultancy services for such work. These prohibitions are also applicable for the companies with which they have a partnership and management relation, for joint stock companies whose more than half is owned by these companies and for companies where more than half of the capital is owned by above-mentioned companies. No matter the purpose of establishment is; foundations, associations, unions, funds and other entities included within the body of the contracting entity carrying out the procurement, or related to the contracting entity and companies in which such entities are partners, cannot participate in the procurement held by these contracting entities. If these tenderers participate in tender process, they should be disqualified and their tender securities will be accepted as revenue for Public Procurement Authority.

Public procurement Law also forbids these acts and conducts: to conduct or attempt to conduct procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful

²⁷¹ Emek, Uğur; Muhittin Acar, "Public Procurement in Infrastructure: The Case of Turkey", p.91-92.

²⁷² Ibid.

²⁷³ Emek, Uğur. "Kamu-Özel İşbirliği Projelerinde Saydamlık ve Hesap Verebilirlik", 2013 May, <http://uemek.blogspot.com.tr/2013/05/kamu-ozel-isbirligi-projelerinde.html>; Gürses, Uğur. "Köprüden geçmeyen de ödediği fatura", *Hürriyet.com*, 6 July 2016, http://sosyal.hurriyet.com.tr/yazar/ugur-gurses_526/kopruden-gecmeyenin-de-odedigi-fatura_40132375; Eğilmez, Mahfi. "Yap İşlet Devret ve Hazine Garantisi", 22 April 2014, <http://www.mahfiEgilmmez.com/2014/04/yap-islet-devret-ve-hazine-garantisi.html>.

influence, undue interest, agreement, malversation, bribery or other actions, to cause confusion among tenderers, to prevent participation, to offer agreement to tenderers or to encourage tenderers to accept such offers, to conduct actions which may influence competition or tender decision, to forge documents or securities, to use forged documents or securities or to attempt to these kinds of acts; to submit more than one tender by a tenderer on its own account or on behalf of others, directly or indirectly, as the principal person or as representative of others; to participate in procurement process despite being prohibited pursuant to Article 11.

Threshold values with regard to the investigation of estimated costs and tenders with predetermined bidders are determined in the article 8: Three hundred billion TL for procurement of goods and services by the contracting entities operating under the general or the annexed budget, five hundred billion Turkish Liras for procurement of goods and services by other contracting entities within the scope of public-private partnerships, eleven trillion Turkish Liras for the works contracts by any of contacting entities covered by this Law.

Companies are not obliged to conclude integrity pact for public tenders above a certain threshold. But the article 17 of the Public Procurement Law takes precautions regulating forbidden acts and conducts for the operation of procurement proceedings in a transparent, fair and competitive manner.

1.8.2

SCORE 25

Integrity of contracting authorities

Scoring Question:

To what extent do the country's contracting authorities and their employees adhere to the internationally recognized standards of integrity and ethical behavior?

According to the article 17 of the Public Procurement Law, those who exert prohibited acts and conducts related to corruption (fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, malversation, bribery or other actions) are forbidden from participating in public tenders between one to two years according to the quality of the acts, those who conclude public tenders not in line with procurement proceedings are also forbidden from participating in public procurement of all contracting entities for a period up to one year but not less than six months. Prohibition decisions are given within 45 days when forbidden acts and conducts are detected. This decision is sent to the Official Gazette for publication in 15 days and it is put into force when published. Public Procurement Authority registers these decisions and keeps their records. Contracting entities that detect an act or conduct that requires prohibition decisions are responsible to inform the relevant ministry or the ministry to which they are related.

Penal responsibility of bidders involves the period after the tender and agreement on the contract. Real or legal persons and their partners or proxies that are involved in acts or conducts constituting a crime under the Criminal Code including those specified in the article 17 of Public Procurement Law shall be notified to public prosecutions. These persons shall be prohibited from participation in the tender proceedings of all public institutions and entities for at least one year up to three years by court verdict. Those for whom a public case is opened following the criminal prosecution related to tenders conducted in line with the Law cannot participate in tenders held by public institutions and until the end of judgment. Those who are subject to a public case shall be informed to the Public Procurement Authority by the Public Prosecutor's Office for registration. Those who are convicted repeatedly for prohibited acts

and conducts set forth under this Law, and the companies with shared capital in which these persons own more than half of the capital, or the sole proprietorships to which these persons are partner, shall be prohibited permanently from participation in public procurements by court verdict. Those who are prohibited and convicted by court verdict shall be notified by public prosecutor to the Public Procurement Authority for registration and to the relevant professional chambers for their professional records. Court verdicts pertaining to those who are prohibited permanently from participation in public procurements shall be announced by publication in the Official Gazette within fifteen days following the notification by the Public Procurement Authority (article 59 of the Public Procurement Law).

If it is established that contracting officer, chairperson and members of the tender commissions and other related persons assigned at any stage to the procurement proceedings starting from the beginning of tender process until its conclusion, have committed acts or conducts specified in the article 17 of the Public Procurement Law; have failed to fulfil their duties in accordance with the legal requirements or failed to act impartially; or have been involved in defaults or negligent acts that inflict damage upon one of the parties, these persons shall be given a disciplinary punishment in accordance with the Law. Criminal prosecution shall also apply to these persons depending on the nature of their acts or conducts. In addition to the punishment rendered by the court, these persons shall compensate for all the loss and damage inflicted upon the parties in accordance with the general provisions. People who have been convicted for the acts and conducts contrary to this Law shall not be assigned to duties regarding this Law. Personnel who received punishment by judicial bodies due to acts and conducts defined in the Law shall not be appointed and assigned by any public institutions and entities covered in the Law, to any duties or authorized positions related to the enforcement of this Law or other related regulations. These sanctions shall also apply to those who permit and carry out tender proceedings violating its instructions.

The autonomy of tender commissions is lacking in public procurement system and this makes them vulnerable to the use of undue influence. For example, members who decline inappropriate requests can be unseated during procurement proceedings for no reasons, tender commissions can be composed of members who are in a hierarchical relationship, thus, these members can be exposed to the use of undue influence.²⁷⁴ In addition, the cancellation of very large tenders undermines the credibility of institutions and leaves the impression that procurement authorities' discretionary powers are too large.²⁷⁵

In 2012, upon the claims that businessmen give bribery to rapporteurs of the Public Procurement Authority and 100 tenders are concluded illegally, 8 suspects including the ex-members of the Public Procurement Authority are punished by imprisonment of 1 year 3 months and 5 years 9 months.²⁷⁶

The arbitrariness in public procurement is sometimes supported by public institutions. For example, in 2014, with the amendment in the article 235 of the TCC by the article 12 of Law No. 6459, a reduction is introduced for punishments related conviction for corruption in tenders. The punishment is reduced from seven years to three years by the amendment, while the person involved in the procurement, sale or leasing of goods or services made on behalf of public institutions or organizations was punished by imprisonment of 5 years to 12 years before. Before the amendment, if a loss occurs due to the corruption in tenders on behalf of public

²⁷⁴ Emek, Uğur; Muhittin Acar. "Public Procurement in Infrastructure: The Case of Turkey", p.86.

²⁷⁵ An exemplary case is Milgem project in 201. See. "Koç'un ihalesi iptal!", *Haberturk.com*, 3 August 2013, <http://www.haberturk.com/ekonomi/is-yasam/haber/866170-kocun-ihalesi-iptal>.

²⁷⁶ "KİK'te 1 milyar liralık yolsuzluk mu yapıldı?", *T24.com*, 16 Şubat 2012, <http://t24.com.tr/haber/kamu-ihale-kurumunda-1-milyar-liralik-yolsuzluk-mu-yapildi,197251>; "Kamu ihalelerinde yolsuzluk davasında 8 kişiye hapis cezası", *Memurlar.net*, 8 June 2016, <http://www.memurlar.net/haber/589333/>.

interests, the punishment would be up to 18 years in prison and the lower limit would not be less than 7,5 years. With the amendment, this punishment is 1 to 3 years, if there is no harm to public interests. This change ignores other interests that public procurement system should protect on behalf of public, such as the destruction of forest land during public procurement implementations.²⁷⁷ In addition, immunities of deputies, the second paragraph of Article 17 of the law no.3628 that privileges governor, the undersecretary and district governors by imposing an authorization system for their investigation and the third paragraph of the Article 17 that states “*laws special to defendants who are subject to special investigations and prosecution procedures due to their duties or titles are reserved*” are still in force. These regulations prevent the effective investigation and prosecution of corruption cases involving corruption in tenders.²⁷⁸ Furthermore, an institution that is charged with ensuring transparency at the highest level should avoid by any means exceptions and privileges that will overshadow the transparency of its actions and transactions. Pursuant to the amendment made by the Law No. 5812 dated 20.11.2008 “*Members of the Board and the staff of the Authority (Public Procurement Authority) shall be deemed to be civil servants in respect of offenses committed in their duties*”. Provisions of the article 104 of the Banking Law No. 5411 dated 19/10/2005 shall apply to the members of the Board and the criminal and legal responsibilities of personnel”,²⁷⁹

In GRECO’s Turkey reports, the investigation and prosecution privileges of public officials are posed as major criticisms. The articles 104 and 127 of the Banking Law No. 5411 are the peak points for public officials’ privileges. The “skimming” articles of investigation and prosecution for public officials can be deemed as the articles 104 and 127 of the Banking Law.

As aforementioned, the broad scope of exceptions in Public Procurement Law and the increasing use of tender procedures based on predetermined bidders and direct procurement prevent an efficient fight against corruption. In the National Integrity Assessment Report of the Transparency-International Turkey, public procurement system is categorized as “weak” with 25 points with regard to its integrity.²⁸⁰

Public Procurement Authority is responsible for the implementation and supervision of Public Procurement Law. It has legal public personality and financial and administrative autonomy. It is dependent on the Ministry of Finance. No organ, office, entity or person can issue orders or instructions for the purpose of influencing the decisions of the Authority. Its decision-making organ is the Public Procurement Board. Its members are appointed by the Council of Ministers upon the proposal of the Ministry of Finance. Its members should have the necessary specialization and are selected from people with no connections to politics both in the past and present. Board members shall take an oath in the First Bureau of Assembly of the High Court of Appeal for being impartial and fair in implementation of the legislation in due manner. Members of the Board cannot be involved in any official or private jobs, trade or freelance activities, cannot be a shareholder or manager in any kind of partnerships based on commercial purposes. Members of the Board are obliged to dispose of any stocks or securities they have acquired prior to holding their offices, belonging to legal entities in the market or their subsidiaries, via transferring or selling off to persons other than their relatives by blood up to third degree or by marriage up to second degree, within thirty days following the start of their assignment periods, except for those securities issued by the Under secretariat of Treasury for domestic debt. Members who do not act in compliance with this provision shall be deemed resigned from their memberships. As a precaution against conflicts of interest, Board members cannot participate in meetings

²⁷⁷ Tarhan, R. Bülent. “İhaleye Fesat Kanştırma Suçu Üzerine”, *Güncel Hukuk Dergisi*, April 2014.

²⁷⁸ Ibid.

²⁷⁹ Tarhan, R. Bülent. “Kamu İhale Kanunu Üzerine”, *Güncel Hukuk*, August 2009.

²⁸⁰ Uluslararası Şeffaflık Derneği, *Türkiye Şeffaflık Sistemi Analizi*, p. 17.

and voting sessions related to decisions concerning their relatives by blood up to third degree or by marriage up to second degree and fosters. Board members are obliged to submit a declaration of property within one-month following the date of start and end of office, and every year during their office period. These declarations of property are not open.

Members of Public Procurement Board were assigned firstly in 2002 by the coalition government composed of Democratic Left Party, Motherland Party and Nationalist Action Party and then all members of the Public Procurement Board are reshuffled in 2007. This raised concerns about privileging loyalty instead of merit in Board appointments. By the same token, while the Public Procurement Board canceled %22,9 of public tender decisions in 2006, this rate declined to 2,8% in 2013. These numbers raise suspicions about whether many public tenders that were considered irregular before are now tolerated in the advantage of certain companies or these irregularities are ignored anymore.²⁸¹ If the rights of bidders, who are willing or may be willing to participate in tenders, are damaged or violated due to prohibited acts and conducts in procurement proceedings, they can make a complaint. These complaints are not anonymous. They are submitted to the Public Procurement Board with signed petitions. The form of petition is defined in the law and the examples of petition can be found in the website of the Public Procurement Authority. The Council of Ministers can decide to take a deposit for application. The price for appeal is paid in the bank account of the Public Procurement Board and kept in a separate account apart from the revenues of the Public Procurement Authority. The complaint can be also submitted to the contracting entity. The contracting entity will examine the complaint and render its decision with justification within ten days.

There is an *ex ante* and *ex post* control of spending by public institutions. According to the Public Financial Management and Control Law no. 5018, initial financial controls are composed of preparation of financial decision, their implementation, realization and documentation (article 58). These controls are made in departments responsible for payment and in financial departments. They examine payment instructions and whether they are in line with the budget rules, principles and legislation. The realization of payment is conditioned on the purchase and implementation of acts, goods and services in line with the procedures and principles, approval by the relevant persons or commissions and provisions of necessary documents for its implementation. Those responsible for the realization of payments are also responsible for the acts and operations they realized within the scope of law and have to do necessary controls. Moreover, internal audits monitor the use of state resources by public officers in an efficient, productive and economic way. Internal audit conducts monitoring according to the law after the completion of financial transactions, evaluate their management, control the public administration on the basis of objective risk analyses, research and suggests methods for a more economic, efficient and effective utilization of resources, perform *ex post* audits on legal compliance, audit and evaluate administrations' expenditures, decisions and operations on financial transactions according to their compliance with the objectives, policies, development plan, programs, strategic plans and performance programs. The purpose of *ex post* external audit that is executed by Turkish Court of Accounts is to audit financial activities, decisions, transactions in line with the laws, institutional goals, objectives and plans and to report their findings to the TBMM to sustain the accountability of public administrations on behalf of public interests (article 68 of Public Financial Management and Control Law no. 5018).

The Public Procurement Authority is responsible for training public and private sector and executing training activities. The annual activity report of the Public Procurement Authority displays that the Education Department gives regular training to its staff including the rule of law. But whether these trainings include the fight against corruption is not noted. Wages paid to the personnel of the Public Procurement Authority is sufficient for an efficient and productive functioning.

²⁸¹ Emek, Uğur; Muhittin Acar. "Public Procurement in Infrastructure: The Case of Turkey", p.90-91.

External safeguards

Scoring Question:

To what extent do the country's public procurement processes include external safeguards for detecting and reporting violations?

With the amendment introduced into the article 81 of the Law no. 5018, the obligation to send drafts of financial communications and agreements to the Ministry of Finance and the obligation of registration for agreements and donations made by public entities under the monitoring of Turkish Court of Accounts are abrogated. Thus, the privileges of *ex ante* audits by the Ministry of Finance and Turkish Court of Accounts are revoked and transferred to contracting entities. Public Procurement Authority is under the monitoring of Turkish Court of Accounts and the reports of Turkish Court of Accounts are open to the public. However, regulatory competence loopholes of Turkish Court of Accounts that are mentioned before are also relevant for the monitoring of the Public Procurement Authority.

The use of restricted procedures and direct procurement prevents the effective use of complaint mechanism which is an important tool to sustain transparency in public procurement. Moreover, the right to complain should be used within 10 days for open tenders and 5 days for negotiated tenders. If the contracting authority signs the agreement immediately after tender, the right to complaint is lost. 3,720 complaints are examined by the Public Procurement Authority in 2015. 158 of them were about putting into force/reexamination after the court decision. Decisions of the Public Procurement Authority can be subject to lawsuit. Public Procurement Authority is subject to 7,443 cases until 31.12.2015. It is part of 19 cases in Turkish Council of State and of 1,058 cases in administrative and ordinary courts.²⁸²

The article 53 of the Public Procurement Law contains the following provisions in its original version: “*If the Public Procurement Authority deems it necessary, it examines and concludes the claims related to violations of the provisions of this Law and of related legislation*”. Public Procurement Authority opened a corruption investigation according to this article.²⁸³ However, the Law No. 5812 dated 20.11.2008 abolished this competence of the Public Procurement Authority.

There is no voluntary disclosure program for companies to report corruption in public procurement system in return for mitigation sanctions in Turkey. Participation of civil society organizations as independent monitors in all stages of the procurement process is not possible. Civil society organizations should be encouraged to participate in the procurement process as an independent observer. Therefore, independent observers who can monitor tender specifics can participate in procurement system to observe ethical rules and transparency.

²⁸² Kamu İhale Kurumu. 2015 Faaliyet Raporu, p.33.

²⁸³ See Küçükşahin, Şükrü. “KİK'teki Ali Dibo dosyaları”, 6 July 2006, <http://www.hurriyet.com.tr/kik-teki-ali-dibo-dosyaları-4704966>.

1.8.4

SCORE

25

Regulations for the private sector

Scoring Question:

To what extent do the country's public procurement processes require integrity measures in bidding entities?

There are no incentives for companies with effective anti-corruption program in public procurement system. If companies are involved in prohibited acts and conducts defined in the Law and sole proprietorships, if these prohibited acts are conducted by legal persons based on shared capital, the prohibition decisions shall apply to partners that are real or legal persons who own more than half of the capital in accordance with the provisions of paragraph 1. Depending on their being real or legal persons, if those who are subject to a prohibition decision are partners to a sole proprietorship, the sole proprietorship shall also be subject to the prohibition decision; if those who are subject to a prohibition decision are partners to a company with shared capital, the company with shared capital shall also be subject to the prohibition decision provided that they own more than half of the capital. The prohibition decision can be given for a term of six months up to one year. Those who are involved in these acts during or after the tender proceedings shall not be allowed to participate in tenders by the contracting entity. The prohibition decisions shall be rendered within at most forty-five days following the date which the conducts or acts requiring prohibition were detected. The prohibition decision shall be sent for publication to the Official Gazette within at most fifteen days, and it shall become effective on the date of its publication. These decisions shall be followed by the Public Procurement Authority and those who are prohibited from participation in public procurement shall be registered. The contracting entities carrying out tender proceedings shall be responsible for notifying the relevant or related ministry of any activity requiring prohibition from participation in tenders.

According to 2015 Annual Report of the Public Procurement Authority, there are 4,928 prohibition records and the active prohibition list contains 8,401 prohibition records as of 31.12.2015.²⁸⁴ Companies can be prosecuted for corruption in tenders. However, as mentioned in bribery and laundering proceeds of crime, the penal responsibility of legal entities can be relevant only if the real persons' responsibility is determined by court verdict. Seizure or invalidation of licenses can be applied for legal persons. However, these measures are not implemented in an effective manner.

There is no obligation for companies to report their beneficial owners in Turkey and there is no official record on beneficial ownership. There is no obligation to report beneficial owner to participate in public tenders.

The initial advertisement of public tender agreements, necessary documents, results of public procurement are published on EKAP and this information is open to public. However, this information is not properly categorized and processed in line with open data principles. It is not possible to say that Public Procurement Authority is satisfactorily transparent as the construction and completion process of public-private partnerships is neither transparent nor shared with public. In addition, there are allegations that companies in close relationship with governments are able to accede to additional information on tenders.

²⁸⁴ Kamu İhale Kurumu. 2015 Faaliyet Raporu, p.37.

1.9

SCORE 25

TAXES & CUSTOMS

1.9.1

SCORE 50

Operating environment

Scoring Question:

Are the country's tax & custom administrations utilizing processes in accordance with international recognized standards?

Tax liabilities, determination of taxes, tax cases and penalties are determined by the Tax Procedure Law no. 213. The declaration of taxes is controlled by tax authorities and Revenue Administration (*Gelir İdaresi Başkanlığı*, GİB) with tax investigations and cross-examinations. Tax authorities are connected to the Revenue Administration.

Liable tax payers can receive their password by applying to Tax Authorities and handle their business using the website of the Revenue Administration. With internet tax system, tax payers can deal with their declarations, assessment, payments; follow whether their accountants pursue their operations as required. The Revenue Administration accelerated e-services in recent years and transferred to online platforms the activities such as e-invoice, e-book, e-enterprise, e-archive, sending the lists of tax return demands, learning tax identification number, inquiries about e-tax certificate, inquiries about tax debts. With communiqués, information notices and announcements, the number of tax payers that use the application of electronic book and electronic archives increase. The number of users using online tax system and e-declaration system increases gradually. Moreover, the questions of tax payers are answered using Tax Communication Center (*Vergi İletişim Merkezi*, VİMER). The number of responses to calls on VİMER exceeded 3,4 million in 2015.²⁸⁵ Furthermore, online notification system is created for corporate tax payers and income tax payers in order to send their documents online. In addition, with the e-inspection project, tax monitoring and inspections can be realized with mobile apps and it became possible for taxpayers to control irregular operations. Tax payers can also inquire their custom declarations and their invoice taken from the Customs Administrations with tax identification number.

The Revenue Administration publishes tax income statistics on internet.

Companies are protected from double taxation and tax fraud with bi-lateral agreements.

A major reason that decreases tax awareness in Turkey is the oft-implemented tax amnesties. Tax amnesties intend to encourage the payment of initial tax while pardoning interests and penalties due to late paying. This often implemented tax penalties decrease tax awareness among liable tax payers. Another major obstacle to a comprehensive tax system in Turkey is the scope of informal economy.

According to the Custom law no. 4458, acts and formalities of the customs administration can be dealt directly or indirectly through representatives. According to article 5 of the Custom Law

²⁸⁵ Gelir İdaresi Başkanlığı. 2015 Faaliyet Raporu, Strateji Geliştirme Daire Başkanlığı, February 2016, p.118, http://www.gib.gov.tr/sites/default/files/fileadmin/faaliyetraporlari/2015/2015_faaliyet_raporu.pdf.

no. 4458 “Any person may appoint a representative in his dealing with the customs administrations to perform the acts and formalities laid down by the customs legislation. Except for the ones performing transportation in transit or making an occasional declaration, the representative must be established within the Customs Territory of Turkey.” In the first paragraph of the article 225 under the section “Proceeding of Transactions at Customs and Customs Consultants” states “Under Article 5, activities regarding the goods being assigned to one of the customs-approved uses, shall be proceeded and concluded through direct representation by the owners of goods and by those who act on their behalf; or through indirect representation by the customs consultants.” The examination of custom consultants, provision of their licenses, disciplinary actions and approval of the highest wage scale of custom representatives are executed by the Ministry of Customs and Trade (Gümrük ve Ticaret Bakanlığı). Direct or indirect representatives have to execute their operations in line with the custom duties published by the Ministry of Customs and Trade. The Ministry also publishes customs and trade statistics.

With the modernization of customs administration, the duration of custom procedures shortened. According to the 2015 Annual Report of the Ministry of Customs and Trade, 56% of customs declarations in the first eight hours, 71% of them in the first 24 hours are completed after the start of custom procedure in import. 98% of declarations are completed in the first 24 hours in export. 81% of operations in half-an-hour, 95% of operations in the first four hours are completed and goods became ready to leave the country.²⁸⁶ In order to accelerate custom operation, the institutions that do not have any record of violation of legislation, have regular registration and financial capability are given Approved Status Certificate and Authorized economic operator. The information and documents of goods that are circulated in international trade and transport can be submitted to a single point of contact with one window system (Tek Pencere Sistemi). With this system, the relevant permissions, approvals, documents can be taken by e-document and e-application procedures and custom procedures can be followed. The Ministry of Customs and Trade cooperates with other ministries and institutions in order to facilitate taking and pursuing necessary documents through e-document system. 117, 304 e-documents are sent to the ministry of Customs and Trade until 2015 and these documents are used in 1,207,588 custom declarations. Moreover, it is possible to follow custom operation through online platforms via the Container and Port Tracking System, Registration of Liable and Tracking System and the Economic Operator Registration and Identification Scheme.

There can be delays in custom operations due to unclear value declaration in import operations, the problems encountered in the determination of custom duties of imported or exported goods, the transfer of information in the invoice to custom declaration, troubles in the import of used goods to Turkey, problems with relevant controls and licenses and customs operations, problem in foreign exchange, implementation of customs regime with economic impact in legislation.²⁸⁷

²⁸⁶ Gümrük ve Ticaret Bakanlığı. 2015 İdare Faaliyet Raporu, p.24, http://www.gtb.gov.tr/data/5770c9f71a-79f563a8d79931/gumruk_bak.2015faaliyet_raporu%20son%20oversiyon.pdf.

²⁸⁷ Gündüz, Zeki. “Gümrüklerde Yaşanan Sorunlar”, Price Water House Coopers, <https://www.vergiportali.com/doc/gumrukler.pdf>

Integrity of tax administration authorities

Scoring Question:

Are the country's tax & custom administrations and its employees committed to internationally recognized standards of integrity and ethical behaviour?

The Revenue Administration is responsible for tax collection and monitoring. The staff working in the Ministry of Customs and Trade has to act in accordance with the Public Servants Law no. 651 and within the framework determined by the Public Officers Ethics Board. These institutions are responsible to provide training and make announcements to spread the principles of Ethics Board. Moreover, there are ethnic commissions in the Revenue Administration and in the Ministry of Customs and Trade. Ethnical commissions have to keep the identity of whistleblower in secret and take precautions to protect them. The last activity report of Ethics Commissions of the Ministry of Customs and Trade belong to the year 2013 on its website. In the annual reports of Education Department of the Ministry of Customs and Trade can be seen regular ethnical training for the staff. In the annual reports of the Revenue Administration between 2010 and 2015, there is no mention of training about ethics and fight against corruption. The Revenue Administration prepared "The Guidelines For The Fight Against Corruption For The Tax Investigators" in 2006 in line with the OECD principles and recommendations. These guidelines need a revision updating it with the changing legislation and practices.

In the Customs Sector Perception Survey of TEİD, 40% of customs brokers think that corruption is common in customs while 41% of them think that corruption is not common in customs. Among the causes of corruption, respondents state issues related to customs sector employees, legislation, government policies and corporate governance.²⁸⁸

In our interviews with customs brokers, allegations that custom brokers who left the public sector tend to pursue business by using their prior public relations and that employers tend to recruit these people for their prior positions in the public sector were expressed. Thus, it is necessary to create a legislation and culture in which employees will not use their past relationships in public sector and will not allow employers to use these relationships. The work of the TEİD "Collective Action Toolkit for Combating Corruption Against Corruption" is an exemplary project to generate this culture and is included as a project in the United Nations' Practical Guide for Collective Action Against Corruption.

The internal audits of the Revenue Administration and of the Ministry of Customs and Trade control the financial operations and transactions about revenues, expenditures, assets and liabilities. Internal audits are not independent but dependent on the ministries, thus, open to the use of undue influence. These administrations are subject to the external audit of the Court of Accounts. The supervision of the Court of Accounts, its independence and efficiencies are discussed in previous parts and the deficiencies in its audits also reflect on the inspections executed in these institutions.

In case tax and custom personnel commit a crime within the scope of corruption, they are subject to the law under Turkish Penal Code. The shortcomings related to the investigation and prosecution of bribery offense is previously mentioned. Online operations decrease the petty

²⁸⁸ TEİD Gümrük Sektörü Algı Araştırması Araştırma Raporu, İstanbul: May 2016, <http://www.teid.org/wp-content/uploads/2016/10/TE%C4%B0D-G%C3%BCmr%C3%BCk-Sekt%C3%B6r%C3%BC-Alg%C4%B1-Ara%C5%9Ft%C4%B1rmas%C4%B1.pdf>.

bribery in many cases. The companies we interviewed underlined that measures against corruption should be applied in a stricter way especially for provincial administrations. There should be regular training about fight against corruption for custom and tax personnel in provinces.

Tax complaints can be done by telephone or internet. There were 38,052 complaints on VİMER between 1 January-31 December 2015 regarding documents, registration of liable tax payers, real property income, reductions on income tax, employment of workers without social security stipend, fake or biased document, payment of wage and other complaints.²⁸⁹ According to legal and administrative regulation, the complaint should be done with identification number in order to be taken into consideration. Thus, there is no anonymous mechanism for complaints. Complaints are transferred to local administration within two days and they will be subject to central supervision. In order to incentivize complaints, complaint payment is paid by the Presidency of Tax Administration and Head of Provincial Treasury. The complaint payment is done according to the article 6 of the law no.1905 that was put into force on 31.12.1931. The payment is assessed based on the 10% of the tax declaration.²⁹⁰ The Revenue Administration made payment to 338 people between 01.01.2015 – 31.12.2015 in line with the law no. 1905.²⁹¹

The complaints to the Ministry of Customs and Trade can be done through telephone and internet. Smuggling denunciations can be done using through the website of the ministry or through ALO 136 Custom Protection Smuggling Line. There are no anonymous complaint mechanisms, the ID is obligatory. 3,065 denunciations to ALO 136 were made in 2015.²⁹² There is no information about the consequences of these denunciations. Contrary to tax, there are no complaint incentives for customs.

The wages of the staff working in the Ministry of Customs and Trade and Revenue Administration change according to their degree and duties. The wage of personnel in these institutions is sufficient.

1.9.3

SCORE 25

External safeguards

Scoring Question:

Are the country's tax & revenue collection processes integrating external safeguards for detecting and reporting violations?

Companies can take their tax identification number using the Central Registration System (*Merkezi Sicil Kayıt Sistemi*, MERSİS). The companies in financial markets are exposed to independent audits and these reports are open to the public. There is no such an obligation for the small and medium-sized enterprises and their revenues and expenditures are kept by free accountants and certified-accountants. There is no voluntary disclosure program for companies to report on corruption in return for mitigation sanctions. For the companies involved in corporate governance index, there is a reduction in price that is implemented as 50% in the first two years, %25 in the two years after and 10% in the following years. This

²⁸⁹ Gelir İdaresi Başkanlığı. 2015 Faaliyet Raporu, p.61-62.

²⁹⁰ Türcay, İmdat. "Vergi İhbarı ve İhbar İkramesi", *Vergialgi.net*, 14 July 2015, <http://www.vergialgi.net/vergi/vergi-ihbari-ve-ihbar-ikramesi/>.

²⁹¹ Gelir İdaresi Başkanlığı. 2015 Faaliyet Raporu, p.118.

²⁹² Gümrük ve Ticaret Bakanlığı. 2015 İdare Faaliyet Raporu, p.33.

reduction continues for 4 years after their involvement in index but it is not implemented afterwards. But this 4-year-reduction is not sufficient for companies to establish independent and effective complaints mechanisms for reporting corruption. As it will be explained further in private sector section; corporate structure, the capacity to attract international investment or being publicly-held companies, human and administrative capacity are influential on this matter.

Tax investigations are realized through routine inspections, sectoral investigations, cross examinations and complaint mechanisms. With the enhancing of online platforms, the investigations are also done electronically. In 2011, with the decree of the Council of Minister, the Investigation Board of the Ministry of Finance (*Maliye Teftiş Kurulu*) with a deep historical background and organizational culture is closed. Account experts, finance inspectors, tax inspectors and revenue controllers are gathered under the roof of Tax Inspection Board (*Vergi Denetim Kurulu*). The fact that the candidates who do not have tax education are allowed to enter into examinations for Tax Inspections Board with the change in regulations raised concerns about the qualification of tax inspectors.²⁹³ The working of Tax Inspector Board within the Ministry of Finance is an organizational obstacle to autonomous operation of tax investigations independent from political influences.²⁹⁴ Tax inspectors may be subject to the pressures of the people, governors and deputies in the places they examine especially in provinces.²⁹⁵ According to the study of Transparency International-Turkey “Corruption in Turkey: Why, How and Where” survey in 2016; customs and foreign trade transactions ranked 3rd and tax authorities ranked 5th among public works and transactions where corruption is the highest. 44% of respondents think that corruption is excessive in tax, customs and foreign trade transactions.²⁹⁶

Tax audit rates are low in Turkey. The Tax Audit Board employs 9,205 inspectors, which is equivalent to 0,6 inspectors per 1000 citizens, and the same ratio is 1,3 in France and 1,5 in the UK.²⁹⁷ According to the Tax Audit Board 2015 Annual Report, 2.32% of income taxpayers and corporate taxpayers (excluding real property income tax) were subject to examination.²⁹⁸ The difference between the actual tax base and the declared tax base is approximately 46,7 billion TL. The tax evaders were fined 18,8 billion TL.²⁹⁹ This high figure illustrates the tax resistance in Turkey.³⁰⁰

Considering that taxpayers evade taxes taking into account the risk of being caught and punished as a result of tax inspections, it is necessary to develop policies that will ensure efficiency in tax inspections. The report prepared by the TESEV on the informal economy recommends the incorporation of technological developments in tax audits, raising awareness among citizens about the relations between the quality of public services and taxation and rendering legal procedures more predictable and stable instead of applying tax amnesties.

²⁹³ Eğilmez, Mahfi. “Vergi Müfettişliği ve Toplumsal Boşvermişlik Hali”, *Vergialgi.net*, 7 April 2013, <http://www.vergialgi.net/makaleler/vergi-mufettisligi-ve-toplumsal-bosvermislik-hali/>; Karanfil, Neşe. “Öğretmenler vergi müfettişi olacak”, *Radikal.com*, 1 April 2013, <http://www.radikal.com.tr/ekonomi/ogretmenler-vergi-mufettisi-olacak-1127486/>.

²⁹⁴ Bakır, Caner. “Maliye Bürokrasisinde Örgütsel Değişim ve Vergi Denetim Kurulu Başkanlığı'nın Kurulması”, *Amme İdaresi Dergisi*, 2012, 45(2), p.99.

²⁹⁵ Eğilmez, Mahfi. “Vergi, yine vergi”, *Radikal.com*, 30 July 2009, <http://www.radikal.com.tr/yazarlar/mahfi-egilmez/vergi-yine-vergi-947267/>.

²⁹⁶ Uluslararası Şeffaflık Derneği. *Türkiye’de Yolsuzluk: Neden, Nasıl ve Nerede?*, March 2016, p.21.

²⁹⁷ Kirmanoğlu, Hülya; Miscioğlu, K. İpek. *Türkiye’de Kayıt Dışı Ekonomi*, TESEV Yolsuzluk Raporları 2016, <http://tesev.org.tr/tr/yayin/yolsuzluk-raporlari-2016-turkiyede-kayit-disi-ekonomi/>.

²⁹⁸ Vergi Denetim Kurulu. *2015 Faaliyet Raporu*, Ankara, p.43, http://www.vdk.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fDosya%2fFaaliyetRaporu_2015.pdf.

²⁹⁹ Ibid.

³⁰⁰ Gelir İdaresi Başkanlığı. *2015 Faaliyet Raporu*, p.81.

Among the reasons for tax evasion can be stated complicated legislation, high tax rates, ineffective tax audits, high indirect tax rates compared to direct taxes, failure to comply with regulations, and insufficient control of informal sectors.³⁰¹ One of the most important problems in the proper collection of tax in Turkey is the high rates of indirect taxation compared to direct taxes applied according to the wealth.³⁰² 63.38% of Turkish tax revenues are provided from indirect taxes. While the indirect tax burden on an ordinary citizen is 67%, about 56 TL of the 100 TL income is taxed and goes back to the state.³⁰³ VAT and Special Consumption Tax from goods and services are also high. While the VAT taken from a real estate of 1,000,000 is % 1, the VAT from Turkish bagels is %8.³⁰⁴ The entire tax revenue of 458,6 billion TL collected in 2016 included 130, 6 billion TL VAT and 120,3 billion Special Income Tax.³⁰⁵ In addition, special consumption tax and VAT collection is unfair. While the special income tax of a zero car is %145, this rate is 0 for yachts, cottages and boats.³⁰⁶

Many administrations that we interviewed in the private sector stated the fact that unregistered businesses are ignored by tax inspectors while legal firms are under strict tax supervision, lead to unfair competition. There were also criticisms that tax investigations and penalties are applied more strictly to firms that voice criticisms against government policies. Transparency, impartiality and independence in tax auditing are necessary for increasing tax awareness and ensuring equality and equity in public taxation. We also observed in our interviews that there is a common perception that tax audits are less strict during election periods. Many of the businesses that are officially registered in the private sector have expressed the view that auditors are ignoring the businesses that benefit from informal economy. Some elements of the informal economy are accepted as “known secrets” among public. For example, it is common practice in small firms to deduct indirect taxes by finding out invoices and thus evading tax or to use unregistered employment. In taxis and in neighborhood markets, the exchange of money is generally done with no-invoice. Moreover, new policies should be produced to prevent tax inspectors in the provinces from being pressed by governors and local artisans. A culture of observing the rule should be cultivated instead of the common practice of tax bargaining. Concerns about bankruptcy of small firms if they are fined by tax authorities during tax examinations hinder the sustainability of businesses by encouraging informality.

Taxpayers who are under tax examination may make tax assessment applications by writing to the tax auditors, their team or group chairperson. After the tax is assessed and the penalty is cut off, taxpayers can apply for reconciliation after tax assessment.³⁰⁷ According to the pre-assessment reconciliations (*Tarhiyat Öncesi Uzlaşma*, TOU) results for 2015, as a result of the applications made to the TOU Commissions; The amount of 1,103,763,758 TL from the tax amount of 2,464,222,476 TL was subject to reconciliation and a settlement of 973,203,569 TL was reached for this amount. On the other hand, 1,926,019,997 TL for 3,563,887,588 TL tax penalty entered

³⁰¹ Kumkale, Rüknettin. “Vergiden kaçınma ve vergi kaçırma”, *Dunya.com*, 12 May 2015, <http://www.dunya.com/kose-yazisi/vergiden-kacinma-ve-vergi-kacirma/23932>.

³⁰² OECD. Revenue Statistics, 2016, <http://www.oecd.org/tax/tax-policy/revenue-statistics-tax-structures.htm>.

³⁰³ Interview of Cüneyt Akgül with Ozan Bingöl (Sworn-In Certified Accountant, Auditor, Tax Expert), “Kazandığınız Her 100 Liranın 56 Lirası Devlete Vergi Olarak Geri Dönüyor!”, <http://www.ozanbingol.com.tr/kazandiginiz-her-100-liranin-56-lirasi-devlete-vergi-olarak-geri-donuyor/>.

³⁰⁴ Gelir İdaresi Başkanlığı. K.D.V. Oranları, <http://www.gib.gov.tr/yardim-ve-kaynaklar/yararli-bilgiler/kdv-oranlari>.

³⁰⁵ T.C. Maliye Bakanlığı Bütçe Mali Kontrol Genel Müdürlüğü. Aylık Bütçe Gerçekleşme Raporları, December 2016, <http://www.bumko.gov.tr/Eklenti/10446,2016aralikayibutcegerceklesmeleriraporupdf.pdf>

³⁰⁶ Gelir İdaresi Başkanlığı. Özel Tüketim Vergisi Tutarları ve Oranları, http://www.gib.gov.tr/fileadmin/mevzuat/otv_oranlari_tum/ozeltuketimoranlari-OpenPage.htm.

³⁰⁷ Gelir İdaresi Başkanlığı. Vergi Uyuşmazlıklarının İdari ile Çözümünde Uzlaşma, Ankara, 2007, http://www.gib.gov.tr/fileadmin/user_upload/yayinlar/uzlasma.pdf.

into reconciliation process and a settlement amounting to TL 138,749,157 was reached for this amount.³⁰⁸ The decisions of the Tax Reconciliation Commission must be disclosed and shared with the public in the name of accountability and transparency of the public administration.

The Parliamentary Commission of Corruption Investigation Report recommends in the Conclusions and Recommendations section that the declaration on principles of Integrity of Customs Cooperation Council should be developed as an action plan. The legislation, pilot studies and other activities in this matter should be reported to the Prime Ministry and Undersecretariat of Customs with administrative and judiciary investigation statistics.³⁰⁹

1.10

SCORE 25

OPEN DATA

1.10.1

SCORE 25

Data Ecosystem

Scoring Question:

Are data produced by state authorities satisfactory, categorized properly, accessible for public?

Turkey is among the 65 countries participating in the Open Government Partnership (OGP), but its membership was inactivated in 2014 because it could not establish a national action plan for its commitments. The action plan proposed by Turkey for the Open Government Partnership consists of two main parts. The first part is aimed at applications that increase transparency in the public sector. Among these applications:

1. Setting up a web portal named www.transparency.gov.tr that will explain administrative legislation and practices in the field of transparency, integrity, accountability and consulting public opinion in this regard;
2. Holding an Advisory Platform for transparency in public and openness, at least once a year, with the broad participation of representatives of public sector, non-governmental organizations and private sector; holding seminars, workshops and conferences with the aim of increasing public awareness in the area of integrity, transparency, accountability and combating against corruption;
3. Plotting a risk map by determining risk areas open to corruption and taking preventive -deterrent measures against corruption;
4. Measuring the suitability and effectiveness of existing measures and policies in matters of reducing bureaucratic red-tape, increasing integrity, transparency and accountability and combating corruption by conducting surveys in order to determine the perception of citizens and the business world and sharing results with the public.

The second part of action plan deals with improving the quality of public services. Building an internet platform to encourage citizen and other interested parties to participate in the policy

³⁰⁸ Vergi Denetim Kurulu. 2015 Faaliyet raporu, p. 45.

³⁰⁹ Tarhan, R. Bülent; Ömer Faruk Genççaya; Ergin Ergül; Kemal Özsemerci; Hakan Özbaran, p.155.

making process; creating an electronic public procurement platform for transparency of public procurement; increasing the transparency of public expenditures and creating a website where they can be traced are among the applications proposed in the second part.

Turkey also ratified the G20 Open Data Principles which are open by default; timely and comprehensive; accessible and usable; comparable and interoperable; for improved governance and citizen engagement; for inclusive development and innovation.

Public institutions give more importance to the production of statistics with the aim to comply with EU statistics system. According to our study on laws and regulations about the ministries' duties and organization, the ministries that make the most references to statistics are the Ministry of Food, Agriculture and Livestock (20 references) and the Ministry of Transport (9 references). But the ministries related to economy are more successful in data production, publication of data regularly, proper categorization and accessibility to data. This study also displays that while the Ministry of Economy, the Ministry of Finance, the Ministry of Customs and Trade, the Ministry of Labor and Social Security have more comprehensive work on data, the data produced by the Ministry of the European Union, the Ministry of Family and Social Security, the Ministry of Culture and Tourism and Ministry of National Defense are neither comprehensive nor informative. Moreover, while it is possible to find data on birth and death, marriage and divorce, residence, population numbers and statistics on cities and villages in the website of the Ministry of Interior Affairs; there is no data on operations, investigations, arrested, disciplinary penalties inside the police forces. The statistics of National Police Department should be reported and published in a more systematic, categorized and comprehensive way by the Ministry of Internal Affairs. Another major problem of data produced by Turkish Ministries is their incompatibility with modern data processing software to make it accessible for researchers.

The data production in Turkey should be considered with the right to information. Since 2003, public institutions and entities are obliged to respond to applications for access to information in line with the Law on the Right to Information no. 4982. According to article 7 of the Law on the Right to Information, the application for access to information should be related to the information or the documents regarding duties and activities of relevant institutions and agencies. If the information or document is in the hands of other institutions or agency rather than the applied institutions, the petition of application is sent to this institution and agency and the relevant person or agency receives a written notice about this. Moreover, citizens can send the application for access to information to Ethics Board and Communication Center of the Prime ministry (*Başbakanlık İletişim Merkezi, BİMER*) and the relevant public institutions have to respond within 15 days.

Turkey ranks 79 out of 11 countries in the Global Right to Information Index.³¹⁰ The restrictions on the right to information are composed of transactions that are subject to the judicial review; information and documents pertaining the state secrets; information and documents pertaining the economic interests of the state; information and documents pertaining the state intelligence; information and documents pertaining the administrative investigation; information or documents pertaining the judicial investigation and prosecution; privacy of the individuals; privacy of communication; trade secrets; intellectual property; internal regulations; internal opinions; information notes; requests for recommendation and opinions; declassified information and documents. However, the interviewees we had in the civil society sector highlight that their application for right to information are circumvented with references to legislation or rejected under the pretext of restrictions.

³¹⁰ Center for Law and Democracy. Global right to Information Rating, <http://www.rti-rating.org/>.

The one whose application for information has been rejected may object by writing to the Review Board of Access to Information (*Bilgi Edinme Değerlendirme Kurulu*, BEDK) within fifteen days from the notification of the decision before starting judicial procedure. The Board will decide on this issue within thirty working days. National Integrity System Assessment prepared by Transparency International- Turkey pointed out that the BEDK member structure should be more diverse in order to represent all stakeholders.³¹¹ It consists of 9 members appointed by the decision of Council of Ministers. The appointments are done via recommendations from various organizations ranging from the members of the Council of Ministers, academia, the Bar Association to general directors and judges from the Ministry of Justice.³¹² Members of the Board serve for 4 years and the President of the Board is elected among the members of the Board. The Board meets once a month, but may be convened whenever the President calls.

The number of applications to BEDK also increased. The number of applicants which was 1,164 in 2006 rose to 2,690 in 2014, but the number of rejected applications is 1,095. Thus, the number of rejected applications is very high.³¹³ The EU progress reports have recommended that the BEDK should be organized autonomously. Another organization of right to information is BIMER, established in 2006 to answer questions from citizens. According to BIMER statistics, the number of applications made in 2006 was 129,297 while it increased to 1,729,952 in 2016.

³¹¹ Uluslararası Şeffaflık Derneği. Türkiye Şeffaflık Sistemi Analizi, p. 62.

³¹² See Bilgi Edinme Kurulu resmi İnternet sitesi, <http://www.bedk.gov.tr/Hakkimizda.aspx>.

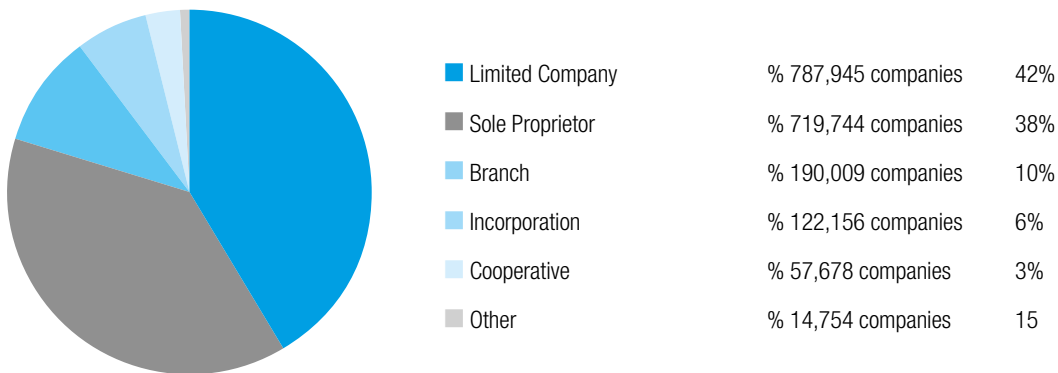
³¹³ Uluslararası Şeffaflık Derneği. Türkiye Şeffaflık Sistemi Analizi, p. 62.

Per the 2013 statistics released by TurkStat, there are approximately 3.5 million registered companies in different sectors and at different scales, both national and international. TurkStat 2015 data further shows that 2.7 million companies are operating in areas except programming and publishing, finance, and insurance. It is possible to stratify these companies according to various classifications such as scale of business, partnership structure, whether the company is publicly traded or not, whether the companies' shares are traded in Istanbul Stock Exchange; such a classification allows us to evaluate companies' viewpoints in terms of their approach to transparency and their practices.

Examining the distribution of enterprises according to their scale of business reveals that the number of SMEs in Turkey reflect the global average of 99.8%-99.9%. On the other hand, the clear majority of SMEs are at a micro-level at 93.5%, that is, companies with less than TRY 1 million annual net revenue and less than 10 employees. In other words, of all SMEs, micro-scale enterprises with 1-9 employees account for 93.5% of total enterprises, small-scale enterprises with 10-49 employees 5.4%, and medium-scale enterprises with 50-249 employees account for 0.9% of all enterprises.³¹⁴ Alongside their preponderance in sheer numbers, SMEs may be considered to form the building blocks of Turkish economy, accounting for 54.1% of total salaries and wages, 62% of total revenue, 53.5% of factor costs and added value, and 55% of gross investments in tangible goods in Turkey.³¹⁵ Furthermore, their shares in exports and imports are increasing rapidly. In 2015, 37.7% of total imports and 55.1% of exports were realized by SMEs. It is also another fact that in some sectors, almost all exports are made entirely by SMEs.

Examining the partnership structures of enterprises, we observe that a significant portion of SMEs are family-owned businesses and the legal status of these businesses are mostly sole proprietorships or limited liability companies. For large-scale enterprises, the legal status of companies mostly comprises limited liability or joint stock companies. Companies with international capital also prefer to partner often with large-scale enterprises, and to a lesser extent, medium-scale enterprises. As can be seen in Graphic 13, 80% of all 1,892,286 active companies are sole proprietorships and limited companies.³¹⁶ In addition, the number of tradesmen and craftsmen in Turkey is 1,802,518.³¹⁷

Graphic 13. Breakdown of the Companies in Turkey According to Their Legal Status



Source: Ministry of Customs and Trade

³¹⁴ TURKSTAT, İş Kayıtlarına Göre Girişim Sayıları 2013

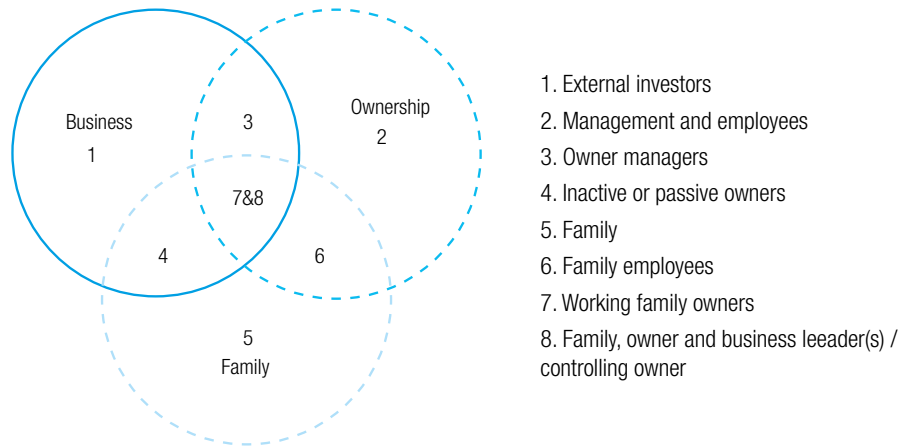
³¹⁵ TURKSTAT, Küçük ve Orta Büyüklükteki Girişim İstatistikleri, 2016, Haber Bülteni, 25 Nov. 2016, Sayı: 21540

³¹⁶ Gümrük ve Ticaret Bakanlığı, 2016 Yılı Aralık Ayı Veri Bülteni, p.9

³¹⁷ Gümrük ve Ticaret Bakanlığı, 2016 Yılı Aralık Ayı Veri Bülteni, p.10

The share of internationally-funded companies in Turkey is 13.8%; the number of internationally funded companies rose from 42,150 in 2014 to 46,800 in 2015,³¹⁸ and to 49,933 in the first half of 2016.³¹⁹ Looking at the distribution of establishment of internationally funded enterprises per the 2014 figures, 34,788 are newly founded companies, 6,297 are mergers, and 975 are branches. The legal status of these comprise 78.7% limited liability companies, 19.1% joint stock companies, and 2.2% other types. Among these internationally funded companies, the top-5 investors are from the Netherlands, UK, Germany, USA, and France. Although the words “family” or “family-owned business” have not been used and defined in the New Turkish Commercial Code No. 6102 that entered into force as of July 1, 2012, the concepts of fairness/equity, transparency, accountability, and responsibility that constitute the basic concepts of corporate governance principles have been detailed and new articles were introduced to define these concepts.³²⁰ In particular, the financial statements of joint stock companies and the preparation of the annual report of the board of directors have been emphasized by Article 515, which defines fair image principles. The Article underscores the necessity of disclosing financial statements transparently and reliably. Per Article 626, the directors and persons responsible for the management of the company are obliged to observe company interests within the framework of honesty. In addition, in many articles of the law, principles of “honesty” and “accountability” have been emphasized and working with these principles are stressed.

Figure 1. Intersecting Circles of Family Business



Source: PwC, *Kin the Game, Family Business Survey 2010/11, 2010*, p.3

A survey conducted on approximately 300 enterprises in different regions of Turkey in 2008 reveals that there is a strong correlation between the number of partners in the SMEs and the kinship status of the partners. The survey revealed that partners also have a kinship relationship in 70% of the 1-5 partner companies, which make up 81% of the enterprises surveyed.³²¹ That said, scale of enterprise and partnership status of companies in the study also indicate trends that do not show much correlation between these variables. It would be a fallacious to assume that all SMEs or large-scale business are family businesses, or that family businesses tend to gravitate towards SME or large-scale business models. Public disclosures and transactions in the stock exchange also hold for both large-scale businesses and SMEs.

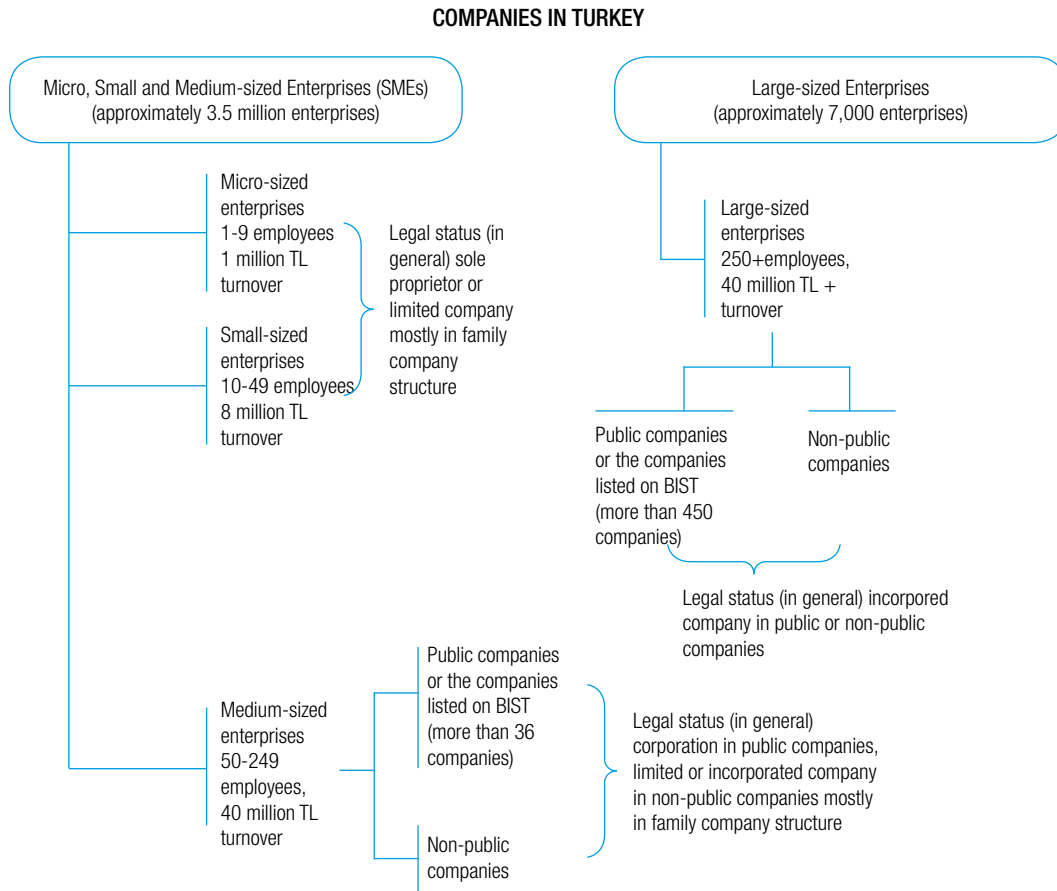
³¹⁸ <http://www.invest.gov.tr/en-US/turkey/factsandfigures/Pages/TRSnapshot.aspx>

³¹⁹ http://www.ekonomi.gov.tr/portal/faces/home/yatirim/uluslararasiYatirim/uluslararasi-dogrudan-yatirim?_afz-Loop=1213845828946655#%40%40%3F_afzLoop%3D1213845828946655%26_adf.ctrl-state%3De79lf85bl_170

³²⁰ Sönmez, Asuman. Toksoy, Andaç. Kurumsal Yönetim İlkelerinin Türkiye’deki Aile İşletmelerine Uygulanabilirliği, *Malîye Finans Yazıları*, July 2011, Sayı: 92, p.67

³²¹ Sönmez Asuman, *KOBİ Finansmanında KOBİ Borsalarının Yeri, Dünya Uygulamaları ve Türkiye Üzerine Bir İnceleme*, Kadir Has Üniversitesi, Doktora Tezi, 2008

Figure 2. Size and Structure of the Companies in Turkey



Source: Asuman Sönmez, BIST, KAP, TURKSTAT

Despite their importance in terms of economic indicators and the abundance of family owned businesses within the economy as is in the rest of the world, the lifetime of family businesses is usually cut short, as the transition from generation to generation proves to be difficult. Only 3 out of 10 family businesses transfer to the second generation.³²² Similarly, in the case of developed economies, research shows that problems with generational transition often occur between the second and third generations. The results of a survey conducted in the USA reveal that the number of family businesses that shut down its operations within the first generation is at 80%, 16% of companies reach the second generation, and only 4% have survived until the third generation.³²³ The decisive factors in the survival of family-owned enterprises are institutionalization and working according to the corporate governance principles that the company adopts.

The previously widely-accepted notions that corporate governance principles are more geared towards publicly-traded companies and that these principles serve solely as instruments to protect shareholders' rights are being abandoned after the observation that strict adherence to corporate governance principles reinforces a sustainable business environment. As such, non-publicly-traded companies have begun to incorporate their own governance principles into their organizational structures.³²⁴

³²² Sarrafoğlu, Fahri. Aile Şirketleri Niye Uzun Olmuyor?, <http://www.netpano.com/makale/?makale=1084>, 13 Nov. 2010

³²³ Türkiye Kurumsal Yönetim Derneği (TKYD), Kurumsal Yönetim İlkeleri Işığında Aile Şirketleri Yönetim Rehberi, Türkiye Kurumsal Yönetim Derneği Yayınları, 2010, p.13

³²⁴ Sönmez, Asuman. Toksoy, Andaç. "Kurumsal Yönetim İlkelerinin Türkiye'deki Aile İşletmelerine Uygulanabilirliği", Maliye Finans Yazıları, July 2011, Sayı: 92, p.81

Although Turkey has a growing economy that may be considered well-integrated to the global economy, its declining position in Transparency International's Corruption Perception Index over the past years is worrisome. Turkey was among the worst performers in its year-over-year growth in scores, marking a drop from 64th to 66th between 2014 and 2015.³²⁵ Turkey further dropped to the 75th position in the 2016 CPI rankings.

The latest report of the Group of States Against Corruption (GRECO) on Turkey also underscores the lack of progress in the previous recommendations, especially in the areas of criminalization of corruption and financing of political parties and election campaigns. It should be noted that GRECO requires Turkey to show "measurable progression as soon as possible." The lack of progress highlighted in these reports undoubtedly undermine the confidence of domestic and foreign investors.³²⁶

On the other hand, downgrades to Turkey's investment outlook scores by international credit rating agencies such as Standard & Poor's, Moody's, and Fitch, and the following removal of Turkey from "investment-grade" countries are factors affecting international capital flow into the country. In such an environment, borrowing costs of firms increase, making it more difficult to achieve economic stability.

Businesses that want to change their scale, especially those that want to go from medium to large scale enterprises, have begun to set up their own working principles, especially in anti-corruption policies in the framework of corporate governance principles, and adopting rules of transparency, fight against corruption and corporate ethics. The positive effects of these activities and developments in the private sector on Turkey's competitive strength are also reflected in the results of the World Economic Forum's Global Competitiveness Report. Turkey had ranked 71st in the 2005-2006 report; marking an improvement in the rankings, Turkey was 61st among 133 countries in 2010, 45th among 148 countries in 2014,³²⁷ 51st in 2015,³²⁸ and 55th among 140 in 2016.³²⁹

Besides improving in the rankings over the years in the Global Competitiveness Index, Turkey has performed below the average in only 2 out of the 12 index components in the index, Labor Market Efficiency and Macroeconomic Environment. Turkey has shown improvements in Institutions, Infrastructure, Health and Primary Education, Higher Education and Training, Goods Market Efficiency, Financial Market Development, Technological Readiness, Market Size, Business Sophistication and Innovation pillars.³³⁰ The report stresses that Turkey should focus on the components of health and primary education, higher education and on-the-job training, efficiency of labor markets, and the effectiveness and transparency of public institutions in order to improve competitiveness.³³¹

The first pillar among the twelve pillars of competitiveness in the Global Competitiveness Index is Institutions. The institutional environment of a country has a strong bearing on the legal and administrative framework within which individuals, firms, and governments interact, and

³²⁵ Zıngıl, Özlem. Şeffaflık ve Yolsuzlukla Mücadeleye İlişkin Yasal Düzenlemelere Genel Bir Bakış, Uluslararası Şeffaflık Derneği, April 2015, p.3

³²⁶ *Ibid*

³²⁷ TÜSİAD-Sabancı Üniversitesi Rekabet Forumu (REF), Sektörel Dernekler Federasyonu (SEDEFED), "Türkiye'nin Küresel Rekabet Düzeyi 2013-2014", Jan. 2014, p.10

³²⁸ <http://www.rekabet.gov.tr/tr-TR/Rekabet-Yazisi/Kuresel-Rekabet-Endeksi-2014-2015-Raporu>

³²⁹ <http://www.rekabet.gov.tr/tr-TR/Rekabet-Yazisi/Kuresel-Rekabet-Edebilirlilik-Endeksi-2015-2016-Raporu>

³³⁰ TÜSİAD-Sabancı Üniversitesi Rekabet Forumu (REF), Sektörel Dernekler Federasyonu (SEDEFED), "Türkiye'nin Küresel Rekabet Düzeyi 2013-2014", Jan. 2014, p.10

³³¹ *Ibid*, p.45

determines the quality of the public institutions of a country.³³² The qualities of the institutional environment influence investment decisions and the organization of production and play key roles in the ways in which societies distribute the benefits and bear the costs of development strategies and policies.³³³ In that regard, the relevance of accounting and reporting standards and transparency for preventing fraud and mismanagement, ensuring good governance, and maintaining investor and consumer confidence are central for profitability.³³⁴ In this pillar, Turkey ranked 56th in the 2013-2014 report,³³⁵ regressing to 64th in the 2014-2015 and to 75th spot in the 2015-2016 report.³³⁶ In the sub-category of Transparency in Government Policymaking, Turkey has shown improvements and rose from its 97th position among 134 countries in 2008 to 37th among 148 in the 2013-2014 report.³³⁷ This sub-category assesses the extent to which the right to access information is functional and how easy it is for the private sector to gain access to information on the foreseeable levels of investment and the production and trade environment, regarding changes in relevant government policies and regulations.³³⁸

The seventh pillar of the Global Competitiveness Index is Labor Market Efficiency. This pillar emphasizes the necessity of ensuring the transparency of the links between active labor markets, the incentives offered to employees, and the labor provided by the workforce.³³⁹ In this component, Turkey's rank has risen from 130th and 131st in 2013-2014 and 2014-2015 reports respectively to 127th in the 2015-2016 report.³⁴⁰

The eighth pillar is Financial Market Development, which centers on the need for legislation to ensure that the financial system is well functioning and that a reliable and transparent banking system is in place to protect investors and other players in the economy.³⁴¹ Turkey has regressed over the past three reports from 51st in 2013-2014 to 58th in 2014-2015, and to 64th in 2015-2016.^{342,343}

In an increasingly global competitive environment, business sustainability is another important issue, as well as efforts to increase market share, sales, and profitability. Based on the opinions of senior executives (CEOs) of 766 UN Global Compact signatory companies operating in various countries around the world in 2010, it has been revealed that the most influential factors that guide companies to sustainability policies are, respectively, brand value, trust and reputation, cost savings and profitability increase, attracting qualified workforce to the company and increasing employee motivation and consumer demands.³⁴⁴ The survey shows that the quality of corporate governance is directly related to the increase in capital costs, opportunities for financing and liquidity, easier escalation of crises, and prolongation of the lives of well-man-

³³² TÜSİAD-Sabancı Üniversitesi Rekabet Forumu (REF), Sektörel Dernekler Federasyonu (SEDEFED), "Türkiye'nin Küresel Rekabet Düzeyi 2013-2014", Jan. 2014, p.92

³³³ *Ibid*

³³⁴ *Ibid*

³³⁵ <http://www.rekabet.gov.tr/tr-TR/Rekabet-Yazisi/Kuresel-Rekabet-Endeksi-2014-2015-Raporu>

³³⁶ <http://www.rekabet.gov.tr/tr-TR/Rekabet-Yazisi/Kuresel-Rekabet-Edebilirlilik-Endeksi-2015-2016-Raporu>

³³⁷ TÜSİAD-Sabancı Üniversitesi Rekabet Forumu (REF), Sektörel Dernekler Federasyonu (SEDEFED), "Türkiye'nin Küresel Rekabet Düzeyi 2013-2014", Jan. 2014, p.96

³³⁸ *Ibid*

³³⁹ *Ibid*

³⁴⁰ <http://www.rekabet.gov.tr/tr-TR/Rekabet-Yazisi/Kuresel-Rekabet-Edebilirlilik-Endeksi-2015-2016-Raporu>

³⁴¹ TÜSİAD-Sabancı Üniversitesi Rekabet Forumu (REF), Sektörel Dernekler Federasyonu (SEDEFED), "Türkiye'nin Küresel Rekabet Düzeyi 2013-2014", Jan. 2014, p.93

³⁴² <http://www.rekabet.gov.tr/tr-TR/Rekabet-Yazisi/Kuresel-Rekabet-Endeksi-2014-2015-Raporu>

³⁴³ <http://www.rekabet.gov.tr/tr-TR/Rekabet-Yazisi/Kuresel-Rekabet-Edebilirlilik-Endeksi-2015-2016-Raporu>

³⁴⁴ Borsa İstanbul, Şirketler İçin Sürdürülebilirlik Rehberi, p.15

aged companies.³⁴⁵ Özetle; kurumsal yönetimin kalitesi ile işletmelerin sürdürülebilirliği arasında ciddi bir bağ vardır ve kurumsal yönetim ilkeleri sürdürülebilirlik açısından işletmeler için artık vazgeçilmez bir öğe haline almıştır. In summary; there is a salient link between the quality of corporate governance and the sustainability of businesses; corporate governance principles have become an indispensable element for businesses in terms of sustainability.

For an enterprise to adopt corporate sustainability principles and prepare corporate sustainability reports means that the enterprise recognizes that it has responsibilities not only to its shareholders but also to all its stakeholders, which broadens the scope of the concept of “accountability.”³⁴⁶

Elements of an effective corporate governance include an effective and independent board of directors, a proactive audit committee, a wage committee that will reconcile managerial wages with shareholder value, an effective internal control structure, appropriate ethical codes of conduct, clear and enforceable policies and procedures, objective and sufficient internal audit function, independent and effective external audit, transparency of notifications, effective communication, accountability, and measurability.³⁴⁷ Adopting these measures does not seem plausible for the SMEs operating in Turkey, especially for micro and small-scale enterprises due to various factors including management structures, financial resources, and human resources.³⁴⁸ There are more and more internationally-owned large-scale enterprises that adopt these principles. The same could be said to a lesser extent for large-scale family-owned businesses. It is a fact that there are very good examples in publicly traded companies in Istanbul Stock Exchange, where some applications are audited by different audit companies and sanctions are enforced under different laws and regulations subject to certain conditions. That said, some companies in the BIST-50 index, which account for the highest company values and highest trading volumes, do not show the willingness to incorporate transparency and anti-corruption measures into their corporate working principles.

It should be noted that good corporate governance is not an end in itself, but more a means for creating the necessary market confidence and business integrity in the needs of businesses to access equity for long-term investment.³⁴⁹

The Corporate Governance Principles were developed by the OECD in 1999 and updated for the first time in 2004. The implementation of the principles was carried out under the auspices of the OECD Corporate Governance Committee of OECD member countries of all G20 countries as well as experts from major international organizations such as the Basel Committee, Financial Stability Board and the World Bank Group.³⁵⁰ The guidelines are classified by six different divisional recommendations and explanations, with the following sections:³⁵¹

- I. Ensuring the basis for an effective corporate governance framework
- II. The rights and equitable treatment of shareholders and key ownership functions
- III. Institutional investors, stock markets, and other intermediaries

³⁴⁵ Deloitte, Yatırımcı İlişkileri El Kitabı, 2008

³⁴⁶ Borsa İstanbul, Şirketler İçin Sürdürülebilirlik Rehberi, p. 33

³⁴⁷ Babuşcu, Hazar. SPK Kurumsal Yönetim Derecelendirme Uzmanlığı Sınavlarına Hazırlık, 2007, p. 333

³⁴⁸ Sönmez, Asuman. Toksoy, Andaç. “Kurumsal Yönetim İlkelerinin Türkiye’deki Aile İşletmelerine Uygulanabilirliği”, Maliye Finans Yazıları, July 2011, Sayı: 92, p. 83

³⁴⁹ G20/OECD, G20/OECD Kurumsal Yönetim İlkeleri, OECD’nin G20 Bakanlar ve Merkez Bankası Başkanlarına Raporu, Sep. 2015, p. 3

³⁵⁰ *Ibid*, p. 4

³⁵¹ *Ibid*, p. 11

IV. The role of stakeholders in corporate governance

V. Disclosure and transparency

VI. The responsibilities of the board

Today, it is not possible for companies that do not share information about methods of creating value added in accordance with principles of transparency, invest in the future but ignoring the expectations of their stakeholders, and focus only on economic sustainability by ignoring the risks related to environmental, social and corporate governance.³⁵²

In this light, it will be useful to look at the transparency of businesses and their applications in this context when working on the Business Integrity Country Agenda. During the study, every question we have tried to answer has been evaluated taking into consideration the following;

- Scale of enterprise,
- Sectors in which the enterprises are doing business,
- Laws and regulations enterprises are subject to,
- Whether enterprises are publicly traded, especially whether their stocks are traded in Istanbul Stock Exchange
- Whether enterprises are trading in capital markets

To ensure the Business Integrity Country Agenda report reflects the practices and to provide information on publicly traded companies, the research includes in-depth analyses of a total of 58 businesses operating in various sectors, including 50 companies that are traded in the BIST-50³⁵³ index and 42 companies in the BIST Sustainability Index.

The reasons for the selection of BIST-50 and BIST Sustainability Index companies are that the BIST-50 Index companies account for the highest market value and the daily trading volume in Borsa Istanbul³⁵⁴ and that companies traded in the BIST Sustainability Index are chosen from companies with extensive programs in the fights against corruption.

The 42 publicly traded companies in the BIST Sustainability Index were selected from a list of companies based on international sustainability criteria by the EIRIS (Ethical Investment Research Services Limited). EIRIS has evaluated 63 companies and provided valuations only utilizing the publicly available data the companies release. The scores given by the EIRIS are derived using this data and allows for being traded on the BIST Sustainability Index.³⁵⁵

The assessment study done by EIRIS is done in three stages. At the first stage, “EIRIS creates a profile for each company about their firm policy and activities in areas of environment, biodiversity, climate change, structure of management, countering bribery, human rights, supply chain, health and safety using information “disclosed publicly” as of June 30. Publicly available reports produced by third-party sides such as annual fiscal reports, sustainability and corporate governance reports, websites, CDP (Carbon Disclosure Reports) can be the examples of public information taken into account.”³⁵⁶

³⁵² Borsa İstanbul, Şirketler İçin Sürdürülebilirlik Rehberi, p. 15

³⁵³ <https://www.kap.org.tr/tr/Endeksler>, Date Accessed: 31.01.2017

³⁵⁴ <http://www.bireyselemeklilikbes.com/BIST-50-endeksi-nedir/>

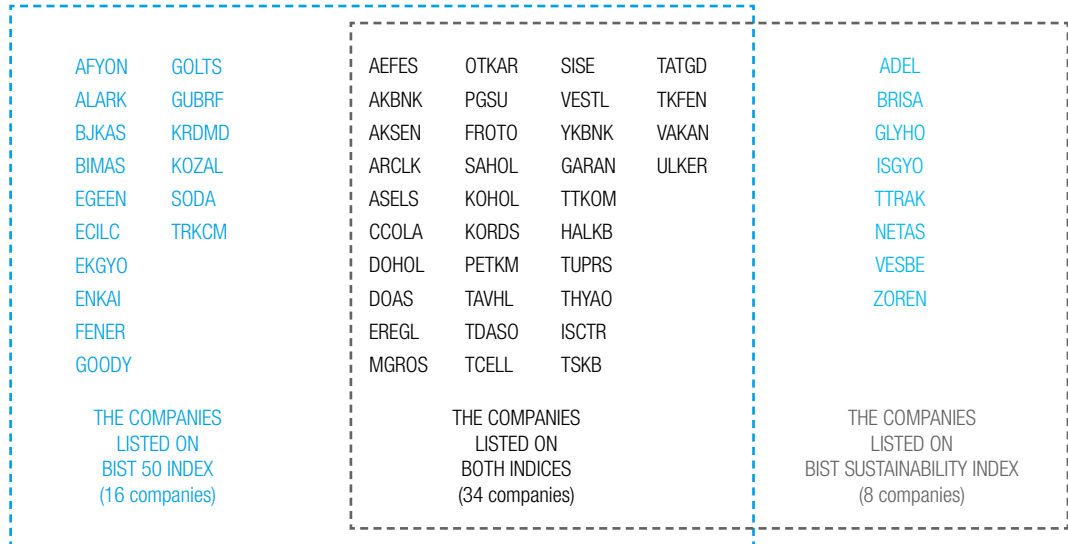
³⁵⁵ Borsa İstanbul, BIST Sürdürülebilirlik Endeksi Temel Kuralları, p. 6

³⁵⁶ *Ibid*, p. 6

The review topics of the Corporate Governance Criteria include the board structure, policies relating to bribery, and regulatory systems in place. Companies subject to this evaluation included the BIST-30 Index companies in 2014, and the BIST-50 Index companies in 2015. In 2016, the scope was extended to BIST-100 Index companies on a voluntary basis.

As can be seen in Figure 3, a total of 58 companies have been included in our assessment from BIST-50 and BIST Sustainability Index. 34 companies are being traded in both Indexes, 16 companies are only in BIST-50 and the remaining 8 in the BIST Sustainability Index.

Figure 3. The Companies Listed on BIST 50 Index and BIST Sustainability Index



Source: BIST, KAP, Asuman Sönmez

For the companies included in these Indexes, three categories of “Anti-Corruption Programs Reporting”, “Organizational Transparency” and “Territorial Reporting” were evaluated. Scores have been given to the companies in the evaluation that account for the largest volume of transactions by national and international investors.

The evaluations for the companies in Figure 3 include 13 criteria in Reporting on Anti-Corruption Programs, 8 criteria in Organizational Transparency, and 5 criteria in Country Reporting.

The desk research was conducted between December 1, 2016 – January 31, 2017. During the research process, numerous sources were used for the evaluations including, but not limited to, statements made through the corporate webpages, disclosures, financial, corporate, and activity reports, compliance reports, credit rating reports, reports on subsidiaries and affiliates, sustainability reports, codes of ethics, codes of conduct, investor presentations, General Assembly meeting notes, opinions of managers, press releases.

Table 5 details the breakdown of the scores of the companies in the research; the scores are indicated respectively for the 50 companies are in the BIST-50 Index, the 42 companies that are traded in the BIST Sustainability Index, all 58 companies in the research, and finally the 34 companies that are traded in both Indexes.

Table 5. Average of Companies Listed on BIST – 50 Index and BIST Sustainability Index

	Anti-corruption Programs	Organizational Transparency	Country-by-Country Reporting
BIST 50 Index (50 companies)	62	84	18
BIST Sustainability Index (42 companies)	73	85	20
BIST 50 Index & BIST Sustainability Index (58 companies)	62	84	19
BIST 50 Index U BIST Sustainability Index (34 companies)	75	84	20

Source: Transparency International Turkey

The questions that form the 3 criteria in the table, and the points that the companies score per these criteria are explained in detail in the questions in the report.

Tüpraş, Ford Otomotiv, and Arçelik, which are traded both in BIST-50 and BIST Sustainability Index, are ranked at the top among the Istanbul Chamber of Industry's (ICI) 2015 Turkey's Top 500 Industrial Enterprises Survey.³⁵⁷ Tofaş and Ereğli Demir Çelik are also in the top-10 of the 2015 Turkey's Top 500 Industrial Enterprises Survey. In fact, these 5 firms realized 17% of net sales of Turkey's top 500 industrial establishments in 2015, and the top-10 companies realized 68.5% of all net sales in the Survey. The remaining industrial firms in our research are also included in the Index.

Furthermore, the companies surveyed and evaluated in this report are also the ones that attract the most foreign investment. The banking sector in Turkey leads in foreign investments. To illustrate, Garanti Bank, Akbank, Halk Bank, İş Bank, Yapi Kredi Bank, Vakıfbank, and the Industrial and Development Bank of Turkey accounted for over 40% of total transactions that involve foreign capital. These 7 banks are also among the 12 whose shares are traded in BIST-50, BIST Sustainability Index, and BIST Banking Index. Furthermore, Garanti Bank, Akbank, Halk Bank, İş Bank, Yapi Kredi Bank, and Vakıfbank are among the largest banks of the 13 market makers in the Turkish Banking System.³⁵⁸

To summarize, the 58 companies in the research operating in different sectors have been selected and evaluated for the purpose of reflecting the business integrity system of Turkey due to their prominence in the Turkish Economy; these companies are among the largest in the economy and have the influence to affect various markets.

In addition, interviews have been conducted with the managers of 22 companies from various sectors operating in Istanbul, Ankara, and Izmir. These companies have been included in the research for providing insights on operations in sectors such as pharmaceuticals, beverage, insurance, construction, banking, service, electronics, auditing, software, customs, legal services, and chemistry and vary in scales of business. 9 of these are SMEs and 13 are large-scale enterprises. Of the 13 large-scale enterprises, 9 are publicly traded; 6 are traded in BIST-50 and BIST Sustainability Index, 1 only in BIST Sustainability Index, and 2 in BIST Main. Of the remaining large-scale enterprises, 3 are internationally funded and 1 nationally funded. In terms of legal status, of the 9 SMEs, 8 are limited liability companies and 1 is Joint Stock Venture. All the large-scale enterprises are Joint Ventures.

³⁵⁷ <http://www.iso.org.tr/sites/1/content/500-buyuk-liste-2015.html>

³⁵⁸ <http://www.alomaliye.com/2015/12/04/2016-yili-piyasa-yapici-bankalar/>

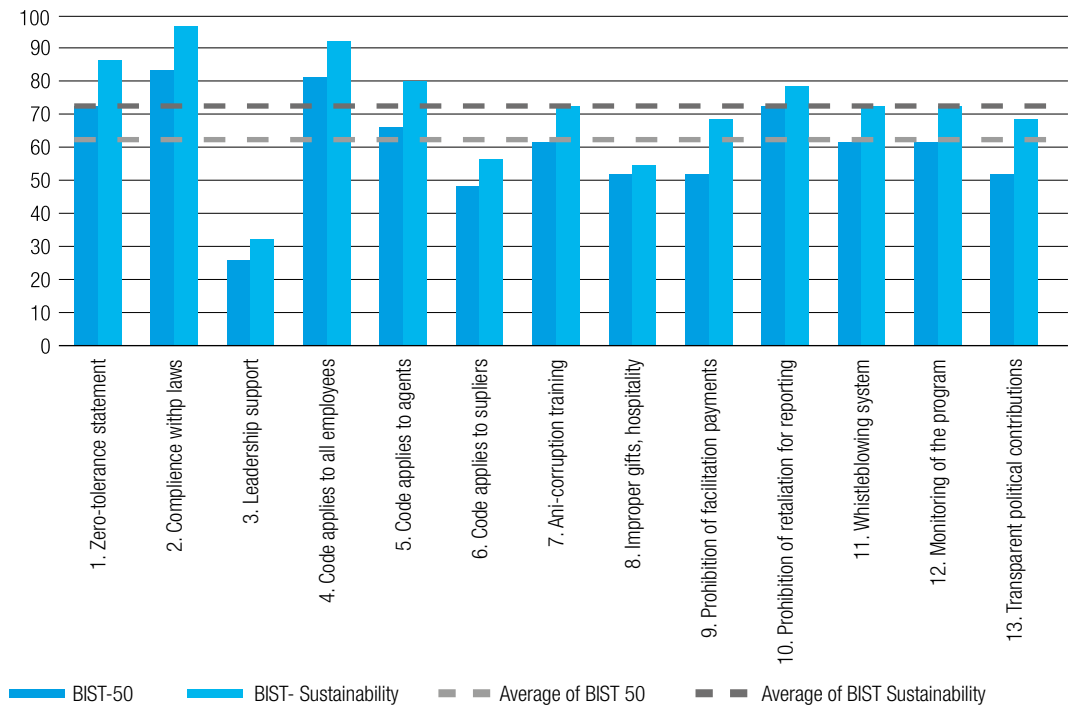
2.1

INTEGRITY MANAGEMENT

While 70% of all publicly traded companies report on corporate social responsibility, 95% of multinational companies operating in 34 different countries on the Global Fortune 250 list publish their employee rights policies, environmental and stakeholder relations activities, and the results of these actions alongside their annual financial reports.³⁵⁹ In Turkey, although there are model reporting practices of large scale enterprises and publicly traded companies, there is a lot of ground to cover to implement effective governance systems, including the management of the integrity system for SMEs, especially for micro and small scale enterprises. On the other hand, business owners also need to be informed and motivated in this regard.

Large-sized enterprises, medium-sized and large-sized enterprises with international financing, some large-sized family businesses, and publicly traded companies listed in Istanbul Stock Exchange are more inclined to working with said principles. In accordance with Article 1529 of the Turkish Commercial Code No. 6102, corporate governance principles of publicly held joint stock companies, principles of disclosure of the board of directors, and the rules and results of companies' rating in this respect are determined by the Capital Markets Board (CMB). Additionally, other public institutions and organizations may be allowed to make limited regulatory adjustments that apply to their areas of corporate governance principles subject to the approval of the CMB. For the companies in the BIST 50 and the BIST Sustainability Index in the assessment, contrasting results were obtained with respect to the 13 questions canvassing "Reporting of Anti-Corruption Programs."

Graphic 14. Average Scores of the Companies Listed on BIST – 50 Index and BIST Sustainability Index According to Their Anti-corruption Program



Source: Transparency International Turkey

³⁵⁹ Borsa İstanbul, Şirketler İçin Sürdürülebilirlik Rehberi, p.6

As seen on Graphic 14, companies in the BIST Sustainability Index are more invested in fighting corruption, which results in higher scores in all individual categories compared to the companies in the BIST 50 Index.

2.1.1

SCORE 25

Provision of Policies

Scoring Question:

To what extent do companies establish formal policies to counter corruption?

The OECD Guidelines for Multinational Enterprises aim to ensure that the activities of multinational companies comply with government policies, to strengthen the mutual trust between the companies and the society in which they operate, and to increase multinationals' contribution to sustainable development by improving the environment for foreign investment. Chapter VII of the Guidelines, titled Combating Bribery, Bribe Solicitation and Extortion explicitly declares that "enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Enterprises should also resist the solicitation of bribes and extortion."³⁶⁰

According to the Guidelines, enterprises may neither provide unlawful gains for employees of business partners or civil servants, nor make such promises or proposals. Furthermore, companies may not use third parties such as agents, consultants, representatives, distributors, consortia, suppliers, and business partners to transfer unfair benefits to civil servants, employees of business partners, or their relatives and other business partners.

Payments in small amounts that are made for the convenience of businesses, namely facilitation payments, are usually illegal and should be prohibited, or at the very least, discouraged. If such payments are legal and are made, the transaction should be recorded in the books and financial records.

Enterprises are also tasked with ensuring the transparency of activities to combat bribery, bribery proposals, and extortion. To this end, companies are required to make public commitments against bribery and extortion. These public commitments may include disclosing their management and internal audit systems, publishing ethics codes and following compliance programs, and explaining the measures adopted in order to fulfill these commitments.

OECD's principal instruments in combating bribery include: The OECD Anti-Bribery Convention (officially Convention on Combating Bribery of Foreign Public Officials in International Business Transactions) that came into force on February 15th, 1999; the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions that was adopted on November 26th, 2009; the Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions dated May 25th, 2009; and the Recommendation on Bribery and Officially Supported Export Credits dated December 18th, 2006.

The United Nations Convention Against Corruption (UNCAC), which entered into force on December 14th, 2005, introduces a wide range of standards, measures, and rules for combating corruption. UNCAC predicates that party states are obliged to prevent civil servants from taking bribes and to prevent companies from bribing domestic and foreign civil servants. The conven-

³⁶⁰ OECD Guidelines for Multinational Enterprises, p.47 <http://www.oecd.org/daf/inv/mne/48004323.pdf>

tion also requires states to tackle bribery in the private sector. The OECD Anti-Bribery Convention and UNCAC are mutually supporting and complementary.

According to Article 10 of the General Assembly Section (1.3) of the Capital Market Boards Corporate Governance Principles' section on shareholders, a policy for donations and grants is created and presented to the General Assembly for approval. In accordance with the policy approved by the General Assembly, shareholders are informed about policy changes and the amount and beneficiaries of donations and aids made during the period by a separate agenda item in the general shareholders' meeting.

Article 1 and 2 of the Code of Ethics and Social Responsibility Section (3.5) of the Capital Market Boards Corporate Governance Principles' section on stakeholders, describe the activities of the Company should be conducted within the framework of ethical rules announced to the public via the corporate website (3.5.1). Additionally, The Company should be considerate of its social responsibilities; should act in accordance with the company's ethical rules and rules with respect to the environment, the consumers and the public health (3.5.2). The company supports and respects universal human rights. It deals with all kinds of corruption, including bribery and extortion.

Article 3 of the Law No. 3628 on Declaration of Property and Fight Against Bribery and Corruption states that "Public officials [...] must return gifts or items in nature of grants worth more than the total of ten months' minimum wage as at the date of receipt, received pursuant to international protocol, competition or courtesy rules or for any other reason whatsoever, from foreign countries, international organizations, other international legal entities, any private or legal person or organization which is not a national of Turkey, within one month as of the date of receipt, to their institutions."³⁶¹ The law also provides the framework for the practice of gift-giving, etc. for public officials in the private sector. From a business scale perspective, is relatively more difficult to talk about creation of institutional anti-corruption policies and monitoring of these practices for micro, small, and medium-sized businesses.

Corporate anti-corruption policies and the creation of said polices has not been points of improvement for SMEs due to the lack of willingness and know-how of business owners and the insufficient financial resources and time to be able to be allocated to these practices. This issue is even more salient for micro and small-sized enterprises, which constitute more than 98% of all enterprises in Turkey.

The 2015 figures show that 13.9 million people are working in 2.7 million enterprises excluding agricultural, programming and publishing, and finance and insurance activities.³⁶² The mean number of employees in these 2.7 million enterprises is 5. Categorizing the enterprises with respect to the number of employees, 98.8% of all enterprises employ up to 49 employees (mean number of employees is 3), 1% employ between 50-249 (mean employees 100), and 0.2% employ more than 250 (mean employees 741).

Ultimately, SMEs employing up to 250 employees account for 99.8% of the 2.7 million enterprises; this marks 73.5% of 13.6 million employees and 54% of the total workforce of 31 million in Turkey. These SMEs make up 64% of all purchases of goods, 62% of total revenues, and 55% of investment in the country. Furthermore, 96.6% of these enterprises employ between 1 to 19 employees. It is almost impossible to talk about institutional policies being implemented in the vast majority of these companies. It would be a safe assumption that it is not possible to implement and follow the aforementioned policies in a work environment in which organizational and departmental divisions are unclear and job descriptions and responsibilities are ambiguous.

³⁶¹ Law on Declaration of Property and Fight Against Bribery and Corruption No. 3628, Article 3.

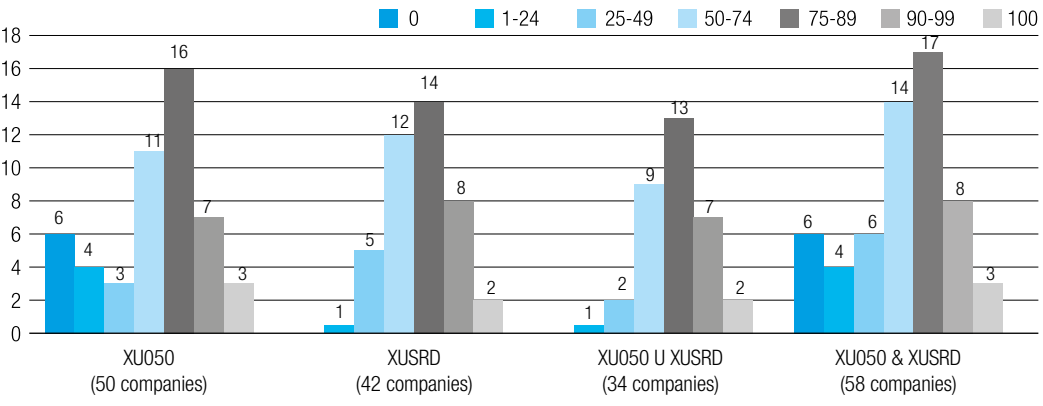
³⁶² TURKSTAT Haber Bülteni, Küçük ve Orta Büyüklükteki Girişim İstatistikleri, Sayı: 21540, 25.11.2016

Approximately 26,000 medium-sized enterprises that employ on average 100 employees are mostly family-owned businesses and account for 19% of the total number of employees, 23% of all purchases of goods, 23% of total revenues, and 25% of investments. Similar to micro and small-sized enterprises, establishment of anti-corruption policies depends on the vision of the business owner, the company’s partnership structure, whether the company is working internationally or open to public, among other factors. These also apply to large-sized businesses that are not open to public, or the ones whose shares are not traded on Istanbul Stock Exchange.

Although operating under different conditions and in different markets, 38 SMEs and more than 450 large-sized enterprises are all subject to the Capital Market Law No. 6362 due to being publicly traded in Istanbul Stock Exchange. By virtue of being subject to the Law, these companies need to fulfill anti-corruption policies that are in line with the Corporate Governing Principles. Nevertheless, there exists a number of problems with sharing the required data (financial reports, etc.) and public disclosures from the corporate Internet pages.

We have observed different results in reporting on anti-corruption programs in companies evaluated in the BIST 50 and BIST Sustainability Indexes. It is striking that even the companies that are traded in the Istanbul Stock Exchange and have to comply with the CMB rules have scored “0” in reporting on anti-corruption programs. The results are based on information that companies do not provide on their corporate Internet sites.

Graphic 15. The Companies Listed on BIST – 50 Index and BIST Sustainability Index According to Their Anti-Corruption Program



Source: Transparency International Turkey

As seen on Graphic 15, 6 BIST 50 companies have scored “0” in reporting on anti-corruption programs and 13 have scored below “50.” Looking at the BIST Sustainability Index companies, none have a score of “0” and the number of companies scoring below “50” is 6.

A total of 509 companies’ shares are traded at different markets in Istanbul Stock Exchange.³⁶³ Of these companies, 18 are in the Emerging Companies Market (ECM), 28 medium-sized companies are in the BIST SME Industrial Index, and 10 are listed in both.³⁶⁴ BIST SME Industrial Index comprises of shares of companies that comply with the rules defined in the regulation by Ministry of Science, Industry, and Technology, such as annual net sales revenue and financial balance sheets except for the number of employees.³⁶⁵

³⁶³ <https://www.kap.org.tr/tr/bist-sirketler>, date accessed: 31.01.2017

³⁶⁴ <https://www.kap.org.tr/tr/Pazarlar>, date accessed: 31.01.2017

³⁶⁵ Borsa İstanbul, BIST Pay Endeksleri Temel Kuralları, p.6, <http://www.borsaistanbul.com/docs/default-source/endeksler/bist-pay-endeksleri-temel-kurallari.pdf?sfvrsn=6>

On the other hand, companies with international financing are more aligned with corporate governance principles, especially for the EU and US companies, thus setting anti-corruption policies within the context of both Turkey and their own countries.

For public large-sized enterprises, facilitation payments such as donations and sponsorships, alongside other expenses such as gifts, hospitality and travel must be done by a certain system within the framework of the Capital Market Law No. 6362. Donations and sponsorships are determined within the framework of a budget and are presented to shareholders at annual general assembly meetings. Additionally, these figures must be announced from the companies' website too. Likewise, there are limits or standards that institutions must comply with when giving and accepting gifts. It should be noted that these limits and standards vary from institution to institution.

On the other hand, all banks operating within the Banking Law No. 5411, regardless of whether their shares are publicly traded or not, must comply with Article 59 titled "Grant Limits." The Article states that "the amount of grants to be extended by banks and institutions subject to consolidated supervision in a fiscal year shall not exceed four per thousand of the bank's own funds. However, minimum half of the grants and aids shall be composed of grants and aids that may be considered as expenditure or deductible costs in the calculation of the corporate tax base. The principles and procedures applicable to the implementation of this provision shall be set by the Board."³⁶⁶

The research shows that the 7 banks that have been evaluated in both indices have earned "1" point for the detailed explanations related to "facilitation payments" and "political funding" on the corporate web pages. On the other hand, of the 58 companies in the research 29 received "0" points for "facilitation payments" and 26 received "0" for "political funding" criteria.

Institutional anti-corruption policies of non-public multinational large-sized enterprises have also been monitored in the research within the framework of the main bodies to which they are connected, and their transactions are carried out taking into account not only the local rules but also the international rules.

Enterprises' ability to disclose their anti-corruption activities through the corporate web page is possible only to the extent that these webpages are active and up to date. Of the enterprises included in the research, it should be noted that full compliance to these principles is far from being the norm. The finding that some companies do not fully disclose their anti-corruption activities on the Internet or other platforms despite showing a commitment to the activities is contradictory at the very least and works counter to transparency principles.

In accordance with the obligation to disclose information to the public described in the Turkish Commercial Code No. 6102, companies are required to open a website (Article 1524) in order to share information with the public and to ensure that the shared information is correct and up to date, complying with accountability principles.³⁶⁷ Within the scope of the said article, companies are required to share information such as financial reports, shareholder records, auditor reports, and the decisions of the board on their websites in line with transparency principles and information society norms. As such, the Article can be said to prescribe the minimum mandatory information to be shared with the public.

Although the rate of computer usage in Turkey has been measured to be 95.9% in 2016, the corporate webpage ownership rate is 66%. The same rates for SMEs are recorded as 95.8% and

³⁶⁶ Banking Law No. 5411, Article 59.

³⁶⁷ ZINGİL Özlem, Şeffaflık ve Yolsuzlukla Mücadeleye İlişkin Yasal Düzenlemelere Genel Bir Bakış, Uluslararası Şeffaflık Derneği, April 2015, p.8

65.2%, respectively.³⁶⁸ The number of enterprises with a corporate webpage is lower for micro and small-sized enterprises compared to medium and large-sized enterprises.

When examined from the point of view of companies in BIST 50 Index and BIST Sustainability Index in the evaluation, it seems that the companies in question have not experienced a problem with regulatory compliance on anti-corruption programs. As a matter of fact, the companies in the research have obtained the highest scores for the “compliance” section.

2.1.2

SCORE 25

Implementation of Practices

Scoring Question:

To what extent do companies have anti-corruption programs in place?

Micro and small-sized enterprises generally do not have anti-corruption policies. The existence of regulations that can be followed in this context (ethical principles, working principles, etc.) are also nonexistent at this level. This observation usually holds for micro and small-sized enterprises regardless of sector. Moreover, managers of these enterprises, who are usually the owners as well, have no interest in the subject.

In the case of medium-sized enterprises, especially those operating in the international arena or taking steps in this direction, those who want to increase the scale of the organization, or owners who have a vision of public ownership, are working towards implementing anti-corruption measures, albeit at a smaller scale. The publicly traded medium-sized enterprises in Istanbul Stock Exchange are obliged to comply with the rules of the markets in which they operate, and in this context, they have created or are creating anti-corruption programs, especially in the framework of compliance with corporate governance principles.

As mentioned previously, 10 out of the 28 medium-sized enterprises in the BIST SME Industrial Index are also traded in the Emerging Companies Market (ECM). ECM provides a platform under BIST for companies with development and growth potential and a publicly traded market value of less than TRY 25 million. Companies that have been traded for 2 years have the opportunity to apply for BIST STARS and BIST MAIN transfers.³⁶⁹ Being traded in the ECM also expedites institutionalization of these companies; announcing financial and other important information to the public in the capital market discipline, making regular and timely reports, and being exposed to the interest and supervision of investors and their partners all help these companies to rapidly develop the much needed mechanisms they require for institutional growth.³⁷⁰

The medium and large-sized enterprises which are traded on the Istanbul Stock Market outside of the ECM continue their work in accordance with the laws and regulations.

For the companies traded in the Istanbul Stock Exchange, compliance with corporate governance principles is a voluntary practice. Nevertheless, all companies are required to publish corporate governance compliance reports and compliance statements to corporate governance principles on their websites and annual reports in accordance with the decision of the CMB dated December 10th, 2004.³⁷¹

³⁶⁸ TURKSTAT Haber Bülteni, Küçük ve Orta Büyüklükteki Girişim İstatistikleri, Sayı: 21540, 25.11.2016

³⁶⁹ <http://www.borsaistanbul.com/en/products-and-markets/markets/equity-market>

³⁷⁰ Borsa İstanbul, Gelişen İşletmeler Piyasası, p.3, http://www.kosgeb.gov.tr/Content/Upload/Dosya/G%C4%B0P/BIST_GEL%C4%B0C5%9EEN_%C4%B0C5%9ELETMELER_P%C4%B0YASASI_K%C4%B0TAP%C3%87IK.pdf

³⁷¹ <http://www.borsaistanbul.com/sirketler/sirketlerin-yukumlulukleri/gelisen-isletmeler-piyasasi/kurumsal-yonetim>

On the other hand, the 50 companies³⁷² in the BIST Corporate Governance Index continue working on fighting corruption and see these programs as an indispensable element of their institutional structure. The BIST Corporate Governance Index was founded with the participation of 5 companies on August 31st, 2007, and comprises companies that have implemented the BIST Corporate Governance Principles. A compliance rating is given to these companies as the result of an assessment of the level of compliance with all the corporate governance principles by the rating agencies that are on the list determined by the CMB.³⁷³ The basic concepts of corporate governance principles such as general assemblies, open information and documents, public disclosure, transparency, and board committees are taken into consideration in determining the compliance rating. For a company to be included in the BIST Corporate Governance Index, it must have an average rating of 7, and no less than 6.5 in any individual category.³⁷⁴ As stated in section 1.9.3 of the report, companies, four years from the date they are included in the Corporate Governance Index, are subject to a decreasing discount on their annual listing fee such as, for the first two years %50, for the third year %25 and for the fourth year %10.³⁷⁵

As can be seen in Figure 4, 23 of the companies in the BIST Corporate Governance Index also are included in the BIST Sustainability Index,³⁷⁶ which has a total of 42 companies. For this reason, these 23 companies in the BIST Corporate Governance Index have been included within the scope of this research. No companies from BIST SME Industrial Index or the ECM are in these indices.

Figure 4. The Companies Listed on the BIST Corporate Governance Index and the BIST Sustainability Index

AKSGY	GRNYO	PINSU	AEFES	OTKAR	SISE	ADEL	TATGD
AKMGY	HURGZ	PNSUT	ARCLK	PGSUS	VESTL	AKBNK	TKFEN
AKSA	IHEVA	SKBNK	ASELS	TAVHL	YKBNK	AKSEN	TCELL
ALBRK	IHLAS	TRCAS	CCOLA	TOASO		BRISA	THLAO
ANSGR	ISFIN	PRKAB	DOHOL	TUPRS		FROTO	ISCTR
AYGAZ	ISMEN	YAZIC	DOAS	TTKOM		SAHOL	VAKBN
CRDFA	IZOCM	YGYO	EREGL	TTRAK		KCHOL	ULKER
DGGYO	LOGO		GLYHO	GARAN		KORDS	VESBE
ENKAI	PRKME		ISGYO	HALKB		NETAS	ZOREN
GARFA	PETUN		MGROS	TSKB		PETKM	
THE COMPANIES LISTED ON BIST CORPORATE GOVERNANCE INDEX (27 companies)			THE COMPANIES LISTED ON BOTH INDICES (23 companies)			THE COMPANIES LISTED ON SUSTAINABILITY INDEX (19 companies)	

Source: BIST, KAP, Asuman Sonmez

In addition to being obligated to work within the framework of the CMB Law and Corporate Governance Principles, the 15 banks and private finance institutions in the Istanbul Stock Exchange are also subject to the Banking Law No 5411 and therefore are required to continue their anti-corruption activities under the auspices of the Banking Law as well. The Law regulates all banking activities within Turkey, regardless of whether the bank is publicly traded or not.

³⁷²<https://www.kap.org.tr/tr/Endeksler>

³⁷³<http://www.borsaistanbul.com/endeksler/bist-pay-endeksleri/kurumsal-yonetim-endeksi>

³⁷⁴<http://www.borsaistanbul.com/sirketler/sirketlerin-yukum-lulukleri/pay-piyasasi/kurumsal-yonetim>

³⁷⁵http://www.borsaistanbul.com/datum/Kotasyon_Ucret_Tarifesi.pdf

³⁷⁶<https://www.kap.org.tr/tr/Endeksler>

The task of the Corporate Governance Committee, established in publicly-held companies within the scope of the Corporate Governance Principles of the Capital Markets Board is determining whether corporate governance principles are applied in the company. In the case that the Principles are not fully implemented, the Committee is required to report conflicts of interest due to the failure to fully comply with these principles, provide suggestions for improvement to the board of directors, and supervise investor relations department.

Anti-corruption policies in non-public large-sized enterprises and international corporations are also becoming increasingly commonplace in establishing ethics and compliance rules in the framework of corporate governance principles and making them publicly accessible via corporate webpages.

As can be seen in Graphic 15, companies in both BIST 50 Index and BIST Sustainability Index have received the lowest score in the “manager declaration” question out of the 13 areas of questions. Even for companies that have extensive anti-corruption programs, ethics codes, etc. it has been almost impossible to see clear statements against corruption and corrupt behavior from company owners and/or senior executives. For this reason, “manager declaration” has been the area in which companies have received the highest instances of “0” points, resulting in an overall reduction of the average scores. 37 companies in the BIST 50 Index and 29 in the BIST Sustainability Index have received “0” points in this area.

Conversely, compliance of all employees and managers to the regulations has been the category for which companies in either category have scored the highest. This is mostly because almost all companies have written statements on this issue, which has resulted in similar scores in both indices.



2.1.3 Whistleblowing

Scoring Question:

To what extent do companies provide secure and accessible channels to raise concerns and report violations (whistleblowing) in confidence and without risk of reprisal?

It is safe to claim that Turkish Law lacks comprehensive and extensive laws that protect whistleblowers from reporting irregularities and violations, both in public and private sectors. Nonetheless, the Constitution, Law No. 3628 on Declaration of Property and Fight Against Bribery and Corruption, Witness Protection Act, Turkish Labor Law have certain articles and clauses that protect the confidentiality of the identity of the whistleblower.³⁷⁷

The SMEs that employ between 1-19 employees make up 96.6% of the 2.7 million enterprises and an average of 2 people work in these enterprises. Since the average number of employees in micro and small-sized enterprises is at such a low amount, reporting irregularities anonymously is impossible because the irregularities usually concern the general managers who also are the business owners at the same time. In such cases, the person who is accused of an irregularity is either given a warning or laid off work, while keeping the identity of the informer confidential.

³⁷⁷ Transparency International Turkey, Private Sector Anti-Corruption Guide, March 2016, Istanbul, p. 50.

In medium-sized enterprises, where the number of employees is more than 100 in average and an organizational flow chart is maintained, in other words departmentalization is complete, department managers and/or the human resources department of the business are usually the first to receive these reports. In these enterprises, the general practice is similar to that of micro and small-sized enterprises, where attention is paid to keeping the identity of the informer confidential. However, it is also a fact that some companies resort to confrontation in these cases. Due to the lack of specific systems and sanctions in place, these mechanisms differ depending on the management style of the company owners and senior executives.

Whistleblowing mechanisms in large-sized and international businesses are either in place, or are being created within the scope of the parent company's rules, while managers and/or human resources departments are usually the recipient of these notifications either in person or via e-mail. Keeping the identity of the informant confidential is still the first priority. In these cases, monitoring or disciplinary committees may be formed to deal with the reported irregularity, or internal audit units may be put in charge to enforce the necessary sanctions according to the rules.

There are similar systems in public large-sized enterprises. Some businesses even set up a notice or notification line that operates entirely from outside the company. Whistleblowing claims may be made over this line, and the process of the notification is strictly confidential and implemented in accordance with the written rules. Such a mechanism is a more effective application in terms of protecting the identity of the whistleblower and protects the informant from reprisals. Companies should create various mechanisms of this kind to facilitate reporting irregularities and infringements and to protect those who do not feel safe reporting such cases.³⁷⁸

In the interviewed companies, our scale-based disclosures have been confirmed and it has been observed, especially in the case of large-scale foreign-funded companies that are not publicly traded, the importance of keeping the identity of the report line and the informant is considered crucial, while the existence of systematic reporting mechanisms in SMEs are not mentioned. There are similar sensitivities observed in the interviewed large-scale publicly-held companies

In a survey³⁷⁹ conducted by TÜSİAD with 804 business representatives (80 of them being small and medium-sized enterprises) in Istanbul in 2014, %60 of the 801 respondents declared that they "would not report any corruption" and %30 of them gave the absence of a legal denunciation mechanism as the reason. The reason for not reporting because of encountering retaliation is 7%.

Research questions have been designed to identify whether or not a notification mechanism for potential whistleblowers exists and whether the informant has encountered any form of reprisal. 37 companies from the BIST 50 index, 30 from BIST Sustainability Index, and 27 companies that are in both indices have reported that specific mechanisms for informants are in place and that the management has taken action after receiving reports. 37 companies of the 58 in the research do not have any channels that potential whistleblowers may seek.

In prevention of reprisals, BIST Sustainability Index companies perform better than their BIST 50 counterparts, 29 of 42 receiving a score of "1." 23 companies in BIST 50 have received a score of "0" and the remaining 27 scored "1." Out of the total 58 companies in the research, 33 have mechanisms to prevent reprisals.

³⁷⁸ Transparency International Turkey, Private Sector Anti-Corruption Guide, March 2016, Istanbul, p. 51.

³⁷⁹ TÜSİAD, İş Dünyası Bakış Açısıyla Yolsuzluk: Algı ve Politika Önerileri 2014 Araştırma Sonuçları, 2014, p.16

2.1.4

Business Partner Management

Scoring Question:

To what extent do companies apply their anti-corruption program to relevant business partners?

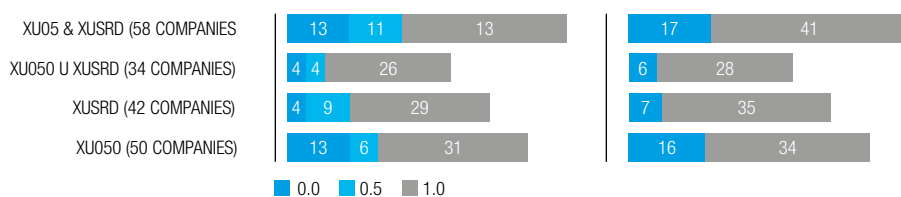
It is unreasonable to expect micro and small-sized enterprises that do not have functioning anti-corruption programs in place to demand similar standards from stakeholders such as their goods and service providers or customers. Moreover, there exists usually no written contracts with the stakeholders that determine the working conditions for the respective businesses. Similar situation is mentioned by interviewed SME managers too.

While a similar situation applies to medium-sized enterprises, written agreements may be signed with suppliers or customers pertaining to specific working principles of the stakeholders. At this point, public perceptions of suppliers and customers may represent a higher-degree criteria for their reputation in the market compared to the written agreements. Higher emphasis on such statements in the companies that have been interviewed within the scope of the research should be interpreted as a shortcoming for the institutionalization of the sector.

In large-sized enterprises, written contracts state regulations that the entity will work with its stakeholders on specific frameworks, and sanctions that may arise in the event of non-compliance with said frameworks are often found in contracts. Especially in dealerships, franchises, etc., for which distribution channels are often crucial and customers are a part of the wider group of stakeholders, detailed sets of rules exist that manage how the companies conduct their businesses. These rules are explicitly stated and are mutually known in written agreements. This applies to all large-sized companies, publicly traded or not. That said, even for large-sized public enterprises with extensive anti-corruption programs and corporate governance principles, it is a difficult task to enforce the same sets of rules for contractors and sub-contractors.

Graphic 16 shows that most companies in the research take measures to stipulate compliance to their anti-corruption programs both in their relationships with their partners (left side of the Graphic and third-parties that have the right to represent the company (right side of the Graphic).

Graphic 16. Compliance to Anti-Corruption Programs in the Relations with Partners and Third-Parties



Source: Transparency International Turkey

34 of the 58 companies evaluated have clearly stated that they can supervise their business partners (suppliers, contractors, subcontractors, etc.) and that the business partners conduct their activities according to the anti-corruption programs stated in the contracts. It is relatively more salient for these companies to make sure that the natural persons and/or legal entities acting on behalf of the company or having the authority to represent the company act in accordance with the company’s anti-corruption program. That said, 17 of the 58 companies have not given any statements of this nature.

2.2

AUDITING & ASSURANCE

Auditing is a matter of utmost importance for businesses of all sizes. As the companies' scale, customers, organizational structures, and fields of activity change, the subjects and forms of audits also change. For these reasons, internal and external auditing help the company owner, managers, and employees in determining whether targets are met and finding out sources of the failures, if there are any.

As Mustafa Kemal Atatürk, the founder of the Republic of Turkey, has stated, "people who believe in the truth of their work enjoy the pleasure of supervision, receiving counter arguments and arguing over their preferences."³⁸⁰ In this sense, auditing is an effective way of determining whether companies are managed correctly and to ensure sustainability.

2.2.1

Internal Control & Monitoring Structures

Scoring Question:

To what extent do companies establish internal control and monitoring structures that seek to detect and prevent corruption?

The Triple Defense Line model favors the clear definition of responsibilities on three fronts, namely; Risk ownership, risk tracking and risk assurance.³⁸¹ According to the model, the first front represents the functions that owns and manages the risk, the second front represents the functions of control and suitability that tracks the risks and internal auditing represents, and the third front which has the role of providing assurance to stakeholders (board of directors, audit committee, and managers) who are able to manage compliance risks at an acceptable level.³⁸²

Internal auditing is an important tool for determining the extent to which company owners and managers are using the resources of the company effectively, efficiently, and economically within the framework of transparency and accountability.

Articles 397 and 398 of the Turkish Commercial Code (TCC) contain information on company audits. Article 397 arranges the auditing of the financial statements by the auditors, and generally defines the content. Article 398 defines the subject and scope of the audits. Section 1.6.1 of the report includes explanations on relevant articles and information for companies. Recalling Article 398, which states that, the audit of the financial statements of the company and its community and the annual report of the board of directors is; the audit of the inventory, the accounting, the internal audit as defined by the Turkish Auditing Standards, reports issued by the board of directors on the committee established for the early detection and management of risks and the annual activity report of the board of directors. Auditing involves the examination of the Turkish Accounting Standards, the compliance with the provisions of the law, and the financial statements of the main contract, in accordance with the ethics of the auditing profession. Per the article, auditing is explaining whether, the company's consolidated financial statements, annual report of the board of directors, reports on the committee established and monitored for the early de-

³⁸⁰ <https://www.tide.org.tr/Page.aspx?nm=anasayfa>

³⁸¹ IIA, Tone at the TOP, Mevzuat Rületi? Uygunluk Riskini Yönetmek İçin En İyi Bahisler, Sayı 79, Oct. 2016, p.1

³⁸² IIA, Tone at the TOP, Mevzuat Rületi? Uygunluk Riskini Yönetmek İçin En İyi Bahisler, Sayı 79, Oct. 2016, p.2

tection and management of risks are in compliance with the information obtained by the auditor during the audit. The auditor presents the board of directors; the structure and reports of the said committee, and a report in conjunction with the rules of procedures determined by the Board of Public Oversight, Accounting, Auditing Authority; to enable the board of directors to manage and identify risks that could threaten or potentially threaten the company.

Capital Market Board's "Communiqué on Principles Regarding Financial Reporting in Capital Markets" No. (II-14.1) aiming to harmonize the changes brought by the Capital Market Law No. 6362 and the Turkish Commercial Code No. 6102 states;

1. Entities will prepare their financial statements on the basis of Turkish Accounting Standards / Turkish Financial Reporting Standards (TMS/IFRS) issued and published by the Public Oversight, Accounting and Auditing Standards Authority (KGK).
2. "Entities" refers to issuers and capital market institutions other than investment funds and housing finance and asset finance funds. Included in the definition of the "Entities" are publicly traded non-listed partnerships, mortgage financing organizations, asset leasing companies, central clearing houses, central repositories, data warehouses, rating agencies, valuation institutions and independent audit firms.
3. It is stipulated that financial leasing, factoring and financing companies whose capital market instruments are traded in the stock market as in the case of banks and insurance companies are obliged to regulate their financial reports within the framework of the forms and principles determined in accordance with their specific legislation and to fulfill the obligation to prepare the financial reports prescribed in this Communiqué.
4. Investment companies liable to prepare consolidated financial statements are under obligation to prepare as well as their annual individual financial statements together with their annual consolidated financial statements. This stipulation becomes effective with effect from the financial reports of the first interim period belonging to the accounting periods starting after 1/1/2014 to enable the investment partners to adapt to the practice.
5. Entities prepare their annual reports in accordance with the provisions of the Regulation on Determination of Minimum Content of Annual Report of Companies promulgated in the Official Gazette edition 28395 dated 28/8/2012. However, the pertinent provisions of this Communiqué are applied on durations pertaining to preparation and public disclosure of said reports.
6. Board of directors of the entity appoints the audit committee to be elected pursuant to the Corporate Governance Principles, or in absence of an audit committee, at least one of its own members, as responsible for financial reporting.
7. Entities the securities of which are traded in an exchange and/or in other organized marketplaces are required to disclose to public their annual financial reports and their independent audit reports relating thereto, as specified in the regulations of the Board pertaining to independent audit. In this regard:
 - a. Disclosure of annual financial reports to public are required to be made within 60 days following the end of their accounting periods, in absence of the obligation to prepare consolidated financial statements; or within 70 days following the end of their accounting periods, in presence of the obligation to prepare consolidated financial statements. Disclosure of interim financial reports to public are required to be made within 30 days following the end of the relevant interim period, in absence of the obligation to prepare consolidated financial statements; or within 40 days following the end of the relevant interim period, in presence of the obligation to prepare consolidated financial

statements. Where interim financial statements are subject to independent audit, the periods of time referred to in the first paragraph hereinabove are increased by 10 days for entities the securities of which are traded in an exchange and/or in other organized marketplaces, and by 15 days for other entities.

- b. Entities other than those covered by the first paragraph hereof are required to disclose to public their annual financial reports and their independent audit reports relating thereto, as specified in the regulations of the Board pertaining to independent audit, 3 weeks prior to the date of meeting of the general assembly of shareholders where the said financial reports will be discussed, and in any case, by the end of the 3rd month following the end of the relevant accounting period.
8. Entities the securities of which are traded in an exchange and/or in other organized marketplaces are required to disclose their public disclosures covered by this Communiqué after closing of last session of the relevant day.
9. Financial statements are allowed to be disclosed to the public prior to the board of directors' annual report, provided that the deadlines for public disclosure of financial reports are complied with. In this case, both the financial statements and the report of the board of directors should be taken separately and a statement of responsibility should be issued.
10. The financial statements will not be published in the Turkish Trade Registry Gazette (TTRG), since the Turkish Commercial Code Article 524 was abrogated.
11. Entities which are by nature a subsidiary, joint venture or affiliated company are required to disclose their financial reports to public at the same time with or prior to their parent company, joint venture or investor company, providing that the periods of time referred to in this Communiqué are abided by.
12. The entities listed below are exempted from the obligation to prepare interim financial reports under this Communiqué:
 - a. Entities the trading sequence of which is suspended for a period of more than 30 business days, Entities that are permanently delisted from the exchange list, Capital market institutions the activities of which are temporarily suspended, Entities in liquidation phase, and Entities that issue securities other than stocks without public offering.
 - b. Entities the stocks of which are included in the Emerging Companies Market List as per the regulations of the Istanbul Stock Exchange Corporation, and entities the stocks of which are traded in the Free Trading Platform are exempted from the obligation to prepare first and third quarter interim financial reports.
 - c. Entities the stocks of which are included in the Emerging Companies Market List as per the regulations of the Istanbul Stock Exchange Corporation, entities the stocks of which are traded in the Free Trading Platform, asset lease companies, and investment firms the securities of which are not traded in an exchange and/or in other organized marketplaces are exempted from the obligation to prepare interim board of directors' reports.
13. Corporations the stocks of which are not traded in the exchange, but which are deemed to be publicly held, if and to the extent they remain below the limits stated in the Decree on Determination of Companies to be Subject to Independent Audit, are not subject to and governed by the provisions of this Communiqué until the time of their application to be filed for trading of their stocks in the exchange within two years.

The Communiqué on Corporate Governance No. (II-17.1) also determines the responsibilities of the Audit committee;

“The Audit committee shall be in charge of the supervision of the corporation’s accounting system, public disclosure of the financial information, independent auditing and the operation and efficiency of internal control and internal audit system” within the scope of Corporate Governance Principles of the CMB. “Election of the independent audit institution, initiation of the independent audit process by preparing the contracts of independent audit and the work of the independent audit institution at all levels shall be conducted under the supervision of the Audit committee.”

“The Audit committee shall designate the applicable method and criteria with regard to the review of the complaints regarding the accounting and internal control system of the corporations and the independent audit, settling thereof, evaluation of the notifications of the employees of the corporation with regard to matters on accounting and independent audit of the corporation within the framework of the confidentiality principle.

The Audit committee shall notify its evaluations with regard to the veridicality and accuracy of the annual and interim period financial statements to be disclosed to the public and accounting principles followed by the corporation to the board of directors in writing, together with the opinions of the responsible executives and independent auditors of the corporation.

The Audit Committee shall convene at least four times a year, provided that it is once in three months, record meeting minutes and submit the resolutions to the board of directors. There shall be an explanation in the annual report with regard to the activities and meeting results of the audit committee. The Number of written notifications of the audit committee to the board of directors within the term of the account period shall also be set forth in the annual report.

The Audit committee shall notify its findings relevant to its own duty and responsibilities and evaluations relevant thereto immediately in writing to the board of directors”³⁸³

The TCC also regulates the penalties that arise from the failure to conduct audits and/or preparation of the necessary records and documents for audits. According to Article 562; (4) “ Failure to submit to persons duly authorized to audit the books in accordance with the first paragraph of Article 210 the books, records, and documents required to be kept pursuant to the provisions of this Law and the information relating thereto, or deficient submission or preventing auditors from performing their duties shall be punished with a fine Judicial fine not less than 300 days, unless the action gives rise to another crime that entails a heavier penalty.”

(6) “If financial books are not available or if they do not contain any records or if they are not kept in accordance with this Law, the responsible persons shall be punished by judicial fine for not less than 300 days.”

(7) “Those who act in violation of Article 527 shall be punished according to the provisions of article 239 of the Turkish Criminal Code.”

On the other hand, 8th paragraph of the same article refers to Article 549, which stipulates imprisonment from one to three years for issuing forged documents, prospectuses, letters of undertaking and declarations with respect to such transactions as incorporation, capital increase and decrease, merger, spin-off, conversion and securities issuance as well as deliberately entering falsified records in the commercial books.

Under Turkish legislation, establishment of a bank in Turkey shall be permitted provided that the establishment conditions laid down in Banking Law No. 5411 are fulfilled. Article 7 of the Law stipulates that “there should be a transparent and open partnership structure and organizational chart that will not constitute an obstacle for the efficient supervision of the institution,”

³⁸³ The Communiqué on Corporate Governance No. (II-17.1)

“there should not be any element that hampers its consolidated supervision,” and “the work plans for the envisioned fields of activity, the projections regarding the financial structure of the institution including capital adequacy, the budgetary plan for the first three years and an activity program including internal control, risk management and internal audit system showing the structural organization must be submitted” under paragraphs (h), (i), and (j).

That is to say, regardless of whether their shares are publicly traded in Istanbul Stock Exchange or not, all the banks established in Turkey are required to institute transparent and accountable executive structures.

Article 23 of the Law holds the board of directors responsible for determination of the powers and responsibilities of internal audit mechanisms. According to the Article; “the responsibilities of the board of directors shall include ensuring the establishment, functionality, appropriateness and adequacy of internal control, risk management and internal audit systems in conformity with the applicable legislation; securing financial reporting systems; and specification of the powers and responsibilities within the bank.” Article 24 defines the establishment and responsibilities of the Audit committees consisting of two members appointed amongst the members of the board of directors who do not have executive duties for the execution of the audit and monitoring functions of board of directors. According to the Article, the audit committee shall, one every six months at the maximum, report to the board of directors the results of its activities, as well as other matters that it deems necessary. Articles 29 to 32 of the Law are about the obligations and scope of the internal audit and control mechanisms.

It has been observed in our research that the companies with an established an Audit Committee are mostly the ones that have publicly traded shares on the Istanbul Stock Exchange, or large-sized enterprises with foreign capital. In the case of internal audits, we have observed that if the enterprise is a part of a Holding, the auditors from the Holding company are the ones conducting the internal audits. Likewise, when the enterprise has foreign shareholders, the internal auditing may be conducted by the foreign partner. Audits are usually carried out at different levels, on a divisionwide, departmentwide, or companywide basis without prior notification, and the results are presented in writing to the board of directors. Although interviewed large-size companies’ managers including publicly held and/or traded on BIST expressed that internal audit is an essential part of their process SMEs were not interested with internal audit.

SCORE **75**

2.2.2

External Audit

Scoring Question:

To what extent do companies subject their financial reporting to external audits?

Independent auditing may be described as the examination and reporting of the accounts and transactions of partnerships by the authorized supervisors appointed by the independent auditors in accordance with the auditing principles and standards on behalf of these organizations, and whether the financial statements reflect the facts or not.³⁸⁴ In other words, independent auditing is the process by which auditing techniques are applied to books, records, and documents and evaluated to obtain appropriate and sufficient evidence to ensure that the annual financial statements and other financial information on the entities conform to the established criteria (for example, the financial reporting standards established or accepted by the CMB for

³⁸⁴ <http://www.borsaistanbul.com/sirketler/sirketlerin-yukumlulukleri/pay-piyasasi/bagimsiz-denetim>

publicly held companies) and that these statements provide reasonable assurance as to the adequacy and reliability of the annual financial statements.³⁸⁵

The persons and institutions that are given authorization certificates by the Public Oversight Accounting and Auditing Standards Authority (entities such as financial intermediaries, and portfolio management companies, etc. by the Capital Markets Board) are authorized to conduct independent audits.

The amended Law has enabled “the transition from corporate auditing to independent auditing” and for this purpose, the Executive Order No. 660 established the Public Oversight, Accounting and Auditing Standards Authority which set out the procedures and principles for the independent auditor and independent audit.³⁸⁶ Regulations concerning Independent Audit and Independent Auditors have been made between articles 397 and 406 of the Turkish Commercial Code.

Individuals and institutions that have been given authorization certificates by Public Oversight Authority (KGK), (Stock Exchange Commission in its field) are authorized and competent to conduct independent audits. Per the 2015 data, in Turkey 196 audit firms were public registers of the Public Oversight Authority’s (KGK), 13.280 persons’ Independent Audit Authority was authorized and 2.085 auditors were employed in the mentioned companies.³⁸⁷ Approximately 20% of the persons who have been granted the Independent Auditing Authority originated from the YMM’s and %80 from the SMMM’s. In addition, 100 of 196 companies were previously auditing as part of SPK, they were accredited to KGK. The obligation to provide at least 96 hours of audit per year to a company is an international standard.³⁸⁸

Independent audit reports prepared by independent audit teams whose numbers may vary according to audited company size (not less than 3 regular and 3 substitute members as required by law) include opinions expressed by independent auditors of the audited firm’s financial statements as a result of the independent audit. These views are whether the financial statements are prepared, in all respects, in accordance with the relevant financial reporting standards. The purpose of the independent audit is to determine whether the financial statements reflect the reality and whether the statements are in accordance with financial reporting standards.³⁸⁹ As such, it is difficult to claim that independent audits are an effective tool to detect corruption.

Articles 3, 4, and 5 of the Second Section of the Communiqué Regarding Independent Auditing in Capital Markets determine the conditions to be fulfilled by the institutions to be independent auditors in the capital markets and the partners, managers, and independent auditors in these institutions and the necessary information and documents to be submitted to the CMB for the authorization of the auditors.

Article 80 of the Law No. 6455 Regarding Amendments to the Customs Law and Other Laws and Statutory Decrees approved on 28.03.2013 and the added fifth clause to the Article 397 of the TCC ensured the auditing of Joint Venture companies which was left out from independent audit.

Pursuant to the TCC, companies subject to the independent auditing requirement may be summed as all equity firms, banks, financial institutions, partnerships, public institutions, and other establishments within the limits of e-POA.³⁹⁰

³⁸⁵ Bağımsız Denetim Yönetmeliği, Resmi Gazete, Sayı:28509, Date:26.12.2012 (22.12.15 Dateli değişiklikler)

³⁸⁶ Sezer, Yılmaz. Zorunlu Oldukları Halde bağımsız denetim yaptırmamış şirketler şimdi ne yapacak?, Dünya Gazetesi, 22 Haziran 2016

³⁸⁷ Kamu Gözetimi Kurumu, Faaliyet Raporu 2015, p.74, 75

³⁸⁸ <http://www.alfabetadenetim.com.tr/article/show/16-bagimsiz-denetimde-mevcut-durum-sorunlar-ve-beklentiler-imiz.html>

³⁸⁹ <http://spk.gov.tr/indexcont.aspx?action=showpage&menuid=6&pid=9&subid=1&submenuheader=null#konu3>

³⁹⁰ <http://www.optimaldenetim.com/bagimsiz-denetim/>

New paragraphs were added to Article 397 of the TCC regarding the supervision of the joint stock companies outside the independent audit with Article 80 of the Law No. 6455 Regarding Amendments to the Customs Law and Other Laws and Statutory Decrees.

According to the TCC, independent auditing requirement criteria for companies are determined by annual Council of Ministers Decrees. The three criteria, total assets, annual net sales revenues, and total employees are determined per the EU directives.³⁹¹

With the Council of Ministers Decision No. 2016/8549, the criteria defining the Eligible Entities which will be subject to independent auditing under the TCC and pursuant to the Decree-Law on the Organization and Duties of the Public Oversight, Accounting and Auditing Standards Authority numbered 660 have been readjusted and the annual net sales revenue limits have been decreased.³⁹² According to the Decision, the companies meeting at least two of the following criteria shall be subject to independent audit; total asset size of TRY 40 million or more (50 million or higher in the previous decree), annual net sales revenue of TRY 80 million or more (100 million or higher in the previous decree), and a minimum of 200 employees or more. In other words, companies fulfilling at least two conditions in the 2014 and 2015 accounting periods will be subject to independent auditing in the 2016 accounting period.³⁹³ Although all joint stock companies and limited liability companies are subject to independent audits, there is no obligation for limited liability companies that do not satisfy these conditions.³⁹⁴

These limits also vary depending on the sector and the respective laws that govern the sectors. Companies that meet any two of the three criteria that entered into force on January 1st, 2016 will be subject to independent audits.³⁹⁵ The sectorial designation of companies according to the Decree of the Council of Ministers on Determination of Equity Companies Subject to Independent Auditing numbered 2012/4213 are listed in Table 6.

Table 6. *The Companies Which Are Subject to Independent Audit*

Company	2016 Limits	2015 Limits
The companies according to the law to 2012/4213	Total Assets More than 40 mn	Total Assets More than 50 mn
	Turnover More than 80 mn	Turnover More than 100 mn
	Number of employees More than 200 people	Number of employees More than 200 people
Companies with at least 25% of the capital who is directly or indirectly owned by professional organizations, unions, cooperatives, foundations, associations and their higher bodies who have the characteristics of a public institution	Total Assets More than 30 mn	Total Assets More than 40 mn
	Turnover More than 40 mn	Turnover More than 50 mn
	Number of employees More than 200 people	Number of employees More than 200 people

³⁹¹ Kamu Gözetimi Muhasebe ve Denetim Standartları Kurumu, Basın Duyurusu, Date: 21.03.2016, Sayı: 2016/1

³⁹² Resmi Gazete, Date: 19.03.2016, Sayı: 29658

³⁹³ Ege Denetim Mali Danışmanlık, Sirküler No: 2016-24, Date: 22.03.2016

³⁹⁴ Kanoğlu Münir Nurettin, 10 Soruda Bağımsız Denetim, Dünya Gazetesi, 10.07.2015 <http://www.dunya.com/gundem/10-soruda-bagimsiz-denetim-haberi-285733>

³⁹⁵ <http://www.optimaldenetim.com/bagimsiz-denetim/>

Companies that publish daily newspapers nationwide	Total Assets More than 40 mn Turnover More than 60 mn Number of employees more than 175 people	Total Assets More than 50 mn Turnover More than 75 mn Number of employees more than 175 people
Companies, excluding call center companies and authorized companies without resource allocation that are within the scope of the Electronic Signature Law No. 5070 dated 15/1/2004, Electronic Communication Law No. 5809 dated 5/11/2008, and companies who are subject to the auditing of the Information Technologies and Communications Authority within the scope of Article 1525 of the Turkish Commercial Code No.6102	Total Assets More than 30 mn Turnover More than 60 mn Number of employees More than 200 people	Total Assets More than 50 mn Turnover More than 100 mn Number of employees More than 200 people
Companies with license, certificate or authorization operating under the regulations of EMRA (excluding the state economic enterprises subject to the provisions of law No.4046), pursuant to the Electricity Market Law No.4628, Natural Gas Market Law No.4646, Petroleum Market Law No.5015, Liquefied Petroleum Gases (LPG) Market Law No.5309-7, and Law Amending Electricity Market Law.	Total Assets more than 30 mn Turnover More than 60 mn Number of employees More than 200 people	Total Assets More than 50 mn Turnover More than 100 mn Number of employees More than 200 people
Companies, except for subsidiaries and companies who are inactive, or whose activities are temporarily suspended or canceled (including those for which necessary amendments to the articles of association and similar procedures have not yet been carried out) whose supervision and management has been taken over by the Fund with the subsidiaries of Savings Deposits and Insurance Fund, in pursuant to the former Banking Law. No.4389 and Banking Law No.5411	Total Assets more than 30 mn Turnover More than 60 mn Number of employees More than 200 people	Total Assets More than 50 mn Turnover More than 100 mn Number of employees More than 200 people
State economic enterprises and their subsidiaries operating under the Executive Order No.233 on State Economic Enterprises and companies with at least 50% of the capital owned by the municipalities.	Total Assets more than 30 mn Turnover More than 40 mn Number of employees More than 125 people	Total Assets More than 40 mn Turnover More than 50 mn Number of employees More than 125 people

In addition to the aforementioned criteria, the auditing conditions are determined within the framework of the regulations of the Energy Market Regulatory Authority (EPDK), the Banking Regulation and Supervision Agency (BDDK) and the Capital Markets Board (CMB) according to their areas of activity and whether the companies are publicly traded or not.

The objective of the Liquefied Petroleum Gases (LPG) Market Law and Amending Law to Electricity Market Law No. 5307³⁹⁶ is “regulation of the surveillance and supervision activities in order to ensure the transparent, non-discriminatory, and stable performance of market activities pertaining to the delivery of petroleum supplied from domestic and foreign resources to consumers in a reliable, cost effective manner within a competitive environment,” and covers the distribution, transportation, storage, trade of LPG and defines rights and obligations of all real and legal persons relating to these activities. Article 12 of the Law relates to “information gathering, records, audit and notification.” According to the Article, “regarding the market parties and/or facilities the appointed Authority official shall be authorized to review any document and commodity including accounting books, take copies or samples, request written or verbal

³⁹⁶ <http://www.petder.org.tr/wp-content/uploads/2016/08/LPG-Market-Law.pdf>

explanations on the subject, prepare necessary minutes, inspect the facilities and operations.” In addition, “the Authority shall audit the market activities via its own personnel or by the way of service procurement from public institutions and organizations and private auditing organizations.”

According to Article 33 of the Banking Law No. 5411, “if, during their audits, independent audit firms detect any matter that may endanger the existence of the bank or an evidence demonstrating that their managers have severely violated the Law or the articles of association, the independent audit firms shall promptly notify the Agency thereof.” Article 40 of the Law establishes the content of the annual activity reports of banks and the independent auditing report is required to be submitted within the annual reports.

Companies whose shares are traded in Istanbul Stock Exchange are obliged to declare the annual and 6-month financial statements and footnotes and interim financial statements and their footnotes in the Public Disclosure Platform (KAP) within the specified period following the end of the accounting period. If the announcement obligation is not fulfilled within the determined period and if no additional extension of the period is requested from the CMB, the transaction sequence of the company stock may be temporarily stopped.³⁹⁷

Although companies traded in the ECM are required to announce to the public their independently audited annual financial reports, they are exempted from the independent auditing of their six-month financial reports, which are mandatory for companies traded in other markets of the Stock Exchange Istanbul. That said, the companies are obligated to publicly announce and share the reports.³⁹⁸

“The companies whose shares are on the ECM Directory are obligated to produce and publicize the year-end financial reports and the independent audit report thereof; and semi-annual financial statements (which do not need to be independently audited). The financial report set includes financial statements, board of directors’ operation report and representation letter. It is also mandatory that the company disclose important events and developments, which are likely to affect the value of its shares or the investors’ decisions regarding investments or exercising of rights. Companies disclose statements conveyed to them by market advisors for announcement as well as the conditions of the market advisory agreements, as required by the ECM Regulation. The company’s web site should be available and operational while the company shares are on the ECM Directory, and all sorts of information and documents required by Istanbul Stock Exchange should be published there as well, after being announced on Istanbul Stock Exchange Public Disclosure Platform (KAP). Public disclosure is realized via the KAP system on the Internet by using digital certificates and signatures.”³⁹⁹

Companies traded on ECM are required to release to public; their financial statements, the annual report of the board of directors and their year-end financial reports consisting of state of responsibility, in other words, their financial report and its related independent audit report.⁴⁰⁰ Furthermore, even if there is no obligation to audit the mandatory six-month financial reports of the companies traded in the other markets of Istanbul Stock Exchange, they are obliged to regulate and announce to the public within the legal period.⁴⁰¹ Like other publicly traded companies who disclose significant events and developments that may affect investors’ investment decisions, such requirements are also applicable for these companies. It is also compulsory for

³⁹⁷ <http://www.borsaistanbul.com/sirketler/sirketlerin-yukumlulukleri/pay-piyasasi/bagimsiz-denetim>

³⁹⁸ <http://www.borsaistanbul.com/sirketler/sirketlerin-yukumlulukleri/gelisen-isletmeler-piyasasi/bagimsiz-denetim>

³⁹⁹ <http://www.borsaistanbul.com/en/companies/companies-liabilities/emerging-companies-market/public-disclosure>

⁴⁰⁰ <http://www.borsaistanbul.com/sirketler/sirketlerin-yukumlulukleri/gelisen-isletmeler-piyasasi/kamuyu-aydinlatma>

⁴⁰¹ <http://www.borsaistanbul.com/sirketler/sirketlerin-yukumlulukleri/gelisen-isletmeler-piyasasi/bagimsiz-denetim>

the companies that are traded on the ECM, to have their website online on ECM as long as the company operates and the data should be published with an electronic certificate and signature on both PDP and the website, in order to make necessary informing within the scope of public disclosure.⁴⁰²

Considering the limits to being subject to independent auditing, micro, small, and medium-sized enterprises, in other words, 99.8-99.9% of all enterprises in Turkey are exempted from mandatory audit. This indicates that a very large group of businesses are essentially free from any form of financial control. As such, these exemptions lead to unwanted behavior such as keeping multiple financial books, and may be considered to be one of the underlying causes of the creation of a shadow economy.

Within the scope of the previous limits, from approximately 7,300 large-sized companies,⁴⁰³ approximately 2,500 in 2013 and 3,500 in 2014 were subject to independent audits.⁴⁰⁴ An estimated 5,000 companies will be subject to independent audit in 2017, based on the 2015 limits. On the other hand, it is expected that the limits will match EU standards by the end of 2017; the updated limits will be € 4 mn in total asset size and € 8 mn⁴⁰⁵ in annual net sales revenue. With this arrangement, we expect the number of companies subject to independent accounting will reach 25,000.⁴⁰⁶ It is estimated that the mentioned companies will be subject to auditing by about 20,000 auditors and up to 250 companies.⁴⁰⁷

In EU countries, firms with an asset value of 2 to 43 million euros, an annual net sales revenue of 2 to 50 million euros, and an employee number of less than 250 are defined as SMEs.⁴⁰⁸ In this framework, it is evident that in the EU standards, the annual net sales revenue limit of 8 million Euro covers some of the small-scale enterprises and all the medium-sized enterprises in terms of annual sales revenue. Thus, this reveals that a very large group in EU countries are subject to independent auditing. Considering Turkey's SME definition which is limited to an annual net sales revenue of 40 million TL, the 8 million Euro sales revenue limit will cause micro, small and significant number of medium-sized enterprises to be left out from independent audit.

For the purpose of supporting the implementation of Independent Audit especially by SMEs, The Small and Medium Scale Enterprises Development and Support Administration (KOSGEB) gives support specifically designed for this issue, limited to 15.000 TL under "Independent Audit Support"⁴⁰⁹ Such support is provided for independent audit services that is given by independent auditing firms and certified public accountant conducting independent auditing that are authorized by the Board of Public Auditing, Accounting and Auditing Standards Authority, and the upper limit for each audit is 7,500 TL. The limit can vary by %50-60-70, depending on the region where the enterprise is located. For example, a KOSGEB member SME, receives an Independent Audit service of TRY 15,000, may be eligible to get a grant of TRY 7,500 from KOSGEB.

⁴⁰² <http://www.borsaistanbul.com/sirketler/sirketlerin-yukumlulukleri/gelisen-isletmeler-piyasasi/kamuyu-aydinlatma>

⁴⁰³ <http://www.kgk.gov.tr/ContentAssingmentDetail/9/Bag%CC%86%C4%B1ms%C4%B1z-Denetime-Tabi-Olacak-S%C-A7irketler-Duyurusu>

⁴⁰⁴ <http://www.alomaliye.com/2015/02/12/bagimsiz-denetime-tabi-sirketlerin-internet-sitesi-acmasi-ve-internet-site-sinde-bulunmasi-gereken-zorunlu-hususlar/>

⁴⁰⁵ http://baded.org.tr/?page_id=36

⁴⁰⁶ <http://www.optimaldenetim.com/bagimsiz-denetim/>

⁴⁰⁷ Bağımsız Denetçiler Derneği Bülten, Yıl: 2015, Sayı: 001, p.9

⁴⁰⁸ http://kobi.tobb.org.tr/index.php?option=com_content&view=article&id=134&Itemid=226

⁴⁰⁹ [http://kosgeb.gov.tr/Content/Upload/Dosya/Genel%20Destek/17.01.2017_Genel_Destek_Program%C4%B1_UE-01\(15\).pdf](http://kosgeb.gov.tr/Content/Upload/Dosya/Genel%20Destek/17.01.2017_Genel_Destek_Program%C4%B1_UE-01(15).pdf), p.25

On the other hand, in 2016, the number of joint stock companies was 122,156; around 117,000 of these companies would have had to be subject to independent auditing under Article 397(5), something that has not been achieved.⁴¹⁰

Per the TCC, a joint stock company that is not subject to an independent audit can provide information to its shareholders in the General Assembly on the financial developments and changes within the company through the audits to be made through YMM or SMMM and the reports on these audits.⁴¹¹

Per Paragraph 3 of Article 397 of the TCC, if the companies are subject to audit and they have not been audited, the annual report and financial reports of the board of directors of the companies should be deemed invalid. In this case, since the financial statements of the companies that are subject to audit and that have not been audited are deemed invalid, they cannot be examined in the General Assembly, cannot be discussed or be acknowledged, cannot be given to banks or similar institutions, cannot be approved by YMMs or SMMMs and the company cannot distribute profit, increase or decrease capital.⁴¹²

Publicly traded large-sized enterprises and enterprises with foreign capital work with licensed independent audit firms. The preparation and submission of proposals regarding the decision of which audit firms the enterprise will work with are carried out by a Corporate Governance Committee that works under the board of directors. Information on all matters pertaining to public disclosure are kept and shared with the public by an Investor Relations Unit that directly reports to the Corporate Governance Committee. The Investor Relations Unit is in charge of designing and implementing the information policy of the company, responding to any queries the shareholders may have, performing all activities related to the General Assembly, keeping records, and preparing reports. External audit reports are published on corporate websites. The reports are also announced through the Public Disclosure Platform.

Even if KOSGEB support is provided, it has been found from the statements of SME managers that; apart from the work of the accountant and financial consultant on the annual financial statements, there are no work done on independent auditing. The fact that the legal status of such companies is limited liability company and that there is no legal obligation to conduct an independent audit is one of the determining factor. It has been stated in the discussion made with the directors of the large-scale enterprises that, whether it is open to public or not, the board of directors attaches great importance to the issue and they are audited by independent auditing firms.

⁴¹⁰ Arslan Özkan, "Bağımsız Denetime Tabi Olmayan Anonim Şirketlerin Genel Kurullarınca Denetçi Seçilmesi Mümkün Müdür?", İSMMMO, Mali Çözüm Dergisi, May -June 2016, p.134

⁴¹¹ Arslan, Özkan. "Bağımsız Denetime Tabi Olmayan Anonim Şirketlerin Genel Kurullarınca Denetçi Seçilmesi Mümkün Müdür?", İSMMMO, Mali Çözüm Dergisi, Mayıs-Haziran 2016, p.138

⁴¹² Sezer, Yılmaz. Zorunlu Oldukları Halde bağımsız denetim yaptırmamış şirketler şimdi ne yapacak?, Dünya Gazetesi, 22 Haziran 2016

2.2.3

SCORE 25

Independent Assurance

Scoring Question:

To what extent do companies undergo voluntary independent assurance on the design, implementation and/or effectiveness of the anti-corruption program?

Issues pertaining to independent audits vary greatly from one company to another. The legal status of the companies, whether they are being publicly traded or not, the necessities legal provisions bring play important roles in how companies view independent audits within their corporate structure.

SMEs in Turkey are defined by their total asset size and annual net sales revenues. If any of these two figures exceed TRY 40 million for two consecutive years for a company, they are defined as large-sized enterprises. The number of employees is usually considered as a secondary criterion since the annual net sales figures define the framework of the scale.

According to the Turkish Commercial Code No. 6102, joint stock companies and limited liability companies meeting at least two of the following criteria shall be subject to independent audit; total asset size of TRY 40 mn or more in the past 3 years, annual net sales revenue of TRY 80 mn or more, and a minimum of 200 employees or more. In that regard, it is virtually impossible to talk about voluntary independent audits for micro and small-sized enterprises, majority of which comprise sole proprietorships. Based on the new limits for mandatory audits, an estimated 5,000 companies will be subject to independent audits in 2017.

Publicly traded companies perform audits and release public notices in accordance with the Capital Market Law and the CMB Corporate Governance Principles. Independent audits and public disclosure procedures are carried out in accordance with international standards and the reports are published in both Turkish and English on the corporate website.

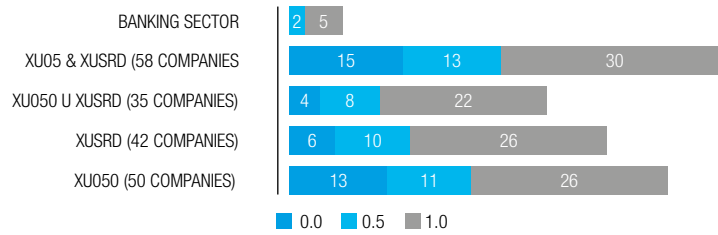
In addition, the 50 publicly traded companies in the BIST Corporate Governance Index continue to work with the rating agencies on their own accord to obtain corporate governance ratings and to maintain their position in the Index with the ratings they receive.

On the other hand, companies in the finance sector that are not openly traded are required to carry out independent auditing activities in the form and duration requested by the Banking Law in addition to the related laws and principles.

Likewise, companies operating in the energy markets must operate under the regulations and communiqués of the Energy Market Regulatory Authority (EPDK) they are subject to.

One of the key issues in auditing is regular monitoring and auditing of whether the company's anti-corruption policies are implemented for sustainability. As the Graphic 17 shows that the 30 companies received a full score, while 15 companies did not make a statement about such transactions of the total 58 companies evaluated in this concept.

Graphic 17. Audit of Anti-Corruption Programs



Source: Transparency International Turkey

As displayed on Graphic 17, BIST 50 and BIST Sustainability Index companies are more likely to establish auditing and control mechanisms compared to other establishments. The banking sector is also more willing to establish these mechanisms, due to the structure and the laws that govern the sector. 5 of the 7 banks among the 58 companies in the research have a full score in this area.

It has been understood that all of the interviewed companies have not conducted any other work in this area other than requested by the laws. However, interviewed multinational executives have declared that they have also carried out work within the laws of the country where the parent company is located.

2.3

SCORE 50

TRANSPARENCY AND DISCLOSURE

2.3.1

SCORE 25

Disclosure of Anti-Corruption Program

Scoring Question:

To what extent do companies report publically on their anticorruption program?

It is impossible to talk about neither policies nor the fulfillment of the obligations of micro and small-sized enterprises in Turkey since companies of that scale usually do not have anti-corruption programs and there are no legal obligations for these companies to disclose any of the transactions in general.

There exist multiple degrees of difference between SMEs, large-sized enterprises, publicly traded companies, and companies with foreign capital (overlaps between categories notwithstanding) in the areas of anti-corruption, corporate governance principles, transparency, and public disclosure. Large-sized enterprises, especially publicly owned companies and/or companies with international capital, work within the framework of national and international laws, regulations, communiqués, and principles such as the Turkish Commercial Code, the Capital Market Law, the G20/OECD Corporate Governance Principles and the UN Principles, creating their own anti-corruption programs or even making proposals during legislative processes.

Companies create an information policy for the public disclosure of their work and publicize it via corporate websites within the scope of the Corporate Governance Principles of the Capital Markets Board.

Anti-corruption activities within an enterprise include, but are not limited to; organization of company-wide employee trainings; publication of annual activity reports; preparation of agenda items in the framework of corporate governance principles at the General Assembly meetings; preparation of contracts with customers, suppliers, and contractors; establishment of specific limits and policies on expenditures such as gifts, travel expenses, etc.; institution of mechanisms to ensure that employees and/or stakeholders have avenues to report any misconduct and to protect potential whistleblowers from reprisals; and ultimately, formation of departments and committees to ensure these anti-corruption activities are carried out according to the company policies and to guarantee the activities are supervised by internal and external auditors.

The companies whose shares are traded on the Equity Market of Istanbul Stock Exchange (except for the ECM and Pre-Market Trading Platform) are required to share their Corporate Governance Compliance Report in their annual activity reports and on their websites in order to allow third parties to monitor compliance statements and issues that might be against corporate governance principles.⁴¹³

Similarly, within the scope of the Corporate Governance Principles of the Capital Markets Board, companies are required to publicly disclose information about their activities, structures, financial status, performances, partnership structures and management in a timely and accurate manner. It is also essential for the information to be applicable for the actions of the entire company and, if possible, in accordance with its fields of activity and geographical areas of operation. In addition, companies should disclose information such as financial and activity reports and financial targets; information on shareholders and their voting rights, including intra-group relations and control mechanisms; the remuneration policy for board members and executive-level managers; information about the qualifications of the members of the board, the principles of selection, whether they are in executive-level positions in other companies, and whether they are accepted independently by the board of directors; related-party transactions, foreseeable risk factors, information about employees and other stakeholders; and the administrative structure and policies, in particular the content of any corporate governance policy or legislation and the process of information.

Article 1524 of the TCC (Amended.: 26/6/2012-6335/34) states that “companies [...] must build a website within three months of registering with the trade registry and allocate a section of their website to announcements that must be made pursuant to the law.” The issues to be announced on the website must be posted on the website within the period set out in the relevant legislation. If no such specific period of announcement has been set forth, then announcement shall be made within five days following either the realization of the relevant event, the registration with the trade registry or the announcement in cases where registration and announcement are required in order for the relevant transaction to become valid.

The Ministry of Customs and Trade has also determined the requirement of opening websites for companies subject to independent audits, based on the Articles 210 and 1524 of the TCC, with the “Regulation Regarding the Websites of Capital Companies.”⁴¹⁴ This regulation sets forth the procedures and principles for the opening of dedicated websites and the relevant contents to be published by the companies. Accordingly, the companies may fulfill their requirements regarding the dedicated websites either by themselves or via Centralized Database Service Providers.

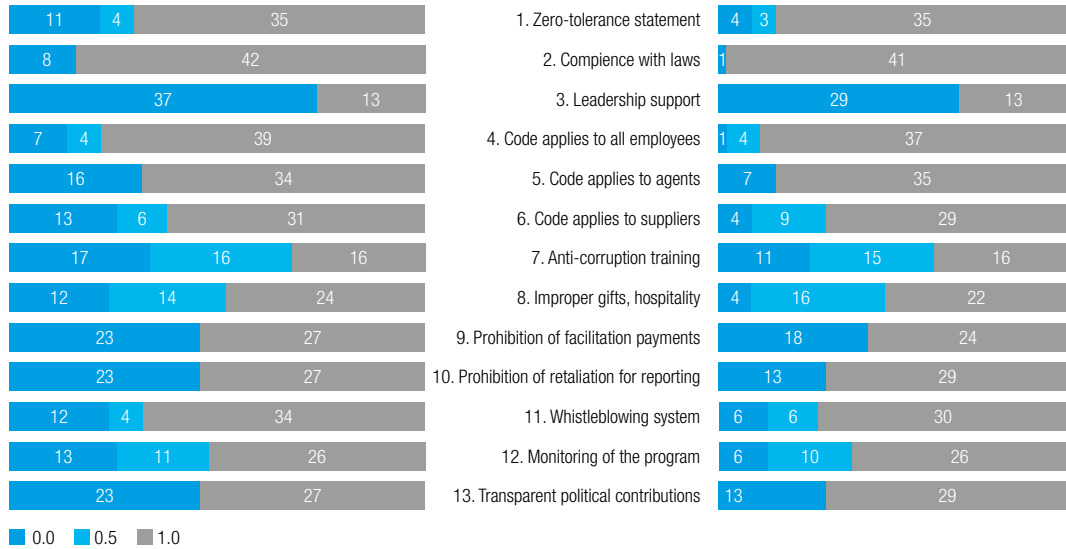
Approximately 1,500 companies newly entering the scope of independent auditing in 2016 are required to open a website and publish the information obligated by the Law and Regulation on the dedicated websites as well as to publish their financial statements.

⁴¹³ <http://www.borsaistanbul.com/sirketler/sirketlerin-yukumlulukleri/pay-piyasasi/kurumsal-yonetim>

⁴¹⁴ Gümrük ve Ticaret Bakanlığı'ndan: “Sermaye Şirketlerinin Açacakları İnternet Sitelerine Dair Yönetmelik”, Resmi Gazete, Date: 31.05.2013, Sayı: 28663

The scores pertaining to public disclosure of anti-corruption programs of BIST 50 and BIST Sustainability Index companies within the scope of the research are shown on Graphic 18.

Graphic 18. Assessment of the Companies Listed on BIST 50 Index and BIST Sustainability Index for Reporting on Anti-Corruption Program



Source: Transparency International Turkey

As demonstrated in Graphic 18, BIST Sustainability Index companies are more successful in compliance compared to BIST 50 companies; only one company in the Sustainability Index has received a score of “0.” Although the conditions for gifts, travel expenses, and business entertainment expenses apply for the companies in Istanbul Stock Exchange, 12 companies in the BIST 50 Index and 4 in BIST Sustainability Index has received a score of “0.” The evaluations also point out that some of the companies have not specified an exact figure for these expenses and that some expenses have been left unclear with explanations such as “appropriate amounts.”

The scoring criterion that resulted in the highest instances of “0” scores, in other words, the category that requires the highest attention for anti-corruption reporting is the lack of statements of company executives showing their stance against corruption.

When the mentioned items are evaluated in terms of the companies interviewed; It has been found that there are no studies related to the 13 articles constituting Anti-Corruption Program especially in micro and small scale enterprises. In the case of companies with international capital, even if they are not publicly traded, it is found that they carry out works on every article and publish through their corporate internet sites. 7 of the 8 companies interviewed in the BIST 50 Index and BIST Sustainability Index were found to score between 80 and 100 points on this issue.

However, a survey conducted by TÜSİAD with 801 business representatives (80 of them being small and medium-sized enterprises) in Istanbul in 2014 revealed that in small and medium-sized enterprises, the perception of the frequency and size of corruption is higher than in large enterprises.⁴¹⁵ Moreover, 48% of small businesses and 39% of medium-sized businesses are in the belief that corruption is on the rise, while in large enterprises this figure is at 20%. The same research has shown that the cost of corruption to SMEs is higher than that of large businesses. In short, it is inconceivable that, while SMEs are aware of the damages caused by corruption and express their discontent, they are not willing to do any work on their own or surrounding businesses to prevent it or to raise their level of knowledge and education in this regard.

⁴¹⁵ TÜSİAD, İş Dünyası Bakış Açısıyla Yolsuzluk: Algı ve Politika Önerileri 2014 Araştırma Sonuçları, 2014, p.7

Scoring Question:

To what extent do companies report publicly on their organizational structure?

Article 199 of the Turkish Commercial Code No. 6102 concerns the reports of subsidiary and controlling companies and imposes responsibilities for the truthfulness of the reports on the board of directors. Article 199 generally refers to the transactions and responsibilities of the controlling (parent) company and its subsidiaries' relations, auditing and reporting. According to the Article, The Board of Directors of the affiliated company shall prepare a report regarding the company's relations with controlling and dependent companies within the first quarter of the activity year. All legal transactions which the company conducted in the previous activity year with the controlling company, with a company dependent on the controlling company, through the direction of the controlling company that serves to its advantage or the advantage of its dependent company and all other measures taken or refrained from being taken to the advantage of the controlling company or of its dependent company in the previous activity year shall be explained in the report. At the end of the report, it reveals whether the management board has inflicted any damage to the company. If any damage has occurred, it is only declared in the annual activity report, whether the loss has been compensated or not. In addition, according to the article, board members of the controlling company may ask a report to be prepared and presented to the board of directors on the shareholders of affiliated companies, their financial information and transactions, their results and effects etc., in accordance with the principles of accountancy that is rigorous, truthful and honest and they may ask the conclusion of the report to be attached to the annual report and the audit report.

A large number of micro and small-sized enterprises do not inform the public about their institutional structures and activities for various reasons including not being involved in matters such as partnership, affiliation, and shareholding; the inadequacy of their corporate webpages; not fulfilling the criteria imposed in the TCC for independent audits; and not being obliged by law to inform the public about company structures and activities.

The situation is similar for medium-sized enterprises, and limited information such as information on products, export markets, references etc. are disclosed from the company websites. Even considering companies with international capital, the number of companies that disclose information on ownership structures and corporate activities on their webpages is low.

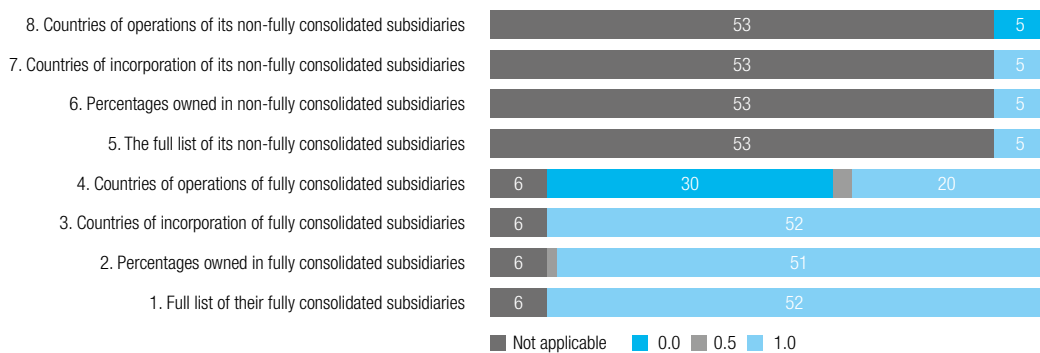
Companies traded in Istanbul Stock Exchange are required to include in their annual activity reports the information in the footnotes of quarterly financial statements presented to the General Assembly such as the list of subsidiaries and affiliates of the enterprise, shareholdings, and in the case when subsidiaries and affiliates are international companies, information related to controlling companies. On the other hand, the Communiqué on Principles of Financial Reporting in Capital Markets No. II-14.1 of the Capital Markets Board states that "entities which are by nature a subsidiary, joint venture or affiliated company are required to disclose their financial reports to public at the same time with or prior to their parent company, joint venture or investor company, providing that the periods of time referred to in this Communiqué are abided by."

Furthermore, Article 5(5) of the Communiqué on Material Events Disclosure No. (II-15.1) stipulates that "upon occurrence of a change in activities, financial standing and management/ capital relations of parent company and subsidiaries of an issuer, within the meaning ascribed

thereto by the definitions contained in the regulations of the Board pertaining to financial statements, which in turn causes a material change in activities, financial standing and management/ capital relations of the issuer, the issuer makes a public disclosure within the frame of provisions of this Article.” This statement ensures that in the case of any significant change, the Public Disclosure Platform is to be notified.

Also, Article 9(9) of the Communiqué on Corporate Governance maintains that the “board, if deems required regardless of the rates stated in this Communiqué, may oblige to make appraisal for transactions between corporations or corporations’ subsidiaries and their related or non-related parties and disclosure of the appraisal results to public within the framework of the principles set forth in this Communiqué.” In this context, the mean organizational transparency score of the 58 companies evaluated is 84 points. For the majority of the companies in the evaluation, there seems to be a lack of transparency for non-consolidated investments.

Graphic 19. Organizational Transparency



Source: Transparency International Turkey

All subsidiaries and/or affiliated companies disclose information in their financial statements and in annexes to annual activity reports. The lower score averages are due to the lack of statements about other countries in which the companies in question operate.

2.3.3

SCORE **25**

Disclosure on Country-By-Country Operations

Scoring Question:

Do companies report publically on their countries of operation?

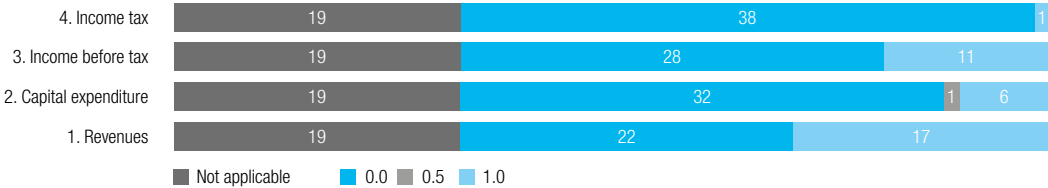
Micro and small-sized enterprises in Turkey generally operate at a local level, and thus are far from reporting at a country-by-country basis. Medium-sized enterprises also usually operate at the national level, and their international operations are limited to foreign trade transactions. For publicly traded companies, although the annual reports include revenues, investment expenditures, pre-tax income, etc. from international operations, these figures are usually given under a consolidated heading “overseas operations” that does not disaggregate figures at a country-by-country basis. Generally speaking, the expectation that publishing these transactions at the country level may harm customers or partners by weakening their competitiveness is the main driving factor of this behavior.

The 58 companies in the evaluation generally do not disclose detailed information about their operations abroad neither in their financial statements, nor activity reports and investor pre-

sentations, similar to other companies that are out of the scope of this research. As a result, the mean country-by-country scores is 19. The evaluations indicate that companies are more likely to share their revenue figures from operations abroad. Nevertheless, except for a few companies that share at a country-by-country basis, these figures are aggregated.

As can be seen in Graphic 20, 19 companies that do not have operations abroad were exempt from this scoring question. A large number of companies do not disclose their expenditures and income taxes from overseas operations.

Graphic 20. Country-by-Country Reporting



Source: Transparency International Turkey

A sectorial breakdown of the companies in the evaluation reveals that all the companies in the banking sector in the scope of the research (7 banks) include detailed explanations of country-level incomes and pre-tax revenues in their financial statements

2.3.4 Additional Disclosure

SCORE **25**

Scoring Question:

To what extent do companies publish information on charitable contributions, sponsorships and lobbying activities both domestically and internationally (e.g. corporate reporting or CSR reports)?

SMEs generally do not provide information on their donations and sponsorship activities; they usually refrain from making this information available to the public due to cultural reasons.

Large-sized enterprises with international partnerships and publicly owned enterprises publish donations, sponsorship activities, and the total values of these activities during the year in their Annual Activity Reports and publicly disclose them through their corporate webpages. These statements may be reported in aggregate or may be itemized in the report in line with corporate policy.

Within the framework of the Corporate Governance Principles of the Capital Markets Board, the general assemblies also present the corporate policy on donations and grants at General Assembly Meetings. In accordance with the policy approved by the General Assembly, shareholders are informed by a separate agenda item regarding the amount of all donations and aids made during the period and the general shareholders’ meeting about the beneficiaries and policy changes.

The Banking Law No. 5411 has set limits on donations. According to Article 59, the amount of grants to be extended by banks and institutions subject to consolidated supervision in a fiscal year shall not exceed four per thousand of the bank’s own funds.

It was mentioned by the interviewed managers of SMEs that amount of the donations and sponsorships were generally kept secret. On the other hand large-sized companies said that these figures are shared with consolidated.

2.4

SCORE 25

STAKEHOLDER ENGAGEMENT

2.4.1

SCORE 25

Stakeholder Relations

Scoring Question:

To what extent do companies engage in multi-stakeholder initiatives aimed at reducing corruption?

Anti-corruption initiatives in the private sector in Turkey are spearheaded mostly by medium and large-sized enterprises, publicly traded companies, and enterprises with international financing. The number of such enterprises do not exceed 30,000, including the 500-plus that are traded in the Istanbul Stock Exchange and 7,000 large-sized companies. These companies conduct their business relations with other stakeholders such as customers, suppliers, and contractors in accordance with their corporate governance principles.

Companies form their anti-corruption policies by preparing codes of conduct, working principles, ethics and compliance policies; by doing so, they become a part of national and global multiple stakeholder initiatives through adopting CMB's Corporate Governance Principles and UN Global Compact's 10th Principle, that is "businesses should work against corruption in all its forms, including extortion and bribery."

2.4.2

SCORE 25

Business-Driven Anti-Corruption Initiatives

Scoring Question:

To what extent do companies engage in multi-stakeholder initiatives aimed at reducing corruption?

Large-sized international companies and large-sized publicly-traded companies take part in actions to reduce corruption, increase the prevalence and awareness of corporate governance principles through various means such as participation in presentations and panels, sponsorships, organization of events.

In sectorial events, these companies exchange views on issues such as sector-specific case analyses, working principles in sectors, development of new methods. Besides collaboration with each other, companies also work together with professional associations, senior committees, and public authorities on issues such as professional ethics, codes of conduct, compliance policies.

On the other hand, auditing and consulting companies on the national and international level contribute to the creation of policies against corruption through reports they publish and, by participation in regional and local working groups.

Most micro, small, and medium-sized enterprises take part in these initiatives as participants, as they usually don't have the necessary corporate structure and lack the financial and human resources to implement the anti-corruption resolutions.

2.4.3

SCORE **50**

Business Associations

Scoring Question:

To what extent do business associations support companies in fighting corruption?

The number, qualities, activities, and effectiveness of CSOs in Turkey have constantly been a matter of contention and there is a consensus on the inadequacy of CSOs in terms of their influence and efficacy.

Although a relatively low number of professional associations, chambers, and foundations are able to influence and educate members and non-members with events and activities such as seminars, workshops and conferences, others do not even bring this issue into their agendas.

For instance, the Banks Association of Turkey and Participation Banks Association of Turkey, together shaping the Turkish banking system have stated contribution to the prevention of unfair competition as a part of their mission.⁴¹⁶ This mission is repeated in paragraph (e) of Article 80 of the Banking Law No. 5411, which lists the duties and powers of associations. Furthermore, Article 75 of the Law states that “banks and their personnel shall ensure that the banks’ activities are performed in compliance with this Law, the applicable regulations and the banks’ establishment goals and policies and comply with ethical principles that take justice, fairness, honesty and social responsibility as a basis in their management. Ethical principles shall be established by the associations of institutions upon the approval of the Board,” further establishing the basis for the working principles of these associations. The associations also establish ethics committees under their organizational structure and aim to create an ethical values framework for the sector.

Likewise, Turkish Capital Markets Association’s (TSPB) mission statement is “to contribute to the development of a community of professionals equipped with high level of expertise who are sincerely committed to ethical values and perceive competition as offering better products and services to investors with the ultimate aim of contributing to the development of the national economy and the capital markets.”⁴¹⁷ The mission statement spotlights how the members of the Union are striving to have a system that promotes competition as a better means to providing fair service and to contribute to the national economy.

Turkish Economic and Social Studies Foundation (TESEV), Union of Chambers of Certified Public Accountants Turkey (TURMOB), The Economic Policy Research Foundation of Turkey (TEPAV), Ethics and Reputation Society of Turkey (TEID), Corporate Governance Association of Turkey (TKYD), Ethics Values Center Turkey (EDMER), Turkish Industry and Business Association (TUSIAD), and Transparency International Turkey are the leading NGOs in Turkey working in the fields of anti-corruption, transparency, and corporate governance.

⁴¹⁶ <https://www.tbb.org.tr/tr/hakkimizda/kurumsal/hakkinda/vizyon-misyon-ve-temel-degerler/12>

⁴¹⁷ <https://www.tspb.org.tr/en/about-the-association-2/>

2.5

SCORE 50

BOARD OF DIRECTORS

2.5.1

SCORE 50

Oversight

Scoring Question:

To what extent are Board of Directors responsible for the oversight of their company's anti-corruption programs?

The Turkish Commercial Code No. 6102 has been amended with new provisions, taking into consideration both the structural and functional corporate governance rules; and at the same time they took into consideration the professional management and full transparency.⁴¹⁸ According to Article 359 of the new law, which changed the obligation of the board of directors to be composed of at least 3 members in the previous law, which states, "The joint stock company has a board of directors consisting of one or more persons appointed by the main contract or elected by the general assembly."

First and foremost, Corporate Governance Principles of CMB determines the number, structure and independence of committees established by the board of directors. As per the Principles, Board of directors shall form an "Audit Committee" (except for banks), "Early Detection of Risk Committee" (except for banks), "Corporate Governance Committee", "Nomination Committee, Compensation Committee" (except for banks) in order to fulfill its duties and responsibilities in a reliable way. However, in case that a separate nomination committee and compensation committee cannot be established due to the structure of the board of directors, corporate governance committee shall fulfill the duties of such committees. The committees are not just on paper, but are also announced at the PDP along with their task areas, working principles and members. The committees are mainly responsible for the defined duties and are in charge of implementation and supervision of the company's anti-corruption programs.

According to the Corporate Governance Principles, to be able to act independently and impartially, the executive director/ general manager cannot be a member of the committees. Furthermore, if there are two members in a committee, both of them should be non-executive members. If there are more than two members, the majority of its members should be non-executive members. In principle, members of the board of directors cannot be assigned to more than two committees. If necessary, experts in specific areas may be eligible to be commissioned at a committee, even if they are not board members. In addition, the Audit Committee should be entitled to invite any executive, internal and external auditors to the committee meetings and to obtain their opinions. The board of directors shall provide all necessary sources and assistance to the audit committee for its duties to be performed.

The Corporate Governance Principles also establishes the duties of the Corporate Governance Committee. The Corporate Governance Committee is tasked with monitoring the company's

⁴¹⁸ Altaş, Soner. "Yeni Türk Ticaret Kanuna Göre Anonim Şirket Yönetim Kurulunun Yapısı Ve Üyelerinin Nitelikleri", Mali Çözüm Dergisi, March-April 2011, p.109

compliance with the Corporate Governance Principles and perform improvement studies and offer any possible suggestions to the board.

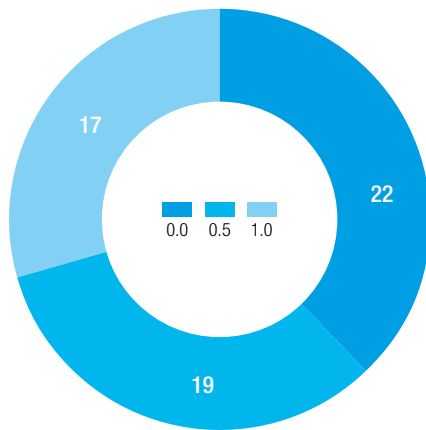
In publicly traded companies and large-sized enterprises with international financing board members, senior managers and employees receive training on anti-corruption policies and corporate governance principles on a regular basis. The Corporate Governance Committee, which is formed by members of the board of directors, prepares the trainings to ensure the adoption and implementation of the corporate governance principles by the employees.

The Audit Committee provides opinion on the independent audit company for the board of directors. The selection of independent auditors according to the Communiqué Serial: X No: 26 Amending the Communiqué Serial: X No: 22 on “Principles Regarding Independent Auditing Standards in the Capital Markets” is done by the Board of Directors for a maximum of 7 years.⁴¹⁹ In addition to the above, the Council of Ministers Decree regarding the Determination of the Companies Subject to Independent Audit⁴²⁰ comprises a rotation requirement. According to Article 26/1/ç “any person who has been appointed as an auditor in aggregate of seven years within last ten years cannot be elected as an auditor once again before three years pass.”

BRSA Regulation on Information Systems Audit to be Made in Banks by Independent Audit Institutions⁴²¹ requires not furnishing advisory and management service to the institution under audit minimum within the last three years and not having a commercial relation herewith.

In SMEs, especially in micro and small-sized enterprises, company owners and employees usually do not receive any training during their working life. Even in matters such as management, marketing, finance, production etc. that are essential for business, oversight mechanisms are neglected due to lack of time, resources, or the unwillingness of the business owner. This is valid for managers of interviewed SMEs as well. In general top level managers and/or company’s owner participate to training program instead of workers in the companies which operate less than 50 employees.

Graphic 21. Anti-corruption Trainings and Participation of Executives in the Companies Listed on BIST 50 Index and BIST Sustainability Index



Source: Transparency International Turkey

In large-sized enterprises and publicly traded enterprises, trainings are held in various subjects, in which human resources and managers participate, but evidence suggests that the share of education on the topic of “fight against corruption” is small in total.

Participation of executives to these trainings were low for the 58 companies that were evaluated and for the scoring question, the average score is 50.

As can be seen from the Graphic 21, even for the companies in the evaluation, which are among the largest and most institutionalized companies in Turkey, 22 out of the total 58 have not held any trainings on fight against corruption. For this reason, these 22 companies received “0” points from this criterion. Although trainings were held in 19

⁴¹⁹ Sermaye Piyasası Kurulu, Sermaye Piyasasında Bağımsız Denetim Standartları Hakkında Tebliğ (Seri: X, No:22)’De Değişiklik Yapılmasına Dair Tebliğ (Seri: X, No: 28), Resmi Gazete, Sayı: 28691, 28 June 2013

⁴²⁰ Bağımsız Denetim Yönetmeliği, Resmi Gazete, Sayı: 28509, Date: 26.12.2012

⁴²¹ https://www.bddk.org.tr/websitesi/english/Legislation/1880BSDY_eng.pdf

companies, these did not include senior managers and were mostly targeted towards employees, which earned these companies “0.5” points for this question. 17 companies regularly train employees and managers on anti-corruption. 15 of these 17 companies are traded in both BIST 50 and BIST Sustainability Index.

SCORE **50**

2.5.2

Executive Remuneration

Scoring Question:

To what extent are Board members and senior executive remuneration of companies determined according to good corporate governance standards?

The Rights and Equitable Treatment of Shareholders and Basic Partnership Functions, in which basic partnership rights such as access to information and participation in important corporate decisions are identified, including participation in key corporate decisions through G20 / OECD Corporate Governance Principles addresses public disclosures about control structures of companies, the use of information technology in general assemblies, the approval processes of related party transactions, and the participation of shareholders in decisions on the fees of senior management.⁴²² Section 5, which focuses on public disclosure and transparency, sets out the main areas of public disclosure and also includes financial and operational results, company targets, major shareholding, remuneration, related party transactions, risk factors and members of the board of directors.⁴²³ The focus of Section VI, titled Responsibilities of the Board, is the election of the top management and the remuneration. “Shareholders should be able to make their views known on the remuneration policy for board members and key executives. The equity component of compensation schemes for board members and employees should be subject to shareholder approval.”⁴²⁴ Since the issue is important in terms of shareholders, the principles are based on public declarations in this regard.

In Article 394 of the TCC, the right to attendances, salaries, bonuses, premiums and annual profit shares to be paid to the members of the board of directors shall be determined by the main contract or the decision of the general assembly. In Article 511, determinations were made regarding the profit shares. According to the Law, “profit shares can only be granted from net profit and only after a certain distinction has been made for the legal reserve fund, and at a rate of five percent of the capital paid to the shareholders, or after a higher share of the profit share has been distributed.”

Similarly, Article 516 of the law states, in the annual activity report of the executive board, it is necessary to include the “financial benefits, allowances, travel, accommodation and representation expenses, cash and cash facilities, insurance and similar guarantees paid to the executive board members and top level managers such as wages, premiums, and bonuses.”

The part on Disclosure in the OECD Guidelines for Multinational Enterprises also considers the disclosure policies of enterprises should include material information on “remuneration policy for members of the board and key executives, and information about board members, including qualifications, the selection process, other enterprise directorships and whether each board member is regarded as independent by the board.”⁴²⁵ According to the Capital Markets Board

⁴²² G20/OECD Principles of Corporate Governance, p. 18

⁴²³ G20/OECD Principles of Corporate Governance, p. 37

⁴²⁴ G20/OECD Principles of Corporate Governance, p. 21

⁴²⁵ OECD Guidelines for Multinational Enterprises <http://www.oecd.org/daf/inv/mne/48004323.pdf>

Corporate Governance Principles, the fees paid to the members of the board and managers who have administrative responsibilities and all other benefits provided are announced to the public through the annual activity report.

Article 27 of the Banking Law No. 5411 is on oath and declaration of property, and states that “after the election or appointment of the chairman and members of the board of directors or board of managers of banks, they shall be required to take an oath in the presence of the local commercial court after their appointment or election. These persons, general managers, deputy general managers and the managers with signing authority, including regional managers, branch managers and the managers of the units within the head office such as departments, sections, groups, etc., shall be subject to the provisions of the Declaration of Personal Property and Elimination of Bribery and Embezzlement Law, No. 3628.”

For the micro and small-sized enterprises that constitute 93.5% of all enterprises in Turkey, the number of employees and organizational structures do not allow for the formation of a Board of Directors. Within this scope; the board of directors is a governing body that is only valid for joint-stock companies, whose numbers have reached 122,156 in 2016.

For non-institutionalized joint stock companies, the determination of the fees of the board of directors and senior executives generally takes place under the concession of the company owner.

For publicly traded companies, these fees are required to be determined according to the corporate governance standards. The General Assembly is also informed about the fees of board members and senior managers and is on duty.

Public disclosures in these transactions are made at an aggregated level, rather than at a person basis and are published in the Annual Activity Report and on the corporate webpage.

2.5.3

SCORE

50

Conflicts of Interest

Scoring Question:

To what extent are safeguards in place to govern conflicts of interest of Board of Directors?

Articles 359 to 397 of the TCC state the obligations related to the board of directors and board members. According to the Law, even if only one person is present, it is enough for the board to form. Similarly, Articles 397 to 406 include sections on auditing; the board’s responsibilities during auditing are also disclosed in these articles.

The most important features of the responsibilities of the Board of Directors in terms of corporate governance principles, as well as the Turkish Commercial Code, are fairness, transparency, minority rights, and representation. As such, the proportion of members who are not executives and those who are independent are important. For this reason, minority nominees may also be members of the board of directors, however their numbers may not exceed half of the number of board members in publicly held joint-stock companies.

A few issues that need to be solved exist for companies regarding independent board members, their proportion in the board of directors, and their responsibilities. Nevertheless, good examples are present within the companies in the evaluation.⁴²⁶

⁴²⁶ Türkiye Kurumsal Yönetim Derneği, BİST Yönetim Kurulları Araştırması 2016, March 2016, p.14

As emphasized in the OECD Corporate Governance Principles, the independence of the board is ensured if and only if a sufficient number of board members are not executive directors. The fact that independent members take a more active role in the boards of directors is considered both as good practice of corporate governance and is demanded by shareholders.

Furthermore, within the framework of the G20/OECD Corporate Governance Principles, investors require information on board members, which should “include their qualifications, share ownership in the company, membership of other boards, other executive positions, and whether they are considered by the board to be an independent member.”⁴²⁷

In the Capital Markets Law no. 6362, the concept of independent board membership is clearly stated and includes binding provisions in terms of capital market companies.

Article 5, paragraph 2 of the Communiqué on Corporate Governance No. (II-17.1) separates corporations into groups according to their market values as such:

- a) First group: Corporations whose average market value is above TRY 3 billion and average market value in actual circulation is above TRY 750 mn.
- b) Second group: Corporations among those excluded from the first group, the average market value of which is above TRY 1 billion and average market value in actual circulation is above TRY 250 mn.
- c) Third group: Corporations among those excluded from the first and second groups, the shares of which are traded on National Market, Second National Market and Collective Products Market. Article 6 states: “The criteria stated under the principle numbered (4.3.4.) regarding the number of independent board member shall not be applied for the third group corporations and the joint ventures, except for the banks, formed of two real persons or legal entities who, do not have a relationship on capital, management or auditing relation with respect to 51 % of the capital of each other as minimum, independent from each other and sharing the management control of the partnership equally with an agreement requiring positive votes of both parties for significant decisions with regard to the corporations provided that any application made in relation thereto should be accepted by the Board Independent members in number of two shall be sufficient in these corporations.”

The same article also regulates banks; the “number of independent board members may be determined by the banks, provided that is not less than three. Board members who are appointed as an audit committee member within the bank’s organizational structure shall be considered as independent board member within the framework of this Communiqué.”

Although there are companies that have managers and executives in their boards, the fact that publicly owned companies generally have one third of the total of board members as independent members with no organic ties with the company affects the working areas and mobility of the members of the Board of Directors positively. In large-sized family businesses, most of the time, members of the board of directors are family members and family friends. The general managers of the companies and, in some cases, senior managers are also board members.

In practice and in academia, discussions are ongoing regarding the advantages and disadvantages of having the chairman and general director as the same person in businesses and its effect on growth and profitability. The arguments revolve around three main ideals: having the chair of the board and the general manager as the same person, having two separate persons in these roles, or while keeping the responsibilities of the chair and the general manager in the same person, having a third position that acts as the managing director.⁴²⁸ According to Spencer Stuart’s Board

⁴²⁷ G20/OECD Principles of Corporate Governance, p. 40

⁴²⁸ IIA, Tone at the TOP, Genel Müdür Ve Yönetim Kurulu Başkanı (Başkan): İki Baş Bir Baştan Daha Mı İyidir?, Sayı 78, August 2016, p.1

of Directors Activity Index, 52% of the companies listed in Standard and Poor's 500 in 2015 have CEOs and the Chairman of the Board of Directors as the same person, and shareholders are at least able to benefit from this in the short run.⁴²⁹ According to the GMI Ratings survey in 2012, it has been observed that the entities in which the same person took over the two responsibilities, in the first year, they provided more returns to their stakeholders than the companies which gave the two roles to two different persons. However, at the end of the 5th year, it has been observed that latter had provided more benefits to their companies compared to the former.⁴³⁰ According to the TCC, the number of board of directors must be at least five for companies whose shares are traded in the stock exchange. For these companies, the Communiqué is adjusted frequently to address the needs of the companies and to provide solutions to their problems.

According to a study, by February 2016, the average board members of BIST-100 companies was 8 the number of board members of 513 companies traded in various markets in BIST was 3,367, and 2,659 in the 382 companies whose shares are traded in the equity market.⁴³¹ In 53 of these 382 companies (13.4%) and 63 out of all 513 BIST companies (12%), one person assumes the roles of chair of the board and the general manager.⁴³²

The same study also reveals that the board chairman and the general manager are separate persons in the companies traded at BIST 30 Index and BIST 50 Index and only 7 of the companies traded at BIST 100 Index are doing the same task.⁴³³ Beside it also reveals that BIST companies have an independent board member ratio of 26%. This ratio is 31% for the companies whose shares are being traded in the equity market. This situation arises due to the companies that do not have the obligation to have an independent board member. This applies especially for ECM, the Equity Market for Qualified Investors, and the Debt Securities Market; a total of 89 companies do not have independent board members. On the other hand, the highest ratio of female board members in BIST market belongs to ECM companies with 23%. This situation might arise due to a high proportion of ECM companies that still maintain the structure of family business appointing female family members to the board.

For the board of directors of the company to manage the company in the best way possible and to continue to work within the framework of corporate governance principles, it is also necessary to take measures and policies to prevent conflicts of interest. Other measures may also need to be taken to prevent leaks that may harm the company.

Article 369 of the Turkish Commercial Code defines the duties of care and loyalty for board members; "Board of Directors members and third parties in charge of management shall be held liable for prudent performance and protection of the company's interests." In this framework, leaks are a direct violation of this statement and will be deemed illegal.

Furthermore, per Article 395 of the Law, "A board member cannot conduct any transaction with the company in his/her or any other person's name without permission from the General Assembly. If this provision is violated, the company can claim the transaction is null and void. The counterparty cannot make such a claim."

The Communiqué on Material Events Disclosure No. (II-15.1) sets down the principles and procedures relating to disclosure to public of information, events and development which may affect the value or price of securities or the investment decisions of investors, with a view to assuring

⁴²⁹ IIA, Tone at the TOP, Genel Müdür Ve Yönetim Kurulu Başkanı (Başkan): İki Baş Bir Baştan Daha Mı İyidir?, Sayı 78, August 2016, p.1-2

⁴³⁰ IIA, Tone at the TOP, Genel Müdür Ve Yönetim Kurulu Başkanı (Başkan): İki Baş Bir Baştan Daha Mı İyidir?, Sayı 78, August 2016, p.2

⁴³¹ Türkiye Kurumsal Yönetim Derneği, BİST Yönetim Kurulları Araştırması 2016, March 2016, p.14

⁴³² Türkiye Kurumsal Yönetim Derneği, BİST Yönetim Kurulları Araştırması 2016, March 2016, p.14

⁴³³ Türkiye Kurumsal Yönetim Derneği, BİST Yönetim Kurulları Araştırması 2016, March 2016, p.19

the operation of capital markets in a reliable, transparent, efficient, stabilized, fair and competitive atmosphere by keeping the investors informed timely, completely and accurately. The Communiqué also defines inside information as “non-public information, events and developments that may affect the value or price of securities or the investment decisions of investors.”

Insider information and any changes in such information which have previously been disclosed to public are disclosed by issuers to public whenever they emerge or are learned. According to the Communiqué, if and when insider information is disclosed to third parties by an issuer or a person acting for and on behalf of that issuer in the course of ordinary performance of its business operations or job duties, then and in this case, such information will be disclosed to public by the issuer. If the person having access to insider information is under obligation to keep insider information in strict confidence pursuant to applicable laws, an articles of association or a special agreement, the provisions are not applicable on such person. The issuer may, postpone the public disclosure of insider information, however as soon as the causes justifying the postponement of public disclosure of insider information are removed, the issuers will disclose such insider information to public.

Article 5 of the Communiqué draws the framework on disclosure of insider information; “(1) Insider information and any changes in such information which have previously been disclosed to public are disclosed by issuers to public whenever they emerge or are learned. (2) If and when insider information is learned beyond the knowledge of issuers by persons directly or indirectly holding 10% or more of capital shares or voting rights of issuer or regardless of such percentage, directly or indirectly holding 10% or more of privileged shares giving the right to elect or nominate directors, then and in this case, the relevant persons make a public disclosure about the said insider information. (3) If and when insider information is disclosed to third parties by an issuer or a person acting for and on behalf of that issuer in the course of ordinary performance of its business operations or job duties, then and in this case, such information will be disclosed to public by the issuer. (4) If and when a person having access to insider information is under obligation to keep insider information in strict confidence pursuant to applicable laws, an articles of association or a special agreement, the provisions of second and third paragraphs of this Article are not applicable on such person.”

The list of persons having access to insider information, reporting and the updating the list of persons having access to insider information to the Central Registry Agency (MKK), and the public disclosure is explained in Article 7.

In publicly traded companies and large-sized companies with international capital, insider information is protected and public disclosure of such information is made by the members of the board of directors and related departments, and insider information is shared within the framework of laws, regulations, and communiqués.

It is important for the board and other senior managers to disclose every transaction, financial investment and even the employment of their relatives to prevent claims of conflict of interest and to uphold principles of transparency.

Additionally, it is the basis of many laws and regulations for the board members to work in the interests of the company and to avoid any transactions that may harm the company.

Articles 393 of the Turkish Commercial Code draws the framework for the extent of discussions regarding the management of the company between the board members and their relatives. “(1) A board member cannot participate in discussions regarding matters which lead to a conflict between interests of the company and personal interests of the member or a person of his/her lineal consanguinity or his/her spouse or one of his/her blood and in-law relatives up to and including the third degree. This prohibition shall also be applied in cases where acting in good faith requires the non-participation of a board member in the discussion. If in doubt about the existence of such conflict, a decision shall be made by the Board of Directors, and the member

involved may not participate in this voting. Even if the conflict of interest is unknown to the Board of Directors, the concerned member is obliged to declare it and abide by the prohibition. (2) A board member who acts in contravention of these provisions, members who do not object to the participation of the concerned member in the meeting while the conflict of interest objectively exists and is known, and board members who decide in favor of the participation of the said member in the meeting shall be liable for damages incurred by the company in regard to this matter.”

Article 396 of the Law defines the non-compete obligations, and stresses the importance of permissions from the General Assembly. “(1) No board member can conduct any transaction of a commercial nature falling under the scope of activity of the company in his/her account or any other person’s account without obtaining permission from the GA, and he/she cannot participate in a company involved in the same kind of commercial business as a partner with unlimited liability. The company shall be free to file a claim for compensation from the board members acting in contravention of this provision, or instead of compensation, to consider the transaction conducted as made in the name of the company and to file a lawsuit and claim any benefits arising from contracts made in the account of third parties belong to the company.”

Furthermore, according to Article 553, “(1) Founders, Board of Directors members, directors and liquidators are accountable to the company, shareholders and creditors for breaching their liabilities wrongfully arisen from the law and contract.”

The General Assembly section of Corporate Governance Principles states: “1.3.6. In cases where shareholders who have a management control, members of board of directors, managers with administrative liability and their spouses, relatives by blood or marriage up to second degree conduct a significant transaction with the corporation or subsidiaries thereof which may cause a conflict of interest, or/and conduct a transaction on behalf of themselves or a third party which is in the field of activity of the corporation or subsidiaries thereof, or become an unlimited shareholder to a corporation which operates in the same field of activity with the corporation or subsidiaries thereof, such transactions shall be included in the agenda as a separate item for providing detailed information at the general assembly meeting on the matter and recorded in the minutes of meeting.”

Another important issue is the sustainability of the company’s productivity and profitability, as well as the monitoring and effective management of possible conflicts of interest, including misappropriation of managerial and shareholder transactions, and misappropriation of corporate assets. For this reason, the increase in the number of remote and/or independent members in the board of directors, besides allowing an independent board of directors to be formed, is considered as an alternative to conflict of interest. This is why the Communiqué No. (II-17.1) requires independent members of the board to be “capable to contribute positively to the operations of the corporation, to maintain his/her objectivity in conflicts of interests between the corporation and the shareholders, to have strong ethical standards, professional reputation and experience to freely take decisions by considering the rights of the stakeholders.”⁴³⁴

Within the framework of the G20/OECD Corporate Governance Principles, “investors require information on individual board members and key executives in order to evaluate their experience and qualifications and assess any potential conflicts of interest that might affect their judgment. For board members, the information should include their qualifications, share ownership in the company, membership of other boards, other executive positions, and whether they are considered by the board to be an independent member. It is important to disclose membership of other boards not only because it is an indication of experience and possible time pressures facing a member of the board, but also because it may reveal potential conflicts of interest and makes transparent the degree to which there are inter-locking boards.”

⁴³⁴ Sermaye Piyasası Kurulu, Kurumsal Yönetim Tebliği (II-17.1), Resmi Gazete, Sayı: 28871, 3 January 2014

Article 361 of the Turkish Commercial Code also states; “if the damage incurred by the company through the fault of board members while performing their duties is insured at a price exceeding 25 percent of the company capital and the company is secured, in the case of public companies this New Turkish Commercial Code - A blueprint for the future 99 matter shall be announced in the bulletin of the CMB and if the shares are listed on a stock exchange this shall also be announced in the stock exchange bulletin, and such matter shall be taken into account in the assessment of compliance with the principles of corporate governance.”

There are practices that some of the large-sized companies publicly opened or traded on BIST have this type of insurance carried out by foreign companies at a certain rate to protect the company against to wrong decisions of the members of the management board.

Capital Markets Board Communiqué On Corporate Governance No. (II-17.1) requires a resolution of board of directors for transactions to be fulfilled with related parties. The Communiqué tries to prevent conflicts of interest between members by introducing restrictions on transaction of services, buying and selling of assets, renting, and transactions over certain rates. Moreover, in addition to the obligation to make valuations on specific issues, the approval of the majority of independent members is sought in board decisions on the transaction. It is also not possible for board members who are related parties to vote at board meetings to be held during the term. If the majority of independent members do not approve the transaction in question, it will be presented to the general assembly for approval, as well as being disclosed at the PDP, with sufficient information on the transaction, and the parties to the transaction and their associates will not be able to vote at the meeting.⁴³⁵

Article 8 of the Communiqué also requires annual reports to include information as to whether principles of corporate governance are implemented. “If not, it shall include a reasoned explanation with this regard and explanations as to whether the corporation has an amendment plan in the future within the framework of such principles in respect of the conflict of interest arising from the non-compliance to these principles and governance implementations of the corporation.”

Furthermore, “in cases that conflicts of interest rises among the stakeholders or a stakeholder is involved in more than one interest group; a balanced policy, as far as possible shall be followed with regard to protection of the vested rights and each right shall be aimed to be protected independently.”⁴³⁶

Transparency regulations of the Banking Law related to Corporate Governance Principles of Banks require the establishment of institutional values and strategic objectives within the bank and the implementation of the necessary policies to determine, prevent, or manage possible conflicts of interest that may arise between the members of the board of directors and the senior management of the bank or its role in the group.

Although cases in which family members are also board members exist for some family companies, for publicly traded companies and internationally funded companies, the presence of independent members in the board ensures that conflicts of interest and problems that may arise therefore are at a minimum, and that board members work in harmony in favor of the company. Corporate governance committees, which are also responsible for the implementation of corporate governance principles in the company also provide advice to the board of directors on identifying conflicts of interest and preventing such conflicts.

⁴³⁵ Sermaye Piyasası Kurulu, Kurumsal Yönetim Tebliği (II-17.1), Resmi Gazete, Sayı: 28871, 3 January 2014

⁴³⁶ Ibid

General Structure of Civil Society Organizations and Legal Framework

The active participation of CSOs in decision-making processes is legally guaranteed in consolidated democracies. Adoption of “good governance principles” by the public and private sectors also requires multi-stakeholder cooperation mechanisms that actively involve CSOs. Legally recognized and defined non-governmental organizations are evaluated in four main categories: Associations, foundations, trade associations and trade unions. The most common CSOs in Turkey are associations. The number of active associations in Turkey is close to 110,000 as of February 2017 according to the data provided by the Department of Associations. However, membership and citizen involvement in associations are relatively low compared to EU countries. A comparison of surveys conducted in 2004 and 2015 reveals that those who think CSOs play an active role in solving the problems of the society has fallen from 64% to 48%. The main reasons for this decrease are restrictions on rights and freedoms, CSOs being pushed out of the decision-making process, and the lack of action-oriented multi-stakeholder approaches between the public and private sectors and civil society.

Although basic rights and freedoms have been constitutionally guaranteed and strengthened by international conventions, there are significant shortcomings in the legal framework regulating the activities of non-governmental organizations in Turkey. The rights and freedoms that guarantee citizenship participation under constitution are; freedom of communication, the right to express and disseminate opinions and thoughts, the right to form associations and to join or to withdraw from membership without prior permission, the right to organize trade unions, to participate in union activities and the right to organize meetings and demonstration marches without prior permission.⁴³⁷ Freedom of association is guaranteed by the twentieth article of the Universal Declaration of Human Rights, the twenty-second article of the International Covenant on Civil and Political Rights, and the twelfth article of the European Convention on Human Rights (ECHR). The freedom of expression of CSOs are regulated in accordance with Article 10 of the ECHR. Although there are similarities between international conventions and national legislation in terms of restrictions of fundamental rights and freedoms, there are significant issues with the exercise of the rights prescribed by the legal framework.⁴³⁸

The lack of recognition of civil networks and platforms in the legal framework creates a loophole that is abused by the public authorities from time to time. More importantly, sustainability of such actions proves to be very difficult due to not being defined legally. Platforms and networks carry out their activities in a way that lacks resources such as fundraising, access to public funds, and employment.⁴³⁹ Regulating the status of organizations such as platforms, unions, initiatives, student clubs and non-profit organizations that lack legal rights under organization freedom will both contribute to the structural transparency of non-governmental organization and prevent the arbitrary implementation of sanctions imposed on such organizations.

There are legal restrictions on public officials, children, and foreigners to be a member of a CSO. On the membership of the public officials, “concrete criteria must be introduced instead

⁴³⁷ Uluslararası Şeffaflık Derneği. Türkiye Şeffaflık Sistemi Analizi, s. 215.

⁴³⁸ Argüden, Y., Toksöz, F., Öğücü Şen, F., Dokur, T. “Katılımcı Demokrasi: STK’ları Güçlendirme Önerileri” Argüden Yönetişim Akademisi Yayınları, 2016, s. 34.

⁴³⁹ Uluslararası Şeffaflık Derneği. Türkiye Şeffaflık Sistemi Analizi, s. 215.

of absolute prohibitions.”⁴⁴⁰ The bureaucratic requirements that are stipulated for a CSO to be established and to conduct their activities should be reduced, and a legal framework should be set up to encourage organization. Reducing the components to be included in the charters is among the steps to be taken in this regard.⁴⁴¹

The power of CSOs to influence and mobilize large segments of society is rather weak. Their sphere of influence is usually restricted to cities and CSO memberships are limited in scope. In order to expand their sphere of influence, CSOs need to improve cooperation between the public and private sectors, as well as among themselves and they need make discursive and formal reforms in their advocacy activities. There has been a dramatic decline in the participation rates of the general population in CSOs, especially in the last decade.⁴⁴² Individuals’ participation in CSO activities in 2004 was 22.7%, compared to 15.8% in 2015.⁴⁴³ “The ratio of non-membership fee donations to CSOs decreased from 18.4% in 2004 to 12.9% in 2015. A decline in the civil society perception and membership over the years, issues pertaining to personal security in Turkey and low social capital increase have increased the negative impacts on individual donor tendencies.”⁴⁴⁴ The decrease in democratization are parallel to decreased participation and contribution to civil society.

In the European Union progress reports published in recent years, there have been proposals for increased cooperation and dialog between CSOs and public institutions. The report published in 2016 underscores the need for the government to develop a comprehensive program for cooperation with CSOs. In the report, membership and registration procedures, as well as legal and structural and discriminatory practices in the establishment phase of the associations are pointed out. It is emphasized that the legal framework regulating financial assistance to CSOs such as the Tax Procedure Law should be rearranged in a more encouraging way to eliminate the material fragility of civil society.⁴⁴⁵

The activities of CSOs and media organizations have been restricted in the state of emergency. Furthermore, numerous CSOs and media organizations have been shut down by the government through the extensive authority provided by the state of emergency. By January 2017, 178 media organizations, 1425 associations and 123 foundations have been shut down.⁴⁴⁶ Some of these closures have not been given justifiable explanations, even in the state of emergency, due to a lack of disclosure by the government. Taking precautions to the ensure that the state of emergency does not conflict with temporality, moderation, principles of international law and human rights, do seem to be essential for the stability of democracy.

⁴⁴⁰ Ayata, G., Karan, U. “Sivil Topluma Aktif Katılım: Uluslararası Standartlar, Ulusal Mevzuattaki Engeller, Öneriler” TÜSEV Yayınları, 2015, s. 151.

⁴⁴¹ a.g.e. s. 149.

⁴⁴² TÜSEV, “Türkiye’de Bireysel Bağışçılık ve Hayırseverlik” 2016, s. 11.

⁴⁴³ TÜSEV, “Türkiye’de Bireysel Bağışçılık ve Hayırseverlik” 2016, s. 11.

⁴⁴⁴ a.g.e., s. 18

⁴⁴⁵ <http://www.tusev.org.tr/tr/yasal-calismalar/diger/turkiye-2016-yili-ilerleme-raporu-sivil-toplumu-igilendiren-maddeler>

⁴⁴⁶ <http://bianet.org/bianet/siyaset/182427-ohal-de-kapatilan-kurumlar>

3.1

SCORE 25

GREATER OVERSIGHT AND BALANCE

3.1.1

SCORE 25

Independent Media

Scoring Question:

To what extent is the media perceived as free and independent?

Journalism, especially investigative journalism, is an indispensable tool in the fight against corruption. Aside the negative spillovers to the fundamental rights and freedoms, the restrictions on media freedom have had disastrous effects in the fight against corruption. One of the basic conditions for the creation of social awareness for anti-corruption activities and the direct and indirect effects of corruption on the lives of citizens is the existence of an independent and effective media. The National Integrity System Assessment for Turkey has found media to be the weakest pillar in the Turkish integrity system.

It is no surprise that numerous national and international studies have found Turkish media to be not free. Almost all representatives of the civil society and members of parties in the Parliament who are not a member of the incumbent party have also declared that Turkish media is far from being free from political influence. Since 2014, Freedom House classifies Turkey as “not free” in the field of media freedom. The 2016 report marks no change from this classification as the decline in the sub-fields of the study continues.⁴⁴⁷ The report addresses the arrests of journalists with charges of terrorism, repressive and arbitrary practices in accreditation procedures, increasing violence against journalists and media organizations, and the decision to seize media organs. The report also emphasizes that Radio and Television Supreme Council has issued 69 warnings and 4 different fines to TV channels and 4 warnings and 4 fines for radio channels between January and November 2015. Turkey is ranked 151st out of 181 countries in the 2016 World Press Freedom Index, down 6.6 points and two places compared to the previous year.⁴⁴⁸ Turkey is the country with the largest number of detained journalists in the world.⁴⁴⁹ Per February 2017 data, 157 journalists are in custody in Turkey.⁴⁵⁰

There are striking restrictions and violations of rights in the field of social media and Internet news. In the Freedom House 2016 report, Turkey’s status of Internet freedoms has been changed from “partially free” to “not free”. As is the case with many fields, when it comes to the media, the legal framework foresees a freedom of opinion and expression far beyond the relevant practices. There are, however, certain deficiencies and problems with the legal framework. Legislation on visual publishing is an obstacle to the diversity of broadcasting organizations. First of all, RTÜK, which has the authority to grant visual publishing license, is a criticized institution for the extent of its political neutrality and independence. Applications that justify this criticism indicate that the authority to grant licenses can be misused. In addition, licenses are only available for joint

⁴⁴⁷ <https://freedomhouse.org/report/freedom-press/2016/turkey>

⁴⁴⁸ <https://rsf.org/en/ranking>

⁴⁴⁹ <https://cpj.org/imprisoned/2016.php>

⁴⁵⁰ <http://tutuklugazeteciler.blogspot.com.tr/>

stock companies.⁴⁵¹ With this article, CSOs and universities are prevented from visual broadcasting. Preventing non-profit organizations from broadcasting their visuals also prevents formation of an independent media body free from conflicts of interest. The inability of universities to obtain visual broadcasting licenses is a major obstacle in the faculties of communication, and broadcasting experiments for the specialization and training purposes.⁴⁵²

Another effective regulatory body in the media is the Information Technologies and Communications Authority. All members to ICTA are appointed by the Council of Ministers and the members are not subject to oversight by the Turkish Grand National Assembly.⁴⁵³ It is unlikely that this institution, which has the authority to monitor online publications and shares and impose sanctions, by definition can be independent of the political influence of the executive power. The Press Advertisement Authority (PAA) is responsible for the announcements to be given to the printed media and the distribution of the announcements.⁴⁵⁴ The sole source of revenue for press organizations, which is the distribution of advertisements and announcements by public institutions functions as a punishment and reward mechanism. Sözeri and Kurban emphasize that “ Due to the institution’s connection with the state, PAA’s power to prevent the official announcements from not being given to the media organs which was decided as the ones that violated the media ethical principles, can create a censorship effect on the written press”⁴⁵⁵

There are also similar problems with frequency assignment. According to the Article 26/4 of the Law on the Establishment and Broadcasting Services of Radio and Television Enterprises No.6112, “Only the media service provider organizations that are established as radio and television broadcasting companies, that operate in the radio and television broadcasting field for at least one year and can fulfill the preconditions specified in the tender specifications and can receive a qualification certificate from the Upper Council to enter the tender” can participate in tenders where frequencies are allocated.”⁴⁵⁶ With the abovementioned article, it is made difficult for the addition of new players into the sector.⁴⁵⁷ The frequency system needs to be changed to support the plurivocality and the pluralism of the media. The shortcomings of the “frekans ihale sistemi” and the lack of frequencies, “increases the cost of entry to the market and creates obstacles and impedes the diversification of visual publishing.”⁴⁵⁸ On the other hand, there are preventive laws on monopolization. Law No.6112 allows real and legal entities to have a share in maximum four media service providers, directly or indirectly and it stipulates the total annual commercial communication revenue of the organizations not be more than 30% of the total communication revenue of the sector.⁴⁵⁹

Economic dilemmas and implicit sanctions in this area are not solely state-led. The widespread cross-ownership problem in the media emerges as a phenomenon that fuels censorship and

⁴⁵¹ Radyo ve Televizyonların Kuruluş ve Yayın Hizmetleri Hakkında Kanun, madde 19(a). <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.6112.pdf>

⁴⁵² İLAD [İletişim Araştırmaları Derneği] (2010), ‘RTÜK Kanun Tasarısı Taslağı Değerlendirme Raporu’ [Assessment report on the draft Law on the Establishment and Broadcasting Services of Radios and Televisions], erişim adresi: [http://www.iletisimarastirma.org/haberler/71-RTÜK-kanuntasarisi-taslagi-degerlendirmeraporu.html](http://www.iletisimarastirma.org/haberler/71-RTUK-kanuntasarisi-taslagi-degerlendirmeraporu.html)

⁴⁵³ Kurban, D., Sözeri, C. “İktidarın Çarkında Medya: Türkiye’de Medya Bağımsızlığı ve Özgürüğü Önündeki Siyasi, Yasal ve Ekonomik Engeller,” TESEV Yayınları, 2012, s. 21.

⁴⁵⁴ a.g.e., s. 22.

⁴⁵⁵ a.g.e., s. 23.

⁴⁵⁶ <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.6112.pdf>

⁴⁵⁷ Uluslararası Şeffaflık Derneği. Türkiye Şeffaflık Sistemi Analizi, s. 197.

⁴⁵⁸ Kurban, D., Sözeri, C. “İktidarın Çarkında Medya: Türkiye’de Medya Bağımsızlığı ve Özgürüğü Önündeki Siyasi, Yasal ve Ekonomik Engeller,” TESEV Yayınları, 2012, s. 26.

⁴⁵⁹ a.g.e., s. 27.

self-censorship. The eight holding companies which holds the ownership of the forty media companies that are most followed, operate in the fields of construction, energy, mining, tourism, telecommunications, banking and finance.⁴⁶⁰ The growth opportunities of these sectors, which are heavily dependent on public tenders, make media ownership and state relations very problematic. When assessed from the perspective of the risk of corruption, it is difficult for the media organizations to produce unbiased, objective and independent news on corruption in the private sector, given their ties with the abovementioned industries.

Cooperation between non-governmental organizations and journalists operating in the fight against corruption is a prerequisite to achieve an ideal clean society, and to enable a business world that is transparent and accountable and driven by corporate civic responsibility.

3.1.2

SCORE 25

Civil Society Participation in the Integrity System

Scoring Question:

To what extent do civil society organizations contribute to strengthening companies' commitment to integrity, accountability, and transparency?

It is imperative to strengthen the cooperation, partnership, and linkages between civil society organizations and the private sector for a robust integrity system. The number of non-governmental organizations collaborating with companies to develop in-house applications on integrity, accountability and transparency in Turkey is very small.

Within the scope of its membership-based Private Sector Program, TI-Turkey provides companies with advice on how to approach issues of transparency, accountability and legal advice in areas of business ethics. TI-Turkey also evaluates corporate policies developed by the private sector in anti-corruption activities in its report Transparency Index in Corporate Reporting since 2015. Alongside TI-Turkey, other CSOs operating in Turkey such as Ethics and Reputation Society of Turkey (TEID), Turkish Economic and Social Studies Foundation (TESEV), The Economic Policy Research Foundation of Turkey (TEPAV) also work to establish guidelines for anti-corruption programs and policies in the private sector. Professional chambers and trade associations also contribute financial and human resources in this regard. In recent years, efforts to develop ethical codes for the sphere of activity of trade associations have been very important. TEID's Customs Brokers Ethical Values Statement is among the pioneering efforts in this area.

Interdependence and cooperation between CSOs are almost as important as forming close ties between civil society and the private sector to enhance the visibility and effectiveness of these actions. Similarly, the public sector also needs to prioritize development of policies aiming at increasing the participation of non-governmental organizations and representatives from the private sector in decision-making processes. To that end, taking steps to improve the ethical understanding of the business sector through a multi-stakeholder approach is an essential condition for strengthening the integrity system.

⁴⁶⁰ <http://turkey.mom-rsf.org/en/findings/business-interests/>

3.1.3

Supervision of the Integrity System for Civil Society

Scoring Question:

To what extent is there an effective and engaged civil society that monitors corruption in the private sector?

Civil society organizations in Turkey are few in number and far from effective in the promotion of anti-corruption principles in general. A similar assertion may also be made for CSO engagement in promoting the values of integrity, commitment to ethical principles, transparency, and accountability in the private sector.

TI-Turkey, TEID, TEPAV, and TESEV are the prominent CSOs in Turkey for their efforts in raising awareness of the risks from corruption with their research and activities. Aside these, consumer associations also contribute indirectly to the business integrity system through their actions. Through their research, reports on legislation and practices, public opinion and expert surveys, and canvassing exercises, these CSOs have formed a growing body of anti-corruption literature in Turkey. Nevertheless, there are shortcomings in converting this knowledge base into effective oversight mechanisms and awareness raising campaigns. Perhaps the most salient reason for this relative ineffectiveness of CSOs in this area is the lack of legislation and programs that allow for CSO oversight and participation in the public sector. Civil society oversight of public procurement is almost nonexistent and being able to monitor procurements would be an important step towards strengthening the business integrity system.

Although not considered independent legal entities due to their structures, initiatives like Graph Commons and Public Expenditures Monitoring Platform also contribute to the business integrity system through their activities. Although the Public Expenditures Monitoring Platform focuses mostly on the public sector footprint of the integrity system, it also provides important data on the relationship between politics and the private sector. Graph Commons fills a niche in this area by mapping these networks and revealing the deficiencies in the business integrity system and ethical business practices.

TUSIAD is at the forefront of employers' organizations with their research and awareness raising campaigns that strengthen the integrity system and contribute to the diffusion of good governance principles. That said, it is still difficult to claim that the work of leading employers' organizations in this area is enough to create meaningful change for the integrity system.

An assessment of labor and labor rights studies shows that unions and related platforms are effective in promoting integrity practices. Confederation of Progressive Trade Unions of Turkey (DISK) plays a leading role in terms of both research and advocacy activities in the interest of improving labor rights in the private sector. It is a fact that trade union rights and freedoms, which are already very limited in Turkey, can not be implemented even to the extent that the legal framework allows for various pressures and sanctions. The Trade Union Law No. 2821 and Collective Labor Agreement, Strike, and Lock-Out Act No. 2822 form the backbone of the legal framework regulating the private sector from the viewpoint of laborers. Organizations that are active in this field often stress that the legal framework and practices are "far from meeting the ILO Conventions and norms and the needs and expectations of the Turkish trade union movement."⁴⁶¹ İş Cinayetlerini Unutma Platformu (Platform for Ending Laborer Deaths) also offers significant contributions to the creation and development of social awareness through the monitoring and advocacy struggle in the area of occupational health and safety.

⁴⁶¹ DISK/Sosyal-İş Sendikası, "Türkiye'de Sendikal Örgütlenme: Mevcut Yasalar, İhtiyaçlar ve Toplu İş İlişkileri Yasa Tasarısı Üzerine Bir Değerlendirme." s.19

The right to information is a fundamental element of a participatory governance approach and the *sine qua non* of research and activities carried out by CSOs to improve the integrity system. The Right to Information Act foresees sharing and access to information far beyond the actual implementation of the law in practice. In contrast to the legal obligations, almost all public institutions are reluctant to share information and data. According to the Global Right to Information Rating index, Turkey is 72nd among 150 countries in providing true and reliable information to those who request information from governmental bodies.⁴⁶² The most problematic areas of the legal framework are the lack of efforts to increase awareness to the right to obtain information, the lack of sanctions for institutions that do not share information and data, and limited access to higher-level regulatory bodies. A high number of right-to-access-information applications have been rejected directly and satisfactory responses have become a rather rare practice. Even when information requests are upheld, the provided information is usually unsuitable for processed by computer programs and are not shared in such a way as to allow comparative statistical evaluations. Justifications that may rightfully be used to deny requests to information such as trade secrets, state secrets, or sensitive information that may harm the privacy of personal lives are arbitrarily abused as to deny information requests. Turkey's status in the Open Government Partnership has been designated as inactive in September 2016 and Turkey ranked 82nd among 113 countries in the WJP's Open Government Index 2016.⁴⁶³

Besides the CSOs that focus their operations in the field of anti-corruption studies, it is of utmost importance for all non-governmental organizations to promote good governance practices in their respective fields of work. For an effective integrity system, all actions and activities of CSOs should be transparent and accountable. Unfortunately, Turkish CSOs are severely lacking in these fields.

As is the case in the rest of the world, CSOs turning into sources and/or tools of corruption hazard is another issue that Turkey's integrity system needs to overcome. For this reason, non-governmental organizations, especially foundations, need to be actively supervised by both other CSOs and the public sector. That said, public oversight over CSOs becoming a mechanism of intimidation is worrisome. One of the first steps towards overcoming this obstacle would be to ensure that a higher number of CSOs are subject to oversight by independent auditing firms; for the CSOs lacking the financial means to adopt such measures, provision of economic support for independent audits is another way to facilitate independent oversight. CSOs should either seek consultancy services or train their staff to increase institutional transparency.

⁴⁶² http://www.rti-rating.org/view_country/?country_name=Turkey

⁴⁶³ <http://data.worldjusticeproject.org/opeCSOv/>

CONCLUSION, RECOMMENDATIONS AND ACTION PLANS



CONCLUSION

Turkish economy ranks among the largest 20 economies worldwide. Turkey is also among the leading countries in the number of enterprises and the number of employees. Despite the sufficiency of the legislation thanks to the harmonization of law with the EU directives, the deficiencies and flaws in practice harm the efforts to fight corruption and increase transparency.

The factors driving the large size of the informal economy are twofold; micro and small-scale enterprises make up the majority of all companies in Turkey and audit and oversight mechanisms over these enterprises are weak. The volume of the informal economy also hurts the development of a transparent commercial environment. Considering micro and small-scale enterprises employ more than 95% of the workforce in the private sector, a transparent and fair work environment needs to be sustained for the employees.

In this regard, it is essential for large-scale enterprises to lead by example regardless of sector and operation. Inclusion of concepts such as the fight against corruption, transparent work environment, and ethical values in company charters and mission statements would accelerate the rate of adoption of these policies by other, smaller scale enterprises.

As always, CSOs and the media have a great responsibility to inform the public and raise awareness in these concepts. Civil society and media cooperation and establishment of platforms will lead to collective action and activities in the fight against corruption and promoting transparency.

RECOMMENDATIONS

PUBLIC SECTOR

- The definition of bribery should be broadened to include private sector corruption; the scope of the definition should include not just publicly traded companies, but all companies.
- A private sector bribery legislation in line with UNCAC and CoE Criminal Law Convention on Corruption should be established to criminalize private sector bribery and to ensure that all persons under the proposed law are equally and equitably responsible for corruption within the institution.
- Legislation introducing responsibilities for private sector companies against corruption and envisaging the regulation of internal systems should be enacted.
- Legislation to investigate and supervise the criminal responsibility of public and private entities should be enacted and the issue of how judges and prosecutors should handle this legislation should be clarified.
- The proposed legislations should clearly define the penalties for persons and companies in corruption offenses in accordance with international standards, and the third parties they work with should be held accountable for the crime.
- Independence of the Judiciary must be protected, external interference and politicization of the Judiciary must be prevented, and the appointment process for judges should be transparent and based on clear and objective criteria.
- The scope of executive and bureaucratic immunities should be narrowed to allow proceedings on cases related to corruption.
- Definition of corruption in The Law on Asset Declaration and Fight Against Bribery and Corruption No. 3628 should be extended to allow for regular asset declarations that are open to the public. Standardized and detailed regulation should be formulated to make sure asset declarations are comparable between periods and other officials.
- The permission requirement from an administrative superior of a public servant to investigate them for activities related to their duties that systematically implies impunity should be abolished.
- A strategy plan that enhances coordination among anti-corruption institutions should be developed.
- The Turkish Court of Accounts (TCA) should be authorized to conduct performance audits based on efficiency and effectiveness.
- The TCA should be authorized to conduct sectoral audit reports.
- The interviews in the recruitment of auditors, which replaced the oral exams, should be streamlined and standardized to ensure a merit-based selection process.
- The autonomy and authority of the Council of Ethics for Public Officials should be increased and its organization restructured to actively implement supervisory authority.
- Duties of the Council of Ethics for Public Officials should be expanded and restrictions on gift-giving should be regulated.
- Legislation on money laundering should be improved and measures should be introduced for political influence.
- Financial institutions and non-financial businesses and professional groups should have their liabilities determined for beneficiaries and access to beneficiary records of legal entities by means such as central registry system should be improved.

- Awareness trainings to increase competition in markets should be implemented and supervisory bodies should train and direct private sector actors on this issue.
- Legislation based on clear notification of corruption should be enacted to cover a wide range of protection provisions.
- Witness protection act should be reformulated to include anti-corruption legislation and additional measures should be passed to prevent the arbitrary enforcement of the law.
- The draft of the Administrative Investigation Guidelines prepared within the scope of the Project for Strengthening Anti-Corruption Practices in Turkey (TYSAP) for the development of internal notification mechanisms should be put into effect by the Prime Ministry.
- Whistleblowers and witnesses should be protected from retaliation through new legislation or by widening the scope of the Witness Protection Act.
- High risk areas for corruption should be identified and a risk map and an action plan should be developed involving risky sectors, with special priority measures for areas such as construction, energy, real estate, customs, taxation, etc.
- Trainings should be done to analyze the difficulties that may arise in the application of International Accounting Standards in SMEs.
- Compliance with International Accounting Standards should be achieved in cooperation with accountants.
- The obligation to declare actual beneficiary information must be provided and official records should be kept.
- Financial institutions and non-financial businesses and professional groups should have their responsibilities for the determination of their beneficiaries determined and access to real beneficiary records of legal entities by means such as a central registry system should be ensured.
- Individuals or companies should independently prove their actual beneficiary information in high-risk areas and provide information if the client or the beneficiary is a public official.
- The campaign finances of all candidates for local, parliamentary, and presidential elections should be regulated and subjected to auditing. In-kind donations for campaign finance should also be clearly regulated and enforced.
- Political parties should publish their detailed balance sheets on their website at regular intervals. Balance sheets of organizations associated with, or controlled by, political parties should also be subject to auditing subsequently with the party finances.
- The Constitutional Court's political party supervisory authorities should be extended beyond technical supervision and financial audit reports of the parties should be publicly disclosed.
- The capacity of the Constitutional Court and the Court of Accounts in matters relating to financial audits of political parties should be increased and their cooperation with law enforcement officials be ensured.
- Effective, proportionate, and dissuasive sanctions on the regulation of political financing should be introduced.
- Independence and impartiality of the Supreme Board of Elections should be ensured and its autonomy be increased through provision of an independent budget.
- All decisions of the Supreme Board of Elections (SBE) should be subject to judicial review.
- In order to provide free and fair elections, all election infringements such as the unfair representation of the opposition parties in the media and the abuse of public funds for election campaigns should be prevented and investigated.
- MPs regular declaration of assets that allows for comparative audits should be implemented and these financial statements should be publicly accessible.

- A lobbying legislation to register and monitor relations between the public and private sector and civil society. This legislation should define lobbying, register lobbying information, lobbying goals and clients, advocacy issues, and lobbying costs.
- An independent, effective and well-funded supervisory body should be established that manages the registers of the lobbyists, provides guidance to individuals and organizations, and reviews specific violations or anomalies.
- Law No. 4734 on Public Procurement should be revised in accordance with EU public procurement directives to limit the scope of exceptions and no new exceptions should be added to the law.
- Public-private partnerships should be included within the scope of the Public Procurement Law and the Executive should cease all actions that bypass the Public Procurement Authority.
- All applications to procurements should be published in detail, and the practice of allowing companies to arbitrarily exceed their financial provisions should be avoided.
- The authority given to the government to forego procurement process should be abolished and the exceptions to purchase goods or services without procurement should only be recognized within the limitations of the law.
- Tax audits should be made more effective, non-legal entities that create informal economy should be integrated into the system.
- Tax exemptions should be formulated with the aim of improving long-term tax compliance through a comprehensive reform agenda and with stakeholder involvement.
- Tax amnesties should be introduced in a manner that promotes principles of equality and justice.
- Customs legislation should be made simpler and more transparent and transactions and decisions at the discretion of the customs officers should be reduced.
- Customs personnel should be rotated to avoid corruption, in a staggered manner that respects the labor rights.
- All public administrations should produce data in accordance with their legislation in their respective duties and jurisdictions; these data must be properly classified, regularly disclosed to the public and machine-readable.
- Oversight mechanisms for public institutions should be improved and public trust in complaints mechanisms should be restored. The Right to Information Law No. 4982 should be made more effective and the non-response rates should be lowered.
- Information Acquisition and Evaluation Board should be made autonomous and independent

PRIVATE SECTOR

- Efforts should be made to increase the knowledge levels of SMEs on issues such as fight against corruption and transparency.
- Sectoral ethics codes should be written and risky transactions be determined.
- Fight against corruption and the concept of ethical business should be emphasized by senior management in companies and a zero-tolerance mentality should be adopted.
- Limits for independent audit under the Turkish Commercial Code should be extended to include small and medium-sized enterprises to reflect EU legislation.
- Efforts should be made to encourage internal auditing, especially for SMEs.
- Companies, especially those that receive goods and services from SMEs, should carry out active inspections not just on contractual matters but also on anti-corruption matters, and the auto-control mechanism must be established in this respect.
- The Capital Markets Board should introduce new arrangements for the fulfillment of fight against corruption in BIST companies and/or publicly traded companies and should follow up its implementation.
- “Notice” mechanisms in companies should be developed to prevent corruption and reprisals should be prevented.
- Rules pertaining to gifts, travel, and hospitality should be made clear.
- Explanations should be made on the financial data related to the country-by-country reporting, especially on country-based income, tax payment figures, etc.
- Disclosures on anti-corruption should be publicly shared and easily accessible on corporate webpages.
- Participation in the BIST Sustainability Index and Corporate Governance Index should be encouraged.
- Trainings and seminars that address anti-corruption activities should be increased in breadth and scope to raise public awareness.
- The private sector should support and cooperate with civil society organizations that work on corporate social responsibility and joint actions should be encouraged.
- The number of independent members in Board of Directors must be increased.
- The Board should take a more proactive role in training and directing in anti-corruption policies of the company. Board members should be made responsible to carry out these activities and actions.

CIVIL SOCIETY

- To facilitate dialog and cooperation between the private sector and CSOs, national and international funding opportunities should be increased for CSOs working to strengthen the business integrity system.
- The principles that are central to the business integrity system must cease to become elements of political polarization discourse.
- CSOs should focus on the creation of anti-corruption policies and the development of an integrity system in the areas in which they operate.
- The private sector and CSOs should be encouraged to cooperate with all relevant actors in establishing a multi-stakeholder approach to developing an integrity system.
- CSOs should be given independent observer status for transactions between the private and public sectors to ensure that checks and balances mechanisms functions.
- The legislative framework for tax exemptions and fundraising should be revised to promote equality and measures that allows for strengthening civil society should be adopted.
- A national strategy based on transparency and accountability principles should be established for the public funding of civil society. Detailed information on the provision of public funding to CSOs should be regularly disclosed to the public by the relevant public institutions.
- An encompassing, structured, and sustainable civil society-public sector dialog mechanism should be established and the recommendations of CSOs should be integrated into practices of the political apparatus.
- The sanctions and practices that are contradictory to the freedom of expression and freedom of assembly should be discontinued.
- The status of “public interest” that apply to certain associations and foundations should be redefined according to objective criteria and the conferral of this status should be free from political influence.
- The Anti-Terror Law No. 3731 should be reformulated in accordance with the requirements of international human rights law and priority should be given to all practices and measures, particularly educational, to ensure that practitioners fully adopt international standards.
- Administrative authority and political neutrality of the Radio and Television Supreme Council should be ensured.
- Media ownership structures must be made transparent and arrangements should be made to prevent cross-ownership of media organizations in order to prevent conflicts of interest, ensure accountability, and establish public oversight.
- Freedom of expression should be maintained by strengthening editorial independence. Criminal law, or criminal procedure measures should not be used as a means to influence editorial preferences or publications.

ACTION PLANS

PUBLIC SECTOR

Recommendations	Target Group	Who will do it?	How will it be done?
Deficiencies in the legislation should be addressed: (i) The definition of bribery should be broadened to include private sector corruption; the scope of the definition should include not just publicly traded companies, but all companies. (ii) Legislation to investigate and supervise the criminal responsibility of public and private entities should be enacted and the issue of how judges and prosecutors should handle this legislation should be clarified.	Private sector	Administration, TUSIAD, TOBB, TI-Turkey, TEPAV, TEID	<ul style="list-style-type: none"> Administration, professional associations and major NGOs working in this field should jointly prepare a draft law and negotiate with the legislators through an advocacy group.
A private sector bribery legislation in line with UNCAC and CoE Criminal Law Convention on Corruption should be established to criminalize private sector bribery and to ensure that all persons under the proposed law are equally and equitably responsible for corruption within the institution.	Large-scale enterprises	Administration, TUSIAD, TOBB, TI-Turkey, TEPAV, TEID	<ul style="list-style-type: none"> Administration, professional associations and major NGOs working in this field should jointly prepare a draft law and negotiate with the legislators through an advocacy group.
Legislation based on clear notification of corruption should be enacted to cover a wide range of protection provisions.	Public and private sector employees	Administration, TUSIAD, TOBB, TI-Turkey, TEPAV, TEID	<ul style="list-style-type: none"> Administration, professional associations and major NGOs working in this field should jointly prepare a draft law and negotiate with the legislators through an advocacy group.
High risk areas for corruption should be identified and a risk map and an action plan should be developed involving risky sectors, with special priority measures for areas such as construction, energy, real estate, customs, taxation, etc.	Public and private sector	Administration, TUSIAD, TOBB, TI-Turkey, TEPAV, TEID	<ul style="list-style-type: none"> Administration, professional associations and major NGOs working in this field should draw a risk map and formulate an action plan; all stakeholders including administrative bodies should be mobilized for compliance with the action plan.

Recommendations	Target Group	Who will do it?	How will it be done?
The Public Procurement Law No. 4734 should be rearranged to be in line with the EU public procurement directives. The scope of the exemptions in the Law should be narrowed and the tendency to add new exemptions should be abolished. The tender application must be published in detail and the companies that receive the tender must be prevented from arbitrarily changing the financial conditions envisaged in the applications.	Public Procurement Authority and private sector	TEPAV, TI-Turkey, TUSIAD, TEID	<ul style="list-style-type: none"> Public tenders will be monitored and the anti-corruption policies of the companies participating in public tenders will be analyzed by using TRACK. News stories on corruption will be monitored and the public will be informed about corruption profiles.
Civil society participation in public procurement should be strengthened.	Public administration and NGOs	Consumer rights associations, Bar associations, TEPAV	<ul style="list-style-type: none"> By monitoring tender specifications, compliance with transparency and ethical rules should be analyzed, and the results should be shared with the public.
Tax auditing should be made more efficient. Non-legal entities that create unrecorded economy and unregistered production should be integrated into the economy.	Taxation authorities, Private sector	ITO, ISO, TOBB, KOSGEB	<ul style="list-style-type: none"> Sectors contributing to the informal economy, such as minibuses and taxis, which have “known secrets” should be examined and an analysis of how they can be recorded should be published. Chambers should audit their members annually.
A lobbying legislation to register and monitor relations between the public and private sector and civil society. This legislation should define lobbying, register lobbying information, lobbying goals and clients, advocacy issues, and lobbying costs.	Administration and NGOs	NGOs	<ul style="list-style-type: none"> A lobbying draft law for Turkey will be prepared by analyzing the lobbying laws of the world with participation of civil society Civil society organizations participating in the drafting of this law will be required to record employment information, lobbying goals and customers, their advocacy issues and lobbying expenses A lobbying database will be created and advocacy actions will be done to encourage the participation of civil society in the draft

Recommendations	Target Group	Who will do it?	How will it be done?
<p>Tax exemptions should be formulated with the aim of improving long-term tax compliance through a comprehensive reform agenda and with stakeholder involvement. Tax amnesties should be introduced in a manner that promotes principles of equality and justice.</p>	<p>Taxation authorities, accountants, private sector</p>	<p>TOBB, TUSIAD, KOSGEB, consumer rights associations, accountant associations, auditor associations</p>	<ul style="list-style-type: none"> ■ A tax amnesty draft report will be formulated by auditors, independent accountants and certified public accountants through an analysis of all tax exemptions since 2002 ■ The draft should be presented to spotlight its positive effects such as reducing the informal economy and increasing tax-consciousness
<p>The autonomy of the supervisory bodies should be increased and additional measures should be introduced to make their supervision more effective.</p>	<p>Administration</p>	<p>Public enterprises, Istanbul Policy Center, OECD Sigma</p>	<ul style="list-style-type: none"> ■ Detailed information on the inspections of the supervisory institutions will be collected using the BICA survey sections ■ Sample countries will be selected and compared with the inspections of the institutions in those countries
<p>A comprehensive legal framework should be established to regulate honesty measures for MPs and their means/ways of implementing. Political Ethics law must be enacted and an autonomous institutional structure should be established to oversee the implementation of this ethical code.</p>	<p>MPs</p>	<p>Checks and Balances Network, Doğruluk Payı, Oy ve Ötesi, City and municipality councils, KA.DER, IPC, Türk Parlamenterler Birliği, Political parties</p>	<ul style="list-style-type: none"> ■ A draft code of political ethics will be created through analyses of international examples with contributions from MPs and civil society ■ Advocacy actions will be done to ensure that MPs are committed to compliance to the political ethics code

PRIVATE SECTOR

Recommendations	Target Group	Who will do it?	How will it be done?
Efforts should be made to increase the knowledge levels of SMEs on issues such as fight against corruption and transparency.	Owner/Managers of Medium-sized Enterprises	TOBB, TSO	<ul style="list-style-type: none"> Seminars on anti-corruption activities and transparency trainings should be organized at the Chambers of Commerce and Industry (TSO), and they should illustrate how the growth and profitability of companies can be improved.
Limits for independent audit under the Turkish Commercial Code should be extended to include small and medium-sized enterprises to reflect EU legislation.	SMEs	TOBB, TSO, TURMOB	<ul style="list-style-type: none"> Business associations and NGOs should consult with legislators on improvements to the Turkish Commercial Code. Limits, especially on turnover should be revised. The number of independent auditors should be increased and audit structures developed.
Efforts should be made to encourage internal auditing, especially for SMEs.	Medium-sized enterprises	KOSGEB, TOBB, TSO	<ul style="list-style-type: none"> Seminars on the importance of internal audits for SMEs should be organized. Efforts should be made to introduce Independent Audit Support by KOSGEB to SMEs and the use of this support should be encouraged.
Sectoral ethics codes should be written and risky transactions be determined.	Private sector	TOBB, TSO, Chambers, NGOs	<ul style="list-style-type: none"> TOBB and TSO's Trade Associations and Assembly Members should hold meetings and workshops on writing sectoral ethics codes. Risky areas for sectors should be identified and roadmaps be drawn to minimize the risks.
Fight against corruption and the concept of ethical business should be emphasized by senior management in companies and a zero-tolerance mentality should be adopted.	Companies listed on BIST Indexes, public and/or non-public large-scale enterprises	Owners and managers of companies	<ul style="list-style-type: none"> Special trainings on anti-corruption programs should be developed. Manager statements and texts in Annual Activity Reports, Sustainability Reports, etc. should be arranged to promote these programs.

Recommendations	Target Group	Who will do it?	How will it be done?
Companies, especially those that receive goods and services from SMEs, should carry out active inspections not just on contractual matters but also on anti-corruption matters, and the auto-control mechanism must be established in this respect.	Companies listed on BIST Indexes, public and/or non-public large-scale enterprises	Large-scale enterprises	<ul style="list-style-type: none"> • Companies should add articles on anti-corruption policies to contracts. • Audits should be conducted at certain times. • Trainings should be organized several times a year on anti-corruption and ethics.
The Capital Markets Board should introduce new arrangements for the fulfillment of fight against corruption in BIST companies and/or publicly traded companies and should follow up its implementation.	Companies listed on BIST Indexes	CMB, NGOs, Consultants	<ul style="list-style-type: none"> • An advisory board comprising CMB, directors of NGOs, and consultants should conduct meetings and workshops to introduce new regulations. • Follow-ups to the regulations should be done periodically.
“Notice” mechanisms in companies should be developed to prevent corruption and reprisals should be prevented.	Companies listed on BIST Indexes, public and/or non-public large-scale enterprises	Senior management	<ul style="list-style-type: none"> • All managers and employees should be given trainings on this subject; the ethics codes and anti-corruption programs of companies should be explained in detail, and trainings should be repeated twice a year over the intranet and internet. • Commitments should be made to protect the notifier/whistleblower’s identity. The notification channels should be controlled by third-parties. • Notification and follow-up process should be done in a swift and efficient manner.
Rules pertaining to gifts, travel, and hospitality should be made clear.	Companies listed on BIST Indexes, public and/or non-public large-scale enterprises	Senior management	<ul style="list-style-type: none"> • To avoid different valuations between companies, an upper limit for each expense item should be determined.
Explanations should be made on the financial data related to the country-by-country reporting, especially on country-based income, tax payment figures, etc.	Companies listed on BIST Indexes, public and/or non-public large-scale enterprises	CMB, BIST	<ul style="list-style-type: none"> • The CMB should reorganize its regulations for publicly traded companies and/or companies listed on BIST indexes on country-by-country reporting activities.

Recommendations	Target Group	Who will do it?	How will it be done?
Disclosures on anti-corruption should be publicly shared and easily accessible on corporate webpages.	Companies listed on BIST Indexes, public and/or non-public large-scale enterprises	Senior management, Investor Relations and/or Compliance Departments (if applicable)	<ul style="list-style-type: none"> The company website should have a dedicated page that explicitly defines the company policy, procedures, and codes on anti-corruption. The webpage should be easily accessible.
Participation in the BIST Sustainability Index and Corporate Governance Index should be encouraged.	Companies listed on BIST Indexes	CMB, BIST	<ul style="list-style-type: none"> Companies in the mentioned Indexes should be awarded with incentives. Incentives previously in place should be reworked and implemented.
Trainings and seminars that address anti-corruption activities should be increased in breadth and scope to raise public awareness.		TOBB, TSO, KOSGEB, Ministries	<ul style="list-style-type: none"> Trainings should be organized on anti-corruption activities similar to the ones on financial literacy and entrepreneurship. Public service ads and infographics should be utilized to increase public awareness.
The number of independent members in Board of Directors must be increased.	Companies with Board of Directors	CMB, TOBB, TUSIAD	<ul style="list-style-type: none"> The benefits of having independent board members should be explained to company owners. The number of independent board members should be gradually increased. Efforts should be made to increase the number of female independent board members through positive discrimination.
The Board should take a more proactive role in training and directing in anti-corruption policies of the company. Board members should be made responsible to carry out these activities and actions.	Companies with Board of Directors	CMB, TOBB, TUSIAD, TI-Turkey, other NGOs	<ul style="list-style-type: none"> Responsibilities of the board members and the possible results of their nonconformity to corporate anti-corruption policies should be explained to company owners.



ANNEXES

ANNEX 1 - QUESTIONNAIRE

Reporting On Anti-Corruption Programs

1. Does the company have a publicly stated commitment to anti-corruption?
2. Does the company publicly commit to be in compliance with all relevant laws, including anti-corruption laws?
3. Does the company leadership (senior member of management or board) demonstrate support for anticorruption?
4. Does the company's code of conduct/anti-corruption policy explicitly apply to all employees and directors?
5. Does the company's anti-corruption policy explicitly apply to persons who are not employees but are authorized to act on behalf of the company or represent it (for example: agents, advisors, representatives or intermediaries)?
6. Does the company's anti-corruption program apply to non-controlled persons or entities that provide goods or services under contract (for example: contractors, subcontractors, suppliers)?
7. Does the company have in place an anti-corruption training program for its employees and directors?
8. Does the company have a policy on gifts, hospitality and expenses?
9. Is there a policy that explicitly prohibits facilitation payments?
10. Does the program enable employees and others to raise concerns and report violations (of the program) without risk of reprisal?
11. Does the company provide a channel through which employees can report suspected breaches of anti-corruption policies, and does the channel allow for confidential and/or anonymous reporting (whistle-blowing)?
12. Does the company carry out regular monitoring of its anti-corruption program to review the program's suitability, adequacy and effectiveness, and implement improvements as appropriate?
13. Does the company have a policy on political contributions that either prohibits such contributions or if it does not, requires such contributions to be publicly disclosed?

Organizational Transparency

14. Does the company disclose all of its fully consolidated subsidiaries?
15. Does the company disclose percentages owned in each of its fully consolidated subsidiaries?
16. Does the company disclose countries of incorporation for each of its fully consolidated subsidiaries?
17. Does the company disclose countries of operations for each of its fully consolidated subsidiaries?
18. Does the company disclose all of its non-fully consolidated holdings (associates, joint ventures)?

19. Does the company disclose percentages owned in each of its non-fully consolidated holdings?
20. Does the company disclose countries of incorporation for each of its non-fully consolidated holdings?
21. Does the company disclose countries of operations for each of its non-fully consolidated holdings?

Country-by-Country Reporting

22. Does the company disclose its revenues/sales in country X?
23. Does the company disclose its capital expenditure in country X?
24. Does the company disclose its pre-tax income in country X?
25. Does the company disclose its income tax in country X?
26. Does the company disclose its community contribution in country X?

ANNEX 2 - THE COMPENIES UNDER REVIEW AND THEIR SCORES

GROUP A

	Code	Company	Anti-Corruption Program	Organizational Transparency	Contry by Country Reporting	Average Score
1	ASELS TAVHL	ASELSAN TAV HAVALİMANLARI HOLDİNG	81 81	100 100	60 60	80 80
2	AKBNK	AKBANK	85	100	40	75
3	EREGL	EREĞLİ DEMİR VE ÇELİK	100	100	20	73
4	YKBNK ISCTR	YAPI VE KREDİ BANKASI TÜRKİYE İŞ BANKASI	100 88	75 88	40 40	72 72
5	HALKB	TÜRKİYE HALK BANKASI	81	88	40	69
6	AKSEN	AKSA ENERJİ	88	75	40	68
7	GARAN ULKER ZOREN	TÜRKİYE GARANTİ BANKASI ÜLKER BİSKÜVİ ZORLU ENERJİ	85 85 42	75 75 100	40 40 60	67 67 67
8	KORDS GLYHO TRKCM VAKBN	KORDSA GLOBAL YATIRIM HOLDİNG TRAKYA CAM TÜRKİYE VAKIFLAR BANKASI	96 85 81 81	100 100 75 75	0 10 40 40	65 65 65 65
9	SAHOL MGROS	SABANCI HOLDİNG MİGROS	92 92	100 100	0 0	64 64
10	CCOLA	COCA-COLA	92	75	20	62
11	NETAS	NETAŞ	73	100	0	58
12	DOAS	DOĞUŞ OTOMOTİV	96	75	0	57
13	ARCLK	ARÇELİK	69	100	0	56
14	SISE	TÜRKİYE ŞİŞE VE CAM FABRİKALARI	88	75	0	54
15	PGSUS	PEGASUS	58	100	0	53
16	AEFES SODA	ANADOLU EFES SODA SANAYİ	81 81	75 75	0 0	52 52
17	OTKAR	OTOKAR	77	75	0	51
18	TKFEN	TEKFEN HOLDİNG	8	100	40	49
19	DOHOL	DOĞAN HOLDİNG	69	75	0	48
20	ADEL KCHOL	ADEL KALEMCİLİK KOÇ HOLDİNG	62 62	75 75	0 0	46 46
	PETKM	PETKİM	58	75	0	44
21	TCELL	TURKCELL	50	63	20	44
22	ENKAI	ENKA	54	75	0	43
	VESTL	VESTEL ELEKTRONİK	27	88	0	38
23	GUBRF	GÜBRE FABRİKALARI	0	75	40	38
24	ECILC	EİS ECZACIBAŞI İLAÇ	0	100	0	33
25	BIMAS	BİM BİRLEŞİK MAĞAZALAR	0	75	20	32
26	KOZAL	KOZA ALTIN	0	75	0	25

GROUP B

Code	Company	Anti-Corruption Program	Organizational Transparency	Contry by Country Reporting	Average Score
1	KRDMD KARDEMİR	77	100	-	88
2	TOASO TOFAŞ	96	75	-	86
3	FROTO FORD OTOMOTİV SANAYİ	92	75	-	84
4	TSKB TÜRKİYE SINAİ KALKINMA BANKASI	88	75	-	82
5	TTKOM TÜRK TELEKOMÜNİKASYON	58	100	-	79
6	TUPRS TÜPRAŞ	65	75	-	70
7	THYAO TÜRK HAVA YOLLARI	50	88	-	69
8	BJKAS BEŞİKTAŞ	23	100	-	62
9	TATGD TAT GIDA	46	75	-	61
10	ALARK ALARKO HOLDİNG	15	100	-	58
11	GOLTS GÖLTAŞ	38	75	-	57
	ISGYO İŞ GAYRİMENKUL YATIRIM ORTAKLIĞI	38	75	-	57
12	EGEEN EGE ENDÜSTRİ	15	75	-	45
13	FENER FENERBAHÇE	0	75	-	38

Not applicable

GROUP C

Code	Company	Anti-Corruption Program	Organizational Transparency	Contry by Country Reporting	Average Score
1	GOODY GOODYEAR	100	-	-	100
2	BRISA BRISA BRIDGESTONE	96	-	-	96
3	TTRAK TÜRK TRAKTÖR	69	-	-	69
4	AFYON AFYON ÇİMENTO	65	-	-	65
5	VESBE VESTEL BEYAZ EŞYA	27	-	-	27
6	EKGYO EMLAK KONUT GYO	0	-	-	0

Not applicable

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