



Monitoring Report:

# The Principles of Public Administration

## TURKEY

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

CSL	Civil Service Law
DoCM	Decision of the Council of Ministers
EKAP	Electronic Public Procurement Platform
EU	European Union
HRM	human resource management
IT	information technology
KPSS	Turkish acronym for Public Personnel Selection Examination
MoD	Ministry of Development
MoE	Ministry of Economy
MoF	Ministry of Finance
ÖSYM	Measuring, Selection and Placement Center – Turkish acronym
PAR	public administration reform
PFM	public financial management
PFMC	public financial management and control
PPA	Public Procurement Agency
PPCL	Public Procurement Contract Law
PPL	Public Procurement Law
PPP	public-private partnership
PTP	Priority Transformation Program
SAI	Supreme Audit Institution
SEE	state economic enterprise
SPA	State Personnel Administration
SSO	State Supply Office
TCA	Turkish Court of Accounts
TGNA	Turkish Grand National Assembly

## INTRODUCTION

Following the comprehensive *Baseline Measurement Reports*<sup>1</sup> prepared by SIGMA in May 2015 for all European Union (EU) Enlargement countries against *The Principles of Public Administration*<sup>2</sup>, SIGMA has continued to monitor the progress of public administration reform in each country. The focus of the specific topics within the Principles for assessment by SIGMA in 2016 was selected in co-operation with the European Commission.

This report covers two Principles for the public service and human resource management area and four Principles for the public financial management area:

- The public service and human resource management chapter focuses on the recruitment, demotion and dismissals and the political influence on senior civil servants.
- The public financial management chapter provides a systematic analysis of the legislative framework and developments concerning the institutional set-up in relation to public procurement functions, as well as a thorough review of the legal and operational framework for the Supreme Audit Institution (SAI).

All topics are highly relevant for a more focused analysis. A more in-depth review of the recruitment, demotion and dismissal of civil servants is relevant because of the complexity of the country's civil service system and the 64th Government's plans for a comprehensive reform of the civil service regime<sup>3</sup>. In public procurement, the need for harmonisation with the EU *acquis communautaire* gives an additional impetus for detailed analysis of the key legislative and organisational aspects of the procurement and public-private partnership systems and policies, while the external audit area deserves in-depth attention in light of the persistent focus on its independence and use of SAI reports to ensure transparent, efficient, effective and economic public spending.

The report covers the period from May 2015 to April 2016, highlighting the main developments, providing updated values for the indicators relevant to the Principles analysed and providing both short- and medium-term recommendations for reforms.

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<sup>1</sup> SIGMA (2015), [Baseline Measurement Reports](#), OECD Publishing, Paris.

<sup>2</sup> SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris.

<sup>3</sup> 64th Government Programme, pp. 14 and 34,  
[http://www.basbakanlik.gov.tr/docs/KurumsalHaberler/64.hukumet\\_programi.pdf](http://www.basbakanlik.gov.tr/docs/KurumsalHaberler/64.hukumet_programi.pdf)

A large teal folder icon with a light blue tab on the left side. The folder is tilted slightly to the right. The text "Public Service and Human Resource Management" is written in white on the front of the folder.

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## PUBLIC SERVICE AND HUMAN RESOURCE MANAGEMENT

### 1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015-APRIL 2016

#### 1.1. State of play

The civil service in Turkey has a career system in which external recruitment is organised for entry-level positions. The first phase of the external recruitment system is based on merit. The KPSS<sup>4</sup> (the Turkish acronym for the Public Personnel Selection Examination) country-wide exams are the first filter, allowing successful candidates to apply for entry-level positions in the civil service. In addition to these generic exams, individual public authorities organise tailored exam processes that include interviews and/or written exams<sup>5</sup>. All regulations specific to additional examination of candidates need the approval of the State Personnel Administration (SPA). The SPA, however, limits itself to checking the legality of special selection procedures. The uniformity of legality is ensured, but the uniformity of the examination process is not, which results in a lack of general rules setting minimum standards for merit-based recruitment, and thus the quality of the selection process differs across institutions. The same is true for internal recruitments (promotions) for higher positions. Moreover, the discriminatory practice of not accepting candidates over the age of 35 is a source of concern.

An issue in the past has been the automatic conversion of contract staff into civil servants, highlighted in the SIGMA 2015 *Baseline Measurement Report*<sup>6</sup>. This back-door entry into public employment reduced the level of merit-based recruitment.

New conversions are scheduled for 2016, according to the Government Action Plan<sup>7</sup>, and will apply to temporary staff of sub-contracted firms. By the end of April no conversions took place. It remains to be seen if future conversions will happen and if they will ensure the merit principle, and what will be the scope of them.

Civil servants are well protected against unjustified dismissal, proven by the low number of dismissed civil servants in recent years. However, access to top positions in the civil service is still not merit-based. Appointments are not subject to any kind of competition, and the annual turnover rate of these positions is high.

#### 1.2. Main developments

Since April 2015, there have been no significant developments, except the issuing of the Prime Minister's Circular 4/2016 that gives instructions on when to initiate a disciplinary process.

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<sup>4</sup> Kamu Personeli Seçme Sınavı.

<sup>5</sup> Institutions analysed were the: Ministry of Family and Social Policy; Ministry of Finance (MoF); Ministry of Economy (MoE); Ministry of Foreign Affairs; Office of the Ombudsman; Office of the Parliament; Tax Administration; and Customs Administration. A SIGMA interview with the SPA confirmed that additional examinations are conducted in all civil service institutions for civil servants.

<sup>6</sup> SIGMA (2015), *Baseline Measurement Report: The Principles of Public Administration: Turkey*, OECD Publishing, Paris.

<sup>7</sup> 64th Government Action Plan, Action 13. The deadline for this measure was 21 March 2016.

## 2. ANALYSIS

This analysis covers two Principles for the public service and human resource management area under one key requirement. It includes a short analysis of the indicators of the Principles and a systematic analysis of two Principles related to recruitment, demotion and dismissals and the political influence on senior civil servants.

**Key requirement<sup>8</sup>: Professionalism of public service is ensured by good managerial standards and human resource management practices.**

### **Indicator values**

Professionalism is examined through three qualitative and eight quantitative indicators that refer to merit-based recruitment and termination of employment in the public service, including senior public servants.

Data in the tables refer to all 15 grades of civil servants, as specified in Article 4 of the Civil Service Law (CSL), or to senior civil servants only (if relevant), from category I (general administrative services) and II (technical services) as specified by Article 26 of the CSL. This is why the values of the quantitative indicators differ from the values obtained during the 2015 baseline measurement. The scope of the data collected in 2016 regarding the categories of civil servants was changed, as explained above, compared to 2015 to better reflect the composition of the definition of public service at central level and to make the analysis more comparable with other countries.

The values of the qualitative indicators remain the same as in the *SIGMA 2015 Baseline Measurement Report*<sup>9</sup> because there were no significant developments last year. The more detailed analysis revealed that the competition procedures following the KPSS exam differ significantly across institutions, so the quality of merit-based selection also differs. This and some other shortcomings of the recruitment system revealed during the detailed analysis did not influence the values, which remained the same as in 2015.

The turnover rate in the civil service (categories I and II) is very low, but this is not the case for senior positions, for which it exceeds 20%.

In categories I and II, the share of women in the civil service is low and accounts for less than one-third of positions. This share is significantly lower for senior managerial positions.

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<sup>8</sup> SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, p. 48.

<sup>9</sup> SIGMA (2015), [Baseline Measurement Report: The Principles of Public Administration: Turkey](#), OECD Publishing, Paris.

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	Principle no.	Indicator	Baseline year	Baseline value	Assessment year	Indicator value
Qualitative	3	Extent to which recruitment of public servants is based on the merit principle in all its phases.	2014	4	2015	4
	3	Extent to which the termination of employment of public servants is based on merit.	2014	3	2015	3
	4	Extent to which political influence on the recruitment and dismissal of senior managerial positions in the public service is prevented.	2014	2	2015	2
Quantitative	3	Annual turnover of civil servants at the level of the central administration.	2014	Not available <sup>10</sup>	2015	1.4% <sup>11</sup>
	3	Number of candidates per vacancy at the level of central administration	2014	Not applicable <sup>12</sup>	2015	52.1 <sup>13</sup>
	3	Number of candidates per senior civil service vacancy at the level of central administration	2014	Not applicable <sup>14</sup>	2015	Not applicable
	3	Percentage of women in the civil service at the level of central administration.	2014	36.5%	2015	29.8% <sup>15</sup>

<sup>10</sup> This baseline value was not available for the SIGMA 2015 *Baseline Measurement Report*. Based on data obtained this year, the value of the indicator for 2014 was 1.6%; it applies only to categories I and II of civil servants. There were 526 209 civil servants at the beginning of 2014, and 8 527 of these left over the year according to the SPA.

<sup>11</sup> There were 561 518 civil servants at the beginning of 2015, and 7 801 of these left over the year according to the SPA.

<sup>12</sup> This baseline value was not available for the SIGMA 2015 *Baseline Measurement Report*. Based on data obtained this year, the value of the indicator for 2014 was 46.2. In 2014 there were 3 729 announced vacancies and 172 484 candidates according to the SPA.

<sup>13</sup> In 2015 there were 3 569 announced vacancies and 185 967 candidates according to the SPA.

<sup>14</sup> This baseline value was not applicable for the SIGMA 2015 *Baseline Measurement Report* as there were no competitions for senior positions in 2014. The indicator is similarly not applicable for this assessment of 2015.

<sup>15</sup> Data applies to categories I and II only, which is different from how it was measured in the SIGMA 2015 *Baseline Measurement Report*, as this involved a wider scope of civil service. For 2015 there were 172 038 women employed in the civil service out of 577 977 civil servants according to the SPA.

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	Principle no.	Indicator	Baseline year	Baseline value	Assessment year	Indicator value
	3	Percentage of women in senior managerial positions in the civil service at the level of central administration.	2013	9.7%	2015	7.7% <sup>16</sup>
	3	Percentage of civil servants at the level of central administration by different ethnic origin in relation to the general ethnic division in the country based on the latest census.	2014	Not available <sup>17</sup>	2015	Not available
	4	Annual turnover of senior managerial civil servants at the level of the central administration.	2014	Not available <sup>18</sup>	2015	28.6% <sup>19</sup>
	4	Turnover of senior managerial civil servants at the level of central administration within six months of a change of government.	2014	Not available <sup>20</sup>	2015	Not available

### **Analysis of Principles**

#### ***Principle 3: The recruitment of public servants is based on merit and equal treatment in all its phases; the criteria for demotion and termination of public servants are explicit.***

Merit and career are fundamental features of the CSL<sup>21</sup>, which foresees a competitive process for recruitment<sup>22</sup>. Civil servants can advance their careers through promotion, which is either horizontal (the grade is increased without changing the position and responsibilities of the civil servant) or vertical (by occupying higher-level positions and having higher-level responsibilities)<sup>23</sup>.

<sup>16</sup> In 2016, the question about women occupying senior civil service positions was based on categories I and II of civil servants only, rather than a wider scope of civil service used in the SIGMA 2015 Baseline Measurement report. For 2015 there were 76 women occupying senior positions out of 986 senior civil servants according to the SPA. If the same methodology of data calculation was applied in 2013 and 2014, the percentage would be: 7.5% and 7.6%.

<sup>17</sup> Data on the ethnic origin of civil servants is not collected.

<sup>18</sup> The baseline value was not available for the SIGMA 2015 *Baseline Measurement Report*. Based on data obtained this year, the value of the indicator for 2014 was 52.7% as 452 senior civil servants left their positions, out of 857 senior civil servants at the beginning of 2014.

<sup>19</sup> 258 senior civil servants left their positions in 2015, out of 903 senior civil servants at the beginning of the year according to the SPA.

<sup>20</sup> The respective data was not provided by the administration upon SIGMA's request.

<sup>21</sup> CSL No. 657/1965, Article 3.

<sup>22</sup> CSL No. 657/1965, Chapter 1, Articles 49-51.

<sup>23</sup> CSL No. 657/1965, Articles 36-38.

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Since 1999, the recruitment for entry-level positions starts with a centralised exam, the KPSS, that builds on the Turkish tradition of national exams from primary to university studies<sup>24</sup>. KPSS exams for A categories<sup>25</sup> are held annually. The scores obtained for the KPSS are valid for two years while the candidate is looking for a vacancy, or until the next exam<sup>26</sup>.

The exam questions are grouped into 124 clusters, each one of them giving different weight to some of the 17 specific exam areas<sup>27</sup>. Typically, a candidate will be required to achieve a minimum score of 70 points for the KPSS<sup>28</sup>. However, individual authorities sometimes require a higher threshold<sup>29</sup>, or specific thresholds for one or several of the 124 KPSS clusters<sup>30</sup>, before candidates can take more specific exams for category A.

An analysis of a sample of questions from a span of several years<sup>31</sup> and the KPSS clusters shows that the KPSS is a merit-based instrument which functions as a general filter in that it reduces the number of potential candidates competing for public sector jobs. However, it does not enable the selection of good candidates to specific positions because the questions in clusters are not sufficiently tailored to the needs of individual authorities<sup>32</sup>. For example, they do not contain questions specific enough to recruit for a given position<sup>33</sup>. The number of candidates per position is about 50 (civil servants, categories I and II), which ensures sufficient competitiveness.

In general, after succeeding in the KPSS exams, candidates for category A vacancies need to sit additional exams, the organisation of which depends on the specific regulations of each individual authority. Specific by-laws from individual institutions for category A positions may require an additional written and/or oral exam. At this point, several elements pose a risk to fully merit-based recruitment (and promotion)<sup>34</sup>.

First, the specific recruitment process for entry-level positions in institutions depends on primary and secondary general legislation for the whole civil service<sup>35</sup>. This is complemented by specific legislation from each individual authority, which may issue different pieces of legislation for each category. The

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<sup>24</sup> TEOG (Temel Eğitimden Ortaöğretime Geçiş) for secondary education; YGS (Yükseköğretime Geçiş Sınavı) for undergraduate university education; and ALES (Akademik Personel ve Lisansüstü Eğitim Giriş Sınavı) for master's and PhD education.

<sup>25</sup> Category A refers to Article 4a of the CSL and means civil servants.

<sup>26</sup> Decision of the Council of Ministers (DoCM) No. 3975/2002, Article 11.

<sup>27</sup> Ölçme, Seçme ve Yerleştirme Merkezi (ÖSYM) (2015), KPSS Exam Guidelines. Specific exam areas are: general skills, general culture, foreign language, educational sciences, law, economy, business, finance, accounting, , labour economy and industrial relation, econometrics, statistics, public administration, international relations, educational area information, and religious service areas 1 and 2.

<sup>28</sup> Turkish Grand National Assembly (TGNA). For instance, 70 points for the position of expert assistant in the TGNA.

<sup>29</sup> Sample from the MoF – threshold of 80%.

<sup>30</sup> The entry exam advertisement for the position of expert assistant in the TGNA poses different point requirements for the following KPSS score clusters: 21, 22, 24, 27, 30, 33, 34, 37, 46, 47, 49, 97, 103, and 115.

<sup>31</sup> Only 10% of the 2014-2015 KPSS exam questions are disclosed on the ÖSYM website, and this institution did not provide more questions at SIGMA's request for this assessment. These questions are rather generic for each subject area and are not tailored to specific groups of civil service positions. For questions from other years, see: <http://osym.gov.tr/belge/1-5508/kamu-personel-secme-sinavi-kpss.html>

<sup>32</sup> The cluster KPSS 110 includes 0.45 general skills; 0.25 general culture; 0.1 law; and 0.2 international relations. It is used to assess candidates who want to work in the Ministry of Labour and Social Security, General Directorate of Occupational Health and Safety, <http://www.lafsozluk.com/2010/12/kpssp110-puan-turu-nedir.html>

<sup>33</sup> The questions on law from the 2007 and 2010 KPSS exams covered the areas of constitutional law, accounting legislation, and tax administration, among others. For 2007: <http://dokuman.osym.gov.tr/pdfdokuman/2007/KPSS/Lisans/01TEMMUZ2007PS/2007kpsspshukuk.pdf>; for 2010: <http://dokuman.osym.gov.tr/pdfdokuman/2010/KPSS/Lisans/2010kpssps.pdf>

<sup>34</sup> This is even more the case as the general regulation on recruitment does not provide specific, fully detailed rules for authorities to comply with when elaborating specific regulations on selection. Article 12 of the DoCM No. 3975/2002 states that "Public institutions and organisations perform the process of selection of personnel through the entrance exam that they hold based on their own legislations."

<sup>35</sup> DoCM No. 3975/2002.

SPA has the duty to ensure the uniformity of personnel practices and the monitoring of secondary legislation (for example, on promotion<sup>36</sup>) from individual authorities. In practice, however, the SPA focuses exclusively on the legality of the different provisions and does not have strong enough power to influence the adoption of secondary legislation<sup>37</sup>. This flexibility is partly understandable, given that the horizontal scope of the civil service in Turkey is very broad. However, the assessment tools and thus the level of quality of selection should be similar in similar institutions like ministries or central institutions. In many EU countries it is ensured by more detailed general civil service legislation related to selection procedures.

Second, the exclusive use of interviews<sup>38</sup> (or giving more weight to interviews than to written exams) for recruiting civil servants after the KPSS introduces some room for subjectivity. SIGMA was not provided with a sufficient number of sample questions used during the recruitment process to be able to properly assess this.

Oral interviews have triggered complaints to the Ombudsman and appeals to the judiciary. The Ombudsman has recorded several issues conveyed by complainants regarding the oral examination for 2014<sup>39</sup>. Between 2013 and 2015, complaints to the Ombudsman regarding the “Public Personnel Regime” accounted for 26.16% of all complaints received<sup>40</sup>. More specifically, the Ministry of National Education was the principal subject of complaints in 2014 regarding unfair and unequal treatment during exams for promotion or change of title. Most complaints refer to the appointments carried out using shortlists which only considered oral exam results for middle category positions<sup>41</sup>.

The Council of State has issued several decisions regarding oral examinations. For promotion, for instance, “It is not justifiable to hold an oral examination for assignments to manager positions, instead of a written one the criteria of which are defined objectively”<sup>42</sup>. However, if oral interviews are to be implemented, the Council of State has requested the means to monitor the process. In the absence of electronic means to monitor exams, such as cameras<sup>43</sup>, organisations such as the Turkish National General Assembly (TGNA) have a protocol to standardise the recording and justification of grades by each of the commission members<sup>44</sup>. Other authorities from the sample simply complete a form, with the grades given by each commission member<sup>45</sup>. This shows that relying only on interviews constitutes a concern for the Council of State.

Third, the vacancies for promotion and recruitment are widely published, but only for short periods of time. A vacancy has to be published in one of the five newspapers with the highest circulation in

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<sup>36</sup> DoCM No. 12647/1999, Article 15.

<sup>37</sup> DoCM No. 217/1984, Article 3g; Article 8e for categories and public employees; also Law 217, Articles 3c, 9, 20, 22 and 23. These Articles state that public institutions should get the SPA’s opinion, but nowhere is it said that its opinion is binding.

<sup>38</sup> The Ministry of Family and Social Policies, Regulation on Family and Social Policies Experts, Official Gazette No. 28384, 14 August 2012, Aile Ve Sosyal Politikalar Uzmanlığı Yönetmeliği, Article 5, leaves to the Ministry the decision on whether there will be a written and oral exam or only an oral exam.

<sup>39</sup> “Examination committees convening with missing members, committee members not abiding by the rules of objectivity, records not being kept through technological means, not being allowed to write down the answers given, candidates being asked different numbers of questions, varying periods of oral exam, establishment of high numbers of Oral Examination and Evaluation Committees, committees scoring the same exam performances differently, not being asked questions covering each assessment field existing within the legislation” (Ombudsman [2014], Annual Report, Section 6.1.5.1, Promotion and Change of Title).

<sup>40</sup> The Ombudsman (2016), Activity Report for 2015, Table 15.

<sup>41</sup> The Ombudsman (2014), Annual Report, Section 6.1.5.1, Promotion and Change of Title.

<sup>42</sup> Council of State Decision No. 2004/840 of 2007, Ombudsman Report 2014.

<sup>43</sup> The Ombudsman recommends using electronic means in the exam in its Annual Report 2014, Section 6.1.5.1, Promotion and Change of Title.

<sup>44</sup> Based on a sample of documents at the disposal of the recruitment commission provided by the TGNA.

<sup>45</sup> Based on samples analysed from the Ministry of Family and Social Policy and the Ministry of Customs and Trade.

Turkey<sup>46</sup>. Recent legislation gives preference to the publication of vacancies on the websites of the recruiting authority and of the SPA<sup>47</sup>. The publication period is very short – there were cases of only four days<sup>48</sup>. Such a short period is inconsistent with the principle of competitiveness.

Another way in which merit-based recruitment is undermined is the automatic conversion of contracted staff into civil service status. B category<sup>49</sup> staff, or those in other categories (C and D in Article 4 of the CSL), do not form part of the career civil service. However, given the past record of conversions of contracted staff<sup>50</sup> into civil service positions, the process for their selection is relevant. For B category, applicants who have passed the KPSS exam fill in a form stating their preferences regarding the vacancies that have been announced in the different institutions. ÖSYM<sup>51</sup> is in charge of matching preferences and vacancies following the regulations<sup>52</sup> and determines the ranking order taking into account KPSS scores, dates of exams, university diploma dates and other objective criteria. Candidates for category B do not normally undergo additional exams (either written or oral) in the individual authorities.

The introduction of contract staff<sup>53</sup> was originally intended in the CSL to provide an exceptional and temporary form of employment for services which could not be carried out by civil servants. The contracts were originally intended for recruiting highly qualified and highly paid staff for projects or programmes for a specific period of time. Numbers and usage increased and evolved towards a quasi-civil service status because contracts were renewed and contract staff became permanent. They even perform the same tasks as civil servants, but under different rules<sup>54</sup>. Law 5620/2007 introduced the KPSS exam for contract staff under Article 4B. Law 5917 introduced the idea of permanent (non-temporary) status, and this concept has been recurrent in the evolution of the legislation<sup>55</sup>.

Large-scale conversions of contracted staff to permanent civil servants took place recently, affecting 200 558 contracts in 2011<sup>56</sup>, mostly from central administration, and 103 673 in 2013<sup>57</sup>, including staff from municipalities. In general, automatic conversion to the civil service removes some of the steps involved in the merit-based recruitment process experienced by civil servants (for instance, the written and oral exams that individual authorities impose on candidates for entry-level positions). MEMUR-SEN, a trade union for civil servants, managed to include in their collective agreements the commitment to achieve several types of conversions: a) permanent worker (contracts under labour law) into contract worker positions (referring to staff from CSL Article 4b) in state-owned enterprises; b) permanent

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<sup>46</sup> DoCM No. 3975/2002, Article 13.

<sup>47</sup> Circular of the Prime Minister 2014/4, which mandates uploading all job vacancy announcements on the SPA website.

<sup>48</sup> For instance, a recent internal promotion in the department of human resources of the TGNA (based on the sample provided by the TGNA). Nine days is the publication period in the Ministry of Customs and Trade (sample).

<sup>49</sup> Category B is contracted staff, as defined in the CSL, Article 4b.

<sup>50</sup> CSL No. 657/1965.

<sup>51</sup> "Ölçme, Seçme ve Yerleştirme Merkezi" – Measuring, Selection and Placement Centre.

<sup>52</sup> DoCM No. 3975/2002, Articles 22 and 23.

<sup>53</sup> They are commonly labelled as contract staff under CSL No. 657/1965, Article 4b.

<sup>54</sup> Compared to civil servants, contract employees work on a position basis; their personal benefits are regulated by a DoCM (not the law). They receive their salary from the general budget or revolving funds from their authority, work on annual contracts, cannot be promoted unless KPSS exams are retaken and required scores are achieved, and are not subject to the discipline regime. On the evolution of this contract, see: Sayan, I.O. and S.O. Albayrak (2011), "From exceptionality to generality, temporariness to continuity: 4/B contract personnel employment", *Amme İdares Dergisi*, Vol. 44, No. 3.

<sup>55</sup> Sayan, I.O. and S.O. Albayrak (2011), "From exceptionality to generality, temporariness to continuity: 4/B contract personnel employment", *Amme İdares Dergisi*, Vol. 44, No. 3, p. 205.

<sup>56</sup> In 2011 the decree-law allowed for the conversion of temporary contractual public employees (under CSL No. 657/1965, Article 4b) to be granted civil service status at a similar level in the hierarchy (statistical data from the SPA).

<sup>57</sup> The SPA. There had been previous conversions of 218 000 temporary workers after Law No. 5620/2007 was introduced; see Sayan, I.O. and S.O. Albayrak (2011), "From exceptionality to generality, temporariness to continuity: 4/B contract personnel employment", *Amme İdares Dergisi*, Vol. 44, No. 3, p. 204.

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worker into civil service positions in state public authorities; and c) full-time temporary personnel into contractual staff<sup>58</sup>. However, it remains to be seen if the conversions planned for 2016 will ensure merit and what their scope will be.

In the regulatory system, there is no negative discrimination against any particular group<sup>59</sup>, except for the age limit at the time of entry. The presence of women in the civil service is low: 29.8% in 2015 (30.2% in 2014)<sup>60</sup>. The situation is more inequitable in the senior civil service, as women only occupy 7.7% of high-ranking positions in 2015 (7.6% in 2014)<sup>61</sup>. Some positive discrimination measures favouring the representation of women in the civil service have been introduced<sup>62</sup>, and there is also positive discrimination for disabled people for recruitment, internships and transfers<sup>63</sup>. Age discrimination appears in all the recruitment regulations of the sample agencies which have been analysed in detail<sup>64</sup>. Applicants to entry-level expert positions cannot be older than 35 at the time of taking their first exam after the KPSS<sup>65</sup>. This provision affecting category A is not in line with the European Union (EU) legislation<sup>66</sup>.

Promotion to higher levels is regulated by secondary legislation<sup>67</sup>, which stipulates all the criteria for promotion. These follow the principle of merit for most positions, except for those at the level of head of unit (*daire başkanı*) and above. There are different criteria regarding the eligibility of candidates for promotion (different educational levels and number of years for different positions, required term of office in particular positions and in the same institution where the promotion will take place<sup>68</sup>). In general, training is required (typically 75 hours<sup>69</sup>) and then an exam is taken, before promotion<sup>70</sup>.

Transfers to higher, equivalent and lower grades are regulated by the CSL and the provisions allow for flexible changes of civil servant positions<sup>71</sup>.

Taking into account these factors, the value of the indicator related to merit-based recruitment is 4.

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<sup>58</sup> Collective agreements for 2016 and 2017 (Kamu Görevlilerinin Genline ve Hizmet Kollarına Yönelik Mali ve Sosyal Haklara İlişkin 2016 and 2017 Yıllarını Kapsayan). 3ç Dönem Toplu Sözleşme, Article 36, signed by Ali Yalçın, President of Memur-Sen, acting as head of the Board of the Unions of Civil Service Employees.

<sup>59</sup> Prime Ministry Circular No. 2004/7 on Respecting the Principle of Equality in Personnel Recruitment.

<sup>60</sup> SPA: 172 038 women out of 577 977 civil servants for categories I and II in 2015. For 2014 there were 169 540 women out of 561 518 civil servants in categories I and II (according to the new methodology of collecting data).

<sup>61</sup> SPA: 76 women out of 986 senior civil servants for categories I and II in 2015. For 2014 there were 69 women out of 903 senior civil servants in categories I and II (according to the new methodology of collecting data).

<sup>62</sup> For example, CSL No. 657/1965, Article 104f. It enables part-time work for women after finishing a period of maternity leave. There are also other options to facilitate combining professional activities with the care of children.

<sup>63</sup> Decision No. 811/2010 to Amend Regulations on the Conditions and the Examination Procedures for Disabled Persons to be Admitted into Employment in the Civil Service; CSL No. 657/1965, Articles 53 and 72; Additional Articles 3, 12, 13 and 14 of the Regulation on the Appointment of Civil Servants by way of Change of Work Place that entered into force when published in the Official Gazette No. 18088 of 25 June 1983.

<sup>64</sup> This possibility was introduced by Decree No. 643, Article 9, of 3 June 2011; amended Law No. 6495, Article 73, of 12 July 2013.

<sup>65</sup> A number of recruitment regulations stipulate this age limit: Law No. 6328 on the Ombudsman, Article 25; MoF, Regulation on Finance Experts, Official Gazette No. 28269, Maliye Bakanlığı Maliye Uzmanlığı Yönetmeliği, Article 5; Ministry of Interior, Position of Experts, Official Gazette No. 28688 of 25 June 2013, İçişleri Uzmanlığı Yönetmeliği, Article 7; Ministry of Family and Social Policies, Regulation on Family and Social Policies Experts, Official Gazette No. 28384 of 14 August 2012, Aile Ve Sosyal Politikalar Uzmanlığı Yönetmeliği, Article 7; and MoE, Regulation on Foreign Trade Experts, Official Gazette No. 28349 of 10 July 2012, Dış Ticaret Uzmanlığı Yönetmeliği, Article 6.

<sup>66</sup> Directive 2000/78/EC, European Union's Equal Treatment at Work, Articles 1 and 6; Judgement of the EU Court of Justice, for example Case C-416/13.

<sup>67</sup> DoCM No. 12647/1999.

<sup>68</sup> DoCM No. 12647/1999, Article 5.

<sup>69</sup> DoCM No. 12647/1999, Article 8.

<sup>70</sup> DoCM No. 12647/1999, Article 11.

<sup>71</sup> CSL, Article 76.

Termination of employment is possible during probation<sup>72</sup>, but otherwise dismissals may result from disciplinary sanctions (clearly regulated)<sup>73</sup>. Performance appraisal results or organisational restructuring cannot result in dismissal<sup>74</sup>, and dismissals do not occur in large numbers (only 60 in 2015<sup>75</sup>). A recently issued circular of the Prime Minister envisages that administrative proceedings (including disciplinary proceedings) will be started immediately against any public employees “co-operating with terror organisations or networks engaged in illegal activities under seemingly legal structures”<sup>76</sup>. This circular was criticised in the media<sup>77</sup>, but it is too early to assess its implementation.

Dismissal is regulated in the CSL as one of the consequences of disciplinary proceedings<sup>78</sup>. The civil servant has the right of defence<sup>79</sup>, and the right of appeal to the Administrative Court<sup>80</sup>. The reasons for dismissal, as laid down in the Law, are sometimes vague and allow for different interpretations<sup>81</sup>.

Court appeals related to recruitment and demotions are possible and are not regulated by the CSL, but by general legislation<sup>82</sup>.

Taking these factors into account, the value for the indicator related to the termination of employment is 3.

**The first phase of the external recruitment system for civil service positions is based on merit. The KPSS country-wide exams are the first filter (a kind of certification) allowing successful candidates to apply for entry-level positions in the civil service. Apart from this, all analysed institutions organise additional selection processes more tailored to their needs, which may be based on interviews and/or written tests. There is, however, a lack of detailed rules setting minimum standards for recruitment. The quality of selection processes differs across authorities and does not always fully ensure merit. The same is true of internal recruitments (promotions) for higher positions. The upper age limit for entry into the civil service is low and discriminates against older candidates.**

***Principle 4: Direct or indirect political influence on senior managerial positions in the public service is prevented.***

Access to senior positions, totalling 986 senior civil servants (categories I and II) in 2015 (0.17% of the civil service) and 857 in 2013, is not merit based. The appointment of high-ranking officials takes place without any type of competition. The senior positions encompass the heads of units – *daire başkanı* –

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<sup>72</sup> CSL No. 657/1965, Article 56.

<sup>73</sup> CSL No. 657/1965, Chapter VII.

<sup>74</sup> CSL No. 657/1965, Article 91.

<sup>75</sup> SPA.

<sup>76</sup> Circular of the Prime Minister No. 2016/4. The circular lists different modes of co-operation, including aiding or preventing struggle against those organisations, carrying out propaganda, etc.

<sup>77</sup> The circular triggered many critical comments from trade unions, political parties and the press. Some examples are available at:

<http://www.imctv.com.tr/hdp-basbakanlik-genelgesi-iptal-edilsin/>

<http://egitimsen.org.tr/keskten-ankara-saldirisi-ve-basbakanlik-genelgesi-aciklamasi/>

<http://www.aktifhaber.com/muhbire-tesvik-genelgesi-sendikalari-ayaga-kaldirdi-1306877h.htm>

<http://www.hurriyet.com.tr/657yi-kirma-genelgesi-40056876>

<sup>78</sup> CSL No. 657/1964, Article 125e.

<sup>79</sup> CSL No. 657/1964, Article 129.

<sup>80</sup> CSL No. 657/1964, Article 135.

<sup>81</sup> CSL No. 657/1964, Article 125e (j): engaging abroad in any action or behaviour which harms the prestige of the State or the dignity of their office.

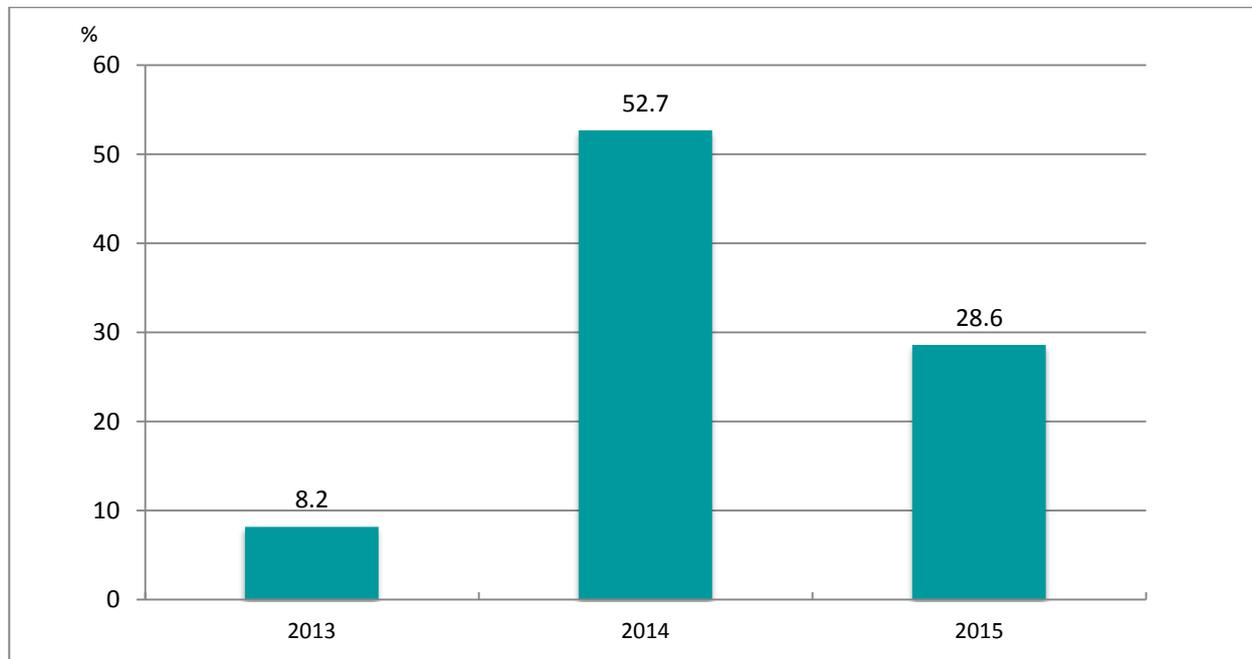
<sup>82</sup> Article 74 of the Constitution deals with the right of petition, right to information and appeal to the Ombudsperson; Article 125 of the Constitution regulates appeals to the court: “Recourse to judicial review shall be available against all actions and acts of administration”. More detailed procedures are in the Law No. 2575 on Council of State, the Law No. 2576 on Administrative Courts, and the Law No. 2577 on Judicial Processes of Administrative Courts.

and positions above, and the procedure of their recruitment is regulated by special legislation<sup>83</sup>. In addition, there are so-called exception positions, for which the CSL recruitment provisions do not apply<sup>84</sup>. There are specific qualification and seniority requirements for each grade, but it is up to the appointing authority whom to appoint from within or from another public authority (provided that the civil servant meets the requirements), without an open competition<sup>85</sup>.

There were some regulatory changes last year related to the supervision of appointment, transfer and acting positions. The Prime Minister centralised the process of appointing senior officials at the end of 2015<sup>86</sup>, and all appointments and transfers between institutions at the level of *daire başkanı* (head of unit) and above (many of which only required the approval of the minister) required, for a few months, the approval of the Prime Minister<sup>87</sup>. At the same time, the circular of the Prime Minister mandated the end of acting positions (temporary appointments) by February 2016<sup>88</sup>. In 2016, the Prime Minister<sup>89</sup> abolished all the provisions referred to in this paragraph and the appointing process resumed the same rules as in the past.

The stability of the senior civil service has decreased in the last two years. This is illustrated by the high turnover rate in high-level positions (52.7% in 2014 and 28.6% in 2015) compared with 2013 (8.2%).

**Table 1. Turnover of senior civil service positions**



Source: State Personnel Administration.

The provisions related to appeals, dismissals and demotions are the same as for the rest of the civil service.

Considering the factors analysed above, the value of the indicator related to political influence on the recruitment and dismissal of senior positions is 2.

<sup>83</sup> Law No. 2451/1981.

<sup>84</sup> CSL No. 657/1965, Article 59.

<sup>85</sup> CSL No. 657/1965, Article 68.

<sup>86</sup> Circular of the Prime Minister No. 2015/13.

<sup>87</sup> This excludes the exception positions of CSL No. 657/1965, Article 59, for whose appointment the signatures of the Prime Minister, the Minister and the President are required.

<sup>88</sup> SIGMA was not provided with data on the number of acting positions.

<sup>89</sup> Circular of the Prime Minister No. 2016/5.

**Access to top positions in the civil service is not merit based, and appointments are not subject to any kind of competition. There have been no significant changes to the recruitment and dismissal of senior civil servants since the last assessment. The turnover rate for senior positions is high.**

**Key recommendations**

**Short-term (1-2 years)**

- 1) The Government should prepare legislation prohibiting all types of automatic conversion to civil service positions that do not ensure merit.
- 2) The Government should prepare changes to the legislation to introduce merit-based, competitive recruitment for the senior managerial positions of the civil service.
- 3) The SPA should review the draft procedures for category A recruitment within all authorities, not only from the legal perspective, but also to promote solutions aimed at increasing application of the merit principle and eliminating any sort of discrimination. As a rule, written testing (before interviews) should be used.
- 4) The Ombudsman should monitor implementation of the Prime Minister's Circular No. 4/2016 to ensure that it does not lead to unjustified dismissals.

**Medium-term (3-5 years)**

- 5) The SPA should review the existing procedures in authorities related to category A recruitment to ensure that a similar level of merit-based selection is ensured and to eliminate any age-related provisions which hamper equal access to civil service.



## **PUBLIC FINANCIAL MANAGEMENT - PUBLIC PROCUREMENT**

### **1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015-APRIL 2016**

#### **1.1. State of play**

The legislative framework<sup>90</sup> covers classic public procurement. Purchases in the utilities sector remain in large part outside the scope of the Public Procurement Law (PPL) because of the high threshold for services and supplies. The procedures applied to defence procurement are not covered by the PPL, but are regulated in separate regulations or internal rules adopted by institutions purchasing goods, services or works related to defence and security.

Since its adoption in 2002 the PPL has been changed several times, but not since April 2015, and some of the provisions of the European Union (EU) Directives have not been transposed. The main gaps in the legislative framework result from the sizable use of exclusions and domestic preferences, and the use of negative references. A comprehensive set of secondary legislation is in place, not only implementing the provisions of the Law, but also operational standards, standard formats for notices, tender documentation and models for general conditions of contracts.

In the institutional framework, the Public Procurement Agency (PPA) plays the leading role by combining the functions of a central public procurement administration and a review body, and by being responsible for secondary legislation initiatives.

In the field of public-private partnerships (PPPs) and concessions, the legal and institutional framework is highly fragmented.

#### **1.2. Main developments**

In the public procurement area no major developments took place.

Minor changes to secondary legislation were introduced and justified by practical needs.

Efforts were orientated towards the preparation of a new draft PPL in accordance with the National Action Plan for EU Accession Phase II<sup>91</sup>.

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<sup>90</sup> PPL No. 4734, Official Gazette No. 24648 of 22 January 2002.

<sup>91</sup> <http://www.ab.gov.tr/files/5%20Ekim/uepkitapcik2016-2019-EN.pdf>

## 2. ANALYSIS

This analysis covers two Principles for public procurement under one key requirement. It includes a short analysis of the indicators of the Principles and a systematic analysis of the legal and institutional framework. The assessment focuses on compliance of the primary and secondary legislation with the *EU acquis communautaire* and the implementation of adopted legislation. The other area analysed is the extent to which a policy framework for public procurement has been developed and implemented. The analysis also examines the scale of coverage by dedicated institutions of the central procurement functions, with special attention given to monitoring capacity.

**Key requirement<sup>92</sup>: Public procurement is regulated by duly enforced policies and procedures that reflect the principles of the Treaty on the functioning of the European Union and the European Union *acquis*, and are supported by suitably competent and adequately resourced institutions.**

### ***Indicator values***

The key requirement for harmonisation of public procurement regulations with the EU *acquis*, as well as the establishment of corresponding institutional structures and arrangements, is examined through six qualitative indicators. The first two describe the extent to which the legislation is complete and enforced, covering the eight main goals defined in Principle 10<sup>93</sup> and the openness of public procurement policy making and monitoring. The next two indicators assess the development and implementation of the policy framework, and the existence and performance of a dedicated institution for central procurement functions. The last two indicators cover the effective monitoring of the public procurement system and the extent to which information about its workings is readily available to all interested parties.

In 2015 the PPA, together with the Ministry of Finance (MoF), initiated work on a new draft of the PPL, with the aim of bringing full compliance with the *acquis* to the respective provisions. Public consultations are required by law; however, the dissemination of the draft among interested parties – especially outside the administrative sphere – was limited and there was no publication of the draft on the internet.

The institutional framework and capacity retained by the PPA and the MoF to perform the central procurement functions remains unchanged.

The Electronic Public Procurement Platform (EKAP) enables procuring entities to prepare and, to some extent, conduct the procedure using standard forms and guidelines.

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<sup>92</sup> SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, p. 96.

<sup>93</sup> *Ibid.*

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	Principle no.	Indicator	Baseline year	Baseline value	Assessment year	Indicator value
<b>Qualitative</b>	10	Extent to which public procurement legislation is complete and enforced.	2014	3	2015	3
	10	Nature and extent of public consultations during the process of developing regulations for public procurement and monitoring their use and appropriateness.	2014	2	2015	2
	11	Extent to which policy framework for public procurement is developed and implemented.	2014	4	2015	4
	11	Extent of coverage by dedicated institutions of the central procurement functions mentioned and of regulations defining their roles, responsibilities, working practices, staffing and resources.	2014	3	2015	3
	11	Comprehensiveness of systems for monitoring and reporting on public procurement proceedings and practices.	2014	4	2015	4
	11	Clarity, timeliness, comprehensiveness and accessibility of information available to contracting authorities and entities, economic operators and other stakeholders.	2014	3	2015	3

### **Analysis of Principles**

***Principle 10: Public procurement regulations (including public-private partnerships and concessions) are aligned with the acquis, include additional areas not covered by the acquis, are harmonised with corresponding regulations in other fields and are duly enforced.***

The legislative framework covering public procurement consists of the PPL<sup>94</sup>, which was adopted in 2002 and has been changed several times over the years<sup>95</sup>, the Public Procurement Contract Law<sup>96</sup> (PPCL) and a comprehensive set of secondary and tertiary legislation.

The PPL is broadly aligned with the EU Procurement Directives, covering procurement both above and below the respective Directives thresholds. In spite of this, there are substantial deviations from the EU framework, such as exclusions from the scope of the PPL, domestic preferences and some others that could hamper the competitiveness or efficiency of the public procurement process and discriminate against EU companies.

The scope of implementation of public procurement procedures is reduced by a notable number of exclusions of different importance and kinds. In 2015 the list of exclusions was extended by the additional exclusion for services and goods purchased by the General Directorate of the Turkish Radio-Television Agency from the Anadolu Agency Turkish Corporation related to programmes, news, production and broadcasts<sup>97</sup>.

Beside the exclusions dedicated to defined institutions for certain kinds of purchases (such as the one mentioned above), the PPL provides for general exceptions, which significantly limit transparency and establish different strands of legal remedies. From the point of view of the EU accession process, the exclusion of utilities and defence procurement must be noted. The purchases of goods and services of state economic enterprises carrying out activities in the energy, water, transportation and telecommunications sectors are made based on Article 3g, which excludes the purchases of goods and services used to produce goods or services related to their operational field or to cover needs related to their main operations, of a value up to TRY 8.1 million (~ EUR 2.5 million) – much above the threshold envisaged in the 2014 Directives<sup>98</sup>. These purchases are governed by the acts issued and implemented by contracting authorities<sup>99</sup>, each establishing different procedures, deadlines and ways of questioning the decisions of those contracting authorities.

Defence procurement is also excluded from the scope of the PPL. Article 3d states that “*goods, services and works procurement which are decided by the relevant ministry that these are related to the defence, security or intelligence or that these require to be treated confidentially, or procurements requiring special security measures during the performance of the contract pursuant to related legislation or those concern the cases in which the basic interest of the state’s security need to be protected*” should be purchased according to principles and procedures prepared by relevant institutions. Based on the above, 11 such regulations were adopted and published on the PPA’s website.

In 2015, expenditures made based on all exclusions listed in Article 3 accounted for TRY 11.9 billion (~ EUR 3.71 billion), of which 45.15% were based on Article 3g and 34.61% on Article 3b<sup>100</sup>. In 2014 the total was TRY 8.4 billion (~ EUR 2.6 billion), 58.74% based on Article 3g and 23.60% on Article 3b<sup>101</sup>.

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<sup>94</sup> Law No. 4734, Official Gazette No. 24648 of 22 January 2002.

<sup>95</sup> 27 laws adopted between 2002 and 2015 changed more than 100 provisions of the PPL.

<sup>96</sup> Law No. 4735, Official Gazette No. of 22 January 2002.

<sup>97</sup> Law No. 6637, Official Gazette No. 29319 of 7 April 2015.

<sup>98</sup> EUR 418 00 for goods and services.

<sup>99</sup> On the website of the PPA, more than 30 regulations based on Article 3g of the PPL have been published: [www.ihale.gov.tr](http://www.ihale.gov.tr).

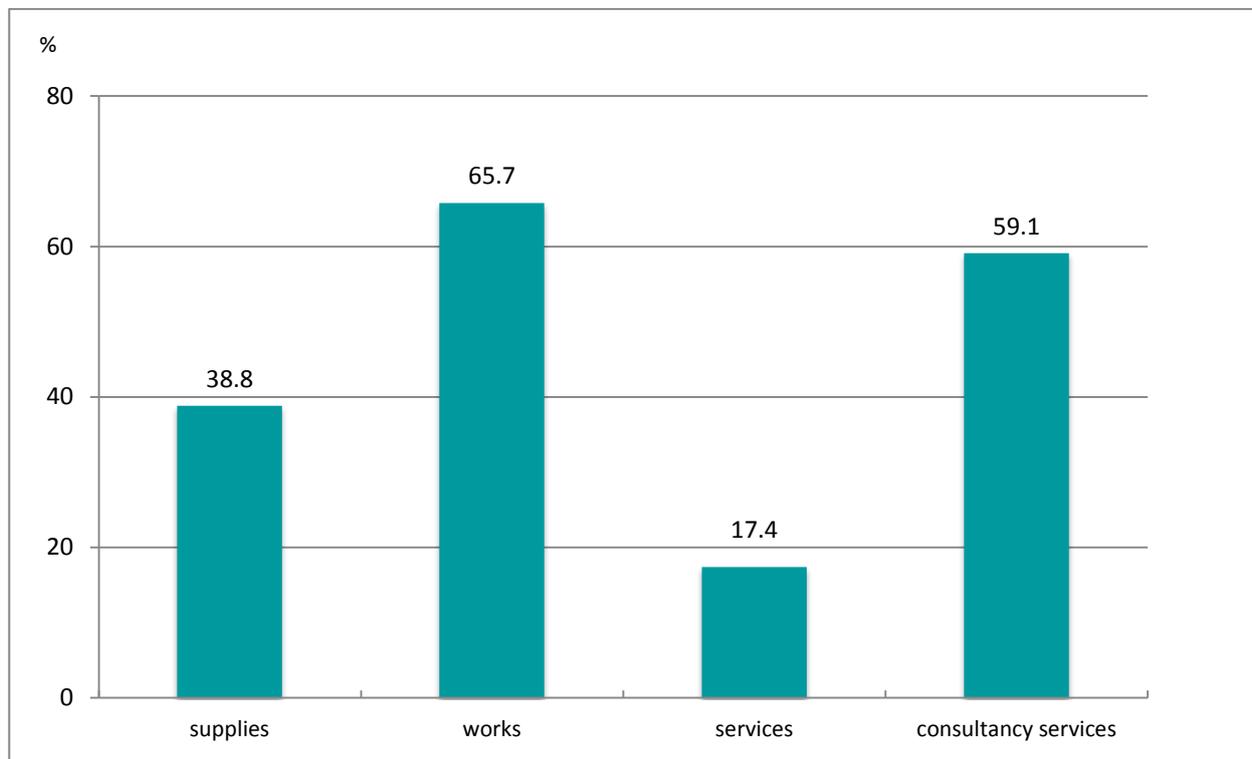
<sup>100</sup> Public Procurement Monitoring Report 2015, p. 6, [www.ihale.gov.tr](http://www.ihale.gov.tr).

<sup>101</sup> Public Procurement Monitoring Report 2014, p. 6, [www.ihale.gov.tr](http://www.ihale.gov.tr).

The other exclusions were introduced on an *ad hoc* basis, the explanation being a need for more flexibility in certain projects. The tendency is visible also in monetary terms: the reported amount of expenditures based on exclusions envisaged by Article 3 of the PPL in 2005 reached TRY 3.3 billion, while in 2015 it was TRY 11.9 billion. The other exclusions provided in laws<sup>102</sup> relating to other sectors are not reported.

The facultative domestic preferences can be applied in procurement below the national thresholds<sup>103</sup>. A price advantage of up to 15% can be provided in favour of domestic bidders in services and works, and to bidders offering domestic products in goods procedures. The compulsory domestic preferences are applied in goods procedures for medium- and high-technology products up to 15%<sup>104</sup>. In 2015 the Ministry of Science, Industry and Technology adopted a list of such products, which was integrated into the EKAP.

**Figure 1. Share of contracts above thresholds, in which the tender documents stipulate a price advantage to domestic tenderers/goods**



Source: Public Procurement Monitoring Report 2015.

The PPL does not fully implement EU Remedies Directive No. 89/665. The main gaps are a lack of provisions for contract ineffectiveness, and limited eligibility to lodge claims against the pre-qualification or tender documents of those potential tenderers who purchased the documentation.

An absence of activities for reviewing policies and practices in public procurement conducted outside the scope of the PPL, including in defence and security procurement, as well as no attempt to eliminate

<sup>102</sup> For example, Law No. 6111 published on 25 February 2011 excluded the purchase of consultancy services for PPP projects, the explanation being that it would facilitate practices so as to prepare better quality documents in less time.

<sup>103</sup> Thresholds announced in 2015: goods and services purchased by contracting authorities operating under general budget, TRY 923 721 (~EUR 286 233); goods and services purchased by other contracting authorities, TRY 1.5 million (~EUR 477 056); works, TRY 33 million (~EUR 10 million). These thresholds are significantly higher than those implemented by EU Directives (published in Official Gazette No. 29251 of 29 January 2015). For EU Directives thresholds see [http://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds/index\\_en.htm](http://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds/index_en.htm)

<sup>104</sup> PPL, Article 63.

discriminatory practices such as domestic preferences and off-set requirements, leads to a value of 3 for the indicator on the extent to which public procurement legislation is complete and enforced.

From the end-user point of view, the secondary and tertiary legislation plays an important role in the public procurement system. A set of seven important implementing regulations<sup>105</sup> is in place to regulate the process in greater detail than the PPL provisions allow for, and to provide for compulsory standard forms. The amendments to the regulations follow the changes in the PPL as well as the introduction of new solutions based on practical needs. The contracting authority is also obliged to follow the provisions of tertiary legislation – *communiqués* – prepared and published by the PPA, of which the General Communiqué<sup>106</sup> is of greatest importance. The contracting authorities, conducting a procedure, have to follow the detailed rules implementing the legislation adopted by the PPA. As the provisions are very detailed and comprehensive<sup>107</sup>, change frequently (e.g. since its adoption in 2005 the General Communiqué has been changed more than 30 times), and put the emphasis on formal aspects of procurement<sup>108</sup>, the efficiency of this complicated system is brought into question.

The introduction of the EKAP in 2010 and its development in subsequent years has moved the public procurement system towards the solutions envisaged in the 2014 EU legislative package. The system enables obligatory e-noticing and e-tender documentation, and to some extent registers the contracting authorities' activities<sup>109</sup>. The provisions of the PPL concerning the e-submission of tenders are in place<sup>110</sup>, but in practice the solution has been used only in selected areas. Not all the advantages of e-procurement are available to each and every economic operator: to take part in the procedure it is necessary to buy the tender documentation. Uploading the e-documentation using an e-signature replaces the obligation to purchase the hard copy of tender documentation from the contracting authority. This opportunity, however, is accessible only to economic operators registered in EKAP, and only economic operators registered in Turkey are eligible for e-signature usage. Foreign companies have to pay a fee for a hard copy to take part in a tender, even if they create a joint venture with a Turkish company.

The PPCL regulates the principles and procedures for preparation and execution of public contracts, including the contract amendments. Article 15 allows for a change of location or duration of work, while Article 16 permits assignment of a contract to a third party with the permission of the contracting officer in case of compulsory situations. Article 24 anticipates the granting of additional works due to unforeseen reasons. The regulations are not fully aligned with the provisions of the 2014 EU Directives regulating amendments to the contracts.

PPP projects in Turkey play an important role. Between 1987 and 2015, 198 contracts implementing PPP projects were signed, for a total amount of USD 115 billion<sup>111</sup>. An increase in the number and value

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<sup>105</sup> Five regulations were published in the Official Gazette No. 27159 of 4 March 2009, as amended: Implementing Regulation on Procurement of Goods; Implementing Regulation on Procurement of Services; Implementing Regulation on Procurement of Works; Implementing Regulation on Framework Agreements; Implementing Regulation on Consultancy Services. Two regulations were published as follows: E-procurement Implementing Regulation, Official Gazette No. 27857 of 25 February 2011 as amended; Regulation on Applications Against Procurement Proceedings, Official Gazette No. 27099 of 3 January 2009 as amended.

<sup>106</sup> Official Gazette No. 25886 of 25 July 2005 and amendments.

<sup>107</sup> The comprehensiveness of the regulations is illustrated by the volumes of acts the contracting authority needs to read, know and implement when conducting a procedure to purchase goods. The PPL has 70 Articles on 50 pages, while implementing regulations for goods only comprises 71 Articles on 50 pages and 7 attachments; the General Communiqué is 100 Articles on 120 pages and 1 attachment.

<sup>108</sup> The regulations focus on formal aspects such as the form of documents proving the contractor's eligibility to take part in the procedure, e.g. stating that only documents certified by a notary or other relevant administrative body could be presented by economic operators, providing for detailed rules on joint ventures and consortiums, with the exception of present experience gained as sub-contractor, etc.

<sup>109</sup> Article 4 of the E-procurement Implementing Regulation lists the actions that should be performed on EKAP.

<sup>110</sup> E-procurement Implementing Regulation, Chapter 6.

<sup>111</sup> Developments in PPP Practices in Turkey and Around the World, General Directorate of Investment Programming, Monitoring and Evaluation, 2015, [www.mod.gov.tr](http://www.mod.gov.tr).

of projects was observed between 2012 and 2015. Despite this scale and increase, there have been no major changes to the legislation. The legislative framework lacks an integrated and harmonised approach: a large number of laws and regulations<sup>112</sup> cover different sectors (energy, roads, ports, airports, health, etc.) and implement different PPP models.

Model	Number of projects	Share
Build-operate-transfer	98	49%
Transfer of operation rights	78	39%
Build-operate	5	3%
Build-lease-transfer	17	9%

Source: Public-private Partnership Practices in Turkey and around the World, General Directorate of Investment Programming, Monitoring and Evaluation, 2015, [www.mod.gov.tr](http://www.mod.gov.tr).

The ongoing fragmented legal framework in the PPP and concessions area results in a value of 3 for the indicator covering the extent to which public procurement legislation is complete and enforced.

The preparations for a new PPL were begun in 2015 and the fully developed draft was finalised in March 2016. The PPA and the MoF have therefore initiated the process of public consultations among interested stakeholders<sup>113</sup>. The draft was presented only to invited entities, and was not published on the Internet or through other media. The scope of public consultations has not been sufficient, especially as far as economic operators are concerned. Since formal consultations are held only with selected participants and no special activities aimed at consultations for laws in force are undertaken, the indicator covering the nature and extent of public consultations remains at 2.

**The legal framework for public procurement is detailed, although the principles of transparency and competitiveness suffer because of numerous exclusions and other solutions not in full conformity with EU Directives. PPP projects are prepared and implemented on a significant scale, based on a fragmented and divergent legal framework.**

***Principle 11: There is a central institutional and administrative capacity to develop, implement and monitor procurement policy effectively and efficiently.***

Turkey does not have a specific public procurement strategy; existing strategic documents focus on different goals. The National Action Plan for EU Accession Phase II, presented by the Ministry for EU Affairs in November 2014, describes in general terms the legislative efforts that should be taken to harmonise the PPL with EU Directives. According to the Plan, all activities should be taken by the MoF and the PPA in the second half of 2016. At the same time, the 10th Development Plan for 2014-2018, approved by the Turkish Grand National Assembly (TGNA), envisages public procurement as a tool to encourage innovation, domestic production, environmental awareness, transfer of technology,

<sup>112</sup> Law No. 3996 is the basis law for build-operate-transfer implementations in Turkey. Law No. 3096 was the first law to allow private sector involvement in the electricity sector. Law No. 3465 has removed the monopoly of the General Directorate of State Highways for highway construction, maintenance and operation. Law No. 4283 regulates the build-operate model in the electricity generation sector. The transfer of operational rights is regulated by Laws No. 4046, 5335, 3465 and 3096. The long-term rent model is implemented by Law No. 5335 and Privatisation Law No. 4046. Law No. 5335 authorises the State Airports Authority to completely or partially transfer its airports to the private sector through long-term leasing or transfer of operation rights methods. Law No. 6428 enables private-sector participation in health campuses and city hospitals through build-ease-transfer agreements. Law No. 351 regulates the same model for dormitories and student housing.

<sup>113</sup> The PPA and the Ministry of Development (MoD) are obliged to obtain opinions from the administration and must also benefit from the opinions of civil society, universities and professional organisations according to the Regulation on Procedures and Principles of Legislation drafting, Official Gazette No. 26083 of 7 February 2006.

innovative entrepreneurship, and support for small and medium-sized enterprises. The stress put on the development of public procurement policies that encourage the use of domestic products is to some extent contrary to the aim of harmonisation with the *acquis* as set out in the first strategic document. The changes implemented to the PPL in 2014 were in line with the 10th Development Plan.

The 10th Development Plan also recognises the need to adapt a consistent approach to PPP projects. With regard to investment policy, it states that a strategy paper will be prepared and that changes to the framework law will be proposed to gather together the scattered pieces of PPP legislation. The need for implementation of an effective monitoring and evaluation system was also expressed<sup>114</sup>. Monitoring and evaluation of PPP projects and the PPP Framework Law are included as actions in the Rationalization of Public Expenditures Priority Transformation Program (PTP), which is an annex of the 10th Development Plan. Both actions have a time frame and responsible institutions are stated.

All the main central public procurement functions are performed by two institutions: the MoF and the PPA. In 2010 the Public Procurement Co-ordination Unit was established within the Directorate of Budget and Fiscal Control of the MoF. This unit is responsible for the determination of key policies regarding public procurement within the context of general economic policy and strategies. It also ensures co-ordination among the parties preparing draft laws in this area, as well as activities regarding Chapter 5 in the context of harmonisation with the *acquis*, among other responsibilities<sup>115</sup>.

The strong position of the PPA is based on legal and factual grounds. In legal terms, the PPA is a body linked to the MoF, but independent in fulfilment of its duties<sup>116</sup>. The PPA has been well provided for in resources, and its staff increased last year from 325 to 345. This good staffing and resource situation arises partially from the way the PPA is financed – it has its own sources of revenue<sup>117</sup>: fees collected from contracting authorities for obligatory publications on EKAP<sup>118</sup>, sums collected from economic operators signing public procurement contracts of significant value<sup>119</sup>, and appeal submission fees in remedy procedures<sup>120</sup>, among others. In 2014 the surplus revenue of TRY 55.8 million (~ EUR 17.3 million) was transferred to the general budget.

Despite the fact that Article 53 of the PPL, when defining the duties of the PPA, does not explicitly mention the preparation of changes in the primary legislation (as it is according to the allocation of duties in the competences of the MoF), in 2015 the PPA was performing the main role in preparing the new draft PPL. According to the PPL, the PPA is responsible for the preparation of secondary and tertiary legislation implementing the PPL provisions. The MoF presents non-binding opinions to the PPA on the drafts of the most important secondary regulations. The other duties performed by the PPA are monitoring and oversight, advisory and operational support, publication of information, professionalisation, and capacity building. The competences of international co-operation, including the negotiation process with the EU, are divided between the two main institutions.

The PPA runs the EKAP, which provides for e-noticing, preparation of tender documentation according to standard forms implemented by regulation, publication of regulations, and some other functions. EKAP does not offer the electronic submission of tenders, except in a small number of cases. The Department of Electronic Procurement has a staff of 112 which manages to ensure the smooth functioning of the electronic system. Comprehensive guidance materials and tutorial videos are published on the website following changes in the legal framework or portal developments.

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<sup>114</sup> 10th Development Plan, Points 594 and 595.

<sup>115</sup> Circular of the General Directorate of Budget and Fiscal Control.

<sup>116</sup> PPL, Article 53.

<sup>117</sup> The revenue of the PPA in 2014 amounted to TRY 158 million (~ EUR 47 million).

<sup>118</sup> PPL, Article 53 (j) (4).

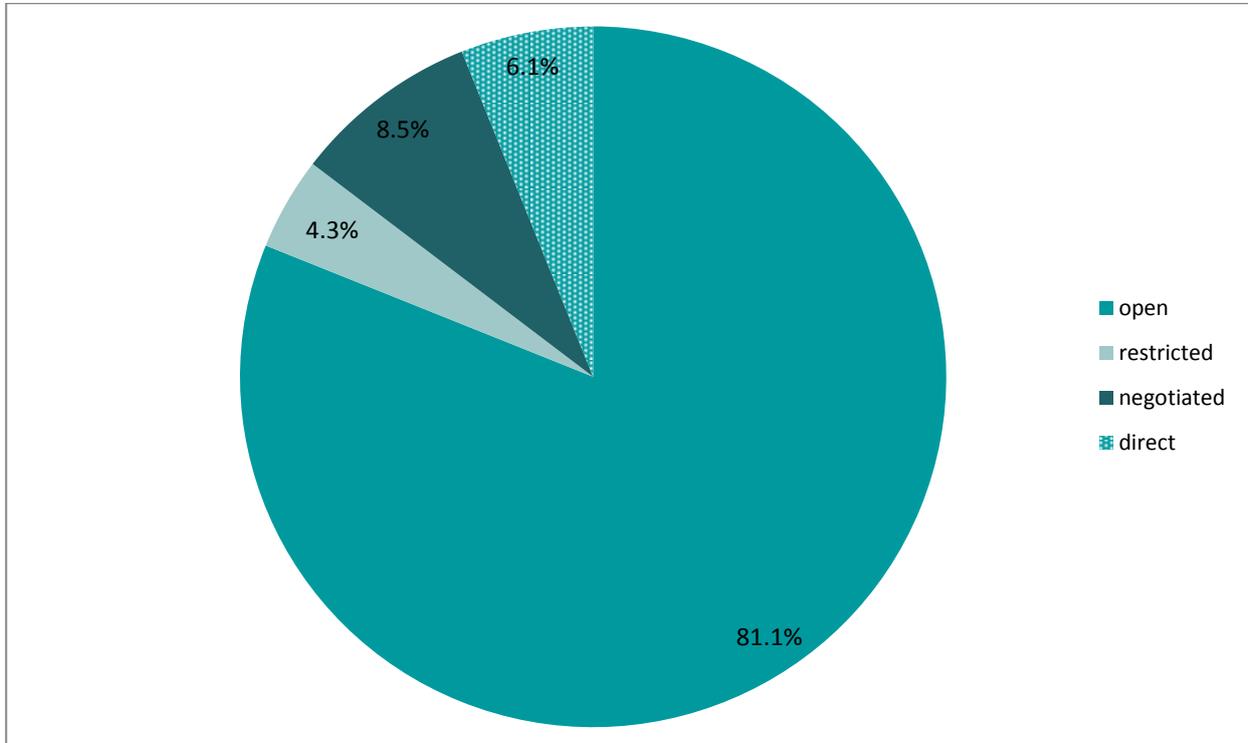
<sup>119</sup> PPL, Article 53 (j) (1).

<sup>120</sup> PPL, Article 53 (j) (2).

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The PPA possesses access to a large amount of data gathered on EKAP, as contracting entities are obliged to register the steps in the procedures and prepare reports on conducted procedures electronically. The gathered data make it possible to observe trends in the public procurement system and the market.

**Figure 2. Share of contracts awarded by type of procedure**



Source: Public Procurement Monitoring Report 2015.

The electronic gathering of data creates the opportunity for analysis and identification of the steps necessary for improvement of the system. The PPA does not take full advantage of the opportunities, limiting itself to preparation of semi-annual and annual reports. The PPA does not enable easy access to raw EKAP data for interested parties – the formal procedure for requesting public information has to be followed. In 2015, the PPA did not change its approach, resulting in a value of 3 for the indicator covering clarity, timeliness, comprehensiveness and accessibility of information available to contracting authorities and entities, economic operators and other stakeholders.

Besides the above-mentioned functions of a central regulatory body, the PPA is also responsible for the review of appeals. Any decision of a contracting authority can be appealed via the Public Procurement Board within the PPA. The Board consists of nine members (in 2015 there was one vacancy) appointed by the Council of Ministers upon the proposal of the MoF. The President of the Board also holds the position of the President of the Agency<sup>121</sup>. The Pre-review and Review Departments of the PPA<sup>122</sup> take part in the process of preparation for Board decisions on appeals. The organisational set-up of the Board as a review body and the Agency as the central regulation body raises the question of possible conflict of interest. In addition, the Public Procurement Board framework is not harmonised with requirements laid down for the review body in EU Directive No. 89/665.

According to the 10th Development Plan, the Ministry of Science, Industry and Technology is the institution responsible for implementation of the Program for Technology Development and Domestic Production through Public Procurement<sup>123</sup>. In February 2015 the Ministry adopted the Regulation

<sup>121</sup> PPL, Article 53.

<sup>122</sup> Organisational chart and report, [www.ihale.gov.tr](http://www.ihale.gov.tr).

<sup>123</sup> 10th Development Plan, p. 172.

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Determining the Principles and Procedures to be applied in the Purchase of Goods and Services Involving Industry Contribution and Off-set Implementation<sup>124</sup>.

The State Supply Office (SSO) carries out the central purchasing services for contracting authorities. The SSO is a state-owned economic enterprise authorised to buy products and services listed in the Main Status adopted by the High Planning Council<sup>125</sup> – information technology (IT) products, office supplies and vehicles, among other items. The SSO employs 1 010 people in the central office, seven regional offices, four contact points and a printing branch, and its total sales in 2015 accounted for more than TRY 3.5 billion (~ EUR 1 billion). The SSO concludes the majority of the purchasing contracts without application of public procurement procedures, based on internal regulations. The solution based on exclusion, expressed in Article 3g of the PPL, enables the SSO as a state economic enterprise to purchase services and supplies up to a value of TRY 7.7 billion (~ EUR 2.4 billion). This, combined with the exclusion envisaged in Article 3e authorising the contracting authorities to buy the supplies and services directly from the central purchasing body, leads to a deviation from the PPL.

The institutional structure in PPPs and concessions reflects the fragmentation of the legal framework. As there is no one integrated process of granting PPPs or concessions contracts, all the different institutions with varying competences are involved.

In build-operate-transfer projects and build-lease-transfer projects in the health sector, the Ministry of Development (MoD) is in charge of taking measures to ensure that the project stock is in harmony with the development plans, programmes and sectoral strategies, monitoring and evaluating projects and establishing co-operation among the parties. The MoD is also responsible for organisation of the work of the High Planning Council in the review and approval of PPPs after their initial preparation. The monitoring competences are limited to the gathering of statistical data on concluded contracts.

The MoF is in charge of ensuring that the financial liabilities of the public sector are in line with the central government budget by monitoring and evaluating the commitments made by public authorities within the scope of the central government. The Undersecretariat of Treasury is responsible for carrying out the necessary operations and transactions to assess the risks and how they are shared, by calculating the possible financial burden of the commitments made by contracting authorities. The institution gives opinions to prefeasibility studies presented to the High Planning Council and assesses the debt in case of partial or full assumption of payment by the Undersecretariat of Treasury<sup>126</sup>.

Implementing agencies must apply to the High Planning Council for authorisation of a PPP operation by submitting a report that analyses the technical, financial, economic, environmental, social and legal feasibility of a project, and uses comparative economic and financial analyses to justify the use of a PPP rather than a conventional method. The High Planning Council is not involved in assessment of all projects; for example, in build-lease-transfer projects in education and projects realised in the ‘transfer of operating rights’ model, no authorisation is obligatory.

The system lacks the appointment of institutions to supervise contract execution and revision.

There is no single place where the legislation, guidelines, data or other materials for the preparation of PPP and concessions projects are available for interested parties. Basic statistical data on concluded PPP contracts is available in a report prepared and published by the MoD<sup>127</sup>. However, this data does not exhaustively cover the PPP operations in the country.

In 2015 no steps were taken to clarify the allocation of tasks among institutions in the field of PPPs or to strengthen the capacity of the MoD to manage PPP strategy development and the implementation process. The lack of a clear, comprehensive overview of public procurement policy implementation

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<sup>124</sup> Official Gazette No. 29268.

<sup>125</sup> Main Status of the SSO.

<sup>126</sup> Procedures and principles are described in the Regulation Regarding Debt Assumption to be Realised by the Undersecretariat of Treasury adopted in April 2014, Official Gazette No. 28977.

<sup>127</sup> “Developments in PPP practices in Turkey and around the world”, 2015, [www.mod.gov.tr](http://www.mod.gov.tr)

means that the indicator for the extent of coverage by dedicated institutions of the central procurement functions mentioned, and for regulations defining their roles, responsibilities, working practices, staffing and resources remains at a value of 3.

**The institutional set-up of the public procurement system is well defined. The PPA is a well-established institution performing a crucial role for management of the system at the state level. However, there is a need for a more open approach in the consultation process and access to gathered data. In the PPP and concessions area, the dispersion of functions hinders the performance of the institutions involved.**

### **Key recommendations**

#### **Short-term (1-2 years)**

- 1) The Government should take measures to regulate and monitor all public procurement in conformity with the EU *acquis*. The Government should review policies and practices in all public procurement conducted outside the scope of the PPL, and propose measures to bring them under the PPL or to otherwise ensure their conformity with the EU *acquis*.
- 2) The Government should take measures to eliminate discriminatory practices, especially domestic preferences and off-set requirements.
- 3) The PPA and the MoF should accelerate the public consultation process of legal drafts, invite opinions from every interested entity, and use electronic tools, such as their publication on the website.
- 4) The PPA should facilitate wider access to its procurement database, so that all interested parties can carry out their own analyses and thereby contribute to the development of the public procurement system.
- 5) The Government should strengthen the capacity of the MoD to manage PPP strategy development and the implementation process, as well as perform monitoring activities.

#### **Medium-term (3-5 years)**

- 6) The authorities in charge of defence and security should ensure the harmonisation of their procurement rules with both the PPL and the EU Defence Directive 2009/81, to align with the EU *acquis*.
- 7) The Government should establish an independent procurement review body and divide the functions allocated within the PPA between the fully independent review body and the central procurement institution.

The Government should ensure the sustainability of a future coherent, single framework for PPPs and concessions, enabling it to fully serve its purpose.

## **PUBLIC FINANCIAL MANAGEMENT - EXTERNAL AUDIT**

### **1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015-APRIL 2016**

#### **1.1. State of play**

The independence, mandate and organisation of the Turkish Court of Accounts (TCA) are established in the Constitution and the TCA Law. The TCA has sufficient capacities and provides substantial resources for training, and has a strategic development plan with a detailed action plan in place. Following a decision of the Constitutional Court<sup>128</sup> in April 2013, legal restrictions on the scope of the TCA's work were lifted, and the full range of TCA reports have been presented to the Turkish Grand National Assembly (TGNA). However, performance audit reports have continued to focus on performance indicators and not the audit of economy, efficiency and effectiveness.

The TGNA does not engage in full and comprehensive deliberation on the individual reports from the TCA. Only a small number of meetings were held with the TGNA and auditees to make stakeholders aware of the TCA's conclusions and recommendations, and to deal with the large number of issues and the broad range of institutions covered by the TCA in its audit reports.

#### **1.2. Main developments**

Subsequent to a Constitutional Court decision in 2014 to overturn provisions to amend Law No. 6085<sup>129</sup> and prevent the TCA from auditing enterprises that are less than 50% state owned, an omnibus law (Military Service Law and the Amendment of Some Laws – Law No. 6661) was passed in January 2016 which includes the provision that enterprises with less than 50% state ownership are to be audited by private sector auditors and the TCA is then required to prepare a report for the TGNA based upon the reports of those auditors. The TCA is still considering the implications of this law.

The TCA continued to submit a range of audit reports to the TGNA in 2015 and published them on its website. However, while the TCA has continued to publish a general report on its website covering the audits of state economic enterprises (SEEs), it decided to stop publishing the individual reports on the audits of SEEs due to concerns that the reports potentially contain commercially sensitive information.

During the past year, the TCA began maintaining data on recommendations made in audit reports. However, further work is being undertaken to develop effective systems to monitor the total number of recommendations accepted by auditees and the number implemented.

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<sup>128</sup> Constitutional Court Decision No. 2013/35 of 28 February 2013.

<sup>129</sup> TCA Law No. 6058.

## 2. ANALYSIS

This analysis covers two Principles for the external audit area under one key requirement. It includes a short analysis of the indicators of the Principles and a systematic analysis of the legal and operational framework of the Supreme Audit Institution (SAI) and the application of professional standards to deliver high-quality audits that have impact.

**Key requirement<sup>130</sup>: The constitutional and legal framework guarantees the independence, mandate and organisation of the Supreme Audit Institution to perform its mandate autonomously according to the standards applied for its audit work, allowing for high-quality audits that impact on public sector functioning.**

### **Indicator values**

The legal framework of the SAI is examined through two qualitative and two quantitative indicators that review the Constitution, the legislation governing the SAI, including internal rules and procedures, and other relevant documents. The functioning of the SAI is examined through one qualitative and three quantitative indicators that analyse the relevant documentation. All the data collected is supplemented by interviews.

The legal framework for external audit and all of the key functions are established. The increase in the value of the first qualitative indicator for Principle 15 reflects that in the three years up to and including the assessment year of 2015, the TCA had not been restricted in carrying out its audits. At the time of last year's baseline measurement this was not the case, as limitations had been placed on the scope of the TCA's work in 2012 through an amending law<sup>131</sup>. The TCA's management has arrangements in place to ensure the development of the institution, and it applies the relevant standards to ensure the quality of its work, although its performance audits continue to focus on performance indicators and not the audit of economy, efficiency and effectiveness. Deliberation by the TGNA on TCA reports is limited, undermining their potential impact.

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<sup>130</sup> SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, p. 105.

<sup>131</sup> Amending Law No. 6353.

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	Principle no.	Indicator	Baseline year	Baseline value	Assessment year	Indicator value
<b>Qualitative</b>	15	Extent to which the fundamental requirement for SAI independence, mandate and organisation is established and protected by the constitutional and legal framework.	2013	3	2015	4
	15	Extent to which SAI management ensures the development of the institution.	2013	4	2015	4
	16	Extent to which the SAI uses the standards to ensure quality of audit work.	2013	4	2015	4
<b>Quantitative</b>	15	Difference between approved budget and realised expenditure of the SAI.	2013	-14.3%	2015	-6.9%
	15	Amount of resources used for mandatory audits compared with resources for audits selected independently by the SAI.	2013	100%	2014	100%
	16	Proportion of audit reports published on the SAI website compared to total audit reports adopted.	2013	100%	2014 <sup>132</sup>	89.4%
	16	Share of audit recommendations accepted and implemented by auditees.	2013	Not available <sup>133</sup>	2014	Not available
	16	Share of timely audit reports.	2013	95.7%	2014	99.6%

<sup>132</sup> 2015 data not available.

<sup>133</sup> The TCA does not compile data on the share of audit recommendations accepted and implemented by auditees.

### **Analysis of Principles**

#### ***Principle 15: The independence, mandate and organisation of the Supreme Audit Institution are established and protected by the constitutional and legal framework and are respected in practice***

The Constitution<sup>134</sup> provides overall independence for the TCA. The TCA's operating costs are financed by a separate budget that it submits to the TGNA without intervention by the executive<sup>135</sup>. The total budget of the TCA for 2015 was TRY 186 million (~EUR 58 million in March 2016), of which 93.1% was spent during the year. The TCA underspent its approved budget by 15.9% in 2014 and 14.3% in 2013.

The audit mandate is exhaustive, and in 2014 the TCA included 1 330 public institutions within the scope of its audits, of which 482 were included in its audit programme for 2014<sup>136</sup>. The TCA publicly issued audit reports on 482 public entities in 2014, including 43 general budget administrations, 147 special budget administrations (including 106 universities), 9 regulatory and supervisory institutions, 267 provincial administrations, municipalities and associated administrations, 7 development agencies, the Social Security institution and the Turkish Labour Institution, and 7 other public administration organisations, including the Central Bank of the Republic of Turkey. Overall, in 2014 the TCA audited approximately 97.73%<sup>137</sup> of the total budget of TRY 480 billion (~EUR 150 billion in March 2016). The TCA is empowered to undertake the audit of European Union and other international funds<sup>138</sup>.

With respect to SEEs, the TCA submitted a general report in 2014 covering all entities audited, and 74 reports related to individual entities<sup>139</sup>. This number declined from 95 in 2013 as a result of privatisation, transfers, public offerings and legislative changes. While the TCA is only required to report on SEEs through a general report and is not legally obliged to report on individual SEEs in previous years, the individual SEE audit reports were all published on the TCA website, excepting those forbidden by disclosure laws<sup>140</sup>. For 2014, however, the TCA only published the general report on its website after it made the decision to stop publishing the individual audit reports. This change in practice by the TCA arose due to concerns about commercially sensitive information becoming public. While this does not undermine transparency *per se*, and the concerns about sensitivity should be taken into account, there are other solutions: for example, removing the sensitive material would allow for publication of the reports, enhancing the accountability and transparency of SEEs.

The TCA Law<sup>141</sup> empowers the TCA to undertake, among other things, regularity (financial and compliance) audits and performance audits (the three Es of "economy, efficiency and effectiveness", and the audit of performance indicators). Last year's assessment referred to the impact of a law enacted in 2012<sup>142</sup> which limited the scope of the TCA to undertake regularity and performance audits, and reaffirmed the priority of compliance audits. In April 2013, the Constitutional Court cancelled<sup>143</sup> the provisions of the amending law limiting the scope of the TCA's work. Therefore, the TCA continued conducting its audits in 2015 in accordance with the legal requirements pre-dating the changes brought about by the amending law, providing audit reports on public administration organisations which include regularity and performance audits.

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<sup>134</sup> Constitution, Articles 160, 164, 165 and 169.

<sup>135</sup> TCA Law No. 6085, Article 62.

<sup>136</sup> TCA statistics.

<sup>137</sup> TCA statistics.

<sup>138</sup> TCA Law No. 6058, Article 4.

<sup>139</sup> State Economic Enterprises Law No. 3346.

<sup>140</sup> TCA Accountability Report.

<sup>141</sup> TCA Law No. 6058, Articles 34-36.

<sup>142</sup> Amending Law No. 6353.

<sup>143</sup> Constitutional Court Decision No. 2013/35 of 28 February 2013.

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A further decision of the Constitutional Court in 2014<sup>144</sup> overturned the provisions of an amending law<sup>145</sup> to prohibit the TCA from auditing SEEs that are less than 50% state-owned. Subsequently, in 2016, the TGNA enacted an omnibus law<sup>146</sup> which requires that SEEs less than 50% state-owned be audited by private sector auditors, with the TCA then required to prepare a report for the TGNA based upon the reports of the private sector auditors. The TCA is considering the implications of this law on its activities.

Since 2010, the Law on the Establishment and Rules of Procedure of the Constitutional Court enables the TCA to perform financial audits on political parties, with the Constitutional Court having the right for a ruling on the results of the TCA audits. The audit is performed on the final accounts of the political parties, and in 2014 the Constitutional Court forwarded the final accounts (for 2013) of 79 political parties for examination. The TCA submitted 111 reports to the Constitutional Court in 2014 relating to the first and main examinations of parties for the years 2010 to 2013. The TCA submitted a separate report<sup>147</sup> to the Supreme Election Council on the accounts of the candidates for the presidential election.

The TCA chief prosecutor is responsible for ensuring that “public loss” and legality issues raised by TCA audit groups are formally considered within the TCA. Judicial reports prepared by the TCA chambers are not submitted to the TGNA and are not made public. In 2014, 1 107 judicial reports were transferred to TCA chambers on audits relating to 2013 and previous years<sup>148</sup>. In 2014, 709 writs were passed and 398 deferred to 2015. TRY 95.5 million (~EUR 29.9 million) was collected before the trials, and decisions were made for recovery after the trials for TRY 94.7 million (~EUR 29.6 million). The TCA sent 17 matters to the relevant public entities or prosecution offices for the necessary actions to be taken regarding criminal acts.

The TCA submits to the TGNA all audit reports required by its mandate. Annually, this includes: the External Audit General Evaluation Report<sup>149</sup>, which consolidates the results of regularity and performance audits of public administration organisations; the Statement of General Conformity<sup>150</sup>, which reports on the implementation of the central government budget law, comparing the results with the accounts of public administration organisations; the Accountability General Evaluation Report<sup>151</sup>, which reports the TCA’s evaluation of the accountability reports prepared by public administration organisations, the Ministry of Interior on local government and the Ministry of Finance (MoF); the TCA’s evaluation of the annual financial statistics<sup>152</sup> published by the MoF; and reports on the audits of SEEs.

The TCA may also submit the results of external audits to the TGNA as separate reports prepared with respect to administrations or topics. Furthermore, it is empowered to submit to the TGNA reports other than those stipulated in the TCA law, prepared as a result of audits and examinations<sup>153</sup>.

The TCA has a strategic plan for the period 2014-2018<sup>154</sup>, which includes an extensive situational analysis, performance indicators, and monitoring and evaluation processes. In 2014, the TCA also adopted a strategic human resource management (HRM) plan for 2015-2018<sup>155</sup>. Neither plan was

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<sup>144</sup> Constitutional Court Decision No. 2014/184 of 4 December 2014.

<sup>145</sup> Amending Law No. 6495, 12 July 2013.

<sup>146</sup> Military Service Law and the Amendment of Some Laws No. 6661 of 27 January 2016.

<sup>147</sup> TCA Accountability Report, p. 30.

<sup>148</sup> TCA Accountability Report, pp. 30-32.

<sup>149</sup> TCA Law No. 6058, Article 38.

<sup>150</sup> TCA Law No. 6058, Article 41.

<sup>151</sup> TCA Law No. 6058, Article 39.

<sup>152</sup> TCA Law No. 6058, Article 40.

<sup>153</sup> TCA Law No. 6058, Article 42.

<sup>154</sup> [TCA Strategic Plan 2014-2018](#)

<sup>155</sup> TCA Strategic Human Resources Management Plan, April 2015.

based on an external peer review of the organisation, but progress is monitored and reported to senior management. Information on progress made in implementing the strategic objectives is included in the TCA's annual Accountability Report, which is provided to the TGNA and published on the TCA website.

At the end of 2015, the number of personnel working at the TCA was 1 580, including the President, 2 deputy presidents, 8 chairs of chambers, 46 members of the chambers, a chief prosecutor and 9 prosecutors, 922 auditors and 591 support staff<sup>156</sup>. There is a continuing recruitment process, and audit staff are appointed by the TCA President after passing a competitive, two-stage, externally provided examination and following an interview by a TCA commission<sup>157</sup> comprised of six members and chaired by the President or an assigned chairman of a chamber.

Each year the TCA training unit undertakes a training needs analysis and a training plan<sup>158</sup> is prepared. The average number of days' training undertaken by audit staff has reduced from ten to three. This is not due to budget constraints but is a result of a TCA management decision that training should be more focussed on individual training needs and mainly delivered in a classroom setting rather than through large-scale conferences.

Based on the above findings, the value for the indicator covering the extent to which the fundamental requirement for SAI independence, mandate and organisation is established and protected by the constitutional and legal framework is 4. The value for the indicator covering the extent to which the SAI management ensures the development of the institution is also 4.

**The independence, mandate and organisation of the TCA are established and protected by the Constitution and the legal framework. The TCA has a significant number of public institutions within its audit mandate. Although not all are audited every year, this applies only to very small institutions and in 2014 nearly 97% of the total budget was audited. The TCA continued to submit, and publish, a range of audit reports to the TGNA which provide comprehensive coverage of its audit mandate, although it decided not to publish the audit reports for individual SEEs due to concerns that they contain commercially sensitive information. There is a level of uncertainty regarding the impact of enactment of an omnibus law<sup>159</sup> on the audit of SEEs which have less than 50% state ownership.**

*Principle 16: The Supreme Audit Institution applies standards in a neutral and objective manner to ensure high quality audits, which positively impact on the functioning of the public sector.*

The TCA Law No. 6085 was enacted in December 2010, some seven years after the Public Financial Management and Control (PFMC) Law No. 5018, which had initiated major PFMC reforms in public administration organisations. The TCA is required<sup>160</sup> to undertake audits in accordance with generally accepted international auditing standards.

In 2014, the TCA adopted manuals covering regularity audits, the evaluation of accountability reports, the evaluation of statistics, and performance audits. The audits carried out by audit groups include system assessments, risk assessments and the sampling of transactions, using appropriate information technology (IT) support. The TCA has access to all institutions within its mandate and may examine all information it considers necessary<sup>161</sup>. However, performance audits continue to focus on performance indicators and not the audit of economy, efficiency and effectiveness.

The TCA has indicated that it intends to recommence audits of economy, efficiency and effectiveness and to participate in the Parallel Performance Audit project for the Network of SAIs of EU Candidate and Potential Candidate Countries supported by the Swedish National Audit Office.

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<sup>156</sup> TCA statistics.

<sup>157</sup> TCA Law No. 6058, Article 17.

<sup>158</sup> TCA Training Plan, 2015.

<sup>159</sup> Military Service Law No. 6661 of 27 January 2016.

<sup>160</sup> TCA Law No. 6058, Article 35.

<sup>161</sup> TCA Law, Articles 6 and 9.

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The TCA issued 47 “disclaimer” audit opinions<sup>162</sup> on the 2012 financial statements of central budget institutions as they did not provide their own financial statements for audit. Within the framework of the Regulation on the Procedures and Principles related to the Submission of Accounts of Public Administrations, an amendment was agreed and published in the Official Gazette No. 28845 on 8 December 2013 granting central budget institutions three years to submit individual financial statements to the TCA for audit. As a result, the TCA did not provide audit opinions for 43 public administration organisations in 2014. Progress is being made by the public administration organisations and the MoF, and these institutions will send their 2015 financial statements to the TCA for audit in 2016<sup>163</sup>, which is one year earlier than required under the amendment.

The TCA has developed a manual on quality control, and quality control is exercised throughout the audit process by audit teams, although the TCA has not had the capacity to undertake independent quality control reviews (hot and cold reviews) of audits as required by auditing standards, and therefore to identify areas of improvement in the conduct of audits. However, before they are issued, the quality of all audit reports, including the appropriateness of the findings and opinions expressed, are assessed by the TCA’s Report Evaluation Board<sup>164</sup>.

The TCA’s Audit Planning and Co-ordination Board<sup>165</sup> oversees medium-term planning and the annual work plan. It also monitors and co-ordinates the implementation of audit plans and work programmes, and the delivery of the work plan is reported in the TCA’s Accountability Report. The TCA adopted 99.6% of the audit reports that it had planned for 2014<sup>166</sup>, an improvement over 95.7% in 2013.

The reports of the TCA are considered by the TGNA’s Planning and Budget Committee, except for reports on SEEs which are considered by the State Enterprises Committee. The Planning and Budget Committee considers reports of the TCA during its deliberations on the final account bill and the budget bill for the following year, but does not engage in a full and comprehensive deliberation on the individual reports from the TCA, because of having limited time in accordance with the constitution. Also, while it approves the draft law on final accounts and the draft state budget for the following year, which provides an element of political discharge, no procedure exists for formal discharge of the executive by the TGNA in respect of the financial results of the public administration organisations.

The TCA’s reports on SEEs are examined and discussed by the State Enterprises Committee in accordance with long-standing hearing procedures. The State Enterprises Committee submits a report to the Speaker of the TGNA, in which the Committee records the outcome of its deliberations, providing details of those reports subject to discharge and those made subject to the general debate procedure. All of the reports related to the SEEs that were scrutinised and made subject to approval and general debate have been published, in accordance with Article 7 of Law No. 3346, and distributed to the members of the TGNA.

The TCA reports are prepared in line with auditing standards, although some public administration organisations and the TGNA<sup>167</sup> noted that the audit reports present information in a technical manner that does not always enable users of the reports to decide what remedial action and decisions are required. In line with the recommendation from SIGMA’s 2015 Baseline Measurement Report, the TCA conducted a limited number of awareness raising meetings with stakeholders. During 2014, the TCA held one meeting with the Planning and Budget Committee and four meetings with senior management of audited entities to raise stakeholder awareness on a range of issues, conclusions and recommendations covered by the TCA audit reports. The TCA also held two meetings with the press,

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<sup>162</sup> INTOSAI Auditing Standard ISSAI 100 states that a “disclaimed” audit opinion is used “where the auditor is unable to obtain sufficient and appropriate audit evidence due to an uncertainty or scope limitation which is both material and pervasive”.

<sup>163</sup> According to representatives of the TCA.

<sup>164</sup> TCA Law No. 6085, Article 28.

<sup>165</sup> TCA Law No. 6085, Article 31.

<sup>166</sup> TCA statistics.

<sup>167</sup> Recorded in SIGMA meetings with representatives of public administration organisations and with the TGNA.

relating to TCA reports, and three meetings with civil society organisations, and provided promotional literature to 20 entities<sup>168</sup>.

All audit teams in the TCA conduct follow-ups of the recommendations given in the audit reports of the previous year, and report as appropriate. With respect to the audits of SEEs, results of the previous year's audits are followed up by both auditors and the SEE Committee. Following the 2015 SIGMA Baseline Measurement Report, the TCA began maintaining data on audit recommendations made in audit reports. In 2014, the TCA made 5 704 recommendations<sup>169</sup> in all of its audit reports. It is undertaking technical preparations to identify the total number of recommendations accepted by auditees and the number implemented<sup>170</sup>; this will enable the TCA to measure the efficacy of its recommendations.

Based on the above findings, the value for the indicator covering the extent to which the SAI uses standards to ensure quality of work is 4.

**The TCA has continued to submit a range of audit reports to the TGNA which provide coverage of the audit mandate in a fair, factual and timely manner. The reports address the requirements of international auditing standards, with the exception of performance audit reports which continue to focus on performance indicators and not the audit of economy, efficiency and effectiveness. The TCA provided no opinions in respect to the 43 public administration organisations which did not submit financial statements to the TCA for audit. During the past year, the TCA began maintaining data on audit recommendations made in audit reports, but further work is being undertaken to develop effective monitoring systems. The TGNA does not engage in full and comprehensive deliberation of the reports from the TCA.**

### **Key recommendations**

#### **Short-term (1-2 years)**

The TCA should take steps to resolve the uncertainty arising from the enactment of Law No. 6661 on the audit of enterprises with investments of public funds of less than 50%.

- 1) The TCA should review the content of its reports on SEEs to ensure that they are ready to be published in the future, with commercially sensitive information removed.
- 2) In collaboration with the TCA, the MoF should ensure that the required actions for all public administration organisations to submit financial statements to the TCA for audit by the end of 2016 are taken.
- 3) The TCA should take steps to re-introduce audits of the economy, efficiency and effectiveness of public administration organisations, in addition to the current audits of performance indicators.
- 4) The TCA should implement the requirements of its manual on quality control, and commence independent quality control reviews of audits (hot and cold reviews) selected on a risk basis.
- 5) The TCA should develop an audit strategy to ensure that all accounts within its mandate are audited on a regular basis, and it should develop a methodology for statistical sampling.

#### **Medium-term (3-5 years)**

- 6) The TCA should make further efforts to raise stakeholder awareness and institutionalise the way the TGNA deals with audit reports and findings, to ensure that effective arrangements are established to deal with the broad range of issues and public administration organisations covered by TCA audit reports.

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<sup>168</sup> TCA Accountability Report 2014, p. 76.

<sup>169</sup> TCA statistics.

<sup>170</sup> TCA Accountability Report 2014, pp. 71 and 77.

For more information:

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