

LAW DRAFTING IN TURKEY

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INTRODUCTION

After starting the Accession Negotiation with the EU, Turkey has undertaken more actions toward reforming and modernising its public administration structures and the way they operate. One of the main areas of this reform and restructuring movement is the “law drafting process” as a tool to improve the transparency and accountability in public administration of Turkey.

Although there is no primary legislation on guiding law drafting, there have always been some secondary regulations such as by-laws or principles or circulars. However, these regulations sometimes are criticised due to weaknesses they have in providing transparency and lack of public consultation mechanisms. A new regulation came into force in 2006 to establish the new rules for drafting legislation in a more comprehensive way and introduced RIA.

BY-LAW

As a response to the critiques and in order to improve the law making mechanism, the new legislation which is called “ By-Law on the Procedures and Principles of Drafting Legislation” was published and came into force in 2006, except for the article 24 that is related with the Regulatory Impact Analysis(RIA). There are two types of by-laws in Turkey. One of them is published by line ministries, and other one is published by the Prime Ministry as decree of the Council of Ministers. The second one provides an effective compliance for implementation of By-Law. The purpose of By-Law is to regulate procedures and principles regarding drafting of laws, decree laws, regulations (tüzüks), by-laws, annexed decision of Cabinet decrees and other regulatory proceedings to be prepared by the Prime Ministry, ministries and their affiliated, related and associated public institutions and agencies.

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To obtain efficiency and effectiveness from legislations, some principles are determined in the By-Law. Below principles apply in preparation of drafts in Turkey;

- a) Drafts shall not be contrary to high norms of law
- b) Drafts shall be prepared in line with purposes of regulation
- c) Judicial decisions shall be taken into account in the preparation of drafts
- d) All of the legislation on regulated areas shall be reviewed during the preparation of drafts and, if necessary, due changes shall be made in current provisions or redundant provisions shall be repealed
- e) Framework drafts shall not include provisions which can not be integrated into the relevant legislation and which will distort the exclusiveness of legislation by being outside of it
- f) The scope of drafts shall be clearly regulated without leaving any room for misgivings; if the scope of the draft is clear, there shall not be any provision on the scope, separately
- g) Articles of draft shall be concise and clear, there shall not be explanatory provisions in parenthesis.

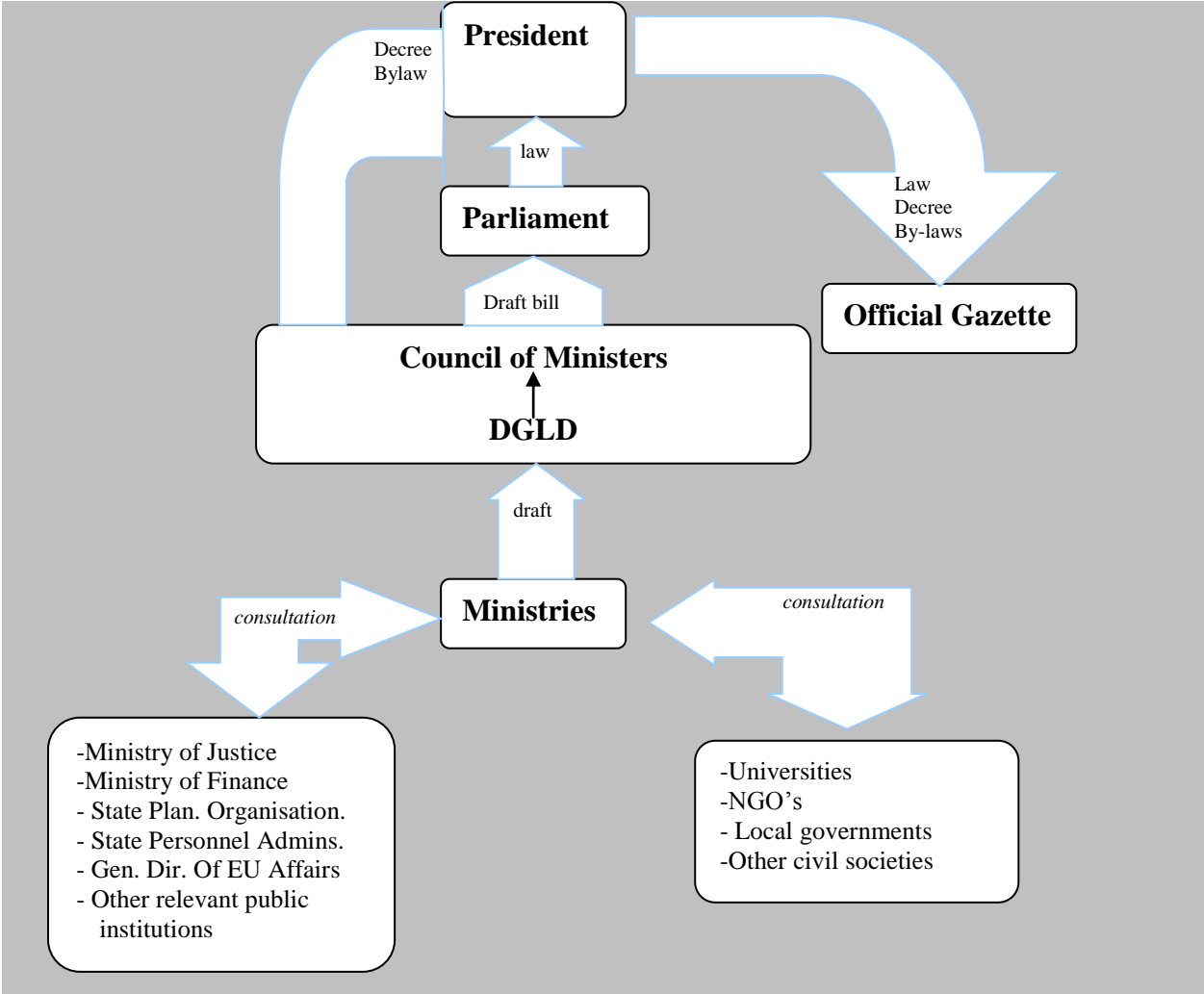
In addition, the language of the drafts should be clear, comprehensively and living Turkish should be used. This principle gives an opportunity to the public to understand the legislation clearly without detailed interpretation.

CO-ORDINATION

The general co-ordination of functioning of law drafting mechanism is provided by the Directorate General for Laws and Decrees (DGLD) in the Prime Minister's Office. This unit scrutinizes draft laws, decree-laws, tüzüks, and by-laws for constitutionality, consistency with existing legislation, legal quality and compliance with the consultation requirement of the By-Law.

The other important element of the By- Law is taking the opinions of relevant public institutions and professional organizations or non-governmental organizations. Nevertheless, By-Law requires that it is obligatory to solicit the opinions of the Ministry of Justice in case of drafts of laws and decree laws; the Ministry of Finance, in case of drafts of laws and regulatory proceedings which regulate financial issues; the State Planning Organization, in case of drafts of laws and decree laws on economic and social policies and measures as well as drafts providing for a new organization; State Personnel Presidency, in case of drafts regarding public employees and organization; the Secretariat General for the EU Affairs, in case of drafts prepared to be harmonized with the EU legislation; and all ministries, including state ministries, on drafts of regulations.

Figure: Legislation Making Procedure in Turkey



Moreover, relevant local administrations, universities, trade unions, professional organizations and non governmental organizations shall also be consulted about drafts. If drafts involve matters of public concern, taking opinion may be made public by the proponent ministry via internet, press and media. After the opinions, solicited in this way, the assessed draft shall be submitted to the Prime Ministry (DGLD).

However, the Prime Ministry (DGLD) may directly solicit the opinion of relevant ministries and public agencies and institutions about drafts which are not agreed upon.

The taking opinion of the relevant non-governmental organization and all citizens during the preparation of the legislation is a good step for providing transparency and accountability of the government.

In addition, there are some opportunities in the Parliament for civic participation. After submission of the government bill to the parliament, all citizen and professional organizations can participate the commission meetings in the parliament according to Parliament Standing Order.

REGULATORY IMPACT ANALYSIS (RIA)

RIA was introduced into the law drafting process in 2006 with the publishing of the By-Law. Before RIA, there is a “justification” system in drafting legislation. The Parliamentary Standing Order requires that bills should be submitted to the Parliament together with the justification which gives background and purpose of the draft laws and justification of each article.

There are provisions about the RIA in the By-Law stated that it is obligatory to make RIA for drafts laws and decree laws whose impact is predicted to exceed 10 million New Turkish Liras (about 7.5 million \$) in case it is taken into effect (though the Prime Ministry Office could request a RIA at its discretion for below threshold draft measures).

The RIA should be prepared by the ministry, public institution or agency which proposes the draft regulation. Provisions which will take place in the RIA are:

- Reasons which are necessary for preparing the regulations, and if the kind of the regulation has been chosen right or not.

- The likely benefits and costs of the regulation, and if the benefits justify the costs.
- If regulation impose additional financial burden to the budget, and if so the approximate cost of the regulation.
- If regulation foresees necessity in establishing new organization or establishing ranks and if these are necessary.
- What are the effects of the regulation on the social, financial and commercial life, also on the environment and stakeholders?
- Whether there are points which increase the bureaucracy and the bureaucratic formalities of the regulation.
- If related parties find the opportunity to deliver opinions when making regulation.
- If the regulation is practical or not, ways for ensuring consistency and ways for following the implementation and reviewing of the regulation.
- If the administration which has been given authorization and responsibility regulation is chosen correctly or not.
- Ways for assessment of the regulation impact.

With the introduction of RIA into law drafting process, as well as jurisdiction, more works to develop capacities in administrative structure are seen necessary. There have been some training programmes to improve the implementation of system and build a capacity among the relevant stakeholders on how to use the RIA to engage in constructive dialogue with the public.

CONCLUSION

During the accession negotiation, Turkey has made good development in regulatory environment by restructuring the law drafting system and with introducing the RIA into its legal framework for ensuring the greater efficiency, accountability and transparency. Increase in quality and decrease in quantity due to new tools and mechanisms in legislation environment, law drafting process has improved in Turkey. These attempts create favorable conditions for economic and business activities.