OECD REVIEWS OF REGULATORY REFORM

REGULATORY REFORM IN TURKEY

# GOVERNMENT CAPACITY TO ASSURE HIGH QUALITY REGULATION

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

**ORGANISATION FOR ECONOMIC CO-OPERATION**

**AND DEVELOPMENT**

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## FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Government capacity to assure high quality regulation* analyses the institutional set-up and use of policy instruments in Turkey. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Turkey* published in November 2002. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, specific sectors such as electricity and telecommunications, and on the domestic macroeconomic context.

This report was principally prepared by Peter Ladegaard and Cesar Córdova-Novion, in the Public Management Service of the OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Turkey. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary General.

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**Executive Summary**

**Background Report on Government Capacity to Assure High Quality Regulation**

The need for a comprehensive regulatory reform agenda is emerging in Turkey in response to both domestic and international factors. Turkey's accelerated drive towards European Union membership and successive economic crises has brought an unprecedented sense of urgency to Turkish regulatory governance.

Very substantial economic reforms have been launched in particular in 2000 and in the first part of 2001. For the majority of these reforms it is still too early to say much about their impact and implementation. Their results and the results of other needed reforms will depend strongly on strengthening the governance capacities to manage and implement regulatory reform.

The economic crisis in Turkey is exposing critical weaknesses in Turkey's current regulatory management system. The need for urgent implementation of comprehensive reforms are confronted with regulatory institutions and practices that in many cases are outdated, incoherent, ineffectively managed, and partially undermined by a very low trust in government, wide-spread non-compliance and in some cases corruption. The implementation and enforcement capacities of the public sector are lagging behind policy decisions. If basic regulatory capacities are not in place, the likelihood that new reforms will succeed is limited, and the erosion of public support and rule of law will continue.

Though still in an early phase, the Turkish government is beginning to address these challenges. Regulatory reform is increasingly seen as an essential element in the range of policy responses needed to restore economic stability and growth. Moreover, Turkey is giving increased priority to reforming the government and the public administration.

Against this background the report suggest an integrated set of short and medium term actions considered essential to improve the capacities of the Turkish Government to assure high-quality regulation. At the center of these actions is the recommendation to build a regulatory management system by adopting at the highest political level a broad policy on regulatory reform that establishes clear objectives, accountability and frameworks for the implementation of regulation. As an integral part of this, the report recommends to establish a ministerial position to champion regulatory reform at Cabinet level and to co-ordinate regulatory reform across government. An oversight technical unit should be established to support the minister in these activities.

The report recommends steps to be taken to improve the capacities to make new regulations and to keep existing regulations up-to-date. The former include such initiatives as: Implementing a step-by-step programme for regulatory impact assessments, improving transparency by establishing legal requirements for consultation procedures during the preparation of regulations, promoting the systematic consideration of regulatory alternatives, and streamlining the current activities of legal scrutiny of draft regulations. The latter include continued efforts to reduce administrative burdens by establishing a central registry of administrative procedures and business licenses, and by initiating a comprehensive review of existing regulations.

Particular attention should be directed towards compliance and enforcement of regulations. Improvements on enforcement and compliance dimensions are among the most important challenges to Turkey's regulatory management system. The problems are the result of a line of deficiencies in the regulatory process. A key effort will be to rationalise the whole enforcement capacities of central ministries, and to strengthen the ex ante assessment of enforcement capacities of regulators and expected compliance issues.

Implementation of these reforms such as building new institutions may take considerable time and sustained attention. Solutions will be time consuming and difficult as they involve administrative practices as well as cultural habits. The most important determinant of the scope and pace of further reform is the attitude of the general public. The Turkish experience suggests communication strategies should accompany the policy reforms suggested above. A high priority to motivate support for reform is to deliver visible benefits to businesses and consumers and by doing so building a constituency for reform.

The current reform challenges are significant, but Turkey's history – in particular the construction of the republic as a modern secular state – demonstrates its strong potential to pursue and ultimately realise difficult but very beneficial reforms.

# 1. REGULATORY REFORM IN A NATIONAL CONTEXT

## *1.1. The administrative and legal environment*

The need for a comprehensive regulatory reform agenda is emerging in Turkey in response to both domestic and international factors. At the international level, the key element is Turkey's drive towards European Union membership, which will require a huge overhaul of regulatory regimes and practices. In addition, successive economic crises, culminating in the 2001 devaluation of the lira, have lead major international organisations[1] to argue strongly the need for a range of reforms to Turkish regulatory governance. Domestically, sense of economic crisis has accelerated needed reforms and brought an unprecedented sense of urgency. Regulatory reform is increasingly seen as an essential element in the range of policy responses needed to restore economic stability and growth.[2]

Very substantial economic reforms have been launched in particular in 2000 and in the first part of 2001. Moreover, until recently neglected, Turkey is giving increased priority to reforming the government and the public administration. There is a growing realization in the country that Turkey must modernize its public institutions and regulatory framework in order to provide favourable conditions for the growing private sector, deliver better services and to improve its prospects for EU entry. There is also a strong and critical focus on governance structures and practices to secure regulatory compliance and enforcement, not least due to the disastrous earthquake of 17 August 1999. The current reform challenges are significant, but Turkey's history – in particular the construction of the republic as a modern secular state – demonstrates its capacity to pursue and ultimately realise difficult but very beneficial reforms.

Box 1. **Good practises for improving the capacities of national administration to assure high quality regulation**

The OECD Report on Regulatory Reform, welcomed by Ministers in May 1997, includes a co-ordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These form the basis of the analysis undertaken in this report, and are reproduced below:

**A. BUILDING A REGULATORY MANAGEMENT SYSTEM**

1. Adopt regulatory reform policy at the highest political levels
2. Establish explicit standards for regulatory quality and principles of regulatory decision-making
3. Build regulatory management capacities

**B. IMPROVING THE QUALITY OF NEW REGULATIONS**

1. Regulatory Impact Analysis
2. Systematic public consultation procedures with affected interests
3. Using alternatives to regulation
4. Improving regulatory co-ordination

**C. UPGRADING THE QUALITY OF EXISTING REGULATIONS**

(*In addition to the strategies listed above*)

1. Reviewing and updating existing regulations
2. Reducing red tape and government formalities

The emerging need for a comprehensive regulatory reform, also nurtured on the historical precedent to use a damaging crisis to rebuild a modern Turkey, will however confront strong opposition and inertia. Sporadic regulatory reform activities in Turkey suffers particularly from fragmentation. They are often developed with different scope, speed and success in different sectors, depending on the political possibilities in that particular policy area, rather than reflecting overall government priorities and support. Most importantly, inefficient enforcement and low compliance put at risk the anticipated outcomes of the reform programmes. More concretely, Turkey today needs to address four interconnected challenges listed below.

Firstly, Turkey must restore confidence in the institutions of government. Turkey currently faces a crisis of public confidence in these institutions and their capacity to respond to the current economic problems and challenges.[3] Turkey's public governance is embroiled in the complex dynamics of coalition politics and the framework of the law on political parties.[4] The Turkish political life for the past decade has indeed created considerable difficulties to reach decisive solutions for difficult issues. The prevailing inertia has in some way prevented comprehensive initiatives and has postponed difficult but necessary actions. Close links between the top levels of the public administration and the political parties have contributed to the politicisation of the recruitment of top civil servants. They have also favoured hierarchical structures that concentrate decision-making powers at the highest levels, slow response times and reduce flexibility. Corruption and occasional defiance of the rule of law by parts of the public sector itself threatens to undermine the credibility of government as a consistent and strong supporter of difficult, but needed reform. While market oriented policies have been introduced especially during the 1980s economic liberalisation and with the very recent economic reforms they have often not been supported by parallel changes in the regulatory environment and in governmental and public sector infrastructure. Crucially, there has often been little attempt to communicate the need for reforms, and their expected benefits, to stakeholders and the public. Partly as a result, reform constituencies are weak and reforms risk loosing momentum and continuity.

Secondly, Turkey faces the challenge of completing the transition from a static, state-led and rule-bound economy to an innovative and entrepreneurial economy, driven by the market economy and civil society. Regulatory governance currently takes place in the context of a highly centralised state structure and political culture.[5] A strong, omnipresent and, in earlier periods, autocratic state, with a strong in-built resistance to foreign influence, has been crucial for the shaping of modern Turkish politics.[6] The benefits and advantages of market mechanisms are not yet fully appreciated by a large part of public sector officials. Lastly, the division of power between ministers of different political parties has increased the difficulties to design and implement for coherent policies and co-ordinated initiatives. Again, many of these difficulties became starkly apparent in the context of the response to the 1999 earthquake.

A third key challenge lies in the low efficiency, transparency and accountability of the public sector. Administrative practices favor legalism and formalism instead of management based on results, outcomes and market-orientation. Salaries are generally lower than in the private sector for high quality managers and regulators. Pay increases are not based on performance-related criteria, and poor performance is not disciplined by sanctions. Incentives are not aligned to encourage good practices. A consequence is that the attractiveness of the public sector as an employer is declining, but this is not matched by a reduction of the number of public servants.

Fourth, Turkey lacks an integrated and consistent framework for regulatory management. Today, the regulatory management system is weak and mostly centred on legalistic controls, and the institutions responsible for these functions are dominated by continuous political oversight and intervention. Co-ordination procedures for preparing regulations do not include systematic procedures for ex-ante assessments of the impact of regulations, and external stakeholders are only sporadically consulted with. Enforcement mechanisms and practices are weak, leading to wide-spread non-compliance.

Turkey's regulatory structure exists in a variety of legal instruments issued primarily by the central government (see Box 2 on Turkey's legal instruments system). As in most OECD countries, Turkey is facing an increasing volume of laws and regulations (see figure 1). This is in part due to the adaptation of existing regulation and implementation of new regulation connected to EU *acquis communitaire*. Complexity and archaisms exist together with new and well-developed regulations. The absence within the Turkish public administration of a government-wide regulatory reform strategy, regulatory impact assessment, a public notice and comment process and policies favouring the use of regulatory alternatives contrasts with OECD recommendations and the practices adopted by many OECD countries (see Box 1).

Box 2. **Hierarchy of Turkish legal and regulatory instruments**

*(1)* *The constitution (Anayasa).* The supremacy of the Turkish constitution is expressed clearly in its 11th article stating that "laws shall not be in conflict with the constitution. The provisions of the constitution shall be fundamental legal principles binding the legislative, executive and judicial organs, administrative authorities and individuals." A special Constitutional Court was created in 1961 to perform the judicial control of acts under the constitution.

*(2)* *Laws and statutes (primary parliamentary legislation) (Kanunlar).* The Parliament is the supreme legislative authority. Individual members of Parliament and the Council of Ministers can propose bills to the Parliament. As in many OECD countries, the trend is for the Government to seek wider delegated powers from an over-burdened parliament to issue and revise lower levels of regulation without the need for new primary legislation. Constitutional amendments in 1971 and 1982 Constitution have strengthened the regulatory powers of the executive substantially by giving the Council of Ministers power to issue ordinances or decrees that can amend existing laws and to issue new legislation (see below). The President promulgates laws passed by the Parliament within fifteen days.

*(3)* *International treaties.* International treaties to which Turkey is a party are approved by the Turkish Parliament by enactment of a law. After the enactment of the law, the Council of Ministers ratifies the international treaties. Even though they carry the force of law, no appeal can be made to the Constitutional Court with regard to the constitutionality of such agreements.

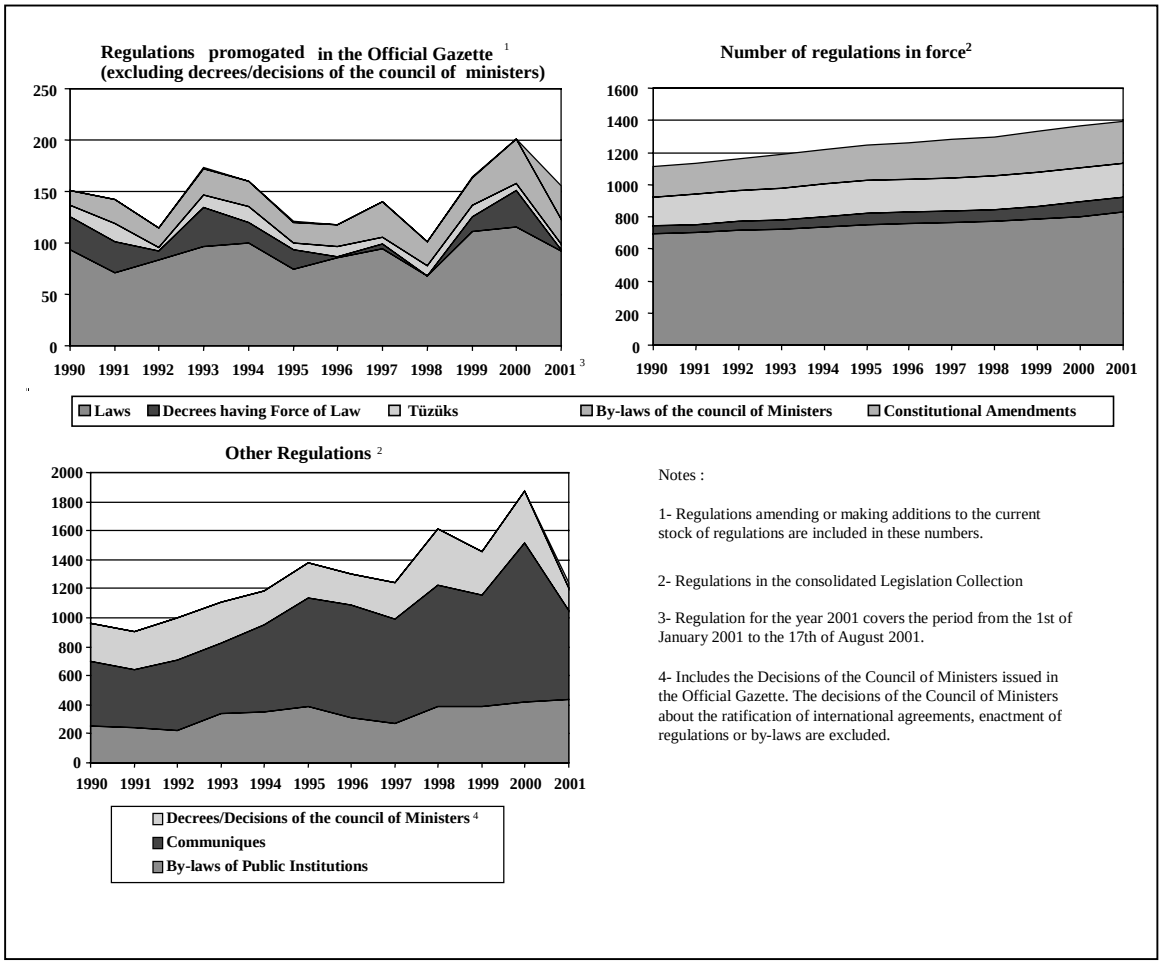
*(4)* *Decrees having force of law (secondary parliamentary legislation) (Kanun Hükmünde Kararnameler).* The Turkish parliament can authorise the Council of Ministers, by special statute, to issue statutory decrees (decrees having the force of law) on certain topics. In these statutes (enabling act) the scope, principles, and duration of the power to issue statutory decrees are stated.[7] The enabling act does not have to specify which provisions of the existing legislation can be amended or repealed by the decree. The enabling act is normally issued for three or six months. The Parliament has never repealed power given to the executive to issue statutory decrees. On the contrary, the powers are usually extended for another three or six months. The Constitutional Court has occasionally repealed powers on grounds that the goal and scope of the authority is wide, not concrete, or that the authorised power is no longer relevant for urgent needs. As for primary parliamentary legislation statutory decrees have to be promulgated by the President, and they are enforceable after their publication in the Official Gazette.

*(5)* *Tüzükler.* The Turkish Constitution provides that the Council of Ministers can issue regulations governing the mode of enforcement and implementation of statutes, provided that they do not conflict with existing legislation. Depending what is stipulated in the statute, such regulations may take the form of a tüzük or a by-law, the former typically authorising a broader discretion to the executive. To become valid, tüzüks must be examined by the Council of State, signed by the President and promulgated in the Official Gazette.

*(6)* *By-laws (Yönetmelikler).* Ministries, public organisations and quasi governmental agencies may issue by-laws with the purpose of ensuring the enforcement and implementation of statutes and tüzüks related to their particular fields of operation and in conformity with such statutes and tüzüks.

*(7)* *Circulars / communiqués.* All ministries and public organisations can issue circulars or communiqués to govern the day-to-day regulation and organisation of work within their portfolio.

Figure 1. **Stock and flow of regulations in Turkey**




In sum, the context of regulatory reform in Turkey is one of severe economic crisis, societal transition and insufficient governance structures. At the same time, promising reforms are being launched and the need to improve public sector capacities is increasingly understood. However, reforms directed to this end have to date lagged other economic and social reforms and efforts to build broad support and participation in regulatory procedures have been insufficient. This has created a significant gap between regulatory requirements and enforcement capacities. It has also strained relations between regulators and key constituencies for reform, including both business and the citizenry.

### *1.2. Recent regulatory reform initiatives to improve public administration capacities*

Turkey has very recently started to launch important initiatives, many of them though as a reaction to pressure. Recent reforms to improve public administration capacities include: more transparency through a constitutional reform, initiatives to fight corruption, reforms to depoliticise, merit-base and mainstream public sector recruitment, new measures to improve budgetary transparency and increase the performance of the administration. For the majority of these reforms, it is still too early to say much about their impact, results and implementation. The speed and scope of reforms differ among policy areas. It is worth noting that important drivers for such reforms and a mechanism to unlock opposition

have been the linkage of these reforms to the fulfilment of stand-by agreements with the IMF and World Bank recommendations, and with the political commitment by the government to implement by 2004 the European Union's *Acquis Communitaire*.

Turkey's *National Programme for the Adoption of the Acquis* was adopted by the Council of Ministers on 19 March 2001. The Programme sets the priorities and commitments for aligning Turkey's regulatory structure to the EU *acquis* and practices in EU Member States. Important initiatives and commitments of the Programme relating to regulatory quality, public sector reform and government capacities are:[8]

- The development of a draft law on public procurement, ensuring more transparency and competition. (The new Public Procurement Law 4734 will be in effect on 1 January 2003.)

- Commitment to establish an independent legal or administrative institution to consider complaints and to settle disputes in public procurement. (A Public Procurement Authority was established as part of the above mentioned Public Procurement Law.)

- Establishment of 12 specialised courts to provide expertise in the settlement of disputes on intellectual and industrial property rights

- Commitment to establish (or strengthen) a range of supervisory or independent authorities and boards such as the Turkish Accreditation Authority (TÜRKAK), a Regulating Marketing Board on Tobacco, Tobacco Products and Alcoholic Beverages, a State Aid Monitoring Authority and an energy regulator covering both gas and electricity. (An Energy Market Regulator responsible for the gas and electricity sectors was established 2 November 2001).

- Commitment to establish adequate administrative infrastructures to support reporting requirements under the Common Agricultural Policy and other heavy reporting areas such as fishery and statistics. As a first step, studies the current infrastructure will be undertaken.

- Commitment to revise and simplify the complex structure of the current legislation on state aid, support to enterprises in complying with EU policies, and development of supporting technological infrastructure for enterprises.

- Acceleration of work on administrative reform in the field of justice and home affairs and strengthening of co-ordination between competent Ministries and other public institutions.

- Strengthening the Economic and Social Council

As of fall 2001, the government has reformed the Economic and Social Council, established Consumer Courts and a Specialised Court for Intellectual and Industrial Property Rights in the province of Istanbul.

Linked to international commitments, the Government in May 2001 approved a comprehensive economic transition programme called *Strengthening the Turkish Economy*. Among its five pillars, the programme "Enhancing Transparency of the State and Strengthening of Public Finance" is intended in particular to improve public sector capacities. So far, its implementation has included:

- Laws and Cabinet Decrees closing budgetary and extra-budgetary funds in order to improve budgetary transparency (Laws 4568, 4629 and 4684 approved by Parliament in May 2000 and in February and July 2001 respectively.)

– A law amending the budget law in order to improve the transparency and efficiency of public expenditure management (Law 4640 approved by Parliament in April 2001)

*Fighting corruption* is an integral part of many programmes as well as the focus of several dedicated projects. An Anti-Corruption Steering Committee composed of senior civil servants from key ministries was set up by in July 2001. The objective of the committee – reporting to the Prime Minister – is to devise by September 2002 a comprehensive plan to fight corruption in Turkey. This follows on from Law 4422, passed in 2000, which established a new procedure to facilitate the prosecution of civil servants on charges of corruption. Rules have also been made to require the disclosure of personal assets of persons holding senior positions in state owned enterprises and other bodies closely attached to the public sector (Law 3628).

Table 1. **Selected reform legislation relating to regulatory reform in Turkey**

| | |
|---|---|
| Law 2872/1983 | Environment impact assessment mandatory for major water infrastructure projects |
| Law 3628/1990 | Disclosure of personal assets of persons holding senior positions in state owned enterprises |
| Law 4054/1994 | Foundation of the Competition Authority |
| Circular 14821/1998 | Obligation for regulators to obtain the opinion of the Competition Authority in regulations effecting issues under the Competition Board's responsibilities |
| Law 4457/1999 | Foundation of the Turkish Accreditation Institution |
| Law 4491/1999 | Foundation of the Banking Regulation and Supervision Agency |
| By-law, 1999 | Objective criteria for the appointment and promotion of public personnel |
| Law 4502/2000 | Foundation of the Telecommunications Authority |
| Law 4587/2000 | Foundation of the Secretariat General for EU Affairs. |
| Cabinet decree, 2000/1658 | Enables revisions of cadres/positions in public organisations in order to make them commensurate with their service requirements |
| Law 4628-4646/2001 | Partial liberalisation of and competition on the electricity markets. Foundation of the Energy Market Regulatory Board |
| Law 4634/2001 | Partial liberalisation of and competition on the Turkish sugar market |
| Law 4640/2001 | Improving transparency and efficiency of public expenditure management |
| Law 4647/2001 | Partial liberalisation of and competition on the Turkish civil aviation market |
| Law 4641/2001 | Re-establishment (by law) of the Economic and Social Council |
| Law 4673/2001 | Permission to the Government to the sell more than 51% of Turkish Telecom Corporation |
| Law 4684/2001 | Closure of budgetary and extra-budgetary funds in order to improve budgetary transparency |
| Law 4709/2001 | Amendments of 33 articles of the Constitution, two thereof with a view to improve access and transparency of the judicial system. |
| Law 4733/2002 | Foundation of The Tobacco, Tobacco Products and Alcoholic Beverages Market Regulation Board, |
| Law 4734/2002 | Foundation of Public Procurement Authority |
| Law 4749/2002 | Law on Public Debt Management |

In October 2001 Turkey implemented a range of *constitutional amendments* primarily addressing liberal rights issues, and relations between citizens and the state. The amendments were explicitly intended to bring the Turkish Constitution in line with EU accession criteria. Two of the more than thirty amendments are likely to improve the Turkish regulatory framework directly. Firstly, Article 74 of the constitution was amended to allow foreign nationals residing in Turkey to file a petition against administrative decisions of the Turkish public sector. Secondly, Article 40 was amended to facilitate citizens' access to the judicial system by putting the State under the obligation to "determine the legal course of action and authorities that may be applied to by persons concerned".

In 1999 a set of *centralised public sector staff recruitment tests* were introduced. The purpose was to improve central government's ability to introduce consistent testing and evaluation criteria for employment in the public sector as well as to monitor and control recruitment throughout government. The new rules – amended in 2001 and 2002 – are widely believed to have succeeded in reducing clientalist abuse of public sector employment, and in providing the Government with an appropriate tool to control public sector expenditure.

Efforts to introduce performance management and auditing in the public sector have been accelerated with a comprehensive Public Expenditure and Institutional Review[9] published in 2001. As a first and important step, a range of training programmes have been conducted for the Ministry of Finance, the Court of Accounts and the Treasury on issues such as performance based budgeting and internal control and auditing mechanisms.

More recently, in October 2001 the State Minister responsible for economy has set up nine working groups to implement the World Bank/FIAS recommendations on reducing administrative barriers to investment (see Section 4.1).[10]

## 2. DRIVERS OF REGULATORY REFORM: NATIONAL POLICIES AND INSTITUTIONS

### *2.1. Regulatory reform policies and core principles*

The 1997 *OECD Report on Regulatory Reform* recommends that countries "adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation." The 1995 *Recommendation of the OECD Council on Improving the Quality of Government Regulation* contains a set of best practice principles against which reform policies can be measured (see Box 3).

The reforms listed in the previous Section are important steps toward achieving good regulatory practices. If well implemented, they will improve the efficiency, transparency and accountability of regulations. However, despite these initiatives, Turkey does not yet have an explicit policy on regulatory reform or regulatory quality. Taken together, the recent initiatives do not represent a coherent or complete programme of regulatory quality improvement. The absence of a government-wide policy promoting regulatory quality – including the institutions for co-ordinating and implementing it – has fragmented reform efforts and impeded overall progress.

Nevertheless, some procedural requirements are in place for the regulatory process. As described in further detail in Sections 2.2 and 3.2 the Principles, issued by the Prime Ministry, based on Law 3056 requires proponent ministries to consult with "relevant" institutions and agencies prior to submitting the draft regulation to the Prime Ministry, and Article 73 of the Standing Orders of The Assembly requires all bills to be presented together with a general justification of the bill and the individual articles. Since these requirements do no contain any quality assurance objectives or criteria they cannot be considered as regulatory reform policies nor core principles. They are, however, the potential pivotal points for the installation of such principles and practises in the regulatory process.

Box 3. **Principles of good regulation**

The experience of OECD Member countries shows that quality standards and an effective regulatory management institution are interdependent. Specifying objective quality standards for regulation clarifies what is expected of regulators and links quality standards with regulatory objectives. But quality standards and principles alone are not enough to improve regulatory habits and provide adequate incentives for producing high quality regulation.. Central oversight of regulatory management, through an expert government-wide institution, can provide a source of expertise and advice, monitor progress and ensure consistent approaches to reform tasks.

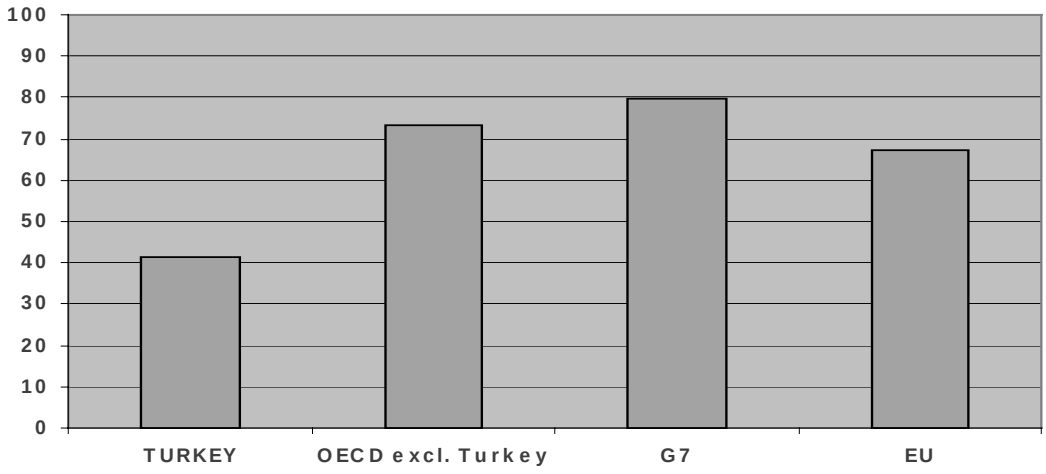
A concrete and market-oriented set of quality standards should be based in the OECD principles accepted by ministers in 1997, which read:

Establish principles of "good regulation" to guide reform, drawing on the 1995 OECD Recommendation on Improving the Quality of Government Regulation. Good regulation should: (i) be needed to serve clearly identified policy goals and effective in achieving those goals; (ii) have a sound legal basis; (iii) produce benefits that justify costs, considering the distribution of effects across society; (iv) minimise costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

*Source*: OECD *Report to Ministers on Regulatory Reform*, 1997.

Box 4. **Policy and organisational commitment**

This synthetic indicator– based on self-assessment – measures the existence and content of explicit government policies on regulatory reform and the organisational arrangements that have been put in place to support them. It ranks more highly such national regulatory reform policies where there is an explicit, published policy promoting government-wide regulatory reform or regulatory quality improvement, which include explicit objectives of reform and explicit principles of good regulation; those that have a dedicated body responsible for encouraging and monitoring regulatory reform, those with specific responsibilities for reform at the ministerial level, those with the use of regulatory impact analysis, assessment of regulatory alternatives, consultation with affected parties, plain language drafting requirements and evaluation of the results of regulatory programmes. On this indicator Turkey scores below the EU, the OECD and G7 averages, reflecting the fact that Turkey is still in an early phase of establishing policy and organisational commitment to regulatory reform policies.




*Source*: OECD, Public Management Service, 2000.

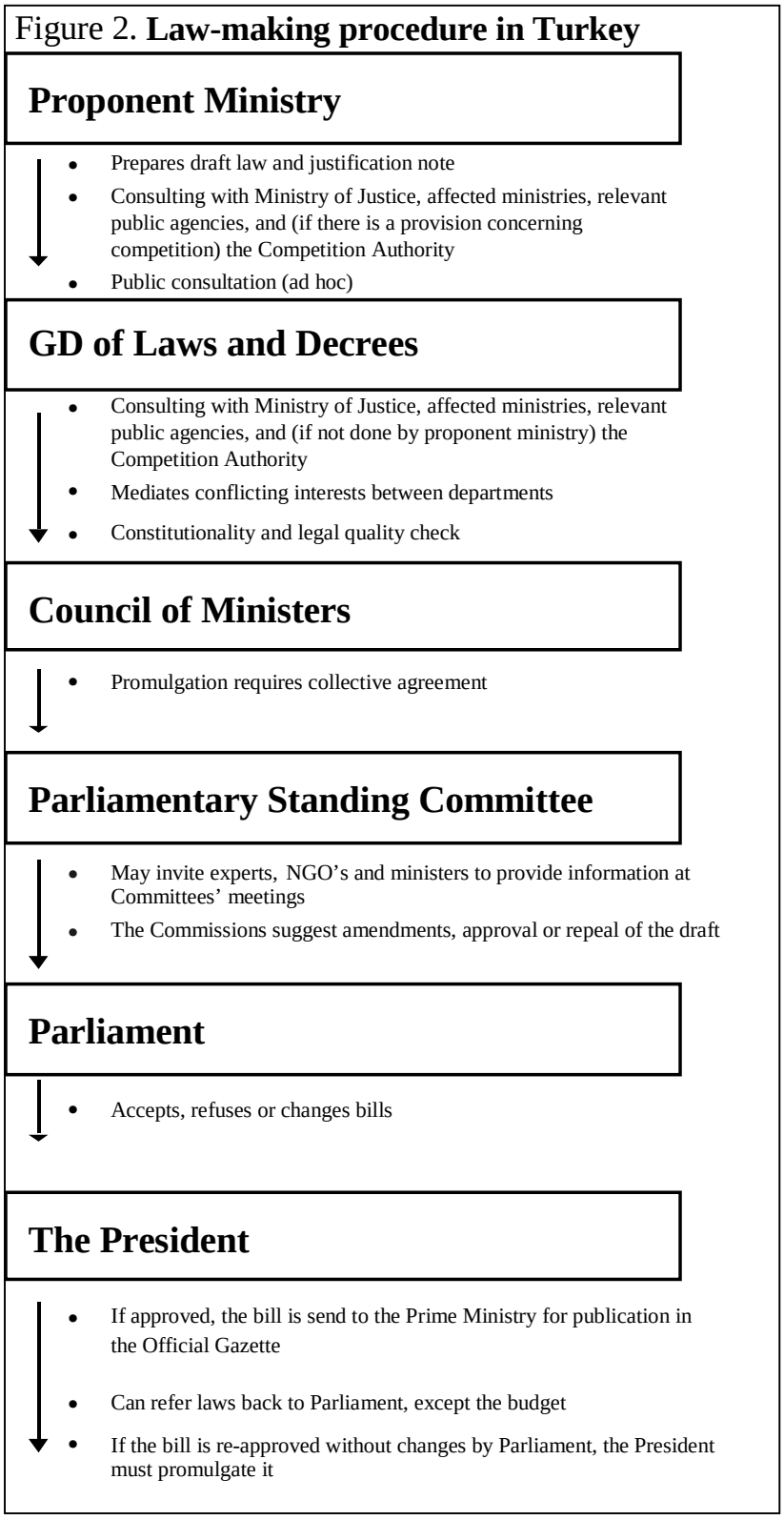
### *2.2. Mechanisms to promote regulatory reform within the public administration*

Reform mechanisms with explicit responsibilities and authorities for managing and tracking reform inside the administration are needed to keep reform on track and on schedule, and to ensure regulatory quality standards continue to improve. It is often difficult for ministries to reform themselves, given countervailing pressures. Initiating and taking up a reform agenda, maintaining its consistency and pursuing systematic approaches across the entire administration is necessary if reform is to be broad based. This requires the allocation of specific responsibilities and powers to agencies at the centre of government.

Considerable experience across the OECD has shown that central oversight units are most effective if they have the following characteristics:

- independence from regulators (*i.e.* they are not closely tied to specific regulatory missions);
- operation in accordance with a clear regulatory policy, endorsed at the political level;
- horizontal operation (*i.e.* they cut across government);
- expert staffing (*i.e.* they have the information and capacity to exercise independent judgement); and
- links to existing centres of administrative and budgetary authority (centres of government, finance ministries).

Figure 2. **Law-making procedure in Turkey**



As in many OECD countries, individual ministries in Turkey are primary responsible for reform performance and regulatory quality control within their areas of responsibility. Unlike many OECD-countries, however, there is no single government unit responsible for co-ordinating regulatory reform or regulatory quality across government.

The procedure for preparing legislation and subordinate regulation is usually initiated by the ministry proposing the new law, sometimes through bilateral discussions with the Prime Ministry. While the Constitution specifies the general process of making new legislation, there are no laws on how to prepare laws or other regulations. Draft regulations are normally prepared within the proponent ministry itself. Ad-hoc expert preparatory commissions are sometimes used, in particular during the preparation on major changes of civil laws.

Proponent ministries are required to follow the intra-governmental consultation requirements stated in "The Principles on Preparation of Laws, Decrees Having Force of Law, Regulations and Draft By-Laws" ("the Principles"). These obligations include taking into consideration the opinions of specific ministries if the regulation will have effects within these ministries' portfolios. The Principles do not prescribe time limits for the intra-governmental consultation process, nor do they prescribe any specific quality assurance measures to be undertaken. At the discretion of the minister, consultation with outside parties can be organised at this stage (see Section 3.1.2. below).

The standing orders of the Turkish parliament requires that bills are submitted to the Parliament together with a justification of the bill and its individual articles. The justification gives the background and purpose of the draft law, together with justification for each article. It does not quantify or analyse its effects (see also Section 3.3.). By tradition, the justification is attached to the draft laws sent for consultation within government and with outside parties.

**The Council of Ministers** is composed of all 36 ministers, including the Prime Minister and 18 ministers of state (see also endnote 5). In order to be become valid to be forwarded to Parliament draft primary and most secondary legislation need a collective agreement of the Council of Ministers in the form of the signature of each individual minister.[11] The Government Coalition Party Leaders often convene to discuss important issues on the Council of Ministers' agenda.

Four units within the Prime Ministry participate in the regulatory management process. First and foremost, **the General Directorate of Laws and Decrees** (GDLD) co-ordinates all legal documents to be discussed and approved by the Council of Ministers. The GDLD scrutinises draft laws, decree-laws, tüzüks and by-laws for decision by the Council of Ministers. The GDLD's scrutiny serves three purposes. First, to check the constitutionality, consistency with existing legislation and the legal quality of draft regulations. Second, to review whether the proponent ministries have observed the intra-governmental consultation requirements of the Principles. If proponent ministries have not consulted with ministries affected by the draft regulation, this is carried out by the GDLD. In cases of urgency the proponent ministry may send the draft law directly to the Prime Ministry, without asking for the opinions of relevant institutions and ministries. Third, the GDLD's function is to mediate conflicting interests between line ministries. The process of mediation is primarily concerned with bridging political and institutional preferences, rather than with carrying out or providing improved assessments of the impact of the regulation in question. Disagreements are settled at ad-hoc meetings with the proponent and effected ministries under the chairmanship of the GDLD. If agreements cannot be made, the DGLD prepares a note to the Council of Ministers summarising the differing views. In the regulatory process the GDLG is also responsible for obtaining the opinion of the Council of State on "Tüzüks" before they are sent to the Council of Ministers.[12]

Apart from its main duty of co-ordination of the regulatory process, the GDLD assists the Department of Legal Counsellors of the Prime Ministry with lawsuits brought against the Prime Ministry and the Council of Ministers. When the economic and social conditions of the country necessitates urgent regulation to be made on issues pertaining to more than one ministry, the GDLD itself prepares bills in co-ordination with relevant ministries and institutions. The GDLD has a total staff of 70 employees, of which 35 are university trained in law (18), social and political sciences (14) and economics (3).

Another directorate within the Prime Ministry – The **General Directorate of Legislation Development and Publication** – is responsible for reviewing the legal quality of regulations issued by line ministries and other regulatory bodies, which do *not* have to pass the Council of Ministers to become valid.[13]

Two other bodies within the Prime Ministry are part of the regulatory management system. **The State Planning Organisation** (An Undersecretariat under the Prime Ministry) is consulted on draft regulations effecting "economic and social policies, measures and annual programmes". The State Planning Organisation is responsible for preparing Turkey's five-year development plans, which set up the macro-economic and social goals of Turkey and specifying the main instruments to reach these goals, and for preparing the Annual Programmes, which in further detail suggests the implementation of the five-years plans.[14] In 2000 the government set up a new and powerful unit **The Secretariat General for EU Affairs,** to co-ordinate the adaptation and harmonisation of Turkish legislation with the *Acquis Communitaire*. Proponent ministries or the GDLG consult the Secretariat on all draft laws and subordinate regulations. The founding law of the Secretariat (Law 4587, 2000) gives the Secretariat the authority to examine whether draft laws and regulations conform with the National Program for Adaptation of the Acquis or not.

Four other ministries and arm's length bodies are consulted, in some cases systematically, before draft laws and regulations are sent to the Council of Ministers by the GDLD:

- **The Ministry of Justice** reviews draft laws and regulations in terms of their constitutionality, consistency with laws already in force, and in terms of their legal quality. If no agreement can be reached with the proponent ministry and the Ministry of Justice, this is reported to the GDLD who acts as a quality control of the Ministry of Justice's findings while trying to mediate the different opinions on the draft law.

- **The Ministry of Finance** is consulted on draft laws and regulations effecting the budget and fiscal policy. As for other ministries, the Ministry of Finance cannot veto proposals it does not agree with: Such disagreements are transported to the GDLG for arbitration.

- **The State Personnel Department** is consulted on draft laws and regulations about public personnel regime and organisational matters.

- **The Competition Board** is since 2000 systematically consulted on draft laws and regulations about issues under the Competition Board's subject matter responsibilities. This requirement of all ministries is not based on the general consultation requirements under "the Principles" but on a circular issued by the General Directorate of Personnel and Principles of the Prime Ministry. Remaining disagreements with the proponent ministry are forwarded to the GDLG for arbitration.

- **The Council of State** (Danistay) is constitutionally authorised to examine draft Tüzüks (by-laws implementing laws).[15] As mentioned above the GDLG is responsible for obtaining the opinion of the Council of State before the Tüzüks are sent to the Council of Ministers.

In the case of draft laws, the **Parliament** and **Parliamentary Commissions** complete the regulatory management system. The President of the Turkish Grand National Assembly (TGNA) forwards bills received from the Council of Ministers or individual MPs to one of the 16 standing sub-commissions in the Parliament. The commissions may invite experts, NGO's and ministers to provide information at their meetings. Bills shall be examined within 45 days,[16] after which a report with the Committee's majority and minority recommendations are sent to the General Assembly suggesting approval, amendments or repeal. During the sessions of the General Assembly the Government (or proponent MPs) can call back the bill or parts of it. Despite a clear majority of government parties in the Parliament, bills are often withdrawn or fundamentally changed during their way through parliament. This is partially due to significant imperfections in the preceding consultation procedures (see also Section 3.1.).

Finally, the President of the Republic plays a determinant role in the regulatory management system, through his/her powers to promulgate laws passed by the Parliament within fifteen days. The President may, within the same period, refer the law back to the Parliament for reconsideration. Budget laws are outside the scope of this provision. If the Parliament again passes the law in its original version (*i.e.* without new amendments) the President has to promulgate it. Laws become enforceable after their publication in the Official Gazette.

A central feature of the Turkish management system is the successive legal controls on draft laws and regulations. In addition to the legal staff in each ministry, six specialised units share responsibility for important functions of drafting and checking the text (Table 2). The intense and partially overlapping legal quality control is not matched by overseeing the substantive aspects of drafts and assuring a proper consultation by business and civil society.

Table 1. **Quality controls of new laws and regulations**

| | Prepare draft | Legal quality control | Accordance with competition law principles | Budgetary impact assessments | Consultation with affected ministries and agencies | Consultation with business and civil society | Arbitration between conflicting ministerial interests |
|---|---|---|---|---|---|---|---|
| Proponent ministry | X | | | (X)[5] | X | (X) | X |
| Ministry of Finance | | | | (X)[5] | | | |
| Ministry of Justice | | X[1] | | | | | |
| The Competition Board | | | X | | | | |
| Prime Ministry* (GD of Leg. Development and Publication) | | X[2] | | | X[2] | | X[2] |
| Prime Ministry (GD of laws and decrees) | X | X[3] | | | X | X[6] | X |
| Council of State | | X[4] | | | | | |

(X) = Not mandatory, exercised ad hoc.
1: Examines draft laws and decrees having force of law.
2: Examines only by-laws not promulgated by the council of ministers as defined in Law 3011.
3: Examines draft laws, law decrees, tüzüks, cabinet decrees and by-laws for decision by the Council of Ministers.
4: Tüzüks needs to be examined by the Council of State. On request from the Council of Ministers, the Council of State also gives its opinion on other draft types of legislation. Such opinions are not binding on the government's implementation of the legislation.
5: No standardised format or guideline for the preparation of budget impact assessments exist.
6: Only exercised rarely.

It is worth noting that some countries, such as Mexico, have created or strengthened their central regulatory capacities as a deliberate solution to counter the economic crisis (see Box 5).

Box 5. **Institutions to steer regulatory reform, the case of Mexico**

In1989 Mexico set up a specialised expert unit to advocate and lead regulatory reform. The history of this institution can be divided into three periods, each one reflecting the focus of the policy at the time.

From 1989 to 1994, as part of the Ministry of Trade and Industry, the Economic Deregulation Unit (UDE in Spanish) focused on deregulating existing laws in key economic sectors. At the end of this period, the UDE broadened its effort to re-regulate crucial framework laws on standards, consumer protection and competition.

Following the deep 1994 economic crisis and in response to it, the government extended UDE's powers and mandate turning it into an overseeing regulatory institution. From 1995, the UDE systematically reviewed and improved all existing business licences, permits and other administrative formalities. Two years later, the government mandated the UDE to administer a regulatory impact analysis programme for all new regulations.

By 1999, recognising the need to increase independence and accountability, as well as to expand the scope of the regulatory policy to non-business regulations, the Congress passed a reform to the Federal Administrative Procedures Law that transformed the UDE into a technically and operationally autonomous agency called the Federal Regulatory Improvement Commission (www.cofemer.gob.mx), whose legal mandate is to ensure the transparency of the regulatory process, and that regulations produce benefits greater than the costs they impose, and the maximum benefit for society. Today COFEMER is the central oversight institution to drive regulatory reform in Mexico. Its main tasks are (1) to undertake the review of existing federal formalities and administer the Federal Registry of Formalities and Services, (2) to review and issue verdicts on draft regulations that have an impact on economic activity and corresponding RIAs, (3) to draft and propose new regulations or reforms to existing regulations in order to improve the federal regulatory framework (including specific regulatory areas or economic sectors), and (4) to advocate reform across the government and at the state and municipal levels. Its main powers consist in reporting periodically to the Regulatory Improvement Council and to the Economic Cabinet, publicly reviewing each federal agency's two-year regulatory improvement programme, and making public its opinions and suggestions of proposed or existing regulations.

To fulfil this ambitious mandate set in the Administrative Procedure Law, the head of COFEMER, who is appointed by the President of the Republic, has a staff of 37 professionals (most of them economists and lawyers) and a budget of USD 4 million a year. COFEMER is helped by a high level advisory council gathering the main representatives of businesses, unions and academics. This advisory council evaluates every three months progress achieved by the annual regulatory improvement programme.

*Source*: update of the OECD (1999) Regulatory Reform in Mexico.

### *2.3. Co-ordination between levels of government*

The 1997 OECD Report advises governments to "encourage reform at all levels of government." This difficult task is increasingly important as regulatory responsibilities are shared among many levels of government, including supranational, international, national, and sub-national levels. High quality regulation at one level can be undermined by poor regulatory policies and practices at other levels, while, conversely, co-ordination can vastly expand the benefits of reform. The policies and mechanisms for co-ordination between levels of administration are thus becoming increasingly important for the development and maintenance of an effective regulatory framework.

#### *2.3.1. National – local*

Turkey is a unitary republic with a highly centralised government structure and administrative system, despite a tendency towards de-concentration and decentralisation over the last 15 years. The country is divided into 81 special provinces under a governor appointed by the national government, who reports to the Ministry of the Interior. The provinces are sub-divided into a total of 850 districts. In addition to the provincial offices of central government departments, there are three layers of local authorities in Turkey: Special Provincial Administrations, Municipalities and Villages.[17]

***Central authorities*** directly provide many essential urban services in Turkey either through field offices of relevant Ministries or via semi-autonomous central government bodies.[18]

***Special Provincial Administrations***. The 81 *Special Provincial Administrations* (SPAs) are each governed by an elected provincial council. Executive functions are assigned to the governor, who is appointed by the central government, as noted above. Thus, SPAs are *de facto* subject to the control of the provincial governors. The governor heads the council and his ratification is required for all budgetary decisions. The SPAs function as a sort of local unit of government, carrying out local services that extend beyond municipal boundaries, as well as some special local services within municipal boundaries. The revenues of Special Provincial Authorities consist mainly of a share of national tax revenues. This share is set by Act 2380, and currently stands at 1.7% of total general budget tax revenues. The SPAs have their own revenues (port fees, rice fees, quarry fees and dues, etc.), but these constitute a very small share (around 1.5%) of overall SPA revenues. SPAs also receive appropriations from the central budget in order to construct infrastructure such as schools, rural roads and village sewerage systems.

***Municipalities*** There are 3 228 municipalities in Turkey, 16 of them metropolitan municipalities. The 1930 *Municipalities Act* and various related laws and regulations provide the legal and regulatory framework for municipal activities. The *Municipalities Act* gives municipalities broad general powers to take necessary measures for the health, well-being and welfare of their inhabitants. In addition, the Act assigns specific powers which can be divided into two major categories: service provision[19] and regulatory powers. The latter include the regulation of construction, environmental regulation, local transports and some business licensing. In addition to central budgetary allocations, municipalities finance their activities from local taxes and charges, including taxes on real estate and land, groundwater, electricity and coal gas consumption. Other charges are levied in respect of water consumption and wastewater discharges, permits for businesses to open on holidays, veterinary inspections, inspections of measuring and weighing devices, etc. The budgets of municipalities are subject to the approval of the provincial governor. While the *Municipality Act* provides powers to municipalities covering many areas of administration, local government has always been subject to close control by central government. Its structure and operation can be changed by law or cabinet decrees and, in many areas, its powers overlap with those of the central authorities. As with the Special Provincial Administrations, the duties of the local municipalities are regulated by national laws, and the central administration has the power of administrative tutelage over the local authorities. While there has been some devolution from the centre since the 1980s, the powers and resources of municipalities remain fairly limited.[20]

***Villages*** are community-based organisations, based on the traditional organisation of village communities around a popularly elected council of elders, lead by the *muhtar*. Since 1924, these organisations have been formally recognised by the central government via ministerial approvals. The *muhtar*, as village chief executive, represents his village and takes responsibility for delivering local services, as well as acting as the representative of central government for the locality. Some members of the council of elders are elected, while others assume their positions by right. A corresponding structure also exists in urban neighbourhoods. The revenues of village authorities derive from several sources laid down in the Villages Act. Village taxes are means-adjusted, have a maximum level, and are payable either in cash, kind or community service *(imece*).

There are no institutional mechanisms for co-ordination between levels of government on regulation and regulatory reform. Nonetheless, a number of informal policy-making and co-ordination mechanisms operate between central and local government and among local authorities themselves. These include the activities of political parties, associations and unions, *ad hoc* committees or panels, training and development programmes, conferences and meetings. Informal practices have also evolved by which local government associations such as the Turkish Municipal Association are consulted when proposed legislation affecting local governments is developed. There are also several unions of municipalities which function at the regional level such as the Union of Municipalities in the Marmara Region, and the Union of Aegean Municipalities.

The most recent OECD Economic Survey of Turkey[21] analysed the legal structure and framework of local government and concluded that it has impeded the efficiency and effectiveness of local authorities and tended to undermine the overall administrative structure. Six main problems were identified:

i) Inappropriate distribution of functions between central government and local authorities

ii) Insufficient financial resources

iii) Insufficient organisation and personnel

iv) Unnecessary practise of trusteeship by central administration

v) Lack of transparency and participation, and

vi) Over-dependence on central government

The division of power between ministries' local representatives, the provincial administrations and the municipalities is not clear. There are concerns both at central and local government level about regulatory and administrative overlaps and inconsistent inspection and enforcement practises. In particular, the lack of co-ordination between individual ministries imposes unnecessary burdens on businesses and reduces the overall efficiency of inspection and enforcement.

Local capabilities also suffer from internal management problems. Patronage has distorted recruitment processes, (before by-laws 1999/12377, 12378) while low wages and inadequate performance incentives reduce efficiency and productivity. Thus, any empowerment of the municipalities through greater devolution of decision-making would need to be accompanied by improved accountability and citizen involvement to provide the necessary checks and balances.

### *2.3.2. European level*

Turkey has had an association agreement with the EC since 1964 and entered a customs union with the EU in 1996. Turkey formally submitted an application for membership in April 1987. Following decisions at the European Council meeting in December 1999 Turkey was recognised as a candidate state to join the European Union, subject to the same assessment criteria as other candidate states.

Joining the European Union has become one of Turkey's highest political priorities, and it is a major force in shaping regulatory reform in many economic and social sectors, and increasingly the administration's capacities to produce high quality regulations.

Box 6. **The European acquis communautaire**

The *Acquis communautaire* comprises the entire body of legislation of the European Communities that has accumulated, and been revised, over the last 40 years, comprising a total of more than 80 000 pages of legal text. It includes:

- The founding Treaty of Rome as revised by the Maastricht and Amsterdam Treaties.
- The Regulations and Directives passed by the Council of Ministers, most of which concern the single market.
- The judgements of the European Court of Justice.

The Acquis has expanded considerably in recent years, and now includes the Common Foreign and Security Policy (CFSP) and justice and home affairs (JHA), as well as the objectives and realisation of political, economic and monetary union.

Countries wishing to join the European Union must adopt and implement the entire *Acquis* upon accession, though there is some flexibility as to timing. The European Council has ruled out any partial adoption of the *Acquis*, as it is felt that this would raise more problems than it would solve, and would result in a watering down of the *Acquis* itself.

In addition to transposing the body of EU legislation into their own national law, candidate countries must ensure that it is properly implemented and enforced. This may mean that administrative structures need to be set up or modernised, legal systems need to be reformed, and civil servants and members of the judiciary need to be trained.

In its *2001 Regular Report On Turkey's Progress Towards Accession*, the European Commission notes that good progress has been made in the implementation of the pre-accession strategy and Turkey's national programme for the adaptation of the Acquis has played a crucial role by providing a wide raging agenda of political and economic reform. The report states that the constitutional amendments are a significant step towards strengthening guarantees in the field of human rights and fundamental freedoms. As in previous reports, the 2001 report urges that implementation and enforcement mechanism are improved, and that administrative reform at all levels is necessary.[22]

Like other candidate countries Turkey is now benefiting from a pre-accession strategy and institutionalised co-operation with the European Union to stimulate and support its reforms. Relations between the European Union and Turkey are organised in the EC-Turkey Association Council and its eight sub-committees, each relating to a specific ministry's portfolio. The Secretariat General for EU Affairs was established by law in June 2000 with the aim of ensuring effective co-ordination in relations with the EU. The Secretariat is primarily staffed with civil servants from units in various ministries (the Prime Ministry, the Ministry of Foreign Affairs, the State Planning Organisation, the Ministry of Industry and Trade and the Ministry of Finance, the Undersecretaries of Foreign Trade and Treasury) that prior to the establishment of the Secretariat were dealing with EU affairs. Co-ordination with other major reform programmes has been relatively simple since the majority of initiatives under the programmes are largely identical.

Turkey's National Programme for adoption of the *Acquis* was adopted by the Council of Ministers on 19 March 2001. A very significant number of constitutional, legal and administrative reforms to align Turkey's legal and administrative environment EU requirements have been promulgated or are under preparation (see Section 1.2).

Implementation of the Acquis will imply major changes and improvements in administrative implementation and enforcement capacities in Turkey. The Secretariat General for EU Affairs uses the informal EU guidelines on "Main administrative structures required for implementing the Acquis" as a

benchmark for scrutinising whether the current administrative structures are sufficient to implement the various chapters of the Acquis. The informal guidelines are considered as being useful, but not always sufficiently clear. Without any legal foundation the guidelines may also be difficult for the EU Secretariat to use to require and enforce necessary changes in the ministries and public bodies' administrative structures and practises.

Many of the changes that will be required in order to implement the Acquis will be of substantial benefit to regulatory governance in Turkey. In addition, the experience of sustaining political commitment to a successful long-term reform programme will better position Turkey to consider the development and implementation of a coherent and wide-ranging regulatory reform policy.

## 3. ADMINISTRATIVE CAPACITIES FOR MAKING HIGH QUALITY REGULATION

### *3.1. Administrative transparency and predictability*

Transparency of the regulatory system is essential to establish a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps ensure against undue influences by special interests. It reinforces the legitimacy and fairness of regulatory processes, yet as a multi-faceted concept it is not always easy to establish in practice. Transparency involves a wide range of practices, including standardised processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; and implementation and appeal processes that are predictable and consistent.

In Turkey, a growing awareness of the need for, and benefits of, regulatory quality are promoting more transparent, open, and consultative procedures for making regulations. At the same time, long-standing practices and continued constraints hinder openness and participation by the public in Turkish regulatory development. On the whole, compared to other OECD countries, Turkey is lagging in terms of regulatory transparency.

#### *3.1.1. Transparency of procedures: administrative procedure laws*

Transparent and consistent processes for making and implementing regulation are fundamental to confidence in the rulemaking process and to opportunities for stakeholders to participate in decisions important to them. The rulemaking process is less structured in Turkey than in many OECD countries. Even though some very broad frameworks for the regulatory process exist, Turkey does not have a specific law, regulation or comprehensive guidance document setting out rule-making requirements. The most important legal framework for the administration to make regulations is a by-law issued by the Council of Ministers. This by-law based on Law 3056 requires proponent ministries to consult with "relevant" institutions and agencies prior to submitting the draft regulation to the Prime Ministry (see next Section on consultation).

Other measures framing the rule-making process are: The Constitution (Article 88), which states that only the Council of Ministers and Members of the Parliament can propose bills to Parliament; The Council of State Law (Article 48) requiring secondary legislation in the form of "tüzüks" to be examined by Council of State (Danistay) before they are promulgated by the Council of Ministers; and the Standing Orders of the Parliament regulating the legislative procedures of parliamentary debates (Article 95); and stipulating that bills shall be submitted to the Assembly along with a *general justification* of the bill and of the individual articles (Article 73).

There are no guidelines for drafting these justifications. In general, the justification focus on the objectives of, and background to, the regulations, rather than assessing their impact. Similarly, administrative processes for developing subordinate regulations lack any check on economic impacts or policy results.

The above-mentioned Principles on the Preparation of Laws Decrees Having the Force of Law, Tüzüks and By-Laws centralises internal government co-ordination of draft laws and regulations within the Prime Ministry. The powers provided by the law and exercised by the Prime Ministry are focussed on controlling the legal quality of the draft laws and on obtaining agreement and consensus among ministries (see also Section 2.2.). Other important elements of rule-making procedure are therefore left to informal administrative traditions and the discretion of ministries. Most regulatory development and quality control activities are currently wholly internal to ministries. The Government has made several attempts to pass an Administrative Procedure Act in recent years, but has not to date succeeded in obtaining Parliamentary approval.

### *3.1.2. Transparency as dialogue with affected groups: use of public consultation*

Public consultation gives citizens and businesses the opportunity to provide active input in regulatory decisions and thus should be considered a central part of the capacities to create high quality regulations. Except for a few voluntary mechanisms, public consultation in Turkey is not systematised and formalised. There are no mandatory requirements or general government guidelines on how to consult with affected parties or citizens and businesses at large.

The lack of a systematic and transparent public consultation mechanism reduces the quality of Turkish regulation in several ways:

- It increases the vulnerability of the public sector to *capture* or undue influence by particular interests.
- It increases the risk of *regulatory mistakes*, due to inadequate information about nature of the problem and the real-world impacts of decisions.
- It reduces government *credibility* and the *legitimacy* of government action.
- Lack of adequate consultation is a missed opportunity to obtain crucial information on *compliance issues* and *impacts*.
- It increases the *"transaction costs"* of policy-decisions, as lobbying and compromise on proposed legislation occurs later in the policy-making process.

The lack of adequate consultation mechanisms has meant that key stakeholders and constituencies focus their lobbying on the final decisions of the cabinet and parliament. Subject to such pressure – which to a large extent could have been incorporated during the preparation of the legislation – draft bills are often sent back and forth between the Council of Ministers and Parliament several times, and legislation is often changed significantly or taken off the Parliamentary agenda. Moreover, when regulations are made public and implemented, they are often met with a "wait-and-see" attitude toward compliance. This reaction is not only widespread among businesses and citizens, but also exists in parts of the public administration.

The informal public consultation processes actually used vary according to the views of the ministry and the minister in charge. The ministry chooses the form of consultation and the participants. Some ministries, for example, convene meetings or make draft regulations electronically available from their Web sites.

Some standing advisory committees do exist, and are often established by law or decree. This mechanism is used particularly in relation to labour and social security issues. An example is the tripartite Economic and Social Council (ECOSOC), first established in 1995 by virtue of a Prime Ministry's Circular (1995/5 of 17 March 1995). Its functions are to represent interest groups in Turkey, promote social co-operation and consensus in the making of economic and social policies and to submit common views to the government. The composition and functions of the Council have been marginally changed several times by subsequent circulars and ECOSOC was re-established by law in April 2001.[23] A total of 21 members represent NGOs, including workers', employers' and other occupational associations. It also includes 15 members representing the government. ECOSOC can form permanent or ad-hoc working groups in which relevant public institutions are required to participate and to which they must provide information and data on request. In addition, the Council, upon the request of the government, may submit views and proposals on all types of issues of an economic and social nature during the preparatory stages of development plans and annual programmes, and on draft bills having a direct effect on economic and social life. The ECOSOC is headed by the Prime Ministry, and the secretariat is with the Undersecretariat of the State Planning Organisation. As of May 2002, ECOSOC had not yet convened under the provisions set up in April 2001.

The labour and employer organisations represented in the committees consider the consultation processes in ECOSOC useful and constructive and also as a practice that could be applied in other policy areas. ECOSOC in its latest form can be seen as an improvement in the Turkish consultative approach to the development of legislation. However, unlike most equivalent bodies in OECD countries, ECOSOC includes a very substantial government representation. While it offers the opportunity for a direct dialogue of NGOs with the Government, the effectiveness as a consultative body with civil society and business is obviously diminished.

*Forward regulatory planning* is a means of raising awareness of proposed new regulation that has the potential to allow for more active public consultation by providing greater notice to stakeholders and thus allowing them more time to organise and formulate their views and submissions. Usually forward planning includes the publication of the overall legislative agenda proposed by a government. Turkey uses a range of mechanisms to provide forward notice of its legislative plans. The government's five-year plans and annual programmes set out broad macro economic and social goals and specify the main instruments to reach these goals. Development plans and annual programmes are published in the Official Gazette and on the web site of the State Planning Organisation. However, the annual programmes, which enter into force by Cabinet decree, do not reflect final and specific government priorities for the legislation put before Parliament. Another reference to the policies and priorities of the government is the reading of the Government Programme before the Parliament within a week of the formation of a new government. The reading is followed by a vote of confidence. Finally, information about the bills on the agenda of the Parliament together with their current status in the parliamentary process can be obtained on the web site of the Parliament.

However, the Turkish government does not publish its plans for specific legislative initiatives, *e.g.* through the General Directorate of Laws and Decrees in the Prime Ministry. Preparation of such a list every three or six months would further improve stakeholders' opportunities to participate effectively in consultation processes.

*Assessment.* Turkey has lagged other OECD countries in creating public consultation mechanisms. This weakens the accountability of the ministries, and reduces their ability to assess impacts, reactions, and compliance issues for new regulations. The adoption of a government-wide policy on the use of consultation in making and amending regulations is fundamental to improving regulatory quality in Turkey. This should include standardised procedures and requirements, ensuring that consultation is open to all interested parties, commences at an early stage in the legislative development process, is supported by the early publication of draft legislation and related material and, ideally, is integrated with impact assessment processes. Equally essential is the provision of detailed guidance and support for ministries on the different consultation mechanisms (including notice and comment, circulation for comment, information consultation, advisory groups and public hearings) and their characteristics.

Box 7. **Best practices in consultation: "notice and comment" in the United States**

The 1946 Administrative Procedure Act (APA) established a legal right for citizens to participate in rulemaking activities of the federal government on the principle of open access to all. It sets out the basic rulemaking process to be followed by all agencies of the US Government. The path from proposed to final rule affords many opportunities for participation by affected parties. At a minimum, the APA requires that in issuing a substantive rule (as distinguished from a procedural rule or statement of policy), an agency must:

*i)* Publish a notice of proposed rulemaking in the Federal Register. This notice must set forth the text or the substance of the proposed rule, the legal authority for the rulemaking proceeding, and applicable times and places for public participation. Published proposals also routinely include information on appropriate contacts within regulatory agencies.

*ii)* Provide all interested persons – nationals and non-nationals alike – an opportunity to participate in rulemaking by providing written data, views, or arguments on a proposed rule. This public comment process serves a number of purposes, including giving interested persons an opportunity to provide the agency with information that will enhance the agency's knowledge of the subject matter of the rulemaking. The public comment process also provides interested persons with the opportunity to challenge the factual assumptions on which the agency is proceeding, and to show in what respect such assumptions may be in error.

*iii)* Publish a notice of final rulemaking at least thirty days before the effective date of the rule. This notice must include a statement of the basis and purpose of the rule and respond to all substantive comments received. Exceptions to the thirty-day rule are provided for in the APA if the rule makes an exemption or relieves a restriction, or if the agency concerned makes and publishes a finding that an earlier effective date is required "for good cause". In general, however, exceptions to the APA are limited and must be justified.

The American system of notice and comment has resulted in an extremely open and accessible regulatory process at the federal level that is consistent with international good practices for transparency. The theory of this process is that it is open to all citizens, rather than being based on representative groups. This distinguishes the method from those used in more corporatist models of consultation, and also from informal methods that leave regulators considerable discretion in whom to consult. Its effect is to increase the quality and legitimacy of policy by ensuring that special interests do not have undue influence.

### *3.1.3. Transparency in implementation of regulation: Communication*

Another dimension of transparency is the requirement that the administration effectively communicates the existence and content of all regulations to the public. Communication is also essential to achieving effective compliance.

In Turkey, the full text of new regulations is published in the Official Gazette once they have been passed by the Parliament (in the case of laws) or by the Council of Ministers (in the case of decrees having force of law, tüzüks, and by-laws issued by the Council of Ministers), and signed by the President. By-laws and communiqués affecting public and economic life are also printed in the Official Gazette.[24] The General Directorate of Legislation Development and Publication is responsible for preparing bound volumes of registers codified according to subjects. The codified register is based on flyleaves with

amendments published every three months. An electronic version of the codified register is accessible (against a charge) from an easily searchable web site managed by the General Directorate of Legislation Development and Publication. Decisions of independent regulators such as the Capital Market Board, the Competition Authority and the Banking Regulation and Supervisory Agency are also published in the Official Gazette.

Most ministries and independent regulators also have a web site from which relevant regulations and decisions under their portfolio are available. Meetings of the Parliament are broadcast live on state-owned radio and television. Finally, special efforts are made by the government to make regulations relevant for businesses and small and medium sized enterprises available (see also Section 4.3).

*De facto* transparency, however, can be reduced when a legal and regulatory framework faces instability through constant revision and amendments of laws, regulations and regulatory institutions. In such cases, understanding the current state of law can be beyond the capacities of most citizens and most businesses. Turkey seems to be confronting such a situation. A symptom of this is the existence of a sizeable consulting industry providing advice on government requirements, and on relevant contacts and procedures in Ankara to assist people in dealing more effectively with bureaucracy and regulatory requirements.[25]

Moreover, a crucial aspect of communication is the overall ability and capacity of the government to explain the need and benefits of reform. Successful and sustainable regulatory reform policies depend on strong and broad support by the public. In Turkey, market oriented policies have been introduced sometimes without strong and convincing communication of the reasons and need for reforms. The failure to explain the reforms' benefits means that reforms often face unchallenged opposition from entrenched vested interests.

*Assessment.* Turkey's processes for providing access to information about regulations currently in force are consistent with best practises in other OECD countries. However, effective communication seems to be frequently constrained by new regulation and the large total volume of regulations. An additional, and perhaps more important issue, is that there has been very limited success to date in communicating the need for regulatory reform in general terms and the potential benefits of such reform. These represent substantial areas for further action.

### *3.1.4. Compliance and enforcement of regulations*

The adoption and communication of a law or regulation is only part of the regulatory process. The law can achieve its intended objective only if it is adequately implemented, applied, complied with and enforced. A low level of regulatory compliance threatens the effectiveness of regulations, public policies, and ultimately the capacities and credibility of governments in taking action. Compliance and enforcement issues can be considered in terms of processes and practices as well as institutional structures.

Turkey is suffering from weaknesses in the enforcement functions of the state, in particular at local level. Local government sensitivity to the economic and employment consequences of business licenses and permits has lead to weaknesses and sometimes neglect in enforcing them. Widespread anecdotal evidence suggests that rather than enforcing "by the book", business and local authorities very often agree on a "tolerable" solution. Finally, there are examples of public sector bodies, which question their obligation to follow court decisions and of official compliance amnesties being given to specific sectors or industries. A prime example is extending deadlines for required environmental protection investments. Such practices provide a strong demonstration effect that compliance is unnecessary and that law can be navigated around rather than complied with.

The important challenges that exist for Turkey in terms of the application, compliance and enforcement of laws and regulations are related to problems in the regulatory process. Two factors are fundamental. First, the infrequent involvement of stakeholders in the preparatory process means that the feasibility of compliance and enforcement are often not adequately considered during the design phase of new laws. Second, awareness of the rules, "ownership" and acceptance of them suffer due to a lack of consultation.

In term of the application of laws, lack of co-ordination between ministries and between different levels of government reduces considerably the general effectiveness of the regulatory framework. In Turkey, each ministry, via its regional or local branches, is responsible for monitoring compliance and enforcing the laws and regulations under its portfolio. Municipalities are responsible for monitoring and enforcing some regulations relating to business start-ups, food and health inspection and environmental protection, but the current division of enforcement responsibilities between municipalities and central government agencies is not clear. There is no system or widespread practice of co-ordinating inspection and enforcement across ministries and agencies. Consequently, enforcement and inspection mechanisms have often been developed independently within individual ministries, leading to inconsistencies across regions and between authorities.

As a consequence, a substantial overlap exists at the local level. As an example, on-site inspections are conducted at many stages of the business set-up procedures by virtually all agencies involved in the process. None of the offices co-ordinate or exchange information. Even different departments in the same ministry do not always share collected information.[26]

In sum, despite the proliferation of inspection bodies, a low level of regulatory compliance threatens the effectiveness of regulations, public policies, and ultimately the capacities and credibility of governments. The co-existence of very extensive inspection actions and the fact that a very large part (some say up to 50%) of the Turkish economy operates informally illustrates the fundamental challenge in Turkey of improving compliance incentives and enforcement practices.

*Public redress and the judicial system*

Mechanisms to redress regulatory abuse must also be in place, not only as a fair and democratic safeguard in a rule-based society, but also as a feedback mechanism to improve regulations.

The first stage for seeking redress in any country is to complain directly to the administration. In Turkey, the *Administrative Jurisdiction Procedure Act* provides uniform rights of appeal to citizens with respect to decision-making by the public administration. The Administrative Jurisdiction Procedure Act is primarily concerned with stipulating the manner and the period of time within which administrative authorities must provide answers or resolutions to an applicant. In particular, the law requires the administration to decide within 60 days when a citizen asks for an administrative decision. No response from the administration within these 60 days automatically means that the request is rejected. There is no requirement for the administration to notify citizens of the justification of its decisions. If a complaint is not filed within 60 days (30 days in the case of taxation issues) the right to redress of administrative decisions via the judicial system is lost.

A recent initiative in this respect is worth noting. Until October 2001 foreign investors have not had access to a satisfactory appeals mechanism to challenge or clarify tax officials' decisions. In October 2001 Article 74 of the Constitution was amended to allow foreign nationals residing in Turkey to file a petition, and to receive a response in writing.

The second stage for seeking redress is to launch a court review. The Constitution's Article 125/I provides a general protection, stating that "all acts and actions of the administration shall be subject to judicial review" A petition can be filed irrespective of whether the plaintiff has exhausted the right of administrative appeal. Administrative justice is provided by local administrative courts and tax courts (first instance), regional administrative courts (second instance) and by the Council of State as the Supreme Court (first and second instance).

As in many OECD countries, the administration of justice in Turkey is slow to complete administrative court action and has a substantial backlog of pending cases. Even though there are no statistics available for the average time cases take going through the administrative court system, existing data suggest that procedures are lengthy: In 1999 the number of total pending cases with local administrative courts were 29376 and the average time for court decision was 167 days. For the regional administrative courts and the Council of State the numbers were 781 and 63861 pending cases and an average of 16 and 401 days for court decisions.[27]

Another typical institution for redress is the ombudsman. Turkey does not have an ombudsman, but the Parliamentary Petition Commission performs some similar functions. When receiving requests or complaints from citizens, the Commission, consisting of 13 members from of the political parties of the Parliament, guide the plaintiff to the right government authority or assist the citizen in following up on his or her case. The committee does not have any formal judicial or executive power. A draft bill on establishing an ombudsman is currently pending in the Parliament.

*Judicial review*

The main responsibility for judicial review lies with the Constitutional Court.[28] The jurisdiction of the Constitutional Court encompasses the constitutionality of laws, decrees having force of law, and the standing orders of the Parliament. The Constitutional Court is also empowered to review and decide whether the procedural rules are complied with when Parliament amends the constitution. The Council of State is responsible for judicial review of cabinet decrees, tüzüks, by-laws and other administrative regulations.

Access to judicial review by the Constitutional Court is possible either as principal proceedings, *i.e.*, instituted by a government organ; or as incidental proceedings, arising out of a pending trial. Incidental proceedings can be initiated by any individual and are not subject to any time limitation. Access to the Court by way of incidental proceedings is dependent on two conditions. First, a plea of constitutionality must be put forward in the course of a pending trial. Secondly, the regular court trying the case must determine whether access to the Constitutional Court is justified (*i.e.*, whether the plea seems serious). In the event that it does so, the court adjourns the proceedings and refers to the matter to the Constitutional Court, which must decide the matter within five months. If no decision is reached by the Constitutional Court within this period, the regular court has to render its judgement on the basis of the existing law. If the Constitutional Court reaches a decision before the judgement of the trial court becomes final, the trial court must comply with this decision. In the event the Constitutional Court dismisses the case on substantive (not procedural) grounds, no plea of unconstitutionality for the same provision of the law can be put forward until a ten-year period elapses.

The number of requests made by the courts for judicial reviews by the Constitutional Court (incidental proceedings) varies – between 8 in 1984 to 84 in 1998 – as does the annulment decisions by the Constitutional Court – one fourth of the requests in 1984 to five percent in 1990.[29]

### *3.2. Choice of policy instruments: regulation and alternatives*

A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. In the OECD area the range of policy tools and their use are expanding as experimentation occurs, learning is diffused, and understanding of the markets increases. At the same time, administrators, rule-makers and regulators often face risks in using relatively untried tools. A clear leading role – supportive of innovation and policy learning – must be taken by reform authorities if alternatives to traditional regulations are to make serious headway into the policy system.

Increasingly, guidelines for regulators in OECD countries require ministries and agencies to consider whether "command and control" regulation is likely to be the most effective policy instrument or whether other options might succeed in achieving policy goals at lower cost. In 2000, 18 out of 28 OECD countries reported that regulators were required to assess alternatives to traditional regulation when preparing new regulation.[30] But the use of regulatory alternatives in OECD countries is, while increasing, still at a relatively low level.

In Turkey, there are no requirements for regulators to identify and assess alternative policy instruments before adopting new regulations, and the use of alternative regulations is exceptional. Even compared to the low rates of use in other OECD countries, Turkey has made little progress in this area. Factors such as a legalistic culture and a regulatory tradition based on 'command and control' rather than incentive-based instruments delay the adoption of many alternative policy instruments. Furthermore, low levels of compliance with traditional regulation may create scepticism about the prospects of new techniques.

In many countries the earliest and most widespread use of regulatory alternatives is seen in the implementation of environmental policies. In Turkey environmental policies generally rely on a command and control approach, with little use of, for example economic instruments.[31] However, recent progress in the use of alternatives in this area may provide the basis for experimentation in other sectors (see Box 8).

Box 8. **Regulatory alternatives used in Turkey**

***Financial incentives***. In recent years, the private sector has been given incentives to invest in environmental protection. Since 1994/95 imported R&D materials and equipment enjoys full exemptions from customs duties, while grants and tax rebates are also available in respect of domestic expenditure in this area. A discount tariff, 17% less than the normal industrial rate, applies to electricity generated from waste treatment plants.

***Integration of environmental concerns in fiscal policies***. Although there are taxes on goods and services that affect the environment, such as the gasoline consumption tax, marine vessel fees, or electricity and coal consumption taxes, they are generally revenue raising instruments and do not specifically aim to alter consumer behaviour. However, part of the revenues from taxes on motor vehicle sales and aeroplane tickets is earmarked for environmental purposes. The Ministry of Finance has recently begun imposing high tax rates on highly polluting vehicles when they are resold in an attempt to reduce the use of such vehicles. Enterprises that are certified by the Ministry of Environment to have sufficient refining facilities are charged less for their energy consumption. Energy consumption beyond 150 kW in residential houses attracts extra energy consumption fees of almost 50%

***Voluntary agreements.*** A growing number of voluntary agreements have been signed between the Ministry of Environment and industries (the yeast, sugar and paper industries in 1995, the leather industry in 1997) to install waste water treatment plants. Other voluntary agreements have been made between the cement industry and the Government to reduce particulate emissions, as well as between the automobile industry and the Government whereby all cars assembled in Turkey will be equipped with catalytic converters by 2001. Other agreements are partial in nature and tend to be kept from public scrutiny, owing to concern that there may be a misunderstanding of their nature as they are often seen as remedies for non-compliance.

***Tax-schemes***. Free-zones established to improve the export capacity of the Turkish economy have been used since 1985 (Law 3218). Enterprises settled in such areas have been excluded from certain formalities and procedures, and have enjoyed tax exemptions. To create incentives for economic activities in east Anatolia, enterprises establishing there have been granted income tax and corporate income tax discounts (Law 4325, 1998). State owned lands have been allocated to such enterprises free of charge.

***Information disclosure (Shaming).*** Names of taxpayers – a top 100 according to their taxable income – who have not paid taxes on time are sometimes published by the Ministry of Finance. This normally attracts massive public attention and indignation. The Ministry of Labor and Social Security also sometimes publishes lists of companies that have not paid employee insurance premiums

*Source*: OECD (1999); The Turkish Government.

Another notable alternative to government regulations has been the devolution of regulatory powers to chambers of commerce and industry and other semi-private bodies. In Turkey, the economic and professional chambers are entitled to regulate the internal relations of their industry within the framework of the law.[32] Such powers include the authority to determine wage and tariffs (Chambers of Artisans, Union of Lawyers Association (though subject to approval of the Ministry of Justice)) and duties and functions of member organisations (Turkish Union of Chambers and Commerce). They also issue standards and criteria for members' services and professional ethics. Membership of specific professional organisations is often a prerequisite to obtain a business license.

These self-regulatory powers raises important problems. Some chambers of commerce and similar professional bodies have created obstacles to competition. For instance, some chambers have set minimum levels for the fees of some services. The Turkish Competition Authority is responsible for resolving problems related to powers delegated to quasi-public professional organisations. On several occasions, the competition authority has intervened giving fines to professional organisations for anti-competitive behaviour.

*Assessment.* Turkey has, to date, made limited progress in encouraging the use of regulatory alternatives. The adoption of a systematic approach to this issue has the potential to substantially favour policy innovation, reduce compliance costs and enhance effectiveness. However, this will require strong capacities at the centre of government, to provide the information, guidance and training needed and to communicate effectively a government commitment to the use of alternatives. Without these steps being taken, natural risk-aversion on the part of regulators is likely to limit any further progress.

### *3.3. Understanding regulatory effects: the use of Regulatory Impact Analysis*

The 1995 OECD *Recommendation on Improving the Quality of Government Regulation* emphasised the role of RIA in systematically ensuring that the most efficient and effective policy options were chosen. The 1997 *OECD Report to Ministers on Regulatory Reform* recommended that governments integrate RIA into the development, review, and reform of regulations. A list of RIA best practices is discussed in detail in *Regulatory Impact Analysis: Best Practices in OECD Countries,* and provides a framework for the following description and assessment of RIA practice in Turkey.[33]

Turkey has no formal requirements to undertake regulatory impact assessment. This is a major weakness in Turkey's quality control procedures. Policy officials do not base decisions on an explicit assessment of the costs and benefits of proposed government actions. Such impact assessments are critical in ensuring that government actions are consistent with principles of quality regulation. The justification currently attached to draft laws only provides a short discussion of the background to and purpose of the draft law, with almost no quantitative assessment of the effects of the regulation.

In countries with undeveloped RIA mechanisms, *budgetary* or *environmental* impact assessments often exist and provide some limited quality control. Moreover, the experience of many OECD countries is that more fully developed RIA processes often arise from these assessment processes. Turkey on both accounts presents an interesting precedent (see Box 9) but also lessons to be avoided.

Box 9. **Good practices: Use of Environmental Impact Assessment in Turkey**

The Environmental Impact Assessment (EIA) adopted in Turkey provides a potentially important base of experience for establishing a regulatory impact analysis. EIA is a widely used process in OECD countries that is conceptually related to RIA, in that it relies on a similar process of identifying and weighing all positive and negative impacts, albeit within a different and narrower framework. Mandatory environmental impact assessment was introduced to Turkey via a 1993 regulation. The EIA regulation is based on EU procedures and national requirements. The regulation was amended in 1997 to address problems encountered during implementation.

Before the investment projects are undertaken either to expand or to replace infrastructure economic analysis and EIA are expected to be used to ensure that appropriate consideration is given to economic, environmental, hydrological and social objectives, based on the criteria in the EIA Regulation. The assessment is made in several stages, which include preparation of an environmental impact statement, review of the project by the environmental authority, its approval for public consultation, the consultation, and final approval of the project, often subject to specified environmental constraints. The investor takes part in the entire assessment process, in order to provide greater transparency. This process is currently being streamlined, having proven to be slow and costly.

Applications for large projects linked to sensitive industries or activities, or those having significant impacts, must be made to the central government; applications for smaller projects with limited local impacts are made at the municipal or provincial level, on the basis of an initial environmental evaluation consisting of a checklist and an evaluation table.

By December 1998, a total of 3 463 projects had been submitted to local and central authorities for EIA; 78% (2 703) were local and 22% (695) were large projects. The rate of rejection of projects was 7% by local levels and 2% by central authorities. There is a significant need for personnel qualified to conduct EIAs, both in the public and the private sectors. Managers and consultants from a growing number of companies are being trained for this purpose. As part of the Turkish EU Acquis transposition programme the ambition is to have the EIA Directive fully implemented by the end of 2001.

*Source*: OECD, 1999.

Budgetary impact assessment constitutes another sectorally focused variant of RIA, in which only the fiscal costs to government are considered. However, in Turkey the linkage between policy proposals and the budget is weak. This is partially due to the high inflation environment, which compresses budgetary time horizons. The Turkish Budget is compiled on an annual basis and does not attempt to anticipate the consequences of current decisions in subsequent years. In this respect, Turkey is one of the few OECD countries to lack a multi-year budget framework to improve the quality of its policy and financial decisions.

When preparing draft regulations that imply financial burdens on current and future state budgets, ministries have a constitutional obligation to specify a financial resource that will meet the stated expenses. In practise, when preparing regulations with an expected significant effect on state expenditures, ministries prepare estimates on the budgetary costs and – separate from this – on personnel requirements. Regulations affecting public finances are sent to the Ministry of Finance and to the State Planning Organisation in the case of investment projects. The scrutiny exercised by the Ministry of Finance is primarily focussed on the staffing consequences of proposals, reflecting the fact that a large portion of government expenditures are on personnel expenditures – an estimated 23.4% in 2001[34] – and that the current opportunities for effective public expenditure management are weak.[35] To facilitate this scrutiny the Government has defined a civil service classification structure and allocated a fixed number of staff of each category to each department (see Section 3.4).

The Ministry of Finance and the State Planning Organisation have no guidelines or standards for reviewing draft laws and regulations or estimating their budgetary impacts. The five-year plan is confined to establishing medium term priorities and does not assess the fiscal costs of its proposals.[36]

The budgetary process is not a sufficiently robust model to adapt to more comprehensive regulatory impact assessments. It lacks incentives, mechanisms, criteria, tools and foremost credibility, with line agencies. The Environmental Impact Assessment is another model, which may provide first input and experiences to the design of a future RIA-process (see Box 9).

Given that Turkey has yet to adopt a formal RIA programme, and that the implementation of RIA is, necessarily, a long term process, the following discussion is presented as a "roadmap" that the Turkish government may wish to consider as a short to medium term approach to implementing RIA disciplines and moving over time toward OECD best practices.

*Maximise political commitment to RIA.* The use of RIA to support reform should be endorsed at the highest levels of government. In the case of Turkey, the adoption of an explicit policy at the highest levels of government is clearly the necessary first step. In this context, it can be noted that Turkish Government officials have indicated recognition that RIA has considerable merit and an acceptance that it should be undertaken across the administration.[37] Given the Turkish legal culture, the implementation of RIA should probably be ratified by law. The scope of RIA should be broad, incorporating both primary and subordinate regulation. Transparent monitoring mechanisms (such as annual reports to parliament) are also required.

*Allocate responsibilities for RIA programme elements carefully.* To ensure "ownership" by regulators, while at the same time establishing quality control and consistency, responsibilities for RIA should be shared between regulators and a central quality control unit. RIA should be prepared by the ministries proposing new regulations, for two main reasons. First, RIA is a tool to improve the degree of responsibility and accountability of those proposing regulations. Second, because RIA must be conducted on the basis of the best possible information concerning the regulation. However, an independent and objective assessment forms a fundamental quality control element for RIA. As such, an expert regulatory reform authority, located at the centre of government, is required to assess RIA and promote and enforce adequate standards of analysis. An additional element of accountability can be provided by a requirement that all RIA should be formally signed off by ministers or by high level officials, as in the United Kingdom.[38]

*Train the regulators.* Regulators must have the skills to prepare high quality economic assessments, including an understanding of the role of impact assessment in assuring regulatory quality, and an understanding of methodological requirements and data collection strategies. All complex decision-making tools, such as producing adequate RIA, demand a learning process. It is vital that the Turkish RIA programme considers from the outset a prolonged investment in training, guidance and a central help desk. Specific courses should be organised. Care should be taken to ensure that RIA requirements are planned in an evolutionary way, making them more precise and stringent as the capacities of the ministries improve.

*Use a consistent but flexible analytical method.* A RIA programme in Turkey should be based first on a clear qualitative assessment, then as soon as possible move to incorporate elements of quantitative assessment and methodologies, which assure consistency and objectivity. A practical strategy with which to start can be to concentrate on compliance costs for businesses. As capacities to prepare and evaluate the RIA increase, the longer term goal should be to move toward a full benefit-cost analysis.

*Target RIA efforts.* RIA is a difficult process that is often opposed vehemently by ministries not used to external review or time and resource constraints. The preparation of an adequate RIA is a resource intensive task for regulators. Experience also shows that central oversight units can be swamped by a large numbers of RIA concerning trivial or low impact regulations. It is thus vital that Turkey target RIA efforts toward proposals that are expected to have the largest impact on society. Alternatively, a two-step RIA mechanism could be devised requiring a simple RIA for all measures and a complete RIA for further-reaching proposals. This is, for example, the situation in Mexico.[39] Another alternative, used in the United Kingdom, is to prepare RIAs for *all* regulations affecting business, charities (or other specified groups), but to require review by a central control unit of only those RIAs that indicate expected effects of more than a given magnitude.

*Develop and implement data collection strategies.* The usefulness of a RIA depends on the quality of the data used to evaluate the impact. An impact assessment confined to qualitative analysis provides lesser accountability of regulators for their proposals. Since data issues are among the most consistently problematic aspects in conducting quantitative assessments, the development of strategies and guidance for ministries is essential if a successful programme of quantitative RIA is to be developed. A practice with potential application to Turkey is the Danish system of panel tests, in which a sample of firms evaluate the potential costs of a proposed regulation.[40]

*Integrate RIA with the policy making process, beginning as early as possible.* Integrating RIA with the policy making process will, over time, ensure that the disciplines of weighing costs and benefits, identifying and considering alternatives and choosing policy in accordance with its ability to meet objectives become a routine part of policy development. If RIA is not integrated into policymaking, impact assessment becomes simply an *ex post* justification of decisions already taken, and contributes little to improving regulatory quality. Integration is a long-term process, which often implies significant cultural changes within regulatory ministries.

For Turkey, this could involve setting up a system similar to the UK approach, where a *preliminary RIA* is prepared when collective ministerial agreement is being sought for the principle of legislation or regulation in a particular area. A second requirement consists of providing an *expanded RIA* when public consultation is being carried out, after which a full regulatory impact assessment is developed to include the results of public consultation. This would then be the basis on which Ministers decide on action.

*Involve the public extensively.* Public involvement in RIA has several significant benefits. The public, and especially those affected by regulations, can constitute cost-effective sources of the data needed to complete high quality RIA. Consultation can also provide important checks on the feasibility of proposals, on the range of alternatives considered, and on the degree of acceptance of the proposed regulation by affected parties. A potentially powerful means for Turkey to formalise public consultation and improve rapidly the quality of RIAs would be to require the publication of a RIA through a 'notice and comment' mechanism, cf. Section 3.1.2.

### *3.4. Building administrative skills through training and merit-based recruitment*

A skilled and well-trained civil service recruited on the basis of merits is a prerequisite for developing and maintaining high-quality regulations and regulatory policies. In Turkey, for many years the possibilities to establish a merit-based bureaucracy were eroded by wide spread clientalism and patronage applied in the recruitment of new civil servants. This not only led to poor quality and low efficiency in many parts of the public sector. It also led to a reduced confidence in the impartiality and independence of the day-to-day decisions taken by public sector authorities.

There is a strong and growing awareness by the Turkish government of the need to establish clear incentives and rules for merit-based recruitment to the civil service. Until 1999 recruitment of new civil servants was based on examinations held by the agency or ministry intending to employ new staff. Evaluations of examination results were held not to be sufficiently clear and objective, sometimes leading to favouritism in the hiring of personnel. This "flexibility" in the employment criteria, combined with very weak central budgetary mechanisms to control the staffing arrangements of agencies and departments, provided ample opportunities to abusive practises in public sector employment fostering clientalism.

With the amendment of the by-law regulating first-time employment in the public sector (by-law 99/12377, amended by by-laws 2001/2031 and 2002/3975) a set of new recruitment rules and criteria were introduced. The new recruitment rules and criteria had two purposes: First, to improve central government's possibilities to monitor and control the number of new employment throughout government. Second, to introduce homogenous test and evaluation criteria for employment of civil servants. This recruitment, personnel allocation and monitoring system works as follows:

1. Candidates take a general exam prepared by the Central Exam Unit (OSYM), an independent body attached to the Higher Education Council. Exams are intended to be held biannually (but since 1999 only one has taken place; a second is scheduled for July 2002)

2. Individual agencies and departments send requests for new staff to the State Personnel Department (staff request organised according to centrally defined skills categories)

3. Based on the requests and in some cases additional information gathering and negotiation with the Personnel Department, the State Personnel Department allocates new staff slots to the applicant agencies and ministries

4. On behalf of the State Personnel Department, OSYM publishes all vacancies and requested skills

5. Candidates with the relevant exam apply for the vacancies to OSYM, who allocates candidates to vacancies according to an electronic system matching candidates' skills and exam scores with the requested skills profile.

The following public sector agencies and independent regulators are exempted from the by-law: The Competition Authority, the Banking Regulating and Supervising Agency, the Energy Regulation Agency, the Telecommunication Authority. These bodies have – as required in their founding laws – set up *specific* tests relevant for the special skill requirements. These tests are also prepared or certified by the OSYM. Career professions listed in the Civil Servants Act (Law 657) are also excepted from the requirements to take a general exam. They take specific entering exams also prepared by the OSYM. In addition to this, the Turkish Armed Forces, university lecturers, judges and public prosecutors are not covered by this by-law, together with autonomous organisations such as the Central Bank, Turkish Radio-Television Corporation, the Scientific and Technical Research Council of Turkey.

No central government agencies, however, are exempted from the recruitment mechanisms. This is unusual, partly because powerful ministries often succeed in lobbying for "necessary" flexibility, partly because the requirements are only based in a by-law, which in the Turkish legal culture can be considered a relatively weak requirement. The explanation for the seeming success in implementing the by-law is to be found not least in the strong and continued support from the very top of the Turkish Government. As such, the implementation of the by-law demonstrates the necessity but also the positive effect of having high level support for regulatory reforms.

There is no special training programme for civil servants on regulatory reforms, but the Public Administration Institute for Turkey and the Middle-East – a research and training institution associated to, but independent from the Prime Ministry – carries out various training programmes for public officials on a regular basis. Sometimes information and methods related to regulatory management issues are integrated in on-the-job-training and in management training courses. The European Community Research and Application Centre of Ankara University and the EU studies centres in Marmara and Middle East Technical University provide training in various subjects related to EU accession.[41]

### *3.5. Building regulatory agencies*

As many OECD countries, Turkey is building market-based institutions to provide regulatory oversight in liberalised sectors and to separate ownership, policy development and day-to-day regulatory overview. Such endeavour is particularly important for countries like Turkey, as foreign investors tend to base their long-term decisions on an impartial and effective regulatory institution at arms' length from the political influences. In practice, this means that a successful operation of sectoral regulators and appropriate oversight of liberalised markets requires adequate design linking sufficient independence from ministries and firms being regulated, with accountability mechanisms to avoid fragmentation of policies, and the resources and skills to provide credibility.

In Turkey, the establishment of new sectoral regulators and the remodelling of existing ones have been a key element in recent years' structural reforms. In particular, their establishment has also been part of agreements with the IMF and has been accelerated through the drive toward EU accession. The renewed impetus for these structural reforms also reflects the need to adjust the insufficient governance structures established following the privatisation of public monopolies in the 1980s.

Turkey's sectoral regulators are established via specific legislation, which define competence of the bodies, state key regulatory objectives and grant them independence in decision-making from political and other vested interests. This is done through statutory appointment procedures, administrative, human resources and budgetary autonomy. The most notable of the newly established regulatory agencies are the Competition Board commencing its activities in 1997, the Telecommunication Board starting its activities in 2000 and the Banking Regulation and Supervision Board operating from 2000. Furthermore, energy and sugar regulators were established in 2001.

*Accountability.* In general independent regulators are held accountable to Parliament, although the related ministry in many cases are said to be able to exercise their influence. The annual reports of the independent regulators are available, although there is no legal requirement to make it publicly available. In banking, the Minister of State responsible for the Economy audits accounts of the regulatory authority through an ad hoc expert commission composed of the representatives from the Court of Accounts, the Prime Ministry and the Ministry of Finance and submits it together with the annual activity report to the Council of Ministers' approval. It is foreseen that the Energy Regulator's accounts will be audited by the Prime Ministry Higher Inspection Board and the Annual Report will be submitted to the related Ministry of Energy.

*Appointments.* Decision-making bodies of the authorities created so far are boards with 7-11 members. A chairman and a deputy are elected usually for a six-year period. The laws provide for a complex appointment procedure, and procedural details may be different across regulations.[42] The laws also stipulate qualification requirements for the members. These include experience and professional credentials (*e.g.* degrees in law, economy, finance, business administration, political science). The members are governed by the civil service law, and thus they may not be members of a political party and are subject to conflict of interest rules about shareholdings. They can not be dismissed before their term

expires for reasons other than explicitly stipulated by the laws. These include standard criteria of an offence in performing their duties or breaking the conflict of interest rules. This system of designating members was used for Turkey's first such independent body, the Capital Markets Board, and it has since been used for others. It has however been argued that the procedures established by laws do not prevent political influence exerted by the Government and that the Government has successfully been bringing in its political appointees to the boards, thereby potentially influencing the day-to-day business of the board.

*Resources / funding.* Independence should be based not only on a clear statute with well-defined functions but also on an adequate resource base. In Turkey the regulatory institutions' resources are primarily funded on the basis of fees for licences/permits, fines and levies. For example, the Banking Law stipulates the fee to be paid by entities in the sector to fund the Banking Regulation and Supervision Board. Independent regulators are exempted from recruiting staff via the general exams used for non-specialised civil servants (see Section 3.4.). Most independent regulators have specialized tests used to select applicants. In addition to this, staff can be employed on the basis of "contracts" which constitute a separate category of employment in state institutions. Contracts allow for higher remuneration levels and therefore for attracting and maintaining qualified experts. Remuneration is usually linked to the salaries in the sector.

*Consultation and rule-making procedures*. Authorities are granted statutory rights to produce secondary legislation. The quality assurance procedures include a check of the regulation's constitutionality and accordance with other laws by the General Directorate of Legislation Development and Publication of the Prime Ministry Office. No standard procedures or requirements exist for this rule-making. Target groups and the scope of consultations is being decided on an ad hoc basis. An exception to this situation is a recent circular from the General Directorate of Personnel and Principles of the Prime Ministry requiring all ministries to receive the Competition Board's opinion about draft laws, regulations, and communiqués about issues under the Competition Board's subject matter responsibilities. The general perception is that even though consultation has been uneven, many independent regulators are more open and more commonly using consultation than central government, particularly due to their novelty and no traditions constraining the use of new methods. All regulations of independent regulators – in the form of by-laws and communiqués – are published in the Official Gazette. They become effective on the date of publication.

*Administrative appeals and public redress.* The rights of businesses and citizens to appeal decisions of independent regulators are identical to those regulating government regulations (see Section 3.1.4.)

*General Assessment* For the newly established regulatory agencies it is too early to assess their performance. However, two areas merit concern and continued attention. First, the proliferation of sectoral regulators may increase institutional rigidity and fragmentation as well as possibilities of duplication between bodies. In some cases such as for the tobacco and sugar industry regulators, the advantages from a dedicated unit of the ministry are unclear, *i.e.* what are the specific market conditions justifying such regulators. It also bears implications for efficient use of financial and human resources. Potential for overlapping jurisdictions should be looked into and managed. Especially the relations between the sectoral regulators and the Competition Authority should be clearly defined, especially with respect to the division of competence.

A second source of concern relates to the *de facto* independence of the regulators. In most cases, the establishment in Turkey of sectoral regulators has been slow and plagued with problems. Questions have been raised about the true independence of the regulators, and about the influence of the Government in bringing its appointees to the boards. Vigorous enforcement of the laws may be necessary for those new agencies to evidence their independence.[43]However given the depth and speed of the recent reforms in Turkey, transition problems are bound to occur. It is important to note that the regulatory framework established for the new sectoral regulators – statutory appointment procedures, administrative, human resource and budgetary autonomy – show a strong ambition and commitment of the Turkish government to establish truly independent and effective independent regulators.

Table 3. **Turkey's major regulatory institutions**

| Board / regulator | Laws / year | Sectors | Task | Powers | Selection of the executive board | Resources / funding |
|---|---|---|---|---|---|---|
| **Competition Board** | Law 4054 / 1994 (operative 1997) | All | Supervise and prevent agreements, decisions and practices which prevent, restrict or distort competition within the markets for goods and services. Control of mergers and acquisitions. | Administrative, supervision, rule-making. | Government selection. (The Council of Ministers appoints the members of the Board from among the two candidates that will be nominated for each vacant post by several institutions either from inside or outside these institutions) | General fees, government budget, fines publication revenues.<br><br>No. of staff: 315 |
| **Banking Regulation and Supervision Agency** | Law 4389 / 1999 (operative in 2000) | Banking | General competence on enforcement of the New Banking Law. Enhancing efficiency, confidence and transparency of the Banking Sector and ensuring efficient functioning of the credit system. The Agency is obliged and authorised to prevent any actions which could jeopardise rights of depositors and a regular and secure operation of banks. | Supervision, rule-making | Government selection<br><br>(The Council of Ministers appoints the members of the Board) | General fees paid by companies in the banking sector.<br><br>No of staff: 323 |
| **Telecommunication Board** | Law 4502 / 2000 | Telecommunications | The Telecommunications Authority i) sets the administrative, financial and technical regulations pertaining to telecommunication; ii) performs follow-up function for these regulations; iii) issues technical standards and test equipment in accordance with these standards iv) implements administrative and financial measures to those who break the rules and regulations. | Administrative, supervision, rule making | Government selection<br><br>(The Council of Ministers appoints the members of the Board) | Licence fees, government budget<br><br>No of staff:422 |
| **Energy Market** | Law 4628 | Electric | Ensuring the formation of electric | Administrative, | Government selection (The | Licence fees, transmission |

| Board / regulator | Laws / year | Sectors | Task | Powers | Selection of the executive board | Resources / funding |
|---|---|---|---|---|---|---|
| **Regulatory Board** | and 4646 / 2001 and 2002 | energy and natural gas | energy and natural gas markets which are financially robust, transparent and operate in accordance with provisions of private law in a competitive market environment. Achieving a stable supply of adequate, good quality, cheap and environment-friendly electric energy, and ensuring autonomous regulation and supervision of these markets. | supervision, rule-making | Council of Ministers appoints the members of the Board) | tariffs, administrative fines, publication revenues<br><br>No of staff: 426 |
| **Capital Markets Board** | Law 2499 / 1982 | Capital Markets | Regulates and supervises the capital markets and protects the rights and benefits of investors | Administrative, supervision, Rule-making, adjudication | Government selection<br><br>(The Council of Ministers appoints the members of the Board) | Fees based on the registered amount of securities, and on the income of the Exchanges.<br><br>No of staff: 390 |
| **Radio and Television Supreme Council** | Law 3984 / 1994 | Radio and TV broad-casting | Competence on regulation of radio and television broadcasting | Administrative, supervision, rule-making | Parliament selection<br><br>(The supreme Council is composed of 9 members, 5 of them is selected from candidates of majority parties, 4 from candidates of opposition parties) | Revenue from advertising, broadcasting permit and licence fees, Government budget.<br><br>No of staff: 337 |
| **Sugar Board** | Law 4634 / 2001 | Sugar, starch based sweeteners | General competence on enforcement of the new Sugar Law and other related regulations. Supervision of enforcement | Administrative, supervision, rule-making | Government selection.<br><br>(The Council of Ministers) | Levies (on the sale of sugar) |
| **The Tobacco, Tobacco Products and** | Law 4733 / 2002 (not yet | Tobacco, tobacco products | General competence on enforcement of the new Law and other related regulations. Supervision of | Administrative supervision, | Government selection | Levies (on the sale of Tobacco, tobacco products and alcoholic beverages), licences fees, |

| Board / regulator | Laws / year | Sectors | Task | Powers | Selection of the executive board | Resources / funding |
|---|---|---|---|---|---|---|
| **Alcoholic Beverages Market Regulation Board,** | operative) | and alcoholic beverages | enforcement, co-operation with national and international organisations. | rule-making | (The Council of Ministers) | administrative fines, |
| **Public Procurement Board** | Law 4734 / 2002 (not yet operative) | All public sector | Examines the complaint about all public procurements; Prepares all regulations related with public procurement; Co-ordinates public procurements | Administrative supervision, rule-making | Government selection<br><br>(The Council of Ministers) | Contracts fees, revenues from publication and government budget |

*Source*: The Government of Turkey and OECD..

## 4. DYNAMIC CHANGE: KEEPING REGULATIONS UP-TO-DATE

### *4.1. Revisions of existing regulations, laws and subordinated regulations*

Regulations that are efficient today may become inefficient tomorrow, due to social, economic, or technological change. Over the years most OECD countries have accumulated a large stock of regulation and administrative formalities. If not checked or reviewed these can lead to a highly burdensome regulatory system. The OECD *Report on Regulatory Reform* recommends that governments systematically review regulations to ensure that they continue to meet their intended objectives efficiently and effectively. Crises have most often been the spur for major review programmes, as governments have sought to supplement traditional macro-economic tools with supply side reforms. Experience from other OECD countries suggest that de-regulation – as a first step in developing a high-quality regulatory system – has been important in boosting sectoral efficiency and innovation and enhance economy-wide flexibility and potential growth.

As in all countries, responsible ministries in Turkey monitor the effectiveness of the laws falling within their competence, supervise the impacts of their initiatives, and evaluate the opinions of interest and professional groups. This monitoring is a regular source to amend laws or bring in new ones.

From 1985-1988 Turkey carried through a comprehensive review and codification of all laws and regulations in force. A total of 11 200 laws, statutes and regulations were reviewed individually and classified according to their subject matter. 1664 inapplicable or ineffective laws and regulations were abolished (Law 3488 of 27 October 1988) and the rest was compiled and published as a collection.

Today, EU accession is the prime driver for review of existing regulation. Revisions of existing regulations are reported in the annual EU reports on progress towards accession and the four annual implementation reports sent to the Secretariat General for EU Affairs.

While there are no mandatory periodic reviews (other than those stemming from EU accession requirements), sunsetting is used in some areas. For example, time limits were set for the activities of Regional Disaster Co-ordination Governorship (Decree having force of Law 576), and for the activities of the Southeast Anatolia Development Administration (decree having force of Law 388/1989).

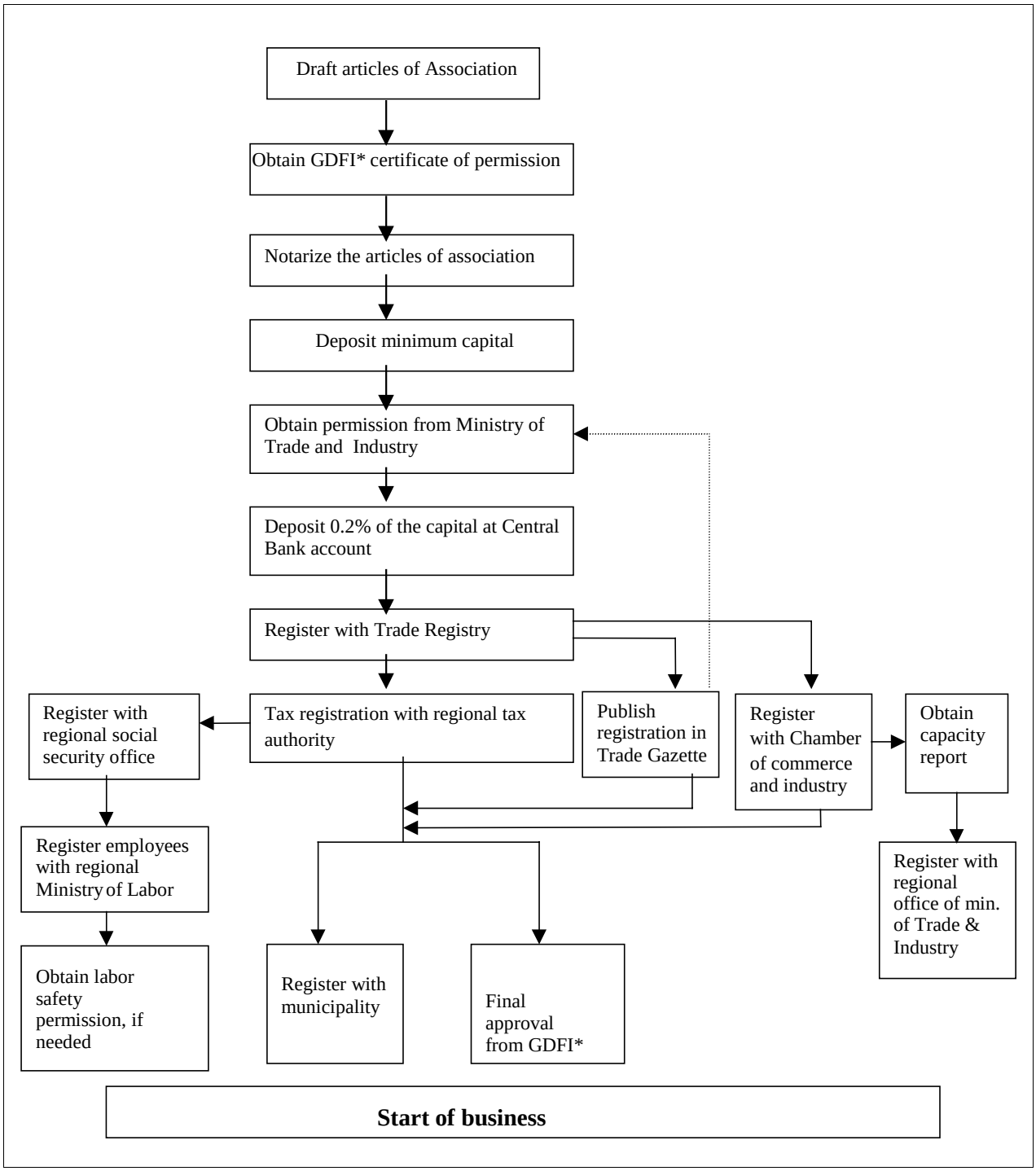
*Assessement.* Experience from other OECD member countries suggests that Turkey may benefit from another review of its existing regulation. A substantial amount of new laws and regulations has been produced since the 1980s review (see figure 1), and there is much evidence suggesting that many regulations in Turkey are out-dated, slowing innovation and causing unnecessary rigidities. Review strategies should be carefully planned and focussed, with a clear set of principles guiding review programmes, including particularly competition principles. Standardised evaluation techniques and decision criteria should complement these principles.

### *4.2. Reducing administrative burdens*

An important area where excessive burdens have been observed is the licensing of businesses where approvals are granted by multiple ministries, municipalities, prefectures as well as some regulatory agencies. A survey conducted in 1987 showed that an investor had to apply approximately 60 public institutions in order to establish a small or medium sized enterprise.[44]

Compared to other countries, procedures for setting up a company are lengthy in Turkey. There are 19 (see Figure 2 below) steps for a foreign company to establish in Turkey. The official time length of these procedures add up to 21/2 month, but in practice it may be significantly longer. For Turkish firms – depending on the legal form of the company – its establishment procedures consists of 17-20 steps;47-65 documents needs to be provided; and applications needs to be made to 13 different institutions.[45]

Figure 2. **Establishing a company in Turkey for foreign entrepreneurs**




*Source*: FIAS (2001). *Note:* GDFI – the General Directorate of Foreingn Investment.

Excessive regulation of business activities via licensing or a complex legal system with overlapping controls add real costs to business activities and potentially stymie new ventures or expanding businesses. Administrative burdens – not only those stemming from market entry barriers, but also those stemming from day-to-day operational administrative requirements – are significant, and they are seen as a leading competitive disadvantages of the Turkish business environment and a key constraint on foreign direct investment.[46] A whole service industry in Ankara and other business centers throughout the country prospers from the complexity of existing bureaucratic procedures. In a recent study over 65% of investors reported using specialized consultants or "paper pushers" with knowledge of procedures and contacts to deal more effectively with bureaucracy.[47]

The Turkish government has long been aware of the need to streamline transactions to obtain licenses and permits,[48] but significant results of these efforts are not visible.[49] Great emphasis and many resources are allocated toward facilitating businesses' *access* to information about regulatory requirements and toward facilitating the internal transactions within the public sector. For example, KOSGEB (the Turkish Small and Medium Industry Development Organisation)[50] has been very active on work on improving information networks such as the Small and Medium Enterprises Common Information Network Project (KOBINET), Internet Contact Points, and a single data base with information on SMEs, shared between all public entities.[51]

The Turkish government is embarking on the task of establishing electronic one-stop-shops, particularly focussed on the administrative, financial, market and industrial information needed by business. Even though today there is no central government agency in Turkey through which any entrepreneur could obtain the information, which he needs in order to start a business and carry out related formalities,[52] several business organizations on a private basis set up such facilities.

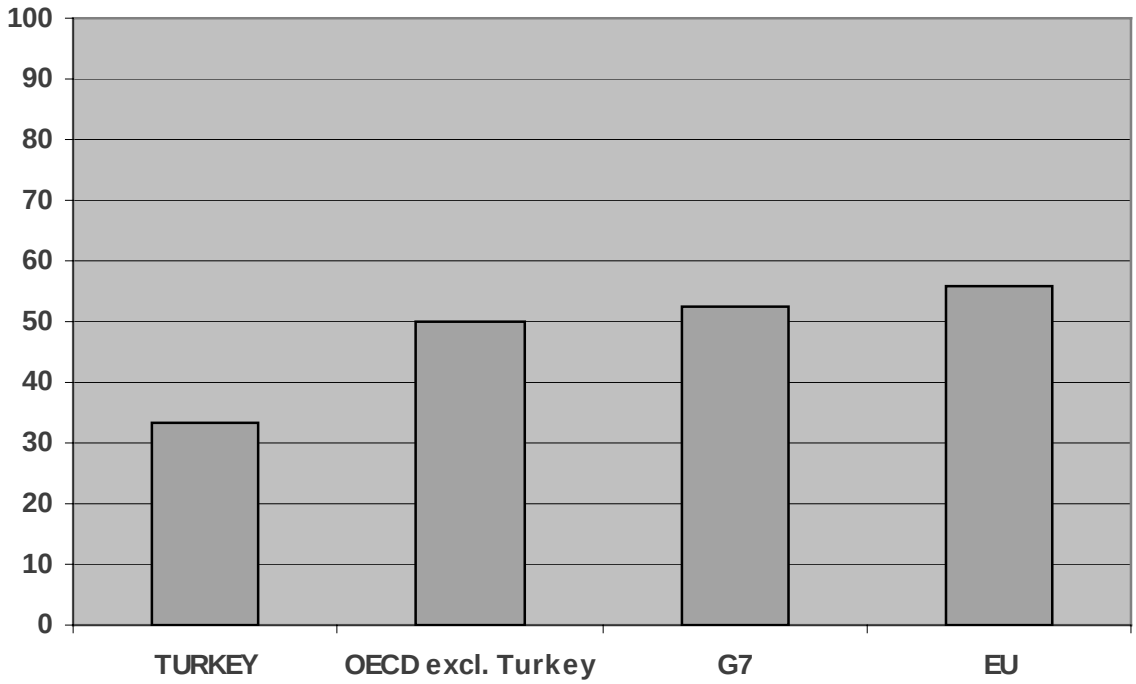
Formalities related to land use regulation is an important barrier for business creation. When found, private land can easily be sold and bought in the market; however, acquiring land from the State is much more difficult and involves a complicated process.[53] Turkey also suffers from a lack of proper regulation of space planning,[54] and development permit process and procedures are reported to be among the most complicated parts of the investment process in Turkey.[55]

A sign of progress to come is the commitment by the government to improve investment-related regulations. In October 2001 nine Working Groups were set up to implement the recommendations of a FIAS/World Bank report on how to reduce administrative barriers to investment. The working groups involves government agencies, NGO's and private sector representatives, and they are co-ordinated by the Treasury's Foreign Investment General Directorate. Further implementation of the working groups' action plans is taking place in nine technical committees, co-ordinated by an Investment Climate Improvement Co-ordination Council. The Council – whose official establishment procedure is on the agenda of the Government – will report to the Council of Ministers in quarterly progress reports.

*Assessment*. Given the significant amount of formalities required to comply with in order to start up a business, the Turkish government's burden reduction activities seem to be disproportionately directed toward *information access*, rather than reducing the actual number of licenses and formalities. In general, many permits required have legitimate purposes, but the supporting governance systems fail to serve those purposes efficiently and effectively. The licensing system as it is today not only imposes significant administrative burdens on business. The lack of transparency combined with bureaucratic discretion at the implementation level also creates strong incentives for corruption and non-compliance. A bright light, however, still on paper form, consists on the commitment to follow up on FIAS recommendations.

Box 10. **Simplifying business licenses and permits**

This synthetic indicator – based on self-assessment – of efforts to simplify and eliminate permits and licenses ranks more highly those programmes where countries use the "silence is consent" (*i.e.* that licenses are issued automatically if the competent licensing office has not acted by the end of the statutory response period), where there are single contact points (one-stop-shops) for getting information on licenses and notifications, where there is programme underway to review and reduce the number of licenses and permits required by the national government and at subnational levels of government.




*Source*: Public Management Service, OECD, 2000.

## 5. CONCLUSIONS AND RECOMMENDATIONS FOR ACTION

### *5.1. General assessment of current strengths and weaknesses*

The depth of the current economic crises has brought a sense of urgency to structural governance reforms in Turkey not seen for many years. Prospects for EU accession is further accelerating comprehensive reform, and it is giving Turkish reformers a stronger hand. There is a growing awareness on benefits and necessity to move toward market-oriented policies and transparent and accountable institutions. A series of fundamental economic and social reforms have been launched in response to the economic crises and to align Turkish laws with EU accession requirements. Both drivers and concrete recent initiatives show a growing political will to confront the grave governance issues that many put as the main culprit of the current crisis. The success of these and other needed reforms will depend on the success of building stronger reform constituencies and on strengthening the governance capacities to manage and implement regulatory reform.

The deep economic crisis in Turkey is exposing the substantial weaknesses of Turkey's current public administration structures. The need for urgent implementation of comprehensive reforms are confronted with regulatory institutions and practices that are outdated, incoherent, ineffectively managed, and partially undermined by a very low trust in government, wide-spread non-compliance and in some cases corruption. The implementation and enforcement capacities of the public sector are lagging far behind policy decisions. If basic regulatory capacities are not in place, the likelihood that new reforms will succeed is limited, and the erosion of public support and rule of law will continue.

Some important elements of an appropriate regulatory management system are already in place, and learning points from positive reform measures are emerging. For example, the basic mechanisms in place for consultation within government could be maintained while expanded to involve more stakeholders and quality checks. Also, the seeming success of the programme to control and merit-base public sector recruitment demonstrates that – provided strong and persistent political support – results can be achieved, despite entrenched and opposing interests.

### *5.2. Policy options for consideration*

The policy options below suggest short and medium term actions that are considered essential if progress in the capacities of the Turkish Government to produce high-quality national regulatory regimes is to be made. They represent a balanced and far-reaching reform agenda that are intended to produce a national regulatory environment that is effective, transparent, accountable, and user-friendly for enterprises and citizens. The strategies recommended are in accord with basic good practices in other OECD countries. If implemented, these reforms will change significantly the style and culture of Turkey's public administration, and its relations with society at large. Implementation of these reforms such as building new institutions, may take considerable time and sustained attention.

These recommendations do not focus on the crucial dimensions of the capacity of the judiciary and the reform of the electoral and party laws. They are crucial foundations for an overall structure of interlocking institutions that together establish the incentives and pressures for high-quality regulation. In particular the role of the judiciary cannot be overestimated. As in most OECD countries, the ultimate check on administrative abuses is the potential for review and reversal by the courts under principles of administrative law. Such deterrence should be credible to be effective. It is particularly important in Turkey to provide an effective and practical judicial infrastructure for dispute settlement, since the role of arbiter of the rules of the game should be enhanced as direct economic intervention by the government is reduced. Furthermore, electoral and party system laws are among the basic fundamental instruments of democratic societies to facilitate the articulation and accumulation of citizens' concerns and aspirations.

- *1. Adopt at the political level a broad policy on regulatory reform that establishes clear objectives, accountability principles, and frameworks for implementation.*

The regulatory reform policy should be based on explicit principles of good economic, social, and administrative regulation such as those in the 1997 OECD *Report to Ministers*. In particular, the principle that regulatory costs should be justified by benefits should be adopted. This well recognised benchmark can stimulate and guide the efforts of all ministries, and build on the efforts on regulatory reform of ministries. It would provide a basis for the performance of those efforts to be assessed, and the efforts themselves to be corrected to improve results. It would improve greater accountability within ministries for their regulatory systems and the results. Given the web of entrenched interests and traditions of ministerial independence in Turkey, personal involvement and direction from the highest political levels is required to advance regulatory reform.

- *2. Establish a ministerial position to champion regulatory reform at Cabinet level and to co-ordinate regulatory reform across government.*

A member of the cabinet should be designated to promote and implement the regulatory reform policy mentioned above. To assure accountability the minister should publicly and annually report on its achievements and challenges. A ministerial committee could assist the minister where bodies representing legal quality, competition and EU accession principles should be included on the committee. The committee could be a forum to resolve controversies between policies. This political body could be modelled, for example, on the Netherlands' Ministerial Committee in charge of the influential MDW ('Functioning of Markets, Deregulation and Legislative Quality') programme. Like in Korea, the minister and the ministerial committee should be complemented with a high level advisory body where businesses and NGOs representative could participate to the design and implementation of the policy.

- *3. Establish an oversight technical unit to help the minister monitor regulatory reform progresses*

The above mentioned minister would require technical support to fulfil his/her mandate. This unit or agency would be in charge of assuring the quality of the regulation and to provide the necessary support to the ministerial committee. As the 'teeth" for this unit its assessment should in all case accompany discussions of regulations or bills in the Council. Its mandate, political accountability, and operation should be focused on objective controls such as regulatory quality and regulatory impact analysis similar to those of the unit in place in the UK or Italy. It should also monitor and promote the necessary economic and public management skills needed to complement work on legal quality within the ministries.

In order to be effective and credible in its challenging and advocacy missions, the unit will need, first, to have a well-resourced secretariat with cross-governmental views and an attractive staffing policy. It should have sufficient financial resources to collect and assess information and buy the expertise of private experts and scholars. Its mission, powers and legal status in the government's legislative and regulatory process should be formalised to reduce opposition. The unit would need authority to advocate and design thematic and sectoral programmes of reforms, co-ordinated across relevant policy areas. The unit could develop performance targets, timelines, and evaluation requirements, review regulatory proposals from ministries against quality principles, and advise the centre of government on the quality of regulatory and reform proposals from regulatory ministries.

- *4. Clarify and streamline the legal scrutiny currently undertaken*

Currently an overlap exists between the legal scrutiny of the Ministry of Justice, the Council of State, the General Directorate of Laws and Decrees and the General Directorate of Legislation Development and Publication. Duplication of the legal scrutiny functions should be avoided and measures should be taken to obtain the most efficient allocation of resources to exercise legal scrutiny of draft laws and regulations.

- *5. Improve the quality of new regulations by implementing across the administration a step-by-step programme for regulatory impact assessment, based on OECD best practice recommendations, for all new and revised regulations.*

Most OECD Member countries now use RIA and the direction of change is universally toward refining, strengthening and extending the use of RIA disciplines. However, in Turkey, RIA is not yet introduced. Yet experience in many countries shows that RIA can be a powerful tool to boost regulatory quality. Lack of information on impacts of regulatory proposals means that Turkey's laws are vulnerable to influence from special interests and less transparent to outside parties.

OECD's best practice principles should be the basis for the Turkish RIA programme. Quality control of RIA's should be overseen by the technical unit recommended above. A comprehensive training programme should be introduced to support capacities for impact assessment. Adequate budgetary funding for the programme should also be planned (for the production by ministries and review by a central unit) to reduce the risk that RIA will become just one more paperwork hurdle in the administrative procedures.

While it is acknowledged that benefit-cost analysis is the long-term goal, constructive steps consistent with current administrative skills could be implemented immediately. These could include incorporating in the justification report required by the Standing Orders of the Parliament, Article 73, the ten quality dimensions of the 1995 OECD checklist. The checklist could be made mandatory for subordinate legislation, decree laws and tüzüks. Transparency and accountability would be increased if the checklist responses were published on the Internet.

In the medium term (*e.g.* 12 months), the government could have in place a traditional RIA structured around an *ex ante* quantitative analysis of impacts, that is, a RIA report prepared by ministries and agencies and reviewed by a technical and independent unit assessing the quality, content, scope, and adequacy of the analysis. The Council of Ministers should refuse to discuss proposals that are not accompanied by a RIA, and subordinate regulations should not be signed by the responsible minister without a RIA that had been reviewed by the independent body. RIA should be targeted on only the most important regulations to avoid wasting time and resources on less significant measures. RIA should also be used as the vehicle for systematic consideration of regulatory alternatives for new regulatory proposals. Preparation of an annual report to Parliament on trends in the use of RIA could increase incentives for its use within the ministries.

- *6. Improve transparency by establishing legal requirements for notice and comment-procedures for all ministries, agencies and independent regulators during the development and revision of regulations*

Currently, public consultation of legal and regulatory proposals is done informally and carried out ad hoc. Low levels of consultation reduce regulatory quality, and leave Turkish regulators vulnerable to organised interest groups, which often represent "insiders". A mandatory public consultation requirement, based on objective criteria, would substantially improve quality and transparency. An effective means to improve transparency and accountability would be to adopt an across-the-board 'notice and comment' process for all regulations, to complement other consultation mechanisms and work as a safeguard against capture by special interest groups. Notice and comment processes are based on clear rights to access and response, are systematic and non-discretionary and are open to the general public as well as organised interest groups. Additionally, the government could develop clear guidelines and parameters for consultation methods and require disclosing RIA with draft texts as part of the notice and comment process. Requiring that all regulatory projects be published together with the regulatory impact analysis (see previous recommendation) could also strengthen the system.

- *7. Promote the systematic consideration of regulatory alternatives for new regulatory proposals, including subordinate legislation, so that the use of alternatives flows beyond the area of environmental protection to all regulatory controls.*

Another significant omission from the current regulatory quality programme is the failure to promote the use of market based alternatives to regulation when government intervention is justified. The OECD *Report to Ministers on Regulatory Reform* documented movement toward a range of alternative instruments in OECD countries and pointed to evidence on gains in policy effectiveness. By explicitly requiring the consideration of alternatives as mandatory for regulatory proposals including subordinate regulation, Turkey can over time move toward a more flexible and efficient regulatory structure that uses markets to achieve public policy goals.

Evidence should be provided that alternatives have been given due consideration. This could be achieved by gradually building into a RIA programme a section devoted to the alternatives considered and why those alternatives were not accepted. An initial phase of training and awareness will allow the public sector to gain greater familiarity with alternative policy tools before a formal requirement is imposed across all of government.

- *8. Initiate a comprehensive review of existing regulations to ensure that regulations continue to meet their intended objectives efficiently and effectively.*

A substantial amount of new laws and regulations has been produced since the 1980s review of the regulatory stock. Much evidence suggests that many regulations in Turkey are out-dated, slowing innovation and causing unnecessary rigidities. Experiences from other OECD countries suggest that prioritising reviews of existing regulations as an initial regulatory quality policy may be a particularly beneficial strategy. Review strategies should be carefully planned and focussed, with a clear set of principles guiding review programmes, including particularly competition principles. Standardised evaluation techniques and decision criteria should complement these principles.

- *9. Continue efforts to reduce administrative burdens by establishing a central registry of administrative procedure s and business licences and permits.*

Administrative burdens, and in particular business licences and permits are among the most important barriers to Turkish entrepreneurs and to market entry. By fostering non-compliance they nourish disrespect for the rule of law, unfair competition with the legal economy and maintain barriers to market access. As in other countries, poorly designed and proliferation of formalities foster petty corruption, undermining trust in the public administration. Rapid and resolute abolition of this type of regulation can bring swift economic gains and build a constituency among SMEs for further reform. To obtain such results rapidly, a mandatory registry of all forms should first be organised, with positive legal security. If a form is not registered in the inventory, then it should not be enforced. As a second step, the forms of the inventory should be reviewed and reformatted, and if possible eliminated or replaced by less burdensome instruments. To accelerate benefits to SMEs, priority in the selection of forms should be based on business opinions. Examples which Turkey could adapt include France with the Centre d'Évaluation et de Registre des Formalités (CERFA), Mexico with its Registro Federal de Tramites,[56] Spain with its Comision de Simplificacion,[57] and Denmark with its Business Panels.[58]

- *10. Increase significantly the attention to compliance and enforcement of regulations*

Improvements on enforcement and compliance dimensions are interlinked and they are among the most important challenges to Turkey's regulatory management system. The problems are the result of a line of deficiencies in the regulatory process including insufficient consultation, ex-ante assessment of compliance and enforcement issues, communication and co-ordination between ministries and between central and local levels of government. Citizens and businesses endure unnecessary burdens caused by the accumulation of regulations and lack of co-ordination between central ministries and agencies and between central and local governments. A key effort will be to rationalise the whole enforcement capacities of central ministries. Solutions will be time consuming and difficult as they involve administrative practices as well as cultural habits. The reinvention of enforcement capacities will require powerful backing during a multi-year programme assessing the adequate needs for individual agencies, the possibility of merges of enforcers and the establishment of transparent and accountable mechanism. Deconcentration to local levels might ease the efforts, though this do not preclude maintaining oversight central capacities.

In parallel, strengthening the *ex ante* assessment of enforcement capacities of regulators and expected compliance during the regulatory decision-making process would also be needed. An interesting experience from which to draw inspiration is the major effort of the Netherlands Ministry of Justice in this area.[59]

### *5.3. Managing regulatory reform*

The success of regulatory reform will depend not only on the policy content of the reform, but also on the strategy, pace, sequencing, accompanying targeted policies, and transitional arrangements for reform.

Turkey's recent regulatory reforms have concentrated on economic reforms strongly needed to rebalance the economic situation, whereas reforms of the public sector and government capacities have lagged behind. There is a risk that urgent short-term actions tied to the need for fiscal adjustments "crowds out" the important systemic initiatives, without which, however, both structural and regulatory reform are likely to fail.

The most important determinant of the scope and pace of further reform is the attitude of the general public. The Turkish experience suggests communication strategies should accompany the policy reforms suggested above. A high priority to motivate support for reform is to deliver visible benefits to businesses and consumers and by doing so building a constituency for reform. Evaluation of the impacts of reform and communication with the public and all major stakeholders with respect to the short and long-term effects of action and non-action, and on the distribution of costs and benefits, will be increasingly important to further progress.

## NOTES

1. See for example World Bank (2000) and IMF (2001).

2. For a detailed description and analysis of the recent economic crises, see chapter 1 of this report and OECD (2001). The economic context of regulatory reform in Turkey is one of relatively high but very unsteady growth, high inflation and a skewed income distribution. Annual real GDP in Turkey averaged just over 4% in the 1980s and almost 5% in the 1990s, compared with an average annual rate of growth in the OECD of 3% in the 1980s and just over 2% in the 1990s. Growth has been volatile, particularly in the 1990s with a contraction of 5% in 1994 and growth rate in 1995-1997 of 7.2%. GDP growth is expected to contract sharply in 2001 reflecting the severe economic crises in Turkey. Income distribution is highly skewed between social strata and between regions. In 1994 Turkey had a Gini coefficient of about 0.49%. The share of the informal sector in the Turkish economy is high.

3. As an illustration, see for example the Turkish Economic and Social Studies Foundation (Tesev, 2001) for results of a survey on trust in institutions and public views on "honesty of occupation categories".

4. The law on political parties together with the electoral law provides on the one hand a proportional election system favouring lists of candidates, on the other hand very powerful party leaders controlling the position in the electoral lists.

5. The centralised structure and the important role of the Prime Minister in the decision-making process is illustrated by the size of the Prime Minister's Department which – apart from the 2300 staff in the Prime Minister's office – consists of 18 State Ministers. The Prime Minister can change the portfolios of these State Ministers (whereas other ministry portfolios are defined by law). Within the portfolio of the State Ministries are areas such as the Treasury and the State Planning Organisation.

6. The sometimes-used reference to the state as "Devlet Baba" – Father State – reflects the historical role and importance of the state. It also indicates the initial reluctance of Turkish legislators of transferring powers from the state to independent regulators and the market.

7. The Council of Ministers cannot issue statutory decrees concerning the fundamental liberties and political rights of individuals. In cases of emergency and martial law, the Council of Ministers' meeting under the chairmanship of the President has the power to issue statutory decrees. The constitutionality of statutory decrees issued in cases of emergency and martial law cannot be controlled and annulled by the Constitutional Court. However these statutory decrees should be submitted to the Parliament on the day of their publication for approval.

8. Sources: The Government of Turkey (2001); The Secretariat General for EU Affairs (2001); The European Commission (2000 and 2001).

9. World Bank (2001*b*).

10 FIAS (2001).

11. Article 73 of the Standing Orders of Parliament.

12. If draft law proposals are submitted by individual MPs, the GDLD is responsible for circulating the proposals to relevant ministries for comments, and for consolidating departments' views to the Parliament

13. According to the Turkish Constitution most law and regulations require the signature of each minister in the Council of Ministers to be valid or to be sent to Parliament. A number of by-laws are exempted from the requirement to pass the Council of Ministers before they can be issued. Article 124 of the Turkish

Constitution provides that the Prime Ministry, the ministries and public corporate bodies may issue by-laws related to their particular fields of operation and in conformity with such statues and regulations.

14. There is no direct link between the legal measures suggested in the five-years plans and Annual Programmes on the one hand, and the bills laid before Parliament on the other. Rather, the five-years plans and the Annual Programmes are some among several important inputs to the political decision-making process.

15. The Council of State is also the last instance for reviewing decisions and judgements given by administrative courts, which are not referred by law to other administrative courts. Furthermore, the Council of State tries administrative cases and gives its opinions on draft legislation submitted by the Prime Minister and the Council of Ministers.

16. According to the Standing Orders of the TGNA, Article 37. If the Commission does not report within 45 days draft can on the request of the Government or an individual MP be sent directly to the TGNA, who will then decide whether the proposed law can go on its agenda.

17. The following descriptions are based on OECD (1995); OECD (2001), annex 4; and Turkish Ministry of Interior (1999)

18. Among the most important of these services are security and police (Ministry of the Interior); planning, curricula and staffing for educational institutions at all levels (Ministry of Education for primary and secondary levels, the Board of Higher Education for universities; various health services (Ministry of Health); museums and cultural facilities (Ministry of Culture and Tourism); major intercity expressways (Ministry of Public Works and Housing); major urban water supply and treatment projects (DSI, the State Hydraulic Works). The central government responsibilities for providing postal services (General Directorate of Posts), telecommunications services (Türk Telecomunication A.S.); and electricity supply and distribution (TEAS: Turkish Electricity Production and Transmission Company and TEDAS: Turkish Electricity Distribution Company) is now being steadily reduced or fully abandoned as these activities are privatised in parallel with the establishment of independent regulators.

19. The major services for which municipalities are responsible are: urban planning and implementation, mapping, areas; urban renewal; organisation and management of public infrastructure; construction and maintenance of parks and other green areas; provision of fire-prevention and fire-fighting services; establishment and management of recreational, sports, cultural facilities, health and social welfare facilities; municipal policing; protection and conservation of historical and natural areas; vocational training; planning and construction of social housing, social assistance and meeting other social needs; land development and the opening up of new settlement.

20. In many areas the central government maintains significant powers of control and tutelage. For example municipalities can borrow money from both internal and external sources, but borrowing from internal sources over a certain percentage of their budget, and all external borrowings, are subject to central government approval. In some cases the authority to supervise local decisions is given to the Council of Ministers, other individual ministers, or the Council of State. The Audit Court is also empowered with trusteeship competence on local authorities with respect to expenditure control. The Ministry of the Interior in 1994 delegated some of its supervisory powers to provincial governors to reduce the excessive concentration at the centre. Some of the sub-national government levels also run businesses on different areas such as supermarkets and construction companies.

21. OECD (2001), Annex 4.

22. European Commission, 2001.

23. Law 4641, 21 April 2001, on the Establishment, Working Principles and Procedures of the Economic and Social Council.

24. Law 3011 regulates regulations required to be published in the Official Gazette.

25. See also FIAS (2001).

26. FIAS (2001).

27. Source: www.adli-sicil.gov.tr/istatist.htm

28. In addition to its main function of reviewing the constitutionality of laws, the Constitutional Court also performs functions specifically accorded to it by the Constitution, such as trying impeachment cases and deciding on the unconstitutional activities of political parties.

29 The table shows the number of requests made by the courts for judicial review before the Constitutional Court arising out of a pending trial.

| | 1984 | 1986 | 1988 | 1990 | 1992 | 1994 | 1996 | 1998 | 2000 |
|---|---|---|---|---|---|---|---|---|---|
| Number of requests by the courts for judicial reviews by the Constitutional Court | 8 | 20 | 43 | 22 | 47 | 25 | 37 | 84 | 28 |
| Number of Annulment Decision Taken by the Constitutional Court | 2 | – | 3 | 1 | 3 | 5 | 11 | 17 | 3 |

*Source*: The Government of Turkey.

30. PUMA/OECD (2000), Answers to questionnaire on indicators of government capacities to assure high-quality regulation.

31. OECD (1999).

32. Article 124 of the Turkish Constitution allows professional organisations, chambers and associations to issue such by-laws covering their internal relations with the specific law defining those associations' functions and objectives. Such by-laws are subject to review by the General Directorate of Legislation Development and Publication, primarily in terms of the by-laws' accordance with the framework law.

33. OECD (1997*b*).

34. In most OECD countries the share of wages and salaries of Central Government Spending ranges from 2.9% (Australia) to 19% (Luxembourg). Source: GFS and IMF in World Bank (2001).

[35]. New staff allocations are not linked to the budget because unforeseen high inflation rates have made it impossible to estimate salary costs *ex ante*.

36. World Bank (2001*b*).

37. Views expressed by the Prime Ministry and the Ministry of Finance.

38. OECD (2002), *Regulatory Reform in the United Kingdom*.

39. See OECD (1999*c*).

40. See OECD (2000). For further guidance see Broder, I. and Morral, J., "Collecting and Using Data for Regulatory Decision-Making" in OECD (1997*b*).

41. A total number of 7 089 personnel have received training at the European Community Research and Application Centre of Ankara University in the following areas; foreign language (3 177), basic training on European Union (2 567), international affairs (826), economic and financial policies (362), common

agricultural policy (63), social policies (59), industrial policy (13 personnel), community law (22). Source: The Turkish Government's answers to OECD questionnaire on regulatory reform.

42. Generally stakeholders (the government (or the "related ministry"), relevant sectors, academics, labour organisations) nominate their candidates (usually 2) for each vacant position on the Board. The Council of Ministers then appoints the Members. As for the Competition Authority, it itself is entitled to nominate 4 candidates.

43. For example, the EC Regular Report 2000 calls for enhancing independence of the Telecommunication Authority from the fixed network operator's influence and from the ownership function of the state in relation to Turk Telekom. Further capacity building is also recommended.

44. Answers of the Turkish Government to OECD questionnaire.

45 Source: The Turkish Government / KOSGEB.

46. According to a World Business Environment Survey by the World Bank in 2000, investors in Turkey reported that about 20% of management time is spent dealing with government regulations and administrative requirements, compared to 8% in Central and Eastern Europe and 4% in Latin America (as quoted in FIAS, 2001). In a survey by FIAS (2001) 92% of investors ranked complexity and non-transparency of government regulatory policies as a serious constraint to business operations.

47. FIAS (2001): viii.

48. Studies for reducing the bureaucratic formalities were launched in mid-60s. A "Struggle Against Red Tape Programme" run by the General Directorate of Turkey and Middle East Public Administration Institute in 1967 is probably the first programme in this respect. Reducing the red tape has always been an objective in development plans, annual and government programmes in the recent years. According to the Turkish Government over 500 studies have been completed between 1984-1990. In 1989 decree having force of Law 353, later amended by Law 3 572, was promulgated with the aim to simplify all types of transactions concerning applications on licences and permits.

49. In the words of a Turkish government document prepared for the EU: "…In spite of this legislation and efforts undertaken it is not possible to say that formalities have been minimised and that they are effectively implemented. Entrepreneurs cannot obtain information about actions and rules they are required to take and observe from a single organisation. Businessmen cannot get information regarding applicable laws and they are only informed about documentation required and rules to be observed while running their businesses" (KOSGEB, 2001: 39).

50. The Turkish Small and Medium Industry Development Organisation (KOSGEB) was established in 1990 (Law 3624) to encourage entrepreneurship and generally assist smaller firms. KOSGEB has more than 36 extension service offices with professional staff and provides diverse technical, management and consulting services to SMEs.

51. SME's with less than 250 employees represent almost 65% of employment in the Turkish manufacturing sector. They are mainly concentrated in the traditional sectors (85% of all SME's are concentrated in the sectors of food and beverages, textiles, wood products, paper, fabricated metal products). The main specific difficulty faced by Turkish SME's is access to finance, since the financial sector has been reluctant to give long term credits because of high inflation and high returns on state papers. The Ministry of Industry and Trade is responsible for the conception and implementation of Industrial policy, assisted by other ministries and KOSGEB.

52. KOSGEB (2001), p. 31.

53. Outside the organised industrial zones, land available for industrial purposes for new investment projects is hard to find. In most cases rezoning would be required to convert agricultural land to commercial use. If rezoning is required, an additional year of time can be easily added to the already lengthy process of setting up a business. *Source*: FIAS (2001).

54. Although the country has a legal framework in place that requires the Ministry of Public Works to develop large scale plan, the national land development strategy and plan is far from being complete. As a result, there is no coherent and consistent land use guidance given to local governments. The absence of a complete national plan limits the initiative of modern land use planning at the local levels and causes a number of approvals and permits, such as the Site Selection Permit, to remain in effect. Incomplete land development plans cause serious difficulty for investors to 'comply with' such plans, as required by law, and result in a time-consuming and costly approvals process. *Source:* FIAS (2001)

55. According to the above mentioned study by the Foreign Investment Advisory Group a myriad of licenses, permits, and approvals is required in this process involving multiple ministries and authorities at both the state and local government levels. The study reports that the entire process is very time- and resource-intensive, posing a serious constraint to investment, and that the requirements and agencies involved are too many and overlapping—*e.g.*, over 20 agencies at the building permit stage. This creates extremely difficulties for knowing which permit is truly important and who is responsible for what.

56. See OECD (1999*c*).

57. See OECD (2000*b*).

58 See OECD (2000).

59. OECD (1999*b*).

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