



**TURKEY: PHASE 2 & PHASE 2bis**

**FOLLOW-UP REPORT ON THE IMPLEMENTATION  
OF THE PHASE 2 & PHASE 2bis  
RECOMMENDATIONS**

**APPLICATION OF THE  
CONVENTION ON COMBATING BRIBERY OF FOREIGN  
PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS  
TRANSACTIONS AND THE  
1997 REVISED RECOMMENDATION ON COMBATING  
BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 19 March 2010.

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## SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

### a) *Summary of Findings*

1. Turkey's progress in implementing the OECD Anti-Bribery Convention since its Phase 2 examination in December 2007 has been significant. Although significant progress was already noted by the Working Group on Bribery in its Phase 2*bis* evaluation in June 2009, there were still a few areas of concern. Since then, Turkey has fully implemented all the Working Group's Phase 2 and Phase 2*bis* recommendations except for one, which is partially implemented. The partially implemented recommendation concerns the need to broaden the scope of external company audits. A draft provision for this purpose is currently before Parliament, and should be adopted by the end of 2010 or early 2011.

2. Highlights of Turkey's progress include the following:

- a) The Turkish Government has undertaken significant awareness-raising and training on the offence of bribing a foreign public official, targeting all the major players, including police, prosecutors, members of the judiciary, Official Development Assistance authorities, public procurement officials, Turkish embassy personnel, private sector representatives, including small and medium enterprises, and civil society. These activities have been continuous since Phase 2, and appear sustainable in the future.
- b) Several legislative and regulatory provisions have been adopted, including for the protection of whistleblowers in the private and public sectors, witness protection, the express denial of the tax deductibility of bribe payments, improving suspicious transactions reporting of money laundering, and the repeal of "effective remorse" – *i.e.* the non-application of penalties to cases of the bribery of domestic and foreign public officials when the briber reports the offence to the competent authorities.
- c) Re-instatement of corporate liability for the offence of foreign bribery through an amendment to the Code of Misdemeanors. These measures do not require a prosecution or conviction of the company employee or manager who offered, promised or gave the bribe to the foreign public official.
- d) Increase in law enforcement activity, with the opening of investigations in two new cases, for a total of three ongoing investigations, as one had been closed since Phase 2*bis*. Neither of these new cases had been previously reviewed by Turkish inspection boards.

3. In Phase 3, the next round of monitoring implementation of the Convention, the Working Group looks forward to a continuation of Turkey's strong efforts, and hopes to see concrete progress concerning the allegations against Turkish companies in the 2005 Final Report of the Independent Inquiry Committee (IIC) into the United Nations Oil-for-Food Programme. Progress in this regard has been slow but steady since Phase 2*bis*. Furthermore, in Phase 3, the Working Group will undertake an assessment of the new legal provisions on corporate liability. Such an assessment is normal practice when Parties to the Convention enact new laws directly related to compliance with the OECD Anti-Bribery Convention.

**b) Background Information**

4. In Turkey's Phase 2 examination, the Working Group on Bribery recommended a Phase 2bis examination due to the following four main areas of concern: i) inadequate awareness of the offence of bribing a foreign public official within the government and the private sector; ii) insufficient private sector and civil society participation in the Phase 2 on-site visit; iii) the repeal of the liability of legal persons for the foreign bribery offence in contravention of Article 2 of the OECD Anti-Bribery Convention; and iv) inadequate law enforcement regarding allegations of foreign bribery involving Turkish companies, including a large number of allegations in the IIC Final Report of the into the UN Oil-for-Food Programme.

5. Significant progress was already noted by the Working Group in its Phase 2bis evaluation of Turkey, including regarding investigations, of which two were ongoing. In addition, a draft law for re-establishing the liability of legal persons ("corporate liability") for the foreign bribery offence was before Parliament, and the Parliamentary Justice Commission had requested and received suggestions from the Phase 2bis examination team on how to improve the draft law. Remaining concerns included the need to urgently adopt the draft law on the liability of legal persons, very slow progress on the allegations in the IIC Final Report into the UN Oil-for-Food Programme, and the use of inspection boards, which are not law enforcement bodies, to collect information about allegations of foreign bribery when the Working Group thought that the public prosecutors should already be involved.

6. All Parties to the OECD Anti-Bribery Convention will be examined in Phase 3, which commences in 2010. Turkey's Phase 3 examination is scheduled for June 2014.

**c) Conclusions**

7. In conclusion, the Working Group on Bribery is of the opinion that Turkey fully implemented all of the Phase 2 and Phase 2bis Recommendations, except Phase 2 Recommendation 5(b) on broadening the scope of external audits, which is partially implemented. The Working Group will continue to follow-up Turkey's progress in implementing the OECD Anti-Bribery Convention in its regular *tour de table*, in particular regarding the three ongoing investigations and allegations in the IIC Final Report into the UN Oil-for-Food Programme. The Working Group will also follow-up closely implementation of the new provisions on corporate liability.

## TURKEY: WRITTEN FOLLOW UP TO PHASE 2 AND PHASE 2bis REPORTS

**Name of country: Turkey**

**Date of approval of Phase 2 Report: 7 December 2007**

**Date of approval of Phase 2bis Report: 18 June 2009**

**Date of information: 22 February 2010**

### **Part I: Written Follow-Up to Phase 2 Report**

#### ***Part I (a): Recommendations for Action in Phase 2***

*Note: For ease of reference, the recommendations from the original Phase 2 Report have been re-numbered. Recommendation 1 of this report corresponds to Paragraph 5 on page 63 of the Phase 2 Report and so on.*

#### **RECOMMENDATION 1**

##### **Text of recommendation 1(a):**

1. With respect to general awareness raising and training activities to promote the effective implementation of the Convention and the 1997 Revised Recommendation, the Working Group recommends that Turkey:

(a) Urgently establish and implement awareness-raising programmes for (i) public officials, particularly those in contact with Turkish companies operating in foreign markets, including staff involved in official development assistance (ODA)-funded procurement contracting; and (ii) companies, including SMEs, that are active in sectors or geographic locations prone to corruption [Revised Recommendation, paragraphs I, II v) and VI iii)];

Actions taken as of the date of the follow-up report to implement this recommendation:

##### **Public Officials**

The Council of Ethics with the assistance of the Council of Europe and the European Union has set up a joint project on “Ethics for the Prevention of Corruption in Turkey” to be implemented during the period 2007-2009 and which, *inter alia*, provides for the elaboration of studies to evaluate the effectiveness of anti-corruption measures implemented in recent years – e.g. legislative measures regarding the PenalCriminal Code, the Law on Access to Information and the Code of Ethics – and the preparation of proposals for improved management, coordination and monitoring of anti-corruption strategies in Turkey.

The Council of Ethics has recently decided to include the OECD Anti-Bribery Convention in that project as well as the scope of other relevant activities. The State Personnel Presidency issued a Circular on November 26, 2008. This circular which addresses all public institutions requires training of all public officials by their institutions on ethical principles and anti-corruption issues.

### **ODA officials**

A lecture on the introduction of the OECD Anti-Bribery Convention, offence of foreign bribery, on duty to report the offence and on the penalties in case of breach of reporting obligation, was given to a large audience of about 150 people, composed of TIKA high ranking officials and staff, particularly of those who are working in foreign representatives of TIKA, on November 6, 2008. The informative booklet prepared by the Undersecretariat for Foreign Trade was distributed to all TIKA staff. As the topic has been included in the regular training of the staff, similar training programs will be organized on a regular basis in the future for TIKA staff. For instance, in cooperation with The MoJ, TIKA organized a training seminar on anti-corruption for its own staff employed as TIKA Program Coordinators (22 people in 20 countries) in 2009 in Ankara. TIKA, in its website, has given link to the Ministry of Justice's web page (<http://www.uhdigm.adalet.gov.tr/oecd/oecd.htm>).

### **Public Procurement Authority officials**

A lecture on the introduction of the OECD Anti-Bribery Convention, 1997 Revised Recommendation and the OECD WGB Recommendations in the Phase 2 Report was given on November 24, 2008 for assistant experts working for the Public Procurement Authority. Twenty (20) assistant experts attended the lecture. Public Procurement Authority will continue to its efforts in making the foreign bribery offence more widely known to experts.

### ***Awareness rising for companies, public officials, NGOs and civil society organizations***

The booklet (for further information on the booklet see the answer of the Rec. 5b) prepared by the Undersecretariat for Foreign Trade is designed to fill a gap in terms of awareness raising since it designates the public and private sector as the target and serves as a guide on key issues. The booklet is available online ([http://www.dtm.gov.tr/dtmadmin/upload/ANL/CokTarafliAnlasmaDb/rusvet/RM\\_kitapcik.pdf](http://www.dtm.gov.tr/dtmadmin/upload/ANL/CokTarafliAnlasmaDb/rusvet/RM_kitapcik.pdf)), and hard copies are distributed at the seminars conducted by the UFT. The UFT so far completed awareness rising activities in the provinces where the major exporting companies reside and the corruption risks are relatively high in the surrounding foreign territories. In this respect, in April 2008, two consecutive seminars were held, one in Ankara (on April 8, 2008) and the other in Istanbul (on April 11, 2008) with an active participation of business representatives and many relevant public institutions and organizations. The seminars created an active environment in which exchange of ideas took place on the OECD Convention as well as the Phase 2 Report on Turkey. Moreover, within the framework of the 11<sup>th</sup> Foreign Trade Week (an officially supported annual forum on trade policies and export opportunities held between October 13-17, 2008), seminars were conducted by the UFT in provinces of Giresun, Rize and Aydın located in the Black Sea and Aegean Regions of Turkey. During those seminars, presentations were made to underline not only the adverse effects of bribery and corruption on fair competition and market access opportunities but also the importance of the supply side perspective that the OECD Convention offers to its Parties. On this occasion, detailed information has also been given on the Turkish legislation and practices in combating bribery of foreign public officials. The seminars grasped the attention of not only business circles, NGOs and public officials, but also public in general, and helped the awareness raising activities reach the grassroots. Lastly, a seminar was organized by UFT in Ankara on 11 February 2010 with the participation of associations of contractors and a presentation made on the OECD convention.

It is worth noting here that among the participants of the aforementioned seminars there were customs consultants, lawyers, provincial chambers of trade and industry, local governors and representatives from important business entities such as Turkish-Iraqi Business Council, Ankara Chamber of Industry, Ankara Chamber of Commerce and Turkish Exporters' Assembly together with individual firms including but not limited with Zorlu Group, Nobel İlaç, Eczacıbasi and Mercedes Benz Turk.

#### ***Awareness raising seminars***

As a concrete indication of its readiness to play its part and show responsibility to fight against bribery and corruption, the Undersecretariat for Foreign Trade (UFT), in cooperation with Ministry of Justice, Ministry of Foreign Affairs, Privatization Administration and Turk Eximbank had prepared an informative booklet. This booklet was designed for filling a gap in terms of awareness raising since it targets the public and private sector as the audience and serves as a reference book on key issues like who the foreign public official is, what a bribery is and what the relevant national legislation is. We are pleased to see that the booklet serves its purpose successfully, and that its online version makes it a lot easier to reach not only to the public and private sector but also to the grassroots. It is considerable that only in last few months, the online version received almost 1000 visitors.

The website also contains information about and the presentations made at the awareness-raising seminars that the UFT has been organizing. In this context four seminars were organized. Initial two seminars were conducted in April 2008 in İstanbul and Ankara. The third one, was completed in cooperation with İstanbul Chamber of Commerce on October 7, 2009, was organized on three pillars. At first pillar, the Ministries of Justice and Finance, and Undersecretariat for Foreign Trade made presentations on what is considered to be "bribery" and legal consequences of bribing foreign officials. At second pillar, the TI drew a general framework and explained distortive effects of bribery on international trade. At third pillar, private firm representatives from two leading companies, Siemens and Coca-Cola Turkey, took the floor to share their experiences in foreign markets with the audience. The most recent seminar of this kind was held on 11 February 2010 in Ankara in cooperation with Turkish Contractors Association, with active participation from SMEs and important exporters, including key players of the contracting sector.

#### ***Awareness raising for SMEs***

Affiliated to the Ministry of Industry and Trade, KOSGEB runs a multitude of support schemes for the SMEs in the areas of consultancy/training, technological development/innovation, international cooperation, export promotion, entrepreneurship development, information technology, quality improvement, financial support and regional development. KOSGEB in cooperation with the MoJ organized two awareness raising seminars targeting export oriented SMEs. In this framework, the first seminar was held in İstanbul on September 11, 2008. Export oriented SMEs participated in the seminar at which an authorized representative from the Ministry of Justice made a presentation on the overall issue and its importance from the perspective of exporting SMEs. Another seminar was held in Ankara on September 24, 2008 in the same framework. KOSGEB SMEs experts that are responsible for providing support services to SMEs participated in both seminars as well. In addition to this, SMEs in the different areas participated in the seminars that were held in İstanbul in October 2009, in Ankara in February 2010 respectively. Through the official website of KOSGEB disseminations are being made regarding bribery and legal consequences of bribing foreign officials. In the context of awareness rising activities, the booklet prepared by the Undersecretariat for Foreign Trade has been distributed to SMEs, and KOSGEB is determined to continue its effort on awareness rising for SMEs.

***Employees' and employers' organizations***

A meeting was organized with high ranking representatives of main employees' and employers' organizations such as TISK, TURK-IŞ, HAK-IŞ, DISK, MEMUR-SEN on November 17, 2008 in the Ministry of Justice. Attendees of the meeting were informed of the OECD Anti-Bribery Convention, 1997 Revised Recommendation, OECD WGB Recommendations in the Phase 2 Report and ongoing Phase 2 *bis* examination process. Representatives of mentioned NGOs were especially informed of the preparations on the on-site visit that took place in January 2009. In order to contribute to raising awareness among civil society, civil servants, employees and business sector, abovementioned NGOs have committed to inform all their local representatives on the issue of combating foreign bribery. Lastly, with the cooperation of UFT, Turkish Contractors Association organized a seminar on the OECD Convention in February 2010 in Ankara.

**If no action has been taken to implement recommendation 1(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 1(b):**

1. With respect to general awareness raising and training activities to promote the effective implementation of the Convention and the 1997 Revised Recommendation, the Working Group recommends that Turkey:

(b) Promptly raise awareness among its foreign representations, including embassy personnel, and ensure that foreign representations disseminate information to Turkish companies and individuals regarding the risks of foreign bribery [Revised Recommendation, paragraph I];

**Actions taken to implement this recommendation:**

**I-Training Activities**

The Training Center of the Ministry of Foreign Affairs (MFA) is responsible for the training programs to be given to the Ministry-staff as well as personnel of other Ministries and institutions who are appointed to Turkish missions abroad. The training programs include lectures on a wide range of issues which a Turkish diplomat needs when performing his duties abroad.

In 2008 and 2009 the MFA included in its training programs lectures on OECD Anti-Bribery Convention. The lectures on the issue are given by competent authorities from the MOJ. The MFA included lectures on OECD Convention in its training programs for personnel who are appointed to Turkish missions abroad in 2010.

The Training Center also organizes an education program for the new staff of the Ministry which takes 4-5 months. The aim of the program is to give the newly employed staff essential information on various aspects of diplomacy profession and Turkish foreign policy. The MFA included lectures on OECD Convention in its training programs for the new staff of the Ministry in 2010.

Every year one or two lectures are delivered in which 60 people participate. Each lecture lasts three hours.

## II- Awareness Raising Efforts

As part of awareness efforts, articles on OECD Anti-Bribery Convention were published in the periodical “International Economical Issues” prepared and released by the MFA. That periodical is distributed to all diplomatic missions of Turkey, as well as various Ministries, academic institutions, scholars and journalists in Turkey. The number of addresses is around 1000.

Information on the issue is also given on the official web site of the Ministry. Additionally, a link is given to OECD/Fighting Corruption on the web page.

In 2008, the MFA has prepared and issued a circular to inform all the Ministry staff, including the ones who work in Turkish missions of abroad on the Convention and newly adopted articles in the Turkish Penal Code related with combating the bribery of foreign officials. The circular informed the staff inter alia, on their duty in reporting crimes and on the penalties in case of breach of reporting

An informative booklet has been prepared by the UFT in cooperation with the MoJ, Ministry of Foreign Affairs, Privatization Administration and Turk Eximbank. This booklet is designed to fill a gap in terms of awareness-raising since it designates the public and private sector as the target and serves as a guide on key issues like who the foreign public official is, what bribery is and what the relevant national legislation is. As such, the booklet covers the steps to be taken in case a Turkish official gets acquainted with a bribery case in a foreign country, in addition to the legal consequences of his/her inaction. There is also the narrative of a hypothetical firm committing bribery in a hypothetical foreign country. This narrative serves as a case-study and clarifies what can be taken as whistle-blowing, what can be done to collect all available information, to whom to present the information, who can be held responsible for the crime of bribery in case the courts decide guilty, etc. The booklet is available to public on the official website of the Undersecretariat ([www.dtm.gov.tr](http://www.dtm.gov.tr)). On the other hand, the UFT has also included the topic of “combating bribery” in the orientation programs for its personnel, in particular targeting the officials appointed as commercial counselor to its missions abroad.

**If no action has been taken to implement recommendation 1(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

### **Text of recommendation 1(c):**

1. With respect to general awareness raising and training activities to promote the effective implementation of the Convention and the 1997 Revised Recommendation, the Working Group recommends that Turkey:

(c) Make further efforts to raise awareness of the non-tax deductibility of bribes to foreign public officials among tax officials, tax professionals and the private sector, as well as provide training to tax officials on the detection of such payments [Convention, Article 13; Revised Recommendation, paragraph IV; and 1996 Recommendation].

**Actions taken to implement this recommendation:**

***Awareness raising for tax professionals and the private sector***

“OECD Bribery Awareness Handbook for Tax Examiners” translated into Turkish and adapted to Turkish system by Revenue Administration of Turkey was disseminated to local tax auditors and tax audit assistants for their use during their in-service trainings. At the same time, non-tax deductibility of bribes to foreign public officials was put on the agenda of in-service trainings of the current revenue controllers. Assistant revenue controllers were trained on the non-tax deductibility of bribes to foreign public officials. The Handbook was sent to all tax administrations throughout the country and was distributed to finance inspectors and assistants.

Additionally, the handbook and the relevant documents were circulated to all accountant chambers and the members by the Union of Certified Public Accountants and Sworn-in Certified Public Accountants of Turkey (TURMOB). In June 2008, the Ministry urged TURMOB by a letter stating that accountants and auditors should be informed that they have the duty to report to the Revenue Administration and management if they have suspicion of bribe during their audit service.

Two essays on the OECD Anti-Bribery Convention were published in the Bulletin (Issue 12 in February 2008; Issue 14 in April 2008) issued by the Department of EU and External Affairs of Ministry of Finance. TURMOB has informed all the chambers about the OECD Anti-Bribery Convention reminding that, in case of detection or suspicion, bribery offence should be reported in detail to public prosecutor’s office and Revenue Administration according to the provisions of the Turkish Criminal Code.

TURMOB has also requested information about any case detected by the members of the chambers. A seminar was held on November 20, 2008 at the Ankara Branch of the Sworn-in Certified Public Accountants. The seminar was organized by TURMOB and the Ankara Branch of the Sworn-in Certified Public Accountants. 46 Certified Public Accountants, and Sworn-in Certified Public Accountants had participated in the seminar. At the last session of the seminar the participants, *inter alia*, discussed the responsibilities of the auditors, ISA, duty to report, detecting bribes during the audits and some sectors’ sale promotion applications. Ankara branch put the seminar on its web site as well.

The handbook was introduced to the public on a national broadcasting TV channel by a representative of Tax Administration in September 2008. Furthermore, this handbook is available on the web site of the Revenue Administration ([http://www.gib.gov.tr/fileadmin/beyannamerehberi/rusvet\\_kitap.pdf](http://www.gib.gov.tr/fileadmin/beyannamerehberi/rusvet_kitap.pdf)) and was electronically sent to more than 150.000 large taxpayers by using tax-payer notification system facilities of Revenue Administration stating that bribery payments to foreign public officials are considered as illegal and such expenses are not tax deductible according to the Turkish tax system. This significant matter has already been stressed in the Handbook distributed to all parties concerned. Therefore, the Ministry of Finance explicitly declared the non-tax deductibility bribes payment with a communiqué which was published at the Official Gazette No: 27060 and came into force on November 20, 2008.

**If no action has been taken to implement recommendation 1(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

## RECOMMENDATION 2

### **Text of recommendation 2(a):**

2. With respect to the general detection of foreign bribery and related offences, the Working Group recommends that Turkey:

(a) Issue specific instructions to its foreign representations, including embassy personnel, on the steps to take when credible allegations arise that a Turkish company or individual has bribed or taken steps to bribe a foreign public official, including the reporting of such allegations to the competent authorities in Turkey [Revised Recommendation, paragraph I];

### **Actions taken to implement this recommendation as of the date of the follow-up report:**

The Ministry of Foreign Affairs has prepared a new Circular to inform the Ministry personnel on the Convention and on the articles in the Turkish Penal *Criminal* Code in relation with combating the bribery of foreign officials. The circular informs the staff, *inter alia*, on their duty in reporting crimes and criminal liability in neglecting reporting obligation. The Circular was issued on December 26, 2008 and sent to Turkish Missions abroad to inform the personnel that included the Ministry of Foreign Affairs personnel as well as the representatives of other Ministries. A similar circular was also issued on December 24, 2008 by the UFT targeting its missions abroad. Moreover, the Revenue Administration also instructed all of its local representatives on the accurate detection of bribe payments disguised as legitimate allowable expenses and of the steps to be taken when credible foreign bribery allegations arise.

### **Follow-up information provided by Turkey at the Working Group on Bribery's request:**

Turkey indicated that embassy personnel learning of credible allegations of foreign bribery involving Turkish nationals or companies are required to report/inform the Chief of Mission, and the Chief of Mission informs the related authority in Turkey through diplomatic channels via Ministry of Foreign Affairs.

**If no action has been taken to implement recommendation 2(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

### **Text of recommendation 2(b):**

2. With respect to the general detection of foreign bribery and related offences, the Working Group recommends that Turkey:

(b) Provide training for staff involved in ODA-funded procurement contracting on detecting and reporting suspicions of foreign bribery [Revised Recommendation, paragraphs I, II v) and VI iii)];

**Actions taken to implement this recommendation as of the date of the follow-up report:**

**ODA officials**

A lecture on the introduction of the OECD Anti-Bribery Convention, foreign bribery offence, and duty to report the offence and on the penalties in case of breach of reporting obligation was given to an audience of about 150 people. This high attendance, composed of TIKA high ranking officials and staff, particularly of those who are working as foreign representatives of TIKA, took place on November 6, 2008. The booklet prepared by UFT was distributed to all TIKA staff. As the topic has been included in the regular training of the staff, similar training programs will be organized on a regular basis in the future for TIKA staff. For instance, in cooperation with The MoJ, TIKA organized a training seminar on anti-corruption for its own staff employed as TIKA Program Coordinators (22 people in 20 countries) in 2009 in Ankara.

**If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 2(c):**

2. With respect to the general detection of foreign bribery and related offences, the Working Group recommends that Turkey:

(c) Strengthen measures to protect whistleblowers in the public and private sectors from retaliation and retribution by their employers [Revised Recommendation, paragraph I];

**Actions taken to implement this recommendation as of the date of the follow-up report:**

First of all, in order to strengthen measures to protect whistleblowers in the public sector from retaliation and retribution by their employers, State Personnel Presidency of Turkey in cooperation with MoJ prepared a regulation amending the “Regulation on Complaints and Appeals of Civil Servants. New Regulation requires that civil servants who have performed the duty to report a crime should not be subjected to disposal or sanctions which may aggravate their conditions. The Regulation was published at the Official Gazette No: 27354 and came into force on September 19, 2009.

Secondly, so as to strengthen measures to protect whistleblowers in the private sector from retaliation and retribution by their employers, the Law amending the Labor Law numbered 4857 was published at the Official Gazette No: 27155 and came into force on February 28, 2009.

**If no action has been taken to implement recommendation 2(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 2(d):**

2. With respect to the general detection of foreign bribery and related offences, the Working Group recommends that Turkey:

(d) Adopt as soon as possible the Draft Witness Protection Act currently before Parliament [Revised Recommendation, paragraph I].

**Actions taken to implement this recommendation as of the date of the follow-up report:**

The Witness Protection Law numbered 5726 was adopted on December 27, 2007 and published on the Official Gazette on January 5, 2008. The Law entered into force as of June 5, 2008.

**If no action has been taken to implement recommendation 2(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**RECOMMENDATION 3**

**Text of recommendation 3:**

3. Regarding the prevention of foreign bribery in relation to ODA-funded procurement contracting, the Working Group recommends that Turkey: (i) systematically include anti-corruption clauses in ODA-funded contracts; and (ii) consider establishing a mechanism for excluding individuals and companies previously involved in foreign bribery from participating in such contracting opportunities [Revised Recommendation, paragraphs I, II v) and VI iii)].

**Actions taken to implement this recommendation as of the date of the follow-up report:**

I- Systematically include anti-corruption clauses in ODA-funded contracts.

TIKA is fully subject to Public Procurement Law No: 4734 in case the procedure for procurement is carried out in Turkey. However, if procurement processes overseas, although TIKA is not subject to the 4734 except prohibition and criminal provisions, it regulates its overseas ODA-funded contracts according to the decree of the Council of Ministers No. 2004/8030, thus, in its technical specifications, TIKA includes articles such as “those that cannot participate in the procurement”, “the reasons of exclusion from the procurement”, “prohibited acts and behaviors”. TIKA has been systematically including anti-corruption clauses to the Memorandums signed with partner countries. For individual procurement contracts signed with companies and institutions in the recipient countries, the laws to which TIKA is subject dictates TIKA to use the contract templates drafted by the Public Procurement Authority.

II- Consider establishing a mechanism for excluding individuals and companies previously involved in

foreign bribery from participating in such contracting opportunities [Revised Recommendation, paragraphs I, II v) and VI iii)].

As it is elaborated in Article 3.i, TIKA includes in its Administrative Specifications such articles as “those that cannot participate in the procurement”, “the reasons of exclusion from the procurement”, “prohibited acts and behaviors”. In this regard, TIKA already has an effective mechanism for excluding individuals and companies previously involved in foreign bribery from participating in such contracting opportunities, as the article titled “prohibited acts and behaviors” clearly prohibits “plot mischief or attempt to do so in procedures related to the procurement through trick, promise, threat, use of influential forces, false competition, agreement, corruption, bribe or other means”. Consequently, the tenderers bidders shall be disqualified from the procurement if such cases are determined. In addition, TIKA will take steps to post its anti-corruption regulations in its official website so as to declare to the public its determination of combating corruption in ODA-funded procurement. Besides, TIKA prepared and distributed booklets for the purpose of raising public awareness in this regard.

**If no action has been taken to implement recommendation 3, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

#### **RECOMMENDATION 4**

##### **Text of recommendation 4:**

4. With respect to the prevention and detection of foreign bribery through the tax system, the Working Group recommends that Turkey: (i) introduce an express denial of deductibility of bribe payments in the tax law or through another appropriate mechanism that is binding and publicly available; (ii) provide training to tax officials on the detection of bribe payments disguised as legitimate allowable expenses; and (iii) continue to include in existing and future tax treaties the Commentary to article 26(2) of the OECD Model Tax Convention, allowing for the reciprocal sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities in relation to corruption offences [Convention, Article 13; Revised Recommendation, paragraph IV; and 1996 Recommendation].

##### **Actions taken to implement this recommendation as of the date of the follow-up report:**

I-The Ministry of Finance introduced an express denial of deductibility of bribe payments in the tax law through a communiqué. This communiqué was published at the Official Gazette on November 20, 2008.

II-Ministry of Finance has taken important steps regarding to raise awareness about the OECD Anti-Bribery Convention and the 1997 Revised Recommendation. The OECD Anti-Bribery Convention, non-tax deductibility and detection of bribes during a tax audit have been included into the regular training program of the assistant finance inspectors.

Acting as the co-coordination unit within the Ministry of Finance of Turkey, the Inspection Board is planning a series of seminars to all related stakeholders within the sphere of influence. A seminar was held on November 6, 2008 by the Ministry of Finance for finance inspectors, tax auditors, revenue controllers

and high level tax officials. 120 tax officials attended this seminar. Seminars will also be held for tax professionals, certified public accountants and sworn-in certified public accountants and finance academics.

Two essays on the OECD Anti-Bribery Convention were published in the Bulletin (Issue 12 in February 2008; Issue 14 in April 2008) issued by the Department of EU and External Affairs of Ministry of Finance.

III- The Commentary to article 26(2) of the OECD Model Tax Convention has been included in existing tax treaties and this will continue in the future tax treaties.

**Follow-up information provided by Turkey at the Working Group on Bribery's request::**

Regarding section I above, the communiqué states: "As the expenditures incurred due to the acts legally banned are not the ones related with acquisition and continuation of commercial income, such expenditures cannot be reduced from income and institutional earnings. Therefore, as the bribe act is defined as an offence under Article 252 of Turkish Penal Code, bribe itself and all kinds of expenditures related with bribe shall not be taken into account while determining taxable commercial income."

**If no action has been taken to implement recommendation 4, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**RECOMMENDATION 5**

**Text of recommendation 5(a):**

5. Concerning the prevention and detection of foreign bribery through systems for accounting and auditing and internal controls, the Working Group recommends that Turkey:

(a) Strengthen efforts to encourage companies including SMEs operating in foreign markets to adopt internal company controls, including codes of conduct and where appropriate ethics committees, specifically addressing foreign bribery [Revised Recommendation, paragraph V C];

**Actions taken to implement this recommendation as of the date of the follow-up report:**

The Turkish authorities believe that competition is an important factor in trade as it fosters creativity, effectiveness and efficiency; hence even if a firm loses in fair competition, it still can gain from what it learned from its rivals. Therefore, fair competition is a win-win game, while bribery turns it into a zero-sum. As a result, every opportunity to explain the private sector why bribery is an important problem hindering competition is being utilized. Moreover, private sector representatives are encouraged to share their experiences and methods which they use to combat bribery. As such, we had representatives from Coca-Cola Icecek and H. O. Sabancı Holding A.S, Siemens to share the floor with the public authorities in making presentations with the aim of raising awareness.

In all four seminars the UFT conducted, at least one representative from private sector was present to share their experiences in foreign markets and their internal control systems with the audience. Their presentations were also important in providing solid examples on how to operate an internal control program in order to combat bribery, encourage employees on informing relevant authorities in the firm immediately, and assure job security of an informant employee.

In addition to the awareness-raising seminars, there are also regulations to foster internal control. The Capital Market Board (CMB) of Turkey has two sets of regulations, one aimed at adoption of international auditing standards in capital markets and the other aimed at adoption of international accounting and financial reporting standards (IAS/IFRS), both of which can be considered to have relevance in fighting foreign bribery. The use of IAS/IFRS as well as auditing standards increases the quality of information disseminated by capital market institutions including publicly held corporations. Moreover, adoption of aforementioned standards prevents the management of capital market institutions to be involved in fraudulent acts, which must be considered in the context of accountancy. These regulations indirectly foster further control by management itself over what is going on within the company and accord to code of ethics if there is any.

**If no action has been taken to implement recommendation 5(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 5(b):**

5. Concerning the prevention and detection of foreign bribery through systems for accounting and auditing and internal controls, the Working Group recommends that Turkey:

(b) Broaden the scope of private companies subject to an external audit to include certain non-listed companies that operate in foreign markets, and broaden the scope of public entities subject to a state audit to include state-owned and controlled companies not subject to an external audit, and agencies involved in official export credit support, public procurement, privatisation, and ODA-funded procurement contracting [Revised Recommendation, paragraphs I and V B].

**Actions taken as of the date of the follow-up report to implement this recommendation as of the date of the follow-up report:**

The “Draft Turkish Commercial Code” was submitted to Turkish Grand National Assembly (TGNA) by the Council of Ministers on November 9, 2005. The Draft was adopted by the Justice Commission of TGNA as of January 11, 2008. It is currently in the agenda of General Assembly and expected to be adopted soon. There is a significant change in the “Draft Turkish Commercial Code” on the abolition of the requirement to have statutory auditors among the statutory bodies of corporations. According to the new system which is mentioned in the Draft Code, audits of all corporations (private, state-owned or state-controlled) of all sizes shall be conducted by independent auditing companies, or alternatively, in small-scale corporations, by a minimum of two independent sworn-in auditors or public accountants to ensure compliance with laws, Turkish Accounting Standards and the Articles of Association. According to the “Draft Turkish Commercial Code”, Ministry of Industry and Trade will be the main supervisor body for proper implementation. The Ministry shall conduct the oversight through commercial registries and its

auditors. In case of any inconvenience with the disclosure and registry requirements, the commercial registry, firstly, calls for conformity with the Law, and if not, administrative sanctions shall be imposed. On the other hand, the Ministry has the authority to inspect the activities of commercial registries and take any measures deemed if necessary. The Draft Law on the Court of Accounts broadens the scope of public entities subject to a state audit to include state-owned and controlled companies not subject to an external audit.

**If no action has been taken to implement recommendation 5(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

## **RECOMMENDATION 6**

### **Text of recommendation 6(a):**

6. Regarding the prevention and detection of foreign bribery through the anti-money laundering system, the Working Group recommends that Turkey [Convention, Article 7]:

(a) Promptly issue the regulation submitted to the Prime Minister's Office for Issuance of a Council of Ministers' Decree establishing suspicious transactions reporting (STR) obligations for accountants and lawyers;

### **Actions taken as to implement this recommendation of the date of the follow-up report:**

"Regulation on the Measures Regarding Prevention of Laundering Proceeds of Crime and Terrorist Financing" was published in the Official Gazette No: 26751 on January 9, 2008 and entered into force on April 1, 2008. Articles 4(1)§ and 4(1)t of the Regulation stipulate that lawyers and accountants are among the obliged parties. Therefore, within the scope of the principles regulated in the Regulation lawyers and accountants are subject to customer identification and have reporting obligations of any suspicious transaction.

**If no action has been taken to implement recommendation 6(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

### **Text of recommendation 6(b):**

6. Regarding the prevention and detection of foreign bribery through the anti-money laundering system, the Working Group recommends that Turkey [Convention, Article 7]:

(b) Promptly issue the regulation drafted by MASAK requiring the provision of feedback to parties that make STRs, and provide improved guidance to reporting parties in the form of up-to-date money

laundering typologies where the predicated offence is the bribery of foreign public officials;

**Actions taken as of the date of the follow-up report to implement this recommendation:**

- The provisions regarding feedback to obliged parties who submit STRs are provided in Article 30 of the “*Regulation on the Measures Regarding Prevention of Laundering Proceeds of Crime and Terrorist Financing*”. In this framework, MASAK informs the obliged parties reporting suspicious transaction when the report is recorded and MASAK may also publish statistical data through annual activity reports, guidelines or periodicals regarding suspicious transaction reports, methods used in Money laundering and terrorist financing, rising trends, case studies prepared by using process after suspicious transaction reports and by benefiting from findings and use them for the purpose of training.
- Also, an amendment was made about the provisions regarding feedback to obliged parties who submit STRs are provided in Article 30 of the “*Regulation on the Measures Regarding Prevention of Laundering Proceeds of Crime and Terrorist Financing*” in the Official Gazette No: 27450 on January 2, 2010 in order to fully comply current Turkish AML/CFT legislation with the EU Directive 2005/60/EC. With this amendment, by adding the phrase of “**MASAK periodically carries out general evaluation on effectiveness of suspicious transaction reports received**”, general feedbacks provided by MASAK at certain periods to obliged parties with regard to effectiveness, and appropriateness of suspicious transaction reports has become easier and MASAK shall make general evaluations periodically on the suspicious transaction reports received in respect of efficiency.

**FEEDBACK Article 30-** (1) MASAK shall inform the obliged parties reporting suspicious transaction when the report is recorded.

(2) MASAK **periodically carries out general evaluation on effectiveness of suspicious transaction reports received and it** has the authority to publish statistical data regarding suspicious transaction reports, methods used in money laundering and terrorist financing, trends, case studies prepared by using process after suspicious transaction reports and by benefiting from findings through annual activity reports, guidelines or periodicals and use them for the purpose of training.

*With regard to guidance for the obliged parties, the activities conducted by MASAK are as follows:*

- “*MASAK General Communiqué 6*” entered into force on September 27, 2008 by being published in the Official Gazette No:27010. Suspicious transaction types are provided as guidance for the obliged parties in the Communiqué.
- A brochure on Law No: 5549 on Prevention of Laundering Proceeds of Crime was prepared by MASAK and published on MASAK web site.
- Sixteen types of brochures have been prepared by MASAK for different obliged parties. The brochures published on MASAK web site are as follows:

-Principles Regarding Customer Due Diligence for Financial Institutions

- Principles Regarding Customer Due Diligence for Obligated Parties except Financial Institutions
  - Principles Regarding Customer Identification in Banking Transactions for Bank Customers
  - Principles Regarding Customer Identification in Capital Markets Transactions for the Customers of Capital Market Brokerage Houses
  - Principles Regarding Customer Identification in Insurance Transactions for Insurance Customers
  - Principles Regarding Customer Identification in Financial Leasing Transactions for Lease Holders
  - Principles Regarding Customer Identification in Financing and Factoring Transactions
  - Principles Regarding Customer Identification in Money Lending Transactions for those Borrowing from Money Lenders
  - Principles Regarding Customer Identification in Transactions Carried Out in Exchange Offices for Customers of Exchange Offices
  - Principles Regarding Customer Identification in PTT (Turkish Post Office) Transactions
  - Principles Regarding Customer Identification for Dealers and Auctioneers of Historical Artifacts, Antiques and Works of Art.
  - Principles Regarding Customer Identification for those who Buy and Sell Immovable for Trading Purposes and Intermediaries of these Transactions
  - Principles Regarding Customer Identification for Dealers of any kind of Sea, Air and Land Transportation Vehicles including Construction Machineries
  - Principles Regarding Customer Identification for Precious Metals Exchange Intermediaries
  - Principles Regarding Customer Identification for Dealers of Precious Metals, Stones and Jewelleries
  - Principles Regarding Customer Identification for Certified General Accountants, Certified Public Accountants and Sworn-in Certified Public Accountants
- Money laundering typologies have been prepared by MASAK and published on MASAK web site. Since there is not any suspicious transaction report on foreign bribery received by MASAK, money laundering typologies that the predicate offence is the bribery of foreign public officials could not be provided for the obliged parties.

**If no action has been taken to implement recommendation 6(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 6(c):**

6. Regarding the prevention and detection of foreign bribery through the anti-money laundering system, the Working Group recommends that Turkey [Convention, Article 7]:

- (c) Assess the reasons for the low number of STRs made to MASAK.

**Actions taken as of the date of the follow-up report to implement this recommendation:**

As a result of the activities conducted by MASAK, significant progress has been achieved in increasing the effectiveness of the suspicious transaction reporting system.

The activities conducted by MASAK in 2008 and 2009 to increase the number of STRs are as follows:

- “*Regulation on Programme of Compliance with Obligations of Prevention of Laundering Proceeds of Crime and Terrorist Financing*” was published in the Official Gazette No: 26999 on September 16, 2008. The principles and procedures on preparing compliance program and assigning compliance officers are provided with this Regulation.
- “*MASAK General Communiqué 6*” entered into force on September 27, 2008 by being published in Official Gazette No: 27010. 114 suspicious transaction types in 3 categories are provided as guidance for the obliged parties in the Communiqué.
- In 2008, MASAK organized 16 trainings and in this scope information about the OECD Convention on Combating Bribery of Foreign Public Officials was given to 790 participants from obliged parties.
- In 2009, MASAK organized 25 trainings and in this scope information about the OECD Convention on Combating Bribery of Foreign Public Officials was given to 1378 participants from obliged parties. The presentations delivered in training programmes have been published on MASAK web site.
- In 2008, 279 obliged parties (47 banks and 232 exchange offices) were subject to inspection of compliance with AML/CFT obligations.
- In 2009, 21 obliged parties (21 banks) were subject to inspection of compliance with AML/CFT obligations.
- In the scope of e-Learning Program of MASAK, which can be reached from Turkey Banks Association web site, information about the OECD Convention on Combating Bribery of Foreign Public Officials is added.
- Explanatory information on the reporting obligations including definition of suspicious transaction, principles and procedures of suspicious transaction reporting, suspicious transaction reporting form, types of suspicious transactions, confidentiality of reporting etc. has been published on MASAK web site.
- A brochure on Law No: 5549 on Prevention of Laundering Proceeds of Crime was prepared by MASAK and published on MASAK web site.
- MASAK consolidated Turkish AML/CFT Legislation and published it as a booklet in March 2009.
- MASAK published a book about “Reporting Systems in the Fight Against Money Laundering and Terrorist Financing” in May 2009.
- “*Guidance on Inspection of Obligations*” was published by MASAK specifically for inspection

bodies which will carry out inspection of obligations.

- In the preparation process of the Undersecretariat of the Prime Ministry of Foreign Trade's booklet for raising awareness of the private sector about the OECD Convention on Combating Bribery of Foreign Public Officials, MASAK contributed in the scope of its own functions.
- In 2008 and 2009, Financial Crimes Investigation Assistant Experts were provided with training about the OECD Convention on Combating Bribery of Foreign Public Officials in the scope of on the job-training programme.

As a result of the general awareness raising and training activities, the significant increase occurred in the number of STRs in 2006 and it has been maintained in 2007, 2008 and 2009. The number of STRs increased 224% in 2006 compared to 2005 and reached from 352 to 1140. In 2007, the number of STRs reached to 2946 by increasing 158% compared to the previous year. In 2008, the number of STRs reached to 4924 by increasing 67% compared to the previous year. **In 2009, the number of STRs reached to 9823** by increasing approximately 100% compared to the previous year. From January 1, 2010 to February 15, 2010, 762 STRs have come to MASAK.

Years	2005	2006	2007	2008	2009	01.01-15.02.2010
Number of STR	352	1.140	2.946	4.924	9823	762

**If no action has been taken to implement recommendation 6(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

## RECOMMENDATION 7

### Text of recommendation 7:

7. Concerning the investigation and prosecution of foreign bribery offences, the Working Group recommends that Turkey [Convention, Article 5] intensify and ensure regular training on foreign bribery for the investigative authorities, prosecutors and members of the judiciary.

### Actions taken as of the date of the follow-up report to implement this recommendation:

The OECD Anti-Bribery Convention and 1997 Revised Recommendation were included in the agenda of the regular in-service training program 2008. In this framework, first phase of training seminars was organized by the Ministry of Justice in Ankara, Istanbul, Bursa and Izmir, in May 2008. In total three hundred (300) selected prosecutors and judges, who are mainly dealing with corruption offences, participated in these seminars. Seminars enabled judges and prosecutors to discuss the Convention and foreign bribery offence in detail. Furthermore, all seminar documents were sent to judges and prosecutors by using the facilities of the National Judicial Network (UYAP) in June 2008. Consequently, almost ten thousand (10,000) judges and prosecutors were informed of the documents which were prepared and presented during these seminars. The Convention and 1997 Revised Recommendation have since then been included in the agenda of the regular in-service training program”

In Ankara on November 14, 2008, a seminar called “Organized Crime and Corruption Offenses in Turkish Criminal Justice System” was held in cooperation with Turkish Ministry of Justice, Ministry of Defense and the British Embassy in Ankara as well. One hundred (100) prosecutors and judges in total from all over Turkey, that were selected among those who are mainly dealing with corruption offences, attended to this seminar. One of the topics discussed and presented during the seminar was “The Role of the OECD Anti-Bribery Convention on the Fight against International Corruption”.

A program aiming to inform the trainee judges and prosecutors about the Convention has been included in the curriculum of the Academy. In this framework, first conference was held in May 2008 with the participation of 459 trainee judges and prosecutors.

Moreover, in order to disseminate information in relation with the Convention, a special web page (<http://www.uhdigm.adalet.gov.tr/oecd/oecd.htm>) was designed on the Ministry of Justice web site. This special web page was created as easily accessible from the main page of the MoJ ([www.adalet.gov.tr](http://www.adalet.gov.tr)). It is possible to find the relevant documents about the Convention, including the translation of Phase 2 Report. Since the MoJ is acting as the coordination body, all the information and activities on Phase 2 *bis* Examination process are shared with public through this web site.

Two articles on the OECD Anti-Bribery Convention were published in the periodical International Law Journal (Issue II and III) issued by the Directorate General for International Law and Foreign Relations of the MoJ. This journal is available online and is electronically sent to all judges and prosecutors in Turkey. Directorate General for International Law and Foreign Relations of the MoJ issued a new circular on “the issues which the judicial authorities need to take into consideration during international judicial cooperation on criminal matters” on March 1, 2008. The circular points out the importance of mentioning the OECD Anti-Bribery Convention in MLA requests on foreign bribery cases.

The Directorate General for Penal Affairs of the Ministry of Justice issued a circular dated 10.02.2009 and numbered 142 addressing prosecutors. The circular is specifically about the combating foreign bribery. This circular has instructions, *inter alia*, on the initiation of investigation on foreign bribery allegations without delay. It also reminds preparation of MLA request from the relevant foreign countries in which the alleged bribery offense committed, and requests the execution of MLA requests of other countries without delay.

**If no action has been taken to implement recommendation 7, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

## **RECOMMENDATION 8**

### **Text of recommendation 8:**

8. Concerning the requirement under article 13(2) of the Criminal Code that the Minister of Justice request the application of “universal jurisdiction” in the specific case where bribery of a foreign public official is committed by a Turkish national or company abroad, the Working Group recommends that Turkey either: (i) eliminate this requirement; or (ii) ensure that the Minister’s discretion for requesting such application shall not be influenced by political interests including “the national economic interest, the political effect

upon relations with another State or the identity of the natural or legal persons involved” [Convention, Articles 4.2 and 5].

**Actions taken to implement this recommendation as of the date of the follow-up report:**

The subsection (h) of the first paragraph of article 13 of the Turkish Penal *Criminal* Code was removed by the article 1 of the Law on Amending the Turkish Criminal Code and Some Other Acts numbered 5918 which was published at the Official Gazette No: 27283 and came into force on June 26, 2009. This amendment eliminates the requirement of the request of the Minister of Justice for both domestic and foreign bribery offences committed by a Turkish national or company abroad.

**If no action has been taken to implement recommendation 8, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**RECOMMENDATION 9**

**Text of recommendation 9:**

9. Regarding the implementation of the offence of bribing a foreign public official under article 252.5 of the new Turkish Criminal Code, the Working Group recommends that Turkey repeal the application of “effective remorse”, which has the effect of releasing an offender from liability for a penalty, to the foreign bribery offence [Convention, Article 1].

**Actions taken to implement this recommendation as of the date of the follow-up report:**

The above-mentioned Law (5918) repealed the application of “effective remorse” for foreign bribery offences. Article 4 of the law adds a new paragraph to the article 254 of the Turkish Penal *Criminal* Code which states that provisions of this article are inapplicable for foreign bribery.

**If no action has been taken to implement recommendation 9, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**RECOMMENDATION 10**

**Text of recommendation 10**

10. With respect to Turkey’s repeal of the liability of legal persons for the foreign bribery offence, the

Working Group recommends that Turkey urgently re-establish such liability in compliance with Article 2 of the Convention [Convention, Articles 2 and 3.2].

**Actions taken as of the date of the follow-up report to implement this recommendation as of the date of the follow-up report:**

Article 8 of the Law numbered 5326 which came into force on June 26, 2009 adds article 43/A to the Code of Misdemeanors dated March 30, 2005. This article introduces administrative liability of legal persons.

ARTICLE 43/A is as follows;

(1) Where the act does not constitute a misdemeanor which requires more severe administrative fines; in the case that an organ or a representative of a civil legal person; or; a person, who is not the organ or representative, but undertakes a duty within the scope of that legal person`s operational framework commits the following offences to the benefit of that legal person, the legal person shall also be penalized with an administrative fine of 10,000 (ten thousand) Turkish Lira to 2,000,000 (two million) Turkish Lira:

a) Offences stated in the Turkish Penal *Criminal* Code numbered 5237:

1) Fraud defined in Articles 157 and 158,

2) Rigging a bid defined in Article 235,

3) Rigging the performance of fulfillment defined in Article 236,

4) Bribery defined in Article 252,

5) Money laundering defined in Article 282,

b) Offence of embezzlement defined in Article 160 of the Banking Code, dated 19/10/2005 and numbered 5411,

c) Offences of smuggling defined in the Code on the Fight against Illegal Smuggling, dated 21/3/2007 and numbered 5607,

ç) Offence defined in Appendix article 5 of the Oil Market Law, dated 4/12/2003 and numbered 5015,

d) Offence of financing of terrorism defined in Article 8 of the Code on the Fight against Terrorism, dated 12/14/1991 and numbered 3713.

(2) The court which is commissioned to try the offences stated in paragraph 1, has the jurisdiction over verdicts on administrative fines in accordance with this Article.

First of all, taking the examination team`s suggestions into consideration, the second paragraph of the draft Article 43/A was amended as “*The court which is commissioned to try the offences stated in paragraph 1, has the jurisdiction over verdicts on administrative fines in accordance with this Article.*” This paragraph, with its new wording, is only indicating the competent authority which imposes fines. The phrase “*which makes the verdict at the end of the trial*” was removed from the previous version. By means of this amendment, imposing fines against legal person is not bind to making a trial and verdict. Even if the public prosecutor cannot identify the briber or if the perpetrator is dead, the prosecutor will be able to demand from the court to impose fine to legal person if he determines that the offence is committed.

Secondly, the addition of Article 43/A into the Code of Misdemeanors does not mean that the investigation will be conducted according to this law. The purpose of this provision is to apply additional sanction to a legal person, e.g. in a bribery case. It has no relation with procedural issues; all the existing criminal procedure provisions are still applicable. It should be noted that whereas coercive measures cannot be applied in terms of the misdemeanors prescribed in the Code of Misdemeanors, acts stated in the Article 43/A of Code of Misdemeanors are prescribed as the acts which constitute serious offences in the Turkish Penal *Criminal* Code. As these acts constitute offences, Criminal Procedure Code shall be implemented. All kinds of coercive measures including search and seizure may also be applied for such acts. Since special security measures for legal persons may also be applied in terms of these crimes, there is no hesitation regarding the implementation of all coercive measures stated in Criminal Procedure Code such as search and seizure in any case.

Thirdly, taking the examination team's suggestions into consideration, the maximum level of the fine which shall be imposed to legal person has been increased up to two million Turkish Liras.

Lastly, the terminology of "civil legal persons" includes all kinds of state-owned or state-controlled companies which carry out commercial transactions. There is no hesitation on this issue.

**If no action has been taken to implement recommendation 10, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

## **RECOMMENDATION 11**

### **Text of recommendation 11(a):**

11. Regarding sanctions for the foreign bribery offence, the Working Group recommends that Turkey:

(a) Encourage prosecutors to seek confiscation upon conviction in foreign bribery cases whenever appropriate [Convention, Article 3.3];

### **Actions taken as of the date of the follow-up report to implement this recommendation:**

The circular was issued on February 10, 2009 by the Directorate General for Penal Affairs of the Ministry of Justice addresses prosecutors. There is a clear instruction in the circular on seeking confiscation upon conviction in foreign bribery cases whenever appropriate. In addition, the topic of seizure and confiscation in foreign bribery cases were included in the agenda of and was discussed in detail during all of the abovementioned training programs organized for judges, prosecutors and trainee judges.

**If no action has been taken to implement recommendation 11(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 11(b):**

11. Regarding sanctions for the foreign bribery offence, the Working Group recommends that Turkey:

(b) Maintain more detailed statistics on sanctions applied in domestic and foreign bribery cases [Convention, Article 3];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

A working group composed of representatives of the relevant departments of MoJ, such as the Directorate General for Laws, the Directorate General for International Law and Foreign Relations, the Directorate General for Penal Affairs, the Directorate General for Judicial Records and Statistics and the Department of IT was established for discussing and determining the necessary steps to be taken for the implementation of relevant recommendations of WGB in Phase 2 Report. In order to maintain more detailed statistics on sanctions applied in domestic and foreign bribery cases, the Directorate General for Criminal Records and Statistics and the Department of IT of MoJ prepared new forms. IT Department is currently able to provide more detailed statistics on sanctions by using National Judiciary Network facilities. Every year, we regularly take detailed statistics on sanctions applied in domestic and foreign bribery using national Judiciary Network, please find annex (1) for last two years' statistics on domestic and bribery cases.

**If no action has been taken to implement recommendation 11(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 11(c)**

11. Regarding sanctions for the foreign bribery offence, the Working Group recommends that Turkey:

(c) Consider taking appropriate measures to exclude companies and natural persons convicted of foreign bribery from participating in privatisations, public procurement and ODA-funded public procurement contracting [Convention, Article 3.4; Revised Recommendation, paragraph II v)].

**Actions taken as of the date of the follow-up report to implement this recommendation:**

Article 11 of the Public Procurement Law No: 4734 regulates ineligibility in public procurements. In other words, the article lists the persons or entities which cannot participate in any procurement, directly or indirectly or as a sub-contractor, either on their own account or on behalf of others. Subsection (a) of the first paragraph of this article was amended by the article 4 of the Law on Amending the Public Procurement Law and the Public Procurement Contracts Law numbered 5812. New subsection is as follows: "a) Those who have been temporarily or permanently prohibited from participating in public tenders pursuant to the provisions of this Law or other laws; and those who have been convicted of the crimes under the scope of Prevention of Terrorism Law No: 3713 dated 12.04.1991, or of organized crimes, or of bribery crimes in their own country or in a foreign country."

The Privatization Administration (PA) has enacted a communiqué on the exclusion of companies and natural persons convicted of foreign bribery from participating in privatizations. The communiqué came into force on June 17, 2008, and it is clearly stated in the “Tender Specification” that a Commitment Letter will be requested from the bidders for the purpose of exclusion of the companies and natural persons convicted of foreign bribery from participating in privatizations. At the same time, this communiqué has played a significant role on rising awareness of companies on foreign bribery. On the other hand, in order to raise awareness for companies, PA put information on its web site (<http://www.oib.gov.tr/>) about the new communiqué and the new practice of the exclusion of companies and natural persons convicted of foreign bribery from participating in privatizations. It also put a link to the web page (<http://www.uhdigm.adalet.gov.tr/oecd/oecd.htm>) designed by the MoJ.

Article 11-a of the Public Procurement Law no. 4734 is a prohibition and criminal provision. Therefore, as it is elaborated in Article 3.i, this provision is binding for TİKA. As it is stipulated in Article 11-a of the Public Procurement Law, TİKA is supposed to disqualify individuals and companies who have been convicted of bribing crimes in their own country or in a foreign country during the tender period. Therefore, within this context, TİKA checks the black list of Turkish Procurement Authority (if the winner is a Turkish company), as well as the list of the World Bank or consult with the related authorities in recipient countries (if the winner is a foreign company).

**Follow-up information provided by Turkey at the Working Group on Bribery’s request::**

The amendment to article 4 of the Law on Amending the Public Procurement Law and the Public Procurement Contracts Law numbered 5812 came into force on 20 November 2008.

**If no action has been taken to implement recommendation 11(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**RECOMMENDATION 12**

**Text of recommendation 12:**

12. Regarding fraudulent accounting offences, the Working Group recommends that Turkey: (i) ensure that the penalties imposed for such offences are effective, proportionate and dissuasive; and (ii) compile more detailed statistics on the sanctions imposed for such offences, particularly those under article 359 of the Tax Procedure Code [Convention, Article 8; Revised Recommendation, paragraph V A iii)].

**Actions taken to implement this recommendation as of the date of the follow-up report:**

I- Fraudulent accounting offences are regulated in the article 359 of the Tax Procedure Code numbered 213. This law was amended by the Law No: 5728 dated January 23, 2008. So as to comply with the new Turkish Penal *Criminal* Code and relevant criminal legislation, this Law changed the general systematic of the article 359 of the Tax Procedure Code. In addition, the penalties for the offences regulated have been

considerably increased by this Law. Before the amendment, minimum limit of penalties for offences in article 359 were 6 months and maximum limit was 3 years. New Law amended the minimum limit of penalties from 6 months to 1 year and maximum limit from 3 years to 5 years.

II- Statistics system of the MoJ was also discussed during the meetings of abovementioned sub-working group composed of representatives of the relevant departments of MoJ. In order to compile more detailed statistics on the sanctions applied in fraudulent accounting offences, the *Directorate General* for Criminal Records and Statistics and the Department of IT of MoJ prepared new forms. IT Department is currently able to provide more detailed statistics on sanctions applied in fraudulent accounting offences by using National Judiciary Network facilities. See annex (1) for last two years' statistics.

**If no action has been taken to implement recommendation 12, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

### **Part I (b): Issues for Follow-up by the Working Group in Phase 2**

#### **Text of issue for follow-up 13(a):**

13. The Working Group will follow-up the issues below, as practice develops:

(a) Procedures for combating foreign bribery by Türk Eximbank, including mechanisms for excluding individuals and companies with prior involvement in foreign bribery from participating in official export credit support contracting [Revised Recommendation, paragraphs I and II v)];

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

Türk Eximbank has "Directives on Combating Bribery of Foreign Public Officials in International Business Transactions" as an internal procedure, approved by the Board of Directors.

In accordance with the Directives, Türk Eximbank informs exporters and applicants requesting official export credit support about the legal consequences of their involvement in bribery in international business transactions in the following forms:

a) Anti-Bribery Undertaking as a stand-alone document, submitted by the exporter;

b) Texts in the Loan Agreements, signed by the Borrower and Türk Eximbank.

Türk Eximbank's procedures for excluding individuals and companies with prior involvement in foreign bribery from participating in official export credit support is based on two phases:

In the "pre-approval of loan/cover/guarantee phase", Türk Eximbank verifies that the exporters are not

listed on the publicly available debarment lists of the World Bank Group, the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development and the Inter-American Development Bank. The Bank also requires the disclosure by the exporters that neither they nor anyone acting on their behalf are under charge in any national court within a five-year period preceding the application.

Turk Eximbank undertakes “enhanced due diligence” for the individuals and the companies who or which declare, via the “Anti-Bribery Undertaking”, that there had been an involvement in foreign bribery in the period covering five years preceding their applications. Turk Eximbank’s “enhanced due diligence” mechanism consists of dismissing the employee involved in bribery, recommending the company to establish a “management control system” including an independent audit and to deliver the audit reports as the Bank may require and requiring any other measures as the Bank deems necessary. According to the negative outcomes of the evaluation, Turk Eximbank has the right to deny the application.

In the “after-approval of loan/cover/guarantee phase”, if the Bank has a reason to believe that bribery might have been involved in the transaction related to the award of the export contract, Turk Eximbank invalidates cover, interrupts loan disbursements, seeks recourse for the amounts disbursed and denies access of the exporter to official support for a specified period of time.

In this regard, Turk Eximbank also works in close cooperation with the MoJ to exclude individuals and companies with prior involvement in foreign bribery from official export credit support.

**Text of issue for follow-up 13(b):**

13. The Working Group will follow-up the issues below, as practice develops:

(b) The investigation of foreign bribery cases, including with regard to: (i) the sharing of competence between the Department of Anti-Smuggling and Organised Crime and the Public Order Department; and (ii) the absence of police authority to undertake an investigation except upon request of the public prosecutors;

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

It should be underlined that information between the Department of Anti-Smuggling and Organized Crime and the Public Order Department should be effectively exchanged since both agencies are sub-units of the *Directorate General* of Security, which is affiliated with the Ministry of Interior, and that they share the same information bank.

In addition to this, concurrent investigations cannot occur because the police have no authority to perform investigations, except under the supervision of the public prosecutors or in response to an immediate and urgent situation. The police are obligated to turn over to the prosecutors any information that they receive concerning an allegation. Since it is the public prosecutors who decide if they need police support, including which police agency they will use, there is no chance of overlapping responsibilities.

**Text of issue for follow-up 13(c):**

13. The Working Group will follow-up the issues below, as practice develops:

- (c) The number of investigations and prosecutions of the offence of money laundering;

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

Number of investigations of the offence of money laundering: 155

Number of prosecutions of the offence of money laundering: 110

**Text of issue for follow-up 13(d):**

13. The Working Group will follow-up the issues below, as practice develops:

(d) Developments regarding whether the following situations are effectively covered by the foreign bribery offence:

- i. Bribery to obtain an abuse of discretion, and bribery to obtain an act or omission that goes beyond the foreign public official's authority;
- ii. "Simplified" bribery (i.e. bribery to ensure the performance or non-performance of a task);
- iii. Bribery where an agreement is reached between the briber and the foreign public official to transmit the bribe directly to a third party, such as a family member, political party or charity; and
- iv. The person bribed exercises a public function for a foreign country or a public international organisation, but has not been appointed or elected or is not holding a legislative, executive or judicial office (e.g. an employee involved in awarding public procurement contracts);

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

In order to meet the requirements of the Convention, Turkey introduced the offence of "foreign bribery in an international business transaction" in article 252/5 of the Turkish Penal *Criminal* Code.

Pursuant to the article 252/5 of the Turkish *Criminal* Code, foreign bribery offence is defined as "offering, promising or giving a direct, or *indirect, benefit*, for the purpose of ensuring the *performance or non-performance of a task, or obtaining or protecting an unjust benefit concerning international commercial activities*, to an elected or appointed person in a foreign country who is a parliamentary officer, a member of a public institution charged with judicial or administrative duties; a person working in an international

organization that has been established by another international public institution, state or government (regardless of its structure or function), or any other person performing a duty having an international character in a foreign country.”

With the above mentioned article following conclusions can be drawn,

1- the term “an abuse of discretion” falls within the meaning of “unjust benefit”. In addition to this, the expression “*or obtaining or protecting an unjust benefit concerning international commercial activities*” refers to international commercial activities without mentioning the task. Therefore, it is possible to say that bribery to obtain an act or omission that goes beyond the foreign public official’s authority is covered by this article.

2-“Simplified” bribery is covered by the phrasing “ensuring the performance or non-performance of a task”

3-by the term “indirect benefit” is understood that benefit can be given to the third party, such as a family member, political party or charity.

4- Turkey’s definition of “foreign public official” is as broad as required by Article 1 of the Convention. In this sense, “foreign public official” covers the person exercising a public function for a foreign country or a public international organization, but has not been appointed or elected or is not holding a legislative, executive or judicial office.

5-“Unjust benefit” contains every kind of undue pecuniary or other advantages including small gifts.

**Text of issue for follow-up 13(e):**

13. The Working Group will follow-up the issues below, as practice develops:

(e) Sanctions imposed in foreign bribery and money laundering cases [Convention, Articles 3 and 7].

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

As of today there is no criminal sanction imposed in foreign bribery.

As far as the money laundering is concerned, please see Annex 1 for the statistics.

## Part II: Written Follow-Up to Phase 2bis Report

*Note: For ease of reference, the recommendations from the original Phase 2bis Report have been re-numbered. Recommendation 1 of this report corresponds to Paragraph 3 on page 24 of the Phase 2bis Report and so on.*

### RECOMMENDATION 1

#### **Text of recommendation concerning recommendation on the investigation of allegations of transnational bribery 1(a):**

1. Regarding allegations of transnational bribery, the Working Group recommends that Turkey:

(a) Report in detail in its Phase 2 written follow-up report, which is due in December 2009, on progress in the two ongoing investigations and the United Nations Oil-for-Food Program cases, and continue to inform the Working Group on developments in these cases, for instance, during the Working Group's *tour de table*;

#### **Actions taken as of the date of the follow-up report to implement this recommendation:**

1-Case # 1: The investigation previously reported in 2007 has now been terminated by the Public Prosecution Office in Ankara, due to a lack of evidence.

2-Case # 2: The investigation is being carried out by the relevant public prosecution office. The case was under preliminary consideration at the time of Phase 2bis.

3-Case #3: A new investigation was opened by the relevant public prosecution office in late 2009 and is continuing.

4-Case #4: Another new investigation was opened by the relevant public prosecution office in late 2009 and is continuing.

5- IIC Final Report: The inspection by the Board of Foreign Trade Controllers is proceeding on allegations in the 2005 Final Report of the Independent Inquiry Committee into the UN Oil-for-Food Program concerning Turkish companies.

**If no action has been taken to implement recommendation 1(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

#### **Text of recommendation concerning recommendation on the investigation of allegations of transnational bribery 1(b):**

1. Regarding allegations of transnational bribery, the Working Group recommends that Turkey:

(b) Maintain contact with the UN Office of Legal Affairs as necessary to ensure the timely receipt of the requested information on allegations in the IIC Final Report concerning Turkish companies, and to

discuss the authentication of documentary evidence if necessary following receipt of the relevant information;

**Actions taken as of the date of the follow-up report to implement this recommendation as of the date of the follow-up report:**

The issue has been elaborated in Phase 2 *bis* Report Recommendations 1a.

**If no action has been taken to implement recommendation 1(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation concerning recommendation on the investigation of allegations of transnational bribery 1(c):**

1. Regarding allegations of transnational bribery, the Working Group recommends that Turkey:

(c) Ensure the effective investigation and prosecution of foreign bribery cases by assessing the level of suspicion necessary to open a criminal investigation of such cases, and by limiting the use of inspection boards in foreign bribery cases to assisting the public prosecutors' office in ongoing investigations and collecting information needed to open a criminal investigation when there is not a sufficient suspicion for the public prosecutors.

**Actions taken as of the date of the follow-up report to implement this recommendation as of the date of the follow-up report:**

Firstly, as is underlined by the Mid-Term Study Of Phase 2 Reports that evidentiary tests must be employed since putting the wheels of justice into motion could have immediate prejudicial consequences for the accused. In this perspective, circumstances, in which the Public Prosecutor shall initiate an investigation, are determined in the Article 160/1 of Turkish Criminal Procedure Code. This article states that: "Immediately following being informed, through denunciation or by any other means, of a condition having the impression that an offence has been committed, the Public prosecutor initiates an investigation to uncover the truth and to determine if the conditions demand the filing of a public case." Thus, the obligation of the Public Prosecutor to investigate starts with learning a condition through a denunciation or in any other means, which gives the impression that an offence has been committed. As is seen, the existence of "sufficient suspicion", "strong suspicion" or "reasonable suspicion" is not obligatory for the Public prosecutor to take an action to uncover the truth. It is enough only to learn the existence of circumstances which give the impression that an offence has been committed.

In other words, in order to initiate investigation in Turkish legal system, as discussed in detail during the Phase II Examination on-site visit, existence of ordinary suspicion or initial suspicion is sufficient. In order to initiate an investigation, certain and true life concrete events or at least evidences which exist as signs must reveal a suspicion that an offence has been committed. To initiate an investigation, it is not enough to have suspicion that is not based on certain events or evidences in the form of signs and is in the form of assumption. Otherwise, prevention of arbitrariness would not be possible. The examination carried out by

the BFTC about the Turkish companies within the UN Oil-for-Food-Program is exceptional and arising from some practical necessities.

**It should also be underlined that for the last two cases, the Ministry of Justice has directly referred the cases to the competent Public Prosecution Office without using inspection boards and competent Prosecutors started to investigations about allegations.**

**If no action has been taken to implement recommendation 1(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

## RECOMMENDATION 2

### **Text of recommendation concerning liability of legal persons 2(a):**

2. Regarding the liability of legal persons for the bribery of foreign public officials, the Working Group:

(a) Restates the Phase 2 Recommendation to “urgently” re-establish the liability of legal persons in conformity with Article 2, and further recommends that Turkey consider the comments in this report on areas of the Draft Bill on the liability of legal persons that might not comply with the Convention, and those areas that might be an impediment to the effectiveness of the liability of legal persons;

### **Actions taken as of the date of the follow-up report to implement this recommendation as of the date of the follow-up report:**

As it is elaborated in Article 10, first draft of the Article 43/A of the Code of Misdemeanors, was phrased as “the court which makes verdict at the end of the trial regarding the offences stated in Paragraph 1, has the jurisdiction over verdicts on administrative fines.” From this sentence it could be understood that in order to apply administrative fines to legal persons, the notion of “making verdict” makes it compulsory to complete the prosecution stage and to end the trial with a verdict. Article 43/A was amended as “*The court which is commissioned to try the offences stated in paragraph 1, has the jurisdiction over verdicts on administrative fines in accordance with this Article.*” This paragraph, with its new wording, is only indicating the competent authority which imposes fines. The phrase “*which makes the verdict at the end of the trial*” was removed from the previous version. Therefore, there is no requirement that a natural person be convicted and punished as a prerequisite to the liability of the legal person. It should be expressed that even the conviction of the natural perpetrator is not necessary in order to convict the legal person, evidentiary links between legal and natural person must be proven.

Article 43/A, regulates additional sanctions for the offences indicated in the Article. The investigation of these offences shall be conducted by public prosecutors in accordance with the Criminal Procedure Code. Public prosecutor does not have to investigate separately for the imposition of administrative monetary sanction, but he/she additionally demands the application of administrative fines to legal person. At the same time, the prosecutor also demands the application of security measures to legal person and other criminal sanctions to natural persons. So in the investigation process of these offences, the prosecutor can apply all coercive investigative techniques which are indicated in Criminal Procedure Code; such as

search, seizure, seizure of immovable, rights and receivables, interception of communication and monitoring with technical tools.

The addition of Article 43/A into the Code of Misdemeanors does not mean that the investigation will be conducted according to this law. As mentioned before, the purpose of this provision is to apply additional sanction to a legal person, e.g. in a bribery case. It has no relation with procedural issues; all the existing criminal procedure provisions are still applicable. It would be possible to prosecute the legal person who bribed on behalf of a related company through complicity provisions. Although the Article 252/5 does not itself contain an explicit complicity provision, the Criminal Code contains a general provision on complicity that applies to offences prescribed in other criminal statutes.

**Follow-up information provided by Turkey at the Working Group on Bribery's request:**

Turkey indicated that, whereas coercive measures cannot be applied in terms of the misdemeanours prescribed in the Code of Misdemeanours, acts stated in the Article 43/A of Code of Misdemeanours are prescribed as the acts which constitute serious offences in the Turkish Penal Code. As these acts constitute offences, Criminal Procedure Code shall be implemented. Therefore, in the case of a separate investigation against the legal person the prosecutor can apply all coercive investigative techniques which are indicated in Criminal Procedure Code; such as search, seizure of immovable, rights and receivables, interception of communication and monitoring with technical tools.

**If no action has been taken to implement recommendation 2(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation concerning liability of legal persons 2(b):**

2. Regarding the liability of legal persons for the bribery of foreign public officials, the Working Group:

(b) Recommends that once a new law comes into force re-establishing the liability of legal persons for the bribery of foreign public officials, the law undergo a peer review analysis in conjunction with Turkey's Phase 2 written follow-up report, which is due to be given in December 2009, assuming that the law will have been passed by then.

**Actions taken as of the date of the follow-up report to implement this recommendation as of the date of the follow-up report:**

As of 15/02/2010, there has been no case law about the liability of legal person.

**If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

### RECOMMENDATION 3

#### **Text of recommendation concerning awareness 3:**

3. Regarding efforts by the Turkish Government to raise the awareness of the private sector on the Convention and the offence of bribing a foreign public official, the Working Group recommends that Turkey, while sustaining its recent efforts and providing follow-up where appropriate such as through a mechanism for companies to ask questions about information provided by the Government, increase its awareness-raising efforts vis-à-vis small and medium enterprises, including through collaboration with business associations that represent SMEs.<sup>1</sup>

#### **Actions taken as of the date of the follow-up report to implement this recommendation as of the date of the follow-up report:**

Affiliated to the Ministry of Industry and Trade, KOSGEB runs a multitude of support schemes for the SMEs in the areas of consultancy/training, technological development/innovation, international cooperation, export promotion, entrepreneurship development, information technology, quality improvement, financial support and regional development. KOSGEB, in cooperation with the MoJ, organized two awareness raising seminars targeting export oriented SMEs. In this framework, the first seminar was held in Istanbul on September 11, 2008. Export oriented SMEs participated in the seminar at which an authorized representative from the Ministry of Justice made a presentation on the overall issue and its importance from the perspective of exporting SMEs. Another seminar was held in Ankara on September 24, 2008 in the same framework. KOSGEB SMEs experts that are responsible for providing support services to SMEs participated in both seminars as well. In addition to this, SMEs in the different areas participated in the seminars that were held in Istanbul in October 2009, in Ankara in February 2010 respectively. Through the official website of KOSGEB disseminations are being made regarding bribery and legal consequences of bribing foreign officials. In the context of awareness rising activities, the booklet prepared by the Undersecretariat for Foreign Trade has been distributed to SMEs, and KOSGEB is determined to continue its effort on awareness rising for SMEs.

**If no action has been taken to implement recommendation 3, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

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<sup>1</sup> The lead examiners note that the need to increase the awareness of SMEs is a horizontal issue affecting many Parties to the Convention.

## ANNEX 1

From 01.01.2009 to 31/12/2009

	Prosecutions	Convictions	Acquittals
Turkish Penal Code numbered 5237 Article 252/1-4 (Domestic Bribery)	597	61	71
Turkish Penal Code numbered 5237 Article 252/5 (Foreign Bribery)	0	0	0
Tax Penal Code numbered 213 Article 359/a-1	290	13	13
Tax Procedure Code numbered 213 Article 359/a-2	3125	273	103
Tax Procedure Code numbered 213 Article 359/b-1	4507	274	92
Tax Procedure Code numbered 213 Article 359/b-2	240	16	9
5237 Turkish Penal Code Article 282/1 (Money Laundering)	58	1	2

From 01.01.2008 to 31/12/2008

	<b>Prosecutions</b>	<b>Conviction</b>	<b>Acquittals</b>
Turkish Penal Code numbered 5237 Article 252/1-4 (Domestic Bribery)	<b>536</b>	<b>133</b>	<b>120</b>
Turkish Penal Code numbered 5237 Article 252/5 (Foreign Bribery)	<b>0</b>	<b>0</b>	<b>0</b>
Tax Procedure Code Numbered 213 Article 359/a-1	<b>262</b>	<b>33</b>	<b>25</b>
Tax Procedure Code Numbered 213 Article 359/a-2	<b>2738</b>	<b>687</b>	<b>278</b>
Tax Procedure Code Numbered 213 Article 359/b-1	<b>4746</b>	<b>903</b>	<b>314</b>
Tax Procedure Code Numbered 213 Article 359/b-2	<b>264</b>	<b>37</b>	<b>17</b>
5237 Turkish Penal Code Article 282/1 (Money Laundering)	<b>52</b>	<b>2</b>	<b>5</b>

**Sanctions imposed by Courts based on Article 282 (Money Laundering) of the TCC Between 01.01.2008-31/12/2008**

<b>Person</b>	<b>Case No.</b>	<b>Court / Prison sentences</b>	<b>Years</b>	<b>Months</b>
1	2008/303	Aydın 1 <sup>st</sup> Assize Court	5	0
2	2008/303	Aydın 1 <sup>st</sup> Assize Court	1	8
3	2008/303	Aydın 1 <sup>st</sup> Assize Court	1	8
4	2008/303	Aydın 1 <sup>st</sup> Assize Court	1	8
5	2008/303	Aydın 1 <sup>st</sup> Assize Court	3	4
6	2008/303	Aydın 1 <sup>st</sup> Assize Court	5	0
7	2008/303	Aydın 1 <sup>st</sup> Assize Court	3	4
8	2008/303	Aydın 1 <sup>st</sup> Assize Court	3	4
9	2008/1018	Sultanbeyli 2 <sup>nd</sup> Criminal Court of First Instance	1	8