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## **Turkey – Justice, freedom and security**

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### **SUMMARY**

The **1998 Report** stated that the 1995 EC-Turkey Association Council resolutions provided for cooperation between the European Union (EU) and Turkey on justice and home affairs issues. Political considerations meant that these arrangements had remained in abeyance until 1998. In that year, a meeting was held in Brussels between the specialised Council committee and the Turkish authorities, where a number of topics relating to justice and home affairs were covered. The Commission

stressed the need to develop active cooperation with Turkey on immigration.

The **1999 Report** stressed that, despite some improvements, progress still needed to be made, particularly on immigration and asylum (concluding readmission agreements, lifting the geographical reservation to the 1951 Geneva Convention), border controls (merging the various departments involved), the fight against organised crime (stepping up the fight against trafficking of human beings) and the fight against drug trafficking (increasing cooperation with the Member States). A number of international agreements on judicial cooperation in civil and criminal law still needed to be ratified.

In its **November 2000 Report**, the Commission noted that Turkey had made no significant progress in the field of justice and home affairs. Turkey still needed to make efforts to bring itself into line with Community law in the areas of combating fraud and corruption, the fight against drugs, as well as customs and judicial cooperation.

In its **November 2001 Report**, the Commission noted that Turkey had made some progress in the field of justice and home affairs.

The **2002 Report** noted that the country needed to step up its efforts to align its legal framework on data protection, combating illegal immigration, reinforcing border controls and adopting legislation on asylum and immigration. It also needed to improve coordination between law enforcement services and continue the reform of its legal system.

The **2003 Report** noted that Turkey had made serious progress, particularly in improving and intensifying its cooperation with the EU and the Member States in a range of fields, such as the fight against illegal migration and organised crime. It still needed to implement the strategies already adopted and intensify its efforts to align its legal and institutional framework.

In its **2004 Report**, the Commission recognised the progress made by Turkey in aligning its legislation with the EU law and practices. Further progress was needed in the reform of the judicial system, the fight against corruption and human trafficking and the control of illegal migration.

The **2005 Report** showed that Turkey had made progress in aligning its law with EU legislation and practice. Nevertheless, further progress was considered necessary in a number of important areas, such as implementation of the national action plan for alignment with the EU on illegal immigration and asylum, cooperation with the EU in combating illegal immigration and human trafficking, the national strategy to combat organised crime and the legislative framework for combating money laundering.

The **2006 Report** noted some progress, particularly in the areas of asylum, border management, the fight against human trafficking, as well as customs and police

cooperation. Alignment with EU legislation in this chapter was under way, but considerable efforts were still needed in areas such as migration, the fight against organised crime, money laundering and judicial cooperation in civil and criminal matters.

The **2007 Report** showed that Turkey had made progress in aligning its law with EU legislation and practice. Improvements had also been made in the fight against organised crime, money laundering and human trafficking. However, considerable efforts still needed to be made in the areas of police cooperation, external borders, migration and asylum.

The **November 2008 Report** indicates that alignment with EU legislation is underway and that some progress has been achieved, especially in the fight against drugs and human trafficking. However, efforts need to be stepped up, in particular on visa policy, judicial cooperation in criminal matters and the fight against organised crime. Additional efforts also need to be made on asylum, migration and border management issues.

### **COMMUNITY ACQUIS (in the Commission's words)**

EU policies in the area of justice and home affairs aim at maintaining and developing the Union as an area of freedom, security and justice. On issues such as border control, visas, migration, asylum, drug trafficking and money laundering, combating organised crime, the fight against terrorism, fraud and corruption, police and judicial cooperation, customs cooperation, data protection and the mutual recognition of court judgements, as well as human rights legal instruments, Member States need to be equipped to ensure they achieve adequate and acceptable standards of implementation. Administrative capacity must be up to these standards by the date of accession. Furthermore, an independent, reliable and efficient judiciary and police organisation are of paramount importance. The key element of this chapter concerns the Schengen *acquis*, which entails the lifting of internal border controls in the EU. However, substantial parts of this *acquis* do not apply upon accession of a new Member State, but only later, after a separate Council decision.

### **EVALUATION**

Little progress has been made on **data protection**. Under the Criminal Code it is an offence to gather and use personal data for purposes other than those allowed by the law. In June 2007, the unit responsible for the protection of personal data was granted observer status within the data protection working party, but it is still understaffed. Turkey must align its legislation with the directive on data protection and

establish a data protection supervisory authority. The Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data and its additional protocol on supervisory authorities and trans-border data flow also need to be ratified.

Progress has been made concerning **visa** policy and the alignment with EU legislation thanks to the new instructions issued to the consular and border authorities. Turkey has lifted its visa requirements for nationals of several countries, a measure that is not in line with the legislation as regards five of these countries (Azerbaijan, Mongolia, Uzbekistan, Tajikistan and Turkmenistan). In 2007, Italy was included in the EU positive list. Eight other countries still need to be included in this list. Turkey must pursue its efforts in aligning with the EU negative list, introduce airport transit visas, abolish the practice of issuing visas at borders and enhance the capacity of its consulates to check for falsified documents.

In the area of **external borders**, implementation of the national action plan on integrated border management has started, *inter alia* by organising inter-agency cooperation meetings and developing guidelines on operational procedures. However, the meetings have taken place only occasionally and further efforts need to be made to implement the action plan. Since 2007, shared databases have been used by the authorities to screen people crossing the borders. However, EU citizens' entry documents still need to be aligned with the *acquis*.

The Turkish authorities have set up an integrated border management projects department (2004) and a unit responsible for risk analysis in the customs administration (2007). In addition, in 2007, they opened a new sea border checkpoint in Izmir and two air border checkpoints in Sivas and Malatya.

On the **Schengen** legislation, some progress has been observed. A national office within the Interpol service acts as the central authority in accordance with the Schengen agreement and, since 2004, as the Europol and OLAF contact point. In 2008, a "Common Manual of Checks at the EU external borders" was published to provide a practical tool for border authorities to respect EU requirements in their work.

In the field of **immigration and asylum**, the national action plan for alignment with the legislation adopted in 2005 is currently being implemented. Since 2003, only the Ministry of Labour and Social Security has issued work permits to foreigners. In 2003, the nationality law was amended to prevent marriages of convenience. The UN Convention on the protection of the rights of migrant workers and their family members was ratified in 2004.

In October 2003, Turkey ratified the agreement laying down the prerogatives and privileges of the International Organisation for Migration (IOM). In addition, it has continued to participate in the activities of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (Cirefi).

Turkey and Greece have taken measures to ensure more effective implementation of the readmission protocol. Turkey has already concluded bilateral readmission agreements with Syria (2001), Romania (2004) and the Ukraine (2005). Negotiations on bilateral readmission agreements are ongoing with Afghanistan, Bulgaria, Russia, Pakistan, Sri Lanka, Jordan, Uzbekistan, Lebanon and Libya. No real progress was made in the negotiations with the EU at the end of 2006.

Concerning refugees, Turkey applies the principle of non-refoulement of foreigners at borders. The number of asylum seekers has risen in recent years. To improve information for them, new brochures in seven languages were published in 2007. In addition, the country is working to improve its administrative capacity and to streamline its asylum procedures. The establishment of an asylum management unit for reception and integration issues has been initiated. Nevertheless, it is essential that the Asylum Law still be revised.

Applications for asylum are processed in cooperation with the United Nations High Commissioner for Refugees (UNHCR). Turkey has also continued to participate in the Cirefi early-warning system. In addition, Turkish airports participate in ECFALIS (European Civil Aviation Conference Facilitation Information System on illegal immigration) for early warning against illegal migration.

As for the **fight against organised crime**, the 2005 Code of Criminal Procedure provides for new powers for investigations in the area of detection, surveillance of telecommunications, shadowing and medical examinations. The successive amendments to the Code have criminalised smuggling and human trafficking (2002), increased the punishments for these crimes (2005) and provided for the freezing and confiscation of the assets of smugglers and traffickers. The changes made to the law on organised crime increased the number of crimes for which surveillance of communications is authorised. In 2007, Turkey adopted laws on the fight against smuggling and cyber-crimes and a national strategy to combat crime. Subsequently, an internet department was set up and implementing legislation to the law on cyber-crime adopted. In 2008, a law on witness protection was adopted and the regulation on the principles and procedures governing controlled delivery was extended to include the coast guard and the customs administration. Turkey is also party to all the main international conventions (Palermo Convention) and to the additional protocol for the prevention, repression and punishment of human trafficking, the protocol

against trafficking of migrants by land, air and sea and the protocol against the illicit manufacturing of and trafficking in firearms, their parts, components and ammunition. In 2004, the country had already signed a cooperation agreement with Europol to combat serious forms of organised crime.

The specialised **human trafficking** unit was set up in 2004. Its role is to enhance dialogue and coordination between the police and the competent authorities. Since 2004, medical treatment for victims of human trafficking has been free and two shelters for these victims have been opened in Istanbul and Ankara. The Turkish authorities have launched a programme to combat human trafficking in cooperation with the IOM (2005) and amended the law on the crime of human trafficking (2007). In 2007, protocols on cooperation and information exchange were ratified with Kyrgyzstan and Moldavia. Nevertheless, Turkey still needs to sign the Council of Europe Convention on action against trafficking in human beings.

As regards awareness-raising and training activities, a circular and a guide have been published for staff who deal with cases of human trafficking. Information can be obtained through the free emergency hotline. This number has been extended to international calls.

Limited progress has been achieved in the area of **police cooperation**. Turkey is party to all the main international conventions in this field. Its overall contribution to cooperation with the international police and the Member States is satisfactory. In 2004, it signed an agreement with Belarus to step up the fight against human trafficking. Turkey must continue its efforts to participate in Europol and the Schengen Information System (SIS). The absence of legislation on data protection continues to pose an obstacle to international cooperation and to the conclusion of an operational agreement with Europol.

As regards administrative capacity, a working group on harmonisation with Europol legislation has been set up and is coordinated by the office of the legal counsel of the Ministry of the Interior. In 2003-04, a training programme for the police and the gendarmerie was implemented in cooperation with the Council of Europe. In addition, the gendarmerie has adopted a "model human rights training programme". Forensic police officers have been trained in order to improve their capacity to detect and analyse evidence. Furthermore, a code of ethics for law enforcement agents has been adopted that is in line with international standards.

The Supreme Council on **Counter-Terrorism**, set up in 2006, remains the leading authority and is responsible for taking measures to combat terrorism and for drawing up recommendations. The 2006 law extends the definition of terrorist acts and

terrorists, reinforces the penalties for these crimes and criminalises the financing of terrorism. The law on the prevention of laundering proceeds of crime (2007) authorizes the Turkish Financial Crimes Investigation Board (MASAK) to gather information on suspicious transactions involving financing of terrorism. A special unit has been established under MASAK to fight the financing of terrorism.

With regard to international instruments, Turkey has ratified the UN International Convention for the suppression of acts of nuclear terrorism (2002), the International Convention for the suppression of terrorist bombings (2002) and the protocol to the European Convention on the suppression of terrorism (2005). It has not yet ratified the Council of Europe Convention on the prevention of terrorism. International cooperation has been reinforced by the signing of agreements and the adoption of action plans with the Member States (Germany, Finland, Poland and the United Kingdom) and other countries (Uzbekistan and India). Measures should be taken to ensure compliance with the recommendations of the FATF (Financial Action Task Force) on the financing of terrorism.

Little progress has been made in the **fight against corruption**. In 2003, Turkey adopted a law implementing the 1997 OECD Convention on combating bribery of foreign public officials in international business transactions. A year later, it joined the Group of States against Corruption (GRECO), which monitors compliance with anti-corruption legislation. However, most of the GRECO's recommendations are yet to be implemented. Turkey also applied both the law establishing a council on ethics in the public service to supervise the conduct of all public officials (with the exception of the president, members of parliament and ministers) and the law on electronic signatures. In 2004 and 2003, respectively, Turkey ratified the Council of Europe Criminal and Civil Law Conventions on corruption. It has set up a central anti-smuggling department and issued a governmental decree on an action plan for enhancing transparency and good governance in the public sector. In addition, a parliamentary investigative committee was set up to consider the economic and social aspects of corruption. In 2005, the Criminal Code came into force. It introduced more severe punishments for crimes of corruption, extended the time limits for proceedings, introduced the concept of corporate criminal liability in corruption cases and provisions on corruption in public procurement. In the same year, two anti-corruption committees were established in parliament to investigate petrol smuggling, illegal public offerings and misuse of bank deposits. In 2006, the law on access to information was amended and the UN Anti-Corruption Convention was adopted. Since 2007, the ministerial committee for enhancing transparency and good governance has been responsible for shaping and coordinating policies vis-à-vis international

organisations.

Nevertheless, corruption remains widespread. No public body is responsible for gathering data and statistics on corruption. No progress has been made regarding the adoption of the Law on the Court of Auditors. The absence of a public accounts committee prevents effective oversight of public expenditure. It is essential to limit the immunities granted and to improve legislation and transparency on the financing of political parties and election campaigns. The development of an anti-corruption strategy, the creation of a central body to coordinate its implementation, and strengthened legislation are of great importance.

In the area of the **fight against drugs**, an agreement between Turkey and the EU on precursors and chemical substances used in the illicit manufacture of narcotic drugs and psychotropic substances came into force in 2004. In compliance with the EU 2005-20 anti-drugs strategy, the national strategy was adopted in November 2006. An action plan for the period 2007-09 was adopted in 2008 to implement it. In 2007, Turkey submitted its first report to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). Once it is participating fully in the centre's work, Turkey will have to set up a data collection network in compliance with its rules. An agreement on its participation was signed in 2008, but it still needs to be ratified and implemented. Turkey also participates in the meetings of the European information network on drugs and drug addiction (REITOX) and is a member of the Major Donors Group of the UN Office on Drugs and Crime. In addition, Turkey is a signatory to the Council of Europe Agreement on illicit traffic by sea. In 2007, it notified the Central Dublin Group that it wished to become a member, but progress has not yet been made on the setting up of a mini-Dublin group in Ankara.

The Banking Law (2003) had already broadened the scope of **money-laundering** offences and lengthened the related limitation period. In 2007, a new law on the prevention of laundering the proceeds of crime had already come into force. It addresses the system for reporting suspicious transactions (including those relating to terrorism), record-keeping, protection of parties and the role of MASAK. In 2002, MASAK adopted a regulation regarding the customer identification requirement and procedures for the groups responsible for reporting suspicious transactions. In 2006, Turkey adopted an Anti-Terrorist Law that makes the financing of terrorism a separate offence. In 2008, it adopted a regulation on measures to prevent laundering of proceeds of crime and terrorist financing.

Turkey is party to the 1990 Council of Europe Convention and to the 2005 Convention on the financing of terrorism. The Council of Europe Criminal Law Convention on corruption, which makes it an offence to launder the proceeds of corruption, was



ratified in 2004. In 2008, Turkey signed Memoranda of Understanding on information exchange with Afganistan, Indonesia, Mongolia, Portugal and Sweden.

In 2007, the FATF published a report indicating Turkey's non-compliance with its recommendations in areas such as customer due diligence requirements, list of liable parties, and reporting of suspicious transactions.

In the area of **customs cooperation**, Turkey launched the GUMSIS project (security system project for customs checkpoints) in May 2002. Turkey cooperates with the South-East European Cooperation Initiative (SECI) on customs-related matters, the fight against cross-border crime and corruption. In November 2004, it took part in the "Toledo II" customs operation to counter cocaine smuggling and in July 2005, it participated in the "Roots" operation to combat drugs smuggling via the Balkans. In addition, mutual administrative assistance agreements have been signed with Slovenia and the Sudan. The new Criminal Code has improved the legal status of the Directorate-General for Customs Enforcement, which is currently implementing an extensive programme for improving border infrastructures. In 2005, the installation of X-ray equipment, closed-circuit television, a number-plate-scanning system and a vehicle monitoring system at some border crossing points led to a substantial increase in seizures of drugs and smuggled goods. In 2007, a risk management strategy and an action plan were drawn up for the Sub-Secretariat for Customs, and customs officials received training on risk analysis, narcotics and organised crime.

Limited progress has been made in the area of **judicial cooperation in criminal and civil matters**. Direct contact between judicial authorities, direct enforcement of foreign decisions, the abolition of dual criminal liability and the restriction of the scope of grounds for refusal are not always allowed under the Turkish legal system. Gradual alignment with private international law and with legislation on access to justice and on insolvency proceedings needs to be ensured. Legislation regarding judicial cooperation in criminal matters is not in line with EU standards, in particular as regards the extradition of both Turkish and foreign citizens, the application of the *ne bis in idem* (double jeopardy) principle, environmental crime, provisions on victims' rights and the implementation of the European arrest warrant.

In 2004, Turkey ratified the Hague Convention on the taking of evidence abroad in civil or commercial matters. It is a member of the European Convention on mutual assistance in criminal matters (1959) and the protocol to this Convention, but has not signed the second additional protocol (2001). In 2008, Turkey adopted a law implementing the 1980 Hague Convention on child abduction as well as a law on international private and procedural law. However, the Council of Europe Convention on cybercrime and a cooperation agreement with Eurojust should still be signed.

As regards **human rights** instruments, Turkey still needs to improve the situation of fundamental rights in a number of areas and to address the problems that minorities are facing. Overall, it has not made much progress on ensuring cultural diversity and promoting respect for and protection of minorities in accordance with European standards, except as regards the law on private educational institutions, which entered into force in February 2007. The number of cases of torture and ill-treatment reported have however decreased, freedom of religion is generally guaranteed and the measures to protect women from violence have been improved (although there are still differences between men and women). Individuals continue to be prosecuted and convicted for expressing their opinion and proceedings brought against newspapers indicate that overall the Turkish legal system does not fully ensure freedom of expression in accordance with EU legislation.

Turkey has ratified two protocols to the European Convention on Human Rights (ECHR): No 6 on the abolition of the death sentence (2003) and No 14 amending the control system of the Convention (2006). Three additional protocols to the ECHR have yet to be ratified. The first optional protocol to the International Covenant on civil and political rights entered into force in February 2007. It recognises the competence of the UN Human Rights Committee to receive and consider complaints from individuals on violations of human rights. Turkey has also signed up to the UN Convention on the rights of persons with disabilities (2007) and the optional protocol to the UN Convention against torture (2005), which have yet to be ratified. In addition, the UN Convention on the elimination of all forms of racial discrimination and the UN International Covenant on economic, social and cultural rights have yet to be ratified. In general, the situation as regards fundamental rights in Turkey has improved significantly since 1999.