Answers from Turkish Side to non-exhaustive list of questions
Chapter 19 – Social Policy and Employment

Screening – Bilateral meeting with Turkey

(1) Health and Safety at Work

Please give a general overview on the national policies and strategies and legislation in the field of Occupational Safety and Health. Which approach has been taken so far for the alignment of national legislation to the EC OSH acquis?

In the field of occupational health and safety, Turkey has legislative, practical and institutional knowledge accumulated over the past 150 years.

The Ministry of Labour and Social Security (MoLSS) in cooperation with related ministries and representatives of workforce play the key role in improving occupational health and safety in the Country. Although the numbers of fatal occupational accidents are still higher than the EU average, there is a steady decline.

Governments attach great importance to ensure the better working and living conditions for the workers and categories of people. We may find the hints of this in national development programmes and strategic documents such as National Programme of Turkey for the Adoption of the Acquis. Establishment of the Directorate General for OHS and strengthening the administrative capacity of the related departments with new recruitments and training programmes also clearly indicate the commitment and willingness of the Government in the area of OHS. Traditionally, governments in Turkey prefers working with the social partners in the areas relating to labour. Occupational health and safety is one of the areas that social partners and other stake holders take part in every kind of activities. The latest development in this area is the establishment of the National Occupational Health and Safety Council in 2005 as an advisory body and as a platform for social dialogue relating to OHS. It is consisted of the representatives of the governmental institutions and stakeholders in an equal footing.

In its last meeting at the end of 2005, a national policy document has been adopted and national goals have been defined by the Council.

The Constitution of the Republic of Turkey has the main, general provisions relating to the protection of health, safety and environment.

Article 56 of the Constitution states that:

Everyone has the right to live in a healthy and balanced environment.

It is the duty of the State and citizens to improve the natural environment, and to prevent environmental pollution.

To ensure that everyone leads their lives in conditions of physical and mental health.

The State shall fulfil this task by utilizing and supervising the health and social assistance institutions, both in the public and private sectors.

In order to provide a widespread health service, general health insurance may be introduced by law.

Another major law which contains the protection of workers is the Code of Obligations. According to Article 332 thereof:

The employers are obliged to;

- take all necessary measures against hazards which workers may be exposed

- provide healthy and suitable working places

- provide healthy accommodation if the worker resides in work place

If the employer fails to comply with these provisions and this causes death of the worker, the employer would have to pay compensation to the survivors, including the amount which they are deprived of with the death of the worker.

Protection of Public Health Law (No:1593) contains some provisions regarding the protection of young and child workers' health and obligation of the employer to recruit occupational physician for surveillance of the health of the workers in the workplaces where more than 50 employees are employed.

Social Insurance Law (No:506) defines the work accident, occupational disease and compensatory obligation of employer when he/she fails to take necessary action for the protection of worker.

Definitions of the Law for work accident and occupational disease are given below:

A) Work accident means an accident occurring in any of the circumstances or situations indicated below which causes immediately or subsequently a physical or mental invalidity to an insured person:

When the insured person is in the workplace;

In connection with the work carried on by the employer;

When the insured person has been sent by the employer to perform duties at another place;

During the period allocated for the nursing of the child of the insured woman;

While insured persons are carried as a group on a vehicle supplied by the employer, to and from the place where the work is being done.

B) Occupational disease is a case of sickness, invalidity or mental trouble, temporary or permanent, suffered by an insured person due to continuing causal factor, which is characteristic of the nature of the work he is doing, or arising out of conditions required for the execution of such work.

Disputes arising as to whether any sickness not included in the list of diseases drawn up in accordance with the provisions of this Law, is to be considered as an occupational disease or not shall be settled by the Social Insurance Supreme Health Board.

Labour Law (No:4857) contains the main provisions for the protection of workers falling within the scope of the Law. Chapter V of the Law is confined to OHS. Key provisions of this chapter are given below:

Article 77. Obligations of employers and workers:

Employers are obliged to;

- take all measures
- make all equipment available
- check and inspect the measures
- inform and train the workers
- notify the occupational diseases and accidents

Workers are also obliged to;

- comply with such measures taken for occupational health and safety

Article 78. Regulations and By-laws:

The Ministry of Labour and Social Security (MoLSS) issues regulations and By-laws, after having obtained the opinion of the Ministry of Health;

- to ensure measures to be taken for occupational health and safety in enterprises
- to prevent occupational accidents and diseases that may be caused by machinery, installations, equipment and materials used
- to arrange the working conditions of the persons who should be protected because of their age, sex and special conditions

Article 79. Suspension of the work and/or closure of the enterprise:

In case any matter is determined in the;

- facilities and assemblies,
- Working methods and procedures,
- machinery and equipment of an enterprise which may endanger the life of workers,

The work is fully or partially suspended, or the enterprise is closed, depending on the nature of danger, upon a decision of a five-member committee consisting of two inspectors in charge of inspecting the enterprise in respect of occupational health and safety, one labour representative and one employer representative and Regional Director, until such danger is eliminated.

Article 80. Occupational health and safety board:

In industrial enterprises which are;

- permanently employing at least 50 persons,
- where works are performed continuously for longer than six months,

each employer is obliged to establish an occupational health and safety board.

Article 81. Workplace physician :

Those employers who permanently employ at least 50 persons are obliged to;

- employ one or more workplace physician(s) and
- establish a workplace health care unit depending on the number of employees and the degree of danger of the work performed
- to ensure good health condition of the workers and
- to take occupational health and safety measures, as well as to provide first aid, emergency therapy and protective health care services, in addition to the health care services provided by Social Insurance Organization.

Article 82. Engineers or technical personnel in charge of labour safety

In industrial enterprises which are;

- permanently employing at least fifty persons,
- where works are performed continuously for longer than six months,

employers are obliged to employ one or more engineer(s) or technical personnel, depending on the number of employees, nature of the enterprise and degree of danger of the work performed, to take labour safety measures at the workplace, to determine and monitor the implementation of the measures to be taken to prevent occupational accidents and occupational diseases.

Article 83. Rights of workers

The worker who faces with;

- close, urgent and vital hazard at the workplace in respect of occupational health and safety
- that may disturb his/her health or endanger integrity of his/her body,

may apply to the occupational health and safety board to fix the situation and take decision to take necessary measures.

If the board decide in line with the worker's request, the worker may avoid from working until necessary occupational health and safety measures are taken.

Article 84. Prohibition on use of alcohol or narcotics

It is prohibited to come to the workplace drunken or having administered narcotics, and to use alcoholic spirits or narcotics at the workplace.

Article 85. Heavy and dangerous works

Young workers and children who have not completed the age of 16 may not be forced to work in heavy and dangerous positions.

Article 86. Medical report for heavy and dangerous works

The workers to be employed in heavy and dangerous positions are subjected to health examination;

- at the time of recruitment
- and thereafter at least once a year

Article 87. Medical report for workers under age of eighteen

It is obligatory to examine the health condition of child and young workers between 14 and 18 (including 18);

- at the time of recruitment
- and thereafter at least every six months

Article 88. By-law regarding pregnant or breast-feeding women

The positions in which and the periods during which it is prohibited to force the pregnant or breast-feeding women to work, the requirements and procedures which such women should comply with in positions in which they are allowed to work and the conditions under which breast feeding rooms or day nurseries shall be determined through a by-law to be prepared by the MoLSS,

Article 91. State authority

The State monitors, controls and inspects the implementation of legislation regarding work life.

This task is carried out by sufficient number of labour inspectors having required qualifications who are authorized to inspect, control and report to the MoLSS.

The transposition of the EU acquis on OHS has been undertaken by Turkey with its National Programme published in July 2003 and OHS-related part of it has almost been transposed in line with the time-table indicated in the NP. There had been some discussions with the experts of the Member States before the transposition. As a result, transposition through secondary legislation was made without changing main structure and logic of the relevant acquis.

Would you consider your current system as being sufficiently flexible to manage adaptation to evolving technical rules, standards and to ensure an adequate reaction to new and emerging risks?

Yes. Our current system is sufficiently flexible to respond to the evolving technical rules and to new and emerging risks. Article 78 of the Labour Law gives enough room to the Ministry to be able to make the necessary arrangements whenever it is needed relating to OHS, be it for a new risk or development in different areas.

II. General overview on status of transposition

Which part of the acquis do you consider to be transposed?

All directives relating to OHS have been transposed, except the recent one concerning electromagnetic fields.

Which projects are under preparation?

Could you please indicate an approximate time schedule for the m adoption/finalization of ongoing and future projects?

Directorate General of OHS (DGOHS) has been involved in several projects directly or indirectly related with the OHS.

First of them was the WLE Project of Sweden. It had great contribution to the transposition process.

Labour Inspection Board has carried out a project with the Netherlands in the framework of the MATRA.

A Twinning (EU) Project has just started with Finland relating to the market surveillance of the PPEs in the framework of the new approach directives.

Several TAIEX programmes, including workshops, seminars and study visits have been realized by the DGOHS and Labour Inspection Board which responded to the urgent needs emerging during the transposition process.

ISAG Project supported by the EC is the biggest one to be carried out by the DGOHS. It started at the beginning of the 2004 and finished partially in February 2006. Mobile Laboratory component of it is still pending for the tender procedure. It is expected that this component will be finalised in 2007.

ENETOSH Project of the German BGAG is another one in which the DGOHS involved as a partner among others. It is a Leonardo project concerning the integration of the OSH into education. It will last for two years.

Another pending project is about the strengthening of Labour Inspection Board, Project fiche preparation is underway.

DGOHS is planning to give another project proposal for 2007, including the grant component for employers, employees and NGOs. The project mainly aims to strengthen implementation by awareness raising, publishing documents and preparing programmes to help employers and employees to implement the harmonised directives.

III. Detailed overview

Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work

A. Material Legislation

(a) Does your country have similar legislation? If yes, which?

If there are several pieces of legislation, how are they coordinated? In view of the textual transposition of the EC directive, how does this affect existing legislation and is there need to repeal existing legislation?

Yes, but partially. A Framework By-law on OHS, transposing the Directive 89/391/EEC was issued in December 2003. However, its implementation has been suspended by the Council of State on the ground that it should have been in the form of a law or regulation. It was drafted once again, in consultation with the social partners, to comply with the decision of the Council of State. Redrafted text was sent to the Council of State by the Prime Ministry in order to have its opinion.

20 individual directives have also been transposed alongside with the Framework Directive.

Previous legislation covering the same area was also send to the Prime Ministry to be repealed, and as they are hierarchically higher legislation they also have to go to Council of State to complete the process.

(b) Which is the scope of application? Is there a common definition of "worker"? Does your law comprise the public sector? To what extent are police, armed forces and civil protection services covered by the national legislation? Please inform about the exemptions.

Scope of the Labour Law No. 4857:

The Law covers all workplaces irrespective of the sector they operate in and their employers, employers' representatives and employees.

Works or workplaces which fall under the scope of the law:

- Maritime and air transportation,
- Agriculture and forestry workplaces employing less than 50 workers,
- All agriculture related construction works which can be considered as in the family economy,
- Handicrafts and jobs made by family members using their home as workplace.
- Domestic servants,
- Apprentices,
- Sports people,
- People under rehabilitation,
- Small work places where only 3 persons are employed.

Following works are also covered by the Law:

- Loading and unloading works, from ships to land and from land to ships
- All ground works of aviation,
- Factories and workshops producing parts of agricultural equipments and articles.
- Construction works in agricultural enterprises,
- Park and garden works which are for society or part of a workplace,
- Water products producing works which are not covered by agricultural works definition and by the Maritime Labour Law.

In the scope of this Law, worker means a natural person working on the basis of an employment contract.

Labour Law does not cover civil servants, police forces and civil defence workers.

(c) Are the actions required from the employer under your legislation based on a preventive approach and does your legislation spell out preventive principles? Which obligations does your legislation provide for the employers?

As it is transposing the EU acquis, it has same preventive approach of the Framework Directive and the individual directives. The following are stated as the main responsibilities of the employer in the Article 6 of the By-law on OHS:

a) The employer shall take the measures necessary for the safety and health protection of workers, including prevention of occupational risks and provision of information and training, as well as provision of the necessary organization and means. The employer shall be alert to the need to adjust these measures by taking into account the changing circumstances with the aim of improving existing situations.

b) The employer shall comply with the following principles in taking measures to protect health and safety:
- Avoiding risks,
- Evaluating the risks which cannot be avoided,
- Combating the risks at the source,
- Adapting the work to the individual, especially as regards the design of workplaces, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work rate and to reducing their effect on health,
- Adapting to technical progress,
- Replacing the dangerous with the non-dangerous or the less dangerous,
- Developing an overall prevention policy which covers technology, organization of work, working conditions, social relationships, and the influence of factors related to the working environment,
- Giving priority to collective protective measures over individual protective measures,
- Giving appropriate instructions to the workers.

(d) Who has the overall responsibility for health and safety at the workplace?

Employer has the overall responsibility for health and safety at the workplace.

(e) Does your law specify cases of *force majeure* which discharge the employer?

In the relevant legislation, there is no reference to the force majeure, but there are court decisions which consider the very rare situations as unavoidable, and even in this case it attributes the responsibility to the employer without fault as the risk is taken by the employee while he/she is under the authority of the employer.

(f) Does the health and safety legislation contain (a) provision(s) that all OSH measures taken by the employer must not involve costs for the workers?

In the relevant legislation, it is stated that measures related to safety, hygiene and health at work may in no circumstances bring financial burden to workers.

(g) Does your legislation provide for workers' responsibility in OSH matters?

Yes. Workers' obligations are set out in the related legislation as below;
"Workers shall comply with the following provisions with respect to health and safety at the workplace:

a) It shall be the responsibility of each worker to take care as far as possible of his own safety and health and that of other persons affected by his acts or commissions at work, in accordance with his training and the instructions given by his employer.
b) Workers must in particular, in accordance with their training and the instructions given by their employer:
   1) make correct use of machinery, apparatus, tools, dangerous substances, transport equipment and other means of production,
   2) Make correct use of the personal protective equipment supplied to them and, after use, return it to its proper place,
   3) Refrain from disconnecting, changing or removing arbitrarily safety devices fitted to machinery, apparatus, tools, plant and buildings, and use such safety devices correctly,
   4) Immediately inform the employer or health and safety workers' representative, of any situation that can be considered representing a serious and immediate danger to safety and health, and of any shortcomings in the protection arrangements,
   5) Cooperate with the employer and safety and health workers' representative, for the requirements to protect health and safety, imposed by the competent authority that is authorized to inspect, to be carried out at the workplace.
   6) Cooperate, in the application of the legislation, with the employer and health and safety workers' representative, to enable the employer to ensure that the working environment and working conditions are safe and pose no risk to safety and health within their field of activity."

(h) Does your legislation provide for an obligation to perform risk assessments? If your legislation provides for the obligation of risk assessment, does it also provides for the obligation for a documentation of the risk assessment in writing in all kinds of enterprises?

The employer, taking into account the nature of the activities at the workplace, shall evaluate the risks to the safety and health of the workers, from the point of view of the choice of work equipment, the chemical substances or preparations used, and the fitting-out of workplaces. Subsequent to this evaluation, the preventive measures and the working and production methods implemented by the employer must assure an improvement in the level of protection afforded to workers with regard to health and safety, and be integrated in all the activities of the undertaking and at all hierarchical levels.

Employers of all workplaces are obliged to prove with written documents that they do the risk assessment.

(i) To what extent does your law provide for a continuous approach to OSH matters and related duties of the employers?

c) In the relevant legislation, it is stated that the employer shall be alert to the need to adjust these measures by taking into account the changing circumstances with the aim of improving existing situations. This statement provides a continuous approach.

(j) Which report duties in regard to accidents at work does the employer have and does he have to keep a register of occupational accidents causing an absence of more than three working days?

The relevant legislation requires the employer:

1) To keep a list of occupational accidents that result in a worker being unfit for work for more than 3 working days.
2) To prepare reports on occupational accidents suffered by his workers.

(k) Does your national law require the information, consultation and cost-free training of the workers and workers representatives? Do workers have the right to apply to the responsible OSH authority and does the law provide for an obligation to submit their observations to the inspection authorities during inspection visits? What are the rights of the workers and/or their representatives with special responsibilities for OSH?

The By-law includes following provisions in relation with information, consultation and training of workers;

Informing the Workers

For effective implementation of occupational health and safety services at the workplace, giving information to the workers is a must. With this purpose:

a) The employer, according to the size of the establishment, will make sure that the workers and their representatives receive the necessary information concerning:
    1) The safety and health risks and protective and preventive measures and activities in respect of both the establishment in general and each type of workstation and job.
    2) According to Article 8 section (b) of the By-law, is obliged to give the necessary information regarding the people hired, to the workers and their representatives.
b) The employer shall take appropriate measures so that employers of workers from any outside establishment engaged in work in his establishment receive adequate information concerning the points referred to in section (a), which is to be relayed to the workers in question.
c) The employer shall make sure that, the workers with specific functions in protecting the safety and health of workers or workers' representatives have access to the following, to carry on their duties effectively:
    1) The risk assessment and protective measures referred to in sub-sections (1) and (2) of section (a) of Article 9 of this By-law,
    2) The accident lists and reports referred to in sub-sections (3) and (4) of section (a) of Article 9 of this By-law,
    3) The information yielded by protective and preventive measures, control activities related to health and safety, and inspection agencies and bodies responsible for safety and health.

Consultation and participation of workers

The employer is obliged to implement the following provisions to ensure the consultation and participation of the workers on issues related to health and safety:

a) The employer on issues related to health and safety, consult the workers or their representatives, give them the right to make proposals, and will ensure their balanced participation in discussions of such issues.
b) Workers or workers' representatives with specific responsibility for the safety and health of workers shall take part in a balanced way, or shall be consulted in advance by the employer with regard to:
    1) Any measure which may substantially effect safety and health,
    2) The designation of workers referred to in Articles 7 section (a) and 8 section (b) and the activities referred to in Article 7 section (a) of this By-law,
    3) The issues referred to in Article 9 section (a) and Article 10 of this By-law,
    4) The enlistment of the competent services or persons outside the establishment as referred to in Article 7 section (c),
    5) The planning and organization of the training referred to in Article 12 of this By-law.
c) Workers' representatives with specific responsibility for the safety and health of workers shall have the right to ask the employer to take appropriate measures and to submit proposals to him/her to that end to mitigate hazards for workers and to remove sources of danger.
d) Workers or workers' representatives with specific responsibilities for occupational health and safety may not be placed at a disadvantage because of their respective activities.
e) Employers must allow workers' representatives with specific responsibility for the safety and health of workers, adequate time off work without loss of pay, and provide them with the necessary means to exercise their functions mentioned in this By-law.
f) Workers or their representatives are entitled to appeal to the Ministry, if they consider that the measures taken and the means employed by the employer for the occupational health and safety are inadequate.

Workers' representatives must have the right to express their opinions during inspection visits by the competent authority.

Training of workers

For ensuring health and safety at the workplace:

a) The employer shall ensure that each worker receives adequate safety and health training, in particular in the form of information and instructions specific to his job. Such training shall be provided in particular:
   1) Upon recruitment, before starting the job,
   2) In the event of a transfer or a change of job,
   3) In the event of a change in the work equipment or getting new equipment,
   4) In the event of the introduction of any new technology.

   The training shall be adapted to take account of new or changed risks and if necessary repeated periodically.

b) The employer shall ensure that workers from outside establishments engaged in work in his establishment have in fact received appropriate instructions regarding health and safety risks during their activities in his establishment.
c) Workers' representatives who have specific responsibilities for health and safety shall be provided special training.
d) The training mentioned in sections (a) and (c) may not be at workers' or their representatives expense and the time spent in training shall be counted as time worked.

(l) Does the national legislation set out the obligation of the employer to designate worker(s) to carry out protection and prevention-related activities or to enlist external services for these functions and how does the national law define the capabilities and aptitudes of the persons or services? Is there a certification requirement of external services?

Yes. It has the following statements as regards the designation of workers responsible for the protection and preventive related activities and as regards the external services;

a) Without prejudice to the obligations referred to in related articles, the employer shall designate one or more workers to carry out activities related to the protection and prevention of occupational risks for the establishment.
b) Designated workers may not be placed at any disadvantage because of their activities related to the protection and prevention of occupational risks. Designated workers shall be allowed adequate time to enable them to fulfil their obligations arising from this By-law.
c) If such protective and preventive measures cannot be organized for lack of competent personnel in the establishment, the employer shall enlist competent external services or persons.

There is certification system for the occupational medicines, occupational safety engineers and occupational nurses. There are committees to decide the curriculum and means of training for each certification programme consisted of the interested

parties including the employers, employees, higher education council, chambers of engineers etc.

(m) What obligations are imposed to employers for first aid, fire fighting and evacuation? Are the workers entitled to leave their workplace in the event of danger without negative consequence?

The regulation contains the following articles as regards the first aid, fire fighting and evacuation;

a) The employer shall:
   1) Take the necessary measures for first-aid, fire-fighting and evacuation of workers, adapted to the nature of the activities and the size of the establishment and taking into account the other persons present.
   2) Arrange any necessary contacts with external services, particularly as regards to first-aid, emergency medical care, rescue work and fire-fighting
b) The employer, for first-aid, fire-fighting and evacuation of the workplace referred to in section (a), taking into account the size of the establishment and the specific dangers, shall assign people who are trained on this subject have the appropriate equipment, and be in sufficient numbers.
c) The employer shall:
   1) As soon as possible inform all workers who are or may be exposed to serious and imminent danger of the risk involved and of the steps taken or to be taken as regards to protection.
   2) Take action and instructions to enable workers in the event of serious, imminent and unavoidable danger to stop work and immediately leave the workplace and proceed to a place of safety.
   3) Under the working conditions where the serious and imminent danger is continuing, except the persons that are specially assigned, it shall be refrained from asking workers to resume work in a working situation where there is still a serious and imminent danger.
d) Workers who, in the event of serious, imminent and unavoidable danger, leave their workstations and/or a dangerous area may not be placed at any disadvantage because of their action and must be protected against any harm.
e) The employer shall ensure that all workers are able to take the appropriate steps in the light of their knowledge and with the technical means at their disposal, in the event of serious and imminent danger to their own and/or that of other persons, and where the immediate superior cannot be contacted, to avoid the consequences of such danger.
   Their actions shall not place them at any disadvantage, unless they acted carelessly or there was negligence on their part.

(n) **How is the surveillance of workers' health organised? Are they entitled to ask for regular checks under the national legislation?**

According to the Article 14 of the implementing regulation employer is responsible of giving workers health surveillance appropriate to the health and safety risks they are exposed to at work:

a) A health report certifying that the condition of health of the worker is appropriate to the work to be performed, shall be obtained when a worker is recruited,
b) Depending on the nature of the work, as the work continues, health surveillance shall be done periodically.

(o) **Collection of statistical data: Which data is collected in the field of occupational accidents? Economic activity, job, age, sex, geographic location, type of injury and body part injured…? Is there a link to the ESAW project (European statistics on accidents at work).**

Employers are obliged to report every occupational accident to the Ministry and to the Social Security Institution. Occupational accident reporting to the Ministry shall include at least the following;

- Gender, age, working time of injured worker
- Education level of the worker, his/her job during the accident and whether it is his/her own duty or not
- Condition of worker after the accident (injury, physical loss, death)
- Short story and damage level of the accident

Turkish Statistical Institute (TURKSTAT) carries out a project to align the occupational accidents and diseases statistics system with those of the EU in cooperation with the SSK and DGOHS.

Which data is collected on occupational diseases? Is there a list of recognized diseases? Is there a connection to the European Schedule on Occupational Diseases (Commission Recommendation of 19 Sept 2003)?

Occupational diseases related issues to be reported to the Ministry are;

- Gender, age, health situation of worker,
- Exposure value of the worker (physical, chemical, biological)
- Duration of exposure
- Health care given to the worker, if any, and its duration
- Working time in the work place where diagnosed as an occupational disease

Although it is not the same with the Recommendation, there is an occupational diseases list in our legislation.

B. Control and Supervision – Practical Implementation (Article 4)

(a) Please provide for a description of the basic structure and organization of the labour inspectorate and, if applicable, other bodies competent for compliance control and enforcement? If there are several institutions, how are the tasks allocated and how are they coordinated?

The inspection of compliance with the legislation about work-life is the duty of the Ministry of Labour and Social Security according to the Law on the "Structure and Duties of Ministry of Labour and Social Security" No: 3146. According to the Social Security Organisation Law, this duty is given to the Labour Inspection Board. In addition, Article 91 of the Labour Law reveals this task as follows: "The State shall monitor, control and inspect application of legislation related to the labour life. This task shall be performed by labour inspectors of the Ministry of Labour and Social Security, in sufficient numbers and with required qualifications and who are authorized to control and inspect."

Labour Inspection Board's main working areas are working environment, working conditions and individual work contracts. Moreover, the Board deals with collective work contracts. The Labour Inspection Board, besides inspecting practices in workplaces according to the legal provisions, investigates workers complaints. Law No. 3008 which was enacted in 1936 provides that the State has a duty of monitoring, controlling and inspecting the work life, aiming to set peace in national labour life. Labour inspection service was established with this Law. The Labour Inspection Central Group was founded in 05.01.1978 by the Ministry of Labour according to the Ordinance of Labour Inspectors and the organizational structure was changed to the present scheme according to the Regulation of Labour Inspection published in Official Gazette in 28.08.1979.

In Article 41 and Provisional Article 1 of Law No 4947 (Social Security Law) which was adopted in 2003, appointment procedure of labour inspectors subjected to approval at three level and they were attached directly to the Minister.

Inspection of work life is internationally based on the ILO Convention No 81 (11.07.1947) about Inspection in Industry and Trade. The convention was ratified by Turkey with the Law No 5690 on 13.12.1950. Labour Inspection Board is the unique inspection board based on an international convention approved by the Parliament.

At national level, labour inspection system is based on; the Constitution, Laws of Labour (Labour Law, Maritime Labour Law, Press Labour Law, Trade Unions Law, Law on Collective Aggrements, Strike and Lock-out), Structure and Duties of the Ministry of Labour and Social Security and Labour Inspection Regulation. It also has duties and competencies stemming from some related laws.

Structure Of The Labour Inspectorate

The Labour Inspection Board consists of the Head of the Board, 3 Deputies, Chief Labour Inspectors, Labour Inspectors, Assistant Labour Inspectors, Section Managers and support staff.

The Head of the Board is appointed among the Labour Inspectors who have at least 10 years of professional experience in labour inspection.

The Labour Inspection Board is located in Ankara. The Board is a central inspection organization and Labour Inspection Groups are formed in order to carry out the inspection services in a peaceful, efficient and active way at 10 administrative provinces (Ankara, İstanbul, İzmir, Adana, Malatya, Bursa, Erzurum, Samsun, Antalya, Zonguldak) where trade and industry are intense.

Social Insurance Inspection Board

In addition to Labour Inspection Board, Social Insurance Inspection Board also carries out occupational disease and work accident inspections. Main duties of Insurance Inspection Board are;

-To widen social security scheme coverage,

-To inform employee and employer for their social security rights and obligations (includes occupational disease and work accident) ,

-To prevent social security frauds,

-To detect or investigate work accidents, occupational diseases and the other insurance cases,

-To collect related information and to examine related persons and record their testimony.

The Board is located in Ankara, and it has 7 regional offices in the industrialized provinces. (Ankara, Istanbul, İzmir, Adana, Bursa, Trabzon, Diyarbakır)

(b) Which tasks are performed by the labour inspectorate (and other instances)? Does the labour inspection function include the supervision of labour relations?

In Article 13 of the Law on the "Structure and Duties of Ministry of Labour and Social Security" No: 3146, Labour Inspection Board is placed among the consulting and inspection units. In Article 15 of the Law No 3146, which replaced Article 19 of the Law on the "Structure of Social Security Council" No. 4947, it is stated that Labour Inspection Board carries out the following duties on behalf of the Minister of Labour and Social Security:

a) Carrying out planned or occasional inspections and taking measures,
b) Monitoring and investigating practices in workplaces according to international conventions,
c) Monitoring compliance with the legislation on working conditions,
d) Conducting works related to the preparation and improvement of national labour inspection legislation, also according to the inspection results preparing a "General Evaluation Report" which states problems, applicability of the legislation and measures to be taken by relevant institutions,
e) Collecting, evaluating and assessing statistics,

The function of Turkish Labour Inspection Board includes the supervision of both labour relations and health and safety issues.

(c) Describe the powers of the labour inspectors: enforcement instruments, penalties, competences in emergency matters.

The duties and powers of inspectors are as follows:

A) To examine production methods, working conditions and labour relations at workplaces
B) To question employers, workers and related persons and to record their testimonies with their signature in the workplace or outside the workplace depending on the situation.
C) To examine, to summarize and to copy if necessary the documents, the records, the reports, the books, the periodic control charts of machineries, etc.,
D) To take the documents crucial for the results of investigation. Those documents should be either impossible to examine at the workplace or if left at the workplace, some possible changes on them might influence the course of the investigation. Those documents are taken in return for an official document signed by the inspector, and are given back to the employer after the necessary examinations are carried out.
E) To check whether the working conditions in workplaces are hazardous to workers' health, to examine the machineries, and the raw and

processed materials, to determine if they comply with the relevant legislation.

F) If inspectors detect an infringement which is related to age, sex and health conditions of the workers, inspectors must;
   1- Prevent those workers from continuing to work.
   2- Stop the machines, installations and work at parts that are hazardous to the workers' health and safety in a way that will affect the production at a minimum level; if possible, to displace the hazard source and to ensure that the hazardous materials which are banned by legislation are taken away from the workplace. To take the measures stated above until the provisions of 'regulation about the closure of the workplace and termination of production' is applied.

G) To enter freely and without prior notice at any hour of the day or night any into the workplace subject to inspection, and if the workplace is closed, to make it opened if there is no legal obstruction.

Labour Inspectors have power to impose sanctions on persons who does not comply with the legislation.

(d) Statistics: Please give some information on the total number of inspectors, ratio per workforce, per enterprise, average periodicity of control for enterprises, team size, infringement procedures, court decisions…etc.

There are 603 inspectors, 326 of which are responsible for the inspection of administrative and social aspects (labour relations), and 277 are responsible for inspections on occupational health and safety (technical inspections). Moreover, the process is initiated for the appointment of further 100 assistant labour inspectors.

Statistical data of the Ministry of Labour and Social Security for 2005;

- number of enterprises: 850.928
- number of workers: 6.181.251
- number of total inspections in 2005: 62.369
- number of employees reached in 2005: 1.703.756
- An inspector per 1410 workplaces,
- An inspector per 10250 workers.
- According to the size and risk factor of the workplace inpection periods are decided. Generally risk workplaces are inspected once a year.

Notice: Further and detailed statistical data is available in the "2005 – General Report of Labour Inspection which is yearly sent to ILO"

Statistics about Social Insurance Inspectors for 2005:

-Total number of social insurance inspectors: 360
-The number of works (or cases) per social insurance inspector: 80
-The number of insured person per social insurance inspector: 20.500

-The number of workplaces per social insurance inspector: 2.400
-The number of controlled workplace: 28.055
-The number of controlled Occupational Disease and Work Accidents: 5.247

(e) How is the control and supervision for the public sector organized?

According to the Labour Law, there is no distinction between private and public sector. Labour Inspection Board performs inspections for all enterprises falling within the scope of the Law. Therefore public workers are also covered.

(f) Which professional background is required for labour inspectors? How are they trained? Is there an obligation for regular training?

Labour Inspectors have different technical and social occupational expertise.

Technical Labour Inspectors (occupational health and safety inspectors) are chosen from graduates from engineering and medicine disciplines. Technical Labour Inspectors inspect the compliance with the legislation on occupational health and safety.

Administrative and Social Labour Inspectors are chosen among graduates from social science disciplines. Social Labour Inspectors are responsible for inspecting the compliance with the legislation regarding the work-life.

Labour Inspector post is subject to an entry examination. Those who become successful in the examination are appointed to vacant assistant labour inspector posts.

Assistant labour inspectors gain experience through special education programmes and accompanying senior inspectors for 3 years.

Assistant labour inspectors do not have alone the authority for inspection. However, those who have good records during the first two years might be given the authority for inspection by the Minister if their senior companions, the head of the group and the head of the Board declare positive opinion.

Moreover, prior to the competency examination each Assistant Labour Inspector must prepare a thesis on a special subject related to the labour inspection.

The assistant labour inspectors successful at the competency examination are appointed to labour inspector posts.

In order to take that examination, assistant labour inspectors:

- should have worked for 3 years,
- should have good records during the years of assistance, and,
- should be given the positive opinion of the Board.

Labour Inspection Board organises regular training seminars, which are specially arranged according to the changes in the legislation and technology.

Social Insurance Inspectors are chosen among graduates of social science disciplines such as Finance, Public Administration, Law, Economics, Labour Economics and Industrial Relations. The examination and training methodology are more or less the same with the those of the Labour Inspectors.

(g) Which body/bodies have tasks in the area of prevention?

According to the Labour Law; enterprises with definite capacities must supply professional services from occupational safety experts, physicians, nurses and health officials. It is obligatory for them to be certificated by the competent authority. These certificates are given by the Ministry to the experts who succeeded the final examination after an education period. Trainers are mainly labour inspectors and experts from universities and other competent institutions.

Ministry of Labour and Social Security initiated certification course programmes in 2004 for occupational health and safety experts. This is a continuous process and the number of certificated experts will be increased to respond to the requirements of enterprises. Occupational health and safety experts will provide professional service to the workplaces and contribute to set up prevention systems in the workplaces.

(h) What do you consider to be the most serious problems in the field of labour inspection (resources, sanctions)?

Turkey has transposed the relevant acquis, and efforts to implement the existing legislation have been strengthened. New Labour Law and the secondary legislation were prepared according to European legislation in the area of social policy and employment. The effectively enforcement and fully implementation of legislation require contributions of all stakeholders. In particular, employers have to get acquainted with the new approach. The new approach is based on the risk assessment model, which is the basic tool to set up an occupational health and safety management system in the workplaces according to EU Directives. The risk assessment model requires a significant change in the OHS management in companies, and as well as in the inspection practices which had been used for years.

As the previous Labour Law No. 1475 and the old regulations had been in force for long years, the employers have difficulties in adapting to this change of legislation. Detailed, but obsolete OHS regulations which had been in force for more than 30 years, were replaced by the legislation transposing EU OHS Directives, containing only general provisions. For years, employers have not made health and safety improvements in workplaces on their own initiatives. Instead of using checklists containing information about what has to be done in the workplace in a certain way, the new approach forces the employers to find out customized measures to different possible problems occurring in the workplace.

Since risk assessment becomes the principal focus of inspections, employers should get experienced in carrying out an adequate risk assessment. Although some big companies carry out certain systematic risk assessments in their factories, most of the branches of industry lack necessary information sources concerning risk assessment and implementation within the scope of new legislation.

Council Directive 89/654/EEC concerning the minimum safety and health requirements for the workplace

(a) Which is the definition of 'Workplace' in your national legislation?

Workplace is defined in our legislation as below:

"Workplace: the area that the worker uses to work, the buildings, extensions, and all the other area that the worker can enter and leave during the course of his/her employment."

(b) Which are the pieces of legislation dealing with the characteristics of the 'workplace'?

It is the Section II and the annexes of the By-law on the Health and Safety Measures to be Taken in the Buildings and the Extensions of the Workplace (OG : 10.02.2004 / 25369).

(c) Please give information regarding the content of your national legislation taking into account the general and specific requirements as contained in Article 6 and the Annexes to the Directive.

Article 8 of the By-law on the Health and Safety Measures to be Taken in the Buildings and the Extensions of the Workplace corresponds to the provisions of Article 6 and the annexes of the Directive.

(d) How is technical expertise and guidance developed on the various issues contained in the annexes?

There are several pieces of legislation dealing with the expertise and guidance concerning the characteristics of the workplace buildings, necessary competencies and details of the workplace structures, stability and solidity of buildings, electrical installations, fire fighting equipment etc.

(e) Is there assistance to enterprises for the configuration of the establishment?

Whenever they apply to the Ministry for assistance, necessary information is given to them. But there is not any ready made procedure for this.

Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work

(a) Are there provisions in place relating to the use of work equipment?

Yes. By-law on Health and Safety Conditions in Using Work Equipment harmonises the Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work. By-law was published in the Official Gazette at 11.02.2004, taking effect at the same date of its publication.

(b) Which is the scope of meaning of "work equipment" under the national provisions?

Article 5 of the By-law defines the “work equipment” as any machine, tool and facility used in performance of the work .

(c) Are there obligations to use work equipment which complies with standards set under European legislation?

Yes. According to the By-law harmonising the relevant directive, employer should ensure that the work equipment to be used for the first time, after the date the By-law enters into force, is in accordance with the minimum requirements set out in the annex of the By-law. Employer will also ensure that the work equipment that is already in use, on the date that the By-law enters into force, is in accordance with the minimum requirements set out in the Annex-I, within 6 months following the entry into force of By-law. In the meantime new approach directives relating to the machinery, lifting equipment, pressure vessels and so on, are also harmonized and in their annexes there is reference to the harmonized EN standards.

(d) Is there a duty for inspection of work equipment (see Directive 95/63) and is such an inspection system in place for the effective technical control of work equipment?

Yes.

(e) Does your law provide for rules regarding the use of work equipment provided for a temporary work at a height (2001/45)

Yes. It is a part of the harmonised legislation as an annex under the heading " Provisions for the use of work equipment provided for temporary work at a height" and it has the following content:

1.1 General provisions

1.1.1 In accordance with Article 5 and 6 of the By-law on Occupational Health and Safety, if the temporary work at a height cannot be carried out safely on a suitable surface, and under appropriate ergonomic conditions, the work equipment most suitable to ensure and maintain safe working conditions must be selected. Collective protection measures will take priority over personal protection measures. The dimensions of the work equipment must be appropriate to the nature of the work done, the load envisioned, and must allow passage without danger.

The access to the temporary workplace at a height will be made by using the most appropriate vehicles and routes, taking into consideration the frequency of passage, the height of the platform, and the duration of the usage. The choice of the vehicles must permit the evacuation of the workers in an imminent danger. There must not be any risks of falling when passing between the vehicles, routes and platforms, decks or gangways.

1.1.2 Ladders may be used for work at a height, in accordance with the provisions set out in 4.1.1, only if use of a safer equipment due to low

level of risk is not required, if the duration of use is short or due to the conditions of workplace that cannot be altered by the employer.

1.1.3 Work performed using a rope can only be carried through where the risk assessment indicates that the work can be performed safely and where there is no requirement for using safer work equipment.
Taking the risk assessment into account and depending in particular on the duration of the job and the ergonomic constraints, provision must be made for a seat with appropriate accessories.

1.1.4 Depending on the type of the work equipment, necessary measures must be determined to minimize the risks inherent in this type of equipment. If necessary, safeguards to prevent falls will be installed. These safeguards must be of suitable configuration and sufficient strength to prevent the fall of the worker from a height and preclude injury to the workers. Collective safeguards to prevent falls may be interrupted only at points of ladder or stairway access.

1.1.5 When the performance of a particular task requires a collective safeguard to prevent falls to be temporarily removed, effective compensatory safety measures must be taken. Until such measures are taken no work will be performed. When this particular task is finished either temporarily or definitely, the collective safeguards must be reinstalled.

1.1.6 Temporary work at a height may only be carried out when the weather conditions do not jeopardize the health and safety of the workers.

1.2 Specific provisions regarding the use of ladders

1.2.1 Ladders will be positioned to ensure stability during their use. Portable ladders must rest on a stable, strong, suitably sized, immobile footing so that the rungs remain horizontal. Suspended ladders must be attached in a secure manner, with the exception of rope ladders, they must not be displaced and their swinging must be prevented.

1.2.2 The feet of the portable ladders must be prevented from slipping by securing the upper and lower ends or by using an anti slip material or by any other arrangement of equivalent effectiveness. Ladders used to access the platforms must be long enough to protrude sufficiently beyond platform level, when there is no handhold on the platform. Interlocking ladders and extension ladders must be used so that the movement of the different sections separately is prevented. The movement of the mobile ladders must be stopped and they must be secured before they are stepped on.

1.2.3 Ladders must always have a secure handhold and secure support available to the workers. In particular, if a load is being carried by hand on a ladder, this situation does not preclude the necessity to have safe handhold.

1.3 Specific provisions for the use of scaffolding

1.3.1 If the scaffolding is not up to the acceptable standards, or if the strength and stability calculations were not made for the scaffolding chosen, or if the calculations are suitable for the structural arrangements planned, the strength and stability calculations must be made for these.

1.3.2 Depending on the complexity of the scaffolding chosen, an assembly, use and dismantling plan must be made by a person who is competent. This plan can be in the standard form that includes the specific details related to the scaffolding.

1.3.3 Bearing components of scaffolding must be prevented from slipping, whether by attachment to the bearing surface, provision of anti-slip device or any other means of equivalent effectiveness, and the load-bearing surface must have sufficient capacity. It must be ensured that the scaffolding is stable and balanced. Scaffolding with wheels must be prevented from accidental moving during work at a height, by appropriate devices.

1.3.4 The dimensions, form and layout of scaffolding decks must be appropriate to the nature of the work to be performed and suitable for the loads to be carried and permit work and passage in safety. Scaffolding decks must be installed such that their components cannot move in normal use. There must be no dangerous gaps between the deck components and the vertical safeguards that may cause falls.

1.3.5 When parts of a scaffolding is not ready for use due to assembly, dismantling or alteration, they must be marked with general warning signs according to the Safety and Health Signs By-law and access to the danger area must be prevented by physical means.

1.3.6 Scaffolding can only be assembled, dismantled or significantly altered, under the supervision of a competent person and by workers who are appropriately trained according to Article 11 of this By-law on the specific risks and on the work that needs to be done covering the subjects mentioned below.

a) Understanding the plans for the assembly, dismantling or alteration of the scaffolding;
b) Safety during the assembly, dismantling, or alteration of the scaffolding;
c) Measures to prevent the risk of persons or objects falling;
d) Safety measures taken for the changing weather conditions that could adversely effect the scaffolding;
e) Permissible loads for the scaffolding;
f) Other risks that may arise during the assembly, dismantling or alteration of the scaffolding.

The person supervising and the workers will be given the assembly and dismantling plans mentioned in 4.3.2, including the necessary instructions.

1.4 Specific provisions for use of rope at work

Work with rope must comply with the following provisions.

a) The system must comprise at least two separately anchored ropes, on as a means of access, descent, and support and the other as backup.
b) Workers must be provided and use an appropriate safety harness. And also connection of safety rope with the safety harness must be ensured.
c) The work rope must be equipped with safe means of ascent and descent and have a self locking system to prevent the user falling if he loses the control of his movements, The security rope must also have a mobile fall prevention system which follows the movements of the workers.
d) The tools and other accessories used by the worker must be secured to the harness or seat of the worker or must be secured by some other appropriate means.

e) The work must be properly planned and supervised so that a worker can be rescued immediately in an emergency.
f) In accordance with Article 11 of this By-law, the workers must receive adequate training specific to the work they will do and in particular, on rescue procedures.

Taking into consideration the risk assessment, in exceptional cases where the use of a second rope will make performing the operation more dangerous, with the condition of taking the necessary safety measures, use of one rope may be permitted.

Council Directive 89/656/EEC on the minimum safety and health requirements for the use by workers of personal protective equipment by workers at work

(a)	**Is there legislation in place on PPE and do you consider it to be aligned to the directive?**

Yes, Council directive 89/656/EEC on the minimum safety and health requirements for the use by workers of personal protective equipment by workers at work has been transposed as a peace of Turkish Legislation under the title of "By-law on the Use of Personal Protective Equipments at the Workplace by Workers" and put into force with its publication at the Official Gazette dated 11.02.2004.

(b)	**Does the PPE put on the market meet the requirement of Directive 89/686 as amended, on the approximation of laws on PPE?**

By-law harmonising the Council Directive 89/686 as amended was published in the Official Gazette in 09.2.2004 and entered into force in 09.2.2005. There are efforts to establish an effective market surveillance sytem in Turkey. A twinning project is under implementation with partnership of Finnish Institutions for strengthening the market surveillance capacity of the Ministry. The project will last untill the end of 2006.

(c) Are there general rules on the use of PPE and on cases on situations where employers must provide PPE?

By-law on the Use of PPE contains the following provision relating to the use of PPE, and the employers' obligation to provide appropriate PPE in the situations mentioned in the Annexes:

Every employer, in jobs mentioned in Annex-III and alike, where the risks cannot be avoided, or sufficiently limited by collective protection measures, will asses and give to the workers, according to the table given as an example in Annex-I, PPE that is necessary for the health and safety of workers, listed in Annex-II.

The employer will take every measure to ensure correct usage of the PPE by the workers.

The workers are responsible for using the PPE they are given according to the training and the instructions they received.

Workers will inform the employer of any malfunction or missing thing that they see on the PPE.

PPE given to the workers must always be functional, its cleaning and maintenance will be done and be changed when needed.

(d) Is PPE provided at no cost for workers?

Yes. PPE is provided free of charge by the employer, who will ensure its good working order and satisfactory hygienic condition by means of the necessary maintenance, repair and replacements.

(e) Is the general principle that PPE shall only be used as a last resort reflected in your national legislation?

The general rule of the relevant By-law states that "PPE shall be used when the risks cannot be avoided or sufficiently limited by technical means of collective protection or by work organization and work methods."

(f) Is there assistance (information etc) on the choice of PPE?

The By-law obliges the employer to inform the worker of the risks against which the PPE protects them and to give demonstrative training on the usage of the PPE.

Council Directive 92/58/EEC on the minimum requirements for the provision of safety and/or health signs at work

Is there legislation on this issue and do you consider it to be aligned to the Directive?

Yes. By-law on Safety and Health Signs published in the OG of 23.12.2003/25325 was prepared by taking the Council Directive 92/58/EEC into account. It is completely in compliance with the mentioned directive.

Council Recommendation of 18 February 2003 concerning the improvement of the protection of the health and safety at work of self-employed workers

Are there any measures, binding or non-binding, aiming at improvement of the safety and health of the self-employed workers?

Although there is no provision concerning OHS about self-employed workers in Turkish Legislation, "Draft Social Security and General Health Insurance Law" which is in the Parliament contains some articles relating to the occupational accidents and diseases. When it is enacted the self-employed will also enjoy similar rights in case of an accident or an occupational disease.

Commission Recommendation of 19 September 2003 concerning the European Schedule on Occupational Diseases

See question (o) under Directive 89/391/EEC.

((o) Collection of statistical data: Which data is collected in the field of occupational accidents? Economic activity, job, age, sex, geographic location, type of injury and body part injured…? Is there a link to the ESAW project (European statistics on accidents at work).

Although several institutions are collecting statistical data on occupational accidents such as Labour Inspection Board, DGOHS, Ministry of Health and the Social Security Institutions, the latter has the most detailed and reliable statistical data. There is also a project carried out by the TURKSTAT to align the current system of data collection with those of the EC in the framework of the ESAW.

In the legislation there are several provisions and a defined procedure for the employer to report any accident to the indicated authorities.

The data collected includes the following information:

- Gender, age, working time of worker,
- The day, hour and working hour of the accident
- Education level of the worker, his/her job during the accident and whether it is his/her own duty or not
- Condition of worker after the accident (injury, physical loss, death)
- Damage part of the body and etc.

Which data is collected on occupational diseases? Is there a list of recognized diseases? Is there a connection to the European Schedule on Occupational Diseases (Commission Recommendation of 19 Sept 2003)

Occupational diseases reported to the Ministry shall include;

- Gender, age, health of worker,
- Exposure value of the worker (physical, chemical, biological)
- Duration of exposure
- Did the worker have therapy, if yes, its duration
- Working time in the work place where diagnosed as an occupational disease

Even though there is not any direct link with the European Schedule on Occupational Diseases there exists a detailed occupational diseases list in compliance with the earlier lists of ILO prepared by expert groups.

Directive 90/269/EC on the minimum requirements for the manual handling of loads where there is a risk particularly of back injury to workers (Fourth Individual Directive)

(a) Does your national legislation contain particular provisions regarding the prevention of accidents and injuries stemming from the manual handling of loads? If so, please give an overview on the key provisions.

Yes. "By-law for the Manual Handling of the Loads" published at the OG dated 11.02.2004 / 25370 was prapered by taking the Council Directive 92/269/EEC into account.

As it is stated in the By-law, the employer;

- Is obliged to take the necessary measures to ensure the load is carried by appropriate methods, particularly by using mechanical systems and make job organization to avoid the need for manual handling of the loads.

- In cases where manual handling cannot be avoided, according to health and safety requirements, will employ appropriate methods to reduce the risk due to manual handling and will make necessary arrangements.

- Assess the health and safety conditions of the type of work involved, taking into consideration the points in Annex-I and the specifications of the loads.

- Must take the measures appropriate with the job performed, and the characteristics of the work environment, taking into consideration Annex-I, to avoid or reduce the risks especially of back injury to the workers.

(b)	Does this activity make part of the (i) preventive actions of the labour inspectorate, and (ii) of the control activities of the labour inspectorate?

The By-law helps and makes the part of the preventive activities of the labour inspectorate. In the inspections performed in the workplaces the provisions of the By-law are used as one of the means of preventive actions.

Council Directive 90/270/EEC on the minimum requirements for work with display screen equipment (Fifth individual directive)

(a)	**Are there specific rules for use for screen equipment?**

"By-law on Health and Safety Measures for Working with Display Screen Equipments" published in the OG dated 23.12.2003 / 25325 was prapered by taking the Council Directive 90/270/EEC into account.

(b)	**If answer to (a) is yes: How is screen equipment defined?**

Display screen equipment is defined as "all types of instruments, that show letters, numbers, shapes, graphs and pictures on their screens, regardless of the content of the operation in application".

(c)	**If answer to (a) is yes: Which measures shall be taken by the employer under the legislation?**

Employer shall determine the risks that may cause the straining traumas due to the use of instruments with screens in the work centers and will take the health and safety measures to eradicate or minimize the risks.

The employer shall also give information to the workers and their representatives, on all subjects that are related to the health and safety in the workplaces and shall train the workers in the following subjects:

- Straining traumas and ways of protection,
- Appropriate posture,
- Protecting the eyes,
- The least eye tiring font styles and colors,
- The habit of resting the eyes at short intervals when working,
- Resting the eyes, muscle and skeletal system,
- Rest breaks.

(d) Do labour inspectors receive particular training in this regard?

Although they do not have particular training in this regard as they are recruited from the graduates of technical schools and as they have three years of practical training period before they have started their actual inspections they have certain knowledge and practical implementation information in this area.

Directive 92/29/EEC on the minimum safety and health requirements for improved medical treatment on board

Is there legislation covering the medical equipment of vessels?

By-law on the Minimum Health and Safety Requirements for Better Healthcare Service on Board Vessels published in the OG 23.6.2002 / 24794 was prepared by taking the Council Directive 92/29/EEC into account by the Ministry of Health.

If yes, which vessels are covered by the national provisions?

The coverage of the national legislation is in line with the definition of the vessel. Vessel is defined in our legislation as "any vessel which sails by an equipment other than oars or is used for fishing in the bays for the public or for the private enterprises", excluding;

- Vessels sailing in inland waters (like lakes, rivers, dams and others),
- War vessels,
- Vessels in which there is not any professional seafarer, which are not for commercial purpose and tripping boats,
- Vessels having high pulling power, low response time to manoeuvre, tugboats working between narrow areas, quays, docks and moles of seaports, in use for laying a ship alongside the quay, for lifting, for mooring by the stern and turning manoeuvres.

Is there regular inspection of the medical equipment? Which public body is responsible for the inspection?

Directorate General for Borders and Coasts of the Ministry of Health is responsible for the inspection of the implementation of the By-law.

Does your country have a centre for medical consultation by radio?

The transposed provision on Medical Consultation by Radio (Article 9 of the By-law) is as follows;

The Ministry shall;

a) In order to provide a better emergency health attendance for seafarer,

1) determine a center or centers to give free advice with radio

2) ensure that some of the physicians, who will present service in these centers, take education about the special conditions of the vessels on board.

b) ensure that health records shall be kept by these centers to optimize the advices given by radio consultation. The confidentiality of these records is essential.

Directive 93/103/EC concerning the minimum requirements for work on board fishing vessels

Is there particular legislation in place for health and safety on board fishing vessels?

Yes. "By-law on Minimum Safety and Health Requirements of Workers in Fishing Vessels published in OG dated 27.11.2004 / 25653 was prapered by taking the Council Directive 93/29/EC into account.

This By-law will enter into force on 27.11.2006.

To which type of vessel does this legislation apply?

According to the By-law:

Vessel: any existing or new fishery ship

Fishery Ship: Any ship flying Turkish Flag, in use for catching fish or any other living creature from sea or for treating them for commercial purpose

New Fishery Ship: Any ship, whose length is 15 meters or longer and whose,

a) construction or renovation has been contracted after the date of entry into force of the By-law,
b) construction or renovation has been contracted before the date of entry into force of the By-law, and delivery will be done after 3 years or later than this date,
c) contract has not been done but
   1) backbone has been mounted on the shipway,
   2) construction has been started or
d) portion of 50 tonnes, or portion corresponding to at least 1% of the total mass (whichever corresponds to a smaller mass) has been constructed at or after the date of entry into force of the By-law.

Existing Fishery Ship: ships which are not new or whose total length is 18 meter or longer.

Are there rules in place for life saving equipment?

Yes. Minimum health and safety requirements for lifesaving and surviving equipments are given in the Annex-III of the By-law.

Does your legislation provide for a regular inspection of life-saving equipment? Which body is responsible for inspection? How would you assess the administrative capacity of the inspection bodies for the fishing sector in general?

Yes. The relevant legislation is the By-law on Minimum Safety and Health Requirements of Workers in Fishing Vessels. For the fishing vessels there are several governmental institutions having different responsibilities. Ministry of Labour and Social Security is responsible for the implementation of the mentioned directives. Undersecretariat for the Maritime Affairs, Ministry of Health and Ministry of Agriculture and Rural Affairs are the other institutions having certain responsibilities in this field.

Administrative capacity of the inspection bodies needs improvement in this field.

Directive 92/57/EEC on the minimum requirements for temporary and mobile construction sites (Eighth Individual Directive)

Briefly describe your national acquis in this field.

By-law for Health and Safety at Construction Sites harmonising the Directive 92/57/EEC was published in the Official Gazette in 23.12.2003.

Are there rules in place for sites where several undertakings are present at the same worksite, in particular as regards coordination of work?

Article 5 of the By-law for Health and Safety at Construction Sites states that the contractor or the project supervisor shall appoint one or more coordinators for safety and health matters, for any construction site on which more than one contractor or sub-contractor is present.

Is there a duty for the client or project supervisor to set up a safety and health plan?

Yes. Sub-paragraph (b) of Article 5 also states that the contractor or the project supervisor shall ensure that prior to the setting up of a construction site, a safety and health plan will be drawn up.

Does your legislation take into account self-employed workers working alongside with other undertakings?

In Article 8 of the By-law relating to the duties of coordinators it is stated that coordinators shall organize cooperation between employers, including successive employers on the same site, coordination of their activities with a view to protecting workers and preventing accidents and occupational health hazards and mutual information as provided in the By-law on Occupational Health and Safety, ensuring that self-employed persons are brought into this process where necessary.

Are there duties relating to the project planning and the project implementation phase?

Article 7 of the By-law deals with the project preparation stage and Article 8 deals with the project implementation stage and the duties of coordinators.

How do you assess the administrative capacity of the labour inspectorate in regard to the construction sector?

Labour Inspectorate periodically carries out inspections at construction sites as it is considered one of the most dangerous sectors. This year a campaign will be started by the Ministry relating to the OHS at construction sector and Labour Inspectorate is in preparation of a well organised programme which will begin in April.

Council Directive 92/91/EEC on the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling (Eleventh Individual Directive) and 92/104/EEC on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (Twelfth Individual Directive)

(a) What is the scope of the national legislation – definition of mineral-extractive industries?

By-law on Health and Safety Requirements of Surface and Underground Mineral-Extracting Industries harmonising the relevant Council Directive was published in the OG dated 22.02.2004 /25381.

By-law on the Requirements for Health and Safety Conditions in the Mineral Extracting Industries through Drilling also published in the same OG, which covers all the workplaces where mineral extracting is done by drilling.

In the By-law the definitons are as follows:

"Surface and underground mineral-extracting industries" shall mean :

- Surface or underground extraction of minerals ,
- Prospecting with a view to mineral extraction ,
- Preparation of extracted materials for sale, excluding the activities of processing the materials extracted .

"Mineral extracting industries through drilling" shall mean:

- Extraction of minerals by drilling boreholes,
- Prospecting with a view to extraction,
- Preparation of extracted materials for sale, excluding the activities of processing the materials extracted.

(b) Does your legislation prescribe the appointment of qualified supervisors by the employer and the permanent presence of a person in charge?

Yes. In Article 5 of the By-law on General Responsibilities of the Employer, it is stated that employer shall appoint qualified supervisors on a permanent basis.

(c) Does your legislation include provisions on an obligation of the employer in charge of the workplace to coordinate all health and safety measures where workers from several undertakings are present?

In the same Article, employer has been given the responsibility to coordinate occupational health and safety activities and to report it in the health and safety document.

(d) Does your national legislation provide for a safety and health document, demonstrating inter alia the assessment of the risks, the taking of adequate measures and safety of workplace and work equipment?

In Article 5 of the By-law, it is stated that employer is responsible for the preparation of health and safety document including the information defined in the same Article.

(e) Is health surveillance in place providing for examination of the workers before taking up duty and at regular intervals?

In Article 10 of the By-law on Health Surveillance of Workers it is stated that workers' health situation shall be checked prior to the taking up the work and shall be periodically controlled afterwards. There is also provision in the Labour Law regarding the first and periodic health checks for the workers in heavy and dangerous works.

(f) Is there legislation in place covering the health and safety of workers involved in dredging?

There is no separate legislation relating to the dredging, but all the provisions of the current legislation are also valid for the dredging activities.

Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens and mutagens at work (Sixth Individual Directive)

(a) Do you use the EC classification system for carcinogens and mutagens or a different classification?

Yes. We use the EC classification system for carcinogens and mutagens as envisaged in the By-law and they are classified in accordance with the provisions of the other by-laws with respect to the classification, packaging and labelling of dangerous substances.

(b) Is there a general obligation of reduction of use and replacement of carcinogens and mutagens, and where replacement is not possible for the use of a close system where technically possible?

Article 6 of the By-law on the Protection of Workers from the Risks Related to Exposure to Carcinogen and Mutagen Substances at Work oblige the reduction and replacement of carcinogen and mutagen substances whenever it is technically possible.

(c) Does your legislation provide for limit values on benzene, vinyl chloride monomer and hardwood dusts and are they similar to the EC values?

Although we do have the limit values for benzene, vinyl chloride monomer in previous legislation, we began to use the values of EC.

(d) Are there provisions on health surveillance prior to taking up duty and in regular intervals?

Article 16 of the By-law has the provision for the medical surveillance of workers prior to taking up the work and periodically afterwards. There is also provision in the Labour Law regarding the first and periodic health checks for the workers in the heavy and dangerous works which covers the workplaces where carcinogens and mutagens are used.

(e) Is there an obligation to keep medical reports and lists of exposed workers (EU: 40 years)?

Yes. In the By-law employer has the obligation to keep the medical records for 40 years.

Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work, as amended by Directive 91/328/EEC, 98/24/EC and 2003/18/EC

(a) Are products containing asbestos sold and processed?

Yes. There is no rule banning the selling and processing of products containing asbestos.

(b) Please give a brief overview on the legislation relating to protection of workers from asbestos? Which activities are forbidden under this legislation?

By-law on the Protection of Workers from the Risks Related to Exposure to Carcinogen and Mutagen Substances at Work published in the Official Gazette dated 26.12.2003 was prepared by taking the Directive 83/477/EEC and amending Directives 91/328/EEC and 98/24/EC into account.

(c) Does the legislation also cover sea and air transport?

No, legislation does not cover sea and air transport.

(d) Does your legislation provide for an exposure limit value?

Yes. According to the provisions of the By-law " It is prohibited to work with asbestos by spraying and use of asbestos containing isolation or sound isolation material, with a density less than 1 gr/cm3."

Sale and marketing of asbestos, use the extraction of asbestos, production and processing of asbestos, products or asbestos added products where the workers may be exposed to asbestos fibers are prohibited.

However the discarding of asbestos products stemming from works like demolishing, pulling out and setting apart asbestos containing material are excluded.

(e) Is there a notification system for work involving asbestos?

Article 6 of the By-law contains the notification procedure as indicated below:

The employer is responsible to report to the Ministry the workplace, which falls under the By-law, prior to the commencement of work.

The report shall cover following subjects:

- The workplace address,
- The type and amount of asbestos being used or processed,
- The jobs performed and utilized processes,

- Number of employees working,
- Starting date of the work and work's duration,
- The measures taken to avoid exposure of workers.

The workers or their representatives have the right to see the documents that are related to reporting.

The employer is obliged to provide a new report whenever a change is made, significantly increasing the asbestos dust in the workplace.

(f) Is there a certification system for undertakings involved in demolition and removal of material containing asbestos?

Yes. Article 12 of the By-law deals with the certification and notification of the demolition and removal work as stated below:

> "Prior to starting the demolition and repair works, the employer shall get information from the building or plant owner to identify the material that may contain asbestos and take the necessary action. If there is any suspicion of any presence of asbestos in the construction or materials, the provisions of this By-law shall be applied."

(g) Is there the duty to set up a work plan prior to the commencement of the activity?

Yes. Article 13 of the By-law has provisions requiring the employer to set up a work plan prior to the commencement of the activity.

(h) Which sanctions can be imposed on employers disregarding legal provisions on protection from asbestos?

Failing in taking the measures by the employer is considered as a breach of Article 78 of the Labour Law, and it is fined according to Article 105 of the same Law. The importation of the asbestos may also be banned.

(i) Is there a national register on asbestos related diseases (mesothelioma and asbestosis)

Yes. According to Article 21 of the By-law, the records for the asbestosis and mesothelioma incidents that are identified by or reported to Social Insurance Institution shall be kept by the Institution.

(j) Is there an obligation for employers to keep records on all workers exposed to asbestos?

Yes. Article 20 of the By-law arranges the obligation of the employer to keep records. The said Article reads as follows:

> "In workplaces with activities in asbestos, the employer is obliged to register the records and store them.

The employer shall enter in a register, indicating the nature and duration of the activities and the exposure of the workers responsible for carrying out work with asbestos or material containing asbestos. The doctor and/or the authority responsible for medical surveillance shall have access to this register. Each worker shall have access and may take a copy of the results in the register which relate to him personally. The workers and/or their representatives shall have access to anonymous, collective information in the register.

The register referred to in section (a) and the assessments records referred to in section (a) of the 19th Article, shall be kept for at least 40 years following the end of exposure.

In case the operation is halted at the workplace, the employer is obliged to give the register referred to in section (b) to the Ministry."

Chemical Agents

(Commission Directive 91/322/EEC on establishing indicative limit values, Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work (14th individual directive) and Commission Directive 2000/39/EC establishing a first list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC)

Does your legislation provide for specific provision regarding the protection from exposure to chemical agents?

Yes. By-law on the Protection of the Health and Safety Measures from the Risks Related to Chemical Agents at Work published in the OG dated 26.12.2003 / 25328 was prepared taking the EC Directive 1998/24/EC and Directives 1991/322/EEC and 2000/39/EC into consideration and it has provisions regarding the protection from exposure to chemicals agents.

To what extent does your legal system include the approach of replacement of hazardous chemical agents?

In Article 8 of the By-law, there is a provision to reduce the risk to minimum level:

"Firstly, substitution method shall be applied, the employer shall avoid the use of the hazardous chemical agent and replace it with another agent or process which is not hazardous or less hazardous to workers' safety and health."

Is there a total ban of the use of certain substances?

Article 11 of the By-law has the following wording as regards the ban of the use of certain substances:

– In working with the chemical agents listed in Annex-III, the following provisions shall be complied with:

> To protect the workers from the health risks caused by the chemical agents listed in Annex-III or from the operations involving these chemical agents, in the event that these chemical agents are found to be at higher levels than mentioned in the Annex, their production, usage and processing shall be prohibited.

Does your legislation provide for occupational exposure limit values? To what extent are these limits already congruent with the limits set up in the Commission Directives 91/322/EEC and 2000/39/EC?

Yes, in the annex of the By-law there exists the occupational exposure limit values. It is similar with the lists of the Commission Directives 91/322/EEC and 2000/39/EC.

To what extent does your legislation follow the classification approach used in the 14th individual directive based on the EC directives 67/548/EEC and 88/379/EEC?

Turkish legislation is fully in compliance with the above directives as they were taken into account during the harmonisation process.

Directive 2000/54/EC on the protection of workers from risks related to exposure to biological agents at work (7th individual directive)

Is there specific legislation at national level?

Yes, By-law for the Protection from Exposure to Biological Agents published in the OG dated 10.06.2004/25488 was prepared taking the EC Directive 2000/54/EC into account.

Does your legislation provide for a classification of biological agents? If yes, to what extent do you consider it aligned with the Community Directive?

Yes, in the annex of the By-law biological agents are classified in line with the EC Directive.

Does your legislation include an obligation to replace dangerous substances by less dangerous?

Yes, Article 7 of the By-law has the provision relating to the replacement.

Is there a notification system for the use of certain biological agents and a duty to notify accidents to a competent authority?

Yes. Article 9 and 15 of the By-law oblige the employer to report to the Ministry about the results of the risk assessment and certain other information relating to the exposure of workers and so on.

To what extent does the legislation apply to activities with non-deliberate involvement of biological agents (e.g. food industry, agriculture, waste processing, etc.) and does the labour inspectorate also cover this aspect upon inspection visits to undertakings in these areas?

Legislation is applied in all workplaces and labour inspectorate also covers these areas.

Directive 2002/44/EC on the minimum requirements regarding the exposure of workers to the risks arising from physical agents (vibration) (Sixteenth Individual Directive)

Is there specific legislation on protection from exposure to vibration in place?

Yes. By-law on Vibration which published in OG dated 23.12.2003 / 25325 was prepared by taking the EC Directive 2002/44/EC into account.

Which is the scope of this legislation?

The scope of the legislation is given in Article 2 of the By-law as follows :

> "This By-law is applied in all workplaces that are covered by the Labour Law dated 22/5/2003 numbered 4857, and that are subject to the risk of being exposed to mechanical vibration.
>
> In all the workplaces that have the risk of being exposed to mechanical vibration, Occupational Health and Safety By-law will be applicable as well, without prejudice to the more stringent and/or more specific provisions of this By-law."

Does your legislation set up exposure limit and action values, and if yes, which?

Yes, exposure limit and action values have all been taken from the EC directives. Article 5 of the By-law reads as follows regarding the exposure limits and action values:

" Exposure limit values and exposure action values:

For hand – arm vibration;
- The daily exposure limit value for an eight hour long work day is 5 m/s^2,
- The daily exposure action value for an eight hour long work day is 2,5 m/ s^2.
- The hand – arm exposure of the worker to the vibration will be evaluated or measured according to the decisions of Article 1 of Section A of the enclosure to this By-law.

For the whole body vibration;
- The daily exposure limit value for an eight hour long work day is 1,15 m/ s^2,
- The daily exposure action value for an eight hour long work day is 0,5 m/ s^2.
- The whole body exposure of the worker to the vibration will be assessed or measured according to the decisions of Article 1 of Section B of the enclosure to this By-law."

Directive 2003/10/EC on the minimum requirements regarding the exposure of workers to the risks arising from physical agents (noise)

Does your Health and Safety at Work legislation specifically cover risks from noise at work?

Yes. By-law for Noise published in the OG dated 23.12.2003/25325 was prepared by taking the EC Directive 2003/10/EC into consideration.

Does this legislation cover all activities?

Scope of the regulation is given in Article 2 of the By-law for Noise as follows: "This By-law is applied in all workplaces that are covered by the Labour Law dated 22/5/2003 numbered 4857." So it has the same coverage with Labour Law.

Does your legislation set up specific exposure limit and/or action values?

Yes. Article 5 of the By-law sets the limits in line with the EC directive as follows:

Points pertaining to exposure limit values and exposure effective values are mentioned below:

a) From the point of view of application of this By-law, the levels of daily noise exposure and the limit exposure levels for the maximum sound pressure and effective exposure values are given below;
    1) Limit exposure values: LEX, 8h = 87 dB (A) ve P_{peak} = 200 Pa[i]
    2) The highest limit exposure effective values: LEX, 8h = 85 dB (A) ve P_{peak} = 140 Pa[ii]
    3) The lowest limit exposure effective values: LEX, 8h = 80 dB (A) ve P_{peak} = 112 Pa[iii]
b) In identifying the worker's exposure, limit exposure value will be applied after taking into consideration the effect of the ear protecting gear that is used by the worker. In exposure effective value, the effect of the ear protection gear will not be taken into consideration.
c) In works where it is determined with certainty that the daily noise exposure fluctuates noticeably from day to day and in compliance with the below provisions, the weekly exposure values may be used instead of daily exposure values in appliying limit exposure values and effective exposure values.
    1) The weekly exposure level established by sufficient measurement should not surpass the 87 dB (A) limit exposure value level.
    2) Sufficient precautions must be taken to minimize the risks in these works.

Which are the measures imposed on the employer to avoid/reduce the risks stemming from noise?

Employer has the responsibility to identify and evaluate the risks and to ensure avoiding or decreasing exposure to noise at the workplace, to give necessary PPE to workers when it is needed, to inform and train the workers and consulting the workers and ensuring their participation regarding the measures taken.

Does your national legislation provide for specific health surveillance?

Article 12 of the By-law provides for health surveillance for workers.

Are labour inspectors trained in regard to this physical agent and are they actively advising employers and workers on this risk?

As there is a specialised inspection system in Turkey, inspectors dealing with the OHS matters have technical backgrounds, and they have enough knowledge on physical agents. So they advise the employers and workers on this risk. There are also physical engineers working as labour inspector and they also give lectures to the safety engineers and other professionals in this subject.

Directive 2004/40/EC on minimum requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (18th Individual Directive)

Is there specific legislation covering protection from risks regarding the exposure to electromagnetic fields?

No. Technical studies are continuing by taking the relevant EC Directive into account.

Are there limit exposure and/or action values provided for by the national legislation?

No.

Which measures are imposed on the employers to reduce exposures to electromagnetic fields?

There is no specific measure in the legislation regarding the electromagnetic fields. However, it is employer's general responsibility to take necessary measures.

Directive 1999/92 for improving protection of workers potentially at risk from explosive atmospheres (Fifteenth Individual Directive)

Does legislation in your country specifically cover the risks arising from explosive atmospheres?

Yes. By-law for the Protection Against Risks of Explosive Atmospheres published in the OG dated 26.12.2003 / 25328 was prepared by taking the EC Directive, 1999/92/EC into consideration.

To what extent are the provisions aligned to the Directive?

It is completely aligned with the provisions of the Directive.

Is Directive 94/9/EC of the European Parliament and of the Council of 23 March 1994 on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres transposed into national legislation?

Yes. The relevant By-law was published in the OG dated 27.10.2002/24919, by the Ministry of Trade and Industy.

(2) People with disabilities

Institutional and operational aspects

1) Have your government adopted any national policy document containing main principles of national disability policy? Is there any corresponding Action Plan (staking out the way how the actions described in the policy document will be implemented). Is there a specific coordination body overseeing the implementation of the national disability policy?

Five-year Development Plans are the main national planning documents which function as framework for the main implementations and investments for the forthcoming 5 years. Eighth Five-year Development Plan (NDP) adopted by the government includes main principles of national disability policy such as employment, social security, social services and assistance, education, and health issues of people with disabilities. In "Mid-Term Programme 2006-2008" prepared by the State Planning Organization, priorities are determined as improving physical conditions, vocational training possibilities, and counseling facilities for people with disabilities. An Action Plan for the Employment of Disabled People 2005-2010 was prepared by the Administration for Disabled People to manage disability issues in a systematic way. This Action Plan includes provisions for recruitment, adaptation to work, job continuity, and promotion at work related issues.

In Turkey, services for disabled people are given by different bodies either governmental or non-governmental organizations. To ensure coordination among these, Administration for Disabled People was established in 1997. Main functions of the Administration are to ensure coordination, formulate policies including promotion of integrating disabled people into society, and measures for solving the problems of disabled people.

2) Have the EU Disability Action Plan been taken into account when drafting and designing the national disability policy? If yes, can you highlight any concrete measures where the EU Disability Action Plan have been of help or inspired policy makers to develop certain actions?

Equal Opportunities for People with Disabilities European Action Plan (dated 30.10.2003) has provided an important insight into the preparation process of Turkish Disability Law about access to, and remaining in, employment, combating discrimination, and accessibility to the public built environment. The national disability policy aims to improve the employment rate and the better integration of people with disabilities into the economy and society taking into account the Action Plan. Besides, in the framework of this Action Plan, Action Plan for the Employment of Disabled People 2005-2010 was prepared by the Administration to tackle disability issues in a systematic way. This action plan includes provisions for recruitment, adaptation to work, job continuity, and promotion at work related issues.

3) Does your national disability policy operate on the basis of the mainstreaming concept? If yes, can you give any examples of where and how the mainstreaming approach was used and worked successfully? How do you ensure the application and implementation of the mainstreaming concept across various policy areas?

Mainstreaming is the central concept in the formulation of the national disability policy. The Constitution explicitly states that "The State shall take measures to protect the disabled and secure their integration into community life" (Article 61), and also provides that "No one shall be deprived of the right of learning and education" (Article 42). Besides, the mainstreaming issue can be seen in the general principles of the Turkish Disability Law: "State shall not exercise discrimination against the disabled people. Combating discrimination is the basic principle of the policies towards the disabled people". Mainstreaming is also guaranteed in the field of education through the Special Education Law (No: 573). By this Law, the education of children with disabilities is provided in the same environment as other children. Moreover, the employment of people with disabilities is provided by Quota System that is mainly based on mainstreaming issues in the process of placement of people with disabilities into labour market.

4) Do you have some kind of regional bodies dealing with disability (regional disability councils) or are disability issues administered and dealt with only at national, centralized level?

Disability issues are administered by the Administration for Disabled People at national level. There are also a number of institutions that serve people with disabilities at central and local levels. The Ministry of National Education, Directorate of Special Education, Guidance, and Counselling Services is the responsible body for the implementation of educational policies. In provinces and sub-provinces, the Guidance Research Centres and special education boards/units affiliated to the Directorate are responsible for the implementation of these policies. Furthermore, Social Services and Protection of Children Agency was organized both at central and local level to serve people with disabilities. In addition, municipalities are the other central/regional bodies which serve people with disabilities.

5) In most EU member states, national disability councils (comprising NGOs, organisations representing disabled persons, disability experts, civil servants, and other stakeholders) have been established. Have similar bodies been established in your state? If yes, are these bodies actively involved in the decision making process related to disabled people? If no, does the government in your country have any plans to contribute to the creation of such bodies?

There are a number of national disability councils in Turkey. Prime Ministry Administration for Disabled People has two advisory committees that have been given primary role in the formulation of policies towards people with disabilities; Executive Committee for Disability and the Council for the Disabled.

Executive Committee for Disability: Members are representatives of governmental organizations, non-governmental organizations, social partners, employee and employer unions, and universities. They are responsible for determining the priorities for applying and selecting projects. Moreover, formulation of policies for disabled and declaration of its opinions about them are among the other duties of this Committee.

The Council for the Disabled: The Council is coordinated by the Administration and meets biennially. The goal of the Council is to discuss and analyse all ideas and developments about disability at national and international levels, and to make suggestions about the solutions in broader terms and raise public awareness about disability issues together with representatives of governmental organizations, non-governmental organizations, social partners, employee and employer unions, and universities. The core topic of the first Council was “Contemporary Society, Contemporary Life and Disabled People” and the second one titled as “Local Governance and Disabled People”. Under these themes, workshops were held under main issues about these themes.

Legislation

6) Is the protection of disabled persons as a specific segment of vulnerable population provided for in the constitution or does a specific "disability law" exist in your legislation? Does the Labour Law in your country explicitly prohibit discrimination in hiring and employment on the basis disability?

The Turkish Disability Law (No 5378) adopted in July 2005 will bring change and improvement in disability issues. By the Law; discrimination against people with disabilities especially in education and employment is prohibited; inclusion of people with disabilities, their families and relevant NGOs in the policy making mechanisms is accepted as a general principle; international disability classification is accepted; provision of services by the private sector is also adopted; the cooperation with the Ministry of Health is emphasized; conduct of job analysis according to the types of disability and application of the results in preparing relevant education and rehabilitation services is determined; establishment of departments for the disabled in metropolitan municipalities is accepted; and institutional structure of the Administration for Disabled People is strengthened.

Discrimination on the ground of disability is not explicitly mentioned in the Labour Law. Article 5 of the Law prohibits discrimination on the grounds of language, race, gender, belief, political opinion, philosophical belief, and religion etc. in work relations.

7) Variations in terminology and definitions of disability used in different sectors of law and policy can lead to inconsistent application of the law and sometimes even result in denial of benefits. To what extend do you consider the definitions you use in your legislation uniform and coherent? Could you briefly describe the different definitions of disability legislation in your country operates with?

There are two different definitions of disability in our legislation. However, the definitions do not lead to inconsistent application of the legislation and denial of benefits.

These definitions are:

a) people with disabilities is people having a disability degree of at least 40 percent which is documented by The Health Board.

b) person who has difficulties in adapting to the social life and in meeting daily needs due to the loss of physical, mental, psychological, sensory and social capabilities at various levels by birth or by any reason thereafter and who therefore need protection, care, rehabilitation, consultancy and support services."

Data and statistics

8) The lack of reliable statistical information is a serious obstacle to effective policy-making in the disability area. Has a centralised data collections system, containing the relevant data, been developed in your country? Which are the main sources of disability related information and how do you ensure that the collection of these sensitive data is not violating the provisions on personal data security?

Data about people with disabilities is collected through survey at national level. Disability Survey in Turkey was carried out in 2002 by TURKSTAT in cooperation with the Administration for Disabled People. There is no centralized registration system towards people with disabilities. People with disabilities are registrated through employment, education, and health services. Concerning the protection of personal data and privacy of the participants, TURKSTAT adopted the law for the protection of personal data and privacy.

Pensions and Benefits

9) In most of the EU countries, social protection available to people with disabilities includes right to health and pension insurance, the right to employment and occupational rehabilitation, child allowances and social welfare rights. Could you briefly describe which different forms of social protection are available for disabled persons in your country?

Social Insurance Institution and Pension Fund provide cash transfers to the families of children with disabilities benefiting from the services given in "special education centers" and rehabilitation centers. Pension Fund also pays a certain monthly amount to people with disabilities as a social assistance.

People with disabilities are entitled to early retirement, and Social Insurance Institution and Pension Fund are related agencies in terms of early retirement for people with disabilities.

Disabled survivors (orphans of the insured) are entitled to the Death Pension without any age requirement.

Social and vocational rehabilitation services are also provided by the municipalities. Municipalities, when they deem necessary during the provision of these services, cooperate with the people's training and apprenticeship training centres. Where the rehabilitation request of the disabled person cannot be met, he/she takes the service from the nearest centre and the concerned municipality pays the amount determined to the centre where the service is purchased.

General Directorate of Higher Education Credit and Hostels Institution gives priority to university students with disabilities in awarding scholarships.

People with disabilities in need get a three-monthly wage from the State via Pension Fund, have access to free-of-charge health services in public hospitals,

and workers with disabilities or those who have disabled in their families benefit from reductions in their income taxes.

10) Social benefit system can sometimes have de-motivating effects in the sense that a disabled person who is able to work still chooses to go on social benefits in stead working. Different means can be applied to boost the efficiency of the system and to prevent situation like this. Could you briefly describe what measures you have taken during the last two years in order to increase flexibility of the system and stimulate disabled person capable of working to take up work?

Government supports integration of disabled people into the labour market, and facilitates their finding a job by providing education, training, and work experience opportunities. In this respect, the Prime Ministry issued a circular announcing the year 2005 as the "Employment Year for Disabled People". It provided a basis for new employment policies for disabled people. Besides, Action Plan 2005-2010 for the Employment of Disabled People has been prepared by the Administration for Disabled People. The Action Plan includes solutions for primary problems faced by disabled people and administrative arrangements. In the preparatory process, opinions of all the related parties (ministries, governmental institutions, associations for disabled people, social partners) have been taken into consideration.

Employment and Education

11) Describe shortly the different means by which you promote active participation and inclusion of people with disabilities in the labour market? To what extend is the quota system applied and which are the other incentives and measures aimed at encouraging disabled persons entry into the labour market?

In Turkey active participation of people with disabilities into the labour market is promoted by quota system both in private and public organizations. In accordance with the Labour Law numbered (No 4857) and Civil Servants Law (No. 657), private and government funded agencies and organizations employing at least 50 workers are obliged to employ disabled persons up to 4% (3% in the case of civil servants) of the minimum required number of employees in that agency or organization. Grant System for employing disabled persons has been established based on contribution for employers. Treasury pays 50% of total amount of insurance premium which employer has to pay as an incentive in cases where: a) an employer employs more people with disabilities than his/her legal obligation, or b) an employer employs people with disabilities with above 80 % degree of disability, or c) an employer employs people with disabilities in spite of the fact that he/she has no legal obligation.

Table 1. The number of placement of PWD

The number of placement of PWD	**2004**			**2005**			**The Exchange Ratio (%)**
	Male	**Female**	**Total**	**Male**	**Female**	**Total**	
Public	1.152	168	1.320	1.547	181	1.728	30.91
Private	13.840	2.012	15.852	18.727	2.862	21.589	36.19
Total	**14.992**	**2.180**	**17.172**	**20.274**	**3.043**	**23.317**	

Table 2. The Number of Unfilled Quota for PWD

The Number Of Unfilled Quota For PWD	2004			2005			The Exchange Ratio (%)
	Public	Private	Total	Public	Private	Total	-5.68
	4.567	21.7840	26.307	2.990	21.824	24.814	

Source: Turkish Employment Agency (ISKUR)

12) Describe shortly the system of vocational training available to disabled persons? How do you ensure that the training is adjusted to the need of the market?

The Ministry of National Education is the main responsible body for the vocational training of people with disabilities. There are vocational training centres, occupational centres, training, and practicing schools that provide vocational training services for people with disabilities. It arranges vocational courses, in occupations that are needed in working life, for persons needing protection and special education. Persons' interests, aptitudes, and needs are taken into consideration in the arrangement and practices of the courses during which the participants benefit from the same rights as other students.

In order to overcome the difficulties faced by people with disabilities in finding job or to provide opportunity for self-employment, Turkish Employment Agency (ISKUR) arranges vocational courses for occupations that suit the capabilities of the disabled considering the type of disability. These courses are generally based on handicraft, ready-made, knitting and computer.

There are also legislative measures aiming to provide vocational training for the integration and reintegration of the disabled into open employment implemented by different departments of the Ministry of National Education, Social Services, and Protection of Children Agency.

In order to ensure vocational training for people with disabilities, the Vocational Rehabilitation and Sheltered Workshops Project, named "Rainbow", is going to be implemented in 30 industrialized cities starting from 4 March 2006 so that people with disabilities can gain qualifications and skills required at work, and access to vocational guidance and placement services.

13) Transition period between the school and the first job pose a challenge and is crucial in ensuring successful integration of disabled persons into the labour market. Do you have any specific programmes in place targeting this challenge? Does some kind of follow-up guidance programme for the vocational training graduates exist?

There is no specific programme to ensure transition period between school and the first job pose. However, Turkish Employment Agency itself finds jobs for its vocational training graduates.

14) Has a legal basis for supported employment been established in your country? Describe briefly the supported employment services system.

There is no legal basis for supported employment in Turkey.

De-institualisation and independent living

15) To what extend is de-institualisation considered to be a priority for your government? Which measures aimed at promoting de-institualisation and community-based alternatives have been carried out during the last two years?

There is no system regarding de-institualisation and community based rehabilitation in Turkey, but there are some efforts to establish community based rehabilitation system. Community based rehabilitation applications are fairly new in Turkey. The few initial applications have emerged from big cities such as Istanbul, Ankara, and Konya. Another city where community based rehabilitation was implemented is Duzce where victims of the 1999 earthquake were supported through a rehabilitation programme that started in 2000. In other cities, municipalities are the driving forces cooperating with local NGOs. In Ankara, a pilot community-based rehabilitation project was implemented in 2004. The activities under community-based rehabilitation were; to develop innovative awareness programme, to assess the needs of the disabled and their families, to establish advocacy group and parent support group. The outcomes of this project are so useful with respect to support the process of the integration of disabled people into the mainstream society, to improve quality of life of disabled people and to strengthen relationships among their families.

16) Does your government currently carry out any form of training for independent living programmes?

Although the Turkish Disability Law supports independent living for people with disabilities as the objective, the government does not carry out any form of training programme for independent living.

(3) European Social Fund

1. Preparation of IPA Strategic Coherence Framework (SCF) for Components III and IV

A-) Briefly outline the steps you envisage to ensure coherence and consistency between the SCF process on the one hand and the JAP/JIM processes on the other.

Turkish side attributes utmost importance to ensure coherence and consistency between the SCF process and the JAP/JIM processes regarding the 4th component of IPA. Key policies and strategic priorities of JAP and JIM will be reflected into the priorities of SCF. Institutional structure for SCF has been designed to ensure this interaction between the SCF process and the JAP/JIM processes. As a part of institutional set-up design under IPA, a Steering Committee for SCF responsible for directing the preparation of SCF and securing OP's compliance with SCF will be established. State Planning Organization, as Sectoral Coordinator (SC) responsible for preparation of SCF, and Ministry of Labour and Social Security, as the Managing Authority of the 4th component of IPA, will take part in this committee as natural members and directly involve and steer the policy formulation process. Similarly, during the preparation process of JAP/JIM, national strategic priorities have been taken into consideration and State Planning Organization and other related stakeholders have been actively involved the process. It is expected that final versions of JIM will be signed in the second half of 2006 and for JAP, in the first half of 2006. In a parallel manner, it is envisaged that first draft of the SCF will have been presented to the EC by June 2006. In that sense, with the finalization of these documents, it will be possible to reflect strategic priorities determined under JAP/JIM as key inputs for the priorities under SCF.

B-) Briefly describe the nature and scope of the consultation process which will be put in place for the preparation of the SCF. In particular, which 'line' Ministries and other 'stakeholders' will be involved in the SCF consultation process for the formulation of strategies and priorities in the fields of employment, education/training, social inclusion and human capital formation? Is the Ministry of Education for instance being involved in the definition of possible priorities relating to education and training within IPA?

In order to ensure participation and well-functioning consultation process, Steering Committee for SCF will be established for directing the preparation of SCF document. As an interministerial platform, it will also secure OP's compliance with SCF, review the progress being made towards achieving objectives and targets, evaluate monitoring reports on the implementation of OP's and perform other responsibilities to be defined in the SCF. It is envisaged that Sectoral Coordinator (State Planning Organization), OP's Managing Authorities (Ministry of Labour and Social Security, Ministry of Transport, Ministry of

Environment and Forestry, Ministry of Industry and Trade) as well as other related ministries and institutions (such as Ministry of National Education corresponding to the priority axes related to education etc.) will take part in this committee. Studies for the actors, rules and procedures for the SCF Steering Committee have been continuing.

C-) Briefly outline what steps you intend to take to strengthen the capacity of the line ministries involved in formulating and implementing the strategies mentioned above.

In order to strengthen the capacity of the line ministries involved in formulating and implementing the strategies, training projects have been designed. Under the 2004 EU Financial Assistance Programme, technical assistance project "Support to State Planning Organisation to Build Capacity at Central, Regional and Local Level to Implement Economic and Social Cohesion Measures in line with the pNDP Project" was designed to support effective implementation of ESC measures in line with the pNDP/CSF and OPs, to support preparation of the OPs and, with a wider perspective, to improve the absorption capacity to be needed for the utilization of Structural Funds upon accession. Commencement date for this project is foreseen as November 2006. Furthermore, in order to respond short-term needs of these institutions, another technical assistance project titled as "Training for IPA-Related Documents and Projects" was prepared by State Planning Organisation to increase institutional capacity of the key actors like sectoral coordinator, managing authorities, implementing agencies under IPA. It is expected that training programmes under this project will be started as of April 2006. The project will provide trainings for selected officials of line ministries and other related public institutions which have main responsibility for the preparation and implementation of Coherence Strategic Framework (CSF) and Operational Programmes (OPs) as well as project generation, feasibility studies and environmental impact assessment analysis in the fields of environment and transport infrastructure, human resources development and regional competitiveness. Both projects will contribute to the adaptation of the Turkish institutions to new system designed for IPA. Further training activities will be organized increasingly to better respond the emerging needs of these institutions.

2. Establishing IPA structures in preparation for future management and implementation of ESF

A-) Have decisions on future structures been taken in relation to the management and implementation of component IV (human resources development)?

Official decision on the key responsible institutions acting as NIPAC, Sectoral Coordinator and Managing Authority was taken and submitted to the Commission through a letter dated 2 February 2006. Similar to the current system, to ensure overall coordination of the EU funds, General Secretariat for the EU Affairs (EUSG) will act as NIPAC in the framework of IPA. State Planning Organization is determined as "Sectoral Coordinator" responsible for the coordination for the 3rd and 4th components. Additionally, the Sectoral Coordinator, in collaboration with the related institutions and the EC, will prepare "Strategic Coherence Framework" covering 3rd and 4th Components. This strategy document will provide a general framework for preparation of the Operational Programmes (OPs) under Components 3 and 4. The possibility to cover the 5th component regarding rural development under the Strategic Coherence Framework has still been evaluated by relevant Turkish authorities.

Studies on the official decision regulating relationship among the key actors of IPA have been continuing. It is expected that draft official decision will be finalised and adopted in a short period of time after the EC issues implementing regulations.

Institutional set-up design for the 3rd and 4th components of IPA envisages establishment of a Monitoring Committee for each OP. Monitoring committees will compose of related line ministries, institutions and stakeholders for the preparation of each OP. As a managing authority, Ministry of Labour and Social Security will chair the Monitoring Committee set up for directing the preparation process of HR OP. During the preparation of the HR OP, the participation of all relevant institutions, relevant NGOs and social partners will be provided in all the necessary phases. Studies for the rules and procedures for this committee and list of all participant institutions have been under preparation.

Regarding implementation arrangements, as stated in the official letter submitted to the Commission through a letter dated 2 February 2006, since establishment and accreditation of new implementing agencies will require time period, in order to prevent emergence of problems regarding utilisation of the EU funds, in the short run, Turkish side prioritizes to strengthen the capacity of the existing CFCU. Considering the fact that infrastructure projects are financed under IPA, it will be proper to establish sectoral units within existing CFCU and improve their capacity. During transitional period in the medium-term, different alternatives regarding establishment of new implementing agencies will be evaluated.

B-) Describe briefly the current overall state of preparations as they relate to component IV (including Inter-ministerial coordination structures)

For the HRD component, the EUSG will be the NIPAC, the sectoral coordinator will be the State Planning Organization and the management authority will be the Ministry of Labour and Social Security. MoLSS will be responsible for managing and implementing the HRD OP efficiently, effectively and correctly.

To provide that all relevant institutions will take part in an inter-ministerial coordination structure, it is envisaged that relevant ministries and institutions as well as relevant NGOs and social partners will take part in the OP Monitoring Committee under the chairmanship of MoLSS. Studies for the rules and procedures for this committee and list of all participant institutions have been under preparation.

The non-exhaustive draft list of the relevant ministries, governmental institutions and social partners is provided below for your information:

- Ministry of Finance
- Ministry of National Education
- Ministry of Health
- Ministry of Transportation
- Ministry of Agriculture and Rural Affairs
- Affiliated bodies of MoLSS (e.g. Turkish Employment Organization)
- State Planning Organization
- General Directorate of Pension Fund for Civil Servants
- General Directorate of Social Services and Child Protection
- General Directorate of Social Assistance and Solidarity
- General Directorate of Foundations
- General Directorate of Women Status
- General Directorate of Family and Social Research
- Turkish Statistics Institution (TUIK)
- Housing Development Administration (TOKI)
- Prime Minister Administration for Disabled People
- Administration of SMEs (KOSGEB)
- Social Partners (Employer Organizations and Unions)

C- What steps are being taken to prepare (for instance, strengthening present staffing levels or skills) within the Ministry of Labour and Social Security in preparation for the role of future Managing Authority for component IV?

Considering the fact that one of the main aims of IPA is to prepare the candidate countries for the ESF, different types of training programmes will be organized under the project on "Strengthening Social Dialogue for Change and Innovation in Turkey" to increase the institutional capacity of MoLSS and social partners in order to fully utilise the funds under the ESF. For instance, between 27 February and 1 March 2006 the first training programme was carried out and 30 MoLSS staff took PCM training, it is envisaged that "Grant Management Training" will be provided to MoLSS staff in April 2006.

Since last year, more than 100 people with foreign language abilities have been employed in different departments of the Ministry. In addition, there are many MoLSS staffs with foreign language skills who participated to the EU related trainings.

Currently, preparation of the strategy documents in the area of HRD has been continuing with the coordination of all relevant institutions. It is expected that the JAP document will be signed in the first half of 2006. On the other hand, 7th and 8th parts of the draft JIM have already been prepared and currently, it has been revising. During the preparation stage, there were around 60 different central participant institutions, Social Partners, NGOs and Universities and it is expected that this document will be ready and signed in autumn 2006. During the preparation of these two strategy papers the institutional capacity and coordination ability of MoLSS have significantly increased.

D-) Describe briefly the management structures envisaged for component IV. Will they be reflected in the organization of the Ministry of Labour and Social Security?

It is planned that the secretariat of Monitoring Committee of the HRD OP will be under the organizational structure of MoLSS. The monitoring committee will meet under the presidency of the Undersecretary of MoLSS with the participation of high ranked officers of the relevant institutions. The EU Coordination Department at the MoLSS is supposed to do the secretarial works of this committee. It is planned that two boards, Management Board and Monitoring Board, will work under the structure of the monitoring committee/management authority.

It is foreseen that the Monitoring Board will play the decisive role in the implementation of the OP. Studies towards preparing the rules and procedures for the monitoring committee and boards are continuing.

Additionally, according to the upcoming issues, it is planned that special expert committees which will meet under the coordination of the MoLSS and will work with the participation of the experts of relevant institutions. However, before taking any further step, all these issues need to be discussed and finalised with the relevant institutions.

E-) Describe briefly the nature and scope of the consultation process envisaged for the formulation of the Operational Programme in respect of component IV.

Considering that priority axes will be in conformity and consistency with the strategy papers (JAP/JIM) in the area of HRD, there is already consultation and cooperation between the main relevant institutions. During the preparation of strategy papers JIM and JAP, a widespread cooperation has been ensured with all the relevant ministries, governmental institutions, stakeholders and NGOs as well as academicians. A similar coordination mechanism has been established also in the preparation of HRD strategy paper drafted, under the Active Labour Market Programme Project undertaken by the Turkish Employment Organization. Therefore, background studies and problem areas as well as the proposed solutions are the outcome of a widespread coordination and close cooperation among all related parties. Moreover, it is planned that all relevant ministries, governmental bodies/institutions, social partners and NGOs will take part in the OP monitoring committee and contribute to the formulation of HRD OP. After defining main priority axes, necessary coordination activities will be carried out together with the main institutions in the relevant field.

To ensure the consistency with the SCF, MoLSS will directly take part in the Steering Committee for the SCF and will be in close cooperation with the State Planning Organization acting as sectoral coordinator.

(4) Labour Law

1 EU Working time directives

- **Directive 2003/88/EC (general)**
- **Directive 1999/63/EC (seafarers),**
- **Directive 2000/79/EC (civil aviation),**
- **Directive 2005/47/EC (railways)**

General questions

1. To what extent do you consider that your legislation is compatible with the EU Working time directives, in particular Directive 2003/88/EC (general), Directive 1999/63/EC (seafarers), Directive 2000/79/EC (civil aviation), Directive 2005/47/EC (railways)? Please describe per directive.

2003/88/EC: Labour Law (4857) was adopted by taking the provisions in Directive 93/104/EC into account. There are still some incompatibilities.

1999/63/EC: Maritime Labour Law is applied to seafarers.

2000/79/EC: There is no any regulation in Labour Law with regard to working time in civil aviation. Employees in civil aviation are out of the scope of Labour Law. However, Draft "Labour Law on Civil Aviation" is on the agenda of T.B.M.M. (Turkish Grand National Assembly)

In that Draft Law, definitions on working time, mobile staff in civil aviation, block flying time are designed compatible with the directive and paid annual leave, free health assessment, maximum annual working time, block flying time, free days and other aspects are regulated in line with the directive.

2005/47/EC: Turkish rail network has borders with Bulgaria, Greece, Syria and Iran. Trains between Turkey and these countries have been operated according to bilateral agreements, concluded with Bulgaria in 1997, with Greece in 1972, with Syria in 1996 and with Iran in 1969. Train operating staff has been changed at exchange stations defined in the relevant agreement, namely Kapikule with Bulgaria, Pithion with Greece, Meydanekbez with Syria and Kapikoy with Iran. In conclusion, State Railways train operating staff travel only to the exchange stations in Greece and Syria.

Turkish train operating staff engaged in cross-border operations has the same rights and responsibilities as other train operating staff except they receive a special daily allowance for the time they stay abroad.

2. Which are the national laws which regulate the issues covered by the aforementioned directives? Please describe per directive.

2003/88/EC: Labour Law, By-law on Shift Work, By-law on Working Time, By-law "on Overtime Working, Civil Servant Law, Turkish Armed Forces Personnel' Law, Judges and Prosecutors' Law, Higher Education Personnel' Law, No. 399 Decree Law.

1999/63/EC: Maritime Labour Law, By-law on Seafarers

2000/79/EC: Instruction on the Flight Task and Rest Period of Mobile Staff in Civil Aviation and Implementation Principles

2005/47/EC: No legislation

3. Is there any preparation/consideration concerning eventual modifications of the pertinent national laws of your country? Please describe.

Technical studies for alignment are underway.

4. What measures is your administration taking or planning to take in order to improve administrative capacity (e.g. with regard to labour inspectors, judges etc.)?

There are 603 inspectors, 326 of which are responsible for inspection of administrative and social aspects (labour relations), and 277 are responsible for inspections on occupational health and safety (technical inspections). Moreover the procedure is initiated for the appointment of further 100 assistant labour inspectors.

The Ministry of Justice has maintained the training programme such as mentioned above in order to improve capacity of the judiciary in the subject of the discrimination. Besides, the Ministry of Justice plans to increase the number of judges and prosecutors and to organise a training programme in order to the effectiveness of judiciary on this subject.

Specific questions

a) Directive 2003/88/EC (general)

5. Does the working time legislation in your country cover all sectors of activity?

There are sectors remaining outside the scope of Labour Law, Maritime Labour Law and Press Labour Law governing the work life.

Civil Servant Law determines working time also and covers all of civil servants.

6. In particular, are there any special rules on working time in the public sector? Are there special rules concerning specific public service activities, such as the armed forces or the police, or certain specific activities in the civil protection services?

In general, weekly working time of civil servants is 40 hours and daily working time is 8 hours. However, different working time periods can be determined through legislation by taking into account services and the needs of institutions.

Working time and form of civil servants who work in services continuing for 24 hours in a day is regulated by their institutions after having the approval of the State Personnel Presidency.

Some examples of services which continue in 24 hours in a day are; security, health, fire brigade. For example, working and rest period of firemen is determined in a way that 12 hours or 24 hours succeeding each other.

In the Turkish Armed Forces, weekly working time of commissioned officers, noncommissioned officers, sergeants and gendermaries is 40 hours in general.

They have a weekly rest period of consecutive 48 hours (Saturday&Sunday). (Turkish Armed Forces Personnel Law Numbered 926)

Fire brigade and disaster services are pursued 24 hours in a day without interruption including national, religious and general holidays and

Firemen work with shifts and 24 working hours and 24 rest hours or 12 working hours and 12 rest hours in order to execute their missions. Continuity of the service shall not be interrupted and such free days will be regulated within an order.

7. Does your legislation provide for definitions of the terms: "working time", "rest period", "night time", "night worker", "shift time"? Please describe.

Working time shall mean any period during which the worker is at work (By-law on Working Time Art. 3). There is no definition on the “rest period”. The “nighttime” at work is the period starting at 20.00 hours at the latest and

ending at 06.00 a.m. at the earliest, and in any case lasting maximum for eleven hours (Labour Law Art. 69). There is no definition on "night worker" (however night worker is understood to be the worker working during the defined night time.) If half of its working time occurs at the night time, shift work is considered as night work (By-law on Shift Work Art. 7). There is no definition on "shift time".

There is no definition on such terms in Civil Servant Law.

8. Are workers entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period?

Upon the agreement between the parties, weekly working time shall be divided equally to the working days of week, unless agreed otherwise by the parties without exceeding 11 hours a day (4857/63). The employee's working time (at most 11 hours a day) has been regulated in the Article 63 of Labour Law.

Breaks are regulated by taking 12 hours uninterrupted rest period in any 24 hours into account and by regarding climate, season, traditions in the region and the characteristic of the work. (By-law on Working Time Art. 3)

Minimum daily rest period is not defined in the legislation for civil servants. Period out of 8 working hours is accepted as daily rest periods in implementation.

Minimum daily rest period of 11 consecutive hours per 24-hour period is not specifically regulated in Civil Servant Law. However, periods out of 8 hours working time are considered as daily rest period. (Civil Servants Law Art. 99)

9. Are workers entitled to a rest break where the working day is longer than six hours?

The workers are granted a break for;

- Fifteen minutes for jobs lasting four hours or shorter,
- Half hour for jobs lasting longer than four hours but shorter than seven and a half hours (included),
- One hour for jobs lasting longer than seven and a half hours, (Article 68 of Labour Law)

There is a noon rest period in terms of civil servants. (Art. 100 of Civil Servants Law)

10. Are workers entitled to an uninterrupted rest period of 24 hours for each seven-day period plus the 11 hours daily rest?

At workplaces covered by Labour Law, at least twenty-four hours of rest time (week holidays) is given to the workers within a period of seven days, on the condition that they have worked the business days determined under Article 63 before the holiday. (Labour Law Art.46). There is no certain provision in Labour Law in the sense of 11+24 rule which is mentioned in 5th Article of the Directive. However 11+24 rule is generally accepted in implementation.

Weekly 48 hours , on Saturday and Sunday as holidays, are given to civil servants as a weekly rest period. (Art. 99 of Civil Servants Law)

11. Is there any limit to the average working time for each seven-day period, including overtime? Which?

The working period is maximum forty five hours a week in general aspect. Unless otherwise agreed, such period is applied by equally assigning it to working days of the week.(Labour Law Art.63). There is no provision on the average weekly working time which includes overtime. However according to Article 41 of Labour Law "The total overtime period can not exceed two hundred and seventy hours a year". Furthermore the same provision is covered by By-law on Overtime Working.

In general, weekly working time of civil servants is 40 hours and daily working time is 8 hours. If overtime happens it should be compensated by wage or a rest period. (Art. 78 of Civil Servant Law)

12. Is there any possibility to exceed the average weekly working time by way of individual consent of the worker concerned (cf. opt-out by virtue of Article 22 of the general directive)?

No there is no such an alternative mentioned in directive both for workers and civil servants.

13. Are workers entitled to paid annual leave of at least four weeks?

The duration of annual paid leave to be allowed to workers can not be less than;

- Fourteen business days for those having a service period between one year and five years (including five years),
- Twenty business days for those having a service period more than five and less than fifteen years,
- Twenty six business days for those having a service period of fifteen years (included) and more.

- However, the duration of annual paid leave to be allowed to workers at the age of eighteen and younger and fifty and older can not be less than twenty business days. (Labour Law Art.53)

  Annual leave of civil servants is 20 days for the ones who have been working for 1-10 years (10 years included) and 30 days for the ones who have been working more than 10 years. (Art. 102 of Civil Servant Law)

14. Are there specific rules on night time work? Can normal hours of night work exceed an average of 8 hours in any 24-hour period? Are there special rules for night workers whose work involves special hazards or heavy physical or mental strain? Please describe.

Yes, there are some rules on night time work. Nighttime working of the workers may not exceed seven and a half hours. It is certified by a health report to be obtained before recruitment that the health condition of the workers to be caused to work at nighttime are suitable for nighttime working. Nighttime workers undergo a periodic medical check by the employer latest once every two years. The costs of such medical checks are covered by the employer.

The employer employs the worker who evidences that his/her health condition has been disturbed due to nighttime working, in a suitable position in dayshift if possible (Labour Law Art.69)

15. Are there any reference periods for the application of national rules concerning weekly rest period, maximum weekly working time and length of night work? Please describe.

With the written agreement of the two sides, weekly normal working time, can be distributed to the work days of the week unevenly with the condition of not exceeding eleven hours in a day.

Under these circumstances;

Following the week or weeks when normal working times were exceeded, total working time can be balanced so as not to exceed total normal time by allowing the worker to have shorter work times. This balancing shall be completed in a two month period, and this period can be extended to four months by collective labour contracts. (Article 5 of By-law on Working Time)

There is no other reference period with regard to implementing of weekly rest period, paid annual leave, night work.

16. Are there any derogations to the general national rules on daily rest, breaks, weekly rest period, maximum weekly working time, length of night work and reference periods? In which cases? Please describe.

There is no any derogation or exception in terms of workers.

Civil Servants: Different working time arrangements can be made by taking into account the characteristics of services and institutions. (Art. 99 of Civil Servant Law)

Working time and form of civil servants who work in services continuing for 24 hours in a day is regulated by their institutions after having the approval of the State Personnel Presidency.

Some examples of services which continue in 24 hours in a day are security, health, fire brigade. For example, working and rest period of firemen is determined in a way that 12 hours or 24 hours succeeding each other. And also there are different arrangements on weekly rest period of workers officiating at religious ceremonies.

17. Are there any specific rules for doctors in training (limit of weekly working hours, etc)?

No. There is no limitation of weekly working hours for the doctors in training. In terms of working conditions, working time and other provisions, they are subject to "Civil Servant Law" (public sector doctors) and "Labour Law" (private sector doctors).

18. Are there any specific rules for mobile workers (in the sense of Articles 2(7) and 20 of the general directive)?

There is no definition on "mobile worker". There is no general rule on "mobile workers" in Labour Law.

19. Are there any specific rules for workers on board sea-going fishing vessels? Are these workers entitled to adequate rest? Are there any limits to the hours of their work or rest? Please describe.

There is an implementing regulation which also covers of such workers. By-law on Working Time which can not be divided to Weekly Working Days defined their working time as the following; " daily working time can not exceed 11 hours, night work can not exceed 7.5 hours…" (Art. 6/a), "Worker can not force to work without giving them uninterrupted 11 hours in any 24 hours period." Rest periods of workers will be regulated in the light of Article 68 of Labour Law. According to this;
"The workers are granted a break for;

- Fifteen minutes for jobs lasting four hours or shorter,
- Half hour for jobs lasting longer than four hours but shorter than seven and a half hours (included),
- One hour for jobs lasting longer than seven an a half hours,

b) Directive 1999/63/EC (seafarers)

20. Are there any specific rules for seafarers in the sense of the aforementioned directive? Please describe.

Yes there are specific rules for such workers. Maritime Labour Law is applied to the seafarers who work under contract in the ships carrying the Turkish flag and sailing on the seas, lakes and rivers and weighing 100 gross tons and over and to the employers of the seafarers. In the case that the total weight of the ships belonging to the same employer is 100 tons or in excess of this weight or if the total number of the seafarers working for the same employer is 5 or more, the provision in the paragraph will be applied. (Art. 1)

21. Are there any limits to the hours of work or rest per any 24 hour period or per any seven-day period? Please describe.

Working time is generally eight hours per day and 48 hours per week. This length of time will be distributed evenly to the workdays of the week. Working time is the period the seafarer works or is in the shift. (Art. 26 Maritime Labour Law). There is no provision which determine the top limit of working time for seafarers including overtime and conditions that is regulated by collective bargainings.

22. Is there any rule prohibiting night work of seafarers under 18 years of age?

There is no such a rule.

23. Is there any rule prohibiting persons under 16 years of age to work as seafarers?

According to Article 8 of By-law on Seafarers (31.07.2002/24832), the requirements to hold a Seaman's Book and / or Competency Certificate concerning age, training-education and sea service are indicated below:

a) Ratings:

1) Every candidate who applies to become a Deck Boy shall:

- Not be less than 16 years of age;
- Have a minimum of primary school diploma;
- Have the Security at Sea certificate as defined in Article 19 of the regulation; to be accredited to bear Deck Boy Competency in his Seaman's Book.

24. Are seafarers entitled to paid annual leave of at least 4 weeks?

The seafarer who has worked for the same employer or in the same ship within one calendar year or has worked for at least six months based on one or more labour contracts will be entitled to a paid annual vacation.

The vacation period cannot be less than 15 business days for the seafarer who has worked between six months and one year and less than one month (30 days) for the seafarer who has longer than one year. (Maritime Labour Law)

c) Directive 2000/79/EC (civil aviation)

25. Are there any specific rules for mobile staff in civil aviation in the sense of the aforementioned directive? Please describe.

There is no any regulation in Labour Law with regard to working time in civil aviation. Employees in civil aviation are out of the scope of Labour Law. However there is a proposal named "Labour Law on Civil Aviation" in the Parliament.

In that Draft Law, definitions on working time, mobile staff in civil aviation, block flying time are designed compatible with the directive and paid annual leave, free health assessment, maximum annual working time, block flying time, free days and other aspects are regulated in line with the directive.

Working and rest time of mobile staff in civil aviation has been regulated by an instruction namely Instruction on the Flight Task and Rest Period of Mobile Staff in Civil Aviation and Implementation Principles which was published by Directorate General of Civil Aviation that is an affiliated body of Turkish Ministry of Transportation and Communications despite that there is no regulation in Labour Law.

26. Is there any maximum annual working time for mobile staff in civil aviation? Is there any maximum annual block flying time?

Flying time (block) for any member of mobile staff can not exceed 110 hours in a calendar month and 300 hours in consecutive 3 calendar months and 1000 hours in a calendar year. (Art. 13)

Flight task period can never exceed 56 hours in a week, 210 hours in a month, 500 hours in three months and 1800 hours in a calendar year. (Art. 14/d/13)

Flying Period (Block Time);
Means, total time between an aircraft first moving with the assistance of its own power or an external power for the purpose of take off until it comes to designated parking position with completely stopping with the aim of breaking/loading bulks or offloading/loading passengers. (Art. 4)

Flight Task Period;
Means, for a flight mission which consists of one flight or flight series, total time starting with the flight preparation of mobile staff who will be exempted from all flight tasks after the same flight or flight series for a flight task which consists of one flight or flight series. (Art 4.)

27. Is mobile staff in civil aviation given days free of all duty and standby, notified in advance, per calendar month or per calendar year?

Free time shall be given only main or temporary head. Minimum 7 days free time period, as defined above, which shall be given in one month, is planned by grouping as 2+2+1+1+1 and place of one day in adjacent even free days in this grouping may be changed by aviation undertaking in month provided that it is notified before 24 hours. The monthly free time is distributed equally in the half of the month in which it is used. In case the accommodation period is more than 6 days, one of these free days may be given in accommodation arena.

Free times shall be given in proportion to working period. (7 days in a week, 96 days in a year) (Art. 18)

28. Is mobile staff in civil aviation entitled to paid annual leave of at least four weeks?

There is no provision which ensures 4 weeks annual paid leave.

d) Directive 2005/47/EC (railways)

Not applicable.

29. Are there any specific rules for mobile staff in the railway sector in the sense of the aforementioned directive? Please describe.

No.

30. Are the concerned workers entitled to a daily rest at home of at least 12 consecutive hours per 24-hour period? Can it be reduced in certain cases? Please describe.

No.

31. Are the concerned workers entitled to a daily rest away from home of 8 consecutive hours per 24-hour period? Should the daily rest away from home be followed by a daily rest at home?

No.

32. Are the concerned workers entitled to a weekly rest period of 24 + 12 hours? Are there any provisions concerning the distribution of weekly rest during the year? Please describe.

No.

33. Is there any provision by virtue of which driving time should not exceed 9 hours (day) or 8 hours (night)?

No.

2 EU directives on working conditions other than working time

- Directive 94/33/EC (young people)
- Directive 91/533/EEC (written statement)
- Directive 1999/70/EC (fixed-term work)
- Directive 97/81/EC (part-time work)
- Directive *96/71/EC* (posting of workers)
- Directive 80/987 as amended by 2002/74/EC (employer insolvency)
- Directive 91/383/EEC (health and safety in fixed term and temporary employment)

General questions

34. To what extent do you consider that your legislation is compatible with the aforementioned EU directives? Please describe per directive.

94/33/EC: Some regulation has been made in new Labour Law (4857) in the sense of forbidding child work and protection of youth persons in work place. By-law on Procedures and Foundations of Child and Adolescent Labour which is completely in line with the relevant Directive, has come into force. By-law on Heavy and Dangerous Works determines that which works are heavy and dangerous and women and adolescent worker can not work.

91/533/EEC: Labour Law is compatible with the directive, except for the obligation on information and giving a document includes working conditions to person who will work abroad.

99/70/EC: Worker representative issue has not been regulated.

97/81/EC: Labour Law is fully compatible with the Directive.

96/71/EC: There is no regulation.

80/987/EEC - 2002/74/EC: Labour Law has been enacted by taking Directive 80/987/EEC into consideration. Amendments with regard to 2002/74/EC have not been adapted to our legislation.

91/383/EEC: By-law on Health and Safety for Fixed-Term and Temporary Workers has been come into force. Our legislation is fully compliant.

35. Which are the national laws which regulate the issues covered by the aforementioned directives? Please describe per directive.

94/33/EC: Labour Law, By-law on Procedures and Foundations of Child and Adolescent Labour, Civil Servant Law
91/533/EC: Labour Law
1999/70/EC: Labour Law, Civil Servant Law
97/81/EC: Labour Law, By-law on Working Time
96/71/EC: No legislation
80/987 – 2002/74/EC: Labour Law, By-law on Wage Guarantee Fund, By-law on Occupational Health and Safety, Law on Bankruptcy
91/383/EEC: Labour Law, By-law on Occupational Health

36. Is there any preparation/consideration concerning eventual modifications of the pertinent national laws of your country? Please describe per directive.

Technical studies for alignment are underway.

37. What measures is your administration taking or planning to take in order to improve administrative capacity (e.g. with regard to labour inspectors, judges etc.)? Please describe.

There are 603 inspectors, 326 of which are responsible for inspection of administrative and social aspects (labour relations), and 277 are responsible for inspections on occupational health and safety (technical inspections). Moreover the procedure is initiated for the appointment of further 100 assistant labour inspectors.

The Ministry of Justice has maintained the training programme such as mentioned above in order to improve capacity of the judiciary in the subject of the discrimination. Besides, the Ministry of Justice plans to increase the number of judges and prosecutors and to organise a training programme in order to the effectiveness of judiciary on this subject.

Specific questions

a) Directive *94/33/EC* (young people)

38. Are there any definitions for the terms "young person", "child", "adolescent"?

Adolescent worker:
Shall mean any person over 15 years of age but not having completed 18 years of age. (Art. 4 of By-law on Procedures and Foundations of Child and Adolescent Labour)

Child worker :
Shall mean any person over 14 years of age but not having completed 15 years of age yet and who completed compulsory full-time schooling, (Art. 4 of By-law on Procedures and Foundations of Child and Adolescent Labour)

There is no definition in Civil Servant Law.

39. Is work by children prohibited? Are there any exceptions? If yes, under which protective conditions/safeguards? Are there any limits to the daily and/or weekly working time? Please describe.

According to Article 21 of Labour Law;

"It is prohibited to employ children who did not complete the age of fifteen. However, those children who have completed the age of fourteen and primary education may be employed in light positions which do not obstruct their physical, mental and moral development and education of those who attend schools.

Security, health, physical, mental and psychological development, personal inclination and capability aspects are considered in employment of children and young workers. Employment of the child may not obstruct him/her to attend his/her school, professional education and regularly trace he courses.

Those jobs which are prohibited for children and young workers below eighteen as well as those which are prohibited for young workers who completed fifteen but not eighteen and the light jobs which are allowed for children who completed the age of fourteen and primary education, and the working conditions are established by a regulation to be prepared by the Ministry of Labour and Social Security within six months.

The working hours for children who completed their basic education and do not attend school may not be longer than seven hours a day and thirty five hours a week. However, that period may be increased up to eight hours a day and forty hours a week for children who completed the age of fifteen.

The working hours during the education term of the children attending school may be two hours a day and ten hours a week maximum, outside the education hours. The working hours for holiday terms may not exceed the periods set forth in the first paragraph above."

Exceptions in the prohibitions on child/adolescent labour are regulated within By-law on Procedures and Foundations of Child and Adolescent Labour. Annexes of this regulation define such exceptions;

ANNEX-1

Light Works where Child Workers may be Employed

1- Fruits, vegetables, flower picking,
2- Assisting work in poultry business and sericulture business,
3- Sales functions for tradesmen or craftsmen,
4- Assisting work in office services,
5- Distribution and sale of daily newspapers, magazines or published material (excluding carrying and stacking load),
6- In works that are carried out as assistant or sales person in bakery, pastry shop, greengrocery, in stands and restaurants that do not serve alcoholic beverages,

7- In menial jobs at sales points such as wrapping and labeling,
8 - Assisting work at libraries, expositions, fairs and exhibitions (excluding carrying and stacking load),
9- Assisting work at sport establishments,
10- In floral sales and arrangements.

ANNEX-2

Light Works where Adolescent Workers may be Employed
Occupations in:
1- Fruit and vegetable canning, vinegar, pickles, tomato paste, jam, marmalade, fruit and vegetable juice production,
2- Fruit and vegetable drying and processing,
3- Halvah, molasses, confection, grape-molasses production,
4- Assisting jobs at butchers,
5- Tea processing jobs,
6- Preparation of various dry nuts,
7- Assisting jobs in small cattle feeding,
8- Broom and brush production,
9- Production of ornaments made by carving from handcrafted wooden, bone, horn, amber, meerschaum, Erzurum stone and other material, production of objects like button, comb, pictures, mirror, frame, similar glass work
10- Sales, labeling and packaging at wholesale and retail outlets,
11- Assisting jobs and work in offices,
12- Growing flowers with the exception of spraying chemicals and fertilizing,
13- Service sector with the exception of places serving alcoholic beverages
and providing cooking services,
14- Other clothing items and, production of walking canes and umbrellas,
15- Production of food items and various processes performed to them,
16- Making of Quilt, tent, sack, sail and similar items and other ready made item production with no weaving,
17- Chest, box, barrel and similar packing items, Basket and similar items made from cork, reed and bamboo.
18- Pots and pans, tile, ceramic tile, porcelain and ceramic production (excluding furnace and silica and quartz dust emitting jobs),
19- Distribution of leaflets,
20- Production related jobs at glass, bottle, optical and similar manufacturing plants production (excluding furnace and silica and quartz dust emitting jobs, thermal process, coloring and chemical processing),
21- Vegetable oil and animal fat production and manufacturing of items made of these (excluding the extraction steps in prine or similar oil manufactured through extraction process with the use of carbon, sulfur type of flammable or irritating solvents),
22- Spinning mill and weaving preparation jobs separated by a division from
where cotton, linen, wool, silk and similar items and their remains, fluffing, rake and starch looms and coloring processes and also having scientifically sufficing air conditioning and aspiration systems,

23- Fish market,
24- Assisting jobs in preparation for production at sugar factories,
25- Packing, barreling, stacking and similar work that does not necessitate lifting up of weight without vehicles exceeding 10 kg,
26- Production of water based glue, gelatin and starch,
27- Manufacturing and repair of rowboat, boat and similar small seafaring units (excluding painting and varnishing jobs).

ANNEX-3

<u>Light Works where Child and Adolescent Workers can not be Employed</u>
1- Work that is carried out during night time as defined in 69th Article of Labour Law numbered 4857,
2- Subterranean or work carried out under water such as mines, laying cables, canalization and tunnel construction,
3- Work prohibited for persons 18 years of age or under by Heavy and Dangerous Work By-law,
4- Work covered under the By-law on Preparation, Completion and Cleaning Works,
5- Work that falls under, Work that is Restricted to Seven and a Half Hours or Less per Day due to Health rules By-law,
6- Production or sale of Alcohol, cigarette and addictive substances,
7- Wholesale and retail sale and manufacturing, processing, storing and all kinds of work that have a possibility for exposure to flammable, explosive, harmful and dangerous substances,
8- Work environments in which there is a high level of noise and/or vibration,
9- Work in which there is a risk to health from extreme cold or heat and work that is carried out with harmful substances for health and result in occupational sickness,
10- Work with a possibility of exposure to radioactive substances and harmful rays,
11- Work involving mobile machinery,
12- Work involving a high level of attention and requiring uninterrupted standing up,
13- Work the pace of which is determined by machinery and involving payment by results,
14- Work involving collection and transportation of money,
15- Work that does not give the opportunity to return home or to the family at the end of working day (excluding work with an educational aim),
16- Excluding the work that apprenticeship requires for Occupational Education Programme, facial and body care and aesthetics, hair removal and massage work,
17- Work clearly or by a report of a specialist doctor is objectively beyond their physical or psychological capacity,
18- Work involving harmful exposure to agents which are toxic, carcinogenic, cause heritable genetic damage, or harm to the unborn child or which in any other way chronically affect human health,
19- Work that is a risk to their safety, health and development which are a consequence of their lack of experience, of absence of awareness of

existing or potential risks or of the fact that young workers have not yet fully matured.

The working hours cannot be more than seven hours a day and 35 hours a week for light work performed by children no longer subject to compulsory full-time schooling. These limits may be raised to eight hours a day and 40 hours a week in the case of children who have reached the age of 15; (Article 6 of By-law)

The work time shall be applied in such a way as to ensure for each 24-hour period, child and adolescent workers are entitled to a minimum rest period of 14 consecutive hours. (Article 6 of By-law)

The work time will be at most two hours per day and twelve hours per week for children attending school on a school day and 10 hours per week for work performed in term-time outside the hours fixed for school attendance, (Article 6 of By-law)

A break shall be given in the middle of work as thirty minutes for work that is more than two hours and less than four hours, a break of one hour for work that is between four hours and seven and a half hours. (Article 6 of By-law)

The weekly rest periods of child and adolescent workers may not be less than 40 hours of uninterrupted time. Furthermore the weekly rest period wage shall be paid without any work carried out. (Article 8 of By-law)

Those who have completed the age of 18 can be a civil servant. (Art. 40 of Civil Servant Law)

40. Is the employer obliged to adopt the measures necessary to protect the health of young people, including an assessment of the risks to young people in connection to their job?

In the assignment of and throughout the work of the child or adolescent worker, their safety, health, physical, mental, moral and psychological evolution, their personal tendencies and talents will be taken into consideration.

Child and adolescent workers can work in occupations where the activities are not to be harmful to their attendance at school, their participation in vocational guidance or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

Employers shall ensure that child and adolescent worker are protected from any specific risks to their safety, health and development which are a consequence of their lack of experience, of absence of awareness of existing or potential risks or of the fact that child and adolescent worker have not yet fully matured.

Light work that child workers are allowed to work at are defined in Annex-1, types of work allowed for adolescent workers are defined in Annex-2 and prohibited work for child and adolescent workers that are under 18 are defined in Annex-3. (Art. 5 of By-law)

The employer shall inform child and adolescent workers of possible risks, adaptation to work, their legal rights and of all measures adopted concerning their safety and health.

The employer shall make an assessment for changes, before the child and adolescent worker begin work or during work or when there is any the following points;

a) the fitting-out and layout of the workplace and the workstation,
b) the form, range and use of work equipment, and the way in which they are handled,
c) the organization of work
d) the level of training and instruction given to young people. (Art. 13 of By-law)

Where this assessment shows that there is a risk to the safety, the physical or mental health or development of child and adolescent worker, an appropriate assessment and monitoring of their health shall be provided at the shortest time. (Art. 13 of By-law)

The employer shall:

- Inform the legal representatives of child and adolescent worker of possible risks and of all measures adopted concerning children's safety and health.
- Ask for a document from the child and adolescent worker showing their status as a student that is prepared by the school prior to commencement of work. Shall keep this document in his/her personal file.
- Put forth a written agreement with the parents or legal representatives of the child and adolescent worker. (Art. 12 of By-law)

41. Is the protection of young people appropriately ensured, inter alia by prohibiting certain forms of work?

The employer shall inform child and adolescent workers of possible risks, adaptation to work, their legal rights and of all measures adopted concerning their safety and health.

The employer shall make an assessment for changes, before the child and adolescent worker begin work or during work or when there is any major change in working conditions and must pay particular attention to the following points;
a) the fitting-out and layout of the workplace and the workstation,

b) the form, range and use of work equipment, and the way in which they are handled,
c) the organization of work
d) the level of training and instruction given to young people.

Where this assessment shows that there is a risk to the safety, the physical or mental health or development of child and adolescent worker, an appropriate assessment and monitoring of their health shall be provided at the shortest time. (Art. 13 of By-law)

Employers shall ensure that child and adolescent worker are protected from any specific risks to their safety, health and development which are a consequence of their lack of experience, of absence of awareness of existing or potential risks or of the fact that child and adolescent worker have not yet fully matured. (Art. 5 of By-law)

The employer shall:

- Inform the legal representatives of child and adolescent worker of possible risks and of all measures adopted concerning children's safety and health.
- Ask for a document from the child and adolescent worker showing their status as a student that is prepared by the school prior to commencement of work. Shall keep this document in his/her personal file.
- Put forth a written agreement with the parents or legal representatives of the child and adolescent worker. (Art. 12 of By-law)

42. Are there any limits to the daily and/or weekly working time of adolescents? Please describe.

The work time shall be applied in such a way as to ensure for each 24-hour period, child and adolescent workers are entitled to a minimum rest period of 14 consecutive hours. (Article 6 of By-law)

43. Are there any restrictions to the night work of young people? Please describe.

It is prohibited to cause children and young workers below the age of eighteen to work at nighttime in industrial works. (Article 73 of Labour Law)

44. Are there any specific rules on rest periods, annual rest and breaks concerning the work of young people? Please describe.

A break shall be given in the middle of work as thirty minutes for work that is more than two hours and less than four hours, a break of one hour for work that is between four hours and seven and a half hours. (Article 6 of By-law)

The weekly rest periods of child and adolescent workers may not be less than 40 hours of uninterrupted time. Furthermore the weekly rest period wage shall be paid without any work carried out. (Art. 8 of By-law)

The paid annual leave to be given to child and adolescent workers shall not be less than 20 business days. The provision of paid annual leave with no interruptions is the essential. However, if it is to the advantage of and upon request by the child or adolescent worker, the leave may be at most divided into two and used as such.

The paid annual leave shall be given in the school holidays of child and adolescent workers subject to compulsory full-time schooling, courses or other educational programmes. (Article 10 of By-law)

b) Directive 91/533/EEC (written statement)

45. Are employers obliged to provide to their employees written information on the essential aspects of the employment relationship? Are these elements specified in your legislation?

In our Law a Labour contract is the contract where one party (worker) agrees to work dependently and the other party (employer) undertakes to pay wage. (Labour Law Article 8)

Labour contracts with one year and longer term shall be made in writing. In cases where no written contract is made, the employer is obliged to present to the worker a written document indicating the general and special working conditions, daily or weekly work period, basic wage and wage additions, if any, wage payment period, term of contract, if definite, and the provisions that the parties should observe in case of termination within two months at the latest. The provision of this paragraph does not apply for definite-termed labour contracts with a term of less than one month. In case the labour contract is terminated before the expiry of two months, such information should be presented to the worker in writing on the date of termination at the latest

The amount, elements, payment form and time of the salary paid to Civil Servants on the basis of their rights, duties and responsibilities is regulated by law.

In order to provide the necessary skills and knowledge to make civil servants be able to perform their duties and learn minimum necessary information about their common qualifications, Civil Servants shall take a candidate vocational training. (Civil Servant Law)

46. Does your legislation require that such information should be provided in a certain form (e.g. by means of a contract, a letter of engagement or any other document)? Is there any deadline?

Labour contracts with one year and longer term shall be made in writing. Article 8 of Labour Law is not applied to employees having a contract with a total duration not exceeding one month. In case the labour contract is terminated before the expiry of two months, such information should be presented to the worker in writing on the date of termination at the latest

The amount, elements, payment form and time of the salary paid to Civil Servants on the basis of their rights, duties and responsibilities is regulated by law.

In order to provide the necessary skills and knowledge to make civil servants be able to perform their duties and learn minimum necessary information about their common qualifications, Civil Servants shall take a candidate vocational training. There is no other additional certification procedure. (Civil Servants Law)

47. Are employers obliged to provide to expatriate employees special written information, covering the following elements: duration abroad; currency used for payment of remuneration; benefits whilst abroad; conditions governing repatriation?

There is no such a regulation in terms of private business.

The duties, responsibilities and the internal vocational training for civil servants appointed on a permanent basis to work abroad is regulated by a by-law. No other document including the mentioned issues is given additionally to civil servants permanently working abroad.

c) Directive 1999/70/EC (fixed-term work)

48. Does your national legislation provide for specific rules covering fixed-term workers?

For Private Sector: In cases where the labour relation is not dependent upon a definite period, the contract is considered as indefinite-termed. The labour contract concluded between the employer and worker in writing in definite-termed works or depending on objective conditions such as completion of a certain work or occurrence of a certain phenomenon is a definite-termed labour contract.

In public sector, fixed term working is in effect in the statute of Contractual personnel and temporary personnel.

Contractual Personnel: Public employees who are employed in the statute of contractual in cases special knowledge and expertise is needed in compulsory and exceptional situations in public institutions and bodies.

Temporary Personnel: Employees who are employed by a contract in works which continue less than one year or are accepted as seasonal works by the Council of Ministers by taking into account opinions of the State Personnel Presidency and Minister of Finance. (Art.4 of Civil Servant Law)

49. Does such legislation cover workers employed in both private and public sectors?

Labour Law covers workers work in both public and private sectors. Civil Servant Law covers contractual and temporary personnel which works under the conditions of Civil Servant Law Art.4.

50. Are there any measures to prevent abuse arising from the use of successive fixed-term contracts, which is/are the criteria used: objective reasons and/or limits on the number of renewals of fixed-term contracts and/or maximum duration of such contracts?

Definite-termed labour contract can not be made successively more than once (in chain) without any founded reason. Otherwise, the labour contract is considered as indefinite-termed from the beginning. (Article 11)

51. Is equal treatment between fixed-term and comparable permanent workers ensured as regards employment conditions?

For private sector: Any worker employed on a definite-termed labour contract can not be subjected to a different treatment compared to an equivalent worker employed on an indefinite-termed labour contract merely on the grounds that his/her labour contract has a definite term, unless a reason justifying discrimination exists. (Article 12)

The employer can not treat part-time worker against full-time worker and definite-term worker against indefinite-term worker differently unless on founded reasons. (Article 5/2)

For public sector: In terms of social rights, some implementations which are less favored than general exist for contractual and temporary personnel.

For example,

- There is a maximum period, which is 30 days, in sickness leaves in a year.

- Any additional wage is not paid to Contractual personnel for extra working out of normal working hours or in holidays.
- Although there are some exceptions, any payment under any title except from the normal wage is not made to contractual personnel

52. Is there any distinction between fixed-term and comparable permanent workers as regards the calculation of the threshold for the constitution of bodies representing workers?

There is no such a distinction.

53. Are employers obliged to inform fixed-term workers on permanent employment opportunities?

There is no provision for fixed – term workers in that means.

54. Are employers obliged to inform workers' representative bodies about fixed-term work in the undertaking?

There is no provision for fixed – term workers in that means.

55. Are employers obliged to facilitate, as far as possible, access of fixed-term workers to training possibilities?

There is no provision.

d) Directive 97/81/EC (part-time work)

56. Does your national legislation provide for specific rules covering part-time workers?

Yes it does. Part time work is regulated with Art.13 and 22 of Labour Law and Art. 6 of By-law on Working Time

Contractual personnel can be employed on part-time basis in public economic enterprises which carry out economic activities in accordance with nature of job. The wages are defined by the principle of pro rata temporis. (No. 399 Decree Law)

Moreover, some employees; such as, engineers, lawyers, doctors can be employed as a contractual personnel in Ministries and local administrations in accordance with nature of job. (Art. 4/b Civil Servant Law)

57. Are part-time workers employed in both private and public sectors covered?

Yes. They can be employed in both private and public sector. Contractual personnel can be employed on part-time basis in public economic enterprises which carry out economic activities in accordance with nature of job. The wages are defined by the principle of pro rata temporis. (No. 399 Decree Law)

Moreover, some employees; such as, engineers, lawyers, doctors can be employed as a contractual personnel in Ministries and local administrations in accordance with nature of job. (Art. 4/b Civil Servant Law)

58. Are there any definitions of part-time workers and comparable full-time workers? Please describe.

There is no definition for part-time workers. However there is a definition for part-time labour contracts. According to this when the normal weekly work time of the worker is established substantially less than an equivalent worker employed on a full-time labour contract, such contract is a part-time labour contract. Part time labour contract is the work which is made at most 2/3 of comparable work pursued in work place with full time contract. (By-law on Working Time Art. 6)

On the other hand comparable full-time worker is defined as followed: Comparable full-time worker is one employed full-time in the business for the same or a similar work. In case no such worker exists at the business, a worker employed on an indefinite-termed labour contract in the said line at a business with conforming conditions and undertaking the same or a similar work is taken into consideration.

There is no definition on part-time employee and comparable full-time employee in related legislation in terms of contractual personnel employed in public sector.

59. Is equal treatment between part-time workers and comparable full-time workers ensured as regards employment conditions?

Yes, the following rules have been set to adjust this area:

The employer can not treat part-time worker against full-time worker and definite-term worker against indefinite-term worker differently unless on founded reasons. (Article 5/2)

The worker employed on a part-time labour contract can not be subjected to any procedure different than a full-time equivalent worker merely on the grounds that his/her labour contract is a part-time one, unless a reason justifying such discrimination exists.(Art.13/2)

Divisible benefits of the part-time worker pertaining to wage and money are paid in proportion to the employment time compared to the full-time equivalent worker. (Art.13/3)

The wages are defined by the principle of pro rata temporis in terms of contractual personnel employed in public sector. (No. 399 Decree Law)

60. Are there any measures in order to promote part-time work?

There is no such a measure.

61. Are obstacles which may limit the opportunities for part-time work identified, reviewed and, where appropriate, eliminated?

There is no such obstacle.

62. Does a worker's refusal to transfer from full-time to part-time and vice versa constitute a valid reason for termination of his/her employment?

The employer can make a fundamental change in the working conditions occurring by means of the labour contract or personnel regulations annexed to the labour contract and similar sources or business applications only by notifying the worker in writing thereof. Changes that are not made in this manner and not accepted by the worker in writing within six business days do not bind the worker. If the worker does not accept the proposal for change within such period, the employer may terminate the labour contract by explaining in writing that the change is based on a valid reason or that he/she has another valid reason for termination and by observing the notification period. In this case, the worker may institute a lawsuit under the provisions of Articles 17 to 21.(Art.22/1)

63. Do employers give, as far as possible, consideration to measures facilitating access to and quality of part-time work?

The requests of workers to pass from part-time to full-time or from full-time to part-time employment when there are vacant positions matching their qualifications are considered by the employer and vacant positions are announced in due time.

64. Are employers obliged to inform part-time workers on full-time employment opportunities?

The requests of workers to pass from part-time to full-time or from full-time to part-time employment when there are vacant positions matching

their qualifications are considered by the employer and vacant positions are announced in due time.

65. Are employers obliged to inform workers' representative bodies about part-time work in the undertaking?

There is no specific provision in that issue.

e) Directive 96/71/EC (posting of workers)

Not applicable.

66. Are there national rules concerning the working conditions applicable to workers posted in your country by an undertaking established in another Member State in the framework of a transnational provision of services?

No.

67. **Is there any definition of the term "posted worker"? Please describe**.

No.

68. Does your legislation provide that certain minimum requirements regarding conditions of employment apply to the workers posted in your country, independently of the law applicable to their employment relationships? Please describe (i.e. minimum rates of pay, maximum working hours, minimum rest periods, minimum paid annual holidays, health and safety at work)?

No.

69. Are there any derogations to the above?

No.

70. Does your country make use of any of the options provided for in Article 3, paragraphs 8, 9 and 10 of the directive?

No.

71. Can collective agreements in your country be declared universally applicable (in particular as regards activities set out in the Directive's Annex)?

No.

72. Does your legislation provide for the designation of liaison office(s) to ensure the cooperation between the national authorities responsible for the monitoring of conditions of employment of posted workers?

No.

73. Have any measures been taken to ensure that information on conditions of employment is made generally available?

No.

74. Does your legislation provide for the possibility that posted workers, who are or were posted in your country, institute judicial proceedings there?

No.

f) Directive 80/987 as amended by 2002/74/EC (employer insolvency)

75. Are there any provisions in your country ensuring a minimum protection for employees in the event of the insolvency of their employer?

These directives have been transposed to Turkish Labour Law through Article 33 of Labour Law and By-law on Wage Guarantee Fund. A separate Wage Guarantee Fund is established under Unemployment Insurance Fund to meet the last three monthly wage receivables of workers arising out of labour relation, effective for the cases where the employer becomes unable to make payments due to declaration of composition of debts, the employer receiving an instrument of incapability or going bankrupt.

76. **How is the term "employer's insolvency" defined in this context?**

Employer Insolvency;

1- The employer becomes unable to make payments due to declaration of composition of debts or
2- The employer receiving an instrument of incapability or
3- Going bankrupt

Declaration of composition of debts: Employer gives a plan to court which include how to pay his debt, how many percent of debt and when.
If this plan is accepted by demander the employer can pay. Moreover employer can use cancellation of assets in order to pay up.

Receiving an instrument of incapability: A paper which indicates that employer assets are insufficient to pay depts. It is given by an authorized body.

Bankruptcy: Opening of collective proceedings based on employer insolvency of employer and involving the partial or total divestment of the employer assets and the appointment of a liquidator.

77. Is there any guarantee institution liable to pay outstanding claims resulting from employment relationships? Does its organization, operation and financing comply with principles ensuring its independence and efficiency (Article 5)?

Wage Guarantee Fund has been established in order to make the payments provided by Article 33 of Labour Law No: 4857.

The Fund shall be operated and managed within the scope of the Unemployment Insurance Fund and within the framework of the decisions of the Board of Administration. (Art. 5 of By-law on Wage Guarantee Fund)

78. Does the aforementioned institution guarantee the payment of employees' outstanding claims resulting from their employment relationships including severance pay? For which period? Please describe.

The Wage Guarantee Fund guarantees only the Net monthly wages of the last three months that should paid to the worker. Severance pay is not included.

79. **Are there any limits to the liability of the guarantee institution**?

A worker may benefit from the Wage Guarantee Fund only once in connection with his employment relation with the same employer. The responsibility of the fund is limited with its resources.

80. Is there any rule providing that, when an undertaking with activities in at least two Member States is in a state of insolvency, the responsible guarantee institution is the one in the Member State where the workers concerned work or habitually work? Are there any arrangements concerning cooperation of the national institutions in such cases?

Not applicable

g) Directive 91/383/EEC (health and safety in fixed term and temporary employment)

81. Does your legislation ensure that workers with fixed-term or temporary employment relationships enjoy the same level of protection as other workers in the same workplace?

Yes it does. To provide the harmonization with the EU directives By-law on Occupational Health and Safety working with a fixed duration

employment relationship or a temporary employment relationship has been adopted. According to this regulation workers employed with a temporary or a fixed-duration employment contract, as regards their safety and health, get the same level of protection as that of other workers in work place.

82. Does your legislation require that the user undertaking provides information to the aforementioned workers, before they taking up any activity, on risks regarding, in particular;
- special qualifications/skills or medical surveillance require?
- any increased specific risks due to the job?

Yes. Article 5 of the above mentioned By-law envisages provision of information on these issues.

83. Does your legislation require the provision of sufficient and appropriate training taking account of the job and the workers' experience/skills?

Yes it does. Without prejudice to Article 12 of By-law on Occupational Health and Safety, employer shall ensure that workers with an employment contracts as referred to in Article 2 of this regulation receive sufficient training appropriate to the particular characteristics of the job, by taking into account their qualifications and experience. (Article 6 of the regulation)

When necessary, in-service-training is given according to the necessities of the service in terms of contractual personnel employed in public sector.

84. Does your legislation prohibit the use of the aforementioned workers for certain works? If not, does it ensure the provision of appropriate special medical surveillance?

Without prejudice to Article 14 of Regulation on Occupational Health and Safety, the medical surveillances to be done shall be complied with the following provisions:
a) Employer shall ensure that workers to be employed with the employment contracts as referred to in Article 2 of this Regulation who are used for work which would be dangerous to their safety or health and requires special medical surveillance, are provided with appropriate special medical surveillance.
b) Special medical surveillance referred to in paragraph (a), if necessary, extend beyond the end of employment contract of the worker concerned. (Art 7)

85. Does your legislation require that "protection and prevention services at work" are informed of the assignment of workers with fixed-term and temporary employment relationships?

Yes it does. According to Article 8 of the before mentioned regulation necessary works shall be done to ensure that workers or persons/institutions from outside designated, in accordance with Article 7 of Regulation on Occupational Health and Safety, to carry out protection and prevention Services related to health and safety are informed of the workers to be employed with an employment contract as referred to in Article 2 of this Regulation, and the health and safety of the workers in question together with other workers are provided.

86. Does your legislation require that the user undertaking provides information to the temporary work agency, before temporary workers take up any activity, on – inter alia-
-occupational qualifications/skills required
- specific features of the job?

Temporary employment with three pillars, namely worker, temporary employment agency and user undertaking is not regulated in our labour legislation. In fact temporary employment agencies in this sense do not exist at all. However; what is generally called “posting of workers” in other legislations is named as “temporary labour relation” without transnational dimension, in Article 7 of the labour law.
In the before mentioned regulation this issue is regulated in Article 9 accordingly, a) before workers to be employed with a temporary employment relationship as referred to in Article 2 (b) of this Regulation are supplied, the employer, who will employ the worker, shall specify to the employer who will transfer the worker, concerning the occupational qualifications required and the specific features of the job to be filled; b) The employer who will transfer the worker shall bring all these facts to the attention of the workers concerned.

87. Does your legislation require that the temporary work agency transmits this information to the workers concerned?

As it has been answered for the question 86 the employer who will transfer the worker shall bring all these facts to the attention of the workers concerned.

88. Does your legislation provide for the responsibility of the user undertaking as regards the health and safety-related working conditions during the period of the assignment?

According to the Article 10 of the before mentioned regulation together with the employer who transfers the worker;

a) The user undertaking is responsible for the duration of the assignment for the conditions governing performance of the work.

b) for the application of point (a), the conditions governing the performance of the work shall be limited to those connected with safety, hygiene and health at work.

3 Information and consultation directives

- **Collective redundancies (98/59/EC)**
- **Transfer of undertakings (2001/23/EC)**
- **European Works Council (94/45/EC)**
- **Framework for informing and consulting employees (2002/14/EC)**
- **Employees' involvement in the European Company (2001/86/EC)**
- **Employees' involvement in the European Co-operative Society (2003/72/EC)**

General questions

89. To what extent do you consider that your legislation is compatible with the aforementioned EU directives? Please describe per directive.

There is no regulation for 94/45/EC, 2002/14/EC, 2001/86/EC and 2003/72/EC in our legislation. There are regulations concerning issues covered by 98/59/EC, 2001/23/EC in our legislation although some incompatibilities exist.

90. Which are the national laws which regulate the issues covered by the aforementioned directives? Please describe per directive.

98/59/EC: Labour Law
2001/23/EC: Labour Law, Collective Agreements, Strikes and Lockouts Law, Law on Privatizations (4046)

91. Is there any preparation/consideration concerning eventual modifications of the pertinent national laws of your country? Please describe per directive.

Technical evaluations are still continuing.

92. Does your country take any measures in order to improve administrative capacity (e.g. with regard to labour inspectors, judges etc.)? Please describe.

Administrative capacity has being improved by EU funded projects and MATRA projects.

There are 603 inspectors, 326 of which are responsible for inspection of administrative & social aspects (labour relations), and 277 are responsible for inspections on occupational health & safety (technical inspections). Moreover the procedure is initiated for the appointment of further 100 assistant labour inspectors.

The Ministry of Justice has maintained the training programme such as mentioned above in order to improve capacity of the judiciary in the subject of the discrimination. Besides, the Ministry of Justice plans to increase the number of judges and prosecutors and to organise a training programme in order to the effectiveness of judiciary on this subject.

Specific questions

a) Collective redundancies (98/59/EC)

93. Which is the definition of the term "collective redundancies"?

The dismissal of the following numbers of workers under Article 17*of the Labour Law on the same date or different dates within the same month is considered as collective redundancies:

a. At least 10 workers, if 20 to 100 workers are employed,
b. At least ten percent of workers, if 101 to 300 workers are employed, and
c. At least 30 workers, if more than 301 workers are employed.

If dismissal is made based on the qualification of works in the dismissal of workers employed in seasonal and campaign works, provisions regarding mass dismissal do not apply. (Article 29 of the Labour Law)

* Workers under Article 17 are employed with indefinite-termed labour contracts**.**

94. Does your legislation provide for a procedure aiming at the information and consultation of the workers' representatives in case of collective redundancies?

Our legislation provides a procedure for informing and consulting of the shop stewards in case of collective redundancies. When the employer intends to dismiss workers in mass due to economic, technologic, structural and similar enterprise, business or work requirements, he/she notifies to this in writing at least thirty days in advance:

- shop stewards
- Respective Regional Directorate
- Turkish Employment Agency

This notification to be made should include information on the reasons of worker dismissal, the number and group of workers who will be affected and the period of time that the dismissal procedures will take place in.

In case the business is completely closed and its activities are finally and continuously ceased, the employer is only obliged to notify the situation to the respective regional directorate and Turkish Employment Agency at least thirty days in advance and to announce it at the business. (Article 29 of the Labour Law)

95. Does your legislation require from an employer, where he/she is contemplating collective redundancies, to consult the workers' representatives in good time and with a view to reaching an agreement, in

order to avoid or reduce the number of workers affected and to mitigate the negative consequences?

In the negotiations to be made between the shop stewards and the employer, the issues of prevention of mass dismissal or decreasing the number of workers to be dismissed or minimizing the negative effects of dismissal on the workers are discussed. A document indicating that the meeting was held is prepared at the end of negotiations. (Article 29 of the Labour Law)

96. Is the employer obliged to inform the workers' representatives on a number of relevant issues (e.g. on the reasons, number of workers employed and affected, period, criteria of the redundancies, etc.)? Is he/she also obliged to transmit this information to the competent public authority?

When the employer contemplates collective redundancies, he/she is obliged to inform the shop stewards in writing at least thirty days in advance. This notification to be made should include information:

- on the reasons of worker dismissal,
- the number and group of workers who will be affected and
- the period of time that the dismissal procedures will take place in.

The employer is obliged to inform also the Respective Regional Directorate and Turkish Employment Agency in writing at least thirty days in advance. The notification should include the same information mentioned above. (Article 29 of the Labour Law)

97. Does your legislation require from the employer to notify to the competent public authority information on projected collective redundancies? Is he/she also obliged to transmit this information to the workers' representatives?

When the employer contemplates collective redundancies, he/she is obliged to notify this to the respective regional directorate and Turkish Employment Agency in writing at least thirty days in advance. As mentioned above in the answer of question 96, the same notification shall be made to shop stewards. (Article 29 of the Labour Law)

98. Does your legislation provide that the projected collective redundancies cannot take effect earlier than 30 days from the aforementioned notification?

Notices of termination become effective thirty days after the notification of regional directorate by the employer of his/her intention of mass dismissal. (Article 29 of the Labour Law)

99. Has a "competent public authority" been designated in your country? Please describe.

Respective Regional Directorate and Turkish Employment Agency has been designated as competent public authority.

100. How are the "workers' representatives" designated in the above context? Please describe.

There are shop stewards, not workers' representatives in Turkey.

A trade union, whose competence to conclude the collective labour agreement is certified, shall appoint shop stewards from among its members at the establishment in the following manner, and shall provide the names of such union representatives to the employer within 15 days: one shop steward, if the number of workers in the establishment does not exceed 50; not more than two, if the number of workers is between 51 and 100; not more than three, if the number of workers is between 101 and 500; not more than four, if the number of workers is between 501 and 1,000; not more than six, if the number of workers is between 1,001 and 2,000; and, not more than eight, if the number of workers exceeds 2,000. One of the above representatives or shop stewards may be designated as chief representative or shop steward. (Article 34 of the Law on Trade Unions, No. 2821)

The functions and the duties of shop and chief stewards, on condition that they are limited only to the establishment, shall be: to take notice of workers' requests and the handling of grievances; to promote and maintain co-operation, harmony at work and peaceful relations between workers and employers; to protect the rights and interests of the workers; to assist and supervise the application of working conditions provided for in labour legislation and collective labour agreements. The functions of shop stewards shall continue as long as the competence of the trade union is valid. Shop stewards shall carry out their functions and duties on condition that their own work and the work discipline at the establishment are not hindered. (Article 35 of the Law on Trade Unions, No. 2821)

b) Transfer of undertakings (2001/23/EC)

101. Does your legislation provide for protection of employees in the event of a change of employer?

Our legislation provides for protection of employees in the event of a change of employer by the Labour Law No.4857 and Collective Agreements, Strikes and Lockouts No. 2822.

Civil servants and contractual civil servants employing in privatized organizations have been transferred to other institutions by the Presidency of State Personnel. These people continue to receive salary that they received in privatized organized. In addition, all sort of financial and social rights are provided for them in the period from leaving from work to transferring to another institution by Privatization Fund. (Art. 22 of Law on Privatizations)

102. Are all types of undertakings are covered, whether they are public or private and whether or not they are operating for gain?

In terms of the scope of the Labour Law, there is no such a distinction of undertakings public or private or operating for gain or not.

103. Is there any exclusion to such coverage?

The provisions of the Labour Law shall not apply for the below specified businesses and business relations;

a. Sea and air transport businesses,
b. Businesses or enterprises carrying out agricultural and forestry works and employing less than 50 (including 50) workers,
c. All building works related with agriculture within the limits of family economy,
d. Houses and businesses where handicrafts are performed among the members of a family and relatives up to 3rd grade (including 3rd grade) without participation of external persons,
e. Domestic services,
f. Apprentices, provided that the provisions of occupational health and safety are reserved,
g. Sportspeople,
h. Persons being rehabilitated,
i. Businesses where three persons pursuant to the definition given in Article 2 of Law 507 on Tradesmen and Craftsmen.

However;

a. Loading and unloading businesses from ships to shore and from shore to ships at the landing stages or ports and quays,
b. Businesses performed at all ground facilities of aviation,
c. Works performed at the workshops and factories where agricultural arts and agricultural tools, machinery and parts are produced,

d. Construction works performed at agricultural enterprises,
e. Works performed at parks and gardens open to public use or annexed to the business,
f. Works related with sea products producers working at seas and not covered by Maritime Labour Law and not considered as agricultural works,

are subject to the provisions of this Law. (Article 4 of the Labour Law)

104. Does your legislation provide for rules safeguarding employees' rights arising from an employment relationship in the event of a change of employer (Article 3)?

Yes, it does. When the business or a part thereof is transferred to another person based on a legal procedure, the labour contracts effective in the business or a part thereof on the date of transfer are transferred to the transferee with all rights and liabilities. The transferee employer is obliged to proceed according to the date of work commencement of the worker with the transferor employer with respect to rights taking the service duration of the worker as a basis.

Transferor or transferee employer can not terminate the labour contract merely on the grounds of the transfer of the business or a part thereof and the transfer does not constitute a justified ground for termination on the part of the worker. (Article 6 of the Labour Law)

Civil servants and contractual civil servants employing in privatized organizations have been transferred to other institutions by the Presidency of State Personnel. These people continue to receive salary that they received in privatized organized. In addition, all sort of financial and social rights are provided for them in the period from leaving from work to transferring to another institution by Privatization Fund. (Art. 22 of Law on Privatization)

105. Are all rights and obligations arising from the employment contract existing on the date of the transfer automatically transferred to the new employer ("transferee")?

Yes, they are. When the business or a part thereof is transferred to another person based on a legal procedure, the labour contracts effective in the business or a part thereof on the date of transfer are transferred to the transferee with all rights and liabilities.

In case of transfer pursuant to the above provisions, the transferor and transferee employers are jointly liable for the debts incurred prior to the transfer and have to be settled on the date of transfer. However, the responsibility of transferor employer for such liabilities is limited to two years from the date of transfer.

In case of termination by way of merging or participation or type modification of corporate personality, the provisions for joint liability are not applied.

The above provisions do not apply for transfer of the business or a part thereof to another person due to liquidation of assets as a result of bankruptcy. (Article 6 of the Labour Law)

Civil servants and contractual civil servants employing in privatized organizations have been transferred to other institutions by the Presidency of State Personnel. These people continue to receive salary that they received in privatized organized. In addition, all sort of financial and social rights are provided for them in the period from leaving from work to transferring to another institution by Privatization Fund. (Art. 22 of Law on Privatization)

106. Is the transferee obliged to continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor (until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement)?

A collective labour agreement shall not cease to because there is a change of employer in the establishments to which the agreement applies. (Article 8 of Law on the Collective Labour Agreement, Strike and Lock out**)**

107. Can transfer, in itself, constitute sufficient ground for dismissing an employee (either by the transferor or by the transferee)?

No, it can not. Transferor or transferee employer can not terminate the labour contract merely on the grounds of the transfer of the business or a part thereof and the transfer does not constitute a justified ground for termination on the part of the worker. The termination rights of transferor or transferee employer necessitated by economic and technologic reasons or change of work organization or the immediate termination rights of workers and employers based on justified reasons are reserved. (Article 6 of the Labour Law)

Any employer who terminates the indefinite-termed labour contract of a worker with at least six months of service at a business employing thirty or more workers has to ground the termination on a valid reason arising **out of the** qualification or behaviors of the worker or the requirements of the enterprise, business or work. (Article 18 of the Labour Law)

In case the employer does not assert a valid reason or the court or special arbitrator decides that the asserted reason is not valid and the termination is decided to be ineffective, the employer is obliged to employ the worker within one month. If the employer does not employ the worker within one month upon his/her application, the employer becomes liable to pay an indemnity equal to minimum four and maximum eight months' wage to the worker. When the court or special arbitrator decides that the

termination is invalid, they also determine the amount of indemnity payable in case the worker is not employed.

The worker is paid the wages and other benefits that have accrued during maximum four months for the period that he/she has not been employed until the finalization of award.

If the worker is employed, the wage and seniority indemnity paid in advance for the notification period is deducted from the payment to be made under the provisions of the above paragraph. If the worker who is to the notification period is not paid in advance, the amount of wage pertaining to such periods is paid separately.

The worker is obliged to apply to the employer for starting work within ten business days from the service of the finalized court award or special arbitrator decision. If the worker does not apply within such period, termination by the employer is considered a valid termination and the employer is responsible only for the legal consequences thereof.

The provisions of first, second and third paragraphs of this Article can not be amended through contracts; contradicting contract provisions are ineffective. (Article 21 of the Labour Law)

108. Is the status and functions of the employees' representatives preserved in the event of a change of employer and, if yes, under which conditions? Is the protection of the employees' representatives ensured, where their term of office expires as a result of the transfer?

There are shop stewards, not employees' representatives in Turkey. The functions of shop stewards shall continue as long as the competence of the trade union is valid. (Article 35 of the Law on Trade Unions, No. 2821) A collective labour agreement shall not cease to in case a change of employer in the establishments to which the agreement applies. (Article 8 of Law on the Collective Labour Agreement, Strike and Lock out)

109. Does your legislation provide for information and consultation of employees' representatives in the event of a change of employer?

There is no directly regulation for information and consultation of employees' representatives in the event of a change of employer. However, there is a regulation for change in working conditions and termination of labour contract. The employer can make a fundamental change in the working conditions occurring by means of the labour contract or personnel regulations annexed to the labour contract and similar sources or business applications only by notifying the worker in writing thereof. Changes that are not made in this manner and not accepted by the worker in writing within six business days do not bind the worker. If the worker does not accept the proposal for change within such period, the employer may terminate the labour contract by explaining in writing that the change is based on a valid reason or that he/she has

another valid reason for termination and by observing the notification period. (Article 22 of the Labour Law)

110. Who provides information on the transfer, to whom and at which time? Is the content of this information specified? Please describe.

There is no provision which ensures this responsibility in Labour Law.

State Personnel Presidency makes the appointment proposal to the institution including information such as scale, degree etc., which is the new one the employee will be transferred to,

111. Are employees' representatives consulted, by whom and at which time? Which are the content and purpose of such consultation?

Not applicable

112. How are the "workers' representatives" designated in the above context? Please describe.

There are shop stewards, not workers' representatives in Turkey.

A trade union, whose competence to conclude the collective labour agreement is certified, shall appoint shop stewards from among its members at the establishment in the following manner, and shall provide the names of such union representatives to the employer within 15 days: one shop steward, if the number of workers in the establishment does not exceed 50; not more than two, if the number of workers is between 51 and 100; not more than three, if the number of workers is between 101 and 500; not more than four, if the number of workers is between 501 and 1,000; not more than six, if the number of workers is between 1,001 and 2,000; and, not more than eight, if the number of workers exceeds 2,000. One of the above representatives or shop stewards may be designated as chief representative or shop steward. (Article 34 of the Law on Trade Unions, No. 2821)

The functions and the duties of shop and chief stewards, on condition that they are limited only to the establishment, shall be: to take notice of workers' requests and the handling of grievances; to promote and maintain co-operation, harmony at work and peaceful relations between workers and employers; to protect the rights and interests of the workers; to assist and supervise the application of working conditions provided for in labour legislation and collective labour agreements. The functions of shop stewards shall continue as long as the competence of the trade union is valid. Shop stewards shall carry out their functions and duties on

condition that their own work and the work discipline at the establishment are not hindered. (Article 35 of the Law on Trade Unions, No. 2821)

a) European Works Council (94/45/EC)

Not Applicable.

113. Is there any national legislation ensuring information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings in accordance with Article 1 of the Directive?

No.

114. Does your national legislation provide for definitions of the terms contained in Articles 2 and 3 of the Directive?

No.

115. Does your national legislation provide for the designation of a special negotiating body in accordance with Articles 4, 5 and 6 of the Directive?

No.

116. Does your national legislation provide for the subsidiary requirements laid down in Article 7 and the Annex of the Directive?

No.

117. Does your national legislation provide for the necessary rules regarding confidential information (Article 8), transmission of information to the workforce (Annex), and the requirement of co-operation (Article 9 of the Directive)?

No.

118. Please describe the national rules in force regarding the method to be used for the election or appointment of the "employees' representatives" in the special negotiating body and in the European works council (cf. Articles 1, 5, 6 and Annex)

No.

119. Does your national legislation provide for rules concerning protection and guarantees to employees' representatives (Article 10)?

No.

120. Does your national legislation provide for rules on jurisdiction/compliance (Article 11)?

No.

121. Does your national legislation provide for rules on possible conflicts of laws (Article 3)?

No.

b) Framework for informing and consulting employees (2002/14/EC)

Not Applicable

122. Is there any national legislation ensuring information and consultation of employees in undertakings or establishments in your country, in accordance with Article 1 of the Directive?

No.

123. Does your national legislation provide for definitions of the terms contained in Article 2 of the Directive?

No.

124. To which undertakings or establishments does your national legislation apply (Article 3)? Are there any derogations?

No.

125. Which are the practical arrangements for information and consultation of employees in undertakings or establishments in your country, in particular as regards content, timing, purpose etc. (Article 4 of the Directive)?

No.

126. Does your national legislation provide for the necessary rules regarding confidential information (Article 6) and the requirement of co-operation (Article 1 of the Directive)?

No.

127. Does your national legislation provide for rules concerning protection and guarantees to employees' representatives (Article 7)?

No.

128. Does your national legislation provide for rules on protection of rights/compliance (Article 8)?

No.

c) Employees' involvement in the European Company (2001/86/EC)

Not Applicable

129. Is there any national legislation ensuring involvement of employees in the affairs of European companies (SE), in accordance with Article 1 of the Directive?

No.

130. Does your national legislation provide for definitions of the terms contained in Article 2 of the Directive?

No.

131. Does your national legislation provide for the designation of a special negotiating body in accordance with Articles 3, 5 and 6 of the Directive?

No.

132. Does your national legislation provide for rules on the content of the agreement concerning arrangements on involvement of employees within the SE (Article 4)?

No.

133. Does your national legislation provide for the standard rules laid down in Article 7 and the Annex of the Directive?

No.

134. Does your national legislation provide for rules regarding confidential information (Article 8) and the requirement of co-operation (Article 9 of the Directive)?

No.

135. Does your national legislation provide for rules concerning protection and guarantees to employees' representatives (Article 10)?

No.

136. Does your national legislation provide for rules on jurisdiction/compliance (Article 12)?

No.

d) Employees' involvement in the European Co-operative Society (2003/72/EC)

Not Applicable

137. Is there any national legislation ensuring involvement of employees in the affairs of European cooperative societies (SCE), in accordance with Article 1 of the Directive?

No.

138. Does your national legislation provide for definitions of the terms contained in Article 2 of the Directive?

No.

139. Does your national legislation provide for the designation of a special negotiating body in accordance with Articles 3, 5 and 6 of the Directive?

No.

140. Does your national legislation provide for rules applicable to SCEs established by natural persons (Article 8)?

No.

141. Does your national legislation provide for rules concerning participation of employees in general meetings (Article 9)?

No.

142. Does your national legislation provide for rules on the content of the agreement concerning arrangements on involvement of employees within the SCE (Article 4)?

No.

143. Does your national legislation provide for the standard rules laid down in Article 7 and the Annex of the Directive?

No.

144. Does your national legislation provide for rules regarding confidential information (Article 10) and the requirement of co-operation (Article 11 of the Directive)?

No.

145. Does your national legislation provide for rules concerning protection and guarantees to employees' representatives (Article 12)?

No.

146. Does your national legislation provide for rules on jurisdiction/compliance (Article 14)?

No.

(5) Social Dialogue

- **When will the draft revised law on trade unions be adopted?**

There are plans to make amendments in the Trade Unions Law No.2821. Technical evaluations together with the social partners are continuing. It is not possible at this stage to give a date for the prospective amendments.

- **Will it lower the double threshold allowing trade unions to sign a collective agreement?**

This issue will be made clear once the technical evaluations referred to above are completed. The Government is working on the issue in close cooperation with social partners.

- **Will it abolish the expensive notaries' fees prior to affiliate oneself to trade unions?**

This issue will be made clear once the technical evaluations referred to above are completed.

- **Will the new pending law on public administration allow all service servants to become members of trade unions?**

Although a great majority of the civil servants enjoy the right to join the trade unions, it is not yet possible for all of the civil servants to become member thereof according to our legislation in force. However, it is intended to extend the scope of the existing legislation in this area, which is the Law on Civil Servants' Unions. Evaluations, together with the

social partners, on possible amendments to be made in this Law are continuing.

- **How do you plan to tackle the under representation of women within Trade unions?**

The unionisation rates for women and men are 58.90 % and 57.27% respectively. For that reason, there is no problem with regard to the under representation of women.

- **Do you plan to facilitate the right of strike? and to put an end to the 2 months suspension for security reason?**

The Government has plans to make amendments in the Collective Labour Agreements, Strike and Lock-out Law No.2822. However, it is not possible at this stage to give information about the possible content of these amendments, since the evaluations on the issue have not been completed yet.

- **When will the draft law reshaping the composition of the economic and social committee with an increase of social partners' representatives be adopted?**

Technical evaluations towards drafting legislation are continuing.

- **Do you plan to widen the information and consultation of workers beyond collective dismissals, dispute resolutions and disciplinary matters and health and safety?**

Yes, it is intended to widen the information and consultation of workers.

(6) Employment Policy

Progress in Joint Assessment Paper (JAP)

In accordance with the Accession Partnership provisions, Turkish Government and European Commission are together conducting an Employment Policy Study. Objective of this study is to observe the progress in adaptation of employment system so as to formulate an employment policy in line with the European Employment Strategy. The details about the ongoing process is as follows:

Employment Policy Study, initially, has a goal to come to an aggreement on Joint Assessment Paper that focused on basic issues encountered in the field of Employment.

Joint Assessment Paper (JAP) for Turkey is being prepared by an expert team determined by the European Commission and Turkey. The first technical meeting was held in Brussels on 12 February 2004. In that meeting, outlines along with the schedule as per the content of the JAP have been formulated and relevant institutions and organisations have officially been announced regarding the formal starting of the studies on JAP in Turkey.

Studies on Chapters 1 and 2 of the JAP have been completed within the framework of the action plan drafted in the meeting held on 12 February 2004 in Brussels. In Chapter 1, a brief introduction of the economic development in Turkey has been touched upon. In Chapter 2, structure of the population and labour force, latest developments in employment, structural changes, unregistered employment, unemployment issue, disadvantaged factors in labour force market and the improvements on wages were mentioned.

The expert team who has prepared the JAP gathered together for a meeting held on 26 November 2004 in Ankara with the participation of other relevant public institutions/organisations and social partners and evaluated the Chapters 1 and 2. Although the report was considered generally appropriate, it was emphasized that some variables as per unregistered employment, labour cost and statistical data must be taken into account. Having regard to the proposals offered in the meeting, drafting of the Chapters 1 and 2 has been completed and the studies on the preparation of the Chapter 3 has started which is to comprise the definition of the basic priorities of employment.

A second technical meeting was held on 1 June 2005 in Ankara with the participation of Turkish and other experts from European Commission. This has focused on the topics which must be addressed in the Chapter 3. Topics in question are as follows; public sector employment structure, active and passive labour force policies performed, implemented projects, regional incentive practices, provincial employment boards, provincial vocational education boards, education-employment relation and social dialogue. Furthermore, it was emphasized that Turkey's employment policies must be determined and put into practice in line with European Employment Strategy.

During the meeting, it was agreed to finalize the Chapters 1 and 2 of JAP by the end of June 2005 and to draw up Chapter 3 by the end of July 2005, so as to have the opinions and views of the all parties on the report by the end of October 2005.

A third technical meeting was held on 16 December 2005 in Ankara with Commission representatives. In this meeting some issues have been taken into consideration such as; access of women to the labour market, informal sector, situation of young unemployed people, social exclusion and social integration, formal education, vocational education and equal opportunity. Also the format of JAP has been revised and it was agreed to determine and place the employment policy oriented priorities in Chapter

4. Besides, some evaluation and assessment have been agreed to put into Chapter 4, namely, coordination between macro economic balance and employment policies, utilization of pre-accession instruments in connection with the development of human resources, development of administrative capacity.

In connection with the first three chapters prepared by Turkish party mentioned above, views and ideas of the Commission experts were received on 17 February 2006. In view of the feedbacks received, studies on the draft are continuing.

Studies on JAP are expected to be concluded by May 2006 and be submitted for the views of the parties.

Informal sector, undeclared employment

1) **What are in your view the reasons behind informal activities/undeclared work in Turkey?**

Direct and indirect reasons for the undeclared employment can be classified under four groups: 1) social and economic reasons are high unemployment rate, unequal distribution of income, poverty, high share of agricultural employment, high level of employment in SMEs, low education and training level of labour force; 2) legislative reasons are complex rules and regulations, inadequate enforcement of legislation, legislative gaps; 3) administrative reasons are the complexity of social security system, lack of coordination among related public institutions and inadequate quality and quantity of human resources in related institutions (e.g number of inspectors); 4) psychological reasons are negative attitude of some employers and lack of awareness of employees about their social security rights.

2) **What have been the policy responses and measures taken so far to address this?**

According to the latest Development Plan of Turkey covering 2001-2005 period, main objective related with the undeclared work was determined as the elimination of the reasons behind the undeclared work.

The followings are the main measures to prevent undeclared work;

A-Legal Arrangements

Law No. 4447

According Law;

- Employer has to notify business establishment and employee in advance.

- Employees have to notify himself/herself to the related social insurance authority.

- Employers have to document or prove, if his employee worked less than 30 days within one month period.

- Inspectors of other governmental institutions are empowered to detect and to inform undeclared workers while they are making their regular controls.

New Labour Law No.4857

The Law:

- Introduces flexible working models. These are; part time work, on call work, temporary work contract, compensatory work, fixed term work and short period work.

- Envisages the establishment of a wage guarantee fund under the Unemployment Insurance Fund.

- Introduces new arrangements for the termination rights of employer and employee with justified cause.

- Provides establishment of the Advisory Board.

Law No. 5198

Earnings taken as a basis for premium (SPEK) are amount that is determined irrespectively from wage and amount accepted as a basis for contribution cut.

Minimum limit of earnings taken as a basis for premium (SPEK) and minimum wage have been equalized so that excessive premium obligation of employer could have been diminished. Formerly, the difference between them was being paid by employer and this situation had directed employers to undeclared work.

B-Implementations

The following activities were realized by the Social Insurance Institution (SSK) in order to raise insured employee rate;

I-Interpretation and Awareness-Raising Activities

a) Distribution of Brochure, Leaflet and Signboards

Brochures were printed and distributed with the aim of generalizing the social insurance awareness. Also, signboards were prepared to inform insured employees about their social security rights and obligations and introduce the new web site of Social Insurance Institution (ssk.gov.tr). Furthermore, the information was set aside at the back of health card about rights of insured person and social benefit recipients.

b) TV Series and Programmes

TV series informing insured persons, retired persons and social benefit recipients about their rights and obligations were produced. It was 52 parts with 6 minutes each.

c) Press Conferences and Instructions

Provincial Directorates of Social Insurance Institution provide instructions for elementary education, high school students and drafted soldiers. Provincial Directorates also provides explanations to local press on the importance of social insurance subjects.

d) Internet (24 Hour open cyber insurance directorate) www.ssk.gov.tr

Via internet, questions of the insured related with social security have been replied. Access to the individual insurance records is much easier through the SSK's web site.

e) SSK Call Center

All services mentioned above can also be performed via phone.

II- Simplification of Bureaucracy

a) e-Declaration project

Employers can reach the following services through the e-declaration project:

- Declaration of employees that should be done each month by the employer could be made via internet without going to the SSK's Local Offices.
- Declaration of employees who have just started to work could also be made via internet without going to SSK's Local Offices.

b) Primary offices (first stop offices)

All the formalities which the enterprises are subject to, would be completed in one single service unit; SSK and Bağ-kur (Social Insurance Institution for Self Employed) memberships and the related services and

also ISKUR (Turkish Employment Agency) transactions started to be given to the enterprises by means of the service unit built in the organized industry region.

3) **What is your assessment of their efficiency?**

Most of the measures mentioned above have been introduced during the last two or three years. For this reason, it has not been possible to get all results to be able to evaluate the efficiency. However, cooperation with other Public Institutions has increased (e.g. Electronic Data Transfer transactions between Social Insurance Institution and General Directorate of Population and Citizenships started.) In addition, after the setting up of e-declaration project, approximately 96 % of insured persons and 72 % of employers have started to use this mechanism. Also re-designed web site of Social Insurance Institution is among the top ten most frequently visited web sites in Turkey. Moreover, TV series on above mentioned insurance information have a higher rating and through this programme many people have had the opportunity to learn their rights related with the social security.

4**) What are the priorities for the next future?**

Undeclared work of regular and casual employee will be considered as the main priority.

By this concept, first of all cooperation among public institutions particularly the Ministry of Finance and SSK will be developed. Secondly, electronic data transfer among related public institutions on the net will be established. Especially, social dialogue mechanism will be evolved and projects related with this subject will be supported like in the example of ILO Project called "Prevention of Undeclared Work through Social Dialogue in Two Provinces".

5) **Are there any new orientations envisaged? Which ones?**

- More Social Security Centers will be set up at local level.
- Insurance clerks are located in the provinciel officess of SSK. The number of clerks is 326 for 2005. To strengthen the capacity of insurance clerks for combating UW, the number of clerks will be increased to 3400 once the draft law for Social Security Reform is adopted.

- The technical infrastructure of declaration system will be strengthened. Through this system the employees will easily learn about his/her work, whether registered or not.

(7) Anti-discrimination

1. What legal provisions exist in your country to tackle discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation? Could you please provide copies, preferably with a translation?

Legal provisions exist in our country to tackle discrimination as follows;

THE CONSTITUTION OF THE REPUBLIC OF TURKEY

Article 10 - All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations.

Men and women have equal rights and the State is responsible to implement these rights.

No privilege shall be granted to any individual, family, group or class.

State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.

Article 48 - Everyone has the freedom to work and conclude contracts in the field of his/her choice. Establishment of private enterprises is free.

The State shall take measures to ensure that private enterprises operate in accordance with national economic requirements and social objectives and in conditions of security and stability.

Article 49 - Everyone has the right and duty to work.

The State shall take the necessary measures to raise the standard of living of workers, and to protect workers and the unemployed in order to improve the general conditions of labour, to promote labour, to create suitable economic conditions for prevention of unemployment and to secure labour peace.

Article 70 - Every Turkish citizen has the right to enter public service. No criteria other than the qualifications for the office concerned shall be taken into consideration for recruitment into public service.

TURKISH PENAL CODE No. 5237

Article 2 - The rules governing the enforcement of penalties and security measures shall be applied without any discrimination on grounds of sentenced prisoners' race, religion, religious sect, nationality, colour, sex, language, political or other ideas or opinions, philosophical beliefs, national or social origin, place of birth or economic or other social status and without granting privileges to anyone.

Article 122/1 - A person who by practicing discrimination on grounds of language, race, colour, gender, disability, political ideas philosophical beliefs, religion, sect and other reasons;

a) prevents the sale or transfer of personal property or real estate or the performance or enjoyment of a service or who makes the employment of a person contingent on one of the circumstances listed above,

b) withholds foodstuffs or refuses to provide a service supplied to the public,

c) prevents a person from carrying out an ordinary economic activity,

shall be sentenced to imprisonment for a term of six months to one year or judicial fine.

LAW ON THE ENFORCEMENT OF PENALTIES AND MEASURES, No. 5275

Article 2 - The rules governing the enforcement of penalties and security measures shall be applied without any discrimination on grounds of sentenced prisoners' race, religion, religious sect, nationality, colour, sex, language, political or other ideas or opinions, philosophical beliefs, national or social origin, place of birth or economic or other social status and without granting privileges to anyone.

LAW ON CIVIL SERVANTS No. 657

Article 7 - Civil servants can not be members of political parties; can not treat for the benefit or harm of any political party, person or group; can not discriminate anyone on the basis of language, race, sex, political thought, philosophical belief, religion or sect when performing their duties.

LAW ON DISABLED PEOPLE AND ON MAKING AMENDMENTS IN SOME LAW AND DECREE LAW No. 5378

Article 14 - In recruitment, no discriminative practices can be performed against the disabled people in any of the stages from the job selection, to application forms, selection process, technical evaluation, suggested working periods and conditions.

Working disabled people cannot be subjected to any different treatment than the other people with respect to their disability such that it could cause a result which is unfavourable for the disabled people.

It is obligatory that measures in the employment processes in order to reduce or eliminate the obstacles and difficulties that may be faced by the disabled people who work or who apply for a job are taken and the physical arrangements are done by the establishments and organizations with the relevant duty, authority and responsibility and by the work places. The employment of the disabled people, who are difficult to be integrated to the labour market because of their conditions of disability, is priory provided by means of sheltered workplaces.

LABOUR LAW No. 4857

Article 5 - No discrimination based on language, race, sex, political thought, philosophical belief, religion, sect and similar grounds can be made in the business relation.

The employer can not treat part-time worker against full-time worker and definite-term worker against indefinite-term worker differently unless on founded reasons.

The employer can not treat a worker differently in concluding the labour contract, establishing the conditions thereof, implementation and termination thereof due to sex or pregnancy, unless biological reasons or those pertaining to the work qualifications oblige.

A lower wage can not be decided for an equal or equivalent job on the grounds of sex.

Implementation of special protective provisions due to the sex of the worker does not justify the application of a lower wage.

In case of contradiction to the provisions of the above paragraph in the business relation or termination, the worker can demand the rights that he/she has been deprived of besides an appropriate indemnity equivalent up to four months' wage. Provisions of Article 31 of Law 2821 on Trade Unions are reserved.

Without prejudice to the provisions of Article 20, the worker is obliged to prove that the employer has contradicted to the provisions of the above paragraph. However, when the worker puts forward a situation strongly suggesting the probability of the existence of an infringement, the employer becomes obliged to prove that no such infringement exists.

2. **Please describe any legal provisions to tackle discrimination in the following areas: employment and occupation; vocational training, education; social protection; social advantages; access to goods and services, including housing**.

Employment and occupation

THE CONSTITUTION OF THE REPUBLIC OF TURKEY

Article 10 - All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations.

State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.

Article 70 - Every Turkish citizen has the right to enter public service. No criteria other than the qualifications for the office concerned shall be taken into consideration for recruitment into public service.

TURKISH PENAL CODE No. 5237

Article 122/1 - A person who by practicing discrimination on grounds of language, race, colour, gender, disability, political ideas, philosophical beliefs, religion, sect and other reasons;

a) prevents the sale or transfer of personal property or real estate or the performance or enjoyment of a service or who makes the employment of a person contingent on one of the circumstances listed above,

b) withholds foodstuffs or refuses to provide a service supplied to the public,

c) prevents a person from carrying out an ordinary economic activity,

shall be sentenced to imprisonment for a term of six months to one year or judicial fine.

LAW ON CIVIL SERVANTS No. 657

Article 7- Civil servants can not be members of political parties; can not treat for the benefit or harm of any political party, person or group; can not discriminate anyone on the basis of language, race, sex, political thought, philosophical belief, religion or sect when performing their duties.

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It is obligatory that measures in the employment processes in order to reduce or eliminate the obstacles and difficulties that may be faced by the disabled people who work or who apply for a job are taken and the physical arrangements are done by the establishments and organizations with the relevant duty, authority and responsibility and by the work

places. The employment of the disabled people, who are difficult to be integrated to the labour market because of their conditions of disability, is priorily provided by means of sheltered workplaces.

Education, Vocational Training,

THE CONSTITUTION OF THE REPUBLIC OF TURKEY

Article 42 - No one shall be deprived of the right of learning and education.
…
Primary education is compulsory for all citizens of both sexes and is free of charge in State schools.

BASIC LAW ON NATIONAL EDUCATION No. 1739

Article 4 - Education institutions are open to the use of everyone with out respecting discrimination based on language, race, sex and religion. No privileges should be granted to any person, any family and group in education.

LAW ON HIGHER EDUCATION No. 2547

Article 45 - Students attend to higher education institutions of State with an exam which conditions are defined by the Board of Higher Education.

- The basic principles of the Basic Law on National Education No. 1739 is also valid for Law on Vocational Training No.3308

- According to the Law on Vocational Training No. 3308 in order to benefit from vocational training and to be trained as apprentice, foreman and master, there are some technical conditions like age, achievement in exams and education.

- *Law On Civil Servants No. 657* is adjusting the in-service training of civil servants and it is aimed that the regulations made according to this Article provide equal opportunities to all staff by taking into consideration the priorities for civil servants in benefiting from in-service trainings.

- As for the foreign nationals, there exist certain legal precautions. According to *By-Law on the Education of the Children of Migrant Workers,* provincial educational directorates in case of application shall;

a) place the students, as far as possible, to a school / department / programme equivalent to the education they pursued in their countries and nearest school to their settlements,

b) provide students equal education and training opportunities provided to the Turkish students,
c) take necessary measures to teach Turkish to the students who cannot speak Turkish,

d) arrange courses for the students to learn their mother tongues,

e) provide Turkish language courses by means of informal education and "skill acquiring" courses by means of vocational training for migrant workers too.

According to same By-Law, the students are eligible to benefit the scholarship opportunities which are provided to the Turkish students.

- According to the Article 28 of *By-Law on Special Education Services of the Ministry of National Education,* it is the principle that the people in need of special education should have their secondary education in special education schools or other general, vocational and technical secondary schools by combining principle and in that way it is guaranteed that the students with disabilities may take education together with the others under same conditions and rights.

Social protection

THE CONSTITUTION OF THE REPUBLIC OF TURKEY

Article 56 - Everyone has the right to live in a healthy, balanced environment.
To ensure that everyone leads their lives in conditions of physical and mental health and to secure cooperation in terms of human and material resources through economy and increased productivity, the State shall regulate central planning and functioning of the health services.

Article 60- Everyone has the right to social security. The State shall take the necessary measures and establish the organisation for the provision of social security

- According to;
  - Law on Social Insurance No. 506 "people working with a service contract";
  - Law on Retirement Fund For Civil Servants No. 5434 "people working as civil servants";
  - Law on Bag-Kur No. 1479 (Social Insurance Institution for Craftsman, Artisans and Self-Employed) "the self-employed" are seen as statutory insured.

Social advantages

Article 10 - All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations.

Men and women have equal rights and the State is responsible to implement these rights.

No privilege shall be granted to any individual, family, group or class.

State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.

LAW ON CIVIL SERVANTS No. 657

Article 7- Civil servants cannot be members of political parties; can not treat for the benefit or harm of any political party, person or group; can not discriminate anyone on the basis of language, race, sex, political thought, philosophical belief, religion or sect when performing their duties.

- In terms of social advantages there are several institutions which provide social advantages (both local administrations and public institutions) and these institutions work according to the legislation by the principle of equality before the law. There is no provision in legislation attributed to direct or indirect discrimination in terms of social advantages.

Access to goods and services

TURKISH PENAL CODE No. 5237
Article 122/1 - A person who by practicing discrimination on grounds of language, race, colour, gender, disability, political ideas, philosophical beliefs, religion, sect and other reasons;

a) prevents the sale or transfer of personal property or real estate or the performance or enjoyment of a service or who makes the employment of a person contingent on one of the circumstances listed above,

b) withholds foodstuffs or refuses to provide a service supplied to the public,

c) prevents a person from carrying out an ordinary economic activity,

shall be sentenced to imprisonment for a term of six months to one year or judicial fine.

3. How is discrimination defined in your national legislation (give details, if applicable, of definitions of direct and indirect discrimination, harassment, instructions to discriminate and victimisation)?

In our national legislation, discrimination can be examined in the light of the Article 122 of the Turkish Penal Code. It is as follows:

"A person who, by practicing discrimination on grounds of language, race, colour, gender, disability, political ideas philosophical beliefs, religion, sect and other reasons;

a) prevents the sale or transfer of personal property or real estate or the performance or enjoyment of a service or who makes the employment of a person contingent on one of the circumstances listed above,

b) withholds foodstuffs or refuses to provide a service supplied to the public,

c) prevents a person from carrying out an ordinary economic activity,

shall be sentenced to imprisonment for a term of six months to one year or judicial fine."

In this way, the discrimination has been clearly inserted in TPC.

4. **What body or bodies exist to assist victims of racial (or other forms of) discrimination? What other tasks do these bodies have (for example providing reports and recommendations)? Please describe the status, resources and powers of any such bodies.**

The units that are responsible for combating discrimination and their legal statute, responsibilities and authorization are shown below:

HUMAN RIGHTS PRESIDENCY (The Department of Human Rights of Prime Ministry)

With the amendment made in the Law concerning the Prime Ministry organisation by the Law dated 12.04.2001 and no 4643, the Department of Human Rights was established within the Prime Ministry.

Being one of the main service units of the Prime Ministry, Human Rights Presidency is under the Deputy Undersecretary and the Undersecretary of the Prime Ministry. Human Rights Presidency's budget is in the Prime Ministry's budget.

The missions of the Department of Human Rights are regulated in the Article 17/A of the Law no 3056 regarding Prime Ministry organisation, by the Article 2 of the Law no 4643.

The missions of the Department of Human Rights are as follows:

- To be permanently in touch with both State and private authorities in charge of the issues related to the human rights and to provide the coordination between these organizations.

- To monitor the implementation of the regulations related with human rights, to evaluate the observation results, to remove failures met in the application and in the legislation and to coordinate the studies in order to conform the Turkish National Legislation with the supported international human rights documents and to make proposals on these issues.

- To monitor, to evaluate and to coordinate the application of the pre-service education, training and in-service human rights education programmes in the public association and organizations.

- To examine and to investigate the application of the human rights violation claims, to evaluate the research results and to coordinate the studies regarding the measures to be taken.

- To carry out the secretary service to the councils established related respectively with their missions under the coordination of Prime Ministry.

- To carry out the other related duties given by the authority.

Human Rights Presidency, in the scope of the above mentioned duties as prevention from the human rights violations, protection and improvement of human rights, works for the prevention from discrimination of all kinds and inspection of allegations violations of non-discrimination as well.

HUMAN RIGHTS PROVINCE AND DISTRICT BOARDS

Human Rights Province and District Boards were founded on 2nd November 2000 by the by-law published in the Official Gazette numbered 24218 and they were restructured by the by-law published in the official gazette numbered 25298. There are 931 human rights boards of which 850 are in districts and the 81 are in provinces.

The Human Rights Boards each of which has at least 15 members are composed of Professional Associations, NGO representatives, officials.

The secretariat services of the Board shall be carried out by the secretariats in the provinces and sub-provinces. Compulsory expenses shall be met by the governorships and sub-governorships.

The Province and District Boards shall have the following duties;

- To examine and investigate allegations of human rights violations,

- To examine and investigate the obstacles to the protection of human rights, the enjoyment of human rights and liberties, as well as the social, political and administrative reasons leading to violations of rights and to

recommend solutions to the Governorship and Sub-provincial Governorship,

- To conduct the necessary work in order to prevent all kinds of discrimination,

- To conduct the necessary work in order to ensure that the administration treats the citizens in a tolerant and polite manner in its practices,

The decisions of the board shall be taken up and finalised, in priority, by the relevant public bodies and institutions without delay.

THE CONSULTANCY BOARD OF HUMAN RIGHTS

The Consultancy Board of Human Rights which is established by the law 4643 is responsible for establishing communication between NGOs and the related government institutions and to act as a consultative body concerning human rights. The Consultancy Board is composed of the representatives of the related ministries or institutions, Professional organisations and the persons who have experiences, published material in the area of human rights. The head of the Consultancy Board is elected from within the members of the Board. The secretariat service of the Board is carried out by the Human Rights Presidency. The expenses are taken charged by the Prime Ministry.

In addition to the above mentioned duties, Board is responsible for acting as a consultative body to the Minister responsible for Human Rights and to the Supreme Board of Human Rights about human rights issues including all terms of discrimination and xenophobia.

5.	What courts or tribunals are able to hear discrimination cases?

In discrimination cases, judgements are rendered by a variety of courts, depending on the nature of the dispute: judiciary courts, administrative courts.

IN JUDICIARY COURTS:

The cases concerning the offence of discrimination which has been stipulated in Turkish Penal Code handle by the criminal court of peace.

The labour court has jurisdiction for cases derived from the Article 5 of the Labour Law No.4857.

The Court of Appeal makes re-examination of a case previously judged by a criminal court of peace or court of labour upon an objection. But, according to provisional Article 2 of the Law on Establishment of the Appeal Courts, the Courts of appeal shall be established by 1st of June 2007.

A decision of Court of Appeal on may be appealed to the Court of Cassation. The 9. Civil Chamber deals with the labour cases. The 2. Criminal Chamber deals with the criminal cases concerning the offence of discrimination.

IN ADMINISTRATIVE COURTS:

The annulment actions and/or full remedy actions concerning discrimination shall be resolved by the administrative courts.

However, according to the first paragraph of the Article 24 of Council of State Law, the Council of State shall be the first instance court in the annulment and full remedy actions brought against the following administrative acts and actions:

a) Decisions of the Council of Ministers,
b) Joint decrees relating to permanent secretaries, the Prime Ministry, Ministries and other public bodies and organizations,
c) Statutory instruments of the ministries and statutory instruments of public bodies or public professional organizations that apply in the entire country.

An objection might be brought to the regional administrative court located in the judicial region of the courts concerned against the decisions rendered by a single judge and the final decisions of the administrative given concerning disputes arising from acts of the governorship, district governorship, local administrative bodies and provincial administration of ministries and other public establishments and institutions concerning temporary appointment or disciplinary suspension of public servants, their allowances, leaves and residence provided them by the authorities.

Furthermore, an appeal might be brought to the Council of State against the judgments of the judicial divisions of the Council of State and administrative courts. Therefore, annulment actions and full remedy actions will be reviewed by the Council of State.

Time-limit for the objections or the appeal made against the decisions of administrative courts shall be thirty days from the day following the notification date.

In addition, when the Court of Cassation or the Council of State has given a final ruling on a case, a person who considers that his fundamental rights as defined in the European convention on Human rights have been violated, may institute proceedings within six months before the European Court of Human Rights.

6. How can individual victims of discrimination bring cases, and how are they expected to prove that discrimination has taken place?

- The victims of discrimination may bring an action according to the general rules of procedural laws: Criminal Procedure Law No. 5271, Civil Procedure Law No. 1086, Procedure of Administrative Justice Law No. 2577.

- In Turkish Judiciary System, poor people can benefit from judicial aid in any action.

- According to Article 5 of Labour Law No. 4857 when the worker puts forward a situation strongly suggesting the probability of the existence of an infringement, the employer becomes obliged to prove that no such infringement exists. On the other hand according to Article 20, the employer is obliged to prove that the termination is based on a valid reason
- According to the first paragraph of the Article 20 of Law on the Procedure of Administrative Justice, Law No.2577, the Council of State or administrative court shall carry out all examinations about the actions before them, of their own motion. The Courts might ask the parties and other persons and authorities to send documents they deem necessary and to present all kind of information within a determined period. The fulfilment of the decisions on these matters in due time by the relevant persons is compulsory.

7. Which organisations can speak for or on behalf of victims in discrimination cases?

In Turkish Legal System, legal persons might bring an action in order to protect their rights or the rights of their members in general. Moreover, the legal persons cannot sue the personal rights of the members. Therefore, an association cannot bring an action on behalf of their members. However, the trade unions or public servants' trade unions can sue and represent on behalf of their members according to the Article 32 of the Law on Trade Union No.2821 and the paragraph (f) of the Article 19 of the Law on Public Servant's Trade Unions No.4688.

8.	**What sanctions and remedies can be applied in discrimination cases?**

According to the Article 122 of Turkish Penal Code, offence of discrimination shall be sentenced to imprisonment for a term of six months to one year or judicial fine.

According to Article 125/C-ı of the Law on Civil Servants No. 657, sanction for any kind of discrimination on grounds of language, race, gender, political thought, philosophical belief, religion and sect in carrying out a duty has been defined as a decrease in wage.

According to Labour Law in the discrimination cases, employers are subject to fines.

According to the Article 12 of Law on the Procedure of Administrative Justice No.2577, the persons concerned may bring directly a full remedy action or a full remedy action together with an annulment action to the Council of State, administrative court against an administrative act that violates their rights due to discrimination. An annulment action is brought with the claim that the act is illegal due to a mistake made in one of the elements of competence, form, reason, subject and aim. They may also commence the annulment action first, and, upon a decision rendered in the annulment action, bring the full remedy action within the action time limits running from the notification of the decision rendered in the annulment action or from the notification of the higher court decision, if an application against this decision has been brought to a higher court. The full remedy action against the damage caused by the implementation of an administrative act may be brought within the action time limits running from the implementation of the act.

Full remedy actions brought by those whose personal rights have been directly affected by the administrative acts or actions. Under the Article 13 of the Law No. 2577, the persons whose rights have been violated by an administrative action must apply to the relevant administration for the rectification of the situation within a year from the notification or the date they learn the action by another way and in any case within five years from the action, before bringing a lawsuit. A suit may be brought within the action time limits running from the day following the notification of this decision, if the application is wholly or partly refused, and from the end of sixty-day period if no response is given within sixty days. In this case, the plaintiff may be demand material damages and moral damages.

If the implementation of an administrative act should result in damages which are difficult or impossible to compensate for, and if this act is clearly unlawful, the Council of State or administrative court may decide to stay the execution of the Law.

According to Labour Law in the discrimination cases, the worker can demand the rights that he/she has been deprived of besides an appropriate

indemnity equivalent up to four months' wage. And according to Article 21 of the same Law, in case of discriminative dismissal, the employer is obliged to employ the worker within one month. If the employer does not employ the worker within one month upon his/her application, the employer becomes liable to pay an indemnity equal to minimum four and maximum eight months' wage to the worker.

9. Please describe any awareness-raising or training activities that your authorities have implemented in this area.

HUMAN RIGHTS PRESIDENCY (THE DEPARTMENT OF HUMAN RIGHTS OF PRIME MINISTRY)

In 2004, Human Rights Presidency conducted a Project which was a joint initiative of the EU Commission and the Council of Europe. The name of the Project was; "Awareness raising on human rights and democratic principles". In the scope of the Project 8 roundtables with the Human Rights Province and District Boards, 7 roundtables with the civil society representatives are conducted. 200.000 brochures and 500.000 posters are published and disseminated. By this Project public is informed about basic human rights issues and the fight against discrimination.

In 15.06.2005 – 28.02.2006 a training Project is conducted by Human Rights Presidency in cooperation with the EU Commission addressed to Human Rights Province and District Boards. In the scope of the Project 17 roundtables are conducted in the regions. The techniques of communication, basic human rights issues and fight against discrimination are told to a group of 632 people who are chairmen, members and officials of the Boards.

In 2004, there were 110 applications in total of allegations of violation of non-discrimination to the Human Rights Presidency and to the Boards. These claims comprise 6.71 % of the total claims of violation of human rights. Therefore it was ranked as the 6th among the rights which were claimed to be violated.

In the first 10 months of the year 2005 there were 126 applications to the Boards and to the Presidency, as the claims of violation of non-discrimination. This comprises the 6.77 % of the total violation claims. It was ranked as the 5th among the rights which were claimed to be violated. The reason for why the application for these claims is not that the violation of non-discrimination is increased but the Boards became known by people in the several parts of the country because of the awareness raising activities. The Boards started to get more applications.

On the other hand, it was founded out that most of the applicants consider every different implementation as discrimination. Because of most of the applicants do not have sufficient knowledge about what discrimination really means, most of the complaints which do not have any relation to

discrimination enlist in the Boards' records as violation of non-discrimination.

The Human Rights Province and District Boards which are founded in 931 different province and district, carry out awareness raising activities such as conducting panels, seminars, meetings and publishing brochures about human rights and combating discrimination.

THE MINISTRY OF JUSTICE

Within the framework of the European Convention on Human Rights (ECHR) and the case law of European Court of Human Rights (ECtHR), The Ministry of Justice organized seminars on human rights for all of judges and public prosecutor who performing their duties in judicial system in close cooperation with EU and Coe in 2004. In those seminars it was also dealt with and studied the topic of "the prohibition of discrimination".

In total, 30 trainer judges and public prosecutors among those 225 trainers attended the two study visits to Strasbourg organized in collaboration with Council Europe in order to gain further and closer acquaintance to the Convention and the Court.

In addition, it has been organized the symposium in which judges and public prosecutors also attended by Bahcesehir University on "Superiority of Human Rights".

Than, 34 high level officials of the Ministry of Justice and judges-public prosecutors have made a study visit to European Court of Human Rights in Strasbourg.

Furthermore, in 2005, the Ministry of Justice organized regional seminars of human rights in Erzurum, Antalya, and İzmir.

In 2005, the Ministry of Justice organized "Seminars of the introduction of new Turkish Penal Code, Criminal Procedure Law and Law on Enforcement of Penalties and Measures" where new criminal system has been dealt with and discussed. All of judges - public prosecutors and judicial inspectors participated in those seminars.

Besides, in 2006, judges dealing with criminal cases and prosecutors also attended the evaluation seminars on new penal legislation organized by the Ministry of Justice.

MINISTRY OF LABOUR AND SOCIAL SECURITY

In the scope of Community Programme "Combating Discrimination" which is carried out by the coordination of MoLSS in Turkey, Seminar on "Combating Discrimination in EU and Reflections in Turkey" aiming at giving general information on combating discrimination, the current situation of the relevant legislation in EU and Turkey, implementations and problem areas was organised in Ankara on 11-12 October 2004 with the participation of representatives of European Commission, experts from member and candidate countries, departments of MoLSS, relevant public institutions, universities and representatives of social partners.

10. What measures is your administration taking or planning to take in order to improve administrative capacity (e.g. with regard to labour inspectors, judges etc.)?

The Ministry of Justice has maintained the training programme such as mentioned above in order to improve capacity of the judiciary in the subject of the discrimination. Besides, the Ministry of Justice plans to increase the number of judges and prosecutors and to organise a training programme in order to the effectiveness of judiciary on this subject.

In the Ministry of Labour and Social Security, there are 603 inspectors, 326 of which are responsible for inspection of administrative and social aspects (labour relations), and 277 of which are responsible for inspections on occupational health and safety (technical inspections). Moreover the procedure is initiated for the appointment of further 100 assistant labour inspectors.

(8) Social Protection

1. **What is the public-private mix in your country?**

Turkish pension system is predominantly based on a publicly managed mandatory pension system. The private pension system operates on a very limited base seperately from public pension schemes. The details are explained in the second question.

2. **What role do mandatory, occupational and individual pension schemes play for income security in old age (different pillars of the systems)?**

Turkey's mandatory social security system consists of three distinct institutions-Social Insurance Institution (SSK), Pension Fund (ES), and Bağ-Kur (BK)- covering different areas of the labour market. SSK covers both public and private sector workers excluding civil servants, while ES covers civil servants and BK covers the self-employed and farmers. The

Social Security Law (Law No.506) gave opportunity to institutions in the service sector such as banks, insurance companies, reinsurance companies, and chambers of commerce to set up their own funds which are commonly known as first-pillar substitute funds.

In old age, the pensioner receives the regular pension from the mandatory system. As of 2005, 2.998.054 SSK, 1.061.509 Retirement Fund and 982.803 Bağ-Kur pensioners withdraw pensions every month in the scope of mandatory pension schemes.

According to the available data, there are two mandatory second pillar-type schemes in which membership is mandatory, for the armed forces (Oyak) and for the employees of the State-owned coal mining enterprise TTK (Amele Birliği). These schemes operate under separate legislation and combine defined benefit and defined contribution elements. It is estimated that these schemes cover around 209,600 people.

The 3 rd pillar individual pension scheme was introduced in 2001 and is based on voluntarily basis. The system aims at presenting a long-term savings tool for the citizens to provide for a supplementary old-age income (in the form of either a lump-sum or life-time annuities) on top of the public pensions. According to the data as of 27 February 2006 the numbers of pension contracts within the system are 768.698 and the total portfolio value of pension mutual funds amounts to € 940 billion.

3. Do you have a minimum income guarantee for pensioners – what is the level, how do people receive it?

There is no minimum income guarantee for the whole population but, there is a minimum pension level for the pensioners.

The level is 481, 78 YTL for the year 2006 in SSK

For the ES pensioners, the minimum income guarantee is the lowest limit of pensions which is currently 615, 13 YTL. There are no special provisions for the allocation of lowest limit pension.

Bağ-Kur doesn't have a minimum income guarantee. However, Bağ-Kur arranges the contribution and pension levels according to the income steps of the insureds. The lowest income step which is the 1 st income step level, offers the lowest pension. But most of the Bağ-Kur pensioners gather around the 12 th income step. Minimum income for Bağ-kur self-employed in agriculture is 236, 72 YTL and for Bağ-Kur self-employed is 355,90 YTL.

In addition to these premium base payments, State provides cash benefits for old people who are over 65 and doesn't have social security or any kind of salary. Approximately 940.000 old people benefits from this social assistance. In this context, more than 350.000 disable people who are out of social security system benefit from non-contributory system, as well.

(69,42 YTL for people over age 65 and max. 208,24 YTL for disable person)

4. Is there a universal system for the whole population? Are there any statistics on the composition of income in old age (social transfers, family support, labour income, additional private income)?

There is no universal pension system for the whole population in the existing system. As mentioned in the 2nd question, there are three social security institutions covering different areas of the labour market, and each has different parameters, norms and standards.

In this context mandatory pension system is base on the premium in Turkey. While 13.380.656 active insured pay their contribution in the system now, totally 7.510.490 people receive pensions. Furthermore 45.794.830 people are identified as dependents that benefits from health insurance through one of his/her insured relative. In additon to this number, occupational funds have 74.434 active insured, 77.102 pensioner and 156.746 dependents.

As indicated in the following answer, minimum old age pension given to BK-Agriculture old age pensioners is above the poverty line.

With green card holders who does not have to pay health insurance premium by reason of their poverty, 91,2% of Turkish citizens have a health insurance.

All our citizens will be covered within the scope of the Draft Law on Universal Health Insurance which is an important component of undergoing social security reform process in Turkey. The concept of dependent population will be defined as the spouse and children. As in the existing health insurances, family members that the insured is obliged to look after will be covered by the insurance without any additional premium burden. However, the age for girls and boys will be limited with 25 on condition of education. Children who receive health benefits as dependents will continue to be provided with health services in their own names after the age to be determined by taking into consideration the minimum age level. In the same way, disabled children who lose their right to receive health benefits on behalf of their families and who are determined to be poor will continue to receive health benefits provided that their health premiums are paid by the State. An insurance programme where citizens with no power of payment will be subsidised instead of providing services through transferring resources to health organizations and service providers. Main target is to cover whole nation in one health insurance system.

In addition to these premium base payments, State provides cash benefits for old people who are over 65 and doesn't have social security or any kind of salary. Approximately 940.000 old people benefits from this social assistance. In this context, more than 350.000 disable people who are out

of social security system benefits from non-contributory system, as well (69, 42 YTL for people over age 65 and max. 208, 24 YTL for disable person).

TURKSTAT has been carrying out yearly household budget surveys (HBS) regularly since 2002. Indicators on structure of consumption expenditures and income distribution and poverty were developed basing on HBS. Data on monthly consumption expenditures of the sample households and demographic and labour characteristics of all household members such as age, gender, education, employment status, economic activities, occupations, employment status and monthly and annual disposable income of the household members by all sources of income have been compiled during the survey. Furthermore, TURKSTAT is planning to carry out Income & Living Conditions Survey (SILC) beginning from 2006.

5. **Describe the level and structure of benefits: the replacement rate, the pension distribution, adjustment and indexing of pensions and the issue of poverty among pensioners. Are there measures in place to specifically combat old age poverty?**

Data from the household budget survey were the main source in calculating the Laeken indicators and pension indicators requested by Eurostat. TURKSTAT had calculated those indicators by using 2002 and 2003 HBS data and transmitted the results to the Eurostat.

In order to clarify the relation between poverty and old aged people, primarily we must compare the data of old age benefits and poverty lines. As you see from the following table, minimum pensions given to pensioners except BK-Agriculture are generally higher than the poverty line based on food and other needs. Therefore it can be made an inference that high percentage of old-aged pensioners could be involved in the lower-middle income class.

Table 1: Pension Amounts and Poverty Lines in Turkey (YTL)

SOCIAL SECURITY INSTITUTIONS	Minimum Pension
BK(Jan.2006)	355,90
BK-Agriculture (Jan.2006)	236,72
SSK (Jan.2006)	481,78
SSK Agriculture (Jan.2006)	348,42
ES (Jan. 2006)	615,13

Legal Minimum Wage (Net)	381
Poverty Line (Only Food) *(2005) (2 personed household)	128
Poverty Line (Food and Other) *(2005) (2 personed household)	311

* This amounts be calculated to inflate amounts of Turkey Statistics Institution Poverty Studies 2004.

Second component required for ratification of this opinion is to gauge the prevalence of social insurance and assistance among old aged people. Number of old age pensioners being over age 60 except disabled or need in care people is 3.058.751. Total number of people being over 60 ages is 5.711.618. Thus 53, 5% of total old aged people have been comprised by social security directly. It can be assumed that serious number of old aged people have utilized social security benefits indirectly as a dependent person, some of which are spouses of old-age pensioners and others may obtain invalidity, death (survivors) or employment injury and occupational diseases benefits.

In existing social assistance system, means-tested old age assistance for people over age 65 (69, 42 YTL for 2006) and assistance for disable person (208,24 YTL for 2006) have been defined and enforced. However reform proposal have promised more integrated and extensive assistance system.

Third part of 5th question is replacement rate and indexation of wages. This data was shown in Table 3. Generally in current social security system, eligibility conditions for retirement are 5000 days paid premium for SSK and 360 days per year for ES and Bağ-Kur. Number of years passed in any insurance is 25 for men and 20 for women. Reform of 1999 has raised number of days paid premium from 5000 to 7000 for SSK and minimum retirement age has increased gradually to 60 age for men and 58 for women. This condition is going to be updated in respect of average life expectation.

Table 3: Replacement Rate and Indexation of Pensions

SOCIAL SECURITY INSTITUTIONS	Average Replacement Rate per year (for first 25 year)		Indexation of Pension	Valorisation of Contribution	Relevant Earnings
SSK		2.6%	CPI	CPI + Growth Rate	Yearly Earnings
BK		2.6%	CPI	Income Table determined by council of ministers	Income Level Table
ES		3,00 %	Increase by civil servants' wages	The last earned wage	Various parameters according to status and the last earned wage.
After Reform Process	(btw.2006-16)	2,50 %	CPI	0,5(CPI+Growth Rate)	Total Yearly Earnings
	After 2016	2,00%			

6. **What are the economic incentives set by the pension system with regard to labour market participation, employment policies? Are there any other incentives (e.g. support for employers hiring older workers)?**

In Turkish social insurance system, it is possible to go back to labour for pensioners under some conditions while they are receiving monthly pension.

Under SSK,

- If an old age pensioner is re-employed as an insured person, his old-age pension shall be suspended as of the date on which he began working. He shall be normal insured person not pensioner for new working period, and when he wants to retiree again, all insured days and periods should be taking into account for new pension.

- But an old age pensioner applies to SSK stating that s/he wants to go on working and continue to receive the pension, a Social Security Support Contribution shall be deducted from the earnings at a rate of 30%. One fourth of the contribution shall be the share of the person insured and three fourths of the employer.

- Persons who are employed in a work under insured status while drawing an old-age pension shall enjoy the same insurance rights as recognised to those persons receiving old age pensions as well as to the dependent spouses and children and the dependent parents.

Under Bag-Kur;

- For the insured that retires from ES and SSK, and continues to work as a self-employed; should pay 10 % social security support contribution from their 12. step pension.

- For the insured who retires from Bag-Kur and continues to work; should pay 10 % social security support contribution from their pensions.

Under ES;

The pensions of the insured who is reemployed in the coverage of Law no: 657 are suspended. If the pensioner is reemployed in the private sector, s/he continues to get his pension.

7. What is the proportion of over 50's, 60's and over 65s still in the workplace.

Total employment rate is 43,4 % for Turkey in 2005 according to the yearly results of Household Labour Force Survey. Employment rates of older persons are given in Table 1 below.

The proportion of persons over 50's is 9,1 % within total employment.

Table 1- Employment rates by ages

Age	Population	Employment	Employment rate (%)
15+	50 826	22 046	43,4
50+	8 647	2 001	23,1
60+	6 192	1 163	18,8
65+	4 203	633	15,1

Source: Labour Force Survey, 2005 Yearly Results

However, the proportion of over 50's is 6,08 %, over 60's is 1,35 % and over 65's is 0,83 % in total active insured.

Table 2: The Number of Insured Person Over 50's, 60's and 65's

	50+	60+	65+
ES	38.949	5.535	--
Bağ-Kur*	446.408	130.495	85.602
SSK*	185.364	13.198	6.344
Total	670.721	149.228	91.946
Proportion in Registered Work Place %	6,08	1,35	0,83

* 2004's data

8. Are there certain groups excluded from the system (coverage)? Is there a possibility of 'opting out'? If so, are there any problems caused by the exclusion of certain groups? Do you consider the system as equitable with regard to gender equality and other groups of the population?

The major "edge group" who does not participate in the statutory social security system of Turkey depending on their choice is unpaid family workers especially in the agricultural sector. But the Law No. 2925 offers voluntary insurance to the agricultural workers and no service contract is required.

Since the income of this group is so low, even only allowing them to get along, they opt out of system. They do not have urgent worries about old age pensions and because their health expenses are covered by the State with Green Card practice they do not register to any of the social security institutions. Temporary housekeeping workers are excluded by law with similar reasoning.

There is no such problem of gender or group discrimination in the Turkish Social Security System.

9. **Are their systems of credit for periods away from paid labour, such as child care, caring for elderly relatives etc?**

Under the Turkish social security system, some defined periods' contribution away from paid labour can be paid by insured when s/he comes back to the labour. The following table shows the differences among social insurance institutions and after reform law.

	Present			Reform
	SSK	**BK**	**ES**	
Pregnancy/Maternity Leaves			+	+
School Periods of military students			+	+
Military service	+	+	+	+
Uninsured doctoral education periods or home and abroad doctorate education periods			+	+
Uninsured Stage periods for lawyers			+	+
daily wage, contract periods, stage periods those are not covered by ES Law of the employee working under Law 5434			+	+
Detention and jail periods of insured (after acquitance)				+
Periods of Strike or Lock-Out	+			+
Periods of unpaid honorary assistancy of doctors			+	+
Period between resignation for elections and returning to the post				+

10. **Does the public consider your system as transparent and administratively effective? Does the system meet general acceptance in the population?**

The transparency of a social security system is closely related to how much the citizens are informed of the actions and accounts of the institutions.

For Turkish social security system to be transparent, a bunch of crucial policies is in force;

All the social security institutions prepare monthly bulletins of statistical data as well as annual yearbooks about their actions and income-expenditure status / balances. The bulletins and yearbooks are published in hard copies and on internet so everyone interested has the opportunity to review the data.

The citizens as well as the foreigners in Turkey by the virtue of Law 3071 on Petition Rights may apply to any public instution about any matter they want to learn about including social security issues. For a more administratively effective system, The Turkish Social Security Regime heavily relies on online applications. 92 % of insured's information in SSK are sent via internet monthly so called e-decleration system.
In addition to spreading knowledge in the easiest way and producing a more transparent system it also contributes to the abatement of work load and time losses of the conventional system. Current Social Security Institutions have

quality certificates of the services they offer and these certificates depend on performance criteria and total quality management approaches.

The draft law on Social Security Institution also states that the president will set the performance criteria and working plan beforehand and performance review will be performed annually. Critical success factors decided by the executive board will be the benchmarks.

As the statistics on web sites of social security institutions make clear, the usage of internet in provision of the service is appreciated by the citizens.

The reform also envisages a more technology oriented service provision and a more effective one-stop shop local social security centers.

11. Assess the financial sustainability of the system (of each pillar) with regard to demographic, economic and social changes.

As seen in the following table the social security deficits increased from 1% of GDP to 4,81% of GDP in a 11 years of time. It is clear that this increasing trend is likely to exist unless some precautions are not taken.

As % of GDP	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total	1,00%	1,38%	2,24%	2,52%	2,80%	3,75%	2,57%	3,17%	3,54%	4,41%	4,39%	4,81%

As a result of this, PROST (Pension Reform Simulation Toolkit) developed by the World Bank is used to project the fiscal implications with the technical assistance of World Bank. PROST uses macroeconomic assumptions and specific assumptions based on each case to model the pension reforms and allows for interpreting the results from the reform and to make knowledgeable decisions whether to introduce the reform or not.

Year 2002 was selected as the base year in undertaking the projections and health insurance was excluded in both the base year and in the projected years. For the SSK projections, it is assumed that the minimum wage will be equalized to the contribution base by July 2004.

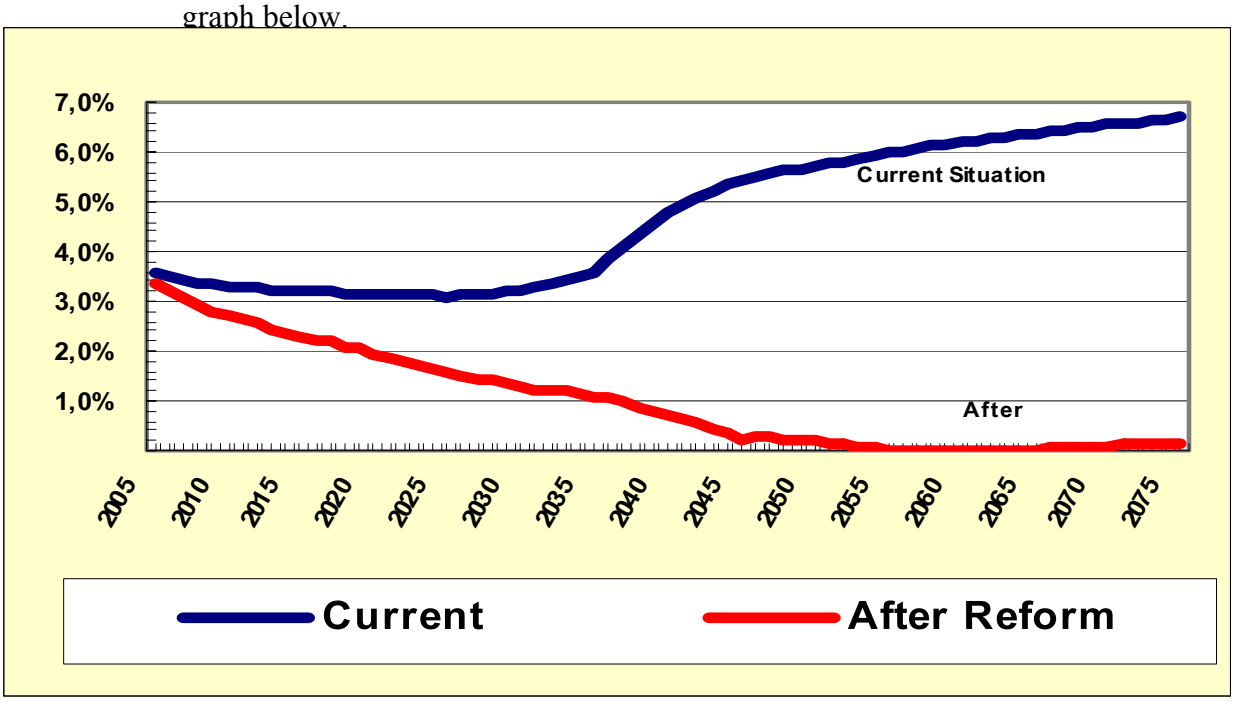
Projecting the base case, the draft law and other reform options macroeconomic, demographic and labour assumptions and specific assumptions for each institution are made.

The following results in making comparisons for the base case, the draft law and other options are considered.

- Revenues
- Expenditures
- Current Deficit
- Average Replacement Rate for old-age pensioners

The main parameters in the base case are contribution rate, retirement age, days of contribution, replacement rate, average earnings in whole working life, valorization of wages and indexation of pension.

The pension deficits projected for the base case scenario, reflecting only the parametric changes which were introduced by the law enacted in 1999 (law no: 4447), and the reform scenario (the draft law) can be seen in the graph below.

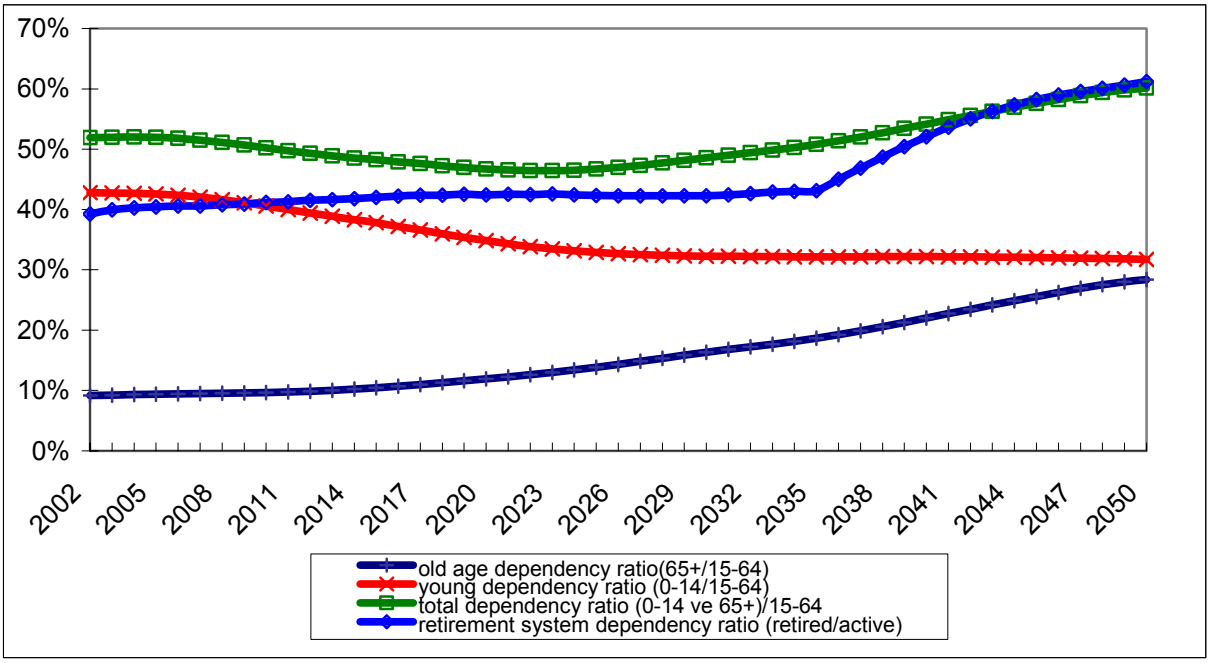


as % of GDP	2002	2005	2010	2020	2030	2040	2050	2060	2070	2075
Base	-3,42%	-3,74%	-3,51%	-3,37%	-3,50%	-5,10%	-6,05%	-6,54%	-6,91%	-7,08%
reform	-3,26%	-3,34%	-2,71%	-1,89%	-1,12%	-0,45%	0,05%	0,21%	0,08%	0,05%

Table 1 : The deficits of the pension system.

On the demographic side as it can be seen in the following graphic, total dependency rate shows the ratio of the population covering the age 65 and over and the population covering 0-14 age group to the total population. Total dependency ratio in our country, which will decrease until the year 2025, will have an upward trend starting with this year and this trend will accelerate starting with the year 2035. In other words, the following twenty years will be a period where the dependent population will decrease and the working-age population will increase in return. At the same time, both the rate of growth and social savings are expected to rise in this period, where social security institutions can acquire fund accumulation

Demographic Indicators



12. **Describe recent major reforms which have been implemented. What were the objectives of the reforms?**

The Turkish Government has designed a two-stage reform strategy for the social security system in 1999. The overall reform strategy is as follows:

1. STAGE I

1. Parametric redesign for the three social insurance organisations

2. Introduction of Unemployment Insurance

2. STAGE II

Introduction of Individual (Private) Retirement Schemes
Institutional/ Administrative Reforms: Restructuring of the Social lnsurance System.
Restructuring of the Social Assistance System.

3. II. FIRST STAGE OF THE REFORM

4. 1.1. REDESIGN OF PENSION AND SOCIAL INSURANCE PARAMETERS

In August 1999, the reform law which changed most of the pension and other social insurance parameters and introduced the unemployment insurance was enacted. This law envisaged the following parametric changes in the social insurance system:

1. Retirement age was increased to 58/60 (W/M) for new entrants and 56/58 (W/M) with a transition period for current contributors from 38/43 (W/M).
2. Increasing the minimum contribution period for full old-age pension for SSK (workers' social insurance scheme) to 7000 days from 5000 days.
3. Extending the reference period to whole working-life for SSK and Bag-Kur (Self-employed and farmers' scheme), for which the reference period was the last 5-or-10 years depending upon the income of contributor and last income step, respectively,
4. Increasing the contribution ceiling for SSK to 3 times from 1.6 times the minimum insurable earning on January 2000, to 4 times on April 2000 and to 5 times on April 2001
5. Indexing contribution bases for SSK and Bag-Kur to both real GDP growth rate and percent change to the CPI,
6. Reduction in replacement rate for old-age and invalidity pensions: The basic replacement rate for SSK decreased from 60% (for 5000-contribution-days) to 53.9% (for 7000-contribution-days) and for Bag-Kur it decreased from 70% (for 25 years of contribution) to 65% (for 25 years of contribution)
7. Changing the pension calculation system and indexing pensions to CPI.
8. Measures to increase the coverage and compliance rates (New declaration obligations for employers and employees and increase in the number of inspectors are introduced by the law),
9. Participation of insured people in health insurance costs (Contributors and pensioners are to pay 20% and 10%, respectively, of the prosthesis and medical equipment costs),
10. Increasing the health insurance contribution rate for Bağ-Kur to 20% from 15%,

4.1. 1.2. Introduction of Unemployment Insurance

The reform law of August 1999 introduced the unemployment insurance. Some basic features of this new scheme are presented below:

- This branch is compulsory for only contributors (workers) to SSK.
- Turkish Employment Agency (ISKUR) is responsible for all transactions and services related to the unemployment insurance.
- Contribution rate for the unemployment insurance is 4%, where employee, employer and the State pay 2%, 1% and 1%, respectively.

- In order for a worker to get the unemployment benefit, he/she must pay the unemployment insurance premiums for at least 600 days in the last 3 years and all of the unemployment insurance premiums of the last 120 days.
- Amount of unemployment benefit is calculated as 50% of the average of the last 4 month's net insurable salary.
- If an eligible person makes contributions for 600 days, he gets the benefit during 180 days whereas the benefit is paid for 240 days if the contributions are made for 900 days. For contribution of 1080 days, the benefit payments are made for 300 days. To tabulate:

Contribution for	benefit payments
600 days	180 days
900 days	240 days
1080 days	300 days

- ISKUR is responsible for finding a suitable job or arranging training programmes for job improvement for the unemployed people.
- The Unemployment Insurance Fund is established to carry out the financial management. The four members of the Board of Fund Managers will consist of the representatives from the Ministry of Labour and Social Security and Treasury, and two representatives from workers' and employers' trade unions. The revenues of the Unemployment Insurance Fund are:
  - ◊ Premiums,
  - ◊ Interests,
  - ◊ Monetary penalties and,
  - ◊ Government contribution in case of deficits.
- The fund is audited by the High Auditing Board.

5. III. SECOND STAGE OF THE REFORM

5.1. 2.1. Introduction of Individual Retirement Schemes

The law for the Individual Retirement Schemes was legislated on April 7, 2001. This new system has the following main characteristics:

The system will be based on the voluntary basis.

The system aims at presenting a long-term savings tool for the citizens to provide for a supplementary old-age income (in the form either a lump-sum or life-time annuities) on top of the public pensions.

People aged 18 and above can participate in the system. Employers can also contribute to the system on behalf of their employees. Both employer

and employee contributions up to certain limits are subject to tax incentives.

The minimum retirement age will be 56 by year 2020 and it will be 60 afterwards. As well as the retirement age, at least 10 years of participation in the system is required for retirement eligibility.

Regulatory and supervisory framework for Management Company, investment funds, and the custodian has been clearly separated.

Stock companies who have a paid-up capital of TL 20 trillion and meet strictly defined financial and technical requirements will be able to get "Individual Retirement Company Establishment Licence" from the Treasury. This company also has to apply to the Capital Market Board for the establishment licence for at least three "Pension Investment Funds", which have different risk structures. Upon completing all establishment licensing procedures, the company has to get "operation licence". The management of the pension investment funds will be carried out by only certified "fund management companies".

A Coordination Committee will be established. The Undersecretary of Ministry of Labour and Social Security, the Undersecretary of Ministry of Finance, the Undersecretary of Treasury, and Chairman of the Capital Market Board will be the members of this committee.

The Coordination Committee will be responsible for co-ordinating together with the concerned institutions or organisations the activities to be conducted by the Undersecretariat, the Capital Market Board and the Ministry of Labour and Social Security and Ministry of Finance in connection with the implementation of this Law; and reviewing the policies and legislative proposals concerning the private pension system and evaluating legislation arrangement proposals.
Pension Companies are subject to Treasury's supervision and auditing whereas Investment Funds within the Pension Company are subject to external periodical auditing as well as the Capital market Board's supervision and auditing. The custodian organisation, on the other hand, will be supervised and audited by the Capital Market Board.

Participants will sign a "Retirement Contract" provided by the company, which clearly defines the important conditions such as fees, distribution of contributions among pension investment funds, and other responsibilities and rights of the individual, etc. The Pension Company will collect the contributions through the banking system and transfer to the investment funds in line with the contract. Investment funds will realise the necessary investments within a predefined strict time interval.

All transactions will be recorded in the individual accounts. Participants will be able to access their accounts at any time.

Participants will be able to change the composition of investment funds and to switch to another company.

Heavy monetary and imprisonment penalties are introduced for people who attempt illegal activities.

5.2. 2.2. Restructuring of the Social Security Institutions

5.3. 2.2.1. Legislative Amendments

(i) Establishment of the Social Security Institution

The Social Security Institution was established under the Ministry of Labour and Social Security. It will function of:

- Planning the overall social security strategy
- Better aligning the administrations of the pension funds,
- Unifying all the social security norms and standards,
- Providing the Ministry of Labour with the capacity to better monitor the actuarial and financial functioning of the three pension funds, and
- Designing and implementing the central social security database system.

In this respect, the SSK, Bağ-Kur, and Is-Kur were linked to this institution.

Social Security High Advisory Board was established. The social partners are to participate in this board. The board is to determine the social security policies.

6. (II) RESTRUCTURING OF SSK

The Board of Directors was equipped with additional authorisation such as:

- Delegation of authority to better organise the responsibilities
- Enabling external independent audits based on the generally accepted auditing rules
- Assuring to do assessment on the actuarial and financial viability of the system for at least a 10-year-period.
- Hiring qualified professionals at higher wages
- Enforcing arrear collection (bailiff)-(hiring private lawyers, declaring the arrear holders with a debt above a certain amount to the public, etc.)
- Assuring to carry out an IT-and-human-capital-formation-based transformation to an efficient system
- Assuring better coordination with the other two SSIs, namely BK and ES.
- Two new General Directorates for Health Affairs and Insurance Affairs were established.

(iii). Restructuring of BK

- The Board of Directors of Bağ-Kur was equipped with additional authorisation similar to SSK. To contribute to higher efficiency and transparency for the system, and to result in increase in the coverage, and compliance rates. Furthermore, the Financial and Actuarial Department was established.

13.	**Are there any automatic mechanisms to change the system if it appears to be unsustainable – i.e. due to demographic changes?**

Under an automatic-adjustment approach, changes will be made to the payroll tax rate, specified social security benefits, the normal retirement age or some combination of these three on an annual or periodic basis to keep the system in long run actuarial balance.

Current social security system of Turkey has no automatic mechanisms to recover from any unsustainability. However, the reform envisages some measures to lighten the accumulation of burdens on the system. Because the life expectancy rates for both men and women in Turkey are on increase, the reform proposes a gradual increase in normal retirement age so that the life expectancy rate does not harm the financial sustainability of the regime. In addition, life expectancy after retirement also affects the finances of the system unless a measure in regards to replacement rate is taken. The reform offers to decrease replacement rate so that the longer living insured will not cause the deterioration of the accounts of the social security institutions.

14.	**Is the population well informed and educated on financial matters – especially in regards to any second or third tier provision?**

For statutory pension system, the relations between insurance institutions and the insured depend on legal basis so information need is not much required apart from the knowledge about rights/responsibilities stated in the related acts. All of the acts and other legal regulations are published on the internet websites of the institutions.

On the other hand, second tier is a little different. Since the system is at initial phase, expanding and heavily relying on private firms and risk taking, there arises a huge need for information.

There are detailed disclosure rules as set by the regulations concerning personal private pension plans. The supervisor has prepared a financial education project for the enhancement of level of awareness regarding the personal private pension system. The search for the funding of this project is ongoing.

(9) Social Inclusion

1. To what extent are existing strategies and policies compatible with EU objectives in the field of social inclusion? Please describe.

In the Medium Term Programme (2006-2008) and Annual Programme for The Year 2006, main documents for the Government Programme, main objectives related with social inclusion are determined as follows:

The basic objective is to increase the active participation of the individuals and groups that are subject to poverty and social exclusion or face with the risk of poverty and social exclusion in economic and social life and secure social solidarity and integration by upgrading their quality of life.

It is essential that a social protection network which covers the entire population and integrates the disadvantaged groups into the society be formed, accessibility to services rendered by the government be increased, migrating segments be integrated with the rest of the population and all segments of the society take responsibility in all these areas.

These policy priorities are in line with fight against social exclusion target of Union Objectives. The Lisbon European Council of March 2000 asked Member States and the European Commission to take steps to make a decisive impact on the eradication of poverty by 2010. Building a more inclusive European Union was thus considered as an essential element in achieving the Union's ten year strategic goal of sustained economic growth, more and better jobs and greater social cohesion It has also agreed that Member States should co-ordinate their policies for combating poverty and social exclusion on the basis of an 'Open Method of Co-ordination' (OMC).

2. What steps is Turkey taking to prepare for future participation in the European social inclusion strategy?

- The process for Turkey's Joint Inclusion Memorandum (JIM) launched on December 3rd, 2004 is carried out by the coordination of MoLSS with the contributions of approximately 60 institutions including public institutions, social partners, universities and NGOs.

- Turkey has also been participating in the Community Action Programme on Combating Social Exclusion since 2003. Turkey has also participated in two events within the framework of the Programme; Gecekondu Study and the Poverty Network.

- The term of "social inclusion" was first used officially in Medium Term Programme (MTP) prepared according to Law no 5018. Before MTP, although the name of social inclusion is not used exactly, subjects in the context of social inclusion concept have been handled in 5-Year Development Plans and Annual Programmes under the headings such as "income distribution and combatting poverty", "social insurance",

"employment", "women, child and family", "working life", "social services and assistance" and "population".

3. **Refer to the road map Turkey has committed itself for the JIM process**.

First six chapters of the revised draft JIM sent to the European Commission. At the end of March, 2 ½ days technical drafting meeting will be held in Ankara with drafters of MLSS, the representatives of the Commission and other relevant ministries. It will give the chance of discussion also a first draft of chapter 8 and exchange of views on the JIM follow-up 2006-2008. The planned road map is as follows:

- End of April: Commission's receives revised complete draft from MoLSS.
- Mid-May: Commission sends comments; MLSS circulates draft including the Commission' comments to all JIM stakeholders.
- Early June: Last consultation JIM seminar in Ankara; focus on commenting the draft and the JIM follow-up process (chapter 8).
- Late June: Final drafting meeting in Brussels at high political level.
- Summer: internal consultation within / between Turkish ministries and within / between the Commission' services.
- Fall: JIM signing ceremony; dates and venue (whether in Turkey or in Brussels) must be agreed well in advance.

4**. How does the MoLSS intend to use the results of the study on gecekondu carried out by M. Adaman and the outcome of the seminars organized in Istanbul and Gaziantep in 2005?**

The consultation process with the relevant institutions is continuing. It is expected to get the final evaluations of the study in order to decide to use the results of the study on gecekondu.

(10) Equal Opportunities

DIRECTIVE 75/117

1- **Is the principle of equal pay for equal work or work of equal value for men and women guaranteed?** **i) by law;** **ii) by collective agreement.** **iii) by the constitution ?**

Yes, the principle of equal pay for equal work or work of equal value for men and women is guaranteed by the following provisions of the relevant Laws.

i) Labour Law No. 4857 - A lower wage cannot be decided for an equal or equivalent job on the grounds of sex (Art. 5/4).

Implementation of special protective provisions due to the sex of the worker does not justify the application of a lower wage (Art. 5/5).

Law No. 657 on Civil Servants - The salaries of the civil servants are determined irrespective of their sex (Art. 43). There is no discrimination in terms of salary for civil servants.

ii) Law No. 2822 on Collective Agreements, Strikes and Lock-outs - No stipulation shall be put into collective labour agreements that is contrary to …….any binding provision of law or regulations……(Art. 5).

iii) The Constitution - All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. Men and women have equal rights and the State is responsible to implement these rights (Art. 10).

The Constitution - Wages shall be paid in return for work. The State shall take the necessary measures to ensure that workers earn a fair wage commensurate with the work they perform and that they enjoy other social benefits. In determining the minimum wage, the living conditions of the workers and the economic situation of the country shall be taken into account (Art. 55).

2- **Is the right to equal pay extended to all persons covered by the Directive, including civil servants?**

The Scope of Labour Law No. 4857 - This Law shall apply for all businesses, other than the exceptions given in Article 4, employers and

employer representatives and workers of these businesses, regardless of their subjects of activity (Art. 1).

Exceptions (Art. 4) - The provisions of this Law shall not apply for the below specified businesses and business relations;

j. Sea and air transport businesses,
k. Businesses or enterprises carrying out agricultural and forestry works and employing less than 50 (including 50) workers,
l. All building works related with agriculture within the limits of family economy,
m. Houses and businesses where handicrafts are performed among the members of a family and relatives up to 3rd grade (including 3rd grade) without participation of external persons,
n. Domestic services,
o. Apprentices, provided that the provisions of occupational health and safety are reserved,
p. Sportspeople,
q. Persons being rehabilitated,
r. Businesses where three persons pursuant to the definition given in Article 2 of Law 507 on Tradesmen and Craftsmen.

However;

g. Loading and unloading businesses from ships to shore and from shore to ships at the landing stages or ports and quays,
h. Businesses performed at all ground facilities of aviation,
i. Works performed at the workshops and factories where agricultural arts and agricultural tools, machinery and parts are produced,
j. Construction works performed at agricultural enterprises,
k. Works performed at parks and gardens open to public use or annexed to the business,
l. Works related with sea products producers working at seas and not covered by Maritime Labour Law and not considered as agricultural works,

are subject to the provisions of this Law (Art. 4).

Law No. 657 on Civil Servants – In addition, the salaries of the civil servants are determined according to provisions in the law regardless of the sex (Art. 43). There is no discrimination in terms of salary for civil servants.

3- Is the notion of pay in compliance with Art. 141 EC and the jurisprudence of the ECJ ? Is there a definition of pay in the law?

Article 141 of EC Treaty - Pay means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer.

Labour Law and Marine Law - In general terms, *wage* is the amount provided and paid in cash to a person by the employer or third persons in return for work performed (Labour Law Art. 32/1; Marine Law Art. 29).

Law No. 657 on Civil Servants - *Salary* is the amount paid to civil servants based on their pay scale for their services (Civil Servants Law – Art. 147).

4- Is there protection against retaliatory dismissal?

Workers Not Covered by Job Security System (Labour Law - Art. 17) - The worker is paid an indemnity equal to three times of the notification period in case the labour contracts of workers are terminated through misuse of the right of termination (Art. 17/5). In addition to this, in case of contradiction to principle of equal treatment in the business relation or termination, the worker can demand the rights that he/she has been deprived of besides an appropriate indemnity equivalent up to four months' wage (Art. 5/6).

Workers Covered By Job Security System (Labour Law, Art. 18-21) - Particularly the following issues do not constitute a valid reason for termination: ……

c) Application to administrative or judicial authorities against the employer for seeking the rights arising out of laws or the contract or participation in a proceeding already instituted on this issue (Art. 18/c).
d) Race, color, sex, marital status, family obligations, pregnancy, birth, religion, political opinion and similar reasons (Art. 18/d).

In case the employer does not assert a valid reason or the court or special arbitrator decides that the asserted reason is not valid and the termination is decided to be ineffective, the employer is obliged to employ the worker within one month or to pay an indemnity equal to minimum four and maximum eight months' wage to the worker (Art. 21/1). In addition to this, in case of contradiction to principle of equal treatment in the business relation or termination, the worker can demand the rights that he/she has been deprived of besides an appropriate indemnity equivalent up to four months' wage (Art. 5/6).

Law No. 657 on Civil Servants - The Article 125/E of Law on Civil Servants organizes the conditions in which civil servants can be dismissed; except these conditions, they can not be dismissed.

5- Is there a gender pay gap? (give figures if possible)

Gender pay gap figure for the private sector estimated depending on the 2002 Household Budget Survey is 12 % in Turkey. This figure is being reported to EUROSTAT periodically.

6- Are part-time workers paid "pro rata temporis"?

Labour Law No. 4857 - The worker employed on a part-time labour contract can not be subjected to any procedure different than a full-time equivalent worker merely on the grounds that his/her labour contract is a part-time one, unless a reason justifying such discrimination exists. Divisible benefits of the part-time worker pertaining to wage and money are paid in proportion to the employment time compared to the full-time equivalent worker (Art. 13/2).

7- Do the transposing provisions cover the whole work force?

The transposing provisions cover the work force in the scope of Labour Law.

DIRECTIVE 76/207 AND 2002/73

1. Are there definitions in the law for direct discrimination, indirect discrimination, harassment and sexual harassment?

In the legislation, there are no definitions for direct discrimination, indirect discrimination, harassment and sexual harassment. However, there are provisions in the Penal Code and the Labour Law including the sexual harrassement and dicrimination cases.

According to the Article 24 of the Labour Law, "the worker can terminate the labour contract with definite or indefinite term before the expiry of its period or without waiting for the notification period in the following cases: .....If the required measures are not taken although the worker becomes subject to sexual harassment at the business by another worker or third persons and notifies the employer thereof (Art. II-d)

In the Article 25 of the Labour Law, it says "The employer can terminate the labour contract with definite or indefinite term before the expiry of its period or without waiting for the notification period in the following cases:..... If the worker attempts sexual harassment against another worker of the employer (Art. II-c).

In the Penal Code, for cases of sexual assault "1. concerning the abuse of a person sexually, upon the complaint filed by the victim, the perpetrator shall be sentenced to imprisonment for a term of three months to two years or imposed judicial fine. 2. In cases where these acts are committed by abusing the influential position gained due to relations arising from hierarchy, service-providing or provision of training or education, or due to interfamily relations, or by taking advantage of the facilities provided by working in the same workplace, the penalty given as per the paragraph above shall be increased by half. If the victim has been forced to quit his/her job, school or leave his/her family, the penalty cannot be less than one year" (Art. 105).

Article 122/1 of the Penal Code- A person who by practicing discrimination on grounds of language, race, colour, gender, political ideas philosophical beliefs, religion, sect and other reasons;

a) prevents the sale or transfer of personal property or real estate or the performance or enjoyment of a service or who makes the employment of a person contingent on one of the circumstances listed above,

b) withholds foodstuffs or refuses to provide a service supplied to the public,

c) prevents a person from carrying out an ordinary economic activity,

shall be sentenced to imprisonment for a term of six months to one year or judicial fine.

2. Are giving instructions to discriminate and less favourable treatment related to pregnancy and maternity defined as discrimination?

According to the Labour Law, "The employer can not treat a worker directly or indirectly different in concluding the labour contract, establishing the conditions thereof, implementation and termination thereof due to sex or pregnancy, unless biological reasons or those pertaining to the work qualifications oblige" (Art. 5/3).

3. Are there provisions concerning exceptions for equal treatment relating to activities for which characteristics related to sex constitute a genuine and determining requirement ? (Art., 2(6) 2002/73)

In the Article 5/3 of the Labour Law, biological reasons or reasons pertaining to the work qualifications are defined as exceptions.

4. Are there any provisions in law or ordinance to define jobs in the sense of Art. 2 (2) of Dir. 76/207 where the sex of a worker constitutes a determining factor?

In certain occupational laws, there exists gender condition; for example in Nursing Law, there is a requirement of being women.

5. Is direct and indirect discrimination on grounds of sex prohibited in relation to all areas covered by Art. 3 1 a-d Dir. 2002/73?

Labour Law - No discrimination based on language, race, sex, political thought, philosophical belief, religion, sect and similar grounds can be made in the business relation (Art. 5/1).

The employer can not treat a worker directly or indirectly in concluding the labour contract, establishing the conditions thereof, implementation

and termination thereof due to sex or pregnancy, unless biological reasons or those pertaining to the work qualifications oblige (Art. 5/3).

Law on Social Insurance - Employed persons shall automatically become insured as soon as they enter employment. The rights and obligations of insured persons and of their employers shall be effective as from the date on which the insured person enters employment (Art. 6).

Law on Social Insurance For Agricultural Employees -Agricultural employees working under a labour contract can become insured depending on their own request (Art.2).

Law on Vocational Training - General provisions on training and working conditions as well as social security are set regardless of sex.

Law on Civil Servants - General provisions on access to employment, promotion, training and working conditions as well as social security are set regardless of sex. There are general and specific (like entrance exams) requirements for recruitments of civil servants, these conditions are the same for men and women.

Law on Collective Labour Agreement, Strike And Lock-Out - No stipulation shall be put into collective labour agreements that is contrary to …….any binding provision of law or regulations……(Art. 5).

6. Are there provisions to allow associations to engage either on behalf or in support of the complainant (against sex discrimination) in any judicial or administrative procedure?

Law on Administrative Jurisdiction - Associations can not issue a case for an individual or a member, but can issue a case only in the case of general benefits of the association (Art. 2).

7. Is there effective judicial protection available to all persons who consider themselves wronged by failure to apply the principle of equal treatment ? Has this protection been extended to persons defending or giving evidence?

- The Constitution - Article 74 about the right of petition.
- Law No. 3071 on Petition Rights- Article 7 on investigation of petition and declaring petitioner about the result of the investigation.
- Labour Law No. 4857 – The State monitors, controls and inspects the implementation of legislation on work life. This task is carried out by labour inspectors in required number and having required qualifications who are authorized to inspect and control reporting to the Ministry of Labour and Social Security (Art. 91).

- Law No. 3146 on Organization and Functions of MoLSS- Article 15 on the functions of Labour Inspection Board.

- Law No. 5521 on Labour Courts - Article 1 and 10 on functions of Labour Courts and their procedures.

- Law No. 657 on Civil Servants - Article 21 regarding civil servants' right to complain or sue due to administrative acts and proceedings that are applied to themselves by their institutions.

- Law No. 4958 on Social Insurance Institution - Article 9 regarding the functions of Insurance Inspection Board.

8. Is there an independent equality body in the sense of Art. 8a Dir 2002/73 ?

There exists no equality body as defined in the Directive. However, there are three institutions performing some duties defined.

- General Directorate on the Status of Women (responsible for gender equality on promotion, analysis, coordination, monitoring; at national level)
- Prime Ministry Human Rights Presidency (responsible for monitoring the implementation of the regulations related with human rights, examining and investigating the human rights violation claims and research results; at provincial level country-wide)
- Ministry of Labour and Social Security (responsible for investigating issues on unequal implementations on work life)

9. Are there any legal provisions encouraging the prevention of discrimination (Art. 2(5) 2002/73), social dialogue (Art. 8b), dialogue with NGOs (Art. 8c)?

There are no such legal provisions encouraging the prevention of discrimination, social dialogue and dialogue with NGOs.

10. Is there a sanctions system in compliance with Art. 8d of Dir. 2002/73 that provides for effective, proportionate and dissuasive compensation in case of discrimination? Is there an upper limit for compensation?

The worker is paid an indemnity equal to three times of the notification period in case the labour contracts of workers are terminated through misuse of the right of termination (Art. 17/5). In addition to this, in case of contradiction to principle of equal treatment in the business relation or termination, the worker can demand the rights that he/she has been deprived of besides an appropriate indemnity equivalent up to four months' wage (Art. 5/6). In case the employer does not assert a valid reason or the court or special arbitrator decides that the asserted reason is not valid and the termination is decided to be ineffective, the employer is obliged to employ the worker within one month or to pay an indemnity

equal to minimum four and maximum eight months' wage to the worker (Art. 21/1). In the case of failing to comply with principles and obligations set forth in Article 5 (principle of equal treatment, including the principle of equal pay); employers or employer representatives are fined for fifty New Turkish Liras (35 Euro) for each such worker (Art. 99/a).

Article 122/1 of the Penal Code- A person who by practicing discrimination on grounds of language, race, colour, gender, political ideas philosophical beliefs, religion, sect and other reasons;

a) prevents the sale or transfer of personal property or real estate or the performance or enjoyment of a service or who makes the employment of a person contingent on one of the circumstances listed above,

b) withholds foodstuffs or refuses to provide a service supplied to the public,

c) prevents a person from carrying out an ordinary economic activity,

shall be sentenced to imprisonment for a term of six months to one year or judicial fine.

There are upper limits for compensations mentioned above.

11. Is there a system of administrative sanctions in case of discrimination based on sex? If so, please give details.

Labour Law - According to paragraph 6 of Article 5 of the Labour Law, in case of contradiction to the principle of equal treatment in the business relation or termination, the worker can demand the rights that he/she has been deprived of besides an appropriate indemnity equivalent up to four months' wage. Provisions of Article 31 of Law 2821 on Trade Unions are reserved.

According to Article 99 of the Labour Law, those employers or employer representatives who;

a. Fail to comply with principles and obligations set forth in Articles 5 and 7 hereof,

b. Fail to provide the worker with the certificate set forth in the last paragraph of Article 8 hereof, and to comply with provisions of Article 14 hereof,

c. Fail to issue employment certificate in contrary to Article 28 hereof, or include incorrect information in the certificate,

are fined for 50 YTL (35 Euro) for each such worker.

Law No. 657 on Civil Servants - In addition, various disciplinary penalties are organized by Law on Civil Servants in case of discrimination based on sex (for example, salary deduction penalty – Art. 125/C-i).

12. Is gender specific advertising allowed?

There is no provision prohibiting gender specific advertising for the private sector.

In the public sector; it is prohibited in the Prime Ministry Circular 2004/7; where it is declared that "it is seen that in some public institutions' advertisement related with the recruitment that putting conditionality of "being man" which gives the impression of being the necessity of public service.

In the framework of that legislation and the approach of our Government to this issue, it is needed that all public institutions should act against the impression of making discrimination and in the recruitment process should not be in a position to be out of necessity of public service."

13. Are there specific physical requirements for joining a profession, Ex.: height requirement for joining the police, army etc. And do these requirements differ for women and men?

There are specific physical requirements for joining some professions, however, these requirements are set differently for women and men by taking biological factors into consideration.

14. Is there a rule established either by law or jurisprudence that there is no justification whatsoever to ask a woman questions related to pregnancy when applying for a job of whatever kind? Would such practises be considered discriminatory? In case a woman had answered a question related to pregnancy in a job interview wrongly, could this lead either to dismissal or repudiation of contract?

According to the Labour Law, no discrimination based on language, race, sex, political thought, philosophical belief, religion, sect and similar grounds can be made in the business relation (Art 5/1).

The employer can not treat a worker differently in concluding the labour contract, establishing the conditions thereof, implementation and termination thereof due to sex or pregnancy, unless biological reasons or those pertaining to the work qualifications oblige (Art 5/3).

15. Are there any provisions to protect women (not pregnant women) against work underground, onerous and harmful work and in particular from night work?

According to the Article 50 of the Constitution, no one shall be required to perform work unsuited to his age, sex, and capacity. Minors, women and persons with physical or mental disabilities, shall enjoy special protection with regard to working conditions.

According to the Article 72 of the Labour Law, it is prohibited to employ men below the age of eighteen and women at any age in underground or underwater positions such as mine galleries, cabling, sewerage and tunnel construction.

According to the *By-law on Hard and Dangerous Work* that has been arranged relying upon the Article 85 of Labour Law, it is not allowed to ask young workers below the age of 16 to work in hard and dangerous work. In the table, in Annex 1, women cannot be asked to work in the works which do not have the letter (W) in the next column; and the young workers who have completed the age of 16 but not 18, cannot be asked to work in the works which do not have the letters (YW) in the next column (Art. 4).

In the entrance to work of the workers who will be asked to work in hard and dangerous work (women included), and the young workers who have completed the age of 16 but not 18; it is obligatory to determine with a medical report issued due to the physical check and laboratory data, which shows that they have the physical resistance to execute such work, due to the quality and conditions of the work. Also during the execution of the work, it is obligatory to determine with a medical report that there is not any obstacle to hinder them to work in such works, for the young workers who have completed the age of 16 but not 18 at least once in 6 months; and for the other at least once a year. These reports are issued by the doctor of the office, office common health unit, and workers' health clinics; and in the absence of these relatively by the nearest Social Insurance Institute, Local Health Units, or by the doctors of the Government or the Municipality. The entrance to work / periodical check form for those who will work in hard and dangerous work, determined through the advices of the Ministry of Health, by the Ministry of Labour and Social Security is presented in ANNEX – II. It is not allowed to ask a worker without a medical report to work in hard and dangerous work (Art. 5).

Working duration of female workers at night shifts is arranged by *By-law on the Working Conditions of Female Workers at Night Shifts.* Female

workers cannot be asked to work more than seven and half hours at night shifts in any condition (Art. 5). In order to work at night shifts, it is obligatory for the female workers to get a medical report from the doctor of the work site, common health unit of the work site, workers health clinics, in the absence of these relatively the nearest Social Insurance Institute, Local Health Centers, Government or Municipality doctors, showing that they have no obstacles to work, prior to the commencement of work. The medical check of these workers is repeated in every six months (Art. 7).

16. Are there any provisions to protect pregnant women from doing overtime, business trips etc.?

In Article 8 of *By-law on Overtime Work and Work for Extra Duration* under Article 88 of Labour Law, pregnant workers are included in workers who shall not do overtime work.

17. Are there any provisions to forbid women who have recently given birth or who have adopted a child to go on business trips, doing overtime, night work etc. until the child has reached a specified age?

In the Article 9 of the *By-law on the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes*, it is prohibited to ask the breastfeeding worker to work at night during the 6 months following the birth. It is prohibited to ask the newly gave birth worker at the end of the eight month period following the birth; and to ask the breastfeeding worker after the six months period to work at night shift as long as it is determined harmful by a medical report during the aforesaid period. The female workers cannot be forced to work at night shifts for the period starting from the determination of their pregnancy by a medical report until the birth. In the Article 10, it is prohibited to ask the pregnant, newly gave birth and breastfeeding worker to work more than seven and half hours a day.

18. Do the transposing provisions cover the whole work force?

The transposing provisions cover the work force in the scope of Labour Law.

The Scope of Labour Law No. 4857 - This Law shall apply for all businesses, other than the exceptions given in Article 4, employers and employer representatives and workers of these businesses, regardless of their subjects of activity (Art. 1).

Exceptions (Art. 4) - The provisions of this Law shall not apply for the below specified businesses and business relations;

a. Sea and air transport businesses,

b. Businesses or enterprises carrying out agricultural and forestry works and employing less than 50 (including 50) workers,
c. All building works related with agriculture within the limits of family economy,
d. Houses and businesses where handicrafts are performed among the members of a family and relatives up to 3rd grade (including 3rd grade) without participation of external persons,
e. Domestic services,
f. Apprentices, provided that the provisions of occupational health and safety are reserved,
g. Sportspeople,
h. Persons being rehabilitated,
i. Businesses where three persons pursuant to the definition given in Article 2 of Law 507 on Tradesmen and Craftsmen.

However;

a. Loading and unloading businesses from ships to shore and from shore to ships at the landing stages or ports and quays,
b. Businesses performed at all ground facilities of aviation,
c. Works performed at the workshops and factories where agricultural arts and agricultural tools, machinery and parts are produced,
d. Construction works performed at agricultural enterprises,
e. Works performed at parks and gardens open to public use or annexed to the business,
f. Works related with sea products producers working at seas and not covered by Maritime Labour Law and not considered as agricultural works,

are subject to the provisions of this Law (Art. 4).

DIRECTIVE 79/7

1. Is there a general social security scheme covering the whole working population? Does it contain differences in the pensionable age for men and women, or in the survivor pension benefits available to men and women? (These may be permitted under the derogations in Directive 79/7.)

Social insurance services which cover old-age, unemployment, health care, invalidity, sickness, maternity, occupational injuries and diseases and survivors benefits are provided mainly by four institutions: Retirement Fund (ES) for the civil servants; Social Insurance Institution (SSK) for the employees and agricultural employees; Social Insurance Institution for the self-employed and self-employed in agriculture (Bağ-Kur); Turkish Employment Organisation (ISKUR) for the employees covered by unemployment insurance. For all institutions, retirement age is 58 for women and 60 for men. In addition, there are occupational social security funds that cover some benefits.

In accordance with the current social security legislation, in case the insured person died, while daughters who do not work and have no income from social security institutions until getting married and sons

until their 18 years of age or until 25 years of age in case they are continuing their education have the right to be paid death benefits.

Law No. 506 on Social Insurance For Workers -Awarding Of Pension to the Spouse and the Children (Art. 23)

The following provisions shall apply in the case of death caused by work accident or occupational disease.

I- Annual pension shall be awarded at the following rates out of the 70 % of the annual earnings of the deceased insured person determined in accordance with the provisions of Article 88;

A) 50 % to his widow or 75 % if she has no child drawing a pension.

…

C) Of the children:

a) "25 % to a son if he has not completed his 18th year, or, if receiving a secondary education his 20th year or, if receiving higher education his 25th year or, if disabled to the extent of being unable to work and if he is not drawing a pension to which he was entitled in respect of an employment covered by a retirement pension or social insurance scheme"

25 % to a daughter regardless of her age if she is not married or she is divorced or is a widow, provided that she is not employed in an occupation covered by Social Insurance Institution or under the Pension Fund for the Civil Servants or she is not drawing a pension from those institutions.

b) 50 % to each child referred to in subparagraph (a)if both parents were dead or they died subsequently or if there was no matrimonial tie between his father and mother, or if his mother remarries subsequently in spite of there being a matrimonial tie between his father and mother at the date of death of the insured father.

The sons of the insured person who have completed their l8th or 2Oth years and have not been entitled to a pension, subsequently go to school for their education, shall be entitled to receive the benefits referred to in subparagraph (a).

II) In case of the death of the insured person whose pension for permanent incapacity for work has been paid in the form of a lump sum, his survivors shall be awarded a pension in accordance with the provisions of this Law regardless of payment of the lump sum to the deceased person.

III) Adopted children, acknowledged children, legitimised children or children recognised by court decision and posthumous children shall be

eligible for a pension to be awarded according to the rules laid down in the foregoing paragraphs.

IV) The total amount of pensions to be awarded to the surviving spouse and children shall not exceed 70 % of the annual earnings of the insured person. In order not to exceed this limit, proportional reductions shall be made, where appropriate, in the pensions payable to the survivors.

V) Pensions awarded to the sons of the insured persons shall continue to be paid until they complete their 18th year, if receiving secondary education their 20th year and if receiving higher education their 25th year. The pensions payable to the sons who are disabled to the extent of being unable to work shall not be liable to suspension even after they complete the age limits referred to above. However, the sons who become disabled to the extent of being unable to work after their pensions are suspended shall again be awarded pensions to be paid as from the first day of the month following the date on which the medical report taken as a basis for the determination of the incapacity for work, provided that they not receiving a pension in respect of their employment covered by a social insurance or retirement pension scheme. The provision of Article 101 is not affected.

VI) (Amended: 20/3/1985-Law No.3168/art.1) If the widow of the deceased insured person remarries, her pension shall be suspended. If the marriage which was the cause of suspension of pension is dissolved, the pension shall be re-instituted. The widow who becomes entitled to a second pension after the death of her subsequent husband she shall be paid the higher of these pensions.

VII) (*) (E.D.: 06.08.2003 changed by Article 35 of Law No.4958) Payment of allocated benefits to the daughter of the insured is terminated at the beginning of the period following the date they start receiving income or pension from jobs subject to Social Insurance or Pension Funds of Civil Servants (Emekli Sandığı) or the date they get married. In the case of disappearance of the situation that causes the termination of allocation, from that date on the benefit is allocated again reserving the provision of paragraph (C) in Part One. If the marriage is terminated and wife earns the right to receive benefit from her husband, the person is allocated with the higher benefit.

(*) Please refer to Supplement12, 44 and 47 of Supplementary Articles for the execution of this provision.

VIII) (Supplement: 29/6/1978-Law No.2167/Art.2) In case of the death of a person while receiving a pension against permanent incapacity for work due to missing 50 % or more of his earning capacity, in his profession, as a result of an work accident or an occupational disease, the survivors of the person shall be awarded pensions not giving regard to whether the death was caused by the work accident or occupational disease which was the cause of the invalidity.

Law No. 506 on Social Insurance for Workers

Pensions for Spouse and Children (Art. 68)

(Amended: 21.6.1973-Law No: 1753/Art.2)
A pension shall be awarded to the survivors of the deceased insured person entitled to a pension according to the following provisions:

I- of the pension of the deceased insured person to be determined in accordance with the provisions of Article 67:

A) (Amended: 20.3.1985-Law No: 3168/Art.2) 50 % to his widow; or 75% if he has no child drawing pension;

…

C) of the children:

a) 25 % to a son if he has not completed the age of 18, or if receiving secondary education the age of 20, or if receiving higher education the age of 25, or if invalid to the extend of being unable to work and if he is not drawing a pension to which he was entitled in respect of an employment covered by retirement pension or social insurance scheme; 25 % to daughter regardless of her age if she is not married or she is divorced or is a widow, provided that she is (expression of "men" is removed by the Article 35 of Law No.4958 dated 29.07.2003. E.D. 06.08.2003) not employed in an occupation covered by retirement pension or social insured scheme or she is not drawing a pension from the fund administering these schemes;

b) 50 % to each child referred to in sub-paragraph (a) if the parents were dead or if they died subsequently or if there was matrimonial tie between his father and mother, or if his mother remarries subsequently in spite of there being a matrimonial tie between his father and mother on the date of death of the insured is father.

If the sons of insured person who have completed their ages of 18 or 20 and have not been entitled to a pension, subsequently go to school for the education, shall be entitled to the benefits referred to in subparagraph (a).

II. Adopted children, acknowledged children, legitimised children or children recognised by court decision and posthumous children shall benefit from the pension to be awarded according to the rules referred to above.

III. The total amount of pensions to be awarded to the surviving spouse and children shall not exceed the amount payable to the insured person. In order not to exceed this limit proportional reductions shall be made, where appropriate, in the pensions awarded to the survivors.

IV. Pensions awarded to the sons of the insured person shall continue to be paid until they complete their age of 18, if receiving secondary education their age of 20 and if receiving higher education their age of 25. The pensions payable to the sons who are invalid to the extent of being unable to work shall not be liable to suspension even after they complete the age limits referred to above. If, however, the sons who become invalid to the extent of being unable to work after their pensions were suspended, shall again be awarded pensions to be paid as from the beginning of the month following the date on which the medical report taken as a basis in determining the State of invalidity, provided that they are not receiving a pension in respect of their employment covered by a social insurance or retirement pension scheme. The provisions of Article 101 shall not be affected.

V. (Amended: 20.3.1985-Law No. 3168/Art.2) If the widow of the deceased insured person remarries, her pension shall be suspended. If the marriage which was the cause of suspension of pension is dissolved, the pension shall be re-instituted. The widow, who becomes entitled to a second pension after the death of her subsequent husband, shall be paid the higher of these pensions.

VI). The pensions awarded to the daughters of the insured person shall be suspended as from the beginning of the quarter following the date on which they started to work in an occupation covered by the social insurance or retirement pension scheme (E.D.: 06.08.2003 changed by Article 35 of Law No.4958 dated 29.07.2003), receiving income or benefit from these places or on the date they marry. If the factor which was the cause of suspension of the pension is abolished, a new pension payable as from the date on which the causal factor was abolished shall be awarded, subject to the provisions of paragraph 1, subparagraph (C). If, however, she becomes entitled to a pension after the marriage is dissolved shall be paid the higher of these pensions.

Social Insurance Law No. 1479 For Craftsman, Artisans and Other Self-Employed – Pensions for Spouse and Children is explained in Art. 45.

2. Is there any specific social security scheme for civil servants, including the armed forces, or are there specific rules for civil servants within the general scheme? Do the specific rules foresee different pensionable ages for men and women?

Pensionable age for civil servant is 58 for women and 60 for men. They must have completed insurance period of 25 years.
In some professions like armed forces and university professors, different pensionable age may be set regardless of sex.

3. Is the pension for civil servants calculated by reference to the number of years of service and also by reference to the last salary received before retirement?

Pensions of civil servants are calculated by reference to the number of years of service and also by reference to the last salary received before retirement in general.

4. Do the transposing provisions cover the whole work force?

The transposing provisions will cover the whole work force when the Draft Law on Social Security Reform adopted.

DIRECTIVE 86/613

1- **How does the law provide for equal treatment as defined in Dir. 76/207, especially in respect of the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity including financial facilities?**

There is no reference to gender in Trade Legislation and other financial laws.

2- **How does the law guarantee that the conditions for the formation of a company between spouses are not more restrictive than the formation of a company between unmarried persons?**

There is no difference between spouses and unmaried persons in procedures for the formation of a company according to Article 5 of Law No. 3572 on Opening a Business and Business Licence.

3- **How does the law guarantee that spouses of self-employed, who are not protected under the self-employed worker's social security scheme, can join a contributory social security scheme voluntarily?**

Law No. 1479 on Social Insurance For Craftsman, Artisans and Other Self-Employed and Law No. 2926 on Social Insurance For Self-Employed at Agricultural Sector - Those who are not registered to social insurance institutions established according to acts or competencies depending on acts, housewives and foreign nationals residing in Turkey can be insured depending on their own request (Law No. 2926 on Social Insurance - Add. Art. 3 / Law No. 1479 on Social Insurance - Art. 79).

4-	**What means of judicial possibilities do persons have who consider themselves discriminated, to pursue their claims by judicial process?**

Law No. 1479 on Social Insurance For Craftsman, Artisans and Other Self-Employed and Law No. 2926 on Social Insurance For Self-Employed at Agricultural Sector - Disputes stemming from the implementation of these Law are solved in labour courts or courts assigned to hear the case (Law No. 2926 on Social Insurance – Add. Art. 3 / Law No. 1479 on Social Insurance - Art. 70).

DIRECTIVE 86/378 AND 96/97

1-	**Is there a law dealing with occupational pensions?**

There is no occupational social security scheme regulated at national level.

There are two mandatory second pillar type schemes for the armed forces (OYAK) and for the employees of the State-owned coal mining enterprise (TTK). These schemes operate under seperate legislation, and combine defined benefit and defined contribution elements.

On the other hand, there are 17 funds which replace statutory social security scheme as defined by the Directive, providing the personnel of Banks, Insurance and Reinsurance Companies, Chambers of Commerce and Industry and Commodity Exchanges, with benefits that replace benefits provided by the Social Insurance Law.

Law No. 506 on Social Insurance For Workers - The personnel of Banks, Insurance and Reinsurance Companies, Chambers of Commerce and Industry and Commodity Exchanges shall not be considered as insured persons for the purposes of this Law if funds organised in the form of foundations or associations by the said organisations prior to the date of publication of this Law for the purpose of providing benefits in the case of invalidity, old-age and death to their personnel are individually transformed not later than six months after the date of publication of this Law into a Benefit Fund Foundation which:

a) covers all the personnel of the bank, insurance or reinsurance company, chambers of commerce, industry and exchanges or of unions formed by them;

b) provides as a minimum, the benefits specified in this Law in the case of industrial accidents, occupational diseases, sickness, maternity, invalidity, old age and death for such personnel, in the case of maternity for their spouses and in the case of sickness for their spouses and children;

c) guarantees that the personnel subject to the constitution of such funds transferring from the one to another of these banks, insurance and

reinsurance companies, chambers of commerce, industry and exchange or unions of same covered by the present Article, the rights acquired by the said personnel in their original funds shall be transferred to the fund to which they have transferred or to a Common Fund to be created among such institutions or organisations,

And the constitution of which evidencing the action is filed with the Ministry of Labour and Social Security not later than six months after the date of publication of this Law.

However, the constitutions of these funds and amendments there to shall become final only after the approval of the Ministry of Labour and Social Security. Their financial status shall also be audited jointly by the Ministries of Labour and Social Security, Finance and Commerce. The Funds and organisations concerned shall have to take the measures deemed necessary by the Ministries jointly following the control of their financial status.

The periods of service completed under the regulations of the funds in question and periods completed under the Laws concerning pension funds or under invalidity, old-age and survivors' insurance shall be added together, if claimed by the insured person, in accordance with the provisions of Law 228 dated 5 January 1961 respecting the award of pensions (Transitional Art. 20).

Law No. 5411 on Banking – However, these funds will be transferred to Social Insurance Institution within three years after publication date of this Article.

2- Are there any limits on access for part-time workers to occupational pension schemes?

Law No. 506 on Social Insurance For Workers - The funds must cover all the personnel of the bank, insurance or reinsurance company, chambers of commerce, industry and exchanges or of unions formed by them (Transitional Art. 20/a).

3- Are there different pensionable ages for men and women in occupational schemes?

Most of Funds' Statutes refer to Law No. 506 on Social Insurance for Workers about pensionable ages. Therefore, there is difference on age criteria between men and women to be entitled to an old-age benefit (generally 58 for women and 60 for men).

4- Are there different minimum service requirements for men and women?

There is no difference on minimum service requirements between men and women.

5- Are there different survivor's benefits for men and women?

Most of Funds' Bills refer to Law No. 506 on Social Insurance For Workers about survivor's benefits. Therefore, there is difference on termination period of survivor benefits between sons and daughters of the insured persons while there is no difference on the amount of survivor payment between them.

Law No. 506 on Social Insurance for Worker:

V) Pensions awarded to the sons of the insured persons shall continue to be paid until they complete their 18th year, if receiving secondary education their 20th year and if receiving higher education their 25th year. The pensions payable to the sons who are disabled to the extent of being unable to work shall not be liable to suspension even after they complete the age limits referred to above. However, the sons who become disabled to the extent of being unable to work after their pensions are suspended shall again be awarded pensions to be paid as from the first day of the month following the date on which the medical report taken as a basis for the determination of the incapacity for work, provided that they not receiving a pension in respect of their employment covered by a social insurance or retirement pension scheme. The provision of Article 101 is not affected.

VII) Payment of allocated benefits to the daughter of the insured is terminated at the beginning of the period following the date they start receiving income or pension from jobs subject to Social Insurance or Pension Funds of Civil Servants (Emekli Sandığı) or the date they get married. In the case of disappearance of the situation that causes the termination of allocation, from that date on the benefit is allocated again reserving the provision of paragraph (C) in Part One. If the marriage is terminated and wife earns the right to receive benefit from her husband, the person is allocated with the higher benefit (Art. 23).

6- Are there different family related benefits for men and women?

There are no different family related benefits for men and women.

7- Are there limits on rights acquired by women during periods of maternity leave?

Most of Funds' Bills refer to Law No. 506 on Social Insurance For Workers about qualifying conditions for entitlement to maternity benefits.

Law No. 506 on Social Insurance For Workers - In order to be entitled to maternity benefits in kind or to nursing allowance, or to a lump-sum payment for pregnancy and confinement:

A) Maternity insurance contributions for at least 90 days must have been paid for the insured woman in the course of the year preceding confinement.

B) Maternity insurance contributions for at least 120 days must have been paid for the insured man in the course of the year preceding the confinement and the insured man must have married the woman who gave birth to a child before confinement (Art. 48).

DIRECTIVE 96/34

1. Is the right to parental leave available to all categories of employees?

Currently, there is no parental leave right in Turkey. However, there is a draft law on the agenda of the Parliament that defines parental leave right for civil servants under the Civil Servants Law and employees under the Labour Law.

2. Is a minimum of 3 month parental leave guaranteed?

According to the draft law;

For the civil servants, an unpaid parental leave of up to 12 months in the following year of the paid maternity leave periods is defined for the women civil servant *or* her husband who is also a civil servant upon their request. This right is the same for the adoption of a child at maximum three years of age. This period can be used as successive periods upon the request of spouses. It can be extended to 12 months upon the request of spouses. The civil servant spouse of the employees working under the Labour Law giving birth or adopting a child have this right also.

For the employees, unpaid parental leave of up to six months after the paid maternity leave period is defined for the women employee *and* her husband (independently) who is also an employee upon their request. This period can be used as successive periods upon the request of spouses. It can be extended to 12 months upon the request of spouses. This right is the same for the adoption of a child at maximum three years of age. The

employees who are spouse of the civil servant giving birth or adopting a child have this right also. This right is non-transferable.

3. Are the right to parental leave for men and women independent (3 month for each, independently of one another) and not transferable?

In the draft, there is an independent parental leave right. For employees, this right is regulated as non-transferable. For civil servants, the total period is regulated and minimum three months parental leave and its non-transferable character are not mentioned.

4. Are the same rights available to men and women?

In the draft, parental leave right is regulated for women and men.

5. Is there a right to time off for "force majeur" reasons to care for sick children?

In the draft, for employees, there is right to take unpaid time off from work for up to two days in a written form in case of a force majeur. For civil servants, 10 days of paid leave right already exists.

6. Is protection from dismissal for exercise of right guaranteed?

The termination of the labour contract depending on exercise of leave right is prohibited.

7. Are acquired rights on the day parental leave starts maintained?

There is no provision on acquired rights in the draft law.

8. Is the right to return to the same job after parental leave guaranteed?

In the draft, right to return to the same or equivalent job after parental leave is protected.

9. Do the transposing provisions cover the whole work force?

The draft law introduces parental leave for civil servants and for employees working under the Labour Law. The other types of employees are not covered.

DIRECTIVE 92/85

1- Is the right to a minimum of 14 weeks maternity leave guaranteed?

According to the Labour Law No. 4857 (Article 74), By-law on the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes (Article 11) and Law on Civil Servants No. 657 (Article 104); it is the principle that the female workers should not be asked to work for a period of sixteen weeks in total, eight weeks before and eight weeks after delivery.

2- Is previous employment of less than 12 month before date of confinement required for maternity leave?

There is no such requirement to be entitled to maternity leave.

3- Is an "adequate allowance" paid for maternity leave and if so, how is it calculated?

Salaries of the civil servants are paid in the period of maternity leave.

In the scope of Social Insurance Law No. 506;

- The benefits which shall be provided in the case of maternity for the insured woman or the uninsured wife of the insured man (Article 43);
- The conditions to be entitled to maternity benefits in kind or to nursing allowance, or to a lump-sum payment for pregnancy and confinement (Article 48);
- Temporary incapacity allowance (Article 49) and
- Calculation of these allowances (Article 89) are defined.

Calculation of Temporary Incapacity Allowances

Article 89- The cash benefit for temporary incapacity for work in cases of work accident, occupational diseases or sickness where the insured person is hospitalised or sent to a thermal or mineral spring for treatment at the expense of the Institution, he shall be paid one-half of his daily earnings calculated in accordance with the provisions of Articles 78 and 88, where the person insured is provided treatment as an out patient he shall be paid two thirds of his daily earnings.

Where an insured person is drawing a pension for a permanent incapacity for work is again put under treatment for the same injury or occupational disease, and he submits a written claim, the difference between the daily cash benefit for temporary incapacity for work to be calculated according to the earnings taken as a basis for determining the pension for permanent incapacity for work and one ninetieth of the quarterly pension for

permanent incapacity for work shall be paid for each day as a cash benefit.

The Institution weekly in arrears shall pay cash benefits for temporary incapacity for work. Where it is difficult to receive from the Institution the said benefit directly, it shall be paid to the insured person on account of the Institution by the employer according to the instructions of the Institution. The Institution shall reimburse the employer for all benefits paid under this Law on basis of vouchers.

The cash benefit payable to an insured woman in the case of maternity shall be equal to two-thirds of her earnings.

4- Is there protection against dismissal for workers within the meaning of the Directive (pregnant women and women on maternity leave) ?

Law on Civil Servants - The Article 125/E of Law on Civil Servants organizes the conditions in which civil servants can be dismissed; except these conditions, they can not be dismissed. Pregnancy and maternity leave are not included in these conditions.

Workers Not Covered by Job Security System (Labour Law - Art. 17) - The worker is paid an indemnity equal to three times of the notification period in case the labour contracts of workers are terminated through misuse of the right of termination (Art. 17/5). In addition to this, in case of contradiction to principle of equal treatment in the business relation or termination, the worker can demand the rights that he/she has been deprived of besides an appropriate indemnity equivalent up to four months' wage (Art. 5/6).

Workers Covered By Job Security System (Labour Law - Art. 18-21) - Particularly the following issues do not constitute a valid reason for termination:……

c) Application to administrative or judicial authorities against the employer for seeking the rights arising out of laws or the contract or participation in a proceeding already instituted on this issue (Art. 18/c).
d) Race, color, sex, marital status, family obligations, pregnancy, birth, religion, political opinion and similar reasons (Art.18/d).

In case the employer does not assert a valid reason or the court or special arbitrator decides that the asserted reason is not valid and the termination is decided to be ineffective, the employer is obliged to employ the worker within one month or to pay an indemnity equal to minimum four and maximum eight months' wage to the worker (Art. 21/1). In addition to this, in case of contradiction to principle of equal treatment in the business relation or termination, the worker can demand the rights that he/she has been deprived of besides an appropriate indemnity equivalent up to four months' wage (Art. 5/6).

5- Is time off guaranteed for ante-natal examinations?

Paid leave for periodic checks during pregnancy is arranged in Article 74 of the Labour Law No.4857 and By-Law on the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes (Article 12).

The sanctions for employer and employer representative who do not apply the Provision in Article 74 are arranged by Article 104 of the Labour Law.

6- Are high risk work (hazardous agents) and compulsory night work banned?

In the case the health report shows that the worker has no obstacles for work, breastfeeding worker is allowed to work; however the situations that the breastfeeding worker is not allowed to work is listed in the By-Law on the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes (Article 13 and Annex I)

Working duration of female workers at night shifts is arranged by By-Law on the Working Conditions of Female Workers at Night Shifts (Article 5).

However, it is prohibited to ask the pregnant, breastfeeding and newly gave birth worker to work at night during the periods mentioned in the provisions of By-law on the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes (Article 9) and By-law on the Working Conditions of Female Workers at Night Shifts (Article 9).

7- Are there health and safety risk assessment procedures in place?

Concerning the dangerous effects of chemical, physical and biological actions and industrial processes which are considered as dangerous for the security and health of the pregnant, newly gave birth and breastfeeding workers; general and special precautions to be taken are described by the By-law for the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes (Article 5).

In terms of working conditions during pregnancy and breast feeding of the worker, the By-law arranged the issues on;

- employing the pregnant worker in a lighter position is mentioned by Labour Law No. 4857 (Article 74/4),
- working in an easy work, changing the working conditions and/or working hours and taking the necessary precautions for pregnant or breastfeeding worker (Article 8).

Guidelines arranged in the scope of the By-law are;

- Annex I - Table Showing the Works and Work Sites in which Pregnant, New Gave Birth and Breastfeeding Workers Cannot Definitely Work and the Important Risk Factors Involved,
- Annex II - Definitions Concerning Chemical Effects,
- Annex III - Observing Form for the Pregnant Workers.

8- Is paid leave granted where transfer to avoid a health and safety risk is not possible?

According to the Article 8 of the By-law on the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes, in case that the Employer has found a negative effect on the pregnancy or breastfeeding of the worker, or a security or health risk due to the results of the evaluation done; the working conditions and/or working hours of the concerned worker are temporarily changed, in such a manner that they will prevent the worker to experience these risks.

In case that a change in the adaptation of the working conditions and/or working hours is not available technically and objectively; Employer takes the necessary precautions to forward the worker to another work.

In case that determined necessary by a medical report, the pregnant worker is asked to work in easy work suitable for her health. At this point no reduction will be done to the wage of the worker. If it not possible technically or logically to transfer another work, depending upon the request of the worker, unpaid leave is provided. This period is not taken into consideration in the calculation of the annual paid leave.

9- Do the transposing provisions cover the whole work force?

The transposing provisions cover the ones that are in the scope of Labour Law.

DIRECTIVE 97/80

1- Is the rule governing the burden of proof correctly transposed in relation to Directives 76/207 as amended, 75/117, 92/85 and 96/34?

Labour Law No. 4857 - No discrimination based on language, race, sex, political thought, philosophical belief, religion, sect and similar grounds can be made in the business relation *(related to Directive 76/207).*

The employer can not treat part-time worker against full-time worker and definite-term worker against indefinite-term worker differently unless on founded reasons.

The employer can not treat a worker differently in concluding the labour contract, establishing the conditions thereof, implementation and termination *(related to Directive 76/207)* thereof due to sex or pregnancy *(related to Directive 92/85)*, unless biological reasons or those pertaining to the work qualifications oblige.

A lower wage can not be decided for an equal or equivalent job on the grounds of sex *(related to Directive 75/117).*

Implementation of special protective provisions due to the sex of the worker does not justify the application of a lower wage *(related to Directive 75/117).*

In case of contradiction to the provisions of the above paragraph in the business relation or termination, the worker can demand the rights that he/she has been deprived of besides an appropriate indemnity equivalent up to four months' wage. Provisions of Article 31 of Law 2821 on Trade Unions are reserved.

Without prejudice to the provisions of Article 20, the worker is obliged to prove that the employer has contradicted to the provisions of *the above paragraph*. However, when the worker puts forward a situation strongly suggesting the probability of the existence of an infringement, the employer becomes obliged to prove that no such infringement exists.

In the Law On Administrative Jurisdiction, in case of suing in administrative courts, in petition there must be lawsuit's subject, reasons and proofs that lawsuit is based on (Art. 3/b).

Administrative courts conduct themselves all sort of investigations related to the lawsuit. The courts can demand parties and other related institutions to send necessary documents and to give information (Art. 20).

2- Are there any proceedings in your country in which it is for the court or any other competent body to investigate the facts of the case?

Law No. 2577 on Administrative Jurisdiction - Administrative courts conduct themselves all sort of investigations related to the lawsuit. The courts can demand parties and other related institutions to send necessary documents and to give information (Art. 20).

3- Does the reversal of the burden of proof cover all employment relationships, including agricultural workers in companies employing less than a specified number of employees?

The burden of proof can be applied in the scope of Labour Law.

The Scope of Labour Law No. 4857 - This Law shall apply for all businesses, other than the exceptions given in Article 4, employers and employer representatives and workers of these businesses, regardless of their subjects of activity (Art. 1).

Exceptions - The provisions of this Law shall not apply for the below specified businesses and business relations;

a. Sea and air transport businesses,
b. Businesses or enterprises carrying out agricultural and forestry works and employing less than 50 (including 50) workers,
c. All building works related with agriculture within the limits of family economy,
d. Houses and businesses where handicrafts are performed among the members of a family and relatives up to 3rd grade (including 3rd grade) without participation of external persons,
e. Domestic services,
f. Apprentices, provided that the provisions of occupational health and safety are reserved,
g. Sportspeople,
h. Persons being rehabilitated,
i. Businesses where three persons pursuant to the definition given in Article 2 of Law 507 on Tradesmen and Craftsmen.

However;

a. Loading and unloading businesses from ships to shore and from shore to ships at the landing stages or ports and quays,
b. Businesses performed at all ground facilities of aviation,
c. Works performed at the workshops and factories where agricultural arts and agricultural tools, machinery and parts are produced,
d. Construction works performed at agricultural enterprises,
e. Works performed at parks and gardens open to public use or annexed to the business,
f. Works related with sea products producers working at seas and not covered by Maritime Labour Law and not considered as agricultural works,

are subject to the provisions of this Law (Art. 4).

4- Do the transposing provisions cover the whole work force?

The transposing provisions cover the work force only in the scope of Labour Law.

DIRECTIVE 2004/113

1- Are there any restrictions based on gender, concerning access to goods and services available to the public, offered outside private and family life?

There is no any restrictions based on gender, concerning access to goods and services available to the public, offered outside private and family life. Article 122/1 of the Penal Code- A person who by practicing discrimination on grounds of language, race, colour, gender, political ideas philosophical beliefs, religion, sect and other reasons;

a) prevents the sale or transfer of personal property or real estate or the performance or enjoyment of a service or who makes the employment of a person contingent on one of the circumstances listed above,

b) withholds foodstuffs or refuses to provide a service supplied to the public,

c) prevents a person from carrying out an ordinary economic activity,

shall be sentenced to imprisonment for a term of six months to one year or judicial fine.

2- Is gender used as an actuarial factor for insurance products?

Gender is used as an actuarial factor in some of the life insurance and health insurance products.

3- **Are health insurance premiums for women higher than for men and are pregnancy and maternity related costs taken into account for the purpose of calculating premiums?**

Due to different morbidity statistics between men and women for some age groups, health insurance premiums may be higher than that of men's. The maternity and pregnancy related costs are usually taken into account in case of maternity expenses coverage.