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Screening report

Turkey

Chapter 24 – Justice, Freedom and Security

Date of screening meetings:

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Bilateral meeting: 13-15 February 2006

I. CHAPTER CONTENT

EU policies aim to maintain and further develop the Union as an area of freedom, security and justice. On issues such as border control, visas, external migration, asylum, police cooperation, the fight against organised crime and against terrorism, cooperation in the field of drugs, customs cooperation and judicial cooperation in criminal and civil matters, Member States need to be properly equipped to adequately implement the growing framework of common rules. Above all, this requires a strong and well-integrated administrative capacity within the law enforcement agencies and other relevant bodies, which must attain the necessary standards. A professional, reliable and efficient police organisation is of paramount importance. The most detailed part of the EU's policies on justice, freedom and security is the Schengen acquis, which entails the lifting of internal border controls in the EU. However, for the new Member States substantial parts of the Schengen acquis are implemented following a separate Council Decision to be taken after accession.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Turkey and the discussion at the screening meeting.

Turkey indicates that it can accept the acquis in this chapter. Turkey indicates that it does not expect any difficulties to implement the acquis by accession.

II.a. Migration

Turkey is party to the main UN, ILO and Council of Europe conventions in the field of migration, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (entered into force on 1 January 2005), the International Covenant on Economic, Social and Cultural Rights (entered into force on 1 January 2004), the International Covenant on Civil and Political Rights (entered into force on 1 January 2004), the C87 Convention on Freedom of Association and Protection of the Right to Organise (entered into force on 1 August 1994), the C111 Convention on Discrimination, Employment and Occupation (entered into force on 1 August 1968), the C100 Convention on Equal Remuneration (entered into force on 1 August 1968), the C118 Convention on Equality of Treatment and Social Security (entered into force on 1 July 1975), the Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force on 18 May 1954), the European Social Charter (entered into force on 24 December 1989), the European Convention on Establishment (entered into force on 20 March 1990) and the European Convention on Social and Medical Assistance (entered into force on 1 January 1977).

A number of different pieces of legislation lay down the clauses and modalities regarding entry, exit, stay, residence of aliens and other provisions on legal migration. Among these are Law No. 2510 on Settlement, Law No. 5683 on Residence and Travel for Aliens in Turkey, the Passport Law No. 5682, the Turkish Citizenship Law No. 403, Law No. 4817 on Work Permits for Aliens, the Labour Law No. 4857 and Law No. 2922 on Foreign Students Studying in Turkey.

Turkish visas are not renewable. Aliens who are willing to stay in Turkey after visa expiry are obliged to apply to the relevant authorities to obtain a residence permit. Residence permits are valid and renewable for five years. The application for a residence permit has to

be lodged at Turkish consular places abroad. Work permits are issued by the Ministry of Labour and Social Security. In principle, applications for work permits are made through Turkish consular representations abroad. Foreigners residing outside Turkey file their applications for work permits with the Turkish representations in the countries where they live. Work permits are granted to foreigners fulfilling the necessary conditions. In addition to applications for work permits filed abroad, any foreigner who has obtained a six-month valid residence permit in Turkey or their employer may apply directly to acquire a work permit from the Ministry of Labour and Social Security.

Naturalisation is granted to those married to Turkish citizens after a three-year cohabitation period. It is granted automatically if the alien is to lose his/her nationality due to marriage.

Foreign students can apply for a “study residence permit” for the duration of their studies after expiration of their visa.

On family reunification, the existing Turkish legislation does not include any provision on age limits for dependent children nor on minimum standards nor on integration conditions. There is no real integration policy in Turkey due to the low number of legal residents. Children and spouses have a right to benefit from the family reunification regime. Other relatives might be allowed to join the family on special occasions or for medical rehabilitation. The definition of “child” also covers adopted children. No residence period is required to apply for a work permit for foreigners who are married to Turkish nationals and come to Turkey under family reunification.

There are no requirements either as to the minimum length of stay in the country before being able to apply for family reunification. Any person possessing a valid six-month residence permit can apply for family reunification. Those who entered the country under family reunification can apply for a work permit after five years.

In order to carry out archaeological research in Turkey an application to the Turkish missions abroad is necessary, whereas for other types of research the only requirement is the need to inform the local authorities. Such legislation needs to be aligned with the wider scope of the EU directive, which covers not only university research but also research carried out by organisations.

Illegal migration

The new Penal Code contains provisions on migrant smuggling. Sanctions entail both imprisonment (three to eight years) and significant judicial fines. If the crime is committed by perpetrators acting as an organisation, the penalty to be imposed shall be increased by half. Article 79 also provides for coercive measures (confiscation of assets) on legal entities involved in migrant smuggling.

In the decade up to 2006, 580.000 illegal migrants have been apprehended in Turkey. In the period 1998-2006, 5500 organisers including smugglers have been captured.

In 2003, a new Law on Work Permits for Foreigners entered into force. The Law prescribes administrative penalties both for the alien working without a work permit and for his employer.

The 2003 Road Transportation Law foresees the cancellation of the transportation permit for three years and the seizure of the vehicle for offences related to migrant smuggling.

Concerning facilitation of illegal migration for financial gain, the universal jurisdiction norm foreseen in the Penal Code applies.

Readmission

Turkey readmits its own nationals in accordance with the Passport Law No. 5682. If it is proved that illegal third country nationals have departed from Turkey, they will be readmitted as long as they are returned by the same or a subsequent flight in the light of ICAO rules and practices. Moreover, aliens with a valid Turkish residence permit are readmitted to Turkey. However, the scope of Turkey's readmission policy is currently limited to aliens arriving by air, and not by sea and land.

Turkey has concluded readmission agreements with five countries (Greece, Romania, Syria, Ukraine and Kyrgyzstan) and has proposed readmission agreements to a number of its Eastern neighbours.

Expulsion

If an illegal migrant does not wish to return to his home country voluntarily, a deportation decision is taken by the Ministry of Interior, and notified to the local authorities. The decision can be appealed. The appeal has suspensive effects, allowing the alien to stay in Turkey.

Illegal migrants who do not possess any valid travel document are deported as soon as valid travel documents are provided. Illegal migrants having been smuggled to Turkey are hosted in facilities called "Guesthouses for Foreigners", managed by the Ministry of Interior. There are currently seven guesthouses throughout Turkey with a capacity of 550 people. No time limit is foreseen for their stay. These centres are meant to be accommodation centres and not custody centres. However, illegal migrants are not allowed to leave freely.

II.b. Asylum

Turkey does not have a comprehensive asylum law. The definition of persons, procedures and institutions involved in the asylum process is regulated by a number of pieces of legislation, such as Law No. 2510 on Settlement, Law No. 5683 on Residence and Travel of Aliens in Turkey, Passport Law No. 5682, Law No. 4817 on Work Permits of Aliens and by the 1994 Asylum Regulation No. 6169, as amended in 2006.

A new asylum law is under preparation. Turkey did not indicate a precise timeframe for adoption of the law. There are no plans to lift the geographic limitation to the Geneva Convention in the short term. The provisions in the Turkish National Action Plan (NAP) on Asylum and Migration, adopted by the Turkish government in June 2005, indicate that a decision on the matter might be taken in 2012.

Turkey is party to the 1951 United Nations Geneva Convention on the Status of Refugees and its Additional Protocol with a "geographical limitation", which limits Turkey's obligations to persons uprooted by events in Europe. According to the current practice, the following countries, inter alia, are considered to be "European": Moldova, Belarus, Ukraine, Russian Federation (including the Asian part), Georgia, Armenia and Azerbaijan.

Applicants for asylum from these countries might be recognised as "refugees". However, European "refugees", such as citizens from Bosnia-Herzegovina and Kosovo, have generally

received protection without being granted formal Convention refugee status or the rights it entails but were instead treated as “guests” under a series of administrative arrangements in case of mass influx. Others, like Chechens, do not have access to the national asylum procedure and are only able to receive and renew temporary residence permits under the normal immigration laws.

Applicants coming from non-European countries would be qualified as “asylum-seekers”. The rights arising from the Geneva Convention such as international protection as well as other types of protection, non-refoulement principle and other liabilities in terms of social assistance, education, employment etc. are granted by Turkey to “asylum-seekers” as well, pending efforts by UNHCR and IOM to resettle them elsewhere.

There are three main types of protection granted in Turkey:

- Regular protection for refugees/asylum seekers;
- Temporary protection in case of mass influx;
- Subsidiary protection on humanitarian grounds.

Turkey cooperates with UNHCR for processing requests by applicants coming from outside Europe. The decision about the application is communicated in writing to the applicant, who may object within fifteen days. The appeal has suspensive effects. In the event of a final negative administrative procedure, an appeal to cancel the decision may be filed to the court. Finally, an appeal to the Council of State is possible as well. When a positive decision is made, the applicant is allowed to reside in Turkey either in dedicated guesthouses or in designated cities.

As far as applications submitted with an inexplicable delay are concerned, the amendment made in 2006 to the Asylum Regulation No. 6169 of 1994 has abolished the ten-day time limit previously foreseen for lodging an asylum application.

The Turkish legislation does not foresee an “accelerated procedure”. However, legislation is under preparation to include provisions regulating the accelerated procedure. The implementation of the accelerated procedure will depend on the existence of a Country of Origin Information system.

The overall number of asylum applications in the period 1995-2005 is 40,898. Among these, 20,545 applications received asylum status while 6,869 were rejected. This indicates that the recognition rate is quite high in Turkey. Ongoing processes are currently 11,723. Abandoned requests amount to 1,761. The great majority of applications originate from Iranian and Iraqi citizens.

II.c. Visa policy

Turkey’s visa policy is laid down by the Ministry of Foreign Affairs in consultation with the Ministry of Interior and other Ministries and institutions. The Turkish visa regime is mainly regulated by the Passport Law No. 5682 of 24 July 1950 and by the Law on The Residence and Travel of Aliens in Turkey No. 5683 of 17 July 1950.

Visa policy in Turkey is based on the principle of reciprocity.

The Turkish legislation allows visa issuance both at the Turkish diplomatic/consular missions and at the Turkish borders. Turkey operates a distinction between four possible categories of entry:

- Visa exemption for a pre-determined length of time (maximum three months) for a number of countries;
- Countries whose nationals are obliged to obtain visas at Turkish consulates abroad prior to their arrival in Turkey;
- “Sticker-type” visas to be obtained at the Turkish borders for the nationals of a list of thirty-five countries (17 EU Member States are included in this list and 8 EU Member States are on the positive visa list of Turkey). This type of visa is obtained at the designated offices of the Ministry of Finance, prior to the passport control by the border authorities. The sticker-type visa does not automatically guarantee the bearer entry into the Turkish territory;
- “Stamp-type” visas are also issued at the border in very exceptional cases, with the permission of the Ministry of Interior (Directorate General for Security), for those aliens who are not nationals of one of the 35 countries mentioned above and who failed to obtain a visa prior to their departure. This type of visa is usually issued if a) the alien is member of a delegation travelling to Turkey who, due to time constraints, was not able to obtain a visa prior to his departure, if b) the alien is a holder of an official passport and travelling for an official purpose, if c) there is not any Turkish Embassy or Consulate in the alien’s country of residence and he has been invited by a Turkish sponsor for business meetings.

Turkey envisages progressively abolishing the issuance of “stamp-type” visas, which is a practice not in line with the acquis.

Turkish current legislation on forms’ format for affixing visas is not in line with the relevant EU legislation.

The Turkish authorities issue two different types of visas: entry visas (single entry, multiple entry, entry with special annotation) and transit visas (single and double transit).

The Airport Transit Visa foreseen in the EU acquis does not exist in the Turkish visa legislation. However, according to a proposal currently before Parliament, nationals of a number of countries will be subject to Airport Transit Visa in the future.

The issuance of visas to seamen in transit is only partly in line with the acquis.

Visa extension, as set forth in the EU acquis, is not possible in Turkey. Following expiration of the visa, an alien may obtain, upon the approval of the Ministry of Interior, a residence permit, which can be prolonged up to four times, each time for five years, by the Governor.

Visa fees vary both according to the type and to the nationality and are fixed on the basis of reciprocity, the “stamp-type” visa being more expensive than the “sticker-type” visa.

A visa application may be refused if the applicant fails to meet the requirements set out in Article 8 of the Passport Law No. 5682. The applicant is informed verbally. Upon request, he might receive a written motivation.

Visa information technology in Turkey is based on a database system set up by Ministry of Interior which is similar to the SIS, called POLNET, and on a database system set up by Ministry of Foreign Affairs, called KONSOLOSLUK.NET. Work is underway to interconnect these two databases.

Full alignment with the EU visa lists is not yet achieved. Turkey envisages gradually completing its process of aligning with the *acquis* in the years ahead. Turkey still has visa-free regime with twelve countries which are on the EU negative visa list. Turkey still has a visa requirement for eight countries which are on the EU Positive Visa List.

II.d. External Borders and Schengen

External Borders

Green and blue borders make up for a total of 9479 km. Approximately 50.000 personnel are assigned specifically for border security and control. Turkey has 113 border gates.

The main pieces of legislation regulating border surveillance are Law No. 3497 on Protection and Security of Green Borders and the Coast Guard Command Law No. 2692.

The authorities involved with Border Management are the following:

Checks at border crossing points:

- The Turkish National Police (General Directorate of Security – Ministry of Interior), competent for checks on persons only for passport purposes;
- The Customs Administration (depending directly on the Prime Minister), as far as checks on goods and persons are concerned.

Border surveillance:

- Land Forces General Command (Turkish General Staff) at land borders (83% of border), depending on the Prime Minister. Conscripts are also used for surveillance purposes;
- The Coast Guard Command (blue borders), depending on the Ministry of Interior;
- The Gendarmerie (deployed on the Iranian and Iraqi borders), also depending on the Ministry of Interior.

A Strategy for the Protection of External Borders in Turkey was adopted in 2003. An Action Plan on Integrated Border Management is being finalised. The aim of the Action Plan is to ensure that all tasks related to border protection duties in Turkey will be coordinated by a single authority under the Ministry of Interior and performed by trained professional law enforcement units. The Customs Administration will continue its own duties.

At the moment, however, there is no central co-ordination system on border management issues, nor there is any general risk assessment strategy developed at central level (be it at the level of the Prime Minister or of the Ministry of Interior). Coordination is only carried out locally, at the level of the Governors (the Heads of the civilian administration in the provinces, except for the Customs Administration, as they also have risk assessment strategy at the central level); they organise, in particular, regular meetings between the various authorities and disseminate information.

In line with EU practice, Turkish passports are provided with entry-exit stamps. An automatic registration of entries and exits, covering also Turkish citizens, is carried out at all border crossing points. In relation to border checking procedures, no distinction is made in Turkish legislation between different categories of persons and/or nationalities. Refusals of entry do not have to be motivated in writing; an administrative appeal is however possible.

Turkey has concluded special arrangements at borders for entry-exit with a number of neighbouring countries. A bilateral agreement with Syria provides for the issuing by the provincial authorities of administrative letters valid for seven days. The letters are granted to those who reside within 50 km of the Turkish-Syrian border. These people are not subject to the visa requirement.

A visa exemption regime between Turkey and Iran is in place since 1997, which aims at facilitating local movement and trade

The Coast Guard Command is responsible to carry out controls at seas. However, the Coast Guard Command, which is responsible for all law enforcement duties at sea, conducts controls on cruise ships only upon suspicion of irregularities in order not to impede their navigation. The Ministry of Interior (the Police) at sea border gates controls the documents when cruise ships dock at Turkish ports.

Currently Turkish travel documents do not contain biometric data. Preparations for finalising e-passports in line with ICAO standards are in progress and there are plans to have the legislative framework allowing for this adopted by the Parliament by the end of 2006. These passports will be provided with a chip in which biometric data including finger prints could be stored. They will have a 10 year validity period, and will not be renewable.

There are no similar plans, for the time being, to include biometric data in residence permits issued to third-country nationals residing in Turkey.

Schengen acquis

No specific information was provided about Turkey's future plans and strategy concerning the implementation of the whole of the Schengen acquis. However, the Turkish delegation expressed the willingness of the Turkish authorities to align Turkish legislation and practices with the Schengen acquis.

In relation to national IT systems, the Polnet system, managed by the Police and available at all border crossing, is to be mentioned (see also under the visa section). This database contains, inter alia, data on persons who are prohibited entry, persons with criminal records, international arrest warrants, as well as data on invalid passports. There is no link with or access to databases of other authorities.

II.e. Judicial co-operation in civil and criminal matters

Judicial co-operation in civil matters

The main body of Turkish legislation as regards judicial cooperation in civil matters are the Turkish International Private and Procedure Law No. 2675 (TIPPL), the Circular No. 63 on the Principles on Executing the Requests for the International Judicial Assistance in Civil Matters, the Civil Code and the Civil Procedure Law No. 1136. In addition, Turkey has concluded a number of bilateral agreements with Member States which provide for the mutual recognition of judgments and legal assistance. Turkey is also a party to a number of

important international conventions in the area of civil justice. Overall, the Turkish legislation is not in line with EU requirements. Turkey indicated that it is taking into account the EU acquis in its present and future legislative activity but no clear indication was given as to when and how the Turkish authorities intend to meet the EU requirements.

The rules on international jurisdiction, recognition and enforcement of judgments are not aligned with the acquis. As Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters will apply directly from accession, Turkey does not necessarily need to align the provisions of TIPPL in this regard, provided that the application of the EU acquis fits into the national judicial structures. Some amendments to the TIPPL might be necessary to address this situation. Turkish legislation will also need to be amended in order to bring it into compliance with Regulation 805/2004 on the European Enforcement Order.

Council Regulation 1348/2000 on the service in the Member States of judicial and extrajudicial documents and Council Regulation 1206/2001 on cooperation between the courts of the Member States will apply directly and therefore not require full alignment of the Turkish legislation prior to accession. The regulations presuppose, however, the existence of certain administrative structures, notably the designation of competent authorities. Turkey is a party to the 1965 Hague Convention on the Service of Documents and of the 1970 Hague Convention on the Taking of Evidence, which both require the designation of competent authorities. Furthermore, Turkey has bilateral agreements on legal assistance with a number of Member States. Therefore, at least part of the necessary structures for the implementation of the acquis exists already. It remains to be verified if Turkey's administrative capacity is sufficient to be able to handle requests for legal assistance in practice.

Turkey's rules on the law applicable to contractual obligations are only partly in line with the EU acquis. Although the future regulation will apply directly, it is highly desirable that Turkey undertake a comprehensive amendment of the TIPPL to bring it into compliance with the Rome Convention and the future Rome I Regulation.

As to family law, Turkey has been a party to the 1980 Hague Convention on Child Abduction since 2000 but the circular No. 65 implementing the convention has only recently been issued and an implementing law is still in the legislative process. Turkey is not a party to the 1996 Hague Convention on Parental Responsibility and the 2003 Council of Europe Convention on Contact with Children. While Turkey has already taken steps to ratify the latter, no decision has been taken on the ratification of the former. Turkish legislation is not aligned with Regulation 2201/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility but this is not indispensable since the regulation will be directly applicable.

Turkey does not seem to have legislation on international insolvency proceedings. Although Regulation 1347/2000 on insolvency proceedings will be directly applicable Turkey needs to ensure that the regulation can operate properly in its system.

Turkey has rules on legal aid stemming from national legislation, international conventions and bilateral agreements with a number of Member States but will need to amend its legislation in order to align it with the EU acquis. Turkey does not have legislation on the compensation of crime victims and will need to take action to meet the EU requirements in this area.

No information was provided on responsible institutions, bodies and administrative capacity in the above mentioned areas.

Judicial co-operation in criminal matters

The main bases for international judicial cooperation in criminal matters are the multilateral (Council of Europe and United Nations) agreements to which Turkey is party and the bilateral agreements with third countries. Turkey has concluded Mutual Legal Assistance and extradition agreements with twenty-one countries (amongst them the United States, but not Iceland and Norway). When no bilateral or multilateral agreements apply, international customary law and the principle of reciprocity apply.

The Law on the Organisation and Functions of the Ministry of Justice provides that the Directorate General for International Law and Foreign Relations in the Ministry of Justice is the central authority for the execution of all kinds of judicial assistance requests in criminal matters.

An important role in the implementation of judicial cooperation in criminal matters is played by the circulars issued by the Directorate General for International Law and Foreign Relations.

Turkey has no specific law on judicial co-operation. Main sources of legislative statutes are the Constitution, laws, by-laws, circulars, case-law and international agreements.

According to Article 90 of the Turkish Constitution international agreements carry the force of law. No appeal to the Constitutional Court can be made on the ground that these agreements are unconstitutional.

The scope for extradition of Turkish citizens is very limited: Article 38 of Constitution provides that Turkish citizens shall not be extradited to a foreign country on account of an offence except under the obligations resulting from being party to the International Criminal Court.

Article 18 of the Turkish Penal Code allows for extradition of foreigners but makes it subject to numerous exceptions. An extradition request is refused if the crime is not an offence under the Turkish Law, if it is an offence of political or military nature or an offence related to expression, if the offence is against the security of Turkey or committed to the detriment of a Turkish citizen or a legal person established under Turkish law, if it falls under the jurisdiction of Turkey, if the period of limitation expired or if it is subject to amnesty.

The extradition procedure has a mixed nature as it involves both a judicial and an administrative decision. The Ministry of Justice makes the first assessment and the Criminal Court of Peace decides on the provisional arrest of the concerned person for extradition purposes. The Court of Cassation decides on the appeals made to the felony court, while the Council of Ministers decides on the execution of court decisions. The Council of State examines the challenges lodged against the decisions of the Council of Ministers.

Article 38 last paragraph of the Turkish Constitution and Article 18 of the Penal Code are legal impediments to compliance with the European Arrest Warrant (EAW), especially as regards the ban on surrender of Turkish citizens and several grounds for non-execution of extradition requests. However, Turkey often proceeds to provisional arrests on the basis of Interpol alerts. The arrest warrant is issued by the Peace Court. Turkey needs to adjust its legislation in the future and a strategy is being prepared in this respect.

Turkey participates in Eurojust and European Judicial Network activities to some extent. The Ministry of Justice appointed two contact points in 2001. They are responding to requests by various EU countries. Turkey participated in various Eurojust co-ordination meetings on specific cases.

The ne bis in idem principle only applies to domestic cases.

Turkey is party to the Council of Europe Convention on the International Validity of Criminal Judgments and to the European Convention on the Transfer of Proceedings in Criminal Matters. The ne bis in idem principle is applicable under certain conditions in accordance with the provisions of these Conventions: a) completion or continuation of execution of the sentencing judgment in one of the Contracting States; b) the sentence should not have been subject to amnesty or fall under the period of limitation.

Article 123 Code of Criminal Procedure regulates seizures and precautionary measures for property and income. According to Article 127 of the Code of Criminal Procedure, the competence to issue any seizure order for the purpose of either securing evidence or subsequent confiscation of related property belongs to the courts and in cases of emergency to public prosecutors. In cases where there is no opportunity to inform the public prosecutor, the law enforcement officer may carry out the seizure upon a written order of the chief security officer.

Turkey exchanges criminal records information under the 1959 Convention on Mutual Legal assistance. Turkey has an on-line system, providing for fast findings. All courts are connected on-line in Turkey. According to the Law on Criminal Records (Law no: 5352 dated 1.6.2005), all criminal records of Turkish nationals who are convicted in Turkey or abroad and foreigners who have committed a crime in Turkey are kept by the DG for Criminal Records of the Ministry of Justice (Article 2). Criminal records information shall be given to other states under the principle of reciprocity (Article 7/2).

The Law on Prevention of Money Laundering (Articles 10-11) regulates controlled deliveries.

Article 135 of the Code of Criminal Procedure allows for detecting, monitoring and recording of communication of the suspect or the accused. The Public Prosecutor shall submit the relevant request to the judge who shall decide within 24 hours. Such a measure can be applied for three months and can be extended once. There is a catalogue of the offences in the Penal Code to which these provisions can be applied.

With regard to environmental protection, relevant provisions are Article 181, Article 182 (negligent offences against the environment) and Article 172 (on ionizing radiation) of the Turkish Penal Code. The first paragraphs of Articles 181 and 182 will enter into force in October 2006. Criminal liability is foreseen both for physical and legal entities. Article 60 foresees particular measures for legal persons. Turkish criminal law contains no specific provisions on ship-source pollution, Article 22 of the Law on Environment regulates administrative fines for such cases with a maximum fine of about 45.000 €

The Turkish Code of Criminal Procedure (Articles 232 – 236) includes specific rights concerning victims in the framework of criminal proceedings (e.g. on appointment of lawyers, interpretation, specific measures for handicapped and juvenile victims etc.).

The relevant legal basis for the transfer of sentenced persons is the Law on Execution of Convictions given by Foreign Courts concerning Turkish Nationals and Convictions given by Turkish Courts to Foreigners. The Law on Execution of Sentences and Security Measures, in force since 1 June 2005, contains details on conditional release.

II.f. Police co-operation and fight against organised crime

Police cooperation

The Ministry of Interior is responsible for public safety through law enforcement bodies such as the Police, the Gendarmerie and the Coastguard.

The Law on the Duties and Authorities of the Police, the Law on the Organisation, Duties and Authorities of the Gendarmerie and the Law on the Duties of the Coast Guard Command are the main pieces of legislation in this field. The National police are responsible for 68% of the population, corresponding to 49M people out of 72M, which is the total population of Turkey. 171.000 police officers and 20.000 other staff work within the police. The Gendarmerie operates in rural areas. The role of the Customs administration, which is not under the Ministry of Interior, is defined by the Law on Organisation and Duties of the Undersecretary of Customs.

In the provinces the Governor coordinates law enforcement bodies, while in districts this is done by sub-governors.

Turkey has been member of Interpol since 1930. The Interpol Department is in charge of communication, exchange of information and cooperation between Europol, Schengen, Interpol and OLAF. Interpol Ankara has access to investigators and national databases within the Turkish National Police (POLNET). These networks allow for nominal searches, stolen passports/works of art/vehicles etc. Only the Turkish police have access to the Interpol database, the other law enforcement bodies need to ask for access authorisation, as the national police's network is not interlinked to other law enforcement's networks. It is planned to extend it to the provinces in the future. The transfer of data is still done manually, and not on line.

The EUROPOL Cooperation Agreement was signed in May 2004 and entered into force in July 2004. Due to the lack of a data protection act in Turkey, the agreement is mainly a strategic rather than an operational one. A Europol National Contact point was established. The Government has adopted the necessary acts for setting up SIS and SIRENE contact points.

Once the draft Law on Personal Data Protection will enter into force, the necessary administrative measures relevant to the Schengen Information System will start to be implemented.

The legal basis for operational police co-operation is the Turkish Penal Code, the Code of Criminal Procedure, the Law on Prevention of Violence and Disorders in Sport Events and a number of Regulations. With regard to the law, a data bank was established for the prevention of hooliganism, identification of suspects, determination of proof and follow-up of the fines. Contact points for sport events are also in place.

There are five Turkish liaison officers abroad while several EU liaison officers are stationed in Turkey. Their role is mainly information exchange.

As one of the founding members, Turkey ratified the South East European Cooperative Initiative (SECI) Agreement, which entered into force in 2000.

Turkey has no corresponding legislation as regards cross-border hot pursuit and surveillance. There are no short-term plans to introduce it.

The central database of stolen motor vehicles contains data on stolen Turkish motor vehicles and stolen foreign plated vehicles which entered Turkey.

Only DNA profiles obtained during crime scene investigation are being digitally kept since 2003. Molecular genetic analysis on the samples taken from persons (suspects-victims etc.) can only be carried out upon court decision. Samples for DNA analysis can only be taken from the suspects accused of crimes requiring at least two years imprisonment. The findings of the analysis are considered to be personal data and therefore cannot be used for any other purpose. The National Programme envisages establishing a DNA data bank.

With regard to witness protection, a separate law is currently before the Prime Ministry Office.

Fight against organised crime

Within the UN system, Turkey has signed and ratified the United Nations Convention against Transnational Organised Crime and its three Protocols. Turkey is also party to a number of regional cooperation efforts in the Balkans and the Black Sea regions, such as the Stability Pact, the South East European Cooperative Initiative (SECI) and the Black Sea Economic Cooperation (BSEC). Turkey participates actively in the SECI Operations (such as *Containment I, Containment II, Containment III and Containment IV Harmony, Road Show I, II, III Operations*) which target drug trafficking and other types of organised crime. Furthermore, Turkey has concluded bilateral and multilateral agreements for cooperation against drug trafficking, terrorism and organised crime with 66 countries. The Turkish National Police has established a “computer-supported urgent intervention system” with some of its regional partners, which should facilitate exchange of information on criminal matters in a secure and fast way.

A National Strategy to Fight against Organised Crime is not yet in place. However, work is ongoing and it is expected to be approved by the competent authority in Turkey soon.

The law enforcement authorities in Turkey responsible for the fight against organised crime are the Ministry of Interior (the Turkish National Police, the General Command of Gendarmerie and the Coast Guard Command), the Ministry of Justice, the Ministry of Finance and the Customs Administration.

In 2001 the Turkish International Academy against Drugs and Organized Crime (TADOC) was established with the support of UNODC, the United States and a number of EU Member States. The Academy functions as a regional resource centre and consultation forum for drug and organised crime related issues. So far, approximately 1100 law enforcement personnel from 49 countries received training at TADOC. More than 6,000 Turkish law enforcement officers were trained at TADOC.

Three law enforcement bodies are responsible for fighting against cybercrime: the Department for Smuggling and Organised Crime under the National Police; the Customs administration and the Department for Smuggling and Organised Crime under the General Command of the Gendarmerie. Joint operations are carried out both at central and regional

level. Concerning cyber crime and racist and xenophobic crimes, there is no corresponding legislation in Turkey. A preliminary draft law on "Cyber Crimes" is under process. However, Article 216 of the Turkish Penal Code addresses such crimes in general. According to the said Article: "Acts degrading anyone on the grounds of race, class, sect, gender or regional differences are accepted as crimes. The sentence for such crimes shall be from six months to one year".

With regard to Turkish definition of "organised crime" and the relevant sanctions, they are not in line with the EU legislation in the field (Joint Action 98/733/JHA of 21 December 1998 and Framework Decision on the fight against organised crime adopted on 27 April 2006).

According to the Article 137 of the Turkish Criminal Procedural Code, if a decision is taken not to carry out investigation and prosecution, all intercepted communications shall be deleted within 15 days. All intercepted communications related to the offence shall be delivered to the court (Article 135).

Trafficking in human beings

The universal jurisdiction norm is recognised by the Turkish Penal Code in relation to certain offences and crimes. Among these are migrant smuggling and trafficking in human beings. Even if trafficking in human beings is committed outside the Turkish territory, the offender, be it a foreigner or a Turkish citizen, is indictable and punishable in Turkey. The Turkish Minister of Justice may request a trial process to be launched in Turkey against an accused person who has already undergone judgment in conjunction with these offences in another country. Since trafficking in human beings is considered to be an offence against public order, it is indictable and investigations or prosecution are not dependent on the accusations made by victims (they are "ex officio").

Victims are provided with free of charge counselling in their language, safe accommodation in shelters, free medical care, psychological and legal assistance. Voluntary and safe return is also arranged by the Turkish authorities, jointly with IOM and NGOs. Victims can claim compensation before the Turkish courts. Specific provisions regarding particularly vulnerable groups, notably children, exist.

Victims of trafficking are automatically granted a six-month residence permit, renewable for the necessary rehabilitation period. The decision on the permit's extension is not dependant on the victim's will to cooperate with the government. The ultimate aim, however, is for the victim to be sent back to his home country as safely as possible.

A National Plan on trafficking was approved in 2003.

II.g. Fight against terrorism

Turkey is party to 12 UN Conventions on the fight against terrorism and has signed the International Convention on the Suppression of Nuclear Terrorism which is under ratification process. Turkey is also party to the European Convention for the Suppression of Terrorism as well as the Protocol amending the European Convention on the Suppression of Terrorism of the Council of Europe and has signed the Council of Europe Convention on the Prevention of Terrorism.

The relevant pieces of Turkish legislation on terrorism are the Turkish Penal Code, the Code of Criminal Procedure, the Law on the Fight against Terrorism, the Law on the

Compensation of Damages Arising from Terrorism and Combating Terrorism and the Law on the Administration of Provinces.

There is no definition in Turkish law of "international terrorism". However, legislative work is ongoing and a draft law covering such a definition is now before the Prime Ministry. Under Turkish law, acts committed with the purpose of terrorism are defined as terrorist acts.

This new law should also include provisions penalising organisations devoted to money raising in Turkey with the purpose of financing terrorism acts in a third country. Current legislation, in particular Article 7 of the Law N. 3713 on the Fight against Terrorism criminalises supporting, harbouring, aiding and abetting terrorists and terrorist groups. This includes supplying funds to terrorists and terrorist groups. There are 21 types of suspicious transactions defined in Turkish law.

Implementation of Security Council regulations on Financing of Terrorism 1267/1999, 1333/2000 and 1373/2001 is ongoing.

While Turkey is not fully participating in Eurojust, it has appointed two contact points for the purpose of its cooperation activities. Concerning exchange of information between the Turkish National Intelligence Organisation (the MIT) and Europol and the General Secretariat of the Council (the Situation Centre - Sitcen), Turkey underlined that the MIT is not a law enforcement body and the relevant NATO Committee is used by Turkey as an appropriate forum for information exchange between security and intelligence services. Relations with the Sitcen could possibly be established. Cooperation with the security and intelligence services of Member States is carried out on an ad hoc basis.

Turkey has been a member of the Financial Action Task Force on Money Laundering (FATF) since 1991, and considers its recommendations as binding.

Specialised felony courts have jurisdiction for dealing with terrorist offences. There are eighteen such courts throughout the country.

A Supreme Council on Countering Terrorism (SCCT) was founded to advance proposals to the Council of Ministers on the fight against terrorism. All relevant actors are represented within the SCCT. The SCCT is chaired by the Deputy Prime Minister and Minister for Foreign Affairs and the Secretariat is provided by the Office of the Prime Minister.

II.h. Fight against drugs

Turkey has ratified the major international conventions in fighting against illicit drugs.

Illicit manufacture, export, import and trafficking of narcotic substances constitute a major crime. These crimes are punishable with a sentence not less than ten years' imprisonment and to a fine corresponding to twenty thousand days. Drug users are sentenced to protective custody and treatment in a hospital. Should the drug user not comply with the requirements of protective custody, imprisonment is executed for up to two years.

The following institutions are involved in the fight against drugs trafficking: the Ministry of Interior (the Turkish National Police, the General Command of Gendarmerie, the Coast Guard Command) and the Customs Administration. Other involved institutions are the Department of Smuggling, Intelligence, Operation and Information Gathering (KIHBI) under the Ministry of Interior, the Ministry of Justice, the Ministry of Health, the Ministry of Agriculture and Rural Affairs and the Ministry of Foreign Affairs. An intranet network is

accessible to the central and provincial authorities in Turkey, for exchange of data, audio and visual files.

Inter-ministerial and inter-agency cooperation is ensured through the establishment in 1997 of a “Supreme Committee for Monitoring and Steering the Fight against Use of Narcotic Drugs” and a “Sub-Committee for Monitoring and Steering the Fight against Use of Narcotic Drugs”. Representatives of eighteen institutions and organisations work together in the framework of these committees.

Turkey’s 1997 National Drugs Strategy is not in line with the acquis. At present, work on reviewing the Strategy is ongoing and a National Drugs Strategy in line with the EU Drugs Strategy should be ready by the second half of 2006.

Turkish membership to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) will enter into force once the relevant agreement is ratified. The Turkish National Monitoring and Prevention Centre for Drugs and Addiction (TUBIM), which is part of the Turkish International Academy against Drugs and Organised Crime (TADOC), was assigned as National Focal Point for the EMCDDA. Turkey is an observer to the Management Board of the EMCDDA and participates in the Reitox network.

Data collection is conducted by the institutional and provincial focal points in Turkey. Data collection methodologies have been aligned with EMCDDA standards.

The Ministry of Health is the national authority in charge of the licit manufacture, import, export and consumption of narcotics, psychotropic substances and narcotic precursors, and it also regulates the treatment centres, methodologies and programmes for drug addicts.

Turkish legislation has been amended in 1997 to allow for controlled delivery operations. In the period 1997-2005, Turkey carried out a total of ninety-nine national and international controlled delivery operations. Main partner countries were the USA, Germany, Austria, Bulgaria, France, Holland, UK, Italy, Canada, Macedonia, Romania, Russia and Greece.

II.i. Customs co-operation

The Turkish Customs operate under the Decree Law on the Organisation and Duties of the Under-secretariat for Customs of 1993, The Customs law of 1999, the Anti-smuggling Law of 2003 and the Code of Criminal Procedure Code as well as other relevant legislation. Automation covers currently seventy-one customs offices. 99.5% of all operations are carried out electronically, 75% of total customs declarations go via the electronic system (single windows project). A risk management strategy has been elaborated to strike the right balance between trade facilitation and security concerns.

Turkey has so far concluded forty-two bilateral customs agreements. A Protocol with the Bulgarian customs implements a lighter procedure for facilitating vehicles flows.

The Turkish Customs operate under the Prime Ministry. A cooperation protocol with the Gendarmerie is operational, while a Protocol is currently being negotiated with the Turkish National Police.

Permanent training courses are provided on integrity-related issues. A Code of Conduct is in force and an Ethic Declaration is signed by all customs staff, while intelligence and informant channels are also in place. The Ethical Board for Civil Servants can carry out investigations on the assets situation of Customs staff.

Turkish Customs co-operate with the EU institutions. At regional level, Turkey is party to the South East European Cooperative Initiative (SECI).

II.j. Counterfeiting of the euro

Turkey ratified the 1929 International Convention on Counterfeiting on 21 January 1937.

The existing Turkish legislation does not cover liability of legal persons.

The authorised body for examining counterfeits is the Central Bank (Article 73, TCC). In the case of counterfeits of foreign currencies, the central bank shall obtain the assessments of the relevant authorities. Law enforcement bodies are only competent for conducting preliminary examination of counterfeits. Within the Central Bank, a Unit for Monitoring Counterfeit Banknotes system is in place. The system enables information exchange between the different units of the Central Bank and law enforcement bodies. The purpose of this unit is to determine the value, amount, region and production methods of counterfeits and ensure combating against it.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTATION CAPACITY

Overall, Turkey is partially in line with the acquis in the area of justice, freedom and security.

Major efforts are necessary to align with the EU acquis in the field of asylum, migration, the management of external borders and visa policy. With regard to the fight against drugs and organised crime further efforts are needed in order to bridge the remaining gaps. Good progress has been made in the fight against trafficking in human beings, but continuous efforts are required.

In these areas, Turkey needs to indicate clear plans and timetables for future alignment against which future progress could be measured. The recently adopted National Action Plan on Asylum and Migration and the draft National Action Plan on Integrated Border Management lack clarity on a number of substantial points. The fulfilment of Turkey's declared intention to be in line upon accession in this chapter require that all necessary legislative and institutional steps necessary for full alignment be planned, including clear mandates for follow-up and time-schedules for each step and milestones. In many sectors where alignment requires important investments and infrastructure financing, Turkey needs to clearly indicate that the necessary budgetary means will be allocated.

The administrative and judicial capacity needs to be enhanced at all levels.

III.a. Migration

Existing Turkish legislation is at an early stage of compliance with the EU acquis and will need to be comprehensively amended in order for Turkey to be fully prepared for EU accession. The gaps analysis presented by Turkey during the bilateral screening provides an assessment of the many fields that require adaptation. The need for legislative amendments is broad and requires a comprehensive strategy for legislative transposition and implementation.

The time schedule set out in the National Action Plan on Asylum and Migration, adopted in 2005, does not make clear precisely when Turkey will start to implement the acquis in this area. Most of the estimated deadlines are given simply as "mid-term", while it appears that

the asylum and migration authority will not start operating until 2012. Establishing an asylum and migration system capable of implementing the *acquis* is a complex task, which will take several years to accomplish; accordingly, it is essential that Turkey takes steps as from now to commence alignment in accordance with the provisions of the Action Plan.

The Action Plan indicates that the necessary adjustments to comply with the Council Directive on Family Reunification (2003/86/EC) and Long Term Residence (2003/109/EC) will be made. However, a timeline for alignment was not provided. With regard to Council Directive 2004/114 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, there are no references to alignment concerning the issue of access to labour market for third country students. The implementation of Directive 2005/71 on a specific procedure for admitting third-country nationals for the purposes of scientific research was also hardly mentioned in the document. With regard to Council Directive 2004/114 covering the area of work permits, there are no references to alignment on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

As far as the fight against illegal immigration is concerned, the Action Plan should mention alignment with Council Directive 2001/51 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement concerning carrier sanctions.

The Action Plan does not clearly distinguish facilitation of illegal immigration (smuggling of persons) from trafficking in persons. Directive 2003/110 on assistance in cases of transit for the purposes of removal by air and Directive 2004/82 on the obligation of carriers to communicate passenger data are not addressed in the Action Plan.

III.b. Asylum

Turkey's current system is not compliant with the EU *acquis* in the field. Substantial amendments of the Turkish legislation are necessary in order to achieve full compliance with EU requirements. The analysis presented by the Turkish authorities includes an identification of remaining gaps and the need for further amendments.

The Action Plan on Asylum and Migration, adopted in 2005, is a significant step forward in the process of alignment with the *acquis* and provides a basis for the further work. Nevertheless, the status and structure of the proposed migration and asylum authority is not clear. It is essential that the migration and asylum authority is able effectively to apply the *acquis* and is composed of specialist officials who have been trained in asylum and migration law. The provisions concerning the composition and functioning of the authority need to be clarified. Moreover, the deadline for establishing the migration and asylum authority is given as 2012 but the deadline for the selection and training of personnel to be employed in the field of asylum and migration is set for 2005 and continuing. The deadline for the establishment of premises for the authority is set for 2006-2010. It is thus not clear where, either institutionally or physically, the persons who are selected in 2005 will work. Unless more precise deadlines are set, it will be difficult to programme further assistance projects in this area. Funding the construction of reception centres for refugees, which is a priority for Turkey, could only be envisaged if it is clear when and how such centres will start functioning. No date is given for the adoption and implementation of the asylum law.

No formal system of subsidiary protection currently exists under Turkish law, though subsidiary protection may be granted in practice as a matter of discretion.

Provisions concerning mass influx and temporary protection are rather brief and do not set out in detail a scheme for aligning with Directive 2001/55 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

The Action Plan indicates that the geographic limitation to the Refugee Convention might be lifted in 2012 if a burden sharing approach is followed by Member States.

III.c. Visa policy

Turkey will need to make substantial amendments to its legislation in order to fully align with EU visa policy. This includes alignment with EU visa lists (positive and negative) and with EU standards on visa stickers, adaptation of its visa issuing procedures as well as development of an efficient consular network.

While Turkey does not foresee fully transposing the acquis in this field in the short term, gradual alignment with the visa acquis should start at an early stage so that best practices can be developed and procedures can also be progressively adapted to EU standards.

Alignment with the EU positive and negative lists, as well as with EU security features and standards for visas (and forms for affixing visas) should be a priority.

Visa-issuing practices also need to be progressively changed; in particular, the issuance of visas at the border should be limited to exceptional situations, the rule being that visas are issued by diplomatic/consular authorities.

III.d. External borders and Schengen

External Borders

Turkey's legislation with regard to the management of external borders is not fully in line with the EU acquis and best practices.

Turkey is in the process of finalising its Action Plan on Integrated Border Management to be endorsed by the Government. Certain aspects of the Action Plan need to be reviewed in order for the text to be up to the EU acquis and EU best practices. While there is no Community competence as to how Border Management should be organised at national level, the following aspects/elements are essential in order to ensure that borders are controlled effectively and efficiently:

- a) Coordination between all the authorities involved in border management: currently, no central system of coordination exists, and each authority seems to act in accordance with its own priorities and specific tasks assigned.

It is recommended to:

- establish, as soon as possible, a coordination system/mechanism, which would also define protocols for the timely exchange of information between the various authorities;
- develop a mechanism for carrying out risk analysis at central level in relation to border management.

- b) Improve (and invest in) the professionalism of personnel: border control needs to be carried out by specialised and properly trained professionals. This rules out the use of conscripts for border management tasks, including surveillance. Appropriate training of all staff tasked with border control duties is also essential in this regard.

With regard to biometrics, EU standards in relation to biometric identifiers in passports, as well as future developments related to biometric identifiers in residence permits, should be taken into account by Turkey when amending its legislation.

It is strongly recommended that the Integrated Border Management Action Plan be complemented with a detailed roadmap, taking the above on board.

Schengen acquis

As was the case in recent EU enlargements, it must be expected that Turkey will not join the Schengen cooperation on the day of its EU accession but only at a later stage when all necessary preparations have been completed. Therefore Turkey's preparations for entering the Schengen cooperation are at a very early stage.

It is however important that Turkey already during the pre-accession period elaborates a Schengen Action Plan that can serve as a comprehensive framework for the preparations and ensure that an overall strategy can be followed both as regards legislative alignment, institutional adaptations, upgrading of staff, effective enforcement and infrastructure investments.

At this stage of the accession process it can be considered as premature to install SIS II compatible systems as these systems will not be operational at the day of Turkey's accession but only at the time when Turkey fully enters the Schengen cooperation and internal borders are lifted. It is however important that Turkey already during the pre-accession period develops its strategy for putting in place national large scale IT systems and information networks accessible to all law enforcement bodies. These systems can be upgraded to be compatible with SIS II at a later stage.

III.e. Judicial co-operation in civil and criminal matters

Judicial cooperation in civil matters

It can be inferred from the presentation by the Turkish authorities that the degree of alignment of the Turkish legislation with the acquis in this field is only partial. The presentation did not make it entirely clear whether the Turkish authorities have a good understanding of the requirements in the field and of the need for a comprehensive alignment of the relevant legislation. The presentation did not include an analysis of the areas where the Turkish legislation needs to be amended in order to be compatible with the acquis. Upon request, no clear indication was given as to the envisaged timetable for legislative reform. The transposition of the acquis therefore represents a substantial challenge. Notably, the approach of the Turkish authorities to take into account the relevant EU acquis when dealing with a legislative project seems insufficient and the elaboration of a detailed action plan with indication of clear deadlines appears necessary.

Since most of the acquis in the area of civil judicial cooperation consists of regulations which will apply directly from accession and will not require a prior modification of national law, Turkey will not have to modify all of its legislation but it will need to ensure that the acquis can function in its judicial and administrative structures once it applies. Furthermore, Turkey

will need to align its legislation on private international law and on access to justice with the EU acquis. Turkey also needs to analyse whether their national rules on insolvency would hamper the proper functioning of Regulation 1347/2000 on insolvency proceedings.

Turkey is strongly encouraged to ratify and implement the 1996 The Hague Convention for personal contact with children and the 2003 Council of Europe Convention on Contact with Children.

Judicial cooperation in criminal matters

The principle of mutual recognition is a corner stone of judicial co-operation within the European Union. Mutual recognition means that judicial decisions of other Member States are recognised and implemented on the territory in the same way as national decision. Turkey did not mention specific obstacles on this issue, which also raises the general question of recognition of decisions taken by the Cyprus authorities.

The principle of mutual recognition is linked with mutual confidence and the general situation of justice, in particular as far as respect of fundamental rights is concerned. It implies direct contact between judicial authorities which means that judges/prosecutors have to be aware of judicial cooperation instruments and as far as possible to be able to speak foreign languages, which then leads to the question of judicial training and quality of justice in general. These issues are dealt with in detail under Chapter 23, but they are also an extremely important part of this area of Chapter 24.

Turkey's legislation regarding judicial co-operation in criminal matters will need to be further amended, in particular as regards scope and procedures for extradition of both Turkish and foreign citizens, the application of the "ne bis in idem" principle and the implementation of the European Arrest Warrant. An amendment of Turkey's Constitution will be necessary to ensure alignment in this regard.

Turkey does not have specific legislation dealing with Mutual Legal Assistance. Bilateral and multilateral conventions are the main instruments in MLA in practice and the Ministry of Justice plays a central role in MLA. Turkey is a member of European Convention on Mutual Assistance in Criminal Matters (1959) and its protocol (1978), but has not signed nor ratified the second additional protocol to the Convention (2001), which Turkey is encouraged to do. Turkey should adopt an organic law on MLA. At the moment, Turkey's legislation is not in alignment with the acquis.

Further changes would have to be taken in order to properly align with the acquis which applies the principle of mutual recognition to judicial decisions, such as in relation to the Framework Decision on the execution of orders freezing property and evidence and that on the mutual recognition of financial penalties. To this end, the Turkish legal order should allow for direct involvement between judicial authorities, allow the direct execution of foreign decisions, abolish dual criminality when necessary and limit the grounds of refusal.

As far as the information in the criminal records is concerned, the effective implementation of article 22 of the MLA convention should be verified, as well as the general standards implemented by Turkey in its own criminal records database.

The MLA 2000 Convention of the European Union has been taken up by the Council of Europe in its second additional protocol to the European Convention on Mutual Assistance in

Criminal Matters and thereof on joint investigation teams. Turkey's legislation is not in alignment with the *acquis*, including with regard to provisions on joint investigation teams.

On *ne bis in idem*, Turkey would have to make amendments within its internal legal order in order to fully align with the relevant *acquis*, which is contained in Articles 54-58 of the Convention Implementing the Schengen Agreement (“CISA”). In particular, the exceptions to the application of the rule as regards foreign judgments go beyond what is allowed by Article 55 of CISA. As stated by the Turkish authorities, every offence which has been committed on the territory of Turkey can be retried in Turkey irrespective of a foreign judgment. This exception to *ne bis in idem* applies even if the offence was partly committed in Turkey and partly in a foreign State which already delivered a judgment. In contrast, in Article 55 of the CISA an exception to the application of *ne bis in idem* on grounds of territoriality is not allowed if the offence has been committed partly in the foreign State where a final judgment has already been delivered and partly in the Member State which has to take into account that foreign judgment.

As stated in part II.e. above, Turkey is party to the Council of Europe Convention on the International Validity of Criminal Judgments and to the European Convention on the Transfer of Proceedings in Criminal Matters. The *ne bis in idem* principle with regard to foreign judgments is thus applicable in Turkey under certain conditions in accordance with the provisions of these Conventions. However, the Government of Turkey while ratifying these Conventions has declared that “it does not consider itself bound to carry out the provisions of the said Conventions in relation to the Greek Cypriot Administration, which is not constitutionally entitled to represent alone the Republic of Cyprus”.

To adequately implement the *ne bis in idem* principle in a manner which fully takes into account the obligations provided for in the *acquis*, the Turkish judicial authorities should have the ability to recognise the judicial decisions of all the Member States of the Union. These declarations, together with the general refusal of Turkey to recognise the Republic of Cyprus, indicate that Turkey is not able to do so.

These considerations expressed in the context of the *ne bis in idem* principle, are valid also regarding implementation of mutual recognition of financial penalties and mutual recognition of freezing orders for property and evidence, as well as of all instruments based on the principle of mutual recognition.

Turkey will need to continue the preparations for its participation in Eurojust.

Turkey has recently adopted a Law on Criminal Records (Law no: 5352 dated 1.6.2005) according to which all criminal records of Turkish nationals who are convicted in Turkey or abroad and foreigners who have committed a crime in Turkey are kept by the DG for Criminal Records of the Ministry of Justice. Turkey exchanges criminal records information under the 1959 Convention on Mutual Legal Assistance and exchanges information with other parties under Articles 13 and 22 of the Convention. To other states the information is given under the principle of reciprocity. Turkey's legislation is partly in alignment with the *acquis* which includes the provisions of Council Decision 2005/876/JHA of 21 November 2005 on exchange of information extracted from criminal records.

Regarding environmental crime, in particular the implementation of Framework Decision 2005/667/JHA on ship-source pollution, significant amendments of the existing Turkish law will be required in order to allow for effective, proportionate and dissuasive sanctions.

Turkey has in its Code of Criminal Procedure provisions on victims' rights in the framework of criminal proceedings. These provisions are partly in alignment with *acquis*.

Turkey is a member of the Council of Europe Convention on the Transfer of The Sentenced Persons (1983), but has not signed the second additional Protocol to the Convention (1997). Turkey is encouraged to sign and ratify the additional protocol.

III.f. Police co-operation and the fight against organised crime

Police cooperation

Turkey has made some progress in developing police cooperation with the EU. This process needs to be continued and cooperation in this area needs to be extended to all EU Member States. Turkey should be encouraged to elaborate an action plan to ensure that the remaining activities can be undertaken in due time before accession.

There is a need to improve the production of statistics on law enforcement, risk analysis and performance indicators and to develop crime prevention strategies in line with EU best practices.

Turkey is encouraged to adopt a code of ethics for the police and the gendarmerie in line with the EU *acquis* and international best practices. Reform of these two bodies needs to be carried out.

It should be noted that money-laundering is covered in more detail under chapter 4 "Free Movement of Capital".

Fight against organised crime

With regard to the legislative framework, Turkey has not yet adopted a National Strategy to Fight against Organised Crime. The development and implementation of such a Strategy will need to be followed closely.

On the implementation side, criminal investigation methods and forensic capacity in investigations still need to be improved. Though steps have been taken to improve co-operation and co-ordination between the law enforcement authorities, further work is necessary. There is a need to improve the production of statistics on law enforcement, risk analysis and performance indicators.

Trafficking in human beings

With the adoption of the new Penal Code, Turkey made a considerable step forward in aligning its legislation on fighting trafficking in human beings with the EU *acquis*. Statistics show an increase in the number of identified victims and in the number of prosecutions brought against traffickers. A number of awareness raising initiatives and training programmes are also being carried out.

Further efforts are necessary as regards the legislation against cyber crime and the combating of child pornography on the internet.

III.g. Fight against terrorism

Concerning the definition of terrorism, the additional information provided by the Turkish authorities shows that some efforts will still have to be made. First of all, the comparative table submitted by the Turkish authorities shows some gaps concerning Article 1(1) letters c, d, g, h and i, that should be covered. Secondly, the definition of Article 1 of the Law 3713 refers only to the Turkish State instead of Governments and international organisations in general, as the definition in Article 1(1) of the Framework Decision on combating terrorism does. In the same way, Articles 302, 309, 311 and 312 focus only on Turkey. Another important concern is that Article 1(1) of the FD on combating terrorism combines different requirements: creating a specific risk, pursuing certain objectives and carrying out specific behaviours, to define the terrorist offences. This system guarantees legal certainty. The definition of terrorist offences under the Turkish Law appears as less precise. It is not clear, for example, whether the elements of Article 1 of the Law 3713 can be applied as a sufficient legal basis for the conviction of someone or whether it has to be applied together with a more specific provision of the criminal code qualified as a terrorist offence by Articles 3 and 4 of the Law 3713. If they are applied separately, nor Article 1 nor any of the criminal code provisions seem to cumulate the three elements of Article 1(1) of the FD on combating terrorism.

Provisions sanctioning terrorist activities need to be more clearly aimed at punishing committed acts rather than at targeting intentions. Direct cooperation and information exchange with EU instances should be increased. Co-operation and information exchange with Member States should be optimised. Ongoing work on aligning with the *acquis* to comply with the Framework Decision on Combating Terrorism will need to be followed closely. Emphasis needs to be put on amending the Law on Fight against Terrorism No. 3713. An issue of particular importance is the possibility of the establishment of a national co-ordination arrangement for the day to day exchange of information, involving all law enforcement bodies, security and intelligence services involved in countering terrorism.

III.h. Fight against drugs

With regard to the legislative framework, Turkey needs to adopt a National Drug Strategy in line with the EU Drugs Strategy 2005-2012 and with the EU Action Plan 2005-2008. A system for detecting new synthetic drugs, emerging trends in the drugs market and placing these substances under control needs to be developed. A network for information collection along the standards of the EMCDDA needs to be further developed. The Reitox Focal Point has been established and sufficient resources for its functioning need to be ensured.

A system for treatment of drug addicts has to be developed to correspond to the needs in Turkey. Substitution treatment, especially with methadone has been started and experience on that has to be evaluated and consideration should be given to the possibility of providing substitution treatment, as well as other drug treatment for people in prisons. Demand reduction activities, including prevention, need to be further developed as part of the National Strategy.

There has been a considerable increase in the seizures, both as a result of a number of controlled deliveries carried out in co-operation with police forces in the Member States and as a result of the fact that Turkish law enforcement authorities have started to use more sophisticated investigation techniques aimed at dismantling trafficking networks rather than only arresting individuals. Cooperation between law enforcement authorities in Turkey has produced promising results and this cooperation should be continued and developed as a

standard practice. As Turkey is situated along a major drug trafficking route for illicit drugs entering the EU, international law enforcement cooperation, including controlled deliveries, should be further strengthened.

The coordination of the many government bodies involved in the fight against drugs represents a substantial challenge. It must be ensured that the necessary financial and staff resources are made available to the responsible authorities. The structures should be developed in such a way that there is enough administrative capacity for implementation of the National Strategy both at the national and at local level. Cooperation between authorities working on the drug supply reduction side and those working on demand reduction needs to be intensified to ensure a balanced implementation of the National Strategy.

III.i. Customs co-operation

Turkey will need to continue adaptation of its legislation in the field of customs cooperation in criminal matters. Issues that request further follow up concern mainly the special forms of cooperation provided for by the Convention on mutual assistance and cooperation between customs administration (Naples II), in particular: hot pursuit, cross-border surveillance, controlled delivery, covert investigations and joint special investigation teams.

Considerable efforts have been made with regard to inter-agency cooperation, staff training and staff ethics. With regard to the legislative framework the lack of specific legislation on data protection needs to be addressed as a matter of priority in relation to chapter 23.

Turkey should continue to emphasize the need for a close working relationship between police and customs services for the prevention and the fight against crime, in particular on drugs, via formal agreements or other arrangements at national level.

The installation of X-ray equipment, closed circuit television, a number plate scanning system and a vehicle monitoring system at some border crossing points has led to a substantial increase in seizures of drugs and smuggled goods.

The preparations for accession in the field of customs cooperation are closely related to chapter 29 “Customs Union”.

III.j. Counterfeiting of the euro

The Turkish legislation seems not to be completely aligned with the EU acquis in this field. However, further information would need to be provided by Turkey.

Turkey has acceded to the 1929 International Convention on Counterfeiting, has established jurisdiction over the relevant offences and ensured these are punishable adequately. However, Turkey has not addressed the question on whether the Turkish Penal Code criminalises ‘instigation of, participation in and attempt of such conduct’ and ‘fraudulent manufacture using legal means’. It is also unclear whether ‘export of counterfeiting currency’ is addressed in national legislation. In relation to recognition of previous convictions Turkey has provided no information. Furthermore, on the basis of the information provided, it seems that liability and sanctions in relation to legal persons are not in line with EU legislation. The relevant national legislation does not cover currencies designated for circulation.