

## **Questions and Answers**

### **Electronic communications**

- (1) *The current Telecommunications legislation is mostly oriented on the European regulatory framework of 1998. Can you first give evidence that the legislation transposes well the '1998 framework', and how it has been implemented in practice? Secondly, does Turkey consider that all obligations of the '1998 framework' have been implemented before starting with regulatory obligations of the '2002 framework'?*

The current legislation mostly transposes the 1998 framework as further indicators of this fact is given below:

Functioning independent national regulatory authority was established in order to carry out its functions in terms of regulation, monitoring, authorisation, dispute resolution issues regarding the telecommunications sector

With regard to regulatory tasks of Telecommunications Authority (TA), legislation such as access and interconnection, tariffs, accounting separation and cost accounting are in place and are being implemented. TA can resolve disputes among operators on interconnection tariffs and TA also published reference interconnection tariffs details of which are given in under question 4(a) of this questionnaire.

Furthermore, access regime in Turkey is being improved by the implementation of the complementary legislation on local loop unbundling, co-location and facility sharing.

In addition to the above-mentioned legislation, TA drafted its legislation on number portability as defined in the 2002 framework.

Provisions regarding authorisation in the current legislation are mostly in line with the European regulatory framework of 1998. Concession agreement and 1st Type Telecommunication License are under the category of individual licenses. On the other hand, although pursuant to the current authorisation regime 2nd Type Telecommunication License and General Authorisation are subject to permission by the Authority, implementation of both categories can be considered similar to that of "general authorisation" in accordance with the Authorisation Directive. Since the Authority started to issue authorisation from 2002, all of the applicants who fulfilled application forms for obtaining 2nd Type Telecommunication License and General Authorisation were authorised by the Authority without exception.

Previously, SMP designations were done in accordance with the existing legislation on designation of operators having SMP and dominant position which reflects the 1998 framework. Currently, SMP designations are being done using market analysis in accordance with 2002 framework.

Regulation of radiocommunications sector and controlling procedures are carried out within the scope of national laws, International Radio Regulation (ITU/RR), CEPT Decisions and EU regulatory framework

TA makes assignment and regulation in order to ensure effective and efficient use of spectrum resources by taking into account principles of proportionality, transparency and non-discrimination.

TA follows the developments regarding spectrum trading. In accordance with the Radiocommunication Law and Radiocommunication By-law, transfer of spectrum rights has been possible since 1983.

(2) *To what extent do you consider the current Telecommunications legislation also transposes part of the '2002 framework'? To what extent do you consider that the draft legislation (currently in Parliament) transposes the '2002 framework'?*

The current telecommunications legislation transposes part of the 2002 framework such as access and interconnection, market analysis, privacy of personal data and data protection, consumer rights, quality of service measures, carrier selection and pre-selection. However, current authorisation regime needs to be improved.

With the enactment of the draft Electronic Communications Law, several changes are to be made in the secondary legislation which will implement the 2002 framework.

Although provisions regarding authorisation in the current legislation reflects European regulatory framework of 2002 to a very limited extend, it provides basis for market liberalisation and does not create obstacle to free entry into market. However, provisions of draft legislation and Electronic Communications Law regarding authorisation will reflect European regulatory framework of 2002.

(3) *If concession agreements (such as shareholder agreements between the State and the incumbent operator) are in place which impose limitations to the liberalisation of the sector and contradict the commitments to the EU, then such agreements should be fully disclosed and shall cease before the accession negotiation starts.*

Concession agreement is a type of authorisation. It is a contract between the Authority and an operator for the provision of telecommunications services and/or establishment and operation of telecommunications infrastructure setting out authorities, rights and obligations of parties. It involves allocation of scarce resources such as “frequency and numbers” for a limited number of operators.

On account of this, it is not a shareholder agreement between the State and the incumbent operator.

Concession agreement is a method of granting rights of use for scarce resources. This method is used when granting special rights and obligations to each operator is necessary. In addition, a concession agreement is signed for nation-wide infrastructure.

The Authority conducts a tendering procedure for determining the capital stock companies with whom the concession agreements are signed. At the end of the tendering procedure, the capital stock companies are selected among the bidders on the basis of objective, transparent, non-discriminatory and proportionate selection principles and concession agreements are signed between the Authority and the winners.

Currently there are four concession agreements. Three of them are regarding GSM services while the other one involves various types of telecommunications services. Provisions in GSM concession agreements are almost the same and they lay down the rights of the operators and sector specific conditions for ensuring the development of competition in GSM sector. Provisions include rights and obligation on, *inter alia*, administrative charges, interconnection, frequency, numbers, competition, tariffs, emergency services, national security, public safety, commitments the operator has made in the course of relevant tendering, which is considered in parallel with the conditions attached to rights of use pursuant to the Authorisation Directive.

Consequently, concession agreement does not impose limitations to the liberalisation of the sector due to its scope as defined above.

(4) *Information on the introduction of the necessary competitive safeguards:*

(a) *reference interconnection offer (RIO), interconnection tariffs*

After being designated as having SMP, Türk Telekom and Turkcell have been obliged to submit their RIOs. The draft RIOs of the mentioned operators have been revised after a public consultation process and approved in 2004 and 2005 respectively for the first time. According to the By-law on Access and Interconnection, the operators have to renew their RIOs annually and a revision has been made on Türk Telekom RIO in 2005 in this respect. The review process for 2006 is being carried out based on the drafts submitted by the operators.

Vodafone (Telsim) and Avea have been designated as having SMP in mobile call termination market in January 2006 and submitted their draft RIOs accordingly. The RIOs will be published after the review and approval of TA.

The reference interconnection rates determined by TA were published in 2004. The implementation of glide path provided significant reductions as given in the following table.

**Table: Reference Interconnection Rates for Fixed and Mobile Operators**

*€-cent/min*

	Origination and Termination Rates for Fixed Network		Mobile Termination Rates for the GSM operators having SMP
	In Zone	Out Zone	
Oct. 2004	2.05	2.95	7.80
Jan. 2005	1.70	2.55	7.40
Oct. 2005	1.00	1.85	7.00

*1 Euro=2.00 YTL as of June 1,2006*

After having designated all three mobile operators as having SMP in mobile call termination market, the column for mobile call termination has been enlarged to provide different rates for Turkcell, Vodafone and Avea in June 2006.

**Table: Reference Interconnection Rates for Mobile Operators**

*€-cent/min*

	Turkcell	Vodafone	Avea
Jun. 2006	7.00	7.60	8.75

*1 Euro=2.00 YTL as of June 1,2006*

The EU funded “Technical Assistance for the improvement of access regime in the Turkish telecommunications market” project, which includes the development of

analytical cost models for fixed and mobile networks, is expected to be completed in 2007. The project outputs will provide assistance to TA on fine adjustment of the interconnection rates.

*(b) reference unbundling offer (RUO)*

The RUO has been drafted by Türk Telekom and submitted to TA. After the public consultation process, the draft has been revised by Türk Telekom. The final revised version is now being evaluated by TA taking into account the outputs of the public consultation process and responses of Türk Telekom. The RUO will be in force after the approval of TA.

*(c) significant market power (SMP) regulations, obligations on SMP-operators*

Although the SMP Communiqué enacted in June 2003 relies on 1998 framework, it does not hinder carrying out market analyses within the scope of 2002 framework. In this respect, TA has informed relevant parties of the procedure of market analyses by publishing a comprehensive report in March 2005. In accordance with the Commission Guidelines on market analysis and the assessment of SMP, the analyses on sixteen markets have been completed so far following the steps given below:

- Data collection and analysis
- Publication of public consultation documents with questionnaires
- Evaluation of responses to consultation document
- Publication of final decision documents covering SMP designations, responses and TA's evaluations of responses published
- Publication of SMP designations in the Official Gazette

The table representing the current status of the market analyses is given below.

**Table: Market Analysis at Retail Level**

	<b>Relevant Markets</b>	<b>SMP</b>
1	Access to the public telephone network at a fixed location for residential customers	Türk Telekom
2	Access to the public telephone network at a fixed location for non-residential customers	Türk Telekom
3	Publicly available local and/or national telephone services provided at a fixed location for residential customers	Türk Telekom
4	Publicly available local and/or national telephone services provided at a fixed location for non-residential customers	Türk Telekom
5	Publicly available international telephone services provided at a fixed location for residential customers	Türk Telekom
6	Publicly available international telephone services	Türk Telekom

	provided at a fixed location for non-residential customers	
7	The minimum set of leased lines (comprising the specified types of leased lines up to and including 2Mb/sec).	Türk Telekom

**Table: Market Analyses at Wholesale Level**

	<b>Relevant Markets</b>	<b>SMP</b>
8	Call origination on the public telephone network provided at a fixed location	Türk Telekom
9	Call termination on public telephone networks provided at a fixed location	Türk Telekom
10	Transit services in the fixed public telephone network	Türk Telekom
11	Wholesale unbundled access (including shared access) to local loops and sub loops for the purpose of providing broadband and voice services.	Türk Telekom
12	Wholesale broadband access including bit-stream access	Türk Telekom
13	Wholesale terminating segments of leased lines	Türk Telekom
14	Wholesale trunk segments of leased lines	Türk Telekom
15	Access and call origination on public mobile telephone networks	Turkcell
16	Voice call termination on individual mobile networks	Turkcell, Telsim, Avea
17	The wholesale national market for international roaming on public mobile networks	X
18	Broadcasting transmission services, to deliver broadcast content to end users	X

The remaining market analyses on “market 17 of international roaming and market 18 of broadcasting” will be studied within 2006 and 2007.

The operators designated as having SMP after market analyses, Türk Telekom, Turkcell, Vodafone and Avea, have the following obligations:

- Non-discrimination
- Transparency (Publication of reference offers)
- Access (Interconnection, co-location and facility sharing)
- Local loop unbundling (for Türk Telekom)
- Cost-based pricing, accounting separation and cost accounting

(d) *carrier selection, carrier pre-selection*

As of May 17, 2004, first authorisations on Long Distance Telephony Service (LDTS) were granted. Currently, there are 40 operators authorised for LDTS. Those operators have right to be selected through carrier selection (CS) and carrier pre-selection (CPS). Regulations with regard to CS and CPS are covered by the relevant annexes of the By-Law on Telecommunication Infrastructure and Services Authorisation and By-Law on Numbering respectively. In addition to these regulations, several Board Decisions have been taken to clarify some regulatory issues on the subject and Communiqué on Long Distance Telephony Services was published in Official Gazette. Accordingly, an obligation was imposed on the operators deemed as having SMP on the market for provision of connection to and use of the public telephone network at a fixed location to provide CS and CPS services. Currently, CS on a call by call basis by dialling carrier selection code and CPS with a facility to override any pre-selected choice on a call by call basis by dialling carrier selection code are provided. 28 LDTS operators have signed interconnection agreement with Türk Telekom, 5 of them for the provision of CS and 5 of them for the provision of CPS.

(e) *number portability*

By-Law on Number Portability (NP) has been drafted and issued on the web site of TA for public consultation. Comments have been received from the relevant parties on the draft legislation and following the evaluation of the comments received, final draft was submitted to the Board. Following the Board approval, the by-law shall come into force after being published in the Official Gazette.

During preparatory works of the mentioned by-law, involvement of operators has been provided through the “Numbering Committee” which was set up in June 2005. This committee made comprehensive studies on the subject which covers technical, operational, financial and regulatory aspects of number portability. Following these works, outputs have been reflected to the draft legislation. Accordingly, in the draft by-law, direct routing is planned as technical solution and implementation of mobile number portability is planned as 6 months from the establishment of reference NP database.

(5) Universal service:

(a) What is covered by the universal service obligation under Turkish legislation?

The universal service obligation under Turkish Legislation covers:

- Fixed telephone services,
- Public pay telephone services,
- Telephone directory services to be provided in the printed or electronic media,
- Emergency call services,

- Basic internet services,
- Communications services as regards distress and safety call at sea.

According to Law No.5369 on the Provision of Universal Service “Scope of the universal service shall be reviewed by the Council of Ministers upon a proposal of the Ministry of Transport, in consultation with the Telecommunications Authority and operators, at certain intervals not more than three years, in the light of country’s social, cultural, economic and technological conditions.”

In this context, two additional services were appended to the scope of universal service by the decisions of Council of Ministers. These services are:

- Services regarding the expansion of information technologies, including computer literacy so as to contribute the improvement of the information society
- Services regarding the provision of the digital broadcasting performed by the utilization of various broadcast media and technology via digital terrestrial transmitters to cover the entire settlements country-wide

(b) What is the procedure for the designation of the universal service provider(s)?

All operators may be designated as universal service provider at the regional or national level.

The universal service providers shall be designated among the operators via tendering method whilst respecting the principles of efficiency, objectivity, transparency and non-discrimination.

(c) Is there a universal service fund in place? If so, who contributes to it and how much?

These is a special account named “Universal Service Revenues” under which the revenues of universal service are collected. Transfers to this special account are as follows:

- 2% of the authorization charges granted to Telecommunications Authority
- 1% of the annual net sales of operators, except GSM operators,
- 10% of the share that GSM operators pay to the Treasury,
- 20% of the administrative fines incurred by Telecommunications Authority,
- 20% of the amount remained after all expenditure of Telecommunications Authority

If the revenues do not cover the expenditures of the universal service obligation, Ministry of Finance shall allocate the required appropriation.

(d) Information on the calculation of the net costs of the universal service obligation

Net cost of the universal service obligations is to be calculated as the difference between the net cost for a designated undertaking of operating with the universal service obligations and operating without the universal service obligations.

Any market benefit which accrues to an undertaking designated to provide universal service shall be taken into account in the calculation of net cost of the universal service.

The rules and the procedures regarding the calculation of net cost of universal service were laid down by a by-law.

(6) *National Regulatory Authority (NRA) tasks and independence:*

(a) *enforcement of regulatory decisions*

As defined in Law No.2813, TA has the authority to enforce its decisions regarding the regulation of the telecommunications sector. This authority is further strengthened by means of sanctions imposed on operators with Board Decisions. Monetary fine amounting to approximately 20 million Euros was given to an operator. The highest amount of monetary sanction that has been imposed by TA in a single case was approximately 150 million Euros which is applied to an operator due to its failure to meet the obligations foreseen in the concession agreement.

Decisions issued by TA are subject to judicial review. Appealing to the administrative court does not impede implementation of the decision. Moreover 9 Appeals in International Chamber of Commerce has resulted in favour of TA.

(b) *public consultations /reasoned decisions*

Draft legislation are prepared by TA usually with the participation of the industry through joint committees. Consultation documents are published on the web site and sent to the relevant operators, industry NGOs etc.

(c) *transparency*

Transparency is one of the major principles of the TA in the course of the regulatory process, as defined in Article 4 of Law No.406 and relevant secondary legislation.

(d) *cooperation with national competition authority*

The cooperation with Competition Authority has been realised within the provisions of Law No.2813. The Law stipulates that Competition Authority takes the opinion of Telecommunications Authority in issues related to telecommunications sector including merger and acquisitions. On the other hand

Telecommunications Authority takes the opinions of all related parties including Competition Authority in its regulations. The articles of Framework Directive with respect to information sharing and cooperation in market analysis between NRA and NCA will be incorporated into new SMP Regulation which has already been prepared. The Authority is planning to publish this regulation after the enactment of draft Electronic Communications Law.

(7) Communications tax

**Communications Taxes for Mobile and Fixed Operators**

<b>Mobile Voice Services</b>	<b>2006</b>
1) Value Added Tax	% 18
2) Special Communication Tax	% 25
3) New Establishment Special Communication Tax (YTL)	24.15
4) Treasury Share	% 15
5) Wireless Usage Fee (YTL)	10
6) Wireless License Fee (YTL)	10
7) Contribution Fee to TA's Expenses	% 0.35
8) Universal Service Fund <sup>1</sup>	% 10
<b>Fixed Voice Services</b> *	
1) Value Added Tax	% 18
2) Special Communication Tax	% 15
3) Communication Tax	% 1
4) Contribution Fee to TA's Expenses	% 0.35
5) Universal Service Fund	% 1

\*Taxes and other legal financial responsibilities of Türk Telekom with regard to the fixed voice services

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<sup>1</sup>According to the Law No.5369, GSM operators have the obligation of contribution to the universal service fund in which the operators pay 10% of the Treasury Share to the universal service fund instead of Treasury Undersecretary.

## Audiovisual Policy

(8) Please provide an overview of the regulation of the regulation of libel, defamation and insult in Turkey.

Broadcasting Law No.3984 Article 4 which sets the broadcasting standards, paragraph (1) states that;

- Broadcasts shall not offend the personality of individuals beyond the limits of criticism

paragraph (s) states that;

- All the items of the program services shall respect to human dignity and fundamental human rights

Additionally, there are some provisions concerning defamation on the Criminal Code, No: 5237, Chapter 8,

- Article 125 regulates the penalty for insult, providing that the action should be performed clearly aiming to humiliate a person. Paragraph (1) sets the penalty for insult as imprisonment of three months to two years or fines. Paragraph (2) states that the same penalty shall be imposed for insulting a person by the means of written or audiovisual communication, directed to the related person.
- The provision that increased the penalty for insulting a person by the means of broadcasting or press was cancelled according to the amendment in June, 2005. Currently, the provision states that the penalty imposed for insult is to be increased with one-sixth providing that the insult to be done publicly.

Furthermore, Civil Code, No. 4721 emphasizes that;

- The individual rights are indispensable in Art. 23.
- Any offence against the individual rights is considered to be against the Law, and Article 24 states that a person may claim protection from the judge against the offender.
- Under Article 25 of the Civil Code, the suitor may claim ending and preventing the possibility of offence from the judge, along with the right of publishing or announcing the correction to a third person.
- The person's right to demand moral or substantial compensation is also legally guaranteed according to the Law of Obligations.

(9) Please provide an update regarding the broadcast in languages other than Turkish

Pursuant to amended Article 26 of the Constitution, freedom to use of languages in the expression and dissemination of thought is provided.

As a consequence of the Constitutional amendment, Broadcasting Law No.3984 Article 4 first paragraph was also amended on 9 August 2002 by the Law No.4771 as follows:

“The broadcasts shall be in Turkish language. .... Furthermore, there may be broadcasts in the different languages and dialects used traditionally by Turkish citizens in their daily lives. Such broadcasts shall not contradict the fundamental principles of the Turkish Republic enshrined in the Constitution and the indivisible integrity of the state with its territory and nation. The principles and procedures for these broadcasts and the supervision of these broadcasts shall be determined through a regulation to be issued by the Supreme Board.”

In accordance with the above written Article of the Law, by-law on “Radio and Television Broadcasts in Different Languages and Dialects Which are Traditionally Used by the Turkish Citizens in Their Daily Lives” entered into force on 25 January 2004.

In this context, broadcasts in languages other than Turkish, Caucasian, Bosniac, Arabic, Kirmanci and Zaza, started by the public service broadcaster (TRT) on 7 June 2004.

Furthermore, 11 local and regional radio and TV enterprises applied to RTUK in order to broadcast in different languages. As a result of the evaluation of RTUK on these applications, 3 local and regional radio and TV channels have been given permission to broadcast in Kirmanci and Zaza dialects since 7 March 2006.

As a recent development, by the RTUK decision dated 30 May 2006, duration of broadcast of music and cinematographic works shall not be included into the time limits defined in the by-law which will bring flexibility for the broadcasters in terms of time limits.

(10) How are the nomination and appointment of the members of the High Audio Visual Board (RTÜK) and the steering board of TRT? What measures guarantee their independence and safeguard them against political interference?

Radio and Television Supreme Council (RTUK) is composed of 9 members. They are nominated by the political parties (ruling and opposing) and elected by the Turkish Grand National Assembly for a terms of six years.

According to the Law No.3984 Article 9 which states that:

“Supreme Council members shall not undertake any civil service or private post for the duration of their membership, shall not be a party directly or indirectly in matters within the field of function and powers of private or public broadcasting enterprises nor derive any benefit for such matters, and shall not be a member to a political party.”

Turkish Radio and Television Corporation (TRT)

The Director General who is also the Head of Administrative Board of TRT is appointed by the Council of Ministers among the 3 nominees selected by RTUK.

The remaining six members of Steering Board of TRT are appointed by the Council of Ministers among the 12 nominees selected by RTUK.

Revenues of TRT, derived from the following sources according to the Law of TRT's Revenues No.3093 are:

- “Bandrolle” tax received from the purchase of television and radio receivers, music sets and VTRs
- Advertising revenue
- A share of income from electrical power consumption
- Revenues from the sale of audio-visual goods and services

As explained above, administrative and financial policies of TRT are determined independently from any governmental and political influence. In addition, TRT does not receive any fund from the general budget. Therefore financial and administrative independency of TRT is ensured.

(11) Has the High Audio Visual Board (RTÜK) suspended or cancelled programmes or broadcasting licenses in the last 2 years? For which reasons?

### Suspension of programmes

Related Articles of the Broadcasting Law	Number of Suspension Jan 2004-May 2006
4 (d): Broadcasts shall not, in any manner, humiliate or insult people for their language, race, color, sex, political opinion, philosophical belief, religion, sect, and any such considerations	1
4 (e): Broadcasts shall not violate the national and moral values of the community and Turkish family structure.	4
4 (f): The privacy of private life shall be respected	3
4 (g): Broadcasts shall serve for the improvement of the general objectives and basic principles of the Turkish national education system and the national culture	1
4 (h): Broadcasts shall use the Turkish language in its spoken form without destroying its characteristics and rules; shall ensure its development in the form of a modern cultural, educational and scientific language as a basic element of national unity and integrity.	1
4 (i): Broadcasts shall not offend the personality of individuals beyond the limits of criticism, shall respect the right of reply and rectification; the news, which the investigation of their accuracy is possible within the framework of code of conduct of media, shall not be broadcast without proper investigation or without being sure of their truthfulness; the given information, provided that it be kept confident, shall not be broadcast unless there is a serious necessity for public interest.	6
4 (j): Broadcasts shall not serve to an unfair aim and interest and shall not lead to unfair competition, broadcasts qualified as proclamation and advertising shall be announced clearly without leading to any suspicion; a product promotion created by one agency with its own efforts shall not be broadcast by	2

an other agency as if it belongs to itself; source of the news which are provided by agencies or another media source shall be indicated with particular importance,	
4 (k): Broadcasts shall not present or declare no one as guilty unless there is a court decision; any programme item that leads people to commit a crime or raise the feeling of fear shall not be broadcast.	4
4 (l): Broadcasters shall respect the principles of impartiality, conformity and reliability in news programmes; broadcasts shall not prevent free formation of opinions; the secrecy of the source of information shall be preserved unless there is an intention for misleading the public	1
4 (p): Broadcasts shall not resort to contests or similar methods via information communication telephone lines, and no prizes shall be awarded to listeners or viewers or no mediation is provided for awarding prize; lotteries shall not be made, questionnaire and opinion polls via telephone shall be realised before the notary from the preparatory stage to announcement of the results.	1
4 (s): All the items of the program services shall respect to human dignity and fundamental human rights.	3
4 (v): The broadcasts shall not encourage the use of violence or incite feelings of racial hatred	2
4 (z): Programmes, which could impair the physical, mental, and moral development of young people and children shall not be broadcast within the time intervals that they may be viewing.	19
Articles 21/1, 21/2, 21/3, 21/5, 22 on Advertising	17

### **Suspension of Broadcasts**

<b>Related Articles of Broadcasting Law</b>	<b>Number of Suspension Jan 2004-May 2006</b>
4 (a): Broadcasts shall not violate the existence and independence of the Turkish Republic, the territorial and national integrity of the State, the reforms and principles of Atatürk.	2
4 (b): Broadcasts shall not instigate the community to violence, terror, ethnical discrimination or shall not incite hate and hostility by making discrimination in the community in terms of the diversities of the social class, race, language, religion, sect and territory or shall not give rise to feelings of hatred in the community.	5

### **Cancellation of broadcasting licences**

Between January 2004 and May 2006, broadcasting licence of 4 radio enterprises which broadcast on satellite were cancelled due to non-payment of annual broadcasting permit fee.

(12) Please provide details of any international commitment(s) which may affect audiovisual services (Bilateral Investment Treaties with other partners, commitments at the WTO (adoption of MFN on audiovisual services))

There is no Most Favoured Nation clause for any foreign audiovisual products. Turkey has no commitments and would like to keep on maintaining this position.

(13) Please provide an overview of the state of alignment of your legislation with the Television without Frontiers Directive, in particular:

-Jurisdiction Art 2 TWFD

There are no specific provision in the Broadcasting Law concerning jurisdiction concept. However Article 2 states that ;

“This law deals with matters relating to radio and television broadcasts transmitted by any and all techniques, methods or means and by electromagnetic waves or other means under any denotation for reception domestically or abroad”.

-Freedom of reception and retransmission Art. 2a, TWFD

Law No. 3984 Article 26 ensures freedom of transmission and retransmission. This article states that:

“The re-transmission of the broadcasts shall be allowed provided that it does not contradict with this Law. The principles and procedures relating to re-transmission shall be regulated by a secondary legislation to be issued by the Supreme Board.

The Supreme Council shall be informed about the retransmitted broadcasts.

For the transmitted and retransmitted broadcasts, provision of Article 25 and 33 are reserved”.

By-law on the Rules and Principles for the Radio and Television Broadcasts of 17 April 2003 provides qualitative and quantitative rules for retransmission such as;

- protection of rights of rights holder
- licence requirements of the retransmitting broadcaster
- determining the country of origin of initial transmission

-Access to major events Art 3a , TWFD

Access of the public to major events is regulated in the By-law of 2003, Art. 42 which ensures public rights for accessing the major events that are important for Turkish society by setting rules and obligations for RTUK and broadcasters considering the list of designated events.

-Promotion of European and independent works, Art. 4 and 6, TWFD. Are there any quotas for Turkish audiovisual productions?

There is no regulation on European works in respect of the Art. 4 and 6 of TWFD. However Law No. 3984 Article 31 includes guidelines on content related quotas which are regulated in detail by-Law on the Rules and Principles for the Radio and Television Broadcast of 2003, Art. 26, 27, 28, 29.

Accordingly, weekly 15 per cent quota for:

- Educational,
- Cultural,
- Turkish folk music,
- Turkish art music programmes are required for all radio and TV broadcasters, excluding thematic channels.

-Promotion of Independent works. Art. 5, TWFD?

There is no regulation on Independent works in respect of the Art. 5 of TWFD.

-Prohibition on the incitement to hatred Art 22a

Broadcasting Law No. 3984 Article 4(b) states that:

“Broadcasts shall not instigate the community to violence, terror, ethnical discrimination or shall not incite hate and hostility by making discrimination in the community in terms of the diversities of the social class, race, language, religion, sect and territory or shall not give rise to feelings of hatred in the community.”

Article 4 (d);

“Broadcasts shall not, in any manner, humiliate or insult people for their language, race, color, sex, political opinion, philosophical belief, religion, sect, and any such considerations.”

Article 4 (v);

“The broadcasts shall not encourage the use of violence or incite feelings of racial hatred”.

## Turkish Criminal Code

### Inciting the population to breed enmity or hatred or denigration

ARTICLE 216- (1) A person who openly incites groups of the population to breed enmity or hatred towards one another based on social class, race, religion, sect or regional difference in a manner which might constitute a clear and imminent danger to public security shall be sentenced to imprisonment for a term of one to three years.

(2) A person who openly denigrates part of the population on grounds of social class, race, religion, sect, gender or regional differences shall be sentenced to imprisonment for a term of six months to one year.

(3) A person who openly denigrates the religious values of a part of the population shall be sentenced to imprisonment for a term of six months to one year in case the act is likely to distort public peace.

Common provision

ARTICLE 218 - (1) Where the offences defined in the above articles are committed through media and press, the penalty to be imposed shall be increased by half.

(14) Are there any limitations to the ownership of television and/or radio stations?

Media ownership is regulated under Article 29 of the Law No.3984. Conditions about share ratios and structure of the corporations which are granted or shall be granted radio and television broadcast permit are as follows.

a) Political parties, associations, labour and employer unions, professional associations, co-operatives, foundations, local governments and companies established or partially owned by local governments, commercial companies, unions, and organisations and enterprises dealing with investment, import, export, marketing and financial affairs shall not be granted radio and television broadcast permit; these institutions could not be the partner of the enterprises which have granted radio and television broadcast permit.

b) According to this Law, radio and television broadcast permit shall be only granted to the corporations, which are established for the purpose of radio and television broadcasting, communication, education, culture and art in accordance with the provisions of the Turkish Commercial Code. A single corporation may establish only one radio and television enterprise.

h) The share of foreign capital in one private radio or television enterprise may not exceed 25 percent of the capital paid up.

i) A real or legal person of foreign nationality holding shares in a certain radio or television enterprise may not become a shareholder in another private radio or television enterprise.

j) The turnover shares of an incorporation to which broadcast permit has been granted, are informed in one month as of the date of turnover to the Supreme Council together with the information about name and surname of the shareholders, shareholding structure and share rates formed as a result of the turnover of the company. Before starting the procedures such as a turnover of companies to another company, purchase of a company by turnover or merging with a company, it is compulsory to make an application with necessary information and documents to the Supreme Council for permission. If any controversy to the provisions of this Law occurs in the formulation of the corporation structure as a result of this procedure, the controversy must be eliminated in a time period given by the Supreme Council. Otherwise, the broadcast permission shall be annulled.

l) Radio and television enterprises could not put contradictory provisions to their main contracts after they are granted broadcast permit, and could not include actions that are not settled with the radio and television broadcasting within their operational area.

m) It is not allowed to allocate channel, frequency and cable capacity for the radio and television enterprises, which are broadcasting to Turkey from abroad. The equivalents of commercials and advertisement given to these enterprises abroad by the enterprises taxable in Turkey may not be deducted from their tax assessments. However, the possibilities such as the sound synchronization in Turkish language of the foreign origin broadcasts transmitted from abroad and through satellite platform and cable system, the broadcasting in multi-language in a simultaneous manner and the broadcasting of commercials in Turkish language shall be allowed. For the broadcasts in which the commercials in Turkish language are transmitted, the relevant directive of the Supreme Council is applied.

(15) What are (if any) the financial support systems in place for the audiovisual sector (including cinema)?

The Ministry of Culture and Tourism (MoCT) provides financial support to the cinema industry, at various stages of film production, through the Supporting Council and other instruments specified in related legislations.

Related legislation consists of;

- The Constitution of the Republic of Turkey (Art.64)
- Law on the Institutional Structure and Duties of the Ministry of Culture and Tourism No.4848 (2003)
- Law on the Evaluation, Classification and Support of Cinema Films No.5224 (2004)
- Law on the Encouragement of Investment and Entrepreneurship in Culture No.5225 (2004)
- Law on Intellectual and Artistic Works No.5846 (1951)
- By-law on the Evaluation and Classification of Cinema Films (2005)
- By-law on the Supporting of Cinema Films (2004)
- By-law on Cinematographic Co-productions and National Producers with Intention to Produce Feature Films in Turkey (2005)

MoCT evaluates film projects and determines those eligible for support at production, scriptwriting, archive, documentation, education, technical infrastructure, research and development, distribution and promotion, marketing and screening stages through the Supporting Council.

Support is provided directly or indirectly. (By-law on Supporting Cinema Films, Art. 4)

- Direct Support: Payments provided directly by the MoCT.
- Indirect Support: The support provided to cover interests, taxes and other expenses due to received bank credits and loans from financial institutions excluding the main amount of credit and loans.

The amount of the resources to be allocated to films is determined by the MoCT within the budget applications and possibilities.

The Supporting Council is established under the MoCT in order to evaluate and designate the projects to be supported according to the Law No.5224, Art.6.

The composition of Supporting Council and its working principles are defined in the By-law on Supporting Cinema Films.

The Council is composed of a representative from the MoCT as Chairman, a representative elected among the members of each related collecting societies respectively, three members among experts in cinema sector.

The Supporting Council in the first meeting of the year, determines the type of the support, the ratio and limits of the financial resource to be allocated for the support of cinema films. The Council informs the MoCT and the related bodies following the approval of support allocation.

### ***General Principles For Support (Art.12)***

Support is provided at project, production and post-production phases.

Project support is given during the pre-production period for research and development, scenario and scriptwriting, translation, design, etc. It is provided directly on non-repayable basis. Amount of support is limited to 50 % of total project cost.

The Council may decide to extend the support for the scenario scriptwriting projects up to 100%.

Production Support is provided to the activities from the preparation to the final stage of a film production. It is provided directly or indirectly and repayable. Amount of support is limited to 30% of total project cost. A film producer, having successfully completed the repayment of the support obtained, may receive, for a consecutive application 50% of the total project cost in support.

The amount provided to the producer as repayable production support is reimbursed through box office revenues after the full recovery of the production cost.

Where box office revenue fails to cover the production expenses, the repayable support is considered as non-repayable upon the producer's request and following the Ministry's evaluation.

Post-Production Support is provided at promotion, distribution and screening stages. It is provided directly or indirectly, repayable or non-repayable. The amount of the support shall not exceed 30% of total expenditures.

***Type and schedule of the payment (Art. 19)***

- a) 30% of the support to be provided at the start of the project
- b) 40% of the support is due during the first 6 months from the start of the project
- c) 30% of the support is payable, following the approval of the project

Payments are made according to support agreement signed between the MoCT and the applicant.

***Repayments (Art.20)***

- a) Direct production supports shall be reimbursed within two years maximum, following the screening date of the film,
- b) Direct post production supports shall be reimbursed within two years maximum, following the payment of the total amount received in support,
- c) Indirect production and post production supports shall be reimbursed within two years maximum, following the complete repayment of bank credit.

***Supporting of Promotional Activities:***

The MoCT provides support to specialized projects and productions promoting the country in the international arena, national and international film festivals, film weeks and days, the cultural and social events and the professionals of the cinema industry. (Law No.5224, Art.9)

The MoCT also organizes or supports film festivals and shows in order to promote national heritage inside and outside Turkey (Law No. 4848, Art.11)

***Encouragement:***

Law on Encouragement Investments and Entrepreneurship in Culture No 5225 (Art.4)

The MoCT, encourages, among others, the construction, maintenance and operation of cultural centres, archives, film platos and cinemas.

(16) What legal and/or financial arrangements are in place for international co-productions (cinema and/or TV)?
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Turkey is a signatory of European Convention on Cinematographic co-production. In accordance with the Convention, the “By-law on Cinematographic

Co-productions and National Producers with Intention to Produce Feature Films in Turkey” has been put into force in 2005.

#### ***Definitions (Art.4)***

**Foreign Producer:** The producers who are not the citizen of the Turkish Republic or legal entities whose head office is not established in Turkey.

**Co-producers:** The producers who cooperate in order to produce a co-produced cinematographic work.

**Dual co-production:** Cinematographic works produced by two producers.

**Multi-lateral Co-production:** Cinematographic works produced by more than two producers.

#### ***Application (Art.6)***

The applications are submitted to the MoCT two months before the shooting starts.

#### ***The Principles for Co-production:***

By-law on Cinematographic Co-productions and National Producers with Intention to Produce Feature Films in Turkey, Art. 5 states that;

- a) The share of the national producer shall not be less than 10% in the dual co-productions,
- b) The share of each producer shall not be less than 5% and more than 80% in a multi-lateral co-production,
- c) In the fiction co-productions, minimum 10% of the artists and technical personnel shall be the citizen of the Republic of Turkey,
- d) ...
- e) In the generics, as well as in promotional and advertising materials of the co-produced cinematographic works, the names of the countries of each producer shall be clearly mentioned.

#### ***Evaluation Criteria (Art.8)***

The evaluation is realised as follows;

- a) Sufficient technical and financial abilities and professional qualifications of the applicant producers,
- b) Membership to the related collective society for the national producer,
- c) Inclusion of cultural and artistic values of the co-producer countries in the cinematographic work,
- d) Respect to common morality, protecting the mental health of minors and the young, conformity with human dignity and not causing any humiliation to any nation and discouraging use of violence and pornography in the content.

### ***Entrance to the Country (Art.9)***

On the approval of co-production, the MoCT in cooperation with the related public institutions, helps to facilitate the entrance/exit procedures for the artists and technical personnel who have taken part in the co-production works, and the entrance/exit procedures of the raw film, technical equipment, decor, costume, advertising material and similar materials which will be used within the context of working permits.

### ***Participation in the Film Festivals and Contests (Art.12)***

- a) Co-producers participate in the international festivals and contests in the name of the co-producer's country with the largest contribution, unless decided otherwise.
- b) The films produced with equal shares participate in festivals and contests in the name of the director's country.
- c) Each co-producer has the right to participate in the festivals in their home country with the co-production.

### ***Film Export (Art.13)***

When a co-production is exported to a country applying quota, it shall be contained in the quota of the country,

- a) which has the largest contribution, under normal conditions,
- b) which provides the best conditions for export to importing country, where all investors have equal share,
- c) which employs the director, where (a) and (b) are inapplicable.

### ***Shooting Permits (Art.15)***

Foreign producers intending to shoot a film in Turkey and national producers working on behalf of them shall take permission from Directorate General of Copyright and Cinema of the MoCT.

Article 13 of By-law on Supporting Cinema Films states that:

Legal personalities and real persons residing in the country may apply for support.

Co-productions involving foreign partner(s) may also apply for support.

### ***Financial Support:***

Co-productions also benefit from financial support system (By-law on Supporting Cinema Films. Art.13)

The Supporting Council every year, determines the basic terms for support, for the co-productions with foreign producers and share and limits of this support in line with support budget.

(17) What are the requirements concerning audiovisual archives?

Law No. 5224, Art. 10 necessitates the archive and documentation of the cinema films. In addition to cinema films, it is compulsory to submit to the Ministry of Culture and Tourism (MoCT) all relevant information and documents deemed necessary, for the compilation of an “Inventory of Cinema Films”.

MoCT may establish a department for archive and documentation, for the purpose of research, development and publication, to provide services on the documentation of sectoral information and to organize activities for information disclosure and “creation of awareness”.

According to Article 13 of Law No.5846, film producers, who make the first fixation of films, shall submit their works (encompassing cinematographic works) for registration and recording in order to protect their rights and benefits.

According to Article7 of Law No. 5224, cinema films, produced domestically or imported, are evaluated and classified allowing for recording and registration, before their commercial distribution and screening.

### **Mandatory Recording and Registration**

According to the provision of mandatory registration in By-law on the Recording and Registration of Intellectual and Artistic Works, Art. 5, it is obligatory to submit to the MoCT the following documents and materials:

- One digital copy (DVD, VCD, Audio CD) of the production, which is recorded and registered
- Scenario, text of dialogues, original film score and lyrics, posters and other promotional materials for cinematographic works

When the film is produced in a foreign language, the following documents and materials should be submitted (By-law on Cinematographic Co-productions and National Producers with Intention to Produce Feature Films in Turkey, Art. 10):

- A copy of the original film together with a copy of the film with Turkish subtitle in digital betacam format
- A copy of the original film together with a copy of the film with Turkish subtitle in DVD format

The film archive of the MoCT dates back to 1978. The archive has been operative since 1982.

Mimar Sinan University, in İstanbul, is a member of FIAF (The Federation of International Archives of Film) since 1973.

The MoCT is aware of the FIAF standards and keeps the inventory according to these standards while continuing its efforts in creating the physical infrastructure in line with the same standards.

## Information Society Services

### (18) Electronic signatures: report on status and progress

Electronic Signature Law (No.5070) was published in the Official Gazette on 23 January 2004. According to the Law, TA is charged with to prepare secondary legislation and inspect the market. Within this framework, TA prepared “By-law on Certificate Financial Liability Insurance” that was published in the Official Gazette on 26 August 2004 and “By-law on the Procedures and Principles Pertaining to the Implementation of Electronic Signature Law” and “Communiqué on Processes and Technical Criteria Regarding Electronic Signatures” that were published in the Official Gazette on 6 January 2005.

After completion of secondary legislation, three parties applied to TA for being Electronic Certificate Service Provider. Following the examination and inspection of TA, these parties started to operate and generate electronic certificates. Taking in the account some problems in implementation, some small changes were made over “By-law on the Procedures and Principles Pertaining to the Implementation of Electronic Signature Law” and “Communiqué on Processes and Technical Criteria Regarding Electronic Signatures” according to demands of the sector. Finally, Telecommunications Board took a decision on 1 June 2006 regarding security requirements for signature creation application and electronic signature format.

After completion of legislation four parties made notification to TA became ECSP up to now.

ECSP	Notification Date
E – Güven Corp.	25.03.2005
TUBITAK UEKAE Institute	31.03.2005
TurkTrust Corp.	13.05.2005
E – Tuğra Corp.	20.06.2006

These parties generated 4913 qualified electronic certificate until 25 June 2006. The number of qualified electronic certificates is expected to reach 22,000 by the end of 2006 depending on the ongoing negotiations between ECSPs and interested parties.