Implementing the OECD Anti-Bribery Convention Phase 4 Report: Türkiye

OECD

This report evaluates and makes recommendations on Türkiye's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2021 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the OECD Working Group on Bribery on 13 June 2024.

The report is part of the OECD Working Group on Bribery's fourth phase of monitoring, launched in 2016. Phase 4 looks at the evaluated country's particular challenges and positive achievements. It also explores issues such as detection, enforcement, corporate liability and international co operation, as well as covering unresolved issues from prior reports.

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Executive Summary

This Phase 4 report by the OECD Working Group on Bribery in International Business Transactions evaluates and makes recommendations on Türkiye's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report details Türkiye's achievements and challenges, including in enforcing its foreign bribery offence, as well as progress made since its 2014 Phase 3 evaluation.

Türkiye has made some progress in implementing the Convention. Legal persons (including state-owned enterprises) are now punishable for foreign bribery by a maximum fine of TRY 245.12 million (EUR 8.31 million) or at least twice the gain from the offence. A 2016 law improved the framework for mutual legal assistance and extradition. In 2018, Türkiye became a party to the Convention on Mutual Administrative Assistance in Tax Matters which allows the international exchange of tax information for use in criminal bribery investigations. Eximbank staff is now required to undergo relevant foreign bribery training. A 2022 anti-money laundering regulation now defines a "politically exposed person" which can assist in detecting bribery and related offences through suspicious transaction reporting. Company transparency has been strengthened via a registry of beneficial ownership and by increasing sanctions for related violations.

However, Türkiye's record of foreign bribery enforcement raises serious concerns. There have been 23 known allegations of foreign bribery committed by Turkish individuals and/or companies since 2000 when Türkiye became a Party to the Convention. None has produced a conviction. Almost two-thirds of the allegations have not been investigated at all. Investigations of the remaining one-third have not been proactive or thorough, and have not resulted in prosecution since Phase 3. No legal person has ever been held liable for foreign or domestic bribery. Enforcement of bribery-related money laundering is similarly insufficient. Issues relating to judicial and prosecutorial independence identified in Phase 3 have deteriorated.

Longstanding Working Group recommendations have also not been implemented. Of the 27 recommendations from Phase 3 in 2014, 21 remain outstanding. Türkiye has disregarded a recommendation to adopt protection for whistleblowers for approximately 17 years. Promises to reform this matter have been repeatedly made and not kept. The law on corporate liability remains ambiguous on whether a natural person prosecution and conviction is required. It also does not apply to bribery-related false accounting. Natural persons still cannot be fined for foreign bribery.

Detection and awareness-raising of foreign bribery are equally lacking. Türkiye failed to detect 21 of the 23 known foreign bribery allegations, including all 12 that were reported by the media after Phase 3. Censorship may further hinder detection through the press and investigative journalism. There is no national strategy to fight foreign bribery despite the significant size of Türkiye's economy. Key government bodies including the Ministries of Justice, Foreign Affairs as well as Treasury and Finance have not raised awareness of foreign bribery in the private sector or promoted corporate anti-corruption compliance programmes. These concerns are particularly acute because of the continued growth of Turkish companies in high-risk sectors such as defence and construction, and in countries with high perceived levels of corruption.

The report and its recommendations reflect the conclusions of experts from Costa Rica and the United States, as adopted by the Working Group on 13 June 2024. It is based on legislation, practice data and other materials provided by Türkiye, as well as research by the evaluation team. Information was also obtained during a January 2024 onsite visit to Türkiye, during which the evaluation team met representatives of Türkiye's public and private sectors, judiciary, media, and civil society. Türkiye will report in two years on the implementation of these recommendations and on its enforcement efforts.

Introduction

1. In June 2024, the Working Group on Bribery in International Business Transactions (Working Group) concluded its Phase 4 evaluation of Türkiye's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention), 2021 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Recommendation) and related instruments.

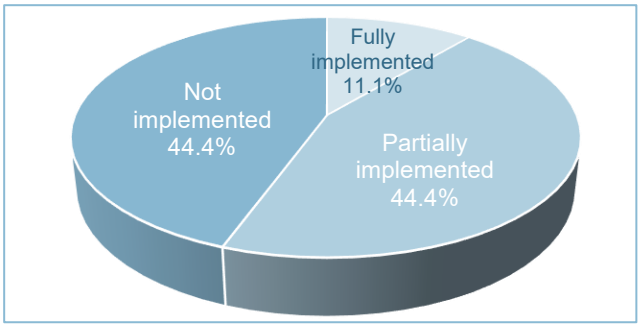
1. Previous evaluations of Türkiye

Table 1 Working Group evaluations of Türkiye

2004 Phase 1 Report
2007 Phase 2 Report
2009 Phase 2bis Report
2010 Phase 2 & 2bis Follow-up
2014 Phase 3 Report
2017 Phase 3 Follow-up Report

2. The Working Group conducts successive phases of peer-review evaluations to monitor all Convention Parties' implementation and enforcement of the Convention and related instruments. Since Phase 2, evaluations have included an onsite visit to obtain governmental and non-governmental views in an evaluated country. The country may comment on but not veto the evaluation report and its recommendations. Evaluation reports are published on the OECD website. Türkiye's last full Working Group evaluation in Phase 3 in 2014 yielded 27 recommendations. In 2016, the Working Group concluded that Türkiye had fully implemented 3 recommendations, partially implemented 12, and not implemented 12 (see Figure 1).

Figure 1 Türkiye's Implementation of Phase 3 Recommendations in 2016



3. In addition to regular evaluations applicable to all Parties, the Working Group has taken numerous exceptional measures because of Türkiye's inadequate implementation of the Convention. At the conclusion of the 2007 Phase 2 evaluation, the Working Group decided to conduct a supplemental Phase 2bis evaluation focusing on six deficiencies.[1] In May 2017, the Working Group was "seriously concerned about the lack of enforcement activity and slow progress with regard to many [Phase 3] recommendations".[2] Türkiye was thus required to provide additional reports in October 2017, June 2018 and March 2019. The last report culminated in the Working Group issuing a public statement criticising Türkiye's lack of foreign bribery enforcement and inadequate corporate liability framework. After a further report in October 2019 failed to demonstrate progress, the Working Group conducted a high-level mission to Türkiye in 2021 followed by another public statement. By October 2022, Türkiye had not progressed on four outstanding Phase 3 issues that were the focus of the high-level mission, namely corporate liability, whistleblower protection, prosecutorial independence from improper influence, and foreign bribery enforcement. A third Working Group public statement and further reports by Türkiye ensued. In October 2023, the Working Group decided that it would consider further exceptional measures at the conclusion of Türkiye's Phase 4 evaluation.

2. Phase 4 process and onsite visit

4. The monitoring process is based on principles agreed by the Parties. Phase 4 evaluations focus on the cross-cutting issues of enforcement, detection and corporate liability. They also address outstanding

[1] (1) Inadequate efforts to secure the attendance of private sector and civil society representatives at the Phase 2 onsite visit; (2) awareness-raising of the foreign bribery offence; (3) addressing foreign bribery by Turkish companies; (4) law on corporate liability; (5) early dismissal of a foreign bribery investigation; and (6) delay in responding to Oil-for-Food cases implicating Turkish companies.
[2] Phase 3 Written Follow-Up Report para. 11.

recommendations from previous evaluations and changes to domestic legislation or the institutional framework. Phase 4 takes a tailored approach, considering each country's unique situation and challenges, and reflecting positive achievements. This report therefore does not revisit issues that were not deemed problematic in previous Phases and which have not been affected by later developments.

5. The evaluation team for this Phase 4 evaluation of Türkiye was composed of lead examiners from Costa Rica and the United States, as well as members of the OECD Anti-Corruption Division.[3] Türkiye responded to the standard Phase 4 questionnaire and country-specific supplementary questions. The evaluation team then conducted an onsite visit in Ankara and İstanbul on 8-12 January 2024. The team met representatives of the Turkish government, law enforcement, prosecutor's office, judiciary, private sector (business associations and companies; lawyers; and auditors), and civil society (non-governmental organisations, academia and media) (see Annex 3 for a list of participants). The onsite visit was largely well-attended, including by prosecutors. The evaluation team expresses its appreciation to all onsite visit participants for their openness and contributions.

6. The Working Group regrets that Türkiye has not sufficiently responded to the evaluation questionnaire. Many of Türkiye's responses do not address the questionnaire's questions or simply provide lengthy translations of legislation. Other questions are not answered at all. Information about actual practice is largely missing. Key institutions such as the prosecutor's office provided very limited input before the onsite visit. Almost all questions about enforcement actions were unanswered. Some of the missing information was later provided during the onsite visit, but some issues could not be discussed fully because of the limited time during the visit. Furthermore, the inadequate questionnaire responses deprived the evaluation team of the opportunity to review important information prior to the onsite visit. Such preparation would have made the discussions at the onsite visit more in depth, fruitful and efficient.

3. Political system, economy and foreign bribery risks

7. Türkiye's head of state is the President who is elected directly to a five-year term, renewable once.[4] Executive power also vests with the President: constitutional amendments in 2017 abolished the office of Prime Minister and Council of Ministers (Constitution Arts. 8, 104). The President has exclusive power to appoint and discharge ministers (Constitution Arts. 104, 106). The Grand National Assembly of Türkiye is the legislature and comprises 600 elected deputies elected every five years (Constitution Arts. 7, 75, 77).

8. Türkiye has a population of over 85 million and the 16th largest economy of the 46 Working Group countries. It has had one of the fastest growing economies in the OECD over the past two decades, with exports and private consumption as key drivers. In terms of trade, Türkiye was the 16th largest exporter and 17th largest importer of goods in the Working Group in 2022. In 2022, its top exported goods were vehicles (10.1%), machinery (8.7%), mineral fuels including oil (6.5%), iron and steel (6.5%), electrical machinery (5.2%), plastics (4.7%) and knit textiles (4.4%). The main export destinations were Germany (8.4%), US (6.8%), Iraq (5.3%), UK (5.2%), Italy (4.9%), Spain (4.0%), France (3.7%), Netherlands (3.3%), Russia (3.0%), Israel (2.9%) and Romania (2.8%). Exports to Russia have increased significantly since that country's invasion of Ukraine though still only constitute 3% of Türkiye's exports. The largest imports

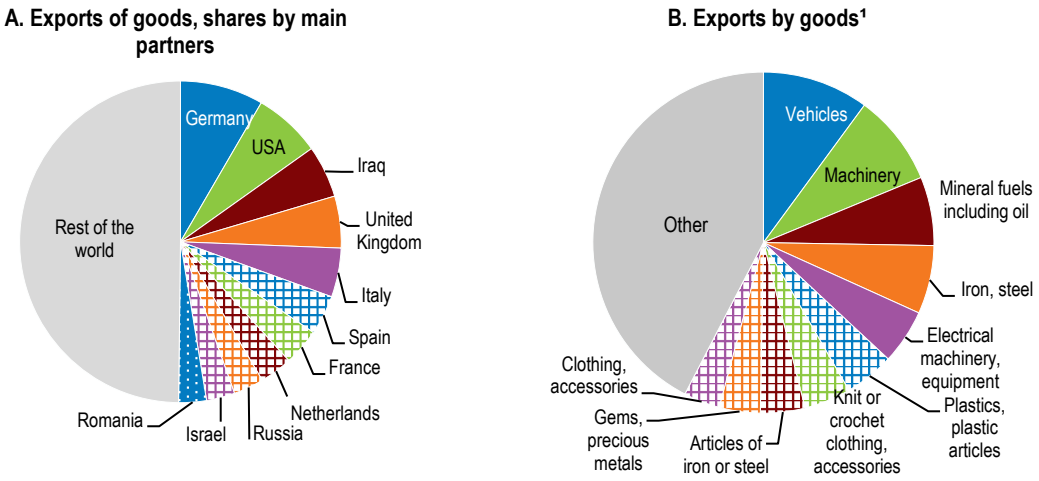
[3] Costa Rica was represented by Ms. Amy Román Bryan, Procuradora de Ética Pública, Procuraduría General de la República; and Ms. Diana Hernández Gamboa, Co-ordinating Prosecutor, Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción. The United States was represented by Mr. Andrew Gentin, Deputy Chief, Fraud Section, Criminal Division, U.S. Department of Justice; and Ms. Tracy Price, Deputy Chief, Foreign Corrupt Practices Act Unit, U.S. Securities and Exchange Commission. The OECD Anti-Corruption Division was represented by Mr. William Loo, Ms. Martha Monterrosa and Ms. Marybeth Grunstra.

[4] On 30 Mar. 2023, Türkiye's Supreme Election Council approved the current Turkish President's candidacy for a third term (Decision 2023/316). One of the President's previous two terms had been before the new "presidential system" of government introduced by a 2017 Constitutional amendment.

in 2021 were manufactures (58.9%), fuels and mining products (20.4%) and agriculture products (9%). The main import sources were the EU (31.5%), Russia (10.7%), China (11.9%) and US (4.8%).[5]

9. In terms of foreign direct investment (FDI), Türkiye ranked 30th and 27th among 46 Working Group members in outward and inward FDI stocks in 2022.[6] The top destinations at the end of 2022 were the Netherlands, US, UK, UAE and Germany. Some of these may be "pass through" countries for investment destined for other jurisdictions.[7] The top five sectors of investment were financial and insurance activities; mining and quarrying; wholesale and retail trade; manufacture of basic metals and fabricated metal products; manufacture of food products; beverages and tobacco.[8] The majority of FDI inflows originated from the Netherlands (15.7%), US (8.1%), UK (7.5%), and Gulf countries (7.1%).[9]

Figure 2 Türkiye's main exports and destinations (January to September 2022)



Source: OECD Economic Survey: Türkiye 2023; Turkstat, "Foreign Trade Statistics, September 2022"

10. A burgeoning defence sector is a significant foreign bribery risk. Between 2018-2022, Türkiye's share of global arms export increased by 69%, doubling its market share and making it the 12th largest global exporter. Much of the trade is with countries that have a notable level of corruption. The top recipients include Qatar, UAE, Oman, Bangladesh and Mali.[10] But markets have progressively diversified to Africa, former Soviet countries, the Middle East and EU.[11] Some project Africa to become Türkiye's third largest defence market, with agreements in North Africa (Morocco, Algeria) and sub-Saharan Africa (Benin, Chad, Niger, Nigeria, Rwanda, Somalia and Sudan).[12] Some of the arms exporters are state-owned enterprises, several of which have grown rapidly in recent years.[13] The media recently reported allegations

[5] OECD Data, Trade in goods and services (2022); OECD (2023), Economic Surveys: Türkiye, pp. 18-19; WTO (2021), Trade Profile, Türkiye.
[6] OECD Data FDI outward stocks and FDI inward stocks.
[7] OECD International Direct Investment Statistics (database).
[8] Türkiye's Ministry of Trade.
[9] Republic of Türkiye's Investment Office, FDI (2022).
[10] SIPRI (2023), Trends in International Arms Transfers 2022; SIPRI (2022), Top 100 Arms-producing and Military Services Companies, 2021.
[11] Nordic Monitor (10 Dec. 2021), "Statistics show Turkey's arms sales to Africa boomed in 2021"; Turkish Exporters Assembly 2021 export data; The Economist (19 Sep. 2023), "Meet the world's new arms dealers".
[12] Atalayar (10 Dec. 2021), "Turkey exponentially increased arms exports to Africa in 2021".
[13] Türkiye Ministry of Treasury and Finance, 2021 Annual Ownership Report of State Owned Enterprises; Republic of Türkiye Investment Office (2022), Turkish Defence and Aerospace Industry; Turkish Business Times (28 Jul. 2023), "Turkish Aerospace showcases Türkiye's burgeoning military potential at IDEF 2023"; SIPRI (2022), Top 100 Arms-producing and Military Services Companies, 2021, p. 8.

made by an opposition party in a foreign country that an export of Turkish drones was tainted by corruption.[14]

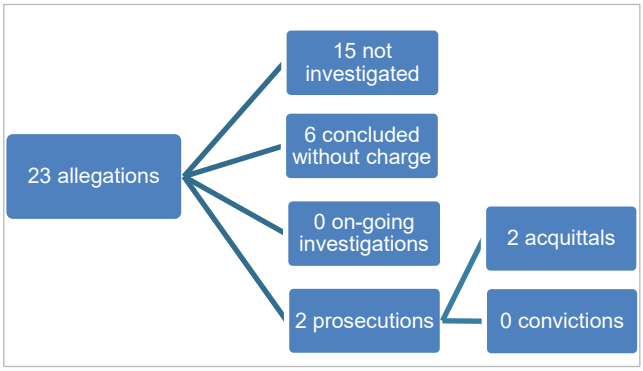
11. The Turkish construction sector also has significant presence in high-risk jurisdictions and thus exposure to foreign bribery. In 2022, Türkiye ranked second globally in the number of contractors operating internationally and seventh in terms of revenue.[15] The majority of projects have been in Russia, the Middle East (Iraq, Libya and Saudi Arabia), Ukraine, and former Soviet Union states (Kazakhstan and Turkmenistan). However, projects in sub-Saharan Africa increased by nearly 17% from 2008 to 2022.[16] Given this risk exposure, not surprisingly, 11 of the 23 known foreign bribery allegations implicate Turkish companies in the construction sector. Construction materials are also a significant export. Iron, steel and cement materials are exported to the UAE, Iraq, Saudi Arabia, Israel, Syria and Libya. Glass is exported to Azerbaijan, Israel, Bulgaria, Turkmenistan and Iraq.[17]

12. A final risk sector is Turkish micro, small and medium-sized enterprises (SMEs). In 2021, Türkiye's SMEs accounted for 99.7% of the total number of enterprises and 30.4% of total exports.[18] The main exports were manufacturing industry products (90.8%), including clothing, machinery and equipment, and textiles.[19] The main destinations were the EU (47.3%) and Asia (33.7%), but a not insignificant number of SMEs operate in or export to high-risk destinations. For instance, SMEs account for most exports of plastic-based building products, mainly to Iraq, Russia, Turkmenistan and Georgia.[20] Türkiye disagrees that SMEs is a risk sector because of the categories of export products and destinations.

4. Foreign bribery enforcement

13. Türkiye's foreign bribery enforcement has been poor historically and was an issue of focus in the Working Group's 2021 high-level mission. The Phase 3 Report (Commentary after para. 26) expressed "serious concerns regarding the lack of proactivity in detecting and investigating foreign bribery". Only 6 foreign bribery investigations had been initiated in the 14 years since the Convention entered into force in Türkiye. The Working Group was "surprised" at this low level of enforcement, given "the size of Turkey's economy, its geopolitical importance and the high involvement of Turkish companies in geographical and industrial sectors prone to corruption".

Figure 3 Türkiye's foreign bribery cases



14. This poor enforcement record has further deteriorated since Phase 3. Two cases that were ongoing in Phase 3 have since concluded without charge. Meanwhile, 12 new foreign bribery allegations have surfaced. None has been investigated by Türkiye. In total, there have been 23 known allegations of foreign

[14] The Press (18 Mar. 2024), "MDP calls on the Parliament to probe govt's drone deal with Turkey"; The Edition (21 Mar. 2024), "No corruption in acquiring drones, details withheld in accordance with advice received: President".
[15] Turkish Contractors Association, Turkish International Contracting Services 1972-2022; HVAC&R (26 Feb. 2023), "Türkiye Ranked Second in the World in Contracting with 42 Companies"; Engineering News Record, 2023 Top 250 International Contractors; AA (25 Aug. 2023), "Türkiye maintained its second place in the giants league in construction".
[16] *Ibid*; see also: African Business (15 Mar. 2020), "Turkish construction companies help to move Africa forward"; The Economist (7 May 2023), "Turkish builders are thriving in Africa"; Middle East Eye (5 Feb. 2023), "The Turkish construction companies outfoxing China in Africa"; Qantara (2023), "Turkey supplants China in East Africa"; The Business Year (11 Feb. 2020), Turkish Construction Overseas.
[17] Ministry of Economy (2018), Industry: Building Materials.
[18] Turkstat, SME statistics 2021.
[19] OECD (2021), SME and Entrepreneurship Outlook: Turkey.
[20] Ministry of Economy (2018), Industry: Building Materials.

bribery committed by Turkish individuals and/or companies since 2000 when Türkiye became a Party to the Convention. Almost two-thirds (15) have not been investigated, 6 were concluded without charge and 2 produced acquittals. There have not been convictions. As explained in this report, Türkiye failed to detect 21 of the 23 allegations, including all 12 that have surfaced since Phase 3 (see section A.3.a at p. 12). When detected, many allegations were not forwarded to law enforcement (section B.2.b at p. 33). Others have not been investigated proactively or thoroughly (section B.2.d p. 35). Summaries of foreign bribery cases concluded since Phase 3 are in Annex 1.

15. A further enforcement-related issue of grave concern is judicial and prosecutorial independence. As explained in section B.3 at p. 37, the Phase 3 Report noted concerns in three areas, namely the High Council of Judges and Prosecutors (HCJP), removal of judicial and law enforcement officials, and executive influence in enforcement actions. Concerns on all three issues have been exacerbated since 2016 when a coup attempt in the country prompted reforms to the HCJP as well as widespread suspensions and dismissals of judicial officials.

Commentary

The lead examiners are extremely concerned at not only Türkiye's foreign bribery enforcement but its overall implementation of the Convention. The Working Group's 2021 high-level mission focused on four areas of concern. Türkiye has made some progress in one area, namely corporate liability for foreign bribery, though the law has yet to be enforced (see section C at p. 51). Unfortunately, Türkiye's already poor record of enforcement and judicial independence in accordance with Convention Art. 5 has further deteriorated since Phase 3. On the fourth issue of whistleblower protection, there is no discernible progress in implementing the Working Group's recommendation which has been outstanding for some 17 years (section A.6.b at p. 18). In the meantime, Türkiye's exposure to the risk of foreign bribery has significantly increased, especially in major export sectors such as defence and construction (see paras. 10-11). Yet, Türkiye has not assessed these risks or devised a strategy of mitigation (section A.1 at p. 11).

The lead examiners also note that Türkiye's implementation of the Convention remains very poor despite a string of exceptional monitoring measures taken by the Working Group, including the 2009 supplemental Phase 2bis evaluation, 2021 high-level mission to Türkiye, three public statements of concern, and numerous additional reports to the Working Group.

A. Detection of the foreign bribery offence

A.1. Strategy for fighting foreign bribery

16. Türkiye does not have a national government policy or strategy to combat foreign bribery. In Phase 3 (para. 13), Türkiye had developed several anti-corruption strategies (e.g. the Prime Ministry's Strategy for Enhancing Transparency and Strengthening the Fight against Corruption; Project on Strengthening the Co-ordination of Anti-Corruption Policies and Practices; and National Action Plan for the Open Government Partnership (OGP) Initiative). However, these policies focused on domestic corruption and did not address foreign bribery. Moreover, such policies have not been maintained or updated since Phase 3. Many are no longer in force and have not been replaced, resulting in a lack of national strategic policies on either domestic corruption or foreign bribery. The European Commission notes that a "fully-fledged corruption prevention policy still remains to be developed". The absence of an anti-corruption strategy demonstrates Türkiye's "lack of will" to combat corruption.[21] In 2016, the Türkiye's participation in the OGP was terminated for its failure to deliver a new National Action Plan.[22] In this evaluation, Türkiye indicates that it

[21] European Commission, Türkiye 2023 - Communication on EU Enlargement, SWD(2023) 696 final, p. 5. See also the Key Findings Press Release.
[22] Open Government Partnership (2016).

is working on a national policy to combat corruption, including foreign bribery. It does not provide any preparatory work or a timeline for the policy's adoption, however.

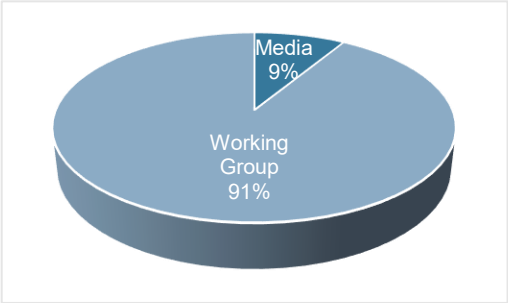
Commentary

The lead examiners are seriously concerned about the continued absence of a national strategy to fight corruption that includes foreign bribery. The need for such a strategy has become critical. The Phase 3 Report (para. 149) had already identified Türkiye's construction sector as a foreign bribery risk. Since then, defence has emerged as another high-risk export sector (see para. 10). However, Turkish authorities have not assessed the risk that companies in these and other economic sectors may engage in foreign bribery. Policies targeting these sectors have therefore not been developed. Further, as described below, Türkiye has few tools to detect bribery. Key stakeholders have received little training specifically on detecting, preventing and reporting this crime. Criminal enforcement is practically non-existent. The lead examiners therefore recommend that Türkiye urgently develop a government-wide national strategy to fight foreign bribery which encompasses prevention, detection, awareness-raising and enforcement.

A.2. Sources of foreign bribery allegations

17. The sources of Türkiye's foreign bribery allegations demonstrate a systemic failure to detect this crime. As mentioned in para. 14, there have been 23 known allegations of foreign bribery committed by Turkish individuals and/or companies since 2000 when Türkiye became a Party to the Convention. Türkiye detected only two of the allegations, both through the media and before Phase 3. The remaining 21 allegations were detected by the Working Group via its own media monitoring efforts and then provided to Türkiye. This includes all 12 allegations that have surfaced since Phase 3. Given Türkiye's failure to detect these allegations, there is no clear practice on the dissemination of foreign bribery allegations to law enforcement. Türkiye has also not investigated any of the post-Phase 3 allegations, as explained in section B.2.d at p. 35.

Figure 4 Sources of foreign bribery allegations



Commentary

The lead examiners are seriously concerned that Türkiye has systematically failed to detect foreign bribery. Almost all known foreign bribery allegations were provided to Türkiye by the Working Group. The lead examiners therefore recommend that Türkiye (a) encourage law enforcement authorities to proactively gather information from diverse sources to increase detection of foreign bribery, and (b) develop a system to disseminate allegations of foreign bribery to appropriate authorities for investigation and prosecution. As explained below, much greater efforts should also be made with respect to practically all potential sources of allegations ranging from the national and international media, whistleblowing, corporate self-disclosures, anti-money laundering measures and external auditing to reporting by public officials, including those in diplomatic missions, tax authorities, and agencies concerned with export credits and official development assistance.

A.3. Detecting foreign bribery through media reports

A.3.a. Media monitoring

18. The Phase 3 Report (para. 83) found that Türkiye's monitoring of the media for foreign bribery allegations was ineffective. It stated that the "collection of media-based information is also reportedly organised at the prosecutorial level." Türkiye indicated that "public prosecutors are assigned in each

province with the duty of following the news in the press, and considering whether such information might be characterised as an offence." Other government bodies also purported to monitor the media. Nevertheless, Türkiye failed to detect several foreign bribery allegations in the media. Phase 3 recommendation 3(c)(i) thus asked Türkiye to "take a more proactive approach to the detection of foreign bribery, including by promptly reviewing and improving existing mechanisms for gathering information reported in the media".

19. In Phase 4, Türkiye describes three measures for monitoring the media. First, the Public Prosecutor's Office (PPO) states that "the Investigation Bureau for Press Offences and the Investigation Bureau for Offences of Civil Servants within the Chief Public Prosecutor's Office regularly monitor the national and international press". The PPO later states that it only monitors the Turkish media, however. Second, the National Police Department of Anti-Smuggling and Organised Crime (KOM) has a section on open source information. Additional Open Source Bureaus are in the Sections on Anti-Smuggling Crimes, Financial Crimes, Organised Crime, Crimes Against National Security and Proceeds of Crime. KOM states that these Bureaus monitor the media for foreign bribery allegations. Third, the Ministry of Foreign Affairs states that its overseas embassies also monitor the media for foreign bribery allegations (see para. 34).

20. These arrangements have largely been unsuccessful. Türkiye failed to detect all 12 foreign bribery allegations that have been reported in the media since Phase 3, and just 2 of 23 allegations since 2000. The media monitoring arrangement described above is not suitable for detecting foreign bribery allegations. For example, as its name suggests, the PPO's Investigation Bureau for Press Offences is not primarily responsible for foreign bribery but offences committed by the media. The Bureau for Offences of Civil Servants is also not responsible for foreign bribery, at least in some regions (see para. 106). In any event, multiple prosecutors who participated in this evaluation say Türkiye's overseas diplomatic missions are the principal source of foreign bribery allegations. But these missions have also been unsuccessful in detecting and reporting allegations in the media (see para. 34). When foreign bribery allegations in the media are provided by the Working Group to Türkiye, they remain uninvestigated (section B.2.d at p. 35). The Ministry of Justice adds that prosecutors can investigate *ex officio* allegations of any offence (including foreign bribery) that are reported in the international media. However, in practice, prosecutors have wholly failed to detect or investigate any foreign bribery allegations reported by the media.

Commentary

The lead examiners are seriously concerned that the Türkiye failed to detect any of the 12 foreign bribery allegations reported in the media since Phase 3, and only 2 of 23 allegations since 2000. The PPO has dedicated units that monitor the media for offences. In practice, prosecutors have not assumed responsibility for detecting foreign bribery. They instead assume that Türkiye's diplomatic missions would perform this function. The prosecutor's role would begin only if it receives a formal denunciation, as explained at para. 111.

For these reasons, the lead examiners reiterate Phase 3 recommendation 3(c)(i) and recommend that Türkiye effectively and systematically monitor domestic and foreign media for allegations of foreign bribery committed by Turkish citizens or companies, including by designating this responsibility to a specific PPO unit. As explained in section B.2.b at p. 33, Turkish authorities (including the Ministry of Justice) should also forward all foreign bribery allegations received from the Working Group to the PPO without delay.

A.3.b. Freedom of the press and censorship

21. Even effective media monitoring would not be useful for detecting foreign bribery if the press is not free to report allegations. The Working Group has thus repeatedly noted in evaluations of other Parties

that a free press and vibrant investigative journalism play an important role in "developing serious, vigorous and high profile reporting of foreign bribery issues".[23]

22. Press freedom in Türkiye is very poor in practice. In theory, Constitution Art. 28 guarantees that "the press is free, and shall not be censored. […] The State shall take the necessary measures to ensure freedom of the press and information." However, press freedom has deteriorated sharply post-Phase 3 and particularly since 2016. According to civil society groups,[24] Türkiye ranks 165 out of 180 countries and last among the 46 Working Group members in press freedom. The government is said to control 90% of the media. Large numbers of journalists have been imprisoned, including 40 in 2022 alone. Other tactics include arbitrary denial of press passes, fines imposed by regulatory agencies, diversion of advertising away from critical media outlets, defamation lawsuits, and threatened or actual physical violence. In this evaluation, Türkiye states that 98 persons who claim to be press members are in custody as of April 2024 because of alleged involvement in terror offences, homicide, sexual offences and other offences. Türkiye claims that none has been incarcerated "solely due to journalistic activities". Türkiye adds that its government does not control the media but takes measures to implement a principle of "preventing media concentration". The Radio and Television Supreme Council imposes fines for violations of broadcasting principles.[25]

23. Of particular concern is the judicial censorship of media reports of corruption allegations. According to civil society reports,[26] Turkish courts issued at least 658 orders removing information published online during a six-month period in 2020-2021. Suppression was on the ground of "violation of personal rights" in 580 (88%) of the cases. Just over half of the orders concerned reports of "corruption and irregularities". In 2022, the number of removal orders rose to 40 536.

24. This censorship raises at least three issues for the implementation of the Convention. First, law enforcement may not learn of a foreign bribery allegation that has been censored. This will be especially likely if an individual implicated in the allegation can readily obtain a judicial injunction on publication. In a previous evaluation of another country, the Working Group has therefore recommended that a media censor be obliged to "forward any information suppressed (in part or in full) by the Censor, which alleges the involvement of [that country's] company or individual in foreign bribery, to law enforcement authorities and/or the Attorney General."[27] Second, even if law enforcement learns of an allegation that has been judicially suppressed, it is questionable whether it could and would defy the censoring court by investigating the allegation. Third, routine bans on corruption allegations that are potentially embarrassing for the government raise questions about the judiciary's independence from improper influence by the executive. This is considered further in section B.3.c at p. 42.

Commentary

The lead examiners are seriously concerned that the lack of press freedom in Türkiye hinders the detection of foreign bribery cases. As the Working Group has repeatedly noted, a free press with thriving investigative journalism is invaluable for revealing foreign bribery. In line with Working Group evaluations of other countries,[28] the lead examiners therefore recommend that Türkiye ensure that (a) the Constitution and other laws relating to freedom of the press are fully applied in

[23] See for example Korea Phase 4 paras. 54-56; Japan Phase 4 para. 94; Bulgaria Phase 4 paras. 48-53; and Greece Phase 4 para. 61.
[24] Reporters Without Borders (2023), World Press Freedom Index; Stockholm Centre for Freedom, "Press Freedom in Turkey: 2022 in Review"; Freedom House, "Freedom in the World 2022: Turkey"; Atalayar (25 May 2023), "The end of press freedom in Turkey".
[25] Establishment of Radio and Television Enterprises and Their Media Service Law 6112 Arts. 19 and 32.
[26] MEDAR (2021), "Impact of Social Media Law on Media Freedom in Turkey Monitoring Report", pp. 6 and 9; Bianet (30 Oct. 2023); Turkish Minute (30 Oct. 2023).
[27] Israel Phase 2 paras. 33-34 and recommendation 4(b).
[28] See for example Korea Phase 4 recommendation 3(c); Japan Phase 4 recommendation 1(g); Bulgaria Phase 4 recommendation 5(a); Greece Phase 4 recommendation 3(b); and Israel Phase 2 recommendation 4(b).

practice so that allegations of foreign bribery can be reported, and (b) any information which alleges that foreign bribery has been committed by a Turkish individual or company, including information that has previously been censored, is forwarded to the Public Prosecutor's Office for investigation.

A.4. Detecting and reporting foreign bribery by Turkish public officials

25. This section deals with detecting and reporting foreign bribery by Turkish public officials generally. Later sections focus on efforts by the Ministry of Foreign Affairs, tax authorities, and agencies dealing with export credit and official development assistance.

26. As in Phase 3, Turkish public officials are required to report all crimes, including foreign bribery. Criminal Code (CC) Art. 279(1) obliges officials to report an offence "which requires a public investigation and prosecution". Failure to report or delay in reporting is punishable by imprisonment of 6 months to 2 years. The penalty is increased by 50% if a law enforcement official commits the offence. The Council for Ethics for the Public Service cites the Regulation on the Principles of Ethical Behaviour for Public Officials and Application Procedures and Principles. However, the regulation only applies to the reporting of domestic corruption or misconduct committed by Turkish public officials.

27. Government officials are expected to use the same reporting channels and procedures as private individuals. Bribery complaints would be reported to the Chief Public Prosecutor's Office (DPACL Art. 18). The Public Prosecutor's Office (PPO) states that it accepts reports via email or phone. Complaints can also be made using these methods or in person to the Department of Anti-Smuggling and Organised Crime (KOM) of the National Police and Gendarmerie General Command. The General Directorate of Security indicates that foreign bribery reports can be made via its general website. However, none of these bodies has a dedicated email address or online website for receiving bribery complaints. The Presidency's Communication Centre (CIMER) accepts reports on "activities of public institutions and organisations" via an online submission form. Such complaints appear to relate to Turkish government misconduct. Nevertheless, Turkish authorities insist that reports of foreign bribery would be accepted on CIMER and transferred to the PPO. Nearly all public and private sector participants in this evaluation are aware of the CIMER reporting channel.

28. Unfortunately, these efforts have not been effective. Turkish public officials have not detected or reported any foreign bribery allegations. For domestic bribery and corruption, there is an absence of data. The PPO does not have statistics on reporting by Turkish officials. Figures on corruption reports submitted on CIMER, to KOM or to the Gendarmerie are not provided.

29. Türkiye should do more to promote public officials' obligation to report foreign bribery. Various institutions have provided general anti-corruption training, but mostly on topics related to public administration misconduct and domestic corruption. While such initiatives are important, little focus has been given to foreign bribery.

Commentary

Turkish public officials can play an important role in detecting and reporting foreign bribery but have yet to do so in practice. The lead examiners therefore recommend that Türkiye (a) raise the awareness of and train relevant public officials on detecting and reporting foreign bribery, and (b) maintain statistics on reports of foreign bribery received from public officials.

A.5. Detecting and reporting foreign bribery through overseas diplomatic missions

30. Overseas embassies and missions have an important role to play in enhancing the awareness of foreign bribery among companies seeking advice about investing or exporting abroad. Diplomatic missions are also well-placed to monitor the local media for foreign bribery allegations that involve Turkish companies or individuals and report them to Turkish law enforcement authorities.

A.5.a. Awareness-raising and training

31. The Ministry of Foreign Affairs (MFA) has conducted limited awareness-raising and training of its officials. An MFA Circular to staff was reissued in April 2024 that mentions the Convention and Türkiye's foreign bribery offence. (Previous circulars had been sent in 2006, 2008 and 2016.) A foreign bribery training module introduced in 2024 was attended by 216 new MFA officials. Officials of the MFA and other Ministries who are posted overseas take the "Foreign Assignment Orientation Course" offered by the MFA's Diplomacy Academy. The Ministry of Justice prepared training materials on foreign bribery for the course. In 2019-2023, 689 non-MFA officials attended the training. (The number of MFA officials is not provided.) Existing MFA officials not posted abroad have not been trained, however.

32. The MFA has not engaged with the private sector on the issue of foreign bribery. It has not trained or raised awareness of Turkish companies on this topic. After reviewing a draft of this report, the MFA states that overseas diplomatic missions brief Turkish companies on foreign bribery risks as part of their "regular operations". However, the MFA does not explain the details of these activities or provide supporting documentation such as event agendas or briefing materials.

33. There is no guidance to MFA and embassy officials on how to respond to Turkish companies seeking assistance with bribe solicitation. An MFA representative states that embassy officials would refer individuals to local lawyers, but this is not reflected in official MFA policies. The sufficiency and appropriateness of such a response are also questionable. Contrary to Türkiye's assertion, the April 2024 staff Circular (like its predecessors) deals only with MFA officials reporting foreign bribery allegations to law enforcement (see next section). It does not address how MFA officials should react when Turkish companies that have been solicited for bribes ask them for advice.

Commentary

The lead examiners are seriously concerned that the MFA has not sufficiently raised awareness of foreign bribery. The Circular on foreign bribery was circulated to MFA staff in 2016 and then not again until this evaluation some eight years later. Training has been insufficient because it was provided only to new recruits as of 2024, and to officials posted overseas. But existing officials stationed in Türkiye can also encounter information about foreign bribery allegations, such as through the media. They may also be responsible for setting policies and procedures relevant to foreign bribery. Furthermore, the MFA's engagement with the private sector on foreign bribery, whether in Türkiye or abroad, is non-existent. The 2024 staff Circular does not guide MFA officials to assist Turkish companies that seek advice on bribe solicitation.

The lead examiners therefore recommend that Türkiye (a) raise awareness of foreign bribery and bribe solicitation risks among the private sector, and (b) train all MFA officials, including those posted abroad, on fighting foreign bribery and the Convention, including on information and steps to be taken to assist enterprises confronted with bribe solicitation, where appropriate.

A.5.b. Detecting and reporting foreign bribery

34. The MFA has not implemented Phase 3 recommendation 7(a) on detecting and reporting foreign bribery. The Phase 3 Report (paras. 146-156) expressed concerns that the MFA and other governmental bodies had failed to detect and report foreign bribery allegations implicating Turkish individuals or businesses. Accordingly, the Working Group recommended that the MFA "review existing policies and procedures on detection and reporting of foreign bribery" that would inform new policies and procedures in this respect. The MFA has not conducted any such reviews, however. The mere reissuance of the 2016 staff Circular in 2024 does not amount to a policy review.

35. Since Phase 3, the MFA's efforts to detect foreign bribery have continued to be ineffective. The MFA states that overseas embassies routinely follow the local press for important developments, including allegations of foreign bribery implicating Turkish individuals or businesses. The 2024 Circular is identical

to its 2016 predecessor and asks MFA staff to "follow the news about [foreign bribery]". In practice, overseas missions have not detected any actual allegations despite the opportunity to do so. As mentioned at para. 20, Türkiye failed to detect all 12 foreign bribery allegations that have been reported in the media since Phase 3. Reports in at least 10 of these cases were covered by the media in 10 countries with Turkish diplomatic missions.

36. The reporting of foreign bribery is also inadequate. Like all Turkish officials, those in the MFA are obliged to report all crimes, including foreign bribery (see section A.4 at p. 15). But the 2024 Circular does not clearly set out the reporting channel. Instead, it refers to various legislative provisions requiring reporting to "competent authorities" (CC Art. 278(1)), "Chief Public Prosecutor's Office" (DPACL Art. 18 and CCP Art. 158(1)), "law enforcement" (CCP Art. 158(1)) and "embassies and consulates" (CCP Art. 158(3)). Media articles should also be uploaded to an MFA database "Mediaarchive" on Dışnet. Nevertheless, Türkiye disagrees and considers the 2024 Circular clear. The MFA adds that if a diplomatic mission receives information about foreign bribery, then the "situation will be evaluated in consultation with the relevant units of [the MFA] and appropriate co-ordination can be ensured with the relevant institutions." But this is not stipulated in any written policy. It is wholly unclear who would evaluate the "situation" in consultation or in co-ordination with whom, or what would happen with the received information thereafter, including whether the information would be submitted to the PPO. There is no explanation of when an allegation would be considered a denunciation. The MFA also states that it "does not have any specific statistical data" on the reporting of bribery.

Commentary

As with other countries, Türkiye's diplomatic missions are responsible for monitoring the local media for information of interest to Türkiye. Yet Türkiye failed to detect all foreign bribery allegations that have been reported by the media in countries with Turkish diplomatic missions. The MFA also does not have a clear procedure for handling such reports and submitting them to Turkish law enforcement, despite reissuing the 2016 staff Circular in 2024.

The lead examiners therefore reiterate Phase 3 recommendation 7(a) and recommend that Türkiye (a) review existing policies and procedures on detecting and reporting of foreign bribery, (b) take steps to ensure that its diplomatic missions monitor the media for foreign bribery allegations implicating Turkish individuals or businesses, (c) set out a clear procedure and channel for MFA officials to report foreign bribery allegations and for forwarding such reports to Turkish law enforcement, and raise awareness among MFA officials of this procedure and channel, and (d) maintain statistics on reports of allegations of foreign bribery received from MFA officials and overseas diplomatic missions.

A.6. Reporting, whistleblowing and whistleblower protection

A.6.a. Channels for reporting foreign bribery

37. In Türkiye, private persons are obliged to report criminal offences that are in progress, and offences that have been completed if it is possible to limit their consequences. Failure to report in these circumstances is punishable by imprisonment of up to one year (CC Art. 278(1)-(2)). Reporting of crimes that do not fall into these circumstances would presumably be optional. Reports of foreign bribery can be made through the same reporting channels outlined in para. 27.

38. Türkiye does not maintain consolidated statistics on the number of foreign bribery reports received by law enforcement from the various reporting channels. Only limited anecdotal information was provided. Reports by the public have not been the source of any foreign bribery investigations. The Ankara PPO confirms that it has not received any reports of foreign bribery in the last two years; there is no information on other PPOs. Türkiye provides statistics on the number of investigations of domestic bribery but not the sources of reports received.

A.6.b. Whistleblowing and whistleblower protection

39. The absence of whistleblower protection in Türkiye in the public and private sectors is a longstanding concern and was an issue of focus during the Working Group's 2021 high-level mission. At the time of this report, Türkiye has not made discernible progress in this matter. Unsurprisingly, not a single case of foreign bribery has been detected through a whistleblower in Türkiye.

40. Since 2007, the Working Group has urged Türkiye to provide whistleblower protection. The Phase 2 Report (para. 38) found that Türkiye had given "little consideration to encouraging whistleblowing" or "developing comprehensive whistleblower protection". Recommendation 6(c) thus asked Türkiye to "strengthen measures to protect whistleblowers". There were no improvements by Phase 3 in 2014. Instead, Türkiye referred to various labour legislation.[29] But these laws simply prohibited wrongful termination and involved civil litigation remedies. They were also difficult to access and understand. The Working Group accordingly urged Türkiye again to "ensure that appropriate measures are in place to protect [whistleblowers]" (Phase 3 Report para. 158 and recommendation 7(b)).

41. A string of unfulfilled promises by Türkiye to rectify this issue then ensued.[30] In 2016, Türkiye reported an anti-corruption Action Plan that "included an article on 'making arrangements for protecting [whistleblowers]'". The article would be "enforced" and lead to legislative amendments in 24 months. No amendments or even a draft bill materialised, however. The Working Group found in 2018 that Türkiye "showed very limited progress", and still "failed to report progress" a year later. During the 2021 high-level mission, Türkiye stated that the 2016 Action Plan had lapsed. However, a "board" had been created in 2021 to develop a new anti-corruption strategy before the end of the year. But again, no legislative amendments arrived. By October 2022, there were only (unspecified) efforts in the Ministry of Labour and Social Security. The Presidency of Türkiye, Strategy and Budget Office was similarly making (also unspecified) efforts to include whistleblower protection in yet another anti-corruption strategy.

42. Instead of describing changes made or plans for reform, the 2023 Phase 4 questionnaire responses merely refer at length to a patchwork of existing legislation. Most of these laws were already in force in Phase 3. None meets the standards in the Anti-Bribery Recommendation:

(a) Türkiye cites the Witness Protection Law and CCP Art. 58. But as the Working Group has repeatedly stated in evaluations of other Parties, such measures address only threatened or actual physical harm, not workplace reprisals. Moreover, a whistleblower is not necessarily a witness, or may become one only after reprisals have occurred.

(b) Other legislation only provides for the confidentiality of a reporting person's identity and does not protect against reprisals (DPACL Art. 18; Principles of Ethical Behaviour and Application Procedures and Principles for Public Officials Regulation 8044 Art. 12; Trial of Civil Servants and Other Public Officials Law 4483 Arts. 1 and 4). Civil Servants Law 657 Arts. 17-21 merely give a Turkish official a right to complain about reprisals, not protection from them.

(c) Some of the provisions mentioned by Türkiye also only apply to misconduct committed by or reported against Turkish – not foreign – officials (Principles of Ethical Behaviour and Application Procedures and Principles for Public Officials Regulation 25785 Art. 12; Trial of Civil Servants and Other Public Officials Law 4483 Arts. 1 and 4). The Whistleblowing Directive of the Borsa İstanbul A.Ş. (stock exchange) only concerns wrongdoing *within* the Borsa (Arts. 1-2), not Turkish companies.

[29] Labour Law 4857 and Law 6098 Code of Obligations.
[30] See Phase 3 Follow-up Report; Summary Records of Working Group meetings (DAF/WGB/M(2018)3 Item 8.d; DAF/WGB/M(2019)5/REV1 Item 8.b; DAF/WGB/M(2022)5/FINAL Item 6.i); high-level mission report and follow-up report (DAF/WGB(2021)53 and DAF/WGB(2022)33/REV1).

(d) Finally, Türkiye cites a series of sectoral legislation that applies to reports of tax, terrorism, smuggling and money laundering offences.[31] None applies to foreign bribery whistleblowing. Moreover, the laws again largely only provide for confidentiality of the reporter's identity, and do not offer any protection or remedies related to a reporting person's employment.

43. During the January 2024 onsite visit, Türkiye promised again to enact legislation. The Ministry of Justice states that the Presidency has considered whistleblower protection and a working group on corruption has been formed. Türkiye does not provide details or timeline for this work, however. The Parliamentary Justice Commission has yet to receive any draft legislation.

44. Non-governmental participants in this evaluation support legislative change in this area. Civil society representatives criticise the patchwork of existing laws that provide limited protection. Campaigns advocating reform have been held. Representatives of companies and business associations express similar support. Some state that their companies have internal whistleblower policies and hotlines but have not received reports of foreign bribery. However, these are large, multinational enterprises whose policies are aligned with the laws of foreign jurisdictions such as France, UK and US. Turkish SMEs likely do not have similar policies despite accounting for a sizable share of Turkish exports, according to private sector participants.

Commentary

The lead examiners are extremely concerned that Türkiye has not heeded the Working Group's recommendation for approximately 17 years to provide whistleblower protection. Undertakings to reform have been repeatedly made and not kept. The latest promise to do the same is vague and unconvincing. As a result, in practice, whistleblowing has not led to any foreign bribery investigations.

The lead examiners thus reiterate Phase 3 recommendation 7(b) and recommend that Türkiye (a) urgently enact comprehensive legislation to protect and provide remedy against retaliatory action to persons working in the public or private sector who report suspected acts of foreign bribery in line with Anti-Bribery Recommendation XX.II; and (b) once enacted, raise awareness of these provisions and encourage companies and government bodies to implement whistleblower reporting channels and protection frameworks.

A.7. Self-reporting by companies

45. The Working Group has recognised that self-reporting (or voluntary disclosure) by companies is an invaluable source of detection of foreign bribery. Across the Parties to the Convention, self-reporting by companies accounts for approximately a quarter of all foreign bribery cases detected since the entry into force of the Convention.[32]

46. Turkish law does not specifically provide for self-reporting by companies. Misdemeanour Law Art. 43/A, which provides for corporate administrative liability for foreign bribery, does not specify self-reporting as a factor mitigating sanctions. Several Turkish participants in this evaluation refer to effective regret under CC Art. 254(4) but this is not the same as self-reporting. Effective regret is a full defence from liability whenever a briber reports the crime of bribery to the authorities. By contrast, the benefits of self-reporting are at the discretion of the courts or prosecutor, and can range from reduced punishment to full immunity from liability. In any event, effective regret is not permitted for foreign bribery under the Convention and Turkish law.

[31] Tax Procedure Law 213 Art. 142; Anti-Terrorism Law 3713 Arts. 6 and 14; Anti-Smuggling Law 5607 Art. 19; Anti-Money Laundering Law 5549; and Regulation on Measures regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism.
[32] OECD (2017), Detection of Foreign Bribery, p. 13.

Commentary

The lead examiners recommend that Türkiye (a) take steps to explain to relevant stakeholders the difference between the defence of effective regret and corporate self-reporting, and that the former is not available in foreign bribery cases, and (b) consider measures to encourage companies that participated in, or have been associated with the commission of foreign bribery, to supply information useful to competent authorities for investigating and prosecuting foreign bribery, and ensure that appropriate mechanisms are in place for the application of such measures in foreign bribery investigations and prosecutions, in accordance with Anti-Bribery Recommendations X.iii and XV.ii.

A.8. Detecting foreign bribery through anti-money laundering measures

47. Phase 4 evaluations examine anti-money laundering (AML) measures that are relevant to preventing and detecting foreign bribery, and the laundering of the proceeds of this crime. A broad assessment of Türkiye's anti-money laundering system is beyond the scope of this evaluation, noting that FATF adopted its latest evaluation report on Türkiye in 2019. Since October 2021, Türkiye has also been under enhanced FATF monitoring (i.e. FATF's public grey list). The money laundering offence and its enforcement are discussed in section B.6.a at p. 47. MASAK is Türkiye's financial intelligence unit (FIU) and primary supervisor of regulated entities to ensure compliance with AML obligations.

A.8.a. National money laundering risk assessment

48. Türkiye has not assessed the risk posed by money laundering predicated specifically on foreign bribery. Türkiye conducted national risk assessments on money laundering in 2018 and 2022. The latest assessment judged corruption as a medium-level threat, the same as tax evasion and human trafficking. But corruption in this context encompasses a wide range of offences such as misuse of public duty, embezzlement and bid rigging. Bribery is also included, but foreign bribery is not specifically considered.

Commentary

Türkiye has conducted risk assessments on money laundering. Unfortunately, corruption was dealt with as a general matter. Foreign bribery was not analysed separately as a predicate offence (i.e. a threat for money laundering). The assessments therefore did not account for the specificities of this crime, such as its inherently cross-border nature, the business context in which it arises, and the economic sectors particularly at risk of committing this offence. The lead examiners therefore recommend that Türkiye (a) include foreign bribery as a specific threat in its next national money laundering risk assessment, (b) disseminate the results of this assessment to all relevant anti-corruption stakeholders, and (c) use its findings to inform Türkiye's policies for preventing, detecting and investigating bribery and related money laundering.

A.8.b. Customer due diligence, politically exposed persons and beneficial ownership

49. Türkiye's AML framework requires regulated entities to conduct customer due diligence in specific situations. A Regulation on Measures (RoM) establishes the circumstances under which identification and verification of customers and beneficial owners are required. Regulated entities include not only financial institutions but also designated non-financial businesses and professionals (including lawyers). Enhanced due diligence is also required for specified transactions and other high-risk situations. Regulated entities must take additional measures for relationships that they assess as high risk (Regulation on Compliance Art. 13; RoM Art. 26/A). Special attention must be given to transactions that are complex, unusually large, or have no apparent reasonable, legitimate or economic purpose (RoM Art. 18). A separate Regulation on Compliance establishes rules for AML compliance programmes.

50. Türkiye has implemented Phase 3 recommendation 4(d) to address politically exposed persons (PEPs) in AML legislation. In 2022, MASAK issued General Communique 21 and a related Implementation

Guidance. The Communique defines PEPs to include officials of Türkiye, foreign countries and international organisations (Art. 3(1)(d)) as well as their relatives and close associates (Art. 4(6)). The Communique also specifies measures that must be taken in business relationships and transactions conducted with PEPs (Arts. 4(2)-(4)). Violations of the Communique are punishable by warnings and fines (Communique Art. 5; Law 5549 Arts. 5 and 13).

51. Progress has also been made on beneficial ownership. The RoM requires regulated entities to identify and verify beneficial owners. It obliges the entities to obtain information on the purpose and nature of the client's intended business. Türkiye has established a new beneficial ownership registry with frequent reporting requirements for legal persons. The registry is estimated to be 96% populated. Entities that do not declare their true ownership are sanctioned. Available fines were increased in 2022, with higher sanctions for repeat violations. Since then, at least 45 211 individuals have been fined, including 1 805 repeat violators. Sanctions have also increased for natural persons who fail to disclose that they act on behalf of a beneficiary (Law 5549 Art. 15) and for financial institutions that fail to identify beneficial owners.[33]

Commentary

The lead examiners welcome Türkiye's new measures to identify and monitor PEPs. They also commend Türkiye for enhancing its approach to obtaining beneficial ownership information for legal persons, including by ensuring that sanctions for violations are dissuasive.

A.8.c. Suspicious activity reporting

52. Financial institutions and other regulated entities are required to file suspicious transaction reports (STRs) with MASAK. A report is required where a transaction is carried out or attempted, within or through a reporting entity, with assets "acquired through illegal ways or used for illegal proposes" (RoM Art. 27(1)). Any information or suspicion based on reasonable grounds can suffice, regardless of the value of the transaction. Reports must be filed within ten days. MASAK and its partner agencies supervise regulated entities for compliance with this requirement. Foreign and domestic bribery are not specifically differentiated from several other corruption offences in an STR, but additional details of the transaction can be recorded in a narrative field. Türkiye has increased the monetary penalties for breaches of STR obligations.

53. Law enforcement have used financial intelligence gathered by MASAK, including information obtained through STRs (Phase 3 recommendations 3(c)(ii) and 4(c)). Investigators and prosecutors have requested this information for use during financial investigations to uncover new suspects and offences, map money laundering transactions and networks, as well as identify and trace assets for confiscation. In 2018-2022, MASAK provided 107 disseminations concerning bribery upon request, though 75 were in 2022 alone. Disseminations for corruption (including bribery) totalled nearly 400. MASAK adds that 3.3% of its analytical reports used by law enforcement in ongoing cases involve corruption as a predicate offence.

54. Of greater concern is the use of STRs to detect bribery. In 2018-2022, MASAK received 836 corruption-based STRs, including 105 STRs concerning foreign corruption. Yet it made only 9 spontaneous disseminations to law enforcement related to corruption and/or bribery (2 foreign and 7 domestic). None resulted in a foreign bribery investigation. Turkish authorities do not have statistics on how many domestic bribery investigations resulted from STRs. But the proportion of domestic bribery cases detected through STRs is likely extremely low, given that Türkiye opened 10 233 investigations for bribery in this period. Furthermore, the 9 spontaneous disseminations to law enforcement represent only 1% of total relevant STRs received. This suggests that the quality of STRs on this topic may be low – or that many filings are defensive.

[33] FATF 1st and 2nd Enhanced Follow-Up Reports of Türkiye (2021 and 2022).

55. The ineffectiveness of STRs as a tool for detecting bribery may be the result of a lack of guidance, training and awareness. MASAK publishes guidelines, including publicly available STR guidance. It provides feedback to reporting entities about STRs filed. It trains these entities' compliance officers and other staff on AML trends and developments. However, these efforts at best refer to domestic bribery generally, and do not mention foreign bribery at all. MASAK states that the STR guidance "includes procedural and legal requirements as well as detailed explanations on categories and types for suspicious transactions." However, there are no typologies or red flag indictors to aid reporting entities to detect bribery-related suspicious transactions. Türkiye points to the 2022 PEP Implementation Guidance and related training with over 1 000 participants in 2022-2023. These efforts covered foreign PEPs but do not speak explicitly and precisely to foreign bribery-related money laundering. Türkiye also refers to Ministry of Justice (MOJ) Circular 157 which does not link foreign bribery with money laundering. It is also directed at law enforcement, not AML reporting entities.

56. The private sector corroborates the lack of guidance and awareness-raising on foreign bribery. Participants in this evaluation do not display a high degree of understanding of the risks of foreign bribery affecting Turkish financial institutions and other regulated entities. They also believe that bribery is difficult to detect through transactions and information available to them about their clients' business activities.

Commentary

The lead examiners are concerned that STRs have not been effective in detecting bribery in Türkiye. They therefore reiterate Phase 3 recommendation 4(a) and recommend that Türkiye raise awareness among reporting entities of foreign bribery as a predicate offence to money laundering, including by providing guidance, typologies and training that specifically address foreign bribery.

A.9. Detecting foreign bribery through accounting and auditing

57. Türkiye has not detected any foreign bribery cases through accounting and auditing. Three bodies share responsibility for regulating accounting and auditing. The Public Oversight, Accounting, and Audit Standards Authority (*Kamu Gözetimi Kurumu*, KGK) oversees standards and ethical rules, licensing and supervision of auditors and audit firms. The Capital Market Board (CMB) provides additional rules on audits of listed companies and capital market institutions. The Union of Chambers of Certified Public Accountants and Sworn-in Certified Public Accountants (TÜRMOB) is the accounting and auditing profession's self-regulatory body.

A.9.a. Accounting and auditing standards

58. The KGK publishes Turkish Accounting Standards (TMS). TMS includes the Turkish Financial Reporting Standards (TFRS) which fully incorporate the International Financial Reporting Standards (IFRS), according to Türkiye. TFRS is applied by Public Interest Entities (PIEs) such as listed companies, brokerage firms and portfolio management companies. Other entities can apply standards published by the KGK that are part of TMS. Türkiye's false accounting offence is discussed in section B.6.b at p. 48.

59. Companies must undergo annual external auditing if they are established under the Commercial Law, headquartered in Türkiye, and meet criteria set out in an annual Presidential decree (Commercial Law 6102 (CL) Arts. 397-398).[34] In addition, PIEs such as banks, financing companies and insurers are subject to mandatory independent audit, according to Türkiye. Capital Markets Law Art. 14 further requires all listed companies and capital market institutions to be externally audited. State-owned or controlled enterprises are audited by the Turkish Court of Accounts and supervised by the General Directorate of

[34] For 2023, companies that meet or exceed two of the three following thresholds must be audited: (a) for non-listed companies considered public under the Capital Markets Law: total assets of TRY 30 million, net sales revenue of TRY 40 million and 50 employees; (b) for specified companies: total assets of TRY 60 million, net sales revenue of TRY 80 million and 100 employees; and (c) for other companies: total assets of TRY 75 million, net sales revenue of TRY 150 million, and 150 employees (Presidential Decree 6364 Arts. 3 and 5).

Public Capital Enterprises in the Ministry of Treasury and Finance. Auditors participating in this evaluation state that 15 000 companies were audited in 2022 and 20 000 in 2023, representing approximately 80% of Turkish GDP. In their view, most exporters and companies in sectors at risk of committing foreign bribery are externally audited.

60. External audits are conducted using Turkish Auditing Standards (BDS) (CL Art. 397). The KGK sets BDS which are in line with International Standards on Auditing (ISAs) for the purposes of this evaluation. BDS 240 concerns the auditor's responsibilities relating to fraud that results in a material misstatement in the company's financial statements. BDS 250 deals with the auditor's responsibility to consider non-compliance with laws and regulations in an audit of financial statements.

A.9.b. Detecting foreign bribery

61. Turkish auditors confirm that foreign bribery can involve fraud and/or constitute non-compliance with laws within the meaning of BDS 240 and 250. The KGK states that, in accordance with BDS 240 and 250, the auditor's objectives are to (a) obtain sufficient appropriate audit evidence regarding compliance with the provisions of those laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the financial statements; (b) perform specified audit procedures to help identify instances of non-compliance with other laws and regulations that may have a material effect on the financial statements; and (c) respond appropriately to non-compliance identified or suspected non-compliance with laws and regulations identified during the audit.

62. Türkiye has not trained auditors on detecting foreign bribery as recommended. The Phase 3 Report (paras. 122-124) found that external auditors were not "actively detecting bribery". Auditors "do not generally consider bribery (foreign or domestic) in the performance of independent audits and that awareness of foreign bribery is relatively low in the profession". The Working Group accordingly recommended that Türkiye raise awareness among auditors that foreign bribery is a type of fraud and provide training on the "red flags to detect foreign bribery" (recommendation 5(b)). In Phase 4, Türkiye only describes training events pertaining to auditor ethics and anti-money laundering. The training did not specifically cover detecting foreign bribery.

63. The picture on detection in practice is mixed. Auditors from the major accounting firms state that they search the news and media, check beneficial ownership, and conduct due diligence on present and potential clients. But these precautions concern customer due diligence to prevent money laundering, not the detection of foreign bribery during the audit of a client. One auditor explains that audits require an examination of the company's regulatory environment and compliance measures, and that this process includes anti-bribery laws. But none of the auditors describes red flags of bribery that they would look for during an audit. Essentially all state that bribery is difficult for an auditor to discover. None of the auditors, some of whom have 15 or even 20 years' experience in the profession, knows of an audit that uncovered bribery.

Commentary

The lead examiners recognise that Türkiye has provided training on fraud, but not specifically on foreign bribery. As in Phase 3, Turkish external auditors have some awareness of foreign bribery, but are highly sceptical of their ability to detect this crime during audits. The lead examiners therefore reiterate Phase 3 recommendation 5(b) and recommend that Türkiye (a) issue guidance for external auditors setting out red flags for foreign bribery, and (b) train external auditors on this issue.

A.9.c. External auditors reporting foreign bribery

64. External auditors are required to report foreign bribery discovered during an audit to the audited company. Under BDS 240(42) and 250(23), an auditor must report fraud and non-compliance with laws to those in charge of the company's governance. Furthermore, ethical standards compatible with the

International Code of Ethics for Professional Accountants apply to Turkish auditors.[35] Code Section 360.11 urges an auditor who suspects illegal activity to approach the appropriate level of management in the audited company (or potentially in its parent company). In doing so, the auditor should respond appropriately after taking into account the nature and circumstances of the matter, persons actually or potentially involved, likelihood of collusion, potential consequences of the matter, and the level of management able to investigate and respond. TÜRMOB states that it has presented the Code in Turkish to accountants and auditors. It organises awareness studies, training, and Ethics Congresses.

65. Suspicions of foreign bribery must be further reported to the authorities. Law 3568 Art. 43 requires certified public accountants and sworn-in accountants to report criminal acts to the competent authorities. According to Turkish authorities, International Code of Ethics Section 360.5 provides that an auditor may report to competent authorities when "the business is involved in bribery (for example, bribery of local or foreign government officials for the purpose of receiving major tenders)." The KGK adds that, in accordance with BDS 240 and 250, if the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether law, regulation or relevant ethical requirements (a) require the auditor to report to an appropriate authority outside the entity, and (b) establish responsibilities under which reporting to an appropriate authority outside the entity may be appropriate in the circumstances.

66. Two obstacles discourage reporting foreign bribery in practice. First, auditors do not appear to understand that their duty is to report reasonable suspicions – and not conclusive proof – of foreign bribery. Several auditors participating in this evaluation state that bribery is "a vague issue" and "the difficulty is in concluding" that it has occurred. One believes that auditors are afraid of notifying management or the authorities because a report may turn out to be false. In response, the KGK states that the auditor's objective according to ISA 200 is "to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, thereby enabling the auditor to express an opinion on whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework." But this misses the point: the concern expressed by the auditors is not that they fail to detect or report an irregularity, but the evidentiary threshold required for reporting it. The KGK adds that the ISAs do not specify an evidentiary threshold for reporting; an auditor who identifies or suspects non-compliance with any law should report as required by ISA 250(29). But in practice auditors are not reporting, judging from their statements in this evaluation.

67. A second obstacle to reporting is a fear of reprisals. One participant in this evaluation is sceptical that auditors would be protected from retribution, saying "most companies would not report this". Another auditor suggests reporting anonymously to the Presidency's Communication Centre (CIMER), even though this channel is primarily for reporting Turkish government misconduct (see para. 27). However, other auditors disagree and believe that they would be protected if they reported in good faith and followed the correct procedures. The KGK also states that it would protect auditors who follow the standards, but legislative provisions protecting auditors are limited. CML Art. 64(1) states that reports by an auditor "do not constitute a violation of any law or contractual provision regarding the disclosure of information, nor do they result in legal or criminal liability for the persons making the notification". But the provision only covers reports to the CMB, not to law enforcement. It protects the auditor from legal liability but not other forms of reprisals, such as harassment. The provision also only applies to reports arising from an audit of an investment firm or a collective investment scheme, or while performing another duty under the CML.

68. Even if reports of suspected foreign bribery are made, Türkiye has not encouraged companies that receive them to respond actively and effectively. The Capital Markets Board (CMB) states that this issue "is evaluated within the scope of the Code of Ethics for Independent Auditors published by the [KGK] and followed by the CMB." The KGK states that "the auditor must act in accordance with BDS 240 and BDS 250." But the Code of Ethics and BDS apply to auditors, not the company that receives the auditor's

[35] TÜRMOB Regulation on Ethical Principles that Certified Public Accountants and Sworn-In Certified Accountants Should Comply with in their Professional Activities, Additional Art. 1.

report. One auditor states that "after discussing with those in charge with the company's governance and if not satisfied with the outcome, then the auditor needs to go to the regulator or authorities". But as mentioned above, an unclear evidentiary threshold and a fear of reprisal may discourage reporting in practice.

Commentary

The lead examiners are concerned that practical obstacles impede external auditors from reporting foreign bribery. There is no guidance on the evidentiary threshold required for reporting suspicions of foreign bribery or the channels for reporting. There are limited legislative provisions that explicitly prohibit or protect auditors against reprisals for reporting foreign bribery or other crimes. Companies that receive reports from auditors have not been encouraged to respond appropriately.

The lead examiners therefore recommend that Türkiye issue guidance to external auditors explaining that (a) their duty is to report reasonable suspicions of foreign bribery in good faith and that certainty is not required, and (b) reports of foreign bribery should be made directly to law enforcement. Türkiye should also (c) take steps to ensure that auditors who report suspected foreign bribery on reasonable grounds are protected from legal action, and (d) encourage companies that receive such reports to respond actively and effectively.

A.10. Detecting foreign bribery through tax authorities

69. Türkiye's Directorate of the Revenue Administration (*Gelir Idaresi Başkanliği*, GIB) is an affiliated institution of the Ministry of Treasury and Finance that is responsible for tax revenues. The Tax Inspection Board (*Vergi Denetim Kurulu*, VDK) under the Ministry is independent of the GIB and investigates tax offences. Türkiye states that the VDK also conducts "tax inspections, examinations, audits and investigations", including those assigned by the Minister.

A.10.a. Non-tax deductibility of bribes and tax treatment of financial penalties

70. The legislation governing tax deductibility of bribes has not changed since Phase 3.[36] The Income Tax Law (ITL) Art. 40 and Corporate Tax Law (CTL) Art. 8 allow certain types of deductions. Non-deductible expenses are listed in ITL Art. 41 and CTL Art. 11. The 2008 General Communique on Corporate Tax No. 3 clarified that bribes are an unacceptable deduction. On 1 March 2023, this provision was incorporated into Chapter 11.12 of the Corporate Tax General Communique No. 1 (serial No. 21):

> Since the expenses incurred due to acts forbidden by law are not in the nature of expenses related to obtaining and maintaining commercial income, these expenses may not be deducted from income and corporate profits. Therefore, as the act of bribery is defined as a crime in Article 252 of the Turkish Criminal Code, bribes and any expenses related to bribery will not be considered as expenses in determining taxable income.

Auditors must consider this provision while carrying out their professional activities, according to the Union of Chambers of Certified Public Accountants and Sworn-in Certified Public Accountants (TÜRMOB).

71. Türkiye's legislation, however, does not prohibit the tax deduction of fines and confiscation imposed as sanctions for foreign bribery. The General Communique excludes the deduction of "*expenses* incurred due to legally prohibited acts". But fines and confiscation are sanctions for the crime, not expenses. Türkiye refers to CTL Art. 11 which prohibits the deduction of fines and penalties "paid in accordance with the provisions of the Law on the Collection Procedure of Public Receivables". It is thus arguable that fines payable under other laws (such as the Criminal Code or ML Art. 43/A) would be deductible. In any event, the CTL only applies to corporate income tax. For personal income tax, Türkiye has not referred to a provision in the ITL that corresponds to CTL Art. 11.

[36] See Türkiye Reports in Phase 2 (paras. 67-68), Phase 2bis (para. 93) and Phase 3 (para. 130).

72. After reviewing a draft of this report, Türkiye refers to another provision that prohibits natural (but not legal) persons from deducting fines for foreign bribery from income tax. ITL Art. 41(6) disallows the deduction of "all kinds of fines and tax penalties and compensation arising from the offences of the owner of the undertaking." However, the ITL only applies to personal income tax. The CTL, which deals with corporate income tax, does not contain a provision with the same language as ITL Art. 41(6). Türkiye argues that the General Communique extends ITL Art. 41(6) to corporate income tax. But as mentioned above, the Communique only deals with expenses, not sanctions for a crime. Türkiye then argues that ITL Art. 41(6) also applies to corporate income tax because of CTL Art. 6(2), which states that ITL provisions on commercial income apply to the determination of net corporate income. But if this interpretation is correct, then Türkiye would not have had to enact separate lists of non-deductible expenses in ITL Art. 41 and CTL 11 (see para. 70). Türkiye also does not provide case law to support its position.

Commentary

The lead examiners recommend that Türkiye take steps, through a legally binding instrument, to ensure that fines and confiscation imposed for foreign bribery are not deductible for corporate income tax purposes.

A.10.b. Enforcement of non-tax deductibility

73. In Phase 3, the Working Group suggested that Türkiye encourage its law enforcement authorities to share information on foreign bribery enforcement actions with the tax administration (recommendation 6(a) and follow-up issue 10(f)). Sharing such information would allow tax authorities to target and re-assess relevant tax liability of individuals suspected of committing foreign bribery. Particularly useful is information about bribery convictions, since in such cases tax authorities do not have to prove that a deducted expense was a bribe; this will already have been proven in court.

74. Türkiye has not implemented this recommendation and the provision on non-tax deductibility remains unenforced. Tax officials state that they learn of bribery cases only if they receive requests from law enforcement for tax information. There is no written policy or practice requiring law enforcement to inform tax officials of bribery cases or convictions. Nor are tax officials required to re-examine the tax returns of individuals or companies convicted of bribery. Türkiye does not provide any examples or statistics on the application of the provision on non-deductibility.

75. Enforcement of non-tax deductibility of bribes is also difficult due to an insufficient limitation period for re-examining tax returns. Turkish tax authorities can re-open a tax return within the five calendar years after the year in which a tax payment is due (Tax Procedure Code (TPC) Art. 114). The conclusion of a foreign bribery case, however, often takes longer. Indeed, the limitation period for bribery prosecutions is three times longer, at 15 years.

Commentary

The lead examiners regret Turkish authorities' inaction since Phase 3 to enhance and encourage the enforcement of the non-tax deductibility of bribes. They reiterate Phase 3 recommendation 6(a) and recommend that Türkiye take steps to ensure that (a) law enforcement authorities routinely share information on foreign bribery-related enforcement actions with the tax administration, including by issuing written guidance to this effect, (b) Turkish tax authorities systematically re-examine the relevant tax returns of taxpayers convicted of bribery to determine whether bribes have been deducted, and (c) the limitation period to re-examine tax returns is sufficient by aligning it with the limitation period for foreign bribery prosecutions.

A.10.c. Detecting and reporting foreign bribery

76. The VDK has not detected any foreign bribery cases in the course of its audits or investigations. In 2018-2021, the VDK and GIB reported 21 incidents of domestic bribery to the Public Prosecutor's Office

(PPO). However, these concerned taxpayers allegedly bribing *Turkish tax inspectors*, not bribery of foreign or even other Turkish officials that were uncovered during tax audits.

77. Rules on reporting remain unchanged since Phase 3. Criminal Code Art. 279 requires all public officials including those in tax authorities to report offences to competent authorities. TPC Art. 367 further requires tax officials to report false accounting offences under TPC Art. 359 to the PPO. The VDK states that it reports bribery to the Chief PPO under DPACL Art. 18.

78. Training on and tools for detecting and reporting should be strengthened. In Phase 3, the VDK had developed and circulated to its tax inspectors its own Anti-Foreign Bribery Guide for Tax Examiners. In Phase 4, VDK states that it has updated the Guide and will include it in upcoming training. A basic training programme is provided to new auditors that touches on the Criminal Code, declaration of assets, anti-bribery and corruption, and legislation on the crime of bribery and crimes "specific to public officials." The 15-hour training covers general elements of bribery but "the issue of bribery of foreign public officials is not specifically addressed," says the VDK. In addition, 241 new auditors attended five-day training sessions in 2019 and 2022 on "Investigation Procedures and Principles" which covered the criminal bribery offence including foreign bribery. In 2017, existing tax auditors attended seminars on "Combating Bribery and Corruption" that mentioned foreign bribery.

Commentary

The lead examiners recommend that Türkiye continue to develop guidance and train new and existing tax auditors to detect and report foreign bribery.

A.10.d. Sharing information with Turkish and foreign law enforcement

79. Since Phase 3, tax authorities have taken some measures to improve the sharing of information and co-ordination with Turkish law enforcement, though not in a foreign bribery context (Phase 3 recommendation 6(b)). Tax officials can share information with Turkish law enforcement upon request. On the domestic level, the general duty of confidentiality of tax information does not apply when tax information is communicated to Turkish courts or law enforcement (TPC Art. 5). Turkish tax authorities state that they routinely receive requests from law enforcement for tax information to assist with criminal investigations. The VDK lists seven training events involving law enforcement in 2018-2024. However, none concerned corruption or foreign bribery but instead addressed tax and financial crimes, terrorism financing, smuggling and money laundering. An eighth event was not training, but VDK's participation in the 2022 onsite visit of the country review of Türkiye under the UN Convention against Corruption. The VDK also does not point to any guidance or interagency agreements to enhance information sharing.

80. On the international level, Türkiye became a party to the Convention on Mutual Administrative Assistance in Tax Matters (MAAC) in 2018. MAAC Art. 22.4 allows a party to use tax information received from another party in a criminal foreign bribery investigation if (a) the *supplying* party's laws allow such non-tax use, and (b) the supplying party *authorises* such non-tax use. Türkiye indicates that the first condition is met by MAAC because treaties to which Türkiye is party have the force of law at the domestic level (Constitution Art. 90; TPC Art. 5). In practice, Türkiye has not received such a request from a foreign jurisdiction.

81. To a lesser extent, Türkiye can also share tax information with a foreign jurisdiction for non-tax use through bilateral agreements. Türkiye has 90 double taxation agreements with other countries, five of which (i.e. approximately 6%) contain language from paragraph 12.3 of the Commentary to Art. 26 of the OECD Model Tax Convention. This language allows "the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters (e.g. to combat money laundering, corruption, terrorism financing)". The provision states that "information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such

use." Türkiye claims that the "OECD Commentary to Article 26 applies to all agreements on the sharing of information with foreign tax authorities". But this falls short of stating that the Commentary is a binding treaty provision in all of Türkiye's bilateral agreements.

Commentary

The lead examiners welcome Türkiye's ratification of MAAC to enhance the exchange of tax information with foreign jurisdictions. However, Türkiye has not taken measures to enhance information sharing between Turkish tax authorities and law enforcement. They therefore reiterate Phase 3 recommendation 6(b) and recommend that Türkiye improve the sharing of information and co-ordination between Turkish law enforcement and tax authorities, particularly the VDK.

A.11. Preventing and detecting foreign bribery through export credits

82. Export credit agencies (ECAs) deal with companies that are active in international business; they thus have an important role in preventing, detecting and reporting potential foreign bribery allegations involving these companies. ECAs can also sanction individuals and companies that have committed foreign bribery by denying them support. Measures that ECAs can take are described in Recommendations V-VIII of the 2019 Recommendation of the Council on Bribery and Officially Supported Export Credits (Export Credits Recommendation). Türkiye's ECA is Türk Eximbank.

83. Eximbank's Codes of Practice for Anti-Bribery in International Business Transactions (CoP) stipulate measures for preventing and detecting foreign bribery. An exporter is required to provide a range of undertakings, including refraining from bribery, paying commissions or fees only for legitimate services, and informing Eximbank if they are investigated or prosecuted for bribery. An exporter must declare that it has not been debarred by multilateral development banks (MDBs). CoP Art. IV(d) requires verification of this declaration. The exporter must also declare that it is not under trial or investigation in Türkiye or abroad for bribery, and has not been convicted of this crime in the past five years.

84. Eximbank states that enhanced due diligence is conducted for transactions "deemed to have high risk with regard to bribery". Eximbank reportedly has provided official export support for Turkish construction projects in Africa.[37] Eximbank agrees that construction projects (especially in regions such as Africa) are considered high risk. It states that it does not provide support to transactions in the arms sector. CoP Art. V sets out the enhanced due diligence measures that should be taken.

85. If an applicant exporter has been convicted of foreign bribery or corruption in the five previous years, Eximbank would consider additional factors when evaluating the application. The decision to approve support would take into account factors such as whether the company has dismissed employees who committed bribery; established an effective control mechanism; and conducted an independent audit (CoP Art. V). The application would also be rejected if bribery is detected during the due diligence process, states Eximbank.

86. Eximbank has not fully implemented Phase 3 recommendation 9(a) to consider the anti-corruption compliance programme of a prospective client when deciding whether to provide support. Eximbank states that a company that has been convicted of foreign bribery must furnish proof that it has such a programme. For other prospective clients, CoP Art. III(c) states that "exporters and relevant parties should be encouraged to establish and implement effective in-house administrative control mechanisms to combat bribery." Eximbank thus urges clients to implement such mechanisms in its Commitment Letters. But this fall short of considering a client's compliance programme when deciding whether to provide support.

87. Eximbank's CoP Art. IV(m) requires "substantial evidence of bribery" to be reported to its Department of Legal Affairs. The Department files a criminal complaint upon the approval of the General Directorate. No reports were made in 2018-2022.

[37] The Economist (7 May 2022), "Turkish builders are thriving in Africa".

88. Eximbank provides Combatting Bribery and Corruption Training covering foreign bribery, the Export Credits Recommendation, and the Eximbank CoP. The training has been mandatory for all Eximbank staff since January 2024. A manual on due diligence and enhanced due diligence is expected to be completed soon, after which it will be added to training.

Commentary

The lead examiners commend Eximbank for requiring its staff to undergo training that specifically addresses foreign bribery. They are also encouraged that Eximbank requires companies with a foreign bribery conviction in the five previous years to have an effective anti-corruption compliance programme. Nevertheless, they reiterate Phase 3 recommendation 9(a) and recommend that Eximbank consider the anti-corruption compliance programmes of all applicant companies, in line with Anti-Bribery Recommendation XXIII.D.i.

A.12. Preventing and detecting foreign bribery through official development assistance

89. The OECD 2016 Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption recommends that adhering countries "manage risks of and respond to actual instances of corrupt practices in development co-operation". The OECD Development Assistance Committee monitors the implementation of this instrument, with the Working Group focusing on Recommendations 6-10.

90. The Turkish Co-operation and Co-ordination Agency (TİKA) in the Ministry of Culture and Tourism co-ordinates Türkiye's official development assistance (ODA) programme in collaboration with other ministries, non-governmental organisations (NGOs) and the private sector. The programme totalled USD 7.7 billion in 2021. However, this figure includes donations to NGOs (USD 362 million) and direct investments in the private sector (USD 323 million) which strictly speaking is not ODA. The top three recipients in 2021 were Syria, Somalia and Azerbaijan. Assistance is concentrated in education, health, water, sanitation as well as emergency and humanitarian aid.

91. TİKA describes two measures to detect and prevent foreign bribery, neither of which is sufficient. First, TİKA provides "in-house training […] to newly recruited personnel and personnel to be assigned abroad". But the training covers matters such as TİKA's policy on gifts and other personal advantages accepted by its staff, ethical training and public internal audit. It thus addresses corruption committed by TİKA staff, not foreign bribery. Second, TİKA ensures that its personnel "benefits from informative publications and reports of international organisations on the subject". But this only entails referring TİKA staff to the OECD's website on the Convention and some publications from the Council of Europe and UN. All these materials are in English. TİKA also refers to the websites of the Board of Ethics for Civil Servants and MASAK. However, these bodies concern domestic corruption, money laundering and terrorist financing, not foreign bribery.

92. TİKA does not have a standard contract for ODA projects. It has also not provided evidence of any ODA contracts to demonstrate that they contain anti-bribery provisions, such as an express prohibition against an implementing partner from engaging in corruption.

93. Due diligence of prospective ODA implementing partners is insufficient. TİKA states that entities seeking ODA contracts are required to declare that they have not been convicted of bribery, as required by Public Procurement Law Arts. 10-11 (see para. 204). No other due diligence is conducted, however. Phase 3 recommendation 9(d) asked Türkiye to "ensure that due diligence is carried out prior to the granting of ODA contracts, including by routinely checking international debarment lists". The recommendation remains unimplemented. TİKA also does not consider an entity's anti-corruption compliance programme when deciding whether to award an ODA contract.

94. Protection of whistleblowers from reprisals is inadequate. TİKA states that ODA officials are obliged to report bribery under the Criminal Code and Declaration of Property and Anti-Corruption Law 3628

(DPACL). The general training described in para. 91 covers this reporting obligation. No reports were made in 2018-2022. TİKA adds that its Internal Control Standards and the DPACL protect whistleblowers. However, the former merely requires TIKA management to "establish methods" for reporting. The latter only provides for the confidentiality of a reporting person's identity. Neither addresses reprisals against whistleblowers. Art. 16(3) of a recent TİKA action plan prohibits "unjust treatment" of a person who reports corruption. Such a brief provision falls far short of the requirements of Anti-Bribery Recommendation XXII.

95. TİKA states that it has assessed foreign bribery risks in its ODA programme. It published a "risk strategy document" in 2021. An action plan, including country-specific components, is under preparation.

Commentary

The lead examiners recommend that TİKA (a) develop measures to prevent and detect foreign bribery in ODA projects, including by developing contracts for ODA projects that contain appropriate anti-corruption provisions, and (b) consider an entity's anti-corruption compliance programme when deciding whether to award an ODA contract. They also reiterate Phase 3 recommendation 9(d) and recommend that Türkiye conduct adequate due diligence before granting an ODA contract, including by verifying whether a prospective ODA project partner has been debarred by a multilateral development bank. Türkiye is recommended in section A.6 at p. 17 to provide protection to all whistleblowers in the public and private sectors. Such protection should include whistleblowers in ODA.

B. Enforcement of foreign bribery and related offences

96. This section considers Türkiye's enforcement of its foreign bribery and related offences. First, it examines the foreign bribery offence itself. This is followed by investigations, prosecutions and international co-operation in foreign bribery cases, including judicial and prosecutorial independence. Related offences of money laundering and false accounting are then covered. The section ends with the conclusion of cases, including non-trial resolutions, sanctions and confiscation. Corporate liability and enforcement are addressed in section C at p. 51.

B.1. Foreign bribery offence

B.1.a. Elements of the offence and defences

97. Türkiye's foreign bribery offence has not changed since Phase 3 when the Working Group found the provisions largely compliant with the Convention. Criminal Code (CC) Art. 252(1) makes it an offence for any person to provide any undue advantage, directly or through intermediaries, to a public official or anyone else "to be indicated by" the public official. Art. 252(9) applies this and all other provisions of Art. 252 to the bribery of foreign public officials as defined in the article. An agreement to bribe is a complete offence (Art. 252(3)). An intermediary who facilitates bribery is considered a principal offender (Art. 252(5)). (See Annex 4 at p. 71 for the full text of the provisions.)

98. There has not been practice clarifying which provision would apply when a bribe is offered or promised but not paid to a foreign official (Phase 3 follow-up issue 10(a)). The foreign bribery provision in CC Art. 252(9) specifically covers a bribe that "is provided, offered or promised". However, CC Art. 252(4) also deals with a case where "a person offers or promises any undue advantage to a public official but this is not accepted by the public official". The applicability of CC Art. 252(4) is pertinent since the provision reduces the penalty by half; CC Art. 252(9) does not specify such a reduction. In Phase 3 (para. 30), Türkiye argued that Art. 252(4) applies only to domestic bribery and Art. 252(9) to foreign bribery. This contradicts the plain wording of the latter provision, which states that the entire Art. 252 applies to foreign bribery. In Phase 4, a Turkish official agrees with this literal interpretation of Art. 252(9). There has not been case law or jurisprudence since Phase 3 on this issue.

99. There has also not been practice clarifying an issue concerning bribes paid to a third-party beneficiary (Phase 3 follow-up issue 10(b)). CC Art. 252(1) covers the providing of an undue advantage to a public official or anyone else "to be indicated by the public official". The Phase 3 Report (paras. 32-33) questioned whether this requires proof that the official explicitly instructed the briber to pay a specific recipient. There is no post-Phase 3 case law or jurisprudence that would clarify this issue.

100. Defences to foreign bribery have also not changed. Since 2009, Türkiye has excluded an effective regret defence for natural persons in foreign bribery cases (CC Art. 254(4)). Sentence mitigation due to self-reporting of an offence is considered at para. 176.

Commentary

The lead examiners recommend that the Working Group continue to follow up (a) the application of CC Arts. 252(4) and 252(9) to cases where a foreign public official is offered or promised but does not accept a bribe, and (b) the interpretation of the term "to be indicated" in CC Art. 252(1).

B.1.b. Jurisdiction and statute of limitations

101. The Phase 3 Report (paras. 93-95) did not raise issues concerning jurisdiction over natural persons for foreign bribery. CC Arts. 8 and 11 provide for territorial and nationality jurisdiction respectively. CC Art. 252(10) further provides jurisdiction over foreign nationals who commit extraterritorial foreign bribery if there is a particular connection to Türkiye, i.e. if a "party" to the dispute is Türkiye, a Turkish public institution, a private legal person established under Turkish legislation, or a Turkish citizen. These provisions have not been amended since Phase 3.

102. The statute of limitations for natural persons is also unchanged from Phase 3. The limitation period is 15 years (CC Art. 66(1)(d)), extendable to up to 22.5 years in certain circumstances. The period is interrupted by any act of procedure and suspended pending the decision of another authority (including foreign authorities) (CC Art. 67; Phase 3 Report para. 96).

103. These provisions' application in practice cannot be assessed because of an absence of foreign bribery enforcement.

B.2. Investigation and prosecution of foreign bribery

104. This section covers Türkiye's criminal enforcement of its foreign bribery offence. It considers the bodies involved in these cases and their respective roles, co-ordination of cases, enforcement of actual cases, investigative techniques, judicial and prosecutorial independence, expertise, and resources. Corporate enforcement is considered in section C.4 at p. 56.

B.2.a. Bodies responsible for foreign bribery enforcement

105. In Phase 3, prosecutors specialising in financial crime were responsible for foreign bribery cases. Declaration of Property and Anti-Corruption Law (DPACL) Art. 19 gives the Public Prosecutor's Office (PPO) exclusive competence over crimes listed in Art. 17 of the same law. Art. 17(1) in turn contains a long list of offences, including bribery. Within the PPO, foreign bribery cases were previously assigned to economic and financial crime bureaus in eight PPOs including those in Ankara and İstanbul (Phase 3 Report paras. 75-76).

106. This arrangement has since changed, for reasons and since a time unknown. Financial crime prosecutors are no longer responsible for foreign bribery cases. Most confusingly, the assignment of responsibilities differs among PPOs:

(a) The Ankara Chief Public Prosecutor's Office (CPPO) provides two different explanations. Its questionnaire responses state that foreign bribery cases are assigned to either its Civil Servant Offences Investigation Bureau, or the Organised Crimes Investigation Bureau if the bribery was committed by a criminal organisation. At the onsite visit, however, it states that only the latter

handles foreign bribery cases. An excerpt of an Ankara CPPO Directive was provided after the onsite visit. The document states that the Organised Crimes Investigation Bureau is responsible for foreign bribery offences under CC Arts. 252(9)-(10). Domestic bribery under CC Art. 252(1) is not explicitly assigned to either the Organised Crimes or Civil Servant Offences Bureau.

(b) The İstanbul CPPO states that its Civil Servant Offences Investigation Bureau is primarily responsible for foreign bribery cases. The Organised Crimes Investigation Bureau investigates only organised crime. According to Turkish prosecutors, a criminal organisation involves at least three individuals. More importantly, these individuals must be connected hierarchically and perform a series of actions that constitute offences. A case in which an individual bribes a foreign official through an intermediary to win a single contract is thus not organised crime *per se*. A document was also provided after the onsite visit stating that the Civil Servant Offences Investigation Bureau is responsible for offences under CC Art. 252, i.e. foreign *and* domestic bribery. But there is no explanation of what this document is or whether it is a CPPO instruction.

(c) No information is provided on the arrangement in other CPPOs. The Ministry of Justice merely states that 487 prosecutors are assigned to corruption crimes in 149 jurisdictions in the country.

107. Further confusion arises regarding the PPO responsible for a particular case. Under the Code of Criminal Procedure (CCP) Arts. 12-14, the PPO where the crime was committed generally has jurisdiction. If the crime was committed in a foreign country or at an unknown location, then jurisdiction is given to the PPO where the accused is caught, his/her last place of residence, or last known address. As a last resort, the court where "the first procedural action was taken" has jurisdiction. In this evaluation, the Ministry of Justice (MOJ) confirms that these rules apply to foreign bribery cases. However, the Ankara CPPO states that it would be responsible for a foreign bribery case of which it is notified, even if the case implicates a company in İstanbul. The İstanbul CPPO contradicts this position by stating that it is responsible for cases of foreign bribery allegedly committed by a company headquartered in that city. The Ankara CPPO also states that its İstanbul counterpart would conduct a foreign bribery case if the MOJ informs that office of the case.

108. Once assigned a case, the prosecutor conducts the investigation personally or through judicial law enforcement officers, e.g. the police (CCP Art. 161). As in Phase 3 (paras. 79-80), three police bodies may support prosecutors in a foreign bribery investigation. In urban areas, the Department of Anti-Smuggling and Organised Crime (KOM) of the National Police are primarily responsible for organised crime cases. KOM states that priority is given not only to organised crime but also smuggling and financial crimes. The remaining cases generally go to Public Order Departments within the National Police. The Gendarmerie takes cases outside urban areas. In practice, the prosecutor "generally" follows but is not bound by these rules. At the prosecutor's request, other law enforcement units can perform the role of judicial law enforcement officers (CCP Art. 165(1)).

Commentary

The lead examiners are concerned that Türkiye does not clearly assign responsibility for foreign bribery enforcement to a specific person or unit in the PPO. Clear designation of responsibility would help ensure priority and accountability for foreign bribery detection and enforcement which currently are substantially deficient in Türkiye (see para. 14). It would reduce the likelihood of cases falling between the cracks, and improve expertise and co-ordination (see section B.2.c at p. 34). In line with Working Group recommendations to other Parties to the Convention,[38] the lead examiners therefore recommend that Türkiye assign primary responsibility for co-ordinating or investigating foreign bribery cases to a specific prosecutorial unit.

[38] For example, see Israel Phase 3 paras. 54-57 and recommendation 3(a); Peru Phase 2 paras. 91-93 and recommendation 9(b).

B.2.b. Commencing foreign bribery cases

109. The principle of mandatory prosecution applies to all crimes, including foreign bribery. DPACL Art. 19 provides that when a prosecutor "learns that the crimes mentioned in Article 17 [which include foreign bribery] have been committed, he/she shall directly and personally start an investigation". CCP Art. 160 stipulates a similar test for opening an investigation into a criminal offence. A prosecutor who "learns of a situation that gives the impression that a crime has been committed, by denunciation or otherwise" must investigate the matter immediately (Phase 3 Report paras. 82 and 84).

110. A provision enacted after Phase 3 allows report of a crime to be rejected without investigation, however. Under CCP Art. 158(6), a prosecutor can decline an investigation if it is "clearly understood that the act subject to the denunciation and complaint does not constitute a crime without requiring any investigation". The same applies if "the denunciation and complaint are abstract and general in nature".

111. In practice, whether a foreign bribery investigation could be commenced based solely on media information without a denunciation by a complainant is unclear. CCP Art. 160(1) clearly requires a prosecutor to investigate irrespective of whether there is a formal complaint. Prosecutors at the onsite visit mostly state that an investigation could be opened if a media report contains sufficiently detailed information. But when asked about the lack of foreign bribery enforcement, some prosecutors cited the absence of denunciations as the reason. Prosecutors were also asked about a specific foreign bribery allegation implicating a Turkish company. The media had widely reported details of the allegation and enforcement action against the bribed official in another Party to the Convention. A prosecutor explained that Turkish authorities had not opened an investigation because "these situations cannot only be news articles. There will be complaints. When we receive them, we can react *ex officio* [and open an investigation]". A second prosecutor states that he had "heard something in the media" about another foreign bribery allegation. Nevertheless, no action was taken because "we have not received any documents on this subject", among other reasons.

112. A perceived need for a formal denunciation has also meant that prosecutors failed to receive information about foreign bribery allegations known to the Ministry of Justice (MOJ). As mentioned at para. 14, Türkiye has not investigated at least 15 known foreign bribery allegations. The Working Group provided media articles and other information on these allegations to the MOJ. However, the MOJ did not forward them to Turkish prosecutors. It considers that it could inform prosecutors of the allegations only by making a formal denunciation. But it also considered that the information in these media articles were not sufficient for doing so. It asked for but did not receive additional information from foreign authorities in two cases (the Airport and Power Stations Cases in Phase 3 Report paras. 23 and 24). For the remaining 13 allegations, the MOJ has not taken any action at all.

Commentary

The lead examiners are concerned about a perceived need for a formal denunciation to precede the opening of a foreign bribery investigation. Turkish law does not impose such a requirement. The lead examiners therefore recommend that Türkiye train prosecutors to emphasise their legal authority to open a foreign bribery investigation ex officio whenever information (including media reports) is sufficient to meet the test in DPACL Art. 19 and CCP Art. 160, irrespective of whether they have received a formal denunciation.

The lead examiners are also highly concerned that the MOJ does not routinely forward foreign bribery allegations to prosecutors, including those contained in media articles provided by the Working Group. As part of the executive government, the MOJ should not decide whether a foreign bribery allegation is investigated. Moreover, the prosecutor – not the MOJ – is better trained and more experienced in deciding whether an allegation is sufficiently detailed to justify investigation. As described at p. 32, Türkiye is recommended to assign primary responsibility for foreign bribery enforcement to a prosecutorial unit. The lead examiners therefore recommend that this unit (or an

appropriate prosecutor's office until such a unit has been created) (a) has access to all foreign bribery allegations (including those received from the Working Group) without delay, (b) attends the Working Group's* tour de table *and provides information on Turkish foreign bribery enforcement actions, and (c) systematically considers such information to open foreign bribery investigations.

B.2.c. Co-ordination of enforcement actions

113. A prosecutor conducting a foreign bribery investigation has limited means to co-ordinate with other prosecutors to ensure allegations are investigated and to avoid duplicate investigations. Prosecutors also explain that the National Judiciary Informatics System (UYAP) records opened cases. But searching the system requires knowledge of the suspect's name or identification number. An investigation would not turn up if the spelling of the name is slightly different or inaccurate. After reviewing a draft of this report, the Ministry of Justice states that, in such cases, a prosecutor could nevertheless check for duplicate cases "by requesting the cover information of the investigations and prosecutions carried out throughout the country within the scope of Art. 252 of the Turkish Penal Code from the Directorate General for Information Technology".

114. Of greater concern is that a prosecutor with jurisdiction over the offence does not assess and consider each foreign bribery allegation for potential investigation. Prosecutors were asked about certain known foreign bribery allegations during this evaluation. Those in Ankara state that they have not opened investigations but that other prosecutors such as those in İstanbul may have done so without their knowledge. Meanwhile, İstanbul prosecutors make the same assertion, saying that their Ankara counterparts may have investigated the matter without informing them. In fact, none of these allegations has been investigated.

115. Türkiye describes another measure to gather information about foreign bribery investigations. The MOJ issued Circular 157 on "Investigations and Prosecutions concerning International Corruption Cases" on 20 February 2015. The Circular requires law enforcement to inform the Ministry "regarding the initiation, progress and result" of a foreign bribery investigation. This is ostensibly because foreign bribery cases "shall necessitate [the] initiation of another investigation against foreign real or legal persons in question by the States party to the [Anti-Bribery Convention]". The requirement also allows the MOJ to inform the Working Group of foreign bribery enforcement actions. Prosecutors state that they contact the MOJ when they seek mutual legal assistance (MLA). But Circular 157 goes further by requiring the MOJ to be informed of all foreign bribery cases, irrespective of whether MLA is sought. The MOJ adds that it is not informed of "the content of the investigation". Requiring law enforcement to inform the executive whenever foreign bribery investigations are opened also raises concerns about prosecutorial independence under Convention Art. 5 (see section B.3.c p. 42).

Commentary

The lead examiners are concerned that the assessment of foreign bribery allegations in Türkiye is uncoordinated. There are no measures in place to ensure that every foreign bribery allegation is considered by a prosecutor. This is because responsibility for co-ordinating and overseeing foreign bribery enforcement actions in the PPO is diffuse. No specific PPO unit is accountable for assessing foreign bribery allegations.

A further concern is that prosecutors must inform the MOJ when they open foreign bribery cases. Türkiye states that this is necessary because a foreign bribery allegation necessarily requires an investigation in a foreign state. However, there is no reason why Turkish law enforcement should not informally contact their foreign counterparts directly to discuss their respective investigations, as occurs with almost all other Parties to the Convention. Direct law enforcement level contact is more efficient. It also avoids the involvement of the executive branch and thus strengthens judicial and prosecutorial independence. The MOJ adds that the Circular allows it to inform the Working

Group of foreign bribery enforcement actions. But this could be accomplished by forwarding Working Group requests for information to law enforcement if and when they occur. Even if the MOJ is not informed of "the content of the investigation", a mandatory requirement to notify the executive of the existence of an investigation undermines the principle of prosecutorial independence from improper influence.

For these reasons, the lead examiners recommend that Türkiye (a) take steps to ensure the co-ordination of foreign bribery investigations among prosecutors, such as by assigning primary responsibility for co-ordinating and overseeing foreign bribery enforcement actions to a specific PPO unit, and (b) repeal the requirement in MOJ Circular 157 of 20 February 2015 that prosecutors inform the MOJ when they open foreign bribery investigations.

B.2.d. Proactive and thorough investigation of foreign bribery

116. As mentioned at para. 14, Türkiye's foreign bribery enforcement record is poor. Of the 23 known foreign bribery allegations, only 2 have been prosecuted. Both occurred before Phase 3 and resulted in acquittals. Of the remaining allegations, 15 have never been investigated, including all 12 that surfaced after Phase 3. Media reports of the allegations were missed by the PPO and/or not forwarded by the MOJ to prosecutors (see paras. 20 and 112).

117. Even when aware of a foreign bribery allegation, Turkish prosecutors have been slow to respond. In the Real Estate (Turks and Caicos Islands (TCI)) case, the Ankara CPPO learned of the case in 2009 but initiated an investigation only in 2011. Another year passed before the matter was transferred to the Gaziantep CPPO in 2012. Requests for MLA were sent in 2013 or 2014 to TCI and another Party to the Convention. No action was then taken for another five years, when further MLA requests were sent in 2019. Türkiye then closed the case in May 2020. It was not aware of press reports that the official who allegedly took the bribes was scheduled to be tried in TCI in October 2023. Türkiye also ceased to respond to queries about this case from another Party to the Convention (see para. 162).

118. Turkish prosecutors could also have been more proactive in seeking evidence and conducting more thorough investigations. In the Real Estate (TCI) case, there was no indication that Türkiye pursued the outstanding MLA requests by contacting foreign authorities via informal channels, or raising the matter in the Working Group. Prosecutors interviewed a suspect in Türkiye in 2011. But they did not gather additional evidence in Türkiye, such as by examining the suspect's financial records to determine whether the proceeds of foreign bribery were repatriated. In the Construction (Kyrgyzstan) case, a Turkish businessman allegedly gave a thoroughbred horse worth up to USD 1.5 million to a foreign public official. He provided a statement to Turkish prosecutors denying bribery, as well as a contract and invoice indicating he had sold the horse for USD 200 000. Turkish authorities then terminated the case without further inquiries, such as examining whether the documented value of the horse was fair, whether the suspect in fact received money for the sale, or whether the businessman's evidence was corroborated by witnesses or documents in Kyrgyzstan.

Commentary

The lead examiners are extremely concerned that foreign bribery investigations in Türkiye were never opened, have languished, or have been closed without thorough investigation. The lack of priority and urgency given to such cases is a significant contributor to Türkiye's very poor foreign bribery enforcement record.

The lead examiners therefore recommend that Türkiye take steps to ensure that its law enforcement (a) act promptly and proactively so that complaints of bribery of foreign public officials are seriously investigated and credible allegations are assessed by competent authorities, (b) take a proactive approach to the investigation and prosecution of foreign bribery, (c) adopt a proactive approach in seeking international co-operation in foreign bribery cases, including by submitting

and proactively following up formal MLA requests, and seeking assistance via informal channels. A lack of corporate bribery enforcement is discussed in section C.4 at p. 56.

B.2.e. Review of enforcement policy

119. Türkiye has not implemented Phase 3 recommendation 3(a) to "review its overall approach to enforcement in order to effectively combat foreign bribery". The Working Group had made this recommendation because of Türkiye's poor enforcement record. In Phase 4, the Ministry of Justice states that it monitors the Working Group; carries out studies, if necessary; periodically reviews the legislation of foreign countries; engages in awareness-raising; and works with other bodies such as the PPO on legislative amendments. None of these activities constitutes a review of Türkiye's foreign bribery enforcement. Nor does Türkiye describe a "policy" for enforcement in this area.

Commentary

Given continuing inadequate foreign bribery enforcement, the lead examiners reiterate Phase 3 recommendation 3(a) and recommend that Türkiye review its overall approach to enforcement in order to effectively combat foreign bribery. Such a review should form part of the national strategy for fighting foreign bribery that encompasses not only enforcement but also prevention, detection and awareness-raising (see section A.1 at p. 11).

B.2.f. Investigative techniques

120. A range of investigative tools is available in foreign bribery cases. Prosecutors may demand information (including tax and banking information) from natural and legal persons, public institutions and organisations. A demand must be complied with within a reasonable time and without delay on pain of one to three years' imprisonment (DPACL Art. 20; Phase 2 Report para. 126). CCP Arts. 161 and 332 impose a similar requirement for the investigation of other offences. The CCP also authorises the search of a place or person (Arts. 116-117); seizure of "materials or gains" for evidence or confiscation (Art. 123); asset freezing (CCP Art. 128); wiretapping (Art. 135); and surveillance of a suspect in public places and his/her workplace (Art. 140). The National Judiciary Informatics System (UYAP) provides law enforcement with access to information such as land and vehicle registration, criminal records and vital statistics.

121. Two special investigative techniques are not available in foreign bribery cases. First, the use of undercover agents is only available for investigating offences such as drug trafficking, creating a criminal organisation, and certain weapons offences (CCP Art. 139). Second, reverse stings and controlled deliveries can only be used in cases of smuggling and money laundering (CCP Art. 139(5); Law 5549 Art. 17 and Law 4208 Arts. 10-11).

122. The Working Group decided to follow up the evidentiary threshold for using some investigative techniques (Phase 3 follow-up issue 10(e)). A court may authorise wiretapping, asset freezing and surveillance only if there are "strong grounds for suspicion based on concrete evidence" and there are "no other means of obtaining evidence" (CCP Arts. 128(1), 135(1), 140(1)). The Phase 3 Report (para. 85) stated that "presumably, if a prosecutor already has concrete evidence, the indictment could be issued without relying on the use of such investigative techniques". By contrast, the search of a place or person only requires "a reasonable belief" that the offender would be caught or that evidence of a crime can be obtained (CCP Art. 116). Materials "likely to be useful" as evidence or subject to confiscation may be secured (CCP Art. 123). In Phase 4, Türkiye states that the higher "concrete evidence" threshold "does not create any obstacles or difficulties in the investigation of [domestic] bribery cases". In Phase 3, the Working Group also raised concerns that a wiretap authorisation requires the unanimous approval of a three-judge panel instead of a single judge. Türkiye has since repealed this requirement in 2016 (Law 6763 Art. 26).

123. Investigators can request financial intelligence and other information from MASAK, Türkiye's financial intelligence unit. Türkiye has implemented Phase 3 recommendation 4(c) to "encourage law

enforcement to more actively use MASAK as a resource in foreign bribery investigations". As mentioned at para. 53, in 2018-2022, MASAK provided 107 disseminations concerning bribery to law enforcement upon request. Disseminations for corruption (including bribery) totalled nearly 400.

Commentary

The lead examiners recommend that Türkiye amend its legislation to make the use of undercover agents, reverse stings and controlled deliveries available in bribery cases. They also recommend that the Working Group continue to follow up whether the evidentiary threshold for wiretapping, surveillance and asset freezing hinders foreign bribery investigations.

B.3. Judicial and prosecutorial independence under Article 5 of the Convention

124. Foreign bribery investigations and prosecutions must conform to Art. 5 of the Convention. They must not be influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved. Commentary 27 further requires that decisions in investigations and prosecutions be based on professional motives and not be influenced by political considerations. By extension, judges, as the ultimate arbiters of prosecutions, must also be independent of political influence. In Türkiye, prosecutors are considered part of the judiciary.

125. Judicial independence in Türkiye is a significant Working Group concern and was an issue of focus during the Group's high-level mission to the country in 2021. This report follows up three Art. 5 issues that were identified in Phase 3: (1) the Council of Judges and Prosecutors, (2) removal of judicial officials, and (3) executive influence in enforcement actions.

B.3.a. Council of Judges and Prosecutors

126. The Council of Judges and Prosecutors (CJP) is the supervisory body for judges and prosecutors in Türkiye. Its powers are extensive. The CJP plays a key role in decisions related to the appointment, transfer, discipline, and dismissal of judicial authorities.[39] The CJP replaced the High Council of Judges and Prosecutors (HCJP) after a 2017 Constitutional amendment.[40]

127. The Phase 3 Report (paras. 88, 90-92 and following Commentary) described significant concerns about the powers of the executive branch to appoint members of the CJP's predecessor, the HCJP. In December 2013, Turkish prosecutors began investigating several high-level officials and their relatives for domestic bribery, bid-rigging and gold-smuggling. The government decried the investigations as a plot by a "parallel state" to discredit and topple it. Türkiye states that the prosecutors were later dismissed and themselves prosecuted (see next section). In addition, Parliament enacted Law 6524 on 15 February 2014 "granting the Minister of Justice, who already heads the HCJP, a stronger role in its decision making" (Phase 3 Report para. 90). The Constitutional Court later struck down the legislative amendments, and a subsequent Law 6545 enacted in June 2014 did not "reintroduce the controversial aspects of Law 6524" (para. 91). The Working Group was "encouraged to some extent by the resilience of the Turkish constitutional system". Nevertheless, these developments "could be perceived as attempts to exercise political influence over prosecutorial decisions, which, in turn, may give rise to concerns about the handling of foreign bribery cases without undue political influence" (Commentary after para. 92).

128. Since Phase 3 in 2014, the Turkish judiciary has been overhauled. On 15 July 2016, a faction of the Turkish military attempted a coup to overthrow the government. The government attributed the attempt to an organisation it refers to as FETÖ. (It also blames FETÖ for the December 2013 corruption investigation

[39] Council of Judges and Prosecutors Law 6087 Art. 4.
[40] Constitution Art. 159 as amended by Law 6771.

described above.) The government considered it necessary to reassign and suspend judicial and law enforcement officials allegedly affiliated with FETÖ, as Türkiye states in this evaluation:

> First of all, it should be stated that the [reassignment and suspension in investigation and prosecution authorities] were conducted by carrying out the necessary inquiries about the persons who would not be able to perform their profession in a manner that is necessary as they lost their impartiality because of their adherence to the terrorist organisation FETÖ, which was structured within the state, and after it was found that these persons were linked to and affiliated with FETÖ. The said actions of reassignment and suspension in investigation and prosecution authorities were conducted not to influence any investigations or prosecutions concerning bribery or any other offence, but especially to re-establish the trust towards the impartiality and independence of the judiciary.

129. One key government effort in this respect focused on the HCJP, given the body's dominant role over judicial discipline and dismissal. As mentioned earlier, a Constitutional amendment in 2017 replaced the HCJP with the CJP. The new body consists of 13 members, including the Minister of Justice who is the CJP President. The other members are the Deputy Minister of Justice; 3 academics chosen by Parliament; and 8 judges or prosecutors, 4 of whom are chosen by the President and the remaining by Parliament. In other words, all CJP members are either from or chosen by the executive and political branches. As the Working Group has observed in evaluations of other countries that considered similar bodies, such an arrangement would leave the CJP "vulnerable to potential political and executive influence. This in turn reduces judicial independence overall, given the [body's] central role in the judiciary's functioning."[41]

130. Türkiye's justifications for reforming the HCJP/CJP are not persuasive. Prior to the reform, the judiciary elected judges to the HCJP. Turkish authorities explain that these elections had become "political". Various factions and distinctions had emerged that were perceived to harm the judiciary's reputation and the courts' working order. But the 2017 reform appears to increase rather than reduce politicisation by giving the power to appoint CJP members to the executive and political branches. A civil society representative suggests that the CJP reform was necessary to protect national security after the failed coup. However, other options could have preserved security without unduly harming judicial independence, for example by instituting background checks on prospective judges and prosecutors, conducting periodic security vetting, and imposing additional or more rigorous hiring criteria.

131. The CJP reform generated concern in and outside of Türkiye. A body representing Turkish judges believes that "the structures of the CJP […] ignore democratic principles". The presence of the Minister and their Deputy on the CJP board "will cause the perception that the board functions under the influence of politics". The European Commission states that "concerns remain around the structure of the CJP, its lack of independence from the executive and the appointment process for its members".[42] The International Commission of Jurists finds that the CJP "cannot be considered structurally independent due to the excessive degree of political control of appointments to the Council".[43] Three separate bodies of the Council of Europe have similar criticisms.[44]

132. Türkiye disagrees with these conclusions. It reiterates the provisions in the Constitution and CJP Law that stipulate the judiciary is independent. The 2017 amendments strengthened the CJP's "democratic

[41] Phase 4 Poland paras. 146-153; Argentina Phase 2 paras. 152-156, Phase 3 para. 121-122, Phase 3bis paras. 106-108; Council of Europe Recommendation CM/Rec (2010)12 para. 27; Group of States against Corruption (2019), Fourth Evaluation Round Interim Compliance Report, paras. 37-41; International Commission of Jurists (2019), Turkey's Judicial Reform Strategy and Judicial Independence, pp. 3-6.

[42] European Commission, Türkiye 2023 – Communication on EU Enlargement, SWD(2023) 696 final, pp. 23-24.

[43] International Commission of Jurists (ICJ) (2019), Turkey's Judicial Reform Strategy and Judicial Independence, p. 6. See also ICJ (2018), Justice Suspended: Access to Justice and the State of Emergency in Turkey.

[44] CoE Commissioner for Human Rights (2019), Report Following Her Visit to Turkey 1-5 July 2019, paras. 13-14; Venice Commission (2017), Turkey: Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and to Be Submitted to a National Referendum on 16 April 2017, para. 129; Group of States against Corruption (2022), Fourth Evaluation Round – Third Interim Compliance Report, para. 94.

legitimacy […] by allowing parliament to elect members to the CJP". They did not affect the CJP's "organisational structure" but instead "facilitated the work of the Council". Decisions affecting judges and prosecutors are made by majority vote in two CJP chambers each consisting of six CJP members. The Deputy Minister of Justice has only one vote in the one of the chambers. Türkiye also considers that "each country constructs the structure of the supreme judicial council according to its own legal structure, judicial customs and needs. In our country, the structure of the CJP has been re-determined by constitutional regulation based on the experiences and needs related to the previous structures of the supreme judicial councils and the result of the referendum [in 2017 amending the Constitution]."

Commentary

The lead examiners are concerned that all CJP members are chosen by Türkiye's executive and political branches, and none by the judiciary. Türkiye argues that the 2017 reform did not affect the CJP's organisational structure or work methods. However, the manner in which CJP members are chosen leaves the CJP vulnerable to potential political and executive influence, as the Working Group and other bodies in Türkiye and abroad have observed. This absence of independence in the CJP in turn leads to concerns about judicial removals and interference in actual corruption cases (see following sections).

In line with Working Group evaluations of other countries,[45] the lead examiners therefore recommend that Türkiye amend its legislation to ensure that (a) a majority of the CJP's members are judges chosen by their peers, and (b) officials from the executive branch of government, including the Minister and Deputy Minister of Justice, are not CJP members.

B.3.b. Removal of judicial officials

133. The Phase 3 Report (paras. 88 and 92) expressed concerns about "large-scale reshuffles" of judges, prosecutors and police officers. As mentioned in para. 127, Turkish prosecutors launched investigations against high-level officials and their relatives in December 2013. In response, the HCJP issued three decrees in January and February 2014 reassigning hundreds of prosecutors and judges. The Working Group expressed concerns that "political influence over decisions to assign and discipline prosecutors could adversely impact foreign bribery investigations and prosecutions." Phase 3 recommendation 3(d) thus asked Türkiye to "take all necessary steps to ensure that any reassignment of police, prosecutors or magistrates in foreign bribery proceedings does not adversely affect the effectiveness of foreign bribery investigations and prosecutions, and is not motivated by [Art. 5 factors]".

134. Since Phase 3, the failed coup attempt on 15 July 2016 has led to even larger-scale removals of judges and prosecutors. In direct response to the attempt, the Turkish government considered it necessary to suspend and remove judges and prosecutors allegedly affiliated with FETÖ (see para. 128). Emergency Legislative Decree 667 of 23 July 2016 gave the HCJP and high courts the power to dismiss judges or prosecutors for this purpose. The CJP states that the total number of departed officials was 4 726. This equates to approximately one-third of the judiciary, considering that 14 732 officials were in service at the end of 2015 (see Annex 6 at p. 78). Around this time, thousands of judges and prosecutors were also taken into police custody and subsequently placed in pre-trial detention.[46]

135. Of grave concern is the perception that these judges and prosecutors were largely suspended, dismissed and detained without sufficient evidence. The HCJP did not accuse these officials of participating directly in the coup attempt, but of suspected "adherence to" FETÖ (see para. 128). The CJP states that some detentions or dismissals were based on the use of "a secret communication app used by FETÖ". Other officials were dismissed because they had "stayed at a house affiliated with FETÖ while as a student, trained in the 'working houses' of this organisation, or made certain social media posts".

[45] Phase 4 Poland recommendation 15(d) and Phase 3bis Argentina recommendation 6(a).
[46] ECHR judgment in Alparslan Altan v. Turkey (12778/17) para. 14.

Confessions and witness statements were also relied upon. One judge acknowledges that the suspensions and dismissals were "quick measures" and hence "it was not possible to collect all evidence" before imposing a suspension or dismissal. These comments corroborate the findings in multiple cases of the European Court of Human Rights (ECHR),[47] whose judgments are considered "norms" in Türkiye according to a Turkish judge in this evaluation. The Court found that the HCJP only had general information provided by the intelligence services that FETÖ had infiltrated the judiciary. It did not have "any 'facts' or 'information' relating directly and personally" to specific officials. Similarly, the officials' pre-trial detentions were arbitrary as they rested on insufficient evidence and an unjustified interpretation of the relevant legislation.

136. Some concerns have also been expressed about a lack of due process. As mentioned above, suspensions and dismissals were alleged to be based on an assessment of whether a judicial official was associated with FETÖ. This assessment conducted in the immediate aftermath of the coup attempt was "different from the one to be conducted in an ordinary period", according to the Constitutional Court.[48] Some participants in this evaluation note variously that some suspensions and dismissals were perceived to be "without investigation" or were "through the administrative disciplinary process which did not require a trial". A civil society member adds that "some constitutional rights did not apply". One aspect of this lack of due process was that the HCJP failed to give adequate reasons for its decisions but only provided generic, non-individualised reasoning.[49]

137. Additional suspensions and dismissals continued beyond the immediate aftermath of the attempted coup. The CJP's exceptional powers to dismiss judges and prosecutors suspected of affiliation to FETÖ were extended to 31 July 2022.[50] Some judicial officials may also have chosen to leave the judiciary before they were dismissed, according to one civil society representative.

138. Turkish participants in this evaluation have mixed views on the dismissals resulting from the coup attempt. Most – including non-governmental ones – emphasise the country's precarious position at the relevant time. A civil society representative describes the situation as a "state of emergency, and danger was very huge". Another states that many members of the public supported these actions and "some people were expecting even more dismissals". The representative acknowledges in their view, however, that "the whole process [of dismissals] is political, not legal". One prosecutor states forcefully that "foreign countries misunderstand the matter. We are criticised because of [these officials'] dismissals, but such persons should not have been judges and prosecutors. […] We do not see them as independent judges and prosecutors." Nevertheless, the prosecutor concedes that "there might have been some mistakes in this large number [of dismissals]". It is important to note, however, that judges and prosecutors who were suspended or dismissed have not participated in this evaluation to express their views.

139. Officials may appeal a dismissal to the Council of State, though this avenue is not completely satisfactory. Türkiye states that, as of April 2024, 91.71% of appeals have been dismissed by the Council of State in the first instance, and 99.18% in the second. A total of 415 officials have been reinstated while hundreds of appeals are still ongoing. The availability to appeal is encouraging but is tempered by four observations. First, reinstatements occurred in only a fraction of dismissals. Second, many reinstatements have come years after the initial suspension and dismissal. By then, serious harm to the officials' professional and personal lives will have already been done. Some cases are still unresolved today after almost eight years. Third, the reinstatements confirm that at least hundreds of dismissals were

[47] ECHR judgments in Baş v. Turkey (3 Mar. 2020) (66448/17) paras. 187-195; Kilinçli and Others v. Türkiye (11 Jul. 2023) (27336/17 and 12 others) paras. 15-16; Alparslan Altan v. Turkey (16 Apr. 2019) (12778/17) paras. 111-115.
[48] Constitutional Court (14 Nov. 2019), Judgment 2019/84, para. 15.
[49] CoE Commissioner for Human Rights (2019), Report Following Her Visit to Turkey 1-5 July 2019, para. 19.
[50] Law 7333 Art. 23 amending Provisional Art. 35 of Decree Law 375.

inappropriate. Fourth, the government has criticised the reinstatements and may seek to curtail this avenue of redress.[51]

140. As in Phase 3, a significant number of judges and prosecutors have also been transferred. The CJP applies a "regional system" that rotates a portion of the judiciary around the country annually. The purpose is ostensibly to "ensure the employment of judges and public prosecutors in the less developed regions of the country and to ensure the fair working principles among themselves in these places."[52] Officials are given an opportunity to express their preferences for transfer locations. However, judges and prosecutors in this evaluation say that relocation can also be involuntary or imposed as a disciplinary penalty. Türkiye confirms that judges and prosecutors may be transferred "based on their professional performance, disciplinary investigation conducted against them, [and] the need of the judicial organisation".[53] One international body observes that "following the amendments to the composition of the CJP, the number of judges and prosecutors subjected to involuntary transfers increased substantially" from 190 in 2010 to 3 722 on 31 May 2019.[54] Another body recommends "reducing the possibility to transfer judges/prosecutors against their will, [and] that such processes be guided by objective criteria and subject to a review mechanism".[55] The European Commission takes a similar position.[56] A body representing Turkish judges calls for an end to disciplinary transfers. Reports that judges or prosecutors have been transferred because of their decisions in specific cases are described in the next section.

141. In response to the above, Türkiye reiterates its position that FETÖ is a clandestine organisation that was responsible for the 2016 attempted coup. It cites several Turkish court judgments since 2018 (i.e. after the 2016 mass dismissals of judges) in support of this position. Türkiye adds that those officials associated with FETÖ had "lost their impartiality" and had to be removed as a "requirement of the public interest and the establishment of trust in the judiciary". A "research Commission before the CJP" conducted dismissal proceedings. Dismissed judges had a "right to petition and right to defence". They were entitled to appeal their dismissals to the CJP and further to the Council of State. That the Council of State has upheld over 90% of the appeals of the dismissals "is the biggest indication of the high rate of success of the process conducted by the CJP."

Commentary

The lead examiners are extremely concerned that large numbers of Turkish judges and prosecutors have been suspended, transferred, detained and/or dismissed since Phase 3. They recognise that many of these incidents occurred at a precarious time for Türkiye. Nevertheless, they are extremely troubled that the dismissals etc. were not always supported by adequate evidence. Türkiye's assertion that dismissed officials were afforded due process is contradicted in some instances by international courts and organisations, as well as several participants in this evaluation. Removal of judicial officials from office and depriving them of physical liberty without sufficient grounds or due process is necessarily a most serious infringement of judicial independence. That the CJP is central to these dismissals etc. underscores the concerns about executive influence over this body (see section B.3.a at p. 37).

For these reasons, the lead examiners reiterate Phase 3 recommendation 3(d), and recommend that Türkiye take steps to ensure that suspensions, transfers, detentions and dismissals of judges and prosecutors (a) do not adversely affect the effectiveness of foreign bribery investigations and prosecutions, (b) are not motivated by Convention Art. 5 factors, (c) are underpinned by sufficient

[51] Turkish Minute (21 Feb. 2024), "Erdoğan signals changes to structure of top courts".
[52] Group of States against Corruption (2020), Fourth Evaluation Round 2nd Interim Compliance Report, para. 63.
[53] Regulation on Appointment and Transfer of Judges and Public Prosecutors Arts. 4 and 7.
[54] International Commission of Jurists (2019), Turkey's Judicial Reform Strategy and Judicial Independence, p. 7.
[55] Group of States against Corruption (2023), Fourth Evaluation Round 4th Interim Compliance Report, para. 30.
[56] European Commission, Türkiye 2023 - Communication on EU Enlargement, SWD(2023) 696 final, p. 27.

evidence of actual, individual wrongdoing, and respect principles of due process, and (d) are subject to review by an independent body within a reasonable time.

B.3.c. Executive influence in enforcement actions

142. The Phase 3 Report noted that in December 2013, Turkish prosecutors began investigating several high-level officials and their relatives for corruption and other offences. The government responded by asserting control over the HCJP and transferring a large number of judges, prosecutors and police officers (see paras. 127 and 133). In September 2014, prosecutors announced a decision of non-prosecution against 96 suspects allegedly involved in the corruption case (Phase 3 Report para. 88).

143. The absence of corruption enforcement against senior Turkish officials has since continued. As described in section A.3.b at p. 13, Turkish courts have issued rulings punishing journalists and media outlets critical of the government. They have also banned information that embarrasses the government or relates to corruption, most often on the application of lawyers and government ministers.[57] Some of the censored allegations have implicated senior Turkish officials, their families, and/or their political parties.[58] These allegations have largely not been investigated or prosecuted. The European Commission states that "the track record of investigations, prosecutions and convictions in corruption cases remain[s] poor, particularly in relation to high-level corruption cases involving politicians and public officials."[59] Türkiye argues that the corruption allegations mentioned above were not investigated because they were "compiled without confirmation from the report, which was prepared purposefully and subjectively" and "not verifiable".

144. Some have further suggested that a prosecutor or judge who makes a decision that is unfavourable to the government can be punished. A small percentage of judges and prosecutors are transferred each year involuntarily. Judges have reportedly been transferred for refusing to ban an opposition politician, releasing a human rights advocate, or opposing a presidential candidate's bid.[60] A civil society representative in this evaluation states that a judge who rules against the government "could be exiled for a while as punishment". One international body observes that "there is a strong perception, supported by objective evidence, that removals and transfers are being used with a view to discouraging certain decisions and affecting the outcome of legal proceedings".[61] Türkiye considers that these statements are "based entirely on hearsay".

145. There are also examples of the executive intervening in foreign legal proceedings in corruption cases. According to media reports,[62] a foreign country was prosecuting Turkish individuals and a Turkish bank for money laundering, fraud and sanctions evasion. High-ranking Turkish officials allegedly "received millions of dollars in bribes to promote and protect the scheme." Turkish officials at the highest levels reportedly lobbied their foreign counterparts over at least two years. Their requests ranged from removing the prosecutor and judge in the case, to ending the case and pressuring prosecutors to accept a less favourable settlement. A second case concerned one of the 15 uninvestigated allegations of Turkish companies bribing foreign officials (see para. 14). Media reports[63] indicate that Turkish officials at the highest level reportedly again conferred with their counterparts from the country of the allegedly bribed official. The dispute and corruption proceedings in the foreign country then ended shortly thereafter. The foreign country credited Turkish officials for helping to "amicably resolve" the case.

[57] MEDAR (2021), "Impact of Social Media Law on Media Freedom in Turkey Monitoring Report", p. 9.
[58] For example, see Reuters (26 June. 2023); Duvar (27 Jun. 2023); Ahval (22 Jun. 2020); Bianet (16 Apr. 2022); Bianet (29 Jul. 2022); Bianet (30 Oct. 2023); Turkish Minute (30 Oct. 2023).
[59] European Commission, Türkiye 2023 – Communication on EU Enlargement, SWD(2023) 696 final, p. 27.
[60] Reuters (4 May 2020); Duvar (18 Jul. 2023); Turkish Minute (22 Dec. 2023).
[61] CoE Commissioner for Human Rights (2019), Report Following Her Visit to Turkey 1-5 July 2019, paras. 26 & 121.
[62] New York Times (29 Oct. 2020).
[63] Dawn (13 Feb. 2020); Business Recorder (5 Dec. 2019).

146. Procedural rules applicable to foreign bribery investigations present further opportunities for executive influence. As mentioned at para. 112, a perceived need for a formal denunciation has led the Ministry of Justice (MOJ) not to forward foreign bribery allegations to prosecutors. As a result, none of allegations was investigated. Prosecutors are also required to inform the MOJ when they open a foreign bribery investigation (see para. 114). However, as a body in the executive government, the MOJ should not play any role in the commencement or co-ordination of foreign bribery investigations.

147. Some participants in this evaluation allude to executive influence in enforcement. One civil society representative states that law enforcement "is open to possible pressure by the executive" and "the judiciary is not impartial." Another representative agrees that there is a lack of corruption enforcement against senior government officials. As in Phase 3, prosecutors and judges who participated in this evaluation insist that they have not experienced executive interference personally, and Türkiye argues that these statements should be preferred over the views of civil society described above. But as one international body points out, overt and explicit interference may be unnecessary considering the "sweeping issues of lack of independence of the judiciary and its partiality to political interests". Judges and prosecutors may be naturally inclined to favour the government given a backdrop of mass dismissals of their colleagues since 2016, and a strong perception that removals and transfers are used to discourage certain decisions.[64]

Commentary

The lead examiners are seriously concerned at the lack of enforcement of high-level corruption cases in Türkiye. Reports of executive influence in specific cases raise concerns about prosecutorial and judicial independence under Art. 5 of the Convention. The lead examiners therefore recommend that Türkiye take steps to ensure that the investigation and prosecution of bribery are not influenced by the factors described in Convention Art. 5, including by (a) clarifying this in prosecutorial guidelines, and (b) raising awareness and training relevant officials on this issue.

B.4. Law enforcement resources, training and expertise

148. The Phase 3 Report (para. 76) was concerned about the number of prosecutors specialising in economic and financial crime. Just 26 prosecutors were assigned to bureaus specialising in these crimes in eight PPO offices including Ankara, İstanbul and İstanbul Anadolu. Phase 3 recommendation 3(b) asked Türkiye to "ensure that sufficient resources and expertise to more effectively detect, investigate and prosecute foreign bribery are made available to (i) PPOs, in particular in the specialised PPOs responsible for financial and economic crime; and (ii) the police".

149. The number of prosecutors available in foreign bribery cases has not increased since Phase 3. The Ankara Smuggling and Organised Crime Investigation Bureau has 13 prosecutors. The İstanbul Civil Servant Offences Bureau has 7. There is no information on other PPOs. For the police, KOM had around 100 staff in 2018-2022.

150. Training has been provided, but little was specific to foreign bribery or corporate liability. Prosecutors state that they receive training only on bribery generally. There has not been training specifically on the detection and analysis of foreign bribery. The Justice Academy trained new judges and prosecutors on the "International Convention against Corruption". Existing judges and prosecutors attended six training sessions in 2018-2023 on "Credibility of Public Administration" which focused on domestic corruption. The Academy's Research and Development Centre covered mainly money laundering and international co-operation. Similarly, the International Academy against Smuggling and Organised Crime trained KOM personnel on foreign bribery only within the context of general training on the bribery offence. An additional "Financial Crime Investigations Specialisation" did not specifically address foreign bribery or corporate

[64] CoE Commissioner for Human Rights (2019), Report Following Her Visit to Turkey 1-5 July 2019, paras. 120-122.

liability. Phase 3 recommendation 1(d) to "train law enforcement authorities on the corporate liability provisions in foreign bribery cases" therefore remains unimplemented.

151. In terms of expertise, foreign bribery is no longer assigned to the PPO's financial crime units but the Investigation Bureaus for Civil Servant Offences and Organised Crimes (see para. 106). These Bureaus do not have extensive experience investigating corporate and financial crimes. Türkiye does not provide information on the availability of expertise in forensic accounting and forensic information technology in foreign bribery investigations.

152. A final concern about expertise stems from a rapid expansion in the size of the judiciary. Despite the departure of one-third of the judiciary after the 2016 coup attempt (see section B.3.b at p. 39), the number of judges and prosecutors grew by 48% from 16 103 in 2017 to 23 805 in 2023 (see Annex 6 at p. 78). This was made possible only by reducing qualification requirements and the lengths of internships for new hires, according to several judges and prosecutors in this evaluation. These inexperienced, recently hired officials constitute a significant portion of the judiciary.

Commentary

The lead examiners are seriously concerned that Turkish prosecutors lack expertise and training in foreign bribery cases. The PPO units responsible for foreign bribery cases do not have extensive experience investigating corporate and financial crimes. The concern is exacerbated by the large number of recently hired and hence inexperienced judges and prosecutors in the judiciary. The lead examiners therefore reiterate Phase 3 recommendations 1(d) and 3(b), and recommend that Türkiye ensure that (a) prosecutorial and police resources are sufficient for investigating foreign bribery cases, and (b) judges, prosecutors and police responsible for foreign bribery cases are provided with adequate training on effective methods to detect and investigate foreign bribery.

B.5. International co-operation

153. This section considers general and systemic issues concerning international co-operation. Issues arising from Türkiye's foreign bribery enforcement actions are considered in section B.2.d p. 35.

B.5.a. Legal framework and central authority

154. Applicable bilateral and multilateral treaties have the force of law (Constitution Art. 90) and form part of the legal framework for co-operation. In foreign bribery cases, Türkiye has bilateral treaties that provide for MLA with 35 jurisdictions (including 7 Parties to the Convention)[65] and for extradition with 33 jurisdictions (including 6 Parties).[66] Applicable multilateral treaties for mutual legal assistance (MLA) and extradition include the OECD Anti-Bribery Convention; UN Conventions against Corruption and Transnational Organized Crime; and the Council of Europe (CoE) Criminal Law Convention on Corruption. Türkiye is party to the European Conventions on Extradition and on Mutual Assistance in Criminal Matters. MLA is also available under the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

155. Since Phase 3, Türkiye has enacted Law 6706 on International Co-operation in Criminal Matters in 2016. Previously, there was no specific legislation governing procedures for MLA and extradition. Law 6706 Art. 3(2) now codifies the principle of co-operation based on reciprocity if there is no applicable treaty. The Code of Criminal Procedure (CCP) applies to any issues not addressed by treaty or other legislation (Law 6706 Art. 5).

156. The central authority for co-operation is the Directorate General for Foreign Relations and the European Union (DGFR) in the Ministry of Justice (MOJ). The central authority has enumerated duties including deciding on the acceptance or rejection of requests and their compatibility with treaty

[65] Brazil, Croatia, Italy, Poland, Romania, Russia and US.
[66] Australia, Bulgaria, Germany, Poland, Russia and US.

requirements or reciprocity (Law 6706 Art. 3). The DGFR has approximately 217 personnel (including 74 judges, 17 justice counsellors, and 26 administrative staff). Ten justice counsellors are posted in countries with which Türkiye frequently exchanges. Training on MLA is carried out periodically within the DGFR, but not on foreign bribery specifically.

B.5.b. Mutual legal assistance

B.5.b.i. Types of MLA available and grounds for denial

157. All customary forms of MLA are available in Türkiye, as determined by the applicable treaty, and to the widest extent possible. These include all investigative techniques and provisional measures allowable under Turkish law. If a formal request is delayed, Türkiye may provide "temporary measures" to secure evidence for up to forty days (Law 6706 Arts. 7(1)(a) and 8(1)(c)). The confidentiality of requests relies on CCP Art. 157, the general provision governing investigative secrecy. A foreign state must seek Türkiye's permission before using the evidence it receives in another investigation or prosecution. However, permission is not necessary if an offence is merely re-categorised, or the separate proceeding relates to the same crime (Law 6706 Art. 6).

158. In terms of grounds for denying assistance, search and seizure is available only for an extraditable crime (Law 6706 Art. 8(1)(ç)), which includes foreign bribery. Türkiye may reject a request where the cost of assistance outweighs the gravity of the offence, and where a state "habitually rejects" Turkish requests of a similar nature (Art. 3(6)). Art. 4 lists additional grounds for refusal.

159. One ground for rejection raises questions: "If the person is convicted or acquitted by Turkish courts, […] requests for legal assistance regarding the same act may not be fulfilled" (Art. 8(1)(f)). On a literal interpretation, the denial of legal assistance is not limited to an investigation of the same act committed by *the same person* who has been convicted or acquitted. Consequently, if Türkiye acquits or even convicts an individual for bribing a foreign official, then it may refuse MLA in an investigation of a co-perpetrator. The same applies if the foreign investigation is against the bribed official or an intermediary who facilitated the bribery. This provision would thus go beyond the generally-accepted notion of *ne bis in idem* where co-operation is refused in an investigation of the same individual, not act. Turkish authorities state that the provision impliedly applies only when assistance is requested in a foreign investigation of a person convicted in Türkiye of the same crime. In their view, there is no ambiguity in the provision.

160. Türkiye states that it can provide legal assistance to a foreign jurisdiction in non-criminal (e.g. civil or administrative) proceedings against a legal person for foreign bribery. It states that the request for assistance must be within the scope of an international convention to which Türkiye is party. As an example, Türkiye states that it provides judicial assistance to foreign authorities to collect administrative fines under the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters. Whether similar assistance can be provided without a treaty is unclear. Law 6706 applies to non-treaty-based requests but only provides for assistance in criminal matters. When asked about this issue, Turkish authorities merely state that "no request has been received regarding this matter. If it is received, it would be evaluated and that the principle of reciprocity would apply.

Commentary

Law 6706 has improved Türkiye's legal framework for international co-operation. Nevertheless, the lead examiners recommend that the Working Group follow up (a) the application of Law 6706 Art. 8(1)(f), and (b) whether Türkiye provides prompt and effective legal assistance to another Party for non-criminal proceedings within the scope of the Convention brought by a Party against a legal person.

B.5.b.ii. MLA in practice

161. The DGFR maintains MLA statistics but only on some and not on all necessary topics. Figures on the offence underlying a request and type of assistance sought are available, but not those on acceptance and rejection rates, reasons for denial, or the timing of requests, responses and reminders. Türkiye reports that it has not requested MLA in foreign bribery cases, and has received two requests in such cases. At the time of this report, it is executing one of the requests and awaiting additional information from the requesting state on the second. Generally, incoming requests are executed in six months, says Türkiye. The most common reasons for rejecting a request are an insufficient link between the offence and assistance sought, absence of "causation", and overbroad requests. Foreign countries generally executive requests from Türkiye in 3-12 months. Common grounds for rejection include a lack of dual criminality, double jeopardy, and low monetary value. However, in the absence of detailed statistics, these response times and reasons for rejection are at best estimates.

162. A survey of Working Group members identifies challenges more broadly. Among the nine respondents, there is consensus that translations are often poor. Some note that requests from Türkiye do not clearly describe the stage of proceedings or material elements of the offence. Türkiye's responses to requests are of variable quality, but usually good or acceptable. Some requests are rejected because of differences in law. Most members are satisfied with response times and note only occasional delays. A few mention that Türkiye does not engage in informal co-operation, an observation corroborated by Türkiye's practice in foreign bribery cases (see para. 118). In the Real Estate (TCI) case, a Party to the Convention states that Türkiye advised in July 2012 that it had an ongoing investigation. The Party requested MLA from Türkiye in May 2013. Türkiye subsequently ceased to respond to queries from this Party. Efforts by this Party to seek co-operation via Eurojust were unsuccessful.

163. For their part, many Turkish prosecutors who participated in this evaluation believe that MLA is ineffective and time consuming. As a result, MLA is often not sought in foreign bribery matters. Training may be necessary to overcome this perception.

Commentary

The lead examiners recommend that Türkiye (a) maintain detailed statistics on incoming and outgoing MLA requests, including on the time required for execution and reasons for refusal, and (b) train prosecutors on obtaining MLA in foreign bribery cases. A further recommendation on proactively seeking international assistance in foreign bribery cases, including using informal channels, is at p. 35.

B.5.c. Extradition

164. As with MLA, Law 6706 has codified certain extradition principles and practices. The rule on specialty, provisional arrest, prioritisation of competing requests, and simplified extradition are addressed in Arts. 10(3)-(4), 14 and 16. The central authority determines extraditability initially. The request is then sent to the Chief PPO for an application to the heavy penal court where the person is found (or in Ankara if the person is not located) (Arts. 12-13, 15). Upon the court's authorisation, the final decision to extradite is made by not only the Minister of Justice but also the President (Art. 19).

165. Law 6706 also codifies grounds for denial. The offence underlying the request must be punishable in the requesting state and Türkiye by imprisonment of one year or more (Art. 10(2)). Foreign bribery thus qualifies. The grounds for rejection are largely the same as those for MLA (see para. 158). One additional ground applies if the person has been in Türkiye for a long time, has been married, or has other similar personal circumstances. The person may then be extradited only if the harm to the person and their family is not disproportionate to the gravity of the crime (Art. 11(4)).

166. In Phase 3, the Working Group decided to follow up denial of extradition on grounds of nationality (follow-up issue 10(g)). Türkiye does not extradite its nationals except to the International Criminal Court

(Art. 11(1)(a)). In Phases 2 and 3 (para. 144), Türkiye stated that cases in which extradition of a Turkish national is refused "were often conveyed to the Turkish judicial authorities for prosecution". In Phase 4, Türkiye states that it has not received an extradition request in a foreign bribery case. Türkiye was requested but has not provided data on denial of extradition on grounds of nationality in other types of cases. Law 6706 Chapter 4 now allows foreign criminal investigations or prosecutions to be transferred to Türkiye when extradition is barred.

Commentary

The lead examiners recommend that the Working Group continue to follow up whether Türkiye submits a case to its competent authorities for prosecution where extradition has been declined solely on the ground that the person is a Turkish national.

B.6. Offences related to foreign bribery

167. This section considers Türkiye's money laundering offence and its enforcement. Anti-money laundering measures for preventing and detecting foreign bribery are examined in section A.8 p. 20.

B.6.a. Money laundering offence

168. Türkiye criminalises money laundering in CC Art. 282 (see Annex 4 at p. 72 for full text). Offences punishable by at least six months' imprisonment are eligible predicate offences, which includes foreign bribery. FATF has concluded that proof of money laundering under Turkish law does not require a conviction of the predicate offence. The offence also covers the laundering of the proceeds of a predicate offence committed outside Türkiye.[67] Money laundering is punishable by three to seven years' imprisonment and a fine of up to 20 000 days. Third-party launderers who purchase, acquire, possess or use illicit assets are subject to two to five years' imprisonment. The maximum sanctions are increased in aggravated cases. Legal persons are subject to the same penalties as for foreign bribery, i.e. a maximum fine of TRY 245.12 million (EUR 8.31 million),[68] but not "less than twice the advantage" from the crime (ML Art. 43/A(1); see para. 195). "Security measures" (i.e. confiscation and dissolution) may also be imposed on legal persons (CC Arts. 60 and 282(5)).

169. Türkiye recently reorganised its prosecution of money laundering offences. Since 2021, designated prosecutors work exclusively on such cases.[69] These prosecutors do not investigate the predicate offence, however. Bribery investigations are thus conducted by a PPO's Bureau for Civil Servant Offences or Organised Crimes (see para. 106). Prosecutors responsible for money laundering cases state that they expect their colleagues in these bureaus to inform them if a bribery case involves money laundering. Parallel investigations are then supposed to ensue.

170. Türkiye has not resolved longstanding concerns about the actual enforcement of the money laundering offence predicated on foreign bribery. Since Phase 2 in 2007, the Working Group has noted a lack of investigations and prosecutions (Phase 3 Report paras. 102-103). In Phase 4, Türkiye provides data showing only 27 investigations, 13 prosecutions, 10 acquittals and 5 convictions in 2018-2022 for money laundering predicated on domestic bribery (and none for foreign bribery). Over the same period, Türkiye opened 10 233 investigations for bribery. This suggests that money laundering was investigated in at most 0.26% of bribery cases. Türkiye explains that some instances of bribery do not result in proceeds that could be laundered. Others may involve low values, or a suspect may have been arrested before an asset could be laundered.

[67] FATF (2019), Turkey: Mutual Evaluation Report, p. 166.
[68] Exchange rates in this report were provided by Türkiye (2023 Turkish Central Bank foreign exchange buying rate).
[69] Ministry of Justice Circular 155/1 (23 Feb. 2021).

Commentary

The lead examiners are concerned that Türkiye's money laundering enforcement related to bribery is not sufficient. The number of bribery-related money laundering investigations is just 0.26% of that for domestic bribery and zero for foreign bribery. Türkiye's explains that not all bribery cases necessarily involve money laundering. Even accepting this explanation, the proportion of bribery cases that lead to money laundering investigations is strikingly low. This observation is even more troubling since corruption is considered a "medium" level risk in Türkiye's money laundering risk assessment (see para. 48). The lead examiners therefore recommend that Türkiye take steps to increase investigations and prosecutions for laundering of the proceeds of bribery.

B.6.b. False accounting offence

171. The Phase 3 Report (paras. 115-118) did not raise concerns about Türkiye's false accounting offences against natural persons. These offences remain substantively the same as in Phase 3:

(a) Tax Procedure Code (TPC) Art. 359 applies to documents kept or issued as required by tax laws. Art. 359(a) prohibits the making of fraudulent books and records; opening accounts of persons who are fictitious or unrelated to the transactions; maintaining off-the-books accounts that decrease the tax base; falsifying or concealing books and records; and issuing or using documents that are misleading about such books and records. The offence is punishable by imprisonment of 18 months to five years. Under Art. 359(b), the destruction of books and records is subject to three to eight years' imprisonment. If the offence under either provision results in a tax loss, then a fine up to three times the loss may be imposed (TPC Art. 344).

(b) The Capital Markets Law (CML) applies to listed companies and capital market institutions. CML Art. 112(1) punishes a failure to keep books and records as required by law with imprisonment of six months to two years and a fine of 5 000 days. Art. 112(2) prohibits financial statements and reports that do not reflect reality; opening of false accounts; and other accounting fraud. The offence is punishable by the same penalty as for the crime of forgery in Criminal Code Art. 207, i.e. imprisonment of one to three years.

172. As against legal persons, the false accounting offence remains deficient as Türkiye has not implemented Phase 3 recommendation 5(a). Misdemeanour Law Art. 43/A(1) imposes corporate liability for enumerated offences like foreign bribery and money laundering (see paras. 168 and 181). However, the TPC and CML false accounting offences are not included. Türkiye repeats its Phase 3 position that TPC Art. 359 applies to legal persons since TPC Art. 344 allows a fine to be imposed for these offences. This interpretation is debatable and unsupported by case law. In any event, fines are available only if the offence has tax consequences, which is too restrictive under Convention Art. 8. Türkiye also argues that "security measures" are available under CC Art. 60 as a sanction. But these measures do not include fines, and require a natural person conviction (see paras. 181 and 198). Meanwhile, CML Art. 112(1) does apply to legal persons, but only if they are listed companies or capital market institutions. Fines for this offence are also paltry: 5 000 days which translates to approximately EUR 17 000-84 000. The CML Art. 112(2) offence does not apply to legal persons at all as it is only punishable by imprisonment.

173. Türkiye's response does not address these concerns. The Capital Markets Board (CMB) states that Turkish law allows criminal sanctions only against natural persons. However, Convention Art. 8(1) explicitly allows countries to impose not only criminal but also civil or administrative fines against legal persons for false accounting. Regardless of their form, these sanctions must be effective, proportionate and dissuasive. The maximum fine of EUR 16 910 under CML Art. 112(1) falls far short of this standard. The CML also does not cover all companies (see para. 171). The CMB also argues that sanctions under CML Art. 112(1) were also chosen considering European Union requirements on capital markets legislation. The Convention, however, concerns fighting bribery and not regulating capital markets.

174. Turkish authorities are unable to demonstrate that they have investigated bribery-related false accounting in practice. They provide statistics showing thousands of investigations and prosecutions of

these offences against natural persons in 2018-2022. But there is no information that these cases relate to bribery, or that legal persons were investigated.

Commentary

The lead examiners are concerned that Türkiye's framework for false accounting against legal persons remains deficient. Türkiye's recent amendments of the corporate liability provisions in ML Art. 43/A failed to resolve this matter. The result is a major deficiency in Türkiye's ability to prosecute legal persons for foreign bribery-related conduct. Türkiye is also unable to provide statistics that demonstrate actual enforcement of bribery-related false accounting.

The lead examiners therefore reiterate Phase 3 recommendation 5(a) and recommend that Türkiye ensure that legal persons can be held liable for the full range of conduct described in Convention Art. 8(1) and are subject to effective, proportionate and dissuasive sanctions. They also recommend that Türkiye maintain statistics on the investigations, prosecutions and convictions against natural and legal persons for bribery-related false accounting.

B.7. Concluding and sanctioning foreign bribery cases

B.7.a. Non-trial resolutions

175. As in Phase 3 (para. 84), non-trial resolutions continue to be unavailable in foreign bribery cases. Turkish law provides for at least four types of abbreviated procedures: rapid procedure (CCP Art. 250); simplified trial (CCP Art. 251); conciliation (CCP Art. 253(1)); and effective regret (CC Art. 254 and CCP Art. 171). None of these procedures applies to foreign bribery. In this evaluation, prosecutors, lawyers and the private sector indicate that they would support making non-trial resolutions available in foreign bribery cases.

Commentary

The lead examiners recommend that Türkiye consider making non-trial resolutions (such as deferred and non-prosecution agreements) available in foreign bribery cases.

B.7.b. Sanctions against natural persons

176. The provisions on sanctions against natural persons for foreign bribery have not changed since Phase 3 (follow-up issue 10(d)). Foreign bribery is punishable by four to twelve years' imprisonment (CC Art. 252(1)). The same penalty applies to intermediaries who facilitate the crime and third-party beneficiaries who receive the bribe. CC Art. 252(1) provides that the penalty is halved if the official is offered or promised but refuses a bribe. However, there are questions whether this provision applies to foreign bribery (see para. 98). Sanctions are increased by one-third to one-half for bribery of certain types of officials such as judges, notaries or auditors (CC Art. 252(7)). CC Arts. 61-62 set out general aggravating and mitigating factors applicable to all offences. According to Turkish authorities, remorse is a listed mitigating factor and can encompass a self-report of a crime.

177. Türkiye has not implemented Phase 3 recommendation 2(a) to consider making fines available as a penalty against natural persons for foreign bribery. It has not taken any concrete steps or made legislative proposals on this issue. The concept of fines is well known in Turkish criminal law. Over 60 Criminal Code offences allow "judicial fines" as a penalty. This includes economic crimes such as theft, property damage, fraud and embezzlement (among others) as well as corruption-related offences such as influence trafficking.[70] Money laundering and false accounting are also punishable by fines (see paras. 168 and 171). In this evaluation, a representative of the Justice Commission in Türkiye's legislature states that they would consider a recommendation to make fines available for bribery.

[70] CC Arts. 142-144, 151, 157, 158 and 255.

178. Türkiye has partially implemented Phase 3 recommendation 2(b) to maintain detailed statistics on sanctions. There are no statistics on sanctions imposed for foreign bribery because of a lack of enforcement. For domestic bribery under CC Art. 252(1), figures provided by Türkiye indicate there were 902 cases that produced convictions, 1 005 with acquittals, 338 with suspended sentences, and 400 "other" decisions in 2018-2022. The cases that led to convictions resulted in 2 102 imprisonment sentences including 1 871 of up to five years, 204 of five to ten years, and 27 over ten years.

Commentary

The lead examiners are disappointed that fines continue to be unavailable as a sanction against natural persons for foreign bribery. The Working Group has repeatedly observed that the availability of fines is vital to ensuring effective, proportionate and dissuasive sanctions for foreign bribery. Türkiye is an outlier: only 3 out of 46 Parties to the Convention do not allow fines to be imposed against natural persons for foreign bribery.[71] The lead examiners therefore reiterate Phase 3 recommendation 2(a) and recommend that Türkiye amend its legislation to allow fines to be imposed in addition to imprisonment against natural persons for foreign bribery.

In addition, Türkiye has not sanctioned any individuals for foreign bribery. It also has provided partial and inconsistent statistics on the sanctions that have been imposed for domestic bribery. The lead examiners therefore reiterate Phase 3 recommendation 2(b) and recommend that Türkiye maintain detailed statistics on the sanctions imposed in practice for bribery.

B.7.c. Confiscation against natural persons

179. The provisions for confiscation did not raise concerns in Phase 3 (paras. 67-70) and have not been amended since. Confiscation is available upon conviction. CC Art. 54 allows the confiscation of a bribe (property "used for committing a crime" or "allocated for committing a crime"). CC Arts. 54-55 apply to proceeds of bribery ("property that has emerged as a result of an offence" and "material gain obtained through the commission of an offence"). Value confiscation is available (CC Arts. 54(2) and 55(2)). Law enforcement can seize property subject to confiscation during an investigation or prosecution as a precautionary measure (CCP Arts. 123, 127-128).

180. Concerns remain about confiscation in practice. The Phase 3 Report (paras. 71-72 and follow-up issue 10(d)) found that the proceeds of bribery have been confiscated in only 11 domestic bribery cases in five years. Recommendation 2(c) accordingly asked Türkiye to "take further steps, such as through providing guidance and training, to ensure that law enforcement authorities routinely consider confiscation in foreign bribery cases". Since then, Türkiye has not issued guidelines on the topic. The Department of Anti-Smuggling and Organised Crime (KOM) attended training on "Financial Crime Investigations Specialisation" and "Combating Proceeds of Crime Specialisation" organised by the Türkiye International Academy Against Smuggling and Organised Crime. But the training did not address confiscation or foreign bribery specifically. Other enforcement officials and prosecutors did not receive such training. Türkiye also does not provide any case examples or statistics on confiscation in bribery cases.

Commentary

Türkiye does not provide information on confiscation imposed in bribery cases. Türkiye has also not issued guidelines or trained law enforcement on this issue. The lead examiners therefore reiterate Phase 3 recommendation 2(c) and recommend that Türkiye (a) draw the attention of prosecutors, including through training or guidance, to the importance of seeking confiscation against natural persons in foreign bribery cases, and (b) maintain statistics on confiscation imposed in bribery cases.

[71] The other two Parties are Portugal (Phase 4 paras. 95-96 and recommendation 8(a)) and Italy (Phase 4 paras. 245-247 and recommendation 12(b)).

C. Responsibility of legal persons

181. Türkiye provides corporate liability for foreign bribery principally through Misdemeanour Law (ML) Art. 43/A (see Annex 4 at p. 72). The provision was enacted in 2009 to complement Criminal Code (CC) Arts. 60 and 253. The Working Group had considered these pre-existing provisions inadequate because they only provide for "security measures", namely dissolution of a legal person and confiscation. A full range of sanctions including fines is not available. The conviction of a natural person was also a precondition for security measures (Phase 2 Report paras. 172-186).

182. Deficiencies in ML Art. 43/A are a longstanding concern and were a matter of focus during the Working Group's 2021 high-level mission to Türkiye. The Phase 3 Report identified three major shortcomings: (a) liability of state-owned or controlled enterprises (SOEs), (b) prosecution of a natural person as a prerequisite to liability, and (c) sufficiency of sanctions (recommendations 1(a)-(c)). The Working Group also decided to follow up liability for foreign bribery committed through intermediaries and the level of the natural person perpetrator that would trigger liability (follow-up issue 10(c)). Apart from these issues, this section also covers successor liability, jurisdiction, statute of limitations, corporate enforcement, and private sector engagement.

C.1. Scope of corporate liability

C.1.a. Entities covered, including state-owned enterprises

183. A 2023 amendment to ML Art. 43/A may have extended the provision to cover SOEs, though this has yet to be confirmed in practice. In Phase 3 (paras. 37-38), ML Art. 43/A(1) provided for liability only for acts committed by an organ or representative of a "private legal person", or a person who undertakes a duty within the scope of that legal person's framework. Türkiye added that ML Art. 43/A did not apply to companies audited by the Court of Accounts (which included SOEs). Türkiye has now deleted the word "private" from ML Art. 43/A(1). The legislation also does not expressly exclude companies audited by the Court of Accounts. The PPO, judiciary, MOJ, legal academics and private sector lawyers consistently indicate that the amended ML Art. 43/A covers SOEs. However, there are no commentaries, jurisprudence or case practice confirming this interpretation.

Commentary

The lead examiners commend Türkiye for amending ML Art. 43/A to cover SOEs. Due to the recency of the amendment, practice has yet to confirm this interpretation. The lead examiners thus recommend that the Working Group follow up the application of ML Art. 43/A to SOEs.

C.1.b. Prosecution and conviction of the natural person perpetrator

184. The Phase 3 Report (paras. 40-41) found that corporate liability required a natural person conviction for the underlying crime. ML Art. 43/A(1) stated that, where a natural person commits an offence, "the legal person shall also be penalised". This implied that a natural person conviction was a prerequisite to corporate liability. The MOJ, prosecutors and judges agreed. No case law indicated otherwise.

185. A 2020 amendment maintained the word "also" in Art. 43/A(1) but added a new Art. 43/A(3). The new provision states that a legal person may be fined without "awaiting" the completion of an investigation or prosecution against a natural person. If it is later determined that the alleged offence was not committed for the legal person's benefit, then the fine is returned to the legal person:

> Art. 43/A(3) If the offences listed in paragraph 1 are committed to the benefit of a legal person, the completion of an investigation or prosecution against the person who committed the act shall not be awaited in order to impose an administrative fine to that legal person. If, at the end of the investigation or prosecution, it is understood that the act was not committed to the benefit of that legal person, the administrative fine shall be lifted and the amount shall be returned, if collected already.

186. The MOJ, PPO, judiciary, legal academics, and private sector lawyers uniformly agree that the amendment removes the requirement of a natural person investigation or prosecution for corporate liability. An MOJ official adds that if a natural person is deceased or is a fugitive, corporate liability nevertheless results if the requirements for liability in Art. 43/A(1) are met. The return of a corporate fine depends not on whether a natural person is acquitted, but whether a court finds – on the merits of the case – that the alleged acts did not benefit the legal person. However, there is no case law confirming these interpretations.

187. The amendment may nevertheless leave room for debate. The word "also", which was the origin of the problem, remains in Art. 43/A(1). The word "awaited" Art. 43/A(3) arguably implies that a natural person investigation should be brought, even if its outcome is not yet known. Furthermore, a corporate fine may be returned if the natural person is acquitted of foreign bribery, even for procedural reasons. Corporate liability is thus intrinsically linked to the natural person's liability.

Commentary

The lead examiners acknowledge Türkiye's efforts to remove the conviction of a natural person as a prerequisite for corporate liability. Unfortunately, the amended ML Art. 43/A continues to contain ambiguities. The lead examiners therefore recommend that Türkiye amend its legislation to ensure that corporate liability for foreign bribery is not restricted to cases where the natural person perpetrator is prosecuted or convicted.

C.1.c. Level of natural person and bribery through intermediaries

188. There has not been practice clarifying the level of a natural person's authority within a company that would trigger corporate liability (Phase 3 follow-up issue 10(c)(i)). ML Art. 43/A(1) provides for corporate liability for an offence committed by a legal person's organ or representative, or a person who undertakes a duty within the scope of that legal person's operational framework. In Phase 3 (para. 44), Turkish authorities explained that this covers: (a) any decision-making or supervisory body in the company; (b) a company's agent who is legally authorised to represent the company; and (c) any person who undertakes a duty within the scope of that legal person's operational framework regardless of their position. To date, there is no case law confirming these interpretations.

189. There has also not been practice on corporate liability for foreign bribery committed using an intermediary (Phase 3 follow-up issue 10(c)(ii)). ML Art. 43/A imposes liability for an offence committed "to the benefit of" a legal person. The term "benefit" is not defined. In Phase 3, the Working Group questioned whether liability arises where a legal person bribes on behalf of a related legal person, such as a subsidiary, holding company, or member of the same corporate group.

Commentary

The lead examiners recommend that the Working Group continue to follow up (a) the level of a natural person's authority that would trigger corporate liability, (b) corporate liability for foreign bribery committed using an intermediary, including related legal persons, and (c) the meaning of "benefit" in ML Art. 43/A.

C.1.d. Successor liability

190. The 2021 Anti-Bribery Recommendation Annex I.B.5 provides for "successor liability". Member countries should have "appropriate rules or other measures to ensure that legal persons cannot avoid liability or sanctions for foreign bribery and related offences by restructuring, merging, being acquired, or otherwise altering their corporate identity".

191. Türkiye does not meet this requirement. ML Art. 43/A does not expressly provide for successor liability. There are no cases in which liability for an offence has been imposed on a successor legal person. Türkiye refers to provisions prohibiting a company from having founders, partners or executives who have

been sentenced to imprisonment of five years or more (Capital Markets Law Arts. 44, 45(2), 49(2) and 55(2)). But these provisions do not impose liability on a successor company or apply to all legal persons. A successor company also does not necessarily have the same founder, partner or executive as its predecessor. The Capital Markets Board (CMB) argues that Turkish law does not permit criminal liability of legal persons. But Convention Art. 2 explicitly allows for administrative or civil liability. The CMB also states that a successor company's directors could be liable for a predecessor's offence under Commercial Law 6102 Arts. 158 and 178. But the Anti-Bribery Recommendation requires liability of the successor company, not its natural person directors.

Commentary

The lead examiners recommend that Türkiye take steps to ensure that legal persons cannot avoid liability or sanctions for foreign bribery and related offences by restructuring, merging, being acquired, or otherwise altering their corporate identity.

C.2. Jurisdiction and statute of limitations

192. ML Art. 43/A(1) states that the provision applies to all legal persons. Türkiye explains that this includes Turkish (a) public legal persons, i.e. public administrations, institutions and organisations; (b) private law legal persons established through "private law legal procedures"; (c) profit-oriented legal persons, i.e. commercial companies regulated by the Commercial Law; and (d) non-profit-oriented legal persons, i.e. associations and foundations regulated by the Civil Code. This definition covers a subsidiary of a foreign company incorporated in Türkiye. Short of incorporation, ML Art. 43/A also covers a foreign company operating through a branch office in Türkiye, according to the MOJ, PPO and judges. Formal legal registration by a company is not a prerequisite to acquiring "legal character".

193. A Turkish company may also be liable for foreign bribery committed outside Türkiye by an employee who is a non-Turkish national. As explained at para. 101, Türkiye has jurisdiction over foreign nationals who commit extraterritorial foreign bribery if there is a particular connection to Türkiye, e.g. if a private legal person established under Turkish legislation is a party (CC Art. 252(10)).

194. The statute of limitations for legal persons is 15 years and is unchanged since Phase 3. Under ML Art. 20(5), if the act "constituting the misdemeanour also constitutes an offence, the statute of limitations for the offence shall apply." The limitation period for foreign bribery for legal persons is therefore the same as that for natural persons, confirms the PPO.

Commentary

Türkiye explains the jurisdictional scope of ML Art. 43/A but does not provide case law or jurisprudence to support its interpretation. The lead examiners therefore recommend that the Working Group follow up Türkiye's ability to assert jurisdiction over legal persons for foreign bribery under ML Art. 43/A.

C.3. Sanctions and confiscation against legal persons

C.3.a. Fines against legal persons

195. Türkiye has increased the maximum fine for foreign bribery. In Phase 3, foreign bribery was punishable by a fine of TRY 10 000-2 million (EUR 339-67 803). A 2020 amendment to ML Art. 43/A(1) increased the fine to TRY 10 000-50 million (EUR 339-1.70 million). Furthermore, administrative fines are revalued annually (ML Art. 17(7) and Tax Procedure Code Art. 298). Thus, the maximum fine for foreign bribery was revalued in 2023 to TRY 245.12 million (EUR 8.31 million), according to Türkiye's Central Bank. Most importantly, the 2020 amendment also provides that "the administrative fine shall not be less than twice the advantage, which is the subject of the procedure or action". There are no provisions setting out factors that aggravate or mitigate the penalty.

196. The new provision setting the fine as at least twice the advantage is welcome but raises two uncertainties. First, it is unclear whether Turkish courts have the capacity to determine the value of the advantage in a specific foreign bribery case. Second, the maximum fine is the amount stipulated in ML Art. 43/A(1) (i.e. TRY 245.12 million in 2023) if this value is *greater* than twice the advantage of the crime. But if this value is *smaller*, then the statute does not set a maximum fine.

197. There is no information on whether sanctions for bribery imposed in practice are sufficient. As explained in section C.4 at p. 56, ML Art. 43/A has not been applied in domestic or foreign bribery cases. In 2021-2023, a fine was imposed in only one case under ML Art. 43/A (TRY 20 000 (EUR 678) for a fraud offence) (see Annex 5 Part 2 at p. 75).

Commentary

The lead examiners welcome the amendment to ML Art. 43/A requiring a fine for foreign bribery to be at least twice the advantage gained. However, Türkiye has yet to demonstrate that the provision leads to effective, proportionate and dissuasive sanctions in practice. The lead examiners therefore recommend that the Working Group follow up the actual sanctions imposed under ML Art. 43/A. They also recommend that Turkey train relevant prosecutors and judges on corporate liability and sanctions for foreign bribery, including the application of the provision on corporate fines.

C.3.b. Confiscation against legal persons

198. Türkiye has not implemented Phase 3 recommendation 1(c)(ii) to ensure that confiscation may be imposed on legal persons "without prior conviction of a natural person". ML Art. 43/A does not provide for confiscation against legal persons. Instead, CC Art. 253 allows a "security measure" to be imposed on a legal person that benefits from bribery. One such measure is confiscation (CC Art. 60(2)). However, the Phase 2bis Report (para. 60) found that a natural person conviction is required. In Phase 3 (para. 55), Türkiye disagreed with this interpretation but did not provide supporting case law. In Phase 4, Türkiye refers to the amendment to ML Art. 43/A regarding whether a natural person conviction is a precondition for corporate liability (see para. 185). But that amendment does not deal with CC Art. 253, which is the provision applicable to confiscation.

199. Confiscation against legal persons raises two additional issues. First, it is not available against state-owned enterprises (SOEs). CC Art. 60(2) only provides for confiscation against "private law legal entities". As described in section C.1.a at p. 51, Türkiye extended the application of ML Art. 43/A from "private legal persons" to all legal persons. But it did not make a similar amendment to CC Art. 60(2). A second problem is the lack of application in practice. In 2018-2022, only seven proceedings were opened for security measures in domestic bribery cases resulting in a single conviction (see Annex 5 Part 3 at p. 77). Confiscation was not ordered because the crime did not produce any assets, says Türkiye.

Commentary

The lead examiners reiterate Phase 3 Recommendation 1(c)(ii) and recommend that Türkiye ensure that confiscation may be imposed on legal persons without a prior conviction of a natural person. They also recommend that Türkiye (a) provide for confiscation against SOEs, and (b) draw the attention of prosecutors, including through training or guidance, to the importance of seeking confiscation against legal persons in foreign bribery cases.

C.3.c. Debarment from public procurement

200. As in Phase 3, Public Procurement Law (PPL) Art. 11(a) provides for debarment. Under this provision, "those who are under sentence […] for offence of bribing public officials in their own country or in a foreign country" are debarred from participating in public procurement. The Public Procurement Authority (PPA) regulates and monitors public procurement in Türkiye.

C.3.c.i. Length of debarment

201. Türkiye provides inconsistent explanations of the length of debarment for foreign bribery. First, Türkiye explained in Phase 3 (para. 165) that PPL Art. 11(a) debars an entity which is "under sentence". Accordingly, the duration of the debarment "is equal to the term of sentence". But this approach obviously cannot apply to a legal person. Second, Türkiye states in Phase 4 that PPL Art. 58 sets debarment at one to two years. But this provision prescribes debarment for "those who are established to be involved in acts and conduct set forth in Art. 17". PPL Art. 17 in turn sets out misconduct by a tenderer *during a procurement process in Türkiye*, such as submitting a tender while being debarred. Art. 17 does not concern debarment due to a foreign bribery conviction, which is set out in Art. 11(a).

202. A third explanation was provided at the Phase 4 onsite visit. Before awarding a contract, a Turkish procuring authority verifies whether a prospective contractor has a criminal record for foreign bribery. Türkiye states that an entity is debarred so long as its foreign bribery conviction is in the criminal records registry. But the PPL does not specify this approach. Türkiye states that the Criminal Records Law determines how long a record is maintained but does not indicate what this period is. In any event, this approach would not be feasible for companies held liable for foreign bribery under ML Art. 43/A. Such liability is not criminal in nature and would not result in a criminal record. Türkiye argues that a procuring authority would then verify whether the company's managers have a criminal record instead. But a company can be liable under ML Art. 43/A without any natural person, including its managers, being held liable (see section C.1.b at p. 51).

Commentary

Since Phase 3, Türkiye has provided three different explanations on the length of debarment for foreign bribery. None of the explanations is wholly satisfactory or clearly supported by statute. The lead examiners therefore recommend that Türkiye amend the PPL to clearly specify the length of debarment applicable to entities convicted of foreign bribery.

C.3.c.ii. Verification by procuring authorities

203. Türkiye uses a debarment list to verify whether a prospective contractor is debarred. The Phase 3 Report (para. 164) stated that the PPA maintains a list of excluded parties based on information provided by prosecutors. Türkiye reiterates this position in Phase 4 and adds that procuring authorities are required to inquire whether an entity has been debarred (General Communique on Public Procurement (GCPP) Art. 30.5.2). According to Türkiye, this verification occurs at three points in time: submission of application, decision to award the contract, and signing of the contract. Türkiye adds that the Ministry of Justice maintains the criminal records registry, and that the PPA is not responsible for imposing administrative fines against legal persons for bribery.

204. Türkiye describes a second process of verification. A prospective contractor must produce a copy of its criminal record from the Ministry of Justice demonstrating the absence of a conviction for foreign bribery. For companies, the requirement also applies to its managers, controlling shareholders and partners. For non-Turkish entities, GCPP Arts. 17.5.3.1-2 require them to provide similar documentation from their countries. Alternatively, they must obtain confirmation from "the chief of mission" of Türkiye in the foreign country that such documentation is not available, states Türkiye.

205. Türkiye has not implemented Phase 3 recommendation 9(b) to check the debarment lists of multilateral development banks (MDBs). It states that the only verification procedures are those described above (i.e. the debarment list and certificates of no-conviction). "No other method is routinely used for the confirmation of prohibition except for the aforementioned practices". Türkiye states that its relations with MDBs "tend to get closer day by day". Hence, "studies can be carried out on possible methods of information sharing and control of prohibitions between the parties".

206. Türkiye has also not implemented Anti-Bribery Recommendation XXIII.D.i. It has not encouraged its procuring authorities to consider a prospective contractor's anti-corruption compliance programme before awarding a procurement contract or as a mitigating factor in deciding debarment.

Commentary

The lead examiners recommend that Türkiye take the following steps to ensure that its procuring authorities, when deciding whether to award a procurement contract, (a) check the debarment lists of MDBs, and (b) consider a prospective contractor's anti-corruption compliance programme.

The lead examiners also recommend that Türkiye consider compliance programmes as a mitigating factor in debarment proceedings.

C.3.c.iii. Training and debarment in practice

207. The effectiveness of the debarment regime in practice is unclear. In 2018-2023, the Public Procurement Authority (PPA) trained 38 088 officials, including on PPL Art. 11 on ineligibility. But Türkiye does not have statistics that would confirm the application of debarments for foreign or domestic bribery in practice. The PPA's debarment registers do not contain information on the criminal offence or the grounds for prohibition. Türkiye also states that 2 334 entities have been debarred for acts under PPL Art. 17. However, Art. 17 deals with debarment due to misconduct during a Turkish procurement process, not foreign bribery (see para. 201).

Commentary

The lead examiners recommend that Türkiye maintain statistics on the number of entities debarred due to a conviction for foreign bribery.

C.4. Actual enforcement of corporate liability

208. The Phase 3 Report (paras. 49-51) found a lack of corporate enforcement. Since ML Art. 43/A was enacted in 2009, only one legal person had been prosecuted (for fraud). None had been found liable for any crime. Phase 3 recommendation 1(d) thus recommended that Türkiye "enhance the usage of, and train law enforcement authorities on, the corporate liability provisions in foreign bribery cases".

209. Things have not improved since Phase 3. Türkiye provides data (see Annex 5 Part 2 at p. 75) which show a near complete absence of enforcement of under ML Art. 43/A, including in bribery cases. In 2020-2023, only four court proceedings against legal persons under this provision were concluded. None concerned bribery. Only one case (for fraud) resulted in liability. One proceeding (for bid rigging) was pending in the courts as of 18 January 2024 (see Table 2.3 at p. 76). As mentioned at para. 150, Türkiye has not trained judges or prosecutors on corporate bribery enforcement.

210. Additional questions arise from a second set of data on CC Art. 253 which provides for "security measures" against legal persons (Annex 5 Part 3 at p. 77). In 2018-2022 the PPO opened 16 cases and commenced 7 prosecutions for (presumably domestic) bribery under this provision. It is unclear why Turkish authorities proceeded against legal persons in these cases under CC Art. 253 instead of ML Art. 43/A. The Working Group has stated that CC Art. 253 does not provide for corporate liability in compliance with the Convention. The provision only allows for confiscation and dissolution of a legal person, not fines. It also requires a natural person conviction (see para. 181).

Commentary

The lead examiners are seriously concerned that no legal person has been held liable for foreign or domestic bribery, even though ML Art. 43/A was enacted 15 years ago. They therefore reiterate Phase 3 recommendation 1(d) and recommend that Türkiye enhance the usage of ML Art. 43/A, especially in foreign bribery cases. Training on corporate enforcement including available sanctions is also recommended (see p. 44).

C.5. Engaging the private sector

C.5.a. Raising awareness of foreign bribery generally

211. Since Phase 3, Turkish authorities have not made efforts targeting companies to raise awareness of foreign bribery. The Ministry of Trade (MOT) supports Turkish companies that export overseas, but has not engaged the private sector on foreign bribery-related issues. As mentioned at para. 32, the Ministry of Foreign Affairs (MFA) has not raised awareness among Turkish companies. The Ministry of Justice also has not directed any efforts specifically at the private sector.

212. Especially troubling is a lack of efforts in sectors at a high risk of committing foreign bribery. As mentioned at paras. 10-11, Turkish companies have continued to experience accelerated growth internationally in high corruption-risk sectors such as defence and construction. These companies are also extremely active in many jurisdictions with high perceived levels of corruption in Africa, the Middle East, Central Asia, and Eastern Europe. In Phase 3, the Working Group urged Türkiye to raise awareness among such companies (recommendation 8(i)). Since then, Turkish authorities have not reached out to companies in risk sectors, or to business associations that represent these companies. One business association asserts that it works in "close co-operation" with the MOT and MFA without providing any details.

213. Activities by private sector business associations are unfortunately also lacking. Business associations representing the defence and construction sectors acknowledge that they have not raised awareness of foreign bribery among their members. One association issued "Principles of Business Ethics" to encourage companies in Türkiye and abroad to "refrain from engaging in behaviours that would undermine and damage the trust and respect for the contracting profession and lead to unfair competition and undue advantage." However, the document mentions only gifts and not foreign bribery or other forms of corruption. Another organisation supports Turkish companies on responsible business conduct and ethical principles. But it has not addressed foreign bribery and admits that "the Convention is not on our agenda a lot". A third organisation explains at length that defence companies and their employees which have been convicted of bribery may be denied security clearances or production licences. This is not the same as raising awareness of foreign bribery, however. Turkish authorities refer to events and training organised by the Union of Chambers of Certified Public Accountants and Sworn-in Certified Public Accountants (TÜRMOB). But these initiatives targeted only accountants and primarily concerned money laundering, not foreign bribery. The İstanbul Stock Exchange (Borsa İstanbul) provided training and issued a directive on bribery committed by its employees, not Turkish companies.

214. As a result, Turkish companies' awareness of the risks of foreign bribery is uneven, at best. One business association in a high-risk sector states that its members have a high level of awareness but have never faced actual bribe solicitations. Another organisation states that Turkish construction companies "are highly reputed". Companies in these sectors state that they are aware of the risk of foreign bribery, though one defence company states that there is "no need to pay officials". Many companies refer to bribery laws in other countries that are Parties to the Convention. But none describes any measures in their companies that specifically prevent foreign bribery in their operations in other countries, including those with high risks. All of the companies say that no employee or whistleblower has ever reported an instance of foreign bribery.

Commentary

The lead examiners regret that Türkiye has not raised awareness of foreign bribery in the private sector. This is particularly concerning due to the continued growth of Turkish companies in high-risk sectors and in countries with high perceived levels of corruption. The lead examiners therefore reiterate Phase 3 recommendation 8(i) and recommend that Türkiye, as a matter of priority, raise awareness of foreign bribery within the private sector, particularly among companies that operate in sectors or countries with a high risk of foreign bribery.

C.5.b. Promoting corporate anti-corruption compliance programmes

215. Türkiye has also not implemented Phase 3 recommendation 8(ii) to "highlight the importance of developing and implementing" corporate anti-corruption compliance programmes. Turkish authorities have not promoted such programmes directly or encouraged business associations to do so. They refer to the Capital Markets Board's Communique on Corporate Governance but acknowledge that this only applies to publicly-listed companies. Moreover, the document contains just one sentence (in section 3.5.2) stating that "corporations shall combat against any kind of corruption including embezzlement and bribery." This falls short of requiring companies to put in place anti-corruption compliance programmes. Turkish authorities do not consider whether a company has such a programme before awarding a public procurement or ODA contract, or when providing export credit support (see paras. 86, 93 and 206). MASAK focuses on compliance with laws on money laundering, not corruption. The Council of Ethics for the Public Service's efforts fight corruption within the civil service in Türkiye, not foreign countries. They also do not apply to the private sector.

216. As with awareness of foreign bribery, the implementation of corporate anti-corruption compliance programmes is uneven among Turkish companies. One organisation states that such programmes are more common now but hardly widespread. Local subsidiaries of foreign multinationals state that they have effective compliance programmes. The same is true of Turkish companies that fall under the jurisdiction of anti-foreign bribery laws of countries such as the US, France and Germany. The situation with other companies is unclear. Business associations, including those in high-risk sectors, have not promoted anti-corruption compliance programmes.

Commentary

The lead examiners are concerned with the lack of guidance and support on anti-corruption compliance programmes provided to Turkish companies operating abroad. They therefore re-iterate Phase 3 recommendation 8(ii) and recommend that Türkiye, as a matter of priority, (a) encourage companies to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics and Compliance (Anti-Bribery Recommendation Annex II), and (b) encourage business associations, where appropriate, in their efforts to encourage and assist companies in developing similar programmes.

C.5.c. Engaging SMEs and SOEs

217. Türkiye's lack of engagement with the private sector extends to small and medium-sized enterprises (SMEs). Turkish SMEs account for around 30% of total exports, and a significant number of companies operate in or export to high-risk destinations (see para. 12). However, SMEs often have less expertise and resources than large companies to implement anti-foreign bribery measures. The Small- and Medium-Enterprises Development Organisation (KOSGEB) affiliated with the Ministry of Industry and Technology supports Turkish SMEs. Neither KOSGEB nor the Ministry has raised awareness of foreign bribery or promoted corporate anti-corruption compliance programmes. Private sector representatives state that SMEs have little awareness of foreign bribery and would benefit from government-led initiatives.

218. Measures involving state-owned enterprises (SOEs) are equally lacking. Turkish SOEs play a significant role in exporting to high-risk jurisdictions, particularly in the defence sector (see para. 10). The Ministry of Treasury and Finance oversees SOEs (see para. 59). The Ministry has not raised awareness of foreign bribery among SOEs. It refers to the Public Ethics Law and bylaws that apply to SOE employees. These instruments, however, target corruption within Turkish SOEs (i.e. SOE employees taking bribes) and not SOEs bribing foreign public officials. The Ministry also notes that the Court of Accounts audits SOEs using international auditing standards. While this internal control is important, it is but one of many essential components of an effective anti-corruption compliance programme. Some SOEs that participated in this evaluation state that they are aware of their exposure to foreign bribery. But one claims that it has

"no incentive or means to give a bribe". Some SOEs in the defence sector suggest that their national security vetting and clearances somehow decrease the likelihood of bribery.

Commentary

The lead examiners are seriously concerned with Türkiye's lack of engagement with SMEs and SOEs on foreign bribery issues. As mentioned above, Türkiye is recommended to increase awareness-raising and promote corporate anti-corruption compliance programmes in the private sector. These efforts should particularly target SMEs and SOEs that are internationally active, and involve relevant government bodies such as KOSGEB and the Ministry of Treasury and Finance.

Conclusions: Positive achievements, recommendations, and follow-up issues

Good practices and positive achievements

219. The Working Group welcomes Türkiye's efforts since Phase 3 to implement the Convention and related instruments. This report identifies good practices and positive achievements by Türkiye for combating foreign bribery.

220. Several positive legislative developments have occurred since Phase 3. Since 2020, a legal person is punishable for foreign bribery under Misdemeanour Law (ML) Art. 43/A by a maximum fine of TRY 245.12 million (EUR 8.31 million) or at least twice the gain from the offence. These provisions now apply to state-owned enterprises. The enactment of Law 6706 has improved Türkiye's legal framework for extradition and mutual legal assistance in criminal matters.

221. Türkiye also made some progress beyond legislation. In 2018, Türkiye became a party to the Convention on Mutual Administrative Assistance in Tax Matters. The treaty enhances Türkiye's capacity to seek and provide tax information to and from another party for use in a criminal foreign bribery investigation. Eximbank requires its staff to undergo training that specifically addresses foreign bribery. To receive export credit support, companies with a foreign bribery conviction in the five previous years must have an effective anti-corruption compliance programme.

222. Finally, several efforts have been made in anti-money laundering (AML). MASAK implemented a longstanding Working Group recommendation in 2022 by issuing General Communique 21 and defining the full range of "politically exposed persons" for the purposes of applying AML measures. Related guidance was also published. MASAK's Regulation of Measures requires regulated entities to identify and verify beneficial owners, as well as to obtain information on the purpose and nature of a client's intended business. A new beneficial ownership registry is approximately 96% populated. Türkiye has increased sanctions related to beneficial ownership violations, including for entities that do not declare their true ownership; natural persons who fail to disclose that they act on behalf of a beneficiary; and financial institutions that fail to identify beneficial owners.

Recommendations of the Working Group and follow-up issues

223. Despite these achievements, the Working Group remains extremely concerned about Türkiye's efforts to fight foreign bribery. In the 2014 Phase 3 evaluation, the Working Group made 27 recommendations to Türkiye. By 2016, Türkiye had only fully implemented 3 recommendations. To encourage further improvements by Türkiye, the Working Group took a series of exceptional measures from 2017-2023, including additional reporting, public statements, and a high-level mission to the country. Nevertheless, Türkiye has only fully implemented 3 additional Phase 3 recommendations, leaving 21 of 27 recommendations outstanding.

224. Of principal concern is Türkiye's poor enforcement of its foreign bribery offence. There have been 23 known allegations of foreign bribery committed by Turkish individuals and/or companies since 2000 when Türkiye became a Party to the Convention. None has produced a conviction. Almost two-thirds of

the allegations have not been investigated at all. Many of the remaining one-third have not been investigated proactively or thoroughly. None has resulted in prosecution since Phase 3. ML Art. 43/A was enacted 15 years ago, and yet no legal person has ever been held liable for foreign or domestic bribery. Enforcement of bribery-related money laundering is similarly insufficient. In Phase 3, the Working Group identified three concerns with respect to judicial and prosecutorial independence: the Council of Judges and Prosecutors, removals of judicial officials, and executive interference in enforcement actions. All three issues have since worsened.

225. Further grave concerns stem from longstanding legislative recommendations that remain outstanding. Türkiye has not heeded the Working Group's recommendation for approximately 17 years to provide whistleblower protection. Promises to reform this matter have been repeatedly made and not kept. ML Art. 43/A continues to be ambiguous on whether a natural person prosecution and conviction is a precondition to corporate liability. The provision also does not apply to bribery-related false accounting. Türkiye is one of only three Parties to the Convention that cannot fine natural persons for foreign bribery.

226. Finally, Türkiye's efforts to detect and raise awareness of foreign bribery are equally lacking. It failed to detect 21 of the 23 known foreign bribery allegations, including all 12 that were reported by the media after Phase 3. Censorship further hinders detection through the press and investigative journalism. There is no national strategy to fight foreign bribery despite the significant size of Türkiye's economy. Key government bodies including the Ministries of Justice, Foreign Affairs as well as Treasury and Finance have not raised awareness of foreign bribery in the private sector or promoted anti-corruption corporate compliance programmes. These concerns are even more acute in light of Turkish companies in high-risk sectors such as defence and construction, and in countries with high perceived levels of corruption.

227. Based on these and other findings in this report, the Working Group makes the following recommendations to Türkiye for further improvement, and identifies issues for follow-up. Türkiye will report to the Working Group in writing in June 2026 on its implementation of all recommendations, its foreign bribery enforcement actions, and developments related to the follow-up issues.

Recommendations for enhancing the detection of foreign bribery

1. Regarding general awareness-raising and strategy to fight foreign bribery, the Working Group recommends that Türkiye
   (a) urgently develop a government-wide national strategy which encompasses prevention, detection, awareness-raising and enforcement (Anti-Bribery Recommendation III and IV); and
   (b) raise the awareness of and train relevant public officials on detecting and reporting foreign bribery (Anti-Bribery Recommendation IV.i and XXI.vi).
2. Regarding detection generally, the Working Group recommends that Türkiye:
   (a) encourage law enforcement authorities to proactively gather information from diverse sources to increase detection of foreign bribery (Anti-Bribery Recommendation VIII); and
   (b) develop a system to disseminate without delay all allegations of foreign bribery, including those provided by the Working Group, to appropriate authorities for investigation and prosecution (Anti-Bribery Recommendation XI and XXI.iv).
3. Regarding the detection through media reports, the Working Group recommends that Türkiye:
   (a) designate a specific unit in the Public Prosecutor's Office with the responsibility for effectively and systematically monitoring domestic and foreign media for allegations of foreign bribery committed by Turkish citizens or companies (Anti-Bribery Recommendations VIII and XXI.iv);

(b) ensure that the Constitution and other laws relating to freedom of the press are fully applied in practice so that allegations of foreign bribery can be reported (Anti-Bribery Recommendations VIII and XXI.iv); and

(c) ensure that any information censored in full or in part which alleges that foreign bribery has been committed by a Turkish individual or company is forwarded to the Public Prosecutor's Office for investigation (Anti-Bribery Recommendations VIII, XXI.iii, and XXI.iv).

4. Regarding the reporting and whistleblowing of foreign bribery, the Working Group recommends that Türkiye:

(a) urgently enact comprehensive legislation to protect and provide remedy against retaliatory action to persons working in the public or private sector who report suspected acts of foreign bribery (Anti-Bribery Recommendation XX.II);

(b) once enacted, raise awareness of whistleblowing provisions and encourage companies and government bodies to implement whistleblower reporting channels and protection frameworks (Anti-Bribery Recommendation XXIII.C.v); and

(c) maintain statistics on reports of foreign bribery received from public officials (Anti-Bribery Recommendation XX.II).

5. Regarding the Ministry of Foreign Affairs, the Working Group recommends that Türkiye:

(a) raise awareness of foreign bribery and bribe solicitation risks among the private sector (Anti-Bribery Recommendation IV.ii);

(b) train all MFA officials, including those posted abroad, on fighting foreign bribery and the Convention, including on information and steps to be taken to assist enterprises confronted with bribe solicitation, where appropriate (Anti-Bribery Recommendation XII.ii and Annex I.A.3);

(c) review existing policies and procedures on detecting and reporting of foreign bribery (Anti-Bribery Recommendation XXI.v);

(d) take steps to ensure that its diplomatic missions monitor the media for foreign bribery allegations implicating Turkish individuals or businesses (Anti-Bribery Recommendations VIII and XXI.iv);

(e) set out a clear procedure and channel for MFA officials to report foreign bribery allegations and for forwarding such reports to Turkish law enforcement, and raise awareness among MFA officials of this procedure and channel (Anti-Bribery Recommendation XXI); and

(f) maintain statistics on reports of allegations of foreign bribery received from MFA officials and overseas diplomatic missions (Anti-Bribery Recommendation XXI).

6. Regarding self-reporting by companies, the Working Group recommends that Türkiye:

(a) take steps to explain to relevant stakeholders the difference between the defence of effective regret and corporate self-reporting, and that the former is not available in foreign bribery cases (Anti-Bribery Recommendation X.iii and XV.ii); and

(b) consider measures to encourage companies that participated in, or have been associated with the commission of foreign bribery, to supply information useful to competent authorities for investigating and prosecuting foreign bribery, and ensure that appropriate mechanisms are in place for the application of such measures in foreign bribery investigations and prosecutions (Anti-Bribery Recommendations X.iii and XV.ii).

7. Regarding money laundering, the Working Group recommends that Türkiye:

(a) include foreign bribery as a specific threat in its next national money laundering risk assessment; disseminate the results of this assessment to all relevant anti-corruption stakeholders; and use its

findings to inform Türkiye's policies for preventing, detecting and investigating bribery and related money laundering (Anti-Bribery Recommendation IV.ii and VIII); and

(b) raise awareness among reporting entities of foreign bribery as a predicate offence to money laundering, including by providing guidance, typologies and training that specifically address foreign bribery (Anti-Bribery Recommendation IV.ii and VIII).

8. Regarding accounting and auditing, the Working Group recommends that Türkiye:

(a) issue guidance for external auditors setting out red flags for foreign bribery and train external auditors on the detection of foreign bribery (Anti-Bribery Recommendation IV.ii and XXIII);

(b) issue guidance to external auditors explaining that (i) their duty is to report reasonable suspicions of foreign bribery in good faith and that certainty is not required, and (ii) reports of foreign bribery should be made directly to law enforcement (Anti-Bribery Recommendation XXIII.B.v);

(c) take steps to ensure that auditors who report suspected foreign bribery on reasonable grounds are protected from legal action (Anti-Bribery Recommendation XXIII.B.v); and

(d) encourage companies that receive reports of suspected foreign bribery to respond actively and effectively (Anti-Bribery Recommendation XXIII.B.iv).

9. Regarding tax, the Working Group recommends that Türkiye:

(a) take steps, through a legally binding instrument, to ensure that fines and confiscation imposed for foreign bribery are not deductible for corporate income tax purposes (Anti-Bribery Recommendation XX);

(b) ensure that law enforcement authorities routinely share information on foreign bribery-related enforcement actions with the tax administration, including by issuing written guidance to this effect (Anti-Bribery Recommendation XI);

(c) Turkish tax authorities systematically re-examine the relevant tax returns of taxpayers convicted of bribery to determine whether bribes have been deducted (Anti-Bribery Recommendation XX);

(d) the limitation period to re-examine tax returns is sufficient by aligning it with the limitation period for foreign bribery prosecutions (Anti-Bribery Recommendation XX);

(e) continue to develop guidance and train new and existing tax auditors to detect and report foreign bribery (Anti-Bribery Recommendations IV.i, XXI and XX); and

(f) improve the sharing of information and co-ordination between Turkish law enforcement and tax authorities, particularly the Tax Inspection Board (VDK) (Anti-Bribery Recommendation XI).

10. Regarding export credits, the Working Group recommends that Eximbank consider the anti-corruption compliance programmes of all applicant companies (Anti-Bribery Recommendations XXIII.D.i and XXV).

11. Regarding official development assistance (ODA), the Working Group recommends that Türkiye:

(a) develop measures to prevent and detect foreign bribery in ODA projects, including by developing contracts for ODA projects that contain appropriate anti-corruption provisions (Anti-Bribery Recommendation XXIV.v);

(b) consider an entity's anti-corruption compliance programme when deciding whether to award an ODA contract (Anti-Bribery Recommendation XXIII.D.i); and

(c) conduct adequate due diligence before granting an ODA contract, including by verifying whether a prospective ODA project partner has been debarred by a multilateral development bank (Anti-Bribery Recommendation XXIV.v).

12. Regarding private sector engagement, the Working Group recommends that Türkiye, as a matter of priority:

    (a) raise awareness of foreign bribery within the private sector, particularly among companies that operate in sectors or countries with a high risk of foreign bribery, including micro, small or medium-sized enterprises and state-owned or controlled enterprises, and involve relevant government bodies such as KOSGEB and the Ministry of Treasury and Finance (Anti-Bribery Recommendation IV.ii);

    (b) encourage companies to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics and Compliance (Anti-Bribery Recommendation XXIII.C.i and Annex II); and

    (c) encourage business associations, where appropriate, in their efforts to encourage and assist companies in developing similar programmes (Anti-Bribery Recommendation XXIII.C.ii and Annex II.B).

Recommendations for enhancing the enforcement of foreign bribery and related offences

13. Regarding investigation and prosecution of foreign bribery, the Working Group recommends that Türkiye:

    (a) review its overall approach to enforcement in order to effectively combat foreign bribery (Anti-Bribery Recommendation VI.i);

    (b) assign primary responsibility for co-ordinating or investigating foreign bribery cases to a specific prosecutorial unit (Convention Art. 5; Anti-Bribery Recommendation XI);

    (c) ensure that the prosecutorial unit with primary responsibility for foreign bribery enforcement (i) has access to all foreign bribery allegations (including those received from the Working Group) without delay, (ii) attends the Working Group's *tour de table* and provides information on Turkish foreign bribery enforcement actions, and (iii) systematically consider such information to open foreign bribery investigations (Convention Art. 5; Anti-Bribery Recommendations VI.ii and XI);

    (d) train prosecutors to emphasise their legal authority to open a foreign bribery investigation ex officio whenever information (including media reports) is sufficient to meet the test in DPACL Art. 19 and CCP Art. 160, irrespective of whether they have received a formal denunciation (Anti-Bribery Recommendation Annex I.D.2);

    (e) repeal the requirement in Ministry of Justice Circular 157 of 20 February 2015 that prosecutors inform the Ministry when they open foreign bribery investigations (Convention Art. 5);

    (f) act promptly and proactively so that complaints of bribery of foreign public officials are seriously investigated and credible allegations are assessed by competent authorities (Anti-Bribery Recommendation VI.ii);

    (g) take a proactive approach to the investigation and prosecution of foreign bribery (Anti-Bribery Recommendation VI.iii);

    (h) adopt a proactive approach in seeking international co-operation in foreign bribery cases, including by submitting and proactively following up formal MLA requests, and seeking assistance via informal channels (Anti-Bribery Recommendation XIX); and

    (i) amend its legislation to make the use of undercover agents, reverse stings and controlled deliveries available in bribery cases (Anti-Bribery Recommendation X.i).

14. Regarding judicial and prosecutorial independence, the Working Group recommends that Türkiye:

    (a) ensure that (i) a majority of the members of the Council of Judges and Prosecutor (CJP) are judges chosen by their peers, and (ii) officials from the executive branch of government, including the Minister and Deputy Minister of Justice, are not CJP members (Convention Art. 5 and Commentary 27);

    (b) take steps to ensure that suspensions, transfers, detentions and dismissals of judges and prosecutors (i) do not adversely affect the effectiveness of foreign bribery investigations and prosecutions, (ii) are not motivated by Convention Art. 5 factors, (iii) are underpinned by sufficient evidence of actual, individual wrongdoing, and respect principles of due process, and (iv) are subject to review by an independent body within a reasonable time (Convention Art. 5 and Commentary 27); and

    (c) ensure that the investigation and prosecution of bribery are not influenced by the factors described in Convention Art. 5, including by (i) clarifying this in prosecutorial guidelines, and (ii) raising awareness and training relevant officials on this issue (Convention Art. 5 and Commentary 27).

15. Regarding law enforcement resources, training and expertise, the Working Group recommends that Türkiye ensure that:

    (a) prosecutorial and police resources are sufficient for investigating foreign bribery cases (Convention Art. 5; Anti-Bribery Recommendation VII); and

    (b) judges, prosecutors and police responsible for foreign bribery cases are provided with adequate training on effective methods to detect and investigate foreign bribery (Anti-Bribery Recommendation VI.ii).

16. Regarding mutual legal assistance (MLA), the Working Group recommends that Türkiye:

    (a) maintain detailed statistics on incoming and outgoing MLA requests, including on the time required for execution and reasons for refusal (Convention Art. 9(1); and

    (b) train prosecutors on obtaining MLA in foreign bribery cases (Anti-Bribery Recommendation VI.iii).

17. Regarding the offences related to foreign bribery, the Working Group recommends that Türkiye:

    (a) take steps to increase investigations and prosecutions for laundering of the proceeds of bribery (Convention Art. 7);

    (b) ensure that legal persons can be held liable for the full range of conduct described in Convention Art. 8(1) and are subject to effective, proportionate and dissuasive sanctions (Convention Art. 8; Anti-Bribery Recommendation XXIII.A.i); and

    (c) maintain statistics on the investigations, prosecutions and convictions against natural and legal persons for bribery-related false accounting (Convention Art. 8; Anti-Bribery Recommendation XXIII.A.i).

18. Regarding the sanctions against natural persons for foreign bribery, the Working Group recommends that Türkiye:

    (a) consider making non-trial resolutions (such as deferred and non-prosecution agreements) available in foreign bribery cases (Anti-Bribery Recommendation XVII);

    (b) amend its legislation to allow fines to be imposed against natural persons for foreign bribery in addition to imprisonment (Convention Art. 3(1));

    (c) draw the attention of prosecutors, including through training or guidance, to the importance of seeking confiscation against natural persons in foreign bribery cases (Convention Art. 3(1); Anti-Bribery Recommendation XVI.iii); and

(d) maintain detailed statistics on the sanctions and confiscation imposed in practice for bribery (Convention Art. 3).

19. Regarding the corporate liability for foreign bribery, the Working Group recommends that Türkiye:

(a) amend its legislation to ensure that corporate liability for foreign bribery is not restricted to cases where the natural person perpetrator is prosecuted or convicted (Convention Art. 2; Anti-Bribery Recommendation Annex I.B.2);

(b) ensure that legal persons cannot avoid liability or sanctions for foreign bribery and related offences by restructuring, merging, being acquired, or otherwise altering their corporate identity (Convention Art. 2; Anti-Bribery Recommendation Annex I.B.5);

(c) enhance the use of ML Art. 43/A, especially in foreign bribery cases (Convention Art. 2; Anti-Bribery Recommendation VI(iii)); and

(d) train relevant prosecutors and judges on corporate liability and sanctions for foreign bribery, including the application of the provision on corporate fine (Convention Art. 2; Anti-Bribery Recommendation Annex I).

20. Regarding confiscation against legal persons, the Working Group recommends that Türkiye:

(a) ensure that confiscation may be imposed on legal persons without a prior conviction of a natural person (Convention Art. 3(3); Anti-Bribery Recommendation Annex I.B.2);

(b) provide for confiscation against state-owned enterprises (Convention Art. 3(3); Anti-Bribery Recommendation Annex I.B.1); and

(c) draw the attention of prosecutors, including through training or guidance, to the importance of seeking confiscation against legal persons in foreign bribery cases (Convention Art. 3(3); Anti-Bribery Recommendation XVI.iii).

21. Regarding debarment from public procurement, the Working Group recommends that Türkiye:

(a) amend the Public Procurement Law to clearly specify the length of debarment applicable to entities convicted of foreign bribery (Convention Art. 3(4); Anti-Bribery Recommendation XXIV.i);

(b) take steps to ensure that its procuring authorities, when deciding whether to award a procurement contract, (i) check the debarment lists of multilateral development banks, and (ii) consider a prospective contractor's anti-corruption compliance programme (Anti-Bribery Recommendation XXIII.D.i and XXIV.v);

(c) consider compliance programmes as a mitigating factor in debarment proceedings (Anti-Bribery Recommendation XXIV.iii); and

(d) maintain statistics on the number of entities debarred due to a conviction for foreign bribery (Convention Art. 3(4); Anti-Bribery Recommendation XXIV.i).

Follow-up by the Working Group

22. The Working Group will follow up case law and practice regarding the following issues:

(a) application of CC Arts. 252(4) and 252(9) to cases where a foreign public official is offered or promised but does not accept a bribe (Convention Art. 1);

(b) interpretation of the term "to be indicated" in CC Art. 252(1) (Convention Art. 1);

(c) follow up whether the evidentiary threshold for wiretapping, surveillance and asset freezing hinders foreign bribery investigations (Convention Art. 5; Anti-Bribery Recommendation X.i);

(d) refusals of mutual legal assistance pursuant to Law 6706 Art. 8(1)(f) (Convention Art. 9);

(e) whether Türkiye provides prompt and effective legal assistance to another Party for non-criminal proceedings within the scope of the Convention brought by a Party against a legal person (Convention Art. 9(1); Anti-Bribery Recommendation XIX.A.iv);

(f) whether Türkiye submits a case to its competent authorities for prosecution where extradition has been declined solely on the ground that the person is a Turkish national (Convention Art. 10(3));

(g) application of ML Art. 43/A to state-owned enterprises (Convention Art. 2; Anti-Bribery Recommendation Annex I.B.1);

(h) the level of a natural person's authority that would trigger corporate liability (Convention Art. 2; Anti-Bribery Recommendation Annex I.B.3);

(i) corporate liability for foreign bribery committed using an intermediary, including related legal persons (Convention Art. 2; Anti-Bribery Recommendation Annex I.C.1);

(j) the meaning of "benefit" in ML Art. 43/A (Convention Art. 2; Anti-Bribery Recommendation Annex I.C.1);

(k) jurisdiction over legal persons for foreign bribery under ML Art. 43/A (Convention Arts. 2 and 4; Anti-Bribery Recommendation Annex I.B.4); and

(l) sanctions imposed under ML Art. 43/A (Convention Arts. 2 and 3).

Annex 1. Summaries of foreign bribery cases concluded since Phase 3

Real Estate (Turks and Caicos Islands)

This was the Real Estate Case (Case #2) in the Phase 3 Report (para. 16).

In 2007, Turkish businessman A allegedly bribed B, a senior official of the Turks and Caicos Islands (TCI), to develop commercial real estate and acquire land at below market prices. An independent inquiry by a UK judge found that the donation "was a possibly corrupt payment" and recommended a criminal investigation. In a 2011, a TCI judge found "a very strong probability that the money was paid as a bribe in order to ensure that the defendant companies obtained the benefit of the proposed development". B's criminal trial in TCI for bribery was reportedly scheduled to begin in October 2023.

Türkiye states that it learned of the case because of information provided by the Working Group and the press. The Turkish Ministry of Justice referred the matter to the Ankara Public Prosecutor's Office (PPO) in 2009 (Phase 3 Report para. 16). But the Ankara Chief PPO initiated an investigation only in 2011. In 2012, the matter was transferred to the Gaziantep Chief PPO. Foreign authorities responded to Türkiye's MLA requests in 2013. Further MLA requests were sent to TCI and another Party to the Convention in 2013 or 2014. In September 2019, the Gaziantep PPO sent a second MLA to TCI which was unanswered. In May 2022, the Gaziantep PPO issued a "decision of non-prosecution".

Construction (Kyrgyzstan)

This was Case #3 Construction Case in the Phase 3 Report (para. 17).

In August 2012, the media reported allegations that Turkish businessman A gave a senior Kyrgyz official B a thoroughbred horse worth up to USD 1.5 million. In return, A's firm obtained licences to build an air traffic control tower at Bishkek's Manas Airport. The Ankara PPO opened an investigation in 2011 or 2012. It requested MLA from a foreign country in September 2013. The case was then closed at an unspecified time due to a lack of "concrete evidence". It was reopened in 2013 or 2014, either because the MLA arrived or because Kyrgyzstan informed Türkiye that it was investigating the official B and requested MLA from Türkiye. In any event, Türkiye closed the case again in October 2014 due to insufficient evidence.

Annex 2. Onsite visit participants

Public Sector

Ministry of Justice
- Directorate General for Foreign Relations and European Union Affairs
- Directorate General for Criminal Affairs
- Directorate General for Legislation
- Directorate General for Criminal Records and Statistics
- Department of Strategic Development
- Justice Academy

Ministry of Trade
- Directorate General for International Agreements and EU
- Directorate General for International Trade in Services

Ministry of Labour and Social Security
- Directorate General for Labour
- Directorate General for Foreign Relations and EU Affairs

Ministry of Foreign Affairs, General Directorate of Multilateral Economic Affairs

Ministry of Treasury and Finance
- Tax Inspection Board
- Directorate of the Revenue Administration
- General Directorate of Institutions and Enterprises with Public Capital

MASAK

Public Procurement Office

Türk Eximbank

Turkish Co-operation and Co-ordination Agency

Council of Ethics for Public Officials

Small and Medium Enterprises Development Organisation of Türkiye (KOSGEB)

Capital Markets Board

Judiciary

Ankara
- 1st, 11th, 31st and 36 Heavy Penal Courts
- 1st Criminal Court of First Instance
- 5th Criminal Chamber

İstanbul 1st, 2nd, 6th, 12th, 16th and 37th Heavy Penal Courts

Council of Judges and Prosecutors

Prosecutors and law enforcement agencies

Ankara Chief Public Prosecutor's Office

İstanbul Chief Public Prosecutor's Office

Court of Cassation Public Prosecutor's Office

Gaziantep Chief Public Prosecutor's Office

Turkish National Police, Department of Anti-Smuggling and Organised Crime

Ministry of Interior, Gendarmerie General Command

Parliamentarians

Justice Commission, Grand National Assembly

Private Sector: Private Enterprises

AKBank
Alarko
ASELSAN
ENKA
HAVELSAN
İşbank
ROKETSAN
Sabancı
STM
TAV
TEI
Tekfen
Turkish Aerospace (TAI)
Vakif Bank
Yapı Merkezi
Ziraat Bankasi
Zorlu

Private Sector: Business Associations

Banks Association of Türkiye

Ethics and Reputation Society (TEID)

Participation Banks Association of Türkiye (TKBB)

Turkish Contractors Association

Turkish Defence and Aerospace Industry Manufacturers Association (SASAD)

TUSIAD

Lawyers and legal academics

Judges Union

İstanbul Bar Association No. 2

CBC Law

Pekin Bayar Mizrahi Law

İstanbul Medipol University

İstanbul Kültür University

İstanbul University Özyeğin University

Accounting and auditing profession

Chamber of Auditors
Union of Chambers of Certified Public Accountants
Public Oversight, Accounting and Auditing Standards Authority
EY
KPMG
Deloitte
PwC

Civil Society and media

Anadolu Ajansi
Confederation of Turkish Real Trade Unions
Corporate Governance Association of Türkiye (TKYD)
İHA
KARAR
ODA TV
Transparency International Türkiye

Annex 3. List of abbreviations and acronyms

AML	anti-money laundering
Art.	Article
BDS	Turkish Auditing Standards (*Bağimsiz Denetim Standardi*)
CC	Criminal Code (Law No. 5237)
CCP	Code of Criminal Procedure (Law No. 5271)
CJP	Council of Judges and Prosecutors (*Hâkimler ve Savcılar Kurulu*)
CJPL	Council of Judges and Prosecutors Law (No. 6087)
CMB	Capital Market Board
CML	Capital Markets Law (No. 6362)
CoE	Council of Europe
CoP	Türk Eximbank Codes of Practice for Anti-Bribery in International Business Transactions (export credits)
CPPO	Chief Public Prosecutor's Office
CTL	Corporate Tax Law (No. 5520)
DPACL	Declaration of Property and Anti-Corruption Law (No. 3628)
DTAs	Double Taxation Agreements
EAW	European Arrest Warrant
ECA	export credit agency
ECHR	European Court of Human Rights
EUR	euro
FATF	Financial Action Task Force
GCPP	General Communique on Public Procurement
GIB	Turkish Revenue Administration (*Gelir Idaresi Başkanliği*)
HCJP	High Council of Judges and Prosecutors (*Hâkimler ve Savcılar Yüksek Kurulu*)
IFRS	International Financial Reporting Standards
ISA	International Standards on Auditing
ITL	Income Tax Law (No. 193)
KGK	Public Oversight, Accounting, and Audit Standards Authority (*Kamu Gözetimi Kurumu*)
KOSGEB	Small and Medium Enterprises Development Organisation (*Küçük ve Orta Ölçekli İşletmeleri Geliştirme ve Destekleme İdaresi Başkanlığı*)
MAAC	Multilateral Convention on Mutual Administrative Assistance in Tax Matters
MASAK	Turkish Financial Crimes Investigation Board (*Mali Suclari Arastirma Kurulu*)
MFA	Ministry of Foreign Affairs
ML	Misdemeanour Law (No. 5326)
MLA	mutual legal assistance
MOJ	Ministry of Justice
MOT	Ministry of Trade
PEP	politically exposed persons
PG	Prosecutor General
PPA	Public Procurement Authority
PPL	Public Procurement Law (No. 4734)
PPO	Public Prosecutor's Office
SME	micro, small or medium-sized enterprise
SOE	state-owned or controlled enterprise
STR	suspicious transaction report (money laundering)
TCI	Turks and Caicos Islands
TCL	Turkish Commercial Law (No. 6102)
TİKA	Turkish Co-operation and Co-ordination Agency (official development assistance)
TPC	Tax Procedure Code (Law No. 213)
TRY	Turkish lira
TÜRMOB	Union of Chambers of Certified Public Accountants and Sworn-in Certified Public Accountants
UNCAC	United Nations Convention against Corruption
VDK	Tax Inspection Board (*Vergi Denetim Kurulu Baskanligi*)

Annex 4. Excerpts of relevant legislation

Criminal Code

Application in terms of location

Art. 8(1) Turkish laws are applied for crimes committed in Türkiye. If the act is partially or wholly committed in Türkiye or if the result takes place in Türkiye, the crime is deemed to have been committed in Türkiye.

[…]

Corporate crime committed by a citizen

Art. 11(1) If a Turkish citizen commits a crime in a foreign country, which requires a prison sentence of not less than one year according to Turkish laws, except for the crimes listed in Article 13, and if he is in Türkiye, no judgment has been given in the foreign country for this crime. and punishable under Turkish law, provided that it is prosecutable in Türkiye.

[…]

Confiscation of Property

Art. 54(1) On the condition that the property does not belong to any third party acting in good faith, property that is used for committing an intentional offence or is allocated for the purpose of committing an offence, or property that has emerged as a result of an offence shall be confiscated. Property that is prepared for the purpose of committing a crime shall be confiscated, if it presents a danger to public security, public health or public morality.

(2) Where the property defined in section one cannot be confiscated because it has been destroyed, given to another, consumed, or, for any other reason, an amount of money equal to the value of this particular property shall be confiscated.

(3) Where the confiscation of property used in an offence would lead to more serious consequences than the offence itself, and would be unfair, confiscation may not be ordered.

(4) Any property where, the production, possession, usage, transportation, buying and selling of which has constituted an offence, shall be confiscated.

(5) When only a certain part of a property needs to be confiscated, then only that part shall be confiscated, if it is possible to do so without harming the whole, or if it is possible to separate that part of it.

(6) Where property is shared by more than one person, only the share of the person who has taken part in the crime, shall be confiscated.

Confiscation of Gains

Art. 55(1) Material gain obtained through the commission of an offence, or forming the subject of an offence or obtained for the commission of an offence and the economic earnings obtained as a result of its investment or conversion, shall be confiscated. Confiscation under this section should only be ordered where it is impossible to return the material gain to the victim of the offence.

(2) Where property and material gain which is subject to confiscation cannot be seized or provided to the authorities then value corresponding to such property and gains shall be confiscated.

Bribery

Art. 252. (1) Any person who directly or through intermediaries provides an undue advantage to a public official, or a person to be indicated by that public official, in order that he acts or refrains from acting in the exercise of his official duties shall be sentenced to a penalty of imprisonment for a term of four to twelve years.

(2) Any public official who provides any undue advantage directly or through intermediaries for himself/herself or to anyone else to be indicated by himself/herself in order to act or refrain from acting in the exercise of his/her duty shall also be sentenced to the same penalty stipulated in the first paragraph.

(3) Where the parties agree upon a bribe, they shall be sentenced as if the offence were completed.

(4) In cases where a public official requests a bribe but this is not accepted by the person or a person offers or promises any undue advantage to a public official but this is not accepted by the public official, the penalty imposed in accordance with the provisions of first and second paragraphs shall be decreased by one half.

(5) Any person acting as an intermediary for transferring the offer or the request for bribe to the other party, making the agreement on bribery or providing the bribe to the other party shall be sentenced as principal offender, irrespective of being a public official.

(6) Any third person who has been provided any undue advantage indirectly within the bribery relation or the representative of the legal entity accepting the undue advantage shall be sentenced as principal offender, irrespective of being a public official.

(7) Where the person who receives or requests a bribe or agrees to such is a person in a judicial capacity, an arbitrator, an expert witness, a public notary or a professional financial auditor, the penalty to be imposed shall be increased by one third to one half.

(8) The provisions of this Article shall also apply in the case of providing, offering or promising of any undue advantage, directly or through intermediaries, for persons -irrespective of being a public official- who act on behalf of the legal entities listed below; requesting or accepting bribe by such persons; intermediating to these activities; providing any undue advantage to another person through this relation, in order to act or refrain from acting in the exercise of their duties:

(a) Public professional organisations,

(b) Companies incorporated by the participation of public institutions or public organisations or public professional organisations,

(c) Foundations acting under public institutions or public organisations or public professional organisations,

(d) Associations working in the interest of public,

(e) Co-operatives

(f) Public joint stock companies.

(9) The provisions of this Article shall also apply to:

(a) public officials elected or appointed in a foreign country;

(b) judges, jury members or other officials who work at international or supranational courts or foreign state courts;

(c) members of the international or supranational parliaments;

(d) individuals who carry out a public duty for a foreign country, including public institutions or public enterprises;

(e) citizens or foreign arbitrators who have been appointed in an arbitration process, initiated to resolve a legal dispute; and

(f) officials or representatives working at international or supranational organizations that have been established based on an international agreement;

if an undue advantage is provided, offered or promised directly or via intermediaries, or if the respective individuals request or accept such undue advantage directly or via intermediaries, in relation to the execution of that individual's duty to perform or not to perform, with the purpose of carrying out an international commercial procedure or obtaining or keeping an unlawful benefit.

(10) Where the bribery offence that falls within the scope of paragraph 9 is committed, although by a foreigner abroad, with regard to a dispute to which:

(a) Türkiye,

(b) a public institution in Türkiye,

(c) a private legal person established in accordance with Turkish legislation,

(d) a Turkish citizen

is a party, or to perform or not to perform a transaction concerning these institutions or persons, ex-officio investigation and prosecution shall be initiated against the persons who give, offer or promise a bribe; who receive, request, accept the offer or promise of a bribe; who intermediate these; who are provided with any undue advantage due to bribery relation, if they are present in Türkiye.

Article 253 – Implementation of Security Measure on Legal Entities

(1) Where a legal entity secures an unjust benefit through the offense of bribery, security measures specific to legal entities shall apply.

Article 282 – Money Laundering

Art. 282(1) A person who takes the values of his assets abroad resulting from a crime with a lower limit of imprisonment of six months or more, or who subjected them to various procedures in order to conceal their illegitimate source or to make them believe that they were obtained through a legitimate means, is sentenced to imprisonment from three years to seven years and up to twenty thousand days. shall be punished with a judicial fine of up to

(2) A person who buys, accepts, possesses or uses the value of the assets constituting the subject of this crime, knowing this feature, without participating in the commission of the crime in the first paragraph, from two to five years punishable by imprisonment. [(99)]

(3) If this crime is committed by a public official or a person with a certain profession during the performance of this profession, the prison sentence to be imposed is increased by half.

(4) If this crime is committed within the framework of the activity of an organization formed to commit a crime, the penalty to be imposed is increased by one fold.

(5) Due to the commission of this crime, security measures specific to them shall be imposed on legal persons.

(6) The person who ensures the seizure of the assets subject to the crime or facilitates their seizure by informing the competent authorities before the prosecution starts due to this crime, shall not be sentenced for the crime defined in this article.

Misdemeanour Law Art. 43/A

Note: amendments in 2020 and 2023 are underlined.

Liability of legal entities

Art. 43/A (1) Where the act does not constitute a misdemeanour which requires more severe administrative fines; in the case that an organ or a representative of a ~~private~~ legal person; or; a person, who is not the organ or representative but undertakes a duty within the scope of that legal person's operational framework commits the following offences to the benefit of that legal person, the legal person shall also be sentenced to an administrative fine of 10 000 Turkish liras to ~~2 million~~ 50 million Turkish liras. However, the administrative fine shall not be less than twice the advantage, which is the subject of the procedure or action:

(a) Offences stated in the Criminal Code of Türkiye No. 5237:
  (1) Fraud (theft by deception) defined in Articles 157 and 158,
  (2) Production and trade of narcotics or psychotropic substances defined in Article 188,
  (3) Bid rigging defined in Article 235,
  (4) Fraud during the discharge of contractual obligations defined in Article 236,
  (5) Bribery defined in Article 252,
  (6) Laundering of assets acquired from an offence defined in Article 282,

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

(c) Offences of smuggling defined in the Anti-Smuggling Law, dated 21/3/2007 and numbered 5607,

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

(d) Offence of financing of terrorism defined in Article 4 of The Law No. 6415 on the Prevention of the Financing of Terrorism dated 7/2/2013.

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

(3) If the offences listed in paragraph one are committed to the benefit of a legal person, the completion of an investigation or prosecution against the person, who committed the act, shall not be awaited in order to impose an administrative fine to that legal person. If, at the end of the investigation or prosecution, it is understood that the act was not committed to the benefit of that legal person, the administrative fine shall be lifted and the amount shall be returned, if collected already.

Declaration of Property and Anti-Corruption Law (DPACL)

Art. 17(1) The provisions of the Law on the Trial of Civil Servants and Other Public Officials dated 2.12.1999 and numbered 4483 shall not apply to those who are accused of the crimes set forth in this Law and in the Banking Law dated 18.6.1999 and numbered 4389, as well as the crimes of extortion, bribery, simple and qualified embezzlement, smuggling during or because of their duty, rigging official tenders and purchases and sales, disclosing or causing the disclosure of State secrets, or of participating in these crimes. 12.1999 dated 4483 on the Trial of Civil Servants and Other Public Officials shall not apply.

[...]

Art. 19(1) When the Public Prosecutor learns that the crimes mentioned in Article 17 have been committed, he shall directly and personally start an investigation against the defendants and shall notify the situation to the chief officer authorized to appoint or to the authorities listed in Article 8.

Annex 5. Data on corporate enforcement

Part 1: Data provided by Türkiye on 19 December 2023

Table 1.1 Number of Investigation Files, Suspects and Crimes (in Public/Private and Natural Person Details) Opened in the Chief Public Prosecutors' Offices During the Year in Relation to Article 252 of the Turkish Penal Code No. 5237 (01.01.2018-31.12.2022)				
Year of File Opening	**Natural Person / Legal Person**	**Number of Files**	**Number of Suspects**	**Number of Crimes**
2018	PUBLIC INSTITUTION	29	23	30
2018	PRIVATE INSTITUTION	79	81	98
2019	PUBLIC INSTITUTION	48	26	50
2019	PRIVATE INSTITUTION	22	22	25
2020	PUBLIC INSTITUTION	59	17	59
2020	PRIVATE INSTITUTION	23	17	28
2021	PUBLIC INSTITUTION	36	29	42
2021	PRIVATE INSTITUTION	26	17	26
2022	PUBLIC INSTITUTION	27	25	27
2022	PRIVATE INSTITUTION	21	26	31
Total		**370**	**283**	**416**

Table 1.2 Number of Investigation Files, Suspects and Crime Closed During the Year by Type of Decision (in Public/Private and Natural Person Details) Regarding Article 252 of the Turkish Penal Code No. 5237 in Chief Public Prosecutors' Offices (01.01.2018 31.12.2022)										
Year of The File Closing	**Natural person / Legal Person**	**Decision of Non-Prosecution**			**Public Prosecution**			**Other Judgements**		
		Files	**Suspects**	**Crimes**	**Files**	**Suspects**	**Crimes**	**Files**	**Suspects**	**Crimes**
2018	Public Institution	8	7	8				6	5	6
2018	Private Institution	68	87	96	1	1	1	23	22	24
2019	Public Institution	30	25	31				17	12	18
2019	Private Institution	43	46	52	1	1	1	2	3	3
2020	Public Institution	41	15	42				10	7	10
2020	Private Institution	16	13	17	1	1	1	3	3	3
2021	Public Institution	40	24	43	2	2	2	9	10	12
2021	Private Institution	12	9	12	3	3	3	10	8	11
2022	Public Institution	19	19	19				5	5	5
2022	Private Institution	13	13	15	1	1	1	5	4	5
Total		**290**	**258**	**335**	**9**	**9**	**9**	**90**	**79**	**97**

Table 1.3 Number of Files, Accused Persons and Crimes According to the Types of Decisions in Criminal Case Files (in Public/Private and Natural Person Details) Decided in Criminal Courts within the Year Related to Article 252 of the Turkish Penal Code No. 5237 (01.01.2018-31.12.2022)													
Year Of File Decision	**Natural person / Legal Person**	**Sentence**			**Acquittal**			**Postponement Of Announcing a Judgement**			**Other Judgements**		
		Files	**Suspects**	**Crimes**	**Files**	**Suspects**	**Crimes**	**Files**	**Suspects**	**Crimes**	**Files**	**Suspects**	**Crimes**
2018	Private Institution				1	1	1						

Part 2: Data provided by Türkiye on 26 January 2024

Table 2.1 Number of Files, Accused Persons and Offences in Accordance with the Article 43/A of the Law Numbered 5326 in the Case Files Concluded within the Criminal Courts (01.01.2020-07.01.2024)											
Decision Year	**Law No**	**Law Article**	**Name of Offence**	**Party Real / Legal Person**	**Type of Decision**	**Type of Conviction**	**Type of Judicial Fine**	**Amount of Fine**	**Number of Files**	**Number of Accused**	**Number of Offences**
2020	5326	43/A-1-a-2	The Offence of Bid Rigging as Defined in the Article 235 of Turkish Penal Code No. 5237	Private Institution	Decision of Not Imposing an Administrative Sanction				1	2	2
2020	5326	43/A-1-ç	Offence Additional Article 5 of the Petroleum Market Law No. 5015	Real Person	Decision of Not Imposing a Sentence				1	1	1
2021	5326	43/A-1-a-1	Offence of Fraud as Defined in the Articles 157 and 158 of Penal Code	Private Institution	Conviction	Judicial Fine	Administrative Fine	20000	1	1	1
2022	5326	43/A	Opposition to the Law on Misdemeanours	Real Person	Dismissal				1	2	2
2022	5326	43/A	Opposition to the Law on Misdemeanours	Private Institution	Decision of Not Imposing Administrative Sanction				1	1	1
2022	5326	43/A-1-c	Smuggling Offences in Anti-Smuggling Law 5607	Real Person	Acquittal				2	4	4
2022	5326	43/A-1-c	Smuggling Offences in Anti-Smuggling Law 5607	Private Institution	Decision of Not Imposing Administrative Sanction				1	4	4
2023	5326	43/A-1-c	Smuggling Offences in Anti-Smuggling Law 5607	Real Person	Acquittal				1	1	1
2023	5326	43/A-1-c	Smuggling Offences in Anti-Smuggling Law 5607	Real Person	Decision of Not Rendering Judgement				1	2	2
2023	5326	43/A-1-c	Smuggling Offences in Anti-Smuggling Law 5607	Real Person	Separation				1	1	1

Table 2.2 Number of Pending Files, Suspects and Offences in Accordance with the Article 43/A of the Law on Misdemeanours No. 5326 within the Chief Public Prosecutor's Offices as of 18/01/2024						
Law No	**Applicable Law Article**	**Name of Offence**	**Party Real / Legal Person**	**Number of Files**	**Number of Suspects**	**Number of Offences**
5326	43/A-1-a-1	Offence of Fraud as Defined in the Articles 157 and 158 of Turkish Penal Code No. 5237	Real Person	6	12	14
5326	43/A-1-c	Smuggling Offences Defined in the Anti-Smuggling Law No. 5607 and dated 21/3/2007	Real Person	51	59	59

Table 2.3 Number of Pending Files, Accused Persons and Offences in Accordance with the Article 43/A of the Law on Misdemeanours No. 5326 within the Criminal Courts as of 18/01/2024						
Law No	**Applicable Law Article**	**Name of Offence**	**Party Real / Legal Person**	**Number of Files**	**Number of Accused**	**Number of Offences**
5326	43/A-1-a-1	Offence of Fraud as Defined in the Articles 157 and 158 of Turkish Penal Code No. 5237	Real Person	1	1	1
5326	43/A-1-a-2	Offence of Bid Rigging as Defined in the Article 235 of Turkish Penal Code No. 5237	Real Person	1	1	1
5326	43/A-1-a-2	Offence of Bid Rigging as Defined in the Article 235 of Turkish Penal Code No. 5237	Private Institution	1	1	1
5326	43/A-1-a-4	Offence of Bribery as Defined in the Article 252 of Turkish Penal Code No. 5237	Real Person	3	14	14
5326	43/A-1-c	Smuggling Offences Defined in the Anti-Smuggling Law No. 5607 and dated 21/3/2007	Real Person	18	23	27

Part 3: Data on security measures provided by Türkiye on 21 November 2023

Table 3.1 Number of Files Opened, Suspects and Offences in the Relevant Year that the Support Article 253 Is Applied with the Article 252 of Turkish Penal Code Numbered 5237 within the Chief Public Prosecutor's Offices (01.01.2018-31.12.2022)							
Year	**Law No**	**Applicable Article**	**Support Article**	**Support Offence Name**	**Number of Files**	**Number of Suspects**	**Number of Offences**
2018	5237	252/1	253	Security Measures on Legal Entities	3	13	13
2019	5237	252/1	253	Security Measures on Legal Entities	7	11	11
2020	5237	252/1	253	Security Measures on Legal Entities	3	3	3
2021	5237	252/1	253	Security Measures on Legal Entities	3	5	5
Total					**16**	**32**	**32**

Table 3.2 Files Concluded, Suspects and Offences in the Relevant Year that the Support Article 253 Is Applied with the Article 252 of Turkish Penal Code Numbered 5237 within the Chief Public Prosecutor's Offices (01.01.2018-31.12.2022)													
Closing Year of File	**Law No**	**Applicable Article**	**Support Article**	**Support Offence Name**	**Decision Of Non-Prosecution**			**Opening Of Public Case**			**Other Decisions**		
					Files	**Suspects**	**Offences**	**Files**	**Suspects**	**Offences**	**Files**	**Suspects**	**Offences**
2019	5237	252/1	253	Security Measures on Legal Entities	4	15	15	1	1	1	1	1	1
2020	5237	252/1	253	Security Measures on Legal Entities	1	3	3	3	4	4			
2021	5237	252/1	253	Security Measures on Legal Entities	2	4	4	3	2	3			
2022	5237	252/1	253	Security Measures on Legal Entities	1	1	1				1	1	1
Total					**8**			**7**			**2**		

Table 3.3 Files, Accused Persons and Offences Based on Types of Decisions Within the Criminal Case Files Concluded in the Relevant Year that the Support Article 253 Is Applied with the Article 252 Of Turkish Penal Code Numbered 5237 Within the Criminal Courts (01.01.2018-31.12.2022)																
Decision Year	**Law No**	**Applicable Law Article**	**Support Article**	**Support Offence Name**	**Types Of Decisions**											
					Conviction			**Acquittal**			**Deferment of the Announcement of The Judgment**			**Other Decisions***		
					Files	**Accused**	**Offences**	**Files**	**Accused**	**Offences**	**Files**	**Accuse**	**Offences**	**Files**	**Accused**	**Offences**
2018	5237	252/1	253	Security Measures on Legal Entities				1	1	1						
2022	5237	252/1	253	Security Measures on Legal Entities	1	1	1							1	1	1

* Türkiye states that "other decisions" are deferral, decision not to impose sentence, withdrawal of imposing sentence, and dismissal.

Annex 6. Data on judges and prosecutors in service and appointments

Information provided by Türkiye's Ministry of Justice

Year	In service			Appointments (including annual relocations of existing officials)		
	Judges	Prosecutors	Total	Judges	Prosecutors	Total
2013	8960	4706	13666	1447	890	2337
2014	9782	5028	14810	2242	1359	3601
2015	9822	4910	14732	2390	1335	3725
2016	11301	4881	16182	5187	2230	7417
2017	11249	4854	16103	1982	1020	3002
2018	13356	6071	19427	2854	1378	4232
2019	14064	6565	20629	2797	1230	4027
2020	14909	6863	21772	3451	1562	5013
2021	14823	6807	21630	2316	1179	3495
2022	15427	7434	22861	3653	2056	5709