

# TURKEY

## Little or no enforcement

0.9% of global exports

### Investigations and cases

In the period 2016-2019, Turkey opened one investigation, commenced no cases and concluded no cases with sanctions.

In other jurisdictions, the US Securities and Exchange Commission filed charges in April 2020 against a former Goldman Sachs executive for his role in “orchestrating a bribery scheme to help a client win a government contract to build and operate an electrical power plant in Ghana”.<sup>1</sup> According to media reports, the client in question is Turkish power producer **Aksa Enerji**, which allegedly paid at least US\$2.5 million in bribes for the contract.<sup>2</sup>

In Estonia, the trial began in early 2019 of employees at the state-owned Port of Tallinn, charged by local prosecutors with accepting bribes between 2005 and 2015 from several Turkish and Polish companies, in exchange for contracts to build ferries for the Estonian company.<sup>3</sup>

### Recent developments

Turkey has made only limited progress in implementing the OECD WGB’s recommendations in its 2014 Phase 3 Report<sup>4</sup> and 2017 Phase 3 Follow-up Report.<sup>5</sup> In March 2019, the OECD WGB

announced that it would send a High-Level Mission to Ankara in 2020 unless Turkey took concrete action by October 2019 to address deficiencies.<sup>6</sup> In October 2019, Turkey submitted a report on its efforts to implement the WGB’s recommendations. The report focused on the existing legal framework and aspects of the enforcement system, such as training efforts and an increase in the number of prosecutors.<sup>7</sup>

Turkey also reported in 2017 that it had issued a legally binding direction to prosecutors and investigators about international corruption cases, Circular No. 157.<sup>8</sup> However, this circular includes an incorrect definition of foreign bribery, as the bribery of Turkish officials by foreign companies.

In 2019, the Financial Action Task Force Mutual Evaluation Report on Turkey criticised the country’s lack of necessary measures to regulate politically exposed persons in the country’s legislation.<sup>9</sup>

### Transparency of enforcement information

Turkey maintains aggregated data on domestic bribery offences but does not publish statistics on foreign bribery enforcement. There is no published data on mutual legal assistance requests sent and received. Unless otherwise stated, all court decisions may be accessed from courts on request.

### Beneficial ownership transparency

There is no central register for beneficial ownership information. Turkey has several registers which record information on shareholders, which may be useful in determining beneficial owners, such as the Trade Registry Gazette, the Central Registration

<sup>1</sup> <https://www.sec.gov/news/press-release/2020-88>

<sup>2</sup> <https://www.sec.gov/litigation/complaints/2020/comp-pr2020-88.pdf>; <https://ethixbase.com/turkey-turkish-energy-producer-caught-up-in-ghana-bribery-claims/>; <https://energynewsafrika.com/index.php/2020/04/23/ghana-ex-tor-md-bribery-allegation-well-cooperate-with-us-authorities-aksa-energy/>;

<sup>3</sup> <https://news.err.ee/907911/port-of-tallinn-corruption-case-trial-to-begin-on-7-may>

<sup>4</sup> <https://www.oecd.org/daf/anti-bribery/TurkeyPhase3ReportEN.pdf>

<sup>5</sup> <https://www.oecd.org/corruption/anti-bribery/Turkey-Phase-3-Written-Follow-Up-Report-ENG.pdf>

<sup>6</sup> <https://www.oecd.org/corruption/turkey-s-foreign-bribery-enforcement-framework-needs-to-be-urgently-strengthened-and-corporate-liability-legislation-reformed.htm>

<sup>7</sup> [https://one.oecd.org/document/DAF/WGB\(2019\)38/en/pdf](https://one.oecd.org/document/DAF/WGB(2019)38/en/pdf)

<sup>8</sup> <https://www.oecd.org/corruption/anti-bribery/Turkey-Phase-3-Written-Follow-Up-Report-ENG.pdf>

<sup>9</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>

System database, tax records and the Central Registry Agency's (*Merkezi Kayıt Kuruluşu*) records.<sup>10</sup> Information on publicly traded companies can also be accessed through the Public Disclosure Platform.<sup>11</sup> Only some of these registers are accessible to the public, notably the Trade Registry Gazette and the Public Disclosure Platform. In addition, according to the Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism,<sup>12</sup> certain legal entities are required to hold beneficial ownership information and make it available to inquiries by law enforcement officials.<sup>13</sup> Trusts are not governed by Turkish law.<sup>14</sup> Professional trustees governed by foreign laws are not required to have records in Turkish registries.

## Inadequacies in legal framework

Deficiencies in the Turkish legal framework have been repeatedly noted by the OECD WGB.<sup>15</sup> Among these, the corporate liability framework does not clearly cover state-owned and state-controlled enterprises. In addition, the prosecution or conviction of a natural person is required for sanctioning a legal person.<sup>16</sup> However, it is possible to confiscate the bribe or proceeds of bribery and impose security measures specific to legal entities without prior conviction of a natural person. Sanctions for legal persons found guilty of committing foreign bribery are not sufficiently effective, proportionate or dissuasive. Considering the context of big multinational companies paying bribes to obtain million-dollar contracts, available sanctions are too low.

Apart from these issues, there is no criminal liability for legal persons. Turkey also lacks whistleblower protection legislation covering the public and private sectors, and there are deficiencies in its anti-money laundering framework.

## Inadequacies in enforcement system

The OECD WGB Phase 3 Report on Turkey in 2014 raised serious concerns about Turkey's lack of active enforcement and called on the country to review its overall approach, provide sufficient resources and expertise to prosecutors and the police, take a more proactive approach to detection, and ensure that investigation and prosecution of foreign bribery is not influenced by the factors prohibited under Article 5 of the Anti-Bribery Convention. The OECD WGB expressed concerns that "foreign bribery investigations and prosecutions may 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". The OECD WGB's Follow-up Report in 2017 found only limited progress.

There are also serious concerns about the independence of Turkey's judiciary.<sup>17</sup> The removal of judges and investigators has, in the past, led to a halt in corruption investigations into leading members of the government.<sup>18</sup> The wholesale removal of more than 4,000 judges and prosecutors following an attempted coup gravely impacted the justice system.<sup>19</sup> As a result, the average level of

<sup>10</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>

<sup>11</sup> <https://www.kap.org.tr/en/menu-content/About-PDP/General-Information>

<sup>12</sup> [https://ms.hmb.gov.tr/uploads/sites/2/2019/04/R\\_RoM-1.pdf](https://ms.hmb.gov.tr/uploads/sites/2/2019/04/R_RoM-1.pdf)

<sup>13</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>

<sup>14</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>, p.203.

<sup>15</sup> See, for example, OECD WGB statement in 2019, <https://www.oecd.org/corruption/turkey-s-foreign-bribery-enforcement-framework-needs-to-be-urgently-strengthened-and-corporate-liability-legislation-reformed.htm>

<sup>16</sup> <https://www.oecd.org/corruption/turkey-s-foreign-bribery-enforcement-framework-needs-to-be-urgently-strengthened-and-corporate-liability-legislation-reformed.htm>

<sup>17</sup> Judicial independence was rated 3 out of 7 by participants in the Global Competitiveness Report 2019, [http://www3.weforum.org/docs/WEF\\_TheGlobalCompetitivenessReport2019.pdf](http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf)

<sup>18</sup> <https://www.reuters.com/article/us-turkey-corruption-prosecutors/turkeys-top-judicial-body-suspends-graft-probe-prosecutors-agency-idUSKBN0K80WC20141230>

<sup>19</sup> <https://www.reuters.com/article/us-turkey-security/turkey-has-removed-more-than-4000-judges-prosecutors-after-coup-minister-says-idUSKBN18M0Q9>

experience among the country's 14,000 judges is 2.5 years.<sup>20</sup>

Political interference and a lack of expertise in judges and prosecutors are therefore a central issue in the enforcement of anti-corruption provisions. In particular, the executive branch's power over the High Council of Judges and Prosecutors should be reduced. It is also of the utmost importance "that evaluations of the performance of judges and prosecutors, as well as disciplinary proceedings against them, are free from undue influence".<sup>21</sup>

## Recommendations

- Require courts to publish all decisions relating to foreign bribery, and collect and publish data regarding investigations and cases in implementation reports
- Create a publicly available central register for beneficial ownership information
- As recommended by the OECD WGB's Phase 3 Report in 2017, ensure that investigation and prosecution of foreign bribery are not influenced by considerations of national economic interest, the potential effect on relations with another state, or the identity of the natural or legal person involved
- Ensure the independence of the judiciary and the Prosecutor's Office from improper political influence
- As recommended by the OECD WGB's Phase 3 Report in 2017, ensure that any reassignment of police, prosecutors or magistrates does not adversely affect foreign bribery investigations and prosecutions
- Proactively and effectively investigate foreign bribery allegations
- Increase available sanctions to deter foreign bribery by corporations and introduce criminal liability of legal persons
- Raise awareness about foreign bribery among the general public and train private-sector employees and public officials to increase anti-corruption awareness within their organisations
- Regulate and enforce whistleblower protection in the public and private sectors
- Regulate politically exposed persons through relevant anti-money laundering legislation.

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<sup>20</sup> <https://www.nytimes.com/2019/06/21/world/asia/erdogan-turkey-courts-judiciary-justice.html>

<sup>21</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c9d29>