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Screening report

Turkey

Chapter 19 – Social policy and employment

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I. CHAPTER CONTENT

On the basis of article 137 of the Treaty establishing the European Community, the Community supports and complements the activities of the Member States in the area of social policy.

The *acquis* in the social field includes minimum standards in areas such as labour law, equal treatment of women and men in employment and social security, as well as health and safety at work. Specific binding rules have also been developed with respect to non-discrimination on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The European Social Fund (ESF) is the main financial tool through which the EU supports the implementation of its Employment Strategy and contributes to social inclusion efforts (implementation rules are covered under Chapter 22 “Regional policy and coordination of structural instruments” which deals with all structural instruments).

The Member States participate in social dialogue at European level and in EU policy processes in the areas of employment policy, social inclusion and social protection.

In the field of disability, the EU has adopted a strategy aimed at mainstreaming disability issues into relevant Community policies and at acting to enhance the integration of people with disabilities.

International agreements, such as the relevant ILO Conventions or the future UN Convention on the Rights and Dignity of Persons with Disabilities, need to be taken into consideration in this context.

In relation to chapter 23 “Judiciary and Fundamental Rights”, it should be noted that disability issues and trade union rights are covered by chapter 19 only. As regards anti-discrimination and equal opportunities, chapter 19 focuses essentially on employment aspects, whereas chapter 23 covers cultural and minority rights as well as violence against women.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

Turkey indicated that it can accept the *acquis* regarding social policy and employment. Turkey indicated that it does not expect any difficulties to implement the *acquis* by accession.

II.a. Labour law

The Turkish Labour Law was revised in May 2003 and is complemented by by-laws. The Labour Law provides for rights and obligations regarding working conditions and work environment of employers and workers. Latest revisions aimed at introducing provisions inspired by the *acquis* in the fields of working time and working conditions.

Civil servants are covered by distinct provisions included in the Law on Civil Servants. The Maritime Labour Law is applied to seafarers, and a draft Labour Law on Civil Aviation is under preparation. However, the scope of application of the Labour Law is restricted. The Labour Law does not apply, *inter alia*, to businesses or enterprises in the field of agriculture and forestry which employ less than 50 workers, apprentices, and tradesmen and craftsmen businesses employing less than three persons.

As regards working time, working time and night time are defined in the Turkish legislation (except for the Law on Civil Servants). However, there are no definitions on night worker, shift work, shift worker, mobile worker, offshore work and adequate rest.

Working time and night work are regulated in the Turkish legislation, as required by the *acquis*. Weekly working time is maximum 45 hours (40 hours for civil servants). Night work may not exceed 7 ½ hours. Before recruitment, a health report certifying that the health condition of the worker is suitable for night work is required. Annual leave is determined according to years of service (ranges from 14 to 26 business days; from 20 to 30 days for civil servants). As regards seafarers, the working time is eight hours a day and 48 hours per week. The annual leave ranges from 15 days to 1 month. There are no legal provisions on mobile staff in the railway sector in view of transposing the *acquis* in this field.

As regards working conditions (other than working time), labour contracts with a duration of one year or more have to be concluded in writing. However, the labour contract is not subject to a special form. The Labour Law includes provisions on full-time and part-time employment contracts. As required by the *acquis*, a fixed-term employment contract cannot be concluded successively more than once, unless there is an objective reason. In case there is no such reason, the employment contract is considered to be of indefinite duration. A temporary employment contract, not exceeding six months, shall be made in writing and can be renewed maximum twice. A by-law on Occupational Health and Safety of workers with fixed term and temporary employment relationships provides for the information and training of such employees as well as for the responsibility of the employer and/or the user undertaking.

As regards child labour, there is a general prohibition to employ a person younger than 15, as required by the *acquis*. However, some exceptions exist regarding light work. Employment of a child should not prevent him/her from attending school, professional education, etc. Night work in industrial sector is prohibited for minors below the age of 18. Children and young workers from 14 to 18 years old need to undergo a medical check prior to recruitment and every six months until completing the age of 18. Fines are imposed according to the severity of cases. While the number of working children from 12 to 17 years of age was 1,3 million according to the Household Labour Survey in 2000, it decreased to around 700 000 in 2003.

As regards employer's insolvency, a regulation on the establishment of the wage guarantee fund required by the *acquis* was issued in October 2004. The fund is managed by the Turkish Employment Agency (İŞKUR). Only the net monthly wages of the last three months are guaranteed.

In the area of information and consultation of workers, collective redundancies and transfers of undertakings are regulated in the Turkish legislation. A collective redundancy needs to be notified in writing at least 30 days in advance. Subsequently, there is consultation between the employer and workers' representatives. Notices of termination of the employment relationships become effective 30 days after the notification to the regional directorate, as required by the *acquis*. In cases of transfers of undertakings, employment contracts are transferred together with all rights and obligations arising from such contracts, as required by the *acquis*. A transfer cannot constitute the exclusive reason for terminating a labour contract. Collective labour agreements continue to apply despite the change of the employer. There are no legal provisions regulating information and consultation of employees' representatives in the event of a change of the employer.

There is no legislation on (transnational) posting of workers, European Works Councils, Information and Consultation of Workers, European Company and European Cooperative Society.

As regards administrative capacity, the main administrative body is the Ministry of Labour and Social Security and its General Directorate of Labour which performs its duties through 22 regional offices and one branch office. The Labour Inspection Board fulfils its duties through regional units located in 10 provinces.

II.b. Health and safety at work

In the field of health and safety at work, the number of accidents and occupational diseases has dropped markedly in the last years, in particular since the 1990s. Construction and mining are reported as the most dangerous sectors.

The Ministry of Labour and Social Security has adopted, since December 2003, a number of by-laws to transpose the *acquis*. The Turkish texts are reproducing the provisions of the existing EU directives in this area. Several pieces of Turkish legislation have been repealed recently to ensure consistency with the more recent legislation adopted in view of transposing the *acquis* in this field.

A Framework by-law on health and safety at work was adopted in December 2003 based on the EU framework directive on health and safety at work. However, it was suspended by the Council of State for legal reasons. New legislation is under preparation. Provisions on health and safety in force are regulated, *inter alia*, by the Labour Law and by-laws. Civil servants as well as activities not covered by the Labour Law are excluded from the scope of the existing Turkish legislation on health and safety at work.

The employer has the overall responsibility for health and safety at the workplace, and measures related to safety, hygiene and health at work may in no circumstances bring financial burden to workers. Industrial enterprises with a permanent activity of more than six months' duration and employing at least 50 persons need to establish an occupational health and safety board, and employ one or more engineers or technical personnel in charge of labour safety. Employers employing permanently at least 50 persons need to engage at least one workplace physician and establish a workplace health care unit depending on the number of employees and the degree of danger of the work performed. Workers to be employed in heavy and dangerous positions are subject to medical exams at the time of recruitment and annual health checks after recruitment. Training for workers is provided and it may not be at workers' or their representatives' expenses and the time spent in training shall be counted as time worked. The law provides for the right of employees to leave their workplace in case of a serious danger upon a decision of the occupational health and safety board.

Workplace is defined in the Turkish legislation. Legal provisions exist on use of work equipment, including temporary work at a height, as well as on use of personal protective equipment. The employer must provide the appropriate personal equipment free of charge and provide training in its use. Legislation has been adopted on safety signs, manual handling of loads and display screen equipment. The employer has the duty to ensure eyesight tests, as required by the *acquis*.

Legislation has been adopted on the minimum safety and health requirements for improved medical treatment on board vessels. The legislation provides for the establishment of a centre or centres to give free advice with radio in order to ensure a better emergency health

attendance. Legislation on minimum requirements for work on board fishing vessels shall enter into force in November 2006.

Legislation has been adopted in the fields of temporary or mobile construction sites, explosive atmospheres and mineral extracting industries. As regards the latter, a safety and health document must be drawn up by the employer and kept up to date, as required by the *acquis*. The employer shall report any serious and/or fatal occupational accidents and situations of serious danger to the regional directorate of the Ministry of Labour and Social Security at the latest within two days. As regards carcinogens and mutagens as well as chemical and biological agents, the EC classification system is used. Medical records on carcinogens and mutagens need to be kept for 40 years, as required by the *acquis*. The legislation on chemical agents does not provide for a total prohibition of certain chemical agents, which is foreseen in the *acquis*. As regards asbestos, there is no rule banning the selling and processing of products containing asbestos. Asbestos is also imported to Turkey. There is no asbestos-extractive industry. Applying asbestos by spraying is prohibited by law, as required by the *acquis*, as well as using certain material containing asbestos for isolation or sound isolation. The employer needs to draw up a work plan before any demolition work is begun in case of asbestos, as required by the *acquis*. Medical records need to be kept for 40 years. There are very few workers in this field and they are closely monitored.

Legislation on noise is foreseen to enter into force in December 2006. There is no legislation in the field of electromagnetic fields.

As regards administrative capacity, the Ministry of Labour and Social Security has the overall responsibility. The following bodies are reporting to it: The General Directorate on occupational safety and health, a training unit (CASGEM) and the Labour Inspection Board. Since its establishment in 2003, the staff of the General Directorate on occupational health and safety has doubled to reach 201 persons. In ten administrative provinces, there are in total 603 inspectors, 326 of which are responsible for the inspection of administrative and social aspects (labour relations) and 277 for inspections on occupational health and safety (technical inspections). More than half of the new staff has a technical and medical background. The appointment of further 100 assistant labour inspectors has been initiated. In addition to the Labour Inspection Board, Social Insurance Inspection Board also carries out occupational disease and work accident inspections. The total number of social insurance inspectors is 360. A National Occupational Health and Safety Council was established in 2005 as an advisory body in this field. There are no such committees on a regional or sectoral basis. Compliance in the field health and safety at work in the fishing sector is partly entrusted to the Health and Maritime Transport Ministries.

II.c. Social dialogue

In the private sector, the issue of collective bargaining and strikes is regulated by two laws, slightly amended in 2001, which date back to the early 1980s. These laws require the existence of two basic conditions for allowing a trade union to sign a collective agreement at company level: it must represent at least 50 % of workers within the company and 10 % of workers within the relevant sector nationwide. The current legislation also provides for particularly cumbersome procedures for workers to enrol in trade unions.

In the public sector, the Public Employee Trade Union Law of 2001, amended in 2004, prevents some groups of public employees from joining trade unions and maintains significant restrictions on the right to strike and to collective bargaining. A strike can be suspended for two months for reasons of national interest and public health, and for even a longer period by a Government decision.

There are plans to make amendments to the Law on Trade Unions and to the Law on Collective Agreements, Strike and Lock-out to remedy the situation. The Government has submitted suggested amendments to such laws to the social partners. No estimated timeframe for the adoption of the revised legislation was provided to the Commission.

The Penal Code provides for imprisonment of those who use force and threaten others regarding membership of or participation in trade union activities or dissociation from trade union or from position in management of trade union. It also envisages imprisonment where trade union activities have been hindered illegally.

Turkey has signed and ratified the ILO Conventions No 87 on Freedom of Association and Protection of the Right to Organise and No 98 on the Right to Organise and Collective Bargaining. However, domestic legislation has not been adapted accordingly. Turkey has not accepted Article 5 (right to organise) and Article 6 (right to bargain collectively, including the right to strike) of the European Social Charter. Turkey has signed the Revised European Social Charter in October 2004, but has not ratified it.

As regards tripartite social dialogue, the Turkish Economic and Social Council (ESC) was established in April 2001. The ESC consists of 39 members, 15 of which are Government representatives. It is chaired by the Prime Minister. A draft law exists in view of reshaping the composition of the ESC by increasing the number of representatives from the civil society and decreasing the number of those from the Government. Another tripartite body is the Labour Assembly, established in 1945, which convenes at the initiative of the Ministry of Labour and Social Security to handle labour issues. It was reconvened in September 2004 after 12 years of inactivity. A Tripartite Consultation Board, a body bringing together the Government and social partners, met for the second time in May 2005.

As regards autonomous bipartite social dialogue, collective bargaining exists in Turkey since the 1960s, but due to increased competition from emerging markets such as China the full implementation of collective bargaining encounters some resistance from industrial sectors. In general, the percentage of the labour force covered by collective agreements is extremely low. Limited or no social dialogue exists in most private enterprises.

Currently, there are three trade union confederations, one confederation of employers (Turkish Confederation of Employer Associations) and four confederations of civil servants in Turkey. They participate in the social dialogue at European level and are affiliated to ETUC and UNICE respectively.

II.d. Employment policy

In 2005, there was no substantial change in the employment (43.4 %) and labour force participation (48.3 %) rates, while unemployment rate remained the same (10.3 %) compared to 2004. Participation by women in the workforce is among the lowest in OECD countries, at 26.9 % (Eurostat LFS, 2004). There is a strong gender divide in the labour market partly coinciding with the urban/rural divide with a high concentration of low educated working women in agriculture, unpaid employment and informal activities. Youth unemployment rate was 19.3 % in 2005. The share of persons over 50 is 9.1 % within total employment.

The Turkish government and the European Commission are conducting an Employment Policy Review in view of formulating an employment policy in line with the European Employment Strategy. The JAP (Joint Assessment of Employment Policy Priorities) process was launched between the EU and Turkey in February 2004 and the JAP document should

be finalised in the second half of 2006. After the signature, the National Reform Programme will be prepared.

The Turkish Employment Agency (İŞKUR) is the main institution responsible for contributing to the elaboration and implementation of employment policy in Turkey. It is organised throughout the country and provides services through its provincial offices. There are 2 331 employees, which is 40 % more than in 2003 (1 667). As regards active labour market measures, İŞKUR has been carrying out various projects to increase employability of the labour force. In the framework of an Active Labour Market Programmes Project (2003–2006), 20 provincial office buildings were modernised and pilot office projects have been carried out in eight provinces to make İŞKUR services more efficient and productive. Staff training was provided to 1 351 employees. İŞKUR is also responsible for making arrangements concerning establishment and functioning of the private employment agencies.

As regards undeclared work, unregistered employment rate was 50.1 % in 2005. The most problematic sectors were agriculture (88.2 %) and construction (64.3 %). According to the Ministry of Labour and Social Security, the reasons behind undeclared work include high unemployment rate, high share of agricultural employment, high level of employment in SMEs, low level of education and training of labour force, inadequate enforcement of the legislation, lack of coordination among related public institutions, inefficiency of inspection, lack of awareness of employees about social security rights and obligations, etc. Recently, several measures have been taken to tackle undeclared work. The employer needs to notify business establishment and the employee needs to notify himself to the related social security authority. Flexible work models have been introduced and awareness raising activities are ongoing. Bureaucratic procedures have been simplified by establishing an e-declaration system (which is used by 96 % of insured persons and 72 % of employers) and one-stop offices covering all the procedures related to social insurance. The number of social insurance inspectors was 360 and the number of insurance clerks 326 in 2005. It is envisaged to increase the number of the latter. Administrative fines in case of undeclared work range from € 330 to € 930.

II.e. European Social Fund (ESF)

In order to prepare for the future management of the European Social Fund (ESF), the Turkish authorities have launched jointly with the Commission a reflection on the future structures in relation to the management and implementation of the Instrument of Pre-Accession (IPA) component IV (Human Resources Development). It is expected that an official decision about the Turkish implementation structures will be adopted in a short period of time after the European Commission issues the IPA implementing regulation. The Ministry of Labour and Social Security will be the managing authority for IPA component IV. As the establishment and accreditation of new implementing agencies will require time, the capacity of the existing Central Financing Contracting Unit (CFCU) will be strengthened to deal on a temporary basis with the management of component IV.

The elaboration of the Strategic Coherence Framework, providing an overview of challenges and future priorities both for Component III (Regional Development) and Component IV (Human Resources Development) is under way. A steering committee has been established for the preparation of this document. A monitoring committee under the supervision of the Ministry of Labour will be set up for the preparation of the Operational Programme for the Development of Human Resources. The participation of all the relevant stakeholders (including social partners and NGOs) in this process is foreseen.

Different types of training programmes will be organised to increase the institutional capacity of the Ministry of Labour and social partners in order to fully use the future funds under the ESF. Recently, a first training programme was carried out on IPA as a preparatory step and, since last year, more than 100 people with foreign language abilities have been employed in different departments of the Ministry.

II.f. Social inclusion

The risk of poverty rate in Turkey was 25.6 % in 2004. The role of the social protection system and social transfers in alleviating poverty is still very limited. As a result, the risk of poverty rate including all transfers is significantly higher than the EU average of 16 %. Poverty risk is higher in rural than in urban areas. It is the highest among families with three or more children (42 %), single parents (40 %), children aged 15 or less (34 %), the unemployed (31 %) and occasional employees as well as those living in the slum areas (gecekondu) and the illiterate.

There is no national integrated strategy on promoting social inclusion. The elaboration of the Joint Inclusion Memorandum (JIM) between the EU and Turkey was launched in December 2004. The finalisation of the JIM process is foreseen in early 2007. Existing administrative structures to promote social inclusion are highly dispersed and there is an insufficient coordination of activities.

According to a Disability Survey carried out in Turkey in 2002, the share of *persons with disabilities* was 12.29 %. A Law on Disabled People was adopted in July 2005. The law provides for guidelines for the classification of different kinds of disabilities and includes provisions for care services, rehabilitation, early diagnosis, employment and education of disabled people. The law stresses the need to combat discrimination against disabled and, referring to the Turkish Penal Code, notes that discrimination based on disability is a crime. An Action Plan for the Employment of Disabled People 2005–2010 has been prepared including provisions for recruitment, adaptation to work, job continuity and promotion at work. Year 2005 was the “Employment Year for Disabled People” which resulted in a 35 % increase of employment of people with disabilities compared to 2004. Notwithstanding the fact that a quota system promoting employment of disabled is in place, still only one out of five people with disabilities participates in the labour market, and the unemployment rate among people with disabilities is 15.5 %. Different forms of social protection are available for disabled, and education of children with disabilities is provided in mainstream schools.

All public buildings and physical environment should be made accessible for people with disabilities in the forthcoming seven years. Except for some minor efforts, there is no system regarding de-institutionalisation and community based rehabilitation. There is not either a training programme for independent living. Although Turkey has not accepted Article 15 of the European Social Charter on the rights of the physically or mentally disabled persons to vocational training, rehabilitation and social resettlement, a project has started aiming at ensuring vocational training for people with disabilities in 30 cities. The Administration for Disabled People, affiliated to the Prime Minister, was established in May 1997, and a Council for People with Disabilities has been set up.

II.g. Social protection

In 2005, Turkey’s social security deficit reached 4.81 % of the GDP, the highest among OECD countries. The main cause of the ballooning deficit is early retirement. In 2006, the minimum retirement age is 43 for women and 47 for men, and 60 % of the retired people are under 60.

The laws on social security reform were adopted in May and June 2006, providing for a complete overhaul of the Turkish social security system. The social security reform consists of four main components: 1) setting up a single retirement insurance for all employees, employers, self-employed and civil servants, 2) creation of a General Health Insurance for the whole population, 3) establishment of a system where social benefits and services are based on objective benefit criteria and improvement of their coverage, and 4) creation of a new institutional structure. The social security system will thus be simplified and reduced in bureaucracy, benefits-liabilities will be equal for everybody, free healthcare will be provided to all children under 18 and the retirement age is to be gradually raised to 65 by 2048. More Social Security Centres are planned at local level.

The Turkish pension system is based on a publicly managed mandatory pension system. There are two mandatory second pillar-type schemes for the armed forces and for the employees of the State-owned coal mining enterprise. The third pillar individual pension scheme was introduced in 2001 and is based on a voluntary basis. There is no minimum income guarantee for the whole population, but there is a minimum pension level for the pensioners. In addition, the State provides cash benefits for old people who are over 65 and do not have social security or salary. 53.5 % of old people are covered by the social security. The major population group which does not participate in the social security system is unpaid family workers especially in the agricultural sector. Many women working in the informal sector are not covered by the social security themselves. However, they can either be covered as dependants of insured persons or the State can meet their health expenses through the so called Green Card practice (Law on Green Card for the citizens who are incapable to pay for health care services). At any rate, as of 2007, the whole population will be covered by the General Health Insurance according to the recently adopted laws on social security reform.

II.h. Anti-discrimination

Although Turkey does not have a separate Act on combating all forms of discrimination, provisions to tackle discrimination are included in a number of laws. Anti-discrimination provisions were added to the Turkish Labour Law in 2003. Article 5 of the Labour Law bans discrimination *inter alia* on grounds of race and religion. There is no specific protection against discrimination on grounds of age or sexual orientation. Certain anti-discrimination provisions are also included in the Law on Disabled Persons that was adopted in 2005. In addition, there are quota provisions for employment of disabled people in the public and private sector according to the Labour Law and Law on Civil Servants.

As required by the *acquis*, the Labour Law provides for a shifting of the burden of proof to the employer, when a worker puts forward a situation strongly suggesting the probability of the existence of an infringement (including different treatment). Provisions also exist on reasonable accommodation for disabled persons in the Law on People with disabilities, the Law on Civil servants and the by-law on employment of workers with disabilities. There are no definitions of direct and indirect discrimination in the Turkish legislation. Contrary to the *acquis*, associations cannot file a complaint on behalf of victims as an individual or as a member, but can file a complaint only in the defence of the general interests of the association. However, the trade unions can sue and represent on behalf of their members.

Apart from general constitutional provisions, there are no specific legal measures prohibiting discrimination on grounds of racial or ethnic origin outside the employment field. The Penal Code, which entered into force in June 2005, introduced penalties for those who commit discrimination hindering someone's economic activity on the grounds of language, race, gender, political ideas, religion, etc.

Different human rights bodies have the responsibility in the field of anti-discrimination. These are the Human Rights Presidency (the Department of Human Rights of the Prime Ministry), Human Rights Province Boards (81), Human Rights District Boards (850) and the Consultancy Board of Human Rights responsible for communication between the NGOs and related government institutions. Awareness raising and training activities have been conducted in this field, including among judiciary.

II.i. Equal opportunities

Turkey stated that the principle of equal pay for women and men is guaranteed by law, as required by the *acquis*. The principle of equal pay pertains to all employees covered in the scope of Labour Law as well as civil servants. In case of non-compliance, employers are fined € 35 for each worker. However, the gender pay gap for the private sector is estimated at 12 % in Turkey. As regards self-employment, there is no difference between establishment of a company by spouses or unmarried persons, as required by the *acquis*.

As regards access to employment, vocational training and promotion, and working conditions, there are no definitions for direct and indirect discrimination, harassment and sexual harassment in the Turkish legislation. Certain legal provisions are not gender neutral, as required by the *acquis*. For example, in certain occupational laws, there is a gender condition (in the Nursing Law there is a requirement of being a woman). Gender specific advertising is allowed in the private sector, and there are specific physical requirements for joining some professions. For example, it is prohibited to employ women at any age in underground or underwater positions such as mine galleries, cabling, sewerage and tunnel construction. The by-law for hard and dangerous work defines the work in which women cannot be asked to work. Working of women at night shifts for more than 7 ½ hours as well as during pregnancy and for six months after birth is prohibited. As regards pregnant workers, maternity leave (mandatory for sixteen weeks: eight weeks before and eight weeks after birth) is regulated by the Turkish legislation. An unpaid maternity leave of twelve months is given to civil servants and six months to workers in the private sector upon their request after paid maternity leave periods. Paid leave for periodical check-ups during pregnancy is also provided, as required by the *acquis*. According to the Labour Law, the employer cannot treat differently (directly or indirectly) a worker in concluding the employment contract, establishing its conditions, or in implementing and terminating it on ground of pregnancy, except for biological reasons or work requirements. The by-law on the Working Conditions of Pregnant or Breastfeeding Women indicates the work and work sites in which pregnant women, workers newly given birth and breastfeeding workers cannot perform. Turkey has not accepted Article 8 of the European Social Charter on the right of employed women to the protection of maternity. There is currently no parental leave right in Turkey. Draft legislation is on the agenda of the Parliament. As regards statutory social security, all provisions on scope, access to schemes, obligation to contribute, calculation of contributions and benefits are the same for women and men, except the retirement age (58 for women and 60 for men). This also applies to civil servants.

In cases of discrimination based on sex, as required by the *acquis*, the Labour Law provides for a shifting of the burden of proof to the employer, when a worker puts forward a situation strongly suggesting the probability of the existence of an infringement. Courts determine the amount of damages and compensation.

There is no occupational social security scheme regulated at national level in Turkey. According to the Penal Code, there are no restrictions based on gender as regards access to and supply of goods and services. However, gender is used as an actuarial factor in some of the life insurance and health insurance products. Health insurance premiums may also be

higher for women than for men due to different morbidity statistics between women and men for some age groups. The maternity and pregnancy related costs are usually taken into account in case of maternity expenses coverage.

As regards administrative capacity, there is no equality body in Turkey as required by the *acquis*. However, three institutions have been established in the field of equal opportunities: the General Directorate for the Status of Women responsible for promotion, analysis, coordination and monitoring of gender equality issues at national level; the Human Rights Presidency (the Department of Human Rights of the Prime Ministry), and the Ministry of Labour and Social Security. An Advisory Board on the Status of Women comprising representatives from all Turkish ministries as well as from relevant academic institutions and NGOs was established in 2005 to provide advice on the planning and implementation of state policies related to the status of women. Although women's participation in certain professions is relatively strong (approximately 30 % of lawyers, academics and doctors are women), the political participation is particularly low, with only 18 women mayors, for example. The number of NGOs dealing with gender equality is over 200 in Turkey.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Overall, Turkey has reached a satisfactory level of alignment in the field of social policy and employment. In order to prepare for the full application of the *acquis*, further measures to transpose legislation are necessary and establishment of full trade union rights is a prerequisite. The scope of application of the labour law and health and safety at work legislation should be extended to ensure a wider coverage of the protection given by the *acquis* to both private and public employees. Fight against child labour should continue, as well as further legal approximation in the fields of anti-discrimination and equal opportunities. The reduction of undeclared work should be a priority in the context of the whole chapter in order to ensure benefits of the *acquis* to all workforce as well as a good level of implementation of EU standards. Gender equality should be improved in all economic and social life. In general, administrative capacity should be strengthened in all areas.

III.a. Labour law

A satisfactory level of alignment has been reached in the field of labour law. Several principles of the *acquis* are in place. However, the scope of application of the labour law is still too limited, as certain sectors or categories of businesses (for example agricultural businesses with fewer than 50 employees) are excluded from it. Several issues are regulated through by-laws, but the constitutionality of such acts in the field of labour law has been put in question by the Constitutional Court. Further harmonisation is needed, particularly as regards the sectoral working time directives as well as the directives on posting of workers, European Works Councils, information and consultation of workers, the European Company and the European Cooperative Society statutes. Several shortcomings need to be addressed with regard in particular to transfer of undertakings, collective redundancies and information on individual employment conditions. Efforts to combat child labour need to continue.

Administrative capacity needs to be strengthened. Recruitment of staff needs to continue, and adequate training needs to be provided.

III.b. Health and safety at work

A good degree of alignment has been reached in the field of health and safety at work. Legislation aiming at harmonisation covers most of the directives. Further harmonisation

needs to continue, and the scope of Turkish legislation should be extended to cover the public sector.

Intensive efforts to ensure implementation of the *acquis*, including through information, awareness raising and training, need to continue and be intensified. Although considerable efforts have been taken to develop administrative capacity, strengthening the capacity of the Labour Inspection Board and its geographical coverage as well as involving the social partners in the overall implementation of well-being at work should remain priorities.

III.c. Social dialogue

Full trade union rights need to be established in Turkey in line with the ILO Conventions 87 and 98 which Turkey has signed and ratified. There are significant constraints on the right to organise and the right to collective bargaining, including the right to strike. There have been reports of workers being fired, or public sector employees moved to different jobs, because of their trade union activities.

In particular, there is a need to alleviate the double threshold of representativeness allowing trade unions to sign a collective agreement in companies, the restrictions imposed on affiliation to trade unions and those imposed on some categories of civil servants to become members of trade unions. Also the right to strike as well as the organisation of trade union meetings and demonstrations need to be facilitated.

As regards administrative capacity, some structural reforms are necessary in order to improve the performance of the Economic and Social Council, including the reduction of the still predominant position of the Government's representatives. Social partners' capacity needs to be improved.

III.d. Employment policy

There is scope for improving policy strategy and coordination and for strengthening the administrative capacity related to employment policy planning and delivery. Very low labour force participation and employment rates, in particular of women, high level of youth unemployment, the large size of the informal economy and the strong rural/urban labour market divide remain the main challenges. In particular, efforts should be pursued to fight against undeclared work and a comprehensive approach to address informality is needed urgently. The large scope of informality implies that effective application of the labour law is a problem, approximately 50 % of the workforce (in majority women) being not protected by the legislation. The gradual de-ruralisation of Turkey and decline of the household sector are likely to maintain substantial shares of women outside the regular labour market in the short and medium terms. Considerable efforts are needed on skill development and adult training in particular. Important efforts are needed to increase labour supply and ensure an inclusive labour market as well as to improve the public employment services at all levels. Work under the JAP process should continue, to be finalised in the second half of 2006.

III.e. European Social Fund (ESF)

As regards European Social Fund (ESF), alignment has been limited. Building on the level of progress achieved under IPA component IV and the policy framework established under the JAP and JIM, structures and legislation will need to be adapted in order to create adequate institutional capacity for the future management, implementation, monitoring, audit and control of ESF-type measures under IPA at national and, where appropriate, regional and local levels. IPA will also allow Turkey to develop its administrative and management

capacity in view of future implementation of the ESF. Participation of all the relevant stakeholders (including social partners and NGOs) in the process of the elaboration of the Strategic Coherence Framework and of the Operational Programme for the Development of Human Resources needs to be ensured.

III.f. Social inclusion

There is a need for a more specific analysis of social exclusion and poverty as regards the most vulnerable groups in the Turkish society. Policy relevant qualitative and quantitative indicators, including regional data, are needed as a basis for future programmes for vulnerable groups. A national integrated strategy on promoting social inclusion needs to be developed. Work under the JIM process needs to continue in order to be finalised in early 2007. In general, it is important to promote an integrated approach mobilising various governmental bodies and all relevant stakeholders in the social inclusion process.

Substantial work is still necessary in order to improve the situation of vulnerable groups and people with disabilities. Attention should be paid to creation of community-based services as an alternative to institutionalisation as well as to improvement of the access to education for children with disabilities. Developments in this field should be monitored carefully.

III.g. Social protection

Since the Turkish social security system is undergoing important changes through the recent adoption of the law on social security reform, the effects of these changes in terms of their adequacy and sustainability will need to be monitored. Weaknesses such as lack of financial stability, presence of a large informal sector and administrative and management problems need to be remedied. Social security coverage needs to be improved. An ageing population will require further reforms of the pension and health care system that ensure both financial sustainability and social effectiveness. Efforts undertaken to upgrade the administrative capacity need to continue.

III.h. Anti-discrimination

The Turkish legislation is partially in line with the *acquis* in this field. Further efforts are necessary to ensure full conformity with the anti-discrimination *acquis*, including the establishment of an independent Equality body. It is currently not clear which organisations would undertake the tasks set out in the EC *acquis* and whether they have the capacity to act effectively as a specialised equality body. All the grounds of discrimination need to be duly mentioned in the national legislation. Moreover, associations should be able to engage either on behalf or in support of the complainant in any judicial or administrative procedure in this field. Public awareness on anti-discrimination needs to be raised. Due attention should be paid to availability of statistical data. Developments in this field need to be monitored carefully.

III.i. Equal opportunities

While the Penal Code entered into force in June 2005 has improved women's fundamental rights in Turkey, full transposition of the gender equality *acquis* is still required. Further alignment is necessary in particular concerning parental leave, equal pay, access to employment, burden of proof, access to and supply of goods and services as well as statutory and occupational social security schemes. Legal adjustments are necessary, for instance, as regards removal of overprotection of women in relation to night work, physically heavy work, underground and underwater work. On the other hand, a pregnant worker should be

protected against dismissal in very wide circumstances. Further adaptations appear necessary with respect to different retirement ages for women and men in the civil service. The recently adopted social security reform package envisages an equalisation of the retirement age for men and women, but not until 2048. Associations which have a legitimate interest in ensuring that the principle of equal treatment is applied should be able to engage, either on behalf or in support of the complainant, in any judicial or administrative procedure. Enforcement of existing rules should be improved, as well as the availability of gender-segregated statistical indicators. An independent Equality body needs to be established. Further efforts are needed to improve gender equality in all economic and social life.

IV. CONCLUSIONS AND RECOMMENDATIONS

In view of the above, in particular the findings presented in Part III, Turkey cannot be considered to be sufficiently prepared for negotiations on this chapter. Therefore, the Commission does not recommend at this stage the opening of accession negotiations with Turkey on chapter 19 – Social policy and employment.

Specific gaps remain to be addressed in relation to social dialogue and undeclared work. In view of the current situation as assessed above, it is recommended that this chapter be opened for negotiations once the following benchmarks are met:

- Turkey needs to ensure that full trade union rights are respected in line with EU standards and the relevant ILO Conventions, in particular as regards the right to organise, the right to strike and the right to bargain collectively. To this effect, Turkey needs to eliminate existing restrictions and adopt a fully revised legislation in this area for both private and public sectors.
- Turkey needs to provide the Commission with an action plan for the gradual implementation and enforcement throughout the country of the *acquis* in each area covered by this Chapter for the benefit of the entire workforce, including undeclared workers. The plan should include: a) an economic and social analysis on undeclared work in Turkey, b) a timetable of measures envisaged, c) the identification of resources allocated, d) the identification of the institutions and social partners involved. For each of the above steps, a gender mainstreaming approach needs to be adopted, with particular attention to be given to women's participation in the labour market.