

FATF



Anti-money laundering and counter-terrorist financing measures

Turkey

Mutual Evaluation Report

December 2019





The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CTF) standard.

For more information about the FATF, please visit the website: www.fatf-gafi.org.

This document and/or any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

This assessment was adopted by the FATF at its October 2019 Plenary meeting.

Citing reference:

FATF (2019), *Anti-money laundering and counter-terrorist financing measures – Turkey*,
Fourth Round Mutual Evaluation Report, FATF, Paris
<http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-turkey-2019.html>

© 2019 FATF-. All rights reserved.

No reproduction or translation of this publication may be made without prior written permission.

Applications for such permission, for all or part of this publication, should be made to

the FATF Secretariat, 2 rue André Pascal 75775 Paris Cedex 16, France

(fax: +33 1 44 30 61 37 or e-mail: contact@fatf-gafi.org).

Photo Credit - Cover: © Getty Images

Table of Contents

| | |
|---|------------|
| Executive Summary | 3 |
| Key Findings..... | 3 |
| Risks and General Situation | 5 |
| Overall Level of Compliance and Effectiveness | 5 |
| Priority Actions | 10 |
| MUTUAL EVALUATION REPORT..... | 13 |
| Preface | 13 |
| CHAPTER 1. ML/TF RISKS AND CONTEXT | 15 |
| ML/TF Risks and Scoping of Higher Risk Issues..... | 16 |
| Materiality..... | 18 |
| Structural Elements..... | 19 |
| Background and Other Contextual Factors | 19 |
| CHAPTER 2. NATIONAL AML/CFT POLICIES AND CO-ORDINATION..... | 29 |
| Key Findings and Recommended Actions..... | 29 |
| Immediate Outcome 1 (Risk, Policy and Co-ordination) | 30 |
| CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES..... | 43 |
| Key Findings and Recommended Actions..... | 43 |
| Immediate Outcome 6 (Financial Intelligence ML/TF)..... | 46 |
| Immediate Outcome 7 (ML Investigations and Prosecution)..... | 54 |
| Immediate Outcome 8 (Confiscation)..... | 63 |
| CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION..... | 77 |
| Key Findings and Recommended Actions..... | 77 |
| Immediate Outcome 9 (TF Investigation and Prosecution)..... | 81 |
| Immediate Outcome 10 (TF Preventive Measures and Financial Sanctions) | 92 |
| Immediate Outcome 11 (PF Financial Sanctions) | 99 |
| CHAPTER 5. PREVENTIVE MEASURES..... | 103 |
| Key Findings and Recommended Actions..... | 103 |
| Immediate Outcome 4 (Preventive Measures)..... | 104 |
| CHAPTER 6. SUPERVISION | 123 |
| Key Findings and Recommended Actions..... | 123 |
| Immediate Outcome 3 (Supervision)..... | 124 |
| CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS | 139 |
| Key Findings and Recommended Actions..... | 139 |
| Immediate Outcome 5 (Legal Persons and Arrangements) | 140 |
| CHAPTER 8. INTERNATIONAL CO-OPERATION | 149 |
| Key Findings and Recommended Actions..... | 149 |
| Immediate Outcome 2 (International Co-operation)..... | 150 |

| | |
|--|------------|
| Technical Compliance Annex..... | 161 |
| Recommendation 1 – Assessing Risks and Applying a Risk-Based Approach..... | 161 |
| Recommendation 2 - National Co-operation and Co-ordination..... | 164 |
| Recommendation 3 - Money Laundering Offence | 165 |
| Recommendation 4 - Confiscation and Provisional Measures | 167 |
| Recommendation 5 - Terrorist Financing Offence | 168 |
| Recommendation 6 - Targeted Financial Sanctions Related to Terrorism and Terrorist Financing | 170 |
| Recommendation 7 – Targeted Financial Sanctions Related to Proliferation | 174 |
| Recommendation 8 – Non-Profit Organisations | 176 |
| Recommendation 9 – FI Secrecy Laws | 182 |
| Recommendation 10 – Customer Due Diligence..... | 183 |
| Recommendation 11 – Record Keeping..... | 188 |
| Recommendation 12 – Politically Exposed Persons..... | 189 |
| Recommendation 13 – Correspondent Banking | 190 |
| Recommendation 14 – Money or Value Transfer Services | 191 |
| Recommendation 15 – New Technologies..... | 192 |
| Recommendation 16 – Wire Transfers | 193 |
| Recommendation 17 – Reliance on Third Parties | 196 |
| Recommendation 18 – Internal Controls and Foreign Branches and Subsidiaries | 197 |
| Recommendation 19 – Higher Risk Countries | 199 |
| Recommendation 20 – Reporting of Suspicious Transactions..... | 200 |
| Recommendation 21 – Tipping-Off and Confidentiality | 201 |
| Recommendation 22 – DNFBPs: Customer Due Diligence..... | 201 |
| Recommendation 23 – DNFBPs: Other Measures | 202 |
| Recommendation 24 – Transparency and Beneficial Ownership of Legal Persons | 203 |
| Recommendation 25 – Transparency and Beneficial Ownership of Legal Arrangements | 206 |
| Recommendation 26 – Regulation and Supervision of FIs | 207 |
| Recommendation 27 – Powers of Supervisors | 209 |
| Recommendation 28 – Regulation and Supervision of DNFBPs..... | 210 |
| Recommendation 29 - Financial Intelligence Units | 211 |
| Recommendation 30 – Responsibilities of Law Enforcement and Investigative Authorities .. | 214 |
| Recommendation 31 - Powers of Law Enforcement and Investigative Authorities | 215 |
| Recommendation 32 – Cash Couriers..... | 216 |
| Recommendation 33 – Statistics..... | 218 |
| Recommendation 34 – Guidance and Feedback..... | 219 |
| Recommendation 35 – Sanctions | 220 |
| Recommendation 36 – International Instruments..... | 222 |
| Recommendation 37 - Mutual Legal Assistance..... | 222 |
| Recommendation 38 – Mutual Legal Assistance: Freezing and Confiscation | 224 |
| Recommendation 39 – Extradition..... | 225 |
| Recommendation 40 – Other Forms of International Co-operation..... | 226 |
| Summary of Technical Compliance – Key Deficiencies..... | 231 |
| Glossary of Acronyms | 234 |

Executive Summary

1. This report summarises the AML/CFT measures in place in the Republic of Turkey as at the date of the on-site visit (05-21 March 2019). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Turkey's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

- a) Turkey finalised a combined ML/TF risk assessment in 2018. The NRA was a significant step in enhancing Turkey's understanding of ML/TF risk. Relevant authorities contributed to the process, with positive input from the private sector. Turkish authorities have a general understanding of ML. This understanding is greater than that represented in the NRA. TF risk is understood well by key agencies such as TNP and MASAK. This understanding of ML/TF would benefit from overarching, formal strategies and policies to combat ML/TF. Authorities have commenced work in these areas.
- b) There are demonstrable mechanisms for co-ordination in place, although their effectiveness for AML/CFT purposes is mitigated to some extent, as AML/CFT co-ordination has not been brought together under a single whole-of-government policy approach, which is both risk-based and demonstrably co-ordinates measures taken.
- c) Turkey has demonstrated the use of MASAK's financial intelligence products to support ongoing investigations and prosecution of predicate, ML and TF offences. MASAK's work has increased many fold since the attempted coup in 2016 with an exponential rise in judicial requests from public prosecution and courts, which has caused strains on the capacity of AML/CFT authorities. The extent to which financial intelligence is used routinely in existing ML cases or developing evidence across all the law enforcement agencies is not demonstrated.
- d) Turkey's law enforcement agencies have trained and dedicated investigators. However, identifying ML activity for investigation through their analysis of STRs and other reports submitted to MASAK, or through investigation of offences generating proceeds of crime is not commensurate with the risk profile in Turkey. While Turkey does not have detailed statistics on ML investigations by predicate offence, they provided statistics for the four highest risk predicate offence supported with a sampling of cases, which

suggests that ML offences and activities are investigated to some extent.

- e) Turkey has an adequate legal framework that should enable the authorities to confiscate the proceeds of crime through a number of measures, but limited statistical figures or other evidence were provided by Turkey to fully demonstrate the good use of these tools. However, after the attempted coup in 2016, Turkey enacted temporary measures, which were effectively implemented against FETÖ/PDY. Although Turkey has demonstrated the existence of high-level commitment to deprive criminals from their proceeds of crime, its practical impact to ensure that criminals are permanently deprived of their illicit gains is less evident.
- f) Turkey undertakes a large number of terrorism investigations; however, TF investigations within these cases are largely directed towards identifying the assets held rather than the identification of the collection, movement and use of funds or other assets. Outside of FETÖ/PDY investigations, there is limited evidence that public prosecutors have used MASAK analysis to extend their investigation to include the bigger networks.
- g) Turkey does not implement terrorism related TFS without delay under the relevant UNSCRs. Turkey's legal framework allows for UNSCR 1267 designations to be transposed, however the transposition process leads to long delays. In general, there is collaboration and co-operation on TF issues between supervisory, regulatory and operational authorities, co-ordinated by MASAK. However, Turkey has never independently proposed a 1267 designation or enacted a domestic designation, nor identified assets linked to a designation target. Turkey does not use 1373 processes effectively, which is not consistent with its risk profile.
- h) As part of its 2018 NRA, Turkey has conducted a sectorial risk assessment to identify the FATF-defined subset of NPOs that are at risk of TF abuse. However, Turkey's supervision of the NPO sector is mainly focused on fraud and mismanagement, instead of TF and Turkey's outreach and oversight efforts remain lacking.
- i) As with TF-related TFS, Turkey's transposition of UNSCR 1718 designations into law is not without delay, and no assets subject to UNSCR 1718 sanctions have ever been identified in Turkey. Turkey lacks a legal basis to implement UNSCR 2231 and its successor resolutions, and no penalties or oversight exist for contravention of these PF sanctions by obliged entities in Turkey, as 2231 designations are not legally valid.
- j) Understanding of ML/TF risks across FIs and DNFBPs varies. While banks have a good understanding of ML risks, and by some way the best understanding among the reporting entities, the understanding of TF risk is relatively weaker than that for ML. The level of understanding of ML/TF risks across DNFBPs is limited. Across all reporting entities, the understanding is less developed among real estate agents, DPMS and exchange offices, which is a cause of concern in light of their risk profiles.
- k) The supervisory measures, including fit and proper tests applied by BRSA, CMB and MoTF for the licensing of banks and other FIs, were found to be generally well developed for the purpose of preventing criminals and their associates from entering the financial system. Supervision and monitoring to address and mitigate ML/TF risks in the financial sector and other relevant sectors has led to remedial actions; however, sanctions applied are not always effective, proportionate and dissuasive.

- l) Turkey has put in place most elements of a legal framework to identify basic and beneficial ownership information of legal persons. The concept of trusts does not exist in Turkish law. Authorities have a moderate understanding of the ML/TF risks posed by legal persons, and are yet to conduct a comprehensive assessment of ML/TF risks and vulnerabilities of legal persons created in Turkey.
- m) Turkey has a sound legal basis to provide and seek the widest possible range of MLA, including extradition in relation to ML, associated predicate offences and TF. Turkey does not have any legal impediments to seeking and responding to a variety of requests for international co-operation both formal and informal.

Risks and General Situation

2. Turkey has a diverse economy comprising industry (automotive, petrochemical, and electronics), agriculture and a growing service sector. Located at an inter-continental junction, Turkey faces significant money laundering (ML) and terrorist financing (TF) risks. This includes serious threats from illegal activities of criminal organisations, terrorist organisations and foreign terrorist fighters (FTFs) seeking to exploit domestic and cross-border vulnerabilities, given Turkey's geographic location.

3. The key threats generating significant proceeds of crime are illegal drug trafficking, migrant smuggling, human trafficking and fuel smuggling. In 2016, 68% of all smuggling offences for which a conviction was secured were directly related to drug smuggling. The business activities posing the highest ML/TF risks are related to activities involving banking, money and value transfer services, including illegal money exchangers, real estate and dealers in precious metals and stones (DPMS).

4. Turkey also faces severe threats from terrorism and has suffered from a significant number of terrorist attacks. Turkey is one of the transit routes for FTFs and a destination of returning FTFs of Turkish origin from neighbouring conflict zones.

5. The 2018 NRA was a significant step for Turkish competent authorities in enhancing their ML/TF risk understanding as it enabled the authorities to articulate existing views in one report. Relevant authorities contributed to the NRA process with positive input from the private sector as well. Overall, the assessment of threat levels is based on various information sources, such as statistics, trend analysis, surveys, reports and the ML/TF risk perception of authorities.

Overall Level of Compliance and Effectiveness

6. Turkey has made significant progress in strengthening its AML/CFT framework since the last evaluation. Law No. 6415 (Prevention of the Financing of Terrorism) came into force in 2013. A number of Regulations were introduced or further amended to strengthen the preventive measures. MASAK also issued General Communiqués to set out principles and procedures on issues including STRs, CDD measures and freezing of assets. However, shortcomings are still noted, in particular in areas such as politically exposed persons, CDD and supervisory measures applicable to DNFBPs and sanction regime for failure to comply with the preventive

measures. In addition, there are still technical deficiencies affecting in particular, the regime applicable to NPOs at risk of TF abuse, targeted financial sanctions related to terrorism and proliferation.

7. Turkey achieves a substantial level of effectiveness in the assessment of ML/TF risks and domestic co-ordination, as well as international co-operation. Turkey demonstrates a moderate level of effectiveness in the collection and use of financial intelligence and other information, ML and TF investigations and prosecutions, confiscation, supervision, implementation of preventive measures and preventing the misuse of legal structures. Fundamental improvements are needed in the implementation of targeted financial sanctions related to terrorism and proliferation.

Assessment of Risk, Co-ordination and Policy Setting (Chapter 2; 10.1, R.1, 2, 33 & 34)

8. The 2018 National Risk Assessment (NRA) was a significant step for Turkish competent authorities in enhancing their ML/TF risk understanding as it enabled the authorities to articulate existing views in one report. Relevant authorities contributed to the NRA process with positive input from the private sector. Overall, there is a general understanding of ML risks. This understanding is greater than that represented in the NRA. There is also a good understanding of TF risk within MASAK and Turkish National Police, though there is scope for a more in-depth assessment, including in relation to NPOs.

9. National AML/CFT policies and activities have been implemented through a series of strategies, action plans, committees, working groups and other similar mechanisms. The limited period of time since the NRA was completed means that policies do not yet constitute a comprehensive, national approach. Work is ongoing to implement such an approach.

10. Co-ordination on AML/CFT issues is of a good standard. Turkey demonstrated that bilateral and multi-lateral co-operation and information exchange is positive, with examples of very good liaison and information exchange being provided.

Financial Intelligence, ML Investigations, Prosecutions and Confiscation (Chapter 3; 10.6, 7, 8; R.1, 3, 4, 29–32)

11. MASAK has electronic access to a wide variety of government and private sector databases, which enables it to generate comprehensive financial intelligence products. MASAK uses a variety of IT tools and techniques to carry out operational and strategic analysis.

12. Turkey has demonstrated the use of MASAK's financial intelligence products to support ongoing investigation and prosecution of predicate, ML and TF offences. The extent to which financial intelligence is used routinely in existing ML cases or developing evidence across all the law enforcement agencies is not demonstrated.

13. Given the volume of proceeds generating predicate offences investigated each year in Turkey, the number and ratio of disseminations made by MASAK to support ongoing predicate offence investigations and related ML investigations is not fully consistent with Turkey's NRA.

14. There has been an exponential rise in the number of judicial requests to MASAK (from Public Prosecution offices and courts), since the attempted coup in 2016, leading to a manifold increase in MASAK's workload in recent years, putting severe constraints on the resources and capacity of MASAK, considering its overarching role in Turkey's AML/CFT framework.

15. Law enforcement authorities have trained and dedicated ML investigators; however, Turkey is not effectively identifying ML activity for investigation through their analysis of STRs and other reports submitted to MASAK, nor through investigation of offences generating proceeds of crime. While there are some documents in relation to anti-drug and organised crimes strategies which reference ML, in addition to high level circulars, Turkey lacks policy objectives with specific goals considering ML investigations as a strategy to combat the profitability of crime.

16. While Turkey was unable to produce statistics to support a finding that ML offences and activities are appropriately investigated, they were able to provide assessors with a sampling of cases which suggest that ML offences and activities are being investigated to some extent.

17. Turkey has an adequate legal framework that enables the authorities to confiscate the proceeds of crime through a number of measures, however limited statistical figures were provided by Turkey to support the good use of these tools. Turkey enacted Presidential Decrees (PD) after the attempted coup in 2016 as an emergency measure that was lifted in 2018. The implementation of the PD was very effective in confiscating assets of EUR 10 billion relating mostly to FETÖ/PDY.

18. While statistics provided demonstrate that LEAs are seizing assets and using measures to secure assets related to predicate crime, and substantial sums were confiscated through the Presidential decree (for terrorism related cases); there was limited evidence to demonstrate the overall effectiveness of the confiscation system in Turkey.

Terrorist and Proliferation Financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5-8, 30, 31 & 39.)

19. Turkey undertakes a large number of terrorism investigations; TF investigation within these cases are largely directed towards identifying the assets held by terrorism suspects rather than the identification of the collection, movement, and use of funds or other assets.

20. Each of Turkey's four LEAs have trained TF investigators and communication is open across the LEAs and MASAK. MASAK provides the LEA with a good level of details regarding the financial and asset data in relation to a suspect, however there is limited evidence that public prosecutor have used MASAK analysis to extend their investigation to include the bigger networks or for identification of the financiers.

21. There is no overarching strategy or action plan to detail how the investigation of TF investigation is used to support national CT strategies and investigations. TF cases may attract a maximum of 10 years imprisonment, the average sentence for TF cases to date being 5 years. There is no clear strategy for the prioritisation of TF investigative techniques to identify the collection, movement and use of TF within investigations.

22. Turkey does not implement TFS related to terrorism without delay under the relevant UNSCRs. Turkey's legal framework allows for UNSCR 1267 designations to be transposed. However, at a domestic level, the average transposition delay for UNSCR 1267 designations is 33 days. Turkey's outgoing 1373 requests to other jurisdictions are rarely accepted by other jurisdictions. Turkey does not consistently respond to incoming UNSCR 1373 requests and has never independently proposed a 1267 designation. No assets related to a 1267 designee have ever been identified. Turkey has also never done a domestic designation of its own accord. This is inconsistent with Turkey's risk profile.

23. There is an uneven understanding and implementation of TFS requirements amongst financial institutions, particularly between large, globally oriented FIs and smaller, domestic banks. Some multi-national banks and money or value transfer services (MVTs) providers implement TFS related to UNSCR 1267 designations as soon as the UN adopts them, before the government decides whether to transpose these designations at a domestic level.

24. Turkey has conducted a sectorial risk assessment to identify what it believes to be the FATF-defined subset of NPOs at greatest risk of TF abuse. However, Turkey's supervision of the NPO sector is mainly focused on fraud and mismanagement, instead of TF and Turkey's outreach and oversight efforts remain lacking.

25. As with TF-related TFS, Turkey's transposition of UNSCR 1718 designations into law is not without delay, and no assets subject to UNSCR 1718 sanctions have ever been identified in Turkey. Turkey lacks a legal basis to implement UNSCR 2231 and its successor resolutions, and no penalties or supervision exist for contravention of these PF sanctions by obliged entities in Turkey.

26. FIs and DNFBPs vary widely in their awareness of and procedures for, observing proliferation-related TFS. DNFBPs and exchange offices, in particular, often do not do checks against relevant PF sanctions lists and lack established procedures or a general understanding of their risks in this regard.

Preventive Measures (Chapter 5; IO.4; R.9–23)

27. Turkey has a diverse financial sector with banks as the key players. Understanding of ML/TF risks across FIs and DNFBPs varies depending on the nature of the sector. Banks have a good understanding of ML risks, although understanding of TF risk is relatively weaker than that for ML. Overall, in other financial sectors, risk understanding is less comprehensive than banks. The level of understanding of ML/TF risks across DNFBPs is limited. Across all obliged entities, the assessment team has a particular concern about real estate agents, DPMS and exchange offices in light of their risk profiles.

28. Banks have relatively good AML measures consistent with risks with other FIs overall having less robust measures. Generally, banks and other FIs have systems for ongoing monitoring. Nevertheless, the quality of measures at banks is mitigated to some extent as identification of unregistered MVTs activity appears lacking, verification of beneficial ownership is not always comprehensive (with some over reliance on the trade registry and attention on the ownership element rather than the control element), and monitoring not always being consistent with risk. DNFBPs have much less robust measures to mitigate risks.

Supervision (Chapter 6; IO.3; R.14, 26–28, 34, 35)

29. MASAK is the key supervisory authority in Turkey and it co-ordinates amongst other relevant supervisory authorities to assign supervisory tasks. The supervisory measures applied by BRSA, CMB and MoTF for the licensing of banks and other FIs was found to be generally well developed for the purpose of preventing criminals and their associates from entering the market. A number of controls exist and there is good co-ordination between MASAK and other supervisors. Given the risk of unregistered MVTs/exchange offices, supervisory authorities and FIs are not taking adequate steps to identify and stop this activity and apply sufficient sanctions.

30. In general, there is good effort to foster public-private sector dialogue with financial institutions, which contributes to supervisors' risk identification and understanding.

31. Supervision and monitoring to address and mitigate ML/TF risks in the financial and other relevant sectors has led to remedial actions; however, sanctions applied are not always effective, proportionate and dissuasive across the financial and DNFBP sector. Further, within the DNFBP sectors, the compliance supervision was observed to be at much lesser degree in the form of little or no on-site supervision conducted or violations examined by MASAK and/or sectorial supervisors.

32. MASAK uses different tools, workshops, guidance and other instruments to promote a clear understanding of AML/CFT obligations and ML/TF risks in Turkey. Other supervisors have issued guidance and used training to raise awareness to some extent and this may further be improved through more extensive efforts.

Transparency and Beneficial Ownership (Chapter 7; IO.5; R.24, 25)

33. Risks of legal persons are understood to some degree. The legal framework has been assessed, together with the cases in which Turkish legal persons were misused (the most important predicate crime and ML threat deriving from fuel smuggling). Turkey is yet to conduct a comprehensive assessment of the ML/TF risks posed by all types of legal persons created in the country and also the risks of foreign legal persons and lawyers (including their involvement with legal persons).

34. Turkey has made significant efforts to streamline the company formation process. Public registries are used to centralise information in electronic format, and the use of protocols and MoUs between agencies and private sector entities, such as banks, has helped to facilitate access to this information for AML/CFT purposes.

35. Sanctions are applied to some extent against legal persons that fail to meet AML/CFT requirements relating to the reporting of basic and beneficial ownership information. However, concerns exist that the limited range of pecuniary fines may not always allow for effective, proportionate and dissuasive sanctions in deserving cases.

International Co-operation (Chapter 8; IO.2; R.36–40)

36. Turkey has no legal impediments to seeking and responding to a variety of requests for international co-operation related to ML and TF offences, including MLA, extradition and intelligence exchanges through Egmont Secure Web as well as through informal police-to-police channels. Supervisors have shared relevant

information with their international counterparts both on request and spontaneously, in particular on supervision and 'fit and proper' issues.

37. The Ministry of Justice uses a National Judiciary Informatics System (UYAP) to track and execute their work. The system is capable of filtering various files based on a coding system, which would allow for the effective prioritisation of files.

Priority Actions

- a) Turkey should prioritise the use of financial intelligence related to ML, consistent with the risks identified in their NRA and develop a national strategy for investigating and prosecuting different types of ML offences.
- b) Turkey should develop a national strategy for confiscating the proceeds and instrumentalities of crime, outlining clear priorities as well as the roles and responsibilities for prosecutor, LEAs and MASAK.
- c) Turkey should address the gaps in its legal framework to fully meet its obligations concerning targeted financial sanctions related to terrorism. In particular, transposition of UN designations should be done in a timely manner that is not contingent upon a decision at national level. Turkey should ensure it is employing its resources to independently identify and propose appropriate targets for 1267 designation and respond to 1373 requests.
- d) Turkey should address deficiencies in its timely transposition of UNSCR 1718 and immediately establish a legal basis to implement UNSCR 2231 and its successor resolutions, including the establishment of effective, proportionate and dissuasive sanctions and requirements for corresponding supervision and preventive measures in the financial sector.
- e) Turkey should implement focused and proportionate measures to NPOs identified as at risk of TF abuse. A targeted risk-based approach and outreach on how to identify, prevent and report TF, with a focus on those NPOs assessed as higher risk for potential TF abuse would help avoid restricting and disrupting legitimate NPO activities.
- f) Turkey should increase the number of parallel financial investigations in terrorism cases with the objective of identifying terrorist financiers, TF trends and methods, and financing networks.
- g) The supervisory approach of the authorities to DNFBP sectors, in particular, for precious metals and stones and real estate sectors should be developed and these sectors should be subject to AML/CFT compliance proportionate to their risk profiling as per the NRA. Sanctions for non-compliance by financial institutions and DNFBPs should be effective, proportionate and dissuasive.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings¹

| IO.1 - Risk, policy and coordination | IO.2 - International cooperation | IO.3 - Supervision | IO.4 - Preventive measures | IO.5 - Legal persons and arrangements | IO.6 - Financial intelligence |
|---------------------------------------|----------------------------------|---------------------------------------|--|---------------------------------------|-------------------------------|
| Substantial | Substantial | Moderate | Moderate | Moderate | Moderate |
| IO.7 - ML investigation & prosecution | IO.8 - Confiscation | IO.9 - TF investigation & prosecution | IO.10 - TF preventive measures & financial sanctions | IO.11 - PF financial sanctions | |
| Moderate | Moderate | Moderate | Low | Low | |

Technical Compliance Ratings²

| | | | | | |
|---|--|---|--|--|---|
| R.1 - assessing risk & applying risk-based approach | R.2 - national cooperation and coordination | R.3 - money laundering offence | R.4 - confiscation & provisional measures | R.5 - terrorist financing offence | R.6 - targeted financial sanctions – terrorism & terrorist financing |
| LC | LC | LC | C | LC | PC |
| R.7 - targeted financial sanctions - proliferation | R.8 - non-profit organisations | R.9 – financial institution secrecy laws | R.10 – Customer due diligence | R.11 – Record keeping | R.12 – Politically exposed persons |
| NC | PC | C | LC | C | NC |
| R.13 – Correspondent banking | R.14 – Money or value transfer services | R.15 –New technologies | R.16 –Wire transfers | R.17 – Reliance on third parties | R.18 – Internal controls and foreign branches and subsidiaries |
| LC | LC | LC | LC | C | PC |
| R.19 – Higher-risk countries | R.20 – Reporting of suspicious transactions | R.21 – Tipping-off and confidentiality | R.22 - DNFBPs: Customer due diligence | R.23 – DNFBPs: Other measures | R.24 – Transparency & BO of legal persons |
| LC | C | C | PC | PC | PC |
| R.25 - Transparency & BO of legal arrangements | R.26 – Regulation and supervision of financial institutions | R.27 – Powers of supervision | R.28 – Regulation and supervision of DNFBPs | R.29 – Financial intelligence units | R.30 – Responsibilities of law enforcement and investigative authorities |
| PC | PC | LC | PC | C | C |
| R.31 – Powers of law enforcement and investigative authorities | R.32 – Cash couriers | R.33 – Statistics | R.34 – Guidance and feedback | R.35 – Sanctions | R.36 – International instruments |
| LC | LC | LC | LC | PC | LC |
| R.37 – Mutual legal assistance | R.38 – Mutual legal assistance: freezing and confiscation | R.39 – Extradition | R.40 – Other forms of international cooperation | | |
| C | C | C | LC | | |

¹ Effectiveness ratings can be either a High- HE, Substantial- SE, Moderate- ME, or Low – LE, level of effectiveness.

² Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – non compliant.

MUTUAL EVALUATION REPORT

Preface

This report summarises the AML/CFT measures in place in Turkey, as of the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Turkey's AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Turkey and information obtained by the assessment team during its on-site visit to Turkey from 05 - 21 March 2019.

The evaluation was conducted by an assessment team consisting of:

- Mr. Alastair Bland, Canada Revenue Agency (Legal and Law Enforcement Expert)
- Mr. Andrew Mahoney, Metropolitan Police Services, UK (Legal and Law Enforcement Expert)
- Mr. Jonathan Fishman, United States Department of Treasury (Financial Expert)
- Mr. Richard Walker, Financial Crime and Regulatory Policy, Guernsey (Risk and Financial Expert)
- Mr. Sanjay Kumar, Reserve Bank of India (Financial Expert)

The team was supported by the FATF Secretariat, represented by Mr. Ashish Kumar, Mr. Derek Leist and Ms. Rana Matar. The report was reviewed by Ms. Mei-Lin Wang, Australia, Mr. Pieter Smit, South Africa, and Mr. Thomas Weratschnig, Austria.

Turkey previously underwent a FATF Mutual Evaluation in 2007, conducted according to the 2004 FATF Methodology. The 2007 Mutual Evaluation and 2014 Follow-Up Reports have been published and are available at: www.fatf-gafi.org/countries/#turkey.

The 2007 mutual evaluation concluded that the country was compliant with three recommendations; largely compliant with 12 recommendations; partially compliant with 22 recommendations; and non-compliant with 11 recommendations. One recommendation was rated as not applicable. Turkey was rated compliant or largely compliant with five of the 16 core and key recommendations.

Turkey was placed under the targeted follow-up process immediately after the adoption of its 3rd round mutual evaluation report. In October 2014, Turkey exited the follow-up process on the basis that it reached a satisfactory level of compliance with all core recommendations and four out of the five key recommendations. Turkey did not reach a satisfactory level of compliance with SR. III; although, it had taken concrete actions and made significant progress, including through legislative amendments, with the aim to address the deficiencies identified in its mutual evaluation report.

CHAPTER 1. ML/TF RISKS AND CONTEXT

38. Turkey is located between the continents of Asia and Europe, with a land area of 780 576 square kilometres. It has common borders with Georgia, Armenia, Azerbaijan, Iran, Syria, Iraq, Greece and Bulgaria. The country is a peninsula surrounded by the Black Sea, the Aegean Sea and the Mediterranean, and has maritime borders with the Republic of Cyprus³, the Russian Federation, Ukraine and Romania.

39. Turkey has a central government, based in Ankara, and administratively consists of 81 provinces. The official language is Turkish. The population of Turkey is approximately 80.8 million people (as of 2017), and the largest province is Istanbul. The literacy rate is 96.8% (as of 2017), and life expectancy is 79 years for females and 72 years for males. The annual population growth rate is 1.33% since 2012.

40. As a founding member of the United Nations, World Trade Organisation, Council of Europe, the Organisation of the Islamic Conference, the Organisation for Economic Co-operation and Development (OECD), the Organisation for Security and Co-operation in Europe (OSCE) and the Organisation of the Black Sea Economic Co-operation, Turkey participates in a number of international bodies. It is also a Member State of the North Atlantic Treaty Organisation (since 1952), G-20 (1999) and is currently in accession negotiations with the European Union, being an associate member since 1964.

41. Turkey recently made a transition to a Presidential Government System in April 2017. The country has a written constitution and a civil law system. Turkey's hierarchy of laws comprises the Turkish Constitution (Constitution), international conventions, laws, presidential decrees, regulations and communiqués. Previous decrees and by-laws of the Council of Ministers are still in force, unless otherwise indicated in a new Presidential Decree or law. The Constitution is the highest legal document, and no other legal instrument may be contrary to it. Legislative power belongs to the Grand National Assembly of Turkey (GNAT) and the President, to some extent, in accordance with the Constitution.

42. Judicial power is vested in the high courts (Constitutional Court, Council of State, Court of Cassation and Court of Disputes) and lower courts. The Constitutional

³ Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".
Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Court supervises the consistency and legality of laws, the Rules of Procedure of the GNAT and the decree laws relating to the Constitution. Its decisions are absolute, as published in the Official Gazette, and bind legislative, executive and judicial organs as well as administrative authorities, natural persons and legal persons. Turkey is a party to the European Convention on Human Rights, and judgements of the European Court of Human Rights are binding in Turkey.

ML/TF Risks and Scoping of Higher Risk Issues

Overview of ML/TF Risks

43. Turkey is the world's seventeenth largest economy and has diverse sectors comprising industry (automotive, petrochemical, and electronics), agriculture and a growing service sector. Located at an inter-continental junction, Turkey faces significant money laundering (ML) and terrorist financing (TF) risks. This includes serious threats from illegal activities of criminal organisations, terrorist organisations and foreign terrorist fighters (FTFs) seeking to exploit domestic and cross-border vulnerabilities, given its geographic location.

44. The key ML threats generating significant proceeds of crime are illegal drug trafficking, migrant smuggling, human trafficking and fuel smuggling. In 2016, 68% of all smuggling offences for which a conviction was secured were directly related to drug smuggling. The business activities posing the highest ML/TF risks are related to activities involving banking, money and value transfer services, including illegal money exchangers, real estate and dealers in precious metals and stones.

45. Turkey also faces severe threats from terrorism and has suffered from a significant number of terrorist attacks. Turkey is also one of the transit routes for FTFs and a destination of returning FTFs of Turkish origin from neighbouring conflict zones.

Country's Risk Assessment and Scoping of Higher Risk Issues

46. The 2018 National Risk Assessment (NRA) was a significant step for Turkish competent authorities in enhancing their ML/TF risk understanding as it enabled the authorities to articulate existing views in one report. Relevant authorities contributed to the NRA process with positive input from the private sector as well. Overall, the assessment of threat levels is based on various information sources, including the ML/TF risk perception of authorities (see Chapter 2 for further details).

47. The crimes posing a high ML threat in the NRA are drug trafficking, migrant smuggling, human trafficking and fuel smuggling. Medium threat level criminality includes aggravated fraud; smuggling of tobacco, tobacco products and alcohol; illegal online betting and corruption. For determining the threat level, several factors were scored and risk weighted after several rounds of discussions between authorities. These factors included the way in which the crime is committed, the parties involved (e.g. whether or not there was organised crime group involvement), the number of persons indicted, the values ascribed to actual and potential proceeds, the socio-economic consequences of the criminality, among others.

48. Authorities have considered terrorism threats from two perspectives, namely national threats (which are viewed as focusing on Turkey) and international threats

(which are viewed as focusing more widely than simply on Turkey). The main TF risks are considered to be FETÖ/PDY, PKK/KCK/PYD-YPG, ISIL and DHKP-C. This is based on numerous factors, including the length of time that these groups have been operating, the loss of life and damage caused, the frequency of attacks, the nature of the organisations and the TF risk they pose. Financing activities have been classified in three groups, namely i) illegal financing, ii) financing through activities that seem legitimate (including NPOs) and iii) financing through external or international support. Intelligence sources have contributed to the conclusions.

49. In deciding which issues to prioritise for increased focus, assessors reviewed material provided by Turkey on their domestic ML/TF risks (as outlined above) and information from reliable third-party sources (e.g. reports from other international organisations). Assessors focused on the following priority issues, which are broadly consistent with the issues identified in the NRA:

1. **Terrorist Financing:** Due to its geographic location, Turkey is currently exposed to important terrorism and TF threats and has been a target of many domestic and international terrorist organisations. The wide variety of TF methods used, influx of refugees from unstable regions and linkages between organised crime and terrorist networks add further complexity to the TF threat faced by Turkey. Key areas of focus included the effectiveness of TF investigations and prosecutions, measures to prevent the abuse of the NPO sector, timely implementation of targeted financial sanctions (TFS) and measures to address risks emanating from the use of cash couriers, illegal hawala networks and illegal exchange offices.
2. **Proliferation Financing:** Turkey borders, and is a traditional trading partner of, the Islamic Republic of Iran, which is subject to UN sanctions related to Iran's weapons of mass destruction program. The implementation of measures to prevent and detect these transactions, as well as the effectiveness of Turkey's efforts to freeze or seize related assets were key areas of focus.
3. **Drug Trafficking:** With its geographic location along the Balkan Route, Turkey considers itself both a target and transit route for illicit drug trafficking. Assessors focused on the extent to which the laundering of the proceeds of drug offences was being successfully investigated, prosecuted and confiscated.
4. **Fuel Smuggling:** The extent to which laundering the proceeds of fuel smuggling is being successfully investigated, prosecuted and confiscated, and how effectively inter-agency co-operation is working in practice to combat these illicit activities were key areas of focus by assessors.
5. **Migrant Smuggling and Human Trafficking:** Since 2013, STRs related to migrant smuggling and human trafficking have significantly grown from one STR in 2013 to 653 STRs in 2017. Measures taken to combat sea smuggling routes for a range of illicit activity, including these predicate offences as well as the nexus between TF and organised crime networks that oversee these smuggling routes, were other areas of focus.
6. **Fraud and Corruption:** Fraud encompasses a wide range of illicit activities. The assessment team explored how fraud and corruption are prioritised by prosecutors and law enforcement, as well as the effectiveness of other measures in place to mitigate these risks.

7. **Illegal Gambling and Betting:** Illegal gambling and betting is a key threat identified by authorities. Assessors focused on the extent to which such actions taken by authorities, including the shutting down of illegal gaming sites and online operations, are producing effective outcomes to address these risks.
 8. **Use of Real Estate:** In the NRA, the real estate sector is rated as high-risk. Key areas of focus for the sector include: the extent to which the sector is implementing preventive measures, such as CDD and STR filing obligations; the existence of other controls or mechanisms that mitigate risks; and the effectiveness of the supervisory framework for the sector.
 9. **Precious Metals and Stones:** The NRA rates the precious metals and stones sector as high-risk because of, inter alia, the volume of the sector, size of transactions and high amount of cash used. Assessors reviewed the ML/TF risk understanding of the sector and its supervisors; adequacy of supervisory resources allocated to address identified risks; effectiveness of enforcement actions; and implementation of AML/CFT obligations by the sector.
 10. **Banking Sector:** Authorities consider that the exposure of the banking sector's products and services to ML/TF risks is gradually increasing. The extent to which AML/CFT measures are being implemented by the sector and effectiveness of the supervisory framework, including guidance and feedback, were other areas of focus.
50. Through the scoping note exercise, two areas were identified as requiring lesser focus or further clarification:
- a) **The Insurance Sector:** In its NRA, private pension and non-life insurance transactions were risk-rated as low, and risk in the life insurance sector was rated as very low. However, the NRA also asserts that analysis of STRs related to aggravated fraud show that money and negotiable instrument fraud, as well as insurance and policy fraud, are frequent, and the number of STRs related to these offences greatly increased between 2016 and 2017. The reasoning as to why the insurance sector was categorised as low risk in the NRA was explored (e.g. the extent to which it was used as an instrument of fraud rather than for ML).
 - b) **Casinos:** Turkey banned casinos in 1998 and non-state backed online gambling in 2006. A state lottery and betting service exists. This issue was explored in the context of illegal gambling and betting, as identified above.

Materiality

51. Turkey has a growing economy with modern industrial, commercial and agricultural sectors. An export-led development model has been followed since 1980. Gross Domestic Product (GDP) is USD 851 billion, and GDP per capita is estimated at USD 10 597 (as of 2017). Sectoral shares of GDP are 6.1% in agriculture, 20.6% in industry, 64.7% in services and 8.6% in construction. Germany, England, the United Arab Emirates, Iraq and the United States are Turkey's main export partners. China, Germany, the Russian Federation, the United States and Italy are its main import partners. The economy has experienced constant growth, except in 2009 (following the Global Financial Crisis). The average growth rate of the Turkish economy is 4.8%.

The inflation rate was reduced to 6.2% by the end of 2012 but again increased to 11.9% in 2017. Unemployment remains at 10.9% at the end of 2017.

Structural Elements

52. Turkey has the structural elements required for an effective AML/CFT system, including political and institutional stability and the rule of law, as embodied in its Constitution.

Background and Other Contextual Factors

53. As of 2017, almost 69% of the Turkish population over the age of 15 was reported to have a bank account: Global Findex Database 2017 (World Bank).⁴ Over the past five years, there has been a steady increase in bank account ownership from 54% in 2014. Turkey has a well-developed AML/CFT legal and regulatory framework.

54. Despite progress made and improved legal framework, Turkey's foreign bribery enforcement framework needs to be urgently strengthened and corporate liability legislation reformed, as per the OECD Working Group on Bribery in International Business Transactions. The OECD remains concerned that Turkey has still not enacted legislation to address long-standing recommendations, notably to reform its laws on the liability of legal persons for the bribery of foreign public officials. Turkey's corporate liability framework does not clearly cover state-owned and state-controlled enterprises, and the prosecution or conviction of a natural person is a necessary basis for sanctioning legal persons. Furthermore, sanctions for legal persons are not sufficiently effective, proportionate and dissuasive⁵.

AML/CFT Strategy

55. The involvement of FETÖ/PDY in the failed coup attempt in July 2016 against state institutions and the Government has had a fundamental impact on the operational priorities of Turkey's AML/CFT regime. Authorities are heavily focused on this terrorism threat.

56. A range of committees and working groups, as well as the strategies and action plans under which their operations are co-ordinated, have established policies and activities which, provide national priorities for AML/CFT, although these are not comprehensive and easily tied together. MASAK's broad role within the AML/CFT framework assists with joining up the framework of committees and working groups.

57. The limited period of time since the NRA was completed means that Turkey does not yet possess a single overarching, formal strategy and policy to combat ML/TF.⁶ However, the NRA contains a series of planned measures for the period

⁴ <https://globalfindex.worldbank.org/>

⁵ www.oecd.org/corruption/turkey-s-foreign-bribery-enforcement-framework-needs-to-be-urgently-strengthened-and-corporate-liability-legislation-reformed.htm

⁶ [In order to address identified ML/TF risks in the NRA, the 11th Development Plan covering the 2019-2023 has been approved by the Grand National Assembly of Turkey on 18 July of 2019 as the first step of establishing an overarching, formal strategy and policy to combat ML/TF. According to Article 771.1 "An effective fight with Money Laundering and Terrorism Financing shall be carried out".](#)

2019-2023 in relation to the banking sector, exchange offices, the capital markets sector, the insurance sector, payment institutions, other FIs and real estate and precious metals and stones sectors.

58. Prior to the completion of the NRA, a range of committees and working groups directly or indirectly co-ordinated national responses to AML/CFT (see Chapter 2 for details). Written strategies and action plans were also used to streamline policies and activities of a number of key agencies.

59. The Co-ordination Board for Combating Financial Crimes (CBCFC) has been involved in addressing a combination of AML/CFT and financial crimes issues, including the approach to the NRA. It also administered a response to the 2013 CFT Action Plan, and promoted revisions to AML legislation. The group also held discussions on the financial structure and organisation of FETÖ/PDY and formed working groups on narco-terrorism, illegal betting and MVTs.

60. The Action Plan for CFT contains a series of objectives. These include the determination of sources of TF and information sharing between authorities; successfully investigating and proving the occurrence of a TF offence; increasing co-operation and raising awareness in the international fight against TF; evaluating and following-up on the implementation of CFT actions; and developing preventive measures and ensuring they are adopted.

Legal and Institutional Framework

61. The key AML/CFT legislation comprises:

- Law No. 5549 (Prevention of Laundering Proceeds Of Crime Law);
- Law No. 6415 (Prevention of the Financing of Terrorism);
- Presidential Decree No. 1 on the Organisation of the Presidency;
- ROM (Regulation on Measures Regarding Prevention of Laundering the Proceeds of Crime and Financing of Terrorism);
- ROC (Regulation on the Program of Compliance with Obligations of Anti-Money Laundering and Combating the Financing of Terrorism);
- ROTF (Regulation on the Procedures and Principles Regarding the Implementation of Law on the Prevention of the Financing of Terrorism); and
- MASAK regulatory instruments (i.e. General Communiqués).

62. The institutional framework for AML/CFT is broad, involving a range of ministries and authorities:

- **Public Prosecutors:** Public prosecutors are responsible for: i) conducting or enabling the conduct of ML/TF investigations; ii) monitoring and attending trial proceedings and applying for legal remedies, as necessary; iii) taking action to execute court decisions; and iv) exercising other duties assigned, in accordance with the law. Public prosecution offices are set up in each province or sub-province in which a court exists (Article 16 of Law No. 5235). The Chief Public Prosecutor's Offices exist in each regional Court of Appeals district.
- **Ministry of Treasury and Finance (MoTF):** The MoTF is responsible for preparing and implementing fiscal policies, managing public financial assets and liabilities, providing legal and revenue services to the government, fulfilling accounting operations and ensuring co-ordination amongst Turkey's

economic actors. Apart from MASAK, which operates as an independent unit housed within the MoTF, other primary units and departments within the MoTF are the Tax Inspection Board, General Directorate of Insurance, Insurance Supervision Board and Board of Treasury Comptrollers. Tax inspectors, Treasury controllers, insurance supervisory experts and actuaries are also designated as examiners for ML examinations and supervision of obligations under the AML Law.

- **Financial Crimes Investigation Board (MASAK):** MASAK is the Turkish Financial Intelligence Unit (FIU) and apart from its core responsibilities as an FIU, it also plays a central co-ordinating role in the Turkish AML/CFT system. Overall, MASAK is responsible for collecting STRs and other data, as well as analysing, evaluating and disseminating its findings to relevant authorities, including public prosecutors. MASAK is also tasked with developing policies and implementing strategies, preparing draft legislation and ensuring co-ordination amongst relevant bodies. In addition, MASAK is the supervisory body tasked with ensuring supervision of AML/CFT obligations by regulated entities.
- **Co-ordination Board for Combating Financial Crimes (CBCFC):** The CBCFC co-ordinates the activities of relevant institutions and establishments and determines the policies, practices, regulations and proposals for the prevention of ML/TF. The Board meets at least twice a year and comprises members from all government agencies, which have responsibilities for combating ML/TF.
- **Assessment Commission (AC):** Under the chairmanship of the Head of MASAK, the AC submits opinions and proposals to the Office of the Presidency relating to asset freezing requests (and their repeal) made by foreign countries, freezing requests (and their repeal) to foreign countries and also referrals to the Public Prosecutor's Office. The AC is the competent technical body for UNSCR 1373. Its decisions are non-binding, and MASAK provides secretariat services to the AC.
- **Ministry of Justice (MoJ):** The main responsibilities of the MoJ are establishing and organising the courts and other judiciary institutions, inspecting them with regard to their administrative duties, submitting suggestions to the Council of Judges and Prosecutors, maintaining criminal records, carrying out procedures related to foreign countries in matters of judicial services and evaluating draft bills. The primary units involved in the MoJ in AML/CFT efforts are the General Directorate of Legislation, the General Directorate of Foreign Relations and the European Union, the General Directorate of Penal Affairs and the General Directorate of Judicial Registration and Statistics.
- **Ministry of Interior (MoI):** The MoI exercises policy control over the General Directorate of Security (Turkish National Police), which is responsible for policing all crimes in urban areas; the General Command of Gendarmerie, which conducts policing in rural areas; and the Coast Guard, which is responsible for Turkey's coasts. The MoI also prepares and implements regulations relating to law enforcement. Investigations are conducted under

the authority of a public prosecutor. Several divisions within the MoI's departments are responsible for combating ML/TF.

- Ministry of Foreign Affairs (MoFA):** The MoFA is involved in international co-operation, the negotiation of international agreements and approval of international conventions. The MoFA presents reports addressing Turkey's implementation of counter-terrorism and counter-terrorist financing resolutions of the United Nations Security Council (UNSC). It co-ordinates with relevant units in Turkey to evaluate requests received from other countries for co-operation and information exchange with regard to terrorism and TF. It also co-ordinates Turkey's implementation of the UNSCRs related to proliferation financing.
- Ministry of Trade:** The Ministry of Trade is responsible for the law relating to legal persons and arrangements and customs-related issues. It has a regulatory and audit role in relation to companies' activities with regard to the Trade Registry and in relation to the establishment of, and statutory changes in, commercial companies.
- Directorate General of Foundations (Ministry of Culture and Tourism):** Duties of the Directorate are governed under Article 693 of Presidential Decree No. 4. These include the supervision of foundations, research and development activities related to foundations and national and international co-ordination.
- Central Bank of the Republic of Turkey (CBRT):** The primary aim of the Central Bank is to achieve and maintain price stability. Its key duties include granting licenses to systems operators, which fall under the categories of Payment and Securities Settlement Systems and Payment Services and Electronic Money Institutions; enhancing the stability in the financial system; taking regulatory measures with respect to money and foreign exchange markets; implementing regulations; supervising compliance with regulations and monitoring financial markets.
- Banking Regulation and Supervision Agency (BRSA):** BRSA is responsible for regulation, monitoring and audit operations of all domestic and foreign banks operating in Turkey, leasing companies, factoring companies, consumer finance companies, financial holding companies, asset management companies, payment and e-money institutions and MVTS providers. BRSA is authorised to issue regulations and communiqués through Board decisions.
- Capital Markets Board:** The CMB is the regulatory and supervisory authority in charge of the securities markets in Turkey. The three primary areas within the responsibility of the CMB are: primary markets, secondary markets and financial intermediation. The CMB licences intermediary institutions and collective investment institutions, registers corporations issuing securities, and supervises clearing organisations as well as securities and precious metal exchanges established in Turkey.

The Financial Sector and DNFBPs

63. In the context of AML/CFT risks and vulnerabilities, not all financial and DNFBP sectors are of equal importance. The level and types of ML/TF risks affecting individual FIs and DNFBPs vary greatly, as do the ML/TF risks facing other particular sectors.

64. Assessors ranked the sectors on the basis of their relative importance in Turkey, given their respective materiality and exposure to ML/TF risks. Assessors used these rankings to inform their conclusions throughout this report, weighting positive and negative implementation issues more heavily for significantly important sectors than for less important sectors. This approach applies throughout the report, but is most evident in Chapter 6 on IO.3 and Chapter 5 on IO.4.

65. For the purposes of this report, the banking sector is weighted as being the most important sector in Turkey, based on its materiality and ML/TF risk exposure. In terms of the total size of assets held in Turkey, the banking sector is, by far, the biggest sub-sector of the Turkish finance sector with a share of 85%. A total of 51 banks, including 33 deposit institutions, 5 participation institutions and 13 development and investment institutions, operate in the sector. The NRA noted that the banking sector's AML/CFT capacity is high thanks to the strong risk management system. However, due to the continued increase in diversity, speed and volume of transactions, and the cross-border character of most banking operations, the inherent risk exposure of the sector is increasing over the time.

66. Exchange offices are weighted as being highly important, as well, based on materiality and ML/TF risk exposure. A total of 744 exchange offices and 78 branches are active in Turkey. The US dollar (USD) comprises the biggest share of exchange transactions. In 2017, exchange transaction amounted to a total of USD 137 billion (USD 70 billion purchased and USD 67 billion sold). In terms of the total size of assets held within Turkey, the exchange offices sector has 0.05% share of the overall financial sector. Contextual factors, such as the ease of conducting business within the sector, increases the sector's ML/TF risk exposure. In the recently completed NRA, cases are mentioned, which highlight abuse of the sector for ML/TF purposes, in particular within proximity to conflict zones (e.g. South-eastern regions in Turkey).

67. In terms of the size of its assets, the capital market sector has a 6.5% share of the Turkish finance sector and is the second biggest finance sub-sector behind the banking sector. A total of 166 companies, 65 intermediaries, 49 portfolio management companies, 31 real estate investment companies, 12 private equity or venture capital investment companies and nine securities investment companies are active in the sector. The NRA identifies the overall risk of the sector as medium. The sector is weighted moderately important.

68. The Turkish insurance sector has a 4% share in the financial sector. Sixty insurance and pension companies are engaged in premium production activity, including 38 non-life insurance companies, 4 life insurance companies and 18 pension firms. Of the total paid premiums, 85.3% are in non-life insurance, and 14.7% of the total paid premiums are in life insurance. There are 44 foreign-capital companies, of which 39 have a foreign capital share over 50%. Given relevant products, services,

delivery channel and geographic risks, the sector is identified as low risk in the NRA. The sector is weighted as being of relatively low importance.

69. The non-bank financial sector in Turkey has a small share amongst FIs, of only 3.7%. A total of 101 companies are active in the sector, including 26 financial leasing companies, 14 financing companies and 61 factoring companies. The ML/TF-related risk level is considered low in the NRA.

70. Currently, there are 33 payment institutions, of which 12 offer bill collection services, 8 are money transfer services, 9 are virtual point-of-sale services, and 3 are mobile payment services. Although, payment institutions are relatively new, the number of payment institutions is rapidly increasing. It is seen that a large part of the money transfers made in the sector occur via two global companies. The sector is risk assessed as medium. The sector is weighted moderately important.

71. In the DNFBP sector, the precious metals and stones sector is considered as high risk due to the size of the sector (Turkey is among the five largest markets and among the top three countries in terms of gold production), with an annual business volume estimated at USD 10 billion. ML risk in the real estate sector is also considered to be high, and the assessors have assigned relatively high weight to this sector. The accountancy sector is subject to AML/CFT supervision and all professionals are required to be registered. The sector is assigned relatively less weight by the assessment team. The notary sector is assessed as low risk in Turkey, due to several structural factors, including the professional profile of notaries, as well as the AML/CFT obligations in place and comprehensive and regular supervision. Lawyers can play a role in company formation and management, and in real estate transactions. However, lawyers are not under any AML/CFT obligations. Lawyers are weighted as being of relatively moderate importance.

Preventive Measures

72. Turkey's preventive measures are set out in the following Regulations and Communiqués, issued by MASAK:

Table 1.1. Regulations and Communiqués issued in Turkey and their objectives

| Regulation/Communiqués | Name | Objective |
|--|---|---|
| ROM | Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism | To implement Law No. 5549 on Prevention of Laundering Proceeds of Crime and to regulate principles and procedures regarding obliged entities and obligations and supervision of compliance |
| ROC | Regulation on Program of Compliance with Obligations of Anti-Money Laundering and Combating the Financing of Terrorism | To implement Law No. 5549 and regulate principles and procedures regarding the establishment of compliance programs and assignment of compliance officers by obliged entities to prevent ML/TF |
| ROTF | Regulation on the Procedures and Principles Regarding the Implementation of the Law on the Prevention of the Financing of Terrorism | To implement Law No.6415 on the Prevention of the Financing of Terrorism and to regulate principles and procedures regarding asset freezing decisions and management and control of frozen assets |
| MASAK General Communiqué on STRs for TF and other Communiqués (No. 5, 7, 8, 12 and 13) | Enforceable instruments issued by MASAK | To clarify the TF offence under Law No. 6415, principles and procedures for STRs, CDD measures and freezing of assets under UNSCRs |

73. The AML/CFT legislative framework in Turkey covers all FIs and DNFBPs, with the exception of lawyers. Lawyers had been one of the obliged entities pursuant to previous AML/CFT legislation: art. 2(1)(d) of Law No. 5549 and Article 4(1)(§) of ROM. However, the provision in the legislation relating to the obligations of lawyers was nullified by the Council of State in May 2017. This exemption is not based on consideration of the ML/TF risks.

Legal Persons and Arrangements

74. According to Article 124 of Turkish Commercial Code (TCC), legal persons in Turkey are commercial companies that may take one of five forms: joint-stock companies, limited companies, general partnerships, commandite partnerships and co-operative companies. The establishment, basic features and functioning of these companies, with the exception of cooperatives, are regulated in the TCC. Cooperatives are regulated in Law No. 1163. MERSIS, which is the central registry of the MoT, maintains a registry of relevant documentation for all commercial companies. Similarly, the KOOP-BIS system is used for cooperatives, VBYS for foundations and DERBIS for associations.

75. Since 2013, limited companies constitute the greatest percentage of formed legal persons (amounting to approximately 80% of total registered entities). The number of legal persons registered according to their types, as in March 2019, is as follows:

Table 1.2. Types of legal persons and their population in Turkey

| Legal Person Type* | Number (March 2019) |
|-----------------------|---------------------|
| Joint Stock Companies | 131 626 |
| Limited Companies | 822 118 |
| General Partnerships | 35 832 |
| Commandite Companies | 1 779 |
| Cooperatives | 35 740 |
| Associations | 114 414 |
| Foundations | 5 689 |

* Source: MERSIS database for companies, partnerships and cooperatives

76. Turkish law does not recognise trusts, and Turkey is not a party to the Hague Convention.

Supervisory Arrangements

77. MASAK is the main supervisory authority in Turkey. All FIs, DNFBPs and other reporting entities are subject to AML/CFT supervision carried out by MASAK. In addition, BRSA, CMB and MoTF have AML/CFT licensing and supervisory roles in the financial sector. The supervisory framework for FIs and DNFBPs is as follows:

Table 1.3. Financial institutions and DNFBPs and their supervisors

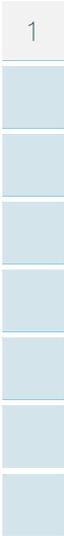
| Financial Institutions/DNFBPs | Licensing/Supervisory Authority |
|--|--|
| FIs | |
| Banks, financial leasing companies, factoring companies, financing companies, asset management companies, payment institutions and e-money institutions | BRSA |
| Intermediary institutions, portfolio management companies, real estate investment companies, securities investment companies and private equity venture capital investment companies | CMB |
| Life and non-life insurance companies, pension companies and re-insurance companies | MoTF (General Directorate of Insurance/Insurance Supervision Board) |
| Exchange offices | MoTF (General Directorate of Public Finance, formerly the MoTF General Directorate of Financial Sector Relations and Foreign Exchange)/Board of Treasury Controllers/Tax Inspection Board) |
| DNFBPs | |
| Casinos | Casinos are not allowed in Turkey |
| TCSPs | There are no separate categories of TCSPs in Turkey |
| Accountants | Supervisory Board of the Chambers of Accountants/MoTF |
| Notaries | Union of Turkish Bar Associations/MoJ |
| Real Estate Agents | Ministry of Trade/Professional Chambers/Tax Inspection Board |
| Dealers in Precious Metals and Precious Stones | Ministry of Trade/Professional Chambers/Tax Inspection Board |

78. MASAK derives the majority of its rule-making and supervisory powers from Presidential Decree No. 1 and Law No. 5549. BRSA derives its licensing and supervisory powers from Banking Law No. 5411, Financial Leasing, Factoring and Financing Companies Law No. 6361 and Law No. 6493 on Payment and Security Settlements Systems, Payment Services and Electronic Money Institutions. The main legal instrument for the CMB's powers is the Capital Market Law No. 6362. Insurance

Law No. 5684 governs the insurance sector. In addition, ROM is the other key legal instrument for the financial and DNFBP sector. Ministries and Chambers derive their powers from respective sectoral laws and regulations.

International Co-operation

79. Turkey has a sound legal basis to provide and seek the widest possible range of Mutual Legal Assistance (MLA), including extradition in relation to ML cases, associated predicate offences and TF. The central authority for coordinating MLA requests (including extradition) in Turkey is the Directorate General for Foreign Relations and the European Union of the MoJ.



CHAPTER 2. NATIONAL AML/CFT POLICIES AND CO-ORDINATION

Key Findings and Recommended Actions

Key Findings

- a) The Turkish authorities have undertaken a combined ML/TF risk assessment, which has led to a circulated, non-public NRA. Relevant authorities contributed to the process, and there has been positive input from the private sector.
- b) There is general understanding of ML risks. This understanding is greater than that represented in the NRA. Overall, understanding is partly reduced by a range of factors, including the statistical framework and areas where assessment coverage is not fully developed (including, for example, cross-border risks, the misuse of legal persons, and lawyers).
- c) There is a good understanding of TF risks. As with ML, understanding is greater than that represented in the NRA but there is scope for a more in-depth assessment, including in relation to NPOs.
- d) There is a link between higher risk areas in the NRA report and EDD, which should be undertaken by FIs, although not for DNFBPs (though the risks of this are mitigated to a large extent). Simplified due diligence provisions have been subject to assessment and appear to be consistent with the NRA and Turkey's risks.
- e) There are national policies (including strategies, action plans and similar documents) and co-ordination mechanisms in place. The policies do not yet constitute a comprehensive, national approach (authorities have commenced work). Co-ordination of AML/CFT is of a good standard; co-ordination to counter PF is not comprehensive.
- f) Bilateral and multi-lateral co-operation and information exchange is positive, with examples of very good liaison and information exchange being provided.
- g) There has been outreach on the NRA report to the private sector through workshops and provision of parts of the report. The level of information disseminated in writing is not complete. NPOs

remain unfamiliar with the outcomes of the NRA, although the authorities have planned to undertake outreach.

Recommended Actions

- a) Turkey should develop an action plan to address the areas of its assessment of risks that require development or improvement, and update its NRA going forward. Statistics should be an important focus of this work.
- b) More comprehensive national AML/CFT risk-based policies should be developed, in a co-ordinated approach, and clearly articulated to the private sector to improve AML/CFT compliance and monitoring. Consideration should be given to adopting a single, comprehensive policy, drawing all relevant elements together. As part of this, AML/CFT risk-based action plans, should be developed with clear timetables subject to demonstrable and effective co-ordination and monitoring.
- c) Competent authorities should put in place, risk-based objectives consistent with national strategies, policies and action plans, and which are subject to demonstrable and effective monitoring.
- d) CPF activities should be more effectively co-ordinated, involving relevant public and private sector entities.
- e) Turkey should conduct further outreach and consider disseminating further information from its NRA (or any other relevant information) to obliged entities, and in particular NPOs, so as to raise awareness of relevant ML/TF risks, threats and vulnerabilities

80. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 2, 33 and 34.

Immediate Outcome 1 (Risk, Policy and Co-ordination)

Turkey's Understanding of Its ML/TF Risks

81. Under the leadership of MASAK, the Turkish authorities have taken steps to develop their AML/CFT activities relevant to understanding risk by undertaking a ML/TF risk assessment and producing a NRA report. The NRA was a significant step in enhancing Turkey's understanding of ML/TF risk; it enabled the authorities to articulate existing views in one report. The statistics in the report date to the end of 2017. Authorities advised that the report and their conclusions remained current as at the time of the assessment team's on-site visit to Turkey and, therefore, that the understanding of risks articulated in the NRA does not require revision. This is on the basis that information (including statistics) up to the finalisation of the report was taken into account and assessed.

82. Relevant authorities contributed to the NRA process. There was also positive input from the private sector by means of surveys completed by FIs and DNFBPs and workshops organised by MASAK with private sector associations (see the section below on the private sector's understanding of risks). These surveys allow a general picture of ML/TF threats to be developed. To a large extent, the gap appears to have been addressed by other forms of public-private sector contacts and liaison between FIs, supervisors and other authorities (e.g. STR filing, the NRA process, ad hoc meetings, typologies workshops and other training, and direct contact with compliance officers). Furthermore, the sectoral analysis of vulnerabilities conducted in the NRA combines elements of AML and CFT, and this dual focus contributes positively to the report's findings.

83. Understanding by authorities demonstrated during the assessment team's visit to Turkey was more detailed than that represented in the NRA.

84. Statistics were used to inform risk assessment and understanding. Where statistics were not available, the views of experts within the authorities, using their operational experience, and other sources of information were used to bridge the gap in understanding. Use of information from a range of external sources including operational authorities and documentation produced by regional and international bodies have also aided this level of understanding. Nevertheless, the level of detail in the report should be enhanced, particularly in light of some over-emphasis on expert views relative to use of quantitative metrics and statistics. The assessment team also has a concern that there has been some over-reliance on the assessment of predicate criminality, as opposed to ML (notwithstanding the existence of ML cases, including two standalone ML cases).

85. There has been some assessment of cross-border risks. Although this would benefit from further development (including in relation to trade based illicit activity), Turkey was able to demonstrate a good level of understanding of the links between different types of criminality outside Turkey and links to Turkey.

86. Risks of legal persons are understood to some degree. The legal framework has been assessed, together with the cases in which Turkish legal persons were misused (the most important predicate crime and ML threat deriving from fuel smuggling). In addition, Turkey points to the sectoral risk assessments undertaken (including of accountants and notaries) as informing understanding in relation to legal persons, the requirements reflected in R.24 and the prohibition of TCSPs as mitigating risk. Turkey considers its assessment is sufficient to justify a rating of low risk for legal persons; it also advised that this low risk means that the assessment is not included in the NRA report. The assessment team considers that a comprehensive understanding would be achieved from a more detailed assessment of ML/TF risks associated with all types of legal persons created in Turkey and also the risks of foreign legal persons and lawyers (including lawyers' involvement with legal persons). While there has been no formal assessment of use of FIs and DNFBPs by foreign trusts, with the information it has provided, Turkey has demonstrated to the assessment team that its view that the risks are low is justified.

Money Laundering

87. The Turkish authorities have a general understanding of ML risk.

88. The crimes posing a high ML threat in the NRA are drug trafficking, migrant smuggling, human trafficking and fuel smuggling. Medium threat level criminality includes aggravated fraud; smuggling of tobacco, tobacco products and alcohol; illegal online betting and corruption. The authorities have reconciled and formed conclusions on the various sources of information used. Several factors were scored and risk weighted for the NRA after several rounds of discussions between authorities so as to identify the highest threat predicate crimes. These factors included the way in which the crime is committed, the parties involved (e.g. whether or not there was organised crime group involvement), the number of persons indicted, the values ascribed to actual and potential proceeds, the socio-economic consequences of the type of criminality and responsibility to treaty partners.

89. Illegal betting is a high proceeds-generating crime and was widely seen as a risk by the banking sector in discussions with the assessment team. The authorities indicated that it had become a particularly pertinent issue in the last few years and that they were concerned about the significant size of the illegal gambling sector (it is at least as large as the legal sector) and the number and implications of STRs filed and investigations undertaken. Demonstrable work has been carried out so as to allow MASAK to be able to provide detailed information about the timing of when illegal betting has been committed and the pattern of how the individual tasked with opening an account differs from the individual managing the account (e.g. login details are passed to and controlled by a second individual or accomplice). It is possible that the threat level ascribed to the crime in the NRA should be modified; this has not detracted from responses by the authorities, which recognise that the risk situation in relation to illegal betting is constantly evolving; they understand the threat.

90. Cybercrime has been considered. This form of criminality features prominently in most fraud cases and its growing importance has been recognised.

91. In light of the pattern of TF identified by Turkey and the risk attached to weapons smuggling for terrorism, the assessment team explored whether such smuggling should be rated as higher risk for ML. There are several mitigating factors at work, including controls in place within Turkey to cover the manufacturing and trading of small weapons, a high degree of sensitivity shown by customs officials to addressing weapons smuggling issues and the perception that organised crime groups see smuggling on behalf of third-parties as posing an unnecessarily high risk for their own smuggling operations. In addition, authorities also advised that terrorist groups active in the region typically receive and use weapons to advance their goals outside Turkey (i.e. in neighbouring conflict zones).

92. Turkey has a very good understanding of the role of organised crime groups within the various types of predicate criminality. This understanding is based on an analysis of previous cases by the law enforcement agencies, analysis of STRs and consideration of evolving nature of threats. This understanding appears to extend to use of Turkey by cross-border OCG networks.

93. High-risk sectors are specified as being the banking sector, exchange offices, the DPMS sector and the real estate sector. The assessment team agrees that these are high-risk sectors; lawyers were not included in the assessment and it is not clear which level of risk should be ascribed to this sector. While unlicensed MVTs activity is understood to be a risk and supporting information was provided by Turkey, the team considers that a more rounded understanding would be aided by further analysis of the

implications of such unlicensed activity and the links between licensed and unlicensed offices and DPMS activity.

94. Correspondent banking by Turkish banks is limited to the extent that EUR and the USD transactions are, by far, the most substantial foreign currencies used and, therefore, European and American correspondent banks comprise the vast majority of such banking relationships. Authorities indicated that banks have not formed correspondent relationships with banks in countries they consider to be high risk.

95. With reference to developing technologies, MASAK has advised that specific aspects were considered such as bitcoin, blockchain and virtual assets but, as they were not found to be risky, were not stated in the NRA report. MASAK was also informed about the use of more widespread products and services in the banking sector such as mobile services, online/digital banking and non-card ATM transactions. Apart from banks, the only other sector developing the use of financial technologies is the capital markets intermediary sector. This includes applications, which enable payments to be made directly between investor and intermediary. In capital markets, electronic transfer of money is conducted through banks; applications on mobiles enable customers to give orders easily.

96. The shadow economy has been assessed as comprising some 26% to 28% of the economy (primarily, manifesting as tax evasion and social security fraud). This shadow economy comprises payment for labour and also transactions of goods, sometimes smuggled from other countries. Cash is also linked to laundering the proceeds of drug trafficking, fraud, illegal betting and corruption. The use of cash is important both within and without the shadow economy. Authorities regularly receive information from banks, which typically screen the use of bulk cash as a red flag for suspicious activity. Relevant STR information on the use of cash for illicit purposes was provided to the assessment team, highlighting the authorities' understanding of this activity.

Terrorist financing

97. MASAK and the TNP have a good understanding of TF risk. They are supported in their understanding by the central position held by MASAK within the AML/CFT framework, the significant risk analysis functions and the departments within the TNP dedicated to fighting particular forms of criminality such as people smuggling, the links between the two authorities, and the work of other parts of the system such as the narco-terrorism working group and the immigration department of the MoI. Understanding by other authorities seems to be less than that of MASAK and the TNP. More comprehensive analysis of TF risk (including in relation to NPOs) would enable a more rounded and demonstrable understanding.

98. Authorities have considered terrorism threats from two perspectives, namely national threats (which are viewed as directly targeting Turkey) and international threats (which are viewed as indirectly targeting Turkey). The main TF risks are considered to be FETÖ/PDY, PKK/KCK/PYD-YPG, ISIL (DAESH) and DHKP-C. This is based on numerous factors, including the TF risk they pose, the length of time that these groups have been operating, the loss of life and damage caused, the frequency of attacks and the nature of the organisations. All four organisations are considered to present high TF risk. The assessment team agrees with this although it is not clear whether the risks have been sufficiently prioritised.

99. Financing activities have been classified in three groups, namely illegal financing, financing through activities that seem legitimate (which includes NPOs) and financing through external or international support.

100. Intelligence sources appear to have allowed Turkey to reach good conclusions on the materiality of the various types of smuggling for TF purposes. With regard to the PKK/KCK and the PYD-YPG, smuggling and illegal activities at and/or near the border are an important source of revenue. By a large degree, smuggling of drugs is the most significant financing activity for these groups, with fuel and weapons smuggling being the next most frequently smuggled goods, respectively. Separately, smugglers have been required to pay so-called taxes or tolls to move their illicit products. In addition, PKK/KCK controls a substantial portion of the European drug trafficking market and has access to significant resources outside of Turkey. It is also bypassing Turkey in its fundraising efforts. Transfers of money to Turkey have been undertaken by the organisation via cash couriers, hawala networks, illegal exchange offices, payment institutions, front companies and NPOs.

101. Authorities view FETÖ/PDY as operating by forming parallel or shadow structures within the Turkish state, financed up to the time of the attempted coup through seemingly legal activities, thereby using its position within the state to direct or redirect funds for its own purposes. This included the use and abuse of NPOs. The organisation is geographically widespread, with the most important source of income now being contributions paid by members and sympathisers from around the world.

102. The financing of DHKP/C and other left-wing organisations benefits from lawlessness in parts of Syria as well as from the provision of training and armaments by the PKK/KCK and the PYD-YPG. Drug smuggling is also considered as a means of financing of such organisations. Authorities consider that most funding seems to take place in Europe through donations, recreational events and sale of publications.

103. Some consideration has been given to the use of financial technologies for TF, in particular the use of various types of bank and credit cards. The use at ATMs within Turkey of foreign bank and credit cards issued abroad is increasing. In addition, cards issued in Turkey are being used to transfer funds abroad for foreign exchange purposes. The authorities have given consideration to blockchain-based and other underlying virtual asset technologies and concluded that they pose a low risk.

104. With reference to international threats, the changing nature of ISIL is recognised by the authorities, together with a decline in its smuggling activities at or near Turkey's border and the revenues from smuggling and organised crime. Illegal cash transfers both within and outside Turkey, using actors who facilitate these transfers, are considered to be the main source of funding; efforts by individuals attempting to self-finance their terrorist activity using cash or other stores of value are expected to become prominent in light of the changing nature of risks associated with ISIL. Cash transfers are typically used by FTFs and others in conflict zones rather than for terrorist acts in Turkey. Methods of transfer have included licensed and unlicensed money transfer services, cash couriers, unlicensed exchange offices, DPMS, NPOs and the use of ATMs with foreign bank cards. Some 3.5 million refugees have sought shelter in Turkey in recent years, and the flow of refugees is an important contextual factor for TF and cross-border cash transfers. Border crossings by FTFs from Turkey to conflict zones have recently reduced and the risks of financing such fighters has similarly diminished.

105. While Al-Qaida is believed by authorities not to operate within Turkey, it is considered nonetheless to be a threat, in particular due to its links with off-shoots operating in conflict zones neighbouring Turkey. Financing models used by Al-Qaida and its branches around the world include zakat gathering, humanitarian aid, donations, contributions by companies and NPOs.

106. Good steps have been taken to consider the differing objectives and TF typologies of individual terrorist organisations and the different financing methodologies in practice used by each organisation. Narco-terrorism and the ways in which the various organisations use drug trafficking for funding has been considered as an important element in understanding the pattern. In this regard, NPOs have been a valuable source of information for authorities in understanding risk. Professional, non-affiliated networks and facilitators do not appear to be engaged in TF activity, but organised crime groups have had a role not least because of their involvement in the types of criminality used by some of the organisations.

107. Cross-border TF risks have been considered. Authorities have assessed the risks to Turkey of TF flows from outside the country being directed to Turkey, either for its ultimate use and placement in Turkey or transiting the country to another destination. Cases provided to the team included flows of funds into Turkey via wire transfers, unregistered money transfer services and cash. Typically, these involve multiple persons remitting funds to a foreign national who in turn separates the funds into smaller amounts for onward dissemination to multiple parties. NPOs that operate inside and outside of Turkey have been used to funnel funds into the country. A number of unregistered money transfer service providers involving persons outside as well as inside Turkey and refugees have been identified. MASAK has disseminated significant information on externally-sourced TF flows to intelligence authorities, LEAs and prosecutors, depending on the case. MASAK also considers the balance of risk of external funding between the PKK/KCK/PYD-YPG and ISIL is well understood by both the public and private sectors.

108. With regard to NPOs, the NRA includes a general assessment of the sector, including financial aid received by associations from abroad. Humanitarian associations operating in conflict zones are considered to present the highest risks. This conclusion was reached after analysing a combination of factors, including information provided by foreign authorities, intelligence sources and associations, which are active in conflict zones. MASAK carried out a study of NPOs, which identified numerous associations and foundations, mostly with links to FETÖ/PDY, and subsequently over 1 500 associations and foundations were closed. While a general risk profile has been developed, more in-depth analysis (using all relevant risk factors) is needed to refine it and understanding.

National Policies to Address Identified ML/TF Risks

109. National AML/CFT policies and activities have been implemented during the period under review through a series of strategies, action plans, committees, working groups and other similar mechanisms.

The National Risk Assessment

110. The limited period of time since the NRA was completed means that Turkey does not yet possess a single overarching, formal strategy and policy to combat

ML/TF. At the time of the visit to Turkey, work was in train to implement such a strategy/policy.⁷

111. The NRA contains a series of planned measures for the period 2019 - 2023 in relation to the banking sector, exchange offices, the capital markets sector, the insurance sector, payment institutions and other FIs, real estate and precious metals and stones sectors. The planned controls for banks include: ensuring that additional measures are taken against technological risks (and increasing enhanced measures against non-face-to-face transactions, in particular); ensuring that additional measures are taken for transactions in bank branches in regions with a high number of refugees; designing a comprehensive and efficient supervision programme; and preparing up-to-date typologies and guidance to enhance STR quality and to organise workshops. There are some differences between the controls articulated for each sector, with those for exchange offices requiring increased compliance to ensure offices establish systems and procedures in a more comprehensive manner; increasing the frequency of activities to improve AML/CFT awareness; reinforcing supervision of exchange offices located in border cities near conflict zones and where the number of refugees is high; and increasing controls in relation to trading foreign exchange without authorisation. The NRA report was completed too recently to allow monitoring as to what extent the controls specified in the report have been met.

112. Also, the controls in the report refer to part (i.e. elements of the preventive part) of the AML/CFT system; work is at an early stage to expand these as part of the completion of strategies and policies arising from the NRA.

Prior to Completion of the NRA

113. A range of committees and working groups, as well as the strategies and action plans under which their operations are co-ordinated, have established policies and activities which, provide national priorities for AML/CFT, although these are not comprehensive and easily tied together. MASAK's broad role within the AML/CFT framework assists with joining up the framework of committees and working groups.

114. The National Security Council (NSC) has emphasised the importance of defeating terrorism, terrorist organisations and financing of terrorism, as well as the importance of information sharing, including sharing of Turkey's knowledge and experience in countering terrorism, internationally.

115. The Co-ordination Board for Combating Financial Crimes (CBCFC) has been involved in coordinating a combination of AML/CFT and financial crimes issues, including the national approach to the NRA. It also administered a response to the CFT Action Plan, promoted revisions to AML legislation, discussed the financial structure and organisation of FETÖ/PDY, and formed working groups on illegal betting and MVTs.

116. The Action Plan for CFT contains a series of stated objectives. These include the determination of TF sources and information sharing between authorities; ensuring effectiveness in proving the TF offence; increasing co-operation and raising awareness in the international fight against TF; evaluating and following-up on the

⁷ On 18 July 2019, the 11th Development Plan, covering the period 2019-2023, was approved by the Grand National Assembly of Turkey. Article 771.1 states that an effective fight with money laundering and terrorist financing shall be carried out.

effectiveness of CFT implementation; developing preventive measures and ensuring they are adopted; and generating awareness of TF.

117. Other national responses to terrorism and TF include the establishment of a narco-terrorism working group in 2017. The activities of this group include the determination of how the proceeds of drug trafficking are ultimately transferred for terrorism purposes. In addition, a MVTS working group was established in 2018, in light of the existence of illegal hawala networks, including networks with links to ISIL. This group has met once, but it already appears to be adding value. Measures were agreed at the meeting and include the close monitoring of MVTS activities, particularly in areas bordering conflict zones; enhanced information exchange between authorities; the assessment of the adequacy of legislation; and the development of specific legislative revisions to address identified gaps.

118. National anti-drug strategies and action plans have been in place since 2006. The 2015 Strategy articulated a range of objectives to combat the wider crime environment (e.g. drug abuse) and is relevant to AML/CFT to some extent. Aspects of these stated objectives include the detection of proceeds, the detection of connections between organised crime groups, organised crime types and terrorist organisations, and the prevention of the laundering of illicit proceeds of organised crime and TF. The 2018 - 2023 national strategy paper and action plan for combatting drugs is more general in that one of its initiatives is, by monitoring the financial dimension of drugs, to prevent access to the proceeds of drug trafficking and TF.

119. The 2016-2018 action plan for reducing organised crime contains a series of objectives to combat organised crime. One of these objectives (and the underlying actions) is directly relevant to AML/CFT in that it seeks to prevent terrorist organisations from obtaining funds from organised crime and seeks to prevent laundering of the proceeds of crime. The same objective and actions feature in the 2019 - 2021 action plan.

120. Other strategies, action plans and similar documents have been established to combat fuel smuggling, other types of smuggling, drug addiction, migration, human trafficking and corruption. A task force and commission have been established on human trafficking. In addition, the strengthening and shaping of AML/CFT authorities can be considered to be an aspect of national policy. For example, the TNP department for combatting narcotic crime was segregated from the anti-smuggling and organised crime department (KOM) so as to address a priority to fight drug and organised crime; consequently, a specialised branch to combat the proceeds of crime was established within the department for combatting narcotic crime.

Exemptions, Enhanced and Simplified Measures

121. Turkey has not sought to create exemptions from compliance with the FATF Standards (although lawyers are not included in the framework).

122. The ROM requires enhanced due diligence by obliged entities for complex and unusual, large transactions; transactions which have no apparent reasonable legitimate and economic purpose; transactions, services or products introduced by new and developing technologies, including non-face-to-face transactions; correspondent relationships; and transactions or business relationships with individuals in risky countries. In addition, the ROC requires EDD to be applied in cases

which, by nature, present a higher risk of ML/TF. MASAK has also published STR guidance, which provides some guidance in relation to how to handle ML/TF suspicions (i.e. high-risk situations). The requirements and guidance are consistent with the findings of the NRA report. The ROM also requires FIs to take risks into account in their risk assessments that have been considered as high by the MoTF and implement enhanced measures for these risks; these requirements apply to the NRA report. The same requirement does not apply to DNFBPs as there is no specific requirement for DNFBPs to apply enhanced measures to risks identified by the MoTF. Nevertheless, DNFBPs are regarded as failing in their AML/CFT obligations if they do not take what they have been advised about the NRA into account, and MASAK has advised that it considers that explicit reference is not necessary. In practice, the gap is likely to be small.

123. The ROM also sets out situations where SDD may be undertaken, based in part on the Interpretative Note to R. 10. These include: transactions between and for FIs; transactions where the customer is a public administration or quasi-public administration; relationships established for the groups of customers to receive salary payments; pension schemes providing retirement benefits by way of deduction from salaries; and transactions where the customer is a public company. Ministerial Communiqué No. 5 provides additional cases, namely: transactions where the customer is a bank subject to regulation and supervision, in accordance with international AML/CFT standards; an international organisation, or an embassy or consulate in Turkey, or a member of staff of one of these bodies; pension contracts, pension plans and life insurance contracts in specified, limited circumstances; transactions relating to prepaid cards subject to specified maximum loads, reloads and cash withdrawals; obliged parties without physical premises conducting transactions where the obliged party has a bank account; transactions related to payment and electronic money institutions for the purpose of purchasing goods and services, subject to specified limitations on value and use of the relationship. These cases represent some of those requested by the private sector and which were assessed as acceptable on risk grounds by MASAK. Some requests were not agreed on the basis of risk. In light of Turkey's multi-layered risk profile, the scenarios where SDD is permitted will need to be monitored.

Objectives and Activities of Competent Authorities

124. Turkey has taken some measures to address identified ML/TF risks, including those linked to terrorist organisations and associated criminality, as well as enhancements to legislation on real estate agents (in 2018) and exchange offices (in 2018 and 2019). Turkey has also begun efforts to better regulate and supervise money transfer through its legislation on payment institutions and its fledgling programme to supervise them. There have also been a range of initiatives targeting predicate criminality and ML (see the section above on national policies). Turkey has also begun to raise awareness of vulnerabilities amongst regional officials charged with oversight of NPOs.

125. MASAK has the strategic objective of preventing the laundering of proceeds of crime and TF. It publicises its priorities in its annual reports. MASAK's most recent priorities were to restructure and enhance its institutional capacity by increasing the quantity and quality of staff; ensure specialist knowledge of a wide range of predicate offences and organised crime; establish teams in cities other than Ankara; strengthen

IT capacity; and enhance co-operation with LEAs. Since 2014 it has also prioritised faster compilation of data; developing its strategic analysis products; informing obliged entities of threats to economic security ; undertaking additional analysis within the framework of a risk-based approach and sharing financial intelligence; increased efficiencies through the use of STR data and other sources; raising awareness amongst obliged entities as to their preventive measures and ensuring the implementation of those measures; supporting the supervision of obliged entities, including via off-site and on-site supervision; carrying out effective and proactive work with LEAs and other relevant authorities; developing capacity in relation to the seizure of assets; and focussing on the prevention of ML/TF.

126. The TNP has a number of departments engaged in combating ML and financial crime, including the KOM, the counter narcotics department, and the cyber-crime department. The KOM has been a key coordinator in relation to combating organised crime. Its roles include: monitoring and suppressing financial crime; gathering and evaluating intelligence; undertaking operations to combat financial crimes that adversely affect the economic, political, administrative and moral structure of the Republic of Turkey; undertaking operations against smuggling; seizing proceeds from smuggling; cooperating with foreign countries; using controlled delivery techniques; cooperating with national and international institutions and organisations to train personnel; planning the procurement of equipment to support the collection of evidence; and preparing and implementing plans to fight smuggling and organised crime. In a letter issued in 2015 to all branches, the KOM emphasises approaches to combat ML. The same letter also includes CFT.

127. The other main LEAs, the General Command of the Gendarmerie, the Coast Guard and Customs Enforcement are also involved in investigating ML and TF offences. Each LEA has officers which specialise in ML and TF investigations. LEAs as a whole are not effectively identifying ML activity; documents provided stress the importance of ML investigations as a strategy, although they do not specify specific goals or targets. In addition, while Turkey has a high-level commitment to deprive criminals of their proceeds of crime, there do not appear to be policies within the LEAs or public prosecutors to support this commitment. TF investigation is largely directed towards identifying assets.

National Co-ordination and Co-operation

128. Turkey has demonstrated political commitment to building a robust AML/CFT framework. There are four co-ordination mechanisms (either committees or similar structures) in place for the development of policies and activities. Co-ordination of AML/CFT is of a good standard.

129. The NSC is the supreme co-ordination mechanism for security and defence policy. As indicated above, it has adopted a strong position in relation to addressing terrorism and TF. The NICB is responsible for the co-ordination of intelligence and for establishing high-level views on the management of intelligence. The ISSCB coordinates Turkey's response to terrorism and TF, and is administered by the MoI. The CBCFC is chaired and administered by the Deputy Minister of the MoTF and is the main tool for AML co-ordination.

130. The CBCFC, which is co-ordinated by MASAK, has also adopted a role in relation to CFT. For example, it has considered the CFT Action Plan (MASAK is also responsible for

monitoring progress on the outcomes of the action plan). The content of meetings includes legislative (i.e. policy) development and other activities. A significant focus of the CBCFC has been on the NRA (which also covers CFT); its approach has been high-level rather than granular. On the other hand, committees and other groups have been established by the CBCFC, which appear to have more narrow focus and granularity in their work. These include committees and other groups to tackle specific themes or issues, such as the NRA, narco-terrorism, illegal betting and money or value transfer services. There are other committees or groups, which have also been active.

131. There are demonstrable mechanisms for co-ordination in place and co-ordination among key agencies is of a good standard, although their effectiveness for AML/CFT purposes is mitigated to some extent as AML/CFT co-ordination has not been brought together under a single whole-of-government policy approach, which is both risk-based and demonstrably co-ordinates measures taken.

132. The MoFA co-ordinates responses to PF and TFS in relation to Iran and DPRK. The activity by MoFA is positive but not comprehensive. There have been some meetings with representatives of various Ministries (which involve some operational authorities) and a few private sector institutions on sanctions related to Iran. Co-ordination in relation to DPRK has been carried out by correspondence. There are no North Korean citizens in Turkey and no applications for export licences have been made. MoFA once engaged with the MoT in connection with a Turkish company employing staff from the DPRK, and while no connections to PF activity were ultimately confirmed, this case indicates that mechanisms are in place, which could be used for PF. Overall, a more active and joined up approach, intelligence and information-sharing on PF is needed.

133. MoUs are not legally required for the authorities to exchange information domestically. Nevertheless, authorities have agreed MoUs to varying degrees as follows: MASAK (43); TNP (15); Coast Guard Command (9); Gendarmerie (5); Customs (5); BRSA (5); CMB (5); Insurance Supervision Board (1). Of these, the TNP, the Coast Guard Command, the Gendarmerie and Customs have entered into a joint protocol. In some cases more than one MoU has been signed between sub-units of the same authorities so as to ensure greater coverage. In addition, the FI supervisory authorities have entered into a joint protocol, which also includes the Ministry of Treasury and Finance, Ministry of Trade and the Savings Deposit Insurance Fund.

134. In order to facilitate information flows, there are liaison officers in LEAs, intelligence units and MASAK. MASAK in particular co-operates and exchanges information to a good degree. This includes via the use of an IT system, which provides LEAs, prosecutors and the Courts with direct access to case information held by MASAK. There is also good contact between TNP liaison officers in each of its departments for combating cybercrime, anti-smuggling and organised crime, and counter terrorism and intelligence, with MASAK. Examples of very good liaison and information exchange were provided to the assessment team. Customs has also taken the positive step of establishing a special task force to combat fuel smuggling.

135. With reference to illegal betting, MASAK has links between policy co-ordination on the one hand and operational activity on the other. For example, MASAK initially acted as a conduit for information flows between the TNP's Department of Combating Cybercrime and banks, and this was followed in turn by its linkage of co-operation between the Department of Combating Cybercrime and the Public

Prosecutor's Office. As required, "study meetings" are also utilised, whereby various authorities are brought together to provide wider input into ongoing investigations. For example, to tackle illegal betting, meetings organised by MASAK were held with the Department of Combating Cybercrime, the Ministry of Justice, the BRSA and other regulatory authorities, the Turkish Banking Association (TBA), banks and the Association of Payment and Electronic Money Institutions (ODED) over a two year period.

136. With regard to AML and CFT, co-operation between MASAK, the intelligence agencies, LEAs and prosecutors is carried out via "Intelligence Notes" and "Financial Analysis Reports." The information flow between MASAK and the intelligence agencies is used to check, examine, refine and supplement the information in the Notes and Reports. Analysis of the information by prosecutors in preparation for cases has also led to enhanced information flows focused on particular case aspects. Prosecutors have sought to ensure inter-agency co-ordination during investigations and prosecutions.

137. MASAK shares its findings on individual STRs made by payment institutions and information on riskier and unlicensed institutions with the BRSA. It has also shared information with the CMB (unlicensed forex companies); companies operating pyramid schemes (the Ministry of Trade); legal and natural persons suspected of dealing in crypto currency (the Tax Audit Board and the BRSA); and information with the Tax Audit Board (FIs suspected of being at risk of having unrecorded earnings). Individual case examples were provided to the assessment team, which demonstrates good co-operation by MASAK on AML and CFT. At the preventive level, in addition to its MoU with the BRSA, MASAK seeks input from the BRSA, the Capital Markets Board, the Insurance Supervision Board and the Tax Inspection Board while preparing its supervisory programmes.

The Private Sector's Awareness of Risks

138. Prior to completion of the NRA, MASAK provided information on ML/TF risks to obliged entities by issuing sectoral guidelines on STRs.

139. Representatives of FIs and DNFBPs were involved in the NRA. In addition to surveys provided to individual FIs, workshops were held with the Turkish Banking Association and Participation Banks Association, the Association of Financial Institutions, the Insurance Association of Turkey, the Turkish Capital Markets Association and the Payments and Electronic Money Institutions Association to share ideas and understand risk. DNFBPs from the real estate, jewellery, accountancy and notary sectors also completed surveys and workshops were held with the Turkey Real Estate Chambers and Associations Federation, the Union of Chambers of Jewellers, the Professional Chambers of Certified Public Accountants of Turkey and the Union of Turkish Public Notaries.

140. The NRA was completed in the final quarter of 2018. The report is confidential and has not been published. While the NRA has been circulated to the authorities, the private sector has received information from MASAK on the NRA report via 15 workshops at the end of 2018 and early in 2019. The relevant text on sectoral vulnerabilities in the NRA report was disseminated to all FIs via their associations and to DNFBPs, which are members of SROs and associations (this would be a significant

part of the DNFBP population). Dissemination of further information would be beneficial.

2

141. NPOs did not participate in the NRA and have not been provided with risk information. NPOs met by the assessment team had received a copy of the NRA during the assessment team's visit to Turkey and were unfamiliar with the outcomes of the report. The Turkish authorities have indicated that, as this is the first NRA, the key factor is that those authorities responsible for the sector have contributed to the NRA process based on their awareness of the threats and risks of the sector and that the General Directorate of Relations with Civil Society liaised with NPOs as part of its work on the NRA. Further efforts in this area are needed.

Overall Conclusions on IO.1

142. **Turkey is rated as having a substantial level of effectiveness for IO.1.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

- a) MASAK has electronic access and uses a wide variety of government and private sector databases, including direct access to banking information, which enables it to generate comprehensive financial intelligence products. MASAK uses a variety of IT tools and techniques to carry out operational and strategic analysis.
- b) Turkey has demonstrated the use of MASAK's financial intelligence products to support ongoing investigations and prosecutions of predicate, ML and TF offences. The extent to which financial intelligence is used routinely in existing ML cases or developing evidence across all the law enforcement agencies was not demonstrated.
- c) MASAK's completed analysis and evaluation files for the years 2013 to 2017 related to terrorism, including TF, represents over 97% of its output, while the supporting STRs related to terrorism and TF received from reporting entities over the same period represents less than 25%.
- d) There has been an exponential rise in the number of judicial requests to MASAK (from Public Prosecution offices and courts) related to FETÖ/PDY since the attempted coup in July 2016, leading to a manifold increase in MASAK's workload.
- e) MASAK has not been able to meet the analytical demands placed on them due to the increasing number of STRs received and the judicial requests for information, particularly in the area of terrorism and TF.
- f) STR filing by DNFBPs is very low as noted in IO.4. This inhibits the flow of intelligence to MASAK.

Immediate Outcome 7

- a) Each of Turkey's four LEAs have trained and dedicated ML investigators; however, Turkey is not effectively identifying ML

activity for investigation through their analysis of STRs and other reports submitted to MASAK, nor through investigation of high-risk proceeds of crime generating predicate offences.

- b) For the four highest predicate offences posing the greatest ML risk as identified in Turkey's NRA, the ratio of predicate offence investigations to ML investigations is less than one ML investigation of every 1000 high-risk proceeds of crime generating predicate offence investigations.
- c) While there are documents in relation to anti-drug and organised crimes strategies which reference ML, in addition to high level circulars, Turkey lacks policy objectives with specific goals considering ML investigations as a strategy to combat the profitability of crime.
- d) Turkey does not have detailed statistics on ML offences investigated and is therefore not in a position to analyse or determine the effectiveness of their actions against the various forms of money laundering activity in the country.

Immediate Outcome 8

- a) Turkey has an adequate legal framework that enables the authorities to confiscate the proceeds of crime through a number of measures, however limited statistical figures were provided by Turkey to support the good use of these tools. On another hand, Turkey enacted Presidential Decrees after the attempted coup in 2016 as an emergency measure that was lifted in 2018. The implementation of the PD was very effective in confiscating assets of EUR 10 billion relating mostly to FETÖ/PDY.
- b) Although Turkey has a high level commitment to deprive criminals from their proceeds of crime, LEA agencies were not able to detail clear and current policies, within their investigation, on confiscation procedures to ensure that criminals are deprived of their illicit gains.
- c) While statistics provided demonstrate that LEAs are seizing assets and using preventive measures to secure assets related to predicate crime to a large extent, and substantial sums were confiscated through the PD; there was limited evidence to demonstrate the overall effectiveness of the confiscation system in Turkey. However cases examples provided showed that confiscation is pursued and applied to some extent.
- d) MASAK provided good intelligence and information; however there was limited evidence that public prosecutors have used MASAK analysis to extend the investigation beyond the intelligence provided by MASAK.
- e) Turkey has legislation in place to address the threat of cross border movements of currency and bearer negotiable instruments that are

falsely declared or undeclared. Turkey has over 100 million individuals transiting its borders each year, with only an average of 20 cash seizures made per annum. This does not appear to be commensurate with the risks faced.

- f) Authorities may confiscate proceeds involving equivalent value for ML and predicate offences however there were limited examples of this in practice. Confiscation results reflect the NRA crime types identified, but results are low in value. Confiscation appears limited to a particular benefit for the predicate crime rather than an extended lifestyle approach through a wider ML investigation to ensure that benefits for criminal behaviour are removed.

Recommended Actions

Immediate Outcome 6

- a) Turkey should prioritise the use of financial intelligence related to ML consistent with the risks identified in their NRA across all law enforcement agencies.
- b) MASAK should demonstrate operational independence by continuing to identify disseminations relevant to ML activity in Turkey though their analysis of STRs and other financial information available, in addition to responding to judicial requests.
- c) Turkey should increase the number of analysts to meet the rise in demand for its financial intelligence products.
- d) Turkey should raise awareness on the importance of STR reporting amongst reporting entities, especially DNFBPs at higher risk, such as dealers in precious metals and stones (see IO.4).
- e) MASAK should further develop the strategic analysis function in order to better inform emerging ML/TF risks and policies and identify trends and typologies.

Immediate Outcome 7

- a) Turkey should develop a national strategy for investigating and prosecuting ML offences consistent with their risk assessment for ML, outlining clear priorities as well as the roles and responsibilities of the prosecutor, LEAs and MASAK, and identifying measurable performance metrics for each.
- b) Turkey should ensure that it has the resources and capacity to investigate complex ML cases, addressing the different types of ML, notably stand-alone ML, professional money launderers and third-party money launderers. Turkey should pursue such cases and make them a priority.
- c) Turkey should ensure that its National Judiciary Informatics System (UYAP) has the capability to maintain and analyse statistics on ML

investigations and prosecutions to ensure its efforts are consistent with its risk profile, strategy and performance goals.

- d) Turkey should build on the prosecutor's and LEA's understanding of the value of ML investigations, identifying and addressing gaps in investigative techniques and capacity, in order to ensure their ability to gather reliable evidence to secure convictions.

Immediate Outcome 8

- a) Turkey should develop a national strategy for confiscating the proceeds and instrumentalities of crime, outlining clear priorities as well as the roles and responsibilities for the courts, prosecutor, LEAs and MASAK, and identifying measurable performance metrics for each.
- b) Turkey should ensure that it has the resources and capacity to deal with cross-border movements of currency and bearer negotiable instruments. Turkey should include cross border movement within the national strategy and demonstrate that, as appropriate, they are pursuing such cases through the courts.
- c) Turkey should ensure that it has a system, across all agencies, to capture the seizure, confiscation and realisation of all assets seized within criminal investigations and provide a national overview of the effectiveness of the system to inform the NRA and subsequent ML/TF policies.
- d) Turkey should build on the court's, prosecutor's and LEA's understanding of the value of ML/TF investigations in not only identifying clear assets but identifying the extended benefit obtained and assets that may be available for consideration by the courts for confiscation of equivalent value or tainted gifts.

143. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R. 3, R.4 and R.29-32.

Immediate Outcome 6 (Financial Intelligence ML/TF)

144. Turkey has an administrative FIU, MASAK, which was formed in 1997. MASAK receives STRs from obliged entities predominantly in electronic format. In addition to STRs, MASAK receives judicial requests from the courts and public prosecutors, cash declarations and cash disclosure reports from customs and referrals from public institutions, natural and legal persons and foreign FIUs.

145. MASAK also has the authority to access information from data processing systems of public institutions and organisations, and institutions and organisations in the nature of public bodies, which keep records regarding economic activities, wealth items, tax liabilities, census information, etc. To-date, MASAK has signed 43 Co-

operation Protocols to access such information with bodies including the Ministry of Justice, the Ministry of Internal Affairs and various LEAs.

146. In addition, MASAK has entered into agreements with the following organisations to receive additional financial intelligence:

Table 3.1. Information Accessed or Obtained

| Institution | Information Accessed or Obtained |
|---|---|
| Central Registry Agency | Capital Market investor account information |
| Risk Center of Banks Association of Turkey | Individual credit and credit card information details |
| Insurance Information and Surveillance Center | Insurance policy information on natural persons and vehicles (except private pension) |
| Western Union Turkey, Payment Service | Information on the wire transactions that the sender or receiver is in Turkey |

Use of Financial Intelligence and Other Information

147. MASAK has impressive access to financial intelligence through direct electronic access to a wide range of financial information. LEAs also have the power to obtain financial information directly from FIs and DNFBPs. LEAs often request analysis from MASAK to support investigations, upon request by the public prosecutor.

148. When requested by prosecutors, the financial intelligence and information produced by MASAK can be used in LEA investigations to determine financial connections of individuals, to understand financial structures and activities of an organisation, to detect networks of relations, to analyse and identify the financial scope of an investigation and to help identify financial evidence related to ML and TF offences and related predicate crimes.

149. MASAK has four dedicated analysis and evaluation departments for operational analysis and evaluation; one dedicated department for strategic analysis; one dedicated department for examination of ML offences and one dedicated department for seizure and postponement. The following table represents files completed by the Analysis and Evaluation departments in MASAK, which includes both predicate offences and ML as Turkey was not able to separate the two:

Table 3.2. Number of Completed Files by the Analysis and Evaluation Departments – MASAK

| Year | Predicate offence and ML | Terrorism and TF | Total |
|-------|--------------------------|------------------|--------|
| 2013 | 64 | 14 | 78 |
| 2014 | 77 | 32 | 109 |
| 2015 | 72 | 77 | 149 |
| 2016 | 22 | 817 | 839 |
| 2017 | 32 | 10 522 | 10 554 |
| 2018 | 83 | 23.810 | 23 893 |
| Total | 350 | 35 272 | 35 622 |

150. The above table shows an exponential increase of the work of the Analysis and Evaluation departments in MASAK since 2016. This increase is directly attributed to the failed coup of July 2016. As such, the increased workload is to combat terrorism, including TF with related predicate offences, and ML analysis decreased to an average

of less than 40% of what it had been in the years before the attempted coup. However, Turkey was able to provide the assessment team with figures related to predicate offences and ML completed files for 2018 (83) by MASAK's Analysis and Evaluation Departments to indicate that this has rebounded. However, predicate offences and ML analysis still only represents something less than 1% of the work of these departments in 2018.

151. MASAK also has a department that conducts examinations. Examination files are commenced by MASAK upon request by the public prosecutor, the courts, LEAs or other authorities. The purpose of examination files is to detect serious anomalies, which are intended to help LEAs determine whether an ML or a TF offence has been committed and pursue it if so. MASAK utilises specialists such as Tax Inspectors, Trade Inspectors, Sworn-in Bank Auditors, Treasury Controllers, Insurance Supervisory Experts and Actuaries, Banking Regulation and Supervision Agency and Capital Markets Board Experts as designated examiners for such files. Turkey considers such files as parallel financial investigations. However, such files would provide intelligence for an investigatory body to work with, these contain expert opinion rather than investigative one. The following table represents the number of examination files and their requesting sources:

Table 3.3. Number of ML Examination Files and Their Sources

| Year | Files Initiated | Sources | | Completed Files |
|-------|-----------------|------------------------------|-------|-----------------|
| | | Prosecutors, Courts and LEAs | Other | |
| 2013 | 61 | 57 | 4 | 47 |
| 2014 | 18 | 18 | 0 | 45 |
| 2015 | 40 | 34 | 6 | 40 |
| 2016 | 84 | 59 | 25 | 20 |
| 2017 | 87 | 74 | 13 | 38 |
| TOTAL | 290 | 242 | 48 | 190 |

152. MASAK indicates that it always initiates ML analysis, evaluation and examination studies when receiving requests from the public prosecutor, the courts, LEAs and reporting from other stakeholders (governmental bodies, persons, etc.). However, Table 3.3 shows that the completion of those files has been a challenge in 2016. In total, MASAK has approximately 100 analysts. In comparison, MASAK's workload has grown from a number of files examined in the low to mid 100s to over 10 000 files in 2017, causing concerns regarding the depth of analysis possible given the number of analysis.

153. MASAK's financial intelligence is complemented by LEAs police powers, which provide the necessary tools to expand ML and TF investigations. The following cases show that Turkey uses financial intelligence and its wide access to other relevant information to pursue ML and TF investigations.

Box 3.1. ISIL Financing Case

In January 2018, a father reported to TNP that he had received information from Syria that his son, who had disappeared in August 2014 and suspected of joining ISIL, had been killed and left behind a wife and children. The father indicated that he had transferred money to the account of a foreigner (suspect X) for support for his daughter-in-law and grandchildren. TNP obtained information pertaining to the account where the father's money had been deposited and identified multiple third-party deposits and transfers out of the account using mobile banking, ATMs, remittances/transfer instructions and wire transfers expanding the investigation well beyond suspect X and the father. Follow up on the third-party depositors identified another individual who was trying to send money to Syria to help his brother return. MASAK was engaged to assist in analysing all the banking records and wiretap authorisations were obtained for suspect X and other targets identified.

Based on the financial intelligence and evidence gleaned from the intercepted communications the investigation expanded into 11 cities across Turkey resulting in the arrest and reveal a possible hawala chain with indictment of 24 suspects. In excess of USD 800 000 was seized during searches of the suspects residences and businesses and the bank accounts of 22 of the suspects were frozen.

Box 3.2. Bank Loan Case

In August 2014 MASAK disclosed to TNP financial intelligence indicating that Bank X had made loans to 36 companies the payments upon which were being made by multiple (2743) individuals not associated with the loans.

Funds from these loans was subsequently transferred out of Turkey to foreign organisations. The names of the Turkish companies that took out the loans was similar to the foreign organisation often differing by only a letter or two. The investigation revealed that the Turkish companies had no commercial activity and had obtained tax identification numbers fraudulently. Furthermore, the same collateral was used to secure many of the loans and Bank X did not maintain appropriate customer identification in respect of the loans.

TNP was able to identify and associate many of the individuals who were making payment on the loans as being members of FETÖ/PDY. Others were identified as being victims of qualified fraud (sympathy scams). The foreign organisations in receipt of the loan funds were identified by TNP as being associated to FETÖ/PDY.

Operations related to this investigation have been expanded to 43 of Turkey's 64 provinces and additional victims and members of FETÖ/PDY have been identified.

Investigations and prosecutions are still ongoing related to ML, TF, establishing and directing a terror organisation, being a member of a terror organisation, aggravated fraud, banking embezzlement and other predicate offences.

Through the course of this investigation Turkey has identified a previously unknown TF typology related to fraudulent loans to move funds for support to a terrorist organisation.

154. These and other cases presented to the assessment team indicate the capability of law enforcement authorities (in particular of TNP-COM and the counter-narcotics department) in accessing and using financial intelligence and information from a range of sources both for building new cases and for use in existing cases. What was less clear to the assessment team was the extent to which this was being done across the law enforcement community and in all relevant cases. LEAs in Turkey work under public prosecutors, which guide the direction of investigation. Turkey did not demonstrate that financial intelligence and information is accessed or used routinely for supporting ML investigations or developing evidence as a matter of practice.

STRs Received and Requested by Competent Authorities

155. In its role as Turkey's FIU, MASAK is the central agency for receiving STRs from obliged parties including all FIs and DNFbps. Banks submitted the greatest volume of STRs followed by factoring companies and PTT. The following table shows the receipt of STRs by MASAK based on the suspicion of predicate offence or ML, TF or both ML/TF:

Table 3.4. Number of STRs Received by MASAK

| Suspicion | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|-----------|--------|--------|--------|----------|----------|---------|---------|
| PO/ML | 24 901 | 35 215 | 70 576 | 91 925 | 1 38 365 | 195 604 | 556 586 |
| TF | 459 | 741 | 3 352 | 40 491 | 38 018 | 27 053 | 110 114 |
| ML/TF | 232 | 527 | 293 | 154 | 28 | 86 | 1320 |
| Total | 25 592 | 36 483 | 74 221 | 1 32 570 | 1 76 411 | 222 743 | 668 020 |

156. There has been a sustained increase in the number of STRs received by MASAK over the five-year period. While there was a dramatic increase in TF-related STRs for the years 2016 and 2017, following the attempted coup, predicate offence and/or ML-related STRs still represent approximately 80% of the STRs received by MASAK.

157. MASAK receives STRs mainly in electronic format, except from some obliged entities, such as accountants and dealers in the transportation of vehicles who may file paper STRs. All STRs received are recorded into MASAK's database as a first step and the ID of the persons involved are verified through relevant databases accessed. STRs recorded are scored automatically through nearly 250 rules, updated regularly by MASAK. Then the system automatically categorises the STRs using a risk-based scoring method. MASAK indicates that STRs received from banks regularly contain information that helped MASAK in identifying potential ML/TF cases.

158. MASAK takes proactive steps to provide guidance to obliged entities on the filing of STRs. In addition to issuing Communiqués with respect to the mandatory requirements of FIs and DNFbps to file STRs, MASAK also holds workshops in co-

ordination with the Bankers Association of Turkey, the Turkish Capital Markets Association, the Insurance Association of Turkey, the Association of Financial Institutions and Association of Payment and Electronic Money. During these workshops, compliance officers of FIs are informed about AML/CFT developments and trends. They are also provided feedback with respect to the quality and quantity of STRs filed.

159. In addition to the workshops, MASAK also organises training on the topic of AML/CFT measures, typologies and STRs for obliged entities. Between 2013 and 2018, training was organised for all FIs including PTT and DNFBPs, such as notaries, accountants and DPMS.

160. Since 2010, MASAK has actively tracked STRs received by each obliged entity and assesses them based on quantity, quality and accuracy. MASAK maintains detailed statistics of STRs received by whom and in relation to which suspicion. The proportion of STRs received from sectors other than the financial sectors is still very low. For example, MASAK received only two STRs over the last five years from dealers in precious metals and stones, even though this sector is viewed by authorities as being a high-risk sector for ML/TF. The corresponding figures for notaries stand at five and none for real estate agents. Lawyers are not an obliged entity. The negligible reporting from these DNFBP sectors inhibits the flow of intelligence to MASAK.

161. In spite of MASAK's efforts to raise awareness amongst obliged entities to file STRs related to ML/TF, the following table (representing the Judicial Requests made to MASAK by the courts and public prosecution offices) further indicates that competent authorities are not requesting reports relevant for ML, consistent with the growing trends in STR reporting nor the country's risk profile.

Table 3.5. Judicial Requests Made to MASAK

| | 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|--------------------|------|------|------|-------|--------|--------|
| ML | 20 | 5 | 11 | 17 | 53 | 106 |
| Terrorism/TF | 1 | 1 | 43 | 5 409 | 25 738 | 31 192 |
| Predicate Offences | 76 | 139 | 185 | 157 | 185 | 742 |
| Total | 97 | 145 | 239 | 5 583 | 25 976 | 32 040 |

162. The lack of increase in judicial requests relating to ML and its predicate offences demonstrated by Table 3.5, when compared to the increase in ML and predicate offence STR reporting, demonstrated in Table 3.4, indicates that further improvements are required with respect to competent authorities requesting relevant financial intelligence in respect of ML and its predicate offences, apart from terrorism and TF offences, which have grown exponentially since 2016.

Operational Needs Supported by FIU Analysis and Dissemination

163. MASAK is comprised of 12 departments, four of which are specialised in analysis and evaluation. The main tasks of these departments are to carry out analysis and evaluation regarding STRs, judicial requests and other reports sent to MASAK, as well as regarding data produced from strategic analysis. In order to streamline this analysis, MASAK's experts benefit from the use of IT tools. MASAK makes good use of its main tool, Integrated Financial Intelligence System (EMIS), developed specifically for MASAK.

164. By law, MASAK must meet all Judicial Requests, so upon receipt, each request is sent directly to the relevant analysis department to be handled. As demonstrated in Table 3.5, the attempted coup has had a significant effect on the workload of MASAK to the detriment of its ML-related analysis products. ML-related disclosures have seen more than a 60% decrease in the period 2016 to 2017 compared with the previous three years, in spite of a more than 260% increase in ML and predicate offence STRs. While MASAK is responding to the operational needs of the judiciary by fulfilling these requests, this massive increase in workload has had an impact on the capacity of MASAK to independently generate financial intelligence related to ML and predicate offences.

165. In addition, MASAK has participated in joint ventures with LEAs in support of ongoing investigations:

- a) MASAK conducted an analysis of overseas foreign exchange transfers. STR data was used to identify persons involved in these activities. MASAK then requested access to their accounts from participating banks and analysed these accounts to identify all international outflows. Disclosure of the findings were submitted to the public prosecutor.
- b) MASAK initiated a study of blocked transactions. Analysis revealed that some accounts in some branches of a bank were blocked upon request of the customers. Cases of customers blocking their own accounts was not common in other banks. All information about the customers whose accounts were blocked was analysed. Analysis revealed that some customers were acting in an organised manner. An examination was done regarding the nature of the transactions and the source of the funds related to these customers. MASAK subsequently submitted a report to the relevant prosecutor's office.
- c) MASAK participated with the TNP in a project targeting point of sale usury. STRs submitted to MASAK over a 21-month period for usury and POS usury were analysed. The identity of the persons listed in the STRs was shared with TNP. TNP subsequently shared with MASAK information regarding legal actions taken against the individuals involved within the scope of POS usury activity.
- d) MASAK conducted an analysis of all migrant smuggling STRs over a 21-month period with a view of identifying networks. Using network analysis software and network visualisation tools, MASAK identified that there are not any organisational connections between the subjects identified in migrant smuggling-related STRs.
- e) In order to study ML/TF risk within Turkey's "financial transfer sector", MASAK commenced the study of 11 million lines of transaction data relating to an international transfer company. Given the volume of data to be analysed, MASAK is developing software suitable for the data structure they want to analyse with a view to carrying out periodic studies of the data.
- f) In conjunction with the Department of Combatting Cyber-Crimes of the TNP, MASAK conducted social network analysis relating to more than 70 000 entities and over 105 000 transactions. Through this analysis,

MASAK was able to identify strong relationships between individuals and networks, and subsequently made disclosures to the relevant judiciary bodies and TNP. As a result of this collaboration and co-operation, assets were seized (TRY 236 297 307 (approximately EUR 36 353 430), USD 505 506, EUR 6 402 494, GBP 43 925 (approximately EUR 50 700) in addition to 3 200 grams of Gold and one vehicle).

166. MASAK has a strategic analysis department, which supports the operational needs of Turkey's competent authorities. The strategic analysis department, which consists of 11 staff, has to some extent carried out projects independently, identifying trends based on analysis of its STRs and access to other financial data. Authorities indicated that the strategic analysis department products have helped to improve their understanding of new threats, such as illegal betting, and use of bank accounts. Where relevant. MASAK shared information about new threats identified with relevant authorities and obliged entities to inform them about recent developments and emerging threats.

167. Further efforts are needed however, to enhance the strategic analysis function of MASAK. This should be based on a range of information sources, including STRs and data available with other authorities for conducting cross-sectoral understanding of ML/TF trends and typologies with a view to help identify risks, inform policy and strategic initiatives and better support the work of all the competent authorities. Considering the risk profile of Turkey, this could, for example include identifying geographic "hot spots", patterns of transactions involving unregistered MVTS activity and other emerging phenomena.

Co-operation and Exchange of Information and Financial Intelligence

168. Co-operation and exchange of information, including financial intelligence, between MASAK and competent authorities is strong, as evidenced by the activities of MASAK's Department of Strategic Analysis and the reliance by the public prosecution on MASAK's analysis and examinations.

169. In addition to the STR and data relating to judicial requests MASAK has direct access to online and/or offline databases of a variety of public authorities and private sector entities and uses these databases.

170. Turkey's LEAs also have access to a wide variety of information sources and intelligence to investigate ML/TF. In addition, LEAs are able to share information and access each other's databases.

171. The sharing of information and financial intelligence between MASAK, the public prosecution and LEAs is considered 'official writings,' and as such are governed by policies and procedures relating to security and confidentiality to protect the information. The system is supervised by an independent agency and the certification is renewed annually.

Overall Conclusions on IO.6

172. **Turkey is rated as having a moderate level of effectiveness for IO.6.**

Immediate Outcome 7 (ML Investigations and Prosecution)

173. In Turkey, conducting investigations or enabling the conduct of investigations to decide whether it is appropriate to file a public case, is the responsibility of the public prosecutor. While LEAs have the ability to follow up on public complains, the power to investigate lies with, and is done at the direction of, the public prosecutor.

174. The public prosecutor has MASAK, intelligence units, supervisory and regulatory authorities, natural and legal persons in addition to the LEAs available to assist in the investigation and prosecution of ML offences. The LEAs involved in investigating ML offences in Turkey are the Turkish National Police (TNP), the General Command of the Gendarmerie and the Coast Guard, in addition to the Customs Enforcement that have some responsibilities in investigating ML offences.

a. *Turkish National Police (TNP)*

The TNP has over 310 000 police officers and has dedicated specialised units, including the anti-drug unit, the anti-cyber-crime unit and the anti-smuggling and organised crime unit (called KOM) each of which are engaged in ML investigations.

b. *General Command of the Gendarmerie*

The General Command of the Gendarmerie has 130 000 police officers and is responsible for policing rural areas of Turkey. The General Command of the Gendarmerie also has specialised units similar to those in structure as the TNP.

c. *The Coast Guard*

The Coast Guard has a staff of 6 100, 2 200 of whom have enforcement responsibilities. 20 staff have part-time ML responsibilities in Ankara. The Coast Guard is also involved in ML investigations primarily as relates to their responsibilities regarding migrant smuggling, human trafficking and/or fuel smuggling. For large cases, the Coast Guard co-ordinates with other specialised units.

d. *Customs Enforcement*

Customs Enforcement has responsibilities with respect to smuggling activity at Turkey's 30 land crossings, 63 airports and 101 seaports. Customs Enforcement has 6000 officers with the authority to seize illicit or suspicious goods. Customs enforcement has no specialised ML unit but refers cases to MASAK and is involved with joint operations with the TNP, the General Command of the Gendarmerie and the Coast Guard as directed by the public prosecutor. Customs enforcement has 500 officers trained in ML investigations.

175. Each of the LEAs in Turkey indicated that they have officers specialised in conducting ML investigations, who have received either basic and/or comprehensive training related to conducting ML investigations. The following table represents the number of personnel within each relevant LEA and those dedicated to ML investigations.

Table 3.6. Number of dedicated ML staff in different LEA

| | |
|---------------------|---|
| TNP KOM | Number of Total Personnel: 990 Number of Personnel dealing with ML: 492 (Headquarters: 5 Province: 487) |
| TNP Narcotic | Number of Total Personnel: 206, (Headquarters: 11 Province: 195) Number of Personnel are dealing with ML: 206 (Headquarters: 11 Province: 195) |
| TNP Public Order | Number of Total Personnel dealing with ML: 128, (Headquarters: 3 Province: 125) |
| TNP Cyber | Number of Total Personnel: 1 835 Number of Personnel dealing with ML: 162 (Headquarters: 41 Province: 121) |
| Gendarmerie | Number of Total Personnel: 947 Number of Personnel dealing with ML: 131 (Headquarters: 11 Province: 120) |
| Coast Guard | Number of Total Personnel: 6 282 Number of Personnel dealing with ML: 20 (Headquarters: 20) |
| Customs Enforcement | Number of Total Personnel: 5 986 Number of Personnel dealing with ML: 10 (Headquarters: 10) |

176. Turkey indicates that within the various LEAs, 10 904 officers have received at least basic AML training with approximately 1750 receiving more advance training.

ML Identification and Investigation

177. Based on information provided by Turkish authorities and collected during the on-site visit, ML investigations are triggered by the information available to MASAK complaints by victims or third parties, information or requests from foreign jurisdictions or by investigations into associated predicate offences.

178. MASAK, as identified under IO.6, has the mandate to make referrals to the public prosecutor on ML cases. In order to identify potential cases for ML, MASAK receives STRs, judicial requests from the public prosecution offices and the courts as well as institutional and individual reports from public authorities, natural and legal persons.

Table 3.7. MASAK Sources of Information on ML and Predicate Offences

| | 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|--|--------|--------|--------|--------|----------|----------|
| STRs | 25 393 | 35 827 | 71 109 | 92 300 | 1 38 774 | 3 63 403 |
| Judicial Requests | 96 | 144 | 196 | 174 | 238 | 848 |
| Institutional and Individual Reporting | 396 | 468 | 337 | 201 | 171 | 1 573 |
| Total | 25 885 | 36 439 | 71 642 | 92 675 | 1 39 183 | 3 65 824 |

179. Table 3.7 shows a steady and sustained increase year-over-year in the information sources available to MASAK to allow them to identify potential cases of ML.

Table 3.8. Number of ML files referred by MASAK to the Public Prosecution

| 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|------|------|------|------|------|-------|
| 30 | 40 | 37 | 9 | 19 | 135 |

180. Turkey is not effectively identifying ML activity for investigation through their STR analysis, nor through other reports submitted to MASAK. Table 3.8 above shows that MASAK referred 135 ML files to the Public Prosecutor between 2013 and 2017 in total (eleven of which resulted in a ML conviction). However, given that MASAK has

received 363 403 STRs and 848 judicial requests from prosecutors or courts regarding ongoing investigations and prosecutions (about a ML or predicate offences) for subsequent analysis, the corresponding number of ML referrals over the same period to the public prosecution is an extremely low number. Moreover, Table 3.8 shows that the number of referrals has in fact decreased over the years.

181. In addition to the information received by MASAK, Turkey can draw upon the investigation of proceeds of crime generating offences to identify potential cases of ML. The decision to conduct parallel financial investigations is at the discretion of the Public prosecutor.

Table 3.9. Number of Investigations for High Risk Predicate Offences

| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|---|--------|--------|--------|--------|--------|--------|---------|
| Drugs Trafficking | 31 308 | 34 431 | 37 090 | 33 203 | 45 614 | 52 744 | 234 390 |
| Fuel Smuggling | 5 604 | 10 861 | 3 028 | 2 179 | 2 424 | 2 184 | 26 280 |
| Human Trafficking and Migrant Smuggling | 2 339 | 2 928 | 5 430 | 5 480 | 5 679 | 7 297 | 29 153 |
| Total | 39 251 | 48 220 | 45 548 | 40 862 | 53 717 | 62 225 | 289 823 |

Table 3.10. Number of ML files related to High Risk Predicate Offences

| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|---|------|------|------|------|------|------|-------|
| Drugs Trafficking | 25 | 21 | 19 | 26 | 18 | 19 | 128 |
| Fuel Smuggling | 11 | 7 | 8 | 6 | 2 | 2 | 36 |
| Human Trafficking and Migrant Smuggling | 7 | 14 | 1 | 0 | 10 | 2 | 34 |
| Total | 43 | 42 | 28 | 32 | 30 | 23 | 198 |

182. As shown in the tables above, from 2013 to 2018 authorities conducted 289 823 predicate offence investigations into the highest risk predicate offences for ML⁸ (namely, drug trafficking, migrant smuggling, human trafficking and fuel smuggling). The number of related ML investigations however is only 198. These statistics indicate that less than 1 in every 1000 predicate offence investigations (for the 4 highest risk predicate offences) is resulting in a ML investigation being launched by authorities. Clearly not all predicate offence investigations warrant a ML investigation to be conducted. Turkey also indicates that ML investigations would not be commenced in cases where; the criminal activity ends during the predicate offence phase; when asset recovery is secured without identifying additional assets to be laundered; or where the perpetrators of predicate offences only possess or use the gains of the specific offence as this does not constitute a separate act thus barring them from pursuing an ML investigation. Less than 1 ML investigation for every 1000 high risk predicate offences, even when factoring in the above noted reasons for not conducting a ML investigation, indicates that a very low percentage of high-risk proceeds generating offences are resulting in a ML investigation.

⁸ As identified in Turkey's NRA.

Table 3.11. Total Number of ML Cases (Investigations, Prosecutions and Convictions)

| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|----------------|------|------|------|------|------|------|-------|
| Investigations | 209 | 215 | 250 | 333 | 559 | 402 | 1 968 |
| Prosecutions | 82 | 54 | 81 | 72 | 189 | 94 | 572 |
| Convictions | 16 | 14 | 12 | 7 | 9 | 12 | 70 |

183. In addition to the ML cases based on article 282 of TCL, Turkey provided data in relation to investigations, prosecutions and convictions based on the offence of purchasing or accepting property acquired through the commission of an offence as set out in article 165 of TCL. Turkey was of the view that this offence constitutes an ML activity and those statistics should be incorporated with the statistics under article 282. The extent to which this offence (under article 165) could be considered as ML offence in relation to serious crimes and would have an impact on the measure of effectiveness of the system in identifying and investigating ML cases is questioned. Article 165 deals with “purchasing or accepting property acquired through the commission of an offence”. Unlike article 282 offences which require a qualifying predicate offence with a minimum of a 6-month sentence and for which there is a penalty of 3 to 7 years, article 165 offences have no such qualifying threshold and the penalty is 6 months to 3 years. Therefore, the data provided by Turkey pursuant to article 165 of TCL is considered as alternative measures (see table 3.15) where investigation/prosecution/conviction of ML cannot be pursued under article 282 of TCL.

184. Based on table 3.11 above, less than one third of ML offences investigated in Turkey lead to a prosecution, where the conviction rate is just over 12%. These ratios suggest that a high percentage of investigations do not lead to identifying the required evidence to launch a prosecution. For the cases that are prosecuted, the evidence that is presented to the court is often not sufficient to secure a conviction. These numbers indicate that ML offences are not being effectively identified, investigated or prosecuted in Turkey and that major improvements are needed.

Consistency of ML Investigations and Prosecutions with threats and Risk Profile, and National AML Policies

185. In Turkey, the highest risk predicate offences for ML according to the NRA involve drug trafficking, migrant smuggling, human trafficking and fuel smuggling. The number of investigations and the potential value of the proceeds of crime generated by those offences are as follows:

- **Drug Trafficking:** between 2010 and 2017 Turkey initiated 685 000 drug trafficking cases. Turkey estimates the value of the drugs seized in Turkey during this period at approximately USD 1.8 billion per year and estimates the total value of drugs trafficked in and/or through Turkey as being USD 7 billion per year.
- **Migrant Smuggling:** between 2010 and 2017 authorities apprehended 18 391 migrant smugglers and over 1 75 000 illegal immigrants. Turkey estimates that smugglers collect between USD 5 000 and USD 20 000 per illegal migrant smuggled. Turkey estimates that approximately USD 3.5 billion in proceeds of crime has been derived by migrant smugglers from 2012 to 2017. Investigations were initiated into 39 000 individuals leading to charges

against 20 000 individuals resulting in 8 900 convictions between 2013 and 2017 for the migrant smuggling offence.

- Human Trafficking while Turkey has no estimates regarding the proceeds of crime generated from human smuggling, authorities have initiated investigations against 3 600 individuals leading to charges against 2 400 individuals resulting in 338 convictions between 2013 and 2017 for the human trafficking offence.
- Fuel Smuggling: between 2013 and 2017 Turkish authorities detected 19 000 cases of fuel smuggling involving 26 000 suspects. These cases represent over 700 000 tons of smuggled fuel with a value of over USD 300 million.

186. Turkey was not able to provide the assessment team with a complete breakdown of their ML investigations by predicate offence, however among the number of case examples provided during the on-site visit, there were cases involving three of the four highest risk predicate offences for ML, as identified in the NRA (i.e. drug trafficking, human trafficking and fuel smuggling). When comparing however the total number of ML investigations (1968) with the number of ML investigations related to the highest risk predicate offences (198) it does not appear that Turkey investigates and prosecutes ML fully in line with its risk profile.

187. In addition, as mentioned earlier, the statistics provided by Turkey under article 165 were considered by the assessment team as alternative measure and caution has been exercised in construing this data in totality as a measure of effectiveness under this immediate outcome.

188. While Turkey was unable to produce statistics to support a finding that ML offences and activities are appropriately investigated proportionate to their ML risks, they were able to provide assessors with a sampling of cases which suggest that ML offences and activities are being investigated to some extent. Following are two case examples of ML cases.

Box 3.3. ML Case Related to Drug Trafficking

TNP received information from their counterparts in country X that three drug trafficking suspects, two of which were of Turkish heritage, were laundering the proceeds of their activities overseas including in Turkey. TNP commenced a joint ML investigation with country X involving a suspect residing in Turkey that was purchasing real estate within Turkey using the proceeds of the drug trafficking activity in country X. Through intercepted conversations obtained as part of country X drug trafficking investigations TNP was able to identify cash couriers who were delivering cash to the suspect in Turkey. A check of the customs and immigration databases was used to corroborate such information and identify the movements in and out of Turkey by the couriers.

TNP were able to identify 43 real estate holdings in five Turkish provinces purchased by the suspect in Turkey using their access to land registry databases. Financial analysis was conducted by MASAK establishing the extent of the assets

held by the suspect in Turkey his family and his businesses indicating that the asset holdings exceeded legitimate income.

A subsequent search of his residence and business resulted in obtaining evidence in the form of a notebook corroborating the deliveries from the cash couriers, title deeds from the property holdings and EUR 200 000 in cash.

An analysis of the notebook, the financial records obtained, and land registry evidence revealed that the suspect in Turkey had acquired real estate holdings. Investigation revealed that EUR 3 235 000 were transferred to the suspect as proceeds from the drug trafficking activity in country X.

The assets of a total value of approximately EUR 23 million have been seized and restrained. The prosecution is ongoing.

Box 3.4. ML Case Related to Illegal Betting

LEAs received intelligence regarding illegal betting being conducted by defendants VO, ZE, EE and DE (acting as sub-dealers) of another defendant EMS who had created a betting website in a foreign country. Three defendants were intercepted at airport and EUR 30 000 seized. Cheques of varying amounts were seized from vehicles used for carrying out money transfer. TNP Mardin police conducted searches at work places of defendants and books, documents and computer records were investigated, which established relationships between suspects. In addition, wiretapping and technical surveillance were carried out on defendants and victim statement was recorded.

MASAK was involved to evaluate the ML aspect of the case and for finalising an analysis and evaluation report for the public prosecutor office.

As a result of prosecution launched, four persons were convicted and sentenced to a term of imprisonment for four years for ML. in addition, EURO 30 000, an apartment and technical devices including computers were confiscated.

189. Turkey provided assessors with a sampling of strategy documents to address predicate crime offences such as the 'Drug Combatting National Strategy Paper and Action Plan 2018-2013', the circular on 'Combatting Fuel Smuggling', the 'Action Plan for Combatting Organised Crime', and the 'National Anti-Drug Strategy Paper 2015'. While these documents and others had sections that addressed training with respect to the proceeds of crime and detecting the proceeds derived from organised crime, none of the documents identified specific targets pertaining to conducting ML investigations. In addition to the above noted documents, Turkey provided assessors with examples of high-level circulars stressing the importance of ML investigations as a strategy to counteract the profitability of crime; however, again none of these documents identified specific goals or suggested targets in order to achieve such outcomes.

Types of ML cases pursued

190. Turkey does not keep statistics on the different types of ML investigations that they have conducted. However, MASAK does have statistics on the ML referrals that they have made to the public prosecution as identified in the table below. Turkey has been able to break those referrals down with respect to the following ML types:

Table 3.12. ML Types Identified in MASAK Referrals to Public Prosecutor

| ML Types | 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|---|------|------|------|------|------|-------|
| Self-Laundering | 30 | 40 | 37 | 9 | 19 | 135 |
| Self/Third Party Laundering (includes some of the above 135 total cases) | 5 | 6 | 1 | 0 | 1 | 13 |
| Foreign Predicate Offence (includes some of the above 135 cases) | 5 | 2 | 3 | 0 | 0 | 10 |

191. Table 3.12 indicates that 100% of the 135 ML cases identified by MASAK relate to self-laundering with approximately 10% of those also involving a third-party (in many cases a family member). MASAK has not referred any exclusive third-party ML cases of the 135 ML cases identified by MASAK over the five-year period of 2013 to 2017. Ten cases (7.5% of the total cases) involve a foreign predicate offence. Following is an example of a third-party money laundering case conducted by authorities.

Box 3.5. Third Party ML Case

Konya Public prosecutors launched two separate investigations regarding allegations that suspects OY and EY, employed in the Konya Selçuk University made illegal deductions from salaries of academic persons and transferred the proceeds into their and their associates' accounts. OY was suspected to have embezzled TL 2.9 million and EY TL 2.5 million.

Technical and physical surveillance, interception of communication and house and workplace searches were conducted to develop the case. Financial enquiries were conducted on 26 persons for tracking the proceeds of crime and a number of bank accounts were investigated. MASAK's expertise was also sought for analysis and evaluation. MASAK' report revealed the connection between the persons who committed the embezzlement and others. Involvement of third parties was detected based on the examination of bank account movements, real estate and vehicle sale and purchasing transactions, trade registry and tax records. Co-ordination and information and evidence exchange among MASAK, public prosecutors and law enforcement was also ensured. MASAK further conducted another examination of foreign trade transactions of a company associated with the suspects, though no complicity was witnessed finally.

Based on the investigation findings, OY and EY were sentenced to imprisonment for 4 years and 2 months for ML. Ten other suspects who were associates of OY and EY were sentenced to 2 years each. In addition, 5 real estates and 4 vehicles which were considered to have been obtained through the conversion of proceeds of crime and which were registered with the defendants were confiscated.

192. Overall, although ML offences are being investigated and prosecuted to some extent and include examples in line with Turkey's risks, Turkey failed to demonstrate that it comprehensively investigates and prosecutes the different types of ML. Major improvements are required in Turkey for it to be able to demonstrate effectiveness pertaining to identifying, prosecuting and securing convictions for the various types of ML.

Effectiveness, Proportionality and Dissuasiveness of Sanctions

193. The range of sanctions available to Turkish courts for those convicted of ML is broadly in line with sanctions available for other financial crimes in Turkey. The perpetrator of the ML offence is sentenced to imprisonment for three to seven years and subject to a judicial fine up to twenty thousand days. The daily amount of the judicial fine ranges from TRY 20 (USD 3.50) to TRY 100 (USD 17.50) depending on the personal and economic situation of the person convicted. If the convicted person is unable or unwilling to pay the fine then they would serve the additional days in jail.

Table 3.13. Average Time of Incarceration Imposed for ML Offences

| Year | Average Time Imposed |
|------|--------------------------|
| 2013 | 4 years 6 months 25 days |
| 2014 | 2 years 3 months 23 days |
| 2015 | 3 years 3 months 10 days |
| 2016 | 3 years 4 months 0 days |
| 2017 | 5 years 5 months 8 days |

194. The sentences imposed for persons convicted of the ML offence in Turkey are in the mid-range of those offences allowed under the law. Turkey has the authority to reduce the sentencing for those who co-operate during the investigation and prosecution and also have the authority to increase the sentencing for aggravated circumstances such as when the offence is committed by a public officer or professional person in the course of his duty; where the offence is conducted in the course of the activities of an organisation established for the purpose of committing the offence; and, when a legal entity is involved in the commission of the offence. Based on table 3.13 and case studies provided by Turkey, sanctions imposed can be considered as effective, proportionate and dissuasive.

195. The legislation in relation to legal persons, where confiscation is not engaged through a criminal conviction, allows for the removal of licence and an administrative fine of EUR 320 000 which was not seen to be sufficiently dissuasive in all cases.

Use of Alternative Measures

196. Turkish law allows judicial authorities to '*delay the pronouncement of the judgement*' for sentences of two years or less under the following circumstances:

- the accused must not have been previously convicted for an intended crime,
- considering the characteristics of the personality of the accused and their behaviour during the main trial, the court has reached the belief that the accused shall not commit further crimes, and
- the damage to the victim or the public, due to the committed crime has been recovered to the full extent by giving back the same object, or by restoring the

circumstances as they were before the crime had been committed, or by paying the damages.

197. The following table identifies ML prosecution where delaying the pronouncement of the judgement has been applied:

Table 3.14. Delaying the Pronouncement of the Judgement Verdicts on ML Prosecutions

| | 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|---------------------------|------|------|------|------|------|-------|
| Number of ML Prosecutions | 2 | 2 | 2 | 1 | 1 | 8 |
| Number of Persons | 5 | 5 | 8 | 2 | 1 | 21 |

198. The delaying of the pronouncement of the judgement verdicts on ML prosecutions demonstrates a potential disruption technique in that it may allow officials to obtain evidence from the accused of more serious ML offence and/or make restitution for proceeds obtained from crime.

199. In addition to delaying the pronouncement of judicial verdicts, article 165 of the TCL covers the offence of selling, purchasing, transferring or accepting/receiving property or proceeds acquired through the commission of an offence for persons not involved in the commission of the offence. In cases where the provisions of the ML offence cannot be met under article 282 of TCL, then charges will be initiated under article 165 of the TCL. As mentioned earlier, article 165 is often used in practice to go after receiving activity rather than serious ML offences. It is mostly chosen for judicial pursuit when the predicate offence requires less than six months of imprisonment (e.g. dealing with stolen goods) and when it is difficult to prove the special intent to commit the ML offence. The following table outlines cases where article 165 has been applied:

Table 3.15. Cases under Article 165 (TCL)

| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|---------------|--------|--------|--------|--------|--------|--------|---------|
| Investigation | 38 597 | 36 581 | 37 366 | 34 965 | 29 281 | 33 580 | 210 370 |
| Prosecution | 15 022 | 14 248 | 15 984 | 12 510 | 12 218 | 14 379 | 84 361 |
| Conviction | 2 908 | 3 327 | 3 630 | 3 139 | 3 161 | 4 131 | 20 296 |

200. While the ratio of investigations leading to prosecutions (40%) and the ratio of prosecutions resulting in a conviction (24%) suggests that a high percentage of investigations are not resulting in identifying the required evidence to launch a prosecution, the authorities clarified that investigations in this table include preliminary inquiries that could be closed at initial stages of the process.

201. Turkish courts also have the discretion to impose sanctions and have imposed on other criminal offences when they are not satisfied with the accusations presented by the prosecution. The following table represents cases where the courts have handed down convictions for other criminal offences when they have not been satisfied with the evidence presented with respect to ML:

Table 3.16. Convictions for Other Offences Resulting from ML Prosecutions

| | 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|---|------|------|------|------|------|-------|
| Qualified Robbery | 5 | 6 | 0 | 0 | 10 | 21 |
| Establishing or Being a Member to a Criminal Organisation | 4 | 6 | 2 | 4 | 2 | 18 |
| Counterfeiting Documents | 2 | 1 | 1 | 1 | 1 | 6 |
| Illegal Gambling | 2 | 2 | 0 | 0 | 0 | 4 |
| Qualified Fraud | 1 | 0 | 1 | 1 | 1 | 4 |
| Qualified Theft | 0 | 0 | 1 | 2 | 1 | 4 |
| Threat | 2 | 1 | 0 | 0 | 1 | 4 |
| Misuse in Public Duty | 0 | 2 | 1 | 0 | 0 | 3 |
| Fraud During Tender | 3 | 0 | 0 | 0 | 0 | 3 |
| Depriving one of their Liberty | 1 | 1 | 0 | 0 | 1 | 3 |
| Usury | 1 | 0 | 0 | 1 | 1 | 3 |
| Violation of the law on Firearms, Knives and Other Tools | 0 | 0 | 0 | 0 | 2 | 2 |
| Fraud | 0 | 0 | 1 | 1 | 0 | 2 |
| Damaging Property | 1 | 1 | 0 | 0 | 0 | 2 |
| Bribery | 1 | 0 | 1 | 0 | 0 | 2 |
| Terror Offences | 0 | 0 | 0 | 0 | 2 | 2 |
| Illegal Betting | 0 | 1 | 1 | 0 | 0 | 2 |
| Cyber Crime | 0 | 0 | 1 | 0 | 0 | 1 |
| Confiscation of Property | 0 | 0 | 0 | 1 | 0 | 1 |
| Possession or Exchange of Hazardous Substances | 0 | 0 | 0 | 0 | 1 | 1 |
| Intentional Injury | 1 | 0 | 0 | 0 | 0 | 1 |
| Violation of Immunity of Residence | 0 | 0 | 1 | 0 | 0 | 1 |
| Unauthorised Evacuation in Cultural and Natural Assets | 0 | 0 | 0 | 0 | 1 | 1 |
| Violation to Capital Market Legislation | 0 | 0 | 0 | 1 | 0 | 1 |
| Gun Trade | 0 | 0 | 0 | 0 | 1 | 1 |
| Purchase or Acceptance of Criminal Property | 0 | 0 | 0 | 1 | 0 | 1 |
| Blackmailing | 0 | 0 | 0 | 0 | 1 | 1 |
| Attempt to Influence Persons Charged with a Judicial Duty | 0 | 0 | 0 | 0 | 1 | 1 |
| Violation of Obligations on Preventative Measures | 0 | 0 | 1 | 0 | 0 | 1 |
| Embezzlement | 0 | 1 | 0 | 0 | 0 | 1 |
| Other | 0 | 0 | 0 | 1 | 0 | 1 |
| Total | 24 | 22 | 12 | 14 | 27 | 99 |

202. The above numbers also suggest that the identification and gathering of evidence necessary to secure ML investigations is not an effective process in Turkey.

Overall conclusions on IO.7

203. **Turkey is rated as having a moderate level of effectiveness for IO.7.**

Immediate Outcome 8 (Confiscation)

Confiscation of Proceeds, Instrumentalities and Property of Equivalent Value as a Policy Objective

204. Turkey has an adequate legal framework that enables the authorities to confiscate and recover the proceeds of crime through a number of measures. The Minister of Treasury and Finance has the authority to suspend the financial transactions in order to conduct further analysis and the Public Prosecutor opts for the most appropriate route for each case. The tools include criminal confiscation

under TCL, in addition to administrative fines and legal restitution to victims. Property of an equivalent value may be confiscated where identified by the court. The provisions of confiscation are not affected in cases where the suspect or convict is dead, in case of abatement of action or penalty or in case of an advance payment. Limited statistical figures were provided by Turkey to support the good use of these tools to confiscate proceeds of crime and instrumentalities. In addition to this legal framework, Turkey enacted a state of emergency and PD in 2016 after the attempted coup to deal with this specific issue. The state of emergency was lifted in 2018. The implementation of the PD was very effective in confiscating assets of EUR 10 billion mostly relating to FETÖ/PDY.

205. Turkey provided two circulars detailing high-level support to maximise efforts to fight ML/TF, one issued in 2009 by General Directorate of Security of the Ministry of Interior and the other issued in 2015 by Directorate General for Criminal Affairs of the Ministry of Justice. These documents show the high level support directing the use of the seizure and confiscation measures in order to deprive criminal of the proceeds of crime; however, these documents did not identify specific goals or suggest targets. In addition, the full adoption of these documents within investigations was not demonstrated during the onsite visit to show how confiscation is pursued as a policy objective.

206. Public prosecutors did not present any local policy objectives or specific ML/TF investigation plans in relation to confiscation except the TNP and Gendarmerie letters and orders requiring officers to consider ML/TF legislation, without any specific investigation plans within the cases presented. LEAs were clear that their responsibility was only to respond to requests from public prosecutors who set the direction of the investigation and asset recovery strategy. Although Turkey has provided some cases where seizure and confiscation are applied, there were unable to provide comprehensive statistics and cases to demonstrate that these tools are routinely implemented across the criminal justice system. Statistical figures provided by Turkey demonstrated a low use of confiscation as a result of ML offences (see table 3.17 below).

Table 3.17. Confiscation figures in relation to ML offence

| Year | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|-----------------|----------|-----------|----------|-----------|-----------|-----------|-------------|
| Number of files | 10 | 8 | 6 | 4 | 3 | 4 | 35 |
| TRY | 458 781 | 1 166 367 | 283 739 | 874 035 | 326 500 | 5 019 761 | 8 129 183 |
| (-EUR) | (70 580) | (179 440) | (43 650) | (134 465) | (50 230) | (772 270) | (1 250 644) |
| USD | 24 400 | 7 221 | | 142 196 | 2 000 000 | | 2 173 817 |
| EUR | 452 880 | 83 171 | 241 000 | 34 935 | | | 811 986 |
| GBP | | 100 | | | | | 100 |
| (-EUR) | | (115) | | | | | (115) |
| Gold (14) | | 1 162.41 | | | | 2 387.56 | 3 549.97 |
| Gold (22) | | | | | | 2 731 | 2 731 |
| Diamond | | 28.99 | | | | | 28.99 |
| Jewellery | 267 | 158 | | | | 80 | 505 |
| Legal person | 1 | 1 | 1 | | | | 3 |
| Immovable | 7 | 35 | 7 | | | 1 | 50 |
| Vehicle | 1 | 11 | 18 | 10 | | 5 | 45 |
| Instrumentality | | | 1 | 2 | 2 | | 5 |

207. Turkey responded to the low figures in ML detailing that provisions in TCL (art. 54, 55) allow the court to confiscate the proceeds and gains. The civil law system

in Turkey allows for the charging and conviction of ML and the predicate offence. A number of case examples were provided detailing where this had been used; however Turkey were unable to provide full detail or explain why confiscation was not routinely pursued under the ML legislation.

208. In addition to the above and based on discussions with authorities, public prosecutors view depriving criminals of their assets as being a key aspect of any investigation. However, authorities were not able to demonstrate how confiscation is embedded in the objectives of the specific agencies and units responsible for investigating crimes. Turkey provided a number of case examples where MASAK provided good intelligence and information; and where in some cases, public prosecutors have used MASAK analysis to extend the investigation beyond the intelligence provided by MASAK.

209. In addition to the legislative measures related to confiscation, Turkey has a number of provisional measures to secure assets, during the investigation: seizure or management of assets and seizure of assets which may be useful as a ‘tool for proof’.

210. Assets may be seized upon the decision of a Judge, or if there is peril in delay, upon the written order from the public prosecutor or in cases where it is not possible to reach the public prosecutor upon the written order of a chief law enforcement officer. The court reviews the predicate case, hears the submissions of the suspect and if the case is proved, orders confiscation of the assets. Courts may take evidence from persons claiming to be bona fide third-parties and make adjustments as necessary. Once confiscation has been decided by the courts, accounts and immovable property rights are transferred to the State. Courts may also order an administrative fine and term of imprisonment where appropriate. However, authorities were not able to provide statistics in relation to the full scale of the orders made by the court.

211. During 2016-2017, the Ministry of Treasury and Finance postponed 9 181 transactions to enable further analysis of transactions in relation to ML/TF by MASAK. Table 3.18 below provides details of some cases where seizure orders have been given following postponement of transfers; however this limited information made it difficult to judge the full effectiveness of this regime.

Table 3.18. Cases where seizure order has been given following postponement of transaction

| Number of persons | Amount of seizure | Number of Investigation/Prosecution |
|--------------------------------|--------------------------|-------------------------------------|
| 34 Natural and 9 Legal Persons | - | 3 Investigations and 1 Prosecution |
| 417 | All bank accounts | 1 Investigation |
| 14 | USD 1 099 527 EUR 92 723 | 1 Investigation |
| 3 | USD 243 860 | 1 Investigation |
| 1 | USD 180 080 | 1 Investigation |

212. In addition, LEAs have seized considerable assets since 2013 and provided a number of cases in support; however, the pursuit of proceeds, criminal instrumentalities and properties through confiscation appears to be minimal when compared to the assets seized and the number of convictions for predicate offences. There is a gap between the scope of seizing and confiscation, as figures provided by Turkey for 2013 detail that over 12 000 vehicles and TRY 10 billion (approx. EUR 1.54

billion) in assets have been seized by LEAs, yet only TRY 14 million (approx. EUR 2.15 million) is shown to have been realised within the top 10 NRA offences. Turkey presented that this figure only represent cash and sold assets, while immovable assets that are transferred to the Ministry of Finance may not be included within this figure; however the values of these confiscated assets are not available to ensure the effectiveness of the confiscation regime.

213. Turkey was not in a position to provide cumulative and comprehensive statistics on confiscation. While statistics provided demonstrate that LEAs are seizing assets and using preventive measures to secure assets related to predicate crime to a large extent, the number of cases provided shows that confiscation, especially in relation to ML is pursued to some extent.

Confiscation of Proceeds from Foreign and Domestic Predicates, and Proceeds Located Abroad

214. Public Prosecutors and the courts have the power to request financial reports from MASAK, BRSA, MoTF, CMB, Public Oversight Accounting and Auditing Standards Authority regarding the value of the proceeds, which are subject to seizure. From 2014 to 2017, there were 1 268 judicial requests to MASAK to obtain information on assets held by suspects. MASAK reports provide details of financial data and other assets held within the systems to which MASAK has access to for the same period, Public Prosecutor made 4 and 36 requests to the CMB and BRSA respectively. However, authorities were unable to provide a breakdown of cases where seizure and/or confiscation had been considered to enable a full assessment of the processes. The table below shows the number of judicial request made to MASAK prior to seizure.

Table 3.19. Judicial Requests to MASAK Prior to Seizure

| 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|------|------|------|------|------|-------|
| NA | 70 | 84 | 229 | 885 | 1 268 |

215. In addition, public prosecutors are entitled to assign MASAK to conduct a financial research on specific issues and prepare a report in this regard. Information in such reports assist them to gather evidence for ML/TF prosecutions. Figures from MASAK in relation to the requests made to them by the judicial authorities are detailed below; however, there has not been an audit to detail the cases linked to these requests or outcomes from these referrals as required by 2015 Ministry of Justice Circular. The implementation of such actions would be useful to understand the added value and possible the 'other avenues' through which confiscation of assets is achieved. There were a sharp increase in requests made following the attempted coup in 2016.

Table 3.20. Judicial Requests to MASAK during Investigations

| 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|------|------|------|-------|--------|--------|
| 97 | 145 | 239 | 5 583 | 25 976 | 32 040 |

216. After the attempted coup, a number of presidential decrees were issued enabling Turkish authorities to seize significant amount of funds from FETÖ/PDY, PKK/KCK/PYD-YPG and DHKP/C associated persons and businesses, which were

subsequently confiscated. Between 2016 and 2018 under these presidential decrees, the total value of assets confiscated from FETÖ/PDY, PKK/KCK/PYD-YPG and DHKP/C was TRY 11 836 947 293 (EUR 1 826 629 849). 2 140 properties with a declared value of TRY 993 536 000 (EUR 153 294 310) were transferred to the General Directorate of Foundations, 985 companies placed in the control of the Savings Deposit Insurance Fund (TMSF), which has also been appointed as administrator of the stocks of 121 other companies, the assets of these companies being valued at approximately TRY 49 300 000 000 (EUR 7 608 024 691). The majority of these confiscated and seized assets relate to FETÖ/PDY.

Box 3.6. Confiscation Case Examples

Case A: Transport Company Involved in Drug Smuggling

In 2007, 350 kilograms of heroin was seized at the border with Country A and three individuals were arrested. One of them was the partner of a transport company. In 2009, a further seizure of 200 kilograms was made from a lorry belonging to the same transport company. In 2009, an ML investigation was started by the KOM. In April 2009 the PPO requested a report from MASAK, which was provided in July 2010.

As a result of the investigation by KOM as well as the report from MASAK, various payments were identified which were linked to the transportation of illegal drugs between 2006 and 2009. The direct proceeds were identified as being EUR 262 000, USD 218 000, GBP 18 000 (approx. EUR 21 000) and TRY 8 500 (approx. EUR 1300). MASAK experts identified that the proceeds of crime had been entered into the company accounts and been used to purchase vehicles (trucks). In 2013, the suspects were convicted of laundering the assets acquired from an offence and in 2015 sentenced to two years and six months. The 12 trucks purchased with the proceeds of crime were confiscated and the operating licence for the company removed.

Case B: Suspect Active As a Member of a Terrorist Organisation

Based on a denunciation letter received, the Public Prosecutor opened a case and assigned it to the Turkish National Police for investigation. A judicial request was made to MASAK in order to identify the assets of the suspect. MASAK responded with a report obtained detailed assets held by the individual and transfers from FETÖ/PDY totalling TRY 17 514 796 (approx. 2 694 584), EUR 12 057 and USD 53 875. The subject was convicted in 2018 of being a member of a terrorist organisation, and a confiscation order was issued for TRY 17 514 796 (approx. 2 694 584), EUR 12 057 and USD 53 875.

Case C: FETÖ/PDY Funding

In 2014, accused F.T, an executive of FETÖ/PDY engaged in activities for recruiting members and providing resources to the organisation; collected funds to the organisation in the name of charitable contributions, scholarships and sacrifice animal skin. To prevent transfer of the bank owned by the FETÖ/PDY to the Saving Deposit Insurance Fund, the money was taken to the bank in January 2014 on different dates and outside office hours where it was deposited in TRY and foreign currency into accounts of trusted people, USD 100 000 deposited into the account

of F.T. In the investigation stage, F.T's assets were seized. F.T. convicted of "membership to terrorist organisation" and sentenced to 6 years 10 months and 15 days imprisonment with USD 100 000 confiscated through confiscation of gains (TCL, art. 55).

Case D: Collecting money for PKK/KCK/PYD-YPG

In 2013, following the search of a house belonging to A, 82 unused and unsealed serial numbered envelopes and 48 sealed serial numbered envelopes, used for collecting support, which were understood to have been used by PKK/KCK/PYD-YPG terrorist organisation were seized. Money in the form of TRY was found inside the envelope serial numbered 038877 and the phrase that *"they put their lives in danger on the mountains, we may only do this, I wish we could give more"* and the name and signature of the person called M. A was sentenced to imprisonment for a period of 6 years 3 months and M was sentenced to imprisonment for a period of 4 years 2 months for the offence of financing of terrorism (art. 4 of the Law No. 6415. Confiscation ordered in relation to the TRY 175 (approx. EUR 27).

Case E: Attack planning by BA

In September 2016, a passenger bus was stopped while on its way from Nizip town to Gaziantep city. BA was arrested and taken into custody. He was searched and found to be in possession of an unlicensed firearm, TRY 21 000 (approx. EUR 3230) and USD 1 000. In addition, a watch was found and materials used for setting up bomb devices seized. When examining the accused mobile phone, they found video of a walk around the building of a District Police Department. BA was convicted of possession of an unlicensed pistol in violation sentenced to 3 years imprisonment and 180 days judicial fine. In addition, TRY 24 125 (approx. EUR 3700) and USD 1 000 found on his person were confiscated (TCL, art. 55).

217. Statistics for confiscations applied through Presidential Decrees and seizure statistics have been provided, authorities were not able to provide detailed statistics on the confiscation, and realisation of criminal proceeds. Turkey provided a number of case examples to demonstrate where the powers under articles 54 and 55 of the TCL which allow the court to confiscate proceeds and gains, were used in confiscation of assets following conviction of membership/assistance to terrorist organisation offence and of TF offence. The table below shows the total value of the assets confiscated, shown within the case examples, during the period 2011-2019* for the four terrorist organisations. In addition to these assets, authorities confiscated four companies and 13 properties with unknown value. Authorities were not able to breakdown these data based on years.

Table 3.21. Confiscated Assets values, within case examples, under TCL, art. 54 and 55 (2011-2019*)

| Organisation | TRY (-EUR) | USD | EUR | Number of Cases |
|-----------------|-----------------------------|-----------|-----------|-----------------|
| Al-Qaida | 8 900 (1370) | 1 400 | 1 000 | 1 |
| ISIL | 21 000 (3230) | 100 800 | | 2 |
| FETÖ/PDY | 135 804 727 (20 893 035) | 1 483 722 | 2 660 160 | 26 |
| PKK/KCK/PYD-YPG | 175 (27) | | 50 | 10 |
| Total | 135 834 802 (20 897 662) | 1 585 922 | 2 661 210 | 39 |

*1st trimester

218. Turkey provided three cases where they confiscated assets on the request of a third country, however they were unable to provide examples of where they had successfully recovered assets located abroad. The assessment team was not informed of the total number of MLA requests made by Turkey in order to attempt to repatriate the illicit proceeds in ML cases; however, provided a number of case examples where MLA requests were made to assist in the confiscation of overseas assets. A number of these cases were rejected or remain unanswered by the relevant countries. During 2013-2017, Turkey received 59 MLA requests to seize assets. To-date, authorities have finalised 14 of those 59 cases, rejected 10 cases and the others are pending within the system. Below is case examples of an MLA request to confiscate assets in Turkey.

Box 3.7. MLA Request to Confiscate Assets in Turkey

In 2007, two persons were convicted in Country A for serious criminal offences (drug possession, human trafficking, firearms possession, grievous bodily harm and forming an organised crime network). Country A made an MLA request to confiscate assets in Turkey assessed at a value of EUR 2 941 000. Turkish authorities identified the assets across a number of bank accounts holding EUR 9 53 000, an apartment, two motorcycles, safety deposit boxes and 23.7 grams (118.5 carats) of oval diamonds. Turkey seized these assets under preventative powers pending a court decision.

The case was referred to the Public Prosecutor and an ML investigation opened. The Public Prosecutor requested the case file from Country A and established that an individual had escaped prison and returned to Turkey. This individual was arrested in Turkey for committing an ML offence and a travel ban was put in place to restrict his movement out of Turkey. The defendants provided documents to the court detailing that assets held in Turkey were legal proceeds from business conducted in Country A. The Public Prosecutor went through a panel of experts who subsequently reviewed the documents available and decided that the income from the business of one suspect and his wife was equivalent to EUR 5 67 000. The source for the remaining EUR 3 14 362 could not be ascertained. The

source of income for jewellery found in the safety deposit box or vehicles could not be determined. The Public Prosecutor requested confiscation in relation to the assets held. In 2013, these two individuals were found guilty of ML offence by the courts in Turkey. The courts confiscated EUR 314 362 and the real estate.

Box 3.8. Outgoing Seizure and MLA Requests

Case 1: During an investigation in Turkey, two suspects were transferring money from company Q in Turkey to company I based in Country B. The two suspects held equal shares and management rights in the overseas company and the transference between the companies enabled them to effectively move the money overseas. On November 2016 an order was made by the Turkish Judiciary to seize the money held by company Q to the amount of USD 50 million and GBP 30 million, an MLA was sent to Country B on November 2016 but to date there has been no response made by country B as a result of this request.

Case 2: As part of an investigation into a member of FETÖ/PDY, a leader of the organisation was sending funds overseas in 2016, through a number of countries. The subject sent money from Turkey to country D and this was then sent through to Country E. A request was made on October 2017 to country D to seize money held in his accounts which was suspended by Country D for 72 hours. MLA request was made by the Ministry of Foreign Affairs on February 2018 for the repatriation of the monies. Country D responded that they were unable to assist at that stage due to technical reasons and the request remains outstanding.

219. Authorities provided the assessment team with statistics on the value of seized psychotropic substances, smuggled goods, migrant smuggling and human trafficking. The value seized represents a large sums. For example, in regards of psychotropic substances seized, the value reaches TRY 57 466 722 961 (EUR 8 723 752 828). Assessors were provided only limited evidence as to the investigation undertaken regarding assets tracing. Examples of confiscations by customs were provided detailing 10 cases during the period 2013-2019. They confiscated the goods and vehicles used to smuggle fuel and cigarettes in possession of the subject at the time of arrest. The focus for confiscation was on assets held as identified by MASAK and linked to the predicate offence rather than any extended consideration of the wider economic benefits that may have been accrued or consideration of equivalent value for the proceeds of crime leaving Turkey, as would typically be expected in cases of drug seizure.

Box 3.9. Case Examples**Case 1. Fraud and Money Laundering**

The perpetrator was working as an accountant in a company. He embezzled funds disguising the theft as payment for tax liabilities. The Public Prosecutor requested a report from MASAK, which revealed that proceeds had been transferred through family members in relation to four properties to the value of TRY 9 98 384 (EUR 154 071), 4 vehicles valued at TRY 2 44 897 (EUR37 792), education expenditure TRY 69 220 (EUR 10 682) and payments to a hair-dresser business of TRY 20 000 (EUR 3 086).

The perpetrator of the fraud and his family were convicted with the main suspect receiving three years imprisonment and a TRY 20 000 (EUR 3 068) judicial fine with two family members receiving two years imprisonment and a TRY 10 000 (EUR 1 543) judicial fine each.

Case 2. Illegal Betting

In 2012, the Public Prosecutor started an investigation into an illegal online betting platform. A request for analysis was sent to MASAK, which provided a report identifying money transfers and the purchase of property. Three transactions totalling GBP 3 197 500 were identified as suspicious. In MASAK's report, an income of over TRY 1 million (EUR 154 320) with real estate and transfer into other assets was identified as having occurred within Turkey. It was established that an organised criminal network was operating an online platform with a main suspect residing in country A.

During the investigation, intelligence led to seizures from cash couriers with EUR 30 000 seized at the airport and three cheques, seized while being transported. Following conviction the cheques were retained by the court as evidence of the offence. Three suspects were convicted for illegal betting and for laundering the proceeds of crime. The EUR 30 000 in cash and real estate (value not provided) identified within Turkey were confiscated by the court.

Case 3. Drug Trafficking

TNP investigated an organised criminal network engaged in the supply and distribution of illegal drugs. Telephone intercept material identified that the network laundered the funds through two car showrooms. Following the arrest operation TRY 122 088 (approx. EUR 18 780), USD 567, EUR 5 and 39 cars were seized along with evidence of the drug offence itself. The suspects were placed under a provisional injunction under Article 128 in relation to the other articles and monies seized. The case is ongoing.

Case 4. Assisting members of ISIL

The accused A, was linked to a manager Z at a border crossing in the Kilis-Gaziantep region who was believed to facilitate members of ISIL across the border. Intelligence received that A would be arriving to İstanbul via air and he was known to organise accommodation for recruits are willing to join ISIL. In January 2016 İstanbul TEM arrested A in his hotel room and a search conducted of his room

revealed one laptop, two cell phones, sim cards, two power banks, one notebook and USD 99 800 which was seized.

A. claimed that he and his family came to Turkey due to the instability in Syria, that Z was his friend and that he knew he was conducting activities within ISIL. Z gave him this money to conduct trade and sent him to İstanbul he had been visiting Turkey for the past 5 years in order to conduct trade. A. denied the allegations. A. had pictures of beheading carried out by ISIL and pictures of himself holding a Kalashnikov with WhatsApp conversations related to ISIL. The court decided that upon the orders of Z, A had assisted those who wanted to join ISIL their travel to Syria, had provided equipment to the terrorist organisation and therefore that he was a member of ISIL to be imprisoned of 6 years and 3 months. The court also decided to confiscate USD 99 800 found in his hotel room.

Confiscation of Falsely or Undeclared Cross-Border Transaction of Currency or BNI

220. Turkey has a broad definition of cash and bearer negotiable instruments and has both a declaration and disclosure regime. Turkish currency above TRY 25 000 (EUR 3 800) and foreign currency above EUR 10 000 is subject to declaration. In addition, passengers are required to disclose the values of Turkish currency, foreign currency or bearer negotiable instruments while entering or exiting upon request of customs.

221. Customs have powers to search any persons or vehicles when looking for cross-border cash movements. Authorities have access to a number of databases which they use to risk profile air passengers, officers are trained in relation to body language and use these tools to highlight individuals for a targeted search. Customs run a cash control software system where information is logged and made available to LEAs and MASAK. Customs are able to share information internationally with their counterparts when required to facilitate a seizure. Controls are focused on passenger movements across the border, bulk transport of cash is controlled by the Central Bank and declared through a 'single window' system to customs without LEA oversight or liaison with couriers to ensure compliance with legislation as Turkey considered that authorised bulk transfer through the central bank hold minimal ML/TF risk.

222. The powers and processes appear to be in place to enable Turkey to manage cash movements and bearer negotiable instruments cross-border; however, the number of cases do not indicate that this is used effectively.

Table 3.22. Cash Declarations, Disclosures and Seizures (including values)

| Year | 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|------------------------------|---------------|---------------|---------------|---------------|---------------|----------------|
| Cash Declaration Incoming | 6 074 | 6 525 | 9 158 | 7 641 | 9 979 | 39 377 |
| Incoming Value (USD) | 5 834 717 457 | 5 021 981 917 | 8 336 671 003 | 8 132 403 708 | 9 912 597 784 | 37 238 371 872 |
| Cash Declaration Outgoing | 33 | 18 | 18 | 480 | 1 641 | 2 190 |
| Outgoing Value (USD) | 23 009 594 | 12 854 620 | 27 742 106 | 222 403 196 | 1 577 825 486 | 1 863 835 002 |
| Cash Disclosure Incoming | 1 180 | 225 | 654 | 682 | 591 | 3 332 |
| Incoming Value (USD) | 351 896 952 | 27 766 541 | 294 917 777 | 53 030 528 | 237 547 490 | 965 159 291 |
| Cash Disclosure Outgoing | 195 | 63 | 15 | 10 361 | 13 579 | 24 213 |
| Outgoing Value (USD) | 3 106 776 | 373 163 | 2 695 797 | 25 736 205 | 287 508 147 | 319 420 091 |
| Disclosures reports to MASAK | 6 | 7 | 1 | 20 | 15 | 49 |

223. No seizures were identified within transit zones and customs officers identified that there are issues with data entry in these areas. Table below details the figures for administrative fines levied. These are levied in addition to any criminal case outcomes. Figures provided for declaration and disclosure detailed all cases and did not break down into legitimate and illegitimate cash transportation or detail the instrument used.

Table 3.23. Cash Seizure Statistics Provided by Customs Enforcement

| | Transport mode | Airway | Post | Other | Total |
|------|----------------|-------------|----------|-------------|-------------|
| 2013 | # of seizure | 12 | 1 | 1 | 14 |
| | Amount –TRY | 4 821 990 | 35 477 | 1 092 000 | 5 949 467 |
| | (-EUR) | (741 845) | (5458) | (168 000) | (915 300) |
| 2014 | # of seizure | 6 | 2 | 5 | 13 |
| | Amount (TRY) | 3 346 462 | 46 258 | 1 573 094 | 4 965 815 |
| | (-EUR) | (514 840) | (7116) | (242 015) | (763 971) |
| 2015 | # of seizure | 1 | - | 7 | 8 |
| | Amount (TRY) | 120 000 | - | 661 132 | 781 132 |
| | (-EUR) | (18 460) | - | (101 710) | (120 174) |
| 2016 | # of seizure | 20 | 1 | 8 | 29 |
| | Amount (TRY) | 10 889 297 | 1450 | 4 742 914 | 15 633 661 |
| | (-EUR) | (1 675 275) | (225) | (729 680) | (2 405 180) |
| 2017 | # of seizure | 15 | 2 | 6 | 23 |
| | Amount (TRY) | 14 028 089 | 46 720 | 2 700 762 | 16 775 571 |
| | (-EUR) | (2 158 170) | (7190) | (415 500) | (2 580 860) |
| 2018 | # of seizure | 15 | 6 | 4 | 25 |
| | Amount (TRY) | 34 336 020 | 163 523 | 12 294 637 | 46 794 210 |
| | (-EUR) | (5 282 465) | (25 160) | (1 891 485) | (7 199 110) |

224. Based on Table 3.22, the average number of declarations and disclosures made by passengers per year is more than 13 822. This includes declarations and disclosures that are for both ongoing and incoming passengers. Customs enforcement detected 87 cases for false or non-declaration/disclosure between 2013 and 2017. Turkey has on average around 100 million passengers transiting per year through their borders. False or non-declaration and disclosure cases uncovered are

intelligence and cannot be considered effective in discouraging illicit cash movements across Turkey's points of entry.

225. Failure to declare results in an administrative fine up to the value of the goods and valuables. In the case of no disclosure or false disclosure, an administrative fine is imposed equal to one tenth of the difference between the value carried and the value disclosed.

Table 3.24. False Declarations and Administrative Fines imposed

| Year | Number of False Declarations | Total Amount of Cash TRY (USD) | Administrative Fine Applied TRY (USD) |
|------|------------------------------|--------------------------------|---------------------------------------|
| 2016 | 10 | 7 089 359 (1 205 191) | 481 593 (81 871) |
| 2017 | 43 | 10 432 743 (1 773 566) | 543 899 (92 463) |
| 2018 | 23 | 54 097 495 (9 196 574) | 2 439 273 (414 676) |

226. In the case of no disclosure or false declaration/disclosure, customs enforcement sends reports to MASAK for further analysis. 49 reports were sent to MASAK, (21 reports were conveyed to the analysis department, 13 reports were found to be related to previous files in the data base, and pre-analysis work was conducted on 17 reports). Based on the analysis, 10 reports were disseminated to the Public Prosecutor, and 18 were notified to relevant judicial and administrative units.

Consistency of Confiscation Results with ML/TF Risks and National AML/CFT Policies and Priorities

227. Turkey is a civil law jurisdiction and has a principle of concurrent offences⁹ which may limit the number of confiscations listed as resulting from TF offences. Courts consider the offences laid before them by the public prosecutors and determine which crime should be subject to conviction. Where TF is presented with an offence of membership or assisting a terrorist organisation, courts can only convict on the most serious offence, this being that of being a member or assistance to the terrorist organisation. Turkey have undertaken a manual review of offences relating to membership or assisting a terrorist organisation where there has been mention of TF within the case and provided some examples to demonstrate where confiscation has been taken against these cases. Insufficient detail was made available to the assessment team to enable an understanding of the effectiveness of confiscation in these cases. ML cases may run in tandem with the predicate offence and a suspect may be found guilty of both, Turkey were unable to explain, given that the legislation does not preclude conviction for the ML offence, why confiscations relating to an ML offence appear low.

⁹ According to this principle, in case a lot of different offences have been committed due to the same act, the individual is imposed the punishment for the crime with the heaviest punishment instead of being imposed more than one sentence.

Table 3.25. Value of Realised Assets (Confiscated Cash and Value of Confiscated Property Sold): Based on the Type of Offence

| Type of offence | Total TRY | Total EUR |
|-----------------------------------|-----------|-----------|
| Smuggling | 3 414 393 | 546 303 |
| Production/trade/use of narcotics | 2 881 099 | 460 976 |
| Terrorism related offences | 1 723 328 | 275 732 |
| Protection of currency | 1 653 967 | 264 635 |
| Migrant Smuggling | 722 358 | 115 577 |
| Illegal fund raising | 418 928 | 67 028 |
| Theft | 400 815 | 64 130 |
| Unregistered Firearm | 318 674 | 50 988 |
| Illegal Hunting | 178 070 | 28 491 |
| Purchasing proceeds of crime | 88 121 | 14 099 |

228. Turkey provided a breakdown by offences in relation to confiscation between 2013 and 2017, as detailed above. While the offences are in line with the NRA, the values of the realized assets (confiscated cash and value of confiscated property sold) are low, and authorities have been unable to provide figures for confiscations resulting from the judicial approach of concurrent offences to demonstrate any extended confiscations of assets outside of the figures above. Turkey was able to provide statistics with regard to the confiscations implemented through Presidential Decrees. Some cases were provided during the onsite would support that confiscation values are high, however comprehensive statistics on the numbers and values of assets confiscated are lacking.

Overall Conclusions on IO.8

229. **Turkey is rated as having a Moderate level of effectiveness for IO.8.**



CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

- a) Turkish authorities have a good understanding of TF threats in Turkey. While MASAK and TNP demonstrated understanding of domestic and international TF risk, this was less evident across other LEAs.
- b) Turkey undertakes a large number of terrorism investigations, TF investigation within these cases are largely directed towards identifying the assets held rather than the identification of the collection, movement and use of funds or other assets.
- c) MASAK provide LEAs with a good level of details regarding the financial and asset data in relation to a suspect, however there is limited evidence that, outside of FETÖ/PDY investigations, public prosecutors have used MASAK analysis to extend their investigation to include the bigger networks or for identification of the financiers. In addition, STR-generated files are low, in view of Turkey's risk profile and risk assessment, and by comparison with the number of TF and terrorism investigations.
- d) Turkey has a low conviction rate under TF law. Turkey provided an explanation in relation to low numbers of TF cases brought to trial in Turkey; the application of the principle of concurrent offences which means that terrorism offences of membership and providing assistance may be prioritised ahead of TF cases. Whilst Turkey undertook a case by case review of these convictions, detail was not available to demonstrate the depth of investigations as being beyond an asset research exercise.
- e) There is no overarching strategy or action plan to detail how the investigation of TF is used to support national CT strategies and investigations. TF cases may attract a maximum of 10 years imprisonment the average sentence for TF cases to date being 5 years. There is, however no clear strategy for the prioritisation of TF investigative techniques to identify the collection, movement and use of funds within investigations.

- f) Each of Turkey's four LEAs have trained TF investigators, TNP have dedicated TF investigators. Communication is open across the LEAs and MASAK and TNP reported a conduit for accessing the security and intelligence agencies but there was little evidence of joint working or co-ordination in relation to TF investigations of the intelligence agencies in countering TF in relation to TF investigations and their engagement with LEA.

Immediate Outcome 10

- a) Turkey does not implement TFS without delay under the relevant UNSCRs. Turkey's legal framework allows for UNSCR 1267 designations to be transposed, but the process is dependent upon the ratification of the President, who faces no time limit in which to act. The average delay has been 33 days. Turkey has frozen no assets pursuant to TFS under 1267 or 1373.
- b) Turkey has not proposed any UNSCR 1267 designations on its own initiative, despite Turkey's own assessment of being exposed to significant ISIL and, to a lesser extent, al-Qaida threats in its NRA findings. The assessment team considers Turkey's efforts to be fundamentally inconsistent with its risk.
- c) In general, while there is collaboration and co-operation between supervisory, regulatory and operational authorities, co-ordinated by MASAK. This is primarily geared at building cases against members of terrorist organisations, as opposed to disrupting terrorist financing, especially with respect to international terrorism.
- d) Turkey does not consistently respond to incoming UNSCR 1373 requests. At the time of the on-site visit, there was a significant backlog of foreign requests received from 2013-2017 that remained unanswered, amounting to some 40 % of the total.
- e) Turkey's outgoing UNSCR 1373 requests to its foreign partners are rarely accepted by other jurisdictions. As of the on-site, Turkish authorities had made 138 requests to foreign partners and received only 2 positive responses.
- f) Turkey does not pursue domestic designation pursuant to 1373 and thus has not designated anyone on their own accord. Turkey has accepted some incoming 1373 requests for domestic listing. The assessment team considers the lack of use of 1373 domestic designations fundamentally inconsistent with Turkey's TF risks and its own risk assessment.
- g) Turkey has conducted a sectorial risk assessment to identify what it believes to be the FATF-defined subset of NPOs at greatest risk of TF abuse, which is included in the NRA. Turkey's outreach to NPOs on TF issues is lacking and Turkey's overall NPO supervision system is heavily geared towards preventing fraud and mismanagement.

- h) In light of the overall context of Turkey's significant exposure to terrorist financing, including its geographic proximity to the conflict zone with ISIL, its history of terrorist activity, and its own assessment of risk, failures in the implementation of targeted financial sanctions were weighted most highly by assessors. Although Turkey's picture is less negative for NPOs, Turkey's context and risks mean the fundamental deficiencies for the other core issues take precedence.

Immediate Outcome 11

- a) Turkey does not implement TFS for proliferation financing. As with TF-related TFS, Turkey's transposition of UNSCR 1718 designations into law is subject to Presidential ratification, which had no time limit. UNSCR 1718 designations are not transposed without delay as the average delay for 1718 designations below is 160 days, and no assets subject to UNSCR 1718 sanctions have ever been identified in Turkey. Turkey lacks a legal basis to implement UNSCR 2231 and its successor resolutions, and no penalties or supervision exist for contravention of these PF sanctions by obliged entities in Turkey.
- b) FIs and DNFBPs vary widely in their awareness of, and procedures for, observing proliferation-related TFS. DNFBPs and small FIs such as exchange offices, in particular, often do not do checks against relevant PF sanctions lists and lack established procedures or a general understanding of their risks in this regard.
- c) Compliance with UNSCR 2231 and its successor resolutions are not covered as part of the authorities' supervisory agenda. Nonetheless, some international FIs screen customers against UNSCR 2231 voluntarily, but procedures (if existing at all) vary significantly among FIs.

Recommended Actions

Immediate Outcome 9

- a) Turkey should increase the number of parallel financial investigations in terrorism cases with the objective of identifying terrorist financiers, TF trends and methods, and financing networks.
- b) Turkey would benefit from a specific national strategy on terrorism establishing goals as well as a specific TF component to embed TF investigations within the process to identify the collection, movement and funding aspects of TF within Turkey.
- c) Turkey should identify clear national priorities as well as establishing clear roles and responsibilities of the authorities in investigating and prosecuting TF (the Public Prosecutor, LEAs and MASAK) and identifying measurable performance metrics for each.
- d) Turkey should further develop the relationship between MASAK,

LEAs and the security and intelligence services to ensure co-ordination and a joint approach to counter TF and support TF investigations.

- e) Turkey should consider raising the sanctions for TF in line with other terrorism offences to enable more TF-specific investigations to be brought before the courts and raise awareness of the importance of pursuing TF offences.
- f) Turkey would benefit from a better collection of statistics in relation to TF investigations to detail the investigations undertaken from referral to conviction and confiscation. This could be used to feed into their NRA and MASAK monitoring system to increase the number of direct referrals by MASAK, by capturing methodology and also detailing where TF investigations have been a key enabler to conviction for other terrorism offences under the principle of concurrent offences.

Immediate Outcome 10

- a) Turkey should implement UNSCR 1267 designations without delay.
- b) Turkey should ensure that measures are in place at a domestic level to propose names for UNSCR 1267 designations on its own initiative and should pursue domestic designations via UNSCR 1373.
- c) Turkey should respond to incoming UNSCR 1373 requests in a timely manner. Resources should be devoted to clearing the significant backlog of foreign requests, which are now very old.
- d) Turkey should use outgoing UNSCR 1373 requests in a manner consistent with international standards and improve its response rate.
- e) Turkey should supervise smaller, more domestically-focused FIs and DNFBPs, especially DPMS, and exchange offices for TFS compliance and should work to develop their understanding of measures to combat this risk.
- f) Turkey should take greater efforts to confiscate assets related to TF, rather than other terrorism offences.
- g) Turkey should work with relevant supervisors and NPOs to ensure that NPOs understand the risk of TF, particularly the conclusions of the NRA, and are familiar with best practices to prevent it. In addition, Turkey should strengthen its TF risk-based supervision of NPOs.

Immediate Outcome 11

- a) Turkey should address deficiencies in its transposition of UNSCR 1718, and in particular the discretionary nature and delays of the transposition process.

- b) Authorities should take steps to actively monitor FIs for compliance with targeted financial sanctions related to proliferation financing.
- c) Turkey should immediately establish a legal basis to implement UNSCR 2231 and its successor resolutions without delay, including the establishment of effective, proportionate and dissuasive sanctions.
- d) Authorities should conduct targeted outreach to FIs and DNFBPs to improve risk awareness, including through the issuance of guidance on both the DPRK and Iran-sanctions regimes.

230. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9 - 11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5-8, 30, 31 and 39.

Immediate Outcome 9 (TF Investigation and Prosecution)

Prosecution and Conviction of Types of TF Activity Consistent with the Country's Risk Profile

231. Authorities have a good understanding of TF threats in Turkey. MASAK and TNP demonstrated understanding of domestic and international TF risk, this was less evident across other LEAs.

232. Turkey has a long history of combatting terrorism. It is directly targeted by and exposed to the threat of terrorism, in particular, due to its geographic location. The threat posed by domestic and international terrorist organisations has increased since 2013 due to conflicts in Syria and Iraq. In July 2016, Turkey was subject to a failed coup attempt that had a major impact across all government departments on resources and the prioritisation of threats. A state of emergency was declared, a Presidential Decree was put in place and a large number of real and legal persons were subject to investigation¹⁰.

233. TF was considered in Turkey's NRA which was prepared by a Steering Committee based on information, data and other statistics available as well as from authorities' analysis of their activities in their respective operational fields. According to the NRA, Turkey is exposed to terrorism and TF threats at a high level. Turkey faces domestic and international threats from a number of terrorist organisations. In particular, the biggest threats identified emanate from PKK/KCK/PYD-YPG, FETÖ/PDY, ISIL, and DHKP/C. All four terrorist organisations are considered to present high TF risk for Turkey. The assessment team agrees with this although it is not clear whether the risks have been sufficiently prioritised

234. These terrorist organisations use their proceeds of legal activities as a source of finance, in addition to proceeds from illegal activities. Smuggling and organised crimes are considered to be a primary way of funding for domestic terrorism. While authorities believe that internal terrorist organisations use smuggling to fund

¹⁰ For more details, please see para 216 for details of confiscation and other matters relating to attempted coup.

themselves, the international terrorist organisation general practice funding via smuggling is limited. Authorities identified an additional source of financing, which is via cash couriers and hawala networks. For international terrorism, terrorist organisations obtain proceeds largely by conducting illegal money transfers and using FTF.

235. When TF offence is evident in addition to a counter terrorism related offences such as membership for a terrorist organisation or providing arms or support for a terrorist organisation, the public prosecutor decides on the charges to be laid before the court. TF may run alongside other prosecutions and it is for the judge to decide which offence suits the evidence provided. In such instances, the principle of concurrent offences that deals with cases when a perpetrator fulfils the requirements of more than one penal provision would apply. Where there is evidence from the facts, the predicate crime relating to membership or providing assistance to a terrorist organisation will normally be prevailed by the judge as the sentence available to terrorism-related offences is greater than that for the commission of a TF offence. TF may form part of the evidence of membership within the case. Examples were given in instances of counter-terrorism cases that included a TF element, however other offences such as membership to a terrorist organisation were pursued and placed before the courts.

236. In the absence of comprehensive statistics, Turkey conducted research on a file-by-file basis analysis which established that 33 946 files out of 41 245 convictions included a terrorism financing investigation or referred to the financing act in the verdict. The financial investigation in Turkey comprised of an asset research including bank accounts, immovable, vehicles, other assets and a network or an associability analysis within the suspects/terror organisation/members. The assessment team is of the view that this is not broad enough to demonstrate a TF investigation to identify the collection, movement and use of funds across all of these investigations. This is demonstrated within a number of the case examples provided by authorities where only the assets and instrumentalities held at the time of arrest were identified, showing no extended financial investigation.

237. Turkey provided a breakdown of convictions for membership/assistance to a terrorist organisation (see table below), FETÖ/PDY account for the majority of these investigations. Additional figures were provided in relation to ISIL for 2016-2018 where few cases appear to be assessed for TF, indicating a focus in relation to asset recovery and TF investigations towards FETÖ/PDY.

Table 4.1. Number of convictions for Membership /Assistance involving a TF investigation listed by Terrorist

| Terrorist Organisation | 2013-2018 |
|------------------------|-----------|
| FETÖ/PDY | 33 837 |
| PKK/KCK/PYD-YPG | 77 |
| ISIL | 10 |
| DHKP/C | 2 |
| Others | 20 |
| Total | 33 946 |

Table 4.2. Number of ISIL Convictions assessed for TF

| DAESH related investigations (TCL 220/7, 314/2, 315) | 2016 | 2017 | 2018 | Total | Number of convictions 2013-2018 where an assessment or TF investigation undertaken |
|--|------|------|------|-------|--|
| Files | 123 | 124 | 290 | 537 | 10 |
| Persons | 212 | 255 | 538 | 1 005 | |

238. The Public Prosecutor's lead in counter terrorism and TF offences is conducted through LEA agents (Turkish National Police, Gendarmerie, Customs Enforcement and Coast Guard) who all have a role in the investigation of terrorism and TF offences and obtain evidence to build a case. LEAs conduct extensive operations against terrorist organisations resulting in the arrest and conviction of individuals for a variety of offences relating to terrorist activity. Between 2013 and 2017, the Gendarmerie and TNP conducted in excess of 200 259 operations in relation to PKK/KCK/PYD-YPG, ISIL, Al-Qaida and DHKP/C. Turkey provided 2015 Ministry of Justice Circular and letter to TNP - KOM to demonstrate prioritisation of TF cases; however, these documents highlight that terrorisms cases should be dealt with and list legislation that is available but do not provide any route for prioritisation. There is no clear national strategy for the prioritisation of TF investigative techniques to identify the collection, movement and use of TF within investigations. TNP KOM provided additional documents and examples to demonstrate a prioritisation and review of cases for TF, other LEAs were able to provide detail of operations against terrorist organisations but did not demonstrate the same focus on TF.

Box 4.1. Case Examples

Case 1: Integration and Transfer of Monies through Banking System

MASAK conducted analysis of accounts and transactions based on 1210 STR reports relating to 366 suspects related to the funding of FETÖ/PDY. The analysis established that accounts had been credited at the same branch, time and location with money that had then been 'blocked' by the account owner. Later accounts were unblocked and the money was immediately transferred to a third-party which compiled these sums

back together. It was established that this methodology had been applied to, at least, 28 218 accounts.

MASAK referred this information to the Public Prosecutor to action. TNP's Financial Crime Unit assisted in gathering the evidence across Turkey as required by the Public Prosecutor in Ankara, reviewing bank accounts files and transactions as well obtaining statements, as required. 366 suspects were investigated. The investigation has been concluded for 59 suspects, with three individuals are currently awaiting trial for membership in a terrorist organisation.

Case 2: Respect institute international – FETÖ/PDY funding

MASAK undertook analysis of bank accounts following STR reports which identified 147 persons making transactions overseas totalling USD 2 112 332 to the Respect Institute Inc. These monies were sent in 8 separate periods between February 2013 and June 2014 in 173 transactions. The report was passed to the public prosecutor who started an investigation and engaged the KOM financial crimes unit to assist.

KOM obtained evidence from financial institutions, tax records, land registry and social security to investigate the allegations. KOM established that there were a number of transactions that took place at the same branch at the same time which could not have been undertaken legally. KOM utilised analytical tools to demonstrate the links between the main suspects. This identified that they were connected through business relationships and their incomes would not enable the transfer of fund that were seen. They established that 33 people were employed providing private education and an employee-employer relationship was detected among 19 persons who made these transfers. Open source enquiries linked the Respect Institute to FETÖ/PDY and further enquiries into the managers also provided links to FETÖ/PDY. Covert techniques were used to gain additional evidence and intelligence in this case. KOM sought assistance from overseas using police to police enquiries, CARIN and MLA requests. These requests identified the beneficiaries of the monies being sent and provided further intelligence to link the Respect Institute to FETÖ/PDY. As a result of the links to FETÖ/PDY this case was reconsidered as TF.

KOM worked closely under the instruction of the public prosecutor and provided the analysis of the case which enabled suspects to be arrested and a case to be brought before the court. 29 persons were found guilty of TF and sentenced to five years imprisonment. Four suspects were convicted of membership and received terms of imprisonment of 6 years and 3 months.

239. Table 4.3 below reflects the general status of TF prosecutions in Turkey. The majority of these cases relate to FETÖ/PDY and PKK/KCK/PYD-YPG. Between 2013 and 2017, Turkey prosecuted 1913 of TF offences, resulting in 53 case convictions involving 115 natural persons (a low conviction rate of 2.7%). Most investigation do

not result in criminal prosecutions due to a lack of sufficient evidence for the Public Prosecutor to formally initiate criminal charges for TF offences.

Table 4.3. TF Investigations, Prosecutions and Convictions pursuant to TF Law (2013 – 2017)

| Year | Number of TF Files Investigated | Number of TF Files Prosecuted | Number of Persons ¹¹ Prosecuted for TF | Number of TF Cases Convictions | Number of Persons Convicted for TF |
|-------|---------------------------------|-------------------------------|---|--------------------------------|------------------------------------|
| 2013 | 14 | 2 | 3 | 9 | 24 |
| 2014 | 68 | 11 | 20 | 6 | 12 |
| 2015 | 211 | 28 | 86 | 10 | 26 |
| 2016 | 1 386 | 222 | 2 663 | 12 | 29 |
| 2017 | 2 758 | 1 650 | 6 070 | 16 | 24 |
| Total | 4 437 | 1 913 | 8 842 | 53 | 115 |

240. In addition to the above statistics, Turkey provided statistics of membership in a terrorist organisations and providing arms to a terrorist organisations cases. The number of cases investigated between 2013 and 2017 is 484 053 cases, and 74 885 cases prosecuted resulting in 15 350 case convictions involving 23 977 natural persons. Turkey undertook further analysis of conviction for membership, provision of assistance to a terrorist organisation and providing arms to a terrorist organisation. Turkey explained that the apparent small number of TF convictions could be explained as being as a result of the courts finding the suspect guilty of membership rather than the TF offence. Turkey were not able to reconcile these figures to show how many cases this applied to or where TF prosecutions had not resulted in a conviction. The assessment team is concerned in relation to the overall effectiveness of the TF legislation and consistency with the TF risk profile.

TF Identification and Investigation

241. The main structures in place for investigating terrorism and TF offences are the TNP, the General Command of the Gendarmerie (GCG) and the Coast Guard.

- a. Within the TNP, a special anti-terrorism unit with 11 000 officers is responsible for investigating terrorism. This unit has sub-units (divisions) specialised on each terrorist organisation¹². This anti-terrorism unit (TEM) has 3 017 officials that deals with all kind of TF cases. In addition to TEM, the anti-smuggling and organised crime unit (KOM) manage TF cases related to FETÖ/PDY organisation. In Ankara, 52 officers from KOM are responsible for tracking the proceeds related to FETÖ/PDY.
- b. GCG is the law enforcement in rural areas with 816 officers dedicated to TF in Turkey. They have a special unit for anti-terrorism with sub-units for each terrorist organisation. The anti-smuggling and organised crime unit (KOM) has 498 officers dedicated to TF in Turkey.

¹¹ Physical and legal persons.

¹² These sub-units are responsible for investigating the funding of each terrorist organisation in the provinces. In headquarter, there are special TF officers in each terrorist organisation divisions.

- c. The Coast Guard has a responsibility for combating all sea border related crimes with 2 200 officers. Although the Coast Guard has no special TF department, authorities indicated that there are 20 officers dealing with TF matters.

242. In addition, customs enforcement, one of the LEAs, have responsibilities with respect to smuggling activity, especially migrant smuggling. There is not a special unit related to TF; however, in case of identifying any suspicious case or TF related suspicions, they report the file to the Public Prosecutor and MASAK. Customs have 391 officers dealing with TF issues.

243. Turkish authorities confirmed that most of the LEAs received general TF training and/or analysis methods training (2/3 hours course), or the more specialised courses are provided to some dedicated LEAs officers. For example, 920 personal in TNP-TEM have received a specific CFT training for five days, 131 officers in GCG received the advance TF course.

244. All these enforcement bodies are under the MOI, except customs enforcement (under the Ministry of Trade). All these bodies, working closely with each other, along with MASAK, report good communication access and exchange of information, with information sharing agreements, MOUs and direct systems access between agencies. In addition, TNP carries out assessments study with the Gendarmerie on a weekly basis. The main goal of such studies is to discuss terrorism threats. Communication is open across LEAs where MASAK and TNP reportedly act as a conduit for accessing the security and intelligence agencies; however there was limited evidence of joint working or co-ordination of the intelligence agencies in countering TF in relation to TF investigations and their engagement with LEA. LEAs reported 24/7 access to MIT through a central intelligence hub. Assessors did not meet with MIT and there was little evidence of co-operation or co-ordination in TF investigation demonstrated during the on-site visit.

245. Authorities indicated that officers have received an initial AML/CFT training. This general course includes two hours of training on TF for TNP and six hours of training for Gendarmerie. 920 TNP officers are provided a further five days anti-terrorism course and 131 Gendarmerie officers a further 10 hour training on TF. Customs officers are provided a five day ML/TF training course of which one day included TF. Officers in Coast Guard lack specialised training in TF matters.

246. Public Prosecutor is responsible for leading the investigation of terrorism and TF offences. TF investigations are identified by LEAs from intelligence or through MASAK. Once there is information of a TF case, then the information is passed on to a specific Public Prosecutor to open a case. The Public Prosecutor is responsible for the direction of the investigation and decides which law enforcement agency will assist in the investigation. Following the Public Prosecutor's decision, the unit tasked to investigate will follow up on information received and carry out an investigation with other LEAs who may be supported by MASAK.

247. Public Prosecutor is responsible for setting the strategic direction of an investigation and depth of TF investigation undertaken as a result. Assessors formed the opinion that where there is clear evidence of a terrorism related offences (e.g. membership or provision of weapons), the Public Prosecutor will focus on this as aspect. Although there are some case examples provided where the money or assets

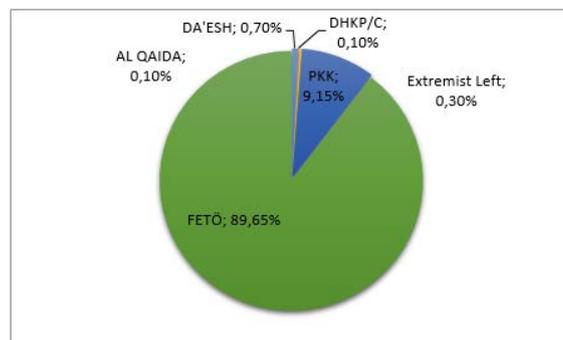
of a suspect have been confiscated by a court, there is little evidence outside of FETÖ/PDY investigations, that demonstrate that investigations go beyond an asset identification analysis which may be a precursor assessment to establish if a TF investigation is required, but does not seek to identify the collect, use and movement of funds. There was no evidence provided to detail where TF investigations assisted in the designation of a terrorist or terrorist organisation under the international sanctions regimes.

Table 4.4. TF Investigations Initiated, Prosecuted and Convicted (2013-2017)

| Investigations under TF legislation | 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|--|------|------|------|-------|-------|--------|
| Number of TF Files | | | | | | |
| (related to real persons) | 14 | 68 | 209 | 1 373 | 2 726 | 4 390 |
| (related to legal person) | 0 | 0 | 2 | 13 | 32 | 47 |
| Total | 14 | 68 | 211 | 1 386 | 2 758 | 4 437 |
| Number of real persons investigated | | | | | | |
| Number of real persons investigated | 29 | 551 | 2786 | 6 455 | 4 676 | 14 497 |
| Number of legal person investigated | 0 | 0 | 6 | 50 | 52 | 108 |
| Total | 29 | 551 | 2792 | 6 505 | 4 728 | 14 605 |
| Prosecutions under TF legislation | | | | | | |
| (related to real persons) | 2 | 11 | 28 | 222 | 1639 | 1 902 |
| (related to legal person) | 0 | 0 | 0 | 0 | 11 | 11 |
| Total | 2 | 11 | 28 | 222 | 1 650 | 1 913 |
| Number of real persons prosecuted | | | | | | |
| Number of real persons prosecuted | 3 | 20 | 86 | 2 663 | 6 022 | 8 794 |
| Number of legal person prosecuted | 0 | 0 | 0 | 0 | 48 | 48 |
| Total | 3 | 20 | 86 | 2 663 | 6 070 | 8 842 |
| Convictions | | | | | | |
| Number of TF conviction Files | 9 | 6 | 10 | 12 | 16 | 53 |
| Number of TF conviction persons | 24 | 12 | 26 | 29 | 24 | 115 |
| Number of TF conviction Legal Persons | 0 | 0 | 0 | 0 | 0 | 0 |

248. Table 4.4 above shows a significant rise in the number of TF investigations after 2016. This is mainly related to the failed attempted coup. The chart below shows that the majority of these cases are related to FETÖ/PDY and PKK/KCK/PYD-YPG.

Chart 1. Breakdown of TF Cases by Terrorist Organisation



249. STRs reported to MASAK are analysed to verify the suspicion. At this stage, MASAK focuses on obtaining financial intelligence from the various data received or collected using innovative software solutions to analyse available data. The monitoring system relies on flags and typologies resulting from TF investigations to be effective. Following the analysis, evaluation and/or examination phase, the results are submitted in a report by the examiner to the MASAK administration. If there is serious suspicion that a TF offence has been committed, the report is sent to the Public Prosecutor. Between 2013 and 2017, MASAK instigated 15 files related to TF to the Public Prosecutor which included 151 individuals. In view of Turkey's risk profile and risk assessment, and by comparison with the number of TF and terrorism investigations, the assessment team is concerned by the low numbers of STR-generated files.

250. In addition to the referrals made to the Public Prosecutor, MASAK shares intelligence on TF-related cases with different authorities, primarily judicial authorities, LEAs and national intelligence service.

Table 4.5. Denunciations Made by MASAK to the Public Prosecutor (2013-2017)

| 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|------|------|------|------|------|-------|
| 1 | 1 | 6 | 5 | 2 | 15 |

251. Between 2013 and 2017, LEAs conducted more than 53 672 investigations in relation to terrorist organisations, these investigations focus primarily on the substantive terrorism offence or predicate crime offence and there was no clear strategy provided for the prioritisation of TF investigation within these cases. Authorities did not provide the number of TF investigations conducted in parallel with the terrorism investigations mentioned above. Authorities consider that the focus is to prevent the collection of funds. Investigators use this to seek evidence to support terrorism prosecutions. This kind of investigation is limited to a request for a MASAK report to detail assets held rather than a TF investigation, except some cases provided where this has been taken forward.

Box 4.2. TF Investigations

Case 1. Terrorism Investigation into Company Providing Logistical support to ISIL

MIT provided intelligence to MASAK on a company owner in Turkey suspected of providing logistical support to ISIL in the form of a drone, camouflage boots and clothing. MASAK undertook analysis and provided a report to the Public Prosecutor. TNP CTD assisted the Public Prosecutor by gathering evidence. Intelligence detailed that goods had been purchased in Hong Kong and the United States to the value of TRY two million (EUR 308 641). Two suspects were identified, one with citizenship in Germany. An MLA request was made to Germany to assist in this investigation and the other suspect, the company director was believed to be in Syria.

MASAK identified possible financial links between individuals involved in the company and ISIL, transactions were identified as passing through MVTs providers and gold dealers. Separate referrals were made to the Public Prosecutor in relation to these events as they were unable to link these activities to a specific TF offence. An arrest warrant was issued for the suspect who was believed to be in Syria, due to his activities to provide logistical support to a terrorist organisation.

The financial dealings of the suspect were identified to support the terrorism investigation.

Case 2. Funding of PKK/KCK/PYD-YPG Through the 'Taxation' of a Local Business

In December 2017, the Gendarmerie ran an operation against the PKK/KCK/PYD-YPG and seized documents, including accounting books for the organisation. A suspect was identified who had donated USD 30 000 to PKK/KCK/PYD-YPG and was seen to owe a further TRY 450 000. Background checks were conducted on the suspect who was established as not being a member of PKK/KCK/PYD-YPG or any other known terrorist organisation. The Public Prosecutor requested details of his bank accounts and tax declarations which were obtained by law enforcement. The suspect ran a business in the area and it was believed that these payments were a form of 'tax' levied by the terrorist organisation. The suspect's tax declarations were in line with his business accounts.

LEAs believed that funds were transferred in cash via cash couriers to the terrorist organisation. The suspect was charged and convicted of committed a TF offence and received a five year custodial sentence.

TF Investigation Integrated With -and in Supportive of- National Strategies

252. Authorities indicated that risks from terrorist organisations are reviewed monthly at ministerial level highlighting the level of support from the Government in this area. However, these meetings appear to consider the threats posed by terrorist organisations in general with no specific focus on TF, nor a specific strategy to be followed in case of a TF investigation. In addition, authorities provided documents related to the national Security Council; however this council looks at high level strategic aspects of terrorism, it does not provide a TF strategy *per se*. Authorities focus primarily on the predicate or underlying terrorism offence and there is no clear strategy for the prioritisation of TF investigative techniques across all LEAs.

253. The Public Prosecutor is responsible for setting the strategic direction of an investigation and depth of TF investigation undertaken as a result. It is a personal case-by-case strategy and not informed by an overarching national strategy.

Box 4.3. Terrorism/TF investigation following suicide terrorist attack in 2016

Following the suicide attack in 2016, TNP conducted a counter-terrorism investigation and discovered a number of documents during searches of a suspects address. These documents were sent to MASAK for analysis. MASAK referred the case to the Public Prosecutor, as they believed that the suspect had been running an illegal hawala network.

Individuals involved in illegal activity were identified and their information was subsequently passed on to the Public Prosecutor. The CTU led by the Public Prosecutor reviewed the financial intelligence available to identify possible financiers and the structure of any group involved. It was established that the suspect was in contact with over 100 individuals. The Public Prosecutor passed the file to the BRSA to investigate the use of hawala network as part of this case.

254. The above case began in 2016 and remains open. The Public Prosecutor leading the investigation did not present a TF Investigation strategy in relation to the case and assessors were unable to identify the focus of the investigation outside of investigating the criminal activity of the suspect. Identifying the persons who may have supported the suspect in his endeavours was not a clear objective, but the case is still ongoing.

Effectiveness, proportionality and dissuasiveness of sanctions

255. TF is punishable by a term of imprisonment of five to ten years, provided that the act does not constitute another offence requiring a heavier punishment. According to authorities, the average length of imprisonment related to the 53 convictions between 2013 and 2017 is approximately five years. 115 persons were convicted under TF legislation. These sanctions could be considered as effective and dissuasive. The legislation in relation to legal persons, where confiscation is not engaged through a criminal conviction, allows for the removal of licence and an administrative fine of EUR 320 000 which was not seen to be sufficiently dissuasive in all cases.

256. While sanctions for TF may be in line with other countries, the policy of the Public Prosecutor to focus on the more serious offences of membership or other underlying serious crime (sanctioned for a term of imprisonment of 10 to 15 years) means that, in practice, there are few TF cases brought to court. This has unintended consequences of undermining TF investigations in serious cases thus preventing to discover financiers and go deeper to understand the broader network and support system. If authorities viewed the TF offence at the same priority level as other terrorism offences this may raise the profile of TF investigation, improving Turkey's CFT system and better enabling the logging of cases as they flow through the system. For these reasons, the assessment team considers that while these sanctions might be proportionate, they could not be considered entirely as effective as regards to membership and assistance terrorism offences.

Alternative Measures Used Where TF Conviction is not Possible (e.g. Disruption)

257. Authorities conduct a large number of investigations/operations against terrorist organisations. The Public Prosecutor explores whether it is possible to prosecute for other offences when there is no sufficient evidence for TF. LEAs detailed predicate crime investigations which were conducted in the belief that the funding from these activities supported terrorist organisations.

258. Between 2013 and 2017, there were 484 053 files pursuant to TCL and Law No 3713 relating to membership in a terrorist organisation or provision of support to terrorist organisations resulting in 15 350 convictions. As previously detailed, Turkey is a civil law jurisdiction and the principle of concurrent offences means that it is unknown when TF is pursued as the main charge where other terrorist offences are found by the court. The lack of statistics means that assessors were not able to identify where TF would form a part of these offences.

259. Turkey identified an issue with foreign terrorist fighters using Turkey as a transit point. In April 2014, they formed Risk Analysis Groups in 30 provinces and across 64 different points of entry such as airports, sea ports and land borders. As of November 2018 approximately 27 000 people had been controlled, 18 378 were subject to a special interview, 1 346 deported and 7180 refused entry. A further 69 967 persons have been added to the no-entry list and 6969 foreign citizens have been stopped while trying to illegally pass into conflict zones.

260. Turkey provided case examples dealing with organised crime in areas of high terrorist activity to manage issues in relation to protection or illegal taxation run by terrorist organisation.

Box 4.4. Case Example of Alternative Measures

Public Prosecutor initiated an investigation into cigarette smuggling believed to be facilitated by PKK/KCK/PYD-YPG across the borders with Iraq and Syria. A covert investigation started using telephone, signal intercept and use of ANPR systems to track the movement of vehicles and persons. PP requested a financial analysis from MASAK who established that large amounts of money were moved within accounts linked to the suspects and these were not commensurate with the commercial activities of the suspects.

Surveillance identified that the terrorist organisation and organised crime network were utilising exchange offices and hawala to transfer monies. LEAs believed that the organised crime networks paid the terrorist organisation a form of 'tax' to facilitate the movements across the border. This belief was formed from the area of operations and also prior use of this method to obtain financing.

Technical surveillance by the Gendarmerie identified the use of hawala in a jewellery store. MASAK analysis established that \$100m of foreign currency had been obtained by the company but that 1/3rd of this was not accounted for in transaction data. The investigation remains open.

Overall conclusions on IO.9

261. **Turkey is rated as having a moderate level of effectiveness for IO.9.**

Immediate Outcome 10 (TF Preventive Measures and Financial Sanctions)*Implementation of Targeted Financial Sanctions for TF without Delay*

262. Turkey does not implement TFS without delay under the relevant UNSCRs (see R.6). Turkey's legal framework allows for UNSCR 1267 designations to be implemented in national law, but the process is dependent upon a Presidential ratification. While the President has not refused a designation to-date, designations cannot take effect in national law until the President affirmatively acts to approve them. There is no statutory time limit for Presidential action, and the time that is inevitably required to go through the process of securing authorisation from the President creates long delays. Upon approval, designated persons and entities are listed in the Official Gazette, at which time. FIs and DNFBPs are legally required to implement TFS. Ratification of 1267 designations took an average of 33 calendar days for the period 2013-2018. This is a fundamental deficiency in the Turkish CFT framework and limits the effectiveness of authorities to identify and take freezing actions against internationally-recognised terrorists and their financiers. Authorities possess the authority to freeze or suspend transactions for up to seven working days if they suspect ML/TF suspicious activity; and Turkey contends this power would be used if assets linked to a new UNSCR 1267 designation were identified before the designation's transposition into national law (in practice, this has not occurred as no assets have been identified). Use of this power would require authorities to identify the relevant asset and issue an order restraining it to a financial institution, and would not be binding for all persons or all financial services.

263. Despite its risks, Turkey has not, to date, identified any assets subject to TFS. However, banks and other FIs have identified some false positive matches, indicating that banks are screening the names of designated persons and entities (often through third-party service providers). Turkish authorities have worked with FIs to identify and resolve these false positives in a timely manner.

264. Turkey has not proposed any UNSCR 1267 designations on its own initiative, despite Turkey's risk profile and context and its own assessment of being exposed to significant ISIL and, to a lesser extent, al-Qaida threats in its NRA findings. However, Turkey has accepted some requests for co-sponsorship of designations upon the request of other countries. The Ministry of Foreign Affairs is the responsible party for accepting such requests. Assessors are concerned that the lack of designations initiated by Turkey is deeply inconsistent with the country's risk profile and its own risk assessment. Authorities have pursued criminal justice cases against ISIL and Al-Qaida figures, including those involved in TF, but authorities did not consider proposing any of these names for designation.

265. Turkey has never domestically designated anyone of its own accord. Turkey has placed a total of only 13 natural persons and nine legal persons on its domestic designation list, all of them in connection with incoming 1373 requests from abroad, despite Turkey's risk profile, including its own assessment of significant internal terrorist financing threat and a large number of criminal cases for other terrorist activity. There is no close co-ordination to vet and de-conflict across agencies to

strategically use the domestic designations power, as Turkish authorities do not employ the domestic designation tool. Instead, Turkey pursues other efforts, such as taking criminal justice measures, to counter terrorist groups, especially those with a domestic focus. There is collaboration and co-operation between supervisory, regulatory and operational authorities, co-ordinated by MASAK. However, this is primarily geared at building cases against members of terrorist organisations for other terrorism-related offences, as opposed to building TF cases and identifying terrorist financiers for application of TFS.

266. Turkey does not consistently respond to UNSCR 1373 requests. At the time of the on-site visit, there was a significant backlog of foreign requests unanswered by Turkish authorities. About 40% of the requests Turkey received for 2013 - 2017 from foreign jurisdictions were outstanding as of the on-site visit, requiring immediate action by Turkish authorities. This may be related to an increased resource demand on authorities since the coup in July 2016, and the inability to meet these growing CFT demands as well as additional priorities (e.g. supervision, see IO 3) without additional resourcing.

267. Similarly, Turkey's outgoing UNSCR 1373 requests to its foreign partners appear to be very rarely accepted by other jurisdictions. As of the on-site, Turkish authorities had made 138 requests to foreign partners and received only 2 positive responses. Assessors question whether it is using the UNSCR 1373 process in accordance with internationally accepted practice, which the overwhelming number of rejections suggest it is probably not doing. Turkish authorities believe the lack of responses is related to the belief among recipients that Turkey is using 1373 requests against a political organisation, not against terrorists. Turkey has attempted to rectify this situation with outreach to foreign partners, but it is yet unclear what effect, if any, this will have.

Box 4.5. Designations and TFS Implemented

Implementation of TFS:

- Average Freezing Time: 33 calendar days to transpose designations (freezing occurs immediately after publication of Presidential Decisions in the Official Gazette)
- No assets identified and frozen pursuant to TFS (with the exception of 7 false positives related to natural and legal persons)
- Turkey has not independently proposed any names for TFS at UN-level but has co-sponsored nine natural and three legal persons for designations at the request of its foreign partners
- UNSCR 1373: Turkey has placed 13 natural persons and 9 legal persons on its domestic lists, all pursuant to foreign requests. No 1373 domestic designations at Turkey's own initiative.
- 138 outgoing 1373 requests with 2 accepted, and 17 incoming requests for 2013-2017, with 10 answered

Enforcing Compliance with TFS:

No pecuniary or other sanctions have been levied against non-compliant FIs and DNFBPs, as no assets related to TFS have been identified

268. Large, multi-national banks and money or value transfer services (MVTS) providers interviewed during the on-site implement TFS related to UNSCR 1267 designations as soon as the UN adopts them, before the government decides whether to transpose these designations at a domestic level. To some degree, this partially covers the major TFS-related process and legislative deficiencies amongst a sub-set of FIs. Not all FIs do this, and in particular, the smaller and medium-sized FIs and those focused on the domestic market have less sophisticated programs and do not go beyond the legal requirements.

269. Many smaller or medium sized FIs, especially those which are primarily domestic have an unsophisticated understanding of TFS. These FIs also are not equipped to identify TFS evasion schemes and have less understanding of the requirements of TFS. MASAK has been in contact with FIs regarding sanctions obligations and risks. FIs and other entities encountered during the onsite generally said they would refuse a transaction with a sanctioned person, but would not likely file a STR, although large international FIs typically have policies and procedures in place to deal with TFS sanctioned persons and entities, including internal policies to inform MASAK.

270. There is also a weak understanding and implementation of TFS requirements amongst exchange offices, MVTS agents and DPMS, which are broadly unfamiliar with TFS requirements. In general, implementation of TFS in this sector is weak or non-existent. Problems associated with this lack of understanding are compounded by transposition delays (see above). While exchange offices hold a small share of the assets in the Turkish economy, they do have a large enough share of overall economic activity to strongly impact Turkey's overall efforts. Turkey has 744 exchange offices and 78 branches active. In 2017, exchange transactions amounted to a total of USD 137 billion. As gold and precious metal traders are especially vulnerable to abuse by terrorists and sanctioned entities and appeared often in case studies presented to assessors, the lack of understanding and implementation from that sector is particularly worrisome. As with exchange offices, gold and precious metals are traded in sufficient volume to have a strong impact on Turkey's overall efforts. The sector was rated as high risk in part because Turkey is among the five largest markets and among the top three countries in terms of gold production, with an annual business volume estimated at USD 10 billion (see paragraph 71). Despite this, many gold and precious metals dealers do not implement TFS, and the NRA survey indicated only 50% of them are even aware of AML/CFT requirements. Many unregistered MVTS providers are operated by or affiliated with DPMS, further compounding the risk. For MVTS providers, supervision of TFS is nascent and Turkish authorities generally acknowledge the need to strengthen MVTS supervision. Measures in place do not yet appear to effectively hold MVTS providers accountable for TFS implementation.

Targeted Approach, Outreach and Oversight of At-Risk Non-Profit Organisations

271. Turkey has conducted a sectorial risk assessment to identify what Turkey believes to be the FATF-defined subset of NPOs most vulnerable to abuse. Turkey has also started the process of identifying factors that may expose NPOs more generally to TF abuse. In connection with its risk assessment, Turkey conducted audits of a defined subset of NPOs, but the process had not been completed at the time of the onsite. Thus, assessors credited Turkey with having defined a group of NPOs to be audited and having begun the process, but the results were not included in the analysis and data presented here¹³. Turkey planned and conducted, as the time of the onsite, to audit 50 NPOs defined as being at highest risk of TF abuse. In view of the size and risk context of the NPO sector identified by Turkey, assessors had some concern about whether the scale of this effort is sufficient. In addition, this audit of high risk NPOs appears to be a one-time event not provided, as a regular feature of Turkey's system at the time of the onsite.

272. In Turkey, NPOs are broadly divided into associations and foundations for regulatory and supervisory purposes. Compared to foundations, which represent 5% of all NPOs in Turkey, there is a rather large sector of associations, representing 95% of the entire sector. In 2017, there were 110 976 associations in Turkey and 5 549 foundations (5 099 new foundations; 262 appendant foundations; 167 non-Muslim community foundations; and 21 foreign foundations). The General Directorate of Foundations is the main regulatory body on foundations and is an administrative autonomous body attached to the Ministry of Culture and Tourism. For associations, the Department of Associations is the main regulatory body, within the Ministry of Interior.

273. Recently, Turkey has made a concerted effort to digitise information collected by government agencies, including information collected from NPOs. This is a policy objective for Turkey, which has improved its information collection and analysis capabilities in a variety of areas where government agencies collect, analyse and disseminate information received from the private sector. In regard to the overall NPO sector, the relevant databases are: DERBİS (Associations Information System) and VBYS (Foundations Information Management System).

274. A central pillar of Turkey's system for NPO oversight is the requirement for NPOs to provide detailed financial statements and undergo audits, most of which are internal. However, the information requested is primarily intended and examined to prevent mismanagement and fraud. Although some auditors have received some basic training related to CFT, the auditors are not specialists in the area of TF and TF prevention is not the primary purpose of the disclosures. The information collected does have potential CFT uses but MASAK has received only a small number of tips of possible TF activity from audits of this information. Turkish authorities did not identify any results or follow up from these tips. MASAK received an average of 4.8 of these tips per year during the period of 2013-2018. The assessment team considers that in view of the roughly 115,000 NPOs in Turkey and the country's risk context, the number of potential TF tips resulting from scrutiny of these financial statements and

¹³ Turkey completed the first tranche of its audit in April 2019 and further results in June 2019.

general audits is quite small and suggests they are not an effective method of preventing TF abuse in and of themselves, especially without the follow-up which was not in evidence. Turkish authorities have established the ambitious goal of inspecting 10% of all associations by 2020. However, these planned inspections do not appear to be based on any understanding of risk and authorities have not begun this process, except for the aforementioned audit of 50 highest risk NPOs, which Turkish authorities will include in this 10% figure. In addition, consistent with the general approach to NPOs, these inspections are likely intended to focus on mismanagement and fraud generally, rather than focusing on CFT. The aforementioned mechanism for notification of TF suspicions if they surface during the audits remains in place.

275. NPOs met during the onsite were unfamiliar with the government's view of NPO risk and best practices, as well as general concepts of TF risk and prevention. As an example of this, NPOs were unaware of the substantive findings of the NRA or indicated that they only received the outcomes directly before the meeting with the assessors and showed a general lack of understanding of TF risk overall, as well as a lack of familiarity with the risk views of authorities. Issues of NPO risk were addressed in the NRA process by the Department of Associations and the General Directorate of Foundations as well as financial institutions, under the co-ordination of MASAK, and NPOs themselves were not part of the process. MASAK has taken steps to improve risk awareness amongst authorities by hosting seminars for the benefit of the Department of Associations in December 2015, April 2018 and November 2018. These meetings were generally well attended, with 70–90 participants in attendance, including head office staff, branch managers, provincial branch managers and other civil servants.

276. According to Turkey's understanding, the highest TF risk within the broader NPO sector lies with the activities of humanitarian aid associations operating close to conflict zones, such as those associations operating in the southern border region and southeast sub-region. While authorities published Guidance for the Prevention of Non-Profit Organisations from Being Abused for TF in 2009 to raise awareness in the broader NPO sector about TF risks, this guidance had not been updated until after the onsite visit and thus could not be included in this analysis¹⁴. Turkey has also provided occasional training or presentations on regulations and legislation to association representatives, which included TF-related topics.

277. Turkey's legal framework for NPOs has administrative fines or judicial penalties for various offenses. Turkey was not able to demonstrate how these sanctions have been used in response to TF, as opposed to other forms of mismanagement or fraud or any general infraction of Turkish law, in order to demonstrate effectiveness. Overall, assessors also developed some concern about the dissuasiveness of some sanctions available. An example of this is the offense of not reporting donations from abroad. Turkey's risk assessment suggests it sees the volume of donations from abroad as a significant risk data point, but if the act does not require a heavier penalty the maximum judicial penalty for failing to do this is three months imprisonment. Turkey also has authority to close NPOs for violations.

278. Turkish banks do not have risk-based policies related to the on-boarding of NPOs. Turkish banks met during the onsite take a blanket approach, with some

¹⁴ Turkey has since completed an updated guidance and published it in June 2019.

declining all NPOs and others applying EDD to all NPOs, regardless of their individual characteristics. NPOs interviewed confirmed that for the NPO sector as a whole, access to financial services remains a challenge. The problem is particularly acute for smaller NPOs.

Deprivation of TF Assets and Instrumentalities

279. Turkey has taken steps to confiscate assets and deny access to funds mostly related to the FETÖ/PDY organisation (see IO.8), but efforts to combat the financing of international-focused terrorist groups are negligible, despite being rated as equally important in Turkey's NRA and despite Turkey's exposure to international terrorist financing risk. The assessment team does not consider the very large imbalance to be consistent with Turkey's risk profile or its own risk assessment. This imbalance is reflected in the very wide disparity in TF-related confiscation between internationally-focused terrorist groups and domestic terrorist groups, raising concerns that Turkey's focus on combatting domestically-focused terrorist groups to the detriment of efforts against international terrorist groups, has hampered Turkey's ability to deprive internationally-focused terrorists operating cross-border of their assets and instrumentalities.

280. In relation to confiscation, Turkey has made very limited efforts to deprive individual terrorists, terrorist organisations and terrorist financiers of their assets pursuant to TF convictions. Between 2013–2017, four people were convicted for TF offences with a confiscation claim. It is unclear what assets were subsequently seized and confiscated as part of these post-conviction proceedings period under TF law, although Turkey believes that persons guilty of funding terrorism were convicted under the membership and assistance legislation rather than TF legislation. Following the 2016 coup attempt, Turkey did confiscate nearly EUR 10 billion of mostly FETÖ/PDY assets (see IO.8), pursuant to a temporary statutory decree granting extraordinary powers that expired in 2018 when the state of emergency was lifted. The great majority of these confiscations were without TF convictions.

Table 4.6. Terrorism-Related Cases Involving Confiscation of Property (2013 – 2017)

| Types of Offence | Investigations | | Prosecutions | | Convictions | |
|--|----------------|-------------|--------------|-------------|-------------|-------------|
| | Files | Individuals | Files | Individuals | Files | Individuals |
| Making Propaganda for Terrorist Organisation | 337 | 683 | 248 | 575 | 19 | 23 |
| Establishing or Managing terrorist organisation | 39 | 126 | 33 | 117 | 1 | 1 |
| Being Member of an Armed terrorist organisation | 18 | 43 | 1903 | 3524 | 92 | 117 |
| Disrupting the unity and territorial integrity of the State | 4 | 18 | 30 | 122 | 5 | 6 |
| Closing Partially or completely the face in meetings and demonstrations to hide the identity | 4 | 5 | 4 | 5 | 1 | 1 |
| Pressing or Publishing the Publications of terrorist organisationa | 5 | 4 | 1 | 2 | | |
| Assisting terrorist organisations from associations and trade unions | 1 | 1 | 1 | 1 | 1 | 1 |
| Targeting the people who have taken part for the counter terrorism | 1 | 1 | 1 | 1 | | |
| Establishing or Managing armed terrorist organisation | | | 61 | 95 | 1 | 1 |
| Attempting to destroy the constitutional order and committing other crimes | | | 1 | 2 | 1 | 2 |
| Targeting the people who have taken part for counter terrorism | | | 1 | 1 | | |
| Providing weapons to armed terrorist organisations | | | | | 5 | 10 |
| Total | 409 | 881 | 2305 | 4537 | 125 | 161 |

Consistency of Measures with Overall TF Risk Profile

281. Turkey's efforts to apply targeted financial sanctions to address terrorist financing are inconsistent with its risk. The lack of without delay implementation of UN sanctions, the failure to use UNSCR 1373 mechanisms effectively, and Turkey's lack of any independent proposal of 1267 designations are fundamental concerns in light of Turkey's risks in context and its own risk assessment. Similarly, the imbalance in effective efforts between domestically focused and internationally focused terrorists, despite equal weight given to these threats in the risk assessment, is inconsistent. Turkey's efforts to protect NPOs from TF abuse are improving and are closer to consistency, but its relative lack of tangible results against international terrorist groups, still-evolving supervisory efforts, and the lack of understanding of TF risk and prevention best practices among NPOs are also concerns for the assessment team, vis-à-vis Turkey's risks. Turkey has, however, addressed NPO risk stemming from domestically-focused terrorists in a manner closer to consistency with its risks. Nonetheless, the primary method of relying on audits and declarations focused on fraud and mismanagement, as opposed to TF-focused supervision, is still not appropriate to the risk in this sector.

Overall Conclusions on IO.10

282. **Turkey is rated as having a low level of effectiveness for IO.10.**

Immediate Outcome 11 (PF Financial Sanctions)***Implementation of Targeted Financial Sanctions Related to Proliferation Financing Without Delay and Identification of Assets and Funds Held by Designated Persons/Entities and Prohibitions***

283. Turkey does not effectively implement targeted financial sanctions related to proliferation finance. Most fundamentally, Turkey's legal framework does not extend to UNSCRs related to Iran. Turkey lacks a legal basis to implement UNSCR 2231 or its successor resolutions, which ensures that UNSCR 2231 designations are not implemented in Turkey and Turkish FIs and DNFBPs cannot be sanctioned for contravening these UNSCRs. Turkey has not proposed or supported designations under UNSCR 2231 or its successor resolutions and as a matter of law, UNSCR 2231 and its successor resolutions do not have any validity in Turkey.

284. The Prime Ministry's Circular 2006/36-1 obliges authorities to immediately freeze funds related to UNSCR 1718 (2006), including funds, other financial assets and economic resources. This includes funds, other financial assets and economic resources that are owned or controlled, directly or indirectly, by the persons or entities designated at UN-level as being engaged in, or providing support for, the nuclear, other weapons of mass destruction and ballistic missile-related programmes of the Democratic People's Republic of Korea (DPRK), or by persons or entities acting on their behalf or at their direction.

285. However, as with UNSCR 1267, Turkey's transposition of UNSCR 1718 designations into law is subject to Presidential ratification, for which no time limit exists. UNSCR 1718 designations are not transposed without delay, as is reflected from the table 4.7 below. The average delay for 1718 designations below is 160 days. No assets subject to UNSCR 1718 sanctions have ever been identified in Turkey.

Table 4.7. Turkey's transposition of UNSCR 1718 designations

| UNSCR | UNSCR Date | Gazetted by Turkey | Delay (in number of days) |
|-------------|------------|--------------------|---------------------------|
| 2087 (2013) | 22-01-2013 | Not available | Not available |
| 2094 (2013) | 07-03-2013 | Not available | Not available |
| 2270 (2016) | 02-03-2016 | 06-05-2016 | 65 |
| 2321 (2016) | 30-11-2016 | 23-03-2017 | 113 |
| 2356 (2017) | 02-06-2017 | 16-03-2018 | 287 |
| 2371 (2017) | 05-08-2017 | 16-03-2018 | 223 |
| 2375 (2017) | 11-09-2017 | 16-03-2018 | 186 |
| 2397 (2017) | 22-12-2017 | 16-03-2018 | 84 |

FIs and DNFBPs' Understanding of and Compliance with Obligations

286. Overall, FIs and DNFBPs vary widely in their awareness of, and procedures for, observing proliferation-related TFS. DNFBPs, in particular, often do not do checks against relevant PF sanctions lists and lack established procedures or a general understanding of their risks in this regard. Global financial institutions have adopted policies to refuse transactions related to DPRK-sanctioned persons and entities while simultaneously informing MASAK, rather than accepting and freezing funds.

287. According to Decree of the Council of Ministers 2017/9950, obliged entities are required to freeze the assets and prevent funding from being made available by Turkish nationals, or by any persons or entities within Turkey, to or for the benefit of persons or entities listed in relation to DPRK sanctions. A Circular of the Prime Ministry No. 2006/36 clarifies these obligations for UNSCR 1718 compliance in Turkey, which provide a window of 60 days in which obliged entities must report to the MoFA, if they have identified funds. Again, Iran-related sanctions are not included in the requirement.

288. Authorities, notably the Central Bank, have taken some steps to check whether obliged entities are compliant with DPRK sanctions; however, it is not clear if any of this information has been fed back to obliged entities to improve their awareness of the risks and their STR reporting to MASAK.

289. In relation to UN-level Iran sanctions, the authorities have held a series of meetings in 2018 and one more session in 2019 to explain to FIs the status of international sanctions programs for proliferation on Iran. None of the interviewees from the onsite were familiar with these meetings or their content, as the sanctions are not legally applied in Turkey.

Competent Authorities Ensuring and Monitoring Compliance

290. Compliance with UNSCR 2231 and its successor resolutions are not covered as part of the authorities' supervisory agenda, and compliance remains voluntary for FIs and DNFBPs. Nonetheless, some large, international FIs screen customers against UNSCR 2231 voluntarily. Those FIs met onsite which do proactively screen against the UNSCR 2231 list voluntarily despite the absence of a legal requirement, have not identified assets subject to UNSCR 2231-related sanctions. Procedures vary as to what follow-up, if any, would be done if such cases were detected.

291. Following the Circular of the Prime Ministry No. 2006/36, Circular of the Prime Ministry No. 2009/17 (2009), Decree of the Council of Ministers 2017/9950 and Decree of the Council of Ministers 2018/11480, the Central Bank and its branches took precautionary measures to prevent the opening of a correspondent banking relationship with the DPRK. Internal briefings have been held for Central Bank employees. The Banking Regulation and Supervision Agency has informed all banks operating in Turkey of these measures. The Central Bank has also confirmed, through its access to bank account information, that there are no citizens of the DPRK that hold bank accounts in Turkey.

292. In addition to the Circulars of the Prime Ministry and the Decrees of the Council of Ministers published in the Official Gazette, the MoFA has informed all relevant institutions (the Ministry of Treasury and Finance, the Capital Markets Board

of Turkey, the Banking and Regulation Supervision Board and the Banks Association of Turkey) regarding the UNSCR 2231.

293. In view of Turkey's close proximity and robust trading relationship with Iran, assessors consider the failure to implement UNSCR 2231 and successors particularly important and clearly indicative of fundamental deficiency.

Overall Conclusions on IO.11

294. **Turkey is rated as having a low level of effectiveness for IO.11.**



CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

- a) Understanding of ML/TF risks across FIs and DNFBPs varies depending on the nature of the sector. Banks have a good understanding of risks and by some way the best understanding of reported entities, overall, other FIs have a broadly good understanding of risks. The level of understanding of ML/TF risks varies across DNFBPs but overall, is low. Across all obliged entities, the assessment team has a particular concern about real estate agents, DPMS and exchange offices in light of their risk profiles.
- b) Banks have relatively good AML measures consistent with risks with other FIs overall having less robust measures. Generally, banks and other FIs have systems for ongoing monitoring. Nevertheless, the quality of measures at banks is mitigated to some extent as identification of unregistered MVTs activity appears not to be strong, there is some over reliance on the trade registry and more focus on the ownership element rather than the control element of beneficial ownership, and monitoring is not always consistent with risk. DNFBPs have much less robust measures to mitigate risks.
- c) Banks and other FIs undertake EDD for high risk customers. While EDD for PEPs/family members/close associates and TFS is in place, it is not comprehensive. Overall, while there are a few exceptions, DNFBPs do not dedicate sufficient resources to address high risk situations and EDD adequately.
- d) STR reporting by banks has increased significantly in recent years and broadly appears to be in line with their risks (although the regime in relation to branches appears less strong). Reporting by some exchange offices and DNFBP sectors is low and not consistent with risk. There may also be scope for further reporting by capital markets institutions.
- e) Internal control systems at banks are relatively strong, with systems generally being in place for other FIs. Control systems at DNFBPs are much less robust or not in place.

Recommended Actions

Turkey should:

- a) as part of providing more information about the outcomes of the NRA (see

IO.1), work with FIs so that they are provided with separate ML and TF-specific guidance to better understand and address risks, in relation to their business.

- b) issue further guidance to FIs and DNFBPs:
 - which will ensure comprehensive approaches to identifying and reporting unlicensed MVTs activity; identifying and verifying beneficial ownership; and on ongoing monitoring;
 - on comprehensive approaches to addressing high risk, including the provision of detail on how the authorities expect Article 13 of the ROC to be met and detailed approaches to addressing PEPs (and their close associates and family members) and TFS. Linked with this, enforceable provisions in relation to PEPs (and their close associates and family members) should be issued;
 - on adding granularity to CFT in procedures manuals;
- c) work with banks (to the small extent necessary) to enhance the overall approach to the filing of STRs in relation to the customers of bank branches, and work with the capital market sector to enhance the reporting from the sector;
- d) review policies and procedures manuals to provide feedback on good practice for FIs so that countermeasures can be more rounded and robust;
- e) develop an action plan to address the deficiencies in connection with DNFBPs, taking into account input from the private sector and recommended actions above, and:
 - develop understanding of ML and TF risks and appropriate countermeasures in each sector (recognising the differences as between sectors) for those risks, including in high risk scenarios;
 - provide guidance and outreach on the recognition and reporting of suspicion; and
 - provide guidance and outreach on the contents of effective internal control mechanisms and how these can be tailored for very small businesses.

295. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23.

Immediate Outcome 4 (Preventive Measures)

296. For the reasons of their relative materiality and risk in the context of Turkey, implementation issues were weighted: most heavily for the banking sector, heavily for important sectors (MVTs, exchange offices, DPMS and real estate sectors), moderately heavy for the securities sector, payment institutions and lawyers and less heavily for insurance, non-bank financial sector, notary and accountancy sector. This is explained in Chapter 1.

297. Assessors' findings on IO.4 are based on interviews with a range of private sector representatives, discussion with MASAK, law enforcement, supervisory authorities and associations and information provided by the Turkish authorities, including the NRA.

Understanding of ML/TF Risks and AML/CFT Obligations

298. Understanding of ML/TF risks across FIs and DNFBPs varies. Banks have a good understanding of risks, and other FIs have some understanding of risks, to a lesser extent. Overall, many FIs have a relatively weaker understanding of TFS and unregistered MVTS-related risks. The level of understanding of ML/TF risks across DNFBPs and small FIs is limited, with the assessment team having a particular concern with regard to the risk understanding of real estate agents, DPMS and exchange offices, in light of their risk profiles.

Financial Institutions

299. Among FIs, banks have the best understanding of ML risks, informed by risk-based programmes. Risk scoring systems cover a range of customer, geographic, and products and services risks (and sometimes other risks, particularly sectoral risk). AML/CFT policies are typically updated each one to three years by most banks and, in some cases, also updated automatically when there is a development affecting the bank's operations. In addition, MASAK provides feedback to banks on their STR filings at annual workshops.

300. Banks view illegal betting as the key ML risk to their sector and, to a lesser extent, ML using legal persons; companies with complex structures; shell banks; banks and companies in international finance centres; customers in high risk countries; cash intensive sectors; DPMS; online gaming; MVTS; PEPs in risky countries; various types of Internet businesses; individuals involved in counterfeiting; natural and legal persons, which do not have the necessary licences to undertake their specified business activity; and payable-through-accounts. This risk understanding is broadly in line with the findings of the NRA but there is scope for further development of understanding.

301. The same point applies to TF understanding. The assessment team notes a minority of procedure manuals provide specific consideration of TF, TFS and relevant risks, and this is typically not comprehensive. Examples of risk factors pertinent to TF include NPOs, which are viewed by banks as being high-risk; donations, particularly foreign donations; use of cards issued by foreign banks; cash; refugees from conflict zones; fake invoices issued near conflict zones; FTFs and volunteers funding FTFs; MVTS; and foreign exchange. Banks are generally aware of TF risks related to MVTS. Not all banks accept MVTS providers as clients. Annual workshops by MASAK cover TF. Nevertheless, more TF-related information could be shared with banks to aid their understanding.

302. Within the banking sector, the level of understanding is linked to capacity, as well as institutional size.

303. The small number of large MVTS providers, especially those which are partners of global MVTS companies, have a strong risk understanding that is broadly similar to that of the larger banks and which includes automated risk scoring systems.

However, the MVTs sector also includes much less sophisticated FIs, including MVTs agents whose risk understanding is very low. Exchange offices as a whole are far behind the large, global MVTs providers in risk understanding, with some having an extremely rudimentary conception of Turkey's AML/CFT risks.

304. In other sectors, risk understanding is less comprehensive than banks (which is also reflected in procedures manuals reviewed):

- Most securities transactions are conducted electronically via trading platforms. The risk to capital market intermediaries is seen as low by the sector. MASAK views some transactions in the sector as high risk in light of their non-face-to-face nature. The understanding of risks varies between market participants, even allowing for the differing nature of business lines between firms.
- In the insurance sector, ML risk understanding is informed by the possibility of fraud. The sector considers it has very low TF risk in practice. TF-related STRs have been filed by sector participants in relation to FETÖ/PDY, with the number of STRs filed decreasing significantly in 2018.
- Non-bank FIs (NBFIs) see their sectors as having low ML/TF risk. Generally, there is a good understanding of ML risks. Micro credit is considered to be particularly low risk in light of the low sums involved and the short repayment periods (up to two months). Credit providers work directly with banks, with payments being received from banks. Leasing largely comprises the leasing of medical products and cars and is seen as low risk (with funds paid to leasing companies via regular banking channels). In general, across NBFI sectors, credit risk is considered to be more important than other risk factors, and that is where understanding is focused.

DNFBPs

305. The real estate sector's level of risk understanding is low. The sector considers that to some extent risks are limited, given that the proportion of foreign purchases is low, with foreign nationals typically owning property in Anatolia and/or along Turkey's west coast. The sector is not seen by real estate agents as being particularly attractive for ML, particularly in light of strict AML requirements to purchase property in the presence of a civil servant as well as mandated property appraisals by a licensed appraisal company prior to the sale. However, MASAK has noted a significant number of their case referrals to public prosecutors involved suspected ML through the real estate sector.

306. The NRA survey indicated that 50% of DPMS are aware of the AML/CFT obligations. A substantial minority also indicated that the sector could be abused by OCGs, but this is not reflected in STR filing by the sector. DPMS consider that the small amounts of cash used in the sector minimises risk. While gold can quickly be converted into cash, its small scale was not considered to be a significant risk by the sector. Volumes of trade in the sector, particularly in relation to import and export activity, are not seen as sufficient for ML/TF although the assessment team notes that Turkey is a major importer and exporter of precious metals and stones (in particular gold, although most gold sold within Turkey is not exported). Import activity is seen as posing a higher risk than export activity, but the former is mitigated as only

companies traded on the stock exchange can import gold. Risks are linked to particular source countries. In general, DPMS awareness of its risks in the sector is not on par with the actual risk context, but some DPMS have a more well-rounded awareness.

307. A large majority of notaries that responded to the NRA survey indicate awareness of AML/CFT obligations. Notaries met by the assessment team had not heard of ML/TF cases in connection with their sector; and were under the impression that there is low ML/TF risk given that they do not physically handle the money. Notaries are more concerned with potential fraud than ML/TF risks.

308. The responses to the NRA survey indicate that a very large majority of accountants are aware they have AML/CFT obligations but that few accountants actively implement AML/CFT controls. This handicaps understanding. Accountants broadly consider that risk is linked to the amount of capital involved, and that they have the capacity to detect ML activity via financial statements through their audit procedures. Overall, there is greater concern about fraud risk. Risk understanding of accountants is generally not on par with the actual risks to the sector. Audited companies have many foreign investors and auditors occasionally act as nominees.

309. Lawyers are generally not aware of ML/TF. Lawyers met were not aware of any ML/TF cases involving lawyers, although practitioners are known to have been active in abuse of trust, corruption and fraud-related cases. While an important role is to represent clients in court, lawyers provide legal opinions and, where enrolled in a bar association, can establish companies on behalf of clients. They can be appointed under a power of attorney.

Application of Risk Mitigating Measures, CDD and Record-Keeping Requirements

General Context

310. Banks proactively consider CDD, as indicated by the more than 39 000 STRs associated with CDD filed by banks in 2017 and 2018. With one exception (payment institutions), STRs associated with CDD filed by other FIs are low in number. STRs with a request for suspension display similar proactivity on the part of banks, with almost all such requests being made by banks. STRs on the number of transactions rejected provide a similar picture.

CDD - Banks

311. Banks have relatively good AML/CFT controls. They categorise customers into three or four risk categories and have integrated IT systems (including software from external data service providers) so as to allow risk scoring. Generally, risk is considered from the perspectives of customer, geography and product or service (and sometimes sectoral risk). The comprehensiveness of the various risk models and the steps to be taken in relation to the risk categories differs between banks. Turkey has advised that, during the period 2014 - 2016, a few banks did not risk rate customers in line with risks identified. Since 2016, the position has improved with all banks now doing so. In light of cases presented to the assessment team and discussions with banks and MVTs providers, the team has concerns about banks' identification of unregistered MVTs activity, notwithstanding that have scenarios to assist with

determining whether customers are unlicensed MVTS and share information with or report suspicions to MASAK when there is a concern.

312. Customer on-boarding involves obtaining information from the customer, using the bank's IT systems and interrogation of the Internet, such as reliable media sources. The use of simplified measures is in line with requirements (General Communiqué No. 5). All customers on-boarded are asked to declare their source of wealth.

313. With regard to beneficial ownership, banks generally follow the 25% threshold in the ROM, with some banks using a 10% threshold. Constitutive documents are provided and there was an understanding that beneficial owners are natural persons. The trade registry database (MERSiS) is routinely used, but the assessment team considers there is some over-reliance on the registry to verify data provided by customers. There is also a concern by the assessment team that banks are concentrating on the ownership element of beneficial ownership and that the control element is not considered to the same degree. MASAK's, however, notes that, when banks have a concern that controllers are different to the actual shareholders, the potential filing of STRs is invariably considered and that steps are taken to understand control frameworks by taking steps such as visiting customers and conducting enquiries in the workplace or with other third parties. Generally, legal persons are considered from the perspective of whether the age and experience of beneficial owners and others involved is consistent with the activities and risks of the company, and whether the pattern of information is consistent. The potential for fake invoices is typically examined, together with to what extent trading links exist with high-risk countries or centres with links to high-risk countries. For foreign companies, information held in the trade registry of the overseas country is checked. Banks are conscious of the importance of obtaining CDD on those acting as representatives of legal persons. It is very rare for legal arrangements to feature in business relationships.

314. Some banks have a policy as to which customers they will not normally accept, including those from international finance centres and sanctioned countries.

315. The Turkish authorities advised that most banks require EDD for high risk customers. High risk is often equated with EDD and requiring additional information from customers, such as more detail on the reasons for establishing relationships; average income and potential use of the account; the source of wealth; invoices; business balance sheets; other banks where relationships have been established; and (for foreign customers) reasons for being in Turkey. A similar approach is taken for legal persons with the same or equivalent information sought, with additional focus on the nature of legal persons, such as the company's capital, revenue, number of employees, countries in which trading activity takes place and significant trading partners. A large majority of banks require information on the source of large cash transactions. Banks advised the assessment team that MVTS providers are subject to EDD, with varying measures taken by individual banks, such as consideration of the licence, consideration of the firm's policies and liaison with the bank's compliance unit and sign-off by senior management. Nationality and the country of operation of customers are of particular importance when considering what countermeasures should be applied, with attention paid to the consistency of the picture presented for the relationship, the assets held outside of Turkey and who is repaying the credit. One

bank advised that all customers are visited by its staff (this was a small bank, but it is not an isolated example).

316. It is common for banks to pay attention to the risks present near borders with conflict zones by, for example, monitoring cash ATM use and potential fraud near these zones. There are also examples of banks not accepting customers from particular countries, which are part of the conflict zones in the region.

317. Banks have systems for ongoing monitoring, based on risk. They are sensitive to the possibility of accounts being established for personal reasons and the purpose of the account being modified, as account holders' lives change, into accounts used for business reasons. Software is generally used to generate alerts for further investigation, such as receipt of income into the account moving over a threshold for the customer or transaction type; an increase in the number or frequency of transactions; changes in transaction channels; the rate of the use of cash in the account; or a deviation from an account's typical transaction history. The use of such software has improved monitoring significantly. According to MASAK, 85% of banks self-report that they review documents in line with risk levels. The level of ongoing monitoring by those met by the assessment team is based on the risk score for the relationship. Banks monitor their customers against scenarios, the split between ML and TF varying between banks.

318. While banks present the strongest approach to CDD in Turkey, the assessment team also considers that there is scope for banks, more generally, to deepen their approaches, informed by a more comprehensive NRA report and more widely available information on issues and risk.

CDD – Other FIs

319. CDD standards of other FIs are weaker than those for banks. The same concerns apply for banks in relation to some over-reliance on the registry and the control element of beneficial ownership. There is also scope to deepen ongoing monitoring. Alignment of countermeasures for TF risk is not as strong as for ML risk.

320. MVTs providers and other FIs have varying levels of CDD obligations depending on the services that they provide. Turkey considers that many agents of MVTs providers have an inadequate understanding of CDD obligations and acknowledges a need for further work to increase awareness in this area (which authorities advise has already begun). As e-money providers and payment institutions came under supervision only in 2017, authorities also acknowledge the necessity of close engagement with this sector to improve their supervisory efforts over preventive measures, including CDD, as well. In 2018, for instance, these two kinds of institutions, despite their small relative size in the Turkish financial sector, accounted for a significant number of detected CDD violations and 34% of fines. As with risk understanding, a small number of MVTs operators partner with global MVTs providers and employ more sophisticated CDD systems prescribed by those global partners, but smaller and newer MVTs providers and exchange offices tend to have weak CDD. This includes the lack of robust customer risk scoring.

321. Exchange offices have generally weak CDD measures, with some exchange offices advising during the on-site that their most important CDD measure is the subjective assessment by the retail staff as to whether a customer "seems suspicious"

in person, based on such factors as appearance and mannerisms. No customer risk scoring is used and little customer information is collected. The authorities believe that the risk in this sector is lower because of the small amount of money in most transactions, justifying weaker CDD measures. However, authorities also acknowledge that their supervision in this area is still developing and improvements are needed.

322. Almost all capital market intermediaries use the customer profile as part of their customer risk ratings and, like banks, use three or four risk categories. Most of the intermediaries who risk-rate customers are considered by MASAK to classify the risk of their customers in line with their actual risk, with a very large majority of those having an additional approval stage at senior management level for high risk customers. A large majority of intermediaries implement additional measures beyond this for high risk customers.

323. Routine information obtained on customers includes information on income levels and work addresses. Source of funds and source of wealth information also seems to be obtained routinely. Almost two-thirds of intermediary institutions have a procedure to request additional information for large cash transactions; cash was not accepted by those firms met by the assessment team. Those met require the customer to sign forms in the presence of a representative of the firm. Follow-up questions are asked by the firms where needed and they require additional information when dealing with high-risk customers. This can include financial statements to evidence support for income and reports from independent consultants. Intermediaries take some comfort from receipt of funds from bank accounts and the CDD measures that banks have undertaken. MVTs providers are not accepted as customers. Firms met by the assessment team do not use the ability to place reliance on third parties to undertake elements of CDD.

324. The structures of corporate entities are generally analysed by firms, and a 25% threshold is generally used to ascertain beneficial ownership. It is understood that beneficial owners are natural persons. For foreign companies, information held by the trade registry of the overseas country is checked. Customers do not appear to be accepted if the beneficial owner cannot be identified.

325. Firms met undertake ongoing monitoring on the basis of risk and are willing to re-rate the risk category of a customer, based on new information, as appropriate. IT tools are used; although, these are more commonly used by investment brokers. Triggers for increased monitoring include a greater frequency of purchases and sales; a willingness to absorb disproportionate costs and risks in trading activity; closing a securities loan before the expiry of the term or in the absence of a clear market rationale; a high use of credit for trading, which is disproportionate to the customer's financial situation; and frequent transfers of funds, cash or securities between organisations, particularly where there appears to be no good reason for this activity. More generally, MASAK has found that a very large majority of intermediary institutions monitor customers according to risk and compare their databases with in-house lists of high risk types of customers. Similarly, a very large majority of intermediary institutions regularly update their documents on the basis of risk. In recent years there has been an improving level of compliance by intermediaries, with countermeasures better attuned to risk.

326. Use of simplified CDD seems more common in the insurance sector than in other sectors. This is consistent with the products for which simplified approaches are permitted in Turkey. Generally, identification data received from customers is checked with information provided by public authorities. Also, open source checks are made when receiving CDD. High risk and EDD seems to be linked to highly insured amounts, whereby more documents are required. Some of these documents are required to be notarised.

327. High risk customers are subject to senior management approval. Agents and brokers are used by insurers' head offices but are collectors of information rather than persons who are provided with responsibility to agree policies and accept customers. The general position is that all CDD is required before policies are agreed, and there appears to be some focus on the rationale and proportionality of transactions. There is also caution about accepting customers which engage in non-face-to-face business activities. Where there is reliance on third parties, the nature of the market means that reliance is placed on banks. Insurers benefit from banks' controls while still retaining responsibility for customer on-boarding.

328. As with other sectors, the insurance sector obtains constitutive documents for legal persons, considers the structure of the legal person and uses the trade registry as well as commercial databases to check beneficial ownership information. For foreign customers, copies of the residence permit and working certificate are required.

329. Monitoring by the insurance sector is not as comprehensive in all cases, as the two other core principles sectors. Nevertheless, the NRA process suggests that the sector, as a whole, assesses its risks regularly when a customer wishes to undertake another transaction. Commercial databases are commonly used, and high risk customers and transactions are monitored using automated systems.

330. NBFIs often provide asset-based financing, with money transferred to the account of the customer's creditor, rather than the account of the customer. It is common for some types of NBFIs to visit their customers and have face-to-face interviews. Countermeasures, are linked with addressing potential fraud and the ability to repay credit; although, ML appears to be a consideration. Applications to become customers are easily rejected by some parts of the sector, as the sector has a low risk tolerance generally (with the provision of funds or a product to customers who then disappear seen as the major risk to avoid). These firms score the risk of their clients and review the pattern of information in the application documents, accordingly. The sector considers that it is important to know its customers. Market intelligence (sharing of information between firms by credit assessment officers) is a feature and informs the customer acceptance process. Some firms use IT tools, namely the Internet or a commercial database, to facilitate CDD.

331. The micro credit firm met requires CDD to be undertaken, even if the firm receives a new application for credit from a previous customer. A very large majority of factoring firms obtain confirmation of contact details. Factoring firms make payments to the customer rather than third parties. A very large majority of such firms apply additional controls in relation to legal persons by visiting the company and additional controls are routinely applied to customers with large cash flows, such as exchange offices and DPMS. Factoring with any foreign involvement is seen as posing a high risk and therefore subject to greater checks.

332. Financing companies met by the team are alert to the risks presented by disparities between income and transaction volume, the reliability of new employees and early repayment of credit. These companies use the Internet, MERSiS, contact information, GSM numbers, confirmation of workplace information, credit reference agencies and sanctions lists for CDD purposes. Their countermeasures are periodically updated. Leasing companies scan the media and check that the goods leased are in line with the purpose of the business. Examples of issues of concern to leasing companies include: a request for leasing, which appears incompatible with the size of the customer's assets; leasing agreements, which are signed on the basis of a power of attorney; and requests to pay the entirety of the lease early. Factors such as these trigger enhanced EDD. Information on the relationship (if any) between the lease holder and the supplier is obtained and, from time to time, firms visit suppliers and also verify that customers are using leased products for the declared purpose. Early closures of contracts are reviewed and leasing companies met undertook ongoing monitoring.

333. Structures of legal persons accepted as customers of NBFIs do not appear to be complicated, with senior managers often accepted as the beneficial owners. A 25% threshold is routinely used by NBFIs, and those firms met had been able to identify beneficial owners to their own satisfaction in all cases. Concerns in specific cases have led to a much lower threshold being used. The registry is used as a source of information. Procedures in relation to shareholders are checked.

334. The NBFIs sector has had a low number and level of AML/CFT violations. A majority of NBFIs carry out EDD in high risk situations (even if this may be attached to reasons other than ML/TF). Monitoring of customers for the same reasons also appears to be normal.

CDD - DNFBPs

335. DNFBPs have much less robust measures to mitigate risks. Measures taken are not comprehensive and are not consistent with risk.

336. Real estate agents met by the team consider information held on the internet, social media and land registry office. They also consider the customer's source of income, occupation and social security. Since 2018, the property being sold must be visited and agents must satisfy themselves that the seller owns the property. Sellers provide information on the utilities they use as they need to be transferred to the purchaser. The risk of fraud is a concern and powers of attorney are checked. For companies, ownership is checked in the Gazette and constitutive documents are reviewed. Comfort about beneficial ownership is taken from the fact of documents bearing photographs and the notarization of signatures of beneficial owners. A person's ability to represent the company is checked through the constitutive documents or other information provided.

337. DPMS tap into the communications network which exists between market participants, particularly if the potential transaction is very unusual. The Chambers of Jewellers disseminates information, such as warnings, to its members, including information from MASAK. Customer identification is considered by those DPMS met by the team, with one of them having more sophisticated customer on-boarding processes, including EDD relating in particular to foreign customers. More checks are

undertaken by this firm for transactions with some countries. It also took disseminations by MASAK into account.

338. Only a minority of the notary sector has customer acceptance policies and risk categorises customers. Notaries met by the assessment team advised that notaries cannot proceed without information on the customer's identity, by way of a driving licence or other identification document bearing a photograph. They enquire about beneficial owners and checks are undertaken with the trade registry and tax office. Representatives of a company provide identification and proof of their ability to represent a company. Notaries also have links to the population registry, which allows checking of information on individuals.

339. The NRA process revealed that few accountants have customer acceptance policies and risk categorise customers. Those met by the team seemed to have customer on-boarding forms. With regard to legal persons they wish to understand when they were established and who by, the address of the headquarters, the type of business and in what countries it operates, if there are any foreign subsidiaries, the capital needs and how financing is secured, the owners and beneficial owners, the ability of those running the business, and which firm(s) of accountants had been used previously. Persons subject to identification must provide an identification document with a photograph; it appeared that source of funds and wealth information would also be requested. Accountants pay more attention if funds originate from abroad. The 25% threshold for beneficial ownership was understood. More work might be undertaken for the larger quoted companies more frequently, possibly as often as every three months. Enquiries can be made through an accountants' e-portal.

340. Obtaining identity information for a person granting a power of attorney is a standard part of the form agreed by the Union of Bar Associations and the Union of Notaries Public. The power of attorney indicates that a lawyer has power to act for a client although it is not clear how often they are needed. Lawyers met by the assessment team have led to a doubt that the requirement of the form is always observed.

Refused Business

341. A generally convincing number of customer applications have been rejected by banks although the assessment team has a concern that a risk-based approach has not been followed in relation to NPOs. The team also has a concern about cases presented during on-site, which suggested examples of businesses operating in a manner suggestive of unlicensed MVTs activity which should have been rejected or dropped as customers by banks but were not, suggesting that the strong policies presented may not always be followed in practice, particularly by smaller or local institutions. The overall positive picture is evident not only in discussions between the assessment team with banks but also the number of requests made as part of the STR process to suspend transactions and the findings of MASAK as a supervisory authority.

342. STRs on rejected transactions have not been filed by DNFBPs. The sector's observation of AML/CFT requirements is too low for business to be refused to an adequate standard when CDD is incomplete.

Record Keeping

343. FIs appear to maintain records for at least the minimum statutory period. Records are maintained on micro film or in electronic/digital or paper form. All information on relationships and transactions appears to be maintained. With regard to DNFBPs, real estate agents met by the assessment team were aware of the eight year requirement.

Application of EDD Measures

Financial Institutions

344. A substantial number of STRs have been made by banks in relation to PEPs, correspondent banking, new technologies, wire transfers, high risk countries and beneficial ownership, indicating that banks are addressing these areas of enhanced risk.

345. Generally, banks consider PEPs to be automatically high risk, with most having procedures for PEPs (some 90%). It appeared to the assessment team that EDD would not necessarily always be adopted. The team has a concern that close associates and family members of PEPs are not generally considered. The gaps (both in relation to customers and beneficial owners of companies) are mitigated to some extent as, in general, commercial databases are used by banks before customer take on and as part of their monitoring; some banks use more than one database. Other FIs advised the team they consider PEPs to be high risk, but they do not seem to identify PEPs by asking for confirmation on customer take-on forms (although some half of all investment intermediary institutions have a procedure). Instead, the internet and commercial databases might be used or firms might use their knowledge of the community; not all NBFIs appear to check for PEPs at customer take-on. There is no general approach across the FI population of asking individuals to confirm if they become a PEP after take-on and approaches to discovery whether somebody has become a PEP (or that they have become a close associate or family member) would be reliant on ongoing monitoring. PEPs, once identified, require senior management approval.

346. Concerning correspondent banking, most correspondent accounts are denominated in USD and EUR, meaning Turkey has a relatively limited number of correspondent banks. Services offered are relatively limited and do not include payable through accounts. Detailed questionnaires are issued by Turkish banks to potential correspondent banks before acceptance in recognition that correspondent banking is high risk. Relationships are subject to sign off by compliance departments and senior management. There seem to be good quality checks on potential correspondents; as part of this, annual surveys are sent to correspondent banks for completion. Correspondent banks do not include shell banks and there do not appear to be any correspondent banks in countries subject to sanctions.

347. Concerning new technologies, FIs generally take account of technological risk in their countermeasures, with some specifying particular types of non-face to face business for which they undertake EDD. Banks assess the risks of prospective products and services; most banks have internal committee structures to review the risks. However, capital market institutions tend to rely on banks' procedures in light

of the banking oriented nature of their services. Some NBFIs have product approval review policies.

348. Concerning wire transfers, banks either advised there were no gaps in wire transfers received or that any wire transfers with gaps (which are occasional) were returned for completion. The banking sector (and MASAK) is confident that no transaction will proceed where there is any gap in information. More generally, systems to check wire transfers for gaps are not risk based but rather they are subject to real time screening and the systems prevent gaps. Banks (other for a few small banks) also use algorithms or other automated systems, which look for keywords, sanctions hits, PEPs and red flags, to facilitate screening. During monitoring banks generally check if transactions are in line with the customer profile and any transaction limits. Approaches can be quite sophisticated. More generally, transfers to payment institutions are reviewed and cases of unlicensed MVTs have been identified. However, the continuing problem with unlicensed MVTs operation in Turkey indicates that some unregistered MVTs activity either goes unnoticed by bank, or is not stopped in a timely manner. Nearly all banks use automated systems to scan offshore transfers (with the other banks doing manual checks). Some two thirds of banks scan domestic transfers.

349. Concerning TFS, UN and other lists of terrorists and terrorist financiers provided by commercial providers are taken into account by many banks in screening, regardless of domestic designation. Banks' databases of customers and beneficial owners are screened automatically by software at least daily and customers and beneficial owners are screened before take on. However, the concern on the approach to beneficial ownership expressed above will have an effect on quality of approaches to TFS. In addition, banks did not clearly articulate rounded approaches or thinking about TFS. Potential matches are investigated, but there is a lack of sophisticated approaches to identify potential evasion of TFS. Most FIs appeared to treat the screening of names as sufficient and had not considered the possibility that sanctioned parties might try to evade their screening. There have been no issues where IT upgrades have resulted in any failure or reduction of capacity to screen for designated persons; banks' systems are integrated with those of MASAK. Representatives of the capital markets and leasing sectors met also screened potential customers as a part of the take-on process (with TFS lists being integrated in the IT systems of the capital markets firms, allowing screening to take place on a daily basis), although screening in the insurance sector seemed to be before pay out. Information obtained by MASAK as part of the NRA process suggests that a very large majority of intermediary institutions (and approximately half of portfolio management companies) screen their customer database and transactions for designated persons (with almost all such entities screening before customer acceptance). Almost half of these institutions have software to undertake the checks. Exchange offices do not appear to screen for TFS effectively.

350. Concerning high risk countries, –banks and large MVTs providers met by the assessment team include geographical risk as a factor in assessing risk and evaluating which countermeasures are applicable. Amongst others, examples of high risk countries include those listed by the FATF; major illegal drug producing and transit countries; states which sponsor terrorism; Transparency International lists; offshore centres; and countries subject to sanction; Non-domestic customers are seen as high risk. Most banks screen potential customers electronically prior to customer take on

for links to what they consider to be high risk countries, including those listed by the FATF. Most banks also consider potential transactions with high risk countries before a transaction, mostly using electronic screening tools. A large majority also screen trade transactions with foreign countries. Other FIs met also had controls which would lead to EDD for countries listed by the FATF. A large majority of capital markets institutions take special measures for risky countries and transactions. As with other preventive measures, smaller MVTS providers and exchange offices apply far less sophisticated and robust measures. For exchange offices in particular, high risk countries are not taken into account.

DNFBPs

351. MASAK has advised that DNFBPs in general do not have sufficient resources to undertake requirements in relation to PEPs, developing technologies and high risk countries. The assessment team agrees with this view. DNFBPs do not provide wire transfer services or services analogous to correspondent banking.

352. On positive points of detail, real estate agents met by the team noted that the local administration office, the police and MASAK are notified if there is a PEP, and that they do not sell property to customers from particular high risk countries subject to sanctions. DPMS were aware of the risk of PEPs and of the need to do more in relation to them. They were aware of the risks presented by particular countries. Notaries advised that they check if a customer is designated before take-on; there are no checks for PEPs. Accountants are aware of PEPs and need to look at whether they are using political power for gain. They appear to screen new customers. Lawyers met seem to check lists of designated persons if they are suspicious.

Reporting Obligations and Tipping Off

353. The pattern of STR reporting since 2014 is expressed in the table below.

Table 5.1. STR reporting by obliged entities

| Obliged Entity | Type of STRs | | | | | | | | | |
|-----------------------------------|--------------|--------|--------|---------|---------|------|------|--------|--------|--------|
| | ML | | | | | TF | | | | |
| | 2014 | 2015 | 2016 | 2017 | 2018 | 2014 | 2015 | 2016 | 2017 | 2018 |
| Banks | 29 994 | 63 203 | 78 883 | 123 494 | 169 742 | 731 | 3252 | 37 980 | 35 557 | 25 981 |
| Factoring Companies | 1 831 | 2 495 | 6 750 | 4 359 | 5 088 | | 2 | 120 | 40 | 10 |
| PTT Corporate | 1 672 | 3177 | 2897 | 3 791 | 3 511 | 5 | 63 | 563 | 1 004 | 507 |
| Insurance and Pension Companies | 686 | 435 | 459 | 305 | 308 | 1 | 16 | 1 521 | 1 167 | 427 |
| Exchange Offices | 497 | 601 | 899 | 1 181 | 1 753 | - | - | | 11 | 2 |
| Payment and e-money Institutions | | | 697 | 3 369 | 13 749 | - | - | 6 | 13 | 43 |
| Intermediary Institutions | 208 | 147 | 309 | 271 | 154 | - | 3 | 62 | 61 | 18 |
| Financing Companies | 39 | 31 | 88 | 547 | 69 | - | 1 | 113 | 84 | 5 |
| Financial Leasing Companies | 95 | 40 | 63 | 29 | 53 | 3 | 5 | 118 | 49 | 16 |
| Precious metals intermediaries | - | - | - | 131 | 169 | - | - | - | - | - |
| Insurance and Reinsurance Brokers | - | - | - | 15 | - | - | - | - | - | - |

| Obligated Entity | Type of STRs | | | | | | | | | |
|---|--------------|------|------|------|------|------|------|------|------|------|
| | ML | | | | | TF | | | | |
| | 2014 | 2015 | 2016 | 2017 | 2018 | 2014 | 2015 | 2016 | 2017 | 2018 |
| Certified general accountants, certified public accountants and sworn-in certified public accountants | - | - | - | - | - | - | - | - | 13 | 1 |
| Public Notaries | 1 | - | 1 | 1 | - | - | 1 | - | - | - |
| Dealers of precious metals, stones and jewellers | - | - | - | - | 42 | - | - | - | - | - |
| Investment partnerships | - | - | - | - | - | - | - | - | 1 | - |
| Portfolio Management Companies | - | - | - | - | 3 | - | - | - | - | - |

354. There has been a significant increase in the number of ML and TF STRs filed during the period under review. The vast majority of ML and TF STRs have been made by banks. This is consistent with the risks to the banking sector and broadly consistent with Turkey's risks.

Money Laundering

355. The increase in the annual number of ML STRs made by banks reflects an improving awareness of risk and what represents suspicion, and improved compliance. About three quarters of the banking community has introduced artificial intelligence software to its IT systems to point compliance teams to potential cases of suspicion. A large majority of banks also appear to use software to review similar accounts for benchmarking purposes for reporting suspicion. Almost all banks routinely include suspicion as a factor for consideration when undertaking their monitoring activity. Banks met by the assessment team understood their reporting requirements and made a substantial number of STRs. Banks have made a convincing number of STRs in relation to attempted transactions. ML from illegal betting, point of sale usury, tax evasion and fraud predominate, with an increased trend relating to illegal betting since 2016. Branches account for some 14% of STRs filed by banks; prospective cases for filing STRs are notified by branches to head office so that the notification and background information can be analysed to ascertain whether a STR should be made.

356. MASAK advises each bank of the quality of its STRs annually at workshops so as to facilitate a cycle of improving quality. For other FI sectors evaluation is on a sectoral basis and the results shared via presentations. Overall, reporting quality by banks, and by payment and e-money institutions, is regarded as being of generally high quality.

357. In order to prevent any possibility of tipping off, head offices of all banks do not appear to routinely notify branches of whether potential suspicion notified to head office has resulted in the filing of a STR; while a branch will be aware that it has made a notification to head office, the absence of confirmation that a STR has been made can only be a limitation on effectiveness (even if, potentially, a small limitation). The assessment team has a concern that there appears to be a small number of cases where relationship managers in branches have a degree of reluctance in promoting

the filing of a STR to compliance teams (resulting from longstanding relationships with banks); this is being addressed by banks.

358. While the number of STRs from the capital markets sector remains small, their quality seems to have improved due to improvements in compliance and increased understanding of requirements (following focus during MASAK's supervision). The medium risk of the sector and the increase in STR violations noted by MASAK in 2018 suggest there is still some scope for increased filing of STRs. Most suspicion is based on the commission of capital market offences; this is consistent with the sector's risks but might miss use of the sector by launderers. Almost all intermediary institutions routinely consider suspicion as a factor when undertaking monitoring activity.

359. The decline in STRs filed by insurers in 2017 is ascribed to an increase in understanding and quality of reporting; the lack of reports by insurance brokers is linked to this, the low ML risk of products intermediated and the dominance of bank assurance. Increased reporting by exchange offices is seen as being in line with other sectors. E-money and payment institutions became obliged entities in 2016; the reporting pattern for these institutions derives from this and focus on outreach to the sector by MASAK in 2017 and 2018 combined with the development of illegal betting as a reporting trend.

360. Overall, STRs filed by FIs other than banks are regarded as being of good quality, except for those made by factoring companies which are rated as being of low quality (with this being attributable to uncertainty arising from forgery).

361. The negligible level of reporting by DNFBPs is not consistent with their risks; MASAK is aware of this issue. The emergence of STRs filed by precious metals intermediaries in 2017 is ascribed by MASAK to outreach. It focussed attention on accountants in 2016 to increase awareness of reporting of suspicion; it intends to do more work with this sector to improve reporting. Ten per cent of real estate agents responding to the NRA survey indicated that they had had suspicion at least once but, as the table above indicates, they had not reported these suspicions. Notaries, DPMS and accountants met by the assessment team were aware of the requirement to report suspicion; notaries linked this to high levels of cash and carrying on with a transaction after it had been reported. STRs filed by the DNFBP sector are regarded by MASAK as being of low quality.

Terrorist Financing

362. The generality of what is said above also applies to TF STRs. The large majority of significant increase in TF reporting by banks relates to FETÖ/PDY, although there has also been enhanced reporting in connection with ISIL/PKK and transactions related to regions where there has been terrorism. MASAK considers exchange offices are less vulnerable to TF than ML and the reporting pattern reflects that TF related transactions are more common near Iraq and Syria. MASAK also considers the number will increase in light of revisions to the legal framework. With regard to payment and e-money institutions, there has been a consistent increase over the last three years. It is also possible that a few STRs relating to TF might have been filed by these institutions as ML STRs in light of identical underlying criminality such as drug and migrant smuggling. Overall, in the view of the assessment team the very low number of TF STRs made by exchange offices, does not reflect the risks posed by those FIs. FETÖ/PDY largely accounts for the increase and patterns in the number TF STRs

filed by other FIs. No TF STRs have been made by DPMS, which does not appear to reflect that sector's risks and the portability of precious metals and stones.

Tipping-Off

363. Generally, obliged parties met by the assessment team were aware of the importance of preventing the subjects of STRs from being tipped off.

364. The first level of defence by FIs is to seek to employ staff with integrity. Internal audits by banks include compliance with regard to tipping off. Training by FIs includes the context and sanctions for tipping off. MASAK provides information on the importance of preventing tipping off during its workshops and other outreach. Most policies/procedures provided to the assessment team by firms in the banking, capital markets and insurance sectors refer to tipping off (albeit not all specify it is an offence). Of the limited number without the reference, the large majority are outside the banking sector. With regard to DNFBPs, internal controls such as procedures manuals are limited (see the section below). Nevertheless, accountants, notaries and DPMS intermediaries are conscious of the standards of integrity to which they are subject and the lack of integrity in tipping off. MASAK has also noted that it has provided training to DPMS and real estate agents to prevent tipping off.

Internal Controls and Legal/Regulatory Requirements Impending Implementation

365. Internal control systems at banks are relatively strong, with systems generally being in place for other FIs. Control systems at DNFBPs are much less robust or not in place.

Financial Institutions

366. There has been a step change in corporate governance at banks since the global financial crisis in 2007/2008. These has led to increased ownership of AML/CFT policies and countermeasures and, in recent years, boards have taken more initiative in seeking meetings with MASAK. The "three lines of defence" model has been adopted by all banks. The large majority of banks now have a dedicated committee led by the board responsible for reviewing compliance risks.

367. Training programmes are undertaken annually, are subject to board approval, and appear to be good quality, comprising both training for new staff (within six months of appointment) and periodic refresher or new courses or events for existing staff. Most banks use a combination of face to face training and internet-based training, with a more recent emphasis on face to face training. A few banks, particularly the smaller banks, provide only face to face training as staff numbers allow this to be effective. Compliance teams tend to have enhanced training, including the provision of certificated courses. Training covers the generality of AML/CFT, with a recent focus on illegal betting. A few banks have undertaken specific training near Turkey's borders on the risks to those parts of Turkey. Trainers have taken part in MASAK's training programmes. Generally, the level and frequency of training seems to be in line with the size and complexity of each bank.

368. Banks have compliance units, which report to a compliance officer. Compliance staff numbers and skill sets have increased significantly in recent years;

units now number on average about 12 staff and generally have separate units addressing sanctions, suspicion, and CDD. The largest units comprise 30 to 40 members. Generally, there are no resource issues although there are occasional event-driven issues such as heavy workloads or a move of office. Large and medium sized banks in particular are using AI to support compliance efforts. The quality of compliance officers has significantly improved over the last ten years and interventions by MASAK in relation to the quality of compliance officers are rare (the BRSA's prudential supervision has also focussed on the quality of officers). Compliance officers report either to the board or the high-level compliance committee. All banks have internal audit departments. These departments undertake their roles based on risk and they check practices which are representative of banks' customers and transactions. Audits are undertaken at least annually and results are reported to the board; the report might be on a standalone AML/CFT basis or the report might contain other subjects. The focus on AML/CFT in recent years means that AML/CFT internal audit expertise has developed and specialists are now relatively common. Banks have better quality policies and procedures than other FIs with some difference of quality between banks, including in relation to their consideration of CFT.

369. Controls are being applied to branches and subsidiaries inside and outside Turkey on a consolidated basis.

370. With some exceptions, the procedures documents for other FIs are not as strong as those for banks.

371. Investment intermediaries have established risk based compliance programmes, which include compliance officers and internal audit functions. (Approximately half of the portfolio management companies and a minority of investment companies have also done this (even though not required by legislation)). Information on compliance is provided to the board annually or semi-annually. In small institutions compliance units number two people on average with three or four staff in larger institutions. Portfolio management companies tend to have one member of staff while about a quarter of investment companies have a compliance officer and a few have a compliance unit. Compliance units are sometimes located within a wider internal control or risk management department. Intermediaries, compliance units have two officers on average, with three or four in larger institutions and 24 in the largest. A significant proportion of these staff have substantial experience. Intermediary institutions which are part of banking groups usually have support from the bank. The procedures of investment sector institutions seen by the assessment team differ in their comprehensiveness. For intermediary institutions linked with banks, internal audits are undertaken at least annually and the results are reported to the board. The focus on AML/CFT in recent years means that internal audit expertise has developed and specialists are now relatively common.

372. Insurers have a systematic control environment which is similar to that for banks, although not as comprehensive. Compliance officers have been appointed and compliance units normally report directly to the board of directors rather than a committee; the units are sometimes located within a wider internal control or risk management department. The units comprise two or three staff in small companies, with approximately five team members in larger insurers. Insurers have appointed internal auditors and the board considers internal audit reports on an annual basis.

373. By way of internal controls, NBFIs are required only to appoint a compliance officer. Compliance officers within NBFIs are normally part of a larger internal control or risk management department. A large majority of NBFIs have written AML/CFT policies. Most leasing companies are part of international groups and, as a generality, they appear to have better internal controls than other NBFIs.

DNFBPs

374. DNFBPs tend to be very small and have scarce resources for the establishment of internal control frameworks. MASAK considers that the imposition of internal control requirements would be beyond the capacity of DNFBPs. Overall, therefore, internal controls among the DNFB population are limited.

375. The majority of real estate agents have written policies but no real estate agent met by the assessment team possessed any policies or procedures. The majority of DPMS do not have a policy. Of those met by the team, one provided procedures, while another provided written customer take on requirements. About half of notaries have advised MASAK that they have received at least some elements of AML/CFT training; representatives of the Notaries Union of Turkey confirmed that they have arranged AML/CFT training for new notaries. MASAK has also provided information to the Union and training within the auspices of the Union's activities. Some half of accountants have indicated to MASAK that their technical accountancy training had an AML/CFT component. A very large majority do not possess a policy although at least one of those met by the assessment team possessed procedures.

Overall Conclusions on IO.4

376. **Turkey is rated as having a moderate level of effectiveness for IO.4.**



CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

- a) The supervisory measures applied by BRSA, CMB and MoTF for the licensing of banks and other FIs were found to be generally well developed for the purpose of preventing criminals and their associates from entering the financial system.
- b) A number of controls are in place that are designed to prevent criminals and their associates from abusing institutions in Turkey. The controls applied include fit and proper tests, criminal background checks of shareholders with qualified shares (generally 10%) and senior management, and inspections to assess whether sufficient controls and IT infrastructure are in place.
- c) Generally, there is good co-ordination between MASAK and other supervisors.
- d) The recently completed NRA has fed into the supervisors' understanding of the risks faced by obliged entities under their supervisory purview. However, supervisors have yet to make full use of this information to improve their risk-based supervisory activity. Supervisory approach also needs to be better aligned with a risk based approach to address the most significant risks identified.
- e) In general, there is good public-private sector dialogue with FIs, which contributes to supervisors' risk identification and understanding.
- f) Supervision and monitoring to address and mitigate ML/TF risks in the financial sector and other relevant sectors has led to remedial actions; however, sanctions applied are not always effective, proportionate and dissuasive.
- g) There is an uneven application of supervisory action leading to sanctions for DNFBPs, and in some cases, little to no statistical information is available to ascertain the extent to which effective, proportionate and dissuasive sanctions are applied. For example, individuals found to be operating without the required accountant's license are regularly sanctioned; however, it is less clear whether other DNFBPs, such as dealers in precious metals and stones, also

face regular penalties for AML/CFT related infractions. Given the weight of these other DNFBP sectors, this is a significant deficiency.

- h) Turkey continues to develop its MVTS supervision, especially in regards to payment institutions and exchange offices; and supervisors acknowledge the need to act more robustly against unregistered MVTS providers in Turkey.

Recommended Actions

Turkey should:

- a) Attribute more resources to risk-based supervision of high-risk sectors, such as banks, DPMS, exchange offices and MVTS providers. Additionally, supervisors should ensure that their supervisory activities are undertaken on a risk-sensitive basis with a view to mitigating ML/TF risk.
- b) Focus on carrying out regular supervision of compliance for banks in particular (as against examination of regulatory violations) and conduct a more number of on-site supervision activities for all types of DNFBPs.
- c) Improve their supervisors' ability to accurately capture data and other important statistical information to improve supervision (e.g. data on detected breaches for real estate agents or DPMS). Authorities are aware of the gaps and are working to improve statistical information gathering.
- d) Supervisors should prioritise more robust action against the risk of unregistered MVTS/exchange offices.
- e) Seek to enhance existing public/private co-operation by bringing new and emerging payment processors and other non-bank private sector representatives into their workshops.
- f) Ensure that supervisors have a range of effective and dissuasive sanctions available to them to apply when appropriate, apart from developing an escalation matrix for imposition of sanctions for the ML/TF violations.

377. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The Recommendations relevant for the assessment of effectiveness under this section are R.14, R. 26 - 28, R.34, and R.35.

Immediate Outcome 3 (Supervision)

378. The main supervisory authority in the Turkish AML/CFT regime is MASAK, which co-ordinates amongst other relevant supervisory authorities to assign supervisory tasks, including audits and on-site supervision. In addition to this centralised approach, the core principle FIs are licensed in Turkey by their sector supervisors, namely BRSA for banks; CMB for the securities market; and MoTF

(Insurance Supervision Board, ISB, and Board of Treasury Comptrollers, BTC) for insurance companies. Other FIs operating in Turkey are similarly licensed by their sectorial supervisor, either the BRSA, CMB or MoTF.

379. Positive and negative aspects of Turkey's supervisory regime were weighted: most heavily for the banking sector, heavily for important sectors (MVTs, exchange offices, DPMS and real estate sectors), moderately heavy for the securities sector, payment institutions and lawyers and less heavily for insurance, non-bank financial sector, notary and accountancy sector. This is due to the relative materiality and other contextual risk factors facing Turkey for these supervised entities, as explained in Chapter 1¹⁵.

Licensing, Registration and Controls Preventing Criminals and Associates from Entering the Market

380. The supervisory measures applied by BRSA, CMB and MoTF for the licensing of banks and other FIs was found to be generally well developed for the purpose of preventing criminals and their associates from entering the market.

Financial Institutions – Licensing, Registration and Other Controls

381. A dual licensing system, requiring establishment and operating licenses, is applied for banks and non-bank FIs, subject to regular BRSA review. Financial institutions are required to be licensed before they may begin operations, and unlicensed entities are subject to sanctions under Turkish law. Banks (51); financial leasing companies (26); factoring companies (61); financing companies (14); asset management companies (13); payment institutions (33); and e-money institutions (10) are all subject to licensing by the BRSA. Collectively, the market share of these 204 entities amounts to 90.1% of the financial sector in Turkey for a combined TRY 3.4 trillion (EUR 530 billion).

382. As part of its authorisation process, BRSA applies a number of controls designed to prevent criminals and their associates from abusing institutions under its regulatory purview. The controls applied include fitness and proper tests and criminal background checks on promoters, board members and senior management, and an inspection to see whether sufficient controls and IT infrastructure are in place to conduct the desired business activities. In general, the entire licensing process can take upwards of three months.

Table 6.1. Licensing Applications (2015–2018)

| Years | Institution | Number of applications | Number of applications progressed | Number of applications rejected | Number of applications approved | Number of institutions whose license has been cancelled |
|-------|---------------------|------------------------|-----------------------------------|---------------------------------|---------------------------------|---|
| 2015 | Banks | 1 | 1 | - | 1 | 1 |
| | Factoring companies | - | - | - | - | 11 |

¹⁵ See Chapter 1 for a description of each supervisor and which entities they are responsible for supervising.

| Years | Institution | Number of applications | Number of applications progressed | Number of applications rejected | Number of applications approved | Number of institutions whose license has been cancelled |
|-------|---|------------------------|-----------------------------------|---------------------------------|---------------------------------|---|
| 2016 | Financial leasing companies | - | - | - | - | 1 |
| | Financing companies | 1 | 1 | - | 1 | - |
| | Payment and e-money institutions | 40 | 9 | - | 8 | - |
| | Asset management companies | 3 | 3 | - | 3 | - |
| | Representatives operating in Turkey of the banks located abroad | 4 | 3 | 1 | 3 | 3 |
| | Banks | 1 | 1 | - | 1 | - |
| | Factoring companies | - | - | - | - | 4 |
| | Financial leasing companies | - | - | - | - | 2 |
| | Financing companies | 2 | 2 | - | 2 | 1 |
| | Payment and e-money institutions | 9 | 21 | 2 | 19 | 1 |
| | Asset management companies | 4 | 4 | - | 4 | 1 |
| | Representatives operating in Turkey of the banks located abroad | 1 | 1 | - | 1 | 3 |
| 2017 | Banks | 1 | 1 | - | - | 1 |
| | Factoring companies | - | - | - | - | - |
| | Financial leasing companies | - | - | - | - | 2 |
| | Financing companies | 1 | 1 | - | - | - |
| | Payment and e-money institutions | 4 | 11 | 2 | 14 | - |
| | Asset management companies | 3 | 3 | - | 2 | 2 |
| | Representatives operating in Turkey of the banks located abroad | 3 | 3 | - | 2 | 4 |
| 2018 | Banks | - | - | - | 1 | - |
| | Factoring companies | 1 | 1 | - | - | 2 |
| | Financial leasing companies | - | - | - | - | 1 |
| | Financing companies | 1 | 1 | - | - | - |
| | Payment and e-money institutions | 5 | 6 | 2 | 7 | - |
| | Asset management companies | 7 | 7 | - | 8 | 2 |
| | Representatives operating in Turkey of the banks located abroad | - | - | - | 1 | 2 |
| | | | | | | |

383. The remaining FIs are subject to licensing requirements by the CMB and MoTF. CMB oversees the licensing of intermediary institutions; portfolio management companies; real estate investment companies; securities investment companies; and

venture capital companies. This also covers banks that wish to undertake capital market activities, open branches or make any articles of association amendments. Application is made directly to the CMB, which reviews submitted documents; the qualifications and criminal records of founding members, shareholders having significant influence (directly or indirectly), board of directors etc.; undertakes capital requirements checks and other checks; and requests relevant information from other competent authorities, such as MASAK, the National Intelligence Service, MoI, MoTF and BRSA.

384. The MoTF licenses non-life insurance companies; life insurance companies; pension companies; reinsurance companies; and exchange offices. In 2017, two licensing applications (non-life insurance) were received and processed. In 2018, one licensing application was received and processed. These operating licenses are issued by the General Directorate of Insurance after examination of documents on co-founders and managers of insurance companies, face to-face interviews of company managers and an on-site supervision by the Insurance Supervision Board.

385. Exchange offices are authorised to buy and sell foreign exchange as well as gold and conduct precious metals transactions within the scope of exchange office activities specified in Communiqué No. 32/45. In 2018, the total amount of foreign exchange transactions conducted by exchange offices was USD 120 billion, the total transaction volume of the exchanges offices decreased by 12.40% compared to 2017. The primary currencies exchanged are the USD (which comprises 60% of all transactions) followed by the EUR (which comprises 37.50% of all transactions). Other currencies exchanged make up less than 2.5% of the market and include the GBP, JPY and SAR.

386. Licensing as a Group 'A' or Group 'B' exchange office by the MoTF is required prior to conducting business in terms of the existing laws amended in May 2018. While 157 of the existing exchange offices have applied for Group 'A' type license, 562 exchange offices have submitted applications for Group 'B' type. Applications are made for a 'License of Establishment' through an online portal, the Exchange Offices Information System, and criteria differ depending on the category applied. In general, licenses are issued after scrutiny of declarations and signatures, opinions received from other institutions and establishment of the financial strength of applicants.

Financial Institutions – Breaches Detected

387. The BRSA has detected a growing number of breaches during the period of 2013 – 2018, which may indicate growing risks related to the licensing of entities under its supervision and/or an improvement in its ability to detect licensing breaches. Based on the breaches identified, a number of referrals have been made to the public prosecutor for action. Additionally, the BRSA has increasingly exercised its authority to abolish signature authority: 8 natural persons (2014); 8 natural persons (2015); 25 natural persons (2016); 75 natural persons (2017); and 5 natural persons (2018).

Table 6.2. Number of Referrals to the Public Prosecutor Based on Breaches Detected

| Reason | 2014 | 2015 | 2016 | 2017 | 2018 |
|--|------|------|------|------|-------------------|
| Operating without license | 5 | 6 | 6 | 30 | 29 |
| Avoiding to take regulatory, remedial and restrictive measures | 0 | 0 | 14 | 22 | 0 |
| Reputational Damage | 0 | 0 | 0 | 1 | 4 |
| Misstatement | 0 | 3 | 0 | 0 | 4* (embezzlement) |

388. Similarly, the CMB and MoTF have detected some breaches and taken requisite measures to cancel licenses. For example, in the period 2014 – 2018, the licenses of four brokers were cancelled by the MoTF following a breach of licensing requirements. Similarly, from 2018 – 2019, the licenses of 22 exchange offices were cancelled during 1.1.2018-24.5.2019, out of a total population of 744 exchange offices for breaches such as recession of exchange office for more than 120 days, illegal branch operations, failure to complete group selection process, withdrawal of consent by exchange office. In addition, CMB has also applied 11 administrative fines for violations regarding CDD during 2014-2018.

DNFBPs – Licensing, Registration and Other Controls

389. Licensing requirements are also in place for DNFBPs, which include a number of checks and controls to prevent criminals and their associates from owning or controlling accountancy firms, notaries, dealers of precious metals and stones and real estate agents. Lawyers are not covered under the broader AML/CFT framework. Licensing authority for lawyers rests with the Union of the Turkish Bar Association. Conditions for admission into the legal profession are established by article 3 of the Attorneyship Law. Impediments to admission include a previous conviction for a prison term exceeding two years (for a number of crimes including bribery, ML, fraud, etc.). Qualifications are separately evaluated by the Bar Association, Union of the Turkish Bar Association and Ministry of Justice.

390. Regarding accountants, there are two different categories: Certified Public Accountants¹⁶ and Sworn-in Certified Public Accountants¹⁷. Applicants for a license are required to submit detailed identity and other documentation, including certified criminal records from the Public Prosecution Office, as well as undergo extensive apprenticeship periods and/or pass required examinations. Once licensed, accountants are required to be a member of a local chamber. Within each chamber, a disciplinary board monitors the conduct of its members and can apply sanctions, including warnings, temporary suspensions and cancellations and expulsions from the industry (see below).

¹⁶ *Certified Public Accountants* serve three primary functions: i) maintain books and ledgers, including balance sheets, profit and loss statements, tax returns, etc.; ii) provide advisory services; and iii) perform investigations, analyses and audits, including presenting written opinions and reports, as well as performing arbitration and similar services.

¹⁷ *Sworn-in Certified Public Accountants* certify the compliance of financial statements and tax returns prepared by natural and legal persons in accordance with generally accepted accounting principles and standards in the Republic of Turkey.

391. For notaries, a stringent list of educational, professional and other requirements (e.g. absence of previous convictions for a crime, including embezzlement, bribery, theft, fraud, forgery, breach of trust, smuggling, money laundering) must be met before entering into the industry. Notary offices are also regularly inspected (at least once per year) by Public Prosecutors for compliance with licensing and other requirements. In addition, the Discipline Board of the Chambers of Notary conducts supervision and control on notaries (see below).

392. In Turkey, real estate agents act as an intermediary to those who want to sell or buy property. However, real estate purchases and sales are not required to be conducted by these agents, and natural and legal persons can conduct these transactions in the land registry office by themselves. There are approximately 200 000 real estate agents in Turkey, which must meet certain personal, educational and other qualifications (including the absence of a criminal conviction).

393. There are 17 909 dealers of precious metals and stones in Turkey, which are required to meet certain professional and other qualifications, including absence of conviction. Both Turkish citizens and non-citizens can act as dealers in precious metals and stones so long as they register within 30 days of the opening of business and, subsequently, have their names published in the Official Gazette. The Supervisory Board of the Board of the Craftsman and Merchant Occupational Organisation is the competent authority for supervising this sector and conducting inspections.

DNFBPs – Breaches Detected

394. Individuals found to be operating without the required accountant’s license are regularly sanctioned at a high conviction rate (86% in 2017), with 12 convicted individuals in 2017 and 11 convicted individuals in 2016. A number of disciplinary penalties are also regularly applied.

Table 6.3. Number of Disciplinary Penalties: Accountants

| Penalty | 2014 | 2015 | 2016 | 2017 | 2018 |
|----------------------|------|------|------|------|------|
| Warning | 239 | 226 | 209 | 185 | 222 |
| Reproach | 195 | 411 | 298 | 225 | 186 |
| Temporary Suspension | 108 | 87 | 99 | 85 | 58 |
| Expulsion | 27 | 25 | 15 | 12 | - |

395. Out of the 1 931 licensed notaries as of 2017, only a relatively low number of notaries have had their licenses revoked, following a detected breach. For example, during the period 2014 – 2018, there were 22 cases in which licenses were revoked. Similarly, following inspections by the Notaries Union of Turkey into possible reported breaches, a relatively low number of cases were ultimately filed with the Public Prosecutor’s Office for criminal justice measures to be taken. In 2017, 244 inspections led to 5 cases filed; in 2016, 173 inspections led to 8 cases filed; and in 2015, 182 inspections led to 5 cases filed. This equates to an average of 3% of all inspections from a tip related to wrongdoing leading to a case filed with the Public Prosecutor’s Office. While pecuniary penalties are also available at the discretion of the Discipline Board of the Chamber, these penalties are relatively low and range from TRY 250 (EUR 37) to TRY 5 000 (EUR 760). These gaps are partially offset by the

lower ML/TF risk weighting of this sector, relative to FIs and other categories of DNFBPs.

396. Data on detected breaches was not provided for real estate agents or DPMS.

Supervisors' Identification and Understanding of ML/TF Risks

397. The findings of the recently concluded NRA are, by and large, consistent with the risk understanding of most supervisors, which have a good understanding of the inherent risks facing the sectors under their supervision. All supervisors contributed to the NRA process, led by MASAK. Due to the centralised structure of the Turkish supervisory regime, whereby MASAK acts as central coordinator, assigning supervisory tasks (including audits and on-site inspections) to other sectorial supervisors, MASAK is placed under some resource constraints. Authorities are aware of this and plan to take steps to further increase the staffing strength of the department of MASAK, dealing with AML/CFT responsibilities. Staffing levels are shown in the following table:

Table 6.4. Staffing Levels of MASAK's Obligations Department Dealing with AML/CFT Supervision

| Title | Number (August 2018) | Number (March 2019) |
|--------------------|----------------------|---------------------|
| Head of Department | 1 | 1 |
| Expert | 6 | 7 |
| Branch Director | 1 | 1 |
| Supportive staff | 2 | 3 |
| Total | 10 | 12 |

398. In general, there appears to be an effort to foster good public-private sector dialogue, which contributes to supervisors' risk identification and understanding; although, the recent publication of Turkey's first NRA and lack of comprehensive and practical AML/CFT sector-specific risk reporting by supervisors, to-date, may limit Turkey's ability to maintain an understanding of new and emerging ML/TF risks.

MASAK

399. As the linchpin in Turkey's AML/CFT framework, MASAK has a good understanding of ML/TF risks in the financial and other sectors as a whole, between different sectors and types of institutions and of most individual institutions. MASAK has broad access to a range of financial and other data (see IO.6), which streamlines its processes and aids in its understanding of ML/TF risks. Due to resource constraints, high-level policy objectives to focus efforts on combating domestic terrorist threats and personnel hiring needs, MASAK is not found to be able to fully leverage this information for AML supervisory purposes.

400. MASAK is continuously developing its risk understanding and regularly engages with the private sector, in particular banks. Due to its central coordinator role, MASAK also has frequent interaction with other supervisors. MASAK develops annual AML/CFT programmes for other supervisors, based on the result of its own analysis and evaluations, as well as information supplied by other supervisors, and conducts case-based infringement examinations that also feed into its risk understanding.

BRSA

401. BRSA has a good understanding of the inherent ML/TF risks facing the banking sector, which is consistent with the NRA findings, to which it contributed. It regularly reviews and analyses various indicators relating to the financial performance of banks and other FIs, within the scope of its audit functions, and receives periodic reporting from the sector related to a broad range of issues (internal control policies and risk management systems, stress tests, compliance with accounting principles and standards, etc.). Its risk understanding feeds into its supervisory cycle, which helps to inform its strategies for on-site supervision and generate risk matrices to inform its supervisory activities. Good co-operation between BRSA and MASAK also facilitates risk identification and understanding. As the supervisory framework for the MVTs sector is relatively new and the payment institution sector is still small but expanding, BRSA's understanding of ML / TF risk for the MVTs sector and the payment institution sector were not found to be as strong as in the case of banks and is evolving.

CMB and MoTF

402. To a lesser extent, CMB has an understanding of the ML/TF risks facing the sectors under its supervision. In particular, its understanding of risks related to capital markets appeared limited in relation to MASAK's understanding of the inherent risks in the sector. In the NRA, capital markets are considered to pose unique ML/TF risks, due to the fact that products and services offered have recently diversified and funds can be transferred within seconds. 24% of ML referrals made to the Public Prosecutor's Office by MASAK involve the purchase and sale of securities. This limited understanding may be due to the structure of Turkey's supervisory system, given that the CMB largely implements supervisory decisions by MASAK (i.e. whether to conduct on-site supervisions and audits).

403. Concerning the other supervisors (ISB and BTC, housed within the MoTF), risk understanding and identification may benefit from further work. Roughly 1.5% of STRs filed with MASAK are related to the insurance sector, but there appears to be a rising trend in reporting from the sector (a three-fold increase during the period 2013 – 2017). The NRA identifies the relative riskiness of the sector as low (pension products are considered as medium risk), due to a variety of product and other contextual factors.

Risk-Based Supervision of Compliance with AML/CFT Requirements

404. MASAK is the principal agency for supervising compliance and co-ordinating AML/CFT supervisory activity, more broadly. Across supervisors, there is an uneven level of risk-based supervision of compliance, in particular amongst the ISB and BTC. While MASAK is making efforts to fully leverage its resources to co-ordinate RBA-based supervision across Turkey, this effort is impeded to some extent by its significant AML/CFT responsibilities and relatively limited resources, with which it can conduct supervision of its own and co-ordinate supervisory activities across all supervisors. Furthermore, there is concern that priority setting for inspections and audits are not based on a comprehensive understanding of risks, but are instead often based on broad metrics, such as firm size, whether an FI has been previously inspected, the percentage of STRs filed compared to an FI's size of assets and number

of transactions, or broad supervisory goals (i.e. attaining a certain percentage quota of annual on-site supervision within a given sector), or referrals related to potential breaches or bad behaviour (i.e. case-based). This seems to limit the extent to which these supervisory examinations mitigate the ML/TF risks.

Financial Institutions

405. The authorities' approach to supervision largely falls within one of two categories: 'supervision of compliance' and 'examinations of regulatory violations.' Supervision of compliance is, generally, conducted on the basis of a program prepared for examining FI's compliance with the AML/CFT obligations. The program is prepared by MASAK in co-ordination with other relevant supervisory authorities. Examination of obligation violations is carried out for the purpose of detecting obligation violations and conducted in relation to one or more violations that are reported to or determined by MASAK. It can also be based on a concrete case determined during the supervision of compliance. Compared to the ISB and BTC, the BRSA and CMB exercise their supervisory authority in a more structured way, based on risks. The position is relatively less robust for other supervisors like MoTF, Insurance Supervision Board, Board of Treasury Controllers, etc.

Table 6.5. Supervision of Compliance Conducted on Financial Institutions

| Obligated Entity | 2014 | 2015 | 2016 | 2017 | 2018 |
|-----------------------------------|------|------|------|------|------|
| Banks | 23 | 11 | 11 | 24 | 11 |
| Insurance and Pension Companies | 12 | 8 | 3 | 3 | 4 |
| Insurance and Reinsurance Brokers | 4 | - | 7 | - | 3 |
| Factoring Companies | 7 | 9 | 3 | 5 | 4 |
| Financial Leasing Companies | 2 | 2 | 5 | 4 | 3 |
| Precious Metals Intermediaries | - | 6 | 3 | 7 | 2 |
| Authorised Exchange Offices | 11 | 10 | 19 | 23 | 30 |
| E-Money Institutions | - | - | - | - | 5 |
| Payment Institutions | - | - | - | 1 | 13 |

406. As the central coordinator, MASAK develops its understanding of ML/TF risks in the financial sector, based on information received through both off-site and on-site supervision and also leverages a wide range of financial and other information, including STR analysis, input from sector supervisors, etc. This understanding supports its risk-based approach to supervision of FIs. However, the approach of MASAK and BRSA for the purpose of AML/CFT supervision of compliance in the banking sector was not found to be entirely in line with the NRA's assessment of the sector as high risk. In particular, supervisors do not have a risk-based scoring system of banks. This hampers the ability of supervisors to conduct risk-based supervision in the banking sector.

407. MASAK and BRSA have adequate legal powers to supervise MVTs providers, including access to transaction records of licensed MVTs providers. With the implementation of the Law No. 6493 on the Payment and Security Settlements System, Payment Services and Electronic Money Institutions, fit and proper checks appear to be sufficient. However, active supervision remains at a nascent stage and many MVTs providers have never been inspected on-site. For the moment, authorities are primarily concerned with licensing in the sector to the detriment of active

supervision, absent a specific request from MASAK. Further efforts are needed to address these supervisory concerns as well as concerns relating to unlicensed MVTs providers, especially gold traders and exchange offices not licensed to provide money transfer. Supervisors acknowledge these issues and the need for further steps to improve supervision in this area.

408. The responsible authority for taking criminal justice measures against unlicensed MVTs providers is the Public Prosecutor's Office, which receives referrals from supervisors. For the period 2016 - 2018, BRSA made 20 referrals to the Public Prosecutor's Office on the basis of its supervisory activity, which identified unlicensed MVTs providers. These numbers show an increasing trend (one in 2016, 8 in 2017 and 11 in 2018). Of these 20 referrals, only four prosecutions have been initiated to-date and one suspect has been sentenced. Given the significant ML/TF risks associated with unregistered MVTs activity in Turkey, as identified by the authorities in the NRA as well as many of the case studies provided to assessors and many of the representatives who participated in the onsite, the referral numbers and subsequent prosecution figures are insufficient and highlight the need for more active supervision on this issue.

409. Similarly, MASAK identified 140 legal and natural suspect persons operating unlicensed MVTs providers in the course of conducting its supervisory activity during 2013-18. In these instances, MASAK shared this information with law enforcement between 2013 and 2018, but it is unclear what action, if any, law enforcement took in most of these cases. This breakdown in the feedback cycle between supervisors and operational authorities inhibits the effectiveness of Turkey's AML/CFT supervisory regime and inhibits the ability to improve on the active supervision of MASAK, BRSA, CMB and the other relevant supervisory bodies within the MoTF.

410. Similarly, while MASAK has identified unlicensed MVTs providers, BRSA has not effectively used MASAK's information to improve its supervision and the risk understanding of the private sector entities under its supervisory oversight. Some banks and DNFBPs, in particular, appeared unfamiliar with the risk of unlicensed MVTs providers during the on-site visit and were unfamiliar with practices and procedures to combat this sort of activity; although, others' FIs, in particular global MVTs providers and international banks, have a more sophisticated understanding of the risks posed by unlicensed MVTs providers (see IO.1). Overall, supervisory efforts against the unlicensed MVTs, while improving, remain inadequate to the threat.

DNFBPs

411. Within the DNFBP sectors, supervisors monitor the extent to which compliance is observed to a lesser degree. Instances of AML/CFT violations observed by sectoral supervisors are reported to MASAK. Annually, there is little to no on-site supervision conducted or violations examined within each sub-category of DNFBPs, with the exception of a consistently low number of on-site visits by supervisors to DPMS.

Table 6.6. Supervision of Compliance | Examinations of Regulatory Violations (2014–2018)

| | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------------|-------|-------|--------|--------|--------|
| DNFBPs | | | | | |
| DPMS | 6 0 | 5 5 | 6 2 | 23 6 | 22 6 |
| Real Estate Agents | 0 0 | 0 0 | 13 1 | 9 5 | 5 2 |
| Notaries | 0 0 | 0 0 | 4 1 | 2 0 | 1 0 |
| Accountants | 0 0 | 0 0 | 41 2 | 0 7 | 21 0 |

Remedial Actions and Effective, Proportionate and Dissuasive Sanctions

412. MASAK has the authority to apply a broad range of remedial actions and sanctions to ensure compliance. However, the penalties and administrative fines imposed on FIs and DNFBPs for AML/CFT violations are limited in number and the amount of maximum penalties applied is also low. Moreover, the reporting entities could challenge the penalties and administrative fines levied on them in court, and there are instances of full or partial reversal of the penalties and other administrative fines imposed by MASAK. This limits the dissuasiveness of MASAK's ability to effectively enforce AML/CFT obligations.

413. Furthermore, due to the structure of Turkey's AML/CFT legislation and the supervisory regime, sectoral supervisors (overseen by MASAK) do not have a mandate to apply sanctions of their own on regulated entities under their supervision for AML/CFT violations observed in the course of their supervision. This adds an additional layer of complexity, by removing the supervisor that has immediate responsibility for sectorial supervision from the sanctioning process. More generally, financial institutions that fail to comply with AML/CFT obligations are given, at least, 30 days to take remedial action. This legal requirement does not incentivise financial institutions' compliance with AML/CFT obligations, and it was not demonstrated that this legally mandated grace period leads to effective outcomes. An escalation matrix, so that the sanctions are proportionate to the level of non-compliance, should help authorities determine appropriate sanction levels.

Financial Institutions

414. Turkish authorities make efforts to identify offenders and take appropriate supervisory action to mitigate risks in the financial sector. However, sanctions applied are not effective, proportionate and dissuasive.

415. In relation to banks, serious violations identified sometimes lead to administrative fines, but in the one recent case identified, this fine is too low. In the last reported case in 2015, a bank was given its legally mandated grace period to address an identified deficiency (the bank had not assigned a compliance officer). When the bank did not take remedial action within the grace period to correct the identified deficiency, a fine of TRY 19 370 (EUR 6 418) was levied against the bank. In other sectors, fines levied by supervisors and regulators for similar violations are also too low. For example, in 2016, a capital market brokerage house was identified as not having assigned a compliance officer. After its grace period, during which time it took no actions to correct the identified deficiency, a fine of TRY 20 450 (EUR 6 122) was applied. This pattern of behaviour exists in a number of cases within the banking sector, insurance and pension sector and capital market sector in cases identified going back to 2013.

416. Sanctions for providing unregistered MVTs services include up to three years' imprisonment in addition to pecuniary fines and the temporary closure of business. While this appears to be in line with sanctions for the commission of other financial crimes in the Criminal Code, Turkey was not able to demonstrate the dissuasive application of these penalties, as only one conviction for failing to meet licensing obligations has actually been applied since 2016.

417. The following table highlights the total amount of fines imposed on FIs for violation of CDD obligations and STR obligations in 2018:

Table 6.7. Sampling of Amounts of Administrative Fines Imposed for CDD and STR Filing Violations [TRY (EURO)/Number of entities]

| FI Type | Administrative Fines (CDD Violations)/Number of entities | Administrative Fines (STR Violations) |
|--------------------------------|--|---------------------------------------|
| Banks | TRY 77 648 (EUR 13 711)/(3) | TRY 199 882 (EUR 35 296)/(6) |
| Capital market brokers | TRY 8 93 316 (EUR 157 746)/(3) | TRY 1 650 762 (EUR 291 500)/(3) |
| Portfolio management companies | TRY 936 308 (EUR 165 338)/(1) | - |
| E-money institutions | TRY 2 786 965 (EUR 492 136)/(2) | - |
| Payment institutions | TRY 2 494 936 (EUR 440 568)/(2) | - |
| Asset management companies | TRY 1 162 540 (EUR 2 05 287)/(1) | - |
| Exchange offices | TRY 1 919 610 (EUR 338 974)/(5) | TRY 198 802 (EUR 35 105)/(3) |

418. To its credit, MASAK has made efforts to improve compliance beyond relying on its sanctioning powers, but these efforts are not sufficient without the exercise of effective, proportionate and dissuasive sanctions to deter future violations. In particular, in addition to on-site and off-site supervision and some sanctions applied, MASAK organises annual workshops with compliance officers from FIs. During these workshops, MASAK shares information on commonly-identified compliance deficiencies to raise awareness of AML/CFT obligations within the financial sector.

DNFBPs

419. Similar to the findings for the financial sector, sanctions applied by MASAK to non-compliant DNFBPs are inadequate, as more generally, only a low number of sanctions are applied annually. Average penalties in the context of administrative fines applied to DNFBPs found to be deficient in meeting their CDD obligations in 2018 amounts to roughly TRY 410 854 (EUR 72 550) in 2018. However, this statistic does not provide a comprehensive picture of the range of sanctions regularly applied. Given the low minimum sanctions available, it is unclear how often these minimum penalties are assessed.

Table 6.8.CDD Obligations: Violators v. Fines Levied¹⁸

| DNFBPs | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------------|-------|------------|---------------|--------------|---------------|
| DPMS | 0 (0) | 5 (46 647) | 3 (14 48 305) | 4 (3 92 033) | 4 (17 74 287) |
| Real Estate Agents | 0 (0) | 0 (0) | 1 (8 796) | 3 (1714690) | 1 (2 79 985) |
| Accountants | 0 (0) | 0 (0) | 1 (67 795) | 3 (4 55 230) | 0 (0) |

420. For breaches of STR obligations, sanctions applied to DNFBPs are noticeably fewer on average per annum, with lower average penalties assessed. The first sanctions for non-compliance with STR obligations in the DNFBP sector began in 2016. In 2018, an average penalty of TRY 104 404 (EUR 15 732) was levied against DNFBP violators. However, this statistics has limited value in assessing the proportionality of sanctions for the reasons mentioned above.

Table 6.9.STR Obligations: Violators v. Fines Levied¹⁹

| DNFBPs | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------------|-------|-------|------------|---------------|--------------|
| DPMS | 0 (0) | 0 (0) | 1 (9 685) | 2 (71 515) | 4 (1 10 455) |
| Real Estate Agents | 0 (0) | 0 (0) | 1 (8 796) | 2 (19 910) | 1 (4 11 569) |
| Accountants | 0 (0) | 0 (0) | 1 (38 740) | 7 (12 37 695) | 0 (0) |

Impact of Supervisory Actions on Compliance

421. MASAK and other supervisors have received good feedback from supervised entities. Supervisors have taken this as an indication that supervision for AML/CFT compliance is good and steadily improving over time, as a result of MASAK's supervision, feedback and guidance, in particular. However, based on the statistics provided, it was difficult to assess this across all categories of FIs and DNFBPs.

422. In the financial sector, MASAK's supervisory actions are showing some encouraging signs of continuously improving success. Whereas, in the period 2014-16, a number of identified deficiencies were not addressed by FIs during legally mandated grace period and led to low value fines by MASAK. Banks, capital market brokerage houses and insurance and pension companies addressed AML/CFT deficiencies identified by MASAK within their grace periods in 2017. However, without the application of effective, proportionate and dissuasive sanctions, no amount of timely remedial action can discourage future non-compliant behaviour.

423. In the DNFBP sector, the threat of one to three years' imprisonment along with the relatively high value of sanctions (when compared to the low value sanctions levied in the financial sector) has meant that there have been no repeat DNFBP offenders. However, the low number of fines levied each year begs to question whether supervisors are well resourced to sufficiently identify a broad range of AML/CFT violations and take the required supervisory and enforcement actions. Based on the limited statistics available for record keeping violations in the accounting sector (2 violations in 2016, 4 violations in 2017 and 0 violations in 2018) as well as the absence of statistics for record keeping violations of other categories of DNFBPs, this would appear to be the case.

¹⁸ Aggregate fines levied are in parentheses in TRY.

¹⁹ Aggregate fines levied are in parentheses in TRY.

Promoting a Clear Understanding of AML/CFT Obligations and ML/TF Risks

424. MASAK uses different tools, workshops, guidance and other instruments to promote a clear understanding of AML/CFT obligations in Turkey and ML/TF risks. Other supervisors have issued guidance and used training to raise awareness to a lesser extent, such as the BRSA's training activities on detecting legal income, banking transactions and sources of ML/TF information conducted in March 2017.

425. MASAK guidelines and booklets have been issued on a wide range of topics, including guidance on institutional policies to counter ML and TF for banks, capital market brokerage houses and insurance and pension companies. Some other examples of guidance include: guidance on the identification of beneficial ownership within the scope of implementing CDD obligations (April 2016) and guidance to combat the abuse of bank accounts for illegal betting purposes (October 2017). Sectoral 'STR Guidelines' are also regularly published, which raise awareness about ML/TF risks and importantly provide guidance on how to properly file an STR to standardise the process across sectors. These Guidelines have been issued to a broad range of obliged entities, including:

- Banks and the Directorate General of the Post
- Capital Market Brokerage Houses
- Insurance, Reinsurance and Pension Companies
- Financial Leasing, Financing and Factoring Companies
- Exchange Offices
- Payment and E-Money Institutions
- Other Obligated Parties

426. MASAK has also published booklets as an awareness raising tool. These booklets include information on the ML/TF offences in Turkish law; CDD obligations; STR requirements and related information; and the tipping-off prohibition and other AML/CFT topics. A sampling of the booklets provided to the assessment team were all dated from 2015²⁰. FATF guidance documents are also regularly circulated to obliged entities, including FATF work on the implementation of the risk-based approach. As needed, MASAK has issued General Communiqués to provide legal clarity pertaining to the implementation of AML/CFT obligations by FIs and DNFBPs.

427. MASAK also promotes an understanding of AML/CFT obligations and ML/TF risks through other activities. This primarily occurs via workshops, organised by MASAK in co-ordination with the Banking Association of Turkey, Turkish Capital Markets Association, Insurance Association of Turkey, Association of Financial Institutions and other self-regulatory bodies.

428. During the on-site, MASAK demonstrated that it uses periodic face-to-face meetings and workshops to share the results of its STR and other analysis to improve reporting from FIs and DNFBPs. MASAK also publishes annual activity reports on its

²⁰ There are plans for these guidelines to be updated later this year, but there has not been any work commenced to-date.

website, which includes basic statistical information; sanitised cases to raise awareness of typologies; and written responses to frequently asked questions (currently, 162 such responses are available on MASAK’s website in Turkish). In addition, MASAK provides specialised training for obliged entities.

Overall Conclusions on IO.3

429. **Turkey is rated as having a moderate level of effectiveness for IO.3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

- a) Turkey has put in place most elements of a legal framework to identify basic and beneficial ownership information of legal persons. Due to the absence of the concept of trusts in Turkish law, Turkey has not signed the Hague Convention and no laws have been passed governing trusts.
- b) Turkey has made notable efforts to streamline the company formation process, including basic and beneficial ownership information collection. Public registries are used to centralise information in electronic format, and the use of protocols and MoUs between agencies and private sector entities, such as banks, has helped to facilitate access to this information for AML/CFT purposes. Many of these processes are ongoing.
- c) Authorities have a moderate understanding of the ML/TF risks posed by legal persons in their jurisdiction, due to their recently completed NRA, and have not undertaken a comprehensive assessment or related work to understand the risks. Some concerns remain about the authorities' full understanding of the concept of beneficial ownership.
- d) Basic information is immediately available to the public via the Trade Registry Gazette and MERSiS. While screening is in place to ensure that there are not red flags during the company formation process (such as an individual with a known criminal history setting up a legal entity), there is a lack of comprehensive controls regularly used to verify that this information is accurate and kept up-to-date in a timely manner, in keeping with Turkish law. Authorities are aware of this challenge and have taken some actions, such as audits, to identify infractions.
- e) Sanctions are applied to some extent against legal persons that fail to meet AML/CFT requirements relating to the reporting of basic and beneficial ownership information. There is concern that the limited range of pecuniary fines may not always allow for authorities to take effective, proportionate and dissuasive actions against all legal persons, despite the annual pecuniary adjustments to account for inflation.
- f) Digitising and centralising the information reporting process for legal persons is a priority for Turkey. Efforts are continuously being made to improve the system.

Recommended Actions

- a) Authorities should undertake a comprehensive sectoral risk assessment of legal persons and the likely existence of foreign legal arrangements operating in Turkey or having business relations with obliged entities in Turkey, in order to understand the full extent of the risks and craft relevant policy recommendations to mitigate abuse.
- b) Authorities should introduce comprehensive measures that will improve the accuracy of BO information contained in registries and ensure that the information is kept up to date.
- c) MASAK should engage with obliged entities to raise awareness about the types of basic and beneficial ownership information that should be collected from professional trustees providing services to foreign trusts and other similar arrangements.
- d) Authorities should continue the good work currently being undertaken to sign protocols and MoUs between agencies to facilitate inter-agency sharing of basic and beneficial ownership information.
- e) Authorities should apply dissuasive and proportionate sanctions for breach of requirements to provide information on basic and beneficial ownership.

430. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R.24 - 25.²¹

Immediate Outcome 5 (Legal Persons and Arrangements)***Public Availability of Information on the Creation and Types of Legal Persons and Arrangements***

431. Information on the types of legal persons that may be established in Turkey is broadly available online, including information on general partnerships; commandite partnerships; joint-stock companies; limited liability companies; and cooperatives. Legal persons in Turkey are primarily joint-stock companies and limited liability companies, which together constitute approximately 95% of the one million legal persons established in Turkey. All commercial companies are required to prepare written articles of association, which are registered in the trade register, published in the Turkish Trade Registry Gazette and are publicly available at ticaretsicil.gov.tr.

432. Trusts and other similar legal arrangements cannot be established within the Republic of Turkey, and subsequently no information is publicly available.

²¹ The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

Identification, Assessment and Understanding of ML/TF Risks and Vulnerabilities of Legal Entities

433. Risks of legal persons are understood to some degree. The legal framework has been assessed, together with the cases in which Turkish legal persons were misused (the most important predicate crime and ML threat deriving from fuel smuggling). While the ML/TF risks and vulnerabilities of legal persons are understood to some degree by authorities, this understanding of ML/TF risks and vulnerabilities varies.

434. Company formation begins through an application on the Central Registry System (MERSiS) and may be carried out through a third person, such as a public accountants or lawyers. The use of this centralised registry has improved authorities' timely access to electronic records to improve risk identification and understanding. As trusts and other similar legal arrangements are not recognised in Turkey, authorities are generally in agreement that there are no risks associated with trusts and other similar legal arrangements. No additional risk-related work has been undertaken by authorities to assess whether this perception is accurate. Vulnerabilities related to legal entities are further amplified by contextual factors, such as Turkey's close proximity to ongoing conflict zones; the large number of refugees and other undocumented migrants that Turkey has taken in over the past decade; and a significant number of unregistered MVTS and providers, exchange offices and agents, and gold and precious metals and stones dealers active in Turkey.

435. Risks of legal persons are understood to some degree. The legal framework has been assessed, together with the cases in which Turkish legal persons were misused (the most important predicate crime and ML threat). According to MASAK's figures, 20% of referrals made by MASAK between 2013 and 2017 were related to the misuse of commercial companies. These are largely related to simple, non-organised types of criminal activity, such as illegal betting. Because of this, authorities believe that ML/TF vulnerabilities related to commercial companies are not relevant in the broader context of ML offences committed in Turkey. The assessment team does not share this view. The extent of understanding by the authorities regarding the risk of potential misuse of legal persons in Turkey currently appears to be limited to the inherent risks of the legal persons. The understanding does not currently consider relevant contextual factors and activity in Turkey, limiting the authorities understanding of how legal persons created in the country can be, or are being, misused for ML/TF purposes. While the 2018 NRA has the elements of vulnerability assessment of the NPO sector, it does not specifically assess the ML/TF risks associated with different types of legal persons created in Turkey. Turkey should develop sector-wise matrix for a thorough understanding of the vulnerabilities and potential for abuse of different types of legal persons created in Turkey for ML/TF.

436. Control mechanisms are in place to mitigate risks to legal entities, such as via the broad public availability of information related to legal entities, the use of centralised databases and expansive access to information by authorities, the fact that Turkish legislation does not allow for nominee shareholders and nominee directors, etc.

437. During the on-site visit, authorities expressed some concerns about the existence of shell companies to commit petty crimes, such as for illegal betting, but believed that controls in place are largely adequate to mitigate these risks. Authorities

also expressed confidence that such cases could be easily identified due to the authorities' access to and use of tax and other information to identify suspicious income and assets.

Mitigating Measures to Prevent the Misuse of Legal Persons and Arrangements

438. Overall, there are a number of good measures in place to prevent the misuse of legal persons; however, in the absence of sector-wise study on the misuse of legal persons in Turkey for ML/TF purposes, these measures are not informed by the evolving ML/TF threats to legal persons in Turkey. These controls mechanisms are not uniform across sectors and authorities' varied understanding of the risks and vulnerabilities to legal persons has not informed a risk-based approach to implementing mitigating measures to prevent misuse. In terms of the legal framework, a number of gaps exist that impede effectiveness in this area (particularly, in relation to R.24 and 25).

439. A number of other legislative provisions directly impact on the effectiveness of Turkey's AML/CFT system for the purposes of preventing legal persons from being used for criminal purposes and improving transparency. Joint-stock companies and limited liability companies, for example, are obliged to keep a share register. This register must be kept in the headquarters of the company, available for audit by authorities. In addition, all share transfers in limited liability companies are required to be registered in the trade register, to which authorities have direct access²².

440. The standardisation of the company formation process and centralisation of this information in electronic format has been a central policy initiative for authorities that has led to good results. Information on the legal owner, as well as other supplementary information (e.g. company name, company residence, capital on hand, shareholder and company manager names, etc.), is required at the establishment phase. Legal requirements oblige legal persons to maintain updated documentation at all times so that authorities have immediate access to company information that can be cross-checked with a number of other registries (e.g. land registry, population registry, etc.) and databases (e.g. tax information) by MASAK. Any change to information that has already been registered in the company registry is required to be updated within 15 days from the date of change.

441. MASAK demonstrated the use of its expansive access to personal and other information as a tool for detecting and mitigating risks and vulnerabilities to legal entities. In some sectors, this broad access, combined with strict controls meant to involve government licensed individuals in high-value transactions, has led to a relatively high degree of transparency. For example, in the real estate sector, transactions must be done in the presence of a civil servant at the office of the local land registry for ownership to be legally transferred.

²² See Immediate Outcome 6 for a fuller understanding of the access to and use of financial and other information, including beneficial ownership information of legal persons.

Timely Access to Adequate, Accurate and Current Basic and Beneficial Ownership Information on Legal Persons

442. Turkey is able to access basic and beneficial ownership information on legal persons due to its expansive and timely access to financial and other information, including information from: banks, national registers or direct access from the legal entity itself. The term beneficial owner has been defined in Article 3(1) (h) of ROM. However, the relevant statute for establishment of commercial companies in Turkey (i.e. TCC) does not prescribe the need to record beneficial ownership information in the Article of Association or otherwise. Both legal and beneficial ownership information are required to be obtained by reporting entities from legal persons at the time of client on-boarding in compliance with the obligations in the ROM. However, there is a concern that shareholding ownership element is given more attention by reporting entities and that the control element is not considered to the same degree (see IO.4). Further concerns also exist in determining the ultimate beneficial ownership information if a company has been established through a series of layers of legal persons located in different jurisdictions for the purposes of obfuscating the ultimate ownership. This impacts the timely access to updated beneficial ownership information.

443. The establishment of a legal person, by submitting articles of association and other identifying information via the online platform, MERSiS, triggers a number of subsequent actions by other agencies. For example, following the submission on MERSiS, tax numbers are automatically granted through MERSiS' integration with the Revenue Administration's electronic system, VEDOP. This online, automated filing process helps to streamline company formation in Turkey, while also granting electronic access to authorities for a wide range of information on legal persons and the natural persons that partake in senior management posts.

444. In particular, MERSIS (Central Registry System), as the central information system, is designed to provide two basic functions, namely: i) aggregate information collection from a single point for a wide range of entities, including professional organisations, associations, foundations, unions, associations, chambers and other legal entities and ii) electronically store trade registry updates and records. The data available in MERSIS is shared electronically with 27 institutions and agencies, including MASAK and other core agencies and private sector participants (e.g. banks) in the Turkish AML/CFT system. Data sharing protocols are in progress with 12 additional institutions and agencies.

445. Additionally, there are some measures in place to detect the true owner of bearer shares. Only joint-stock companies are allowed to issue bearer shares and these companies are obliged to keep shareholder books. Bearer share issuers are legally obligated to indicate any outstanding bearer shares in the Articles of Incorporation, captured during the registration process in the Trade Registry. Any distributed bearer shares are required to be printed within three months from the date of full payment of the share value and disseminated. The total volume of bearer shares issued by joint stock companies is less than 1% of total shares. However, these measures do not fully address concerns regarding the abuse of bearer shares. There is currently a proposal to amend legislation to record owners of bearer shares in non-publicly traded companies, but not specific action had been initiated at the time of the on-site visit.

446. Authorities demonstrated a strong commitment to streamlining information collection and accessibility, and noted that efforts are ongoing to continuously improve authorities' timely access to beneficial ownership information. For example, the Trade Registry Gazette is currently updated manually. However, authorities were open that this leaves the system open to human error. Digitalising work is ongoing to automate updates to the Trade Registry Gazette in line with changes to national registries.

447. During the on-site, authorities showed a mixed understanding of the concept of beneficial ownership, with some authorities noting that beneficial ownership extends to the persons who hold shares in the company. While this may be true in circumstances where the legal owner of the shares is acting on his/her own behalf, this may not always extend to cases where the legal owner of the shares is acting on behalf of another legal or natural person.

448. Similarly, while the authorities' access to timely, electronically-stored legal and beneficial ownership information is an impressive characteristic of the Turkish system, there are concerns that the over-reliance on registries to trace beneficial ownership information may translate to lax controls since the onus rests on the legal person to update its information in these databases (e.g. changes to its senior management structure). Authorities were not able to demonstrate how they have sanctioned a range of legal persons for not regularly updating information in registries, as required by law.

Timely Access to Adequate, Accurate and Current Basic and Beneficial Ownership Information on Legal Arrangements

449. Trusts and other legal arrangements are not allowed under Turkish law and Turkey is not party of the Hague Convention on the Law to Applicable to Trusts and on Their Recognition; however, foreign trusts may operate in Turkey and trustees in Turkey may provide services to foreign law trusts (see R.25). Authorities indicated that it would be extremely rare for such foreign trusts to operate in Turkey. No data on the existence (or otherwise) of trustees in Turkey, providing services to foreign law trusts exists. In practice, authorities and the private sectors alike indicated that it is very rare for legal arrangements to feature in business relationships.

450. While authorities were confident that legal and other mechanisms in place to identify beneficial ownership would be sufficient to capture beneficial ownership of foreign express trusts and other similar arrangements established abroad, it is still unclear how this beneficial ownership information would be captured or what, if any, sanctions would apply for failure to accurately report beneficial ownership information of a foreign trust.

451. In theory, foreign trustees are required to provide identification documents before establishing a business relationship with the reporting entities in Turkey as part of the regular course of conducting CDD during the on-boarding phase (article 4 of the ROM). However, similar requirements would not necessarily be applicable to the settlor or other beneficiaries, even if these involve Turkish nationals or individuals residing in Turkey but who have established trusts and other similar legal arrangements abroad. Similarly, where not all of the individuals benefitting from a foreign trust with business relations in Turkey have been determined, there are not

any clear requirements to understand the class of persons in whose main interest the trust is operating.

452. MASAK has powers to request beneficial ownership information of foreign legal arrangements, but has not used these powers to-date, as authorities have not undertaken any exercise to identify foreign legal arrangements operating in Turkey.

Effectiveness, Proportionality and Dissuasiveness of Sanctions

453. Authorities have access to a wide range of criminal, administrative and other sanctions against legal persons that fail to meet reporting and other AML/CFT requirements related to basic or beneficial ownership information (see R.24). Broadly, this covers the following:

- Administrative fines of TRY 3 825 (EUR 600) are prescribed for violations relating to the requirement to make correct statements to authorities and maintain accurate records accurately. Similarly, legal persons who fail to fulfil to keep trade books or obtain other necessary approvals pursuant to Articles 64 and 65 of the TCC are subject to a fine of TRY 4 000 (EUR 626).
- The board of directors of legal persons that are owned or controlled by another legal person are regularly required to prepare a report, which discloses all legal actions and relations between the controlled company and the controlling company. In this regard, legal persons who fail to uphold this obligation are liable to judicial fines, no less than 200 days at a rate of TRY 20 (EUR 3.13) – TRY 100 (EUR 15.67) per day, as determined by the court²³.
- As the key authority in Turkey's AML/CFT system, MASAK has broad powers to obtain any kind of information or records, including beneficial ownership information, from legal persons. Failure to comply with these obligations incurs a penalty of imprisonment from one to three years and a judicial fine of up to 5 000 days at a rate of TRY 20 (EUR 3.13) – TRY 100 (EUR 15.67) per day, as determined by the court.
- Obligations are also in place regarding the identification of natural persons who control a customer on whose behalf a transaction is being conducted. Accordingly, if a natural person acts in his/her own name but for the benefit of another natural or legal person and does not inform in writing the obliged entity with whom (s)he engages in business relations in Turkey, a sanction of imprisonment from six months to one year or a judicial fine of up to 5 000 days is applicable at a rate of TRY 20 (EUR 3.13) – TRY 100 (EUR 15.67) per day, as determined by the court.

454. MASAK has identified a number of infractions for failure in declaring the transaction carried out for the benefit of other persons, which have been forwarded to the Public Prosecutor's Office for action. The average conviction rate for the past five years (12.6%) is higher than the conviction rates for other similar crimes, but still moderately low. No further information was provided as to whether other sanctions, including pecuniary fines, were administered in the other cases.

²³ The amount of the judicial fine is assessed by the court in consideration of the private and economic conditions of the individual in question.

Table 7.1. Number of Article 15 (Law No. 5549) Referrals Made by MASAK, Prosecutions and Convictions

| Years | 2014 | 2015 | 2016 | 2017 | 2018 |
|-----------------|-------|-------|-------|------|-------|
| Referrals | 17 | 38 | 21 | 35 | 111 |
| Prosecutions | 9 | 4 | 15 | 20 | 48 |
| Convictions | 2 | 6 | 3 | 3 | 14 |
| Conviction Rate | 11.8% | 15.8% | 14.3% | 8.5% | 12.6% |

455. Further, a small number of Article 60 (TCL) convictions have led to the cancellation of some business licenses. Such cases relate to security measures specific to legal entities and involve predicate crimes. The low number of sanction measures taken in relation to the total number of legal persons legally established and operating in Turkey (approximately one million legal persons) implies that sufficient actions are not being taken.

Table 7.2. Number of Article 60 (TCL) Cases Involving Legal Persons

| Year | 2014 | 2015 | 2016 | 2017 | 2018 |
|-------|------|------|------|------|------|
| Cases | 6 | 5 | 8 | 5 | 23 |

456. In addition, a range of other sanctions apply, including sanctions for providing misleading information that leads to the commission of an economic offence, such as fraud, counterfeiting or ML offences. In these cases, a range of penalties apply, generally ranging from a term of imprisonment from one to seven years and a judicial fine of up to 20 000 days is applicable (maximum judicial fine of TRY 2 million or EUR 320 000), depending on the type of economic crime that was facilitated by the misleading information supplied.

457. The total number of audits performed on legal persons in Turkey and the total amount of penalties applied following the identification of infractions related to AML/CFT obligations in the last three years are provided in the table, below:

Table 7.3. Number of Audits and Administrative Penalties Levied on Legal Persons

| | 2016 | 2017 | 2018 |
|--------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| Audits | 30 | 27 | 160 |
| Total Administrative Penalties | TRY 150 599 (approx. EUR 23 170) | TRY 219 194 (approx. EUR 33 725) | TRY 431 429 (approx. EUR 66 400) |

458. Administrative penalties are applied by relevant local authorities where the company is physically domiciled in Turkey. However, these total penalties appear to be relatively low. For example, in 2016 only EUR 21 719 in pecuniary fines were levied against legal persons in Turkey. There has been a notable increase in the administrative penalties levied over the past three years, as outlined in the table above, but the figures are still too low for the entire sector. Further, the competent authorities are not found to have developed any escalation matrix so as to decide that the sanctions are proportionate to the level of non-compliance.

459. Overall, various authorities have broad access to a range of basic and beneficial ownership information, including a broad range of public information

available to banks and national registries. MASAK's central role in Turkey's AML/CFT system, and the broad powers accorded to it, ensure that authorities have timely access to this information. However, a lack of complete statistics, lack of comprehensive studies on misuse of legal persons for ML / TF purposes compounded by the low number of sanctions levied against legal persons for failure to meet AML/CFT requirements are certain notable deficiencies. Information on foreign legal trusts operating in Turkey through one or other forms of permitted legal persons is non-existent.

Overall Conclusions on IO.5

460. **Turkey is rated as having a moderate level of effectiveness for IO.5.**



CHAPTER 8. INTERNATIONAL CO-OPERATION

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 2

- a) Turkey does not have any legal impediments to seeking and responding to a variety of requests for international co-operation related to ML/TF offences, including MLA, extradition and intelligence exchanges through Egmont Secure Web as well as through informal police-to-police channels.
- b) The Ministry of Justice uses a National Judiciary Informatics System (UYAP) to track and execute its work. The system is capable of filtering various files based on a coding system, which allows for the effective prioritisation of files. Nevertheless, Turkey does not take full advantage of the system's capacity especially in the area of generating detailed statistics.
- c) BRSA, CMB and ISB have shared relevant supervisory information with their international counterparts both on request and spontaneously. The majority of these requests relate to 'fit and proper' tests and 'on-site supervision'. Relevant information related to AML/CFT issues is shared through MASAK. However, there was no documented policy for co-ordination between MASAK and sectorial supervisors.
- d) Turkey sends and receives numerous MLA and extradition requests relating to ML, predicate offences, TF, terrorism, seizures and confiscation. While most of these requests have been executed, Turkey appears to struggle to get timely and positive responses to their requests related to PKK/KCK/PYD-YPG and FETÖ/PDY, a domestic terrorist group and a terrorism and TF priority for Turkey.

Recommended Actions

Immediate Outcome 2

- a) Turkey should capitalise on case management components of its UYAP system to generate more detailed statistics relating to their international co-operation activities.
- b) Turkey should develop and implement standards to ensure that

MLA and extradition requests are sent with complete and comprehensive information to allow the requested country to comply with the request consistent with its legal framework.

- c) Turkey should make additional use of international co-operation for raising MLA requests related to ML cases.
- d) MASAK may consider putting in place a documented policy for co-ordination with the sectorial supervisors.

461. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36 - 40.

Immediate Outcome 2 (International Co-operation)

462. Turkey has a sound legal basis to provide and seek the widest possible range of MLA, including extradition in relation to ML, associated predicate offences and TF. The central authority for coordinating mutual legal assistance requests (including extradition) in Turkey is the Directorate General for Foreign Relations and European Union of the Ministry of Justice. The Directorate has a total of 255 employees. Once the Ministry confirms that the requests are consistent with Turkish domestic law and the provisions of the bi-lateral and multi-lateral conventions to which Turkey is party of, the request is approved. Competent authorities (public prosecutors and/or the courts) are then identified to execute the request.

463. MLA and extradition requests to and from Turkey are handled by judges, who have received language and higher education in foreign countries, in addition to training related to processing MLA and extradition requests.

464. Both MLA and extradition requests are conveyed to relevant judicial authorities via UYAP. The UYAP system allows requests to be prioritised. Urgent cases are identified in the system through the use of different codes, which help to distinguish between files. Detainee files, seizure and confiscation request files and terrorism files are registered under different codes and are processed with priority.

465. The Ministry of Justice prepared and sent to all the judicial authorities *Guidelines for Mutual Assistance in Criminal Matters*, to be used when executing MLA requests. The guidelines provide guidance on the types of legal assistance available and specific issues related to different countries in terms of process and requirements.

Providing Constructive and Timely MLA and Extradition

466. As outlined in Recommendations 37, 38 and 39, Turkey has no legal impediments to seeking and responding to international co-operation requests related to MLAs and extradition for both ML and TF offences.

Mutual Legal Assistance

467. Between 2013 and 2017, Turkey received 74 MLA requests relating to ML offences. As indicated in Table below, 66% of these requests were accepted by the Ministry of Justice and fulfilled.

Table 8.1. MLA Requests Received on ML Offences and Their Status

| MLA Requests | 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|--------------|------|------|------|------|------|-------|
| Executed | 5 | 5 | 15 | 22 | 2 | 49 |
| Denied | 4 | 2 | 0 | 3 | 0 | 9 |
| Pending | 1 | 1 | 4 | 10 | 0 | 16 |
| Total | 10 | 8 | 19 | 35 | 2 | 74 |

468. In addition to MLA requests relating to ML offences, Turkey indicates that it receives many requests relating to predicate offences, however they are not able to produce detailed statistics regarding MLA requests related to predicate offences. The following table is sample of MLA requests related to three relevant predicate offences for 2016. Reasons for being unable to execute a request include; failure to locate the concerned person at the address provided address, the unavailability of the requested information at the relevant authorities, and the death of the concerned person.

Table 8.2. Sample Predicate Offences related Incoming MLA Requests for 2016

| Offence | Accepted | | Pending | Additional Information Requested | Denied | Total |
|---|----------|-------------------|---------|----------------------------------|--------|-------|
| | Executed | Unable To Execute | | | | |
| Migrant smuggling and Human Trafficking | 52 | 5 | 6 | 2 | 1 | 66 |
| Drug Trafficking | 78 | 8 | 26 | 7 | 1 | 120 |
| Fraud (All types) | 113 | 17 | 23 | 20 | 2 | 175 |
| Total | 243 | 30 | 55 | 29 | 4 | 361 |

469. During 2016-2017, Turkey received four MLA requests related to TF. In addition, Turkey received a number of MLA Requests on Terrorism-related offences. However, Turkey indicated that while they were not able to break down the requests statistically by year, the majority of the requests detailed below have come since 2016.

Table 8.3. MLA Requests Received on Terrorism-Related Offences and Their Status (2013-2017)

| Number | Executed | Denied | Pending | Additional information requested |
|--------|----------|--------|---------|----------------------------------|
| 178 | 140 | 1 | 27 | 10 |

470. Turkey has managed to execute approximately 80% of the requests that they received on terrorism related offences during this period.

Extradition

471. Turkey also receives and responds to extradition requests related to ML, TF and predicate offences. Table below details the extradition requests specific to ML and TF offences.

Table 8.4. Incoming Extradition Requests Related to ML and TF Offences

| Year | Requesting country | Nationality | Offences | Status |
|------|--------------------|-------------|------------------------|-------------------------------|
| 2014 | Romania | Iraq | Fraud, ML | Pending. Person left Turkey |
| 2014 | Iran | Iran | Illicit Enrichment, ML | Pending |
| 2015 | Italy | Italy | ML | Pending. Person not yet found |
| 2015 | France | France | Terrorism, TF | Extradited |
| 2016 | China | China | TF (FTF) | Pending |
| 2017 | Australia | Australia | Terrorism, TF | Pending |

472. As identified in Table above, Turkey indicates that it received only six extradition requests related to ML or TF offences between 2014 and 2017. In 2015, Turkey extradited a French national to France related to terrorism charges which included TF. In all other cases, requests remain pending; however, in two of the four cases, the pending status is due to the fact that the person has left Turkey. Authorities indicate that they consider these particular cases as pending, as the suspect may return to Turkey.

473. Between 2013 and 2017, Turkey received an additional 75 extradition requests for terrorism-related offences (excluding TF), of which one has been concluded with the return of the requested individual to the requesting country. Turkey denied 13 requests due to reasons of nationality, jurisdiction, political offence or refugee status. For several reasons, Turkey concluded 17 cases without returning the individual to the requesting country, including the person sought was arrested in another country, an expiry on the statute of limitations and/or the request was devoid of detailed information crucial to allowing the request to be successfully executed.

Table 8.5. Incoming Extradition Requests Related to Terrorism Offences (Excluding TF)

| Requesting State | Executed | Denied | Pending | Concluded | Total |
|------------------|----------|--------|---------|-----------|-------|
| 2013 | 0 | 1 | 3 | 0 | 4 |
| Austria | 0 | 1 | 0 | 0 | 1 |
| Azerbaijan | 0 | 0 | 2 | 0 | 2 |
| Uzbekistan | 0 | 0 | 1 | 0 | 1 |
| 2014 | 1 | 1 | 2 | 1 | 4 |
| USA | 1 | 1 | 0 | 0 | 2 |
| Spain | 0 | 0 | 1 | 0 | 1 |
| Romania | 0 | 0 | 1 | 1 | 2 |
| 2015 | 0 | 1 | 7 | 4 | 12 |
| Belgium | 0 | 1 | 0 | 1 | 2 |
| Iran | 0 | 0 | 1 | 0 | 1 |
| Spain | 0 | 0 | 0 | 1 | 1 |
| Kazakhstan | 0 | 0 | 0 | 1 | 1 |
| Uzbekistan | 0 | 0 | 2 | 0 | 2 |
| Russia | 0 | 0 | 1 | 0 | 1 |
| Serbia | 0 | 0 | 1 | 0 | 1 |
| Tajikistan | 0 | 0 | 2 | 1 | 3 |
| 2016 | 0 | 10 | 22 | 7 | 39 |
| U.A.E. | 0 | 1 | 2 | 1 | 4 |
| Belgium | 0 | 0 | 0 | 1 | 1 |
| China | 0 | 9 | 17 | 5 | 31 |
| Kazakhstan | 0 | 0 | 1 | 0 | 1 |
| Russia | 0 | 0 | 2 | 0 | 2 |
| 2017 | 0 | 0 | 10 | 5 | 15 |
| Australia | 0 | 0 | 1 | 0 | 1 |
| Belgium | 0 | 0 | 0 | 1 | 1 |
| Denmark | 0 | 0 | 1 | 0 | 1 |
| The Netherlands | 0 | 0 | 1 | 0 | 1 |
| Spain | 0 | 0 | 0 | 2 | 2 |
| Kyrgyzstan | 0 | 0 | 4 | 1 | 5 |
| Russia | 0 | 0 | 3 | 1 | 4 |
| TOTAL | 1 | 13 | 44 | 17 | 75 |

474. More than 75% of the extradition requests made to Turkey between 2013 and 2017 for terrorism-related offences were denied or remain pending. Only one of the countries listed above, which has made extradition requests to Turkey responded to the call for feedback on MLA and international co-operation with Turkey, in that circumstance, the overall feedback was negative. Another country not listed in the table above indicated that they were satisfied with the repatriation of a terrorist suspect (through an administrative deportation process) to their country from Turkey in addition to Turkey's co-operation in delivering letters rogatory.

Simplified Extradition

475. Turkey has a simplified extradition process and has received 3 such requests between 2013 and 2017; all of which have been accepted. The following is an example of a case where that process was utilised.

Box 8.1. Simplified Extradition Case

Person X who had been sought by the judicial authorities of country Y was apprehended in Antalya on 13/12/2017 and taken under provisional arrest for extradition to country Y.

With the decision of PPO dated 18 January 2018, request for extradition of the concerned to country Y was adjudicated to be admissible and the decision was appealed against.

During the appeal period, the concerned submitted a petition to accept his own extradition to country Y. Subsequently, the concerned submitted a petition waiving the appeal through his counsel, and the extradition file was returned to the court on 28/02/2018. Thereupon, PPO re-opened a session because of the declaration of the concerned for his consent on his extradition to country Y, deciding on the admission of extradition request on 05/03/2018 and the decision became final on the same day without resorting to legal remedies.

The extradition decision was approved by the Ministry with the letter of 07/03/2018. The concerned was delivered to the officials of country Y on 09/03/2018, which concluded the extradition process according to the simplified extradition procedure.

Seeking Timely Legal Assistance to Pursue Domestic ML, Associated Predicates and TF Cases with Transnational Elements

476. Turkey seeks legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements. In terms of volume, the primary focus is on predicate offences. As is the case with incoming requests, the Ministry of Justice, Directorate General for Foreign Relations and European Union acts as the central authority for sending MLA and extradition requests.

477. Between 2013 and 2017, Turkey sent a total of 9 MLA requests relating to ongoing ML investigations to Germany, Austria, Switzerland and the Netherlands. Six of these requests have been fulfilled, while two are still pending and one was rejected. The underlying predicate offences related to these ML investigations were drug smuggling (5), fraud (3) and corruption (1).

478. In addition to the MLAs requests sent with respect to ongoing ML investigations, Turkey has also sent a number of MLA requests related to other predicate offence for which a future ML investigation might be contemplated. While Turkey is not able to produce detail statistics on such requests, Table below is sample of MLA requests related to three relevant predicate offences for 2016.

Table 8.6. Sample PO related Outgoing MLA Requests for 2016

| Offence | Accepted | | Pending | Additional Information Requested | Denied | Total |
|---|------------|-------------------|------------|----------------------------------|-----------|------------|
| | Executed | Unable to Execute | | | | |
| Migrant smuggling and Human Trafficking | 61 | 12 | 16 | 7 | 0 | 96 |
| Drug Trafficking | 121 | 32 | 87 | 15 | 7 | 262 |
| Fraud (All types) | 295 | 57 | 73 | 34 | 12 | 471 |
| Total | 477 | 101 | 176 | 56 | 19 | 829 |

479. A little more than 50% of outgoing requests have been executed. Some of the comments received in response to the call for feedback on MLA and international cooperation with Turkey indicated a lack of sufficient detail resulting in the need for follow-up to request additional information. Turkey indicated that these follow-up requests are able to be tracked and managed within their UYAP system.

480. Turkey has also sought MLA with respect to TF and terrorism related offences. Between 2013 and 2017, Turkey only classified four requests as relating specifically to TF, with the remainder being related to terrorism. Of the four requests sent on TF, two requests related to FETÖ/PDY and two requests related to PKK/KCK/PYD-YPG. Turkey received assistance on the FETÖ/PDY-related request sent in 2015, while the remaining three requests sent in 2013, 2016 (PKK/KCK/PYD-YPG) and 2017 (FETÖ/PDY) remain pending. The following table is a summary of terrorism-related MLA requests sent by Turkey between 2013 and 2017 and their status:

Table 8.7. MLA Requests Sent on Terrorism-Related Offences and Their Status (2013 to 2017)

| Number | Executed | Denied | Pending | Additional information requested |
|--------|----------|--------|---------|----------------------------------|
| 208 | 95 | 55 | 43 | 15 |

481. While Turkey was not able to provide assessors with a breakdown of these MLA requests as per the specific terrorist group that they relate to, it is fair to conclude that the majority of the requests related to FETÖ, given Turkey's operational focus on FETÖ following the attempted coup.

482. Turkey would appear to receive a similar number of requests regarding terrorism-related offences in comparison to the number of request that they make. The major difference in the results however is the relatively large number of Turkey's requests that are denied. While not a prevalent comment, concerns were raised in the international feedback that, in some cases, requests from Turkey seem to be political. Turkey has struggled to build international consensus with respect to the terrorism and terrorist financing risk posed mostly by FETÖ.

483. Turkey has sent 29 extradition requests related to a combination of both terrorism and TF offences, between 2014 and 2017. In some cases, ML is included along with terrorism and/or TF, and in one case from 2014, ML, embezzlement and fraud were the identified offences (this request is still pending). Of the remaining 28

cases, all relate to FETÖ (27 of these requests were made in 2017). To-date, three have been rejected, while the remaining requests are still pending.

484. In addition to the above noted extradition requests, Turkey pursues extradition requests related solely to terrorism offences pertaining to a number of terrorist groups, as outlined in Table below:

Table 8.8. Extradition Requests Sent by Turkey Related to Terrorism Offences

| Terrorist Group | 2013 | 2014 | 2015 | 2016 | 2017 | Pending | Granted | Rejected | Other | Total |
|-----------------|------|------|------|------|------|---------|---------|----------|-------|-------|
| Extreme left | 9 | 12 | 17 | 8 | 7 | 17 | | 28 | 8 | 53 |
| ISIL | | | | | 2 | 1 | | 1 | | 2 |
| DHKP-C | 24 | 15 | 5 | 6 | 13 | 14 | | 41 | 8 | 63 |
| TOAR | 4 | 3 | 7 | 5 | 2 | 8 | 4 | 8 | 1 | 21 |
| Other | 7 | 2 | 9 | 6 | 10 | 9 | 2 | 21 | 2 | 34 |
| FETÖ/PDY | | | 4 | 21 | 191 | 183 | 2 | 22 | 9 | 216 |
| PKK/KCK/PYD-YPG | 40 | 23 | 38 | 26 | 36 | 64 | 5 | 74 | 20 | 163 |
| Total | 84 | 55 | 80 | 72 | 261 | 296 | 13 | 195 | 48 | 552 |

485. Turkey makes a large number of MLA and extradition requests related to predicate offences, including terrorism and, to a lesser degree, ML and TF.

Box 8.2. MLA Requests made by Turkey

Regarding an investigation that was conducted in the country X against RK, BK, TG and other suspects for the offences of production and trade of drugs and ML, it was detected that the mentioned persons laundered proceeds of crime amounting to millions of Euros in various countries including Turkey. Country X requested Turkey to conduct joint investigation pursuant to MLA requests made in 2013 and 2014. In order to determine the steps to be taken, a meeting was held in Turkey in 2014 with the representatives of country X and the investigation units of Turkey. In line with the agreement reached, an ML investigation was initiated in Turkey while the judicial proceedings with regard to predicate crimes pursued in country X.

Additionally, contact points were designated from both countries with a view to expeditiously meet the future MLA requests. Thanks to the expeditious communication made, simultaneous operations were undertaken in both countries in 2014, followed by searches conducted at the residences and workplaces of the suspects in Turkey, which led to seizure of Euro 200 000 belonging to suspect FA. During the process, Turkey and country X fulfilled the MLA requests of each other and the evidence collected were efficiently used in the investigations conducted in both countries.

In this regard, 43 real estates, which were believed to be acquired by FA through illegal proceeds gained via offences committed in country X were seized within the scope of the ML investigation conducted in Turkey. Total value of the seized assets is approximately EUR 23 million. The prosecution against FA, regarding whom the decision of seizure is still in force, is ongoing.

Seeking Other Forms of International Co-operation for AML/CFT Purposes

486. Turkey also seeks other forms of international co-operation in order to pursue ML, TF and predicate offences with transnational elements. As a member of the Egmont Group, MASAK is able to request information from that network of FIUs through the Egmont Secure Web. Turkey has taken advantage of this mechanism, with over 600 such requests made between 2013 and 2017 and an upward trend in MASAK's utilisation of the tool. Since 2006, MASAK has signed 52 MOUs with other countries, allowing them to also share information with non-Egmont Member countries. The following table represents requests for financial intelligence related to ML/TF and related predicate offences sent by MASAK through the Egmont Secure Web.

Table 8.9. Information Requests sent through Egmont Secure Web

| Years | Outgoing Requests | Proactive sharing | Total |
|-------|-------------------|-------------------|-------|
| 2013 | 30 | 3 | 33 |
| 2014 | 91 | 5 | 96 |
| 2015 | 250 | 41 | 291 |
| 2016 | 45 | 0 | 45 |
| 2017 | 124 | 50 | 174 |

487. The TNP, other Turkish LEAs and Customs also actively seek international co-operation in a variety of ways. While the main source of financial intelligence from foreign counterparts is through MASAK, TNP also requests assistance on ML offences through INTERPOL:

Table 8.10. Information Requests sent via INTERPOL for ML Offences

| | 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|--------------------|------|------|------|------|------|-------|
| Requests Sent | 7 | 9 | 6 | 8 | 6 | 36 |
| Requests Fulfilled | 4 | 5 | 4 | 5 | 3 | 21 |
| Requests Rejected | 3 | 4 | 2 | 3 | 3 | 15 |

488. In addition, TNP- TEM, the department of counter terrorism within TNP has sought assistance from foreign counterparts in terrorism related offences including TF as per the following data provided by Turkey:

Table 8.111. Outgoing Requests of TNP-TEM on terrorism, TF and Designated Persons

| | 2017 | 2018 | Total |
|------------------------|------|------|-------|
| Requests Sent | 1 | 4 | 5 |
| Requests Fulfilled | 1 | 2 | 3 |
| Requests not Fulfilled | 0 | 2 | 2 |

489. LEAs also execute international co-operation through other channels, such as the CARIN network and via liaison officers. Turkey has 91 counsellors acting as liaison officers assigned in 71 foreign countries and two international organisations. In addition to these networks, LEAs participate in joint operations with other countries. As an example, the Department of Combating Narcotic Crime within the TNP has been

involved in 32 joint operations (mainly judicial police co-operation related to controlled deliveries) with counterparts in 28 countries.

490. Authorities indicate that BRSA, CMB and ISB exchange information on their activities with foreign counterparts and they provided the assessment team with statistics about the exchange of information activities of regulatory and supervisory agencies.

Providing Other Forms of International Co-operation for AML/CFT Purposes

491. MASAK is the main unit for the exchange of financial intelligence between Turkey and other countries. As noted above, MASAK receives and responds to requests for financial intelligence, mostly through the Egmont Secure Web. The average time to provide responses to requesting parties is 29 days:

Table 8.12. Information Requests Received and Responded To

| | Incoming Requests | Responses Provided | Spontaneous Disseminations | Total Requests |
|-------|-------------------|--------------------|----------------------------|----------------|
| 2013 | 272 | 272 | 10 | 282 |
| 2014 | 265 | 265 | 24 | 289 |
| 2015 | 324 | 324 | 236 | 560 |
| 2016 | 374 | 374 | 520 | 894 |
| 2017 | 420 | 420 | 259 | 679 |
| Total | 1 655 | 1655 | 1 049 | 2 704 |

492. As previously indicated, while MASAK is the primary unit for the exchange of financial intelligence, LEAs also co-operate internationally on matters relating to ML and predicate offences, including terrorism and TF. This is achieved through their association with CARIN and INTERPOL, as well as Turkey's expansive network of liaison officers across the globe (50 countries are represented by 131 police liaison officers in Turkey) and through joint operations.

Table 8.13. Information Requests Received Via INTERPOL for ML Offences

| | 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|------------------------|------|------|------|------|------|-------|
| Requests Received | 25 | 23 | 27 | 22 | 16 | 113 |
| Requests Fulfilled | 17 | 18 | 21 | 18 | 13 | 87 |
| Requests not fulfilled | 8 | 5 | 6 | 4 | 3 | 26 |

493. In addition to matters relating to ML, the Department of Intelligence and TNP-TEM respond to requests from foreign counterparts in respect to terrorism and TF.

Table 8.14. Information Requests from Foreign Counterparts on Terrorism and TF

| | 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|------------------------|------|------|------|------|------|-------|
| Requests Received | 4 | 7 | 12 | 22 | 25 | 70 |
| Requests Fulfilled | 3 | 6 | 11 | 14 | 20 | 54 |
| Requests not Fulfilled | 1 | 1 | 1 | 8 | 5 | 16 |

Table 8.15. Incoming Requests Received by TNP-TEM on TF and Designated Persons

| | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|-----------------------|------|------|------|------|------|-------|
| Requests Received | 1 | 5 | 17 | 51 | 37 | 116 |
| Requests Fulfilled | 1 | 3 | 14 | 32 | 18 | 68 |
| Request not Fulfilled | 0 | 1 | 2 | 19 | 19 | 43 |

494. There are a good number of information exchanges between BRSA and foreign supervisory agencies. A majority of these exchanges relate to fit and proper tests and on-site supervision. MASAK is responsible for any intelligence related exchanges, in its capacity as the main supervisory authority as well as the FIU of Turkey. However, there was no documented policy for co-ordination between MASAK and sectorial supervisors.

495. Similarly, the exchange of information undertaken between CMB and its foreign counterparts mostly relates to fit and proper tests, licensing and reporting requirements, etc. Time elapsed for receiving as well as providing information requested as part of CMB's international co-operation ranges from one day to more than 400 days. The majority of requests resulted in a response delay of more than 30 days from the time of receipt. It was explained to the assessment team that the delays were mostly on account of (a) non-availability of information with CMB and collecting the same from the Government, other supervisors or sources; (b) physical movement of requests rather than email; (c) incomplete details in the request sought; etc.

496. In respect to the insurance sector, only very limited exchanges have occurred between MoTF and foreign counterparts. This could be attributed to the assessment of the insurance sector as low risk. In respect to the cases that the MoTF sends to foreign supervisors, the average response time is approximately one week.

International Exchange of Basic and Beneficial Ownership Information of Legal Persons and Arrangements

497. Competent authorities are able to provide basic information and legal ownership information of legal persons registered in Turkey. This information is also available online and can be accessed publicly.

498. For beneficial ownership information, it is possible to trace beneficial ownership information of legal persons registered in Turkey (see IO.5). This would, however, not cover situations when control is exercised through means other than legal ownership, such as when foreign entities are involved in the chain of ownership or where legal ownership lies with strawmen. MASAK conducts further enquiries including accessing information from various databases (e.g. MERSIS database, tax

database) and obtains information from FIs in such cases. Previous cases history is also checked regarding the subject matter.

499. The average time taken for 540 requests received by MASAK from overseas counterparts through the Egmont Secure Web for BO information on 1,234 companies over the years shows deterioration (from 13 days in 2015, 15 days in 2016 and 39 days in 2017). This improved to 34 days in 2018, with further improvement to 17 days for the period Jan-Mar 2019. The decline in response time during 2017 and 2018 could be attributed to channelizing the human resources for dealing with the high level of security threat after the failed coup attempt in Turkey in July 2016. In addition, Turkey provided statistics on exchange of basic and beneficial ownership information sharing by revenue administration on tax matters. 34 such requests were responded to by Turkey in 2017 (16 on beneficial ownership and 18 on legal ownership). Average time taken to respond to these requests has varied between 3-6 months (in many cases, these requests required obtaining additional information).

500. Turkey provided only one case example where request for beneficial ownership information (apart from bank records, official and investigation records) received from a foreign country in respect of three entities in April 2018 was executed in December 2018. This case involved suspected ML, electronic fraud and perjury.

501. Turkish law does not allow for the establishment and operation of trusts in Turkey nor have any such requests for information sharing been raised on authorities as advised by Turkey. In case of a request on foreign trusts, which operates in Turkey with another business title or form, MASAK can use its authority to obtain beneficial ownership to the extent available.

Overall Conclusions on IO.2

502. **Turkey is rated as having a substantial level of effectiveness for IO.2.**

Technical Compliance Annex

This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 23 February 2007. This report is available from:

www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Turkey%20ES.pdf

Recommendation 1 – Assessing Risks and Applying a Risk-Based Approach

This is a new recommendation, which was not assessed in the 3rd MER.

Criterion 1.1 – Turkey prepared an NRA in 2018/19 to identify and assess ML/TF risks. This includes an overview of the most relevant proceeds-generating predicate crimes in Turkey, consideration of national and international threats relevant to TF and of vulnerabilities associated with financial and most DNFBP sectors.

Criterion 1.2 – MASAK is the competent authority to co-ordinate actions to assess risks: Prime Minister Circular 2016/22.

Criterion 1.3 – MASAK is required to ensure that the NRA is kept up-to-date, and that this be in accordance with a policy determined according to a number of factors, such as the significance of the level of risk: Action Plan, art. 5.3 (Section 5).

Criterion 1.4 – MASAK sent the action plan to relevant organisations and published it on MASAK's website to ensure further implementation by stakeholders. The authorities were provided with a copy of the risk assessment. Also, MASAK has organised workshops to provide information to the private sector. Fifteen such workshops were organised in December 18 and February 2019 for FIs and DNFBPs. Partial information (assessment of ML/TF vulnerabilities of financial sector and non-financial sector- section 5.1 and 5.2 respectively of the NRA) was shared with FIs and DNFBPs, participating in the workshops.

Criterion 1.5 – Turkey implements a risk-based approach for AML/CFT. The NRA Action Plan states that the plan will serve to prioritise risks, to effectively allocate resources to decision making bodies and enable the implementation of AML/CFT measures in a proportionate manner with the risk-based approach. A similar call to action is reflected in the NRA Strategy Paper to combat ML/TF. In particular, article 4.4 of the NRA Action Plan states that the Steering Committee approves the NRA report. Articles 5.1 and 5.2 specify that the aim is to i) mitigate perceived risk, ii) prevent ML/TF risks that are caused by institutional, sectoral, regional, customer and

product deficiencies and iii) monitor actions taken. The success of the measures and analyses conducted were evaluated and a risk-based audit and scoring criteria was reviewed. In addition, the Action Plan contains language that, within the scope of implementation ensures that the measures stipulated for risk mitigation or prevention are put into practice by each authority.

Criterion 1.6 - Turkey has not explicitly applied any exemptions, but lawyers are not included in the framework. . Lawyers had been one of the obliged entities pursuant to the AML/CFT legislation. However, the provision in the legislation relating to the liability of lawyers was nullified by a court decision in 2017. This is not based on an assessment of proven low risk of the sector.

Criterion 1.7 - See c.10.17. Enhanced measures are required to be taken for transactions specified within the ROM and high-risk situations identified by obliged entities: ROM, art. 26/A, while additional measures must be taken by obliged entities for relationships that they define as high risk, as a result of their in-house risk ratings: ROC, art.13. There are specific requirements for FIs to take risks into account in their risk assessments that have been considered as high by authorities and to implement enhanced measures for these risks: ROM, art. 26/A. These requirements do not apply to the DNFBPs as there is no specific requirement for DNFBPs to apply enhanced measures to the risks identified by MoTF (art. 26/A) or by itself except for risky transactions regulated in art. 18 of ROM (complex and unusual large transactions and the ones, which have no apparent reasonable legitimate and economic purpose). Turkey has advised that all stakeholders, including DNFBPs, are required to implement controls to mitigate risks identified in the NRA.

Criterion 1.8 - The Ministry of Treasury and Finance may allow obliged entities to take simplified measures in specific circumstances and in such other circumstances as the Ministry may decide: ROM, art. 26 (see c.10.18). MASAK Communiqué No. 5 provides clarity on cases where simplified measures can be applied. Authorities have advised that ROM, art. 26(1), is based on examples set out in the FATF Interpretive Note to Recommendation 10, which have not been found to be higher risk. In addition, simplified measures may not be applied where ML/TF risks might occur: ROM, art. 26(2).

Criterion 1.9 - MASAK has the power to regulate and supervise AML/CFT obligations for FIs and DNFBPs (except lawyers). Supervision is carried out through examiners assigned to conduct supervision (see R.26 to 28).

Criterion 1.10 - A risk-based compliance programme is required by legislation: ROC, art. 5, as well as communiqués issued, including on risk management activities to combat ML/TF. In this context, an institutional policy must be prepared that, at least, includes policies related to risk management: ROC, art. 7(1). In addition, the development of a risk management policy is required considering risk to be exposed, the business size, volume and nature of transactions, to identify, grade, monitor, assess and reduce risk: ROC, art. 11(1). Risk management activities include the development of a risk methodology (including risk ratings and classifications) for customer, service and country-specific risks: ROC, art. 11(1). The provisions cover products to some extent (newly introduced products), but do not explicitly cover the criterion's language on delivery channels. The gaps are mitigated, to some extent, by the totality of the provisions in the ROC.

- a) Policies and procedures must be in written form: ROC, art. 9(1). This article, combined with arts. 7, 11 and 12, mean that, in practice, it is implicit that risk assessments (which are required) must be in written form.
- b) In addition to the factors mentioned above in this criterion, other relevant risk factors include: risky countries (ROM, art. 39(1)); transactions requiring special attention (ROM, art. 18); monitoring the customer profile and transactions (ROM, art. 19); taking measures against technological risks (ROM, art. 20); rejection of transactions and termination of business relationships (ROM, art.22); relationships with risky countries (ROM, art. 25); and enhanced measures (ROM, art. 26/A), as well as: service risk (ROC, art. 39(1)c); customer risk (ROC, art. 3(1)d; risk (ROC, art 39(1)f; country risk (ROC, art. 3(1)i; additional measures for high-risk groups (ROC, art. 13) and monitoring and controlling (ROC, arts. 14 and 15).
- c) Obligated entities must retrospectively question the coherence and efficiency of their risk defining and assessing methodologies, and their risk rating and classification methods, and reassess and update them according to achieved results and new conditions: ROC, art. 12.
- d) Obligated entities must send their institutional policies and amendments to MASAK: ROC, art. 10. These policies cover internal measures and internal rules on risk management: ROC, arts. 7, 11 and 12.

Criterion 1.11

- a) Obligated entities are required to have policies relating to risk management, monitoring and controlling, training and internal control: ROC, art. 7. Procedures must be put in place for certain issues, such as who is responsible for measures and operations under the institutional policies, and which persons/units are responsible for ratifying, carrying out, reporting and monitoring transactions according to the determined risk: ROC, art. 8. Policies and procedures must be ratified by the executive board: ROC, art. 9. See (sub-criterion b) below for internal controls). There is no explicit requirement for controls, other than procedures to be approved by senior management; although, under art. 6, the Executive Board is responsible for the adequacy of its institutional compliance programme.
- b) The contents of obliged entities' compliance programmes (institutional policy and procedures; risk management; monitoring and control activities; assignment of a compliance officer and compliance unit; training; internal control activities) are clearly specified: ROC, art. 5. Monitoring and control requirements for customers are specified: ROC, arts. 14 and 15. Further detail, including that deficiencies that must be reported to the Executive Board, are also clearly specified in law: ROC, arts. 26 and 27. Deficiencies detected as a result of monitoring and control measures must be reported to the relevant units for the necessary measures to be taken, and the results must be followed up: ROC, art. 15(1).
- c) See c.1.7 and c.10.17.

Criterion 1.12 – See c.1.8. Simplified measures can only be applied in relation to the types of transaction specified by legislation or by the Ministry of Treasury and Finance. Obligated entities may not apply simplified measures where ML/TF risks

might occur due to the transaction and are required to take into account whether the transaction is suspicious.

Weighting and Conclusion

There are minor shortcomings regarding dissemination of information on the results of risk assessments to all FIs and DNFBPs. Lawyers are not covered under the AML/CFT framework and risk assessment obligations for FIs do not explicitly cover delivery channels. There is no specific requirement for DNFBPs to apply enhanced measures to the risks identified by MoTF (art. 26/A) or by itself except for certain risky transactions.

Recommendation 1 is rated largely compliant.

Recommendation 2 - National Co-operation and Co-ordination

In its 3rd MER, Turkey was rated largely compliant with the requirements. Public prosecutors were not directly involved in national AML/CFT policy development on a regular basis, and there were concerns related to the effectiveness of co-operation.

Criterion 2.1 – National AML/CFT policies and activities have been established to some extent through the existence of a series of agency and working group- level strategies, actions plans, committees, working groups and similar mechanisms. The limited period of time since the NRA was completed means that Turkey does not yet possess an overarching, national policy to combat ML/TF informed by the risks. Prior to the NRA, a range of committees and working groups, as well as the strategies and action plans under which they operate, established policies and activities, which directly or indirectly provide national responses to AML/CFT.

Criterion 2.2 – The National Security Council (NSC) is the primary mechanism for preserving Turkish integrity, independence and security: Constitution, art. 118. The NSC's role is broad in scope, and its mandate includes terrorism in all its aspects, including TF. The National Intelligence Co-ordination Board (NICB) acts as a high-level co-ordination mechanism: Law No. 2937, art. 5. MASAK is represented in the Board to cover AML/CFT issues. Among other tasks, MASAK is required to develop policies and implement strategies to ensure co-ordination amongst institutions and organisations for the prevention of ML: Presidential Decree No. 1, art. 231. The Co-ordination Board for Combating Financial Crimes (CBCFC), chaired and administered by Deputy Minister of MoTF, is the main tool for AML/CFT co-ordination. In addition to MASAK, which serves as the Secretariat for the CBCFC, its membership comprises a range of government representatives and supervisory authorities: Presidential Decree No 1, art. 232, and Regulation 26730. There is also an Internal Security Strategies Co-ordination Board (ISSCB), whose members are affiliated with the Ministry of the Interior. The functions of the ISSCB and working groups that report to it include the formulation of strategies, policies and action plans on national security issues (including terrorism and TF), and the monitoring of their implementation.

Criterion 2.3 – See c.2.1 and 2.2 for the policy-making mechanisms in Turkey. Operational-level mechanisms include the Commission for Freezing of Terrorist Assets, a Crypto-Currency Working Group, an MVTs Working Group and an Operational Information Sharing System. Relevant documents include the Action Plan on CFT, the National Strategy on Fighting Organised Crime (which includes an Action

Plan), the National Anti-Drug Strategy Paper and Combatting Drugs Action Plan (which includes ML and narco-terrorism issues). There are also strategy papers and Action Plans that seek to address aspects of predicate criminality, which is relevant to reducing ML. The existing mechanism does not fully cover the development and implementation of AML/CFT policies and activities at the national level.

Criterion 2.4 – MoFA has the responsibility to co-ordinate mechanisms to combat the financing of the proliferation of weapons of mass destruction (PF). MASAK also co-operates with intelligence agencies and MoFA on PF-related operational issues, as needed.

Criterion 2.5 – MASAK, along with other law enforcement authorities, co-operates and co-ordinates with the Turkish Personal Data Protection Authority, established under Law No. 6698. This includes participation in drafting of legislation and in training programmes on data protection and privacy issues. Personal data processed for preventive, protective and intelligence activities carried out by public institutions and organisations assigned to maintain national defence, security, public order or economic security are outside the scope of the Law: Law No. 6698, art. 28. Authorities also advised that the Law’s preamble, presented to the Turkish National Assembly, explicitly indicates that duties carried out by the competent authority with respect to ML/TF is exempt.

Weighting and Conclusion

As the NRA has recently been concluded, Turkey does not yet possess overarching, national strategies and policies to combat ML/TF informed by the risks.

Recommendation 2 is rated largely compliant.

Recommendation 3 - Money Laundering Offence

In its 3rd MER, Turkey was rated partially compliant for R.1 and largely compliant for R.2 (paras. 96 – 119), the predecessors to R.3. The main technical deficiencies were that not all physical elements for the ML offence were covered in Turkish Law, as required by the Conventions; the threshold for predicate offences was too high; and there was not any clear demonstration that the intentional element can be inferred from factual circumstances. In addition, the sanctions for ML were relatively low for natural persons, with a limited range of sanctions for legal persons. Since the last evaluation, Turkey enacted Law No. 5918, amending the Turkish Criminal Law (TCL), which came into force on 9 July 2009.

Criterion 3.1 – The ML offence covered in the TCL is broadly in line with the Vienna and Palermo Conventions as material elements are covered as follows:

- a) Conducting any act, for the purpose of concealing or disguising the illicit origin (TCL, art. 282(1)) which covers the conversion or transfer of assets, as required by the conventions. However, concealing or disguising assets are only covered when they are conducted with a specific intention.
- b) Purchase, acquisition, possession or use of illicit funds constitute an ML offence for third-party launderers (TCL, art. 282(2)).

Criterion 3.2 – Predicate offences to ML constitute all offences that carry a minimum penalty of six months’ imprisonment: TCL, art. 282(1). This covers a range of offences

in each FATF designated categories of predicate offences.

Criterion 3.3 – Turkey applies a minimum threshold approach, where the predicate offence carries a minimum penalty of six months’ imprisonment.

Criterion 3.4 – The ML offence extends to any asset, which has been acquired as a result of an offence...:”TCL, art. 282(1). The term *assets* refers to money, any kind of movable or immovable, tangible or intangible goods or rights that have monetary value, and any kind of legal documents or instruments certifying rights on them: ROM, art.4. While no explicit provision exists as to whether the ML offence could extend to assets acquired indirectly, provisions that enable corresponding or equivalent value confiscation (ROM, art.282) in addition to cases provided seem to cover this.

Criterion 3.5 – When proving that property is the proceeds of crime, there is no requirement that a person be convicted of a predicate offence. Instead, it must simply be proven that the property has been acquired as a result of an offence (TCL, art. 282(1)).

Criterion 3.6 – There is no explicit provision in the TCL that predicate offences extend to conduct that occurred in another country when this constitutes an offence in that country. Turkish courts have jurisdiction over ML offences committed whether in a foreign country or within Turkey (TCL, arts. 11 – 13). The law does not distinguish between predicate offence committed outside or inside Turkey (TCL, art. 282). Turkey provided a court case to confirm that this is covered.

Criterion 3.7 – The ML offence applies to any person, including those who commit the predicate offence TCL, art.282(1), as the TCL does not preclude the perpetrator of the predicate offence from being charged with self-laundering when the acts are related to conducting an act for the purpose of concealing or disguising the illicit origin. The law explicitly states that purchasing, accepting, possessing or using illicit funds constitutes an ML offence for third-party launderers (TCL, art.282(2)), and for self-launderers based on the art.282(1) it would be possible when this is conducted with the specific intention of disguising or concealing the illicit source of funds.

Criterion 3.8 – Turkey provided case examples, whereby intent and knowledge required to prove the ML offence could be inferred from objective factual circumstances. The existence of a criminal offence depends upon the presence of intent. Intent is defined as knowingly and willingly conducting the elements in the legal definition of an offence. There is probable intent when the individual conducts an act while foreseeing that the elements in the legal definition of an offence may occur: TCL, art. 21(2).

Criterion 3.9 – Natural persons are subject to imprisonment of between three and seven years and judicial fines²⁴ for up to 20 000 days for the acts mentioned in TCL, art. 282(1). ML sanctions for acts mentioned in art. 282(2) ranged from two to five years. Statutory sanctions may be increased for aggravating circumstances: TCL, art.

²⁴ A *judicial fine* is an amount payable to the State Treasury by the offender, which is calculated, unless otherwise stated in the law, by multiplying the identified number of days, which shall be more than five but not more than seven hundred and thirty, with a daily amount: TCL, art.52. The daily amount of the judicial fine is, at least, twenty Turkish lira or, at most, one hundred Turkish Lira and is determined having regard to the personal and economic conditions of the person.

282(3) and (4). Imprisonment is increased by 50% if the ML offence is committed by a public official or any professional in the course of performing his or her duty, and may be doubled if committed by an organised criminal group. These sanctions are considered dissuasive.

Criterion 3.10 – When a legal person is involved in the commission of an ML offence, it is subject to specific security measures: TCL, art.282(5), such as the cancellation of its license and confiscation measures. No criminal penalties shall be imposed on legal persons TCL, art.20 (2), as implementation of criminal measures against legal persons is contrary to the fundamental principles of the criminal justice system in Turkey, according to authorities. In addition to security measures, legal persons that are misused for the commission of an ML offence are also subject to administrative fines, which range from EUR 1 500 – EUR 325 000. These administrative fines are not considered as dissuasive.

Criterion 3.11 – Ancillary offences are criminalised, through general prohibitions relating to participation, conspiracy, attempt, aiding and abetting, facilitating and counselling, as well as incitement and assistance to the commission of an offence (TCL, arts. 35 to 41).

Weighting and Conclusion

The main shortcomings include the definition of ML as being not totally in line with the Conventions as act of concealing and disguising assets requires a specific intention, minor shortcoming with regard to self-money laundering in addition to the non-dissuasiveness of sanctions applied to legal persons.

Recommendation 3 is rated largely compliant.

Recommendation 4 - Confiscation and Provisional Measures

In its 3rd MER, Turkey was rated largely compliant with these requirements (137 – 153). The deficiency was primarily related to effectiveness, in addition to minor issues concerning the protection of the rights of *bona fide* third-parties.

Criterion 4.1 – Turkey has legislative measures for the confiscation of:

- a) property laundered (TCL, art. 54),
- b) instrumentalities used or intended for use in intentional offences (TCL, art.54(1)) and material gain or economic benefit obtained through the commission of an offence (TCL, art.55(1)).
- c) property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist (TCL, art. 54);
- d) the value corresponding to property and gains when such property and proceeds, which are subject to confiscation cannot be seized or provided to the authorities, (TCL, art.55(2)).

Criterion 4.2 – Turkey has measures, including legislative measures that enable their competent authorities to:

- a) identify, trace and evaluate property that is subject to confiscation,
- e) carry out provisional measures and seize assets subject to certain safeguards: CPL,

arts. 116-134. In particular, art.128 (1) provides powers to seize assets. In addition, when assets are suspected of being linked to ML/TF, the Minister of Treasury and Finance is authorised to suspend attempted transactions or transactions in the process of being executed by obliged entities for seven working days or disallow the execution of those transactions for the same period of time (AML Law, art.19/A);

- f) take steps to prevent or void actions taken to prejudice the ability to freeze or recover property that is subject to confiscation (Law 6098, art.19) and;
- g) take other appropriate investigative measures (see R.30 and R.31).

Criterion 4.3 – The rights of bona fide third-parties are protected (TCL, art.54 -55).

Criterion 4.4 – Turkey has mechanisms to manage and, as necessary, dispose of frozen, seized and confiscated property, according to the Regulation on Property of Crime. In addition, when there is a likelihood that a seized item will be damaged or suffer a substantial loss of value, the item in question may be liquidated before final judgment (CPL, art.132). In other cases when there are strong grounds of suspicion that the crime is being committed, within the activities of a firm, and it is necessary to reveal the true state of affairs, the judge or the court is entitled to appoint a trustee for the administration of the firm. (CPL, art. 133).

Weighting and Conclusion

All criteria are met.

Recommendation 4 is rated compliant.

Recommendation 5 - Terrorist Financing Offence

In its 3rd MER, Turkey was rated partially compliant with these requirements (paras. 120 - 131). The main deficiencies were related to the narrow scope of the TF offence and the limited range of sanctions that could be applied to legal persons, with some deficiencies related to the intentional element.

Criterion 5.1 – TF criminalisation in Turkey is consistent with art. 2 of the TF Convention. Turkey criminalises the wilful provision and collection of funds when there is intention that funds are used, or with the knowledge that they are to be used, in full or in part, in perpetration of acts listed within art.3²⁵: Law No. 6415, art.4). .

Criterion 5.2 – The TF offence in Turkey extends to any person who provides or collects funds for a terrorist or terrorist organisation, with the intention that they are used, or knowingly and willingly are to be used, even without being linked to a specific act, in full or in part in perpetration of the acts that are set forth as crime within the scope of art. 3 (Law 6415, art.4). Court cases confirm that art. 4, in particular the mental element of the TF offence, does not require the intention that a specific terrorist act be committed.

²⁵ This includes acts i) intended to cause death or serious bodily injury for the purpose of intimidating or suppressing a population or compelling a government or an international organisation to do or to abstain from doing any act; ii) acts set forth as terrorist offences in Anti-Terror Law; and iii) acts that constitute an offence, as defined in the Annex to the TF Convention.

Criterion 5.2bis – Turkey criminalises the preparation of terrorist acts: TCL, art. 39 and TF Law (TF Convention, art.2). The wording of these offences and the application in the court appears to cover the case where travel has been financed.

Criterion 5.3 – The TF offence applies to funds covering money or property, rights, claims of every kind whether movable or immovable, tangible or intangible, which could be represented by money and all kinds of documents representing them: TFL, art.(2)(1)(c). Turkey makes a difference between financial support and non-financial support. The TF offence covers cases when the value of financial support can be measured. In other cases, where a non-financial support is provided (e.g. the provision of transportation), the general provisions of the TCL would be applied, as assistance to a terrorist organisation: TCL, art. 220(7). Regarding the source of the funds, the definition does not distinguish between legitimate or illegitimate sources.

Criterion 5.4 – The TF offence does not require that the funds were actually used to carry out a terrorist act or were linked to a specific terrorist act. It is sufficient that it is intended or reasonably suspected that the funds could be used for this purpose (TFL, art.4). In addition, the Court of Cassation of Turkey confirmed interpretation of TF criminalisation, in particular the mental element of the TF offence, which does not require intention that a specific terrorist act be committed.

Criterion 5.5 – Intent and knowledge required for the commission of a TF offence can be proved in Turkey by relying on objective factual circumstances (TCL, art. 21). Cases provided confirmed this (Court of Cassation, the Ninth Penal Chamber of the Court of Cassation Date 22.05.2013, Decision No 2013/8053, Case No. 2013/3017).

Criterion 5.6 – Natural persons convicted of a TF offence are subject to terms of imprisonment from five to ten years. These sanctions are considered as dissuasive and proportionate. Aggravated sanctions are available in relation to these terms of imprisonment depending on the other circumstances of the offence.

Criterion 5.7 – When a legal person is involved in the commission of an TF offence, it is subject to specific security measures: TF Law, art. 4(4), such as the cancellation of its license and confiscation measures. No criminal penalties shall be imposed on legal persons TCL, art.20 (2), as implementation of criminal measures against legal persons is contrary to the fundamental principles of the criminal justice system in Turkey, according to authorities. In addition to security measures, legal persons that are misused for the commission of a TF offence are also subject to administrative fines, which range from EUR 1 500 – EUR 325 000. These administrative fines are not considered as dissuasive.

Criterion 5.8 – Ancillary offences are covered the general provisions in the TCL. These include attempt to commit TF (art.35), participation as an accomplice (art.37), soliciting another person to commit TF (art.38) and acting in common purpose²⁶ (art.220).

²⁶ According to TCL, art. 220, if three or more people found an organisation in order to commit a crime, the founders and administrators of this criminal organisation are to be imprisoned from 2 to 6 years and those who become a member of the organisation are to be imprisoned from 1 to 3 years. In cases where the organisation is armed the penalties applied are increased from ¼ to ½

Criterion 5.9 – The TF offence is an ML predicate offence due to the sentencing regime as well as the fact that the TF offence carries more than a six months' imprisonment threshold.

Criterion 5.10 – Turkey has legislation in place to deal with persons alleged to have committed a TF offence in the same or different country from where the terrorist individual or terrorist organisation is located, where the acts occurred or where the acts would occur.

Weighting and Conclusion

Turkey has minor shortcoming as the sanctions applied to the legal persons for TF offence are not fully dissuasive.

Recommendation 5 is rated largely compliant.

Recommendation 6 - Targeted Financial Sanctions Related to Terrorism and Terrorist Financing

In its 3rd MER, Turkey was rated partially compliant with these requirements (para. 154 – 170). The key technical deficiencies related to: the lack of guidance and formal procedures in place for accessing frozen funds for necessary expenses, delisting, unfreezing or sanctions for failure to observe a freezing order; the lack of a system in place for communicating decrees to DNFBPs; no deadlines set for freezing action to be taken by FIs, in accordance with official decrees; and no provision for giving effect to the actions initiated under the freezing mechanisms of other jurisdictions, as related to UNSCR 1373(2001), other than through judicial or mutual legal assistance mechanisms.

Criterion 6.1 –

- a) The Ministry of Foreign Affairs is the competent authority with responsibility for proposing persons or entities to the 1267/1989 Committee for designation, and for proposing persons or entities to the 1988 Committee: Presidential Decree No. 1, art. 128. Within the Ministry of Foreign Affairs, the Directorate General for Research and Security Affairs co-ordinates amongst relevant competent authorities.
- b) Turkey does not have a mechanism for identifying targets for designation on their own initiative in regards to UNSCRs 1267/1989 and 1988.
- c) When acting as a co-sponsor of a designation originally proposed by another jurisdiction, Turkey does apply the reasonable basis standard. Due to the absence of a clear mechanism for surfacing and proposing designations unilaterally under UNSCRs 1267/1989 and 1988, Turkey does not apply an evidentiary standard of proof of “reasonable grounds” or on a “reasonable basis” when deciding whether or not to make a proposal for designation on its own initiative.
- d) Turkey does follow the procedures and, in the case of UNSCRs, the standard forms for listing, as adopted by the relevant committees when acting as a cosponsor at the request of another jurisdiction. (the 1267/1989 Committee and 1988 Committee)
- e) Turkey has the legal framework to provide as much relevant information as possible.

Criterion 6.2 –

- a) The President of Turkey is the competent authority for designating persons or entities that meet the specific criteria for designation, as set forth in UNSCR 1373.
- b) While MASAK is the responsible agency, Turkey lacks a specific mechanism or procedure for identifying targets for domestic designation on its own initiative. It does have a mechanism for validating incoming requests and for identifying targets for outgoing requests pursuant to 1373. Incoming foreign requests must be made directly to MASAK, the Ministry of Justice or the Ministry of Foreign Affairs (who then conveys the request to MASAK), for further review. The President’s decision regarding the freezing request is conveyed via the Ministry of Foreign Affairs: Law No. 6415, arts. 6 - 7 of. For incoming foreign requests, decisions come into force when published in the Official Gazette.
- c) The Assessment Commission for the Freezing of Assets (AC) considers proposals for designations: Law No. 6415, art. 9. The AC is composed of member assigned by Presidency; member assigned by National Intelligence Agency, General Director of Public Finance, Ministry of Treasury and Finance; General Director of Public Finance, Ministry of Treasury and; Deputy Minister of the Ministry of Interior; General Director of Criminal Affairs, Ministry of Justice; and General Director of the Research and Security Affairs, Ministry of Foreign Affairs,—under the chairmanship of the Head of MASAK (which also provides Secretariat services). AC recommendations are forwarded to the President, who makes the final determination. The legal powers and processes in place for national designations do not require a prompt determination, as required under this criterion. Turkish law has provisions for the “without delay” standard in steps along the process, including implementation of the President’s decision, but the requirement to have an AC recommendation to the President for presidential decision almost guarantees that designations cannot be transposed without delay. There is no specific requirement for Turkey to conclude the entire process within any particular timeframe.
- d) Turkey applies an evidentiary standard of proof of “reasonable grounds” when deciding whether or not to make a designation: Law No. 6415, art 7.1 and the ROTF, arts. 6.3 and 8.2. The designation is not conditional upon the existence of a criminal proceeding, and a designation may be made without the existence of an ongoing criminal proceeding; however, the legal framework allows the option to annul if the requesting country does not initiate an investigation within one year from publication in the Official Gazette: Law No. 6415, art 6.5.
- e) Turkey does have the legal framework to provide as much information as possible with outgoing requests.

Criterion 6.3 –

- a) MASAK does have the legal authorities to collect or solicit information to identify persons and entities that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the criteria for designation.
- b) Turkey has the legal authority to operate ex parte against a person or entity who has been identified and whose (proposal for) designation is being considered: Law No. 6415, art 8.4.

Criterion 6.4 – Turkey does not implement targeted financial sanctions without delay, despite changes to the designation process, including the creation of the AC for the freezing of assets and new powers granted to the Turkish President to streamline the designation process. Implementation still requires Presidential ratification, which has no statutory time limit and does not happen without delay. The statutory provisions that provide for a seven day temporary freeze period by decision of the Minister of Foreign Affairs is not sufficient to fill the gap between a UN-level designation and its implementation in Turkey, especially in view of the extended delays created by the current process. Turkey’s AML law also provides for a seven day suspension period by decision of the Finance Minister in cases where TF is suspected.

Criterion 6.5 –

- a) Turkey requires that freezing action be executed without delay, conditional upon the request of MASAK: Law No. 6415, art 12.41. Natural and legal persons, as well as public institutions and organisations, are required to inform MASAK of any “asset records” within 7 days, upon request by MASAK. Designated individuals and entities are required to inform MASAK of “claims or debts and all other asset[s]” within 30 days of publication in the Official Gazette.
- b) The obligation to freeze covers all funds or other assets that are owned, possessed or directly or indirectly controlled by the designated person or entity: Law No. 6415, arts. 2c and 2ç Funds or other assets that are jointly owned or controlled, directly or indirectly, by designated persons or entities is also covered: ROTF, art 3.1. However, this does not cover the funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities, nor the funds or assets derived or generated from funds or assets owned or controlled directly or indirectly by designated persons or entities.
- c) Turkey does not adequately prohibit their nationals, nor any persons and entities within their jurisdiction, from making financial or other related services available. Funds are required to be placed within frozen accounts; however. The prohibition does not cover persons and entities acting on behalf of, or at the direction of, designated persons or entities, unless licensed, authorised or otherwise notified in accordance with the relevant UNSCRs. Only those who have been specifically notified of the injunction, per art. 14(8) of the Regulation on TF, are covered by this prohibition.
- d) Designations are published in the Official Gazette. MASAK is required to notify the General Directorate of Land Registry; Ministry of Transport and Infrastructure; Maritime Affairs and Communications; Ministry of Interior; General Directorate of Civil Aviation; relevant banks and other FIs; relevant Company and Trade Registry; Ministry of Trade and natural and legal persons, as well as public institutions and organisations: ROTF, art 14. Decisions are communicated through fax, email and web services. MASAK also makes use of an e-notification system when communicating decisions with banks and most FIs: AML Law, art. 9a. Turkey communicates designations to all FIs and DNFBPs, as opposed to those deemed relevant, immediately upon taking action via its Official Gazette, which serves as notification. Clear guidance to FIs and other persons or entities, including DNFBPs that may be holding targeted funds or other assets, on their obligations to take freezing action is available from MASAK, although it has never been provided as no assets subject to a freeze have been found.

- e) FIs, DNFBPs and other individuals, institutions and organisations are required to report to competent authorities any “asset records” related to the prohibition requirements of relevant UNSCRs within 7 business days: ROTF, arts 14.2 and 14.3.
- f) The rights of bona fide third parties acting in good faith are protected: Law No. 6415, art. 10 and ROTF, art. 13.2.

Criterion 6.6 –

- a) The ability to convey names for delisting to the UNSC is conferred to MASAK through the Ministry of Foreign Affairs: Law No. 6415, art. 5.3 and ROTF, art. 4.4. The freezing decision also provides legal remedies and delisting requirements that must be met for an individual or entity to be delisted: ROTF, art. 12.2. General principles of administrative law provide for recourse to judicial review for individuals and entities affected by actions and acts of the administration, including legal recourse for designated individuals and entities: Constitution, art. 125.
- b) In addition to general provisions under the Constitution, which allow for aggrieved parties to approach the administrative court of first instance for judicial review, the AC is required to assess whether a listed individual or entity continues to meet the criteria for designation pursuant to UNSCR 1373. See criterion 6.6a and 6.6b.
- c) The Council of State deals with administrative cases related to the annulment of decisions of the President in its capacity as the administrative court of first instance. Listed individuals and entities can bring an action for annulment before the Council of State within 60 days after the notification of designation. With regard to designations pursuant to UNSCR 1373, there are no clear procedures to allow, upon request, review of the designation decision before a court or other independent competent authority, outside of the 60-day window established under the Constitutional framework. This 60 day window can be applied either to 60 days from the date of listing in the Official Gazette or 60 days from the freezing of assets.
- d) There are no clear procedures to facilitate review by the 1988 Committee, in accordance with any applicable guidelines or procedures adopted by the 1988 Committee, including those of the Focal Point mechanism established under UNSCR 1730. Turkey does provide a notice to affected designees informing them of their ability to apply to the UNSCR 1988 Committee and mentioning the existence of the 1730 Focal Point; although, it does not say how to do this or for what.
- e) Designated persons and entities are informed of this availability. Turkey does provide a notice to affected designees informing them of their ability to contact the UN ombudsman.
- f) Requests to unfreeze funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism (i.e. a false positive), can be made to MASAK: ROTF, art. 14.6. Turkey has a written procedure governing this eventuality.
- g) MASAK uses an e-notification system to communicate with relevant parties,

including most FIs, for instant notification: AML Law, art. 9a. There is no guidance to FIs and other persons or entities, including DNFBPs that may by holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action, although the need to use it has never arisen.

Criterion 6.7 – Turkey authorises access to frozen funds or other assets that have been determined to be necessary for basic expenses, for the payment of certain types of fees, expenses and service charges, or for extraordinary expenses: Law No. 6415, arts 13.2 – 13.7.

Weighting and Conclusion

The fundamental shortcomings in Turkey's legal framework is include the delays caused by the need for Presidential ratification of UN listings . Turkey lacks mechanisms or procedures to identify and propose UN designations on its own initiative under 1267, or to undertake domestic designations on its own initiative under 1373.

Recommendation 6 is rated partially compliant.

Recommendation 7 – Targeted Financial Sanctions Related to Proliferation

This is a new Recommendation, which was not assessed in Turkey's 3rd round MER.

Criterion 7.1 – Iran-related designations, such as those stemming from UNSCR 2231 and successors, are not implemented in Turkish law. All subsequent criteria for Recommendation 7, as written below, assess Turkey's compliance with UNSCR 1718, but it should be noted that the criteria is not met for Iran-related TFS, as this is not implemented in Turkish law. The analysis below pertains only to DRK-related sanctions. Targeted financial sanctions on the DPRK related to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing are implemented through Circulars of the Prime Minister: Circulars 2006/36 (amended by Circular 2016/11) and Circular 2009/17. The framework for combatting proliferation financing was subsequently enhanced by two Council of Ministers Decisions: 2017/9950 and 2018/11480. These Council of Ministers Decisions require the implementation of targeted financial sanctions at the instant that they are published in the Official Gazette. However, as with Recommendation 6, the need for Presidential ratification in Turkey's legal framework means the without delay standard cannot be met.

Criterion 7.2 – Designations relevant to proliferation financing and the obligations of FIs and DNFBPs operate similarly to the regime for targeted financial sanctions related to terrorist financing²⁷.

- a) Turkey requires all relevant institutions and organisations within the country to freeze, without delay, the funds or other assets of designated persons and entities: Decision 2017/9950, art. 2.1.

²⁷ Turkey recently changed its system of government and adopted the presidential system. Since this change, the authority to make a designation concerning proliferation financing has been conveyed to the President of the Turkish Republic. Previously, this authority was reserved to the Council of Ministers. See Recommendation 6.

- b) The freezing obligation extends to funds or other assets that are owned or controlled, directly or indirectly, by the persons or entities designated by the United Nations Sanctions Committee or by the United Nations Security Council, and persons or entities acting on the behalf of designated persons and entities or at their direction in furtherance of illicit activities designated in UNSCR 1718 and successor resolutions: Decision 2017/9950, art. 2.1. This provision does not cover persons acting on behalf of designated entities for their financial interests but not involved in weapons proliferation. Jointly owned assets or assets derived or generated from funds or other assets owned or controlled by designated persons are not explicitly covered.
- c) Articles 2.1 and 2.2 of Decision 2017/9950 satisfy the requirement that any funds or other assets are prevented from being made available by their nationals or by any persons or entities within their territories, to or for the benefit of designated persons or entities unless licensed, authorised or otherwise notified, except for the fundamental deficiency identified in criterion 7.1.
- d) Designations are communicated via the Official Gazette. As distinct from terrorist designations, no other system is used for notification of proliferation-related actions. FIs and DNFBPs independently review the Official Gazette regularly for notification. Otherwise, no specific notification procedures exist for them. Turkey does not provide clear guidance to FIs and other persons or entities, including DNFBPs that may be holding targeted funds or other assets, on their obligations in taking action under freezing mechanisms.
- e) Turkey requires FIs and DNFBPs to report to competent authorities in regards to compliance with the prohibition requirements of the relevant UNSCRs within 60 days.
- f) The rights of *bona fide* third parties acting in good faith are protected.

Criterion 7.3 – Turkey does not have measures for monitoring and ensuring compliance by FIs and DNFBPs with the relevant laws or enforceable means governing the obligations under Recommendation 7.

Criteria

- a) Turkey does not enable listed persons and entities to petition a request for de-listing at the Focal Point for de-listing established pursuant to UNSCR 1730, nor does it inform designated persons or entities to petition the Focal Point directly.
- b) There are no publicly known procedures to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism (i.e. a false positive), upon verification that the person or entity involved is not a designated person or entity.
- c) Turkey does authorise the access to funds or other assets, where countries have determined that the exemption conditions set out in UNSCRs 1718 are met, in accordance with the procedures set out in those resolutions. This is contained in Decree 2017/9950, art. 2.
- d) The mechanisms for communicating de-listings and unfreezing to the financial sector and the DNFBPs immediately upon taking such action is the Official Gazette. There is no mechanism for providing guidance to FIs and other persons or entities,

including DNFBPs, that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action.

Criterion 7.5 – Decision 2017/9950 deals with the freezing obligation and limited access rights of designated individuals and entities to pay for basic living and other expenses.

- a) Turkey does not explicitly allow for the addition of these funds, so long as they are subject to freezing.
- b) Decision 2017/9950 provides for contracts or liens to be satisfied if entered into before the freezing date. However, 7.5(b) relates to freezing actions under UNSCR 1373 or UNSCR 2231, while Decision 2017/9950 does not include either UNSCR in its list of resolutions to which it applies. The Decision does list UNSCR 1718, as well as a number of other resolutions, but UNSCR 1373 and UNSCR 2231 are not mentioned. This appears to invalidate the provision. In addition, while the Decision requires that funds not be made available for the benefit of UNSCR 1718 designees, it does not include the caveats in 7.5(b) that the country determine that the payment is not related to proliferation activity undertaken before designation and does not provide for ten days of notice to the committee.

Weighting and Conclusion

Turkey's lack of legal basis to implement UNSCRs related to Iran makes the framework fundamentally deficient at the most basic level. There are also important deficiencies related to the lack of a framework for without delay implementation of UNSCR 1718 designations.

Recommendation 7 is rated non-compliant.

Recommendation 8 – Non-Profit Organisations

In its 3rd MER, Turkey was rated partially compliant with these requirements (para. 510 - 530). At that time, the key technical deficiencies related to Turkey not periodically reviewing the NPO sector for TF vulnerabilities and not providing outreach and guidance on TF and the lack of a requirement for foundations to keep detailed records for a period of five years. Since then, the recommendation has been substantially revised.

NPOs in Turkey can take several different legal forms, including foundations and associations. Foundations are defined as “charity groups in the status of a legal entity formed by real persons or legal entities dedicating their private property and rights for public use”: Law No 4721, art. 101. There are 5 549 foundations, broken down into four types²⁸: 5 099 “New Foundations” (91.7%), 262 “Appendant Foundations”

²⁸ Mülhak (Appendant) Foundations: Foundations that were established before the enforcement date of the abolished Turkish Civil Code No. 743 and management of which is left to descendants of the endower. Non-Muslim Community Foundations: Foundations that obtained their legal entity status according to the Foundations Law No. 2762 irrespective of whether they have a charter, and which belong to non-Muslim societies, whose members are Turkish citizens. New Foundations: Foundations that were established in accordance with provisions of the abolished Turkish Civil Code No. 743 or

(4.8%), 167 “Non-Muslim Community Foundations” (3.1%) and 21 “Foreign Foundations” (0.4%). In comparison, there is a fairly large association sector operating in Turkey. Associations are defined as “a society formed by unity of at least seven real persons or legal entities for realisation of a common object other than sharing of profit by collecting information and performing studies for such purpose”: art 56 of Law No 4721. Currently, there are 113 104 associations registered within 21 subgroups²⁹.

Criterion 8.1 –

- a) Turkey conducted an NRA in 2018, with a component dedicated to NPO risks that considered likely characteristics linked to TF abuse (for instance, NPOs that operate close to conflict zones). The highest TF risk within the NPO sector is to be found within humanitarian aid associations operating close to an area on the southern border near conflict zones. Authorities are currently updating the first Guidance for the Prevention of Non-Profit Organisations from Being Abused for TF, published in 2009, based on the findings of the NRA³⁰.
- b) Turkey has identified several threats, including domestic and international terrorism linked threats, posed by terrorist entities to the NPO sector at risk. NPOs in Turkey are exposed to international terrorism abuse due to Turkey’s geographical location and proximity to conflict zones. Ongoing threats and vulnerabilities to the NPO sector are primarily related to ISIL activities in neighbouring Iraq and Syria; the inflow of Syrian migrants into Turkey; and expenses linked to the reconstruction of cities in previous nearby conflict zones. Based on this context and actual instances of abuse, authorities consider humanitarian aid associations at the greatest risk for abuse, particularly humanitarian aid associations that deal extensively in cash.
- c) Turkey has reviewed its audit program for NPOs in connection with its risk understanding, and issued a circular from the Minister of the Interior requesting that all NPO provincial supervisors audit at least 10% of their NPOs each year. The

current Turkish Civil Code No. 4721. Foreign Foundations: Foundations that are founded overseas and have branches or representatives in Turkey.

²⁹ The 21 subgroups (including registered numbers of associations) are Professional and Solidarity Associations (35 850); Association on Sports (23 664); Associations for the Implementation of Religious Services (18 246); Education and Research Associations (6 095); Culture, Art and Tourism Associations (5 735); Humanitarian Aid Associations (5 397); Associations in the Field of Health (2 583); Associations of Individual Teaching and Social Development (2 538); Associations of Social Values (2 507); Environment, Natural Life, Animal Protection Associations (2 336); Associations of Town Planning, Urbanisation and Development (1 666); Associations of Rights and Defence (1 477); Associations for the Disabled (1 389); Associations Supporting Public Institutions and Personnel (1 106); Thought-Based Associations (1 087); Associations in the Field of Food, Agriculture and Livestock (726); Associations for Solidarity with Foreign Turks (640); International Institutions and Co-operation Associations (632); Associations for Martyr’s Relatives and Veteran Soldiers (426); Associations for the Old and Children (334); and Children’s Associations (10).

³⁰ The Guidance update was completed in May 2019.

10% figure is not based on a risk assessment but Turkey will include its 2019 risk-based audit of 50 NPOs in this figure. During the onsite, Turkish authorities acknowledged that the 10% figure is an extremely ambitious goal which they are not likely yet in a position to satisfy, but nonetheless the guidance was issued. Turkey also created an Auditing and Statistics Working Group to evaluate whether further refinements to the auditing program were required and whether specific subsets of the NPO population required greater scrutiny. Turkey's NPO audits, however, are not primarily focused on TF as NPOs are not obliged entities, although auditors are required to report suspected TF violations they find and auditors have the examination of financial records in the scope of their duties.

- d) Turkey does not periodically reassess the NPO sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures. Since the publication of relevant guidance in 2009, Turkey has reassessed NPO risk under its 2018 NRA and at the time of the onsite, a specific audit of the 27 NPOs considered to be of highest risk by Turkey was ongoing³¹. There is no structure in place to create periodic reviews.

Criterion 8.2 –

- a) The principles and procedures for fundraising, 'fund-using' and auditing are established in Law No. 2860 on Fund Raising. Any person or entity that proposes to engage in aid collection activities must file an application with the relevant competent authority: Law No. 2860, art 8. The relevant competent authority has the authority to determine the duration of any aid collection activity, subject to its authorisation: Law No. 2860, art 10. The responsible committee for collecting aid of a legal entity is required to be comprised of the members of the entity's management bodies: Law No. 2860, art. 11. Civil servants are barred from being involved in aid collection activities, without the approval of the competent authority: Law No. 2860, art. 13.

Associations - Associations are required to submit yearly expense statements related to their activities to the local administrative authority in April of each year: Law No 5253, art. 19. Authority for inspecting these submissions rests with the Governate, but the Interior Ministry may also do so. A fine of 100 days may be imposed for intentionally submitting a false declaration: art 32 of the Law no 5253 on Associations.

Foundations - Foundations are required to submit a yearly report during the first quarter of each calendar year, containing information about the assets and activities of the foundation for the previous year: Law No. 4721, art. 114. Management is also required to submit a list of managers or the members of the board of the foundation; budget and financial statements; activity reports; information on real estate; financial charts of the preceding year (and documents confirming that these reports are publicly available); and financial statements of its business operations and the operations of its subsidiaries: Law No. 5737, art. 32 and ROF, art. 34. The General Directorate of Foundations is responsible for verifying the submissions from foundations. An administrative fine of TRY 1.294 (EUR 210) is imposed on a foundation management that fails to deliver on time

³¹ The audit was completed in April 2019.

those declarations, documents and details requested under this Law; art.11 of the Law no.5737 Law on Foundations.

- b) MASAK is generally responsible for public awareness and support activities: Presidential Decree No. 1, art. 23(1)(d). Efforts were underway as of the on-site visit to update guidance to the NPO sector, first published in 2009, based on the findings of the NRA. However, MASAK's efforts as of the on-site so far have all been aimed at awareness raising and training within the Turkish government agencies responsible for this sector, not the NPO sector and donor community³². The Department of Associations also has been working to increase awareness at a local level. An official letter was sent to the Governorates of Turkey's 81 provinces, instructing provincial offices to provide information on TF in trainings, to support information meeting on AML/CFT measures and to initiate necessary actions in co-operation with relevant organisations in order to prevent the use of NPOs for TF.
- c) Turkey does not work with NPOs to develop and refine best practices to address TF risk and vulnerabilities.
- d) Associations are required to collect funds from abroad via banks: Law No. 5253, art. 21. Foundations may receive in-kind and in cash endowments and grants from individuals, institutions and bodies domestically or abroad. Cash that comes from, or is sent, abroad must come via regulated financial channels (i.e. banks): Law No. 5737, art. 25. The fine for false declarations was recently increased to TRY 1294 (EUR 210).

Criterion 8.3 – For associations, the primary means of supervision is by internal audit: Law No. 4721, which is not a means of external supervision. Law No. 5253 also provides for government audit, with audits occurring “when deemed necessary”. Public benefit associations are examined every two years, but those that are not PBAs are examined “when deemed appropriate.” This appears to refer to cases in which some outside information has come to light, which indicates a suspicion, or when analysis of the submitted information gives rise to a suspicion. For foundations, Turkey identifies the General Directorate for Foundations as the competent authority. Law No. 5737 also provides for audits, which must be conducted internally by the NPO and submitted to the Directorate annually. The provisions require audit by the General Directorate of Foundations, but there is no indication of how often these are done or on what basis. There is no indication that supervision is connected to a risk assessment, as required by the RBA. Overall, the laws and regulations rely on internal audits and allow for government exams. Guidance has been issued to clarify aspects of the audits, including the types of documents reviewed, etc.

Criterion 8.4 –

- a) Compliance is monitored via various instruments, but these focus primarily on general financial management and prevention of fraud or tax crime, rather than AML/CFT. NPOs are not obliged entities in Turkey. An internal audit procedure must be undertaken, either by the NPO or through an independent auditor, and audits are subject to review by the supervisory board, which files a report with the Board of Directors and General Assembly of the NPO: Law No. 4721, art. 86

³² After the onsite, as previously mentioned in 8.1, the new guidance to NPOs was published.

and Law No. 5253, art. 9. See the deficiencies related to risk-based measures noted in criterion 8.3. For public benefit associations, audits are required once every two years. Foundations are audited by the General Directorate of Foundations: Law No. 4721, art. 111 and Law No. 5737, art. 33. There are no clear risk-based measures being applied. Associations are inspected by the Ministry of the Interior when the Ministry deems necessary. Foundations are also inspected primarily pursuant to a suspicion raised by an outside party. These audits focus primarily on financial management, not AML/CFT, although Turkey notes that the audits examine financial records, which are relevant to AML/CFT.

- b) A range of sanctions are available, but many of the sanctions available are neither proportionate nor dissuasive. Associations that do not meet their legal obligations may be dissolved, upon request of the Public Prosecutor or any other concerned person who is aware of wrongdoing: Law No. 4721, art. 89, upon request of the Public Prosecutor: Law No. 4721, art. 90. Administrative fines are also available and vary from TRY 1294 TRY (EUR 210) for the establishment of an association without authorisation to 25% the amount of transferred funds from abroad, in the case of funds from abroad that are not collected via a bank, acting as regulated financial intermediary. Executives of associations that do not maintain adequate records, in accordance with law, can be sanctioned with three months to one year in prison or a judicial money fine and an administrative fine 1294 TRY (EUR 210). Individuals involved in associations charged with election meddling may be liable for imprisonment from six months to two years or a punitive fine: Law No. 5253, art. 32. These sanctions are too low to be effective, proportionate and dissuasive. Foundations that do not meet their obligations face similar sanctions. Under court review, the Ministry of Interior may take actions to temporarily suspend the activities of foundations suspected of not upholding their obligations: Law No. 4721, art. 115. Upon decision by the court, foundations may be dissolved: Law No. 4721, art. 116. The length of suspension is up to the discretion of the presiding judge. Individuals convicted of serious crimes, including fraud, smuggling, etc., are ineligible to be managers of foundations or associations: Law No. 5737, art. 9, and managers that are dismissed by court decision are barred from holding office in the same foundation's management and auditing bodies for a period of five years: Law No. 5737, art. 10. Depending on the reasons for dismissal, they may be barred from other foundations for a five year period, as well. Foundations that fail to file their declarations are exposed to a 1294 TRY fine (210 EUR). As with the sanctions for associations, the sanctions for foundations are too low to be effective, proportionate and dissuasive.

Criterion 8.5 –

- a) The Department of Associations co-operates with and shares information with other public authorities. This includes informing other relevant authorities when an association is suspected of being linked to a terrorist organisation or terrorist financing. It also has a legal mandate to carry out research and build strategies in co-operation with NPOs, relevant institutions, universities and other research institutions: Presidential Decree No. 1, arts. 263.1(ğ) and (h). Relevant databases are held by the Department of Associations and the General Directorate of Foundations, and include information on institutional data, founder and manager information, immovable property, vehicle information, public relief, financial aid and foreign aid. These databases are directly available to MASAK, the Turkish

National Police and the Turkish General Command of the Gendarmerie. Publicly available information also informs this co-operation.

- b) Association auditors are employed in the Department of Associations. 33 experts and assistant experts, 36 inspectors and 14 assistant inspectors are employed at the General Directorate of Foundations. For associations, there are a total of 65 auditors, of which there are 35 Association Auditors and 30 Association Auditor Assistants. There are Provincial Association Directorates in the governorships in 81 provinces under the Department of Association. Both the Department of Associations and the General Directorate of Foundations are required to notify MASAK with respect to ML/TF suspicions that arise in the course of their investigative and auditing functions, and are also endowed with the authority to make a criminal complaint directly to the Public Prosecutor. The auditors focus primarily on financial management and fraud prevention, and this is their core expertise, as opposed to AML/CFT. MASAK has the authority to collect relevant data, including STRs for analysis (see Recommendation 20). As warranted, MASAK conveys cases to the Public Prosecutor's Office when serious suspicion of TF is identified, including in the case of NPO abuse. Notice must be provided 24 hours before audits take place. Turkey notes that since most records must be maintained online, there is a limit to the potential for destruction of documentary evidence that could take place in this 24 hour window. Additionally, law enforcement, as opposed to auditors, may perform searches or seizure at NPO offices in cases of criminal suspicion without notice as per the normal criminal laws of Turkey.
- c) MASAK, the Turkish National Police and the Turkish General Command of Gendarmerie have direct access to information on foundations and associations through DERBIS and VBYS (see 8.5a). During audits of associations, upon the request of the assigned officers, any information, document, and record must be presented and full access to premises must be provided: Law No. 5253, art. 19. However, penalties for non-compliance on these points are minimal, with a maximum of three month imprisonment or judicial fine. Similarly, foundation inspectors have the right to request information and documents including electronic records from banks, real and legal persons and any information they deem necessary: ROF, art. 127.
- d) If any offence is detected during an audit, the Department of Associations immediately notifies the Public Prosecutor's Office and the association: Law No. 5253, art. 19. If, in the course of exercising its duties, MASAK identifies serious suspicion that a TF offence has been committed by, or through, an association or foundation, the case is immediately conveyed to the Public Prosecutor's Office: Presidential Decree No. 1, arts. 231.1(e) and (i).

Criterion 8.6 – MASAK is the central point of contact for information sharing with foreign counterparts in regards to particular NPOs suspected of terrorist financing or involvement in other forms of terrorist support: Presidential Decree No. 1, art. 231 (1)(l) and (5).

Weighting and Conclusion

Turkey's legal framework lacks specific procedures to periodically review NPO risk, to conduct outreach and guidance to NPO, or to work with NPOs to develop best practices on preventing TF abuse. The primary vehicles for oversight in Turkish law,

such as required financial statement and internal audits, are overseen by authorities who are not focused on TF and are aimed primarily at preventing fraud and mismanagement. The framework is ambiguous as to when audits will take place and the auditing that takes place routinely is not based on any assessment of TF risk.

Recommendation 8 is rated partially compliant.

Recommendation 9 – FI Secrecy Laws

In its 3rd MER, Turkey was rated largely compliant with these requirements (para. 282 - 291). The key deficiency related to FIs not being authorised to share applicable information in regards to correspondent banking, reliance on third parties and wire transfers.

Criterion 9.1 – There are no financial institution secrecy laws that inhibit the implementation of the FATF Recommendations.

a) *Access to and sharing of information between competent authorities:* **MASAK** has powers to require necessary information and documents: Presidential Decree No. 1, art. 231(1)(j); Law No. 5549, art. 7; and ROM, arts. 31 and 36. Failure to comply results in imprisonment (up to three years) and a judicial fine (up to 5 000 days, which is the equivalent of TRY 500 000 or EUR 84 000): art. 14 and 7 of Law No. 5549. In addition, examiners appointed by MASAK have the power to obtain information and documents upon request, including through examination: Presidential Decree No. 1, arts. 231(1) and (4); Law No. 5549, art. 11; and ROM art. 36(2). Failure to provide inspectors with information is subject to same penalties, as those set out above. Institutions receiving a request for information are subject to a non-self-incrimination provision. MASAK can share information it possesses with other authorities.

The BRSA has powers to obtain information: Law No. 5411, arts. 95 and 96. Penalties of imprisonment for one to three years and a judicial fines of 500 to 1 500 days is available for non-compliance; Law No. 5411 art. 38. BRSA also has powers to obtain information in relation to financial leasing as well as factoring and financing companies: Law No. 6361, art. 17. Prison sentences and administrative fines are available for non-compliance: Law No. 6361, art. 47. In relation to the card payments system, BRSA has powers to require information and both administrative fines and prison sentences are available for non-compliance: Law No. 5464, art. 27. With regard to payment services and electronic money institutions, there are powers for the CBRT and the BRSA to obtain information: Law No. 6493, arts. 8 and 21. Prison sentences and fines are applicable in relation to non-compliance. BRSA can share information with MASAK, public prosecutors and criminal courts as well as its foreign counterparts.

The CMB also has power to obtain information: CML, arts. 89 and 90. A person failing to provide information is subject to imprisonment: CML, art. 111. The CMB is able to provide information to other authorities voluntarily (without receiving a request) for financial stability purposes and meet other domestic and international requirements: CML, art. 128.

The **MoTF** can obtain information from insurers and intermediaries: Law No. 5684, arts. 28 and 29. Penalties for non-compliance include imprisonment and fines. With regard to pension companies, the MoTF can obtain information: Law No. 4632, arts. 1, 11 and 20. Penalties for non-compliance include imprisonment and fines. The MoTF

may also require information under Treasury Communique No. 2018-32/45, arts. 19 and 28. The legal framework mentioned above also provides provisions to overcome confidentiality to which the person requested to provide information is subject. MoTF can share information with domestic and foreign competent authorities. See c.31.4 for the powers of law enforcement authorities to obtain information.

b) Sharing of information between financial institutions: There are no provisions preventing the exchange of information by FIs for the purposes of compliance with Recommendations 13, 16 and 17. See those Recommendations for compliance with these specific criteria.

Weighting and Conclusion

The criterion is met.

Recommendation 9 is rated compliant.

Recommendation 10 – Customer Due Diligence

In its 3rd MER, Turkey was rated non-compliant with these requirements (para. 271 - 275) as there were numerous fundamental deficiencies.

Criterion 10.1 – FIs are prohibited from opening anonymous accounts or accounts in fictitious names: ROM, art. 22(1). Banks are obliged to not open deposit, investment fund, credit or other accounts or provide remittance and foreign exchange services to clients who do not document their identities and tax numbers: Law 5411, art.76, and intermediaries cannot open fictitious accounts: CMB Communique III-39.1, art.56(h).

Criterion 10.2 – FIs are required to undertake CDD when:

- a) establishing business relations: ROM, art.5(1)(a);
- b) carrying out occasional transactions above the designated threshold TRY 20 000 (EUR 3 365) including situations where the transaction is carried out in a single operation or in several operations that appear to be linked : ROM, art.5(1)(b);
- c) carrying out occasional transactions that are wire transfers above the designated threshold TRY 2 000 (EUR 3 36) : ROM, art.5(1) (c);
- d) regardless of any exemptions or threshold, in cases of suspicions of ML/TF : ROM, art.5(1)(d);
- e) In cases where there is doubt about the adequacy and the accuracy of previously obtained customer identification information: ROM, art. 5(1)(e).

Criterion 10.3 – FIs are required to identify natural and legal persons carrying out transactions and persons on whose behalf or for whom the transactions are conducted: Law 5549, art.5(1) and ROM, art.14. Chapter 3 of ROM defines principles and procedures regarding CDD obligations for the implementation of Law 5549. It specifies a range of natural and legal persons for whom CDD obligations apply, including unincorporated organisations. Turkey does not recognise trusts and legal arrangements though foreign trustees may operate in Turkey with other business titles, as unincorporated organisations or as natural persons, subject to CDD obligations. Customer identification consists of the receipt of identification information and verification of its accuracy: ROM, art.5. The types of document and/or source of document specified amount to reliable, independent source documents, data or information: ROM, arts.6 to 14.

Criterion 10.4 – FIs are required to identify natural and legal persons acting on behalf of the customer (see criterion 10.3). In addition, verification that a person acting on behalf of a customer is so authorised and of that person's identity is required: ROM, art.14.

Criterion 10.5 – Art. 3 of ROM defines beneficial owner (BO) as a natural person who ultimately controls or owns a natural person who carries out a transaction within an obliged entity, or the natural persons, legal persons or unincorporated organisations on whose behalf a transaction is being conducted. FIs must take necessary measures to detect the BO and to verify BO: ROM, art.17/A. FIs must identify natural persons holding more than 25% of the legal person's shares: ROM, art.17/A(1). Where there is suspicion that such natural persons are not the only ultimate BO, or where there is no natural person meeting the 25% threshold, the natural person who ultimately controls the legal person must be identified. If such a person cannot be identified, the senior management official is considered BO for identification and verification purposes. The identity of BO must be verified: ROM, art.17/A(6). However, the absence of explicit provisions on trusts and similar arrangements and the parties to those arrangements will have an effect on how BO is interpreted.

Criterion 10.6 – Information on the purpose and intended nature of the business relationship must be obtained before entering into a business relationship or conducting a transaction: ROM, arts. 5(3) and 22. FIs are required to obtain information on the profession of individuals: ROM, art.6, as well as on the business of other customers: ROM, arts.7-14. This is not broad enough in scope to mean that the purpose and intended nature of the business relationship must be understood. ROM, art.19 requires monitoring of transactions and whether they are consistent with the business relationship. This and the requirement for on-going monitoring of all customers as to whether the transactions they conduct are consistent with the information regarding business, risk profile and fund resources (art. 15(3)(f) of the ROC) will indirectly require the purpose and intended nature to be understood.

Criterion 10.7 – FIs are required to conduct ongoing due diligence on the business relationship:

- a) Ongoing monitoring of transactions is required to ascertain whether they conform to the information held on the customer's profession, commercial activities, business history, financial status, risk profile and source of funds: ROM, art.19(3). In addition, FIs listed in art.4 of the ROC are also required to perform monitoring: ROC, art.14. Within the scope of this obligation, they are required to perform controls on customer-related information and documents, including the information contained in wire transfer messages: ROC, art. 15(3)(e), and conduct

ongoing monitoring³³ as to whether the transaction conducted by the customer is consistent with the information regarding the customer's business, risk profile and source of funds: ROC, art.15(3)(f). FIs must develop rules for ensuring the monitoring and control of risky customers, transactions and services: ROC, art. 12.

- b) There is a requirement to keep up-to-date information, documents and records regarding the customer, as well as verify contact and address details: ROM, art.19. It is implied that information be kept relevant. In the case of higher risk categories of customers identified by FIs, enhanced monitoring must be undertaken: ROM, art.26/A(1)(e) and ROC, art. 13.

Criterion 10.8 – There are general requirements to identify the customer and those who act on behalf of or for the benefit of customers, and gather information on the purpose and intended nature of the business relationship: ROM, arts. 5(1), 5(3). In the case of legal persons registered at the Turkish trade registry, FIs must obtain information on the field of activity: ROM, art.7. For associations, foundations, trade unions, confederations and unincorporated associations, FIs must obtain information on their aims: ROM, arts.8, 9 and 12. Art.11 addresses the identification of non-resident legal persons, requiring information equivalent to that for Turkish legal persons. Also see the provisions on BO under criterion 10.5, above. These, together with ongoing monitoring obligations, may mitigate the gap of lack of an express requirement to understand the customer's ownership and control structure. Turkey is a non-trust law country, hence its relevant terminology is not explicitly outlined in the domestic legislation. However, legal arrangements will be subject to CDD (including understanding nature of business and ownership and control structure) as outlined in ROM for legal persons.

Criterion 10.9 – For legal persons, name, legal form, trade registry number and proof of address is required to be identified and verified through documents of registration to the trade registry. This would include the powers that regulate and bind the legal person and the names of relevant persons holding a senior management position. The trade registry will have registered office address as well as address of principal place of business if different from registered address, if a company uses two addresses. These obligations do not explicitly apply to customers that are legal arrangements, however, FIs have a general obligation to identify and verify their customers by obtaining their identification information and verifying it.

³³ Monitoring and control activities include, at least, the following activities: customers and transactions in the high-risk group; transactions conducted with risky countries; complex and unusual transactions; controls, through sampling, of whether the transactions exceeding an amount which the obliged entity will determine according to the risk policy are consistent with the customer profile; linked transactions which, when handled together, exceed the threshold requiring customer identification; control of customer related information and documents; ongoing monitoring of whether the transaction conducted by the customer is consistent with information regarding the business, risk profile and source of funds of the customer; control of non face-to-face transactions; and risk-based control of services that may become prone to misuse due to newly introduced products and technological developments.

Criterion 10.10 – When establishing a permanent business relationship with legal persons, FIs must identify the BO. See criterion 10.5 above. The provisions do not include occasional transactions, as art. 17A(1) refers only to business relationships.

Criterion 10.11 – There is no specific reference to settlors, trustees, protectors or beneficiaries of trusts or equivalent parties for other types of legal arrangement. The Turkish legal framework does not encompass the establishment of trusts and records of the Turkish revenue administration demonstrate the existence of only four entities, with business name of trusts. While customers that are legal arrangements will be captured by customer identification provisions in ROM, art.12³⁴ and art.17/A(5)³⁵, the language of these articles does not lend itself to all parties to trusts and similar arrangements. The gap is mitigated to some extent by provisions relating to identification and verification obligations for persons (such as trustees) acting on behalf of others (such as trusts).

Criterion 10.12 – Sub-criterion (a): Art. 1493(2) of the TCC requires life insurance policy holders to disclose the beneficiary of insurance policies to insurance companies; this includes beneficiary's name. Specific provisions are not included for sub-criteria (b) and (c) but the gap is reduced as FIs are required to detect whether a transaction is being carried out for the benefit of another person: ROM, art.17(1). Where a person declares that (s)he is acting for the benefit of someone else, the benefitting person must be identified; although, it is not clear if verification is also covered by this. Where there is a suspicion that a person acting in his own name is in fact acting for the benefit of another person, measures for the identification of BO must be applied. In addition, in its FAQs, MASAK states that “the insured or the beneficiary will also be identified while carrying out a transaction (such as payment) requiring identification of these persons.” This does not cover verification of beneficiary's identity.

Criterion 10.13 – There are no specific provisions that require FIs to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable. This is somewhat mitigated by the general requirement to take customer risk factors into account in deciding whether to apply enhanced CDD and the sectoral STR guideline for FIs, to regard life insurance policies as risky where a customer applies for life insurance not compatible with the customer's age and health status, or accepts such conditions without question.

Criterion 10.14 and Criterion 10.15 – Delayed verification is not permitted: art. 5(1) ROM.

Criterion 10.16 – Provisional Art. 2 of ROM requires FIs to apply CDD requirements to the existing customers as on 1st September 2008. In this scope they were required to adjust existing customers' identification information to ROM by 1st September 2009: MASAK Communiqué No.8. If an FI cannot conduct customer identification, it shall not establish business relationship and not conduct the transaction: art. 22(1). In cases where customer identification cannot be carried out due to suspicion on the adequacy and accuracy of the previously obtained customer identification

³⁴ ROM, art. 12 addresses unincorporated organisations and organisations, such as unincorporated joint ventures.

³⁵ ROM, art. 17(A)/5 addresses unincorporated organisations and the need to detect the natural person ultimately controlling “the legal person” and, where no such person is detected, the senior managing official are considered to be the beneficial owner.

information, the business relationship will be terminated: art. 22(1).

Criterion 10.17 – FIs must apply one or more of a series of defined enhanced measures, in proportion to the identified risk, for higher-risk situations that they identify in the framework of a RBA: ROM, art.26/A. The application of such measures is also required for transactions within the scope of art.18 (special attention – complex and unusual large transactions and transactions which have no apparent legitimate and economic purpose), art.20 (measures against technological risks) and art.25 (relationships with risky countries). In addition, the MoTF may separately determine whether a country represents a high-risk situation to be taken into account within the scope of art.26/A. MoTF may also determine enhanced measures different to those specified in the article. No such determinations have been made. Art. 13 of the ROC contains identical provisions on enhanced measures.

Criterion 10.18 – MoTF allows FIs to take simplified measures for self-transactions; where the customer is a public administration or quasi-public professional organisation; in establishing a business relationship within the scope of salary payment by accepting a batch of customers; in transactions related to pension schemes that provide retirement benefits through deduction from salaries and of pension agreements; in transactions where the customer is a public company with its shares listed on the Turkish stock exchange: ROM, art.26. Further, MASAK Communiqué 5 clarifies the applicable measures and transaction types covered under the article. Further, in each case where simplified measures may be applied, FIs shall assess each transaction separately whether there will be any abuse of transaction for ML/TF and, therefore, whether there is any ML/TF risk. In the event that there is a suspicion of ML/TF, FIs shall not apply simplified measures and shall report the transaction to MASAK as an STR: art. 2(1), MASAK Communiqué 5.

Criterion 10.19 –

- a) When FIs cannot identify the customer or obtain information on the purpose of the business relationship, they are required not to open the account, commence business relations or perform the transaction: ROM, art. 22(1). Where customer identification and verification cannot be conducted due to suspicion on the adequacy and accuracy of previously obtained customer identification information, FIs are required to terminate the business relationship: ROM, art.22(2). There is a gap in that the provisions of art.22 do not apply to all relevant CDD measures and relate only to customer identification.
- b) FIs are required to consider whether the situations falling under art. 22(1), as described above and art 22(2), are suspicious (meaning in practice that consideration must be given to filing an STR): ROM, art.22(3). The gap therefore described in c.10.19(a) largely applies here; although, it is further reduced, by the examples in the STR Guideline on STR Filing when CDD cannot be completed satisfactorily.

Criterion 10.20 – Where FIs identify a suspicious transaction, they must carry out research on the transaction: art. 4 of MASAK Communiqué 13. Where an STR is necessary, FIs must conduct the necessary customer identification procedures. Customer identification must also be carried out to the extent possible where the suspicious transaction was attempted but could not be fulfilled. The Communiqué also specifies that more detailed research on the transaction or customer profile may

be necessary and that while making research, manners and attitudes that lead customer to suspect that he/she will be reported shall be avoided. This mostly mitigates lack of explicit provisions that stipulate that the CDD process may not be pursued in cases where the FIs believe that performing CDD will tip-off the customer.

Weighting and Conclusion

Turkey meets the core CDD requirements such as identification and verification of customer and beneficial owner. There are minor deficiencies related to lack of requirements to consider beneficiaries as a risk factor, lack of explicit reference to parties to a legal arrangement and requirement to not to open account or terminate business relationship applying only in case of suspicion relating to customer identification, rather than all relevant CDD measures.

Recommendation 10 is rated largely compliant.

Recommendation 11 – Record Keeping

In its 3rd MER, Turkey was rated compliant with these requirements (para. 308).

Criterion 11.1 – FIs are required to maintain records on transactions, both domestic and international, for at least eight years following completion of the transaction: art.8, Law 5549 and ROM art. 46.

Criterion 11.2 – FIs are required to retain the documents, books and records, identification documents and records kept in all forms regarding their transactions and obligations, for eight years. The obligation is triggered from the date of issue of documents, from the last date on which the last record was made for books and records, and from the date on which the last transaction was made for identification documents. These provisions cover the termination of the business relationship and the date of the occasional transaction. Documents and records of suspicious transactions reports made to MASAK or internal reports made to the compliance officer, documents attached to reports, the written reasons relating to suspicious transactions decided not to be reported by compliance officers are all in the scope of obligation of retaining and submitting (art.46(2)). Records in all forms seem to implicitly cover account files and business correspondence. In addition, Turkish Commercial Code (art. 64 and 82) requires all commercial letters received and copies of commercial letters sent to be retained by every trader for ten years.

Criterion 11.3 – There is no specific language relating to reconstruction of individual transactions to provide, if necessary, evidence for prosecution of criminal activity. However, art. 217 of the Criminal Code, which allows all kinds of legally obtained evidence to be used as evidence; and the totality of the detailed requirements on CDD, transactions, the legal provisions enabling the authorities to obtain information and the provisions articulated above for criterion 11.1 and 11.2 provide necessary available evidence for inquiries into criminal acts. There is no language limiting the keeping of transaction records.

Criterion 11.4 – FIs are required to ensure that all information, including CDD information and transaction records, are available to MASAK upon appropriate authority: art.7 of Law No. 5549 and ROM, art. 31. The requirement to provide information must be made in writing, except in urgent situations. In cases where

information is required in writing it must be submitted within a period of no less than seven days (the seven day requirement is to protect FIs taking into account formal procedural duration, information is provided earlier if available). When information is required verbally (i.e. in urgent situations), any deadline for the provision of information can be imposed as there is no limiting factor in the legislation; such verbal communications must be followed up in written form. Responses to verbal communications are made within the required timeframes and do not trigger the seven day requirements.

Weighting and Conclusion

All criteria are met.

Recommendation 11 is rated compliant.

Recommendation 12 – Politically Exposed Persons

In its 3rd MER, Turkey was rated non-compliant with these requirements (para. 263, 264 and 276). The key technical deficiency was that Turkey had not implemented AML/CFT measures concerning the establishment of customer relationships with PEPs.

Criterion 12.1 – There is no specific reference to foreign PEPs in Turkish AML/CFT legislation. In relation to high-risk customers (in addition to performing the CDD measures required under Recommendation 10):

- a) FIs are required to establish risk management policies (ROC art. 4), carry out risk management activities (arts. 11 and 12) and take enhanced measures for high-risk groups (art. 13). However, there is no specific obligation for FIs to establish risk policies and procedures for the express purpose of determining whether a customer or the beneficial owner is a PEP.
- b) FIs are required to implement “one or more or all” of a range of enhanced measures, which includes obtaining approval of senior manager to commence or continue business relationship or carry out transaction. However, due to the noted provision, this becomes one of several optional enhanced measures and does not meet the sub-criterion.
- c) When faced with high-risk customers and high-risk transactions, FIs are obliged to take one or more or all of a range of enhanced measures to reduce the risk identified (see criterion 12.1(b)). This includes gathering additional information on the customer (although, there is no specific requirement to establish the source of wealth) and information on the source of funds.
- d) Conducting enhanced ongoing monitoring on the relationship is also one of a range of enhanced measures that is possible (see criterion 12.1b).

Criterion 12.2 – There is no specific reference to domestic PEPs in Turkish AML/CFT legislation:

- a) FIs are not required to take reasonable measures to determine whether a customer or the beneficial owner is a domestic PEP (see Criterion 12.1).
- b) In cases when there is a high-risk business relationship, a range of enhanced measures may be selectively taken; however, this is not sufficient (see Criterion 12.1).

Criterion 12.3 – FIs are not required to apply the relevant requirements of criteria 12.1 and 12.2 to family members or close associates of all types of PEP.

Criterion 12.4 – Insurance companies are obliged entities: ROM, art. 4. They are required to implement additional measures when faced with high customer risk, as well as identify and verify beneficial ownership: ROM, art. 17/A. Furthermore, life insurance policy holders (insurers) are required to disclose the beneficiary of insurance policies to insurance companies: TCC, art. 1493(2). MASAK has issued communiqués for the insurance sector, including in relation to risky individuals or organisations (although, none of these communiqués explicitly references PEPs or obligations relating to life insurance policies and PEPs). There is no requirement that, where higher risks are identified, FIs must inform senior management before the payout of the policy proceeds, conduct enhanced scrutiny on the whole business relationship with the policyholder, or consider making an STR.

Weighting and Conclusion

There is no specific reference to or obligation on FIs relating to foreign or domestic PEPs.

Recommendation 12 is rated non-compliant.

Recommendation 13 – Correspondent Banking

In its 3rd MER, Turkey was rated non-compliant with these requirements (para. 265 – 266, 277).

Criterion 13.1 – In relation to cross-border correspondent banking and other similar relationships, FIs are required to do the following (ROM, art.23.1):

- a) obtain, by making use of publicly available resources, reliable information on whether the respondent FI has been subject to a ML/TF investigation or been sanctioned; its business field; reputation; and the adequacy of its supervision. The language does not cover the need to understand fully the nature of the respondent’s business.
- b) assess the respondent institution’s AML/CFT controls;
- c) obtain approval from senior management before establishing new correspondent relationships; and
- d) clearly understand the respective AML/CFT responsibilities of each institution.

Criterion 13.2 – With respect to “payable-through accounts,” FIs are required to satisfy themselves that the respondent bank:

- a) has performed CDD obligations on its customers that have direct access to the accounts of the correspondent bank: ROM, art. 23(d).; and
- b) is able to provide relevant CDD information upon request to the correspondent bank: ROM, art. 23(d).

Criterion 13.3 – FIs are prohibited from entering into or continuing correspondent relationships with shell banks, as well as banking relationships with banks where there is doubt as to whether or not the bank permits their accounts to be used by shell banks: ROM, art. 23(2).

Weighting and Conclusion

There is a minor gap regarding understanding fully the nature of the respondent’s business.

Recommendation 13 is rated largely compliant.

Recommendation 14 – Money or Value Transfer Services

In its 3rd MER, Turkey was rated partially compliant with these requirements (para. 452 - 456). The key deficiencies primarily related to limitations identified within other criteria, including with FIs and customer due diligence, PEPs, new technologies and record keeping.

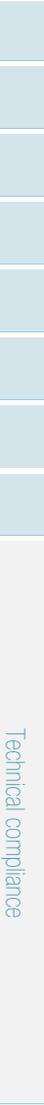
Criterion 14.1 – Money or value transfer services are described as a “payment service:” Law 6493, art. 12.1. Natural or legal persons intending to operate in the field of payment services must first obtain permission from the Banking Regulation and Supervision Agency (BRSA), in accordance with applicable conditions: Law No. 6493, art. 14.1 and 14.2.

Criterion 14.2 – The supervision of payment systems is performed by BRSA. BRSA is also entitled to supervise the branches and agents of payment institutions or the entities to which activities are outsourced by these institutions: Law 6493, arts. 21.1 and 21.2. The investigation and prosecution of unlicensed individuals and entities is subject to written request by BRSA to the Chief Public Prosecutor’s Office. However, BRSA and MASAK lack a unit or mechanism specifically aimed at identifying unregistered providers. Instead, they rely on denunciations, which may be made to them on an ad hoc basis by outside parties, including law enforcement and financial institutions. BRSA may also become aware of unlicensed MVTS providers in the course of an examination. In regards to sanctions, real persons and officers of legal persons who act as a payment institution without the required licensing and registration are subject to imprisonment for one to three years and a judicial fine of up to 5 000 days (TRY 500 000 or EUR 84 000).

Table 1. Number of Denunciations by BRSA to the Public Prosecutor and Number of Suspected Violations per Annum (2016 - 2018)

| Crime | 2016 | 2017 | 2018 |
|---|------|------|------|
| Operating without license (Violation of Article 28 of the Law No.6493) | 1/1 | 8/29 | 1/1 |

Criterion 14.3 – MVTS providers, as licensed payment institutions, are subject to AML/CFT obligations, including monitoring for AML/CFT compliance: ROM, art. 4.1, Law No. 5549, art. 11 and ROM, Chapter 6. MASAK is designated as the supervisory authority: Presidential Decree No. 1, art. 231.1(i). MASAK, as the supervisory body, has the authority to ensure supervision of obligations within the scope of AML/CFT: Presidential Decree No.1, art. 231(1)(i). In the normal course of business, BRSA conducts examinations of MVTS providers, but these examinations are focused on prudential concerns. However, BRSA examiners are required to immediately report AML/CFT violations discovered in the course of this work to MASAK in writing: ROM, art. 40(1). MASAK may also request for examiners to inspect relevant MVTS providers on a case-by-case basis or under the scope of a supervisory program: ROM, art. 25(2).



Examiners are required to immediately report AML/CFT violations to MASAK in writing: ROM, art. 40(1) for AML/CFT purposes.

Criterion 14.4 – Payment institutions are required to maintain a current list of their agents and make the list publicly accessible on their website: ROPS, art. 13.2.

Criterion 14.5 – Payment institutions are required to set up internal control methods for the purposes of fulfilling AML/CFT obligations and preventing fraud. Payment institutions are also required to monitor their agents via a centralised system: ROPS, art. 13.6.

Weighting and Conclusion

The shortcoming mainly is related to identification of unlicensed providers. While Turkish authorities have the authority to act against this activity, there is a lack of a mechanism or unit specifically focused on identifying them.

Recommendation 14 is rated largely compliant.

Recommendation 15 – New Technologies

In its 3rd MER, Turkey was rated partially compliant with these requirements (para. 267 - 270). The key deficiencies primarily related to a lack of adequate AML/CFT measures concerning new technology risks and the establishment of non-face-to-face business transactions (other than for banks and brokers).

Criterion 15.1 – FIs are required to develop a risk management policy, which considers their business size, business volume and the nature of the transactions they conduct: ROC, art. 11. The objective of the risk management policy is broadly defined in as defining, grading, monitoring, assessing and reducing the possible risk exposure of FIs: ROC, art. 12. This article also addresses risk management activities under the policy, including in relation to service risk, and rating and classifying services, transactions and customers depending on risks. Service risk is defined in art. 3(c) as including risk exposure under non-face-to-face transactions or new products to be offered using developing technologies. FIs are also required to pay special attention to the risk of using facilities introduced by new and developing for ML/TF and to take appropriate measures for its prevention. While the language in the ROC and ROM explicitly covers the identification and assessment of new products, non-face-to-face transactions and new technologies, it does not explicitly cover new business practices, new delivery mechanisms and pre-existing products.

According to art. 12(1)(d) of the ROC, AML/CFT risk management activities of the financial institutions should carry out required development works through pursuing recommendations, principles, standards and guidelines established by international organisations related to issues under the scope of risk. The assessment team considers this provision is relevant but too obscure to be relied on as a means of fully meeting this criterion. The absence of specificity is mitigated by the language of risk management, non-face-to-face business and monitoring requirements (art.15) in relation to non-face-to-face business and to services that may become prone to misuse due to newly introduced products and technological developments.

NRA also highlights products, service and delivery channel risks, including risks emanating from non-face to face transactions in the financial sector. In addition,

MASAK has issued guidance for banking sector on new financial techniques. MASAK has also organised workshops with Turkish Banking Association and representatives of banks, e-money and payment institutions to increase awareness on new technological methods used in emerging threats.

Criterion 15.2 – See c.15.1. The provisions of the ROC and ROM mentioned at c.15.1 above address risk assessment in relation to new products and developing technologies; the gaps mentioned above also apply in the context of c.15.2 but, as in c.15.1, are also mitigated by the other provisions referred to in the ROC and the ROM. FIs are required to develop a risk management policy with the aim of defining, grading, monitoring, assessing and reducing the risk that they may be exposed to: art. 11, ROC. Risk management activities cover rating and classifying services, transactions and customers depending on risks: art. 12(1) of the ROC. In particular, monitoring and control activities should include risk-based control of services that may become prone to misuse due to newly introduced products and technological developments: art. 15(3)(ğ) ROC

Weighting and Conclusion

There are minor gaps due to lack of explicit requirements new business practices, new delivery mechanisms and pre-existing products.

Recommendation 15 is rated largely compliant.

Recommendation 16 – Wire Transfers

In its 3rd MER, Turkey was rated non-compliant with these requirements (para. 304 – 307 and 309).

Criterion 16.1 – FIs are required to verify the identity of customers when the amount of a single transaction or the total amount of linked transactions in wire transfers is equal to or more than TRY 2 000 (EUR 325): art. 5(1) of the ROM. In addition, FIs that send wire transfers are required to verify information regarding the originator (namely the name, surname, title of the legal person registered at the trade registry, the full name of other legal persons and unincorporated organisations; the account number or, where there is no account number, the reference number of the transaction; the address or place of birth or at least an identity number such as a passport or tax number for identifying the client): art. 24(1) of ROM. Banks are not permitted to make remittances for customers who have not provided their identity and tax number: art. 76 of Law No 5411.

a) Concerning originator information:

- Specified information on originators must be included in wire transfers: art. 24 of the ROM. This includes the name of the originator.
- This includes a requirement for a transaction reference number but not for the transaction reference number to be unique or to permit traceability of the transaction (although in practice this is the case). Since November 2018, a Unique End-to-End Transaction Reference Number (UETR) has been required by the CBRT Payment Systems Message Structures and Operation Types, (Message Standards in short), which is an attachment of the operational,

enforceable rulebook (see (b) below), to be included in messages, permitting traceability of each transaction.

- The relevant information is required.
- b) Concerning beneficiary information, a specific transfer message of the CBRT payment systems is used for TRY cross-border payments :
- The CBRT Payment Systems Message Structures and Operation Types (an operational rulebook attached to the CBRT Systems Operational Rulebook made under Law 1211, Law 6493 and the Regulation on Payment and Securities Settlement Systems Activities) requires the name of the beneficiary to be included on messages.
 - The CBRT operational rulebook also requires inclusion of the beneficiary's **account number**. *Since* November 2018 the Message Standards has required a UETR to be included in messages.

Criterion 16.2 – The ROM does not explicitly refer to batch files. However, the provisions specified in c.16.1 apply to all cross border wire transfer equal to or more than TRY 2 000 (EUR 325) whether they are processed in batch files or not.

Criterion 16.3 – Arts. 24 (originators) and 25 (beneficiaries) of the rulebook require wire transfers to include information regarding the originator/beneficiary (name, surname, and identity number or taxpayer identification number) irrespective of the threshold of TRY 2 000 (EUR 335): art. 5(1) of the ROM.

Criterion 16.4 – FIs are required to verify the identity of customers (and those persons who act on their behalf or for their benefit) in cases requiring a STR regardless of the monetary amount involved: art. 5(1)(d) of the ROM. The customer can be considered to be the originator.

Criterion 16.5 – See c.16.1 for the obligations on which information should be included on originator as part of a wire transfer. These provisions also apply to domestic transfers.

Criterion 16.6 – As indicated above, the relevant information accompanies the wire transfer.

Criterion 16.7 – The ordering FI is required to maintain all originator and beneficiary information collected for a period of eight years, in accordance with Recommendation 11: art. 8(1) of the Law No.5549.

Criterion 16.8 – The provisions of the ROM and Law No 5549 specified in c.16.1 are obligatory. Therefore it is not allowed to execute the wire transfer, if it does not comply with the requirements specified at criteria 16.1-16.7.

Criterion 16.9 – While Turkey does not have legal provisions explicitly referring to intermediary institutions in relation to information, which accompanies a wire transfer, the language of the ROM captures intermediary institutions by means of an official letter sent by MASAK to the Bank Association of Turkey; the Participant Banks Association of Turkey; the Turkish Capital Markets Association; the Central Bank of Republic of Turkey 27.12.2010 with the Ref.No.18214; the Central Registration Institution; and the Capital Market Board.

Criterion 16.10 – See c.16.9 for the provisions on intermediary institutions. The Turkish authorities have advised that all FIs taking part in a wire transfer chain are required to ensure that the relevant information accompanies the wire transfer, that under art. 8(1) of Law 5549 requires information to be retained for eight years and that there is no possibility at the technical level for information not to accompany a transfer. In addition, under art. 14-ç of the CBRT Payment Systems Rulebook the CBRT is obliged to retain information on messages processed by the system for a period determined by law and, in case of dispute, to provide the records to relevant parties and authorities. Also, under art.17-e the FI is obliged to keep all information for eight years. In addition, under art. 23 of Law No.6493, documents and records should be kept a period of minimum ten years.

Criterion 16.11 – In the event that a FI receives a wire transfer message, which does not include required originator information (see c.16.1), either it must return the message or it must complete the missing information through the FI who sent the message: ROM, art. 24. Thus, in practice the system does not allow for gaps in the required information as confirmed by the Turkish authorities and banks.

Criterion 16.12 – See c.16.9 to 16.11. Art. 15 applies monitoring and controls to information required to be placed in wire transfer messages, completing the missing information and updating the messages. Thus, in practice, the system does not allow for gaps in required information. Besides, article 24 of the ROM as regards originator information and the wider provisions in the ROC and ROM address the requirements.

Criterion 16.13 – See c.16.11 and 16.12. In the event that a beneficiary FI receives a wire transfer message, which does not include required originator information (see c.16.1), either it must return the message or it must complete the missing information through the FI who sent the message: art. 24 of the ROM. Similar requirements apply for the beneficiary information as per the CBRT Standards.

Criterion 16.14 – Art. 5(1) of the ROM provides that FIs must identify their customers or those who act on behalf of or for the benefit of their customers by receiving their identification information, verifying it when the amount of a single transaction or the total amount of multiple linked transactions is equal to or more than TRY 2 000 (approx. EUR 300) in wire transfers and maintain this information in accordance with R.11.

Criterion 16.15 – The framework does not include specific language addressing the criterion. However, the provisions and argumentation from c.16.11 onwards mitigate the absence of explicit language in meeting this criterion.

Criterion 16.16 – Art. 3 and 4 of the ROM apply the provisions of that instrument to MVTs providers. Under art. 4(1) the provisions apply to FIs and their branches, agencies, representatives, commercial proxies and similar affiliated units. Under art. 4(2) the provisions apply to branches, agencies, representatives, commercial representatives and similar affiliated units in Turkey of a head office abroad. Under art. 4(3), the provisions extend to branches, agencies, representatives, commercial representatives and similar affiliated units of head office in Turkey, when they operate abroad. Affiliated units include agents. The provisions of art. 4(3) apply to the extent that the legislation and competent authorities of the foreign jurisdiction allow.

Criterion 16.17 – See c.16.16. The requirement to report suspicion is analysed in R.20. Under art. 31 of the ROC compliance officers must evaluate information and findings

obtained through research that he/she has carried out to the extent of his/her power as well as the possibility of suspicion. Necessary information and documents must be requested from all units of the FI. There is no language explicitly covering the requirement of the criterion that information from both ordering and beneficiary sides should be taken into account to determine whether an STR has to be filed. However, the requirements of the ROC mentioned above mean that compliance officers would take into account information from the ordering and beneficiary sides of a wire transfer automatically.

Criterion 16.18 – The provisions analysed in c.6.4 and 6.5 apply to wire transfers.

Weighting and Conclusion

There are minor gaps regarding lack of explicit requirements for MVTs providers to consider information on both originator and beneficiary sides to determine whether an STR has to be filed and implementation of targeted financial sanctions.

Recommendation 16 is rated largely compliant.

Recommendation 17 – Reliance on Third Parties

In its 3rd MER, Turkey was rated non-compliant with these requirements (paras. 279 - 281).

Criterion 17.1 – Reliance on third parties is covered within the ROM and in a guidance paper issued by MASAK entitled “The Principle of Reliance on Third Parties”. FIs can establish business relationships or carry out transactions by relying on measures taken by another FI concerning the identification of the customer, the person acting on behalf of the customer, the beneficial owner, and information on the purpose of the business relationship or transaction: ROM, art. 21. In such circumstances, the responsibility remains with the FI relying on the third party.

- a) Art. 21(3) provides that the FIs establishing a business relationship or conducting a transaction by relying on third party shall immediately receive identity data on the customer from the third party. The concept of identification data includes all of the information collected on the relationship/transaction specified in chapter 3 of the ROM; in essence, this is all CDD information required by the ROM.
- b) Reliance on third parties is only permissible if certified copies of documents relating to customer identification from the third party are made available immediately when requested: ROM, art. 21(2)(b).
- c) FIs are required to ensure that third parties are subject to regulation and supervision in accordance with international standards: ROM, art. 21(2). In addition, under the same article, reliance is only possible when the FI ensures that the third party has taken measures that meet the requirements of customer identification, record keeping and the principles of CDD. Paragraph V of the guidance paper issued by MASAK provides that it should be ensured that the third party has taken necessary measures within the scope of CDD, particularly, customer identification; that it is subject to regulations and supervisions compatible with international AML/CFT standards.

Criterion 17.2 – Reliance on third parties is possible if the parties are residents abroad only if it is ensured that third parties have met a set of measures (e.g. customer

identification, record keeping and customer due diligence), and are also subject to AML/CFT regulations and supervision in accordance with international standards: ROM, art. 21(2)(a). Reliance on third parties cannot be applied in cases where the third party is resident in a risky country: ROM, art. 21(5).

Criterion 17.3 - There are no specific provisions for FIs that rely on a third party that is part of the same financial group. Instead, the same legal provisions that govern third party reliance are applicable: ROM, art. 21:

- a) CDD and record keeping requirements and programs against ML/TFTF are applied (see criterion 17.1)
- b) The implementation of these measures is supervised by a competent authority (see criterion 17.1).
- c) Reliance on third parties cannot be applied in cases where the third party is resident in a risky country (see criterion 17.2).

Weighting and Conclusion

All criteria are met.

Recommendation 17 is rated compliant.

Recommendation 18 - Internal Controls and Foreign Branches and Subsidiaries

In its 3rd MER, Turkey was rated partially compliant and non-compliant with these requirements (paras. 338 - 365). The key technical deficiencies were: there were no requirements for FIs to establish adequate internal audit procedures and policies in relation to TF; for securities firms to have AML/CFT related internal audit procedures and policies and for insurance companies to have internal controls, training and screening procedures. No requirement for internal controls for overseas branches and subsidiaries other than for banks; to pay particular attention when branches and subsidiaries were in non-compliant countries and to apply the higher of the home/host standards. There was no obligation to inform home supervisors when a foreign branch/subsidiary was unable to apply appropriate AML/CFT measures due to host country restrictions.

Criterion 18.1 – Banks³⁶, capital market brokerage companies, insurance and pension companies and the General Directorate of Post (in relation to its banking activities) are required to establish a compliance programme for AML/CFT purposes: ROC, art. 4. The compliance programme is risk-based and must ensure compliance with laws, regulations and communiques. It includes the development and implementation of institution-wide policies and procedures, risk management activities, monitoring and control activities, training activities, and internal audit: ROC, art. 5(1). When developing risk management policies, FIs must take into account the business size, business volume and the nature of transactions conducted: ROC,

³⁶ Excludes the Central Bank of the Republic of Turkey and Development and Investment Banks

art. 11. The purpose of the policy is to grade, monitor, assess and reduce the risk exposure of obliged entities.

There are additional requirements in some sector specific legislation. Payment institutions are required to set up internal control methods and to monitor their agents to fulfil AML/CFT requirements and prevent fraud: ROP, art. 13(6). Group A exchange offices are required to establish an effective internal control system, including a risk management system, in order to continuously check, audit and detect errors, fraud and irregularities with regard to all activities and prevent them: Communiqué 2018-32/45, art. 15(3).

- a) Banks, capital market intermediaries, insurance and pension companies and General Directorate of Post (for banking activities) are required to appoint a compliance officer and establish a compliance unit, with the executive being responsible for appointing the assigning the compliance officer and the unit: ROC, arts. 5(1) and 6(2). The compliance officer reports to the executive board or to one or more members of the board to whom the board has transferred its authority: art. 16 of the ROC. Other FIs are required to appoint a compliance officer at administrative (i.e. managerial) level.
- b) Compliance officers are required to not have committed serious crimes: ROC, arts. 17 and 30. In addition, there are educational requirements, citizenship requirements, managerial experience requirements and requirements to prevent a conflict of interest. The requirements cover only compliance officers and not all employees as required in the criterion. The gap is reduced by supervisory approaches (as opposed to what is required of FIs), as there are requirements for employees at managerial level to be fit and proper through the mechanisms identified at R.26. In addition, the Communiqué on Principles Regarding Licensing and Recordkeeping for Those Engaged in Capital Market Activities (VII-128.7) (Annex-1), requires persons working in publicly-held joint stock companies and capital market institutions to have qualifications.
- c) FIs are required to carry out training activities, based on a training policy: ROC, arts. 5(1) and 21. The policy must include the realisation of training activities, the determination of which staff will be trained and training methods. Art. 22 onwards cover training activities, training subjects, reporting of training results to MASAK and training by MASAK. Training activities must be reviewed and repeated periodically according to necessity (art. 22(3)). Annual internal audit reviews must cover whether training activities are sufficient and efficient: ROC, art. 26.
- d) Annual internal audit reviews are required: ROC, arts. 26 and 27. Deficiencies found as a result of internal audit must be reported to the executive board. It is not explicit that the internal audit function must employ/use staff not used in other functions and therefore that the units be separate to other functions. This is mitigated by the responsibilities placed on the internal audit function and reporting to the executive board. For most but not all types of FI there are provisions in instruments other than the ROC which suggest independence of the internal audit function. Under art.32 of Banking Law 5411 the internal audit units of banks must perform their functions in an impartial and independent manner. Under art. 3 of the Communiqué on Principles Regarding the Internal Auditing Systems of Brokerage Houses, internal audit must be conducted independently from the routine operations of the brokerage house. Under art. 13 of the

communiqué on Portfolio Management Companies and Activities of Such Companies, there must be an inspection unit independent from the daily activities of the company, employing inspectors working solely and exclusively in the unit, and reporting directly to and responsible to the Board of directors. Under art. 4 of the Regulation on Internal Systems of Insurance, Reinsurance and Pension Companies, internal audit shall report directly to the Board of directors and be administratively independent.

Criterion 18.2 – According to art. 4(2) of the ROC, the compliance program should cover foreign branches, agencies, representatives, commercial representatives and similar affiliated units of FIs whose head offices are in Turkey to the extent that the legislation and competent authorities of the country where they are located permit. However, there are no explicit requirements as set out in the criterion in respect of group-wide implementation of AML/CFT programmes and sharing of information by group level functions with branches and subsidiaries when relevant and appropriate to risk management.

Criterion 18.3 – Foreign branches, agencies, representatives, commercial representatives and similar affiliated units are required to implement AML/CFT measures consistent with the requirements under Turkish law to the extent that the legislation and authorities of the other country permit: ROM, art. 4(3). Majority-owned subsidiaries are deemed to be covered within the notion of ‘similarly affiliated units’.

Under art. 40(2) of the ROM, individuals within obliged parties with inspection authority provided by legislation (i.e. compliance officers and internal audit officers) should, through their units, inform MASAK of breaches. This would not seem to fully meet the language of the criterion on informing home supervisors where the host country does not permit the proper implementation of AML/CFT measures consistent with home country requirements. In addition, there is no requirement to apply additional measures to manage the risks.

Weighting and Conclusion

AML/CFT requirements for group wide implementation are not explicit on policies and procedures for sharing of information, provision at group level compliance of customer, account and transaction information and information and analysis of transactions or activities that appear unusual. No requirements for financial groups to apply additional measures and inform home supervisors if the host country does not permit the proper implementation of AML/CFT measures.

Recommendation 18 is rated partially compliant.

Recommendation 19 – Higher Risk Countries

In its 3rd MER, Turkey was rated non-compliant with these requirements (para. 312 - 314).

Criterion 19.1 – Risky countries are defined by the Ministry of Treasury and Finance as countries which do not have sufficient AML/CFT laws and regulations, do not cooperate on combating ML/TF or are considered risky countries by competent international organisations: ROM, art. 3. Where the FATF identifies a country as having ML/TF risks, a decision by the Ministry of Treasury and Finance is required

for that definition and its implications to have effect in domestic law. Obligated entities are required to pay special attention to business relationships and transactions with natural or legal persons, unincorporated organisations and citizens located in risky countries: ROM, art. 25. One or more enhanced measures are required under two circumstances: i) transactions within the scope of arts. 18, 20 and 25 and ii) high-risk situations identified in the framework of the implementation of the RBA: ROM, art. 26/A. ROC art.3 also requires enhanced measures for high-risk customers. Nevertheless, a gap exists due to lack of an explicit provision for FIs to take enhanced measures when called upon by the FATF unless defined by the Ministry.

Criterion 19.2 – Turkey is able to label countries as high-risk, triggering enhanced due diligence measures, when called upon to do so by the FATF and independently of any call by the FATF to do so, through the mechanism at the Ministry of Treasury and Finance (see criterion 19.1). In addition, the Ministry is authorised to determine other enhanced measures as needed (which could include countermeasures): art. 26A(2), ROM.

Criterion 19.3 – See c.19.1 and 19.2 and the ability of the Ministry of Treasury and Finance to define risky countries. MASAK is required to co-operate with domestic institutions and exchange information in the fulfilment of its duties: Presidential Decree No. 1. MASAK places information on its website about public statements made at FATF plenaries on the weaknesses in the AML/CFT systems of other countries. To-date web traffic indicates that obliged entities regularly visit the MASAK's website, particularly FIs. It also organises periodic meetings with representatives of the private sector.

Weighting and Conclusion

There is no explicit obligation for financial institutions to apply enhanced due diligence measures for countries when called upon by the FATF, unless such countries are defined as high-risk by the Ministry of Treasury and Finance.

Recommendation 19 is rated largely compliant.

Recommendation 20 – Reporting of Suspicious Transactions

In its 3rd MER, Turkey was rated partially compliant with these requirements (para 330-337). The main deficiencies were that no direct requirement to report STRs related to TF to the FIU, and the STR types were mainly related to high value transactions.

Criterion 20.1 – Obligated entities are required to report to the FIU of any transaction when any information, suspicion or reasonable grounds to suspect that the asset, subject to the transactions, is acquired through illegal ways or used for illegal purposes (Law 5549, art.4). Law sets forth the STR requirement in general framework, the scope of STR obligation related to TF is wider in the ROM where the suspicion includes assets suspected to be used for terrorist activities or by terrorist organisations, terrorists or those who finance terrorism (ROM, art.27). The reporting must be made within 10 days when the suspicion occurred (ROM, art. 28(1)). Any new information in relation to the reported transactions must be addressed to the FIU without delay (ROM, art. 28(3))

Criterion 20.2 – Obligated entities are required to report all suspicious transactions, including attempted transactions, regardless of the amount of the transaction (ROM, art. 27(1)(2)).

Weighting and Conclusion

All criteria are met.

Recommendation 20 is rated compliant.

Recommendation 21 – Tipping-Off and Confidentiality

In its 3rd MER, Turkey was rated largely compliant with these requirements (para.321-324). The main deficiency was related to the practice of some FIs in automatically suspending transactions that are the subject of an STR that may inadvertently alert the customer.

Criterion 21.1 – Natural and legal persons are protected by law from both civil and criminal liability for fulfilling their reporting obligations (Law 5549, art. 10(1)). The compliance officers, legal representatives of the obliged entities, their managers and personnel complying with the obligation of reporting suspicious are protected by the regulation (ROM, art. 29(4)). While no explicit requirement that the reporting should be made in good faith in the legislation and the regulation, there is a general requirement regarding good faith in TCL and Turkish Civil Law.

Criterion 21.2 – Obligated entities are prohibited by law from disclosing the fact that an STR or related information is being filed with the FIU except to supervisors and courts (Law 5539, art. 4(2)). The general provision about the prohibition of this disclosure is set in the law. The extension of prohibition covering the directors, officers and employees of FIs is regulated in the regulation (ROM, art. 29(1)(2)).

Weighting and Conclusion

All criteria are met.

Recommendation 21 is rated compliant.

Recommendation 22 – DNFBPs: Customer Due Diligence

In its 3rd MER, Turkey was rated non compliant with these requirements due to deficiencies in the scope of DNFBPs covered. In addition, the deficiencies noted for FIs in the legal framework also applied to DNFBPs. Further lawyers, accountants and other legal professionals were not considered as obliged entities.

Criterion 22.1 – In Turkey, casinos are forbidden by Law No.4302 for 1997. Turkish authorities maintain that TCSPs do not exist in Turkey as a separate category. Other DNFBPs are required to comply with the CDD requirements set out in Recommendation 10 in the following situations:

- a) Real estate agents when they buy and sell immovable for trading purposes and intermediaries of these transactions (ROM, art. 4(1)(n)).
- b) Dealers in precious metals and stones (ROM art. 4(1)(1)(k)).
- c) Notaries (Law 5549, art. 2(1)(d)).

- d) Accountants (ROM, art. 4(1)(t)).
- e) Independent audit institutions, which is authorised to conduct audit in financial markets (ROM, art. 4(1)(u)).

Lawyers are not covered in the AML/CFT framework. The deficiencies identified under R.10 like purpose and intended nature of the business relationship (criterion 10.6), legal person's business, its ownership and control structure (criterion 10.8), etc. also apply to DNFBPs. Additionally, DNFBPs are not required to adopt risk based approach for enhanced due diligence where ML/TF risks are higher (criterion 10.17).

Criterion 22.2 – DNFBPs are required to comply with the same record-keeping requirements as FIs – see analysis under R. 11. However, there is a scoping issue, as lawyers are not covered.

Criterion 22.3 and 22.4 There are no specific requirements for DNFBPs to comply with provisions covering PEPs and new technologies.

Criterion 22.5 (Not applicable) Third party reliance is not permitted for DNFBPs.

Weighting and Conclusion

Key deficiencies include non-coverage of lawyers under the AML/CFT framework, no specific requirements for DNFBPs to comply with provisions covering PEPs and new technologies.

Recommendation 22 is rated partially compliant.

Recommendation 23 – DNFBPs: Other Measures

In its 3rd MER, Turkey was rated non-compliant with these requirements due to the limited scope of DNFBPs. In addition, there was no requirement to nominate a compliance officer, to undertake in-house training, apply special attention to customers from countries that did not comply with the FATF Standards. There were also effectiveness issues.

Criterion 23.1 – DNFBPs are subject to the same STR reporting requirements as FIs, so the analysis in relation to R.20 equally applies to reporting DNFBPs. However, there is a scoping issue, as lawyers are not covered.

Criterion 23.2 and 23.3 – There are no specific requirements for DNFBPs to comply with the internal control and the high risk countries requirements.

Criterion 23.4 – DNFBPs are required to comply with the same tipping-off and confidentiality requirements as FIs. So the analysis in relation to R.21 equally applies to DNFBP. However, there is a scoping issue, as lawyers are not covered.

Weighting and Conclusion

Lawyers are not covered and there is no specific requirements for DNFBPs to comply with internal control and high risk country requirements.

Recommendation 23 is rated partially compliant.

Recommendation 24 – Transparency and Beneficial Ownership of Legal Persons

In its 3rd MER, Turkey was rated partially compliant with these requirement (para 492-505). The major deficiencies noted were limitations in accessing information from the trade registry in real time as it was paper-based and concerns about updating of the information. There was no obligation to declare the real beneficial owner or natural persons who ultimately control legal persons to the registry or other authorities. Bearer shares, even though *de facto* limited to companies not traded in the stock market, were also a matter of concern

Criterion 24.1 – The Turkish Commercial Code (TCC), art.124, provides that legal persons, which are commercial companies, may take five forms in Turkey: joint-stock companies, limited companies, general partnerships, commandite partnerships, and cooperative companies. The establishment, basic features and functioning of each of these companies, except cooperatives, are regulated in the TCC. Cooperatives are regulated: Law No. 1163. Other legal persons include NPOs (associations and foundations). Associations are governed under Turkish Civil Law No. 4721 and Associations Law No. 5253. Foundations are charities, formed under art. 101 of Law No. 4721 are also subject to Foundations Law No. 5737.

TCC provides the necessary framework for different forms of legal entities in Turkey, processes for their formation, basic features, etc. The information relating to legal entities is published online in the Trade Registry Gazette (ticaretsicil.gov.tr) and is publicly available. Similarly, commercial registry transactions are available in MERSIS (<https://mersis.gtb.gov.tr>). Furthermore, beneficial ownership information is obtained and recorded using other publicly available mechanisms, as further detailed in c.24.6.

Criterion 24.2 – The NRA has elements of a vulnerability assessment of the NPO sector. The risk of misuse of all types of legal persons operating in Turkey for ML/TF purposes is understood to some degree based on the limited cases of misuse of legal persons assessed for ML purposes. While Turkey considers its assessment is sufficient to justify a rating of low risk for legal persons, a detailed assessment of ML/TF risks associated with all types of legal persons created in Turkey is required.

Criterion 24.3 – The online MERSiS system can be accessed for information, such as the company name, date of incorporation, current status (active, in liquidation or inactive), whether the company is a single-member or multi-member company, registered address, commercial registry office where it is registered, names of authorised persons to represent the company and position of the authorised person. In addition, articles of association and other registration records are accessible at the website of the Trade Registry Gazette. Only general information about cooperatives and guidelines is publicly available in the KOOPBİS system. The DERBİS system (for associations) and VBYS (for foundations) are only available to public authorities.

Criterion 24.4 – Articles of association capture information about the company name, incorporation details, legal form and status, and company address. This is required to be registered with the trade registry. Furthermore, TCC, art. 31 requires any changes to be registered with the trade registry. TCC, art. 499 requires companies to maintain a share register to record the name, trade name and address of the owners of different types of shares.

Criterion 24.5 – TCC, art. 32, requires that registered information must i) fully reflect the actual situation, ii) not mislead third parties and iii) not contravene a public order. The registry director is obliged to examine whether the legal requirements for registration are met. Any changes to information that has already been registered is required to be updated within 15 days from the date of change: TCC, art. 31. Foundations are required to report any changes in address and managing body members within 15 days. Associations are required to maintain a member registration book and to notify the Department of Associations via DERBIS in cases of admission, termination and/or cancellation of members within 30 days of the last transaction date.

Criterion 24.6 – Turkey uses a combination of measures to ensure the determination of beneficial ownership information in a timely manner. Beneficial ownership information is primarily gathered from reporting entities, which have business relationships with legal persons. Turkey also uses a range of other mechanisms (e.g. trade registry gazette, MERSIS database, tax records and central registry agency's records) to trace beneficial ownership information of legal persons. This may allow beneficial ownership to be determined in a timely manner but as in many countries, there are difficulties and delays in obtaining the information when foreign legal persons and arrangements are part of the ownership/control structure.

Criterion 24.7 – Please refer to criterion 24.5 and 24.6. Also see criterion 10.7 and 10.10 for beneficial ownership information gathered by FIs. Turkey requires that registered information in its public databases are truthfully supplied and updated within 15 days of any substantive change. However, as beneficial ownership information is primarily gathered through reported entities (which may not have business relationships with all legal persons created in Turkey), the absolute requirement of the criterion that beneficial ownership information is accurate and as up-to-date as possible is not fully met.

Criterion 24.8 –

- a) There is no specific legal provision, which mandates that one or more natural persons resident in Turkey be authorised by the company, and accountable to competent authorities, for providing all basic and available beneficial ownership information.
- b) According to ROM obligations, FIs and DNFBPs are required to provide beneficial ownership information of legal persons to MASAK, as requested. However, there is no specific legal provision requiring that a DNFBP be authorised by the company, and accountable to authorities, for providing all basic and beneficial ownership information, as well as providing further assistance.
- c) MASAK has the power to request all kinds of information and documents from public institutions and organisations, natural and legal persons and unincorporated organisations: Presidential Decree No. 1, art. 231(1)(j).

Criterion 24.9 – The records in the trade register are kept indefinitely. Even if the company is closed, the relevant records must be kept by the registry directorate. FIs have separate record-keeping obligations (see R.11)

Criterion 24.10 – Trade Registry records are accessible online. MASAK has protocols with the Ministry of Trade to access MERSIS records. In this regard, MERSIS is one of

the most important projects of Turkey's ongoing efforts to digitise collected data, and it is one of the four basic databases designed for public electronic services. The information that public institutions need to access basic and beneficial ownership information is presented from a single point and the data registered in MERSIS is shared with 27 institutions. As noted, this is ongoing, with planned work to expand access to 12 additional institutions still ongoing. Furthermore, the Ministry of Trade is obliged to share information with the public prosecution and other LEAs, when requested. With regard to accessing beneficial ownership information through reporting entities, the AML Law, art. 7, authorises MASAK to request any kind of information from every public and private institution, natural and legal persons. Penal provisions exist for non-compliance. As regards other legal persons, MASAK, Turkish National Police and the Turkish General Command of Gendarmerie have direct access to the DERBIS and VBYS systems, in accordance with their respective signed protocols. Timely access will be impacted when for example, there are foreign ownership or control elements.

Criterion 24.11 – Turkey asserts that it uses other mechanisms, as identified by the country, to ensure that bearer shares are not misused for ML/TF. Only joint stock companies are allowed to issue bearer shares. The TCC, art. 484, requires that share certificates be issued either to the bearer or registered. Only the shares of joint stock companies that are publicly traded at an exchange (Borsa Istanbul) are recorded and monitored through the Central Securities Depository (MKK CSD) of Turkey, which is established under the provisions of the Capital Market Law (CML) and governed by its articles (Dematerialisation of Capital Market Instruments, art. 13, and MKK CSD of Turkey, art. 81) and relevant decrees of the CML. However, this mechanism does not fully address the possibility of misuse of bearer shares/warrants for ML/TF. The total volume of bearer shares issued by joint stock companies is less than 1% of total shares. There is currently a proposal to amend legislation to record owners of bearer shares in non-publicly traded companies, but no action had been taken at the time of the on-site visit.

Criterion 24.12 – Turkish legislation does not allow nominee shareholders and directors. Shareholders may only represent themselves in the general assembly meetings by giving a third person an authorisation through a notary public. The members of the board of directors are prohibited from attending board meetings through a representative. They must attend the meeting in person: TCC, art.390.

Criterion 24.13 – The quantum of administrative fines indicated under the TCC are too low (TRY 7 658 for failure to meet TCC, arts. 64 and 65 – approx. EUR 1180) and cannot be considered proportionate or dissuasive.

Criterion 24.14 – See Recommendations 37 and 40. In cases when MLA requests are received regarding basic or beneficial ownership information, the Ministry of Justice is the central authority to respond. The Revenue Administration also exchanges beneficial ownership information in tax-related matters. Whenever requested by its foreign counterparts, MASAK is also authorised to exchange relevant information.

Criterion 24.15 – Turkey does not have a dedicated process or mechanism to monitor the quality of assistance received regarding basic and beneficial ownership information. However, MASAK informs its counterparties about the quality of assistance provided when a feedback request is received. MASAK also provides

feedback in cases where the information received plays a key role in additional ML/TF related analysis.

Weighting and Conclusion

Key deficiencies relate to the lack of effective and dissuasive sanctions; lack of a comprehensive assessment of ML/TF risks associated with all types of legal persons created in Turkey; concerns regarding accurate and updated beneficial ownership information and its timely determination in all cases; concerns regarding bearer shares; and the lack of a mechanism to monitor the quality of assistance received.

Recommendation 24 is rated partially compliant.

Recommendation 25 - Transparency and Beneficial Ownership of Legal Arrangements

In its 3rd MER, Turkey was rated not-applicable with these requirements (paras. 506 - 509), as the concept of trusts do not exist under Turkish law.

Criterion 25.1 – Turkey is not a signatory to the Hague Convention on Laws Applicable to Trusts and their Recognition. There are no trusts governed under the laws of Turkey; nonetheless, in the case of professional trustees providing services to trusts governed under the laws of another country, Turkey is required to meet relevant obligations under Recommendation 25.

- a) Not applicable, given that there are no trusts governed under Turkish law.
- b) Not applicable, given that there are no trusts governed under Turkish law.
- c) Trustees are not defined under the AML/CFT Law, and professional trustees, providing services to trusts, governed under the laws of another country are not specifically required to obtain and hold adequate, accurate, and current information on the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust or basic information on other regulated agents of and service providers to the trust for at least five years after their involvement with the trust ceases. There is a requirement for every legal person to register under the trade registry. Furthermore, legal persons are required to have a tax number and should file records with the Revenue Administration, as well. In general, all legal persons in Turkey are required to keep records for at least 10 years, according to the Commercial Code. Traders are required to keep necessary books and records, including commercial letters, for at least 10 years starting from the end of the calendar year in which the last record is made: TCC, art. 82. The Turkish Tax Procedure Law No. 213 also requires taxpayers to keep documentation for a period of five years after the end of the financial year to which the documentation relates: TCC, art. 253.

Criterion 25.2 – See c.25.1(c). Professional trustees are not required to keep accurate and up-to-date information, updated on a timely basis.

Criterion 25.3 – Turkey is not a signatory to the Hague Convention on Laws Applicable to Trusts and their Recognition. There are no trusts governed under the laws of Turkey. There are no prohibitions related to foreign trustees, which may

operate in Turkey. When foreign trustees initiate a business relationship with any reporting entity, they are subject to CDD measures under the ROM. According to Law No. 5549, art. 15, the failure to declare that a transaction is carried out for the benefit of another person is subject to imprisonment from 6 months to 1 year or judicial fine up to 5 000 days.

Criterion 25.4 – There are no legal impediments or enforceable means that would prevent competent authorities from gathering information relating to a foreign trust.

Criterion 25.5 – The powers of competent authorities referred to under R.27, 29 and 31 apply in this case.

Criterion 25.6 (a - c) – Trusts are not recognised in Turkey. Otherwise, MASAK has access to the trade registry gazette, MERSİS records and tax records, and is authorised to obtain every kind of information from legal and natural persons: Law No. 5549, art. 7. MASAK has access to a broad range of information and can obtain information on the legal owner and may access relevant beneficial ownership information. MASAK is authorised to exchange this information within the scope of its duties.

Criterion 25.7 – Trusts are not recognised in Turkey, and trustees are not legally liable for failure to perform the duties relevant to meeting their AML/CFT obligations (except for their failure to disclose their status). Only general sanctions exist for AML/CFT obligations violations (see preventive measures), which may not capture trustees operating on behalf of a foreign trust.

Criterion 25.8 – There is no specific legislation in Turkey subjecting professional trustees operating on behalf of a foreign trust to sanctions for non-compliance, except for failure to disclose their status (see c.25.3).

Weighting and Conclusion

Key deficiencies include the lack of specific obligations for professional trustees to maintain accurate and up-to-date information; trustees are not legally liable for failure to perform their duties, except for the failure to disclose their status as operating on behalf of another beneficiary, and there are limited sanctions.

Recommendation 25 is rated partially compliant.

Recommendation 26 – Regulation and Supervision of FIs

In its 3rd MER, Turkey was rated partially compliant with these requirements. The main deficiencies were related to the lack of ongoing offsite AML/CFT control other than limited reporting; lack of provisions that would prevent criminals or their associates from being beneficial owners of significant or controlling interests in FIs; some concerns on fit and proper regime in addition to the non application of the core principles for AML/CFT purposes in the insurance and securities sectors.

Criterion 26.1 – MASAK regulates and supervises the AML/CFT obligations of FIs through different agencies. Supervision of the AML obligations is carried out through the examiners assigned to conduct supervision (AML Law, art.11): Tax Inspectors, Customs and Trade Inspectors, Sworn-in Bank Auditors, Treasury Comptrollers, Insurance Supervisory Experts and Actuaries, Banking Regulation and Supervision Agency and Capital Markets Board Experts. Examiners who carry out AML/CFT

supervision in the name of MASAK are personnel of Banking Regulation and Supervision Agency (BRSA), Capital Market Board (CMB), and Ministry of Treasury and Finance (MoTF) as well as Ministry of Customs and Trade.

In addition, MASAK may prepare a supervision program in co-operation with the related supervisory authority and it has also authority to request from the supervisory authority to include the supervision of obligation in its supervision program. The authority which is to conduct supervision of obligations has to fulfil this request (ROM, art. 35(4)).

Criterion 26.2 – Core principles institutions and other FIs are required to be licensed in Turkey. BRSA, CMB and MoTF are licensing authorities for core principles FIs and other FIs. Though there is no explicit mention about debarring operations of ‘shell bank’ in Turkey, the existing regulations do not leave scope for starting operation of shell bank in Turkey. The following table sets out the licensing requirements in Turkey:

| Licensing Authority | FIs | Relevant Legislation |
|---------------------|---|---|
| BRSA | Banks | Banking Law No.5411 |
| | Financial leasing, factoring and finance companies | Financial Leasing, Factoring and Financing Companies Law No.6361 |
| | Payment and e-money institutions | Law No.6493 on Payment and Security Settlements Systems, Payment Services and Electronic Money Institutions |
| CMB | Capital market institutions, intermediary institutions, portfolio management companies, real estate investment companies, securities investment companies, venture capital companies, Other capital market institutions | Capital Market Law No.6362 (CML) |
| MoTF | Exchange offices | Communique No. 2018-32/45 attached to the Decree No. 32 Regarding the Protection of the Value of Turkish Currency |
| | Insurance and reinsurance companies | Insurance Law No.5684 |
| | Pension companies | Law No.4632 on Individual Pension Savings and Investment System |

Criterion 26.3 – Supervisory authorities (BRSA, CMB and MoTF) have measures to prevent criminals and their associates from holding a significant or controlling interest, or a management function, in a FI, as it is required that founders, qualified shareholders and managers operating in senior roles have not been convicted of crimes including financial crimes. Requirements extend to those directly or indirectly exercising control in case of banks, insurance, capital market institutions and other FIs. Supervisory authorities carry out fit and proper tests of FIs in the context of licensing requirements and procedure.

Criterion 26.4 –

- a) The referred consolidated supervision of the banks in terms of art. 66 of the Banking Law is not specific to supervision for AML / CFT purposes. Further, the information provided on the supervisory approach adopted by CMB and MoTF

with reference to AML / CFT requirements does not appear to be risk based. They are prudential supervision for their regulated entities which also cover AML / CFT aspects.³⁷

- b) The supervisory approaches of the sector specific supervisors namely BRSA, CMB, MoTF for other financial institutions are not risk based for the purpose of ensuring compliance to the AML / CFT rules and regulations. In addition, AML / CFT examination are part of their prudential annual inspections of the FIs supervised by them.

Criterion 26.5 –

MASAK as main authority within the Turkish AML/CFT regime, develops annual ML/TF programs or case-based supervision plans based on:

- the general risks of the sectors within the financial system through sectoral risk analysis and the risks of FIs in these sectors within the framework of certain criteria. The results of the ML/TF analysis conducted at the sectoral and organisational level are presented in the Strategic Plan drawn up annually. In addition, the analysis and evaluations carried out by other supervision authorities in their area of responsibility are taken into consideration by MASAK.
- the ML / TF risks present in Turkey do not seem to be taken into consideration, and
- degree of discretion allowed to the obliged entities in general and the FIs in particular are not covered in the risk based approach of MASAK and or the sectoral supervisors.

Criterion 26.6 – BRSA periodically reviews the risk profiles of FIs under their supervision. BRSA has been assessing the compliance level of FIs as a part of its regular prudential and conduct of business supervision process. Hence, AML/CFT compliance level of the banks are evaluated in an embedded process in the regular supervisions as part of CAMELS, covered under ‘M’, the management. However, no information is available on the ML/TF risk profile of the financial institutions supervised by CMB and MoTF.

Weighting and Conclusion

Key deficiencies include lack of fit and proper requirements for beneficial owners of exchange offices and supervisory approach being partly risk based.

Recommendation 26 is rated partially compliant.

Recommendation 27 – Powers of Supervisors

In its 3rd MER, Turkey was rated partially compliant with these requirements. The deficiencies identified were the lack of explicit provision for control of compliance with AML/CFT requirements for insurance companies, in addition to a limited effectiveness of the supervision system.

³⁷ Also see the latest IMF Financial Sector Assessment Program- Turkey’s Detailed Assessment of Observance of the Basel Core Principles for Effective Banking Supervision report [here](#).

Criterion 27.1 – MASAK, as the supervisory body, has the authority to ensure supervision of obligations within the scope of AML/CFT (PD 1, art.231(1)(i)). Supervision of the AML obligations is carried out through the examiners assigned to conduct supervision ((AML Law, art.11): Tax Inspectors, Customs and Trade Inspectors, Sworn-in Bank Auditors, Treasury Comptrollers, Insurance Supervisory Experts and Actuaries, Banking Regulation and Supervision Agency and Capital Markets Board Experts. Examiners have powers to request all kind of information, documents and they can also use the powers given to them by other laws³⁸ (ROM, art.36).

Criterion 27.2 – MASAK has the authority to conduct inspections of FIs through the examiners assigned to conduct supervision as described under *Criterion 27.1*. In addition, obliged entities including FIs should provide all necessary facilities including to ensure proper working conditions (in their premises) for examiners during the process (ROM, art. 36(3)).

Criterion 27.3 – When requested by MASAK or examiners, public institutions and organisations, natural and legal persons, and unincorporated organisations should fully and accurately provide all kinds of information, documents and related records any information or passwords necessary for accessing to or making these records decipherable, and render necessary convenience (AML Law, art.7).

Criterion 27.4 – MASAK have the possibility to take sanction decisions and apply sanctions to FIs for failure to comply with AML/CFT requirements. The range of penalties and administrative sanctions include monetary penalty, judicial sanctions, license cancellations (AML Law, art. 13-14). See analysis under Rec. 35.

Weighting and Conclusion

The key deficiency relates to the effectiveness and dissuasive nature of sanctions imposed by supervisors in line with Recommendation 35.

Recommendation 27 is rated largely compliant.

Recommendation 28 – Regulation and Supervision of DNFBPs

In its 3rd MER, Turkey was rated non - compliant with these requirements as no systems exist for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements.

Criterion 28.1 – (N/A) Not applicable as casinos are not operating in Turkey.

Criterion 28.2/28.3 – MASAK is the competent authority for monitoring and ensuring the compliance of the DNFBPs operating in Turkey with regard to the AML/CFT requirements (PD 1, art. 231(1)(i)). However, lawyers are not covered under the requirements.

Criterion 28.4 –

- a) MASAK's powers to monitor and ensure compliance are the same for FIs and DNFBPs. For details, see R.27.

³⁸ Such as Banking Law, Capital Market Law, Insurance Law, Tax Procedure Law.

- b) Real estate agents, dealers of precious metals and stones, notaries and accountants must apply to the relevant supervisory authority to have their officers and managers approved for undertaking their respective activities. In addition, if a person is sentenced to a penalty of imprisonment for an intentional offence, the person cannot be the administrator or inspector of a legal entity. Further, the offender cannot conduct any profession or trade, which is subject to the permission of a professional organisation, under his own responsibility as a professional or a tradesman (TCL, art. 53). Fit & proper requirements applied to these categories are: real estate agents (Regulation on Trade of Immovable, art.6); Dealers of precious metals and precious stones (Law No 5362, art. 6 and 7); Notaries (Law No 1512, art. 7) and Accountants (Law No 3568, art. 4 and 5). These requirements do not extend to associates of criminals from being professionally accredited or holding (or being the beneficial owner of) a significant or controlling interest in a DNFBP.
- c) A limited range of sanctions is available for failure to comply with AML/CFT obligations by DNFBPs (AML Law, art. 13 –14) (also see R.35).

Criterion 28.5 –

- a) MASAK developed sectorial risk assessments taking into account the diversity and the number of the sectors under DNFBP.
- b) The number of DNFBP obliged parties included by MASAK in their supervision program for 2018 does not appear to be based on the risk profile of the sector and/or the obliged entities.

Weighting and Conclusion

There is scope issue as lawyers are not covered in AML/CFT framework and other deficiencies relate to risk categorisation of all DNFBP constituents, absence of measures to ensure that associates of criminals are not professionally accredited, or hold (or be the beneficial owner of) a significant or controlling interest and lack of risk-based supervision.

Recommendation 28 is rated partially compliant.

Recommendation 29 - Financial Intelligence Units

In its 3rd MER, Turkey was rated largely compliant with these requirements (para. 171-190). The main deficiency was related to the limited scope of the reported obligation for TF in addition to effectiveness issues. Since the last evaluation, the FATF standards in this area were strengthened.

Criterion 29.1 – MASAK is the Turkish FIU, an administrative style FIU, organised within the administrative structure of the Ministry of Treasury and Finance and directly attached to the Minister. MASAK has the duty and power to collect data, receive suspicious transaction reports, analyse and evaluate them in the scope of prevention of laundering proceeds of crime and financing of terrorism (PD 1, art. 231(1)(e)).

Criterion 29.2 – MASAK serves as the central agency for the receipt of suspicious transaction reports filed by obliged entities in the scope of prevention of laundering proceeds of crime and financing of terrorism (PD 1, art. 231(1)(e)). The disclosures filed by reporting entities, include:

- a) Suspicious transactions reports that obliged entities are required to report to MASAK (Law 5549, art.4(1)).
- b) transactions, to which they are parties or intermediaries, exceeding the amount determined by the Ministry to MASAK (Law 5549, art.6).

Criterion 29.3 – In relation to obtaining and accessing information:

- a) MASAK has the duty and the power to request all kinds of information and documents from (...) natural and legal persons, and unincorporated organisations” (PD 1, art. 231(1)(j)). MASAK has the authority to request any information not only from obliged entities (reporting entities) but also from all natural and legal persons.
- b) MASAK has direct and indirect access to a wide range of financial, administrative and law enforcement information based on the access system given to MASAK to the data hold by public institutions and organisations (Law 5549, art. 9). Exceptions to this authority are public economic enterprises and the banks with public capital excluding the Central Bank of the Republic of Turkey. Further, Law 5549 (art.16 (2)) indicates that the Custom Administration is obliged to report to MASAK suspicious cross-border currency declaration cases. In addition, according to Circular (2016/1) issued by the Directorate General of Customs Enforcement, a copy of all Cash Disclosure Reports are to be sent to MASAK.

Criterion 29.4 – In relation to analysis undertaken by the FIU:

- a) MASAK conducts operational analysis. MASAK has the duty to analyse and evaluate STRs (PD 1, art.231(1)(e)). Any reports and information received related to the prevention of laundering proceeds of crime and financing of terrorism should be evaluated by the MASAK expert staff (PD 1, art. 231(6)). MASAK’s analysis includes the use of statistical and analytical methods to obtain financial intelligence from the various data collected and other reports (ROE, art. 3(b)). In addition, MASAK has the duty to examine the cases conveyed by Public Prosecutors and to fulfil the requests relating to the detection of the ML offence (PD 1, art. 231(1)(h)).
- b) MASAK provides strategic analysis as it has the duty to research the subject matters of Law 5549 (PD1, art. 231 (1)(g)). MASAK carries out general analysis studies to determine general trends based on STRs and financial data for the purpose of preventing and detecting ML/TF offences. In addition, MASAK is mandated to produce financial intelligence by applying data analysis techniques on MASAK data warehouse and data obtained and accessed from various sources as well as to produce study reports on typologies, trends, patterns and profiles (MASAK Internal Circular dated 23 March 2017).

Criterion 29.5 – MASAK has the duty and the power “to convey cases to the competent Public Prosecutor’s Office, where serious suspicion exists that a ML/TF offence has been committed” (PD1, art.231(1)(i)). In addition, the public prosecutor may conduct any kind of exploration either directly or through the judicial law enforcement forces under his/her command in order to investigate (CPL, art.161). For this purpose, the prosecutor may demand all kinds of information from all public servants. This would include tasking MASAK with conducting financial intelligence analysis.

All information subject to dissemination are considered as official writings and measures that need to be taken and procedures to be followed to protect information have been determined by MASAK Internal Circular dated 23 October 2017.

Criterion 29.6 – MASAK protects information in the following ways:

- a) MASAK has policies and procedures in place to govern the security and confidentiality of information including the handling, storage, dissemination and protection of, and access to, information.
- b) MASAK staff must obtain security clearances. In addition, employees of MASAK shall not disclose or make personal use of the information they access under penalty of law (Law 5545, art.22) and are obliged to sign a secrecy commitment declaration.
- c) No person other than MASAK staff is allowed to enter MASAK premises.

Criterion 29.7 – In relation to operational independence and autonomy:

- a) MASAK is an administrative style FIU, organised within the administrative structure of the Ministry of Treasury and Finance and directly attached to the Minister. PD 1 provides a legal base for MASAK to carry out its functions free from any undue influence or interference. The authorities and powers are granted directly by the PD and Law 5549 and Law 6415. No body or institution therefore has the authority or position to interfere with MASAK's operations
- b) MASAK has a co-ordination role to exchange views and information for the prevention of the laundering of proceeds of crime (PD 1, art. 231(1)(a)). In addition MASAK is authorised to exchange information and documents with its foreign counterparts and to sign Memorandum of Understanding for those matters not included in the nature of an international agreement (PD 1, art. 231(1)(m)).
- c) While MASAK resides within the Ministry of Treasury and Finance, MASAK has distinct core functions from the Ministry and has specific duties and powers (PD1, art. 231).
- d) Article 231 (1) k) of Presidential Decree No.1 grants MASAK the authority to request temporary assignment of personnel from other public institutions and organisations to MASAK, when their knowledge and expertise is necessary. In addition, MASAK is in a position to obtain and deploy the resources needed to carry out its functions.

Criterion 29.8 – MASAK has been a member of the Egmont Group since 1998.

Weighting and Conclusion

All criteria are met.

Recommendation 29 is rated compliant.

Recommendation 30 – Responsibilities of Law Enforcement and Investigative Authorities

In its 3rd MER, Turkey was rated partially compliant with these requirements (para. 191 – 203). This was mainly due to the very low number of ML convictions and the poor level of awareness of the public prosecutors and the judges on ML matters. This raised effectiveness issues, which are not assessed in this section under the 2013 Methodology. There are also significant changes in the standard.

Criterion 30.1 – In Turkey, the public prosecutor has the responsibility to investigate ML, associated predicate offences and TF, given that he is responsible to investigate all crimes (CPL, art. 160(1)). The public prosecutor may conduct any kind of research either directly or through the judicial security forces under his command. These authorities are security officials carrying out investigations in police, gendarmerie, customs administration and coast guard (CPL, art. 164(1)).

Criterion 30.2 – See c.30.1. In addition, the public prosecutor may conduct any kind of exploration either directly or through the judicial law enforcement forces under his/her command; in order to investigate the factual truth (CPL, art.161). For this purpose, the prosecutor may demand all kinds of information from all public servants. In addition, all police units responsible for investigating predicate offences in Turkey under the command of the public prosecutor and upon the order of the public prosecutor, are able to pursue parallel financial investigations related to ML regardless of where the offence occurred.

Criterion 30.3 – Where there are strong grounds for suspicion that there are proceeds of crime identified during the course of an investigation, the public prosecutor has the right to seize such proceeds (CPL, art. 128). In doing so and depending on the case, a report from the BRSA, CMB, MASAK, Undersecretary of Treasury and the Accounting and Auditing Standards Authority can be prepared to identify all relevant assets. The report includes the identification, tracing and evaluation of property which is subject to seizure. In addition, such a report shall be prepared at the latest in three months and that the period could be extended for two months when special reasons require.

Criterion 30.4 – Where there are strong grounds for suspicion that there are proceeds of crime identified during the course of an investigation, the public prosecutor has the right to seize such proceed (CPL, art. 128). In so doing and depending on the case, a report from the Banking Regulation and Supervision Agency, Capital Markets Boards, Financial Crimes Investigation Board (MASAK), Undersecretary of Treasury and the Accounting and Auditing Standards Authority can be prepared to identify all relevant assets.

Criterion 30.5 – (N/A) Turkey has no specific anti-corruption enforcement authority. Corruption is investigated by the public prosecutor as being responsible to investigate all crimes in Turkey (CPL, art.160).

Weighting and Conclusion

All criteria are met.

Recommendation 30 is rated compliant.

Recommendation 31 - Powers of Law Enforcement and Investigative Authorities

In its 3rd MER, Turkey was rated largely compliant with these requirements (para. 208 – 211) due to effectiveness issues. There have also been changes to the standard.

Criterion 31.1 – Competent authorities conducting investigations of ML, associated predicate offences and TF have the powers to use compulsory measures for:

- a) The production of records held by FIs, DNFBPs and other natural and legal persons, as the public may demand all kinds of information from all public servants” (CPL, art.161).
- b) The search of persons and premises (CPL, art.116-122). These articles also address the authority to search third party premises to obtain evidence.
- c) Taking witness statements (CPL, art. 2, and 145-148).
- d) Seizing and obtaining evidence (CPL, art. 123, 127-132 and 134).

Furthermore MASAK, who can be tasked by the public prosecutor, has the power to request all kinds of information and documents from public institutions and organisations, natural and legal persons, and unincorporated organisations (PD 1, art. 231(1j)).

Criterion 31.2 – Competent law enforcement authorities are able to use the following investigative techniques:

- a) Competent law enforcement authorities have the power to use undercover operations for TF investigations (TFL art. 4(7)). In addition, undercover operations are possible during the course of an investigation, when the investigation is related to a limited number of crimes listed in art. 139 CPL. This list does not include ML and all the predicate offences unless it is related to organised crime. .
- b) Intercepting communications is possible during the course of an investigation or prosecution conducted in relation to a crime (CPL, art. 135). This authority is restricted to certain crimes (including the ML & TF offence), however some predicate offences are not listed as a crime where intercepted communications are allowed for obtaining evidence. Authorities state that interception of communications is possible for associated predicate offences as part of ML investigations.
- c) Accessing computer systems is possible, as competent authorities are able to obtain permission to search computers, computer systems and computer files used by the suspect to obtain evidence in a criminal investigation (CPL, art. 134). In addition, accessing computer systems of third parties is possible (CPL, art.117).
- d) Controlled delivery is granted to competent authority for seriously organised smuggling activity (Law 4208, art.10). However, no similar technique appears to be granted for ML, TF, or predicate offences investigations other than seriously organised smuggling activity.

Criterion 31.3 – MASAK, who can be tasked by the public prosecutor, has the power to request all kinds of information and documents from public institutions and

organisations, natural and legal persons, and unincorporated organisations (PD1, art.231(1)(j)). In addition, a general provision addresses secrecy pertaining to public officials relating to evidence obtained and analysed during the course of an investigation (Law5549, art. 22), which covers the process to identify assets.

Criterion 31.4 – The public prosecutor, as the authority responsible to investigate all crimes in Turkey (CPL, art.160), is able to ask for all relevant information held by the FIU, as he has the power to demand all kinds of information from all public servants (CPL, art. 161).

Weighting and Conclusion

Turkey has some minor deficiencies as regards the range of investigative techniques that competent authorities can use for ML and predicate offences.

Recommendation 31 is rated largely compliant.

Recommendation 32 – Cash Couriers

In its 3rd MER, Turkey was rated largely compliant with these requirements (para.214-227). The main deficiency was the non-issuance of the regulations implementing the new disclosure requirement in addition to some concerns related to effectiveness.

Criterion 32.1 – Turkey has implemented a hybrid system; a disclosure and a declaration system for the physical cross-border transportation of Turkish currency, foreign currency or instruments³⁹. Passengers shall declare Turkish currency and foreign currency and instruments for the purpose of exchange control as described in c.32.2. In addition, passengers making a physical cross-border transportation of Turkish currency, foreign currency or instruments shall disclose them fully and accurately upon the request of Customs Administration. Turkey has measures in place to deal with the cross-border transportation of Turkish currency, foreign currency or instruments through mail and cargo.

Criterion 32.2 – Turkish currency and the instruments enabling payments in Turkish currency exceeding TRY 25.000 (EUR 3 650), foreign exchange exceeding EUR 10 000 and its equivalent must be declared for outgoing cross border transportation to the customs administration by Cash Declaration Form (Circular, 2016/1 2.1(1)). This provision intends to protect the value of the Turkish Currency. This provision is applicable to that “carried by passengers physically, in their baggage or vehicles”. Incoming cross border transfers of Turkish currency, foreign currency or instruments related to export payments, profit obtained from transit trade, foreign capital and cash obtained from other origins, should be declared to the Customs administration. Cash transfers to Turkey relating to personal capital and liabilities such as gifts, donations, dowry and other transfers detailed within Decree No.32 on the protection of the value of Turkish Currency and the Decree on Regulation and Supervision of Foreign Trade of Rough Diamond must be transferred to the country only through the banking system.

³⁹ Turkish currency instruments and foreign currency defined in Decree 32, art.2, covers Turkish money and all kind of instruments and means enabling payments in Turkish currency such as commercial and ordinary bills, letters of credit, credit cards, traveller cheques, remittances and letters in addition to foreign currency banknotes.

Criterion 32.3 – Travelers making a physical cross-border transportation of Turkish currency, foreign currency or instruments ensuring payment by them, shall disclose them fully and accurately upon the request of Customs Administration (Law 5549, art.16(1)). The passengers to be requested to disclose is chosen as a result of risk analysis carried out by the customs administration or by sampling method. While choosing the passengers, it is not considered whether the passengers made declaration or not (Cash Controls Circular, art.1.2(1)). Where inaccuracies arise in the disclosure further detail may be sought and disclosure filed.

Criterion 32.4 – Upon discovery of a false or misleading disclosure or failure to disclose, passengers are required to give information about identity, profession or occupation, address of residence, destination address and telephone number, the values with passengers concerning their type, quantity, amount, source, purpose of use and to whom they belong, detailed list of values held by the passenger determined by customs officer (ROM, art.42 and Cash Controls Circular, art. 1.2-2.2)). Upon discovery of a false or misleading declaration or failure to declare, passengers are required to give the same information requested for the disclosure system. (Cash Controls Circular, art. 2.1 (3)).

Criterion 32.5 – Persons who make a false disclosure are subject to an administrative fine equal to one tenth of the difference between the value carried along and the value disclosed (ROM art.43(2)) This amount appears to be small. In addition, values carried along by travellers may be sequestered by the customs Administrations. The case is conveyed to MASAK as suspicious. MASAK carries out analysis and evaluation work for the case. In addition, if custom officials consider the case to be criminal, they will convey the case to the Public Prosecutor immediately. Where a seizure was made without a warrant of a judge, the seizure shall be submitted to the judge who has jurisdiction for continued authorisation within 24 hours. Criminal sanctions can be applied including confiscation of the values and imprisonment. Penalties overall could be considered proportionate and dissuasive only when the case is dealt in the scope of other laws.

Criterion 32.6 – Information obtained through the declaration and disclosure systems is shared with MASAK (Law 5549, art.16 and ROM art. 43(1)). In addition, MASAK signed a protocol with the Ministry of Trade that ensures MASAK receives information on cross border movements of cash amounts electronically.

Criterion 32.7 – Border protection, customs regulation and migration policies are managed primarily by the Ministry of Trade and Ministry of Interior. Nationwide coordination mechanisms are in place to share intelligence in relation to cash couriers with other LEAs. Bulk transfer of cash is managed through the Central Bank and there is a single window exchange mechanism enabling exchange of information between the central bank and LEAs in this regard.

Criterion 32.8 –

- a) Customs can restrain currency or BNI when there is suspicion of any offence based on the general provision in CPL, art. 123 where “materials likely to be useful as means of proof or values of property which are subject to confiscation of goods, or confiscation of gains shall be secured”. In addition, where there is “strong” suspicion that ML/TF offences are committed, the asset values may be seized (Law 5549, art.17). In addition, Public Prosecutor may also make seizure decision in

urgent cases. The seizure applied without the judicial decision is submitted for the approval of the judge on duty within twenty-four hours at the latest.

- b) In cases no explanations are made or false or misleading explanation is made in the scope of declaration or disclosure, all values carried by the travellers are stopped and sequestered by the Customs Administration. MASAK is notified of cases which are deemed to be suspicious. (Law 5548, art.16(2) – ROM, art. 43).

Criterion 32.9 – The Turkish declaration and disclosure systems allows for international co-operation and assistance. Customs has MoUs with partners overseas enabling the sharing of information. Declarations and disclosures are filed on central system and retained by MASAK, which is authorised to exchange information including cash declarations and disclosures to international partners. Information is shared by the Directorate General of Customs Enforcement, Ministry of Trade through its Mutual Administrative Assistance Agreements signed with 66 countries and assistance may be sought/provided through the MLA route.

Criterion 32.10 – The use of data and information collected through disclosure and declaration systems is safeguarded by various principles; Protection of personal data, protection of information by Customs Administration and other laws.

Criterion 32.11 – Persons transporting funds or BNIs in relation to ML/TF or predicate offences may be subject to sanction for these offences. MASAK is required to open a file where a referral is made and currency or BNIs may be subject to seizure only where ‘strong suspicion’ exists (For more details see criterion 32.5). Where a criminal investigation is started measures under Rec 4 are engaged and enable the confiscation of currency or BNIs.

Weighting and Conclusion

Turkey has some minor deficiencies as regards to sanctions for false declaration/disclosure in addition to some shortcoming to sanctions to persons carrying out cross border transportations of currency or BNI related to ML/TF offences or predicate offences.

Recommendation 32 is rated largely compliant.

Recommendation 33 – Statistics

In its 3rd MER, Turkey was rated partially compliant with these requirements (para. 593). The main deficiencies were that no statistics on spontaneous international disseminations involving the FIU, limited information on cross border transportation of currency, statistics on inspections related to AML/CFT and the sanctions were not shared amongst the supervisors. In addition, statistics were not examined by agencies to evaluate trends and issues.

Criterion 33.1 –

- a) Turkey maintain comprehensive statistics regarding STRs received and disseminated including breakdown according to sectors;
- b) Turkey does not maintain comprehensive statistics on ML/TF investigation. While statistics on ML and TF prosecution and convictions were provided, Turkey was unable to provide full detail of Terrorism cases where TF has been an aspect of the prosecution or conviction without a manual review.

- c) Statistics for property frozen, seized and confiscated is held across a number of LEAs, MASAK and Courts with different systems in place each providing statistics for a single strand. This system does not provide a comprehensive statistics on property seized and confiscated in relation to ML/TF, requiring a laborious and delicate process to compile comprehensive numbers.
- d) Turkey maintain statistics on MLA requests for co-operation made and received.

Weighting and Conclusion

While some authorities do maintain comprehensive statistics, statistics maintained by law enforcement authorities are fragmented and not comprehensive.

Recommendation 33 is rated largely compliant.

Recommendation 34 – Guidance and Feedback

In its 3rd MER, Turkey was rated partially compliant with these requirements (para. 327 - 329). The key technical deficiencies were that MASAK did not provide specific feedback to obliged entities on STRs submitted, nor did it provide information on the trends and methods observed in the STRs received.

AML/CFT compliance booklets are available for a number of sectors, including banks, capital market intermediary institutions, futures brokerage companies and portfolio management companies, insurance, reinsurance and pension companies and insurance and reinsurance brokers, accountancy sector, real estate agents, dealers in precious metal and stones, precious metal stock intermediary institutions, factoring, financing and financial leasing companies, PTT limited with banking activity, exchange offices and others sector (such as historical artefacts, antiques and art works dealers).

Criterion 34.1 –

Guidance

MASAK is the main authority tasked with providing AML/CFT guidance to obliged entities. MASAK carries out its duty by publishing guidance and leaflets, and providing feedback through formal writings, workshops and its website. Between 2013-2018, MASAK circulated 12 General Communiqués⁴⁰ related to AML/CFT, published 12 booklets on the Turkish AML/CFT framework and liabilities of obliged entities as well as guidelines on STR submissions for banks, capital market intermediary institutions, insurance and pension companies, financing and financial leasing companies, exchange offices, payment service providers, electronic money institutions and other obliged entities. A general FAQ related specifically to AML/CFT responsibilities of obliged entities is also available on MASAK's public website.

Other guidance has also been circulated by MASAK to all obliged entities on beneficial ownership and CDD procedures; the protection, storage and sharing of personal data; and the preparation of corporate policy and obligations of banks within the domestic

⁴⁰ This includes 'core' communiqués such as Communiqués 5, 12 and 13, as well as 'lesser' communiqués that amend or make other minor changes to previously released communiqués.

AML/CFT framework. Furthermore, MASAK publishes some FATF guidance for obliged entities on its public website.

In terms of other competent authorities, the BRSA has circulated guidance on compliance with AML/CFT supervision carried out in banks in accordance with the Turkish AML/CFT framework. Also, the General Directorate of Relations with Civil Society circulated guidance on the prevention of TF abuse in the NPO sector. This does not cover the full range of competent authorities, supervisors and SRBs.

Feedback

MASAK provides feedback on STRs and publishes STR statistics, methods, trends and case studies through annual activity reports, guidelines and periodicals for the purpose of training: ROM, art. 30. Within this framework, obliged entities reporting suspicious transaction are informed by MASAK when the report is recorded. MASAK also provides feedback in face-to-face interactions with obliged entities, including via annual workshops and other trainings.

Workshops are used to inform compliance officers about AML/CFT developments and trends and to provide general feedback about STRs in terms of quality, quantity and other trends. Trainings cover a range of AML/CFT topics, including typologies and STR trends. Between 2013 and 2018, trainings were organised for all FIs including the Postal and Telegraph Corporation (PTT) and other DNFBPs, such as notaries, accountants and dealers in precious metals and stones. Separately, MASAK also organises various seminars and conferences to provide further information, including case studies. Periodic emails to obliged entities on the results of STR analysis are circulated; annual activity reports are available on the MASAK website; and sanitised case studies are also published.

This does not cover the full range of competent authorities, supervisors and SRBs.

Weighting and Conclusion

There is scope deficiency as lawyers are not covered. Full range of competent authorities and SRBs are not involved in the establishment of guidance.

Recommendation 34 is rated largely compliant.

Recommendation 35 – Sanctions

In its 3rd MER, Turkey was rated partially compliant with these requirements (para. 449 - 450). The key technical deficiencies were the limited range of available sanctions; the level of fines was deemed to be ‘very low;’ and the absence of sanctions for senior staff in institutions where violations occur.

Criterion 35.1 – Core sanctions applicable to natural or legal persons that fail to comply with AML/CFT requirements in Turkey are found in AML Law, arts. 13, 14 and TF Law art. 15. The total fine for any given year imposed on FIs cannot exceed TRY 13 817 280 (EUR 2 272 578) and total fines imposed on natural persons cannot exceed TRY 500 000 (EUR 82 236). Furthermore, a statute of limitations restricts the ability to levy administrative fines to within five years from the date of violation of the obligation: art. 13.6, AML Law.

- Administrative fines of TRY 12 152 (EUR 1 998) are available for natural persons who fail to comply with obligations pertaining to CDD, STR filing and periodic reporting. This fine is doubled for any FI in breach of its AML/CFT obligations.
- Obligated entities that fail to comply with “training, internal control, control and risk management systems” obligations are given, at least, 30 days in order to remove deficiencies and take necessary measures. After this grace period, failing the removal of cited deficiencies, an administrative fine of TRY 12 152 (EUR 1 950) is levied. For financial institutions, this fine is applied twofold.
- Individuals, institutions and organisations that fail to comply with the obligations of electronic notification specified in art. 9/A of this Law are sanctioned with an administrative fine of TRY 13 816 (EUR 2 272) for each failure to comply. The total amount of administrative fine applied in one year cannot exceed TRY 345 420 (EUR 56 812).

In regards to “tipping off,” record keeping and providing information when requested, sanctions available include imprisonment from 1 to 3 years and a judicial fine up to 5 000 days (TRY 500 000 or EUR 82 236) for natural persons. Legal institutions that fail to provide information and documents upon request face the cancellation of their license to operate and confiscation of assets and gains: TCL, arts. 54, 55, 60.1 and 60.2.

Individuals who do not obey or who neglect or delay to implement asset freezing measures taken in pursuance to applicable TFS are punished by an imprisonment for a term of six months to two years or a judicial fine of TRY 3 600 (EUR 592) to TRY 73 000 (EUR 12 006), unless such act constitutes a serious offence requiring a heavier penalty⁴¹. In the case where the entity is a legal entity or a representative of a legal person; or a person, who is not the entity or representative, but undertakes a duty within the scope of that legal person’s operational framework, this legal person is punished by an administrative fine between TRY 14 356 (EUR 2 361) and TRY 143 600 (EUR 23 618). See analysis for NPOs under c.8.4(b).

Overall, the range of monetary sanctions available for failure to comply with AML/CFT measures are not always proportionate and dissuasive in all cases.

Criterion 35.2 – Individuals that have responsibility for AML/CFT obligations within legal entities, including directors and senior managers, may be held in full or in part personally liable for the administrative fine imposed on the obliged entity: Law No. 6098, art. 400. Furthermore, directors and senior management who do not conform to, or who neglect or delay to obey, asset freezing decisions taken in pursuance to UNSCR 1267/1989, 1988 and 1373 are punished by imprisonment for a term of six months to two years or a judicial fine (TRY 3 600 to TRY 73 000 - approx. EUR 500 to 11 050) unless such act constitutes a serious offence requiring a heavier penalty: TF Law, art.15 and TCL, art.52.

⁴¹ “*Conceptual aggregation*” is a general principle in the Turkish Criminal System. If a natural or legal person commits two distinct offences at the same time as a single act, the individual is punished according to the offence requiring a heavier penalty. For example, an individual that delays the implementation of asset freezing measures taken in pursuance to applicable targeted financial sanctions may also be considered as reaching the threshold for financing, aiding or abetting terrorism. Accordingly, the individual would be liable to sentencing under the heaviest sanction available.

Weighting and Conclusion

There is a scope limitation as lawyers are not covered under AML/CFT framework. Monetary sanctions for FIs/DNFBPs and sanctions for NPOs are not proportionate or dissuasive. There is a five-year time limitation concerning the right for supervisors to impose administrative fines.

Recommendation 35 is rated partially compliant.

Recommendation 36 – International Instruments

In its 3rd MER, Turkey was rated partially compliant with these requirements (540–545). The main deficiencies related to shortcomings in implementation of Vienna, Palermo and Suppression of TF Conventions. In addition, there were no specific arrangement for the implementation of S/RES/1373(2001), an aspect that is no longer assessed under this Recommendation.

Criterion 36.1 – Turkey has signed and ratified the Vienna Convention, the Palermo Convention⁴², the TF Convention and the Merida Convention.

Criterion 36.2 – Turkey has implemented the vast majority of the relevant provisions of the Palermo Convention, Vienna Convention, Merida Convention and the TF Convention. However, there are number of technical gaps with the relevant elements of the convention (see R3, R5, R.12, R.28, R.31).

Weighting and Conclusion

A number of minor technical gaps with the relevant elements of the conventions prevents full compliance with R.36.

Recommendation 36 is rated largely compliant.

Recommendation 37 - Mutual Legal Assistance

In its 3rd MER, Turkey was rated largely compliant with these requirements (para. 548 – 561). The main deficiency was related to the fact that dual criminality is required for mutual legal instances in certain instances, which would pose an obstacle for rendering assistance taking into account the limited scope of TF offence.

Criterion 37.1 – In addition to the bilateral and multilateral agreements on mutual legal assistance that Turkey is party to, Turkey has a legal basis in the form of International Judicial Co-operation in Criminal Matters Law (IJCL). While executing the request for judicial co-operation, the provisions of the Turkish Criminal Procedure Law shall apply if there are no relevant provisions within the IJCL or other laws (IJCL, art. 5).

⁴² The following components of the Palermo Convention were adopted by Turkey by laws No. 4800, 4803 and 4804 on 2003-02-04 and ratified by the Decree of the Council of Ministers No. 2003/5329 on 2003-03-18: (i) Protocol against the Smuggling of Migrants by Land, Air & Sea; (ii) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The component of the Palermo Convention - Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition – was adopted by Turkey by law No. 5095 on 2004-02-17 and ratified by the Decree of the Council of Ministers No. 2004/7097 on 2004-04-26.

Criterion 37.2 – IJCL identifies MoJ as the central authority. Directorate General for Foreign Relations and European Union within MoJ is responsible for MLA. MoJ uses a National Judiciary Informatics System (UYAP) to track and execute its work. The system is capable of filtering various files based on a coding system, which would allow for the prioritisation of case files. In addition, this system helps in communicating the requests to the judicial authorities in different locations in Turkey. It also helps to prioritise the requests that urgent cases are notified through UYAP system.

Criterion 37.3 – Turkey does not subject MLA requests to unreasonable or unduly restrictive conditions. The reasons for denying a request are as follows (IJCL, art. 4):

- The sovereign rights, national security, public order or other fundamental interests of Turkey are violated,
- The offence subject to the request is solely a military offence, thought crime, political offence or an offence connected with a political offence,
- There are convincing grounds that the person subject to the request would be exposed to an investigation or prosecution or be punished or be exposed to torture or ill-treatment because of his/her race, ethnic origin, religion, nationality, his/her connection to a certain social group or political opinions,
- Fundamental guarantees in relation to the right to defence are not granted in the requesting State.

Criterion 37.4 – Turkey does not refuse MLA requests solely on the basis that the offence involves fiscal matters (IJCL, art. 4). Secrecy or confidentiality does not constitute a ground for denying a request.

Criterion 37.5 – Turkey maintains the confidentiality of MLA requests, as IJCL indicates that while executing the request for judicial co-operation, the provisions of the Turkish criminal procedure law (TCPL) shall be applied, if there are no relevant provisions within the IJCL and TCPL addresses the secrecy of investigation (art. 157).

Criterion 37.6 – Article 4 of the IJCL outlines the grounds for possible rejection and lack of dual criminality is not such a ground unless it involves coercive action like search and seizure (article 8(1)(ç) of the IJCL).

Criterion 37.7 – Where dual criminality is required for MLA, the broadest possible interpretation is used and it is sufficient that both countries criminalise the conduct underlying the offence.

Criterion 37.8 – While executing the request for judicial co-operation, the provisions of the TCPL shall be applied if there are no relevant provisions within IJCL or other laws (see R.31) (IJCL, art. 5).

Weighting and Conclusion

All criteria are met.

Recommendation 37 is rated compliant.

Recommendation 38 – Mutual Legal Assistance: Freezing and Confiscation

In its 3rd MER, Turkey was rated partially compliant with these requirements (para.564 - 568). The main deficiencies that there was no specific provision for applying provisional measures to answer mutual legal assistance requests for search, seizure and confiscation except for reciprocity, that dual criminality may impede search, seizure and confiscation where the request is related to TF in cases which do not involve Turkey or its interests and no arrangement for coordinating seizure or confiscation actions with other countries.

Criterion 38.1 – Turkey has the ability to respond to requests made by foreign countries to identify, freeze, seize or confiscate property from, proceeds from, instrumentalities used in or for ML, predicate offences or TF or property of corresponding value as laid down in Rec 4, when Turkey is party to a convention or a bilateral agreement (Law 6706, art. 1). Turkey is party to many international and European MLA conventions, and concluded bilateral agreements with various countries where a set of provisions for identification, freezing, seizure or confiscation are included to take expeditious action.

Criterion 38.2 – The enforcement of foreign non-conviction based confiscation orders is not possible in Turkey. To render a decision related to confiscation in Turkey, an intentional offence should exist (TCL, art.54). This is a fundamental principle of Turkish domestic law. In the event of the death of a suspect, the law allows the continuation of proceedings and confiscation relating to material gain and other property subject to confiscation (TCL, art. 64).

Criterion 38.3 –

- a) Foreign judicial authorities may request to be present before Turkish judicial authorities during the execution of the proceedings within the scope of the request for legal assistance and indicates that the request shall be fulfilled if considered appropriate (IJCL, art. 8(1)). Besides, Turkey is a signatory to the European Convention on Mutual Assistance in Criminal Matters (ETS 30). Joint investigation teams may be formed in accordance with the Second Additional Protocol of the convention and the controlled delivery may be practised. Foreign judicial authorities may also participate in the execution of the seizure happening during these practices.
- b) Turkey has the mechanisms for managing and, when necessary, disposing the seized or confiscated assets. The Regulation on Property of Crime published in the Public Gazette on 23 March 2016 covers the procedures and principles with respect to the preservation, seizure, transfer, disposal, return, confiscation, destruction of the property of crime and the proceeds of crime and the use of the National Judiciary Informatics System (UYAP) during such procedures. Art. 18(ç) addresses the procedure for returning property to foreign nationals.

Criterion 38.4 – There is nothing in Turkish Law that prevents sharing of confiscated property with other countries. While no situations have occurred where sharing has taken place, examples of MLATs provided by Turkey contain clauses addressing provisions for sharing confiscated property.

Weighting and Conclusion

All criteria are met.

Recommendation 38 is rated compliant.

Recommendation 39 – Extradition

In its 3rd MER, Turkey was rated largely compliant with these requirements (para. 574 – 578). The main deficiency was related to the limited circumstances where the person will be prosecuted in Turkey if the extradition is refused on the ground of citizenship.

Criterion 39.1 – Turkey is able to execute extradition requests in relation to ML/TF without undue delay:

- a) ML and TF are extraditable offences under Turkish law, provided the upper limit of the sentence of imprisonment is at least one year according to both the law of the requesting State and Turkish law. ML and TF offences carry such a sentence in Turkey.
- b) Ministry of Justice is the central authority in extradition procedures. The Ministry of Justice uses a National Judiciary Informatics System (UYAP) to track and execute their work. The system is capable of filtering various files based on a coding system, which would allow for the prioritization of files. There is also the Circular dated 16 November 2011 and numbered 69/4, which is the guide for the practitioners on extradition.
- c) Turkey does not place unreasonable or unduly restrictive conditions on the execution of requests, and conditions in which extradition can be denied are clearly defined (IJCL, art. 11).

Criterion 39.2 –

- a) Turkish nationals are not eligible for extradition, with the exception of the obligations related to being a party to the International Criminal Court (IJCL, art.11).
- b) If the extradition request is refused on the ground of nationality, the relevant judicial authority (Public Prosecution Office) is notified for initiation of an investigation against the person sought to be extradited. In addition, in line with art. 6 of *European Convention on Extradition* and upon request of the country, cases are conveyed to Turkish judicial authorities without undue delay for initiation of a judicial investigation in the case where the extradition request is rejected on the ground of nationality.

Criterion 39.3 – In Turkey, the extradition request may be accepted for offences which require the upper limit of the sentence of imprisonment to be at least one year according to both the law of the requesting State and Turkish law, during the investigation or prosecution phase. If already convicted, the extradition request may be accepted if the imposed sentence is an imprisonment for at least four months (IJCL, art.10). Although dual criminality is required in some cases, Turkey takes a conduct based approach to dual criminality and indicates that this principle is practised in a flexible manner and it is rarely used as a ground for refusal. There is no requirement for the category of the offence to be identical in both countries and authorities can use

the description of criminal conduct in domestic law, which most resembles the crime being presented.

Criterion 39.4 – The extradition process is simplified when the person subject to the extradition request consents (IJCL, art. 17).

Weighting and Conclusion

All criteria are met.

Recommendation 39 is rated compliant.

Recommendation 40 – Other Forms of International Co-operation

In its 3rd MER, Turkey was rated largely compliant with these requirements. The deficiency raised was related to effectiveness.

General principles

Criterion 40.1 – MASAK is the authority to share information internationally (PD 1, art. 232(1)(l)(m) and 231(5)). In addition, key Turkish agencies, MASAK and the national police, are party to the most important international conventions for information exchange (Interpol and Egmont group). There are, however, no specific national legal provisions requiring the most rapid response possible.

Customs also has statutory authority to share information. BRSA is also a member of the BCBS. BRSA can exchange information only for the specified purposes of training and audit (Law 5411, art. 98), and may not have sufficient authority to allow information exchange for any lawful purpose (and not just for specified purposes, for example, for an audit as mentioned in the law). Turkish authorities provided language from the standard template used for BRSA MOUs and the MOU template does appear to use language that is broader in scope.

Criterion 40.2 –

- a) MASAK and police have legal bases for providing co-operation. BRSA has signed MoUs with different parties. Customs also has statutory authority to share information.
- b) Nothing prevents the competent authorities from using the most efficient means to co-operate (Law 5411, art.98; Law 5684, art.29 and CML, art. 128).
- c) Competent authorities have clear and secure gateways, mechanisms or channels to facilitate, transmit and execute requests for assistance. Co-operation largely occurs through mechanisms established by Egmont and Interpol for example.
- d) Turkey provided no information to demonstrate a clear general process for prioritization and timeliness other than a reference to Egmont and Interpol rules. MOUs have a process for prioritizing requests.
- e) Officials are prohibited from disclosing information (Law 5411 and 5549). “Officials are prohibited to disclose information and relevant confidentiality provisions are dispersed in (Law no 5411, 5549, 5684, 6362 and 6698).”

Criterion 40.3 – MASAK appears to rely largely on its Egmont authority, and has 52 additional MOUs. Turkish police have MOUs with another 102 countries. Customs

have signed 66 bilateral agreements with their counterparts. However, this applies primarily to law enforcement, rather than all competent authorities. Turkey has also signed a number of bilateral MOUs with Egmont and Interpol members. While these MoU are not needed as the statutory authority and membership in Egmont and Interpol are sufficient; unless other countries legislation require signing MoUs, Turkey believes that this would further reinforce co-operation between the relevant parties. Although Turkey does not consider MOUs a requirement to share information, BRSA and other supervisors share information subject to the principle of “reciprocity.” “In addition, while no restrictive manner exists while exchanging information other than principle of reciprocity, MASAK has 52 of these MoUs, and BRSA has 35, CMB has 35, Treasury has 4 bilateral MoUs, aside from multilateral MoUs signed under the rules of IOSCO and IAIS.

Criterion 40.4 – There is no impediment to provide feedback, on the use and the usefulness of the information obtained, to competent authorities from which they have received assistance, although there is no requirement to do so.

Criterion 40.5 – Turkey does not place unreasonable or unduly restrictive conditions the provision of information or assistance with regard to the grounds listed in this *Criterion*.

Criterion 40.6 – To ensure that information exchanged by competent authorities is used only for the purpose for which the information was sought, Turkey has cited the controls and safeguards based on the principles of international organisations and relevant articles of international conventions on safeguarding information, to which it is a signatory. Turkey has no additional specific provisions for this.

Criterion 40.7 – Competent authorities are required to maintain confidentiality of received information based on principles included in MoUs signed. CMB and BRSA consider confidentiality principles while exchanging information. IOSCO MMoU (art. 10-11) include similar provisions.

Criterion 40.8 – Presidential decree allows MASAK to make inquiries on behalf of foreign counterparts and exchange information with them. CMB is able to request information (CML, art.89). BRSA provisions (Law 5411, art.98) allow for information exchange only for audits, training, and personnel exchange. This is not wide enough and may preclude some sharing of information.

Exchange of information between FIUs

Criterion 40.9 – MASAK has an adequate legal basis for providing co-operation on ML, associated predicate offences and TF (PD 1, art.231).

Criterion 40.10 – When requested, MASAK informs its counterparts about how information received was used, as well as the results of the analysis carried out. In addition, in cases where the received information plays a key role in an ML/TF analysis, MASAK provides spontaneous feedback.

Criterion 40.11 – MASAK has the authority to exchange information with its counterparts and within the scope of its duties, it is able to exchange:

- a) information which it can access or obtain directly or indirectly; and
- b) other information which it can obtain or access, directly or indirectly, at the domestic level.

In addition, Turkish authorities consider the principle of reciprocity in information exchange fundamental to their legal framework.

Exchange of information between financial supervisors

Criterion 40.12 – MASAK has the authority to exchange information as an FIU as well as supervisory authority on AML/CFT issues. Other supervisory institutions (BRSA, CMB and Treasury) exchange information when requested by their counterparts within their field of responsibilities.

Criterion 40.13 – MASAK, as a supervisory authority on AML/CFT issues, can exchange information within the scope its duties. Likewise, other financial supervisory authorities can exchange information subject to reciprocity and non-disclosure conditions as long as reciprocity and equivalent confidentiality protection rules are ensured.

Criterion 40.14 – The BRSA (Law 5411, art.98) allows for the exchange with foreign counterparts of information on branches of foreign institutions operating in Turkey, any information “to conduct audits” and “provide training and ensure exchange of personnel.” but the provisions do not cover other purposes outside those specified circumstances. For CMB, the authority contained in CML article 128 appears sufficient. Internally, financial supervisors appear to have sufficient legal authority to exchange information.

Criterion 40.15 – MASAK's powers with regard to ensuring international co-operation encompasses exchanging supervisory information. MASAK can conduct inquiries on behalf of its foreign counterparts when a request is received from its counterparts. When it comes to other supervisory authorities: CML arts. 88 and 89, allowing the commodities supervisors to conduct inquiries on behalf of foreign partners, make no mention of that ability and do not appear to grant that authority. However, article 128 allows the exchange of supervisory information with foreign institutions, including related to the inspection of Turkey-based branches and headquarters. Turkey also cites its signature of the IOSCO MMoU this regard.

Article 29 of Law 5684 does appear to allow the insurance supervisor to conduct inquiries on behalf of foreign governments. Article 98 of Law 5411, as stated in previous criteria, appears to allow auditing on behalf of a foreign supervisor and exchange of information for the purposes of auditing, training, and personnel exchange only.

Criterion 40.16 – Turkey cited the regulation on monitoring and supervision as well as some international MMOUs (IOSCO and IAIS). CML articles 128 and 135 do seem to provide some protection in this regard to the extent they refer to the “principles of confidentiality,” although this is not specifically defined. Section VI of the draft BRSA MOU provided does seem to satisfy this recommendation, and to the extent BRSA shares via these MOUs it is likely operating in a manner compliant with this recommendation.

Exchange of information between law enforcement authorities

Criterion 40.17 – Turkish National Police can exchange information with its foreign counterparts via Interpol, Europol Department, CARIN, and foreign liaison officers. Fifty foreign countries have 131 police liaison officers in Turkey. Some of the exchanges are carried out via these personnel. Turkey also has 91 counsellors

assigned in 71 foreign countries and 2 international organisations. This membership requires countries to abide by the rules of these organisation. In addition to the activities of Interpol, Europol Department, the Anti-Smuggling and Organised Crime Department exchanges information via CARIN network. This network is widely used in information exchanges for asset tracing purposes with the asset recovery offices of the EU countries. Furthermore, Turkey has signed bilateral and mutual agreements and protocols with 102 countries' competent authorities on police co-operation and fight against terrorism, drug smuggling and other kinds of organised crime. However, there is no specific statutory authority for financial authorities or supervisors to share financial information with law enforcement cited, though, the ability of MASAK to collect this information under presidential decree 1 and then share it may satisfy this requirement. It is unclear from Turkey's submission whether Interpol membership is sufficient for law enforcement because Turkey does not cite any authority to share financial information with any law enforcement other than MASAK, such as the national police. Turkey appears to satisfy this requirement via law enforcement sharing through a MASAK pass-through. Turkish law enforcement also shares information through CARIN, through liaison officers.

Criterion 40.18 – Turkey is a member of Interpol and the Interpol procedure is followed, except for requests that require an MLAT request or for customs information. There is no impediment to using investigative techniques available to Turkish authorities for this purpose.

Criterion 40.19 – Law 6706, article 1(3) allows law enforcement to choose investigative methods, which would imply the ability to form joint task teams Turkish authorities provided examples of joint investigative team formation, indicating that Turkey has sufficient legal authority in this regard.

Exchange of information between non-counterparts

Criterion 40.20 – Competent authorities cannot exchange information indirectly with international non-counterpart authorities, however any diagonal exchange of information is secured through MASAK. MASAK's procedure is to route all requests to the counterpart agency of the requestor. In addition, the regulation on financial structure allows sharing between the insurance supervisors and "audit authorities" only. Similarly, the citations for the authority of BRSA and CMB apply to sharing with counterparts.

Weighting and Conclusion

Minor shortcomings exist in Turkey's compliance to Rec.40, as mainly there is a lack of provisions with regard to the timeliness of responses, some limitations in the purposes for which financial supervisors can share information and no specific requirements to prevent the misuse of information.

Recommendation 40 is rated largely compliant.



Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations

| Recommendations | Rating | Factor(s) underlying the rating |
|---|--------|--|
| 1. Assessing risks & applying a risk-based approach | LC | <ul style="list-style-type: none"> • Scope issue: lawyers are not covered • Risk assessment obligations for FIs do not explicitly cover delivery channels • No specific requirement for DNFBPs to apply enhanced measures to risks identified by the Ministry or by itself, except for certain risky transactions • No specific mechanism to share information on the results of risk assessment to all obliged entities |
| 2. National co-operation and co-ordination | LC | <ul style="list-style-type: none"> • No overarching, national policies to combat ML/TF informed by the risks |
| 3. Money laundering offences | LC | <ul style="list-style-type: none"> • The definition of ML is not totally in line with the Conventions as act of concealing and disguising assets requires a specific intention • The sanctions applied to the legal persons are not fully dissuasive |
| 4. Confiscation and provisional measures | C | <ul style="list-style-type: none"> • The Recommendation is fully met |
| 5. Terrorist financing offence | LC | <ul style="list-style-type: none"> • The sanctions applied to the legal persons are not fully dissuasive |
| 6. Targeted financial sanctions related to terrorism & TF | PC | <ul style="list-style-type: none"> • No mechanism in Turkey for identifying targets for designation on its own in regards to UNSCRs 1267/1989 and 1988 and 1373 • No implementation without delay |
| 7. Targeted financial sanctions related to proliferation | NC | <ul style="list-style-type: none"> • Lack of legal basis to implement UNSCRs related to Iran • No implementation without delay • The limited scope of the assets |
| 8. Non-profit organisations | PC | <ul style="list-style-type: none"> • Lack of specific procedures to periodically review NPO risk, to conduct outreach and guidance to NPO, • Lack of specific procedures to work with NPOs to develop best practices on preventing TF abuse • Supervision applied to NPOs are not focused on TF and are aimed primarily at preventing fraud and mismanagement |
| 9. Financial institution secrecy laws | C | <ul style="list-style-type: none"> • The Recommendation is fully met |
| 10. Customer due diligence | LC | <ul style="list-style-type: none"> • lack of requirements for FIs to consider beneficiaries as a risk factor • Lack of explicit reference to all parties to a legal arrangement for conduct of CDD by FIs • Requirement to not to open account or terminate business relationship applying only in case of suspicion relating to customer identification, rather than all relevant CDD measures |
| 11. Record keeping | C | <ul style="list-style-type: none"> • The Recommendation is fully met |
| 12. Politically exposed persons | NC | <ul style="list-style-type: none"> • No specific reference to or obligations on FIs relating to foreign or domestic PEPs |
| 13. Correspondent banking | LC | <ul style="list-style-type: none"> • Minor gap regarding understanding fully the nature of the respondent's business |
| 14. Money or value transfer services | LC | <ul style="list-style-type: none"> • Lack of specific mechanism aimed at identifying unregistered MVTS providers |
| 15. New technologies | LC | <ul style="list-style-type: none"> • Lack of explicit requirements for FIs on new business practices, new delivery mechanisms and pre-existing products |
| 16. Wire transfers | LC | <ul style="list-style-type: none"> • Lack of explicit requirements for MVTS providers to consider information on both originator and beneficiary sides to determine whether an STR has to be filed • Gaps regarding implementation of targeted financial sanctions |
| 17. Reliance on third parties | C | <ul style="list-style-type: none"> • The Recommendation is fully met |
| 18. Internal controls and foreign branches and subsidiaries | PC | <ul style="list-style-type: none"> • Requirements not explicit on policies and procedures for sharing of information, provision at group level compliance of customer, account and transaction information and information and analysis of transactions or activities that appear unusual • No specific requirements for financial groups to apply additional measures and inform |

| Recommendations | Rating | Factor(s) underlying the rating |
|---|--------|--|
| | | home supervisors if the host country does not permit the proper implementation of AML/CFT measures |
| 19. Higher-risk countries | LC | <ul style="list-style-type: none"> No explicit obligation for financial institutions to apply enhanced due diligence measures for countries when called upon by the FATF, unless such countries are defined as high-risk by the MoTF |
| 20. Reporting of suspicious transaction | C | <ul style="list-style-type: none"> The Recommendation is fully met |
| 21. Tipping-off and confidentiality | C | <ul style="list-style-type: none"> The Recommendation is fully met |
| 22. DNFBPs: Customer due diligence | PC | <ul style="list-style-type: none"> Scope issue: lawyers are not covered No specific requirements for DNFBPs to comply with provisions covering PEPs and new technologies |
| 23. DNFBPs: Other measures | PC | <ul style="list-style-type: none"> Scope issue: lawyers are not covered There is no specific requirements for DNFBPs to comply with internal control and high risk country requirements |
| 24. Transparency and beneficial ownership of legal persons | PC | <ul style="list-style-type: none"> Lack of effective and dissuasive sanctions Lack of a comprehensive assessment of ML/TF risks associated with all types of legal persons created in Turkey Mechanism to ensure that bearer shares/warrants are not abused for ML/TF do not fully address the concerns Lack of a specific mechanism to monitor the quality of assistance received |
| 25. Transparency and beneficial ownership of legal arrangements | PC | <ul style="list-style-type: none"> Lack of specific obligations for professional trustees to maintain accurate and up-to-date information Trustees are not legally liable for failure to perform their duties, except for the failure to disclose their status when operating on behalf of another beneficiary Limited sanctions for failure to comply with AML/CFT requirements |
| 26. Regulation and supervision of financial institutions | PC | <ul style="list-style-type: none"> Lack of fit and proper requirements for beneficial owners of exchange offices Assessment of risk profile of FIs not reviewed periodically Frequency and intensity of on-site and off-site AML/CFT supervision not entirely risk based |
| 27. Powers of supervisors | LC | <ul style="list-style-type: none"> The amount of financial penalty for failure to comply with AML/CFT requirements not in line with R.35 |
| 28. Regulation and supervision of DNFBPs | PC | <ul style="list-style-type: none"> Scope issue: lawyers are not covered Absence of measures to ensure that associates of criminals are not professionally accredited, hold or be the beneficial owner of a significant or controlling interest Range of sanctions for failure to comply with AML/CFT obligations for DNFBPs is limited Supervision of DNFBPs is not entirely on risk-sensitive basis |
| 29. Financial intelligence units | C | <ul style="list-style-type: none"> The Recommendation is fully met |
| 30. Responsibilities of law enforcement and investigative authorities | C | <ul style="list-style-type: none"> The Recommendation is fully met |
| 31. Powers of law enforcement and investigative authorities | LC | <ul style="list-style-type: none"> Not all the investigative techniques could be used by authorities in ML and predicate offences |
| 32. Cash couriers | LC | <ul style="list-style-type: none"> False disclosure sanctions are not proportionate nor dissuasive unless it's dealt in the scope of other laws Some shortcoming to sanctions to persons carrying out cross border transportations of currency or BNI related to ML/TF offences or predicate offences |
| 33. Statistics | LC | <ul style="list-style-type: none"> Statistics maintained by law enforcement authorities are fragmented and not comprehensive |
| 34. Guidance and feedback | LC | <ul style="list-style-type: none"> Scope deficiency: lawyers are not covered. Full range of competent authorities and SRBs are not involved in the establishment of guidance |
| 35. Sanctions | PC | <ul style="list-style-type: none"> Scope issue: lawyers are not covered Monetary sanctions for FIs/DNFBPs and sanctions for NPOs are not proportionate or dissuasive Statute of limitations restricts the ability to levy administrative fines to within five years from the date of violation of the obligation |

| Recommendations | Rating | Factor(s) underlying the rating |
|--|--------|---|
| 36. International instruments | LC | <ul style="list-style-type: none"> Some technical gaps with the relevant elements of the conventions |
| 37. Mutual legal assistance | C | <ul style="list-style-type: none"> The Recommendation is fully met |
| 38. Mutual legal assistance: freezing and confiscation | C | <ul style="list-style-type: none"> The Recommendation is fully met |
| 39. Extradition | C | <ul style="list-style-type: none"> The Recommendation is fully met |
| 40. International Co-operation | LC | <ul style="list-style-type: none"> Lack of provisions with regard to the timeliness of responses Some limitations in the purposes for which financial supervisors can share information No specific requirement to prevent the misuse of information |

Glossary of Acronyms⁴³

| | |
|--------|---|
| AC | Assessment Commission |
| AML | Anti-Money Laundering |
| ATL | Anti-Terror Law |
| BRSA | Banking Regulation and Supervision Agency |
| BTC | Board of Treasury Controllers |
| CBCFC | Co-ordination Board for Combating Financial Crimes |
| CBRT | Central Bank of the Republic of Turkey |
| CBT | Credit Bureau of Turkey |
| CBF | Cash Declaration Form |
| CDR | Cash Disclosure Report |
| CDD | Customer Due Diligence |
| CMB | Capital Market Board |
| CPF | Combating Proliferation Financing |
| CPL | Criminal Procedure Law |
| DNFBP | Designated Non-Financial Businesses and Professions |
| DPMS | Dealers in Precious Metals and Stones |
| DPRK | North Korea |
| EDD | Enhanced Due Diligence |
| FI | Financial Institution |
| FTF | Foreign Terrorist Fighter |
| GNAT | Grand National Assembly of Turkey |
| ISB | Insurance Supervision Board |
| LEA | Law Enforcement Agencies |
| MASAK | Financial Crimes Investigation Board (Turkish FIU) |
| MERSİS | Trade Registry Database |
| ML | Money Laundering |
| MLA | Mutual Legal Assistance |
| MOFA | Ministry of Foreign Affairs |
| MOI | Ministry of Interior |
| MOJ | Ministry of Justice |
| MOT | Ministry of Trade |
| MOTF | Ministry of Treasury and Finance |
| MOU | Memorandum of Understanding |
| MVTS | Money or Value Transfer Services |
| NICB | National Intelligence Co-ordination Board |
| NBFI | Non-Banking Financial Institution |
| NPO | Non-Profit Organisation |
| NRA | National Risk Assessment |
| NSC | National Security Council |
| PD | Presidential Decree |
| PEP | Politically Exposed Person |
| PF | Proliferation Financing |
| RBA | Risk-Based Approach |

⁴³ Acronyms already defined in the FATF 40 Recommendations are not included into this Glossary.

| | |
|-----------|---|
| ROA | Regulation on Association |
| ROC | Regulation On Program Of Compliance With Obligations Of Anti-Money Laundering And Combating The Financing Of Terrorism |
| ROF | Regulation on Foundations |
| ROM | Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism |
| ROTF | Regulation on the Procedures and Principles Regarding the Implementation of Law on the Prevention of the Financing of Terrorism |
| STR | Suspicious Transaction Report |
| SDD | Simplified Due Diligence |
| TBA | Turkish Banking Association |
| TCC | Turkish Commercial Code |
| TCL | Turkish Criminal Law |
| TCSP | Trust and Company Service Provider |
| TF | Terrorist Financing |
| TFS | Targeted Financial Sanctions |
| TNP | Turkish National Police |
| TRY | Turkish Lira |
| TNP (KOM) | Turkish National Police (Anti-Smuggling and Organised Crime Department) |
| UN | United Nations |
| UNSCR | UN Security Council Resolution |
| UYAP | National Judiciary Informatics System |

FATF



© FATF

www.fatf-gafi.org

December 2019

Anti-money laundering and counter-terrorist financing measures - Turkey

Fourth Round Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Turkey as at the time of the on-site visit from 5 - 21 March 2019.

The report analyses the level of effectiveness of Turkey's AML/CTF system, the level of compliance with the FATF 40 Recommendations and provides recommendations on how their AML/CFT system could be strengthened.