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Monitoring Report:

# The **Principles** of Public **Administration**

**TURKEY**

May  
2019

# **Monitoring Report:**

## **The Principles of Public Administration**

### **TURKEY**

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## LIST OF ABBREVIATIONS AND ACRONYMS

AAD	Administrative Affairs Directorate
CoG	centre of government
EC	European Commission
DGL	Directorate General for Labour
DGPP	Directorate General of Personnel and Principles
DOC	Directorate of Communications
HRM	human resource management
HRO	Human Resources Office
LCS	Law on Civil Servants
MoF	Ministry of Finance
MoFLSS	Ministry of Family, Labour and Social Services
MoJ	Ministry of Justice
MoL	Ministry of Labour and Social Affairs
MoTF	Ministry of Treasury and Finance
OECD	Organisation for Economic Co-operation and Development
OHAL	Olağanüstü Hâl (state of emergency, Turkish acronym)
OPS	Office of the Private Secretary to the President
RIA	Regulatory Impact Assessment
RPO	rules of procedure
SBD	Strategy and Budget Directorate
SPA	State Personnel Administration
TGNA	Turkish Grand National Assembly

## INTRODUCTION

This 2019 SIGMA Monitoring Report focuses on the policy development and co-ordination (PDC) and public service and human resource management (PSHRM) areas. This report, which follows up on the 2017 analysis and recommendations, first provides an overview of the state of play and main developments. It then presents a detailed analysis of each of the related *Principles of Public Administration*<sup>1</sup> in the assessed areas, measured against the indicators of the *Methodological Framework for the Principles of Public Administration*<sup>2</sup>, and closes with key recommendations.

Turkey has undergone transformational changes since the 2017 assessment<sup>3</sup>. A constitutional referendum was held on 16 April 2017 on 18 proposed amendments to the Turkish Constitution, including abolition of the office of the Prime Minister and replacing the existing parliamentary system of government with a presidential system. The constitutional change was concluded by the snap elections held on 24 June 2018, in which President Recep Tayyip Erdoğan was re-elected. Substantial changes in the institutional framework of the government have been made since July 2018 and were still ongoing during this assessment.

The main purpose of this assessment is to analyse changes in the PDC and PSHRM areas, although the focus of this study is very limited. First, the assessment addresses only three PDC Sub-principles and two Sub-principles in the PSHRM area. Second, only policy and legal framework analysis was conducted. Since governmental transformation is still ongoing, this assessment does not focus on actual practices. As a result, no sample files were collected from selected institutions to verify the application of policies and it was therefore not possible to calculate the total value of the Sub-principles.

The PDC area has changed significantly since the constitutional transformation that abolished the institution of Prime Minister and centralised the policy development and co-ordination functions under the Presidency. Due to the volume of changes required, not all of the necessary procedures have yet been established, nor have the relationships among the various stakeholders been fully settled. Thus, the policy development and co-ordination structure under the presidential system is still a work in progress.

In the PSHRM area, the main modification concerns the institutional framework of civil service co-ordination. The co-ordination of human resource management policy has been transferred from the Prime Ministry to the Presidency, while implementation will be the responsibility of the Ministry of Family, Labour and Social Services once the State Personnel Administration has been closed in July 2019. As with the PDC area, it will take some time before the new system is fully established and the effects of the transition can be assessed. In the recruitment area, there have been no major changes since the 2017 assessment. Indicators relating to termination of employment were not assessed, however, due to the ongoing effects of the State of Emergency.

SIGMA draws on multiple sources of evidence for its assessments and wishes to thank the Presidency for its collaboration in providing the necessary administrative data and documentation.

Focus areas for the 2019 Monitoring Report were selected jointly by the Organisation for Economic Co-operation and Development (OECD) and the European Commission (EC).

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<sup>1</sup> OECD (2017), *The Principles of Public Administration*, OECD, Paris, <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-2017-edition-ENG.pdf>.

<sup>2</sup> OECD (2019), *Methodological Framework for the Principles of Public Administration*, OECD, Paris, <http://www.sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-May-2019.pdf>.

<sup>3</sup> OECD (2017), *Monitoring Report: Turkey*, OECD, Paris, <http://sigmaweb.org/publications/Monitoring-Report-2017-Turkey.pdf>.

A large, stylized teal folder icon with rounded corners and a light blue tab on the left side. The text "Policy Development and Co-ordination" is written in white on the folder's surface.

## Policy Development and Co-ordination

## POLICY DEVELOPMENT AND CO-ORDINATION

### 1. STATE OF PLAY AND MAIN DEVELOPMENTS: JULY 2017-MARCH 2019

#### 1.1. State of play

With the referendum of 16 April 2017 and the presidential elections of 24 June 2018<sup>4</sup>, the transformation of the Turkish constitutional regime from parliamentary to presidential has resulted in changes of the legal framework defining the critical centre-of-government (CoG) functions and institutions. The Prime Ministry was abolished<sup>5</sup>, and the Presidency was reorganised<sup>6</sup>. The President assumed the power to approve Presidential Decrees “on the matters regarding executive power”<sup>7</sup> within limitations set by the Constitution<sup>8</sup>. The Grand National Assembly of Turkey (TGNA) is the sole responsible institution for enacting, amending and repealing laws<sup>9</sup>. The President can issue presidential decrees and decisions, while ministers can issue regulations<sup>10</sup>. At the time of this assessment, many systems are still in the process of transition from one governance model to another taking into account the volume of required changes.

Under the new governance system, all critical CoG functions<sup>11</sup> have been allocated to newly established institutions within the Presidency and ministries, except one for co-ordinating the preparation of the government sessions, since the Presidential Cabinet is not a formal body<sup>12</sup>. The Presidency elaborates guidelines on the key aspects of the policy-making process. Only two aspects are currently not covered by dedicated guidelines: development of policy proposals and conduct of public consultations<sup>13</sup>. Arrangements and procedures have not yet been formally institutionalised for co-ordinating and consolidating opinions on line ministries’ proposals between CoG institutions and within units of the Presidency. In practice, co-ordination of proposals for the annual Presidential Programme is carried out by the Strategy and Budget Directorate (SBD) of the Presidency.

The use of Regulatory Impact Assessment (RIA) in legislative drafting is required by legislation<sup>14</sup>, however is not applied in practice, because of the change of the governance system in which only the TGNA has the right to enact, amend and repeal laws. RIA is not applied on presidential decrees and decisions since it is not explicitly required by legislation regulating legislative drafting<sup>15</sup>. Guidelines<sup>16</sup> on the steps to be taken during an RIA has been annulled, and new guidelines have not been put in place.

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<sup>4</sup> Constitution change, Act No. 6771 of April 16, 2017.

<sup>5</sup> Constitution, Articles 109-114.

<sup>6</sup> Constitution, Article 106, followed by the Presidential Decree on the Presidential Organisation of the Republic of Turkey No. 1 of 10 July 2018, Official Gazette No. 30474.

<sup>7</sup> Constitution, Article 104.

<sup>8</sup> *Idem*.

<sup>9</sup> Constitution, Article 87.

<sup>10</sup> Constitution, Article 104.

<sup>11</sup> OECD (2017), *Principles of Public Administration*, Policy Development and Co-ordination chapter, Principle 1, OECD, Paris, <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-2017-edition-ENG.pdf>.

<sup>12</sup> As explained to SIGMA during an interview with representatives of the Presidency on 3 April 2019.

<sup>13</sup> There are dedicated Guidelines on Public Participation, however, they only set out the possible methods of public participation but they do not explain how they should be used while drafting policy proposals and regulations under the presidential system and the new decision making process within the executive branch.

<sup>14</sup> Council of Ministers (CoM) Decree on the Principles and Procedures for Drafting Legislation of 19 December 2005, Official Gazette No. 26083, Article 24.

<sup>15</sup> CoM Decree on the Principles and Procedures for Drafting Legislation of 19 December 2005, Official Gazette No. 26083.

<sup>16</sup> Circular of the Prime Ministry, General Directorate of Personnel and Principles of 7 April 2007.

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There is no legal obligation for the Presidency and ministries to conduct public consultations. Furthermore, in cases where public consultation is carried out, no minimum duration for written public consultations has been established. Interministerial consultations are mandatory, but the policy-making system still lacks formalised and institutionalised co-operation and conflict-resolution mechanisms to solve possible disputes between institutions before drafts are submitted to the President for adoption.

### 1.2. Main developments

The Government of Turkey changed from a parliamentary system to a presidential system on 9 July 2018, when the constitutional changes of April 2017 came into force<sup>17</sup>.

The fundamentals of Turkey's new governance structure and system of government were established through adoption of several decrees in the second half of 2018, the main decrees being: 1) Decree-Law No. 703 introducing transitional amendments to existing legislation<sup>18</sup>; and 2) Presidential Decree No. 1 establishing the new institutional and functional system of the Presidency<sup>19</sup>.

Presidential Decree No. 1, adopted in July 2018, establishes the new Presidency, which consists of the Vice-Presidents, the Office of the Private Secretary to the President (OPS), the Administrative Affairs Directorate (AAD), nine Policy Boards, and four Presidential Offices, as well as other directorates and ministries. The four Presidential offices, nine Policy Boards<sup>20</sup> and directorates all work under the President and report to him. The previous Council of Ministers (CoM) was annulled through a Constitutional change<sup>21</sup>, and ministers are now directly accountable to the President<sup>22</sup>. In 2018, the number of ministries was reduced from 26 to 16<sup>23</sup>.

To guide ministries in the policy-making process, the Strategy and Budget Directorate (SBD) of the Presidency developed and published two new guidelines on strategy planning and analysis<sup>24</sup> that did not exist during the previous monitoring period.

The RIA guideline<sup>25</sup> previously available to line ministries for conducting analysis has been annulled<sup>26</sup>, according to the representatives of the Presidency. No new guideline has yet been drafted.

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<sup>17</sup> Constitution, Articles 101 and 103.

<sup>18</sup> Decree Law No. 703 on Amending Certain Laws and Decrees for the Purposes of Compliance with the Amendments to the Constitution, Official Gazette of 9 July 2018 No. 30473.

<sup>19</sup> Presidential Decree No. 1 of 10 July 2018 on the Presidential Organisation of the Republic of Turkey, Official Gazette No. 30474.

<sup>20</sup> The following Policy Boards have been established: Science, Technology and Innovation, Education and Training, Economic, Foreign, Legal, Culture and Art, Health and Food, Social and Local Government.

<sup>21</sup> Constitution, Articles 109 – 115 repealed on April 16, 2017; Act No. 6771.

<sup>22</sup> Constitution, Article 106. During the fact-checking meeting held on 3 April 2019, SIGMA was informed that the Presidential Cabinet cannot be regarded as a legal entity (as was the previous Council of Ministers) due to the change of the governance system and Constitutional provision in Article 104 that states "The executive power shall be vested in the President of the Republic".

<sup>23</sup> Presidential Decree No. 1 of 10 July 2018, Official Gazette No. 30474, Part 6, Ministries.

<sup>24</sup> Strategic Planning Guidelines for Public Administrations of 2018 and Guidelines for Strategic Planning Analysis Methods of 2018: <http://www.sp.gov.tr/tr/html/18/Kilavuz+ve+Rehberler/>.

<sup>25</sup> Circular of the Prime Ministry, General Directorate of Personnel and Principles of 7 April 2007, [https://www.basbakanlik.gov.tr/genelge\\_pdf/2007/2007-0010-006-03896.pdf](https://www.basbakanlik.gov.tr/genelge_pdf/2007/2007-0010-006-03896.pdf).

<sup>26</sup> Presidential Circular No. 2018/3 of 1 August 2018.



## 2. ANALYSIS

### Policy planning and co-ordination

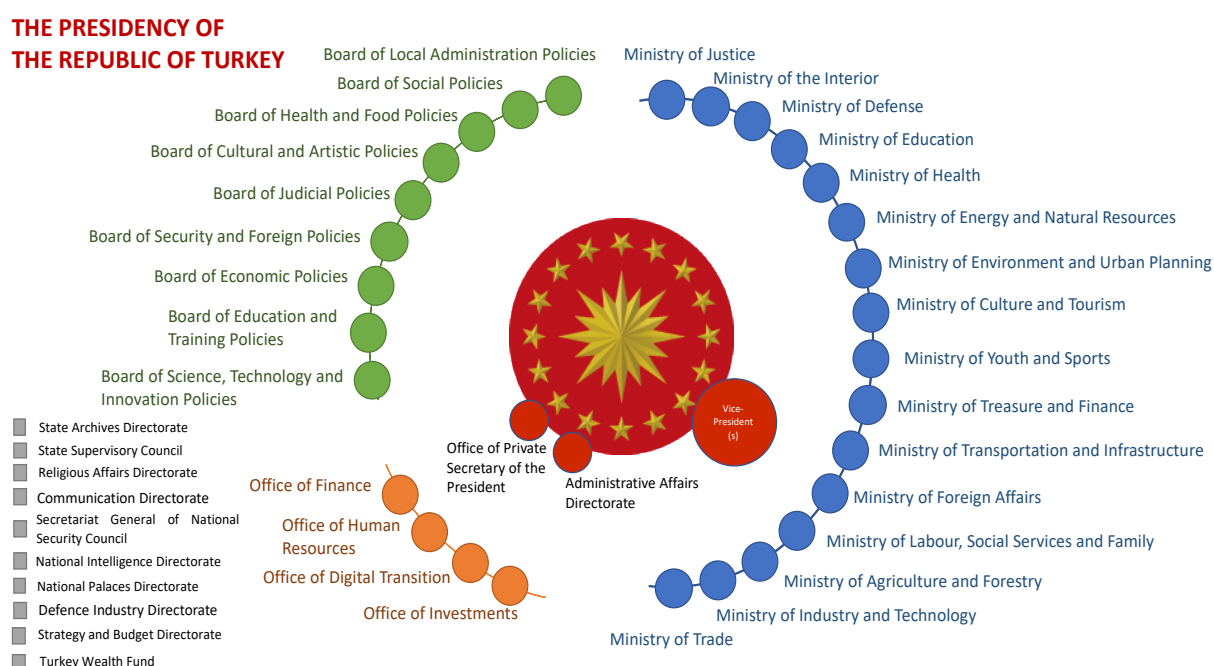
This analysis covers Principle 1 for the policy planning and co-ordination area. It includes an analysis of the indicator(s) and sub-indicators used to assess the Principle, and an overall summary of the state of play. Short- and medium-term recommendations are presented at the end of the section.

#### Analysis of Principles

**Principle 1: Centre-of-government institutions fulfil all functions critical to a well-organised, consistent and competent policy-making system.**

As a result of the Constitutional<sup>27</sup> transition from a parliamentary system to a presidential system, all institutions previously performing the critical CoG functions have been either abolished (e.g. Prime Ministry, Ministry of Development) or reorganised (e.g. Ministry of Finance, Ministry of Justice [MoJ]). A new organisational set-up was established, with the Presidency assuming all of the critical functions of the CoG (Figure 1). The CoM, the main government decision-making body, was also abolished<sup>28</sup>, and the Presidential Cabinet was formed, led by the President and consisting of the Vice-President and 16 ministers<sup>29</sup>.

**Figure 1. Organisational structure of the Presidency<sup>30</sup>**



The new legal framework allocating functions within the new organisational setup of the Presidency was established through several Presidential Decrees, the main decrees being:

<sup>27</sup> Constitution.

<sup>28</sup> *Idem*, Articles 109-114.

<sup>29</sup> *Idem*, Article 104.

<sup>30</sup> This figure was elaborated by SIGMA experts, based on provisions laid out by the Presidential Decree No. 1 of 10 July 2018 on the Presidential Organisation of the Republic of Turkey, Official Gazette No. 30474.

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- Presidential Decree No. 1 on the Presidency of the Republic of Turkey, which establishes the main institutions constituting the Presidency, their functions and organisational set-up.
- Presidential Decree No. 13 on the Organisation of the Strategy and Budget Directorate, which establishes the functions and organisational set-up of the SBD.
- Presidential Decree No. 14 on the Organisation of the Directorate of Communications, which sets forth the functions and organisational set-up of the Directorate of Communications.

This newly adopted legislative framework clearly attributes all critical CoG functions to the various institutions within the Presidency, except for co-ordinating the preparation of the government sessions, including the preparation of agendas. According to the information provided to SIGMA during an interview<sup>31</sup>, the Presidential Cabinet is an informal meeting between the President and the ministers, and those should not be confused with the CoM meetings under the previous governance system. Management of relations between the Presidential Cabinet and the TGNA is assigned to the Director of the AAD<sup>32</sup>.

Ensuring the legal conformity of draft legal acts adopted by the President is assigned to the AAD<sup>33</sup>. It is tasked with reviewing draft legislation developed by ministries to ensure compliance with the Constitution, laws, presidential decrees and the annual Presidential Programme. According to Presidential Decree No. 1, the MoJ has also been assigned the mandate to examine and provide its opinion on the compliance of draft legislation with the Turkish legal system and legislation drafting technique<sup>34</sup>. The MoJ is supposed to check alignment with the legal system and legislation drafting technique and the AAD to focus on alignment with core laws and the Presidential Programme.

Presidential Decree No. 1<sup>35</sup> assigns co-ordination of the policy content of proposals for presidential decisions to the AAD of the Presidency. It is tasked with checking not only legal compliance with the Constitution, other laws, presidential decrees and general principles of laws, but also compliance of draft legislation with the terms set out by the Presidential Programme. In addition, the Policy Boards are assigned to carry out the function of “developing recommendations for decisions and policies to be taken by the President”<sup>36</sup>.

Preparing and co-ordinating approval of the strategic priorities and work programme of the executive is assigned to two bodies: the SBD of the Presidency<sup>37</sup> and the Ministry of Finance and Treasury (MoFT)<sup>38</sup>. However, there is no explicit regulation of how to divide the mandate for this function between these two institutions, except for a general provision that it should be jointly determined<sup>39</sup>.

The functions related to public sector resources planning (ensuring that policies are affordable and overseeing co-ordination of public sector resource planning) are assigned to the MoFT<sup>40</sup> and the SBD of

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<sup>31</sup> Interview with the representatives of the Presidency on 3 April 2019.

<sup>32</sup> Presidential Decree No. 1 of 10 July 2018 on the Presidential Organisation of the Republic of Turkey, Official Gazette No. 30474, Article 6 (b).

<sup>33</sup> Presidential Decree No. 1 of 10 July 2018 on the Presidential Organisation of the Republic of Turkey, Official Gazette No. 30474, Article 7 (e).

<sup>34</sup> *Idem*, Article 42.

<sup>35</sup> *Idem*, Article 7 (e).

<sup>36</sup> *Idem*, Article 22 (a).

<sup>37</sup> Presidential Decree No. 13 of 24 July 2018 on the Organisation of the Directorate of Strategy and Budget, Official Gazette No. 30488, Article 2 (a).

<sup>38</sup> Presidential Decree No. 1 of 10 July 2018 on the Presidential Organisation of the Republic of Turkey, Official Gazette No. 30474, Article 220 (k).

<sup>39</sup> Presidential Decree No. 13 of 24 July 2018 on the Organisation of the Directorate of Strategy and Budget, Official Gazette No. 30488, Article 17 (2).

<sup>40</sup> *Idem*, Article 220 (b).

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the Presidency<sup>41</sup>. According to Decree No. 1, the MoFT is authorised to provide opinions on draft legislation<sup>42</sup>, while the SBD has the function of “reviewing any and all regulations that may affect public expenditure policies and co-ordinating potential regulations with the MoFT”<sup>43</sup>.

Monitoring government performance through implementation of the key planning documents (Development Plan, Medium-Term Programme, Medium-Term Financial Plan, annual Presidential Programme and sectoral plans and programmes) is assigned to the SBD<sup>44</sup>, together with the MoFT<sup>45</sup>. The Policy Boards<sup>46</sup> chaired by the President, comprised of non-governmental representatives, may monitor the activities and practices of the ministries and institutions and report to the President regarding compliance with the annual Presidential Programme<sup>47</sup>.

Co-ordination of government communication activities is assigned to the OPS<sup>48</sup>. It is in charge of managing the protocol, public relations and corporate communication services of the Presidency through its affiliated units. With the reorganisation of the Presidency, a new Directorate of Communications was established<sup>49</sup>. Although it has a broad mandate to promote Turkey internationally, the Directorate also co-ordinates efforts to adopt a holistic communication strategy across all institutions and agencies.

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<sup>41</sup> Presidential Decree No 13 of 24 July 2018 on the Organisation of the Directorate of Strategy and Budget, Official Gazette No. 30488, Article 2 (I).

<sup>42</sup> Presidential Decree No. 1 of 10 July 2018 on the Presidential Organisation of the Republic of Turkey, Official Gazette No. 30474, Article 220 (b).

<sup>43</sup> Presidential Decree No. 13 of 24 July 2018 on the Organisation of the Directorate of Strategy and Budget, Official Gazette No. 30488, Article 2 (I).

<sup>44</sup> *Idem*, Article 2 (b).

<sup>45</sup> Presidential Decree No. 1 of 10 July 2018 on the Presidential Organisation of the Republic of Turkey, Official Gazette No. 30474. Article 217 (I).

<sup>46</sup> *Idem*, Article 22.

<sup>47</sup> *Idem*, Article 22 (e).

<sup>48</sup> *Idem*, Article 2 (c).

<sup>49</sup> Presidential Decree No. 14 of 24 July 2018 on the Organisation of the Directorate of Communications, Official Gazette No. 30488.

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**Table 1. Institutions performing CoG functions before and after constitutional changes<sup>50</sup>**

No.	Critical function	Institution assigned to perform function (as assessed in 2017)	Institution assigned to perform function (as assessed in 2019)
1.	Co-ordinating the preparation of the government sessions, including preparation of agendas	Prime Ministry	None (Presidential Cabinet is not a formalised body as was previously CoM) <sup>51</sup>
2.	Co-ordinating activities to ensure legal conformity	Prime Ministry, MoJ	Presidency – the AAD, MoJ
3.	Leading preparation and co-ordinating approval of the government's strategic priorities and work programme	Prime Ministry, Ministry of Development	Presidency – Strategy and Budget Directorate, MoFT
4.	Co-ordinating the policy content of proposals for government decision, including defining the policy-preparation process and ensuring coherence with government priorities	Prime Ministry	Presidency – the AAD
5.	Ensuring that policies are affordable and overseeing co-ordination of public sector resource planning	MoF	MoFT, Presidency – Strategy and Budget Directorate
6.	Co-ordinating government communication activities to ensure a coherent government message	Prime Ministry	Presidency – Office of Private Secretary to the President, Directorate of Communications
7.	Monitoring government performance to ensure that the government collectively performs effectively and keeps its promises to the public	Prime Ministry, MoF, Ministry of Development	Strategy and Budget Directorate, MoFT
8.	Managing the relationship between the government and other parts of the state (e.g. the President, the Parliament)	Prime Ministry	Presidency – Director of the AAD

Although all, except one, critical CoG functions are assigned to different units and institutions of the Presidency, there are no regulations that clearly describe procedures and processes for how these

<sup>50</sup> This table was elaborated by the by SIGMA experts, based on the SIGMA 2017 Monitoring Report on Turkey and the provisions laid out by the Presidential Decree No. 1 of 10 July 2018 on the Presidential Organisation of the Republic of Turkey, Official Gazette No. 30474.

<sup>51</sup> As explained to SIGMA by the representatives of the Presidency during an interview on 3 April 2019.

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functions should be exercised in practice as part of a joint decision-making process, i.e. there are currently no rules of procedure (ROP).

In addition to previously available guidelines for regular reporting<sup>52</sup> and legal drafting<sup>53</sup>, the stock of guidelines has been augmented with two methodological toolkits for development of sector and institutional strategies<sup>54</sup>, as well as guidelines for developing and monitoring the annual Presidential Programme<sup>55</sup>. All guidelines, except the latter, are accessible on the SBD website for the use of institutions and the wider public<sup>56</sup>. The areas which currently are without guidelines are development of policy proposals and carrying out public consultations.

Presidential Decree No. 1<sup>57</sup> contains clear provisions regarding co-operation and co-ordination between ministries, public institutions and organisations<sup>58</sup>. However, there is no formally institutionalised mechanism for co-ordination and co-operation among the CoG institutions. SIGMA was shown<sup>59</sup> examples of practical co-ordination and co-operation in regard to development of the annual Presidential Program, however not on the consolidation of the opinions of CoG institutions on draft policy proposals submitted by ministries. The practice, though, is not formally regulated as a set of rules of procedure for decision-making under the new governance system.

Owing to the lack of certain guidelines and the lack of formalised co-ordination mechanisms within the CoG, the value for the indicator on fulfilment of critical functions by CoG institutions is 3. This reflects an improvement over the previous assessment, as two new guidelines on strategic planning have been introduced.

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<sup>52</sup> Regulation on the Annual Reports Prepared by Public Administrations of 17 March 2006, Official Gazette No. 26111.

<sup>53</sup> CoM Decree on the Principles and Procedures for Drafting Legislation of 19 December 2005, Official Gazette No. 26083.

<sup>54</sup> Strategic Planning Guidelines for Public Administrations of 2018 and Guidelines for Strategic Planning Analysis Methods of 2018.

<sup>55</sup> Internal document of the Presidency developed by the previous Ministry of Development for preparing and monitoring the Annual (Performance) Programme of the CoM for the implementation of the 10th Development Plan.

<sup>56</sup> Guidelines available at <http://www.sp.gov.tr/tr/>.

<sup>57</sup> Presidential Decree No. 1 of 10 July 2018 on the Presidential Organisation of the Republic of Turkey, Official Gazette No. 30474.

<sup>58</sup> The Decree includes a separate provision regarding the function of co-operation and co-ordination for each ministry or institution.

<sup>59</sup> During an interview with the representatives of the Presidency on 3 April 2019.

### Fulfilment of critical functions by the centre-of-government institutions

This indicator measures to what extent the minimum requirements for functions critical to a well-organised, consistent and competent policy-making system are fulfilled by the centre-of-government (CoG) institutions.

As this indicator is used to assess the fulfilment of the minimum requirements, it does not measure outcomes or include quantitative sub-indicators. The outcomes of some of these critical functions are captured by other indicators on policy development and co-ordination.

Overall indicator value	0	1	2	<b>3</b>	4	5
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Sub-indicators	Points
1. Critical functions are assigned to CoG institutions by legislation	7/8
2. Availability of guidelines to line ministries and other government bodies	2/4
3. Institutionalisation of co-ordination arrangements between the CoG institutions	2/4
<b>Total<sup>60</sup></b>	<b>11/16</b>

Following the transition to the new system of government, almost all critical functions of the CoG have been transferred and formally assigned to the newly established institutions and ministries within the Presidency. Since there are no formal Cabinet meetings, this function is not executed under the new governance system. Guidelines to line ministries are available in most areas, except for the development of public policy proposals and carrying out public consultations. Formal co-ordination and co-operation mechanisms between CoG institutions remain unregulated, however, co-ordination is ensured in practice, at least in regard to the development of the annual Presidential Programme.

#### **Key recommendations**

##### **Short-term (1-2 years)**

- 1) The Presidency should develop a detailed RoP (like those of the TGNA) to regulate the overall policy-preparation and decision-making processes within the Presidency. These RoP should clearly describe internal decision-making processes within the Presidency and delineate the responsibilities of the involved institutions for each step of the process.
- 2) The Presidency should introduce working procedures or mechanisms to consolidate the CoG opinions on proposals of different ministries before they are submitted to the President for adoption.

##### **Medium-term (3-5 years)**

- 3) The Presidency should develop and put into practice guidelines for developing policy proposals and conducting public consultations that would guide (and provide best practice examples) ministries and other institutions of the executive branch through the decision-making processes under the new governance system.

<sup>60</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-9=2, 10-12=3, 13-14=4, 15-16=5.

## Policy development

This analysis covers Principle 10 and 11 for the policy development area. It includes an analysis of the indicator(s) and sub-indicators used to assess these Principles, and an overall summary of the state of play. Short- and medium-term recommendations are presented at the end of the section.

### Analysis of Principles

#### *Principle 10: The policy-making and legal-drafting process is evidence-based, and impact assessment is consistently used across ministries.<sup>61</sup>*

The principle of evidence-based policy making in the Turkish public administration is foreseen by the legal framework through an obligation to conduct RIA<sup>62</sup>, however, it is not being applied in practice after the change of the governance system. The main regulatory requirements for RIA remain unchanged since 2017, despite the Constitutional changes that foresee that draft laws can be enacted, amended and repealed only by the members of the TGNA<sup>63</sup>. Partial RIA is required for all policy proposals, and full RIA is required for those proposals with an expected impact above TRY 30 million<sup>64</sup>. The areas exempt of RIA are national security, national budget, emergency situations and international agreements<sup>65</sup>. RIA regulations require assessment of the estimated financial burden on the budget in addition to other impacts, such as social, economic, commercial, environmental and administrative burden<sup>66</sup>.

After the transition to the new system of government, the legal obligation to perform RIA remained unchanged, despite the change of the governance system. It was explained to SIGMA during interviews<sup>67</sup> that the obligation to conduct RIA for draft Presidential decrees and decisions is not foreseen by the currently applied regulation defining the legislative drafting process<sup>68</sup> and therefore it is not applied in practice. Also, since the Constitution foresees that draft laws can be proposed only by the members of the TGNA and there is no regulation to require RIA for draft laws drafted by the TGNA, it is not applied also by the legislative branch. The RIA Guideline from 2007 was withdrawn<sup>69</sup>, and no new guideline has yet been drafted, according to information provided to SIGMA during interviews<sup>70</sup>.

The transition to the new system of government introduced changes to the institutional responsibility for RIA. Since July 2018, the AAD<sup>71</sup> is in charge of developing procedures and principles for preparation of legislation, as well as assurance of their application and scrutiny of compliance. The compliance check function is also assigned to the MoJ<sup>72</sup>. In the absence of more detailed procedures for policy making within the executive branch and while interaction patterns between new institutions are still emerging, it is difficult to clearly define the delineation of roles performed by the AAD and the MoJ in regard to policy towards the application of RIA within the new governance system.

It was not possible to assess the extent of the use of RIA and assessment of budgetary impacts because the law drafting falls under the exclusive responsibility of the TGNA since the new system of government

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<sup>61</sup> Principle 10 was only partially assessed, due to the lack of a sample of draft legal acts needed for such assessment.

<sup>62</sup> CoM Decree on the Principles and Procedures for Drafting Legislation of 19 December 2005, Official Gazette No. 26083, Article 24.

<sup>63</sup> Constitution, Articles 87 and 104.

<sup>64</sup> *Idem*, Article 24 (1).

<sup>65</sup> *Idem*, Article 24 (7).

<sup>66</sup> *Idem*, Article 25 (5).

<sup>67</sup> Interviews with representatives of the Presidency on 3 April 2019.

<sup>68</sup> CoM Decree on the Principles and Procedures for Drafting Legislation of 19 December 2005, Official Gazette No. 26083.

<sup>69</sup> Presidential Circular No. 2018/3 of 1 August 2018.

<sup>70</sup> Interviews with representatives of the Presidency on 5-6 February 2019.

<sup>71</sup> Presidential Decree No. 1 of 10/7/2018 on the Presidential Organisation of the Republic of Turkey, Official Gazette No. 30474. Articles 7 (e) and (f).

<sup>72</sup> *Idem*, Article 38 (f).

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system came into effect, while SIGMA methodology requires analysis of draft laws and supporting materials adopted by the executive. Under the presidential system, the highest level of legislative act adopted by the executive branch is a Presidential Decree. SIGMA was not provided with a sample of those and their accompanying documents, and therefore it is not possible to assess the practice. This is the reason for the lower scores for most of the sub-indicators that require assessment of practice. Taking into account that the transition from one governance system to another is still in process, the established sub-indicator values are also low.

Evidence-based policy making						
This indicator measures the functioning of evidence-based policy making. It assesses the legal requirements and practice regarding the use of basic consultative processes, budgetary impact assessment and broad impact assessment.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Regulation and use of basic analytical tools and techniques to assess the potential impact of draft new laws	1/2
2. Regulation and use of budgetary impact assessment prior to approval of policies	1/3
3. Regulation and use of Regulatory Impact Assessments	1/3
4. Availability of guidance documents on impact assessment	0/2
5. Quality control of impact assessment	0 <sup>73</sup> /3
6. Quality of analysis in impact assessment	0 <sup>74</sup> /15
<b>Total<sup>75</sup></b>	<b>3/28</b>

The legal obligation to conduct RIA is still an integral part of the legislative-drafting process, despite the Constitutional changes do not foresee the right for the executive branch to draft laws. Detailed guidelines previously available to ministries have been annulled without putting new methodological support in place that would be applicable under the presidential governance system. The actual use of RIA could not be assessed, as information on RIA and budgetary assessment was not provided to SIGMA through the sample of draft legislative acts required to attest to the practice. However, during interviews it was confirmed that after the change of the governance system, RIA is not being applied neither by the executive, nor by the legislative branch.

<sup>73</sup> The sub-indicator value is set at 0 partially due to the lack of sample data provided to SIGMA.

<sup>74</sup> The sub-indicator value is set at 0 due to the fact that no sample data was provided to SIGMA.

<sup>75</sup> Point conversion ranges: 0-2=0, 3-7=1, 8-12=2, 13-18=3, 19-23=4, 24-28=5.



***Principle 11: Policies and legislation are designed in an inclusive manner that enables the active participation of society and allows for co-ordination of different perspectives within the government.***

There are no legal provisions obliging ministries and other public bodies to conduct public consultations when drafting policies or legal acts. Instead, there is a legal provision providing a possibility for non-governmental organisations to provide comments and views on draft legal acts within 30 days<sup>76</sup>. A minimum duration for public consultations is not established. However, for any consultations that are held, the opinions provided and an assessment of those opinions must be included in the package submitted to the Presidency<sup>77</sup>. At the same time, there is no obligation to make such reports publicly available. Since a sample of draft legislative acts adopted by the President was not provided to SIGMA, it is impossible to confirm this practice.

Under the existing regulatory framework, the ministries themselves have high discretion to decide on the need for and approach to public consultations. They have no obligation to inform relevant stakeholders in advance. Also, there is no regulation on which documents and supporting information to provide for public consultations. Guidelines are available to ministries on how to design and implement public participation<sup>78</sup>. But there is no evidence that they are applied by institutions, as SIGMA was not provided with a sample of draft legislative acts adopted by the President that would confirm this practice.

Following the constitutional change, nine Policy Boards chaired by the President were established<sup>79</sup> at the end of 2018. These Policy Boards consist mainly of representatives of academia, business associations and research institutions<sup>80</sup>. The mandate of the Policy Boards is multi-dimensional, including providing recommendations for decisions taken by the President, carrying out studies, giving opinions to institutions on matters falling within their jurisdiction, monitoring policies, and organising meetings with ministries, civil society and other representatives<sup>81</sup>. The Policy Boards could in some ways be considered as engagement of a wider circle of stakeholders into the decision making process within the executive level, however, not a fully fledged public consultation process. However, their processes are still emerging, and the regulatory framework is currently too general to assess their practice and effectiveness.

There is no explicit requirement in the legislation to conduct quality assurance of public consultations at the final stage of the decision-making process on policies to be adopted by the President. Instead, there is a requirement for the AAD of the Presidency and the MoJ to examine the compliance of draft legislation submitted by ministries and to provide opinions<sup>82</sup>. This, however, does not necessarily imply examining the quality of public consultations. It is not possible to assess the conduct of quality assurance of the outcomes of public consultations, as SIGMA was not provided with a sample of draft legislative acts adopted by the President.

The regulatory framework for interministerial consultation is established. It foresees that, before submitting policy proposals to the Presidency for adoption, ministries are required to obtain opinions from affected institutions, including consulting with the AAD of the Presidency, the State Personnel Administration, the MoFT, the MoJ, and the Foreign Relations and European Union Directorate of the

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<sup>76</sup> CoM on the Principles and Procedures for Drafting Legislation of 19 December 2005, Official Gazette No. 26083, Article 7 (2).

<sup>77</sup> Ibid. Article 9 (b) and (ç).

<sup>78</sup> “Principles for Participation: Application Guide for Designing, Implementing and Managing Participatory Work”, Ministry of Development, 2012: [http://www.sp.gov.tr/upload/Sayfa/18/files/Katilimciligin\\_Ilkeleri.pdf](http://www.sp.gov.tr/upload/Sayfa/18/files/Katilimciligin_Ilkeleri.pdf).

<sup>79</sup> Presidential Decree No. 1 of 10/7/2018 on the Presidential Organisation of the Republic of Turkey, Official Gazette No. 30474, Articles 21 and 22.

<sup>80</sup> Information on the composition of the Policy Boards is available at <http://www.hurriyet.com.tr/gundem/kurullara-76-atama-40982030>.

<sup>81</sup> Presidential Decree No. 1 of 10/7/2018 on the Presidential Organisation of the Republic of Turkey, Official Gazette No. 30474, Article 22.

<sup>82</sup> *Idem*, Articles 7 (e) and 38 (f).

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Ministry of Foreign Affairs, when draft legal acts affect their fields of authority<sup>83</sup>. However, no minimum duration for interministerial consultations is defined. The ministries have to provide an account of the opinions received and feedback on their assessment<sup>84</sup>. SIGMA was not able to determine if interministerial consultation works in practice works, due to lack of access to a sample of draft legislative acts adopted by the Presidential Cabinet. It was agreed that during this assessment sub-indicators 3 and 4 will not be assessed.

There are no regulations setting out institutionalised interministerial co-ordination and conflict-resolution mechanisms. The existing regulation foresees that the Director of the AAD has the duty “to ensure co-ordination among public institutions and organisations”<sup>85</sup>, however, currently there is no further regulation on how this function should be carried out in practice, and whether it would involve any institutionalised interministerial mechanisms.

Public consultation on public policy						
This indicator assesses the regulatory framework, the establishment of the quality control function on public consultation.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Adequacy of the regulatory framework for an effective public consultation process	2/10
2. Quality assurance of the public consultation process	0 <sup>86</sup> /3
3. Regularity in publishing draft laws for written public consultation	0 <sup>87</sup> /4
4. Test of public consultation practices	0 <sup>88</sup> /24
<b>Total<sup>89</sup></b>	<b>2/41</b>

<sup>83</sup> CoM Decree on the Principles and Procedures for Drafting Legislation of 19 December 2005, Official Gazette No. 26083, Article 6 (1).

<sup>84</sup> *Idem*, Article 9 (1).

<sup>85</sup> Presidential Decree No. 1 of 10 July 2018 on the Presidential Organisation of the Republic of Turkey, Official Gazette No. 30474, Articles 6 Sub-Article 1 (b).

<sup>86</sup> The sub-indicator value is set at 0 due to the fact that no sample data was provided to SIGMA.

<sup>87</sup> The sub-indicator value is set at 0 due to the fact that no sample data was provided to SIGMA.

<sup>88</sup> The sub-indicator value is set at 0 due to the fact that no sample data was provided to SIGMA.

<sup>89</sup> Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-27=3, 28-34=4, 35-41=5.

Interministerial consultation on public policy						
This indicator measures the adequacy of the regulatory framework for the interministerial consultation process.						
Overall indicator value	0	<b>1</b>	2	3	4	5

Sub-indicators	Points
1. Adequacy of the regulatory framework for an effective interministerial consultation process	5/9
2. Test of interministerial consultation practices	0 <sup>90</sup> /12
<b>Total<sup>91</sup></b>	<b>5/21</b>

Overall, the regulatory framework setting out procedures for public consultations is not in place. This gives wide discretion to ministries to decide on the approach to be used for public consultations. Institutional responsibility for quality assurance on public consultations that are carried out is not clearly defined. Although the Policy Boards consist of representatives from academia, business associations and research institutions, their practice is still emerging, and their regulatory framework is currently too general to be assessed. Requirements for interministerial consultations are established, but co-ordination and conflict-resolution mechanisms have not been institutionalised in the legislation and put into practice.

### Key recommendations

#### Short-term (1-2 years)

- 1) The Presidency should introduce clear processes and procedures for regulation of mechanisms to resolve conflicting views of line ministries at the top administrative level prior to the adoption of draft decrees and decisions by the President.
- 2) Taking into account the changes introduced by the transition from a parliamentary to a presidential system of government, the Presidency should clarify and set the policy concerning RIA within the new governance system. It should confirm the scope and criteria for conducting RIA by ministries and other institutions in relation to draft Presidential decrees and decisions, if applicable.
- 3) After clarifying the policy on RIA with the new governance system, the roles and responsibilities of the AAD of the Presidency and the MoJ in the area of RIA should be set. In particular, responsibilities regarding the development of methodological support and conducting quality control of RIA should be clearly assigned in the regulatory framework. The AAD of the Presidency together with the MoJ should develop and put into practice the guidelines for carrying out RIA within the new governance system. It should include methodologies for impact assessment, as well as practical toolkits (examples of good practice and templates, etc.).
- 4) The Presidency should improve the regulatory framework and procedures for public consultation by introducing a clear obligation to line ministries to conduct public consultation for draft Presidential decrees and decisions, and public policies, setting a minimum duration for the public consultation process and an institutional responsibility to carry out quality control of public consultations performed by line ministries before sending drafts for adoption by the President.

<sup>90</sup> The sub-indicator value is set at 0 due to the fact that no sample data was provided to SIGMA.

<sup>91</sup> Point conversion ranges: 0-2=0, 3-6=1, 7-10=2, 11-14=3, 15-18=4, 19-21=5.

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**Medium-term (3-5 years)**

- 5) After clarification of the policy concerning RIA, the Presidency (in particular, the AAD) should design and implement a capacity-building programme in the area of RIA for institutions carrying out quality control of RIA and for civil servants conducting RIA for draft Presidential decrees and decisions.
- 6) The Presidency should introduce regulatory requirements obliging ministries and other institutions to develop and publish reports on the outcome of the public consultation process as a way of providing feedback to those who had participated in the process. Also, these reports should accompany the draft regulation when it is sent for review by the Presidency and adoption by the President.

A large, stylized teal folder icon with rounded corners and a light blue tab on the left side. The text "Public Service and Human Resource Management" is written in white on the folder's surface.

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## PUBLIC SERVICE AND HUMAN RESOURCE MANAGEMENT

### 1. STATE OF PLAY AND MAIN DEVELOPMENTS: JULY 2017-MARCH 2019

#### 1.1. State of play

With the referendum of 16 April 2017 and the presidential elections of 24 June 2018, the transformation of the Turkish constitutional regime from parliamentary to presidential has resulted in changes to the Law on Civil Servants (LCS)<sup>92</sup> and the introduction of presidential decrees with an impact on the civil service.

The LCS has been amended slightly in the areas of the scope of this assessment, but it retains a number of core features from the previous parliamentary regime. As in the past, the Turkish civil service remains a career system with a wide horizontal scope<sup>93</sup>, including all institutions from the central government except the offices of the Presidency<sup>94</sup>. In the offices of the Presidency, some staff are employed through a labour contract, although they maintain some civil service rights when returning to their previous institutions<sup>95</sup>. Civil servants in the Presidency are subject to all provisions of the LCS except for recruitment, examination, grade and step advancement.

The new presidential system reshuffles some of the roles of policy co-ordination and implementation in the human resource management (HRM) area. Previously it was jointly co-ordinated by the Ministry of Finance (MoF) and Ministry of Labour and Social Affairs (MoL), under guidance from the Prime Ministry. In the present system, the role of the latter is performed under the direct supervision and political responsibility of the President. The State Personnel Administration (SPA), subordinated to the Ministry of Family, Labour and Social Services (MoFLSS)<sup>96</sup>, was still in place in (March 2019) but is to be closed down by July 2019<sup>97</sup>. The functions of the SPA will be transferred to the MoFLSS<sup>98</sup>. The functions of the MoF in the civil service area are now shared with the Strategy and Budget Directorate (SBD) under the Presidency.

Presidential control of the bureaucracy is enhanced through control of appointments to top civil service positions<sup>99</sup> up to ministerial level<sup>100</sup>.

#### 1.2. Main developments

Changes in legislation concentrate political responsibility for the public service under the President. The most relevant changes are: 1) the decision to abolish the SPA in July 2019 and transfer its functions to the MoFLSS; and 2) the transfer of some of the functions of the General Directorate of Budget and Fiscal Control from the MoF to the SBD. The co-ordination of HRM issues has been placed under the President

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<sup>92</sup> LCS No. 657/1965.

<sup>93</sup> See definitions of the horizontal, vertical and material scope of the civil service in OECD (2017), *The Principles of Public Administration*, OECD, Paris, p. 41, <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-2017-edition-ENG.pdf>.

<sup>94</sup> LCS No. 657/1965, Articles 59 and 61.

<sup>95</sup> Law No. 5523, Article 10.

<sup>96</sup> The Decree Law No. 703 of 2 July 2018 also changed the ministerial structure, merging several ministries and changing the title and mandate of the former Ministry of Labour and Social Affairs to the Ministry of Family, Labour and Social Services.

<sup>97</sup> *Idem*, Article 123.

<sup>98</sup> Information received from the Presidency.

<sup>99</sup> Presidential Decree No. 3 on Appointment of Top Positions in Public Institutions of 10 July 2018, Article 3.

<sup>100</sup> Turkish Constitution, Article 106, changed by Law No. 6771 of 21 January 2017, Article 10, approved in 2017 referendum and entered into effect after presidential elections of 24 June 2018.

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in two units: the SBD and the Head of Administrative Affairs. Other HRM functions remain under the MoFLSS.

The Tenth Development Plan 2014-2018 has expired, but the new plan has not been adopted yet by the Turkish General National Assembly (TGNA). The SPA has introduced a new institutional strategy that covers civil service areas in a wider perspective<sup>101</sup>.

The President has acquired enhanced powers on the top civil service. First, the President decides which positions are subject to presidential appointment<sup>102</sup> and this power is not limited by the TGNA<sup>103</sup>. In the previous system, heads of departments in ministries and inspectors were jointly appointed by the related minister, the Prime Minister and the President<sup>104</sup>. In the current system, the President can use the power of appointment alone<sup>105</sup> somewhere around 17 000 and 18 000 civil service positions from the level of head of the ministerial department and above, including 10 000 – 11 000 inspectors<sup>106</sup>. These new powers increase the influence of the President over top positions compared to the regulatory regime for exceptional positions established in the LCS<sup>107</sup> and the appointment system established in the Law 2451<sup>108</sup>. These top officials can come from the private and non-governmental sector, provided that they have the required number of years of experience<sup>109</sup>.

The LCS has been changed to include a reason for termination of civil service status when a civil servant is linked to a terrorist organisation<sup>110</sup>. Civil servants who were dismissed during the period of the State of Emergency (July 2016 to July 2018) can appeal to the State of Emergency Procedures Investigation Commission (OHAL Commission)<sup>111</sup>. By December 2019, the Commission had processed 50 300 of the 125 600 applications received up to the end of 2018, rejecting 46 600 applications and granting reinstatement of applicants to their functions in 3 700 cases<sup>112</sup>.

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<sup>101</sup> Strategic Plan of the State Personnel Administration 2018-2022.

<sup>102</sup> Presidential Decree No. 3.

<sup>103</sup> For example, in the United States it is the Plum Book that lists the positions for which the President has the authorisation to make appointments, <https://www.govinfo.gov/app/details/GPO-PLUMBOOK-2016>.

<sup>104</sup> An example of a tax inspector appointment of the former system with three signatures: <http://www.resmigazete.gov.tr/eskiler/2018/07/20180707-3.htm>.

<sup>105</sup> An example of a tax inspector appointment with only the signature of the President: <http://www.resmigazete.gov.tr/eskiler/2019/03/20190330-3.pdf> (Date of publication: 30 March 2019).

<sup>106</sup> Information received from the Presidency.

<sup>107</sup> LCS No. 657/1965, Articles 59-61.

<sup>108</sup> Law No. 2451 on the Procedure for the Appointment of Ministries and Affiliated Organisations, Article 2, Annexes 1 and 2.

<sup>109</sup> Presidential Decree No.3, Articles 3 and 5.

<sup>110</sup> LCS No. 657, Article 125, E, I.

<sup>111</sup> Law No. 7075 on Accepting the Changes of the Decree on the State of Emergency Inquiry Commission of 1 February 2018.

<sup>112</sup> <http://www.hurriyet.com.tr/gundem/ohal-komisyonunun-bir-yili-125-bin-itiraz-50-bin-karar-41066920>.

## 2. ANALYSIS

### Policy, legal and institutional frameworks for public service

This analysis partially covers Principles 2 and 3 for the public service and human resource management area. It includes an analysis of the indicator(s) and sub-indicators used to assess the Principle and an overall summary of the state of play. Short- and medium-term recommendations are presented at the end of the section.

#### **Analysis of Principles**

***Principle 2: The policy and legal frameworks for a professional and coherent public service are established and applied in practice; the institutional set-up enables consistent and effective human resource management practices across the public service.***

The LCS was approved in 1965<sup>113</sup> and has been amended on several occasions, including Decree Law No. 703 and some presidential decrees. The most substantial changes affecting the senior civil service are in Presidential Decree No. 3. Despite those amendments, the LCS maintains its essential elements, covering a wide range of categories of public servants (general administration, health, education, security, intelligence and religious services) and regulating all general provisions relevant to employment relations in the public service.

Changes in the presidential era still follow a piecemeal process that builds upon past changes and causes a drift of well-entrenched rules.

Although the new presidential legislation has not challenged the material scope<sup>114</sup> of the CSL according to the Principles of Public Administration<sup>115</sup>, it has promoted a shift in political responsibility for the civil service and operational co-ordination of HR issues. In the former system, the MoF and the MoL were jointly responsible for the civil service, with diverse roles in appointments to top civil service positions also played by individual ministers, the Prime Minister and the President. The MoF was in charge of salary policy and had an impact on HRM issues through budgetary laws. The SPA<sup>116</sup>, subordinated to the MoL, was responsible for co-ordination of HRM issues.

In the new system, several organisational changes have taken place in the overall institutional policy framework of the civil service. Political responsibility for the civil service has been entrusted directly to the President, who co-ordinates the policy in this area via the Administrative Affairs Directorate (AAD) and the SBD. The Presidency is supported by the MoFLSS and the SPA; and the MoF on HRM questions related to the budget. The functions of the SPA will be taken over by the MoFLSS<sup>117</sup> showing that the latter is going to have an implementation role in the HRM policy area. However, during the time of this assessment, the transition was still in progress and the division of functions not completely settled. The description of the institutional framework is based on the plans heard from the Presidency and general stipulations in legal acts that do not give a full picture of how the system is going to work in practice. For instance, the division of roles in oversight of the fiscal impact of HRM decisions is not completely clear.

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<sup>113</sup> LCS, No. 657/1965.

<sup>114</sup> *Idem*, Articles 32-39 on the description and classification of posts; Article 48 on eligibility criteria to enter the civil service; Articles 46-53 on recruitment and selection; Article 55 on professional development; and Articles 146-186 on the disciplinary regime.

<sup>115</sup> OECD (2017), *The Principles of Public Administration*, OECD, Paris, Principle 1, sub-principle 4, in the area of Public Service and Human Resource Management, p. 41, <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-2017-edition-ENG.pdf>.

<sup>116</sup> Decree Law No. 217/1984 on the Establishment and Duties of the State Personnel Administration.

<sup>117</sup> Information received from the Presidency. The Presidential Decree No. 1, Article 74 (g-j) lists the civil service related tasks of the MoFLSS.



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In the process of centralising certain functions around the presidency, the SBD<sup>118</sup> has been entrusted with functions that were previously implemented by the MoF. The MoF has disappeared or been replaced in many articles of the LCS<sup>119</sup>. In particular, the functions and duties of the General Directorate of Budget and Fiscal Control<sup>120</sup> have disappeared from the new system, as its functions are not listed in the Decree Law No. 703. The newly established SBD has been entrusted with budgetary functions previously performed by the MoF<sup>121</sup> that are now to be performed in co-operation with the Ministry of Treasury and Finance (MoTF)<sup>122</sup>. Given that there are no procedures or secondary regulation in this regard, the current co-ordination and communication mechanisms need to work on an ad hoc and informal basis, due to the need for co-operation between the two entities.

Furthermore, each public authority has its own HRM unit, which may be decentralised across the territory, according to the size of each authority. These units are in charge of all HRM activities within their institution, from planning to disciplinary procedures. The SPA has been the main partner of the HRM units, although its role on homogenisation of HR practices across the different authorities has been limited. There are frequent meetings of HR managers from different ministries and agencies<sup>123</sup>. In addition, the SPA is consulted on legislative issues by the individual authorities. This consultation process helps to somewhat harmonise the HRM practices across public administration, but this uniformity is not always guaranteed as the institutions do not have to follow the advice<sup>124</sup>. The SPA gives non-binding opinions on the regulations affecting HRM in individual authorities, and the authorities can issue regulations, as long as they do not contradict higher-level rules that are often rather general. This may result in a high disparity in HRM practices. For instance, all specific regulations related to additional examination of candidates elaborated by individual authorities need the approval of the SPA. However, as the SPA limits itself to analysis of the legality of special selection procedures<sup>125</sup>, legality is ensured but uniformity of the examination process is not. As there are no general rules setting minimum standards for recruitment, the quality of the selection process differs across institutions. The same issue affects promotions for higher positions.

In addition, the SPA has been entrusted with monitoring and evaluation of HRM-related principles and procedures, but in practice this monitoring has taken place on an ad hoc basis, and no overall monitoring report on the whole system is available<sup>126</sup>. The SPA has also a subsidiary role of assistance (with non-binding opinions, newsletters and communiqués) in drafting of the authorities' HR plans<sup>127</sup>.

There has never been an overall civil service strategy or overall monitoring report on the implementation of civil service policy. The Tenth Development Plan of Turkey 2014-2018<sup>128</sup> mentions some areas where the civil service requires improvement: 1) the personnel information system; 2) the enhancement of meritocracy and objectivity in recruitment and promotion; 3) the implementation of performance appraisal for civil servants and its link to civil service salaries; 4) the introduction of in-service training;

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<sup>118</sup> Presidential Decree No. 3, Article 37 and Presidential Decree No. 13 on its organisation.

<sup>119</sup> For example, LCS 657, Articles 4 B, 34, 152 III, 154, 156 and 217.

<sup>120</sup> BÜMKO (*Bütçe ve Mali Kontrol Genel Müdürlüğü*) <http://www.bumko.gov.tr/?dil=2>.

<sup>121</sup> The changes introduced in the administration by Decree Law No. 703 merged the MoF with the DG Treasury, while budgetary functions were transferred to the Presidency and are implemented by the SBD (Presidential Decree No. 13, Article 10).

<sup>122</sup> Presidential Decrees No. 1 and 3 refer to the need for co-operation between the two entities.

<sup>123</sup> Information received from the Presidency.

<sup>124</sup> This problem has been mentioned also in the SPA Strategic Plan 2018-2022 in the SWOT analysis.

<sup>125</sup> Decree-Law No. 217/1984 on the Establishment and Duties of the State Personnel Administration, Article 3, c.

<sup>126</sup> In 2018, The SPA produced a three-page report on the measures from the Tenth Development Programme for which it was responsible. Since that report, it has not issued an additional follow-up report. It does not produce a report monitoring the civil service issues considered relevant to the Principles.

<sup>127</sup> Decree-Law No. 217/1984 on the Establishment and Duties of the State Personnel Administration, Article 3.

<sup>128</sup> Tenth Development Plan (2014-18), paragraphs, 378, 380, 381, 384 and 386, [http://www.mod.gov.tr/Lists/RecentPublications/Attachments/75/The%20Tenth%20Development%20Plan%20\(2014-2018\).pdf](http://www.mod.gov.tr/Lists/RecentPublications/Attachments/75/The%20Tenth%20Development%20Plan%20(2014-2018).pdf).

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and 5) linking the effectiveness and efficiency of the civil service to salaries. However, the Plan did not set specific, quantifiable targets and timelines. There is also a SPA strategy<sup>129</sup> that sets several wider civil service related objectives. The Strategic Plan is monitored via the annual performance programme<sup>130</sup> that is in line with the objectives set in the strategy<sup>131</sup>. However, even though the strategy sets wider objectives that have an impact on the development of the entire civil service, there are some substantial issues that limit its effect. The strategy is not fully in line with the Tenth Development Plan, as the former does not include objectives related to performance appraisal and remuneration. The objectives set in the strategy are mostly process related and do not have clear target levels nor deadlines, therefore the attainment of the goals cannot be always monitored. The strategy is also not based on the comprehensive situation analysis of civil service performance based on quantifiable data. Another set of problems is related to the fact that it is an institutional, not a sectorial strategy. On the one hand, it means that it does not cover all policy areas (e.g. remuneration). On the other, it also implies that the strategy is not drafted jointly with the other institutions involved in the civil service area. An Eleventh Development Plan of Turkey being drafted but not yet adopted by the TGNA at the time of this assessment.

The New Economy Programme (2019-21), a medium-term programme launched by the MoTF, sets out broad lines for financial stability and long-term economic transformation. It focuses mainly on economic and financial issues. As regards the public service, there is only one mention of labour-related issues, the need to measure and attract talent and to reward performance<sup>132</sup>. Given that the civil service has been centralised under the Presidency, the lack of a strategic framework and the absence of monitoring of civil service performance have lowered the value of related indicators compared to the SIGMA 2017 Monitoring Report.

A central civil service registry is not yet a reality that could be used for more general planning and strategic purposes, related to competency gaps, socio-demographical trends or salary policies. In this regard, there has been no change or evolution since 2017. For operational purposes, public authorities rely on their own registries. The SPA was required to keep public personnel records, but this role has been limited because the registry has focused on positions rather than persons. . Presidential Decree No. 2 mentions the information required in the registry, and the Annual Programme of the Presidency<sup>133</sup> entrusts the MoFLSS, MoTF, SBD with conducting the studies needed to implement such an information system.

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<sup>129</sup> Strategic Plan of the State Personnel Administration 2018-2022.

<sup>130</sup> The State Personnel Administration's Performance Programme 2018.

<sup>131</sup> SPA 2018 Year Performance Programme.

<sup>132</sup> MoTF, New Economy Programme (2019-21) Balance-Discipline-Transformation, launched on 18 September 2018, <http://www.bumko.gov.tr/Eklenti/11245,ovpsunumv11ingilizcepdf.pdf?0>.

<sup>133</sup> Annual Programme of the Presidency 2019, Measure 156.

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**Adequacy of the policy, legal framework and institutional set-up for professional human resource management in public service**

This indicator measures the extent to which the policy, legal framework and institutional capacities are in place and enable consistent human resource management (HRM) practices across the public service.

Overall indicator value 0 1 2 3 4 5

Sub-indicators	Points
1. Establishment of political responsibility for the civil service	2/2
2. Quality of public service policy documents	1.5/4
3. Implementation and monitoring of public service policy	1/4
4. Right balance between primary and secondary legislation	Not assessed
5. Existence of a central, capable co-ordination body	3/4
6. Professionalism of HRM units in civil service bodies	Not assessed
7. Existence of a functional HR database with data on the civil service	Not assessed
8. Availability and use of data on the civil service	0/5
<b>Total<sup>134</sup></b>	<b>N/A</b>

The President has been given political responsibility for the civil service, which could potentially help to launch a more uniform public service policy covering the different dimensions of HR. However, this may be hampered by the unclear division of roles among the main stakeholders. Although the SPA strategy sets wider civil service related objectives, they are not clear or targeted enough to effectively measure progress. There has been no significant progress on the personnel registry.

<sup>134</sup> No total is calculated as two sub-indicators are not included in this assessment. Therefore, no overall value is provided.

## Human resource management

*Principle 3: The recruitment of public servants is based on merit and equal treatment in all its phases; the criteria for demotion and termination of public servants are explicit.*

The newly established presidential system has retained merit and competition as relevant principles in the LCS<sup>135</sup>. Civil servants progress in their career both horizontally (moving to a higher grade in the same position) and vertically (being promoted to a higher-level position)<sup>136</sup>. Most of the ingredients of a merit-based civil service are present in the legislation (e.g. the obligation to create staffing plans, job classifications and the composition of selection committees), and they have not been amended by presidential decrees or amendments of the LCS. However, the analysis of the LCS is insufficient, since all public bodies have special secondary regulation on the matter. As the scope of this report is limited to central legal acts, it is not possible to fully explore the subject.

Issues identified in the SIGMA 2017 Monitoring Assessment<sup>137</sup> persist, starting with the announcement of vacancies. Although the legislation mandates publication of vacancies on the websites of both the recruiting authority and the SPA<sup>138</sup>, the SPA website<sup>139</sup> does not allow job-seekers to sort vacancies by type of position, institution, location or date of announcement or to subscribe to announcements of new vacancies.

The use of interviews as the final stage of the selection process is not uniform. External competitions for a vacancy are divided into two parts. The first consists of written KPSS<sup>140</sup> tests, which are centrally organised for the whole central administration in clusters, each giving different weight to some of the 11 specific exam areas<sup>141</sup>. Each individual institution may then require candidates to achieve a minimum threshold, according to their own legislation. Specific by-laws of individual institutions for Category A<sup>142</sup> positions may require candidates to do an additional written and/or oral exam. There is nothing wrong with using interviews during the selection process, as this practice is promoted by SIGMA and widely used across many civil services. The problem is that, in Turkey, even the main features (e.g. the weight of interviews, what characteristics can be assessed, whether the interviews should be structured) are not centrally regulated in legislation. Therefore, it is not clear how interviews are actually conducted in individual organisations, what is being assessed via this tool or how the interviews would affect the final outcome. The decisive value given to the oral exam in recruiting some categories of civil servants can introduce considerable room for subjectivity. Given the limited scope of this study, it was not possible to assess whether the system is actually abused at the institutional level. However, analysis of the sample organisations during the SIGMA 2017 Monitoring Assessment confirmed the lack of consistency and usage of structured interviews. This observation is confirmed by the Council of State's introduction of definitions of the oral exam and interview<sup>143</sup>. Problems related to non-uniform application of interviews have also caught the eye of the Ombudsman<sup>144</sup>, which has introduced transparent procedures for conducting interviews within its own institutions and is videotaping them, in order to set an example for other public authorities<sup>145</sup>.

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<sup>135</sup> LCS No. 657/1965, Article 3 on the merit principle and Articles 49-51.

<sup>136</sup> *Idem*, Articles 36-38.

<sup>137</sup> <http://sigmaweb.org/publications/Monitoring-Report-2017-Turkey.pdf>.

<sup>138</sup> Circular of the PM No. 4/2014, which mandates posting all job vacancy announcements on the SPA website.

<sup>139</sup> SPA website: <http://www.dpb.gov.tr>.

<sup>140</sup> KPSS: Public Personnel Selection Examination (Turkish acronym).

<sup>141</sup> <https://dokuman.osym.gov.tr/pdfdokuman/2018/KPSS/KILAVUZ10052018.pdf>.

<sup>142</sup> LCS, Article 4A.

<sup>143</sup> <https://www.memurlar.net/haber/735606/danistay-dan-sozlesmeli-ogretmen-sozlu-sinavlarıyla-ilgili-sok-karar.html>.

<sup>144</sup> The 2018 Ombudsman annual report, subsection 6.12.6.3, offers extensive detail on the recommendations and principles that should be applied to interviews for educational inspectors.

<sup>145</sup> <https://www.memurlar.net/haber/795953/kdk-dan-ornek-mulakat-uygulamasi-cam-fanus-ve-kamera-kaydi.html>.

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Due to the State of Emergency in place at the time, the SIGMA 2017 Monitoring Assessment did not cover the area of termination of civil servants. Although the State of Emergency was lifted on 19 July 2018, it still has implications on civil-service termination practices. A change in the LCS added a special reason for the termination of contracts of civil servants on the grounds of links to terrorist organisations<sup>146</sup>. The high number of civil servants affected led to the creation of the OHAL Commission to hear appeals from dismissed civil servants<sup>147</sup>. Law 7075 sets out the features, duties, and rights of the OHAL Commission and the appeal process. The regulation includes judicial review, not of the Commission's decisions, but of the institution from which the civil servant was dismissed<sup>148</sup>. The Commissions' decisions can be appealed in the administrative courts. An Information Note from the Council of Europe repeats an earlier decision of the European Court of Human Rights<sup>149</sup> that there were no reasons to presume that applications to OHAL Commission and judicial review by the administrative courts, and ultimately by the Turkish Constitutional Court, were not likely to provide an effective remedy. However, this position is not a definitive one. The effectiveness of the system will be kept under review in the light of the working methods, accessibility and general practice of the OHAL Commission and the administrative courts<sup>150</sup>. The OHAL Commission has published its 2018 report<sup>151</sup>. As of 31 December 2018, the latest published data shows that the OHAL Commission has processed 50 300 applications (of the 125 600 received by the end of 2018), rejected 46 600 applications, and granted reinstatement of applicants to their functions in 3 700 cases. The Commission has reached the capacity of processing 1 200 applications per week<sup>152</sup>.

Due to the lasting implications of the State of Emergency regime, indicators related to termination of service are not assessed in this report. The assessment methodology is not designed for situations such as this.

In general, there are no demotions in the Turkish civil service, except for civil servants who are appointed by the President to a top civil service position and then have to return to their original position.

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<sup>146</sup> LCS 657, Article 125, E, I).

<sup>147</sup> Law 7075 on Accepting the Changes of the Decree on the State of Emergency Inquiry Commission of 1 February 2018.

<sup>148</sup> *Idem*, Article 11.

<sup>149</sup> European Court of Human Rights, Application No. 70478/16 Gökhan KÖKSAL vs. Turkey, Decision of 12 June 2017, [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-174629%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-174629%22]}).

<sup>150</sup> <https://www.coe.int/en/web/human-rights-rule-of-law/-/meeting-of-the-turkish-inquiry-commission-on-the-state-of-emergency-measures-with-representatives-of-directorate-general-i-human-rights-and-rule-of-la>, published on 29 November 2018.

<sup>151</sup> [https://ohalkomisyonu.tccb.gov.tr/docs/OHAL\\_FaaliyetRaporu\\_2018.pdf](https://ohalkomisyonu.tccb.gov.tr/docs/OHAL_FaaliyetRaporu_2018.pdf).

<sup>152</sup> <http://www.hurriyet.com.tr/gundem/ohal-komisyonunun-bir-yili-125-bin-itiraz-50-bin-karar-41066920>.

Turkey  
Public Service and Human Resource Management

**Meritocracy and effectiveness of recruitment of civil servants**

This indicator measures the extent to which the legal framework and the organisation of civil service recruitment support merit-based and effective selection of candidates wishing to join the civil service and whether this ensures the desired results in terms of competitive, fair and non-discretionary appointments that enhance the attractiveness for job-seekers and performance of the public sector.

This indicator measures only external recruitment. The indicator on merit-based recruitment and dismissal of senior civil servants covers recruitment and promotion to senior managerial positions, and the indicator on professional development covers promotions to other positions.

Overall indicator value	0	1	2	3	4	5
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Sub-indicators	Points
<b>Legal framework and organisation of recruitment</b>	
1. Adequacy of legislative framework for merit-based recruitment for civil service positions	15/18
2. Application in practice of recruitment procedures for civil service positions	Not assessed
<b>Performance of recruitment practices</b>	
3. Time required to hire a civil servant	Not assessed
4. Average number of eligible candidates per vacancy	Not assessed
5. Effectiveness of recruitment for civil service positions (%)	Not assessed
6. Retention rate of newly hired civil servants (%)	Not assessed
<b>Total<sup>153</sup></b>	<b>N/A</b>

<sup>153</sup> As two sub-indicators are not included in this assessment, no total is calculated and no overall value is provided.

Turkey  
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**Merit-based termination of employment and demotion of civil servants**

This indicator measures the extent to which the legal framework and the HRM practices support fair termination of employment in the civil service and fair demotion of civil servants wherever it is envisioned in the legislation. The indicator does not deal with termination of employment and demotion of senior civil servants.

Overall indicator value 0 1 2 3 4 5

**Sub-indicators**

**Points**

**Legal framework and organisation of dismissals and demotions**

1. Objectivity of criteria for termination of employment in civil service legislation	Not assessed
2. Objectivity of criteria for demotion of civil servants in the legislative framework	Not assessed
3. Right to appeal dismissal and demotion decisions to the courts	Not assessed

**Fairness and results of dismissal practices**

4. Dismissal decisions confirmed by the courts (%)	Not assessed
5. Implementation of court decisions favourable to dismissed civil servants (%)	Not assessed
<b>Total<sup>154</sup></b>	<b>N/A</b>

The new presidential system has not introduced significant changes in civil service recruitment. The tradition of converting diverse types of public employment contracts into different categories that enjoy higher protection from the State is still practiced. Interviews are used by many institutions for making a final selection between candidates, although the procedures for conducting them are not well-established. After the end of the State of Emergency, some changes were introduced to the CSL, and a special commission has been established to process cases of affected civil servants.

**Key recommendations**

**Short-term (1-2 years)**

- 1) The Presidency should clarify the functions of the different stakeholders involved in the co-ordination of the civil service after the closure of the State Personnel Administration.
- 2) To ensure transparency and a merit-based approach, the Presidency should clarify the main characteristics of job-selection interviews in the central legal acts regulating the civil service.
- 3) The Presidency should start publishing annual reports on the progress made in developing the civil service area and HRM-related data.

**Medium-term (3-5 years)**

- 4) The Presidency should improve the personnel registry and use it as an instrument to manage human resources in a more strategic way.
- 5) The Presidency should establish strategic grounds for the development of the civil service with clear objectives, and specific activities, time frames and budget.

<sup>154</sup> As two sub-indicators are not included in this assessment, no total is calculated and no overall value is provided.

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