

17 April 2007

Screening report

Turkey

Chapter 3 – Right of establishment and freedom to provide services

Date of screening meetings:

Explanatory meeting: 21 and 22 November 2005

Bilateral meeting: 19 and 20 December 2005

I. CHAPTER CONTENT

Member States must ensure that the right of establishment of EU nationals and legal persons in any Member State and the freedom to provide cross-border services as laid down in the EC Treaty is not hampered by national legislation subject to the exceptions set out in the Treaty. The case law of the European Court of Justice regarding Article 43 EC et seq. and 49 EC et seq. is part of the *acquis* and needs to be respected. This requires a continuous examination of the Member State's current and future legal order with the aim of identifying legal or administrative obstacles on national, regional or local level not compatible with the Community law. The *acquis* under this chapter is of a horizontal nature covering a large variety of fields and professions and involving many public and/or semi-public institutions and bodies.

The *acquis* also harmonises the rules concerning regulated professions to ensure the mutual recognition of qualifications and diplomas between Member States; for certain regulated professions a common minimum training curriculum must be followed in order to have the qualification automatically recognised in an EU Member State. Directive 2005/36/EC, adopted on 7 September 2005, is the key piece of legislation in this field. On 20 October 2007, at the end of the transposition period, this Directive will replace fifteen existing Directives in the field of the recognition of professional qualifications. It was taken thus as the basis for the screening exercise in this subchapter. Community legislation in this field requires thorough transposition by Turkey and implementation by the Turkish institutions dealing with academic and professional training. In some cases upgrading programmes for persons not fulfilling the minimum training requirements might be considered.

As regards postal services, the *acquis* aims at opening up the postal services sector to competition in a gradual and controlled way, within a regulatory framework which assures a universal service. Main pieces of *acquis* are the Postal Directive (Directive 97/67/EC) and the amending Postal Directive (Directive 2002/39/EC). The establishment of an independent National Regulatory Authority (NRA) in this field is one crucial point for the proper implementation of the Community legislation.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Turkey and the discussion at the screening meeting.

Turkey stated that it is aware of the obligations resulting from the *acquis* under this chapter and that it accepts this *acquis*. Turkey did not present any schedule regarding the alignment of its legislation with the *acquis*.

The Commission stated that the degree of fulfilment of obligations under the Association Agreement will be taken into consideration by the Commission when recommending on the opening of negotiations for this chapter.

II.a Mutual recognition of professional qualifications

The current legal basis in Turkey for the recognition of qualifications is the "Law on Higher Education" (No 2547) as well as the "Regulation of diplomas awarded by a Higher Education Institution Abroad" which was adopted by the Council of Higher Education in 1996.

The latter Regulation does not differentiate between academic and professional recognition. Turkey indicated that in 2001 the Council of Higher Education started the alignment process concerning the harmonisation of the minimum training requirements for seven regulated professions covered by the *acquis*. Turkey did not mention specific dates for the further alignment process.¹

Professions in the health sector:

General Care Nurses: There are two categories of nurses. The first requires completion of a four year programme at secondary school (after 8 years of basic general school education). The second category requires the completion of a 4-year post secondary university programme in nursing. Turkey stated that the four-year university programmes in nursing fulfil the minimum requirements of Directive 2005/36/EC.

In order to execute the profession of a nurse one needs to have Turkish citizenship, to be female, to have a nurse diploma registered by the Ministry of Health and to have a permission from the Provincial Health Authority for private practice. A nurse employed in the public sector is not allowed to have an (additional) private practice.²

Legislation involved: Law No 6283 on Nursing

Midwives: There are two categories of midwives. The first requires the completion of a 4-year secondary school programme in midwifery (after 8 years of basic general education). This programme includes theoretical and practical training. The second category of midwife requires the completion of a 4-year full time university programme in midwifery which includes practical training as well.

Turkey stated that the four-year university programmes in midwifery fulfil the minimum requirements of Directive 2005/36/EC. For the first category of midwives Turkey indicated its will to organise an upgrading of midwives trained under the current system on a voluntary basis, with the Commission reserving its position on this.

In order to execute the profession, Turkish citizenship is required as well as a midwifery diploma which needs to be registered with the Ministry of Health. Only women are permitted to work as midwives. In case of a private practice, permission from the Provincial Health Authority is needed. A midwife employed in the public sector is not allowed to practice at the same time in the private sector.³ Turkey plans to harmonise (*inter alia* by abolishing the gender requirement for both nurses and midwives) but did not give a specific date.⁴

Legislation involved: Law N° 1219 on the Principles for the Performance of the Art of Medicine and Dentistry

Doctors: The basic academic education is six years of university studies. Turkey stated that this programme fulfils the minimum requirements of Directive 2005/36/EC. The

¹ After the screening meeting, on 1 December 2006, a Regulation on the Harmonisation of the Minimum Training Requirements for the Seven Regulated Professions stipulated by the EU-Directive 2005/36/EC has been adopted by the Council of Higher Education, which according to Turkey brings the minimum requirements for the seven health professions in compliance with the mentioned Directive.

² After the screening meeting Turkey stated that under certain conditions (*inter alia* if it does not hinder the fulfilment of duties in the public sector) a nurse, midwife or doctor employed in the public sector may additionally carry out private practice.

³ See footnote 2.

⁴ In the meantime, a bill abolishing the gender requirement has been introduced to the Parliament.

option of additional specialist training exists for certain specialisations and has different durations. Turkey indicated that the current set up concerning the specific training of the general medical practitioners is not in line with Directive 2005/36/EC and requires legislative changes. It was not specified when this was envisaged.

In order to execute the profession one needs to have Turkish citizenship and to have a diploma from Turkish medical faculties. If a Turkish citizen acquires a diploma abroad, he/she needs to go through a two-stage diploma recognition procedure involving a test on the theoretical and practical (clinical) knowledge in the given field.⁵

For work as a doctor in the private sector membership in the Turkish Medical Association is required as well as a licence issued by this professional organisation. The Membership fee is approximately € 1100 per year.⁶ There is no registration fee. If employed in the public sector, no membership in the Turkish Medical Association is necessary.

Private practice of medical practitioners is regulated by the Law No 1219 on The Principles for the Performance of Art of Medicine and Dentistry. According to this Law, medical doctors are allowed to carry out private practice.

Legislation involved: Law No 1219 on the principles for the performance of the art of medicine and dentistry, regulation on specialist medical doctors, Law No 6023 on the Turkish Medical Association

Dentists: The profession of a dentist is legally different from the profession of a medical doctor. A 5 year full-time university programme needs to be completed. As concerns the specialist training, Turkey indicated that it is not in line with Directive 2005/36/EC. A regulation aiming at *acquis* alignment is under preparation. It provides for a specialist training lasting four years. The Commission noted that dental specialisations are not compulsory, but if they are created they have to comply with the *acquis*.

In order to execute the profession of a dentist in the private sector, the enrolment in the Turkish Dentists Association is necessary as well as obtaining a licence by this Association. The membership fee is approximately €1,100, the registration fee €60. If a dentist works full time in the public sector, such membership is not necessary. As soon as a dentist employed in the public services additionally works part time in the private sector, registration and licence are necessary. Another requirement for both the public and private sector is Turkish nationality. If a Turkish citizen acquires a diploma abroad, he/she needs to go through a two-stage recognition procedure involving a test on the theoretical and practical (clinical) knowledge in the given field.⁷

Legislation involved: Law No 1219 on the Principles for the performance of the art of medicine and dentistry, Law No 3224 on the Turkish Dentists Association.

Veterinarians: 5-year full-time university studies are required. In order to execute the profession Turkish citizenship is required, a diploma from one of the faculties of veterinary medicine in Turkey registered by the Ministry of Agriculture and Rural

⁵ After the screening meeting, by decision of the Council of Higher Education of 8 August 2006, the two-stage recognition procedure is waived for diplomas obtained from recognised foreign universities in the field of medicine, pharmacy and dentistry.

⁶ After the screening meeting TR informed that according to the latest regulation of the Turkish Medical Association the annual membership fee is now between 15-75 €

⁷ See footnote 5.

Affairs. Furthermore in order to work as self employed veterinarian a permission from the provincial agricultural authority is necessary for running a surgery, policlinic or hospital for the treatment of animals. In addition, membership in the Union of Veterinary Medicine is mandatory as well as registration with the local branch of this professional organisation.

Legislation involved: Law No 6343 on the pursuit of veterinary medicine profession; establishment and duties of Turkish Veterinary Medical Association and Veterinary Medical Chambers, Law No 3285 on the Animal Health and Surveillance, Law No 4631 on Animal Breeding, By-Law on implementing regulation on the surgery and Policlinics of veterinary medicine.

Pharmacists: At present 5-year full-time studies at a Turkish faculty of pharmacy are required. This 5-year period includes 6 months of practical training in a pharmacy. Turkey stated that this programme fulfils the minimum requirements of Directive 2005/36/EC. In order to exercise the profession Turkish citizenship is required as well as a diploma from a faculty of pharmacy in Turkey registered by the Ministry of Health. If a Turkish citizen acquires a diploma abroad, he/she needs to go through a two-stage diploma recognition procedure involving a test on the theoretical and practical (clinical) knowledge in the given field.⁸ When operating in the private sector, one needs to be a member of the Turkish Pharmacists Association and receive a licence issued by it. Membership fee is approximately € 1,300 per year.⁹ There is no registration fee. If working in the public sector, no registration with the Turkish Pharmacists Association is necessary. A pharmacist working in the public sector is not allowed to practice in the private sector. Foreigners are not allowed to exercise the profession of a pharmacist in Turkey. According to the relevant legislation, one pharmacist can operate as an owner or responsible manager only one pharmacy or pharmaceutical drugstore at a time. According to the Law No 6643 on Turkish Pharmacists' Association, private practice of the pharmacist profession requires registration to the Chamber of Regional Pharmacists of the relevant province.

Legislation involved: Law No 6197 on Pharmacists and Pharmacy, Law No 6643 on Turkish Pharmacists Association.

Professions outside the health sector specifically mentioned in Directive 2005/36/EC

Architects: The completion of a 4-year full-time university study programme is required. Turkey is of the opinion that the minimum training requirements mentioned in Directive 2005/36/EC are fulfilled. This programme includes an internship between 60 and 120 days partially in an office, partially on a construction site. An architect may work as employed architect or as self-employed. As employed architect in the public sector, he/she does not need to register with the Chamber of Architects (CAT). The same applies to architects whose work is purely academic. Any architect working in the private sector as employed architect needs to register with the Chamber. He/she can practice as a registered architect without technical implementation responsibility.

Work as a self-employed architect requires one's own architectural office, register with the regional branch of the CAT and get a licence from this Chamber. Foreign architects must apply for temporary membership in the Chamber. The registration fee is about €18,

⁸ See footnote 5.

⁹ After the screening meeting TR informed that the annual fee for membership to a local Chamber of Pharmacists varies between €120-180 and that no membership fee to the Turkish Pharmacists' Association has to be paid.

whereas the fee for temporary membership is €220. Turkish architects have to pay €18 registration fee and about €53 annual membership fee.

There is no Turkish citizenship requirement for architects. Foreign architects who want to work as employed architects can do so in the framework of a specific project, but like their Turkish employed colleagues, they need to register with the professional Chamber.

Self-employed foreign architects in Turkey have to fulfil the following conditions: they need to obtain a work permit from the Ministry of Labour and Social Security; before issuing such permit, the Ministry hears two opinions from the Ministry of Public Works and from the Union of Turkish Chambers of Engineers and Architects with which the CAT is affiliated. If the work permit is given on the basis of a specific contract, only work foreseen under this contract can be carried out by the foreign architect. A general rule for foreign self-employed architects is that they can operate only without technical implementation responsibility.

Legislation involved: Law no 6235 on the Union of Turkish Chambers of Engineers and Architects and by-law, Law No 3458 on Engineers and Architects, Law No 4817 on Work Permits for Foreigners

Craftsmen: There are two ways to achieve a mastership certificate: following the 8-year compulsory basic education one can undergo an apprenticeship training lasting 2-4 years, depending on the profession. This is followed by the journeyman examination. A journeyman who has worked at least 5 years or has completed a mastership training course can take the mastership examination in order to receive the mastership certificate. Another educational track is the attendance of a 4-year vocational or technical high school. Graduates of a vocational or technical high school can receive a certificate equal to a mastership certificate allowing them to establish an enterprise without additional examination. However, graduates of the former 3-year vocational high schools are required to take the exam to receive the mastership certificate.

In order to execute a craft profession, one needs to have a mastership certificate, to register with the relevant chamber, to receive the permission from local authorities and competent institutions to set up an enterprise, to register with the tax administration and with the social security institution. Foreigners can establish a business or work as employees, provided the equivalence of their certificates on vocational or technical training is recognised by the Ministry of National Education. In addition, they need a residence and work permit.

Legislation involved: Law N° 3308 on vocational training (as amended by Law No 4702)

Other professions Turkey informed that there are many other regulated professions such as opticians, circumcisers, dental prosthesis technicians, seafarers, professions in civil aviation, notary, road transportation professions, private security services, independent accountant, customs commissioner, survey and cadastre engineer. For exercising most of them, Turkish citizenship is a precondition.

General system: For professions not covered by specific directives, the general system applies. This means that if one is qualified to practice a given profession in the home state, this person should be allowed to practice the same profession in the host state. In case of substantial differences in the length and content of the education and training between the host state and of the home state the authorities of the host state may impose a compensation measure which may be, at the applicant's choice, a period of supervised

practice or an aptitude test. Turkey stated that up to now there is no general system yet in place and for this reason professional diplomas in a large variety of professions such as the ones mentioned under "other professions" are subject to a recognition procedure. The Commission stated that for some of the mentioned professions specific rules apply which are, however, dealt with under chapter 14 (*Transport policy*).

Professions governed by specific sectoral Directives

Main pieces of *acquis*: Directive 77/249/EEC, Directive 98/5/EC (lawyers); Directive 86/653/EEC (commercial agents); Directive 74/556/EEC, Directive 74/557/EEC (transport of toxic products).

Lawyers: 4-year full-time university studies in Turkey or graduation in a foreign country followed by extra courses in Turkey and an examination. This is followed by a one-year traineeship. A professional examination needs to be passed.¹⁰ In order to execute the profession, Turkish citizenship is required as well as membership in the Bar Association. The lawyers need to be resident in the jurisdictional area of the Bar Association of which registration is sought. The bar associations have public legal personality status. They are accepted as public institutions; a refusal to register would be subject to administrative court procedures. The same applies to other professional Chambers.

The Bar Association needs to issue a licence. Only with such licence the process of admission to exercise the profession is completed. The registration or its refusal are administrative acts. The registration fee amounts to approximately € 145. In addition there is an annual fee of about €120. There are bar associations on provincial basis. The Union of Bar Associations is the umbrella organisation of all bar associations.

A lawyer establishing an office must not have more than one office. The office needs to be established in the jurisdictional area of the Bar Association that he/she is enrolled in. Lawyers may also set up a joint office.

Foreign lawyers' partnerships intending to operate in Turkey may only offer services of consultancy in foreign laws and international law under the condition that they have been formed in compliance with the Law. This restriction also applies to lawyers who are Turkish nationals and working for foreign lawyers' partnerships. In such cases, enrolment in the Bar association is not mandatory for the partners. The principle of reciprocity applies.

Legislation involved: Law No 1136 on Lawyers

Commercial agents: Turkey informed about the requirements under Turkish Law for commercial agents. It informed that a new Commercial Code is currently on the agenda of the Parliament which takes the requirements of Directive 86/653/EEC into account. No date for adoption was given.

Professional use of toxic products: Turkey informed about requirements in the fields of plant protection products. In order to exercise a profession in this field, Turkish citizenship is required. Turkey informed that on 5 December 2005 it became party to European Agreement concerning the International Carriage of Dangerous Goods by Road

¹⁰ In the meantime, the need to pass the professional examination was abolished by Law No 5558 in December 2006.

(ADR).¹¹ There are no rules on recognition of periods of work experience. There will be recognition rules in the future act on chemicals which is under preparation.

Legislation involved: Law No 6968 on Plant Protection and Plant Quarantine, Regulation on plant protection products and equipment, various by-laws.

Implementation and administrative capacity

The core administrative body responsible for the alignment process is the Council of Higher Education. A unit "EU and international relations" has been created recently within this Council. Turkey has not yet decided which body will be the contact point in the meaning of Article 57 of Directive 2005/36/EC. Within the Council of Higher Education there is a Recognition Committee composed of three Members; one of them being also a Member of the Council. This Committee recommends to the Council a decision concerning the recognition of a given diploma or concerning further examinations or compensatory training to be taken by the applicant before the diploma can be recognised. The final decision rests with the Council. This procedure does not apply to doctoral degrees and basic medical degrees.

In the case of Higher Education diplomas in medicine, dentistry and pharmacy awarded abroad, a two-stage test has to be taken by applicants in addition to the evaluation of the curriculum abroad as compared to the curriculum applying in Turkey.¹²

No concrete plans regarding the strengthening of the existing administrative capacity were disclosed.¹³

II.b. Right of establishment (Art. 43 EC et seq.)

The basic legal Act relevant for the establishment of companies is the Turkish Commercial Code (No 6762). A number of other laws apply additionally in certain sectors. There are many legal forms for the establishment of a company, such as limited companies, joint stock companies, commanded companies. Turkey informed that, in principle, there is no different treatment of national and foreign companies in terms of establishment of subsidiaries and branches. Turkey mentioned the Law No 4875 (Law on Foreign Direct Investment) and No 4884 (Law amending the Turkish Commercial Code, Tax Procedure Law, Stamp Duty Law, Labour Law and Social Insurance Law) as the latest legislation regulating the legal positions of both foreign and domestic natural and legal persons pursuing economic activity in Turkey.

The Law on Foreign Direct Investment stipulates that companies established with foreign capital are regarded as local Turkish companies which means that they can benefit from the same rights and exemptions that are granted to domestic companies engaged in the same field of activity. Foreign investors are not required to obtain an additional permit or approval while setting up business in Turkey. There is only a notification requirement. Specific restrictions apply, however, to companies operating in the field of education, tourism (at least one shareholder of Turkish nationality, in case of yacht operations) and as far as the production of defence-related equipment is concerned (see also chapter 4,

¹¹ Ratification process is still ongoing.

¹² See footnote 5.

¹³ After the screening meeting, Turkey informed that a Vocational Qualifications Authority was established by Law No 5544 of 21 September 2006.

Free movement of capital)¹⁴ Further restrictions apply in the fields of radio and TV broadcasting, maritime, air and road transport. The latter are dealt with under chapter 14, *Transport policy*. Exceptions apply, for instance, in the media branch, where foreign investors may hold only 25% of the shares of a broadcasting company. Turkey reported that, in 2005, procedures for the establishment of companies have been substantially simplified by Law No 4884. Until 2005, up to 70 documents had to be submitted to the competent authorities and 19 steps to be followed. Turkey stressed that, after 2005, the procedure has been reduced to 3 steps and requires less documents. The latter have to be submitted as originals. Turkey indicated that after the simplification a company registration can be carried out within one single day by filling out a standard form without applying to several different authorities for necessary approvals. The competent body is the Ministry of Industry and Trade (MIT) or local trade registration offices working under the chambers of commerce existing in every city. In case of Limited and Joint-Stock companies 0.04% of the capital needs to be paid at the Central Bank, or a State Bank.

Following the establishment of companies as described above, the registration with the Chamber of Commerce or another competent Chamber is the next compulsory step. For legal entities (companies), this requirement is provided for in Law No 6762 (Commercial Code) and Law No 5174 (Law on Union of Chambers of Commerce, Industry and Commodity Exchanges). For tradesmen and craftsmen (natural persons) this requirement is stipulated in Law No 5362 (Law on Professional Organisations of Craftsmen and Tradesmen). Chambers are accepted as public institutions; a refusal to register would therefore be subject to an administrative court procedure.

The regular deadline for becoming registered with the Chamber of Commerce is one month after the registration with the Trade Registry. The statutes of the registered companies are published automatically in the Registry Gazette.

In Turkey, there are specific requirements for companies operating in the financial services field (see chapter 9, *Financial services*).

For the setting up of branches of foreign companies, Law on Foreign Stock Companies is relevant. Pursuant to this law, branches of foreign companies in Turkey do not exist as separate legal entities but remain apart of the foreign legal entity. They are taxed as non-resident companies. The responsible institution for the registration of branches of foreign companies is the registry office in the relevant Chamber of Commerce. The registration process must be handled by a fully authorised representative who has to be resident in Turkey. Any branch of a foreign company needs to register with the respective Chamber.

Turkey informed that once a company or a self-employed is established and has registered with the competent Chamber, the following additional steps have to be taken before the economic operator can actually start providing services: The relevant local authorities need to issue a permission (licence) according to the "By-Law on licence to establish a workplace". The approach differs depending on the type of economic activity planned by the applicant. For economic operators intending to open a stationary shop there are lighter requirements than for those applying to open a restaurant, a private school or a pharmacy. Turkey stated that there was no discrimination against foreigners in the process of granting such licences.

¹⁴ After the screening meeting, the requirement of at least one shareholder in the case of yacht operations was abolished on the basis of Law No 5571 which was published in the Official Gazette on 13 January 2007.

In specific cases concerning *inter alia* the establishment of workplaces where dangerous chemical substances are produced, utilised or stored or in the case of workplaces in the industrial sector involving more than 10 workers special rules apply. In such cases the applicant needs to receive a so called "licence to establish" and "certification to operate" by the Ministry of Labour and Social Affairs. This is regulated by the implementing "By-Law on obtaining a Licence to establish a workplace and certification to operate" based on Law No 4857 (Labour Act). Applications for obtaining a "licence to establish" and a "certification to operate" need to be dealt with within 30 days as from the date of application. Turkey informed that if this deadline is not met the applicant is entitled to operate the workplace.

A foreigner wanting to set up a business needs to turn to the Ministry of National Education to receive a document stating the equivalence of vocational and technical training. Foreigners also need a work permit according to Law No 4817 (Law on the work permit for foreigners). This is not only required from employees, but also from self-employed persons. The latter can receive a work permit provided that they have already been residing in Turkey for at least five years and that their work contributes positively to the economic development and boosts employment. Finally, each economic operator providing services needs to be registered for tax purposes.

As mentioned under section II.a, Turkish citizenship is required for a large variety of professions. In certain sectors, only one place of business can be established.

Turkey informed that, at present, a new draft Commercial Code composed of 1500 articles has been introduced to the parliamentary procedures. Once adopted this new Code will bring a partial alignment of the Turkish legislation. Turkey did not give other specific indications on the approach to be followed in the process of overall alignment with the *acquis*.

II.c. Freedom to provide cross border services (Art. 49 EC et seq.)

At present, Turkish legislation does not contain specific provisions regarding the cross-border provision of services without establishment or residence in Turkey. Alignment requires a considerable amount of legislative amendments in various fields such as Labour Law, Company Law, Commercial Law or legislation on foreigners.

Turkey stressed that under certain circumstances it allows the provision of services on a temporary basis by foreign service providers. This is only possible under the condition that the persons designated to provide a specific service of a foreign company in Turkey hold a work permit and a residence permit issued by the Turkish authorities.

Turkey confirmed that currently museums ticket prices differ depending on whether the visitors are Turkish nationals or foreigners.¹⁵

No information was given as to when alignment is planned.

Implementation and administrative capacity (regarding II. b and II. c)

Turkey informed that the relevant ministries have instructions to screen their own legislation for this chapter. The Ministry of Industry and Commerce plays a lead-role in these efforts which are co-ordinated by the committee for alignment in the Prime

¹⁵ Turkey informed that, in the meantime, in light of a new regulation the price differentiation on the basis of nationality was abolished as of 1 February 2006.

Ministry. Other ministries, such as the Ministry of Labour and Social Security, are closely associated with the process. In view of the size of the country, the regional branches of central ministries are of high practical importance.

In the process of granting licences and permissions to foreign service providers also various chambers, local authorities and other public or semi-public bodies are involved.

Turkey did not disclose specific plans as to the strengthening of the bodies involved in the future application of the *acquis*.

II.d. Postal services

Postal services are regulated by the Law on Postal Services (LoPS, No 5584) and seven by-laws. The law on Road Transport (No 4925) and a by-Law also have some relevance. The Post and Telegraph Organisation (PTT) can be regarded as the Universal Service Provider (USP), even though the concept of “USP” is not developed in the Law: The definition of universal service and other related issues have not been regulated within the postal legislation. The PTT is a state owned enterprise. It has in total 4,349 offices with 29,000 staff for domestic and international postal, postal financial and logistic services. There is no plan to privatise PTT. According to the Law on Postal Services, it is a body affiliated to the Ministry of Transport. The Law provides for a postal monopoly regardless of weight limits. However, this monopoly is broken by private companies operating on the basis of the law on Road Transport for which the Ministry of Transport issues authorisations. Private parcel companies are authorised to operate in the parcel segment by Law No 4925. These authorisations cover the parcel segment up to 100 kg which means that private companies *de facto* operate in the area reserved for PTT due to an unclear delimitation between the PTT and the private companies in Turkish legislation.

The law on postal services does not provide for a licensing regime laying down the requirements for granting or withdrawing a licence to other service providers. As mentioned above, the authorisations to private operators in the parcel sector are given under the Law on Road Transport.

The Board of PTT is authorised to determine the limits of tariffs. The services are based on the uniform price principle for each service throughout the country. There is no national regulatory authority (NRA) in the meaning of the *acquis*. This issue is being studied (pre-drafting stage), but has not yet reached the level of political decision-making.

Complaint procedures are regulated in the Law. In the absence of an independent National Regulatory Authority, the quality standards are set and supervised by the PTT. Supervision of private service providers in the parcel sector is carried out by the Ministry of Transport on the basis of the By-Law on Road Transport.

As concerns the notice on competition in the postal services, Turkey informed about the Law on Protection of Competition (No 4054) which is the general law applied in various sectors of the economy.

There is no separate accounting system for reserved and non-reserved services. Cross-subsidisation may exist, but it is not possible to clarify this due to the lack of separation of accounting systems. Tariff applications for postal services of PTT on the domestic market are not geared to costs yet whereas international postal services are partially

geared. Turkey is undertaking preparatory work regarding cost accounting and separation of accounting between the reserved and non reserved services in view of *acquis* alignment.

Issues such as compensation for losses and damages, right of application and period of expiry, indemnity, liability and non-liability are already regulated in postal legislation.

Turkey stated that PTT staff delivering postal items are exempt from fares and related duties as well as taxes charged by public institutions, municipalities and their subsidiaries. It informed that services of the PTT are subject to Value Added Tax (VAT).

Turkey did not give any specific indications on when it would align its legislation with the *acquis*. It stressed that it was too early to give a time frame. It informed in general terms that preliminary studies were under way. They have not been discussed yet at the political level. Consultations are ongoing with stakeholders at technical level concerning the future regulation of postal services and a restructuring of the PTT.

Implementation and administrative capacity

The General Directorate of the PTT is affiliated to the Ministry of Transport. It is not only running the PTT operationally but plays, in the absence of a National Regulatory Authority, also a regulatory role as regards issues such as quality standards or tariff limits. The assessment of quality standards is carried out in co-operation with UPU and PostEurop in fixed intervals. Preliminary studies are being carried out in order to restructure and improve Turkish Postal Sector legally and operationally in line with the relevant EU *acquis*.

The General Directorate of PTT is, however, not involved in the process of granting licences to private companies in the parcel sector. The latter role remains, as described, with the Ministry of Transport applying the Law on Transport. Turkey did not disclose information on how many staff is currently involved in functions which would need to be carried out by a National Regulatory Authority in the future.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

As regards the *acquis* under this chapter, Turkey is at an early stage of alignment. Turkey needs to move from the phase of preliminary studies to the elaboration of more specific plans on how to align and in which time frame. Particularly large gaps exist in the area of freedom to provide cross border services and postal services. The chapter "Freedom to provide services" is one of eight chapters covered by the conclusions on Turkey adopted by the Council (GAERC) on 11 December 2006 and endorsed by the European Council on 14/15 December 2006.

III.a. Mutual recognition of professional qualifications

Turkey partially meets the training requirements under Community law. Particularly the training for general care nurses, in particular those having completed only a 4-year secondary education programme, and midwives needs upgrading.

Turkish legislation diverges from the *acquis* on two essential points:

- It does not distinguish between recognition of academic and professional qualifications.

- It contains nationality requirements which restrict access to certain professions to Turkish citizens.

Many professions are regulated in Turkey. In future, the general system should apply to many of the now regulated professions, e.g. to the profession of opticians. Some of the professions mentioned by Turkey are subject to specific rules dealt with under chapter 14 (*Transport policy*). The reciprocity principle applied in some professions to nationals from a number of countries needs to be replaced by the principle of automatic recognition under specific provisions of Directive 2005/36/EC concerning six health professions (doctors, general care nurses, dentists, veterinarians, midwives and pharmacists) plus architects as far as nationals from EU Member States are concerned. Furthermore, the directives on lawyers (Directives 77/249/EEC and 98/5/EC), as well as on commercial agents (Directive 86/653/EEC) must be implemented.

Linguistic skills cannot a priori be a condition for recognising professional qualifications of EU nationals from other EU Member States. They can only be taken into account at a later stage with regard to the specific requirements of the concrete activity to be carried out by the EU national. The citizenship requirement as well as other requirements listed under III.b. such as the gender requirement for nurses and midwives will have to be lifted.

The existing structures (Council of Higher Education) need to be adapted for Turkey to cope effectively with the tasks required by the *acquis*. The focus needs to be changed from academic to professional qualifications. Turkey needs to consider at an early stage which body shall play the role of a contact point in the meaning of Article 57 of Directive 05/36/EC. The other bodies involved, such as the professional Chambers, need a re-orientation as regards their future tasks once the *acquis* would apply.

III.b. Right of establishment

Turkey is in a state of limited alignment in this subsector. There is a general awareness of the incompatibilities with the *acquis* in its legislation but Turkey has not yet elaborated a time schedule for the alignment process.

A number of requirements under current legislation are not compatible with the EC Treaty and the relevant case law of the European Court of Justice with respect to EU legal and natural persons providing services: *inter alia* the nationality requirement, the gender requirement (concerning nurses), non-proportionate language requirements or the “one office rule”, the residence requirement.

The requirement to deposit a warranty at the Central Bank or a State Bank when establishing a stock company is not compatible with the *acquis*. Even though the procedures for establishing a company have been simplified the compulsory procedures following the establishment are still too heavy to comply with *acquis* requirements as laid down by the European Court of Justice.

The requirement for a self-employed national of an EU Member State to apply for and obtain a work permit on top of all procedures linked to the establishment and registration of his company is not compatible with the *acquis*. The same applies to the condition of previous residence of at least five years in Turkey and to the requirement that the activity of the foreign service provider needs to positively contribute to the overall employment situation. This concept needs to be abandoned. Turkey also needs to review its legislation as regards foreigners and make it compatible with the *acquis*. In some areas, foreigners are completely excluded from exercising the profession in Turkey which needs to be changed.

Turkey has not started yet to set up the necessary inter-service coordination structure to ensure that current and new legislation is examined on its compatibility with Articles 43 and 49 EC. A considerable effort is needed to ensure the smooth functioning of such structures which should also involve regional and local bodies. The knowledge of the case law of the ECJ needs to be more widespread among the relevant services including the judiciary.

The Chambers in charge of particular professions have the potential to carry out the functions provided for in the *acquis*. However, membership fees need to be the same for Turkish nationals and EU nationals under the *acquis*. This is currently not the case for architects.

In case of defence-related industries, the criteria for issuing establishment permits are opaque and could allow for discrimination against foreign investors for reasons not related to defence or public security considerations as industry and trade aspects are part of the decision making process (see also chapter 4, *Free movement of capital*). The condition that at least one shareholder of a company operating in the field of tourism must be a Turkish national is not in compliance with the *acquis*.

III.c. Freedom to provide cross border services

Turkey has currently no provisions in place allowing for the cross border provision of services in the meaning of Article 49 EC and related ECJ jurisprudence.¹⁶

Such provisions need to be introduced in the Turkish legal framework. According to the case law of the European Court of Justice, requirements which have already been fulfilled by the service provider in the Member State of establishment cannot be imposed again by the Member State where the service is provided (e.g. obligation to have an establishment, obligation to enter into a register).

The current requirement for any foreign service provider to have a work permit and a residence permit are not in line with the *acquis* in this field.

Article 49 EC also includes the freedom to receive services. It is not in line with the *acquis*, that museums ticket prices differ depending on whether the visitors are Turkish nationals or foreigners.

III.d. Postal services

In the area of postal services Turkey is at an early stage of alignment.

The current postal monopoly regardless of weight limits is not compatible with the *acquis*. A gradual process of alignment should start soon to allow for competition in the postal sector. The *de facto* acceptance of the breach of the postal monopoly by private parcel companies is not sufficient. A consistent overall approach needs to be taken during the alignment process.

The absence of a National Regulatory Authority (NRA) independent from the PTT is an important deficiency to be addressed by Turkey at technical and political level. The

¹⁶ Nonetheless, the European Commission takes it for granted that Turkey fully complies with its GATS commitments under "Mode 1" (i.e. WTO commitments to allow cross-border supply of services, which Turkey has taken for a number of services sectors).

establishment of such NRA will require considerable financial efforts and human resources. A track record of activities of any future NRA will be required before accession. The issue of establishing a NRA is linked with the opening of the sector for competition.

Separate accounting systems for the reserved and non-reserved areas will need to be introduced in the future. It needs to be noted positively that the services of PTT are subject to VAT.