

29 June 2007

Screening report

Turkey

Chapter 10 – Information Society and Media

Date of screening meetings:

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Bilateral meeting: 13-14 July 2006

I. CHAPTER CONTENT

The *acquis* includes specific rules on electronic communications, on information society services, in particular electronic signatures, electronic commerce and conditional access services, and on audio-visual services. In the field of electronic communications, the *acquis* aims to eliminate obstacles to the effective operation of the internal market in telecommunications services and networks, to promote competition and to safeguard consumer interests in the sector, including universal availability of modern services. As regards audiovisual policy, the *acquis* requires the legislative alignment with the Television without Frontiers Directive (89/552/EEC), which creates the conditions for the free movement of television broadcasts within the EU. The *acquis* aims to the establishment of a transparent, predictable and effective regulatory framework for public and private broadcasting in line with European standards. The *acquis* also requires the capacity to participate in the community programme Media 2007.

In relation to Chapter 23, "Judiciary and Fundamental Rights", it should be noted that television broadcasting is considered as a specific manifestation in Community law of the principle of freedom of expression. This chapter focuses on aspects related to the broadcasting and distribution of television services, whereas chapter 23 covers all other issues related to the freedom of expression.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Turkey and the discussion at the screening meeting. Turkey indicates that it can accept the *acquis* regarding Information society and media and that it does not expect any difficulties to implement the *acquis* by accession.

II.a. Electronic communications and information technologies

According to the information provided by Turkey on the **general framework**, the main primary legislation is the Telegram and Telephone Law (as amended), the Radiocommunications Law (as amended), the Universal Service Law, the Electronic Signature Law and the Law on the Establishment of Radio and Television Enterprises and Their Broadcasts. The current legislation in Turkey mostly transposes the 1998 framework. It transposes some parts of the 2002 framework. Full implementation is foreseen with the enactment of the draft Electronic Communications Law, which has been in Parliament since October 2005.

With respect to enforcement, it follows from the framework that the powers and the competencies of the national regulatory authority, i.e. the Telecommunications Authority (TA), should be exercised following the principles of promotion of competition, protection of the rights and interests of consumers, interoperability of telecommunications systems, promotion of innovative technologies, efficient use of scarce resources, impartiality, non-discrimination and transparency. According to the information provided by Turkey, the TA, which was established in August 2000, is independent with administrative and financial autonomy. The total number of staff is 494, of which 128 persons are directly involved in regulatory work. The chairman and the six board members are appointed for 5 years by the Council of Ministers. Re-appointment is possible. The TA is in charge of regulation and monitoring of the telecommunications sector, authorisation, dispute resolution, consumer protection, market analysis, remedies and sanctions, frequency management and preparation of the National Allocation Table. The TA also prepares the necessary plans in the field of radio-communication and telecommunication, and submits these to the Ministry of Transport.

Besides the main tasks for the TA (regulation, authorisation, dispute resolution, spectrum management and monitoring & inspection) the main roles of the Council of Ministers in this area is overall policy determination, approval of minimum fees for authorisations and the appointment of the members of the Telecommunications Board.

Other relevant state bodies are the Ministry of Transport, which main roles concern policy issues and universal service, and the Communications High Board, which makes suggestions to the Ministry of Transport in the area of radio-communications and approves the radio and TV frequency channel plan.

As concerns **relevant markets and market analysis**, Turkey explained that the main provisions are contained in the 2003 By-Law on Access and Interconnection, the 2003 Communiqué on Principles and Procedures for Designation of the Operators with Significant Market Power (SMP) and the 2003 Communiqué on Principles and Procedures for Designation of the Operators with Dominant Position (DP). According to Turkey, the current system is transitional; it is based on the 1998 acquis but allows the carrying out of market analyses within the scope of the 2002 framework. The analysis of sixteen relevant markets has been completed in 2006. Further legislative alignment to the 2002 framework is planned through provisions in the draft law on electronic communications and revision of secondary legislation. The By-Law on Access and Interconnection will be amended¹. In the SMP Communiqué, provisions governing market analysis, including NRA-NCA cooperation in market analysis, will be added². The DP Communiqué will be repealed³.

The area of **access** to, and interconnection of, electronic communications networks and associated facilities is regulated by the By-Law on Access and Interconnection, as well as by regulations on local loop unbundling, co-location and facility sharing, accounting separation and cost accounting, and leased lines. After being designated as operators with significant market power (SMP), operators are obliged to submit their reference interconnection offers (RIOs), which are revised annually. A RIO is published after review by and approval of the TA. The principle for interconnection tariffs is the cost of the efficient service provision and the cost method is 'forward looking long run incremental cost'.

Regarding local loop unbundling a communiqué was enacted in July 2005, defining scope, definitions, pricing rules and dispute resolution procedures. It also provides for the need for Turk Telekom to submit a reference unbundling offer (RUO), which after public consultation, will be published⁴ after review by and approval of the TA.

A communiqué on facility sharing and co-location was enacted in 2003, setting out the scope and principles. Facility sharing and co-location are implemented in the RIOs and RUOs.

The accounting separation and cost accounting obligation applies to both fixed and mobile network operators having SMP in related markets. The requirement of having separate accounts for the business units is defined in terms of revenues, costs and capital employed. The details of the accounts and reporting formats are specified in a document from the TA on principles and procedures. The accounting separation obligation is subject to a two-year transition period and in this period is enforced by study groups composed of representatives

¹ Published on 14 June 2007 (OG 26552).

² The SMP Communiqué was repealed and a new By-Law was issued on 7 January 2007 (OG 26396).

³ Repealed on 7 January 2007.

⁴ Published on 22.11.2006.

of the TA and the operators. The TA may audit the operators' accounts or request independent auditors' verifications from the operators.

As regards leased lines, there is a cost orientation obligation for wholesale leased line tariffs. The Board of the TA examines the tariff proposals according to the principle of the cost for efficient service provision. Benchmarking can also be used. In 2004, leased lines tariffs were approved according to cost orientation.

Turkey also stated that further alignment in this area will be achieved by the adoption of the draft law on electronic communications and by amendments to the By-Law on Access and Interconnection. The latter will include remedies based on market analysis and differentiate between obligations according to markets and SMP operators.

Regarding **authorisation** of electronic communications networks and services, the legislation currently in force foresees authorisation agreements (signed with state owned entities specified in the law), concession agreements, telecommunication licenses and general authorisation. Turkey acknowledges that the current authorisation system is not fully in line with the 2002 *acquis*. Turkey will have to ensure that its authorisation systems do not impose unduly burdensome authorisation conditions. A new by-law on authorisation of electronic communications and networks has been drafted in order to take full account of the *acquis* in the context of the draft Electronic Communications Law.

Regarding numbering, a new By-Law on Number Portability has been drafted in addition to the By-Law on Numbering that was published in February 2004⁵.

The **universal service** obligation in the Turkish legislation follows from the 2005 Law on the Provision of Universal Service and the 2006 By-Law on the Rules and Procedures on the Collection of the Universal Service Revenues and the Financing of the Expenditures.

The scope of the universal service is fixed telephony services, public pay phones, telephone directory services (printed or electronic), emergency call services, basic internet services and communications services as regards distress and safety call at sea. The single European emergency call number '112' has been assigned as the single emergency call number, in addition to other emergency numbers, and can be reached free of charge.

In 2006, the Council of Ministers extended the scope of the universal service obligation twice to include "services regarding the expansion of information technologies (including computer literacy)" and "the provision of digital broadcasting via digital terrestrial transmitters country-wide".

The law foresees a designation procedure to appoint the universal service provider(s). The universal service obligation is financed by 2% of the authorisation charges granted to the TA, 1% of the annual net sales of operators (except GSM operators) 10% of the share that GSM operators pay to the Treasury, 20% of the administrative fines issued by the TA and 20% of the amount which remains after all TA expenditure has been deducted. The revenues of universal service go into a special account named "Universal Service Revenues". If these revenues do not cover the net cost of the universal service obligation, the Ministry of Finance will pay the difference. The net cost is calculated as the difference between the net cost for a designated undertaking of operating with the universal service obligations and the net cost of

⁵ Published on 1 February 2007 (OG 26421).

operating without the universal service obligation. Any market benefits are taken into account in the calculation of net cost.

As regards **competition** in the markets for electronic communications networks and services, Turkey stated that it has adopted the principles contained in the Commission Competition Directive and empowered the regulator to enforce these. On the issue of the possible existence of shareholders' agreements which could affect the competition in the market, Turkey stated that no shareholder agreement has been signed between the State and an operator, since such agreements are not foreseen as an authorization type in the Telegram and Telephone Law.

As regards competition in the area governed by authorisation agreements, Turkey explained that there are two state owned entities with which the TA has signed such agreements: „Türksat Satellite Communication Cable TV and Operation Incorporated Company (Türksat A.Ş.)“ and „General Directorate of Coastal Safety and Salvage Administration (KEGKİ)⁶. The 2005 authorisation agreement with Türksat A.Ş. is based on the amending laws no. 5189 and 5335, while the 2005 authorisation agreement with KEGKİ is based on the amending law no. 5189. The agreement with Türksat A.Ş. mainly covers the establishment and operation of satellite and cable TV infrastructure and provision of all types of telecommunications services that can be provided over satellite and cable TV infrastructure. The agreement with KEGKİ mainly covers the provision of maritime communication and coastal safety communication services. Turkey clarified that an authorisation agreement has the same characteristics as a concession agreement, except for the fact that an authorisation agreement is signed with a state owned entity specified in the relevant laws.

Turkey underlined that there are currently 23 satellite telecommunication and satellite platform operators and 4 cable TV operators in Turkey which can be rivals to Türksat A.Ş. for most of the services⁷. Türksat A.Ş. currently has the monopoly on the provision of satellite services to the public administration. In addition, there is not a provision in the Law no. 5189 stating that the services provided by KEGKİ can not be provided by other operators.

Tariff rebalancing is ongoing.

In the area of processing of personal data and the protection of **privacy** in the electronic communications sector, Turkey explained that the main provisions are contained in the Criminal Code and in the 2004 By-Law on Personal Information Processing and Privacy in the Telecommunications Sector, which was prepared mostly in parallel with the EU 2002/58 Directive. Turkey acknowledges that the national provisions are not yet fully aligned with the applicable *acquis*. Further alignment will take place with the adoption of the Draft Electronic Communications Law, Draft Law on Protection of Personal Data and amendments to the secondary legislation.

The legal basis for the management of the **radio spectrum** by the TA is provided in the Radio-Communication Law and the Radio-Communication By-Law. The TA is responsible for the management and administration of spectrum resources, the preparation of the National Allocation Table and the assignment of frequencies. The transfer of spectrum rights (especially PMR/PAMR and maritime bands) has been possible since 1983. TA follows the

⁶ The name of the Administration was changed to General Directorate of Coastal Safety in February 2007.

⁷ By June 2007, the number of satellite telecommunication and satellite platform operators is 21 while the number of cable operators is 5.

developments in spectrum trading and generally monitors the efficient and effective use of spectrum in Turkey.

As regards **broadband** development, the current subscriber penetration rate is about 2.8 % (July 2006). In the context of the national broadband strategy, the Government has launched a number of broadband development initiatives. It is aiming at a subscriber penetration rate of 12.5 % by 2010.

In the area of the organisation and the management of the **Internet**, the Internet Domain Names and the European Network and Information Security Agency, Turkey informed that there is no legislation on the management and organisation of internet domain names. However, the draft electronic communications law foresees that the rules and the procedures concerning the management and organization of ".tr" domain names shall be decided by the Ministry of Transport.

Regarding the network and information security, the competent authority is the National Research Institute of Electronics and Cryptology (UEKAE) a specialised institute of TUBITAK. UEKAE has been assigned with specific duties in the information society strategy.

Safer Internet measures in schools are regulated by a 2004 circular on Internet ethics issued by the Ministry of National Education and a protocol between the ministry and Türk Telekom on a filter mechanism against "pornography, terror, drug usage, weapons, gambling and violence". Outside schools, a 2006 circular issued by the Ministry of Interior obliges Internet cafés to use and update filter softwares which block "online gambling, pornography, violence, terror propaganda, and forbids them to keep and access computer games with pornographic content or encouraging gambling, betting, violence, drug usage or other bad habits"⁸.

II.b. Information society services

Turkey adopted an Information Society Strategy and Action Plan in July 2006⁹.

In the area of **E-signatures**, the main piece of legislation is the 2004 Electronic Signature Law. The TA has prepared the implementing legislation and is authorised to inspect the market, including the supervision of the activities of the electronic certificate service providers. The mandatory notification procedure provided for in the Electronic Signature Law applies to all electronic certificate service providers wishing to establish themselves in Turkey.

As regards **electronic commerce**, Turkey stated that the main principles of the Directive can be found in the e-Signature Law, the Law of Obligations, Consumer Protection Law, the Criminal Code and Civil Procedural Law. The e-Commerce Working Group, coordinated by the Undersecretariat for Foreign Trade (UFT), has been screening Turkish legislation in order to identify further alignment needs. The Ministry of Industry and Trade has established arbitration committees for out-of-court settlement of consumer problems in this area.

⁸ A recent law, Law No 5651 on Regulation of Means of Combatting Certain Crimes Committed via Internet, entered into force on 23 May 2007. (OG 26530).

⁹ Adopted by the High Planning Council.

Turkey also stated that there is currently no specific legislation corresponding to legal protection of services based on **conditional access**, but partial regulations in various laws, such as the sanctions provided by the Criminal Code and the remedies provided by the Law of Obligations and the Law on Artistic and Intellectual Works. Turkey has not yet signed the European Convention on the legal protection of services based on, or consisting of, conditional access.

II.c. Audiovisual policy

With respect to the **general framework**, Turkey explained that according to Article 26 of the Constitution, as amended in 2001, everyone has the right to express and disseminate his/her thoughts and opinion by speech, in writing or in pictures or through other media individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities. According to the same provision, transmission by radio, television, cinema, and similar means may be subjected to a system of licensing. A 2004 amendment to Article 90 of the Constitution introduced prevalence of international agreements in the area of fundamental rights and freedoms, in cases of contradiction between national and international law.

A 1993 amendment to the Constitution ended the state broadcasting monopoly. Turkey has ratified the European Convention on Transfrontier Television.

The main body, responsible for regulation and supervision of radio and TV broadcasting, is the Radio and Television Supreme Council (RTÜK). As an autonomous and impartial public legal body which regulates radio and television broadcasting services, it is composed of 9 members who are elected by the Turkish Grand National Assembly among the nominees of the political parties for a term of 6 years. As regards the independence, the Broadcasting Law stipulates that Supreme Council members shall not occupy any civil service or private post for the duration of their membership, shall not be a party directly or indirectly in matters within the field of function and powers of private or public broadcasting enterprises or derive any benefit from such matters, and shall not be a member to a political party.

Regarding Turkey's position at WTO on audiovisual services, Turkey did not include the audiovisual services neither in its Uruguay Round commitment list nor in its Doha Round offers. Turkey also does not have any MFN exemption in audiovisual services in its List of Article II Exemptions. Turkey would like to maintain this situation.

In the area of **television without frontiers**, the main piece of legislation is the Broadcasting Law. It is based on the principle of supremacy of law, the general principles of the Constitution, fundamental rights and freedoms, national security and moral values. The Broadcasting Law specifies that the broadcasting language is Turkish. In 2002, Article 26 of the Broadcasting Law was amended in order to allow retransmission of broadcasts. In 2003, Article 4 of the Broadcasting Law was amended in order to allow broadcasts in traditionally used language and dialects. The broadcasting legislation also consists of the 2003 By-Law on the Rules and Principles for the Radio and Television Broadcasts and the 2004 By-Law on Radio and Television Broadcasts in Different Languages and Dialects, which are Traditionally Used by the Turkish Citizens in Their Daily Lives. There are also productions and programmes in universal languages. Turkey declared that all official languages of the EU are regarded as "universal languages".

Broadcasts shall use the Turkish language in its spoken form without destroying its characteristics and rules; shall ensure its development in the form of a modern cultural, educational and scientific language as a basic element of national unity and integrity.

Content restrictions (see also chapter 23 - Judiciary and Fundamental Rights) include provisions against the violation of Turkey's constitutional provisions, the territorial integrity, the reforms and principles of Atatürk and against violation of public order (violence, terror, ethnical discrimination, incitement to hatred and hostility on the grounds of social class, race, language, religion, sect and region) and "fair play".

Turkey stated that it has reached a high level of alignment in the area of advertising and the protection of minors.

Turkey informed that it has the legal framework necessary for the implementation of measures to protect **film heritage**. It is composed of Article 64 of the Constitution, the 2003 Law on the Institutional Structure and Duties of the Ministry of Culture and Tourism, the 2004 Law on Evaluation, Classification and Support of Cinema Films, the 1951 Law on Intellectual and Artistic Works and a number of by-laws. The legal framework is implemented mainly by the Ministry of Culture and Tourism.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Overall, Turkey's level of alignment with the *acquis* on information society and media and its degree of implementation is limited. Turkey is partially aligned with the *acquis* on electronic communications, but further measures are needed to fully transpose the universal service obligation. In the fields of information society services and audiovisual policy, alignment is also limited. Further alignment with the *acquis* on television broadcasting, in particular the adoption and full application of the principle of freedom of reception and retransmission, should be a priority. In general, the administrative capacity should be strengthened in all the three main areas of this chapter.

III.a. Electronic communications and information technologies

In general, there is partial alignment with the applicable *acquis* and important steps still have to be taken to achieve legislative and practical alignment and to have a sufficiently competitive sector. The current telecommunications legislation mostly transposes the 1998 *acquis* and transposes parts of the 2002 framework. There are also some transitional regulations in place. The draft Electronic Communications Law, aimed at alignment with the 2002 framework is in Parliament since October 2005. Once this primary law is adopted several by-laws (secondary legislation) have to be adopted for the framework to be implemented.

Some recently adopted regulations, such as the implementing regulation on 'rights of way' (May 2006), represent an increasingly satisfactory level of alignment with the *acquis*. Also positive is the fact that Turkey has already granted a large number of relevant licences, including infrastructure licences. Furthermore, carrier selection and carrier pre-selection is included in some of the recently concluded reference interconnection offers. But the authorisation regime is not aligned with the EU framework and the tax burden and the financial obligations imposed on operators (mobile operators in particular) are not limited to levels which could be justified by the necessary administrative cost of the regulatory authority or the optimal use of scarce resources (radio frequencies and numbers).

Implementation in practice is still at an early stage. Only a small number of new market entrants have become operational on the market. This means that effective competition on the fixed telephony market is still far away, in particular as regards the provision of local telephony services, and that a large part of the 1998 acquis based legislation is not yet applied in practice. In addition, the implementation of competitive safeguards, such as local loop unbundling, number portability and cost accounting is still pending. It follows that interconnection tariffs are not fully cost oriented at the moment. The Telecommunications Agency has adopted a revised regulation related to market analysis and SMP identification based on the 2002 EU framework, whereas the new primary law which aims at alignment with the 2002 framework is still pending for adoption in the Grand National Assembly of Turkey. This transitional situation – which is a hybrid situation between the 1998 or the 2002 framework - should end as soon as possible, as it doesn't provide the necessary legal certainty for market players.

The Telecommunications Agency is the key authority for the application of the legislation and achieving a competitive market. It needs to be strengthened in terms of independence from the Government, capacity, and financial autonomy. The legislative alignment will also require the capacity of the competent Ministry to be strengthened.

Regarding the universal service provisions, there are a number of problems. Firstly, the two Council of Ministers 2006 decisions extending the scope of the universal service to include a national policy addressing computer illiteracy (including providing an exclusive right to one operator to deliver these services), as well as to include the development of digital broadcasting throughout Turkey, are not in line with the applicable EU provisions. National Government policy initiatives, even though aimed at the whole Turkish territory, are not to be included under the universal service provision obligation. It does not fall within its purpose and definitions, nor should the telecommunications market be forced to finance these initiatives in the context of the universal service.

Another issue is that, contrary to the law, there is currently no operator or operators designated as a universal service provider(s) in Turkey. A universal service fund has already been set up, and contributions to this fund have been determined, as well as the procedures and principles of the collection of these contributions, without yet having determined whether there is a need for a universal service fund (based on the net cost calculation of the universal service provider(s)), and without a request from a designated undertaking. According to the relevant EU provisions, a compensation mechanism can only be introduced after the regulatory authority (NRA) has decided that there is a possibility of an unfair burden on the universal service provider(s). It is necessary to calculate the net cost and determine whether this net cost really represents an unfair burden. The compensation mechanism can only be introduced if the designated undertaking(s) so requests and the calculations indicate the necessity for such a mechanism.

There is competition in the mobile market with three operators and a 68% penetration rate as of March 2007. The penetration rate for internet services, which in May 2006 had reached 15.5%, is still low. Mainly due to a lack of competition in the fixed market, in particular on the retail ADSL market, broadband penetration (around 3% of population) is also low, facing persistent quality problems and high pricing conditions for access to the local loop.

The fact that Türksat has a monopoly on the provision of satellite services to public administration is not in line with the Commission's Competition Directive and will need to

be addressed. Tariff rebalancing should proceed, as it is an important element for the introduction of competition in a market.

With the expected entry of more market players in the near future, and with further alignment with the EU regulatory framework, the administrative capacity of the Telecommunications Agency will require further strengthening, especially in order to be able to address the issues of the 2002 framework, in particular the determination of relevant markets and the designation of operators with significant market power (SMP). The analyses performed in 2005/2006 can be considered as transitional, but future relevant market and SMP decisions need to be based on the correct legislation and need to be justified.

III.b. Information society services

Overall alignment in this area is limited. Legislation on cyber crime is not adopted. However, as concerns conditional access services, signing and implementing the European Convention on the legal protection of services based on, or consisting of, conditional access, would be a positive step forward, as the Convention provides similar protection.

Regarding the Electronic Signatures legislation and implementation, some provisions are not transposed, for example a provision on the legal effect of e-signatures in general, and the free access to the market of certification services providers (there is a notification system in place which may serve as a prior authorisation, and that is not in line with the EU Directive). Also it will need to be determined whether a difference in approach on some issues (such as supervision and liability) also leads to incompatibility with the Directive 1999/93/EC.

III.c. Audiovisual policy

In the area of media and audiovisual policy, Turkey's level of alignment with EU standards and the EC audiovisual *acquis* is limited.

Turkey's level of alignment with the EC audiovisual *acquis* and its capacity to fully implement it needs to be assessed in the light of the general restrictions of freedom of expression in the media (see Chapter 23 on Judiciary and Fundamental Rights). The content restrictions have a 'chilling effect' on production and programming decisions taken by operators in the European audiovisual market resulting in a negative impact on the functioning of the internal market for television broadcasts and other media services. The language restrictions may also affect the freedom of movement of these services, although Turkey has declared that all official languages of the European Union are regarded as "universal languages", and therefore fall outside the scope of the language restrictions to broadcast.

Turkey's level of legislative alignment with the EC audiovisual *acquis* is limited to certain provisions in the Television Without Frontiers Directive, such as the provisions on advertisement and the protection of minors, and to the *acquis* on the protection of the film heritage. Turkey's Broadcasting Law still poses numerous problems in terms of non discrimination on grounds of nationality, definitions, jurisdiction, major events, promotion of independent works and restrictions on the share of foreign capital and television enterprises. The share of foreign capital in private radios and televisions is limited to 25 % by the Broadcasting Law, which is contrary to Article 12 of the EC Treaty. Moreover, freedom of reception and retransmission, as defined by the Television without Frontiers Directive, is not ensured in Turkish legislation.

Turkey needs to align its legislation, in particular Articles 2, 4, 25, 26, 29 of the Broadcasting Law, with the Television Without Frontiers Directive. The legislation must fully reflect the freedom of reception and retransmission provided by Article 2a of that Directive. Only measures to protect minors or prevent incitement to hatred, in the sense of the *acquis*, may justify restrictions of the reception or retransmission of television broadcasts falling under the jurisdiction of another Member State. In case a restriction is justified under the Directive, the obligatory procedure laid down in Article 2a of the Directive shall apply.

Turkey still has to ratify the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

Finally, in the framework of World Trade Organisation (WTO) Turkey has not introduced into its Schedule of Specific Commitments under the General Agreement on Trade in Services (GATS) the necessary exemptions to the Most Favoured Nation (MFN) rule in regard to audiovisual services. It is therefore not in a position to fully participate in the MEDIA 2007 programme before accession to the European Union. Partial participation as regards training only is possible subject to the fulfilment of the conditions indicated in the programme.

The independence and administrative capacity of the regulatory body RTÜK needs to be further strengthened. Its political independence has been weakened with the decision to entrust political parties (rather than the High Education Council and Press Councils, as in the past) with the responsibility of nominating Council members. With regard to the administration of the broadcasting sector, the radio and television higher council (RTÜK) has not been able to re-allocate frequencies and review the temporary licences effectively. The Council of State has recently suspended the application of the regulation adopted in March 2006 on 'the conditions of the provision of channels and frequencies, related tender procedures, broadcasting licences and permissions'. With regard to the supervision of the broadcasting sector, the principle of transparency of the decisions adopted by RTÜK is also undermined by the current practice of RTÜK to no longer share with the public its decisions on warning, suspension of programmes or cancellation of broadcasting licences.

Finally, it is necessary to strengthen the independence of the public service broadcaster TRT. The nomination procedure will have to be addressed in line with best European practices

IV. CONCLUSIONS AND RECOMMENDATIONS

In view of the above, in particular the findings presented in Part III, Turkey cannot be considered to be sufficiently prepared for negotiations on this chapter. Therefore, the Commission does not recommend at this stage the opening of accession negotiations with Turkey on chapter 10, Information Society and Media.

Specific gaps remain to be addressed in relation to the alignment with the EC *acquis* on audiovisual policy. In view of the current situation as assessed above, it is recommended that this chapter be opened for negotiations once the following benchmark is met:

- Turkey presents to the Commission an Action Plan with a clear timetable for the legislative alignment with the EC audiovisual *acquis*, including concrete proposals to ensure that the national regulatory framework complies with the principle of freedom of reception and retransmission of television broadcasts, as defined by the Television Without Frontiers Directive, as well as measures to strengthen the independence and administrative capacity of the regulatory body RTÜK.