A CSR Law for Turkey

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Introduction: A National CSR Programme for Turkey

Corporate Social Responsibility (or CSR) represents one of the hottest business fads to affect Turkish business in the last decade.¹ In brief, CSR describes the activities which Turkish businesses can do to improve the welfare of the environment, their own employees, and the people who are affected by the businesses activities (such as suppliers, creditors, the government and others). As part of its implied commitment (as part of EU accession) to adopt the Lisbon Treaty’s commitment toward improving the competitiveness of EU business -- and in line with other European countries -- the Turkish government (in consultation with Turkish business) has been actively involved in passing legislation which adopts the standard laws which encourage business to become more socially responsible. If such legislative work continues, other country experience suggests that Turkish company profitability should rise (with increases in the quality of the general business environment).

However, in order to make Turkey a European-wide leader in CSR (and thus in international business) the Turkish government should pass a consolidated CSR Law which ratifies many of the CSR-related provisions already in place in most EU member states. This article will present the recommendations of the UNDP funded and sponsored CSR Roadmap (which was adopted by the Turkish CSR Peer Group in November 2007).² The first section of this article describes the types of CSR-related lawmaking done in EU member states and in some candidate countries. The second section describes the elements of a consolidated Turkish CSR Law (which are summarised below as shown in Figure 1) and the incentives which political parties will face in pushing such legislation. The final section describes how the Law can be implemented in the Turkish context.

CSR Legislation in EU Member States and Candidate Countries

CSR has become a Community wide issue because of the wide recognition that CSR can – if conducted correctly – lead to increased business competitiveness and economic growth. According to the EU’s Lisbon Strategy, Europe will become the most competitive, dynamic and knowledge driven regions through (in part) companies’ voluntary participation in CSR.³ Turkey is also a party to a number of international conventions related to CSR such as the UN Global Compact, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the OECD Guidelines for Multinational Enterprises. Turkey is also required – under the terms of its candidacy to the EU – to implement the acquis

² Naturally, this article as a contribution to the (liberal) marketplace of ideas represents the views of the articles and not the position of any funder or member of the CSR Peer Group. The legislative suggestions made in this article do not represent already existing plans of any particular agency.
³ See RESPONSIBLE COMPETITIVENESS IN EUROPE: ENHANCING EUROPEAN COMPETITIVENESS THROUGH CORPORATE RESPONSIBILITY (2006). While the EU has repeated stressed the voluntary nature of CSR in its communications, EU member states have increasingly been regulating in the absence of a clear direction from Brussels. See Promoting a European Framework for Corporate Social Responsibility, EU Green Paper COM(2001) 366 final. The extent to which a CSR Law embodies such a “voluntary” principle represents a fascinating theoretic legal issue which we treat in a separate, more academic treatise.
Communautaire. Important parts of the acquis cover CSR issues such as consumer and environmental protection (chapters 22 and 23), the promotion of fair competition (chapter 6), and combating corruption (a basic criteria for membership).

**Figure 1: Legal Provisions for a CSR Draft Law**

<table>
<thead>
<tr>
<th>Item</th>
<th>Section of Turkish Law</th>
<th>EU Countries with similar provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Part of the Law</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CSR Office</td>
<td>New legislation needed</td>
<td>UK</td>
</tr>
<tr>
<td>Administrative review of CSR related executive decisions</td>
<td>Turkish Administrative Law</td>
<td>FR, DK, ES, BE, DE, PL</td>
</tr>
<tr>
<td>CSR Related Regulatory Impact Analysis</td>
<td>New legislation</td>
<td>Most of EU</td>
</tr>
<tr>
<td>Turkish Administrative Law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Turkish Administrative Law</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CSR Performance Audit and Oversight of national CSR Action Plan</strong></td>
<td>Turkish Administrative Law</td>
<td>Almost no countries have action plans</td>
</tr>
<tr>
<td>Ombudsman’s functions (participation or referral of civil, criminal cases)</td>
<td>Lacking in Turkey (covered by courts)</td>
<td>All EU (Treaty requirement)</td>
</tr>
<tr>
<td><strong>Delegation (decentralisation) of CSR Rule-making</strong></td>
<td>PFMCL and others</td>
<td>FR</td>
</tr>
<tr>
<td><strong>Triple Bottom Line Reporting Requirement</strong></td>
<td>Commercial Code</td>
<td>FR</td>
</tr>
<tr>
<td><strong>Social Enterprise Legal Form</strong></td>
<td>Commercial Code</td>
<td>UK</td>
</tr>
<tr>
<td><strong>Whistleblower protection</strong></td>
<td>Labour Code</td>
<td>UK (in rest EU as part of data protection)</td>
</tr>
<tr>
<td><strong>Tax-breaks for qualified CSR programmes and investments</strong></td>
<td>Tax Code</td>
<td>Most of EU</td>
</tr>
<tr>
<td><strong>Streamlining civil cases for CSR crimes</strong></td>
<td>Civil Code</td>
<td>Most of EU (though UK particularly liberal)</td>
</tr>
<tr>
<td><strong>Definition of “CSR crimes”</strong></td>
<td>Criminal Code</td>
<td>Most of EU (though not specific CSR crimes)</td>
</tr>
</tbody>
</table>

**Supporting the Law**

<table>
<thead>
<tr>
<th>Item</th>
<th>Section of Turkish Law</th>
<th>EU Countries with similar provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>informal CSR Education Board (to encouraging the teaching of specialized CSR courses in business programmes and certificate courses)</td>
<td>Incorporation as an Association under Law on Associations</td>
<td>France, Belgium, Italy</td>
</tr>
<tr>
<td>Working group for representing Turkish views on international CSR ratings and standards</td>
<td>Either as trust or nominated by CSR Office</td>
<td>none</td>
</tr>
<tr>
<td>Business-membership organization (to serve as CSR consultancy incubator in Turkey and throughout the EU)</td>
<td>Sirket or non-profit</td>
<td>Most covered by pan-EU organisations</td>
</tr>
<tr>
<td>Synthetic SRI Index will be created and sent to portfolio managers</td>
<td>Capital Markets Law</td>
<td>SRI highly differentiated across EU</td>
</tr>
</tbody>
</table>

Source: authors. See Council of the Bars and Law Societies of the European Union for recent update.

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According to an evaluation methodology used by the European Union, Turkey appears to lag far behind the EU member states in its adoption of CSR practices.\footnote{European Union, \textit{Compendium on national public policies on CSR in the European Union}, (2007). Turkey is not included in the EU evaluation and we compile Turkish data from our own sources.} Figure 2 show the extent to which various EU member states have adopted requirements for 17 different CSR related businesses practices (such as the requirement to offer business incentives or provisions encouraging socially responsible investment). Figure 2 shows that Turkey has only adopted 3 of these practices – lagging behind the more progressive countries such as Germany or France – but resting on par with other Eastern European countries such as Hungary or Romania.

![Figure 2: Turkey Lags Far Behind in CSR Policies](chart)

The chart shows the number of CSR provisions adopted by each country (for a maximum of 17).
Source: EU (2007) see footnote for full citation

Turkey also appears to lag behind in the implementation of CSR legislation. According to the UNDP-EU assessment methodology, Turkey scores a D (on a 5 point scale from A to F) for its CSR “legal and political environment.”\footnote{MARK LINE AND ROBERT BRAUN, \textit{Baseline Study on CSR Practices in the New EU Member States and Candidate Countries}, (2007).} Such an indicator measures five things: a) a named CSR department, a published CSR national strategy, c) publication of a government CSR report, d) specific legislation to adopt good CSR practices and e) work in partnership with the private sector and NGOs. While each of these components are laudable measures, almost none of the EU members yet meet these five rigorous conditions either. Thus, if Turkey will implement them, the Republic has the chance to be a leader in CSR across the entire European space.

Clearly, Turkey requires a strong legislative-led approach to promoting CSR in order to “catch up” with the other European states. As the fight against organised crime, privatisation and many other areas of Turkish policy in the past show, a strong office and a strong administrative legal response are the best ways in the Turkish context in order to make policy a reality. A legislative response also encourages Turkish educational establishments to “invest” in the topic (as legislation signals to Turkish society that the government is serious about CSR) and mandates that Turkish business co-ordinate among themselves in order to ensure that the costs and benefits of CSR are spread fairly among Turkish industry.
Components of a CSR Law for the Turkish Republic

Given the large amount of legislative provisions required to be introduced into force in a short period of time, Turkey parliamentarians should pass a single CSR Law (instead of changing the Turkish code on a piece-meal and ad hoc basis). The first and most compelling reason for a CSR law comprises the need to establish a body in order to co-ordinate the government’s work on CSR policy. As previously mentioned, most international CSR fora recommend the establishment of such an office. The office should be independent in order to avoid the politicisation of the Office once it comes into existence (though its birth should be highly politicised). The Office should also conduct CSR related regulatory impact analyses – both to propose CSR friendly regulation by Turkish agencies, as well as to avoid a mess of overlapping and duplicative regulations. Such regulatory impact analysis would also ensure that the benefit of each CSR-related regulation passed by any executive agency generated more business benefits than costs. Related to such an analysis is the performance audit of executive agencies’ work on CSR. As an internal audit, the performance audit would be conducted according to International Audit and Assurance Standards Board (IAASB) guidelines and would only make recommendations which would increase the profitability of Turkish business (or the ability of the Turkish household to pay higher tax amounts based on higher levels of income). Such competencies would be useful in evaluating progress on a national CSR action plan (which would consist of a matrix passed by the Meclis every 4 years and supervised by the CSR Office detailing the activities each executive agency should do to promote CSR in Turkey).

The Office would have three basic legal competencies – the ability to make administrative decisions, to participate in civil actions and to propose that criminal charges be brought against companies for particularly harmful “CSR crimes.” The Office would be able to issue recommendations for squashing of executive acts as well as apply for writs of mandamus and injunctions which would be issued by an administrative judge (in order to give them legal force). Such a law would also allow the Office, just like any other natural or legal entity, to file civil or criminal charges against companies which committed CSR related civil or criminal offences (so no special power would be given to the Office and the Law only would describe the conditions under which the Office could participate in these types of legal actions).

The Office would need to make a profit in order to continue to exist. Given the low level of budgetary funds available for such an office, the CSR Office should be independent and, like a QUANGO, financed by project and consulting work (instead of from budgetary funding). Revenue for the CSR Office would come from two sources. First, the CSR Office could sell its consulting services for a fee. Second, the Office could recover damages in civil courts from companies which commit CSR delicts which harm others (and the reimbursement of legal costs in cases which the Office wins). Naturally, the Office would need to avoid situations of conflict-

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8 For a comparison with the provisions being adopted into various other OECD member country legal frameworks, see Council of the Bars and Law Societies of the European Union, CSR Corporate Social Responsibility and the Role of the Legal Profession: A Guide for European Lawyers Advising on Corporate Social Responsibility Issues, (September 2003).

9 Requiring the CSR Office to seek a court order from an administrative judge for all administrative decisions gives the office real power without while exposing the Office to the regular checks-and-balances which are inherent in most French-inspired Continental legal systems. For more on Turkey’s particular administrative traditions, see Melsa Ararat, Turkey: Social Responsibility in a State-Dependent Business System, in CORPORATE SOCIAL RESPONSIBILITY ACROSS EUROPE (André Habisch, Jan Jonker, Martina Wegner and René Schmidpeter, 2003).
of-interest (as defined in Law 3628 of 19 April 1990). Expenditure would comprise legal actions, marketing costs, publication of CSR related studies and other costs. Any form of taxation used to fund the Office should be strictly avoided (as these taxes distort the economic incentives faced by Turkish companies and decrease system-wide profitability).

A separate part of the legislation would be required in order delegate CSR related regulatory competencies to Turkish executive agencies (and other elements of the law are shown in Figure 3). Decentralisation remains a controversial subject in Turkey, as in elsewhere. However, most countries have – to a much larger degree than Turkey – legislation which allows local offices and agencies to respond to local needs.10 As a continued step in a long series of steps in this direction, the Ministry of Education should be given the authority to establish committees aimed at making regulations about CSR (if it chooses to do so and particularly in the universities, vocational schools and in in-house company trainings).

One of the most controversial aspects of the new bill would be a triple bottom line reporting requirement placed on large businesses and businesses which represent a high-risk of engaging in CSR crimes and CSR delicts.11 The Office would be responsible for establishing the legal definitions of a “large business” and “high risk” business in consultation with (and only with the formal written approval of) the major business associations. The other controversial aspect of a CSR Law would be the simplification of the current legal registration of “social enterprise” (as it is recognised in the UK for example). At present, in Turkey, the legal establishment of a social enterprise consists of a formal link between a business interest (sirket) which gives it trading profits to an associated charity (vakif). Perhaps a single iktisadi isletme form of legal incorporation (as it exists in the UK) would simply the existing web of companies and charitable foundations in Turkey.

As part of the CSR Bill, the existing legal framework should be amended to remedy CSR-related crimes and delicts committed by companies. In the draft bill, a list of CSR related offences (both civil and criminal) would be defined:

- **Easing civil recourse.** For CSR related civil offences, an expedited procedure should be defined (and added to the Civil Code) making the filing of a lawsuit against a company faster, cheaper and easier.

- **Criminalising harmful practices.** For some CSR-related offences which are currently civil offences (involving the payment of a fine for the company having been found guilty of having committed a CSR-related civil offence), the law should criminalise these activities and assign criminal liability directly to the company’s directors.

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10 The 1935 Administrative Procedure Act in the United States represents one of the first and most salient examples whereas the 1982 and 2003 French decentralisation “waves” represents a model which Turkey is likely to follow.

11 The use of the word CSR crime (and delict) are journalistic (like “crime against the environment”) and consist any offence against society, the environment, or other company stakeholders as included in the Criminal Code (in the case of a CSR crime) or in the Civil Code (in the case of a CSR delict).
Figure 3: Draft Outline of a CSR Law for Turkey

Article 1: Definitions

Section I: Provisions Related to the CSR Office
Article 2: Competencies of the CSR Office
Article 3: Appointment of Management
Article 4: Guarantee of CSR Office’s Legal Independence from the Executive and Legal Personhood
Article 5: Legal Status of Decisions taken by CSR Office
Article 6: Procedures for CSR-Related Conducting Regulatory Impact Analysis
Article 7: Procedures for Seeking Prospective or Injunctive Relief in Administrative Courts
Article 8: Procedures for Suing as Plaintiff, Witness, or Friend-of-the-Court, in Civil Cases
Article 9: Authority to Act in EU and International CSR-Related Fora
Article 9: Provisions related to Revenue-Generating Commercial Activities undertaken by Office
Article 10: Provisions related to Office Expenditures
Article 11: CSR Performance Audit Functions

Section II: Delegation of CSR-Related Regulatory Authority
Article 12: Definition of Legislative Provisions Eligible for Delegated Rulemaking
Article 13: Grant of Power to Engage in Secondary Legislation by Administrative Agencies with CSR Related Competencies
Article 14: Particular Provisions related to Ministry of Education
Article 15: Particular Provisions related to Ministry of Trade and Commerce
Article 16: Particular Provisions related to Other Ministries and Executive Agencies

Section III: Modifications to the Commercial Code, Labour Code, Tax Code
Article 17: Changes to Commercial Code: Introduction of Triple Bottom Line Reporting Requirements
Article 18: Changes to Commercial Code: Simplification of “Social Enterprise” Business Structure
Article 19: Changes to Labour Code: Whistleblower Protection
Article 20: Definition of a Qualified CSR Programme and Investments in Tax Code
Article 21: Treatment of Qualified CSR Business related Expenses

Section IV: Modification to the Civil and Criminal Codes
Article 22: Definition of CSR-Related Delicts
Article 23: Provisions Related to Easing CSR-Related Civil Complaints
Article 24: Miscellaneous Changes to Civil Code and Remedies Available for CSR Related Lawsuits
Article 25: Definition of Various “CSR Crimes” and Sanctions

Section V: Final Dispositions
Article 26: State Planning Office Oversight of Present Law until the CSR Office is Established
Article 27: Execution
- **Providing director defenses.** However, in compensation for increased exposure to criminal liability, directors would be able to use the implementation of a “qualifying” CSR programme (as defined in the CSR Bill) as a defence in such criminal cases in order to frustrate proof of intent claims that the director intended to commit the purported CSR crime.

- **Whistle-blowing.** In order to encourage whistle-blowing in cases of CSR offences by the wrong-doing company’s own employees, the CSR bill would mandate that employees -- whose complaint about a CSR offences leads to a successful prosecution -- would be entitled to 12 months paid leave (in order to find a new job) in cases where the individual feared retaliation by co-workers.

- **International enforcement.** At the international level, the CSR Office should consider the jurisdiction of international bodies -- particularly the European Court for Human Rights -- as a potential forum for remedying CSR crimes in cases where Turkish courts prove unreliable.

- **CSR friendly tax regime.** For “qualified” CSR programmes (as defined in the CSR Bill which would lead to an amended section of the Tax Code), companies would be able to write-off 100% of CSR-programme related expenses.

The political nature of legislation represents a strong reason for passing a CSR law – instead of conducting piece-meal “technical” work. As CSR is a political as well technical issue, the Meclis provides the best forum for reaching the political compromises required to arrive a CSR programme acceptable by the various strata of Turkish society for two reasons. First, much education about CSR at the political level still needs to be done and Turkish society needs to politically “charged up.” Second, many of the provisions in a CSR bill would be highly contentious – some imposing costs on particular businesses (particularly large businesses), redistributing income from stakeholders and so forth. These distributional issues can only be handled at the political level.

A CSR Bill is likely to pass the Meclis. Figure 4 shows the incentives each political party has to pass a CSR Bill and shows if the current political configuration remains until the vote on the CSR Bill, such a Bill is likely to receive a majority. According to a 2006 Globalscan survey, most Turkish voters want stronger CSR-related provision in the law – as 59% of the Turkish population think that "large companies have too much influence over our national government" and 46% did not trust large national companies. So a CSR Law is a universal “vote getter” across the political spectrum.

**Figure 4: Major Parties and Likely Stance on CSR Bill**

<table>
<thead>
<tr>
<th>Name</th>
<th>Justice and Development Party (Adalet ve Kalkınma Partisi)</th>
<th>Republican People's Party (Cumhuriyet Halk Partisi)</th>
<th>Nationalist Movement Party (Milliyetçi Hareket Partisi)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political Position</td>
<td>Conservatism, Economic Liberalism</td>
<td>Kemalism, Social Democracy</td>
<td>Turkish Nationalism</td>
</tr>
<tr>
<td>Proportion Votes</td>
<td>47%</td>
<td>21%</td>
<td>15%</td>
</tr>
<tr>
<td>Likely relation to CSR Law</td>
<td>Most factions have campaigned on economic reform and liberalism. Likely to support on populist grounds.</td>
<td>Traditional pro-EU, likely to support on ideological grounds (as CSR is big EU issue).</td>
<td>Like to resist CSR Law as anti-EU and usually against liberal policies as represented by proposed legislation.</td>
</tr>
</tbody>
</table>
Other Activities in Support of a Turkish CSR Law

To help prepare the groundwork for a CSR Law, an informal CSR Education Board could be established to provide, not only the doctrine for the national CSR programme, comprise a first step in order to promote the teaching of specialist CSR courses in university programmes, by consulting companies, and in “in-house” (employee) training programmes. Academic instructors and consulting trainers who currently teach in CSR would sit on the informal Board. Around the EU, many models of such networks and boards exist, such as the CSR Academy or the European-wide European Academy for Business in Society.

Turkish companies will be inevitably rated by domestic and foreign rating agencies on their adherence to particular CSR practices. Indeed, over 59 different ratings agencies (independent of the international ratings) conduct such ratings! Yet, Turkish businesses and thought-leaders have little role in the international fora which establish and use these indicators. An informal CSR Ratings and Standards Committee should be established which will represent the interests of various Turkish CSR rating agencies abroad. The committee – comprised of companies which are already working on the adoption of CSR standards in Turkey -- would work domestically to share best practice about indicators. Internationally, the committee shall present the views of Turkish industry and rating experts on international indicators. TUSIAD represents a natural host organisation for the meetings of such a Committee.

One or more large Turkish holding companies and multi-nationals could take the leadership in order to create a CSR incubator (training and membership organisation). The CSR industry in Europe represents at least $20 billion in revenues annually. Turkish companies hold less than 1% of this consulting market and foreign businesses appear likely to dominate the CSR consulting and education market in Turkey. Modelled after Business in the Community or CSR Europe, the organization will serve as an incubator for local CSR consulting companies.

Equity markets in many EU countries have seen the offering of Socially Responsible Investment (SRI) funds or indices which help to focus investor attention on CSR and channel resources into CSR-friendly companies. Such a market remains lacking in Turkey and the Capital Markets Board is unlikely in the near future to introduce regulations which encourage the establishment of these indices. However, a synthetic SRI fund should be developed, whereby an individual or organisation publishes a newsletter giving advice about the composition of an investor’s portfolio which would replicate an SRI fund. In the longer term, such work should encourage asset management companies in Turkey to gauge interest for SRI products.

Conclusions: Issues in Passing the Draft CSR Law

Two objections will be raised immediately to such a draft law. First, many will argue that such a Bill “goes too quickly” – namely that too many changes are proposed. However, the

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history of Turkish policy shows that policy change only occurs in Turkey with quick, decisive action. The failed attempts to a central anti-corruption agency and even the long process of setting up a successful capital market attest to this fact. Second, many will argue that the provisions contained in the law are not legal. These arguments are often made to resist policy change, and proponents of these arguments often fail to point to specific elements of Turkish jurisprudence (or the Constitution) which would prevent the passage of such a law. EU experience (and many of her countries which have legal systems which are not dissimilar with Turkey’s) show that each of the proposed provisions have been used successfully in profit-promoting CSR national policy.

A first step will require that a senior politician in the AKP and CHP voice support for CSR-related legislation. Given the high level political attractiveness for such a law (the vast majority of Turkish voters appear in support if the public opinion polls serve as a guide), such support should come relatively easily. A bill will need to be drafted (probably by one or more members of the CSR Peer Group and in association with the relevant academic or practitioner legal experts) and presented in the Meclis by a member of parliament for a first reading. The State Planning Office will be a useful ally – making recommendations for the specific functioning of the Office and helping to set the Office up after the Bill has been adopted into law. The rest depends on Turkish business.