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Working Paper

The influence of the accession negotiations between the EU and Turkey on Turkey's employment and social policies

Discussion Paper, No. 3/15

Provided in Cooperation with:

Europa-Kolleg Hamburg - Institute for European Integration

Suggested Citation: Kuşlu, Göksel (2015) : The influence of the accession negotiations between the EU and Turkey on Turkey's employment and social policies, Discussion Paper, No. 3/15, Europa-Kolleg Hamburg, Institute for European Integration, Hamburg

This Version is available at:

<https://hdl.handle.net/10419/109032>

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**Discussion Paper
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**The Influence of the Accession Negotiations
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Employment and Social Policies**

Göksel KUŞLU

March, 2015

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Institute for European Integration**

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Please quote as follows:

Europa-Kolleg Hamburg, Institute for European Integration, Discussion Paper No 3/15,
<http://www.europa-kolleg-hamburg.de>

The Influence of the Accession Negotiations between the EU and Turkey on Turkey's Employment and Social Policies

Göksel KUŞLU*

Abstract

This paper aims to look into the effects of the accession negotiations between the EU and Turkey on Turkey's employment and social policies and attempts to assess the level of compliance of the Turkish legislation with the EU Acquis in this field. As a candidate country, Turkey is required to transpose and implement the EU Acquis on employment and social policy, which constitutes the 19th chapter in the EU-Turkey negotiation process. This *sine qua non* condition for the accession provided a catalyst for legislative and institutional reforms with regards to employment rights, social dialogue, health and safety at work, gender equality and non-discrimination. It was found that Turkish legislation is in compliance or mostly complies circa 70% of the EU Directives in employment and social policy field. The analysis based on indicators also revealed that Turkey lagged far behind its European counterparts exactly in those social and employment policy areas where the highest compliance deficits were observed.

Key words: Turkey-EU relations, accession negotiations, EU acquis, employment and social policy, employment and social indicators

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For the sake of brevity, the paper limits itself to stating the degree of compliance and the main deficits of Turkish legislation compared to EU Directives without going in depth into the respective Directives and Turkish legislation.

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The Influence of the Accession Negotiations between the EU and Turkey on Turkey's Employment and Social Policies

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1. Introduction

Despite the ongoing claims that Turkish foreign policy orientation has changed and Turkey turned its face away from the West, relations with the West and the desire to take part in Western international organisations remain a high priority for Turkey. The European Union (EU) accession process is one of the strongest bonds linking Turkey to the West.

The relationship between Turkey and the EU is almost as old as the creation of the European Communities themselves. In September 1959, Turkey applied for associate membership of the European Economic Community (EEC) and four years later, in September 1963, the Association Agreement (known as “Ankara Agreement”) was signed which eventually foresees the accession of Turkey to the Community. This Agreement envisaged a progressive establishment of a Customs Union between Turkey and the former EEC, which was ultimately set up in 1995. The next significant step in Turkey-EU relations came with the Helsinki Summit in 1999, in which Turkey received the status of a candidate country. In October 2005, accession negotiations between the EU and Turkey started.

Turkey's integration into the EU has become a long and hard process as many scholars and politicians expected. Missiroli (2006) expresses the bittersweet relationship between Turkey and the EU by stating: *“The history of EU-Turkey relations has been dogged by half-hearted commitments, recurrent second thoughts and frequent non-compliance – on both sides.”*

The desire of Turkey to take part in the EU has resulted in increasing compliance pressures and affected Turkey's legislative and institutional practices. In this paper, the results of these compliance pressures will be investigated concerning one of the negotiation chapters, employment and social policy chapter (chapter 19). The focus will be on Turkey's efforts to internalize the EU rules and norms, as well as on the still existing major gaps between the relevant Turkish legislation and the EU Acquis in the field of employment and social policy.

The remaining structure of the paper is as follows. Chapter 2 provides the scope and priority aims of employment and social policy. In chapter 3, Turkey's policy responses to the integration pressures and the compatibility of Turkish legislation with the EU Acquis are investigated concerning employment rights and

work organisation, social dialogue and employee participation, health and safety at work and equal treatment between men and women and fight against discrimination. Chapter 4 presents an overall evaluation of the “goodness of fit”¹. Finally, chapter 5 asks whether there is a trend of convergence or divergence between Turkey on the one hand and the EU and selected member countries on the other hand in employment and social indicators. In addition, chapter 5 asks whether there exists a relation between the detected developments and the legislative reforms realised in Turkey.

2. EU Employment and Social Policy

Employment and social policy has always been one of the most debated areas of policy-making in the EU due to the divergent traditions of member states. On social issues, two opposing schools of thought exist: namely “the neo-liberal state model” and “the welfare state model”. The supporters of the neo-liberal model try to limit social expenditures and regulations because of competition concerns. Welfare state supporters see social expenditures and regulations as necessary for social cohesion. The EU tries to balance these opposing views in accordance with the principle of subsidiarity by supporting and complementing the activities of the member states. Employment and social policy forms part of the shared competences between the EU and the member states. Nevertheless, the main responsibility lies in the hands of the member states.

The priority aims of the EU employment and social policy are to increase employment and worker mobility, to improve the quality of jobs and working conditions, to inform and consult workers, to combat poverty and social exclusion, to promote equality between men and women, and to modernise social protection systems (EU, 2014a). The EU recognizes “employment” as a core component of social policy. Article 151 of the Treaty on the Functioning of the European Union (TFEU) explicitly emphasizes this issue under the headline “social policy as follows:

“fundamental social rights [...] shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation [...] with a view to lasting high employment [...]”.

Sapir (2003) also emphasises the objective of promoting employment as the main issue of social policy: *“social policy...targets both the individual employment situation (basically driven by non-discrimination and health concerns) and seeks to develop an active labour market policy”*

¹ “Goodness of fit” refers to how well the national legislation of Turkey is compatible/fit with the EU law (Acquis Communautaire)

EU employment and social policy touches on issues that concern the whole society such as employment rights and work organisation, health and safety at work, social dialogue and employee participation, equality between women and men and anti-discrimination. This policy area became a crucial matter in the EU's agenda by time. Starting from 1970's, new competences were given to the EU, the policies were incorporated into primary law, the amount of legislation in this policy area was increased, the scope of qualified majority voting was extended, new institutions were established and the existing ones were strengthened. This brought along many challenges for the EU member states and for the candidate countries. As a candidate country, Turkey is supposed to transpose the EU Acquis on employment and social policy in its own legislation.

3. Turkey's Policy Responses to the Integration Pressures and Goodness of Fit with the EU Acquis

The EU accession process has provided a strong stimulus for various changes concerning Turkey's employment and social policies. These changes as well as the compatibility of Turkish legislation with the relevant EU Acquis are investigated in the following under four sub-headings: "Employment rights and work organisation", "social dialogue and employee participation", "health and safety at work" and "equal treatment between men and women and fight against discrimination".

3.1. Employment Rights and Work Organisation

Employment rights and work organisation constitute the backbone of the European employment policy. The Community Charter of the Fundamental Social Rights of Workers from 1989 established the major principles of the European labour law. The Treaty of Amsterdam included a separate "Employment" title and made "a high level of employment" an explicit priority of the EU. The Lisbon Treaty emphasised the objective of employment and integrated the text of the Charter on Fundamental Social Rights with a legally binding reference. The EU adopted several directives in this area in order to improve the working conditions of its citizens.

3.1.1. Turkey's Policy Responses

One of the most important steps related to employment rights and work organisation was taken by the adoption of a new Turkish Labour Act (TLA) dated 22 May 2003 and numbered 4857. This Act was designed "*to regulate the working conditions and work related rights and obligations of employers and employees working under an employment contract*" (Art. 1). Adaptational pressures played a key role in the formulation of the new Act as the general preamble of the Labour Act stresses: "*whilst the efforts for*

fulfilling the requirements of international labour conventions approved by our country are ongoing; the need to comply with European social norms became evident.” (TBMM, 2003).

The new law introduced novel articles ensuring flexibility in the labour market, providing employment protection and promoting job creation which form the EU’s one of the goals called “*More and Better Jobs through Flexibility and Security*” (European Commission, 2007b). For the first time, the Turkish Labour Act regulated atypical forms of employment including temporary employment (Art. 7), fixed-term contracts (Art. 11), part-time work (Art. 13) and on-call work (Art 14). The decision to enter into any type of employment contract was left to the parties (employers and employees) without prejudice to the limitations brought up by legislation (Art. 9). Atypical forms of employment are very common in the EU. According to “*World of Work Report 2013: EU Snapshot*” “*atypical forms of employment are on the rise... Since 2008, the incidence of temporary and part-time employment has increased in 19 and 22 EU countries, respectively.*” (ILO, 2013).

Flexibility in the labour market helps to increase employment and provides job creation. However, flexibility per se is not sufficient to create a balanced labour market. There is a need for a proper balance between the needs of employers and employees. Therefore, while flexibility is of paramount importance for the employers, job security is also of paramount importance for the employees. The purpose of job security is to protect the employee, the weaker party in an employment relationship, against the employer (Eryiğit, 2013). Considering this, the new Turkish Labour Act envisaged provisions related with employment protection. The Labour Act incorporated the “*Job Security Act*” (Act No. 4773) which had already been passed in Parliament in 2002. According to Gerek (2011), “*job security has gained a significant ground in practice through the Law no.4857*”. Job security is regulated under Articles 18 to 21 of the Turkish Labour Act. The right of an employer to terminate an employment contract by giving prior notice to an employee is restricted by law for protecting the job security of an employee (Büyükorallı, 2012). However, size and seniority based exclusion regarding termination of employment was determined in the Act. According to Art. 18, the job security provisions do not cover employees who are employed in an establishment with less than thirty workers or who do not meet a minimum seniority of six months. For those, the employer's obligation, that the termination of the employment contract must depend on a valid reason, does not apply. Turkey’s size-based exclusion threshold is higher than the thresholds of individual EU member states (MSs) according to ILO’s employment protection legislation database (ILO, 2014). Workers excluded from the coverage of job security protection continue benefitting only from the relevant articles on notice terms and severance pay if they are eligible, and in the event of abusive dismissals, compensation amounting to three times the wages for the term of notice. (Dereli, 2012).

Further to the adoption of the labour law, several implementing regulations have been issued (European Commission, 2004, p.109). The implementing regulations concerning working time, overtime work and special procedures for shift workers came into force in April 2004 (European Commission, 2004, p.109). A regulation on the establishment of the wage guarantee fund came into force in October 2004 with the aim of transposing the Acquis related to the protection of employees in the event of the insolvency of their employer (European Commission, 2005, p.94). All those regulations aimed to align Turkish legislation with the EU Acquis in the area of labour law in order to approximate the rights of Turkish employees with those of the EU.

3.1.2. Compliance of Turkish legislation

The EU Acquis in the field of employment rights and work organisation regulates two main areas:

- Protection/safeguarding of employees (in the event of insolvency of employer, transfers of undertakings, collective redundancies, protection of temporary workers and obligation to inform employees of applicable working conditions);
- Organisation of working time (sectorial working time provisions and framework agreements resulting from inter-disciplinary dialogue including part-time work, fixed-time work and parental leave).

These areas are regulated through directives by setting minimum requirements and they are supplemented by framework agreements of the social partners (management and labour). Cases brought before the European Court of Justice have also strengthened this regulatory framework and contributed to the protection of employment rights and the improvement of living and working conditions throughout the EU.

Table 1 summarizes the compliance of Turkish legislation with the EU Acquis in the area of employment rights and work organisation, and the areas of misfits:

3.2. Social dialogue and Employee Participation

The social dialogue and employee participation constitute one of the most important pillars of EU-social policy. In the EU context, social dialogue involves a set of processes and arrangements whereby European-level organisations, representing employers and workers, conduct discussions and negotiations, undertake other joint work, and are jointly involved in EU decision- and policy-making (European Commission, 2012). The social dialogue became progressively an integral part of EU- social policy. The Single European Act implemented the social dialogue into Union Law and the Lisbon Treaty gave the Union the role of promoting the social dialogue further.

Table 1: Compliance of Turkish legislation with Directives concerning employment rights and work organization

Directives	Compliance of Turkish Legislation	Non-compliance area(s) of Turkish Legislation
<i>on “Protection/Safeguarding of Employees’ Rights”</i>		
Council Directive 91/533/EEC	Mostly comply	-TLA did not set up a special rule for the expatriate employees
Council Directive 98/59/EC	Mostly comply	-Workers’ representatives body for the consultation purposes does not exist -The scope of the written information to be provided by the employer is narrower in TLA
Council Directive 2001/23/EC	Mostly comply	-There is no corresponding provision in TLA regarding that workers’ representatives have certain rights to be informed and consulted (information and consultation obligation was not foreseen in Turkish legislation)
Directive 2008/94/EC	Mostly comply	-Wage Guarantee Fund does not guarantee severance and notice pay (<i>kıdem ve ihbar tazminatı</i>) which are provided for by national law on termination of employment relationship
Directive 2008/104/EC	Non-comply	The legal basis related to temporary agency work does not exist in Turkish legislation
<i>on organisation of working time</i>		
Directive 2003/88/EC	Mostly comply	The length of the employee's annual leave with pay and extra protection for night workers partially comply with the Directive
Council Directive 97/81/EC	Mostly comply	-There are no specific provisions in TLA preventing the dismissal of a worker who refuses to transfer from full-time to part-time work and vice versa -There are no provisions in Turkish legislation which stipulate that employers must take measures to facilitate access to part-time work at all levels of the enterprise, including skilled and managerial positions, and, where appropriate, to facilitate access by part-time workers to vocational training to enhance career opportunities and occupational mobility; and providing information to existing bodies representing workers about part-time working in the enterprise
Council Directive 99/70/EC	Mostly comply	-There is no specific provision for fixed-term workers regarding the obligation of information and employment opportunities. -There exists no direct provision in Turkish legislation concerning information and consultation clause of the Directive.
Council Directive 2010/18/EU	Partially comply	-Under TLA, men are not allowed for paternity leave (the right of parental leave is granted only to women). CSA is incompatible in that sense -There is no provision in TLA regarding the right for a leave in the case of adoption of a child. CSA is incompatible in that sense also.

Source: Author's own compilation

3.2.1. Turkey's Policy Responses

On its way to EU membership, Turkey has taken important steps to improve the social dialogue and to introduce employee participation. Although the social dialogue is not historically embedded in Turkish industrial relations, it deserves to be singled out as the EU regards the existence of a strong and well-organised social partnership and social dialogue mechanisms in the candidate countries as one of the preconditions for EU accession requirements (Yıldırım, Çalış, 2008). The EU accession process has been an important factor in establishing institutional bodies and aligning regulatory framework regarding the social dialogue and employee participation in Turkey.

The Turkish Labour Act introduced innovations regarding the institutionalisation of a social dialogue and employee participation. Art. 114 of TLA provided for the establishment of “*a tripartite board of advisory nature in order to provide for effective consultations between the government and confederations of employers, public servants, and labour unions.*” The regulation setting out rules and procedures for the functioning of the ‘Tripartite Advisory Board’ entered into force in April 2004. The Board has the tasks of advising on matters of working life, of fostering cooperation and compromise-seeking among the parties and of monitoring legislative developments in this area (European Commission, 2004, pp.109-110). It has also the role of providing an effective guidance, information, and communication among the parties with respect to the alignment of the national legislation to the EU Acquis in the area of working life (Art. 5-f of the regulation setting out rules and procedures for the functioning of the ‘Tripartite Advisory Board’).

The amendment of the Constitution in September 2010 was another important step, which paved the way for improving the trade union rights of civil servants. With this amendment, public employees gained the right to collective bargaining and collective agreements. The amendments also included lifting the ban on certain strikes (politically motivated strikes and lockouts, solidarity strikes and lockouts, general strikes and lockouts, occupation of work premises, labour go-slows, reduced productivity, and other forms of resistance), removing the ban on membership of more than one trade union at the same time and in the same branch of activity, and repealing the restriction to one collective agreement at the same workplace for the same time (European Commission, 2010, p. 69). Furthermore, with the constitutional amendments, the Economic and Social Council has become a constitutional body, to be consulted by the government for policy making in the economic and social fields (European Commission, 2010, p. 69).

The most important steps related to the social dialogue and employee participation were undertaken in 2012 by the adoption of two new laws regarding trade union rights in the public sector and private sector. These laws were adopted largely as a domestic policy response to the integration pressures. One of the opening benchmarks for the Chapter 19 were about “*ensuring full trade union rights in line with EU standards and*

relevant ILO conventions in particular as regards the right to organize, the right to strike and the right to bargain collectively both in public and private sectors” (Ministry for EU Affairs, 2014).

A new Act on Public Servants' Trade Unions and Collective Agreement, No 6289 (the Act Amending the Act on Public Servants' Trade Unions numbered 4688) was adopted in April 2012 (published in the Official Gazette No. 28261 of 11 April 2012) leading to the first collective bargaining exercise in the public sector. The Act mainly aims to ensure the participation of public employees in governance, the possibility of public employees to conclude a collective agreement and the development of the social dialogue. By this Act, a *“Public Employees' Advisory Board was formed in order to improve the social dialogue between public servants' trade unions and confederations and public administrations, evaluate legislation on public servants and public management practices, to carry out joint activities to enable the management to have a better functioning structure, ensure participation of civil servants in the management and develop solutions for the problems experienced by public administrations”*, (Art 15). By the virtue of this Act, parties to collective agreements, methods and principles for concluding agreement, provisions on the establishment and functioning of a Public Employees' Arbitration Board were regulated (Ministry for EU Affairs, 2012, p.139).

A new Act on Trade Unions and Collective Agreements for the private sector (The Act No. 6356 on Trade Unions and Collective Labour Agreements) was published in the Official Gazette No. 28460 of 7 November 2012. This act replaced the Act No. 2821 on Trade Unions and the Act No. 2822 on Collective Labour Agreements, Strikes and Lockouts. The new Act has combined the total of 152 Articles (68 Articles from Act No: 2821 and 84 Articles from Act No: 2822) into a single text consisting of 83 Articles. The Act, in essence, appears to aim at establishing freedom of association, particularly regarding unions' internal affairs, which is expected to improve democracy in the unions (Işık, Van Wezel, 2013). According to Özdemir and Erdoğan (2013), making regulations under a single law, removing the notary condition in membership, reducing the required age for membership and the regulations, which may help to the capacity of being member to the international institutions, are the positive aspects of this Act.

Although Turkey has established institutional bodies and adopted laws in order to improve the social dialogue and employee participation in line with the EU standards, the functioning of these bodies and the sufficiency of trade union laws were criticised by the EU. This area seems to be the most challenging and the decisive one for the advancement and conclusion of the negotiations in Chapter 19.

3.2.2. Compliance of Turkish legislation

The social dialogue is an essential element of the European social model and of labour market governance. Based on the principles of solidarity, responsibility and participation, it constitutes the main channel through which the social partners contribute to the establishing of European social standards and play a vital role in the governance of the Union (EU, 2014b).

The legal basis of the social dialogue rooted in primary EU law, more concrete in the Treaty on the Functioning of the European Union (TFEU). Art. 152 of the TFEU states: “*The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy*”. Article 155 (2) TFEU provides two ways to implement the EU social dialogue agreements: either by implementation via Council Directives, or “in accordance with the procedures and practices specific to management and labour and the Member States”, the so-called “voluntary route” (Eurofound, 2011).

The Directives which are based on framework agreements resulting from an inter-disciplinary dialogue (on parental leave, part-time working and fixed-term work) were evaluated in “employment rights and work organisation” section.

The table below summarizes the compliance of Turkish legislation with the EU Acquis in the area of the social dialogue and employee participation, and the areas of misfits.

Table 2: Compliance of Turkish legislation with Directives concerning the social dialogue and employee participation

Directives	Compliance of Turkish Legislation	Non-compliance area(s) of Turkish Legislation
Council Directive 2001/86/EC	Non-comply	The concept of a European Company is new to Turkey and there are no legal provisions with respect to these entities and the information, consultation and other mechanisms of involvement of employees in the affairs of European companies.
Directive 2002/14/EC	Non-comply	There exists no corresponding legislation regulating the right to information and consultation of employees in the sense the Directive requires it.
Council Directive 2003/72/EC	Non-comply	The concept of a European cooperative society is also new to Turkey and there are no legal provisions with respect to these entities and the information, consultation and other mechanisms of involvement of employees in the affairs of European Cooperative Societies.
Directive 2009/38/EC	Non-comply	There exists no corresponding legislation in Turkey regarding the employees’ transnational information and consultation rights.

Source: Author's own compilation

3.3. Health and Safety at Work

Health and safety at work has been one of the priority concerns of the EU employment and social policy. The need for a global approach to occupational safety and health became more manifest with the establishment of the EEC by the Treaty of Rome in 1957 (European Parliament, 2014). The adoption of the Single European Act in 1987 represented an important milestone, which allowed the Council of Ministers to adopt occupational health and safety directives by a qualified majority. Since then, the EU has taken several legislative and institutional initiatives aiming to make Europe a healthier and safer place to work. Health and safety at work is now one of the most important and most advanced areas of EU social policy (EU, 2014c).

3.3.1. Turkey's Policy Responses

In the field of occupational health and safety, Turkey has legislative, practical and institutional knowledge accumulated over the past 150 years (ABGS, 2006). However, the most comprehensive and detailed arrangements have been done in the process of EU membership negotiations (Demir, 2011). Approximation of the legislation and strengthening the institutional capacities of relevant institutions were defined as the main objectives in Turkey's "National Programmes for the Adoption of the Acquis".²

The Labour Act No. 4857 restructured the obligations and responsibilities of employers and employees regarding health and safety at work. Establishments with a minimum of fifty employees became obliged to set up an occupational health and safety board (Art. 80 of TLA) and to employ one or more physicians at the establishment. Furthermore, they had to set up a health unit with a view to protect the health of the employees, to take occupational health and safety measures and to provide first aid, urgent treatment and preventive health services depending on the number of employees and the risk factors involved. (Art. 81 of TLA).

The most significant step leading the alignment of Turkish legislation to the Acquis in the field of health and safety at work was undertaken in 2012 by the adoption of the Occupational Health and Safety Act No. 6331 (OHS Act). The Act was prepared based on the principles of the Directive 89/391/EEC (called Framework Directive). The biggest innovation of the Act is its application to all types of public and private workplaces and the inclusion of all employees. In other words, with the new Act, all employees became entitled to benefit from the services of health and safety at work regardless of their work, workplaces and

² Turkey adopted its National Programs for the Adoption of the Acquis in response to the Accession Partnership Document of 2001. These programmes were published in the Official Gazettes dated 24 March 2001, 24 July 2003 and 31 December 2008.

their field of activity (Art. 2 of OHS Act). The law adopts an approach based on prevention and protection in accordance with the class of risk (Ministry for EU Affairs, 2012, p. 141). It brings various obligations to employers including taking health and safety precautions and all other precautions to decrease occupational risks, monitoring applicability of precautions and ensuring their proper application, training employees on possible occupational risks, health and safety rules, first aid, firefighting and other natural disasters and risk assessments (Özeke, 2013).

In 2013, a series of regulations were promulgated with regard to the implementation of the OHS Act based on Art. 30 of this Act. Most of them repealed the regulations published in 2003 and 2004 aiming to align national legislation with the EU directives. Within the scope of the implementation of OHS Act, a total of 32 regulations and 5 communiqués were published between 29.12.2012 and 19.09.2013 (Ministry of Labour and Social Security, 2013).

The EU accession process has also contributed to reinforcing the capacity of institutions involved in the transposition of the Acquis and of the inspection bodies in the field of health and safety at work. The institutional capacities of Directorate General of Occupational Health and Safety (DGOHS), Occupational Safety and Health Institution (ISGUM) and Labour and Social Security Training and Research Centre (ÇASGEM) were strengthened. The inspection bodies, the Labour Inspection Board and Social Security Institution have also started harmonising their inspection practices and they further improved their capacities. The EU funded projects played an important role in increasing the capacities of these institutions.

3.3.2. Compliance of Turkish legislation

EU legislation covers a broad spectrum of OHS issues aiming to promote a safer and healthier working environment. In terms of the number of directives, this area is the most comprehensive and advanced areas of EU social policy. “The Framework Directive on Safety and Health at Work” (89/391 EEC) constitutes a substantial milestone in protecting the health and safety of workers at work. Within the meaning of Article 16(1) of the Directive 89/391/EEC, a series of individual directives were adopted. Besides, there are also Directives aiming to protect fixed-term and temporary agency workers, young people at work and workers exposed to asbestos.

The table below summarizes the compliance of Turkish legislation with the EU Acquis in the area of health and safety at work and the areas of misfits:

Table 3: Compliance of Turkish legislation with Directives concerning health and safety at work

Directives	Compliance of Turkish Legislation	Non-compliance area(s) of Turkish Legislation
Council Directive 89/391/EEC	In compliance	-
Individual directives based on the Directive 89/391/EEC	In compliance (17 out of 19), Non-comply (2 out of 19)	There exists no corresponding regulation regarding the exposure of workers to risks arising from physical agents (artificial optical radiation) and the exposure of workers to the risks arising from physical agents (electromagnetic fields)
Council Directive 91/383/EEC	In compliance	-
Council Directive 94/33/EC	Mostly comply	-TLA's prohibition of night work for young people is narrower than the Directive (only applies to industrial work) -There is no corresponding provision in Turkish legislation regarding the exception for the participation of children in cultural, artistic, sports or advertising activities in relation to the general prohibition of employment of young people
Directive 2009/148/EC of the European Parliament and of the Council	In compliance	-

Source: Author's own compilation

3.4. Equal Treatment between Men and Women and Fight against Discrimination

Gender equality and anti-discrimination have been key tenets of European social policy since the foundation of the Community. It was anchored in the Treaty of Rome, which introduced the principle that men and women should receive equal pay for equal work (Art. 119). Based on this principle a series of Directives have been adopted starting from 1970's. The Treaty of Amsterdam included new provisions on non-discrimination and equal treatment. The Treaty of Lisbon added the non-discrimination principle and equality between women and men to the values of the European Union (Eurofound, 2010). These principles are now an integral part of the EU and considered as fundamental rights within Union law.

3.4.1. Turkey's Policy Responses

The main documents regulating gender equality and anti-discrimination in Turkey are the Constitution, the Labour Act, (for civil servants; Civil Servants Act), the Civil Code and the Penal Code. The precondition of aligning legislation in order to obtain full EU membership has resulted in an overhaul of the legislative and institutional framework in this field since 1999.

The Turkish Grand National Assembly adopted a new Civil Code on November 22, 2001, largely motivated by the Turkish harmonization process to the EU Acquis (Kıvılcım-Forsman, 2004). The Civil Code, Law No 4721, which entered into force in January 2002, introduced provisions aiming to eliminate inequalities

and to promote equality between women and men. One of the most important changes included in the 1030 amendments to the civil code sees the removal of the clause that defines the man as the head of the family, giving equal status to the woman (WWHR, 2001). It equated the legal age for marriage for women and men at the age of 17 (it was previously 17 for men and 15 for women). In addition, the Civil Code introduced the legal basis for the sharing of marital assets in case of divorce and granted the same heredity rights to children born out of wedlock with children of legitimate birth (Müftüler-Baç, 2012).

The new Labour Act No. 4857 inserted the principles of anti-discrimination and equal treatment in the employment relationship into the corpus of the Turkish legislation. Art. 5 of the TLA prohibits discrimination based on language, race, sex, political opinion, philosophical belief, religion and sex or similar reasons in the employment relationship. It also bans the discriminative pay based on gender for the same work or for work with equal value. TLA also includes provisions concerning maternity leave and parental leave in working life as well as the reservation of financial rights and social benefits during annual leaves and casual leave.

The Constitutional amendments took place in 2004 and 2010 guaranteeing the principle of equality and giving the government the role to implement this principle in practical life. The following paragraph was added to Art. 10 titled “Equality before the law”: “*Men and women shall have equal rights. The State has the obligation to ensure that this equality exists in practice*” (added on May 7, 2004; Act No. 5170). “*Measures taken for this purpose shall not be interpreted as contrary to the principle of equality*” (added on September 12, 2010; Act No. 5982). These amendments constitutionalized the principle that women and men are equal.

The new Turkish Penal Code No. 5237 (TPC) adopted in September 2004 and entered into force in June 2005 constitutes another important step towards gender equality. The reform of the Penal Code has transformed the philosophy of the old Penal Code by acknowledging women’s right to have autonomy over their bodies and sexuality (İlkkaracan, 2006, p.7). The new code, which states in the first article that the aim of the law is to “protect the rights and freedoms of individuals,” brings progressive definitions and higher sentences for sexual crimes, criminalises marital rape, brings measures to prevent sentence reductions granted to perpetrators of honour killings, eliminates previously existing discrimination against non-virgin and unmarried women, criminalises sexual harassment at the workplace and considers sexual assaults by security forces to be aggravated offences (İlkkaracan, 2006, pp. 7-8). With the amendment in Art. 122 of the TPC in 2014, hate crimes are inserted into the text and penalties are foreseen for offenders.

Institutional reforms were undertaken in order to tackle discrimination and to promote gender equality during the negotiation process. Directorate General for the Status of Women was set up in 2004, which was

then, after the establishment of Ministry of Family and Social Policies in 2011, reorganized under the umbrella of the Ministry. The Directorate aims to promote equality between women and men, to strengthen the role of women in all areas of society life and to develop policies and strategies in order to eliminate all types of discrimination towards women. In 2009, the establishment of “The Parliamentary Committee on Equal Opportunities for Women and Men” has filled an institutional vacuum to promote gender equality and non-discrimination (TBMM, n.d.).

3.4.2. Compliance of Turkish legislation

The scope of Directives on gender equality and anti-discrimination extended over the years. Currently, it covers issues of parental leave, burden of proof in cases of discrimination, equal treatment for men and women in matters of social security, the access to and supply of goods and services, matters of employment and occupation, equal treatment between men and women engaged in an activity in a self-employed activity and equal treatment between persons irrespective of racial or ethnic origin.

The table below summarizes the compliance of Turkish legislation with the EU Acquis in the area of equal treatment between men and women and fight against discrimination, and the areas of misfits.

Table 4: Compliance of Turkish Legislation with Directives concerning equal treatment and fight against discrimination

Directives	Compliance of Turkish Legislation	Non-compliance area(s) of Turkish Legislation
Council Directive 79/7/EEC	Mostly comply	-There are some provisions which allow positive discrimination in favour of women in the Law No:5510
Council Directive 2000/43/EC and Council Directive 2000/78/EC (anti-discrimination directives)	Partially comply	-Ethnic origin, age and sexual orientation are not explicitly mentioned as protected grounds -No specific provisions in Turkish legislation referring to social protection, social advantages and access to supply of goods and services -Certain forms of discrimination are not explicitly defined and applicable to all of the fields required by the Directives. -equality body has not been established
Council Directive 2004/113/EC	Non-comply	- no specific and comprehensive law regarding the prohibition of discrimination based on sex in access to and supply of goods and services
Directive 2006/54/EC of the European Parliament and of the Council	Partially comply	-Turkish legislation establishes a general framework of equal treatment but does not go into details as envisaged in the Directive - equality body has not been established
Directive 2010/41/EU of the European Parliament and of the Council	Non-comply	-There exists no specific legislation regarding the equal treatment of self-employed people in Turkey

Source: Author's own compilation

4. Evaluation of the Goodness of Fit

After having looked at the compliance of the Turkish legislation with EU-Directives in the field of employment and social policy, the main summarized findings are:

Table 5: Compliance summary of Turkish legislation with the EU employment and social policy Directives:

Areas of Directives	Compliance of Turkish legislation with the Directives (in terms of number of Directives)				
	In total	In compliance	Mostly comply	Partially comply	Non-comply
Employment rights and work organization	9	-	7	1	1
Social dialogue and employee participation	4	-	-	-	4
Health and safety at work	23	20	1		2
Equal treatment and fight against discrimination	6	-	1	3	2
TOTAL	42	20	9	4	9
% of total	100	47,6	21,4	9,5	21,4

Source: Author's own compilation

- Turkish legislation complies with nearly half of the EU Directives. However, Turkish legislation does not comply with around 21 % of the Directives at all. Turkey performed best in aligning its legislation in the area of “health and safety at work” and worst in the area of “social dialogue and employee participation”.
- The compliance level is 69% if we take the percentages of Directives together for which Turkey's legislation is in compliance or mostly comply. This level can be considered as a “good level of fit” taking into consideration that the candidate countries may prefer to postpone adopting some of the Directives until accession with various concerns such as the financial and administrative burden of the Directives or because of political reasons. However, this “good level of fit” does not necessarily mean that Turkey has actually done all it has to do. There is still a considerable deficit which can be summarized under three titles:
 - Institutional deficits: Lack of workers' representatives body and equality body
 - Legislative deficits: Lack of legislations regarding the temporary agency work, the European company, the European cooperative society and the European works council, specific hazards at work (electromagnetic fields and artificial optical radiation), the prohibition of discrimination based on sex in access to and supply of goods and services and equal treatment of self-employed people

- Rights/protections deficits: Lack of the right of paternity leave for man (under TLA) and lack of explicit mentioning of ethnic origin, age and sexual orientation as protected grounds.

In order to get some hints of the effects of the EU-led reforms and to find out whether or not Turkey is behind its European counterparts in the areas where the highest compliance deficits were observed, some employment and social indicators are analysed in the following chapter.

5. Analysis of Employment and Social Indicators

Using statistical data can provide some information on the effectiveness of the reforms in Turkey and may show where deficits still exist. Moreover, based on these data, comparisons concerning the economic and social performances of the countries over time can be undertaken. The indicators presented in the following are widely used by the EU, especially in the field of employment and social policy, to assess progress towards its policy goals. For example, the Lisbon Strategy and the Europe 2020 Strategy established quantitative employment and social targets, which the Member States have to reach. Turkey has prepared its National Employment Strategy in line with the European Employment Strategy and determined qualitative targets to be reached by 2023. In the following, we use such indicators in order to get information regarding the effects of the reforms realised in Turkey. In addition, we compare the figures for Turkey with selected EU countries to have a better understanding about the weaknesses and strengths of the Turkish labour market and of the country's social policies. The analysis of the relevant indicators will be conducted in two ways: First, the level of Turkey compared to the EU average/selected countries will be discussed and second, the development of the levels in time will be explored in order to reveal whether there is a trend of convergence or divergence between Turkey and the EU/selected countries.

In terms of employment rates, Turkey lags far behind its European counterparts. Although the rates increased in Turkey from 2006 to 2013, there seems to be a long way to catch up the EU average. The table shows that the employment rate of Turkey is lower than that of all other selected countries. Turkey's 2014-2023 National Employment Strategy sets a target of an employment rate of 55% to be reached in 2023 (ÇSGB, 2014). This target is still behind the realized EU average of the year 2013. According to the Europe 2020 Strategy, the EU's employment rate target is to raise it to at least 75%. There is a certain pattern of convergence towards the EU average and towards the selected countries, however, the gap between the EU-average and Turkey in the current and intended employment rates are still considerable.

Table 6: Labour Market Indicators – Employment and unemployment rates

Employment Rate (%)*	2005	2006	2007	2008	2009	2010	2011	2012	2013
EU(28)	67.9	68.9	69.8	70.3	68.9	68.5	68.5	68.4	68.3
Turkey	...	48.2	48.2	48.4	47.8	50	52.2	52.8	53.4
Germany	69.4	71.1	72.9	74.0	74.2	74.9	76.3	76.7	77.1
Spain	67.2	69.0	69.7	68.5	64.0	62.8	62.0	59.6	58.6
Poland	58.3	60.1	62.7	65.0	64.9	64.3	64.5	64.7	64.9
Romania	63.6	64.8	64.4	64.4	63.5	63.3	62.8	63.8	63.9
Italy	61.6	62.5	62.8	63.0	61.7	61.1	61.2	61.0	59.8
Unemployment Rate %**	2005	2006	2007	2008	2009	2010	2011	2012	2013
EU(27)	9.0	8.2	7.2	7.0	9.0	9.6	9.6	10.4	10.8
Turkey	9.5	9.0	9.1	10.0	13.0	11.1	9.1	8.4	9.0
Germany	11.3	10.3	8.7	7.5	7.8	7.1	5.9	5.5	5.3
Spain	9.2	8.5	8.2	11.3	17.9	19.9	21.4	24.8	26.1
Poland	17.9	13.9	9.6	7.1	8.1	9.7	9.7	10.1	10.3
Romania	7.2	9.0	6.4	5.8	6.9	7.3	7.4	8.4	7.3
Italy	7.7	6.8	6.1	6.7	7.8	8.4	8.4	10.7	12.2

*The employment rate is calculated by dividing the number of persons aged 20 to 64 in employment by the total population of the same age group.

**The unemployment rate (annual average) represents unemployed persons as a percentage of the labour force based on International Labour Office (ILO) definition.

Source: Eurostat

Unemployment rates point to markedly different developments in the selected countries. Turkey's unemployment rate in 2013 remained below the EU-average. There is a remarkable increase in the unemployment rate of Spain, which can be attributed to the global financial crisis of 2008. The figures show that the labour markets of most EU countries were hurt from the financial turmoil more than Turkey. Germany proved to be successful in decreasing the unemployment rates in the wake of global economic crisis. Turkey also succeeded to decrease the unemployment rates gradually from 2008 to 2012 and reached a better level than the EU average. The National Employment Strategy of Turkey has identified unemployment rate as 5% to be reached by 2023.

Table 7: Flexibility and job security indicators:

Part-time employment as percentage of total employment*									
	2005	2006	2007	2008	2009	2010	2011	2012	2013
EU(27)	16.6	16.8	16.9	16.9	17.4	17.9	18.2	18.6	19
Turkey	-	7	7.8	8.5	10.3	10.7	10.9	11	11.3
Germany	23.7	25.5	25.6	25.2	25.5	25.6	25.8	25.7	26.2
Spain	11.7	11.3	11.1	11.3	12.1	12.7	13.2	14.2	15.5
Poland	9.2	8.4	8	7.4	7.3	7.3	7	6.9	6.9
Romania	8.7	8.2	8.2	8.2	8.2	9.4	9.0	8.8	8.5
Italy	12.6	13	13.4	14	14	14.7	15.2	16.7	17.6
Fixed-term employment (employees with a contract of limited duration) as percentage of the total number of employees**									
	2005	2006	2007	2008	2009	2010	2011	2012	2013
EU(28)	14.0	14.5	14.6	14.1	13.6	13.9	14.1	13.7	13.8
Turkey	-	12.5	11.9	11.2	10.7	11.5	12.2	12.0	11.9
Germany	14.2	14.5	14.6	14.7	14.5	14.7	14.7	13.9	13.4
Spain	33.3	34.0	31.6	29.1	25.2	24.7	25.1	23.4	23.1
Romania	2.4	1.8	1.6	1.3	1	1.1	1.5	1.7	1.5
Poland	25.7	27.3	28.2	27.0	26.5	27.3	26.9	26.9	26.9
Italy	12.3	13.1	13.2	13.3	12.5	12.8	13.4	13.8	13.2
Strictness of employment protection – individual and collective dismissals (regular contracts) (OECD)***									
	2005	2006	2007	2008	2009	2010	2011	2012	2013
Turkey	-	-	-	2,471	2,471	2,471	2,471	2,471	2,471
Germany	-	-	-	2,978	2,978	2,978	2,978	2,978	2,978
Spain	-	-	-	2,660	2,660	2,660	2,558	2,558	2,284
Poland	-	-	-	2,391	2,391	2,391	2,391	2,391	2,391
Italy	-	-	-	3,032	3,032	3,032	3,032	3,032	2,794

*persons employed on a part-time basis as a percentage of the same age population.

** A job may be considered fixed term (temporary) if employer and employee agree that its end is determined by objective conditions such as a specific date, the completion of a task or the return of another employee who has been temporarily replaced (usually stated in a work contract of limited duration).

***OECD's synthetic indicator of the strictness of regulation on individual and collective dismissals incorporates 13 detailed data items with weighted sum of sub-indicators concerning the regulations for individual dismissals (weight of 5/7) and additional provisions for collective dismissals (2/7).

Source: Eurostat and OECD

Part-time and fixed-term employment indicators give an idea about the extensiveness of labour market “flexibility”. Part-time employment has been increasing in Europe for the past two decades (Eurofound, 2009). The EU aimed to facilitate access to part-time work for men and women for the mutual benefit of employers by a framework agreement on part time work. According to the figures, the efforts to promote part-time work seem to have proved successful. Currently, around one in five people in the EU works part-time. Although the rates differ significantly from country to country, the rates followed roughly the same

trend in the selected countries with the exception of Poland and Romania. In Turkey, the level of part-time employment is below the EU average since it is relatively a new form of employment; however, a similar trend can be observed indicating that the convergence process taking place. Flexibilisation of the labour market was determined as one of the strategic targets in the National Employment Strategy of Turkey and increasing the proportion of part-time employment to the EU level was set as a target to be reached by 2023.

Fixed-term employment is another form of flexible employment. The share of employees working on a contract of fixed-term also varies considerably among the EU member states. In Poland, more than one of four employees had fixed-term contracts whereas in Romania the rate was only around 1-2%. The considerable range in the propensity to use limited duration contracts between EU Member States may, at least to some degree, reflect national practices, the supply and demand of labour, employer assessments regarding potential growth/contraction, and the ease with which employers can hire or fire (Eurostat, 2014). The proportion of employees in Turkey with a contract of limited duration is not far from the EU average.

OECD's "strictness of employment protection indicator" gives an idea about the "job security" of the labour market. It measures the procedures and costs involved in dismissing individuals or groups of workers (OECD, 2014). Data ranges from 0 to 6 with higher scores representing stricter regulation and covers the years from 2008 to 2013. The figures show that as regards to individual and collective dismissals, Germany and Italy have traditionally stricter regulations whereas Turkey and Poland have lighter employment protection regulations among the other compared countries. The figures also show that Italy and Spain have eased their regulations on employment protection in the last years. The OECD average was 2.29 in 2013, which means that all of the countries under consideration have stricter dismissal regulations than the OECD average. Employee protection measures required by the EU Directives seemed certainly had an effect in this respect.

Table 8: Trade Union Density Rates*:

	2005	2006	2007	2008	2009	2010	2011	2012	2013
Turkey	8.17	7.50	6.63	5.80	5.86	5.85	5.39	4.54	..
Germany	21.68	20.72	19.89	19.13	18.93	18.56	18.05	..	..
Spain	14.70	14.34	14.66	14.62	15.82	15.56	..	..	..
Poland	21.50	16.20	15.60	15.10	15.09	14.58	..	..	..
Romania	..	34.44	..	32.83	..	..	..	..	..
Italy	33.59	33.24	33.49	33.43	34.70	35.46	35.61	..	..

*Trade union density corresponds to the ratio of wage and salary earners that are trade union members, divided by the total number of wage and salary earners.

Source: OECD (for the countries except Romania), ICTWSS database (v. 4.0) (for Romania)

OECD's trade union density statistics show trade union membership in relation to the total number of employees. According to the figures, the rates vary among the EU countries. The average level of union membership across the whole of the European Union, weighted by the numbers employed in the different member states, is 23% (ETUI, 2014). Turkey is far behind this average and there is a steadily declining trend in the levels of unionisation. The weak social dialogue mechanism in Turkey manifests in low trade union density rates. According to Dinler (2012), Turkish trade unions suffer from two persistent problems that impede their organising in any sustained way. Firstly, Turkey's restrictive trade-union legislation, criticized repeatedly as contradicting international conventions on labour rights, has made it difficult for unions to obtain legal recognition. Secondly, employers use various tactics to discourage unionisation, including intimidation, harassment and dismissals of union members, which often go unpunished. Trade unions in Turkey also suffer from generally low confidence. The study of Urhan and Selamoğlu (2008) revealed that only 37 employees among 411 believe that trade unions are capable of protecting and promoting the rights and interests of their members which is not surprising taking the abovementioned problems into consideration. In chapter 5 we concluded that Turkey performed worst in aligning its legislation in the area of social dialogue and employee participation. The trend of divergence between EU countries on one side and Turkey on the other side regarding the trade union density rates alerts the need for an urgent reform in this field.

Occupational accident rate corresponds to the number of occupational accidents occurred in a given year as a percentage of the number of compulsorily insured person in the same year. The data reveal that the occupational accident rate in Turkey decreased year by year from 2005 to 2012.

Table 9: Accident at Work in Turkey:

	2005	2006	2007	2008	2009	2010	2011	2012
Number of compulsorily insured person (1)	6.918.605	7.818.642	8.505.390	8.802.989	9.030.202	10.030.810	11.030.939	11.939.620
Number of occupational accidents(2)	73,923	79,027	80,602	72,963	64,316	62,903	69,227	74,871
Occupational accident rate (%) [(2)/(1)]	1.068%	1.011%	0.948%	0.829%	0.712%	0.627%	0.628%	0.627%

Source: Social Security Institution Statistical Yearbooks from 2005 to 2012

However, the EU-Commission criticized the data collection system for occupational accidents and diseases in its progress reports as the accidents in the informal sector are not reported. Due to the large size of the informal sector in Turkey, these statistics do not provide a confidential comparison of occupational accident rates with the EU counterparts. However, the figures above may show a declining trend in the occupational

accident rate in Turkey. This declining trend may reflect Turkey's success in aligning its health and safety legislation to the EU standards.

Table 10: Gender Equality Indicators

Women Employment rate (%) *	2005	2006	2007	2008	2009	2010	2011	2012	2013
EU (28)	59.9	61.1	62.1	62.8	62.3	62.0	62.2	62.4	62.5
Turkey	-	24.0	24.2	24.9	25.8	28.0	29.7	30.9	31.8
Germany	63.1	65.0	66.7	67.8	68.7	69.6	71.1	71.5	72.3
Spain	54.4	57.1	58.6	58.9	56.8	56.3	56.1	54.6	53.8
Poland	51.7	53.1	55.5	57.3	57.6	57.3	57.2	57.5	57.6
Romania	56.9	58.5	57.9	57.3	56.3	55.9	55.7	56.3	56.2
Italy	48.4	49.6	49.9	50.6	49.7	49.5	49.9	50.5	49.9
Female Activity Rates (%)**	2005	2006	2007	2008	2009	2010	2011	2012	2013
EU (28)	62.2	62.9	63.2	63.7	64.1	64.4	64.8	65.5	66.0
Turkey	-	25.1	25.2	26.2	27.8	29.6	31.0	31.8	33.2
Germany	66.9	68.5	69.4	69.7	70.4	70.8	71.8	71.7	72.5
Spain	58.9	60.7	61.9	63.6	65.1	66.3	67.3	68.4	68.7
Poland	58.1	56.8	56.5	57.0	57.8	58.5	58.9	59.7	60.1
Romania	55.3	56.6	56.0	55.2	55.4	55.8	56.0	56.4	56.5
Italy	50.4	50.8	50.7	51.6	51.1	51.1	51.5	53.5	53.6

*represents employed women as a percentage of same age women population.

**represents active women as a percentage of same age women population (labour force participation rates of women).

Source: EUROSTAT

The gender-related indicators reveal a huge discrepancy between employed women in the EU and in Turkey. The employment rate and labour market participation of women are considerably lower in Turkey than in the EU as well as than in other selected countries. Although there is a steadily increasing trend in women's employment and activity rates in Turkey and there is at least a convergence tendency between Turkey and the EU average, the gap is still significant. It seems that catching up to the EU average will be a long-term process for Turkey. The need for legislative (EU-aligned equal treatment and anti-discrimination laws) and institutional (equality body) reforms are of utmost importance. However, the differences in the employment and activity rates are not the result of legislative and institutional differences alone. They also reflect traditional gender roles, societal, cultural and political factors and gender stereotypes.

To sum up, most of the figures show a positive trend in the labour market and the social conditions of Turkey since Turkey has started accession negotiations with the EU. However, there are still considerable

gaps. The most significant gaps between the EU and Turkey exist in trade union density rates and gender-related indicators. These areas are also those where the highest compliance deficits were observed. Obviously, the reforms have helped to start a process of convergence between Turkey and the EU in most of the observed areas. However, in the fields where Turkey did not align its legislation, significant gaps are still in existence.

6. Conclusion

Employment and social policy has always been one of the most debated areas of policy-making in the EU due to the divergent traditions of member states. The EU tried to balance these views and clarified the division of competence between the EU and the Member States. According to this “shared competence”, the development and implementation of employment and social policies remained principally in the hands of the Member States whereas the EU took the role of supporting and complementing the Member States’ activities. The areas where the EU remained active and enacted Directives were “employment rights and work organisation”, “social dialogue and employee participation”, “health and safety at work” and “equal treatment between men and women and fight against discrimination”. Employment and social policy issues became a crucial matter in the EU's agenda over time.

The EU expects from Turkey as a candidate country that it transposes and implements the EU Acquis on employment and social policy, which constitutes the 19th chapter in the EU-Turkey accession process. This *sine qua non* condition for the accession has resulted in legislative and institutional reforms in Turkey. The new Labour Act No 4857, the new Acts on Trade Unions and Collective Agreements No 6289 and 6356, the Occupational Health and Safety Act No 6331 the new Civil Code No 4721, the new Turkish Penal Code No 5237 and the amendments of the Constitution constituted the major legislative reforms in aligning Turkish legislation with the EU Acquis. In this process, several institutional bodies were established and the institutional capacities of the existing bodies were increased which also aimed at harmonizing the institutional practices of Turkey with those of the EU.

Regarding the compliance of the Turkish legislation with the EU Directives, it was found that Turkish legislation which is either in compliance or mostly complies with the respective Directives constitute 69% of the total number of Directives on employment and social policy field. We consider this level of fit as a “good level of fit” with the assumption that due to the nature of some Directives, some provisions may be transposed into national legislation after accession. We detected also that Turkey performed best in aligning its legislation in the area of “health and safety at work” and worst in the area of “social dialogue and employee participation”. In addition, we found that there are still some significant deficits to be addressed.

The analysis of employment and social indicators showed that there are positive trends on the Turkish labour market in many respects since the accession talks have started. However, the analysis also revealed that Turkey still lagged far behind the EU average especially in trade union density rates and gender-related statistics. Exactly these areas are those where the highest compliance deficits exist.

Speeding up the legislative reforms in the fields of social dialogue, equal treatment and anti-discrimination should be of primary importance. Establishment of workers' representatives' body and equality body will bring the Turkish legislation closer to the EU Acquis. Raising the public awareness, applying the legislation strictly and societal mobilisation can contribute to reducing the number of occupational accidents. Increasing the number and strengthening the capacity of women's organisations, adopting parental leave laws, transforming and challenging the traditional gender-roles and gender stereotypes can bear fruits to increase women's employment and labour market participation rates. Finally, the inclusion of the civil society, social partners, governmental organisations and strengthening social dialogue mechanism could contribute to a better implementation of employment and social policies in Turkey.

References

- ABGS (Avrupa Birliği Genel Sekreterliği), (2006), “*Answers from Turkish side to non- exhaustive list of questions Chapter 19-Social Policy and Employment, Screening*” – Bilateral meeting with Turkey retrieved from http://www.abgs.gov.tr/tarama/tarama_files/19/sorular%20ve%20cevaplar_files/SC19_cevaplar.pdf
- Büyükoral, C. (2012), *Job Security Provisions in the Labor Code No. 4857*”, Erdem&Erdem Law Office, retrieved from <http://www.erdem-erdem.com/en/articles/job-security-provisions-in-the-labor-code-no-4857/>
- Demir, N. (2011), “*Occupational Health and Safety Issues in Turkey and European Union: A Comparative Study in The Context of Turkey's Path Towards EU Membership*”, International Journal of Contemporary Economics & Administrative Sciences, Volume :1, Issue:2, p. 124
- Dereli, T. (2012), “*Flexicurity and Turkey's New Labor Act: Problems And Prospects*”
- Dinler, D.Ş. (2012), “*Trade unions in Turkey*”, Friedrich Ebert Stiftung, retrieved from <http://library.fes.de/pdf-files/id-moe/09536-20121221.pdf>
- Eryiğit, B. (October 10th 2013), “*Turkey: Job Security Under Turkish Law*”, Mondaq, retrieved from <http://www.mondaq.com/x/268238/employee+rights+labour+relations/Job+Security+Under+Turkish+Law>
- EU, (2014a), “*Summaries of EU legislation- Employment and Social Policy*”, retrieved from http://europa.eu/legislation_summaries/employment_and_social_policy/
- EU, (2014b), “*Summaries of EU legislation, Social dialogue and employee participation*”, retrieved from http://europa.eu/legislation_summaries/employment_and_social_policy/social_dialogue/index_en.htm
- EU, (2014c), “*Summaries of EU legislation, Health, hygiene and safety at work*” retrieved from http://europa.eu/legislation_summaries/employment_and_social_policy/health_hygiene_safety_at_work/index_en.htm
- Eurofound, (2010), “*Treaty of Lisbon*” retrieved from <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/treatyoflisbon.htm>
- Eurofound (2011), “*European social dialogue and implementation of agreements*” retrieved from <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/europeansocialdialogueandimplementationofagreements.htm>
- European Commission, (2004), “*2004 Regular Report on Turkey's progress towards accession*”, COM(2004) 656 final
- European Commission, (2005), “*Turkey 2005 Progress Report*”, COM (2005) 561 final, p. 94
- European Commission (2007a), “*Enlargement Strategy and Main Challenges 2007-2008*”, COM(2007) 663 final, p.11, retrieved from http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/strategy_paper_en.pdf
- European Commission (2007b), “*Towards Common Principles of Flexicurity: More and better jobs through flexibility and security*” COM(2007) 359 final
- European Commission, (2010), “*Turkey 2010 Progress Report*”, COM(2010) 660, p.69
- European Commission (2012), “*Social Europe Guide - Volume 2 - Social Dialogue*”, p.8, retrieved from <http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=6352&furtherPubs=yes>
- European Parliament (2014), “*Health and Safety at Work*”, retrieved from http://www.europarl.europa.eu/ftu/pdf/en/FTU_5.10.5.pdf

Eurostat, (2014), “*Employment statistics*” retrieved from http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Employment_statistics

Gerek, H. N. (2011), “*İş Sözleşmesinin İkale Sözleşmesi İle Sona Ermesi*”, *Çalışma ve Toplum*, 4, 31.

Ilkcaracan, P. (2006), “*Women Realizing Change in Turkey: The Reform of The Turkish Civil and Penal Codes*”, Women for Women’s Human Rights (WWHR), New Ways, p.7 [Online] retrieved from http://www.amazone.be/IMG/pdf/Efsa_Kuraner.pdf

ILO, (2013), “*Snapshot of the labour market in the European Union - 2013*” retrieved from http://www.ilo.org/global/about-the-ilo/media-centre/issue-briefs/WCMS_209596/lang--nl/index.htm

ILO, (2014) “*Employment protection legislation database – EPLex*” retrieved from http://www.ilo.org/dyn/epllex/termmain.byCountry?p_lang=en

Işık R., Van Wezel, A. (2013), “*Trade Union Rights Situation in Turkey*”, Joint Report of 32nd meeting of the EU-Turkey Joint Consultative Committee (JCC), 7-8 November 2013

Kıvılcım Forsman, Z. (2004), “*Türkiye’nin Avrupa Birliği Üyeliğinin Ön Koşul olarak Kadın Hakları*”, in Berktaş, F. (Ed.), “*Türkiye’de Avrupa Birliğinde kadının konumu*”, İstanbul: KA-DER

Ministry for EU Affairs, (2012), “*2012 Progress Report prepared by Turkey*”, December, retrieved from http://www.abgs.gov.tr/files/IlerlemeRaporlari/2012/2012_tr_progress_report_en.pdf

Ministry for EU Affairs, (2014) “*(Chapter 19) Social Policy and Employment*” retrieved from <http://www.abgs.gov.tr/index.php?p=84&l=2>

Ministry of Labour and Social Security DG of Occupational Safety and Health, (2013), “*Works for the Alignment of EU Acquis*”, Powerpoint presentation, Ankara

Missiroli, A. (2006), “*Foreword*” in Akçakoca, A. (2006), “*EU-Turkey Relations 43 Years on: Train Crash or Temporary Derailment?*”, EPC Issue Paper No.50, p.5

Müftüler-Baç, M (2012), “*Gender equality in Turkey*”, European Parliament, Directorate General for Internal Policies, January

Özdemir, M. C., Erdoğan, E. (2013), “*Reform Movements in Turkish Industrial Relations: Assessment of New Trade Unions and Collective Bargaining Law No: 6356*”, *Academic Journal of Interdisciplinary Studies*, 2(9), p.719

Özeke, B.H. (2013), “*Turkey: General Aspects Of Occupational Health And Safety in Turkey*” Mondaq, retrieved from <http://www.mondaq.com/x/249234/Health+Safety/General+Aspects+Of+Occupational+Health+And+Safety+In+Turkey>

Sapir, A. (2003), “*An Agenda for a Growing Europe: Making the EU Economic System Deliver*”, report of an independent high-level study group established on the initiative of the President of the European Commission, p. 18

TBMM (2003), “*İş Kanunu Tasarısı ve Sağlık, Aile, Çalışma ve Sosyal İşler Komisyonu Raporu (1/534)*” retrieved from <http://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss73m.htm>

TBMM (n.d.), “*Committee on Equality of Opportunity for Women and Men*”, retrieved from <http://www.tbmm.gov.tr/komisyon/kefe/act.htm>

WWHR (Women for Women's Human Rights), (2001), “*Turkey: New civil code ensures equality in the family*” retrieved from <http://www.wluml.org/node/662>

Yıldırım, E., Çalış, Ş. (2008), “*The Impact of EU Accession on Turkish Industrial Relations and Social Dialogue*”, *Industrial Relations Journal*, 39(3), p. 213