

ESG Regulations in Türkiye: Addressing the “S” Criterion

May 2024



Compliance with ESG criteria has become a hot topic in recent years. This leads companies to pay attention to meet ESG standards, which consist of three main categories: Environmental, Social, and Governance.

Although the Turkish government and companies have primarily focused on the "E" (Environmental) area, attention to the "S" (Social) criteria has also been notable in Turkish legislation and judicial decisions. In this article, we discuss how the "S" criterion is covered in Türkiye from various perspectives.

Labour Standards

Turkish legislation contains many protective measures for employees and it is generally considered as employee-friendly, much like Turkish Labour Courts. A fundamental example of this approach is that in Türkiye, individuals are often considered employees and granted employment rights, even in cases of independent contracting or freelancing arrangements. Likewise, labour outsourcing concepts such as temporary agency work and subcontracting are allowed only in limited circumstances. Even in cases where labour outsourcing is permitted, the principal employer is vested with various responsibilities and liabilities in order to protect employees, including supervising and monitoring payment obligations of the outsourcing firms.

The legislation also obliges employers to provide basic rights on a wide range of issues to ensure the health, safety, and well-being of employees. This encompasses the minimum wage requirements, paid annual leaves, weekly resting periods and lunch break entitlements, as well as standards for working conditions such as limits on overtime. Türkiye has also approved the UN Convention on the Rights of the Child, as well as ILO Conventions including the ones numbered 138 and 182 concerning child labour, all of which have been adopted as a part of local legislation.

Gender Equality, Diversity and Human Rights

Gender equality, diversity, and human rights are seriously protected areas in Turkish legislation. Labour Law explicitly prohibits discrimination against employees based on factors such as language, race, gender, disability, political opinion, religion, and similar grounds. Furthermore, different working conditions cannot be imposed based on employment types (e.g., *full-time or part-time, temporary or permanent arrangements*), or status (e.g., *marital status, pregnancy, or union membership*). To enforce these provisions, various mechanisms and compensations are in place, including pecuniary and non-pecuniary compensations for workplace harassment, reinstatement compensations for invalid termination and discrimination compensation. In this sense, specific privileges and protections are afforded to certain groups of employees, such as the requirement to employ disabled employees, the prohibition of overtime and night work for pregnant and breastfeeding employees, priority recruitment for former personnel after their military service, strict rules for child labour, and the obligation for workplaces with a certain number of female employees to provide nursing rooms and kindergartens.

Work Council

While the concept of a work council is not introduced in Türkiye, the Occupational Health and Safety Law mandates the establishment of an occupational health and safety committee in workplaces with 50 or more employees. These committees consist of representatives from both employees and employers, as well as occupational safety personnel. Their objective is to optimize the physical conditions within the workplace by implementing necessary measures to eliminate hazards or reduce potential risks. This law also imposes extensive obligations on employers, including the preparation of emergency plans and the organization of first aid, fire, and evacuation drills, all aimed at safeguarding the physical and mental health of employees.

Executive Pay

The increasing practice of tying executive compensation to ESG-related objectives reflects a growing acknowledgment among business leaders of the substantial influence that ESG factors can have a significant impact on the long-term success and sustainability of their organizations. Along with this trend, companies aim to motivate their executives to prioritize ESG considerations and ensure the effective management of associated targets. Although there are currently no regulations or directives in Türkiye that mandate the incorporation of ESG factors into executive compensation schemes, there are certain indexes introduced by Istanbul Stock Exchange in order to measure companies' compliance with ESG criteria. The Corporate Governance Index, established in 2007, can be seen as one of the initial steps in this direction. More recently, sustainability indexes such as BIST Sustainability, BIST Sustainability 25, and BIST Participation Sustainability have been introduced. These indexes serve to guide companies in formulating policies related to ESG risks and to inform investors about companies' sustainability policies.

Protection of Whistle-blowers

Although Turkish legislation does not directly address the protection of whistle-blowers, they are afforded certain protections under constitutional rights, as well as through the Court of Appeal precedents. Whistle-blowing against an employer is generally deemed lawful when it involves the superior public interest, as indicated by numerous court precedents. For example, in a case where a supermarket employee was dismissed for reporting the sale of expired products, the Court of Appeal protected the employee on the basis that he had fulfilled his obligation to oversee the public interest. Similarly, in another case, the reporting of a company's improper actions to public authorities was interpreted as an exercise of the employee's freedom of expression and dissemination, thus protected under the law.

Conclusion

Despite employee-friendly structure of Turkish legislation, development and enforcement of the regulations specific to ESG remain in its early stages in Türkiye. Companies often take the initiative to implement social corporate responsibility measures and set their own internal targets to strengthen their reputation before their investors, customers, and suppliers. It is imperative for all organizations to prioritize these matters and proactively build a sustainable and responsible business environment, which will not only provide benefit to themselves, but also will contribute positively to the broader society in which they operate.



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