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**Gül Sosay  
Ünal Zenginobuz**

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Sosyal Bilimler Enstitüsü  
Boğaziçi Üniversitesi  
34342 Bebek  
İstanbul TURKEY

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**Independence and Accountability of Regulatory Agencies in Turkey**

**Gül Sosay**  
**Boğaziçi University**  
**Department of Political Science and International Relations**  
**sosay@boun.edu.tr**

**E. Ünal Zenginobuz**  
**Boğaziçi University**  
**Department of Economics**  
**zenginob@boun.edu.tr**

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## **Independence and Accountability of Regulatory Agencies in Turkey**

One of the most salient issues regarding independent regulatory agencies (IRAs) is how to ensure their accountability without undermining their independence that is deemed essential for the fulfillment their mandates. This, so called “independence-accountability dilemma” (Priest 1998; Scott 2000), is a fundamental issue concerning distribution of power and legitimatization of the use of power. Thus, designing a regulatory framework that instigates “the right balance between independence and accountabililty” (Majone 2005a: 53) is critical for both democratic and good governance. In agreement with Priest (1998) and Hupkes, Quintyn, and Taylor (2005), we contend that independence and accountability are not contradictory, but rather fully consistent with one another. In other words, if the regulatory framework is properly designed, independence and accountability become complementary and mutually supportive, rather than mutually exclusive values. In such a framework, accountability arrangements make independence effective because they provide legitimacy and credibility to the independent agency. (Hupkes, Quintyn, and Taylor 2005; Majone 2005 )

As IRAs diffuse across not only economically developed countries, but also less developed ones (Levi-Faur 2003, Jordana and Levi-Faur 2005; Sosay and Zenginobuz 2005), studies focusing on the interaction between independence and accountability of IRAs in various political contexts gain increasing importance. Although there is an ever growing literature on the independence and accountability of IRAs in economically advanced countries and the European Union, independence and accountability of IRAs in less developed countries has not yet drawn sufficient scholarly attention. As an effort to address this gap, this paper focuses on and evaluates the formal (statutory) independence and accountability of eight IRAs that operate in economic sectors in Turkey. These are, namely, the Competition Agency (CA), the Capital Markets Board (CMB), the Banking Regulation and Supervision Agency (BRSA), the Public Procurement Agency (PPA), the Telecommunications Agency (TA), the Energy Markets Regulatory Agency (EMRA), Sugar Agency (SA), and the Tobacco, Tobacco Products, and Alcoholic Beverages Markets Regulation

Agency (TTAMRA).<sup>1</sup> The objective of this paper is to analyze the relationship between formal independence and accountability of these IRAs.<sup>2</sup>

## **Independence of IRAs**

### **Independence: The Fundamentals**

An initial question to be addressed regarding IRAs is why governments and legislatures choose to delagate decision-making powers to authorities that will by design be independent from them. After all, IRAs may follow policies that will be different than what the governments and legislatures would themselves choose to follow, and it is not evident why governments and legislatures would want to forego some of their powers in this manner. Gilardi (2005), in his review of the literature on the rationales for the establishment of IRAs<sup>3</sup>, provides the following list as to why IRAs may prove to be preferable to ordinary bureaucratic structures:

- *Expertise*: IRAs by design have more flexible organizational structures that also provide better compensation for their employees, leading to more qualified personnel to work for them than those that work for traditional buraucracies;
- *Flexibility*: Their autonomous structures allow IRAs better adjust to changing conditions in the industries they regulate;
- *Decision-making costs*. IRAs are not going to be inhibited from making decisions regarding industries they regulate in cases where elected governments would tend to stall due to uncertainty about political gains and losses of policies;
- *Credible commitments*: IRAs, with their longer time horizons, ameliorate the credibility problem that arises due to the fact that commitment by a government to a regulatory policy in a particular industry (for example, one that promises fair return to long-term investments

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<sup>1</sup> See Sosay and Zenginobuz (2005) for an analysis of the proliferation of IRAs in Turkey. The ninth Turkish IRA, namely, the Radio and Television Supreme Council, is not included in our sample as it is functionally differentiated from the eight economic sector IRAs.

<sup>2</sup> The OECD inventory of regulatory authorities does include Turkey, as a member of the OECD. However, data on the Turkish financial regulators are missing from the inventory (OECD 2005)

<sup>3</sup> See Majone 1994a, 1999, 2001a; Horn 1995; Moe 1990; OECD 2002a: 95.

by private agents) cannot be guaranteed to last beyond the following election as the new government may have different preferences over outcomes in that industry;

- *Stability*: IRAs also imply a more stable policy environment even in the absence of credibility problems (due to, for example, high likelihood that the same government remains in power over several elections) as the rules and regulations will less likely be subject to sudden and unexpected changes;
- *Economic efficiency*: The better regulatory environment resulting from (i)-(v) above will lead to better economic performance in markets subject to regulation;
- *Public participation and transparency*: IRAs embody more open and transparent decision-making processes than those of ordinary bureaucratic structures, and therefore are more open democratic control by consumers and ordinary citizens;
- *Blame shifting*: IRAs shield politicians from blame when unpopular decisions are taken or when regulatory failures occur;
- *Political uncertainty*: IRAs provide the politicians with a vehicle to lock in policies that they favor beyond their term of office as the policies of IRAs are by their nature more difficult to interfere with.

Some of the points in the list above involve normative prescriptions indicating why IRAs should be preferred in favor of other type of regulatory bodies, while others involve positive predictions indicating why we would expect politicians to choose delegating some of their authority to IRAs. Of the points raised in the list above, the two that have received a lot of emphasis in recent work on delegation are the credibility problem and the uncertainty problem (Bendor, Glazer, and Hammond 2001; Huber and Shipan 2004; Miller 2005).

### **The Credibility Problem and the Independence of IRAs**

The credibility and the time inconsistency problem that governments face in implementing their policies was first pointed at systematically by Kydland and Prescott (1977), where the issue was how to conduct monetary policy. Should the governments exercise discretion and adopt their

monetary policies to current conditions, or conduct policy on the basis of fixed rules (“rules versus discretion”)? They pointed out that there was a potential conflict between policy-makers discretion and policy optimality, and they argued that the ensuing problem could be ameliorated if the policy makers could credibly commit themselves to a fixed and pre-announced course of action. Policy-makers discretion can lead to time inconsistent policies, because (i) policy-makers will change their policies over time to adapt them to new information (which was not available at the time initial decision was made); (ii) their preferences may change (a new government, new public opinion etc.).

Time inconsistency problem arises in politics as a consequence of the lack of well-defined political property rights: the right to exercise public authority does not belong to anyone; public authority is only temporarily attached to those who win elections (Moe (1990)). There is an inherent uncertainty in the democratic political process: “whatever today’s authorities create stands to be subverted or perhaps completely destroyed – quite legally and without compensation whatever – by tomorrow’s authorities” (Moe 1990: 227).

When the success of policy relies ultimately on the response of rational individuals, even a policy that has been adopted with best of intentions for the benefit of the collective good may be rendered ineffective by rational actors that anticipate the future moves of policy-makers who would want to change these policies when new contingencies arise. Policies that are rendered time-inconsistent due to expectations of rational agents suffer from a lack of credibility. Time inconsistent policies are not credible because rational actors know that they are subject to revision. It is very difficult for elected politicians to be credible, because they have a very short time horizon, namely the next election. Also, a legislature cannot bind the following legislatures, nor a majority a subsequent majority. Hence the coherence of policies over time is jeopardized.

One possible solution to this credibility problem for governments is the delegation of competencies to independent agencies. Policy-makers thus give up their discretion and commit themselves to more or less fixed rules (Shepsle 1991; Dixit 1996).<sup>4</sup> Independent agencies have

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<sup>4</sup> See also Elster (1979) on the strategy of commitment to manipulate the feasible set of alternatives through restricting the set of possible actions and changing the reward structure.

different incentives and do not suffer from the short time horizon imposed by the democratic process. Hence their capacity to credibly commit themselves is much greater than that of democratically accountable and elected bodies.

The policy-makers need to be credible especially when they cannot rely on coercion to implement their policies (Majone 1997a). For example, in the case of foreign direct investments, if a government wants to convince foreign investors to invest in its domestic firms, it cannot force them, but it has to convince them that its policies will favor their investments. Hence it must establish credibility.

In addition to time-inconsistency and the related credibility problem, there are, however, other political transaction costs that affect political exchange. These costs involve informational problems such as adverse selection (hidden information) and moral hazard (hidden action), which in turn lead to what are called the “agency losses”. Agency losses arise whenever one actor, the principal, delegates some power or competencies to another actor, which becomes its agent (Moe 1984; McCubbins, Noll, and Weingast 1998). Adverse selection occurs when the principal cannot be sure that he is selecting the agent that has the most appropriate skills or preferences; moral hazard occurs when the agent’s actions cannot be perfectly monitored by the principal.

The establishment of independent agencies will give rise to agency problems. The agency will tend to pursue its own interests rather than that of the government unless some incentive mechanisms are established. While agencies may solve the credibility problem with their independence from political influence, agency losses that will inevitably arise due to information problems may very well outweigh the credibility gains arising from their independence.

### **Political Uncertainty And Delegation Of Authority To IRAs**

In addition to the credibility problem, governments may also be willing to give up authority to IRAs due to what is called “political uncertainty” (Moe 1990). Political uncertainty refers to the possibility that future decisionmakers will be different from the current ones and will in most likelihood want to change the policies adopted by the latter. One way of reducing the possibility of

policy reversal that will be undesirable from the viewpoint of the current decisionmakers is to make it more difficult to temper with policy by creating an independent agency with a mandate that is biased towards keeping the favored policy.

By insulating their favored agencies and programs from the future exercise of public authority governments will, of course, “not only be reducing their enemies’ opportunities for future control; they will be reducing their own opportunities as well.” (Moe 1990: 227-229). That is, creating an independent agency to protect favored policies will affect not only the future decisionmakers but all decisionmakers, including the one that creates the independent agency. In other words, creating the independent agency will also tie the hands of the decisionmaker that creates it.

It should be noted that the argument regarding the credibility problem and political uncertainty argument are partially related to each other as the presence of political uncertainty exacerbates the credibility problem. However, as noted by Gilardi (2005), the incentive for creating an independent agency is very different in each case.

### **What makes a regulator independent?**

In an attempt to operationalize the notion of regulatory independence, Greve (2002: 19-20) considers the following five questions:

- (i) Can any minister interfere and overrule the decisions made by the agency in specific cases?
- (ii) Can any minister make strategic decisions regarding the regulation?
- (iii) Does the same personnel policy and management rules apply as in the central administration in general?
- (iv) Can the minister formulate policy independently of the regulatory agency?
- (v) Is the regulatory agency financed by government and parliament through the ordinary state budget?

The degree of regulatory independence is then related to how many of these questions are answered in the negative.

In contrast to Greve's definition, which only concerns the relationship between the independent regulator and government, Smith's (1997: 1) definition also pays attention to the relationship between the regulatory agency and the regulated industry. He defines independence for regulators as consisting of the following three elements:

- (i) an arm's-length relationship with regulated firms, consumers and other interests,
- (ii) an arm's-length relationship with political authorities,
- (iii) organisational autonomy, such as earmarked funding and exception from restrictive civil service salary rules, that is necessary to establish the requisite expertise and to maintain those arm's-length relationships.

### **Operationalization of independence**

Towards a more detailed operationalization of regulatory independence, Gilardi (2002) develops a measure that concentrates on formal (statutory) independence. He draws on Kreher's (1997) operationalization, which uses many of the insights developed for measuring central bank independence (Cukierman *et al*, 1992; Cukierman and Webb, 1995; Kreher, 1997).

Kreher (1997) introduces the distinction between statutory independence and actual independence, as it would not be possible to reduce actual independence to legal status of the agencies. Elaborating on Kreher's (1995) distinction, Gilardi (2002) distinguishes between *formal independence* and *actual independence*, and introduces an operationalization of formal, or statutory independence.<sup>5</sup> He divides formal (statutory) independence into four dimensions:

- i. Status of the director of the agency,
- ii. Status of the board of directors,

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<sup>5</sup> As also argued by Gilardi (2005), informal (actual or de facto) independence is obviously also important, but formal independence is the fundamental issue when one studies the creation of IRAs by decision-makers but the former is the most relevant factor when the decision to delegate is investigated. Formal independence is a variable that decision-makers are able to determine shape, and it has significant impact on how the actual independence of an agency will turn out to be.

- iii. Relationship with the government and legislative; and
- iv. Financial and organizational autonomy.

The indicators associated to these variables are presented in Table 1 (See Appendices). In each case 0 indicates lowest level of independence and 1 indicates highest level of independence. Indicators are first aggregated at the variable level, with equal weights. Then, the variable-level indices are aggregated, again with equal weights, to arrive at the overall independence index.

### **Independence of IRAs in Turkey<sup>6</sup>**

Table 2 (See Appendices) displays detailed information on independent regulatory agencies in Turkey. Using Gilardi's (2002) index described above, we assess the formal independence of Turkish regulatory agencies. In Table 3 (See Appendices) we present detailed information on two Turkish agencies to demonstrate the nature of the operationalization involved. Table 4 provides variable-level and the overall independence indices for all of the Turkish agencies. The last two columns on electricity regulators in Italy and the U.K. are from Gilardi (2002) and are included for the purpose of comparison.

Table 4 (See Appendices) reveals a general tendency regarding the formal independence of Turkish agencies. Except for the SA and the TTAMRA, the formal independence indices for Turkish agencies are around in the range 0.71-0.74. Comparing the four variable-level indices among themselves, we observe that the formal independence indices that involve the appointment stage, i.e. those involving the agency head status variable and the board member status variable, are in general lower than the formal independence indices for the post appointment stage.

### **Accountability of IRAs**

#### **Accountability: The Fundamentals**

There is a growing academic and/or policy-oriented literature on the accountability of IRAs. On the subject, the field is rather rich with definitions, conceptual and theoretical frameworks that largely overlap and complement, rather than contradict, one another.

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<sup>6</sup> This section draws on Zenginobuz (2002b).

Based on two definitions of accountability formulated by Caiden (1998: 25) and Jacobzone (2005: 98), we, in this paper, take accountability to be *an obligation to report, to explain, to give reasons, to respond, to answer for, to render a reckoning, to submit to an outside or external judgment, and bear the consequences of the manner in which the regulator has discharged duties, fulfilled functions and utilized resources as well as of its regulatory performance*. While this definition offers a general understanding of what accountability involves, it does not provide clear answers to some critical questions that must be addressed to assess accountability. These questions are, namely:

- who is accountable?
- accountable to whom?
- accountable for what?
- accountable by what means or mechanisms?

Answering these questions is necessary to obtain a complete picture of accountability within a specific regulatory regime. Thus, this section presents a literature-based discussion and analysis addressing these questions as a means to develop a framework that can be used to empirically study and evaluate the accountability of IRAs.

- **Who is accountable?**

The identification of the agent or who is to be held accountable is an important, yet often not sufficiently emphasized issue. The answer is generally presumed, rather than questioned. The predominant assumption is that IRAs as institutions or “corporate bodies organized to perform particular functions” (Priest 1998) are to be held accountable for rationality, legality, fairness, performance, and other criteria that will be specified below. This is not an ungrounded assumption since powers are generally delegated to IRAs as institutions, rather than to individuals that occupy positions within these institutions, and regulatory decisions and activities involve collective and collaborative work

On the other hand, it should also be acknowledged that institutions are managed and operated by individuals. As Priest underlines, “human behavior is what drives institutions.” (1998: 5) Individual ‘regulocrats’, like bureaucrats who are agents in the traditional delegation chain, are subject to the provisions of administrative law for their way of conduct (administrative accountability). This is a necessary, but possibly not sufficient constraint to ensure high quality regulation by IRAs. Individuals occupying positions in IRAs, such as their chairs and board members, may act perfectly in accordance with the requisites of administrative law; yet, their actions may not contribute to or may counter the efforts to generate the regulatory outcomes IRAs are mandated to produce. Adding in a personalized version of accountability for regulatory functions and activities performed independently by IRAs as well as for their performance can help deal with this potential problem.

In sum, the question of ‘who is accountable’ should be addressed at two levels: institutions and individuals. The laws institutionalizing independent regulatory agencies may hold the agencies and/or individuals who manage and operate them accountable. Hence, differentiating between institutional and personal accountability can provide a more nuanced comparison across regulatory regimes.

- **Accountable to whom?**

In recent years, the networks of accountability in regulatory regimes have extended so much as to justify Scott’s (2000) model of ‘redundancy’ applicable to some. Within this context, formulation of accountability as a vertical and linear relationship between principals and agents can offer only a partial answer to the question ‘accountable to whom’. ‘The 360° view of accountability’ developed by the British House of Lords (2003) clearly demonstrates the multitude of actors with which IRAs are in a relationship of accountability. (Figure 1)

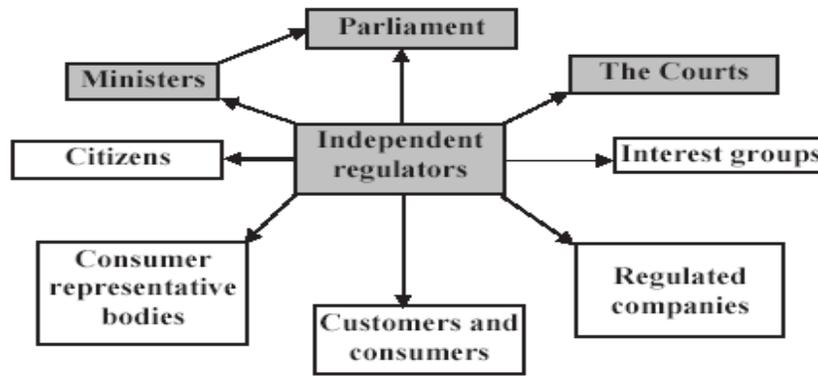


Figure 1: The 360° view of accountability. The shaded boxes comprise the bodies that exercise power directly in relation to the regulators. Citizens, consumer bodies and regulated bodies lack the power to summon regulators to justify their actions. (Source: House of Lords 2003).

In analyzing to whom IRAs are accountable, Scott (2000) presents a view of accountability in three dimensions: upwards, horizontal, and downwards. In ‘upwards’ accountability, that corresponds to the simple vertical relationship between principals and agents and to the shaded boxes in Figure 1, accountability is rendered to a higher authority. ‘Horizontal’ and ‘downwards’ accountability involve accountability to broadly parallel (e.g. independent monitoring or appeal bodies, audit offices, ombudsmen) and to lower level institutions and groups (e.g. consumers, interest groups), respectively.

First and foremost, IRAs are designed to be accountable to the three branches of the government, namely, the legislature, the executive, and the judiciary (‘upwards’ accountability). This is essential to ensure that regulatory activities correspond with the democratic will that is represented by these institutions and that IRAs do not emerge as a ‘fourth branch’ operating independently from the system of checks and balances in a representative democracy.

As IRAs have evolved, increased in number, and diffused across sectors, the inadequacy of traditional hierarchical (‘upwards’) mechanisms of accountability between principals and agents with delegated powers, and thus, the necessity of establishing a network of complementary and overlapping checking mechanisms (Majone 1994b) that will be studied in further detail below have become increasingly evident. Consequently, accountability in regulatory regimes have been extended to make IRAs also accountable to specially established independent monitoring or appeal

bodies, audit offices, and ombudsmen ('horizontal' accountability). Even though these institutions often do not have the formal authority to control and sanction regulators, they perform crucial functions, such as scrutiny and formal review. Therefore, such bodies should also be included in the 360° view of accountability.

Thirdly, the controversy around the democratic accountability and legitimacy of independent non-majoritarian institutions, such the IRAs<sup>7</sup>, have contributed to bringing in the stakeholders, namely, the consumers and regulated industries, and the general public into the framework of accountability. In addition to being indirectly accountable to the stakeholders and the general public constituting the electorate, via their elected representatives in the parliament, regulators have also been made directly accountable to them ('downwards' accountability). Mechanisms of accountability that provide information and representation to the stakeholders and citizens *en masse* and voice and choice to individuals for their discretionary use (Lodge 2004) have been incorporated into regulatory regimes.<sup>8</sup>

- **Accountable for what?**

The question of accountability for what has been a much debated issue. Firstly, since IRAs are created primarily to promote effective regulation, much emphasis has been put on accountability for regulatory outcomes or performance. This can be explained by the emergence of what Behn (2001) calls the "new public management paradigm", which aims "at fostering a performance-oriented culture that is characterized by [among other things] a closer focus on results." (The Public Management Service of the Organisation for Economic Cooperation and Development , Cited in Behn) Regardless of whether they subscribe to this paradigm or not, both the practitioners and scholars of regulation agree on the quality of regulatory outcomes or performance as a criterion for which IRAs must be accountable for. There is also consensus that regulatory outcomes should be evaluated on the basis of whether they meet the objectives that they have been assigned. In order to be able to make an accurate assesment of the quality of regulatory outcomes, these objectives must

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<sup>7</sup> See Majone (1999 ), Sosay (2006).

<sup>8</sup> See Mulgan (2000) for a related discussion.

be clearly identified. While this may be relatively easy to do theoretically on paper, operationalizing and measuring them so that they can be used as yardsticks to evaluate regulatory performance pose a challenge.

Based on a survey of relevant literature, Gilardi (2005) provides a comprehensive list of rationales for the establishment of IRAs. They are, namely, increasing expertise, flexibility, credibility, stability, efficacy and efficiency, public participation and transparency; reducing decision-making costs and political uncertainty; and blame shifting. Differentiating the reduction of decision-making costs and political uncertainty as well as blame shifting as positive arguments that aim to explain, rather than to provide prescriptions for action, and underlining the methodological difficulty of determining if IRAs have led to increased expertise, flexibility, credibility, and stability in the regulatory process, he argues that the best way to evaluate regulators with respect to their output is to focus on efficacy and efficiency, that is, their impact on market performance.

The quality of regulatory outcomes IRAs is only one aspect of regulatory quality. As such, output-oriented accountability cannot by itself guarantee democratically legitimate and good governance. Many scholars of IRAs emphasize procedural legitimacy as a standard that complements output legitimacy and hence, helps resolve the controversy around the legitimacy of IRAs in democracies (Majone 1999; Scharpf 1999). From this perspective, IRAs are to be held accountable for process. In other words, the regulators are made accountable for their activities and actions in the decision making process. This involves determining whether the regulators have followed the rules of conduct and decision making or met the process requirements that are established by law or statute. Legality and fairness are the primary values which the regulators are accountable for. Accountability for the budget and financial accounts that is sometimes separately listed may also be regarded as a sub-category under accountability for process.

- **Accountable by what means or mechanisms?**

The mechanisms of accountability for IRAs are ideally designed to ensure that nobody controls the independent agencies, yet they are ‘under control’ (Moe 1987). This is the prescribed recipe for

minimizing the trade-off between independence and accountability. In a regulatory regime based on this general principle, the first requirement is that *delegated powers, objectives, roles, responsibilities, and decision-making processes of IRAs must be clearly specified in laws*. In other words, a legal framework that explicitly specifies who is accountable to whom and for what as well as how decisions and actions are to be taken is the first condition that must be met in designing accountable as well as independent IRAs and ensuring accountability for both process and output.

Another general condition that must be incorporated into the design of mechanisms of accountability, again for both process and outcome, in regulatory regimes is *transparency*. The regulators cannot be fully held accountable when their regulatory activities that are not made transparent. That is to say, accountability presumes transparency. In practical terms, this involves creating regulatory regimes with “prescribed standards of making regulatory activities accessible and assessable” (Lodge 2004: 127) to all the actors whom IRAs are accountable to, such as the parliament, the executive, the judiciary, financial auditors, monitoring agencies, the stakeholders, and the general public. Otherwise, lack of information and/or potential information asymmetries can undermine accountability.

When the intent is limited to making regulatory activities ‘accessible’, transparency can be attained by providing and publicizing information about regulatory activities. Obliging IRAs *to publish regular formal reports and financial statements, to write explanations of deliberations, proceedings and specific decisions, to respond to requests for information* is the primary means of doing this. These mechanisms of accountability created to enhance transparency are crucial for both *ex ante* and *ex post* accountability as the IRAs are obligated to report before and after action is taken.

To make regulatory activities ‘assessable’ as well as ‘accessible’, the ‘addressees’ of these aforementioned documents should be also taken into account. When they are addressed to specialized bodies, they may and in most cases are expected include for example, economic information, such as data, models, and forecasts, that can be grasped and evaluated only by experts.

On the other hand, when the objective is revelation and dissemination of information to the ‘laypeople’ whom IRAs are accountable to, such as consumers and the general public, written and oral statements (e.g. press statements) should be formulated in a language understandable to those who are not experts.

Merely obliging the IRAs to be accountable is not sufficient to alleviate the concerns about their democratic accountability and legitimacy. Hence, other mechanisms to enhance democratic accountability without too much endangering the independence of regulatory agencies are introduced. One such mechanism is the institutionalization of *appointment, reappointment, and dismissal procedures* by which the senior officials of IRAs are appointed, reappointed, and dismissed by the government or the head of state upon recommendation by the finance minister or the government. As Hupkes, Quintyn, and Taylor assert “[g]overnmental appointment serves to strengthen their position, in particular, in relation to the regulated industry. Reappointment and dismissal procedures may be looked at as mechanisms of personal accountability, and reappointment of officials, in principle, could function as a mechanism of ex post accountability by which an official could be dismissed on grounds of bad performance.” (2005: 1591)

Regulatory policies and decisions involve value judgments that affect the welfare of the stakeholders as well as the general public and may inevitably have redistributive effects. While making IRAs accountable for their regulatory outputs may provide channels through which these actors can contest them after a decision is made or an action is taken, the requirements of democratic legitimacy may be interpreted to also include *ex ante* accountability. Whether, how, and how much the stakeholders and the public (directly or through their elected representatives) are not only provided information, but also represented in the process, allowed to participate, and consulted before a decision is made or an action is taken should also be taken as measures in evaluating the accountability of IRAs. Hence, various means of representation, participation, and consultation are incorporated into regulatory regimes.

*Representation* of the parliament and/or the stakeholders in advisory and/or supervisory boards/committees of the IRAs provides a channel through which the representatives of the general electorate and those who are directly affected by regulatory actions and decisions can participate in the regulatory process. *Consultation* with the parliamentarians and the stakeholders is expected take place mainly in the boards/committees where they are represented. Appearances before the parliament and ad hoc inquiries also provide a means of consultation and an opportunity for the parliament to probe and criticize regulatory activities. Whether consultation is obligatory or optional, whether advisory and/or supervisory boards/committees are standing or ad hoc, and whether the appearances before the parliament are regular or ad hoc can be used as indicators of accountability.

While the regulators are generally expected to include an overall economic assessment in their annual reports prepared for those whom they are accountable to, some additional mechanisms are often established to secure the budgetary and financial accountability of IRAs. The *review of the annual accounts and balance sheets by a national audit office, independent auditors, such as private consulting firms and academic experts, and/or internal inspectors* is often required to ensure good governance. The more independent and objective the audits, investigations, and other reviews are, the more effective the mechanisms of financial accountability are considered to be.

With the exception of reappointment, and dismissal procedures, the mechanisms of accountability introduced thus far do not involve punishment. While these mechanisms are necessary, they are not sufficient to assure accountability. The obligations to report, to explain, to consult for advisory opinions, and to be audited do not go much beyond providing transparency and access in the absence of formal and authoritative appeal and sanctioning mechanisms. Such mechanisms are provided primarily within the framework of *judicial accountability and in some cases, through special appellate bodies, governmental or ministerial bodies*.

The regulators are legally obligated to act within their powers and observe due-process requirements. On one hand, as agents in the administrative structure, individual ‘regulocrats’ are

not immune from the provisions of administrative law. Thus, they can be penalized for the abuse of power and administrative misconduct by courts. On the other hand, the fact that they occupy positions within IRAs that are created by special laws or statutes and that enjoy delegated powers incomparable to those exercised by traditional bureaucracies necessitates additional measures. First and foremost, whether they are acting within their powers and in accordance with the procedural rules specified in the founding documents of the IRA concerned are subject to the supervision and review of courts, special appellate bodies, or quasi-judicial governmental/ministerial bodies. The failure to comply with the procedural provisions of the IRA-specific legal documents which they are bound by is a ground for appeal or challenge and for the overturn of a regulatory decision. This is a mechanism that is designed to enhance accountability for process.

A similar mechanism may allow appeals for errors of fact as well as on the merits of regulatory decisions ('outputs') including their legality and fairness. In this mechanism, those affected by regulatory decisions are granted the right of redress in the court or other bodies of appeal that can overturn decisions when they are found not to meet the requirements of legality and/or fairness.

On the other hand, appeals and sanctioning based on the market-performance of IRAs are constrained by the discretion conferred on regulatory agencies as independent institutions with broad delegated powers. In democracies, the principals have the authority to revise and repeal the laws and statutes of IRAs as well to dismiss or not to reappoint the regulators. In some systems, the principals may also have the authority to cut the agencies' budgets and other resources. However, the tension between independence and accountability constrains the principals' ability and inclination to hold the regulators liable for and sanction institutional (or personal) failures in the substantive quality of regulatory decisions in relation to the market-related objectives the IRAs are mandated to achieve. The methodological and practical difficulties involved in evaluating the market-performance of IRAs that are often established to carry out multiple functions and accomplish multiple objectives and that "may compete with other regulatory authorities" (Hupkes,

Quintyn, and Taylor 2005: 1581) in achieving those objectives also create complications and make it difficult for the principals to measure IRAs' performance against their mandates and punish them for institutional (or personal) failures.

Furthermore, the aforementioned sanctioning mechanisms, even when/if they are activated, may not be or viewed as measures that directly and solely penalize such failures. In other words, such sanctions rarely "provide an undiluted message to the agency and its members" (Priest 1998: 19). For instance, legal amendments, reappointments, and dismissals may be due more to the principals' political considerations than to the IRA's market performance; changes in the agency's budget and other resources may result from the need to introduce further fiscal discipline by reducing public expenditures.

Regulatory regimes may be so designed that courts, special appellate bodies, or quasi-judicial governmental/ministerial bodies have the power to overturn regulatory decisions based on their failure to serve market-related regulatory objectives. Yet, in addition to the methodological and practical complexities specified above, the fact that the judges often do not have the expert knowledge to accurately assess and reach to conclusions regarding the market performance of IRAs generally limits judicial oversight to the review of the regulatory processes and outputs for legality and fairness, rather than for market-performance. Furthermore, rules on immunity and limited liability of regulators (except that which is provided by administrative law) are correlates of independence and are justified by the need for effective regulation. The likelihood of direct legal actions against them can dissuade the regulators from acting promptly and decisively and hence, adversely affect the quality of regulatory outputs. (Hupkes, Quintyn, and Taylor 2005)

The way mechanisms of accountability are or should be designed may vary depending on which doctrine of public management is adopted. Based on work by Hood (1986, 1997, 1998), Lodge (2004) sets up an accountability framework across three doctrines of public management, namely, fiduciary trusteeship doctrine, consumer sovereignty doctrine, and citizen empowerment doctrine. As doctrines that see different actors as loci of authority, they advocate different mechanisms of accountability. This is summarized in Table 5 (See Appendices). As will be evident in our analysis below, fiduciary trusteeship doctrine appears to be the dominant one shaping regulatory regimes in Turkey.

- **Operationalization of accountability**

There is a growing literature involving efforts to operationalize and measure the accountability of IRAs. Using published and internet sources, the OECD Secretariat prepared an inventory of regulatory authorities in 2003-2004. As a comprehensive tool for documenting regulatory regimes in member countries, the OECD inventory also includes variables and questions addressing accountability (OECD 2005). Gilardi, in a paper attached to the OECD's 2005 report, presents a list of indicators and questions that can be used to empirically assess and compare accountability across regulatory regimes. Benefiting from pre-existing work and bringing in a few new indicators, this paper relies on the following indicators to evaluate the accountability of IRAs in Turkey.

IRAs are institutionalized by laws or statutes that set the legal parameters of regulatory activities. Since it is the first requisite for independent and accountable regulatory agencies, the first indicator is the following:

- 1) Does the law (or statute) institutionalizing the IRA clearly specify the accountees, the accountability holders, decision making procedures, and mechanisms of accountability, as well as unambiguously define and in case of multiple objectives, prioritize the objectives of the IRA?

The identification of those who is/are accountable is significant in differentiating who is/are to be held responsible for regulatory activities. If the IRA as a corporate body, rather than an individual or a group of individuals, is specified as the accountee, it is more difficult to distinguish who is responsible and thus, must be held accountable for legality, fairness, effectiveness, and so forth. This is a condition that weakens accountability in regulatory regimes.

- 2) Is an individual (e.g. the chair of the IRA) or a board/commission rather than the IRA as an institution specified as being accountable?
- 3) Is it an individual or a board/commission who assumes the legal personality of the IRA and hence, is held accountable?

- 4) Is the administrative personnel of the IRA accountable for personal conduct under administrative law?

The answers to the general questions of ‘accountable to whom?’ ‘accountable for what?’ and ‘accountable by what means or mechanisms?’ can be captured by a series of indicators. First, even though they are independent bodies, IRAs (or individuals occupying positions in them) are accountable to their principals that represent the democratic will. Hence, questions concerning IRAs’ formal obligations vis-à-vis the parliament and the executive must be included as indicators of democratic accountability.<sup>9</sup>

- 5) What are the formal obligations (in law or statute) of the IRA vis-à-vis the executive government?

- No formal obligations
- Obligation to submit regular reports , for information only
- Obligation to submit regular reports and to get approval
- Obligation to explain decisions, deliberations, and proceedings
- Fully accountable to the government

- 6) What are the formal obligations (in law or statute) of the IRA vis-à-vis the Parliament?

- No formal obligations
- Obligation to submit regular reports, for information only
- Obligation to submit regular reports and to get approval
- Obligation to explain decisions, deliberations, and proceedings
- Fully accountable to Parliament

- 7) If there is a reporting requirement to the government and/or to the parliament, should reports cover financial accounts?

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<sup>9</sup> This set of questions includes those formulated for the OECD inventory with some additions and /or modifications.

- 8) If there is a reporting requirement to the government and/or to the parliament, should reports cover an evaluation of regulatory performance, including an assessment of whether and to which extent the objectives stipulated in law or statute have been achieved?

Some aspects of transparency are covered by these questions. However, they may not be sufficient to address higher standards of transparency (also involving disclosure of full information to the stakeholders and the general public) incorporated into some, if not all, regulatory regimes. These standards are addressed by Gilardi (2005). His indicators are reformulated to capture mechanisms of formal accountability other than the formal obligations of the IRA vis-à-vis the government and the Parliament.

- 9) Is the IRA obliged to make the basic data and the formal economic models it uses for regulatory policy publicly available?
- 10) Is the IRA obliged to publish and publicize its own economic forecasts?
- 11) Is the IRA obliged to provide an explicit rule or strategy that describes its policy?
- 12) Is the IRA obliged to disclose how each decision has been reached?
- 13) Is the IRA obliged to use procedures for making regulation known and accessible to affected parties?
- 14) Is the IRA subject to plain language drafting requirements?
- 15) Is the IRA obliged to explain its decisions in a specific period of time?

As underlined above, representation, participation, and consultation in decision making are also regarded essential for the democratic accountability and legitimacy of IRAs. The following indicators can be used to evaluate IRAs in this respect.

- 16) Which groups are represented in these advisory boards/committees and in which proportion?
- 17) Is the IRA obliged to consult advisory boards/committees before a decision or action is taken?
- 18) Are these advisory boards/committees standing or ad hoc?

While the aforementioned reporting requirements of IRAs involve the disclosure of information on their financial accounts, this is generally not accepted as a sufficient means of supervision and control to ensure budgetary and financial accountability. External audits are considered to be one of the conditions for good governance are also incorporated into regulatory regimes.

19) Is the IRA subject to a regular external audit of its financial accounts?

20) If the IRA is subject to a regular audit of its financial accounts, is it audited by

- A national audit office
- Private consulting firms
- Independent academic experts
- Other?

Finally, regarding the mechanisms of appeals and sanctions, first the following questions based on those included in the OECD inventory should be answered.

21) Through whom can the decisions of the IRA be appealed or challenged?

- Courts
- A special appellate body
- Governmental or ministerial body
- Other?

22) Which body, other than a court, can overturn the decisions of the IRA where the latter has exclusive competence?

- No body
- A special appellate body
- Governmental or ministerial body, with qualifications
- Governmental or ministerial body, unconditionally

23) What are the accepted grounds for appeal or challenge?

- Errors of fact
- Errors of law (including failure to follow the due process)

- Merits of the decision including its impact on market performance
- Other?

Other means of punishment for the regulators who fail to achieve the IRA's market-related objectives may be the non-renewal of their terms in office or dismissal. Hence, the last indicator:

24) On what grounds can the chair and/or board members of the IRA be dismissed?

The indicators listed in this section will guide our comparative analysis of accountability of IRAs in Turkey.

### **Accountability of Independent Regulatory Agencies in Turkey**

The level of specification vary across laws insitutionalizing these IRAs in Turkey. In other words, there is not a consistent and standard legislative formulation in which the institutional characteristics, decision making processes, mechanisms of accountability, and objectives of the aforementioned IRAs are clearly identified. As is evident from the analysis to be presented in this section and Table 6 (See Appendices), exclusion or insufficient specification of some of the fundamental requirements of accountability in the founding documents of IRAs is a deficiency that weakens their accountability.

In Turkey, except the CMB, which itself is structured as a board, all economic sector IRAs rest on a distinction between the agency and its board as the decision making organ. The members of the boards are appointed by the Council of Ministers from among the candidates proposed by selected ministeries, state institutions, and/or non-governmental organizations while the chairs are chosen by the Council of Ministers or the members of the board. (see Table X-independence). Before they take office, the board members of all except of the TA, SA and TTAMRA, have to swear, before the Supreme Court, that they will carry out their duties with utmost care and honesty and will not act against the provisions of law during their terms in office. The laws institutionizing all eight IRAs recognize the chairs of the boards as the actors who represent their agencies and are responsible from and thus, accountable for the organization, supervision, implementation, evaluation and publicization of regulatory activities.

Based on the principle of integral unity of the administration provided by Article 123, paragraph 1 of the Turkish Constitution<sup>10</sup>, IRAs are regarded as a part of the administration. As the independence of IRAs creates certain dilemmas regarding their status under administrative law<sup>11</sup>, the administrative personnel of the IRAs in Turkey, are treated as public servants, except for their salaries and financial rights. As individuals hired by administrative service contracts, they are bound by the laws applied to public servants with the stated exceptions.

Reporting requirements are the most salient of the IRAs' formal obligations vis-à-vis the parliament and the government in Turkey. By article 7, paragraph 2 of the Law No. 4743 (30.1.2002) on the restructuring of debts to the financial sector (*Mali Sektöre Olan Borçların Yeniden Yapılandırılması ve Bazı Kanunlarda Değişiklik Yapılması Hakkında Kanun*), IRAs are obligated to inform the Planning and Budget Committee of the Turkish Grand National Assembly of their regulatory activities once a year.<sup>12</sup> This condition is explicitly stated in the founding laws of only the CMB and the BRSA. Neither the Law No 4743, nor the laws instituting these two IRAs specify which information must be provided and in what form it should be presented (e.g. written reports, briefings, oral presentations) to this parliamentary Committee. The founding law of only the BRSA includes a provision regarding its obligation to submit an annual report of activities to the Committee, also consisting of an analysis of their social and economic effects, and financial accounts to the parliament.

By article 7, paragraph 2 of the Law No. 4743, all IRAs in Turkey are obligated to submit annual reports of their activities to the Council of Ministers by the end of May. Again, the law does not stipulate the required contents of these reports. Aside from this umbrella provision, the reporting requirements included in the founding laws of these IRAs vary. For instance, the law institutionalizing the CA, oblige the agency to publish annual reports including its activities as well

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<sup>10</sup> The paragraph is as follows: "The administration forms a whole with regard to its structure and functions, and shall be regulated by law." (<http://www.tbmm.gov.tr/english/constitution.htm>)

<sup>11</sup> See Ulusoy (1999).

<sup>12</sup> Other paragraphs of this article, including that which provided for the auditing of IRAs' annual financial accounts by a committee composed of an inspector from the Ministry of Finance, an inspector from the Prime Minister's Office, and an auditor of the Supreme Supervision Board of the Prime Ministry, have been annulled for being against the Constitutional principles by a ruling of the Turkish Constitutional Court published in the *Official Gazete* on 14.03.2006, but this paragraph has been retained.

as the condition and developments in its area, but does not state the contents and the addressees of these reports. On the other hand, the CMB, BRSA, and EMRA are required to submit annual reports together with their financial accounts to their 'related' Ministries. The CMB also has to present analyses when asked by the Minister. The BRSA, when requested, provides information and analyses to the Undersecretariat of Treasury, the State Planning Agency, and the Central Bank.

Mechanisms of accountability limited to annual reporting to the parliament, government, and selected state institutions remain insufficient to meet higher standards of transparency. Maybe most significantly, as public institutions, IRAs are bound by the provisions of the Right to Obtain Information Law (Law No 4982) which was published in the *Official Gazette* on 9.10.2003. The Law sets the principles and general procedures concerning the persons' exercise of the right to obtain information in accordance with the principles of equality, impartiality, and openness as requirements of democratic and transparent governance. The right excludes the disclosure of classified information and documents, information and documents the disclosure of which may damage the economic interests of the country or create unfair competition, civilian and military intelligence, commercial secrets, information and documents the revelation of which may hamper fair adjudication of cases under judicial review, or violate individuals' privacy rights, as well as some internal organizational documents and correspondence of public bodies. Moreover, institutions subject to this law are not obligated to respond to requests for information or documents the presentation of which will require extra work, research, inquiry or analysis. Requests for recommendations and opinions are also outside the scope of this law. Despite all these limitations and safeguards, this law introduces a mechanism of transparency the significance of which should not be underestimated.

Even though the importance of informing the public is at least mentioned in passing in the founding laws of almost all the IRAs in Turkey, we do not find consistency in the specification of requirements of transparency included in these laws. Those of the two least independent regulatory agencies, namely, the SA and the TTAMRA, as well as the TA are also the least specific in their

provisions. While the chair of the Sugar Board (of the Sugar Agency) is held responsible from informing the public and may, but is not obligated to communicate issues discussed at the board meetings as well as the decisions taken to the media, there are no provisions regarding transparency requirements in the founding laws of the TTAMRA and the TA. Neither are these three agencies legally obliged to publish their decisions or publicize regular reports of their activities. Similarly, the EMRA does not legally have to publish its decisions, but its founding law requires providing information on the details of grants from international institutions to the public and holds the chair of its board responsible from informing the public about its activities without stipulating how (like the SA).

On the other hand, the laws institutionalizing the CMB, the BRSA, the CA, and the PPA have stricter requirements of transparency. First of all, their founding laws are highly specific in depicting their decision making procedures, contents of decisions, reasons for decisions, time periods during which decisions will be reached, announced, and appealed, as well as fees and penalties. Moreover, the CA is obliged to publish its final decisions, notifications, and bylaws. So is the CMB, which like the BRSA, issues weekly bulletins including decisions that interest the public. The PPA, on the other hand, is required to publish the Public Procurement Bulletin in both printed form and over the internet. However, for all these means of communication to the stakeholders and the public, there are no plain language requirements.

In addition to revelation of information regarding the activities of IRAs to the stakeholders and the public, their representation and participation in decision making are also regarded as channels by which the accountability of IRAs can be enhanced. As presented in the section on the independence of IRAs in Turkey, the board members of IRAs in Turkey are chosen among candidates proposed by related ministries, public institutions and in some cases representative organizations of interested parties. Namely, on behalf of non-governmental actors, the following groups each have one appointed representative in the boards of the stated IRAs: the Union of Chambers and Commodity Exchanges of Turkey (TOBB) in the CMB, CA, PPA, and TA (together

with the Ministry of Industry and Commerce, the board member representing the consumers), the Association of Capital Market Intermediary Institutions of Turkey in the CMB, the telecommunications sector in the TA, the Interuniversity Council in the CA, the Confederation of Turkish Employer Unions in the PPA, the Union of Turkish Chambers of Agriculture in the TTAMRA, Turkish Sugar Factories Inc., Union of Turkish Sugar Beet Producer Cooperatives, and private sugar companies (2 representatives) in the SA. The board of only the BRSA does not include any members proposed by non-governmental institutions.

The IRAs in Turkey are not under any formal obligations to consult advisory boards/committees composed of the representatives of the stakeholders, consumers, the general public and/or independent experts the before decisions or actions are taken even though the laws or bylaws of some include vague references to the fact that they may and/or should seek the opinions of interested parties. For instance, the law establishing the TA includes a provision asserting that the agency may take measures to make the expression of opinions by interested parties possible, but not stipulating what those measures may or should be. If they deem necessary, the IRAs ‘related’ ministries may set up ad hoc advisory committees, but the only standing advisory bodies that are established are the advisory units within the organizational hierarchies of the agencies.

Regarding financial accountability, we find different arrangements in the laws establishing the IRAs concerned.. The institution of financial oversight for the CA, TA, and the PPA is the the Turkish Court of Accounts (TCA), which under the Constitution and the Law on the Turkish Court of Accounts, is responsible for auditing on behalf of the Grand National Assembly (Parliament) the revenues, expenditures and property of government offices operated under the general and annexed budgets. With the 1996 amendment to its law, the TCA is also given the task of examining the extent to which the government offices under its jurisdiction use their resources with due regard to economic efficiency and effectiveness.

A second group of IRAs, consisting of the EMRA, the SA, and the TTAMRA, are audited by the Supreme Supervision Board (SSB) of the Prime Ministry, which was originally created to

oversee the activities as well as the financial accounts of the state-owned enterprises in Turkey. Neither the founding laws of these three agencies, nor that of the TA specify that their “financial accounts” are overseen by the SSB and TCA, respectively. However, based on the fact that the decisions of IRAs are subject to adjudication by administrative courts, review by the SSB and the TCA is interpreted as being limited to finances.<sup>13</sup>

The ‘related’ ministers play a central role in the mechanisms of financial accountability of the two IRAs in the financial sector. The ‘related’ minister (a minister of state) has the financial accounts of the BRSA audited by a committee appointed by the minister himself/herself and composed of an inspector from the Court of Accounts, an inspector from Ministry of Finance, and an inspector from the Prime Minister’s Office. On the other hand, while the law establishing the CMB asserts that the minister has it audited, it does not specify by whom. In the cases of both the BRSA and the CMB, the minister is also responsible from taking measures based on the conclusions of the audit. Subsequently, s/he presents a report, including the conclusions of the audit as well as the measures taken, together with the IRA’s annual report of activities, to the Council of Ministers. The BRSA and the PPA also need to receive the clearance of their accounts from the Council of Ministers. In addition, the BRSA may, but does not have to, have its finances audited by an independent auditing firm.

In Turkey, the IRAs are tied to the administrative structure through their related ministries. Hence, their decisions can be challenged, appealed, and overturn through administrative courts for errors of law, including the failure to follow the due process. While the judicial oversight of the BRSA, the CMB, TA<sup>14</sup> and the SA is carried out by (regional) administrative courts, the CA and the EMRA are overseen by the Council of State.<sup>15</sup> The law establishing the TTAMRA, on the other hand, does not specify a court or body of appeals. Except for the TTAMRA, some decisions of

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<sup>13</sup> Without further specification, the Turkish term used in this context (*‘denetim’*) may mean ‘control’, ‘check’, ‘oversee’ or ‘audit’.

<sup>14</sup> For the franchise contracts it signs, the TA asks for the opinion of the Council of State.

<sup>15</sup> The Council of State is the last instance for reviewing decisions and judgments given by administrative courts and which are not referred by law to other administrative courts. It shall also be the first and last instance for dealing with specific cases prescribed by law. (constitution)

which may be repealed with qualifications, by the government, no other body can overturn the decisions of the IRAs in Turkey.

Last, but certainly not the least, although they do not constitute means of appeal, there are some means of punishment and reward at the disposal of the parliament and the government. Undoubtedly, the parliament always has the authority to introduce amendments in legislation by which powers are delegated to the IRAs. The Council of Ministers, on the other hand, has the authority to appoint and reappoint the board members of the IRAs in Turkey. Reappointment may be regarded as a reward for their performance in office. Yet, dismissal may hardly be used as a punishment for failures related to regulatory activities as the board members cannot be dismissed unless they lose the qualifications required for the job or violate laws.

#### **The “Independence and Accountability Dilemma”: The IRAs in Turkey**

Table 4 (See Appendices) reveals that the independence scores of economic sector IRAs in Turkey are close to each other across the board, except for the two IRAs in the agricultural sector, namely the SA and the TTAMRA. As was discussed in Sosay and Zenginobuz (2005), the creation of these two IRAs involved a number of peculiarities, including the sunset clause for SA, the regulatory body for the sugar industry. In fact, SA is now defunct. Both the SA and the TTAMRA are among Turkey’s less accountable IRAs. These observations point to the fact that less accountability does not imply more independence on the part of an IRA. Neither does less independence necessarily mean more accountability.

IRAs are delegated powers and hence, granted independence by laws passed by the Turkish parliament. However, the laws establishing the IRAs in Turkey, with the exception of the BRSA, do not explicitly specify any formal obligations vis-à-vis the parliament. It is only after the introduction of Law No 4743 that the IRAs have been required to annually ‘inform’ the parliament’s Planning and Budget Committee. Being almost as vague as some IRAs’ (e.g. CA) annual reporting requirements neither the contents nor the addresses of which are stated in the founding laws, this provision of Law No 4743 do not ensure actual oversight by the parliament,

short of exercising its authority to amend legislation concerning IRAs. On the other hand, both the IRAs' founding laws and the Law No 4743 introduce stricter reporting requirements vis-à-vis the executive through 'related' ministers and directly to the Council of Ministers. Moreover, the board members and chairs of the IRAs under consideration are appointed and reappointed by the Council of Ministers. As this pulls down the formal independence indices involving the appointment stage, it also enhances the ability of the executive to reward or punish regulators for regulatory performance. If is employed impartially and based on sound evaluation of the IRAs' impact on market performance, this type of *ex post* executive oversight may be an effective mechanism to achieve high quality regulation. Yet, as mentioned before, reappointments may be due more to the political considerations of the government than to the IRAs' regulatory performance. In any case, leaving accountability of IRAs primarily to the government, and to a lesser extent to the parliament, runs the danger of leading to overpoliticization.

The problems of accountability generated by the imbalance between the oversight by the parliament and the executive can be mitigated by formally engaging non-governmental actors into the process of developing and implementing regulatory policy. However, the legal obligations of the economic sector IRAs in Turkey, especially when limited to the laws institutionalizing them (i.e. when the Right to Obtain Information Law is not taken into consideration), vis-à-vis the stakeholders and the general public are not strict enough to compensate for the existing deficiency of democratic accountability. This approach to regulatory design evidences that consumer sovereignty and citizen empowerment doctrines of public administration have not yet sufficiently penetrated into the thinking of institution builders in Turkey.

Currently, the IRAs concerned publish and publicize more information, regular reports, and analyses than they are legally obliged to. As these documents are readily accessible especially via the internet, we may conclude that *de facto* transparency of these agencies supersedes their *de jure* transparency requirements. Nevertheless, short of effective feedback mechanisms, such transparency is not sufficient to assure accountability. Even though it may be regarded as having the

risk of diminishing the independence of regulatory agencies, formally obliging them to consult/get the approval of specialists, the stakeholders, and the general public may be a means to improve democratic accountability. This may take the form of including the representatives of these groups in the boards of IRAs as is the case for the stakeholders in the CA, CMB, TA, PPA, and SA in Turkey. While this may be a plus in terms of democratic accountability, due attention should be paid to prevent the creation of a bias in favor of the represented groups at the expense of the public interest and the “professionalization” of such participation by outside stakeholders. In other words, this mechanism of accountability should not divert the IRAs away from the public good (as specified by their objectives) for which they are granted independence at the first place. A similar line of argument can be made for the creation of standing advisory/supervisory committees which the IRAs may be obliged to consult/get the approval of..

As demonstrated in Table 4 (See Appendices), the index scores of ‘financial organization and autonomy’ of all, but two, economic sector IRAs in Turkey are relatively high. Despite enjoying such significant financial independence, the CMB, the BRSA, the EMRA, not to mention financially less autonomous agencies, namely, the SA and the TTAMRA, are financially accountable to ministerial/governmental bodies (or a committee appointed by the minister in the case of the BRSA). Only the CA, TA, and PPA are audited by the Court of Accounts exercising its authority to audit the revenues, expenditures and property of government offices operated under the general and annexed budgets on behalf of the Grand National Assembly (parliament). The variation in the mechanisms of financial accountability may be puzzling given that the six out of eight IRAs have very close scores in the independence index. This reveals the contentious nature of the issue. As is stated by Karacan, in his monograph on Turkish IRAs, “in Ankara, battles are fought over who is to audit the financial accounts of IRAs” (2002: 80) . He argues the reason for these conflicts which are reflected on the design of regulatory regimes in Turkey is the belief that “you control the agency you audit”. The persistence of such understanding is a cause for serious concern regarding the independence of IRAs.

The laws establishing the IRAs in Turkey do not include any formal mechanism whereby their market related performance are measured. Judicial oversight is limited due to the technical inadequacy of administrative courts, in particular due to insufficient number expert judges and other personnel to handle the ever increasing case load. The judicial reviews are generally limited to procedural checks on whether the actions taken confirm to the letter of the law. Even that has proven to be difficult as the laws of many IRAs are not specific enough to allow assesment of due process.

There is certainly a need for independent and specialized bodies to assess the quality of regulatory outputs and whether the IRAs accomplish the market-related objectives for which they are created to achieve. Such bodies exist elseweher and have proven to be crucial in the proper functioning of IRAs in the USA and the UK, two countries whose IRA systems serve as examples to others, and provide support and legitimacy for their independent status.

### **Concluding Remarks**

This study has revealed that there is no standard and consistent regulatory design employed for all economic sector IRAs in Turkey. The variations observed in the independence and accountability features of these agencies emerges as a question that requires further scrutiny. One hypothesis may be that regulatory designs reflect, to a large extent, the differences in the times as well as the domestic/international political/economic environment in which the IRAs have been created. Sosay and Zenginobuz (2005) present an analysis focusing mainly on the international factors/actors that have led to the diffusion of IRAs in Turkey. Studies that concentrate more on the domestic political and economic dynamics behind the proliferation of IRAs in Turkey can complement their effort.

Ther objective of this paper has been to explore the interaction between the formal (statutory) independence and accountability of economic sector IRAs in Turkey. As such it has been a part of a more comprehensive research agenda that also involves measuring the informal

independence of IRAs in Turkey, developing indices of formal and informal accountability, and applying them to assess the accountability across IRAs in various countries, including Turkey.

## **APPENDICES**

**Table 1: Formal (statutory) independence of regulatory agencies: operationalization (Gilardi 2002)**

<b>Variable</b>	<b>Indicators</b>	<b>Numerical coding</b>
A) Agency Head Status	1) Term of Office	
	-over 8 years	1.00
	-6 to 8 years	0.80
	-5 years	0.60
	-4 years	0.40
	-fixed term under 4 at the discretion of the appointer	0.20
	-no fixed term	0.00
	2) Who appoints the agency head?	
	-the board members	1.00
	-a mix of the executive and the legislative	0.75
	-the legislature	0.50
	-the executive collectively	0.25
	-one or two ministers	0.00
	3) Dismissal	
	-dismissal is impossible	1.00
	-only for reasons not related to policy	0.67
	-no specific provisions for dismissal	0.33
	-at the appointer's discretion	0.00
	4) May the agency head hold other offices in government?	
	-no	1.00
	-only with permission of the executive	0.50
	-no specific provision	0.00
	5) Is the appointment renewable?	
	-no	1.00
	-yes, once	0.50
	-yes, more than once	0.00
6) Is independence a formal requirement for the appointment?		
-yes	1.00	
-no	0.00	
B) Board members status	7) Term of Office	
	-over 8 years	1.00
	-6 to 8 years	0.80
	-5 years	0.60
	-4 years	0.40
	-fixed term under 4 at the discretion of the appointer	0.20
	-no fixed term	0.00
	8) Who appoints the board members?	
	-the board members	
	-the agency head	1.00
	-a mix of the executive and the legislative	0.75
	-the legislature	0.50
	-the executive collectively	0.25
	-one or two ministers	0.00
	9) Dismissal	
	-dismissal is impossible	1.00
	-only for reasons not related to policy	0.67
-no specific provisions for dismissal	0.33	

	-at the appointer's discretion	0.00
	10) May the board members hold other offices in government?	
	-no	1.00
	-only with permission of the executive	0.50
	-no specific provision	0.00
	11) Is the appointment renewable?	
	-no	1.00
	-yes, once	0.50
	-yes, more than once	0.00
	12) Is independence a formal requirement for the appointment?	
	-yes	1.00
	-no	0.00
C) Relationship with government and parliament	13) Is the independence of the agency formally stated?	
	-yes	1.00
	-no	0.00
	14) Which are the formal obligations of the agency vis-à-vis the government?	
	-none	1.00
	-presentation of annual report for information only	0.67
	-presentation of an annual report that must be approved	0.33
	-the agency is fully accountable	0.00
	15) Which are the formal obligations of the agency vis-à-vis the parliament?	
	-none	1.00
	-presentation of annual report for information only	0.67
	-presentation of an annual report that must be approved	0.33
	-the agency is fully accountable	0.00
	16) Who, other than a court, can overturn the agency's decision where it has exclusive competency?	
	-none	1.00
	-a specialized body	0.67
	-the government, with qualifications	0.33
	-the government, unconditionally	0.00
D) Financial and organizational autonomy	17) Which is the source of the agency's budget?	
	-external funding	1.00
	-government and regulated firms	0.50
	-government	0.00
	18) How is the budget controlled?	
	-by the agency	1.00
	-by both the government and the agency	0.50
	-the government	0.00
	19) Who decides on the agency's internal organization?	
	-the agency	1.00
	-the parliament	0.50
	-the government	0.00
	20) Who is in charge of the agency's personnel policy?	
	-the agency	1.00
	-the government	0.00

**Table 2: Independent Regulatory Agencies in Turkey**

	<b>Law/ Date of Creation</b>	<b>Sectors</b>	<b>Composition and Appointment of the Board</b>	<b>Source of Income</b>
<b>Banking Regulation and Supervision Agency (BRSA)</b>	Law 4389 / 1999 (became effective in 2000)	Banking	-7 members -6 year term (renewable)  Nominations by: -Minister in charge of BRSA	-Special Fund: up to three per ten thousand of the total assets of banks (as reported in their balance sheets)
<b>Capital Markets Board (CMB)</b>	Law 2499 / 1981 (Amended in 1992 and 1999)	Capital Markets	-7 members -6 year term (renewable)  Nominations by: -“Related” Minister (2) -Ministry of Finance (1) -Minister of Industry and Trade (1) -BRSA (1) -TOBB (1) -Union of Turkish Capital Market Intermediary Institutions (1)	-Special Fund: three per thousand of the issuance value of capital instruments  -General Budget (if necessary)

Source: Zenginobuz (2002b)

**Table 2: Independent Regulatory Agencies in Turkey (cont.d)**

	<b>Law/ Date of Creation</b>	<b>Sectors</b>	<b>Composition and Appointment of the Board</b>	<b>Source of Income</b>
<b>Telecommunications Authority (TA)</b>	Law 4502 / 2000	Telecommunication	-5 members -5 year term (renewable)  Nominations by: -Minister of Transportation (3) -Minister of Industry and Trade, and TOBB (Union of Turkish Chambers and Exchanges) (1) -Telecommunication Sector (1)	-Frequency license and usage fees -One per ten thousand of license fees -Contributions from operators -Income from publications and consulting -General Budget (if necessary)
<b>Electricity Market Regulatory Authority (EMRA)</b>	Laws 4628 and 4646 / 2001	Electricity Natural Gas	-7 members -6 year term (renewable)  -Appointed directly by the Council of Minister	-License fees -One percent of transmission fees -Contributions from up to one per thousand of annual revenues of operators in the natural gas sector

Source: Zenginobuz (2002b)

**Table 2: Independent Regulatory Agencies in Turkey (cont.d)**

	<b>Law/ Date of Creation</b>	<b>Sectors</b>	<b>Composition and Appointment of the Board</b>	<b>Source of Income</b>
<b>Turkish Competition Agency (CA)</b>	Law 4054 / 1994 (put into effect in 1997)	All Sectors	-11 members -6 year term (renewable)  Nominations by: -Competition Authority (4) -Minister of Industry and Trade (2) -Minister in charge of State Planning Institute (1) -Court of Appeals (1) -Council of State (1) -Interuniversity Council (1) -TOBB (Union of Turkish Chambers and Exchanges) (1)	-Two per thousand of registered capitals of corporations -Five percent of fines assessed by RK -Income from publications

Source: Zenginobuz (2002b)

**Table 2: Independent Regulatory Agencies in Turkey (cont.d)**

	<b>Law/ Date of Creation</b>	<b>Sectors</b>	<b>Composition and Appointment of the Board</b>	<b>Source of Income</b>
<b>Sugar Agency (SA)</b>	Law 4634 / 2001	Sugar and sweeteners	-7 members -5 year term (renewable)  Nominations by: -Minister of Industry and Trade (1) -Minister of Agriculture (1) -Minister in charge of Undersecretariat of Foreign Trade (1) -Turkish Sugar Factories Inc. (1) -Union of Turkish Sugar Beet Producer Cooperatives (1) -Private Sugar Companies (2)	-Five per thousand of revenues from domestic sales of companies
<b>Tobacco, Tobacco Products, and Alcoholic Beverages Markets Regulatory Board (TTAMRA)</b>	Law 4733 / 2002	Tobacco, Tobacco Products, and Alcoholic Beverages	-7 members -5 year term (renewable)  Nominations by: -Minister of Finance (1) -Minister of Health (1) -Minister of Agriculture (1) -Undersecretariat of Treasury (1) -Undersecretariat of Foreign Trade (1) -Union of Turkish Chambers of Agriculture (1) -Minister in charge of TEKEL Inc. (1)	-Four per thousand of revenues from tobacco products and alcoholic beverages produced (import value if imported) -License fees

Source: Zenginobuz (2002b)

**Table 2: Independent Regulatory Agencies in Turkey (cont.d)**

	<b>Law/ Date of Creation</b>	<b>Sectors</b>	<b>Composition and Appointment of the Board</b>	<b>Source of Income</b>
<b>Public Procurement Agency (PPA)</b>	Law 4734 / 2002	All public bodies	<p>-10 members -5 year term (nonrenewable)</p> <p>Nominations by: -Minister of Finance (2) -Minister of Infrastructure and Housing (3) -Undersecretariat of Treasury (1) -Council of State (1) -Court of Accounts (1) -Union of Turkish Chambers and Exchanges (1) -Confederation of Turkish Employer Unions (1)</p>	<p>-Five per ten thousand of value of procurement contracts (to be collected from contractors) -Fees for filing complaints -Income from publications --General Budget (if necessary)</p>

Source: Zenginobuz (2002b)

**Table 3: Details on statutory independence of two Turkish agencies: EMRA and TTAMRA**

	<b>EMRA</b>	<b>TTAMRA</b>	
A) Agency Head Status	1) Term of Office	6 years	5 years
	2) Who appoints the agency head?	Council of Ministers	Council of Ministers
	3) Dismissal	only for incapacity or misbehavior	only for incapacity or misbehavior
	4) May the agency head hold other offices in government?	no	no specific provision
	5) Is the appointment renewable?	yes	Yes
	6) Is independence a formal requirement for the appointment?	yes	no specific provision
B) Board members status	7) Term of Office	6 years	5 years
	8) Who appoints the board members?	Council of Ministers	Council of Ministers
	9) Dismissal	only for incapacity or misbehavior	only for incapacity or misbehavior
	10) May the board members hold other offices in government?	no	no specific provision
	11) Is the appointment renewable?	yes	Yes
	12) Is independence a formal requirement for the appointment?	yes	no specific provision
C) Relationship with government and parliament	13) Is the independence of the agency formally stated?	yes	yes
	14) Which are the formal obligations of the agency vis-à-vis the government?	annual report for information	annual report for information
	15) Which are the formal obligations of the agency vis-à-vis the parliament?	annual report for information	annual report for information
	16) Who, other than a court, can overturn the agency's decision where it has exclusive competency?	none	government with qualifications
D) Financial and organizational autonomy	17) Which is the source of the agency's budget?	regulated firms	regulated firms
	18) How is the budget controlled?	by the agency	by both the agency and the government
	19) Who decides on the agency's internal organization?	Council of Minister	Council of Ministers
	20) Who is in charge of the agency's personnel policy?	the agency	the agency
<b>Independence Index</b>	<b>0,71</b>	<b>0,39</b>	

Source: Zenginobuz (2002b)

**Table 4: Formal (statutory) Independence of Regulatory Agencies in Turkey**

	<b>A) Agency head status</b>	<b>B) Board member status</b>	<b>C) Relationship with government and parliament</b>	<b>Financial organization and autonomy</b>	<b>Independence index</b>
<b>CA</b>	0.56	0.56	0.84	1.00	0.74
<b>BRSA</b>	0.62	0.62	0.84	0.75	0.71
<b>CMB</b>	0.62	0.62	0.84	0.75	0.71
<b>TA</b>	0.59	0.59	0.84	0.88	0.72
<b>EMRA</b>	<b>0.62</b>	<b>0.62</b>	<b>0.84</b>	<b>0.75</b>	<b>0.71</b>
<b>PPA</b>	0.75	0.75	0.85	0.63	0.74
<b>SA</b>	0.20	0.20	0.17	0.38	0.23
<b>TTAMRA</b>	0.25	0.25	0.67	0.38	0.39
<b>Autorita per l'nergia elettrica e il gas (Italy)*</b>	<b>0.81</b>	<b>0.81</b>	<b>0.84</b>	<b>0.84</b>	<b>0.84</b>
<b>Office for gas and electricity markets (OFGEM. U.K)*</b>	<b>0.21</b>	<b>0.21</b>	<b>0.67</b>	<b>0.75</b>	<b>0.45</b>

Source: Zenginobuz (2002b);

\*From Gilardi (2002).

**Table 5: Accountability and Transparency Across Regulatory Regimes (Source: Lodge 2004)**

	<b>Fudiciary trusteeship</b>	<b>Consumer Sovereignty</b>	<b>Citizen Empowerment</b>
Locus of authority	Technocratic authority	Individual consumer	Participation in collective decision making
Decision making process involved in the setting of rules	Legislative and technocratic decision making	Competition between sets of rules, individual choice	Inclusion, 'discourse' between contrasting worldviews
Transparency of the rules to be followed	Professional standards and legality	Contractual obligations, competition law	Publicness of access and procedural rules
Accountability and transparency of regulated activities	Oversight through supervision by experts, political competition for office, consumer representation duties	Competition and benchmarks, information revelation requirements, individual focus	Oversight through lay participation, local production
Accountability and transparency of controls on regulated activities	Reporting duties and legalism	Competition between standards and agencies, choice mechanism, information revelation, legal redress	Involvement mandated supervision, public interest group involvement
Accountability and transparency of feedback processes	Reviews by experts	Evolution of competitive orders, mutual adjustment through discovery process	Immediate participation, including affected parties

**Table 6: Accountability of IRAs in Turkey**

	<b>Who is accountable?</b>	<b>Administrative accountability of the personnel?</b>	<b>Formal obligations to the Parliament?</b>	<b>Formal obligations to the government?</b>
<b>CA</b>	The chair of the board	Yes	Annual informing of the parliament's Planning and Budget Committee (Law No 4743)	Annual report to the Council of Ministers (Law No 4743)
<b>CMB</b>	The chair of the board	Yes	Annual informing of the parliament's Planning and Budget Committee (Law No 4743)	Annual report to the Council of Ministers (Law No 4743); Semi-annual Annual report of its strategies and their implementation of the Council of Ministers; Annual report together with financial accounts to the related minister; Presentation of analyses when requested by the minister
<b>BRSA</b>	The chair of the board	Yes	Annual informing of the parliament's Planning and Budget Committee (Law No 4743); Annual report of activities, including an analysis of their social and economic effects, performance and financial accounts to the parliament	Annual report to the Council of Ministers (Law No 4743); Annual report together with financial accounts to the related minister; Clearance of financial accounts by the Council of Ministers
<b>TA</b>	The chair of the board	Yes	Annual informing of the parliament's Planning and Budget Committee (Law No 4743)	Annual report to the Council of Ministers (Law No 4743)
<b>EMRA</b>	The chair of the board	Yes	Annual informing of the parliament's Planning and Budget Committee (Law No 4743)	Annual report to the Council of Ministers (Law No 4743); Annual report together with financial accounts to the related minister;
<b>PPA</b>	The chair of the board	Yes	Annual informing of the parliament's Planning and Budget Committee (Law No 4743)	Annual report to the Council of Ministers (Law No 4743); Annual financial report to the Council of Ministers; Clearance of financial accounts by the Council of Ministers
<b>SA</b>	The chair of the board	Yes	Annual informing of the parliament's Planning and Budget Committee (Law No 4743)	Annual report to the Council of Ministers (Law No 4743)
<b>TTAMRA</b>	The chair of the board	Yes	Annual informing of the parliament's Planning and Budget Committee (Law No 4743)	Annual report of the Council of Ministers (Law No 4743)

**Table 6: Accountability of IRAs in Turkey (cont.)**

	<b>Formal obligations regarding disclosure of information to the stakeholders and the public?</b>	<b>Plain language requirements?</b>	<b>Formal obligation to consult advisory bodies?</b>	<b>Subject to external audit of financial accounts?</b>	<b>External audit by?</b>
<b>CA</b>	The Right to Obtain Information Law	No	No	Yes	Court of Accounts
<b>CMB</b>	The Right to Obtain Information Law; Weekly bulletin	No	No	Yes	The 'related' minister
<b>BRSA</b>	The Right to Obtain Information Law; Weekly bulletin; Publication of quarterly reports; Announcement of its risk management policies to the public; Publicaiton of decisions in the <i>Official Gazette</i>	No	No	Yes	A committee appointed by the Minister related with the BRSA and consisting of an inspector from the Court of Accounts, an inspector from the Ministry of Finance, and an inspector from the Prime Minister's office
<b>TA</b>	The Right to Obtain Information Law	No	No	Yes	Court of Accounts
<b>EMRA</b>	The Right to Obtain Information Law; the chair informing the public Informing the public on the details of grants from international institutions	No	No	Yes	Supreme Supervision Board (under the Prime Minister)
<b>PPA</b>	The Right to Obtain Information Law; Public Procurement Bulletin	No	No	Yes	Court of Accounts
<b>SA</b>	The Right to Obtain Information Law; The chair informing the public	No	No	Yes	Supreme Supervision Board (under the Prime Minister)
<b>TTAMRA</b>	The Right to Obtain Information Law	No	No	Yes	Supreme Supervision Board (under the Prime Minister)

**Table 6: Accountability of IRAs in Turkey (cont.)**

	<b>Through whom can the decisions of the IRA be appealed or challenged?</b>	<b>Which body, other than a court, can overturn the decisions of the IRA where the latter has exclusive competence?</b>	<b>What are the accepted grounds for appeal or challenge?</b>	<b>On what grounds can the chair and/or board members of the IRA be dismissed?</b>
<b>CA</b>	The Council of State	No body	Errors of law	Loss of qualifications for the job; violation of law
<b>CMB</b>	Regional Administrative Court	No body	Errors of law	Loss of qualifications for the job; violation of law
<b>BRSA</b>	Regional Administrative Court	No body	Errors of law	Loss of qualifications for the job; violation of law
<b>TA</b>	Regional Administrative Court	No body	Errors of law	Loss of qualifications for the job; violation of law
<b>EMRA</b>	The Council of State	No body	Errors of law	Loss of qualifications for the job; violation of law
<b>PPA</b>	Regional Administrative Court	No body	Errors of law	Loss of qualifications for the job; violation of law
<b>SA</b>	Regional Administrative Court	No body	Errors of law	Loss of qualifications for the job; violation of law
<b>TTAMRA</b>	Not specified	Government with qualifications		Loss of qualifications for the job; violation of law

**Table 6: Accountability of IRAs in Turkey (cont.)**

	<b>Decision making process - specifications?</b>	<b>Contents and format of decisions specified?</b>
<b>CA</b>	Decisions by absolute majority	Yes
<b>CMB</b>	Decisions by absolute majority	No
<b>BRSA</b>	Closed board meetings; Decisions by absolute majority	No
<b>TA</b>	Decisions by absolute majority	No
<b>EMRA</b>	Decisions by absolute majority	No
<b>PPA</b>	Decisions by absolute majority	No
<b>SA</b>	Decisions by absolute majority	No
<b>TTAMRA</b>		No

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