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# CONTRACTUAL ARRANGEMENTS IN TURKEY'S COAL MINES

## Forms, Extents, Drivers, Legal Drivers and Impact on OSH

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# EXECUTIVE SUMMARY

The developments in Turkey's mining industry are closely related to the rapid economic expansion of Turkey over the past decade and the resulting continuing and increasing need for energy. In 2014, Turkey was the 12th largest producer of coal worldwide with a volume of 70.6 million tonnes. However, as nearly 90 percent of all locally extracted coal is lignite, which is a type of coal with low heat content; Turkey is a net importer of higher quality coal. Turkey has made efforts to increase the share of domestic coal in electricity generation and according to Turkey's Tenth Development Plan (2014-2018) it is a policy goal to continue to pursue these efforts.

While coal mines cannot be subject to private ownership in Turkey due to a constitutional prohibition, the Mining Law allows for a transfer of the operation of coal mining licenses to private entities, but only if the operations of the entire license hold is transferred. Due to a need for additional private capital in order to meet Turkey's increasing energy and coal needs, state-owned enterprises developed a practice to contract out costly mining operations (e.g., underground mining) using *rödövens* contracts. The two largest state owned coal mining entities Turkish Coal Industries (TKİ) and the Turkish Hard Coal Authority (TTK) have been using such *rödövens* contracts to contract out coal mining operations to private enterprises since 1984 and 1988, respectively. The use of such contracts – or contracts labeled as such - has escalated since then and in particular in the past fifteen years. In the period 2000-13 the share of the private sector's involvement in hard coal production increased almost fivefold and in the period 2005-12 its share in lignite production increased with 50 percent. In 2014 one third of TKİ's coal production was undertaken by private contractors under *rödövens* arrangements. As far as TKİ is concerned, it only operates open cast mines. Virtually all of the coal produced in TKİ's underground mines is produced by the private sector.

While a lot of attention has been given to the use and impact of *rödövens* agreements in the mining industry, the use of these agreements must be examined in the context of the use of subcontracting arrangements. The legal analysis has clarified that there is a need to distinguish between these contractual arrangements. *Rödövens* agreements developed as a means to enable private entities to engage in mining operations taking into account that transfer of ownership over natural resources is constitutionally prohibited and as they are a form of lease agreements, under such agreements, the employer/owner's responsibilities are transferred from owner to the operator or *rödövens* holder. Under subcontracting arrangements, however, and as provided by law, the relevant employers in the supply chain have a joint responsibility, all while the main employer maintains its responsibilities. The law further specifies that subcontracting should be used to enable a transfer of auxiliary work or specialization-required work for technological reasons, but that an entire operation cannot, be subcontracted. What this study reveals is on the one hand that the frequent use of subcontracting arrangements have caused a fragmentation of the employers' responsibilities and that there may be a need to devise measures to reinforce the implementation of legal requirement for coordination between the employers in a supply chain. Such measures should also take into account that this fragmentation has had a negative impact not only on the application of OSH laws and regulation but also on their enforcement.

An additional concern is however, the development, in practice, of ambiguous and disguised contractual arrangements which have been labeled as *rödövens* agreements but which have been used to mask other types of contractual arrangements in the industry. This is reflected in numerous court cases. A more detailed regulation of *rödövens* agreements was introduced in 2010 and following the

mining accidents in 2014 further amendments have been introduced in 2015.<sup>1</sup> It is still early to evaluate the impact of these recent legislative changes.

Subcontracting is a global phenomenon and many countries are grappling the need to address its implications and to handle evolving ambiguous and disguised contractual relationships. These developments are driven by a number of different factors including the economic level and development of a country, the strategic importance of different sectors of the economy as well as the national legal context and background.

In order to understand and assess the impact of these developments in Turkey, in particular in the mining industry, this study represents an effort to carry out a multidisciplinary approach. Based on a mapping of the industry, normative as well as economic determinants are examined together with an analysis of actual practice based on publicly available data and a few cases studies in Turkish coal mines. While the actual impact of these determinants may be difficult to assess in real terms, the overview presented gives some indications of the cause and effect relationships between different factors. In order to try to capture and describe actual practice in the industry a longitudinal and cross-country comparison of Turkish coal mines' OSH performance, is followed up by seeking statistical links between occupational accidents and fatalities with sectoral production patterns in Turkish mines. An attempt is made to establish a statistical relationship between accident rates and sectoral profits and investments per worker. The analysis also shows a positive but a weak association between the accident rates and profitability while there is a negative correlation between the productivity-measured by sales per worker and the accident rates. In addition, there is a positive statistical association between the share of subcontracted employment in total sectoral employment and accident rates, suggesting that the sectors where the subcontracting ratio is higher, accident rates tend to be higher too.

With a main focus on OSH requirements, the national as well as the international *normative context* for the mining sector is examined including the distribution of responsibilities among the main actors - including employers, workers, and workers' representatives. Over the past fifteen years Turkey has been engaged in a process of reform, harmonizing its national OSH system with relevant EU standards regarding national as well as enterprise level requirements for prevention and risk assessment. Turkey has also decided to undertake a series of international commitments in the area of OSH under Conventions developed by the International Labour Organization (ILO). Through the supervisory system of the ILO Turkey has been given further guidance on how to steer the dynamic national policy process it has engaged in by ratifying the Occupational Safety and Health Convention, 1981 (No. 155). In March this year Turkey made further international commitments in the area of OSH by ratifying, inter alia, the ILO Safety and Health at Mines Convention, 1995 (No. 176).

The results of this study have been presented and discussed at a two tripartite meetings on 25 August and 19 November 2015. In this context, issues related to the governance structure of the mining industry became a focal point of the discussions. Given the strategic importance of mining in Turkey's economy, and in line with international commitments undertaken, a national policy should be developed - in close cooperation with the social partners - to enable a coordinated response to the need for an efficient continued development and use of Turkey's natural resources, all while ensuring optimal levels of safety and health of all persons engaged in the mining sector. Based on the issues

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<sup>1</sup> Regulation changing the guidelines for the application of the Mining Law. Official Gazette of the Republic of Turkey 06.11.2010 No. 27751.

raised in the study and the discussions held it is recommended that consideration should be given, inter alia, to the following policy recommendations.

## **POLICY RECOMMENDATIONS**

Against the background of the foregoing and in the light of discussions that have been held with the tripartite constituents and relevant actors in the field, the following policy recommendations have been developed. While the responsibility for articulating these policy recommendations, and the ultimate responsibility for their content, lies with the authors of this study, they have been vetted in a tripartite context and are based on a broad level of consensus.

### **Develop a national policy on mining**

Given the strategic importance of mining in Turkey's economy, and in line with international commitments undertaken, a national policy should be developed - in close cooperation with the social partners - to enable a coordinated response to the need for an efficient continued development and use of Turkey's natural resources, all while ensuring optimal levels of safety and health of all persons engaged in the mining sector. A sectoral development strategy for the coal industry must be developed in line with Turkey's macro level goals such as the Tenth Development Plan and the Prioritized Transformation Programmes. While these policy documents constitute a good framework, a more nuanced perspective is required, specifically for the coal industry based on an analysis of Turkey's energy needs, and the potential of the coal industry to meet these needs, with a long term vision that also takes into account the OSH implications of such a vision. In that context, consideration should be given, inter alia, to the following substantive issues:

### **1. Revise Turkey's energy policy taking into account sustainability principles**

Coal is an important source for meeting Turkey's energy needs. The 2014 energy balance statistics show that the share of coal and lignite combined is 30 percent in Turkish primary energy supply, which is 90 per cent fossil fuel dependent. Such a dependency on fossil fuel is inevitably reflected in Turkey's greenhouse gas emissions. Data from TURKSTAT suggest that emissions increased around 110 percent during 1990-2013, and that Turkey doubled its emissions just in 13 years. Yet, the international policy framework promotes development policies that should entail a low carbon growth. The emphasis on the implications of any type of policies on the economic, social and environmental structure is pronounced more frequently in the international policy agenda. These are reflected in the Sustainable Development Goals (SDGs) undertaken by 195 member countries in the 2015 Paris Climate Change Agreement of the General Assembly of United Nations. Moreover, the G20 under Turkish Presidency highlighted the need to promote development policies that comply with the SDGs. Taking into account the recent global agreements, Turkey needs to reconsider its energy policies and adopt a framework that also allows for a shift from coal towards low-carbon renewable energy alternatives that are in harmony with the newly agreed international standards.

### **2. Revise the governance structure in the mining sector**

A structural change in the governing institutions is necessary in order to ensure an improved governance structure and a smooth functioning of the coal industry with an improved OSH record. Currently, and while the MENR is responsible for both planning and overseeing energy production and mine licensing, its primary obligation is to ensure that the electricity production is both affordable and timely. This is both politically and economically a very important responsibility when taking into

account Turkey's ever growing energy needs and energy deficit. However, the mandate of energy stability appears to relegate the operation of mines to a secondary level of importance and unfortunately incentivizes increased risk taking in the coal mining sector. In order to ensure that an increased reliance on domestic resources does not lead to a trade off against OSH standards, the mandates of decision making on energy production and creating the inputs for the energy production should be separated through a governance reform that aims at facilitating long term strategic planning which will increase efficiency, encourage long term technological investments and improve the OSH record of Turkey. In line with priorities and preferences of the authorities, such a governance reform could be carried out in – at least - three different ways; i) enhancing the power of MİGEM in strategic sectoral planning while maintaining the existing institutional structure; ii) establishing a separate Ministry that would be in charge of regulating the mining sector; and iii) separating MİGEM from the MENR and restructure it as an independent public board that would be responsible for the oversight of the sector. This last option might be preferable given Turkey's successful experience regarding institution building reforms, such as the independent Central Bank and the Independent Banking Regulation and Supervision Agency and might prove be effective in promoting long term strategic planning and improving the OSH record.

### **3. Ensure an appropriate assessment and monitoring of compliance with OSH standards at the licensing stage**

One of the key findings regarding governance structures and OSH inspections is that, under the existing and applied structure, MoLSS is not involved in the evaluation of the OSH standards in the project licensing stage. In practice, and due to scarce resources, MoLSS monitoring commence after the start of operations of an entity. There seems, however, to be a lack of consensus among the stakeholders regarding which institution that should undertake this responsibility. MoLSS suggests that in line with the shared responsibility to build a “OSH Culture”, it is not only the employers, workers, experts or inspectors that are responsible for promoting OSH standards, but all involved parties need to reflect OSH policies in their decision making. On the other hand, MİGEM suggests that by law its mandate is to extend licenses all while ensuring that Turkey's mining reserves are utilized under the most efficient and rational principles, that the property rights as well as the environment are protected, and that the state's share is collected over the value added of production. In their view it follows it should be the responsibility MoLSS to verify whether projects meet the OSH standards laid down. In any event, from a perspective of prevention it is of utmost importance that OSH standards in a given project are evaluated at the licensing stage before any operations start. It does not, however, seem possible to resolve this important issue without engaging higher level authorities. It is recommended that relevant policy makers urgently take the matter in hand and resolve the uncertainty regarding the monitoring of OSH in the licensing stage.

### **4. Redesign the sectoral governance structures to increase inclusiveness**

In the field surveys carried out, both public and private stakeholders expressed their concerns regarding the haste with which amendments to the Law No 6331 were developed and implemented following the Soma tragedy. Furthermore, not only the tripartite constituents but also non-governmental sectoral bodies such as TMMOB, TOBB, and other civil society organizations should be a part of the process. For example, TOBB's Mining Sector Assembly could be redesigned and expanded to include all relevant stakeholders in the mining industry and generate guiding policy decisions. This way, the process of designing policies and implementing and enforcing them could be separated to increase efficiency. This board could also take into account policies regarding regional land use planning; expected demand for coal resources as well as potential environmental and

economic impacts that could ensue. In addition, it could become the link between government and citizens by ensuring close consultation.

## **5. Ensure that *rödövens* contracts and subcontracting arrangements are not misused and that fragmentation of responsibilities in regular subcontracting arrangements are addressed**

The widespread misuse of *rödövens* contracts has had a negative effect on the working and OSH conditions in mines. While underground coalmines operated by private companies now are prohibited from executing such contracts, this ban is limited in scope as state owned enterprises and their subsidiaries are exempt from this amendment. As a continued use of *rödövens* contracts is foreseen in the Tenth Development Plan of Turkey, a more comprehensive approach should be developed to regulate this practice to ensure it serves its purpose. While subcontracting is regulated in the Labour Law, action should be taken to identify not only improper uses of *rödövens* contracts but also of the prevalence and use of other ambiguous and disguised subcontracting arrangements. In terms of subcontracting arrangements in compliance with national laws, further consideration is required to address problems related to fragmentation of responsibilities including how to ensure an efficient implementation of Art. 23 of the OSH law.

## **6. Ensure that workers effectively can exercise their rights and that ambiguous recruitment systems are eradicated**

In a well-functioning OSH system based on prevention, ensuring they have a voice and tapping the knowledge of workers should be a regular practice, inter alia, to enable a proper and continuous assessment of risks at workplaces. Furthermore, as provided in Article 13 of the OSH law, workers have the right to protect their lives in situations of imminent and serious danger. In order for this right not to be illusory, concerted efforts need to be taken to ensure that workers can exercise this and other rights at the workplace, with the assistance, as appropriate, by their representatives. Furthermore, according to the recently ratified ILO Safety and Health in Mines Convention, 1995 (No. 176) which will enter into force for Turkey as of 23 March 2016, workers shall not only have the right to request and obtain a labour inspection where there is cause for concern on safety and health grounds, but also have the right to have recourse to advisers and independent experts. Promoting awareness on these and other rights of the workers and their representatives is vital both for the promotion of a safety and health culture based on prevention. On the other hand, as the statistics reveal, the years of worker experience, years of schooling as well as formal employment rates have declined in Turkish mining sector. The causes for this deteriorating labour profile should be examined in further detailed research also taking into account the possible impact of employment structures such as the gang master system (*Dayıbaşılık*), and whether this is a widespread phenomenon beyond the Soma basin. In order to ensure that mine workers know their rights, are appropriately trained and have the necessary skills, it would be important to enhance the collaboration between MoLLS, İŞKUR, and employer representatives and workers unions. The fact that a reform of the vocational schools is on the agenda of the government could be an opportunity to improve the skill profile of mine workers. The field visits show that in some of the best run private mines in Turkey, there are vocational schools in the facilities which help meeting the training needs of mining workers. Incentivizing such practices could help to improve the profile of mining workers across Turkey.

## **7. Improve the national capacity to provide standardized first aid, search and rescue trainings**

A criticism that was raised in the stakeholders meeting was the available capacity and lack of standardization of first aid and search and rescue trainings. Views were expressed that the capacity of the training center in Zonguldak fell short of meeting the national needs and that there was therefore a need for public policy intervention to step up and standardize search and rescue education. Further training to spread risk management culture should also be on the agendas of the MoLSS and of MNER.

## **8. Develop a centralized database on national mining activities**

Another gap raised throughout meetings held was the lack of a common inter-public institutional database with access to all information relevant for the sector. A common database which would bring together and harmonize data collected by different institutions and line agencies would be an important tool for identifying sectoral risks and preventing accidents. While steps already taken to develop a protocol for data sharing between some public institutions is a very positive development, it should be ensured that such data sharing is systematic and inclusive for all related stakeholders. On the other hand, it should be noted that the current reporting system does not include a requirement to notify “dangerous occurrences,” although this will become an obligation for the mining sector under Convention No. 176. Such dangerous occurrences should also be reflected in official statistics and be part of the commonly available information system as an analysis of such occurrences is an important element in prevention. A data sharing system would be an important tool for identifying needs and problems, promoting transparency and improving the governance structure in the mining sector in Turkey.

## **9. Explore the possibility to use non-public entities for additional oversight**

The Mandatory Personal Accident Insurance for Mine Workers Regulation that came into effect in 26 January 2015 is an interesting mechanism which constitutes an additional tool for oversight in the coal industry. Currently, however, risk premiums of the accident insurance are predetermined and equal for all workers in all mines. This system could be improved by keeping the insurance mandatory, but determining the premiums in accordance with the insurance firms’ risk evaluation of each specific mine. This way, additional incentives to improve OSH conditions would be created for private coal mines in order to reduce the insurance premiums they pay for each worker. Another possibility that could be explored is the possibility of having the OSH experts being paid by the insurance firms as opposed to the existing structure where the wages of the experts are paid by the employers. While this proposal should not be taken to affect basic tenant in Act No. 6331 that it is the Employers’ responsibility to ensure compliance with OSH standards, international best practice regarding the roles and functions of OSH experts should be explored.

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The full text of the report will be available on the websites of ILO Office for Turkey and TEPAV in January 2016.

<http://www.ilo.org/ankara/lang--en/index.htm>

<http://www.tepav.org.tr/tr/>