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# STRENGTHENING INSTITUTIONAL CAPACITY OF MINISTRY OF TRANSPORT AND INFRASTRUCTURE ON THE TRANSPORT OF PERISHABLE FOODSTUFFS

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## GAP ANALYSIS REPORT FOR TURKISH REGULATION and BEST EUROPEAN PRACTICE

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## ABBREVIATION

ATP	International Transportation of Perishable Foodstuffs and Special Equipment that will be used for such Transportation
CA	Contracting Authority – Ministry of Transportation and Infrastructure, European Union Foreign Affairs General Management, European Union Investment Office (EUID)
EC	European Commission
ERA	Final Beneficiary – Transportation Services Regulation General Management
EU	European Union
EUID	Ministry of Transportation
EUR	Euro
DGSTR	Transportation Services Regulation General Management
HACCP	Hazard Analysis and Critical Control Points
MoTI	Ministry of Transportation and Infrastructure
NGOs	Non-Governmental Organizations
SCTPF	Strengthening Institutional Capacity Of Ministry Of Transport And Infrastructure On The Transport Of Perishable Foodstuffs
SRER	Senior Representative of End Beneficiary
TOBB	Union of Chambers and Commodity Exchanges of Turkey
ToR	Terms of Reference
TSI	Turkish Standards Institute
UNECE	United Nations Economic Commission for Europe

## PROJECT'S APPROACH AND STAGES ON THE LEGISLATION ALIGNMENT

The legislation analysis activities within the project aims to ensure proper transposition, implementation and enforcement of the ATP Agreement provisions and identify the gap between the Turkish legislation and the best European practice for ATP implementation.

### **Step 1 International transportation ATP requirements and their replication in the EU countries legislation**

To ensure that the requirements of the ATP Agreement are fulfilled, the initial step that shall be taken is a gap analysis to identify the discrepancies between the provisions of the ATP Agreement and current Turkish legislation. The gap analysis will identify the areas where efforts need to be directed, allowing for identification and improvement of legal bases, as well as establishing a more efficient institutional structure, to enable efficient utilization of resources, in light of the implementation of the ATP Agreement. In this report, the articles/components of the ATP Agreement that are identified in Turkish legislation will be compared to the primary legislation of the determined best EU implementation countries. In the light of these findings, recommendations have been made for the alignment of Turkish legislation. Identified areas for improvements will have an effect on the next steps throughout the project to obtain the best possible outcome.

***(Activity 1.1, Outcome: Gap Analysis Report for Turkish legislation and best European practices Report)***

### **Step 2 Legislation Analysis for the for the establishment of proper infrastructure for ATP controls and feasibility of rules and standards stated in the ATP Agreement for domestic transportation activities**

Legislation analysis conducted at Step 2 is a continuation of the analysis done under Activity 1.1. In scope of Legislation Analysis, regulations regarding the transportation and inspection of perishable foodstuffs in Turkish Legislation are compared with the ATP requirements and by detecting the differences between them, feasibility of the adaptation of ATP requirements to inland transportation operations and inspection of this operations are investigated. Thus, the Ministry will have a clear framework that includes appropriate proposals to make adjustments to the existing legal infrastructure or to be used in new legislative studies.

***(Activity 1.2, Outcome: Legislation analysis Report).***

### **Step 3 Specifying legal bases for penalties to apply during land road inspections in line with the existing system and drafting new legislation draft if necessary**

In the beginning of the Project, there was no legal basis established for penalties in the Turkish legislation for breaching the ATP rules. However, in the last 6-month period, Ministry of Transportation and Infrastructure published new legislation by making important progress. ATP agreement does not provide any kind of punishment by it's own and does not force countries to provide any sanctions: however many of the Contracting States imposes administrative fees in order to make transporters to comply with the ATP rules. Besides, if vehicle that used for the transportation does not have valid and appropriate ATP certificate, state is authorized to transfer the load to another vehicle that is complying ATP as it is defined in the Agreement. Since legal basis of sanctions that will be imposed in land road inspections in Turkey are already specified, this report will explain the structure of ATP and penalties that will be imposed within the 01.01.2022 and compare them with the recommendations submitted for the legislation updating studies that will be completed if needed.

***(Activity 2.2, Outcome: Draft legislation and Report on the legal basis for penalties and drafting the legislation amendment draft if needed).***

### **Step 4 Needs assessment to apply ATP rules on the transport of fruits and vegetables, which are not covered by the Agreement**

In analogy to step 2 (Activity 1.2), this activity contains elements of legal analysis and assessment of rules and relevant Articles in Turkish legislation which may include elements regarding inspections, controls and requirements



of transport of fruits and vegetables. The relevant legislation of the EU country, which is determined to have the best practices in the transportation of fresh fruits and vegetables, will be examined in detail and suggestions will be presented within the scope of the report.

**(Activity 1.3, Outcome: Needs Assessment Report for ATP Implementation of fruits and vegetables)**

**Step 5 Draft national legislation to implement the ATP as a regulation for international and domestic transport of perishable foodstuffs, including fruits and vegetables**

Project team, on the basis of consequences obtained by the completion of steps provided above, if settled on with Ministry, will start to prepare the improvement suggestions by analysing the national legislation that laid down as condition to implementation of ATP Agreement in domestic and international transportation of perishable foodstuffs. Also, including the fruits and vegetables to the national legislation of Turkey will be separately analysed. EU practices regarding the issue, will be deeply researched and some legal regulations will be translated to Turkish as best practice samples to detail the domestic legislation.

**(Activity 1.4, Outcome: Draft national legislation to implement ATP as a regulation for international and domestic transport of perishable foodstuffs including the fruits and vegetables)**

## DETERMINATION OF THE BEST EUROPEAN PRACTICES

This section provides general look on transportation of perishable foodstuffs project and activities to be applied in scope of Terms of References and focuses on the possible deviations and details regarding the methodical approach.

**General Notes for the EU Countries:**

- Spain and Portugal are also applying the ATP for their national transportation. Especially, Spain and Turkey are very similar in the production and trade of fresh fruits and vegetables as Spain is a big exporter.
- Poland has started to increase their roadside checks with their policemen in the last years, thus their up-to-date experience would be valuable. <sup>1</sup>

While selecting the best European practices countries, the project's team applied the following criteria that are in line with the activities identified by the project's Term of References:

1. Production and export numbers of perishable foodstuffs,
2. Implementation of ATP requirements for both on the international and domestic transportation,
3. Conducting effective control activities for domestic and international transportation,

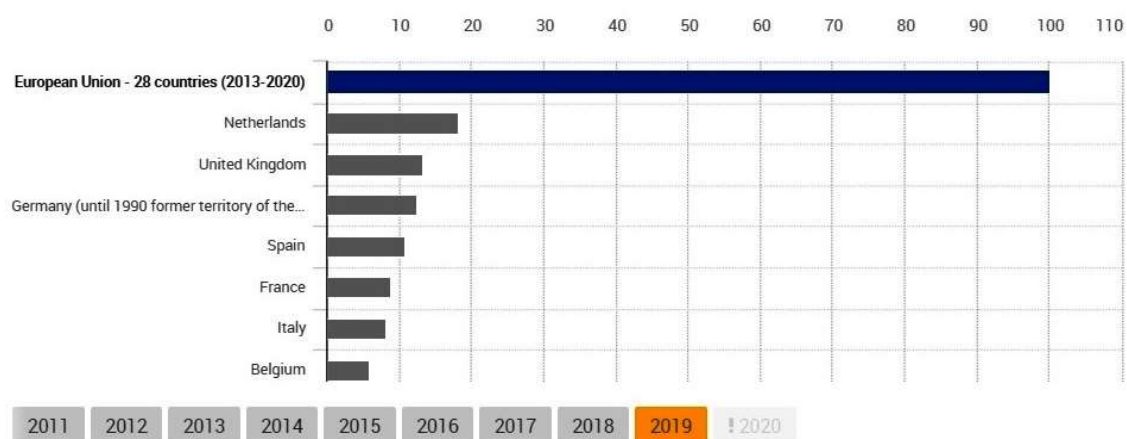
It should be noted, as a result of the research and evaluations that we did, we identified a limited number of the EU countries that meets at least one or two identified criteria. In this respect, the most advanced countries regarding the implementation of ATP are France, Italy and Spain, countries which legal and practical experience will benefit the further developments in the Turkish transport market. Those countries, according to the available UNECE data, are the most advanced and active in roadside checks as well. Table 1: Summary Information Table for Selected Countries

Table 1: Summary Information For Selected Countries

	France	Italy	Spain
<b>Manufacturer of Perishable Foodstuffs<sup>2</sup></b>	X	X	X
ATP requirements for the Inland Transportation (or similar)	X	X	X
Land road Controls	X	X	X

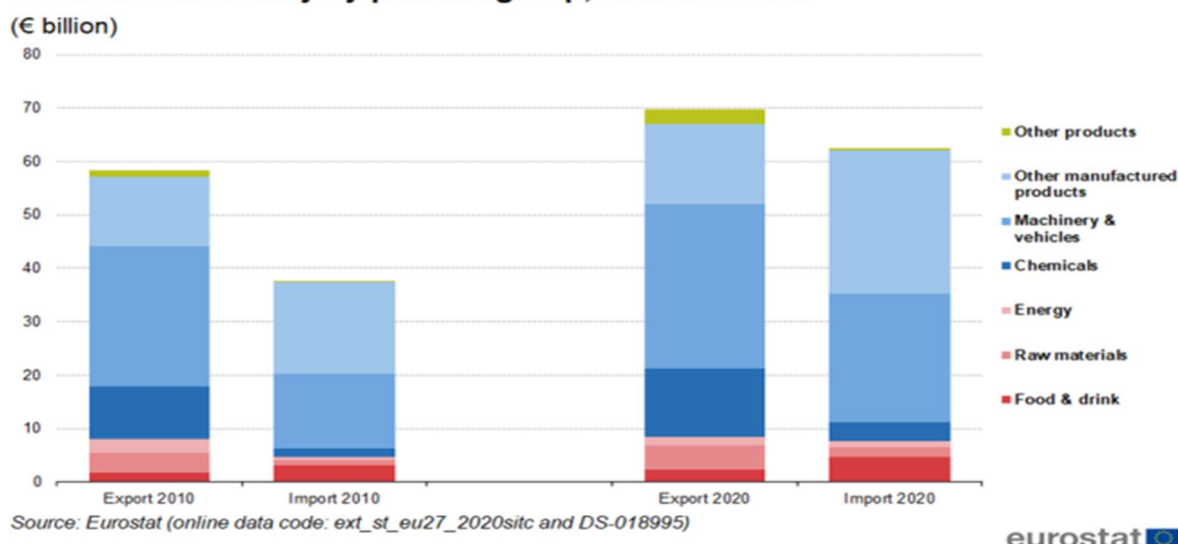
<sup>1</sup> [https://unece.org/sites/default/files/2021-09/ECE\\_TRANS\\_WP.11\\_2021\\_1E.pdf](https://unece.org/sites/default/files/2021-09/ECE_TRANS_WP.11_2021_1E.pdf)

<sup>2</sup> Netherlands, United States, Germany, France, Italy, Spain and Belgium are the biggest exporters in value among the non-EU states, in 2019. (Shape 1) Foodstuffs imports from non-EU countries to EU states are generally supplied from the Brazil, USA and Norway. Followers of the mentioned suppliers are Argentina, China and Turkey. EU states generally imported fruits and vegetables, fish, coffee, tea, cacao and spice from the non-EU companies. Turkey is one of the biggest commercial partners of EU, by the 2020 and biggest among the candidate states. Turkey's food export to EU is growing with small but steady steps. (Shape 2)



Shape 2: EU and non-EU trade pursuant to Contracting State according to Product Group (food, drink, and tobacco)<sup>3</sup>

### EU trade with Turkey by product group, 2010 and 2020



Shape 2: Trade between Turkey and EU according to Product Groups (comparison between 2010-2020)<sup>4</sup>

Among the countries stated above (big foodstuffs manufacturers) only Spain, France and Italy had implemented special requirements for the domestic market (similar to ATP requirements). Finland, Moldova and Slovakia are other countries that implementing such requirements, but they have limited potential since they are address to small region. Besides, based on the decisions taken and published by UNECE Domestic Transportation Committee, in the sixth session conducted by the Study Group of the Transportation of Perishable Foodstuffs, (Geneva, 13-46 October 2020) only Belgium, Bosnia Herzegovina, Czech Republic, Denmark, Finland, France, Greece, Hungary, Italy, Latvia, Poland and Spain had provided information regarding the land road inspections and number of detected breaches in 2020.<sup>5</sup>

<sup>3</sup> [https://ec.europa.eu/eurostat/databrowser/view/EXT\\_LT\\_INTRATRD\\_custom\\_1278904/default/bar?lang=en](https://ec.europa.eu/eurostat/databrowser/view/EXT_LT_INTRATRD_custom_1278904/default/bar?lang=en)

<sup>4</sup> [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Turkey-EU\\_-\\_international\\_trade\\_in\\_goods\\_statistics#EU-Turkey\\_trade\\_by\\_type\\_of\\_goods](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Turkey-EU_-_international_trade_in_goods_statistics#EU-Turkey_trade_by_type_of_goods)

<sup>5</sup> <https://unece.org/ru/node/17202>

Criteria/ Countries	Requirements for Domestic Transportation	Land Road Controls 2020	Railway Controls 2020
<i>Netherlands</i>	Non-Available	Non-Available	Non-Available
<i>United Kingdom</i>	Non-Available	Non-Available	Non-Available
<i>Germany</i>	Non-Available	Non-Available	Non-Available
<i>Spain</i>	<b>Available</b>	957	0
<i>France</i>	<b>Available</b>	530	0
<i>Italy</i>	<b>Available</b>	Non-Available (1354/79)	Non-Available
<i>Belgium</i>	Non-Available	1728	0
<i>Finland</i>	<b>Available</b>	84	0
<i>Moldovia</i>	Non-Availabe	Non-Availabe	Non-Availabe
<i>Slovakia</i>	<b>Available</b>	Non-Availabe	Non-Availabe

In this report, regarding the selection of best European practices, we will focus on the general EU regulations respected for the transportation of perishable foodstuffs in France, Italy, and Spain and the implementation of roadside controls. We would like to underline here that; policies directed to transportation of perishable foodstuffs based on the selection of best practice countries in Europe, management of roadside controls will be analyzed in the reports analyzing the EU legislations such as France, Italy and Spain.

We suggest to go towards the experience and practice of France which is one of the countries has the similar law system with Turkey if special conditions and requirements needed to be analyzed deeply and beyond the ATP Agreement regarding the international transportation of perishable foodstuffs.

## SUMMARY OF THE REPORT

The Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage (ATP) is established in Geneva at 1 September 1970 and entered into force on 21.11.1976. It contains uniform standards for the international transport of temperature sensitive foodstuffs. The ATP and its annexes are regularly amended and updated by the Working Party on the Transport of Perishable Foodstuffs (WP 11) of the Economic Commission for Europe's Inland Transport Committee' since their entry into force. The current text entered into force on 06.07.2020.

The Republic of Turkey became a party to the ATP through accession on 21.12. 2012. Pursuant to Article 11 (1) of the Agreement, ATP entered into force for Turkey on 21.12.2013. There are no notifications or reservations that Turkey has registered while becoming a party to the ATP. The ATP Agreement and it's annexes has been regularly amended and updated by the working group operating under the relevant commission.

In light of the implementation of the ATP, this report identifies areas where efforts should be directed to allow for the establishment and improvement of legal bases, as well as a more effective institutional structure to ensure efficient use of resources. In the report, the articles/components of the ATP directed to practice have been identified in Turkish law and in the law of Spain, Italy and France, which are selected as the three best EU implementation countries. In the light of these findings, recommendations have been made for the alignment of Turkish law.

After the preparation of the first version of the report, the Turkish authorities issued two important By-laws for the application of the ATP:<sup>6</sup> By-law on Inspection of Transportation Services published in the Official Gazette dated

<sup>6</sup>Following the submission of the first version of this report, the legislation that was examined within the framework of the report and/or referenced for the report was amended, as well as By-law on Road Transportation, Code on Road Traffic, and By-law on Road Traffic. In addition, Communique on Principles and Procedures on Standard Practices to be Obeyed in Wholesale and Retail Trade of Vegetables and

03.06.2021 and numbered 31500, and By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs published in the Official Gazette dated 02.07.2021. Therefore, the report was revised in light of the aforementioned By-laws.

The main amendment introduced by By-law on Inspection of Transportation Services to Turkish legislation is the uniformization of the controls in the areas under purview of the Transportation Services Regulation General Management, including ATP controls. The By-law determines the rules and procedures regarding the mentioned controls. By-Law is concerning the component regarding the “obligation to take required measures in order to providing compliance with ATP” stated in the article 6 of ATP.

By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs is the first legislation in Turkish law devoted to application of the ATP to the transportation of perishable foodstuffs. The main innovations introduced by the By-law to Turkish law in terms of the content of this report are as follows: It defines special equipment (ATP Art. 1), regulates the inspection and testing obligation (ATP Art. 2), includes the obligation to use special equipment for the international transportation of perishable foodstuffs (ATP Art. 4), stipulates the imposition of sanctions on those who do not comply with the said obligation (ATP Art. 4), determines persons subject to obligation and sanctions (ATP Art. 4), adopts land road controls (ATP Art. 6) and specifies the public officials who will carry out these controls.<sup>7</sup>

The provisions for implementation aspect of the said By-laws will enter into force on 01.01.2022. In accordance with Article 20 of By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, it will be possible to implement provisions of two By-laws together.

The two aforementioned By-laws indicate significant progress in aligning Turkish legislation with ATP and with best EU practices (France, Spain and Italy legislation) regarding the implementation of ATP to international transportation. Prior to the issuance of the by-laws, the main area where the ATP legislation in force in mentioned EU countries differ from the relevant provisions of the Turkish legislation is that control and sanction mechanisms have been established to ensure the effective implementation of ATP in the former. The issued By-laws, on the other hand, seem to significantly reduce this fundamental difference via above-mentioned mechanisms adopted. However, for any legal structure to be considered effective, in addition to being established through legislation, it must also function efficiently in practice. Therefore, the effectiveness of the established mechanisms will be determined by the course of the practices that are expected to initiate as of 01.01.2022.

The basic factors in determining the recommendations made in the report are as follows:

- ATP is an international agreement that can be directly implemented in Turkish law. ATP shall be deemed as the Code as per the article 90. However, it is not a directly effective international agreement because it did not go into detailed regulation, especially on control and sanction issues. As a result, it should be transposed into the Turkish legal system via the provisions of the domestic legislation which should be drafted in parallel with the ATP and the hierarchy of norms. Thus, the scope and limits of the rights and obligations of individuals shall be determined clearly and precisely in accordance with the principle of legal certainty.
- The competent authority for the implementation of ATP for Turkey is the Ministry of Transport and Infrastructure. The reference for this authorization with respect to the ATP is the list of national competent authorities designated by each Contracting State for the implementation of the ATP, also published on the UNECE website. Its legal reference in terms of Turkish domestic law is the Presidential Decree No. 1 on the Organization of the Presidency Article 474 (1) (ğ). Pursuant to said article, duties and capacities of the Ministry of Transport and Infrastructure include carrying out the international relations required by transportation, maritime, communication, postal business and services, execution of agreements and compliance with the legislation in these fields if required by the international legislation.

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Fruits was annulled and replaced by Communiqué on the Standards to be Complied with for Wholesale and Retail Trade of Vegetables and Fruits published. The legislation amendments were examined and discussed in the related sections of the report.

<sup>7</sup>The most important innovation introduced by the By-law to Turkish legislation is that it has extended the scope of issues regarding ATP transportation towards the domestic law. However, since this report is limited to international transportation, such changes will be examined under the next activity (no. 1.2).

- The implementation of the ATP requires, for all Contracting States, the active contribution and effort of all other stakeholder authorities determined by the domestic legislation of the related country, in addition to the national competent authority for the implementation of ATP. The Ministries responsible and authorized for setting ATP-related rules and carrying out controls in the examples of France, Italy and Spain examined in this report vary from country to country and vary within the same country over time (for reasons such as changes in the name and/or duties of the Ministry). However, a method including cooperation among all or some of the Ministries responsible for transportation, health, agriculture, and economy, in which each Ministry is limited to its own field, stands out in general. The cooperation of different authorities is essential, especially with regard to the general measures (control) component of Article 6 of the ATP. The reason for this is that the subject-matters and locations of the controls within the scope of ATP are included in the duties and responsibilities of different authorities. Road officials, customs officials, the persons responsible for protecting public health, security guards, local authorities, etc. are assigned depending on the scope and location of the controls.
- There is no binding EU Legislation containing special regulations for the implementation of ATP. Since every EU country is not a party of ATP, there is not monotype application in EU.
- By-Laws of the European Parliament and of the Council No. 852/2004, 853/2004, 854/2004 and By-Law of the EU Commission No. 37/2005 on food hygiene and official control of foodstocks have been prepared with the aim of preventing foods intended for human consumption in general, and food of animal origin in particular, from endangering human health. These By-Laws consists of the all of the processes, including transportation, in the presentation of cold chain foodstocks to consumers. Relevant By-Laws have been transferred into Turkish legal system with the By-Law of Food Hygiene, By-Law on Specific Hygiene Rules for Food of Animal Origin By-Law on Determination of the Specific Rules regarding the Official Control of Foods of Animal Origin, and Turkish Food Codex Communiqué on the Monitoring of Temperatures in the Means of Transport, Warehousing and Storage of Quick-frozen Foodstuffs, and compliance with EU legislation has been achieved. The subject is within the responsibilities of the Ministry of Agriculture and Forestry. Main subjects of the ATP, namely; specific equipment, ATP certificate of compliance, transportation of perishable foodstuffs with vehicles with ATP certificate of compliance, the obligation to check the vehicles regarding the use of ATP certificate of compliance are not specifically regulated in the mentioned legislation. Therefore, control of the compliance of vehicles with ATP performing transportation of perishable foodstuff in terms of special equipment requires a separate control mechanism. In the recommendations made in the report, the necessity of non-contradiction with the controls and sanctions subject to the above-mentioned legislation, which fall into the Ministry of Agriculture and Forestry's responsibility, and not to lead to duplication on the issues of control and authority was taken into account.
- In the recommendations regarding the States party of the "Roadmap of Accession to and Implementation of ATP" published by the UNECE, it is proposed to refer to the ATP in existing Codes, rather than transferring the content of the ATP exactly to the domestic legislation and enacting a new Code on this subject during the alignment phase of the ATP. Underlying reason is that ATP is a *living instrument*. In particular, technical provisions of the ATP are amended and updated. Amendment of a code is a long-lasting process in almost every country. Hence, Any ATP-specific Code shall not be able to keep up with the ATP's effective pace.
- The rules regarding the structure of the Turkish legal system, the hierarchy of norms and the general principles regarding the nature of the laws were taken into account in this regard. The necessary provisions that should be included in the Codes in terms of guaranteeing the rights and freedoms of individuals, realizing the principle of the rule of law, and establishing the framework of the duties and responsibilities of the State are as follows: purpose (why it is accepted?), scope (what are the content and limits of the content?), definitions (what are the meanings of the terms included?), control principles (who are responsible for controls on whether or not the obligations are complied with?), main sanctions (what are the sanctions that those who do not comply with the obligations will be subject to?)

In the light of mentioned above, Turkish Legislation complies with the ATP and best EU practice countries legislation, regarding the ATP article 1 and Annex 1 and ATP article 6. Turkish legislation partially complies with the other ATP regulations/components. (ATP article 2, ATP article 3, ATP article 4 and Annex 2 and Annex 3). On the other hand, regarding the article 5 Turkish legislation is not compliant with the ATP and best practice EU countries. Legislation amendments are required in this regard.



From the recommendations provided by the report, the recommendations for legislative amendments listed below that ATP can serve to improve the institutional capacity of the Ministry of Transport and Infrastructure within the framework of its implementation in Turkey are included the following:

Uniting the By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs and Directive and providing different sanctions for different violations including the cancellation and suspension which are specified in the Presidential Decree numbered 655 With a provision to be added to By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, stating that the ATP certificate of compliance issued by the authorities of another Contracting State to the special equipment in a vehicle with a foreign license plate engaged in international transportation shall be considered valid during the period the relevant vehicle is in Turkey until proven otherwise, if a provision is made to recognize the ATP certificate of compliance of the States that are not party to the ATP, the relevant provision should be included in the By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, with the amendment to be made in By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, the scope of ATP should be defined by stating that scope and boundaries of ATP shall prevail for the international transportations and as including the railway transportation along with land road transportation if conditions on the field requires, By the amendment to be made in By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, it should be regulated that temperature values that should be abided for the international transportation are temperature values stated in the ATP and it should be regulated that vehicles carrying quick frozen foodstuff should have a temperature recording device, persons subjected to sanctions and obligations should be specified in accordance with the ATP by the amendment of By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, With the amendment of article 2 of the By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, thermal sea containers, and land road or railway transportations conducted before or after seaway passing are should be specified out of scope, with the article to be added to article 20 of the By-Law, it should be clarified that control activities regarding the mentioned By-Law shall be conducted by the means of By-law on Inspection of Transport Services.

Proposals stated in the report are general proposals for filling the gaps in the Turkish legislation and aligning the legal structure via ATP. Elaboration has been avoided except for the relevant requirements.

The table prepared in accordance with the data in the report is called the Legal Gap Analysis Table. This table is included in the related section of the report.

Currently, there is no approved translation of the original English text of the ATP. For this reason, during the preparation of this report, only the original English text of ATP is taken into consideration. However, to ensure the correct understanding of the ATP, original English text of the ATP should be translated to Turkish by approval. Publishing the approved Turkish text in websites of the Ministry, TSI and other partners will serve Turkish public to have correct information regarding the ATP rules.

## 1. INTRODUCTION

### 1.1 GENERAL

The United Nations (UN) Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage (ATP) entered into force on 21.11.1976. It contains uniform standards for the international transport of heat temperature sensitive foodstuffs.

ATP stipulates that special equipment (insulated equipment, refrigerated equipment, mechanically refrigerated equipment, heated equipment, mechanically refrigerated and heated equipment) must be used for the transportation of the said foodstuffs and that this equipment must bear an ATP certificate. Special equipment refers to equipment that complies with the specifications in ATP Annex 1. Perishable foods are frozen and deep-frozen foods in Annex No. of ATP 2 and refrigerated foods in Annex No. 3 of ATP. Annexes 2 and 3 also cover the maximum temperatures that must be maintained during the transportation of frozen, deep-frozen and refrigerated foods covered by Annexes 2 and 3. ATP does not contain the definition of perishable foodstuffs. ATP does not contain the definition of perishable foodstuffs.

Contracting States are obliged to apply the provisions of the ATP to transportation of perishable foodstuffs intended for human consumption. States have discretion as to whether or not to apply ATP to perishable foods not intended for human consumption (ATP art. 3/3). The scope of the application of ATP is road transport, rail transport, and sea crossings shorter than 150 km that conducted between two road transportations.

The ATP and its annexes are regularly amended and updated by the Working Party on the Transport of Perishable Foodstuffs (WP 11) of the Economic Commission for Europe's Inland Transport Committee<sup>8</sup> since their entry into force. The current text entered into force on 06.07.2020.

Currently, 52 States are parties to the ATP. These States are Albania, Andorra, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czechia, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Monaco, Montenegro, Morocco, Netherlands, N. Macedonia, Norway, Poland, Portugal, Moldova, Romania, Russian Federation, San Marino, Saudi Arabia, Serbia, Slovakia, Slovenia, Spain, Sweden, Tajikistan, Tunisia, Turkey, Ukraine, England, USA, Uzbekistan, Iran, and Armenia (11.02.2022).

Following the entry into force of the ATP, the Ministry of Transport and Infrastructure, the competent authority designated by Turkey in the implementation of the ATP, signed a protocol with TSI on 20.10.2016. TSI has been carrying out certification procedures within the scope of ATP since 01.05.2017 in accordance with this protocol.

EU legislation on foodstuffs is mainly concerned with production, storage and retail. The By-Law of the European Parliament and Council on the Hygiene of Foodstuffs<sup>9</sup>, dated 29.04.2004 and numbered EC No (852/2004), requires producers to have temperature-controlled processing and storage facilities that can keep food at suitable temperatures and enable these temperatures to be monitored and registered. The By-Law was transposed to the Turkish legal system with the By-Law on Food Hygiene dated 2011 (Entry into force: 17.12.2011).

The subject of hygiene of animal-origin food is regulated by the By-Law of the European Parliament and Council<sup>9</sup> ensuring hygiene for food of animal origin, dated 29.04.2004 and numbered EC No (853/2004). Its provisions were incorporated into Turkish law by the By-law on Special Hygiene Rules for Animal-Origin Food (entry into force: 27.12.2011).

Regulation of the European Parliament and Council dated 29.04.2004 No (854/2004) on the official controls of animal-origin food<sup>10</sup> was transposed to Turkish legislation by the By-law on the Determination of Special Rules Regarding the Official Controls of Animal-Origin Food (entry into force: 17.12.2011).

<sup>8</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0852>

<sup>9</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004R0853>

<sup>10</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0854>

Commission Regulation EC No (37/2005) dated 12.01.2005 on the monitoring of temperatures in the means of transport, warehousing and storage of quick-frozen foodstuffs intended for human consumption (which concerns the transportation, warehousing and storage of fast-frozen foodstuffs intended for human consumption, and monitoring of temperatures in vehicles)<sup>11</sup> was transferred to the Turkish legal system with the "Turkish Food Codex Communiqué on the Monitoring of Temperatures in the Means of Transport, Warehousing and Storage of Quick frozen Foodstuffs" Numbered 2014/48 (entry into force: 18.10.2014).

The EU legislation mentioned above falls into the scope of duties and responsibilities of the Ministry of Agriculture and Forestry. ATP is complementary to the regulations introduced by this legislation.

Alignment of policies and approaches is a key element for the implementation of the entire project. The primary requirement for alignment is to identify the difference between Turkish legislation on ATP and best EU practices and, based on this, to propose suggestions for possible changes in Turkish law for compliance.

Within the scope of this report, the EU states that implemented the ATP rules, were selected based on factors such as the structure of the economy and export-import potential, the implementation of ATP requirements in the international and domestic market, and the controls and sanctions mechanisms introduced to check the implementation.

In light of the implementation of the ATP, this report identifies areas where efforts should be directed to allow for the establishment and improvement of legal bases, as well as a more effective institutional structure to ensure efficient use of resources.

In the Legal Gap Analysis Table in the report, the relevant ATP provision/component is registered in the left column, Turkish legislation<sup>12</sup> corresponding to the ATP provision in the second left column, best European applications (Legislations of Spain, Italy and France) legislation meeting the ATP provision in the second right column, and recommendations for compliance of Turkish legislation in the right column.

## 1.2 INCORPORATION OF INTERNATIONAL AGREEMENTS INTO DOMESTIC LAW, TURKISH HIERARCHY OF NORMS

### 1.2.1 INCORPORATION OF INTERNATIONAL AGREEMENTS INTO DOMESTIC LAW

*Direct applicability (self-executing)* means that an international norm can be applied in domestic law, without the need for further processing, transposition or attribution, provided that it is duly accepted<sup>13</sup>. In countries where the monist system is adopted, an international agreement is directly applicable.<sup>14</sup> Regarding the place of international agreements in the hierarchy of Turkish norms, according to the rule introduced first by the 1961 Constitution and still in force today, international agreements that have duly entered into force bear the force of Law (Art. 90 of the Constitution). Therefore, the only necessary condition for an international agreement to be applicable in Turkish law is that the agreement enters into force in accordance with the relevant Turkish legislation. There are no additional conditions. Based on this rule, it can be said that Turkish law has adopted the monist system<sup>15</sup>. As a result, the ATP is a directly applicable international agreement.

<sup>11</sup> <https://eur-lex.europa.eu/eli/reg/2005/37>

<sup>12</sup>The Turkish legislation listed here is Turkish legislation that explicitly/implicitly meets the relevant ATP provision/component. The listed Turkish legislation may be partially compliant or non-compliant regarding the ATP and best EU practice countries legislations.

<sup>13</sup> Turkish law requires international agreements to be ratified and promulgated to be a binding force in internal law, and the President of the Republic is authorized in this respect. In principle, in order for the President to exercise this power, the TGNA must approve the agreement with a relevant law (exceptions are listed in Article 90 of the Constitution and Article 5 of the Code No. 244). Text of the assent code does not embody the international agreement text.

<sup>14</sup> Monism and dualism are used to identify two different theories regarding the correlation between international law and national law. Monists adopt the idea that internal and international law systems are integrated with one another Dualists highlights the difference between national and international law and remark that the international law should be converted into national law. Uluslararası hukukta monizm ve dūalizm-[https://tr.xcv.wiki/wiki/Monism\\_and\\_dualism\\_in\\_international\\_law](https://tr.xcv.wiki/wiki/Monism_and_dualism_in_international_law)

<sup>15</sup> Doç. Dr. İbrahim ŞAHBAZ, Avrupa İnsan Hakları Sözleşmesi'nin Türk Yargı Sistemindeki Yeri, p. 11 tbbdergisi.barobirlik.org.tr:m2004-54-66 p. 11



Nevertheless, terms of “direct applicability” and “direct effect” are two different concepts. *Direct effect* refers to the situation where a directly applicable international norm is appropriate for the generation of arguable claims before the judicial and administrative authorities. <sup>16</sup> “Direct effect” agreement is an international agreement that is unambiguous, unconditional, and is of nature that does not require the state to take any additional measures to implement.

It is uncommon for an international agreement to have direct effect. The underlying factor is that the international agreements are mostly contended with the establishment of general provisions in the determination of control and supervision mechanisms. The ambiguity of the provisions and/or *margin of appreciation* requires relevant States to make regulations that ensure the effectiveness of their provisions in the domestic law.

ATP does not contain definitive and irrefutable provisions, especially regarding the issue of taking overall measures (controls) and establishing enforcement mechanism thereof. Hence, ATP cannot be deemed to have a direct effect.

## 1.2.2 TURKISH HIERARCHY OF NORMS

The hierarchy of norms expresses the inferior/superior relationship between two or more legal rules that are in force at the same time in a certain legal order. Accordingly, the norm that is higher in the hierarchy has a superiority in practice over the lower one. Since the lower ranked norm derives its authority and legitimacy from the above, it cannot be contrary to it. The hierarchy of norms that are in force in Turkey stems from the 1982 Constitution as amended by Code No. 6771 dated 09.07.2018. The hierarchy levels of norms are as follows:

1. Constitution
2. International treaties on human rights
3. Codes, *Emergency Presidential Decrees*<sup>17</sup> and other international agreements (those which do not fall into the scope of the 2nd degree)
4. Other Presidential Decrees (those which do not fall into the scope of 3rd degree)<sup>18</sup>
5. By-laws<sup>19</sup>
6. Other regulatory actions (*Circulars, directives, communiqués etc.*)

## 2. METHODOLOGICAL APPROACH

### 2.1 ATP PROVISIONS/COMPONENTS

ToR clearly states that the activity subject to this report should be a comparing document. On one side of the comparison are the provisions/components of the ATP to be determined on the basis of control, institutions, governance and authorities, and the corresponding best EU practice countries legislations, on the other side, the current Turkish legislation corresponding to the relevant provisions of the ATP. Therefore, the main elements that will determine the scope and limits of the examination subject to this report are the relevant provisions/components of the ATP. Therefore, methodologically, the relevant ATP provisions/components are required to be identified first.

<sup>16</sup> Dr. Ahmet Burak BİLGİN, AİHS ve Diğer Uluslararası Anlaşmaların İç Hukuktaki Yeri Bağlamında 2004 Değişikliğinin Beraberinde Getirdiği Sorunlar ve Bazı Çözüm Önerileri.

<sup>17</sup> Constitution a. 119: In the event of state of emergency, the President of the Republic may issue presidential decrees on matters necessitated by the State of emergency, notwithstanding the limitations set forth in the second sentence of the seventeenth paragraph of the Article 104. Such decrees which have the force of law shall be published in the Official Gazette, and shall be submitted for approval to the Grand National Assembly of Turkey on the same day.

<sup>18</sup> Constitution a. 104: The President of the Republic may issue presidential decrees on the matters regarding executive power. The fundamental rights, individual rights and duties included in the first and second chapters and the political rights and duties listed in the fourth chapter of the second part of the Constitution shall not be regulated by a presidential decree. No presidential decree shall be issued on the matters which are stipulated in the Constitution to be regulated exclusively by law. No presidential decree shall be issued on the matters explicitly regulated by law. In the case of a discrepancy between provisions of the presidential decrees and the laws, the provisions of the laws shall prevail. A presidential decree shall become null and void if the Grand National Assembly of Turkey enacts a law on the same matter.

<sup>19</sup> Constitution a. 124: The President of the Republic, the ministries, and public corporate bodies may issue by-laws in order to ensure the implementation of laws and presidential decrees relating to their jurisdiction, as long as they are not contrary to these laws and decrees. The law shall designate which by-laws are to be published in the Official Gazette.

Then, the best EU practice countries and Turkish legislation corresponding to the determined ATP provisions/components should be determined accordingly.

As a result of the examination carried out considering the above requirements, the articles of the ATP that are taken as a basis for this report are the general requirements of Articles 1 to 6 and Annexes 1, 2 and 3. Article 1 and Annex 1 determine the definitions and standards of special equipment used in the international transportation of perishable foodstuffs. Article 2 and Annexes 2 and 3 determine the test and inspection obligation and the validity of ATP certificates of compliance issued by foreign countries, Article 3 and Article 5 determine the areas where ATP is applied, Article 4 and Annexes 2 and 3 regulate the obligation to use the ATP certificate of compliance and the sanctions for non-compliance, the persons who are subject to the obligation to comply and to the sanction of non-compliance. Article 6 is related to the obligation of the Contracting States to take general measures necessary for the proper implementation of the ATP and to notify the other Contracting States of the general measures they have taken, violations they detected and the sanctions they have imposed on these violations.

Articles 7 to 20 of ATP are exclusively procedural (entry into force, accession, termination, amendments, notifications, other international agreements that may be signed, etc.). The articles do not contain provisions on control, institutions, governance and authorities that can be the subject of this report. Therefore, not included in the report.

## 2.2 TURKISH LEGISLATION ON ATP

The Turkish legislation that is the basis of this report was determined in the light of the ATP provisions/components that determine the scope of the report.

The accurate determination of the legislation on the transportation of perishable foodstuffs with special equipment requires a wide internal legislation review. The reason for this is that food, food safety, food classifications, road transportation, technical requirements of equipment, inspection, authorization, control and sanction issues are under the different authorities' duties and responsibilities. Some of the legislation contains situations that may overlap in the fields of duties and responsibilities at first glance, and it does not always contain definite borders regarding the separation of the application areas of domestic and international law. This is a situation that can be monitored in the domestic legislation of almost every country.

The research on Turkish legislation regarding ATP was carried out through a professional Turkish law search engine, in addition to open web-based resources such as the Official Gazette, the Presidency legislation information system and the websites of the relevant Ministries. According to the research, the list of legislation that is directly and/or indirectly related to the ATP and which is taken as a basis in the formation of the data in the Legal Gap Analysis Table in this report is presented below:

### **The relevant legislation of the Ministry of Transport and Infrastructure**

#### **1- Code on Road Transportation <sup>20</sup>**

The law regulates domestic and international transports by road. It includes the transportation of passengers and goods by motor vehicles on public roads, transporters, transportation agents, transportation brokers, transportation warehouses and cargo operators, employees in transportation works and all kinds of vehicles, devices, equipment, structures and so forth used in transportation. It does not apply to motor vehicles belonging to Turkish Armed Forces, Gendarmerie General Command, Coast Guard Command and General Directorate of Security. Competent authorities to impose administrative fines in cases of violation of the law are the Ministry personnel authorized by the Minister of Transportation, traffic police and municipal police, rank gendarmerie personnel in places outside the scope of the traffic police, customs guard and customs inspection officers working at border gates and their supervisors, municipal police stationed at terminals.

<sup>20</sup>mevzuat.gov.tr/MevzuatMetin/1.5.4925.pdf

The law leaves to the By-law on Road Transportation the regulation of issues pertaining the conditions on which administrative e sanctions in the forms of warning, temporary suspension and cancellation will be applied to those operating within the scope of the Law. The law does not specify the control provisions and control authorities, which are the bases of administrative sanctions.

## **2-By-law on Road Transportation <sup>21</sup>**

It has been prepared based on the Law on Road Transport. It includes those who carry out passenger and goods transportation by motor vehicles on public roads, carriers, agencies, freight brokerage, freight forwarders, shipping warehouse management, cargo management, logistics management, distribution management, terminal management and similar transportation activities, and those who work in transportation business, all kinds of vehicles, tools, equipment, structures, facilities and the like used in transportation activities. The By-Law regulates the procedures and principles of controls directed to transport authorization certificate holders, and in which cases administrative sanctions in the form of warning, temporary suspension and cancellation will be applied to those engaged in transport activities. The By-law was last amended on 02.07.2021. The amendments are generally related to the types of authorization certificates, the procedures of warning penalties, temporary suspension and cancellation of authorization certificates.

## **3- Legislative Decree No. 655 on Some Arrangements Regarding Transport and Infrastructure <sup>22</sup>**

Although various provisions have been repealed, Article 28 of the "Legislative Decree dated 02.07.2018 and numbered 703 amended with Article 28 on the Amendment of Certain Codes and Decrees in order to Adapt to the Amendments Made in the Constitution" is important for the subject of this report. The article is about the control authority of the units of the Ministry of Transport and Infrastructure, the types of administrative sanctions and the amount limits. Accordingly, the Ministry of Transport and Infrastructure service units are authorized and in charge of envisaging and applying administrative sanctions in the form of administrative fines, warnings, temporary suspension of activity and cancellation of authorization for those who violate regulations concerning their area of responsibility, which have to enter into by being published in the Official Gazette. The condition to be provided is that it should be clearly stated in which cases each sanction will be applied.

## **4- By-law on Inspection of Transport Services<sup>23</sup>**

The said By-Law regulates the procedures and principles regarding the controls of the activities carried out in the field of road transport services, the qualifications, duties, authorities, responsibilities and obligations of the personnel who will carry out the controls, the procedures and principles to be applied in the preparation and follow-up of the administrative fine decision minutes, the violation detection minutes and the procedure regarding the warnings to be given and lays down the principles thereof.

The By-Law defines performance of the control (namely, inspection in the Turkish legal system) as follows; "examining, investigating and controlling whether the activities in the field of road transport services are carried out in accordance with the Code on Road Transportation, Code on Road Traffic, and Legislative Decree No. 655". Inspector related to personnel working in administrative or regional directorates, having the qualifications specified in Article 18 of the By-Law, of the institutions and organizations listed in the Code on Road Transportation, Code on Road Traffic, and Legislative Decree No. 655, and trained in this regard. Authorized institutions (supervisory) consist of the units of the General Directorate of Security and the Gendarmerie General Command authorized under the Code on Road Transportation, Code on Road Traffic, and Legislative Decree No. 655 in addition to the units of the Ministry of Transport and Infrastructure, and the units of the Ministry of Trade at the border gates and the relevant municipal police units. Personnel of the Ministry (administrative and regional directorates) and personnel of other institutions authorized to control are authorized by the Code on Road Transportation, Code on Road Traffic, and Legislative Decree No. 655. Control types are divided into four, namely; controls carried out in the road,

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<sup>21</sup> <https://mevzuat.gov.tr/mevzuat?MevzuatNo=24299&MevzuatTur=7&MevzuatTertip=5>

<sup>22</sup> [mevzuat.gov.tr/MevzuatMetin/4.5.655.pdf](https://mevzuat.gov.tr/MevzuatMetin/4.5.655.pdf)

<sup>23</sup> <https://mevzuat.gov.tr/mevzuat?MevzuatNo=38660&MevzuatTur=7&MevzuatTertip=5>

controls carried out in the enterprises, physical location and spatial suitability controls, and controls made by using electronic systems. Among these, road controls are control at fixed control stations, mobile control and controls at border gates. Controls are performed pursuant to a control list, and a report is issued afterwards.

Sanctions specified in the legislation shall be applied in case it is determined during the controls that the requirements specified in the related legislation are not complied with or the obligations are not fulfilled thereof. The By-law leaves the determination of the sanctions to other legislation, and does not contain any provision on the notification, follow-up and collection of administrative fines applied to vehicles registered in foreign countries.

The provisions of the By-law that are still in force are mainly procedural ones. The uniform control mechanism it has established came into force on 01.01.2022. Annex of the said By-Law consists of the identification card of the control officer, administrative fine decision minutes (in accordance with the Code on Road Transportation and separately in accordance with the Decree No. 655), violation detection report and notification sample.

#### **5- By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs<sup>24</sup>**

The purpose of the By-law is to improve the technical conditions regarding the transportation conditions of the transportation of perishable foodstuffs, to determine the rights, responsibilities and obligations of the carriers involved in these activities in order to ensure food safety, and to regulate the procedures and principles regarding the test, approval, inspection and certification processes of the special equipment to be used in perishable foodstuff transportation activities.

The By-law specifies the rules applicable to the transportation of perishable foodstuffs included in the ATP, within the scope of the ATP (i.e. between Turkey and any other State party to the ATP), within the country and to the States that are not parties to the ATP (i.e. between Turkey and any State that is not a party to the ATP). The By-law includes provisions on general rules in transportation activities, obligations of special transportation equipment users, assignment and authorization of ATP Inspection/Type Test Centers, testing, inspection and certification processes, and controls and sanctions for carriers and inspection centers.

The By-law will enter into force on 01.01.2022.

#### **6- Directive on Test and Technical Inspection of Special Equipment to Be Used For The Transportation of Perishable Foodstuffs (20.12.2021 date and 83209 numbered)**

The purpose of the Directive is to regulate the procedures and rules regarding the approval, inspection and certification processes of special equipment that will be used for the transportation activities, in order to provide food safety, by improving the technical conditions regarding the transportation circumstances for the transportation of perishable foodstuffs.

Directive covers the authorization and inspection of examination centers and/or ATP TIP Test centers that authorized by the Ministry, along with all technical examination and tip test processes of special equipment used for the transportation of perishable foodstuffs, that will be conducted by rules and procedures determined by ATP Agreement or Ministry.

#### **Relevant legislation of the Ministry of Commerce**

#### **7- Code on Product Safety and Technical Regulations<sup>25</sup>**

(Entry into force: 12.03.2021) Object of the code is to ensure the safety and compliance of the products regarding the relevant technical regulations, and to determine the principles of market surveillance and

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<sup>24</sup> <https://www.resmigazete.gov.tr/eskiler/2021/07/20210702-2.htm>

<sup>25</sup> <https://resmigazete.gov.tr/eskiler/2020/03/20200312-1.htm>

inspection, duties of authorized institutions and obligations of economic operators and compliance assessment bodies. The code covers all the products that are intended to be launched, offered, made available on the market or put into service. Code covers the products that are exported or aimed to be exported to member countries, but excludes the products that are exported or aimed to be exported to non-member countries as a principle. Market surveillance and inspection activities and product compliance assessment procedures carried out to ensure the compliance of the products with the requirements specified in the relevant technical regulation or general product safety legislation and to protect the public interest consist of the principal control mechanism of the Code. Content of the technical regulation has been set forth in the Code as "mandatory legislation that determines the nature of the product, its processing or production methods, or the related terminology, symbol, packaging, marking, labeling or compliance assessment processes, including administrative provisions individually or undividedly."

Controls stipulated in the code are performed for the verification of the compliance of products with technical regulations and general product safety legislation. Controls are performed via market surveillance and inspection from launching the product to the consumption process. Relevant controls can also be performed during importation, exportation, installation, service delivery or good or service providing processes, or during the usage. The products can also be controlled in the transportation vehicles. Withdrawal or administrative fines are stipulated in case the products are illegitimate. The code predicates the fact that the procedures and principles regarding the compliance controls of goods or services and products subject to foreign trade to be performed by the competent authorities responsible for relevant controls and sanctions shall be determined by the President as per the by-law to be issued by the public authority.

The physical implementation field of the control mechanism stipulated by the code consists of mainly the products themselves.

#### **8- By-Law on General Product Safety<sup>26</sup>**

(Entry into force: 12.03.2021) This By-Law has been issued based on the Code on Product Safety and Technical Regulations. By-Law ensures that the launched or supplied products that are ready for consumption, intended for the consumer, or not intended for the consumer, can be used by the consumer under reasonably foreseeable conditions, and covers the duties of authorized institutions in this field, obligations of manufacturers and distributors in this regard.

By-law does not cover equipment used or operated by consumer service providers.

#### **9- Code on the Regulation of Trade of Vegetables and Fruits and Other Goods with Sufficient Supply and Demand<sup>27</sup>**

(Entry into force: 26.03.2010) The code was adopted for ensuring the trade, supply, distribution and sale of vegetables and fruits and other goods with sufficient supply and demand, protecting the rights and interests of producers and consumers, regulating the activities of professionals, and providing a modern system and operation of wholesale markets and market places.

In the Code, the concept of goods is defined as: "Tradeable vegetables and fruits, meat and meat products, milk and dairy products, water and fishery products, honey and eggs, cut flowers and ornamental plants to be determined based on the level of supply and demand." Pursuant to the Code, the Ministry of Commerce is authorized to determine the supply and demand level of goods other than vegetables and fruits, by obtaining the approval of the Ministry of Agriculture and Forestry.

Competent authority entitled to take the measures and perform controls stipulated by the code is essentially the Ministry of Commerce. The Ministry of Agriculture and Forestry is the competent authority responsible for carrying out the necessary inspections regarding the quality, standard and food safety of the goods

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<sup>26</sup><https://resmigazete.gov.tr/eskiler/2021/03/20210311-18.htm>

<sup>27</sup>[mevzuat.gov.tr/MevzuatMetin/1.5.5957.pdf](http://mevzuat.gov.tr/MevzuatMetin/1.5.5957.pdf)



covered by the Code. Duties and authorities of the Ministry of Health within the scope of the other legislation, regarding the protection of general health and hygiene are reserved.

### **10- Communiqué on the Standards to be Obeyed in the Wholesale and Retail Trade of Vegetables and Fruits<sup>28</sup>**

(Entry into force: 29.06.2021) The code stipulates the binding procedure and principles regarding the wholesale and retail trade of goods pursuant to the Code on the Regulation of Trade of Vegetables and Fruits and Other Goods with Sufficient Supply and Demand. It covers the procedures and principles regarding the standards to be obeyed in the packaging, transportation, storage and retail sale of the goods.

The foodstuffs (various fruits, mushrooms, squash flowers and soybean sprouts) included in Annex 1 of the Communiqué must be cooled down to the storage temperature at the point of place of production and this temperature must be maintained at all stages until they reach the final consumer: cold chain transportation. These foodstuffs are stored in cold stores and offered for sale in refrigerated aisles in big stores and chain stores.

The foodstuffs listed in Annex 1, which are subject to cold chain transportation, are transported by refrigerated vehicles suitable for pallet use after cooling. Closed or tarpaulin transportation vehicles are used to transport these to the wholesaler at the production site or to the sorting, packaging or pre-cooling facility. One exception to the cold chain rule and the refrigerated vehicle transportation requirement is the "transportation of goods purchased from manufacturers or wholesalers for retail sale by retailers registered in the chambers of merchants and craftsmen, and goods sold directly to consumers on retail by manufacturers." If there is such an exception, it is not obligatory to apply cold chain transportation for these foodstuffs and to use refrigerated vehicles for transportation. The list in the Annex 1 is a limiting list in this regard. For foodstuffs that are not included in the scope of Annex 1, and even if the foodstuff is in the scope of Annex 1, for the cases where the above-mentioned exception is valid, the transportation vehicles must be closed or have tarpaulin.

Vehicles and equipment to be used in transportation with refrigerated vehicles within the scope of the Communiqué must meet the following conditions: a) There must be no wear, holes or cracks on the inner and outer surfaces of the insulated equipment. No light may leak into the insulated equipment if the doors are closed,

b) There must be mechanical devices that can keep the internal temperature of the insulated equipment between 0 - 15 oC. +2 oC tolerance is applied in temperature values,

c) The insulated equipment must have a temperature monitoring device,

d) Compliance of refrigerated vehicles with the conditions specified in the Communiqué must be documented by inspection and testing in 3-year periods by TSI.

Mechanically cooled vehicles with ATP certificate of compliance are considered to meet the above conditions, provided that they have cooling/heating equipment and a temperature monitoring device.

If different goods are transported in the same vehicle, precautions must be taken to prevent the goods from damaging each other during transportation.

The Ministry of Commerce is responsible for the execution of the communiqué. The authorities of the Ministry of Agriculture and Forestry are reserved in the official controls regarding the compliance with the issues determined by the Code on Veterinary Service, Plant Health, Food and Feed, and the by-laws issued upon this Code with respect to packaging, storage, transportation and retail sale of goods.

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<sup>28</sup><https://www.resmigazete.gov.tr/eskiler/2021/06/20210629-13.htm>

The articles of the Communiqué that are still in force are the articles titled "annulled communiqué", "enforcement" and "execution". The articles in question are of procedural nature. Implementation-related articles of the Communiqué will enter into force on 01.07.2022.

## **Relevant Legislation of the Ministry of Agriculture and Forestry**

### **11- Code on Veterinary Services, Plant Health, Food and Feed<sup>29</sup>**

(Entry into force: 13.06.2010) The code covers the food and feed operators. Object of the code is to protect food and feed safety at all phases of distribution, taking into account public health, consumer interests and environmental protection requirements. The code covers the official controls and sanctions regarding all stages of production, processing and distribution of food, food-contact materials, matters and feeds. Foods prepared for primary production and personal consumption are outside the scope of the Code.

The code identifies the food as any processed, partially processed or unprocessed edible or drinkable substance or product. The code also identifies 'control' as the process performed or commissioned by the Ministry of Agriculture and Forestry with the aim of determining the compliance of activities related to feed, food, animal welfare and improvement, plant and animal health pursuant to the provisions of the relevant Code.

The Annex no. 2 of the Code is the document to be taken as a basis for the duties of the professional members regarding the official controls pursuant to the article 31 of the Code. As per the Annex 2, official controls are constitutively separated into four basic control groups as primary production, production and processing, distribution and importation. Controls in the distribution process are performed in places such as retail workplaces, veterinary health product stores, etc., and do not cover transportation vehicles and/or their qualifications thuswise. Controls in the importation process are determined as per the quality of the food and do not cover the transportation vehicles.

By-law on Food Hygiene, By-law on Food Codex and Communiques entered into force pursuant to the By-law on Food Codex are predicated upon this Code.

### **12- By-Law on Food Hygiene<sup>30</sup>**

(Entry into force: 17.12.2011) By-law (EC) No 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs have been issued as per the Code on Veterinary Service, Plant Health, Food and Feed. The object of this by-law is to determine the general rules regarding hygiene of the foodstuffs that must be complied by the food establishment from the primary production of the food to submission to final consumer. It covers all stages of production, processing and distribution. By-law also prevails for the food enterprises where import and export controls are performed and By-Law of Special Hygiene Rules for Foods of Animal Origin are applied. By-law also covers provisions in regards to the vehicles and equipment during the transportation in addition to the packaging of foods, the obligation of food enterprises to comply with HACCP principles. As per the hygiene requirements specified in the article 7, food enterprises are obliged to comply with the temperature control requirements for foods, and to maintain and record the cold chain and relevant processes when required by their actions. As per the article 13, vehicles and/or containers used for the transport of food should be capable of preserving the transported food at appropriate temperatures when necessary, and to allow monitoring of the relevant temperatures. Articles 26 and 27 of the By-Law manifests only the article 7 from the articles to be applied for the importation and exportation, and the abovementioned provisions. Ministry of Agriculture and Forestry is responsible for the execution of the by-law. The By-Law does not include a provision regarding the controls and sanctions.

### **13- By-Law on Specific Hygiene Rules for Food of Animal Origin<sup>31</sup>**

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<sup>29</sup><https://resmigazete.gov.tr/eskiler/2010/06/20100613-12.htm>

<sup>30</sup><https://resmigazete.gov.tr/eskiler/2011/12/20111217-5.htm>

<sup>31</sup><https://resmigazete.gov.tr/eskiler/2011/12/20111227-10.htm>

(Entry into force: 27.12.2011) This By-Law has been issued based on the Code on Veterinary Services, Plant Health, Food and Feed, and By-Law (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin. By-law covers the procedures and principles regarding the specific hygiene requirements that should be abided by the food enterprise producing processed and unprocessed food stock, and the auto controls performed thereof. Food of animal origin is divided into various groups in the By-Law. The different maximum temperatures stipulated for each of these groups must be maintained throughout the transportation. The By-Law does not include a provision regarding the controls and sanctions.

#### **14- By-Law on Specific Rules for the Organization of Official Controls on Products of Animal Origin<sup>32</sup>**

This By-Law has been issued based on the Code on Veterinary Services, Plant Health, Food and Feed, and the By-Law (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin. The object of this by-law is to lay down official control principles of foods of animal origin, taking into consideration food hygiene, public health, animal health and animal welfare rules. The by-law specifically covers the deemed controls to be performed by the vets regarding the live animals, and the forms issued thereof. The only provision stipulating the transportation terms on fishery products is set forth in the article 33 of the by-law.

#### **15- Communiqué on the Monitoring of Temperatures in the Means of Transport, Warehousing and Storage of Quickfrozen Foodstuffs<sup>33</sup>**

(Entry into force: 18.10.2014) The purpose of the communiqué is to determine the rules for monitoring the temperature during the storage, preservation and transportation of quick-frozen foodstuffs. It was prepared within the framework of the Turkish Food Codex By-law and the Commission Regulation (EC) No. 37/2005 on the Monitoring of Temperatures in the Means of Transport, Warehousing and Storage of Quickfrozen Foodstuffs. Pursuant to the article 4 of the communiqué, temperature control should be performed at every stage in order not to break the cold chain during the transportation of quick-frozen foodstuffs, the ambient temperature should be recorded at frequent and regular intervals using appropriate measuring and recording devices, and all measurement and recording devices used to monitor the temperature should comply with TS EN 12830, TS EN 13485 and TS EN 13486 standards.

### **Relevant legislation of the Ministry of Internal Affairs**

#### **16- Code on Road Traffic<sup>34</sup>**

(Entry into force: 18.10.1983) The code sets forth the necessary rules to ensure traffic order in terms of security of life and property on highways and measures to be taken in all matters regarding the traffic safety. The code deems the Ministry of Internal Affairs as the authority responsible for checking the vehicles, the documents and equipment required to be kept in the vehicles pursuant to the Code, the drivers and their documents, whether the drivers and other road users comply with the rules, and performing the required controls upon the compliance of traffic regulations and various facilities with the provisions of this Code. Pursuant to the article 6 of the Code, the police may act in place of the municipal traffic police when in need; gendarmerie, trained officers, non-commissioned officers and specialist gendarmeries may act in place of the police and traffic governance in need regarding the regulation of the traffic and expropriation on traffic crimes.

Duties assigned by the said Code and other codes on traffic services are included in the scope of task of the Ministry of Internal Affairs and other ministries, organizations and municipalities authorized by this Code, in cooperation with the Ministry of Internal Affairs. Article 8 of the Code covers the duties of the Ministry of Transport and Infrastructure. Accordingly, the code deems the Transport and Infrastructure as the authority responsible for ensuring the necessary coordination regarding road transport, carrying out or having the inspections of vehicles subject to registration, supervising inspection stations, issuing

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<sup>32</sup> <https://resmigazete.gov.tr/eskiler/2011/12/20111217-9.htm>

<sup>33</sup> <https://resmigazete.gov.tr/eskiler/2014/10/20141018-6.htm>

<sup>34</sup> <https://mevzuat.gov.tr/mevzuat?MevzuatNo=2918&MevzuatTur=1&MevzuatTertip=5>



administrative fines by preparing a report for those who violate the provision regarding inspection, making the weight and size controls of the vehicles, or having them done without prejudice to the duties and powers of the traffic police, issuing report regarding the administrative fines for the subjects deemed contradictory.

### **17- By-Law on Road Traffic<sup>35</sup>**

(Entry into force: 18.07.1997) The By-Law on Highway Traffic issued by the Ministry of Internal Affairs sets forth the principles of duties, powers and responsibilities for the security of life and mail security on highways, and rules regarding the operation procedures and conditions of traffic organizations, and the qualifications, selection, operation procedures, duties, powers and responsibilities of the personnel to be assigned thereof. Article 13 of the By-Law determines the duties and authorities of the Ministry of Transport in parallel with the Highway Traffic Code.

### **18- By-law on Collection of Administrative Traffic Fines Imposed on Vehicles with Foreign Plates<sup>36</sup>**

The By-law was prepared based on Article 115 of the Code on Road Traffic. It determines the procedures and principles regarding the collection of administrative traffic fines imposed on vehicles with foreign license plates and to foreign drivers driving vehicles with Turkish license plates, regardless of whether the driver is a Turkish citizen or not (Art. 1). The personnel authorized to implement the By-law are the personnel of the General Directorate of Security and the Gendarmerie General Command, and the personnel assigned and authorized in the relevant units of the Ministry of Transport and Infrastructure and the General Directorate of Highways (Art. 3). It is implemented to those who violate the traffic rules written in the Code on Road Traffic. The provisions of the By-law are executed jointly by the Minister of Internal Affairs, the Minister of Commerce, the Minister of Treasury and Finance and the Minister of Transport and Infrastructure.

## **Relevant Legislation of Ministry of Industry and Technology**

### **19- TSI Directive on Inspection Surveillance<sup>37</sup>**

(Entry into force: 01.08.2014, last revision regarding the entry into force: 27.03.2019). The purpose of the directive is to determine the procedures and principles of TSE's national and international inspection, surveillance, compliance control in imports, verification, approval, technical service, carrying out special purpose inspection activities and the issuance of documents, reports, compliance letters within the scope of these activities. It covers the procedures and principles related to the inspection, surveillance, compliance control in imports, verification, approval, technical service, execution of activities carried out within the framework of the duties and authorization or signed protocols and the applicable legislation or upon other special request, given to TSE by Ministries/Authorized Institutions.

The Directive in question is not a text specific to ATP. However, the Procedures and Principles of the Activities carried out within the scope of TSE ATP are based on this Directive.

## **General Legislation**

### **20- Turkish Penal Code<sup>38</sup>**

(Entry into force: 12.10.2004) This code is enforceable in cases where non-compliance with the obligation to use ATP certified special equipment in the international transportation of perishable foodstuffs is deemed as a crime. Judicial law enforcement and public prosecutors are authorized in the investigation phase of the crimes within the scope of the Turkish Penal Code, and the criminal courts are authorized in the trial phase.

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<sup>35</sup> <https://mevzuat.gov.tr/mevzuat?MevzuatNo=8182&MevzuatTur=7&MevzuatTertip=5>

<sup>36</sup> <https://resmigazete.gov.tr/eskiler/2018/02/20180213-4.htm>

<sup>38</sup> <https://mevzuat.gov.tr/mevzuat?MevzuatNo=5237&MevzuatTur=1&MevzuatTertip=5>

### **21- Presidential Decree No. 1 on the Organization of the Presidency**<sup>39</sup>

The decree lays down the assigned duties of the Units of the Presidency, Ministries and the relevant Units of the Ministries.

### **22- Code on Misdemeanor**<sup>40</sup>

It determines the general principles regarding misdemeanors, the types and consequences of administrative sanctions that can be applied for misdemeanors, the rules regarding the notification/announcement of administrative sanction decisions, the decision-making process for misdemeanors, the legal remedies against administrative sanction decisions, the principles regarding the execution of administrative sanction decisions.

The Code defines the concept of misdemeanor as “an injustice for which the laws impose administrative sanctions.” The general provisions of the Code on Misdemeanor apply to all acts requiring administrative fines. Acts arising from road transportation legislation are also included in this scope.

## **2.3 COMPLIANCE LEVEL OF THE TURKISH LEGISLATION REGARDING THE ATP**

The degree of compliance of the relevant provision with the ATP and best EU practice countries legislation is specified in the second column from the left of the Legal Gap Analysis Table, along with the Turkish legislation provision corresponding to ATP. Three different terms have been used in order to specify the compliance level: compatible, partly compatible, and incompatible.

Accordingly, the relevant provision is considered **compliant** if the following conditions exist: The provision in question is in line with the ATP and best EU practice countries legislations and there are no domestic legal norms contradicting this provision.

The relevant provision **partially complies with** the ATP, if the following conditions exist: Current provision partly or implicitly meets the relevant ATP and best EU practice countries legislation provision, however, it is disadvantageous regarding its position in the hierarchy of norms.

The relevant provision is **non-compliant** regarding the ATP, if the following conditions exist: There is no provision on the issue in the relevant legislation or the relevant provisions are non-compliant regarding the ATP and best EU practice countries legislations.

The degrees of compliance were determined on the basis of the relevant provisions of By-law on Inspection of Transportation Services and By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs will enter into force on 01.01.2022.

## **2.4 LEGISLATION ON EU BEST PRACTICE COUNTRIES**

EU best practice countries have been determined based upon the parameters such as the structure of the economy and country's export/import potential, the implementation of ATP requirements in the international and domestic market, and the relevant controls and sanctions on the relevant practices of the countries. In this regard, Spain, Italy and France have been chosen, considering the similarities of export items in their economies and their geographical climate with Turkey. Each three country have established inspection, control and enforcement mechanisms for the effective application of ATP and organize them thuswise. Each three country apply ATP in their domestic transportations. Each three country also actively participate in the ATP questionnaires of the UNECE. The EU best practice countries share certain similarities with Turkey in regard to their legal systematic. Among the aforementioned countries, France, in particular, is the prominent figure with the similarity of their management system and the basic principles of the legislation with the Turkish legal system (As it is known, at the establishment

<sup>39</sup>[mevzuat.gov.tr/MevzuatMetin/19.5.1.pdf](http://mevzuat.gov.tr/MevzuatMetin/19.5.1.pdf)

<sup>40</sup><https://mevzuat.gov.tr/mevzuat?MevzuatNo=5326&MevzuatTur=1&MevzuatTertip=%205>

stage, Turkey regarded France as the precedent country in the preparation of administrative law legislation and Italy in criminal law).

The best EU practice countries legislations that are the basis of this report was determined in the light of the ATP provisions/components that determine the scope of the report.

The legislation related to ATP has been prepared in the mother languages of all three countries, and legal words may bear different meanings even in legal systems with resembling legal literature; making it difficult to elaborate the subject. For this reason, research on the relevant legislation was carried out within the scope of the main principles of the legal systems. Legislation of the EU best practice countries on ATP was issued considering the main legislation corresponding to ATP articles/components based on legal gap analysis. Information in the UNECE website and legislation obtained from the open sources of each country were used in the determination of the relevant provisions.

Principal text of the Spanish legislation on ATP consists of the Code No. 16/1987 on the By-Law of Road Transportation<sup>41</sup>, Royal Decree No. 1211/1990 as an approval for this Code,<sup>42</sup> Royal Decree No. 237/2000,<sup>43</sup> and Royal Decree No. 1225/2006 as an amendment for the Code No. 16/1987 on the By-Law of Road Transportation.<sup>44</sup>

ATP became legitimate in Italy with the Code No. 264 dated 02.05.1977.<sup>45</sup> Presidential Decree No. 404 dated 29.05.1979, Presidential Decree No. 327/80 and Ministry of Transport Decrees No. 1182 and 1183, both dated 28.02.1984 have been issued regarding the implementation of this Code.<sup>46</sup>

French legislation on the implementation of ATP principally consists of the Code on Rural and Marine Fisheries<sup>47</sup>, Code on Road Transport<sup>48</sup>, Code on Road Traffic<sup>49</sup>, Penal Code<sup>50</sup>, Decree on Technical Requirements on Temperature-Controlled Transportation of Perishable Foodstuffs dated 27.11.2020 (this decree is renewed periodically, and the previous version is dated 2018), and technical documents of Cemafroid (An organization authorized with ATP certificates by a Decree of 2008)<sup>51</sup>.

Provisions regarding the ATP in the legislation on each three EU best practice countries are complementary for the EU by-laws<sup>52</sup> specified in the introduction part herein. Information on the legislation on best EU practice countries are included in the second column from the right of the Legal gap Analysis Table

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<sup>41</sup>[ontime.es/...Ley-de...de-Transportes-Terrestres.pdf](http://ontime.es/...Ley-de...de-Transportes-Terrestres.pdf)

<sup>42</sup>[https://noticias.juridicas.com/base\\_datos/Admin/rd1211-1990.html](https://noticias.juridicas.com/base_datos/Admin/rd1211-1990.html)

<sup>43</sup><https://www.boe.es/buscar/doc.php?id=BOE-A-2000-5011>

<sup>44</sup>[https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2006-19826](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2006-19826). See also – General reference: <http://www.safetyway.es/en/spanish-regulations.html>

<sup>45</sup> <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1977-05-02;264>

<sup>46</sup> References: <https://bertona.it/en/certification-atp-borgomanero.html>,

[https://www.confetra.com/it/centrostudi/doc\\_pdf/quaderni\\_p057-105%20q107.pdf](https://www.confetra.com/it/centrostudi/doc_pdf/quaderni_p057-105%20q107.pdf)

<sup>47</sup>[https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006071367?fonds=CODE&page=1&pageSize=10&query=Code+rural+et+de+la+p%C3%A0che+maritime&searchField=ALL&searchType=ALL&tab\\_selection=all&typePagination=DEFAULT](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071367?fonds=CODE&page=1&pageSize=10&query=Code+rural+et+de+la+p%C3%A0che+maritime&searchField=ALL&searchType=ALL&tab_selection=all&typePagination=DEFAULT)

<sup>48</sup>[https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000023086525?init=true&page=1&query=code+des+transports+&searchField=ALL&tab\\_selection=all](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000023086525?init=true&page=1&query=code+des+transports+&searchField=ALL&tab_selection=all)

<sup>49</sup>[https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006074228?init=true&page=1&query=code+de+la+route+&searchField=ALL&tab\\_selection=all](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006074228?init=true&page=1&query=code+de+la+route+&searchField=ALL&tab_selection=all)

<sup>50</sup>[https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006070719?init=true&page=1&query=code+penal&searchField=ALL&tab\\_selection=all](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070719?init=true&page=1&query=code+penal&searchField=ALL&tab_selection=all)

<sup>51</sup>[http://www.autoritecompetenteatp.cemafroid.fr/index\\_en.htm](http://www.autoritecompetenteatp.cemafroid.fr/index_en.htm)

<sup>52</sup> By-Law (EC) No 852/2004 of the European Parliament and of the Council on the Hygiene of Foodstuffs was transferred to the Turkish legal system with the By-Law of Food Hygiene of 2011 (Effective Date: 17.12.2011);

By-Law (EC) No 853/2004 of the European Parliament and of the Council Laying Down Specific Hygiene Rules for Food of Animal Origin was included in the By-Law on Specific Hygiene Rules for Food of Animal Origin (Effective Date: 27.12.2011);

By-Law (EC) No 854/2004 of the European Parliament and of the Council Laying Down Specific Rules for the Organisation of Official Controls on Products of Animal Origin Intended for Human Consumption was included in the Turkish Legislation with the By-law on Specific Rules for the Organization of Official Controls on Products of Animal Origin (Effective: 17.12.2011);

Commission By-Law (EC) No 37/2005 of 12 January 2005 on the Monitoring of Temperatures in the Means of Transport, Warehousing and Storage of Quickfrozen Foodstuffs Intended for Human Consumption was included in the Turkish law with the Turkish Food Codex Communiqué on the Monitoring of Temperatures in the Means of Transport, Warehousing and Storage of Quick-Frozen Foodstuffs Intended for Human Consumption (Effective Date: 18.10.2014).

### 3. LEGAL GAP ANALYSIS TABLE

ATP PROVISION/COMPONENT	EQUIVALENT IN TURKISH LAW	EQUIVALENT IN BEST EU PRACTICE COUNTRIES	RECOMMENDATION(S)	COMPLIANCE
Article 1 & Annex 1 Definition of special equipment used for the international transportation of perishable foodstuffs and related standards	Definition of special equipment is stated in the article 4 of the <b>“By Law on Special Equipment to Be Used For The Transportation Of Perishable Foodstuffs”</b>	<p>- France: Rural and Maritime Fisheries Code A. R.231-48 and Decree on the Technical Conditions of the Transportation of Temperature controlled Food define the special equipment in line with ATP.</p> <p>Spain: Royal Decree-Law no. 237/2000 Article 1 defines special equipment with reference to ATP Article 1 &amp; Annex 1.</p> <p>Italy: It was specified in line with the ATP through Code No. 264 dated 1977.</p>	Since definition of special equipment is stated in the article 4 (1) of the By Law on Special Equipment to Be Used For The Transportation Of Perishable Foodstuffs, no additional definition is required.	Complies
Article 2 a- Obligation to Perform Inspections and Tests	Obligation regarding to perform inspections and tests is regulated in the articles 5, 6 and 20 of the <b>“By Law on Special Equipment to Be Used For The Transportation Of Perishable Foodstuffs”</b>	- France: Decree on the Technical Conditions of the Transportation of Temperature controlled Food and Cemafruid technical documents specify the standards that the equipment to be complied with and the procedures for compliance control of these standards.	According to Legislative Decree No. 655, administrative fines can be specified only within the legislation published on the Official Gazette. Under article 5/4 of the By-Law, institutions in the scope of By-Law are obliged to comply with the regulatory	Partially Complies

		<p>Spain: Royal Decree-Law no. 237/2000 specifies the testing obligation, the standards to be complied with regarding the special equipment, and the procedures for compliance control of these standards. Tip Inspection and testing Centers are authorized and accredited in scope of Royal Decree 2200/1995.</p>	<p>acts published by the Ministry, and in case of the violation of said obligations, only one penal sanctioning is stated in article 23/1-a of the By-Law. For this reason, many different obligations stated in the Directive became subjected to same penal sanctioning without distinction number of violations or characteristics of violations. To prevent this, By-Law and Directive should be united and different penal sanctions for different violations should be provided.</p> <p>In this scope, suspension, cancellation, and similar sanctions which are specified in the Legislative Decree No. 655 can be regulated</p>	
<p>b- Validity of ATP certificates issued by foreign countries (obligation regarding the ATP certificates issued by Contracting States; optional for those issued by other States)</p>	<p>Special equipment produced in foreign countries and registered in Turkey is regulated in article 17 of the <b><i>“By-Law on Special Equipment to Be Used for The Transportation Of Perishable Foodstuffs”</i></b></p>	<p>- France: Decree on the Technical Conditions of the Transportation of Temperature controlled Food, Cemafroid technical documents An ATP Certificate of Compliance issued by another Contracting State may be recognized in France. For the aforementioned situation, the French authorities may request control, testing or tunnel testing if they deem it necessary.</p>	<p>It is suggested that, through the article that will be added to By Law on Special Equipment to Be Used For The Transportation of Perishable Foodstuffs, The ATP certificate of compliance issued by the authorities of another Contracting State regarding the equipment in a vehicle with a foreign license plate engaged in international transportation is accepted as valid during the period the related vehicle is in Turkey until proven otherwise.</p>	<p>Partially Complies</p>

		- Spain: Pursuant to Article 2 of Royal Decree-Law no. 237/2000, for the ATP Certificate of Compliance to be recognized in Spain, it must have been duly issued by the competent authorities of the country of origin of the vehicle. Recognition of the ATP Certificate of Compliance of a vehicle which is registered in another Contracting Party is dependent on its compliance with the format stated in the ATP		
<p>Article 3 Types and conditions of transportation within the scope of ATP</p> <p>(Land Road transportation, railway transportation; intermodal sea passings of less than 150 km before, after or between these two)</p>	<p>Scope of the <b>By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs</b>, is defined in the article 2.</p>	<p>France: There is no specific regulation since France had implemented the ATP to the inland transportation.</p> <p>Spain: Pursuant to article 1 of the 237/2000 numbered Royal Decree, only land transportation is included in the scope.</p> <p>Italy: Pursuant to Code numbered 264 and dated 1977, scope is regulated in compliance with the ATP and there is no special regulation.</p>	<p>Within the amendment of article 2, abiding with the scope and boundaries of ATP for international transportations and including the land and railway transportation to the scope of inland transportation is suggested, if the conditions of the field require.</p>	<p>Partially Complies</p>
<p>Article 4 &amp; Annex 1-2</p> <p>a) Obligation to use special equipment for the road transportation of perishable foodstuffs</p>	<p>Rules regarding the obligation of using special equipment is regulated in the article 5 of the <b>By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs</b>.</p>	<p>- France: Rural and Maritime Fisheries Code Article R231- 45</p> <p>All of these legislations stipulate that special equipment should be used for the land transportation of perishable food.</p> <p>- Spain: Royal Decree-Law no. 237/2000 Article 7</p>	<p>Within the amendment of article 5 of the By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs, it should be regulated that temperature requirements which shall be exercised for international transportation are temperature requirements stated in ATP, and vehicles operating on international transportation of frozen</p>	<p>Complies</p>



		<p>- Italy: Regulated in parallel with the ATP by Code No. 264 dated 1977. During the transportation conducted in scope of ATP, ATP Certificate of Compliance or approved copy should be present in the vehicle and should be submitted to the authorities when asked.</p>	<p>foodstuffs should have a temperature recording device.</p>	
<p>b) Sanctions for noncompliance with the obligations</p>	<p>Administrative fines are regulated in the article 23 of the <b><i>By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs.</i></b></p>	<p>- France: Penal Code is regulated in Rural and Maritime Fisheries Code Article L205, Code on Transportation Article L1451, Code on Land Roads Article L121-4. Transportation of foodstuffs in a vehicle that does not have the required equipment to allow proper storage of foodstuffs, transportation of perishable foodstuffs in equipment that does not have air temperature recording devices requires an administrative fine of up to 1500 Euros, and an administrative fine of up to 3000 Euros in case of recurrence. In case of a fake ATP certificate, a penalty of 10 years imprisonment and a fine of 150,000 Euros shall be imposed in accordance with the criminal law. If persons who do not reside or have a job in France do not pay the administrative fines at the time of the penalty, the vehicle will be confiscated until payment is performed.</p>	<p>Sanctions regarding the breach of obligations are regulated in the article 23 of the By-Law. Within the amendment of mentioned article, different sanctions which are stated in the 655 numbered code, such as cancellation and suspension, should be specified for different violations.</p>	<p>Complies</p>

		<p>- Spain: Pursuant to Article 197 (26.2) of Code No. 16/1987 on the Regulation of Land Transportation amended by Royal Decree-Law No. 1225/2006, an absent, expired or fake ATP certificate of compliance shall be subject to an administrative fine of 401 Euros, and not carrying the certificate in the vehicle despite the ownership of the certificate, to an administrative fine of 201 Euros.</p>		
		<p>- Italy: Specified by the Code No. 264 dated 1977 For the act of carriage within the scope of ATP, the ATP certificate of compliance or its approved copy must be kept in the vehicle carrying out the international transportation of perishable foodstuff and must be submitted when asked by the authorities. In addition to not having an ATP certificate, failure to comply with the required temperatures during transportation, not installing a temperature recorder to the vehicle, and not keeping these records for one year also require administrative fines</p>		



<p>c- Persons subject to obligations and sanctions: - The person who is the sender according to the transportation document for rental and fee-based transportation / the person who signed the transportation contract with the carrier if there is no transportation document (if the carrier provided a warranty or promise for this, he/she will also be addressed)</p> <p>- Carriers in other cases (freelance carriage)</p>	<p>Article 23 of <b><i>By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs.</i></b></p>	<p>- France: Specified in the Code on Transportation Article L1451-1. Transportation companies, road transportation vehicle and driver hire companies are companies that order the carriage of goods by road (the sender).</p>	<p>Persons subjected to sanctions and obligations should be regulated in the By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs.</p>	<p>Partially Complies</p>
<p>Article 5</p> <p>It is stated that, except for the issues specified in article 3, thermal sea containers, and land road/railway transportations carried out before or after seaway passing are not subjected to ATP regulations.</p>	<p>Article 2 of the <b><i>By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs.</i></b></p> <p>In accordance with the article 5/3 of the By-Law on Special Equipment to be Used for the Transportation of Perishable Foodstuffs, businesses operating on transportation of perishable foodstuffs are obliged to obtain transportation authority certificate. Within this article, it is indirectly stated that By-Law is exclusive for the land road transportation.</p>	<p>There is no specific regulation regarding the Thermal Sea Containers.</p>	<p>Even if By Law is limited with the land road transportation, mentioned thermal containers can be used in the land road transportation too. By updating article 2 of the By-Law on Special Equipment to be Used for the Transportation of Perishable Foodstuffs, it is suggested that stating the land road and railway transportations of thermal containers are out of scope, would be appropriate.</p>	<p>Non-Compliant</p>

<p>Article 6</p> <p>Obligation to take the required general measures for the effective implementation of the ATP:</p>	<p>Controls and Roadside Controls are regulated in the article 20 and 21 of the <b>By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs.</b></p>	<p>- France: Article L205 of the Rural and Maritime Fisheries Code, and Article L1451 of the Code on Transportation. In practice, roadside controls are carried out by trained police officers and by advance notice to the Prosecutor. Prosecutor has a right to assert objection. In case where advance notice to the Prosecutor is not possible due to emergency of the case, it is stated notice should be sent to the prosecutor without delay after the inspections are completed. There is no use of a control form.</p> <p>- Spain: Regulated in Royal Decree Law no. 1211/1990. The police responsible for the monitoring of transportation, the Ministry of Transport Mobility and Urban Agenda and the inspectors of the Autonomous Communities are considered as the control authorities. There is no use of a control form.</p> <p>- Italy: Specified by Code no. 264 dated 1977 and Presidential Decree no. 327/80. The Ministry of Sustainable Infrastructure and Mobility is authorized for technical requirements, and the Ministry of Health is authorized for health and hygiene requirements.</p>	<p>Controls and roadside controls are regulated in articles 20 and 21 of the By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs. By adding a clause to Article 20 of the By-Law, it can be regulated that control activities arising from the By-Law will be conducted in the scope of By-law on Inspection of Transport Services.</p>	<p>Complies</p>
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<p>b) Obligation to notify the related Contracting States of general measures, violations of the ATP and penalties for violation of the ATP</p>	<p><b>Presidential Decree No. 1 on the Organization of the Presidency</b> article 474 (1) (ğ)</p>	<p>There is no specific regulation.</p>	<p>No additional recommendation is required.</p>	<p>Complies</p>
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### 3.1 ATP PROVISIONS/COMPONENTS

ATP provisions/components are recorded in the left column of the Legal Gap Analysis Table.

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#### 3.1.1 ATP ARTICLE 1 & ANNEX 1

Article 1 identifies the specific transportation equipment to be used in the international transportation of the perishable food stuff by referring to Annex 1. Accordingly, said equipment is “insulated”, “refrigerated”, “heated” “mechanically refrigerated”, or “mechanically refrigerated and heated” and is in accordance with the definitions and requirements specified in the Annex 1.

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#### 3.1.2 ATP ARTICLE 2

This article includes two components:

##### **a) Obligation of inspection and testing**

Contracting States are obliged to inspect and test the compliance of the specific equipment to the requirements stated in the ATP Annex 1 Appendix 1 (equipment controls are performed before the equipment is put into service, periodically, at the latest, every six years and in other cases deemed necessary by the competent authorities), Appendix 2 (measurement and control methods of insulating capacity of specific equipment and effectiveness of cooling and heating devices), Appendix 3 (ATP certificate forms), and Appendix 4 (distinguishing marks to be affixed to specific equipment).

Annex 2 of the ATP should include the preservation of quickly/deep frozen food groups and refrigerated food groups in Annex 3 and the maximum temperatures stated in the same annexes envisaged throughout their transportation.

##### **b) Validity of the ATP certificates issued by foreign countries**

Each Contracting State is obliged to legitimize ATP certificates issued duly and in accordance with the competent authorities of another state (see paragraph 1 of Annex 1, Appendix 1). Recognition of certificates conforming to ATP requirements (Annex 1, Appendix 1 and Appendix 2) issued by States that are not parties to the ATP are at the discretion of the Contracting States.

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#### 3.1.3 ATP ARTICLE 3

##### **Types and conditions of transportation within the scope of ATP**

Relevant articles determine the implementation of the ATP based on the type of transportation. First of all, it is stated that in case of foodstuffs stated in the Annex-2 and Annex-3 are carried with land road, railway or with the combination of these two, and delivery country is a Contracting Party, ATP regulations should prevail. Besides, it is stated that in intermodal seaway passings shorter than 150 km, only if conducted before, after or during the one or more railway and/or land road transportation, ATP regulations will prevail. However, after the seaway passings conducted except from the conditions stated above, it is stated that land road/railway transportation of load to different Contracting Party should be evaluated separately without considering the seaway passing.

It is also stated in the last paragraph of article 3, that the provisions of the ATP shall be applied to foodstuff intended for human consumption, and the appliance to other foods is subject to the discretion of the Contracting State.

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#### 3.1.4 ATP ARTICLE 4 & ANNEX 2, ANNEX 3

Relevant article consists of three different components:

### **a) Obligation to use special equipment in the land transportation of perishable foodstuffs**

The equipment stated in the 1st article of the ATP should be used in the transportation of the perishable foodstuffs specified in the Annex 2 (quickly/deep frozen food groups and the maximum temperature values required for the their loading, transportation and unload. Sampling and temperature measuring procedure during the transportation for the verification and recording of transportation heat)), and Annex 3 (refrigerated food groups and the maximum temperature values they can be transported, loaded and unloaded) Transportation temperature values should be maintained during the transportation, required measures should be taken during the loading and unloading in order to preserve the temperature values.

As an exception of the obligation regarding the use of special equipment, ATP shall be implemented within the date of entry into force, unless it is conflicted with the obligations arising from the Contracting Party's international agreements that are already in force or international agreements placing these.

### **b) Sanctions to be applied in case of the non-compliance with the obligation**

Sanctions should be quintessential. Accordingly, the Contracting State that determines the non-compliance with the use of ATP certificate and temperature requirements stated at the Annex 2 and Annex 3 within the scope of ATP during the transportation may not allow the unloading of the foodstuff within it's own territory deems the unloading of the foodstuff contrary to public health requirements, and if the conditions for evacuation permission are not met. Relevant State may also prohibit the entry of foodstuffs into its territory for reasons of public health and zoonophylaxis and provided that it is not contrary to other obligations arising from the other international agreements or may subject the foodstuffs to specific terms it determines.

### **c) Nature of persons<sup>53</sup> subject to provision and sanction**

About the compliance with the requirements of the agreement;

- For rental carriages or carriages for a fee, person who is stated as a sender pursuant to carriage document; if carriage document is not issued, real or legal person who signed a carriage contract with the transporter shall be addressed.

- In other cases (transport for own account) transporter is obliged to comply with the ATP requirements.

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#### 3.1.5 ATP ARTICLE 5

Excluding the issues stated in the article 3, it is stated that; land road/railway transportations of thermal sea containers manufactured with equal qualifications pursuant to ISO 1496-2 or competent authorities of Contracting States, conducted before or after the seaway passing are not subjected to ATP regulations.

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#### 3.1.6 ATP ARTICLE 6

Relevant article consists of two components:

### **a) Obligation to take the general measures necessary for the effective implementation of the ATP**

General measurements that should be taken by Contracting States in the effective implementation of the ATP are disesteemed in the ATP text. However, it can be seen that the obligation to take general measures corresponds to the obligation to develop control mechanisms. Among these control mechanisms, land road inspections stand out as a deterrent factor.

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<sup>53</sup> In legal terminology, the term "Person" is divided into two as 'natural person' and 'legal entity' Natural persons are individuals. Legal entities are made up of natural persons congregated for the fulfillment of various commercial and social purposes, and are subject to various rights and obligations by the rule of law, regardless of not being a natural person.

## **b) Obligation to notify the relevant Contracting State of general measures, violations of the ATP and penalties for violation of the ATP**

Contracting States are obliged to notify general measurements taken within the scope of ATP with one another via relevant authorized institutions. Similarly, if any Contracting State finds that a person resident in the territory of another Contracting State has violated the ATP and/or imposes sanctions against that person, administration of the State applying the violation and/or sanction is obliged to notify the administration of the Contracting State of the settlement of the violation and/or sanction.

## **3.2 EQUIVALENTS OF ATP PROVISIONS/COMPONENTS IN TURKISH LEGAL SYSTEM**

Equivalents of ATP provisions/components in Turkish legal system is placed in the second column from the left of the Legal Gap Analysis Table.

### **3.2.1 ATP ARTICLE 1 & ANNEX 1**

#### **By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs**

In accordance with Article 4 (1) (m) of the By-Law, special transport equipment refers to equipment (vehicle superstructures, containers, insulated transport containers and similar) consisting of insulated box/equipment defined in Annex 1 of the ATP Agreement and a cooling/heating device, if any.

### **3.2.2 ATP ARTICLE 2**

#### **a) Obligation of inspection and testing**

#### **By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs**

Chapter 5 regulates testing, inspection and certification processes. Relevant chapter includes provisions regarding ATP type approval test procedures, periodic/exceptional inspection of special transportation equipment used in perishable food transportation, issuance of ATP conformity certificate, ATP conformity certificate issued for equipment manufactured according to the reference unit, ATP conformity certificate issued as a result of periodic/exceptional inspection, ATP certificate of conformity issued to insulated equipment/containers with an internal volume of less than 2 m<sup>3</sup>, verification of temperature monitors/loggers.

#### **b) Validity of the ATP certificates issued by foreign countries**

#### **By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs**

Article 17 of the By-Law has determined the necessary conditions for issuing a national ATP Certificate of Conformity in case of registration of special equipment manufactured in the country of another Contracting State in our country. Accordingly:

a) ATP Type Test Report for equipment, issued by the competent authority of the country party to the ATP Agreement, or reference equipment type test report of the relevant series for mass production equipment,

b) ATP Compliance Document/Certificate issued by the competent authority in the country where the equipment was manufactured, and if the equipment in question is in use, the ATP Compliance Document/Certificate issued by the competent authority of the country where it was previously registered,

c) In the case of mass-produced equipment, the manufacturer's declaration containing the technical specifications of the equipment should be issued.

Periodic inspection may be performed on used equipment, if deemed necessary by the approval authority.

If the approval authority deems it appropriate, it can perform the controls regarding the compliance of the production and the control of the insulated equipment coming from abroad before preparing the ATP certification of the insulated equipment manufactured abroad.

Besides, in scope of temporary article 1, after the date of 15/5/2017, it is required to have ATP certificate of Compliances of special transportation equipment used for the transportation of perishable foodstuffs, from the approval institution authorized by the Ministry. Also, it is stated that documents provided by authorized institution of another contracting state before 15/5/2017, should be converted to ATP Certificate of Compliance by applying to approval institution.

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### 3.2.3 ATP ARTICLE 3

#### **By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs**

Pursuant to Article 2 of the By-law:

- a) Carriers involved in the transportation of perishable foodstuffs,
- b) Special equipment to be used in the transportation of perishable foodstuffs (insulated equipment, cooler/heating device, vehicle, equipment and so forth),
- c) Perishable foodstuff transportation activities of all public institutions and organizations,
- d) International transportations with vehicles with foreign license plates on the inland roads are within the scope of the By-law.

The transports not included in the scope of the By-Law are as follows:

- a) Carriage operations carried out in accordance with the provisions of the legislation to be applied in the state of war and in the state of emergency, or in accordance with the international agreements,
- b) The inland or international transportation of perishable foodstuffs not included in the Agreement on International Transportation of Perishable Foodstuffs and Special Equipment to be Used in Such Transportation Activities.”

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### 3.2.4 ATP ARTICLE 4 & ANNEX 2, ANNEX 3

#### **a) Obligation to use special equipment in the land transportation of perishable foodstuffs**

#### **By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs**

Pursuant to art. 5, special transport equipment used in the transport of perishable foods must have an ATP Certificate of Conformity. The article states that the documents of the equipment manufactured in Turkey or manufactured abroad and registered in Turkey will be issued by the Ministry of Transport and Infrastructure or the institution/organization authorized by the Ministry, and notes that it is obligatory to use the labels and signs defined in the ATP Agreement on special transport equipment used for the transport of perishable foods.

#### **b) Sanctions to be applied in case of the non-compliance with the obligation**

#### **By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs**

Article 23: “(1) Pursuant to Article 28 of the Legislative Decree No. 655, for the following violations detected in land road and operational inspections to be carried out for those operating within the scope of this By-law;

... b) an administrative fine of two thousand (2000) Turkish Liras shall be imposed for each subparagraph to the carrier who violates the first paragraph<sup>54</sup> of Article 6...

(5) Administrative fines specified in this article shall be implemented by increasing the revaluation rate determined and announced in accordance with the Code No. 213 for that year, effective from the beginning of each calendar year. For the calculation of such administrative fines, fractions of one (1) Turkish Lira shall not be taken into account.

(6) Administrative fines imposed within the scope of this By-law shall be paid within one month following the notification.

(7) Due to opposition to this By-law and the regulatory actions published by the Ministry regarding the activities within the scope of this By-law, the Ministry personnel in charge of inspections shall take action in absentia for misdemeanors and violations to be detected in the electronic environment."

### **c) Nature of persons subject to provision and sanction**

#### **By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs**

Pursuant to Article 23, the addressee of ATP obligations and violations is the carrier.

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#### **3.2.5 ATP ARTICLE 5**

There is no regulation regarding the exemption of land road/railway transportation exemptions of thermal sea containers.

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#### **3.2.6 ATP ARTICLE 6**

##### **a) Obligation to take the general measures necessary for the effective implementation of the ATP**

#### **By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs**

Ministry of Transport and Infrastructure in accordance with article 21 of the regulation on land road controls inspects the vehicles engaged in transportation within the scope of the activities specified in this By-Law at the fixed or mobile inspection stations established by the highways for the control of vehicles traveling in traffic. Inspections of vehicles carrying perishable food are also carried out by personnel of the public institutions authorized to conduct inspections on the road, from the institutions specified in Article 28 of the Decree Law No. 655. The by-law reserved the provisions of Article 20 and other legislation related to controls.

##### **b) Obligation to notify the relevant Contracting State of general measures, violations of the ATP and penalties for violation of the ATP**

#### **Presidential Decree No. 1 on the Organization of the Presidency**

Duties and capacities of the Ministry of Transport and Infrastructure include carrying out the international relations required by transportation, maritime, communication, postal business and services, execution of agreements and compliance with the legislation in these fields if required by the international legislation (Art. 474 (1) (ğ)).

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<sup>54</sup>The text of the provision is as follows: "Obligations of the user of special transportation equipment  
ARTICLE 6

(1) Obligations of users of special transportation equipment involved in the transportation of perishable foodstuffs are as follows:

a) To ensure that the transportation equipment has the appropriate mark class in accordance with the procedures and principles published by ATP or the Ministry based on the foodstuffs being carried.

b) To have ATP Certificate of Compliance or Perishable Foodstuff Transportation Certificate issued by the approval authority for the equipment and to mark the transportation equipment in accordance with these documents.

c) To carry out the activities regarding the inspections of the transportation equipment of which periodical inspection date is due or which requires exceptional inspection as a result of any repair or modification, to keep the documents of these equipments up-to-date and to present the documents in question during the inspections."



### 3.3 THE BEST EU PRACTICE COUNTRIES

The best EU practice countries are placed in the second column from the right of the Legal Gap Analysis Table.

#### 3.3.1 SPANISH LEGISLATION

Principal text of the Spanish legislation on ATP consists of the Code No. 16/1987 on the By-Law of Road Transportation, Royal Decree No. 1211/1990 as an approval for this Code, Royal Decree No. 237/2000, and Royal Decree No. 1225/2006 as an amendment for the Code No. 16/1987 on the By-Law of Road Transportation. Royal Decrees constitute most of the legislative arrangements in the Spanish legislation. The reason for this is that the country's regime is monarchy based on parliamentary democracy. Spain is the only EU country to implement ATP controls on railway transportation.<sup>55</sup>

##### 3.3.1.1 ATP ARTICLE 1 & ANNEX 1

Article 1 of the Royal Decree No. 237/2000 identifies the specific equipment by referring to ATP Article 1 and Annex 1.

##### 3.3.1.2 ATP ARTICLE 2

Royal Decree No. 237/2000 specifies the necessary standards for specific equipment and relevant transactions regarding the control of compliance with such standards. Tip Test and Inspection Centers are accredited and authorized in scope of Royal Decree No. 2200/1995.

Article 2 of the Royal Decree No. 237/2000 relates to the recognition of foreign ATP certificates of compliance. In order for the ATP certificates to be recognized, certificate of compliance should be duly issued by the competent authorities of the country of origin of the vehicle. Recognition of the certificate of compliance of a vehicle registered in another State party to the ATP shall be subject to the condition that the certificate complies with the model specified in the ATP.

##### 3.3.1.3 ATP ARTICLE 3

Only land transportations are included in the scope, by the article 1 of the Royal Decree No. 237/2000.

##### 3.3.1.4 4 ATP ARTICLE 4 & ANNEX 2, ANNEX 3

Obligation to use an ATP certificate of compliance in international land transports is stipulated in Article 7 of Royal Decree 237/2000.

Sanctions regarding the absence of ATP certificate of compliance were arranged in the Royal Decree No. 1225/2006 as an amendment for the Code No. 16/1987 on the Regulation of Road Transportation. Amendment and Decree relates to an administrative fine of 401 Euro regarding the absence of ATP certificate of compliance in the vehicle transporting the perishable foodstuffs as per the article 197 (26.2) of the Code No. 16/1987 on Regulation of the Road Transportation, and an administrative fine of 201 Euro for not having the ATP certificate of compliance in the vehicle. Authorities competent to impose sanctions are also deemed as the relevant control authorities. These shall be specified in the description under the article 6.

##### 3.3.1.5 ATP ARTICLE 5

There is no special regulation regarding the thermal sea containers.

<sup>55</sup> UNECE questionnaire 27.07.2020  
unece.org/...trans...2020/wp11/ECE-TRANS-WP11...17e.pdf

### 3.3.1.6 ATP ARTICLE 6

As per the Royal Decree No. 1211/1990 as an approval for the Code on Regulation of the Road Transportation, competent authority responsible for the implementation of the ATP is the Ministry of Transport, Mobility and Urban Agenda. Duties of the other relevant Ministries are subjugated, limited to their own jurisdiction. The police responsible for the monitoring of transportation process, the Ministry of Transport, Mobility and Urban Agenda, and inspectors of the Autonomous Communities are the control authorities. No control form is used in the controls.

Spain performed 1245 road and 11 railway controls in 2019 and detected 25 ATP violations in these controls.<sup>56</sup>

### 3.3.2 ITALIAN LEGISLATION

ATP became legitimate in Italy with the Code No. 264 dated 02.05.1977. Presidential Decree No. 404 dated 29.05.1979, Presidential Decree No. 327/80 and Ministry of Transport Decrees No. 1182 and 1183, both dated 28.02.1984 have been issued regarding the implementation of this Code.

#### 3.3.2.1 ATP ARTICLE 1 & ANNEX 1

The definition of specific equipment was determined in parallel with the ATP with the Code No. 264 dated 1977.

#### 3.3.2.2 ATP ARTICLE 2

Obligation of testing and inspection were determined with the Code No. 264 on 1977 in parallel with the ATP. ATP certificates of compliance are issued by the Ministry of Sustainable Infrastructure and Mobility. The Ministry is authorized for technical entrustment in this regard with the Decree.

#### 3.3.2.3 ATP ARTICLE 3

There is no special provision.

#### 3.3.2.4 ATP ARTICLE 4 & ANNEX 2, ANNEX 3

The definition of specific equipment was determined in parallel with the ATP with the Code No. 264 dated 1977. The ATP certificate of compliance or its approved copy must be kept in the vehicle during the international transport of perishable foodstuffs within the scope of the ATP and must be submitted when asked by the authorities. Administrative fine is applied in the event that ATP certificate of compliance is not obtained, or carrier does not keep it in the vehicle, and in the event of non-compliance with the required temperatures during the transportation or storage, and if the relevant records are not kept for one year.

#### 3.3.2.5 ATP ARTICLE 5

There is no special provision.

#### 3.3.2.6 ATP ARTICLE 6

Relevant article was decided with the Code No. 264 on 1977, and Presidential Decree No. 327/80. Accordingly, the Ministry of Sustainable Infrastructure and Mobility is authorized for the technical requirements, and the Ministry of Health is authorized for the health and hygiene requirements.

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<sup>56</sup> UNECE questionnaire 27.07.2020  
unece.org/...trans...2020/wp11/ECE-TRANS-WP11...17e.pdf

There is no data regarding the figures determined in the control performed by Italy in 2019, however, 75 ATP violations detected in the same year.<sup>57</sup>

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### 3.3.3 FRENCH LEGISLATION

French legislation on the implementation of ATP principally consists of the Code on Rural and Marine Fisheries, Code on Road Transport, Code on Road Traffic, Decree on Technical Requirements on Temperature-Controlled Transportation of Perishable Foodstuffs dated 27.11.2020 (this decree is renewed periodically, and the previous version is dated 2018), and technical documents of Cemafruid (An organization authorized for ATP certifications by a Decree of 2008). Technical documents of Cemafruid enter into force upon the approval of the relevant Ministry.

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#### 3.3.3.1 ATP ARTICLE 1 & ANNEX 1

Code on Rural and Marine Fisheries article R.231-48 and Decree on Technical Requirements on Temperature-Controlled Transportation of Perishable Foodstuffs defines the specific equipment in parallel with ATP.

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#### 3.3.3.2 ATP ARTICLE 2

Obligation of testing and investigation is primarily included in the Decree on Technical Requirements on Temperature-Controlled Transportation of Perishable Foodstuffs. Decree specifies the technical requirements for obtaining ATP certificate of compliance and consists of provisions in regards to the investigation of test centers.

Cemafruid is deemed authorized for the technical investigation of specific equipment and issuance of ATP certificate of compliance. Certificates are issued by means of DATAFRIG, an electronic system. Technical documents of Cemafruid finalizes the Decree on Technical Requirements on Temperature-Controlled Transportation of Perishable Foodstuffs.

Obligation of recognition of ATP certificates of compliance issued by the relevant authorities of other Contracting States and respective terms are included in the technical documents of Cemafruid. Accordingly, the applicant applies to Cemafruid with the test reports and the file containing the certificates issued by the authorities of the country of production. If these documents are deemed valid, ATP certificate of compliance is issued. French authorities can stipulate control, test or tunnel test before the certification.

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#### 3.3.3.3 ATP ARTICLE 3

There is no special provision.

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#### 3.3.3.4 ATP ARTICLE 4 & ANNEX 2, ANNEX 3

Article R231-45 of the Code on Rural and Marine Fisheries covers the obligation of ATP certificate of compliance.

Sanctions regarding the disobedience are included in the Penal Code, article L205 of the Code on Rural and Marine Fisheries, Article L1451 of the Code on Transportation, Article L121-4 of the Code on Land Roads. Transportation of foodstuffs in a vehicle that does not have the required equipment to allow proper storage of foodstuffs, transportation of perishable foodstuffs in equipment that does not have air temperature recording devices requires an administrative fine of up to 1500 Euros, and an administrative fine of up to 3000 Euros in case of recurrence. In case of using fake ATP certificate of compliance, relevant judicial authorities are reported in this regard. In this case, an investigation is initiated by the Prosecutor's Office and the sanctions stipulated for fraudulent crimes under the Penal Code (10 years imprisonment and a fine of 150.000 Euros) are applied. Penal codes are applied in addition to administrative sanctions. Vehicles of the persons not residing or working at France are retained in case

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<sup>57</sup> UNECE questionnaire 27.07.2020  
unece.org/...trans...2020/wp11/ECE-TRANS-WP11...17e.pdf

they do not pay the fine they are contingent upon at the moment of penal sanction until they pay the relevant amount. The authorities competent to impose administrative fines are the same as the control authorities, which will be examined under Article 6 below.

Persons subject to the obligation of having ATP certificate of compliance and sanctions to be applied in case of non-compliance thereof are determined in the article L1451-1 of the Code on Transportation. These entities (persons) are transportation companies, road transportation vehicle and driver hiring companies, and companies ordering road transportation in this regard (sender).

#### 3.3.3.5 ATP ARTICLE 5

There is no special provision.

#### 3.3.3.6 ATP ARTICLE 6

Obligation to take general measures is covered by the article L205 of the Code on Rural and Maritime Fisheries, and Article L1451 of the Code on Transportation.

Accordingly, persons authorized with the performance of relevant controls consist of police, officials appointed by or working in the Ministry responsible for transport, officials authorized to record the traffic offenses, and customs officials. In practice, roadside controls are carried out by trained police officers and with condition of notifying the Prosecutor. The police are exclusively authorized to stop the travelling transportation vehicle among other administrative authorities.

France conducted 824 land road controls in 2019, and no ATP violations were detected during these controls.<sup>58</sup>

### 3.4 ANALYSIS OF THE LEGAL GAPS AND RELEVANT PROPOSAL(S)

Proposals are recorded in the right column of the Legal Gap Analysis Table.

In this section, the proposals of the provisions/components of the ATP and the current Turkish legislation are compared with one another. Possible legislative amendments in Turkey should be determined by identifying alternative ways, if any, in consideration of the provisions of the best EU practice.

The basic factors in determining the recommendations made in the report are as follows:

- ATP is an international agreement that can be directly implemented in Turkish law. ATP shall be deemed as the Code as per the article 90. However, it is not a directly effective international agreement because it did not go into detailed regulation, especially on control and sanction issues. As a result, it should be transposed into the Turkish legal system via the provisions of the domestic legislation which should be drafted in parallel with the ATP and the hierarchy of norms. Thus, the scope and limits of the rights and obligations of individuals shall be determined clearly and precisely in accordance with the principle of legal certainty.
- The competent authority for the implementation of ATP for Turkey is the Ministry of Transport and Infrastructure. The reference for this authorization with respect to the ATP is the list of national competent authorities designated by each Contracting State for the implementation of the ATP, also published on the UNECE website. Its legal reference in terms of Turkish domestic law is the Presidential Decree No. 1 on the Organization of the Presidency Article 474 (1) (ğ). Pursuant to said article, duties and capacities of the Ministry of Transport and Infrastructure include carrying out the international relations required by transportation, maritime, communication, postal business

<sup>58</sup> UNECE questionnaire 27.07.2020  
unece.org>...trans...2020/wp11/ECE-TRANS-WP11...17e.pdf

and services, execution of agreements and compliance with the legislation in these fields if required by the international legislation.

- The implementation of the ATP requires, for all Contracting States, the active contribution and effort of all other stakeholder authorities determined by the domestic legislation of the related country, in addition to the national competent authority for the ATP. The Ministries responsible and authorized for setting ATP-related rules and carrying out controls in the most successful EU countries in the implementation of ATP examined in this report vary from country to country and vary within the same country over time (for reasons such as changes in the name and/or duties of the Ministry). However, a method including cooperation among all or some of the Ministries responsible for transportation, health, agriculture and economy, in which each Ministry is limited to its own field, stands out in general. The cooperation of different authorities is essential, especially with regard to the general measures (control) component of Article 6 of the ATP. The reason for this is that the subject-matters and locations of the controls within the scope of ATP are included in the duties and responsibilities of different authorities. Road officials, customs officials, the persons responsible for protecting public health, security guards, local authorities, etc. are assigned depending on the scope and location of the controls.

- By-Laws of the European Parliament and of the Council No. 852/2004, 853/2004, 854/2004 and By-Law of the EU Commission No. 37/2005 on food hygiene and official control of food stocks have been prepared with the aim of preventing foods intended for human consumption in general, and food of animal origin in particular, from endangering human health. These By-Laws consists of the processes, including transportation, in the presentation of cold chain foodstocks to consumers. Relevant By-Laws have been transferred into Turkish legal system with the By-Law of Food Hygiene, By-Law on Specific Hygiene Rules for Food of Animal Origin By-Law on Determination of the Specific Rules regarding the Official Control of Foods of Animal Origin, and Turkish Food Codex Communiqué on the Monitoring of Temperatures in the Means of Transport, Warehousing and Storage of Quick-frozen Foodstuffs, and compliance with EU legislation has been achieved. The subject is within the responsibilities of the Ministry of Agriculture and Forestry. Main subjects of the ATP, namely; specific equipment, ATP certificate of compliance, transportation of perishable foodstuffs with vehicles that has the requirements of ATP , the obligation to check the vehicles regarding the use of ATP certificate of compliance are not specifically regulated in these By-Laws. Therefore, control of the compliance of vehicles with ATP performing transportation of perishable foodstuff in terms of special equipment requires a separate control mechanism. In the recommendations made in the report, the necessity of non-contradiction with the controls and sanctions subject to the above-mentioned legislation, which fall into the Ministry of Agriculture and Forestry's responsibility, and not to lead to duplication on the issues of control and authority was taken into account.

- In the recommendations regarding the States party of the "Roadmap of Accession to and Implementation of ATP" published by the UNECE, it is proposed to refer to the ATP in existing Codes, rather than transferring the content of the ATP exactly to the domestic legislation and enacting a new Code on this subject during the alignment phase of the ATP. Underlying reason is that ATP is a *living instrument*. In particular, technical provisions of the ATP are amended and updated. Amendment of a code is a long-lasting process in almost every country. Hence, Any ATP-specific Code shall not be able to keep up with the ATP's effective pace.

- The rules regarding the structure of the Turkish legal system, the hierarchy of norms and the general principles regarding the nature of the laws were taken into account in this regard. The necessary provisions that should be included in the Codes in terms of guaranteeing the rights and freedoms of individuals, realizing the principle of the rule of law, and establishing the framework of the duties and responsibilities of the State are as follows: purpose (why it is accepted?), scope (what are the content and limits of the content?), definitions (what are the meanings of the terms included?), control principles (who are responsible for controls on whether or not the obligations are complied with?), main sanctions (what are the sanctions that those who do not comply with the obligations will be subject to?)

In the light of mentioned above, Turkish Legislation complies with the ATP and best EU practice countries legislation, regarding the ATP article 1 and Annex 1 and ATP article 6. Turkish legislation partially complies with the other ATP regulations/components. (ATP article 2, ATP article 3, ATP article 4 and Annex 2 and Annex 3). On the other hand, regarding the article 5 Turkish legislation is not compliant with the ATP and best practice EU countries. Legislation amendments are required in this regard.

In the recommendations made in the report, the following recommendations for legislative amendments, which are considered to serve to improve the institutional capacity of the Ministry of Transport and Infrastructure within the framework of the implementation of the ATP in Turkey, are included:

Uniting the By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs and Directive and providing different sanctions for different violations including the cancellation and suspension which are specified in the Presidential Decree numbered 655 With a provision to be added to By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, stating that the ATP certificate of compliance issued by the authorities of another Contracting State to the special equipment in a vehicle with a foreign license plate engaged in international transportation shall be considered valid during the period the relevant vehicle is in Turkey until proven otherwise, if a provision is made to recognize the ATP certificate of compliance of the States that are not party to the ATP, the relevant provision should be included in the By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, with the amendment to be made in By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, the scope of ATP should be defined by stating that scope and boundaries of ATP shall prevail for the international transportations and as including the railway transportation along with land road transportation if conditions on the field requires, By the amendment to be made in By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, it should be regulated that temperature values that should be abided for the international transportation are temperature values stated in the ATP and it should be regulated that vehicles carrying quick frozen foodstuff should have a temperature recording device, persons subjected to sanctions and obligations should be specified in accordance with the ATP by the amendment of By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, With the amendment of article 2 of the By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, thermal sea containers, and land road or railway transportations conducted before or after seaway passing are should be specified out of scope, with the article to be added to article 20 of the By-Law, it should be clarified that control activities regarding the mentioned By-Law shall be conducted by the means of By-law on Inspection of Transport Services.

1. ATP and its annexes are regularly updated and amended by the European Economic Commission Inland Transportation Committee Study Group of the Transportation of Perishable Foodstuffs (WP 11). The current version entered into force on the date of 06.07.2020. On the date this report is drafted, the Presidential Decree regarding the approval of the current text is not published in the Official Gazette. Because of this reason, it is not in force for Turkey. Even if the amendments are usually about technical details, in order to implement the ATP effectively, approval process of current texts of ATP should be completed.
2. Currently, there is no approved translation of the original English text of the ATP. For this reason, during the preparation of this report, only the original English text of ATP is taken into consideration. However, to ensure the correct understanding of the ATP, original English text of the ATP should be translated to Turkish by approval. Publishing the approved Turkish text in websites of the Ministry, TSI and other partners will serve Turkish public to have correct information regarding the ATP rules.

Special proposals regarding the articles are recorded in the following relevant ATP article/component.

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### 3.4.1 ATP ARTICLE 1 & ANNEX 1

#### **Relevancy of the EU best practice countries**

Specific equipment is clearly defined in the legislation of all three of the best EU practices, referring to article 1 of the ATP. This definition has been included in the relevant Codes in Italy and France, and the Royal Decree of Spain.

#### **Legal gap analysis**

Definition of special equipment is stated in the article 4 of the By Law on Special Equipment to Be Used For The Transportation Of Perishable Foodstuffs

#### **Recommendation(s)**



Since definition of special equipment is stated in the article 4 (1) of the By Law on Special Equipment to Be Used for The Transportation of Perishable Foodstuffs, no additional definition is required.

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### 3.4.2 ATP ARTICLE 2

#### **Relevancy of the EU best practice countries**

##### **a) Obligation of inspection and testing**

Relevant obligation is covered by the legislation of all of the EU best practice countries. It is based on the Royal Decree in Spain, relevant Code in Italy, and relevant Decree in France. Technical documents have been issued based on these main regulations in each three countries.

##### **b) Validity of the ATP certificates issued by foreign countries**

There is an obligation to recognition of ATP Certificate of Compliance issued by the authorized authorities of another Contracting State. This obligation is based on Royal Decree in Spain, to Decree and Cemafruid Technical Documents in France.

No provision has been found regarding the recognition of certificates in compliance with ATP requirements issued by States that are not parties to the ATP.

#### **Legal gap analysis**

##### **a) Obligation of inspection and testing**

According to Legislative Decree No. 655, administrative fines can be specified only within the legislations published on the Official Gazette.

Under article 5/4 of the By Law on Special Equipment to Be Used for The Transportation of Perishable Foodstuffs, Approval Institutions and ATP Inspection Centers are obliged to comply with the regulatory acts published by the Ministry regarding to their activities in scope of the By-Law. In case of the violation of said obligations, only one penal sanctioning is stated in article 23/1-a of the By-Law.

However, even if many different obligations are specified within the Directive on Test and Technical Inspection of Special Equipment to Be Used for The Transportation of Perishable Foodstuffs published by the Ministry, since administrative fines can be specified only within the legislations published on the Official Gazette, Directive does not provide administrative fine. Because of this reason, all of the obligations stated in the Directive became subjected to same sanctioning under the article 23/1-a of the By-Law.

##### **b) Validity of the ATP certificates issued by foreign countries**

The By-Law on Special Equipment to be Used in the Transport of Perishable Foodstuffs has determined the conditions required for the issuance of a national ATP certificate of conformity, in line with the legislation of ATP and best EU practice countries, in case special equipment manufactured in the country of another Contracting State is registered in our country. However, there is no statement in the By-Law regarding that the ATP certificate of conformity given by the authorities of another Contracting State to the equipment in a vehicle with a foreign license plate engaged in international transportation will be considered valid as long as the relevant vehicle is in Turkey until the contrary is proven. Although it has been stated that such certificates are accepted as valid in practice, since the relevant rule is related to individual rights and freedoms, it should be added to the By-Law and placed on a legal basis.

Turkish law does not contain any provision regarding the recognition of documents issued in compliance with the ATP requirements by the relevant authorities of the States that are not party to ATP.

#### **Recommendation(s)**



#### **a) Obligation of inspection and testing**

By uniting By-Law on Special Equipment to Be Used for the Transportation of Perishable Foodstuffs and Directive on Test and Technical Inspection of Special Equipment To Be Used For The Transportation of Perishable Foodstuffs, breach of different obligations stated in the Directive should be made subjected to different sanctions.

Besides, alongside with the administrative fines, sanctions stated in the Legislative Decree No. 655 such as cancellation, suspension and similar sanctions can be provided.

#### **b) Validity of the ATP certificates issued by foreign countries**

With a provision to be added to the By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, it is recommended that the ATP certificate of compliance issued by the authorities of another Contracting State to the special equipment in a vehicle with a foreign license plate engaged in international transportation activities should be accepted as valid as long as the relevant vehicle is in Turkey, until proven otherwise.

Introducing a provision for the recognition of ATP certificates of non-Party States is at the discretion of the Ministry of Transport and Infrastructure, within the framework of the requirements in the field. If a provision for recognition is stipulated, the relevant provision should be included in the By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs. Recognition terms are required to be adjusted in accordance with the last phrase of article 2 of the ATP.

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### 3.4.3 ATP ARTICLE 3

#### **Relevancy of the EU best practice countries**

In France and Italy, there are no provisions that specifically regulating the practice area and types of ATP. Main reason of this, France and Italy had implemented the ATP to their domestic transportation. On the other hand, in Spain, only land transportations are in scope of ATP, pursuant to article 1 of the 237/2000 numbered Royal Decree.

#### **Gap analysis**

With the By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, it is seen that Turkey, like the EU best practice countries, has extended the ATP rules regarding perishable food transportation to domestic transportation. In this context, article 2 of the by-law on the scope includes both domestic and international transportation of perishable foodstuffs.

In this case, it is understood that the scope of Article 2 of the said By-Law is in line with the legislation effective in EU best practice countries.

#### **Recommendation(s)**

Within the amendment of article 2, abiding with the scope and boundaries of ATP for international transportations and including the land and railway transportation to the scope of inland transportation is suggested, if the conditions of the field require

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### 3.4.4 ATP ARTICLE 4 & ANNEX 2, ANNEX 3

#### **Relevancy of the EU best practice countries**

##### **a) Obligation to use special equipment in the land transportation of perishable foodstuffs**

This obligation is included in the legislation of each of the three EU best practice country.

##### **b) Sanctions to be applied in case of the non-compliance with the obligation**

Relevant sanctions are regulated in all of the EU best practice countries. Sanctions are generally applied as administrative fine. Amount of the fine changes as per the nature of ATP violation. Data obtained regarding the French legislation are the most applicable for Turkish law. For why, the administrative structures of the countries are similar and the ATP penal system in force in France is in line with the principles of the system in Turkey regarding administrative and judicial penal (Different sanctions for different types of violations, increasing the penalty for repetition, regulations facilitating the collection of the penalty issued to the foreigner).

### **c) Nature of persons subject to provision and sanction**

Perpetrators of the obligations and sanctions are determined in a manner that does not contradict the general rule of the ATP.

## **Legal gap analysis**

### **a) Obligation to use special equipment in the land transportation of perishable foodstuffs**

In the article 5 of the By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, there is no regulation regarding the temperature requirements and obligation to have temperature recorder in the vehicles carrying quick frozen foodstuffs.

### **b) Sanctions to be applied in case of the non-compliance with the obligation**

Sanctions regarding the breach of obligation is stated in the article 23 of the By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs.

### **c) Nature of persons subject to provision and sanctions**

By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs currently charges obligations and sanctions on the carrier. This issue should be revised in accordance with the ATP.

## **Recommendation(s)**

### **a) Obligation to use special equipment in the land transportation of perishable foodstuffs**

Within the amendment of article 5 of the By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs, it should be regulated that temperature requirements which shall be exercised for international transportation are temperature requirements stated in ATP, and vehicles carrying frozen foodstuffs are obliged to have a temperature recording device.

### **b) Sanctions to be applied in case of the non-compliance with the obligation**

Administrative fines: ATP has the force of law but does not contain any kind of regulation regarding the administrative fines which is one of the most effective sanctions in the practice. Regulation regarding the administrative fine are stated in the article 23 of the By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs. With the amendment of mentioned article, along with the administrative fines, sanctions stated in the 655 numbered Code such as cancellation and suspension can be provided for the violation of different obligations.

### **c) Nature of persons subject to provision and sanctions**

Persons subjected to obligations and sanctions should be revised in By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs in parallel with ATP.

There is no regulation regarding the thermal sea containers.

### **Legal Gap Analysis**

Scope of the By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs is stated in the article 2.

In the paragraph 3 of article 5 of By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, obligation of having a certificate of authority for companies conducting the transportation of perishable foodstuffs is stated. In this article, it is indirectly stated that By-Law is exclusive for land road transportation.

### **Recommendation(s)**

Even if By-Law is limited with the land road transportation, mentioned thermal containers are used in the land road transportation too. With the update of article 2 of the By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, it should be stated that thermal sea containers and land road and railway transportations conducted before or after seaway passing are not in the scope.

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#### **3.4.6 ATP ARTICLE 6**

### **Relevancy of the EU best practice countries**

#### **a) Obligation to take the general measures necessary for the effective implementation of the ATP**

All Legislation of all three EU best practice country includes control mechanisms under the obligation to take general measures to ensure the effective implementation of the ATP. These controls are performed three EU best practice countries in collaboration with the officers of other stakeholder authorities in addition to the Ministry that is primarily responsible for the subject.

#### **b) Obligation to notify the relevant Contracting State of general measures, violations of the ATP and penalties for violation of the ATP**

There is no special regulation in EU best practice countries regarding the obligation of notification.<sup>59</sup>

### **Legal gap analysis**

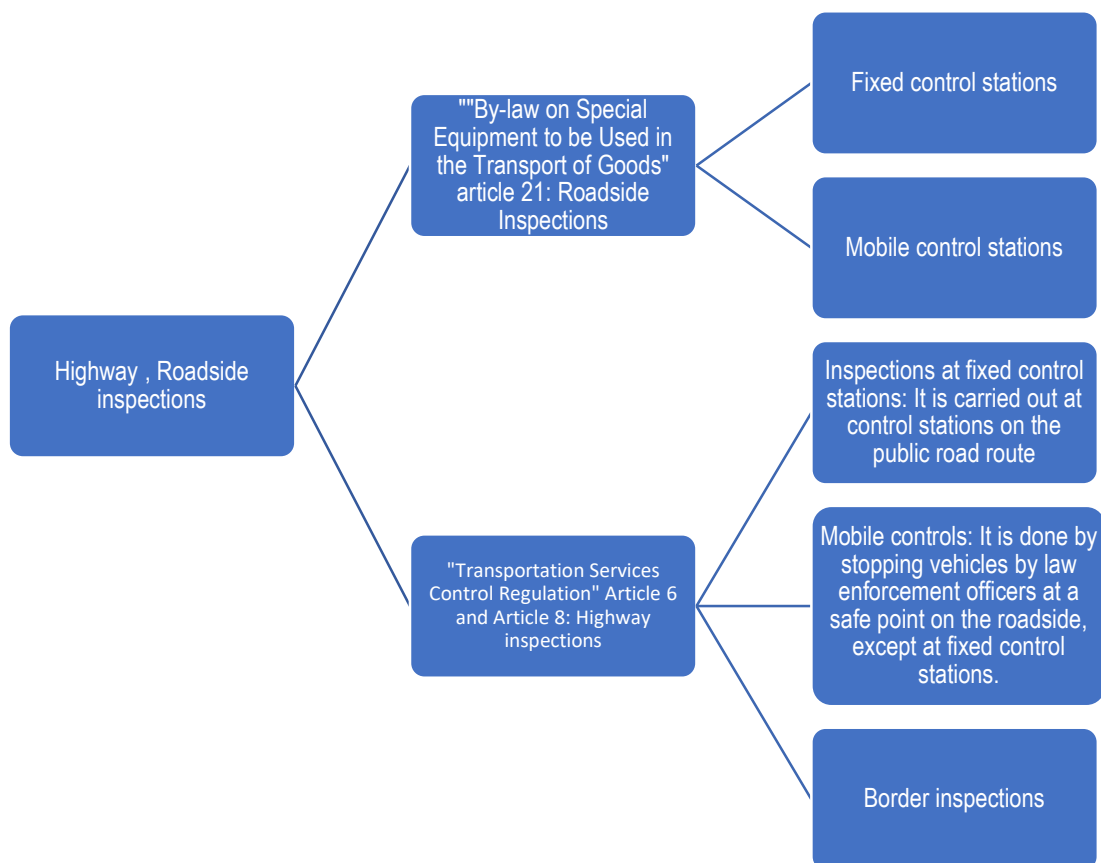
#### **a) Obligation to take the general measures necessary for the effective implementation of the ATP**

Relevant articles of the Code on Road Transportation are not fully applicable to ATP. By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs and the Regulation on the Inspection of Transport Services contain provisions that can be directly applied to ATP controls.

The By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs determines the persons authorized to conduct roadside inspections and determines the location of the Ministry of Transport and Infrastructure's roadside controls. The By-Law also reserves the provisions of other legislation related to controls. Therefore, the By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs should be interpreted and implemented together with the relevant provisions of the Regulation on the Inspection of Transport Services. The table, including the provisions of the two By-Law regarding road and roadside controls, is given below:

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<sup>59</sup> Information sharing is possible between the member states of the Council of Europe and the parties to the Convention by the virtue of the Convention No. 52 of the Council of Europe on the Punishment of Road Traffic Offenses; however, France is the only party to this Convention among the EU best practice countries. Turkey is also against the Convention in this regard. Turkey is not a party to this Convention.



The public officials authorized for ATP controls by the aforementioned By-laws are as follows:

- ▶ Personnel of the Ministry of Transport and Infrastructure,
- ▶ Relevant units of the General Directorate of Security and Gendarmerie General Command,
- ▶ Units of the Ministry of Commerce at the border gates,
- ▶ Relevant municipal police units.

The control authorities and control places determined by the regulations comply with the Turkish legislation and the requirements of the ATP. Relevant By-Law is also in parallel with the best EU practice countries.

#### **b) Obligation to notify the relevant Contracting State of general measures, violations of the ATP and penalties for violation of the ATP**

Obligation of notification arises from the ATP and the article 474 (1) (h) of the Presidential Decree No. 1 on the Organization of the Presidency.

#### **Recommendation(s)**

##### **a) Obligation to take the general measures necessary for the effective implementation of the ATP**

Controls and land road controls are regulated in articles 20 and 21 of the By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs. By adding a clause to Article 20 of the By-Law, it can be regulated that control activities arising from the By-Law will be conducted in the scope of By-law on Inspection of Transport Services.

##### **b) Obligation to notify the relevant Contracting State of general measures, violations of the ATP and penalties for violation of the ATP**

There is no requirement to transfer the obligation of notification separately to domestic law with additional provision.

In practice, the part of the notification obligation to notify the general measures is fulfilled in the form of UNECE questionnaires. Turkey has participated into various questionnaires regarding the implementation of ATP.<sup>60</sup> Turkey's contribution to data obtained from the questionnaires of UNECE will diversify and increase with the compliance of ATP regarding especially the controls and sanctions.

The obligation to notify the relevant Contracting State of ATP violations and penalties must also be fulfilled. This will serve the effective enforcement of the relevant domestic law provision.

### 3.5 THE CONCLUSION OF THE ANALYSIS

Even if current Turkish legislation is generally complying with the ATP regulations, also there is some non-compliant points. However, in order to make Turkish Legislation complying with the ATP regulations, relevant recommendations stated in this report can be kept in mind. Thus, ATP regulations and Turkish Legislation can be fully compatible.

#### **Primary Legislation - By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs**

1. By uniting the By-Law and Directive on Tip test and Technical Details of Special Equipment Used for the Transportation of Perishable Foodstuffs, different obligations can be subjected to different sanctions. Similar sanctions stated in the Presidential Decree No:655, such as suspension, cancellation and similar sanctions can be provided.
2. Regulation about the validation of ATP certificates issued by other Contracting Parties to special equipment installed on vehicles with foreign plate, as long as it is in Turkey and proven otherwise should be added to By-Law,
3. With the amendment of article 2 of the By-Law, it should be regulated that the scope and boundaries of ATP should be abided for international transportation and land road and railway transportation are included in the scope for domestic transportations,
4. With the amendment of article 5 of the By-Law, stating that temperature requirements which shall be exercised for international transportation are temperature requirements specified in ATP, and vehicles operating on international transportation of frozen foodstuffs are required to have a temperature recording device.
5. Specifying the persons who are subjected to sanctions in parallel with the ATP.
6. With the amendment of article 6 of the By-Law, it should be stated that thermal sea containers and land road and railway transportations conducted before or after sea passing are out of scope.
7. With the amendment of article 20 of By-Law, it can be stated that, inspection operations arising from the mentioned By-Law should be conducted in the manners of Code on Road Inspection Services.

We should state sanctions that will be imposed in Turkey are similar and parallel with the European approach by analyzing the sanctions imposed in countries such as France and Spain. In addition to this, sanctions stated in the Decree no 655 such as suspension, cancellation and similar can be provided.

In further phases, By-Law of the Ministry can be updated upon the two typical violations of ATP Agreement.

Based on extensive consultations and relevant resolutions 1.4 and 2.2 (Creating the legal basis of penalties to be applied in road inspections in line with the current system) to be taken by the Ministry of Transport and Infrastructure (Final Buyer of the Project) as part of future Activities The Contractor will prepare draft legislation/articles for

<sup>60</sup> UNECE questionnaire 27.07.2020  
unece.org/...trans...2020/wp11/ECE-TRANS-WP11...17e.pdf

integrating the above suggestions in accordance with current Turkish legislation. Besides, in scope of Activity 1.4 EU practices regarding the topic will be deeply investigated and some legal regulations will be translated to Turkish in order to detail the legislation.



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