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

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LEGISLATION ANALYSIS REPORT

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ABBREVIATION

ATP	International Transportation of Perishable Foodstuffs and Special Equipment that will be used for such Transportation
EU	European Union
HACCP	Hazard Analysis and Critical Control Points
SCTPF	Strengthening Institutional Capacity Of Ministry Of Transport And Infrastructure On The Transport Of Perishable Foodstuffs
TSI	Turkish Standards Institute
UNECE	United Nations Economic Commission for Europe

PROJECT'S APPROACH AND STAGES ON THE LEGISLATION ALIGNMENT

The legal activity within the project aims to ensure proper transposition, implementation and enforcement of the ATP Agreement provisions and identify the gap between the Turkish regulation 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 the report, articles/components of ATP Agreement determined in the Turkish Legislation is compared with the primary legislation of the best European Countries on the application of ATP. 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 regulation and best European practice)

Step 2 Legal analysis of the establishment of the infrastructure for the ATP controls and possibility to implement rules and standards specified in ATP Agreement in domestic transport operations

This legislation analysis is a continuation of the analysis done under Activity 1.1. In scope of the Legislation Analysis, Turkish legislation regarding the transportation and control of perishable foodstuffs are compared with the ATP requirements and, by detecting the differences between them, feasibility of adaptation of ATP requirements to domestic transportation of perishable foodstuffs and control of such operations in Turkey is researched. Thus, Ministry will have a clear picture with proper recommendations on the current legal base adjustment or the new one to be adopted if appropriate.

(Activity 1.2, Outcome: Legislation analysis Report).

Step 3 Legal bases for penalties to apply during land road inspections in line with the existing system and drafting new legislation 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 concerned legislation of the identified best EU country regarding the transportation of fruits and vegetables will be reviewed in detail and relevant recommendations will be provided within the report.

(Activity 1.3, Outcome: Needs Assessment Report for ATP Implementation of Transportation of Fruits and Vegetables)

Step 5 Draft national legislation to implement the ATP 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 with the By-Law for international and domestic transport of perishable foodstuffs including the fruits and vegetables)

SUMMARY OF THE REPORT

The United Nations (UN) Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be used for such Carriage (ATP) is drafted in Geneva at the date of 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.

ATP is also applicable for the domestic transport of the relevant State, depending on the consent of the Contracting State. France, Italy, Spain, Russian Federation and Slovakia are among the States implementing ATP to their domestic transport activities.

The Republic of Turkey became a party to the ATP through accession on 21.12.2012. Pursuant to the condition of becoming a party stipulated under Article 11 (1) of the Agreement, ATP entered into force for Turkey on 21.12.2013. There are no notifications or reservations that were recorded by Turkey while becoming a party to the ATP. ATP Agreement and its annexes, is regularly amended and updated by the study group operating under the relevant commission.

This activity is a continuation of the "Legal Gap Analysis for Turkish Legislation and Best EU Practices" conducted under activity 1.1. Activity 1.1 is related to the international application of ATP by Turkey. In this context, the requirements in the terms of reference and the content of the report require the examination of all ATP provisions/components related to implementation. This activity, on the other hand, is related to domestic implementations. Regarding the purposive terms of reference, there is an examination of the articles/components of ATP concerning the control of perishable foodstuffs and the requirements for the transport of perishable foodstuffs.

This report relates to the determination of the articles/components of the ATP for the control and the other requirements, which correspond to the Turkish law and the law of Spain, Italy and France, which are determined as the best three EU Countries which best practices regarding the ATP implemented. In consideration of the abovementioned determinations, suggestions have been made for alignment of Turkish law with ATP in case it is decided to apply the provisions of ATP to inland transport.

The main factors taken into account in determining the relevant proposals are as follows:

-ATP is an international agreement that can be directly implemented in the 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. Consequently, 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 for individuals will be clearly specified in accordance with the legal determinacy criterion. This obligation, which is applicable in terms of international law, is also a requirement for inland transport.

-In principle, the recommendations for Turkish law are based on the common criteria of the best EU practices (France, Spain and Italian Legislation), and if there is a country that stands out in the implementation of the related ATP provision/component, this point is also stated in the related section.

- Regulations No. 852/2004, 853/2004, 854/2004 of the European Parliament and of the Council and Commission Regulation No. 37/2005 on hygiene and official control of foodstuffs have been prepared with the purpose of preventing foods intended for human consumption in general, and animal foods in particular, from endangering human health. These Regulations consists of the all processes, including transportation, in the presentation of cold chain food stocks 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 Temperature during Storage, Conservation and Transport of Quick-Frozen

Foodstuffs, and compliance with EU legislation has been achieved. Turkish Food Codex Communiqué on the Methods of Sampling and Analysis for the Control of Temperature of Quick-frozen Foodstuffs (Effective as of: 31.07.2015) has been prepared within the framework of alignment with the European Union legislation, within the framework of the Commission Directive 92/2/EEC of 13 January 1992 laying down the sampling procedure and the Community method of analysis for the official control of the temperatures of quick-frozen foods intended for human consumption. This matter falls under the purview of the Ministry of Agriculture and Forestry.

Essentially, all kinds of issues (packing, labelling, marking, temperature monitoring and control, etc.) related to foodstuffs as well as goods and materials contacting with them are under the responsibility of the Ministry of Agriculture and Forestry. The codes, by-laws and communiqués on the control of perishable foodstuffs examined within the scope of this report are also duties of the Ministry of Agriculture and Forestry in this context. On the other hand, food hygiene is also an important matter for Turkey as it is for almost all States, which creates extensive obligations in the context of domestic and international law, is very comprehensive, technical, and needs to be kept up to date, includes internal regulations of the related authorities that are not published in open sources, includes the regulations under the contract law with other public authorities/private institutions using formats such as protocols and/or is not published in open sources.

Main subjects of the ATP, namely; specific equipment, ATP certificate of conformity, transport of perishable foodstuffs with vehicles has ATP requirements, the obligation to check the vehicles regarding the use of ATP certificate of conformity are not specifically regulated in these By-Laws. Therefore, control of the compliance of vehicles with ATP performing transport of perishable foodstuff in terms of special equipment requires a separate control mechanism. The subject falls under the purview of the Ministry of Transport and Infrastructure as the authority entitled to implement the ATP in Turkey.

For the recommendations made in the Legislation Analysis Table, the necessity of not contradicting the authorities arising from the legislation falling under the purview of the Ministry of Agriculture and Forestry, and not causing duplication in terms of control and authority was taken into consideration.

- It is recommended that the provisions and requirements to be implemented to both markets should be uniform in the recommendations for the Contracting States that implement/will implement ATP for their inland transport activities, which are included in the "Road Map to Accession to and Implementation of ATP" published by UNECE. The purpose of this recommendation is that the transport of perishable foodstuffs issue specified in the Road Map not to cause confusion for users and implementers (the term implementer refers to the States authorities entitled to perform control and sanctioning). It is also stated in the Road Map that if any Contracting State decides to implement ATP in inland transport, issues such as the transitioning process for the entry into force of the domestic implementation and the determination of which vehicles the ATP provisions will be applied should be clarified.

- The rules regarding the structure of the Turkish legal system, the hierarchy of norms, and the requirements of the legislation on cooperation between Ministries have been taken into account.

In this regard, it has been stated that it is necessary and sufficient for the related Codes to have content determining the purpose, scope, definitions and subject-matter, principles, the authorities entitled to control whether these principles are complied with, the distribution of authority under the coordination of the competent authorities, and the general sanctions for non-compliance with the provisions; it has been taken into consideration that it is necessary to make recommendations in line with the established practice and legal system and other issues should be included in the secondary legislation (related by-laws and other sub-regulations).

- In this regard, the main recommendation in this report for the process of determining the legal infrastructure required for inland transport of perishable foodstuffs is to update the current legislation in scope of the legislation analysis, regarding the implementing the ATP provisions to domestic transportation as well.

In order to ensure the alignment of the legislation and the uniformity of the provisions to be implemented to the international and inland transport of perishable foodstuffs, the provisions regarding the international and inland transport of perishable foodstuffs within the scope of the ATP are regulated in a single By-law.

It should be preferred that the provisions to be implemented to the vehicles that will be obliged to use the ATP certificate of compliance are common provisions for international and inland ATP transports, except for the provisions regarding the form of certificate.

- The recommendations stated in the report are general recommendations for filling the gaps in the Turkish legislation and aligning the legal infrastructure required by inland transport of perishable foodstuffs with the ATP. Excess of detail has been avoided except for the requirements for this purpose.

-Legislation Analysis Table is intended for the data included in the report. The Table is included in the report, not as a separate annex.

Although not included in the proposals, two general matters are provided below regarding the ensurance of the integrity and effectiveness of the proposals:

- ATP and its annexes are regularly amended and updated by the European Economic Commission Internal Transport Committee Working Party on Transport of Perishable Foodstuffs (WP 11). Current version was put into force on 06.07.2020.

- 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, in order 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

ATP stipulates that special equipment (insulated equipment, refrigerated equipment, mechanically refrigerated equipment, heated equipment, mechanically refrigerated and heated equipment) must be used for the transport 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. 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 transport 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 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 covers road, rail transport and sea crossings shorter than 150 km.

Currently, 50 States are parties to the ATP. These 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.

Following the entry into force of the ATP, the Ministry of Transport and Infrastructure, the competent authority designated in the implementation of the ATP, signed a protocol with TSI on 20.10.2016. Relevant protocol is a delegation of authority performed as per the 35th article of the Code on Road Transport. TSI has been carrying out certification procedures since 01.05.2017 in accordance with this protocol.

ATP is also applicable for the domestic transport of the relevant State, depending on the consent of the Contacting State. France, Italy, Spain, Russian Federation and Slovakia are among the States implementing ATP to their domestic transport activities.

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 Foodstuffs¹, 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 Council² 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 food³ 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).

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 transport, warehousing and storage of fast-frozen foodstuffs intended for human consumption, and monitoring of temperatures in vehicles)⁴ was transferred to the Turkish legal system with the Turkish Food Codex Communiqué on the Monitoring of Temperature during the Storage, Preservation and Transport of Quick-Frozen Food" Numbered 2014/48 (entry into force: 18.10.2014).

Turkish Food Codex Communiqué on the Methods of Sampling and Analysis for the Control of Temperature of Quick-frozen Foodstuffs (Effective as of: 31.07.2015) has been prepared within the framework of alignment with the European Union legislation, within the framework of the Commission Directive 92/2/EEC of 13 January 1992⁵ laying down the sampling procedure and the Community method of analysis for the official control of the temperatures of quick-frozen foods intended for human consumption.

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 best EU practice countries 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.

Left column of the Legislation Analysis Table covers the relevant ATP provision/component, second left column covers the corresponding Turkish legislation and the level of the alignment of legislation to ATP, second right

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0852>

² <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004R0853>

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

⁴ <https://eur-lex.europa.eu/eli/reg/2005/37>

⁵ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31992L0002>

column covers the legislation of the EU best practice countries re-compensating the ATP provision (Spain, Italy, France), and right column covers the proposals regarding the alignment of the Turkish legislation thereof.

1.2 METHODOLOGICAL APPROACH

1.2.1 IMPLEMENTATION OF INTERNATIONAL AGREEMENTS IN 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 accepted⁶. In countries where the monist system is adopted, an international agreement is directly applicable.⁷

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 system⁸. As a result, the ATP is a directly applicable international agreement.

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. ⁹ "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. This shall apply in the domestic implementation of ATP, similar to its international scope.

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 the Code No. 6771 dated 09.07.2018. The hierarchy levels of norms are as follows:

⁶ Turkish law requires international agreements to be ratified and promulgated to be a binding force in domestic 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.

⁷ 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 düalizm- https://tr.xcv.wiki/wiki/Monism_and_dualism_in_international_law

⁸ Doç. Dr. İbrahim ŞAHBAZ, Avrupa İnsan Hakları Sözleşmesi'nin Türk Yargı Sistemindeki Yeri, p. 11 tbbdergisi.barobirlik.org.tr/m2004-54-66 p. 11

⁹ Dr. Ahmet Burak BİLGİN, AİHS ve Diğer Uluslararası Anlaşmaların İç Hukuktaki Yeri Bağlamında 2004 Değişikliğinin Beraberinde Getirdiği Sorunlar ve Bazı Çözüm Önerileri.

1. Constitution
2. *International treaties on human rights*
3. Codes, *Emergency Presidential Decrees*¹⁰ 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)¹¹
5. By-laws¹²
6. Other regulatory actions (*Circulars, directives, communiques etc.*)

¹⁰ 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.

¹¹ 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.

¹² 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.

2.SCOPE OF THE LEGISLATION ANALYSIS

2.1 ATP PROVISIONS/COMPONENTS

ATP is applied to the perishable foodstuff transport activities between Contracting States. Therefore, articles of the ATP are literally deemed as a rule for the international transport. However, if the ATP is also applied to the inland transports of the Contracting States concerned, each article shall basically apply to the field of inland transport.

Terms of Reference require the analysis of the legislation subject to this report to examine the provisions of Turkish law regarding the control of perishable foodstuffs and the requirements for the transport of perishable foodstuffs within the country. The articles/components of the ATP on which this report is based should therefore also cover the same topics.

In this regard, the inspection and testing obligation component of Article 2 of the ATP, since inspection and inspection procedures are essentially a transport requirement is deemed as the bases on the general measures component of Article 6 of ATP, since it directly meets the subject of ATP Annex 2 and Annex 3 and control, and ATP Annex 2 Appendix 2, legislative analysis, due to its connection with the conditions sought for foodstuffs and transport activities in the transport of perishable foodstuffs.

2.2 Turkish Legislation on Control of Perishable Foodstuffs and Requirements for Inland Transport

The determination of Turkish legislation on the control of perishable foodstuffs and inland transport requirements was carried out with a professional Turkish law search engine, in addition to open web-based resources such as the Official Gazette, the Presidential legislation information system and the websites of the relevant Ministries. Relevant research sets forth the list of legislation based on the formation of the data in the Legislation Analysis Table in this report regarding the control of perishable foodstuffs and the rules to be followed in their domestic transport hereinbelow.

The relevant legislation of the Ministry of Transport and Infrastructure

1- Code on Road Transport¹³

(Entry into force: 19.07.2003) Relevant code regulates the domestic and international road transports. Code covers the transport of passengers and goods by motor vehicles on public roads, transporters, transport agents, transport brokers, transport warehouses and cargo operators, employees in transport works and all kinds of vehicles, devices, equipment, structures and so forth used in transport, and relevant terms for the commercial transport activities. Code 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 Transport, 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.

The Code leaves to the By-law on Road Transport 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.

¹³ mevzuat.gov.tr>MevzuatMetin/1.5.4925.pdf

2-By-law on Road Transport¹⁴

(Entry into force: 08.01.2018) By-Law has been prepared based on the Code on Road Transport. Relevant by-law covers passenger and goods transport 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 transport activities, and those who work in transport business, all kinds of vehicles, tools, equipment, structures, facilities and the like used in transport activities, and the authorization certificates. 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.

3- Legislative Decree No. 655 on Certain Regulations Concerning Transportation and Infrastructure¹⁵

(Entry into force: 01.11.2011) 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 relates to 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 Services¹⁶

(Entry into force: 03.06.2021). Relevant By-Law regulates the procedures and principles regarding the controls of the activities to be performed in the field of transport services by road and the qualifications, duties, powers, responsibilities and obligations of the personnel who will carry out the control, the procedures and principles to be applied in the preparation and follow-up of the administrative fine decision minutes, the procedures and principles regarding the violation detection minutes and legal warnings to be issued in this regard.

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 of Road Transport, Code of Road Traffic, and the Legislative Decree No. 655". Control authority (inspector) relates 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 of Road Transport, Code of Road Traffic, and the Legislative Decree No. 655, and trained in this regard. Authorized institutions (inspector) consist of the units of the General Directorate of Security and the Gendarmerie General Command authorized under the Code on Road Transport, Code on Road Traffic and the Decree Law No. 655, the units at the border gates of the Ministry of Commerce 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 Transport, Code on Road Traffic and Legislative Decree No. 655. Control types are divided into four groups, namely; controls carry out in the road, controls carried out in the enterprises, physical location and spatial suitability controls, and controls made by using electronic systems (article 7). Road controls are performed at fixed control stations, mobile controls, 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

¹⁴ <https://mevzuat.gov.tr/mevzuat?MevzuatNo=24299&MevzuatTur=7&MevzuatTertip=5>

¹⁵ mevzuat.gov.tr/MevzuatMetin/4.5.655.pdf

¹⁶ <https://mevzuat.gov.tr/mevzuat?MevzuatNo=38660&MevzuatTur=7&MevzuatTertip=5>

in the 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.

Annex of the relevant By-Law, the established uniform control mechanism of which shall actually enter into force on 01.01.2022 de facto, consists of control officer identification card, administrative fine decision minutes (in accordance with the Code on Road Transport and separately in accordance with the Decree Law No. 655), violation detection report and notification sample.

5-By-Law on Special Equipment to be Used for the Transportation of Perishable Foodstuffs.¹⁷

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.

Besides, By-Law specifies the Certificate of Perishable Foodstuffs Transportation that will be used for the domestic transportation of perishable foodstuffs included into ATP and to Countries which are not a party of ATP.

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 Regulations¹⁸

(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 inspection, duties of authorized institutions and obligations of economic operators and conformity assessment bodies. The code identifies the products as "any substance, preparation or item" (m. 3) The

¹⁷ <https://www.resmigazete.gov.tr/eskiler/2021/07/20210702-2.htm>

¹⁸ <https://resmigazete.gov.tr/eskiler/2020/03/20200312-1.htm>

code covers all the products that are intended to be launched, offered, made available on the market or put into service. Market surveillance and inspection activities and product conformity 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, labelling or conformity assessment processes, including administrative provisions individually or undividedly."

Controls stipulated in the code are performed for the verification of the conformity 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 transport vehicles. Withdrawal or administrative fines are stipulated in case the products are illegitimate. The physical implementation field of the control mechanism stipulated by the code consists of mainly the products themselves. The code relates to the determination and control of technical standards of the product.

8- By-Law on General Product Safety¹⁹

(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 Demand²⁰

(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 marketplaces.

In By-Law, product is defined as; "fruits and vegetables subjected to trade and meat and meat products, milk and milk products, water and water products, other foodstuffs such as honey and egg and cut flower and foliage plants that will be determined pursuant to sufficiency of supply and demand." Pursuant to By-Law, Ministry of Commerce is entitled to determine the other products except from the fruits and vegetables with sufficient supply and demand with opinion in favor of Ministry of Health.

Competent authority entitled to take the measures and perform controls stipulated by the Code is essentially the Ministry of Trade. 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 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 Procedures and Principles Regarding Standard Practices to Be Followed in Wholesale and Retail Trade of Vegetables and Fruits²¹

(Entry into force: 03.10.2017) The code stipulates the binding procedure and principles regarding the wholesale and retail trade, packaging, transport, storage and retail sale of goods pursuant to the Code on

¹⁹<https://resmigazete.gov.tr/eskiler/2021/03/20210311-18.htm>

²⁰ [mevzuat.gov.tr>MevzuatMetin/1.5.5957.pdf](http://mevzuat.gov.tr/MevzuatMetin/1.5.5957.pdf)

²¹<https://resmigazete.gov.tr/eskiler/2017/10/20171003-9.htm>

the Regulation of Trade of Vegetables and Fruits and Other Goods with Sufficient Supply and Demand. 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 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, transport and retail sale of goods. Pursuant to the clause (9) of article 6 of the Communiqué; vehicles with mechanical refrigerating system with ATP certificate are regarded to meet the transport standards required in the Communiqué, provided that they have cooling/heating equipment and temperature/humidity monitoring device. Nevertheless, the scope of the Communiqué is limited to the vegetables and fruits and other products included in the list in the appendix of the "Communiqué on Goods to be Traded as a Wholesaler or by Notifying the Trader" (entry into force: 28.10.2016)²². The appendix of the relevant communiqué excludes the perishable foodstuffs covered by ATP.

Relevant Legislation of the Ministry of Agriculture and Forestry

11- Code on Veterinary Services, Plant Health, Food and Feed²³

(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. 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 does not cover transport vehicles and/or their qualifications thuswise.

By-law on Special Hygiene Rules for Animal-Origin Food, By-law on Food Hygiene, By-law on Food Codex and Communiqués entered into force pursuant to the By-law on Food Codex are predicated upon this Code.

12-By-law on Food Hygiene²⁴

(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 has 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. By-law covers all the 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 transport 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

²² <https://resmigazete.gov.tr/eskiler/2016/10/20161028-19.htm>

²³ <https://resmigazete.gov.tr/eskiler/2010/06/20100613-12.htm>

²⁴ <https://resmigazete.gov.tr/eskiler/2011/12/20111217-5.htm>

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. The By-Law does not include a provision regarding the controls and sanctions.

13-By-law on Special Hygiene Rules for Animal Food²⁵

(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. Object of the By-Law is to determine specific hygiene requirements set forth in the By-Law on Food Hygiene that should be abided by the food enterprise producing 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 transport.

14-By-law on Official Controls of Food and Feed²⁶

(Entry into force: 17.12.2011) Relevant By-Law has been issued based on the provision in the article 31 of the Code on Veterinary Services, Plant Health, Food and Feed (article regarding the provision of control). Object of the By-Law is to prevent, eliminate or reduce the risks that may arise directly or through the environment for humans and animals to acceptable levels, to determine the procedures and principles regarding the protection of consumer interests, prevention of unfair competition and official controls of food and feed, including labelling of food and feed and other forms of information aimed at informing consumers. It covers the procedures and principles regarding official controls, traceability, rapid warning system, emergencies, precautionary measures, crisis management, informing the public, official certification, annual and multi-annual national control plans, responsibilities and objections. By-Law does not cover official controls applied to verify compliance with the rules of common market regulations of agricultural products. Controls are performed as per the Annex No. 2 of the Code on Veterinary Services, Plant Health, Food and Feed. Aforementioned Annex not contain any provisions regarding the controls to be performed on the transport vehicles.

15-By-law on Regulation of the Special Provisions Regarding Official Controls of Animal Food²⁷

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.

16-By-Law on Turkish Food Codex²⁸

(Entry into force: 19.02.2020) By-Law covers the provisions on special regulations regarding the minimum technical and hygiene criteria for food and food related substances and materials, pesticide residues and veterinary drug residues, vitamins, minerals and certain other items that can be added to foods, food additives, flavourings and flavouring food ingredients, food enzymes, contaminants, packaging, labelling, sampling and analysis methods, maximum amounts of coccidiostats and histomonastats that can be found in animal foods, which cannot be prevented from being transported to non-target feeds, principles

²⁵ <https://resmigazete.gov.tr/eskiler/2011/12/20111227-10.htm>

²⁶ <https://resmigazete.gov.tr/eskiler/2011/12/20111217-7.htm>

²⁷ <https://resmigazete.gov.tr/eskiler/2011/12/20111217-9.htm>

²⁸ <https://mevzuat.gov.tr/mevzuat?MevzuatNo=34289&MevzuatTur=7&MevzuatTertip=5>

of horizontal and vertical food codex regarding transport and storage, special provisions regarding geographical indication, certain food or food group that are not included in the horizontal and vertical food codex, and the rules for determining the special provisions regarding some other food and/or food groups. Pursuant to article 12, the provisions of the Code on Veterinary Services, Plant Health, Food and Feed and other relevant legislation are applied in the controls regarding the provisions of the said By-Law.

By-Law sets forth a distinction between horizontal and vertical codex. The horizontal food codex covers: a) Use, labelling and purity criteria of food additives, b) Use and labelling of flavourings and food ingredients with flavouring properties, c) Use and labelling of food enzymes, d) Maximum limits of contaminants, e) Maximum residue limits of pesticides allowed in foods, f) Classification and maximum residue limits of pharmacological active substances of veterinary drugs that can be found in animal foods, g) Microbiological criteria of foods, h) General rules regarding food-contact substances and materials, i) Labelling of foods, j) Additive vitamins, minerals and certain other elements, k) Sampling and analysis methods, l) Maximum amounts of coccidiostats and histomonastats that cannot be prevented from being transported to non-target feeds that can be found in animal foods (a. 5)

Vertical food codes cover the specific criteria to be determined for the food or food group or food-contact substances and materials covered, in addition to the horizontal food codex provisions pursuant to a. 6. Vertical food codex also covers the legislation on sampling and analysis methods specially arranged for a particular food or food group or food-contact substance and material. It is obligatory to comply with the provisions of the relevant horizontal food codex for food and food-contact substances and materials. Vertical food codex provisions are applied together with horizontal food codex provisions (art. 7).

17- Turkish Food Codex Communiqué on Quick-Frozen Foods²⁹

(Entry into force: 18.10.2014) Object of the Communiqué is to determine the characteristics that quick-frozen foods should have in the stages of production, preservation, storage, transport and marketing in accordance with the relevant technique and hygienically. This communiqué has been prepared within the framework of Council Directive 89/108/EEC on Frozen Foods for Human Consumption³⁰. Communiqué ensures that all equipment used in cabinets in fast freezing, storage, transport, distribution and retail sales aisles comply with the provisions of the Communiqué (art. 5(1)e), random temperature controls be made on quick frozen foods during official controls. Temperature monitoring during the storage, preservation and transport of quick-frozen foods in accordance with article 5 (1) i is carried out in accordance with the rules in the Turkish Food Codex Communiqué on Monitoring the Temperature During Storage, Preservation and Transport of Quick-Frozen Foods. Pursuant to article 13, the transport and storage of foods within the scope of the Communiqué shall comply with the rules in the section of the By-Law on Turkish Food Codex regarding the Transport and Storage of Foods. Pursuant to article 14, samples are taken from the products covered by the Communiqué in accordance with the rules specified in the By-Law on Turkish Food Codex and internationally accepted analysis methods are applied. Accordingly, temperature controls of the products covered by the Communiqué are carried out in accordance with the Turkish Food Codex Communiqué on Sampling and Analysis Methods for Temperature Control of Quick-Frozen Foods.

18-Turkish Food Codex Communiqué on Monitoring of the Temperature During Storage, Preservation and Transport of Quick-Frozen Foodstuffs³¹

(Entry into force: 18.10.2014) This communiqué is intended to set forth the rules regarding the monitoring of temperatures in the means of transport, warehousing and storage of quick-frozen foodstuffs. This communiqué has been issued based on the Commission By-Law (EC) No 37/2005 on the Monitoring of Temperatures in the Means of Transport, Warehousing and Storage of Quick-Frozen Foodstuffs. Pursuant to the article 4 of the communiqué, temperature control should be performed at every stage in

²⁹ <https://resmigazete.gov.tr/eskiler/2014/10/20141018-5.htm>

³⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01989L0108-20130701>
Current version is dated 01.07.2013.

³¹ <https://resmigazete.gov.tr/eskiler/2014/10/20141018-6.htm>

order not to break the cold chain during the transport 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.

19-Turkish Food Codex Communiqué on the Methods of Sampling and Analysis for the Control of Temperature of Quick-frozen Foodstuffs³²

(Entry into force: 31.07.2015) Communiqué has been prepared, within the framework of the Commission Directive 92/2/EEC of 13 January 1992 laying down the sampling procedure and the Community method of analysis for the official control of the temperatures of quick-frozen foods intended for human consumption³³, and in accordance with the European Union Legislation. It regulates the selection of control points and the measurement method for the official control of temperature in quick-frozen foods offered for human consumption. Control determination is given in Annex 1 of the Communiqué, and measurement methods are given in Annex 2 of the Communiqué. Control determination to be made during the transport of foodstuffs is also within the scope of Annex 1.

20-Turkish Food Codex Communiqué on Ice Cream³⁴

(Entry into force: 13.01.2005) Communiqué sets forth the properties of ice cream in order to ensure the production, preparation, processing, preservation, storage, transport and marketing of ice cream in accordance with its technique and in hygienic conditions. Pursuant to article 14, transport and storage of the products covered by the Communiqué must comply with the rules set forth in the Food Transport and Storage section of the By-Law on Turkish Food Codex. It is stated in the article 17 that the Ministry of Agriculture and Forestry is authorized in accordance with the Code on Veterinary Services, Plant Health, Food and Feed.

21-Turkish Food Codex Communiqué on Meat, Prepared Meat Mixtures and Meat Products³⁵

(Entry into force: 29.01.2019) Object of the Communiqué is to determine the issues regarding the production, packaging and marketing of raw meat, minced meat, poultry minced meat, prepared meat mixtures, mechanically separated poultry meat and meat products in accordance with the technique. Transport and storage of the products stated within the scope of this Communiqué shall comply with the provisions related to transport and storage of foods stated in the By-law of Turkish Food Codex (Article 22). Samples are taken in accordance with the rules specified in the By-Law on Turkish Food Codex, and internationally accepted analysis methods are applied thereof (art. 23). Administrative sanctions are imposed on those who violate the Communiqué in accordance with the relevant articles of the Code on Veterinary Services, Plant Health, Food and Feed (art. 24).

22-Turkish Food Codex Communiqué on Fermented Milk Products³⁶

(Entry into force: 16.02.2009) Its aim is to determine the product characteristics in order to ensure that fermented milk products are produced, prepared, processed, packaged, stored, stored, transported and marketed in accordance with the technique and as per the hygiene rules in this regard. Relevant code covers the fermented dairy products, concentrated fermented dairy products, heat-treated fermented dairy products and composite dairy products based on these products. Transport and storage of products covered by the Communiqué should be performed pursuant to the parameters set forth in the By-Law on Turkish Food Codex regarding the Transport and Storage of Foodstuffs, Code on Veterinary Services,

³² <https://resmigazete.gov.tr/eskiler/2015/07/20150731-7.htm>

³³ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31992L0002>

³⁴ <https://resmigazete.gov.tr/eskiler/2005/01/20050113-13.htm>

³⁵ <https://resmigazete.gov.tr/eskiler/2019/01/20190129-4.htm>

³⁶ <https://resmigazete.gov.tr/eskiler/2009/02/20090216-8.htm>

Plant Health, Food and Feed and By-Law on Animal Health and Surveillance (art. 14)³⁷. Pursuant to article 15, samples will be taken in accordance with the rules specified in the Sampling and Analysis Methods section of the By-Law on Turkish Food Codex and internationally accepted analysis methods will be applied thereof. Pursuant to Article 16 of the Communiqué on control, enterprises producing and selling products covered by the Communiqué must comply with the provisions of the Communiqué during registration and permit, import procedures, and control and inspection processes. Actions deemed necessary regarding enterprises that do not comply with these provisions are performed by the Ministry of Agriculture and Forestry in accordance with the provisions of the Code on Veterinary Services, Plant Health, Food and Feed³⁸.

23-Turkish Food Codex Communiqué on Drinking Milk³⁹

(Entry into force: 27.02.2019) Aim of this Codex is to determine the characteristics of drinking milk in order to ensure that it is produced, stored, transported and marketed in a hygienic manner in accordance with its technique. Codex does not cover raw milk. Pursuant to Article 17, the rules in Article 10⁴⁰ of the By-Law on Turkish Food Codex are compiled in the transport and storage of the products covered by the Communiqué. Provisions of the By-Law on Turkish Food Codex are applied for sampling and analysis of products (art. 18). Administrative sanctions are imposed on those violating the Communiqué in accordance with the relevant articles of the Code on Veterinary Services, Plant Health, Food and Feed (art. 19).

24-Turkish Food Codex Communiqué on Cheese⁴¹

(Entry into force: 08.02.2015) Object of this Communiqué is to determine the characteristics of cheeses for direct consumption or that are further processed in order to ensure that they are produced, processed, preserved, transported and placed on the market in accordance with the technique and in a hygienic manner. Transport and storage of the products stated within the scope of this Communiqué shall comply with the provisions related to transport and storage of foods stated in the By-law of Turkish Food Codex (art. 15). Transport and storage of the products stated within the scope of this Communiqué shall comply with the provisions related to transport and storage of foods stated in the By-law of Turkish Food Codex (art. 16). Administrative sanctions are imposed on those violating the Communiqué in accordance with the relevant articles of the Code No. 5996 on Veterinary Services, Plant Health, Food and Feed (art. 19) dated 11/6/2010.

25-Turkish Food Codex Communiqué on Butter, Other Milk Fat Based Spreadable Products and Anhydrous Milkfat⁴²

(Entry into force: 12.04.2005) Object of this Communiqué is to determine the characteristics of the butter, other milk fat based spreadable products and anhydrous milkfat so as to ensure their proper and hygienic production, storage, transport and marketing. It has been prepared within the framework of harmonization with the European Union, taking into account the Commission By-Law on "Standardization of Spreadable Oils", numbered 2991/94 EC. Transport and storage of the products stated within the scope of this Communiqué shall comply with the provisions related to transport and storage of foods stated in the By-law of Turkish Food Codex (Article 14). Samples should be taken from the products covered by the

³⁷ The article refers to the Code on Animal Health and Surveillance instead of the Code on Veterinary Services, Plant Health, Food and Feed. However, the aforementioned Code has been repealed with the Code on Veterinary Services, Plant Health, Food and Feed. References to the Code on Animal Health and Surveillance are deemed to be to the Code on Veterinary Services, Plant Health, Food and Feed.

³⁸ Relevant article refers to the Code on Animal Health and Surveillance, instead of the Code on Veterinary Services, Plant Health, Food and Feed. However, the aforementioned Code has been repealed by the Code on Veterinary Services, Plant Health, Food and Feed. References to the Code on Animal Health and Surveillance are deemed to be to the Code on Veterinary Services, Plant Health, Food and Feed.

³⁹ <https://resmigazete.gov.tr/eskiler/2019/02/20190227-5.htm>

⁴⁰ The article text refers to the article 9; however, article 10 corresponds to the provision of the new By-Law on Food Codex.

⁴¹ <https://resmigazete.gov.tr/eskiler/2015/02/20150208-16.htm>

⁴² <https://resmigazete.gov.tr/eskiler/2005/04/20050412-11.htm>

Communiqué in accordance with the rules specified in the Sampling and Analysis Methods section of the By-Law on Turkish Food Codex, and internationally accepted analysis methods should be applied thereof (art. 15). Legal action is taken against enterprises that do not comply with the Communiqué, pursuant to the Code on Veterinary Services, Plant Health, Food and Feed (art. 17).

26-Turkish Food Codex Communiqué on Edible Iced Products⁴³

(Entry into Force: 07.10.2005) Object of this Communiqué is to determine the characteristics of edible iced products so as to ensure their proper and hygienic production, processing, storage, transport and marketing. Edible ice products include icy mixes and milk ice products. Transport and storage of the products stated within the scope of this Communiqué shall comply with the provisions related to transport and storage of foods stated in the By-law of Turkish Food Codex (Article 14). Samples should be taken from the products covered by the Communiqué in accordance with the rules specified in the By-Law on Turkish Food Codex and internationally accepted analysis methods should be applied accordingly. Legal action is taken against enterprises that do not comply with the Communiqué, pursuant to the Code on Veterinary Services, Plant Health, Food and Feed (art. 16). The supervision regarding the implementation of the provisions in the Communiqué is carried out by the Ministry of Agriculture and Forestry in accordance with the Code on Veterinary Services, Plant Health, Food and Feed (art. 17).

Relevant legislation of the Ministry of Internal Affairs

27-Code on Road Traffic⁴⁴

(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; gendarmery, 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 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.

28- By-Law on Highway Traffic⁴⁵

(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 goods 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

⁴³ <https://resmigazete.gov.tr/eskiler/2005/10/20051007-8.htm>

⁴⁴ <https://mevzuat.gov.tr/mevzuat?MevzuatNo=2918&MevzuatTur=1&MevzuatTertip=5>

⁴⁵ <https://mevzuat.gov.tr/mevzuat?MevzuatNo=8182&MevzuatTur=7&MevzuatTertip=5>

assigned thereof. Article 13 of the By-Law determines the duties and authorities of the Ministry of Transport and Infrastructure in parallel with the Highway Traffic Code.

Relevant Legislation of Ministry of Industry and Technology

29- TSI Directive on Inspection Surveillance⁴⁶

(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

30- Presidential Decree No. 1 on the Organization of the Presidency⁴⁷

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

2.3 ATP COMPLIANCE LEVEL OF THE TURKISH LEGISLATION REGARDING THE ATP

The ATP compliance level of the relevant code is also listed in the second column from the left of the Legislation Analysis Table, along with the Turkish legislation corresponding the ATP. Three different terms have been used in order to specify the compliance level; compatible, partly compatible, and incompatible.

Accordingly, the relevant provision **complies with the ATP**, if the following conditions exist:

Current provision meets the ATP criteria and there is no domestic legal norm that conflicts with this provision.

The relevant provision **partly complies with the ATP**, if the following conditions exist:

Current provision partly or implicitly meets the relevant ATP provision; however, it is disadvantageous regarding its position in the hierarchy of norms.

The relevant provision is **incompliant with the ATP**, if the following conditions exist:

There is no relevant provision in the respective legislation, or relevant provisions are incompliant with the ATP.

⁴⁷ mevzuat.gov.tr>MevzuatMetin/19.5.1.pdf

2.4 LEGISLATION OF THE BEST EU 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 transports. 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 stage, Turkey regarded France as the precedent country in the preparation of administrative law legislation and Italy in criminal law).

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. Best EU Practices Countries is prepared as per the legislation corresponding in terms of the ATP substances/components based on regulatory 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 Transport⁴⁸, Royal Decree No. 1211/1990 as an approval for this Code,⁴⁹ Royal Decree No. 237/2000.⁵⁰

ATP became legitimate in Italy with the Code No. 264 dated 02.05.1977.⁵¹ Presidential Decree No. 404 dated 29.05.1979, Presidential Decree No. 327/80 and Ministerial Decrees No. 1182 and 1183, both dated 28.02.1984 have been issued regarding the implementation of this Code.⁵²

French legislation on the implementation of ATP principally consists of the Code on Rural and Marine Fisheries⁵³, Code on Road Transport⁵⁴, Code on Road Traffic⁵⁵, Penal Code⁵⁶, Decree on Technical Requirements on Temperature-Controlled Transport 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 for the issuance of ATP certificates by a Decree of 2008)⁵⁷.

Provisions regarding the ATP in the legislation on each three EU best practice countries are complementary for the EU Legislation in the introduction part herein.

⁴⁸ ontime.es/...Ley-de...de-Transportes-Terrestres.pdf

⁴⁹ https://noticias.juridicas.com/base_datos/Admin/rd1211-1990.html

⁵⁰ <https://www.boe.es/buscar/doc.php?id=BOE-A-2000-5011>

⁵¹ <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1977-05-02;264>

⁵² References: <https://bertona.it/en/certification-atp-borgomanero.html>,
https://www.confetra.com/it/centrostudi/doc_pdf/quaderni_p057-105%20q107.pdf

⁵³ https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071367?fonds=CODE&page=1&pageSize=10&query=Code+rural+et+de+la+p%C3%AAche+maritime&searchField=ALL&searchType=ALL&tab_selection=all&typePagination=DEFAULT

⁵⁴ https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000023086525?init=true&page=1&query=code+des+transports+&searchField=ALL&tab_selection=all

⁵⁵ https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006074228?init=true&page=1&query=code+de+la+route+&searchField=ALL&tab_selection=all

⁵⁶ https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070719?init=true&page=1&query=code+penal&searchField=ALL&tab_selection=all

⁵⁷ http://www.autoritecompetenteatp.cemafroid.fr/index_en.htm

Information on the best EU practices is included in the second column from the right of the Legislation Analysis Table.

3.LEGISLATION ANALYSIS TABLE

ATP PROVISION/COMPONENT	EQUIVALENT IN TURKISH LAW	BEST EU PRACTICES	RECOMMENDATION(S)	COMPLIANCE
Article 2 Obligation to Perform Inspections and Tests	General Rules for Transportation Activities are stated in the article 5 of the <i>“By Law on Special Equipment to Be Used For The Transportation Of Perishable Foodstuffs”</i>	<p>- France: The Decree on Technical Conditions for the Transport of Perishable Foods at Controlled Temperature, and the Cemafroid technical documents determine the standards required in terms of the equipment and the procedures for controlling compliance with these standards.</p> <p>- Spain: Royal Decree 237/2000. It determines the test obligation, the standards that the special equipment should have and the processes related to the control of compliance with these standards.</p> <p>- Italy: It was specified in line with the ATP through Code No. 264 dated 1977, and then its scope was extended to inland transport.</p>	<p>- If the implementation of ATP to inland transport is deemed appropriate.</p> <ol style="list-style-type: none"> 1. 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 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. 2. In this scope, suspension, cancellation, and similar sanctions which are specified in the Legislative Decree No. 655 can be regulated 	Complies

<p>Article 3 Types and conditions of transportation within the scope of ATP</p> <p>(Land Road transportation, railway transportation; intermodal sea passing of less than 150 km before, after or between these two)</p>	<p>Scope of the By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs, 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>Even if there are no direct reference to transportation methods in the By-Law, as it is understood from the definition of “transporter” stated in the By-Law and matter of “obligation to have Transportation certificate authority” stated in the article 5, that scope of the By-Law only covers the land road transportation.</p> <p>Considering there is no seaway or inland waterway passing shorter than 150 km in Turkey, scope of the By-Law can be limited to land road and railway transportation.</p>	<p>Partially Complies</p>
<p>Article 4 Annex 2, Annex 3</p> <p>(a) Obligation to use special equipment in land transportation of perishable foodstuffs.</p>	<p>Rules regarding the obligation to use special equipment is regulated in the article 5 of the “By-Law on Special Equipment to Be Used for the Transportation of Perishable Foodstuffs”. In this scope, vehicles used in the domestic transportation obliged to have “ATP Certificate of Compliance” or “Certificate of Perishable Foodstuffs Transportation” (BTB)</p>	<p>France: The special equipment certificate of compliance issued for inland transport is different in form from the international ATP certificate of compliance issued within the scope of ATP. The name of the certificate issued for inland transport is “certificate of technical compliance.”</p> <p>Spain: The special equipment certificate of compliance issued for inland transport is different in form from the international ATP certificate of compliance</p>	<p>In the By-Law, it is regulated that BTB will be issued for the vehicles that do not comply with the requirements of ATP but can be used for domestic transportation or transportations to the countries which are not a party of ATP Agreement. However, issues such as technical requirements of the BTB and labels and marks that will be used in scope of BTB is defined in the “Directive on Test and Technical Inspection of Special Equipment To Be Used For The Transportation of Perishable Foodstuffs”</p> <p>It is recommended to handle all requirements regarding the BTB and ATP Certificate of Compliance in the By-Law and by considering the requirements of the ATP</p>	<p>Partially Complies</p>

		<p>issued within the scope of ATP. The name of this certificate is “certificate of compliance for special vehicles used in the transport of perishable foodstuffs.”</p>	<p>requirements, more specific criteria for the BTB can be provided.</p>	
<p>(b) Perishable foodstuffs must be transported in accordance with the maximum temperatures stipulated in the ATP for their type, by certified special equipment with a temperature measuring and recording device, especially for food transport.</p>	<p>Obligations of special transportation equipment users are stipulated in the article 6 of the “By Law on Special Equipment to Be Used for The Transportation of Perishable Foodstuffs” However, there is no regulation regarding the transportation temperature and temperature recording device that will be used.</p> <p>However, transportation temperatures that are exercised at domestic transportation are specified at “By-law on Special Hygiene Rules for Animal Food.”</p> <p>Transportation temperatures that are exercised at domestic transportation are specified at “Turkish Food Codex Communiqué on Quick Frozen Foods”</p> <p>Criteria regarding the temperature measuring</p>	<p>- France: Rural and Maritime Fisheries Code Article R231-45 R231-45: Certified special equipment must be used for land transport of perishable food. The code is regulated by Cemafroid in accordance with a Decree of June 2, 2008.</p> <p>Exceptions to the inland transportation of perishable foodstuffs are as follows;</p> <p>a) Transport for a distance of less than 80 km without reloading (door opening),</p> <p>b) Transport of milk and milk cream by tankers for less than</p>	<p>- If the implementation of ATP to inland transport is deemed appropriate.</p> <p>1. With the amendment that will be made in 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 specified in ATP, and vehicles carrying frozen foodstuffs should have a temperature recording device. In the same article also, it should be regulated that temperature requirements for inland transportation</p>	<p>Partially Complies</p>

	<p>and recording devices are specified within Turkish Food Codex Communiqué on Monitoring of the Temperature During Storage, Preservation and Transport of Quick-Frozen Foodstuffs</p>	<p>200 km, c) parcels, d) Transport of the frozen fish products for less than 1 hour and for a distance of less than 80 km from a cold store (to the aforementioned approved structure), provided that it is to be thawed for preparation upon arrival at an approved structure, e) In cases where the cold procedure of the transport is not required due to severe climatic conditions.</p> <p>- Spain: Royal Decree 237/2000 article 7: Certified special equipment must be used in the land transport of perishable food.</p> <p>Italy: Pursuant to the Ministerial Decree dated 28 February 1984, vehicles engaged in inland transport of perishable foodstuffs are subject to the ATP regime</p>	<p>and criteria for the usage of temperature recording devices are regulated in the related legislation of the Ministry of Agriculture and Forestry.</p> <p>2. With the amendment that will be made in article 5 of By-Law on Special Equipment to Be Used for The Transportation of Perishable Foodstuffs, the obligation of using special equipment should be regulated in parallel with the ATP.</p>	
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<p>(c) Persons subject to obligations and sanctions:</p> <p>- 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>Persons subjected to obligations and sanctions is regulated in the Article 23 of <i>By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs.</i></p> <p>Selection of control points and measurement method for the official control of the temperature of quick-frozen foodstuffs offered to human consumption is regulated in the <i>“Turkish Food Codex Communiqué on the Methods of Sampling and Analysis for the Control of Temperature of Quick-frozen Foodstuffs.”</i></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 <i>By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs.</i></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, Annex 2, Appendix 2</p> <p>a) Obligation to take the required general measures for the effective implementation of the ATP:</p>	<p>Procedures regarding the inspections, are regulated in articles 20 and 21 of “By Law on Special Equipment to Be Used for The Transportation of Perishable Foodstuffs”.</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>-If the implementation of ATP to inland transport is deemed appropriate;</p> <ol style="list-style-type: none"> 1. With the clause to be added to article 477 of Presidential Decree No. 1, Transport Services Regulation General Management should be authorized regarding the regulation and inspection in the scope of international treaties about the Transportation of Perishable Foodstuffs. 	
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		<p>- Italy: Specified by Code no. 264 dated 1977 and Presidential Decree no. 327/80, Ministry of Sustainable Infrastructure and Mobility is authorized for technical requirements, and the Ministry of Health is authorized for health and hygiene requirements</p>		
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3.1 ATP PROVISIONS/COMPONENTS

ATP provisions/components are listed in the left column of the Legislation Analysis Chart.

3.1.1 ATP ARTICLE 2

Obligation to Perform Inspections and Tests

Relevant obligation states that it is obligatory to test and inspect the conformity of the specific equipment to the standards listed 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 of conformity forms), and Appendix 4 (distinguishing marks to be affixed to specific equipment). Annex 2 of the ATP should include the preservation of frozen food groups and refrigerated food groups in Annex 3 and the maximum temperatures recorded in the same annexes envisaged throughout their transport.

Briefly, the inspections and tests to be carried out in inspection centers should be aimed at determining that the special equipment meets the technical requirements specified in the relevant Annexes and Annexes.

3.1.2 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.

3.1.3 ATP ARTICLE 4, ATP ANNEX 2-3

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

Special Equipment defined in the article 1 of the ATP should be used for the transportations of perishable foodstuffs stated in the Annex 2 and Annex 3 of the ATP.

b) Perishable foodstuffs must be transported in accordance with the maximum temperatures stipulated in the ATP for their type, by certified special equipment with a temperature measuring and recording device, especially for food transport.

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 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.

Special equipment carrying deep-frozen perishable food must have a temperature measuring and recording device in accordance with Annex 2 Appendix 1. The device must comply with EN 12830 and EN 13486 standards. Records are recorded by the operator and kept for at least one year, depending on the type of food.

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.

c) Nature of persons 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.

In accordance with Annex 2, Appendix 2, the temperatures mentioned in Annexes 2 and 3 should be measured not during transportation, but at the loading or unloading stage. Inspection and temperature measurement should not be performed during transportation unless there is serious doubt that the degrees in Annex 2 and Annex 3 are not respected. In addition, sampling and temperature measurements should in any case be performed without exposing the foodstuffs to conditions that would affect the food safety and quality, should be carried out in a refrigerated environment, and should be implemented in a way that causes minimum delay and minimum disruption for transport operations. Temperature increases, also, are considered tolerable to a certain extent.

3.1.4 ATP ARTICLE 5

Except from the issues stated in the article 3, it is stated that thermal sea containers manufactured with the same qualifications pursuant to authorized authorities of Contracting parties or ISO 1496-2, land road/railway transportations conducted before or after the sea passing are not included into ATP.

3.1.5 ATP ARTICLE 6

Article 6 of the ATP obliges Contracting States to take general measures for the effective implementation of the ATP. General measures are not regarded 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, roadside inspections stand out as a deterrent factor.

3.2 Turkish Legislation on Control of Perishable Foodstuffs and Requirements for Inland Transport

The equivalents of the provisions/components of the ATP in Turkish law are listed in the second column from the left of the Legislation Analysis Table.

3.2.1 ATP ARTICLE 2

By Law on Special Equipment to Be Used for The Transportation of Perishable Foodstuffs

Article 5 of the By-Law regulates the general rules which are required to be complied for the transportation activities. On the other hand, penal sanction which will be imposed in case of breach is stated in the article 23/1-a of the By-Law.

3.2.2 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 which are not included in the Agreement on International Transportation of Perishable Foodstuffs and Special Equipment to be Used in Such Transportation Activities.”

3.2.3 ATP ARTICLE 4, ATP ANNEX 2-3

Applicable rules regarding the inland transportation of perishable foodstuffs in scope of ATP, are as follows:

By Law on Special Equipment to Be Used for The Transportation of Perishable Foodstuffs

Rules regarding the obligation of using special equipment is specified in the article 5 of the By-Law on Special Equipment to Be Used for The Transportation of Perishable Foodstuffs.

Article 6 of the By-Law specifies the obligations of special equipment users operating in the transportation of perishable foodstuffs, however, does not contain any regulation regarding the transportation temperature and temperature recording device to be used.

People subjected to sanctions and obligations are specified in the article 23 of the By-Law.

By-law on Special Hygiene Rules for Animal Food

Listed in Article 17, in accordance with the rules for the storage and transport of domestic equidas, their meat must, as a rule, be kept at a certain temperature (not more than 3 °C for entrails and 7 °C for other meats) throughout the transport. Pursuant to Article 22, poultry and rabbit-line meat must reach a temperature of not more than 4 °C before the transport and, as a rule, remain at this temperature throughout the transport. In accordance with Article 31, minced meat is cooled to an internal temperature of no higher than 2 °C and prepared meat mixtures to an internal temperature of no higher than 4 °C or frozen to -18 °C or lower. Such temperature conditions shall be maintained during storage and transport. If the Mechanically Separated Meat shall not be used immediately after they are obtained, they shall be packed or packaged, be cooled by an internal temperature not higher than 2 °C or be frozen until their internal temperature reaches -18 °C or lower. Such temperature conditions shall be maintained throughout storage and transport. In accordance with Article 52:

Fresh fishery products, raw thawed fishery products, cooked frozen products obtained from crustaceans and mollusks should be preserved at the melting temperature; and except salted frozen whole fish for production of canned food, frozen fishery products should be preserved at -18 °C or lower degrees as the temperature is to be same everywhere during the transport. Article 55 2 c: Cold chain is preserved during transport and when arrived at processing facility, the temperature of milk and colostrums cannot be more than 10 °C

Turkish Food Codex Communiqué on Quick Frozen Foods

Temperature requirements for the inland transportation of quick-frozen foodstuffs is regulated in the article 5/d of the Communiqué.

Turkish Food Codex Communiqué on Monitoring of the Temperature During Storage, Preservation and Transport of Quick-Frozen Foodstuffs

Rules regarding the monitoring of the temperature during storage, preservation and transport of quick – frozen foodstuffs are as follows.

- a) Temperature controls shall be carried out for every stage in order not to break the cold chain of quick-frozen foodstuffs during the transport, storage, distribution, and retail sale store preservation.
- b) During the storage, preservation and transport of quick-frozen foodstuffs, the ambient temperature is recorded at frequent and regular intervals using appropriate measuring and recording devices.
- c) All measurement and recording devices used to monitor temperature must comply with TS EN 12830, TS EN 13485 and TS EN 13486 standards. Food business operators must have documents with them, showing that these devices comply with the relevant TSI standards.
- d) Temperature records are kept by the food business operator at regular intervals by specifying the date and time, and these records are kept for at least one year or longer, taking into account the structure and shelf life of the quick-frozen foodstuffs (Article 4).

Turkish Food Codex Communiqué on the Methods of Sampling and Analysis for the Control of Temperature of Quick-frozen Foodstuffs

The Communiqué is specific to the methods of sampling and analysis for the control of temperature of quick-frozen foodstuffs. The following provisions regarding the sampling of control locations are specified in the related section on transport in Annex 1 of the Communiqué:

Transport

- a) Sampling of control locations during transport:

The samples for measuring the temperature should be selected from both the bottom and the top, close to each openable door or door wings of shipment.

- b) Sampling of control locations during unloading:

Annex 1 of the Communiqué also includes sample selection method for controls.

Annex 2 of the Communiqué includes the temperature measurement method during the controls.

3.2.4 ATP ARTICLE 5

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

3.2.5 ATP ARTICLE 6

By-law on Inspection of Transport Services

According to the By-law, the term control refers to determining whether the activities carried out in the field of road transport services comply with the related legislation. The personnel performing controls consist of the personnel of the institutions and organizations listed in the Code on Road Transport, the Code on Road Traffic and the Legislative Decree No. 655, authorized for controls and trained in this regard. Types of control include road controls as well. These controls are divided into three groups as fixed control stations, mobile controls and border gate controls. Controls at fixed inspection stations are carried out within the framework of a certain control program. It is essential to inspect the vehicles determined by means of electronic systems, and if the systems cannot select vehicles in this way, the vehicles to be inspected are determined by the inspector. For mobile controls, the road section and time of control are determined by the regional directorates. It is important that there is a sufficient and safe area where the vehicle(s) will be stationed and the vehicles to be inspected will be pulled over on the road section to be inspected. It is important not to control in locations where sight distance is reduced such as bends, junctions, bridges and tunnels, in road sections where the pavement is narrow or crossing is prohibited by traffic signs, and in cases where the road surface is snowy or icy, and in foggy, rainy and similar weather conditions that reduce sight distance. Vehicle pull overs, lane narrowing and similar traffic measures on the road section of controls are carried out by the traffic police. Controls are performed by using checklists.

3.3 BEST EU PRACTICES

Best EU practice country provisions are listed in the second column from the right of the Legislation Analysis Table.

3.3.1 ATP ARTICLE 2

France: Testing and inspection obligation is specified in the Decree on the Technical Conditions of the Transport of Temperature-controlled Foodstuffs the Decree specifies the technical conditions for obtaining an ATP certificate of compliance and includes provisions for the inspection of test centers. Cemafroid is authorized by as approval authority for tip test/inspection services in scope of ATP. Certificates are issued via the electronic system called DATAFRIG. Cemafroid technical documents are complementary for the Decree on the Technical Conditions of the Transport of Temperature-controlled Foodstuffs.

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.

Italy: Testing and inspection obligation is specified in line with the ATP through Code No. 264 dated 1977. The Code was later extended to inland transport.

3.3.2 ATP ARTICLE 3

France: There is no specific regulation since France had implemented the ATP to the inland transportation.

Spain: Pursuant to article 1 of the 237/2000 numbered Royal Decree, only land transportation is included in the scope.

Italy: Pursuant to Code numbered 264 and dated 1977, scope is regulated in compliance with the ATP and there is no special regulation

3.3.3 ATP ARTICLE 4, ATP ANNEX 2-3

a) Obligation to use special equipment in land transportation of perishable foodstuffs.

Certificate of compliance to be used for domestic transportations is regulated in all three of the best EU practice countries and these certificates are different from the ATP Certificate of Compliance in shape.

b) Perishable foodstuffs must be transported in accordance with the maximum temperatures stipulated in the ATP for their type, by certified special equipment with a temperature measuring and recording device, especially for food transport.

France: Rural and Maritime Fisheries Code Article R231-45 R231-45: Certified special equipment must be used for land transport of perishable food. The code is regulated by Cemafroid in accordance with a Decree of June 2, 2008.

Exceptions to the inland transportation of perishable foodstuffs are as follows;

- a) Transport for a distance of less than 80 km without reloading (door opening),
- b) Transport of milk and milk cream by tankers for less than 200 km,
- c) parcels,
- d) Transport of the frozen fish products for less than 1 hour and for a distance of less than 80 km from a cold store (to the aforementioned approved structure), provided that it is to be thawed for preparation upon arrival at an approved structure,
- e) In cases where the cold procedure of the transport is not required due to severe climatic conditions.

Spain: Royal Decree 237/2000 article 7: Certified special equipment must be used in the land transport of perishable food.

Italy: Pursuant to the Ministerial Decree dated 28 February 1984, vehicles engaged in inland transport of perishable foodstuffs are subject to the ATP regime.

c) Nature of persons subject to provision and sanction

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).

3.3.4 ATP ARTICLE 5

France: There is no special regulation.

Spain: There is no special regulation regarding the Thermal Sea Containers

Italy: There is no special regulation regarding the Thermal Sea Containers.

3.3.5 ATP ARTICLE 6

France: 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.⁵⁸ Also, France conducted 530 land road controls in 2020.⁵⁹

Spain: 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.⁶⁰ On the other hand, Spain conducted 957 land road controls in 2020 and detected 27 violations. Spain did not conduct any railway controls in 2020.⁶¹

Italy: 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.

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.⁶² Even if there is no data regarding the number of controls conducted by Italy in 2020, 67 ATP violations are detected in these controls.⁶³

3.4 LEGAL GAP ANALYSIS AND RECOMMENDATION(S)

Recommendations are listed in the right column of the Legislation Analysis Table.

In the recommendations section, the requirements of the provisions/components of the ATP are compared with the provisions of Turkish law on the control of perishable foodstuffs and on the requirements for the inland transport of perishable foodstuffs. At the same time, possible legislative amendments for Turkey and alternative methods, if any, are determined in the light of the provisions entered into force in Spain, France and Italy, which are the best EU practice countries in terms of implementation of the ATP. The recommendations will be valid if Turkey implements the ATP provisions to inland transport.

The main factors taken into consideration for the recommendations are as follows:

- ATP is an international agreement directly applicable in Turkish law. It has the force of law in accordance with Article 90 of the Turkish Constitution. However, it is not a directly effective international agreement since there is no detailed legislative regulation, especially on control and sanction matters. As a result, it should be transposed into the Turkish legal system with the domestic legislation provisions to be prepared in line with the ATP and in

⁵⁸ UNECE questionnaire 27.07.2020

unece.org/sites/default/files/2020-09/ECE-TRANS-WP11...17e.pdf

⁵⁹ UNECE anketi 09.08.2021

https://unece.org/sites/default/files/2021-09/ECE_TRANS_WP.11_2021_1E.pdf

⁶⁰ UNECE questionnaire 27.07.2020

unece.org/sites/default/files/2020-09/ECE-TRANS-WP11...17e.pdf

⁶¹ UNECE anketi 09.08.2021

https://unece.org/sites/default/files/2021-09/ECE_TRANS_WP.11_2021_1E.pdf

⁶² UNECE questionnaire 27.07.2020

unece.org/sites/default/files/2020-09/ECE-TRANS-WP11...17e.pdf

⁶³ UNECE anketi 09.08.2021

https://unece.org/sites/default/files/2021-09/ECE_TRANS_WP.11_2021_1E.pdf

accordance with the hierarchy of norms. Thus, the scope and limits of the rights and obligations for individuals will be clearly specified in accordance with the legal determinacy criterion. This obligation, which is applicable in terms of international law, is also a requirement for inland transport.

- As a rule, the recommendations for Turkish law are based on the common criteria of the best EU practice countries, and if there is a country that stands out in the implementation of the related ATP provision/component, this point is also stated in the related section.

- Regulations No. 852/2004, 853/2004, 854/2004 of the European Parliament and of the Council and Commission Regulation No. 37/2005 on hygiene and official control of foodstuffs have been prepared with the purpose of preventing foods intended for human consumption in general, and animal foods in particular, from endangering human health. These Regulations include processes including transport for the consumer consumption of cold chain foodstuffs. The Regulations in question were transposed into the Turkish legal system via the By-law on Food Hygiene, the By-law on Special Hygiene Rules for Animal Food, By-law on Regulation of the Special Provisions Regarding Official Controls of Animal Food, and the Turkish Food Codex Communiqué on Monitoring of the Temperature During Storage, Preservation and Transport of Quick-Frozen Foodstuffs, thus ensuring alignment with the EU legislation. Turkish Food Codex Communiqué on the Methods of Sampling and Analysis for the Control of Temperature of Quick-frozen Foodstuffs (Effective as of: 31.07.2015) has been prepared within the framework of alignment with the European Union legislation, within the framework of the Commission Directive 92/2/EEC of 13 January 1992 laying down the sampling procedure and the Community method of analysis for the official control of the temperatures of quick-frozen foods intended for human consumption. This matter falls under the purview of the Ministry of Agriculture and Forestry.

Essentially, all kinds of issues (packing, labeling, marking, temperature monitoring and control, etc.) related to foodstuffs as well as goods and materials contacting with them are under the responsibility of the Ministry of Agriculture and Forestry. The codes, by-laws and communiqués on the control of perishable foodstuffs examined within the scope of this report are also duties of the Ministry of Agriculture and Forestry in this context. On the other hand, food hygiene is also an important matter for Turkey as it is for almost all States, which creates extensive obligations in the context of domestic and international law, is very comprehensive, technical, and needs to be kept up to date, includes internal regulations of the related authorities that are not published in open sources, includes the regulations under the contract law with other public authorities/private institutions using formats such as protocols and/or is not published in open sources.

For the recommendations made in the Legislation Analysis Table, the necessity of not contradicting the authorities arising from the legislation falling under the purview of the Ministry of Agriculture and Forestry, and not causing duplication in terms of control and authority was taken into consideration.

- It is recommended that the provisions and requirements to be implemented to both markets should be uniform in the recommendations for the Contracting States that implement/will implement ATP for their inland transport activities, which are included in the "Road Map to Accession to and Implementation of ATP" published by UNECE. The purpose of this recommendation is that the transport of perishable foodstuffs issue specified in the Road Map not to cause confusion for users and implementers (the term implementer refers to the States authorities entitled to perform control and sanctioning). It is also stated in the Road Map that if any Contracting State decides to implement ATP in inland transport, issues such as the transitioning process for the entry into force of the domestic implementation and the determination of which vehicles the ATP provisions will be applied should be clarified.

- The provisions regarding the structure of the Turkish legal system and the hierarchy of norms of the Turkish legal system, and the requirements of the legislation on cooperation among Ministries have been taken into account.

In this context, it has been stated that it is necessary and sufficient for the related Codes to have content determining the purpose, scope, definitions and subject-matter, principles, the authorities entitled to control whether these principles are complied with, the distribution of authority under the coordination of the competent authorities, and the general sanctions for non-compliance with the provisions; it has been taken into consideration

that it is necessary to make recommendations in line with the established practice and legal system and other issues should be included in the secondary legislation (related by-laws and other sub-regulations).

- In this regard, the main recommendation in this report for the process of determining the legal infrastructure required for inland transport of perishable foodstuffs is to update the current legislation in scope of the legislation analysis, regarding the implementing the ATP provisions to domestic transportation as well.

The following is recommended to Introducing the obligation to use certified special equipment for the inland transport of perishable foodstuffs; determining the exceptions of the obligation, the transition process, the form of the certificate of inland transport of perishable foodstuffs; determining which issues will be subject to control in terms of transport of perishable foodstuffs (including the controls regarding whether there is a certificate of compliance of transport of perishable foodstuffs and whether the validity of the certificate is expired or not in any case in the scope of control; adding provisions on the control of temperature measuring and recording devices, within the framework of the possibilities and capabilities in the field and in consultation with the Ministry of Agriculture and Forestry), adding a general provision that the controls will be carried out in accordance with the By-law on Inspection of Transport Services.

In order to ensure the alignment of the legislation and the uniformity of the provisions to be implemented to the international and inland transport of perishable foodstuffs, it is recommended that the provisions regarding the international and inland transport of perishable foodstuffs within the scope of the ATP be regulated in a single By-law.

It should be preferred that the provisions to be implemented to the vehicles that will be obliged to use the ATP certificate of compliance are common provisions for international and inland ATP transports, except for the provisions regarding the form of certificate.

- The recommendations listed in the report are general recommendations for filling the gaps in the Turkish legislation and aligning the legal infrastructure required by inland transport of perishable foodstuffs with the ATP. Excess of detail has been avoided except for the requirements for this purpose.

Although not included in the recommendations in the report, two general points are presented below in order to ensure the integrity and effectiveness of the recommendations:

- ATP and its annexes are regularly amended and updated by the Economic Commission for Europe Inland Transport Committee Working Party on the Transport of Perishable Foodstuffs (WP 11). The current version entered into force on 06.07.2020. As of the date of this report, the Presidential Decree regarding the approval of the current text has not been published in the Official Gazette yet. Therefore, it has not entered into force for Turkey. Although the amendments are usually on technical details, the approval process of the current ATP texts must be completed for the effective implementation of ATP in international and inland transport of perishable foodstuffs.

- Differences were detected between the original English text of the ATP and the Turkish translation of it. For example, in the original English text of the ATP, the second clause of Article 2 refers to Appendix 3, while in the Turkish text it refers to Appendix 4. Similarly, in the original text of Article 3, which determines the field of implementation, it is mentioned that the loading and unloading points of foodstuffs or equipment related to these activities must be located in two different States. In the Turkish text of this expression, the phrase "the point" where the foodstuffs or equipment is loaded is located in two different States, which is not correct. In addition, the term used in the Turkish legal system, especially in the whole of the road transport legislation, for the person performing the transport is "transporter". However, in the Turkish translation of ATP, this term is translated as "carrier". Publishing the correct Turkish translation version on the websites of the Ministry, TSI and other stakeholders deemed appropriate will serve to make the ATP provisions well known to the Turkish people. Specific recommendations for articles are listed below under the related ATP article/component.

3.4.1 ATP ARTICLE 2

Relevance of best EU practices

The inspection and testing obligation is specified in the legislation of all three of the best EU practice countries. It is based on the Royal Decree-Law in Spain, the Code in Italy, and the Decree in France. The technical documents were prepared based on these main regulations in all three of the countries.

Legal gap analysis

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.

Recommendation(s)

If it is decided to implement ATP to inland transport, the following recommendations are to be valid:

1. 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.
2. Besides, alongside with the administrative fines, sanctions stated in the Legislative Decree No. 655 such as cancellation, suspension and similar sanctions can be provided.

3.4.2 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.

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

3.4.3 ATP ARTICLE 4, ATP ANNEX 2-3

Relevance of best EU practices

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

The obligation to use certified special equipment in the inland road transport of perishable foodstuffs is an obligation specified in the related legislations of all three of the best EU practice countries. Legislations of all three countries differentiates from each other in terms of form of the certificate of compliance issued for inland transport of perishable foodstuffs and the international ATP certificate of compliance issued within the scope of ATP.

b) **Perishable foodstuffs must be transported in accordance with the maximum temperatures stipulated in the ATP for their type, by certified special equipment with a temperature measuring and recording device, especially for food transport.**

France: Rural and Maritime Fisheries Code Article R231-45 R231-45: Certified special equipment must be used for land transport of perishable food. The code is regulated by Cemafruid in accordance with a Decree of June 2, 2008.

Spain: Royal Decree 237/2000 article 7: Certified special equipment must be used in the land transport of perishable food.

Italy: Pursuant to the Ministerial Decree dated 28 February 1984, vehicles engaged in inland transport of perishable foodstuffs are subject to the ATP regime. No certificate of compliance which does not meet the requirements of ATP but can be used for inland transportation, has been issued since September 1984 for vehicles that do not comply with ATP requirements. The special equipment certificate of compliance issued for inland transport is different in form from the international ATP certificate of compliance issued within the scope of ATP.

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

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).

Legal gap analysis

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

In the By-Law, it is regulated that BTB will be issued for the vehicles that do not comply with the requirements of ATP but can be used for domestic transportation or transportations to the countries which are not a party of ATP Agreement. However, issues such as technical requirements of the BTB and labels and marks that will be used in scope of BTB is defined in the ***“Directive on Test and Technical Inspection of Special Equipment To Be Used For The Transportation of Perishable Foodstuffs”***

b) **Perishable foodstuffs must be transported in accordance with the maximum temperatures stipulated in the ATP for their type, by certified special equipment with a temperature measuring and recording device, especially for food transport.**

In inland transportation, temperature requirements regarding the perishable foodstuffs are currently regulated in the relevant legislation of the Ministry of Agriculture and Forestry and additional regulation is not required.

Moreover, in accordance with the Presidential Decree No.1, mentioned issues are under the authority of the Ministry of Agriculture and Forestry.

In the article 5 of the By-Law on Special Equipment to Be Used for the Transportation of Perishable Foodstuffs, general rules for the transportation activity are regulated but exceptions stated in the ATP are not included.

(c) Persons subject to obligations and sanctions:

It is understood that persons subjected to obligations and sanctions is regulated as complying with the general rule of the ATP.

Recommendation(s)

a) Obligation to use special equipment in land transportation of perishable foodstuffs.

It is recommended to handle all requirements regarding the BTB and ATP Certificate of Compliance in the By-Law and by considering the requirements of the ATP requirements, more specific criteria for the BTB can be provided.

b) Perishable foodstuffs must be transported in accordance with the maximum temperatures stipulated in the ATP for their type, by certified special equipment with a temperature measuring and recording device, especially for food transport.

With the amendment that will be made in 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 specified in ATP, and vehicles carrying frozen foodstuffs should have a temperature recording device. In the same article also, it should be regulated that temperature requirements for inland transportation and criteria for the usage of temperature recording devices are regulated in the related legislation of the Ministry of Agriculture and Forestry.

Within the amendment that will be made in article 5 of the By-Law on Special Equipment to Be Used Fort The Transportation of Perishable Foodstuffs, exceptions regarding the obligation to use special equipment should be specified in parallel with the ATP.

(c) Persons subject to obligations and sanctions:

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.

3.4.4 ATP ARTICLE 5

Relevancy of the EU best practice countries

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 an 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.

3.4.5 ATP ARTICLE 6, ATP ANNEX 2 APPENDIX 2

Relevance of best EU practices

Legislations of all three of the best EU practice countries include control mechanisms under the obligation to take general measures to ensure the effective implementation of the ATP. Controls are carried out in all three of the countries by the Ministry responsible for ATP and, if necessary, by the officials of other stakeholder authorities in cooperation. Each Ministry/entitled authority carries out controls within the framework of the authority granted to it by domestic law.

Legal gap analysis

The controls specified in the Turkish legislation regarding the inland transport of perishable foodstuffs are mainly divided into two groups.

The first group of controls is the “controls regarding whether the transport activities are carried out in accordance with the transport legislation and second group of controls is the “controls for food and food contacting goods and equipment”.

Recommendation(s)

If the implementation of ATP to inland transport is deemed appropriate:

With the clause to be added to article 477 of Presidential Decree No. 1, Transport Services Regulation General Management should be authorized regarding the regulation and inspection in the scope of international treaties about the Transportation of Perishable Foodstuffs.

THE CONCLUSION

The general current Turkish legislation is partially complying with the ATP provisions. However, the need to apply the ATP requirements to the Domestic transport operations is quite a complex question. Regarding the applying the ATP requirements to domestic transportation activities, Ministry made important progress and fulfilled many of the necessities. On the other hand, in accordance with this report, completing the legislation compliance is suggested. Besides, considering that applying the ATP requirements to domestic transportation activities is affecting many institutions, creating committees in order to ensure effective coordination between institutions is suggested. Additionally, doing more field research and detecting the necessities of the sector by consulting with the public institutions, companies and academic staff would be beneficial.

The "Road Map to Accession to and Implementation of ATP" published by UNECE stated that if any Contracting State decides to implement ATP in inland transport, issues such as the transitioning process for the entry into force of the domestic implementation. Accordingly, in the temporary Article 2/2 of the By-Law, it is obligated that equipment produced in 2022 or after, should be complying with the ATP requirements, and 3 years of the transition period for the equipment which is produced before 2022 is specified, to obtain the Certificate of Perishable Foodstuffs (BTB).

Recommendations pursuant to hereby report are as follows, in addition to procedures that explained above or already completed.

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. Considering there is no seaway passage shorter than 150 km in Turkey regarding the transportation of perishable foodstuffs, scope of the By-Law shall be limited with the land road and railway transportation for the domestic transportations.
3. All requirements regarding both ATP Certificate of Compliance and BTB should be regulated in the By-Law and more clear criteria for the BTB should be specified considering the ATP requirements.
4. With the amendment that will be made in 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 specified in ATP, and vehicles carrying frozen foodstuffs should have a temperature recording device. In the same article also, it should be regulated that temperature requirements for inland transportation and criteria for the usage of temperature recording devices are regulated in the related legislation of the Ministry of Agriculture and Forestry. Exceptions of the obligation of using special equipment should be regulated in parallel with the ATP.
5. Persons subjected to sanctions should be regulated in parallel with the ATP.
6. With the amendment of article 2 of the By-Law, land road and railway transportation of the sea containers are out of scope.
7. With the clause to be added to article 477 of Presidential Decree No. 1, Transport Services Regulation General Management should be authorized regarding the regulation and inspection in the scope of international treaties about the Transportation of Perishable Foodstuffs.

The French, Italian and Spanish experience could be a subject for further deeper investigation, bring additional knowledge on their specific background and actual specific reasons for the certification of the national transportations, as well as the lessons learned, that the Turkish Authorities, could get it via bilateral consultations with the Authorities of those countries including during the Study Visits to be organized, but it's obvious that those steps should be based on the comprehensive economical study with the detailed and an unequivocal conclusion that this decision and further steps bring more social-economical benefits to Turkey than the potential losses in different political, social and economical spheres with its introduction.

As a result of detailed research, articles/components of the ATP agreement are identified, related legislation of best EU practice countries (France, Spain, Italy) are analysed and recommendations for providing the legislation compliance are specified. Based on the wide range of consultations, within the Activity 1.4 the Contractor will prepare draft legislation /articles for the proper incorporation of this report recommendations into the current Turkish legislation.



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