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

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RECOMMENDATIONS FOR THE TURKISH LEGISLATION

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ABBREVIATION

ATP	International Transportation of Perishable Foodstuffs and Special Equipment that will be used for such Transportation
EU	European Union
EUR	Euro
MoTI	Ministry of Transportation and Infrastructure
SCTPF	Strengthening Institutional Capacity Of Ministry Of Transport And Infrastructure On The Transport Of Perishable Foodstuffs
SRER	Senior Representative of End Beneficiary
TSI	Turkish Standards Institute
UNECE	United Nations Economic Commission for Europe

INTRODUCTION

The Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage (ATP) is established in Geneva on 1 September 1970 and entered into force on 21.11.1976. It contains uniform standards for the international transport of temperature sensitive foodstuffs.

Republic of Turkey became a party to ATP through accession on 21.12.2012. Following the entry into force of the ATP, The Ministry of Transport and Infrastructure, which is the authorized authority determined by Turkey in the implementation of ATP, signed a protocol with Turkish Standards Institutes (TSI) on 20.10.2016. TSI has been carrying out certification processes within the scope of ATP since 01.05.2017, in accordance with this protocol.

Since the effective date of ATP and its annexes, it has been regularly updated and amended by the European Economic Commission Inland Transportation Committee Study Group of the Transportation of Perishable Foodstuffs (WP 11). ATP had been amended five times since came in force in Turkey amendment dates are 13.11.2014, 30.09.2015, 19.12.2016 and 06.07.2020.

Within the scope of SCTPF Project, to ensure the requirements regarding the ATP Agreement are fulfilled pursuant to Tor, Gap Analysis Report for Turkish Regulation and Best European Practice (Activity 1.1) and Legislation Analysis Report (Activity 1.2) has been prepared. Subject-matter and the purpose of the reports in question are as follows.

ATP Requirements in International Transportation and Their Equivalents in EU Legislation

In the Gap Analysis Report for Turkish Regulation and Best European Practice, differences between ATP regulations and current Turkish Legislation have been detected and the articles/components of the ATP Agreement that are identified in Turkish legislation are compared to the primary legislation of the determined best EU implementation countries. As a result of these findings, recommendations for the completing the compliance of Turkish Legislation had been specified.

(Activity 1.1 Outcome: Gap Analysis Report for Turkish regulation and best European practice)

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

This legislation analysis is a continuation of the analysis done under Activity 1.1. In scope of the Legislation Analysis Report, 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. As a result, suggestions regarding legal amendments that needs to be done for compliance of ATP provisions to internal transportation have been explained.

(Activity 1.2, Outcome: Legislation Analysis Report)

In Report on Proposals for Turkish Legislation (Activity 1.4), based on the outcomes from the completion of the activities specified above, it is aimed to determine recommendations for the full compliance of national legislation with ATP, prepare draft articles/legislations and completing the compliance process in this way.

(Activity 1.4 Outcome: Report of suggestions regarding Turkish Legislation)

1. LEGAL RECOMMENDATIONS PURSUANT TO OUTCOME OF ACTIVITY 1.1 AND ACTIVITY 1.2

In this section, in the light of outcomes attained from Activity 1.1 and 1.2, legal recommendations regarding the requirements to be done in order to develop national legislation and draft legislation/articles will be prepared concerning the amendments. Also, by investigating the EU practices regarding this issue, some legal provisions will be translated to Turkish as best practice examples in order to detail the legal legislation.

1.1 ATP ARTICLE 2

1.1.1 Legal Gap Analysis

a) Obligation of Inspection and Testing

Provisions regarding the obligation of testing and inspection are regulated on 5th, 6th and 20th articles of the By-Law. Under article 5/4 of the By-Law, approval institutions and ATP inspection centers are obliged to comply with the regulatory acts published by the Ministry. Besides Directive on Test and Technical Inspection of Special Equipment To Be Used For The Transportation of Perishable Foodstuffs is published by the Ministry, which provides obligations regarding the transportation of perishable foodstuffs.

Even if administrative sanctions are provided, that shall be imposed in case of the violation of obligations stated in the By-Law (including the legislative acts published by the Ministry) many different obligations became subjected to same sanction. For this reason, it is suggested to provide different sanctions for the violation of different obligations arising from By-Law and Directive. On the other hand, it should be remembered that administrative fines can be specified only within the legislations published on the Official Gazette.

In order to prevent this situation, 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. In this scope, alongside with the administrative fines, sanctions stated in the Legislative Decree No. 655 such as cancellation, suspension and similar sanctions can be provided.

b) Validity of the ATP certificates issued by foreign countries

Special equipment produced in foreign countries and registered in Turkey is regulated in article 17 of the By-Law on Special Equipment to Be Used for The Transportation of Perishable Foodstuffs. According to article 2 of ATP, each contracting state is obliged to recognize the ATP Certificate of Compliance issued by authorized authority of another country and complying with provisions of, annex-1, appendix – 1, paragraph 3 of this agreement.

However, there is no statement in the By-law regarding that the ATP certificate of compliance issued by the authorities of another Contracting State to the special equipment in a vehicle with a foreign license plate engaged in international transportation activities should be accepted as valid as long as the relevant vehicle is in Turkey, until proven otherwise. Although it has been declared that such documents are accepted as valid in practice, by the reason of the relevant rule is related to individual rights and freedoms, it should be added to the Regulation and placed on a legal basis.

1.1.2 Recommendation for Draft Legislation

a) Validity of the ATP certificates issued by foreign countries

It is recommended to add the following paragraph to Article 5 of the By-law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs.

- (5) ATP Certificate of Compliance issued by the authorities of another Contracting State to the special equipment in a vehicle with a foreign license plate engaged in international transportation activities should be accepted as valid as long as the relevant vehicle is in Turkey, until proven otherwise.

1.2 ATP ARTICLE 3 AND ARTICLE 5

1.2.1 Legal Gap Analysis

a) **Transportation Types in scope of ATP and Conditions (Land Road transportation, railway transportation and seaway passings shorter than 150 km conducted between before, after or between land road and railway transportation)**

With the By-law on Special Equipment To Be Used For the Transportation of Perishable Foodstuffs, it is understood that Turkey extended the ATP regulations regarding the transportation of perishable foodstuffs, like best EU practice countries, to the domestic transportation. Article 2 of the By-Law covers both domestic and international transportation of perishable foodstuffs in this context.

In this situation, it is understood that article 2 of the By-Law regarding the scope is parallel with legislation which are in force in the best EU practice countries. 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.

b) **Thermal sea containers, and land road/railway transportations carried out before or after seaway passing are not subjected to ATP regulations.**

Article 5 of the ATP Agreement clearly sets forth that thermal sea containers are not within the scope of ATP. Even if By-Law is limited with the land road transportation, mentioned thermal sea containers can be used for the land road transportation too.

For this reason, with the update of article 2 of By-law on Special Equipment To Be Used For the Transportation of Perishable Foodstuffs, it is recommended to specify that land road and railway transportation of thermal sea containers are out of scope.

1.2.2 Recommendation for Draft Legislation

Scope

Article 2 – (1) This By-Law covers the following;

- a) **Land road and railway transportation of perishable foodstuffs,**
- b) **Special equipment that used for the transportation of perishable foodstuffs,**
- c) **Duties and obligations of parties engaged in the transportation of perishable foodstuffs,**
- d) **Activities regarding the transportation of perishable foodstuffs conducted by public institutions and foundations.**

(2) This By-Law does not cover the following;

- a) Transportation activities conducted in scope of legislation regulations that shall be applied during warfare, exceptional circumstances or in accordance with the international agreements,
- b) Transportation of perishable foodstuffs which are not included in the (ATP) The Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage
- c) **Land road and railway transportation of thermal sea containers approved by the competent authorities to be manufactured in accordance with ISO 1496-2 or equivalent qualifications, conducted before or after sea passings.**
- d) **Direct and transit transportation of equipment which is loaded with perishable foodstuffs and passed through any border point in Turkey, with land road and railway.**

1.3 ATP ARTICLE 4 AND ANNEX 1-2

1.3.1 Legal Gap Analysis

a) **Obligation of Special Equipment for Land Road Transportation of Perishable Foodstuffs**

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

Within the amendment of article 5 of the By-Law on Special Equipment to be Used for The Transportation of Perishable Foodstuffs, it should be regulated that temperature requirements which shall be exercised for international transportation are temperature requirements stated in ATP, and vehicles operating on international transportation of frozen foodstuffs should have a temperature recording device. However, temperature requirements which shall be exercised for domestic transportation are currently regulated in the relevant legislation of Ministry of Agriculture and Forestry. Because of this reason, with the amendment of article 5, it is recommended to state that temperature requirements which shall be exercised in domestic transportation are the temperature requirements specified in the legislation of Ministry of Agriculture and Forestry.

In the By-Law, it is stated that BTB will be issued for equipment which does not meet the ATP requirements but can be used for the domestic transportation of perishable foodstuffs or to the countries which are not a party to ATP. However, requirements of BTB, issues such as marks and signs that will be used in scope of BTB are regulated in the Directive on Test and Technical Inspection of Special Equipment To Be Used For The Transportation of Perishable Foodstuffs.

That's why, it is recommended to regulate all requirements both for ATP Certificate of Compliance and BTB in the By-Law, and specifying more tangible criteria for the BTB, by considering the requirements of ATP.

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

Regulations regarding the administrative fees are specified in the article 23 of By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs. With the amendment of mentioned article, along with the administrative fees, other sanctions such as suspension, cancellation which are specified in the 655 numbered Code can be provided.

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

In case of the violation of obligations stated in the article 6 By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs, transporter is subjected to sanctions, in accordance with the article 23 By-Law on Special Equipment to be Used in the Transportation of Perishable Foodstuffs. However, pursuant to article 4 of the ATP, persons subjected to sanctions differs depending on the different circumstances.

In order to provide convenience, it is suggested to define the obligations of sender under different article and administrative sanctions that will be exercised in case of the violation of mentioned obligations should be regulated in the article 23.

1.3.2 Recommendation for Draft Legislation

a) **Obligation of Special Equipment for Land Road Transportation of Perishable Foodstuffs**

It is recommended the update article 6 of By-law on Special Equipment To Be Used For the Transportation of Perishable Foodstuffs as follows.

Obligations of user of special transportation equipment

Article 6 - (1) Obligations of users of special transportation equipment involved in the domestic transportation of perishable foods are as follows:

- a) To have ATP Certificate of Compliance or BTB issued by approval institution.
- b) To have ATP Certificate of Compliance or BTB issued for equipment, with the equipment
- c) To mark the insulated equipment complying with the principle and procedures determined by ATP and Ministry,
- d) To ensure that the transportation equipment has the appropriate mark class in accordance with the procedures and principles determined by the ATP or the Ministry according to transported foodstuffs,

(2) Obligations of the users of special transport equipment involved in bilateral perishable foodstuffs transportation activities from Turkey to the Contracting States of ATP or from other countries to Turkey are as follows:

- a) To have an ATP Certificate of Compliance issued for equipment,
- b) To have an ATP Certificate of Compliance issued for equipment, with equipment,
- c) To mark the insulated equipment by complying with by ATP,
- d) To ensure that the transportation equipment has the appropriate mark class in accordance with the procedures and principles determined by the ATP, according to transported foodstuffs,
- e) Transport the perishable foodstuffs in the temperature values stated in the ATP,
- f) To ensure to have a temperature recording device complying with the standards stated in the ATP for special equipment that used for the transportation of frozen/deep frozen foodstuffs and ensure that device is working during the transportation of foodstuffs.

(3) Special transportation equipment users are obliged to follow the validity of the inspection documents by ensuring that inspection of the transportation equipment is completed in periodic inspection date or when required to have exceptional inspection because of the any kind of repair or modification and have them with the equipment in order to submit them during the controls.

(4) Regulations of 11/6/2010 dated and 5996 numbered Code on Veterinary Services, Plant Health, Food and Feed and sub legislations which are legislated based on the mentioned code shall prevail regarding the issues such as temperature requirements that shall be complied during the domestic transportation of perishable foodstuffs and transportation of deep-frozen foodstuffs, and authorities of Ministry of Agriculture and Forestry reserved during the official controls.

Obligations of the Sender

ARTICLE 7 – (1) Obligations of the Sender engaged in the transportation of perishable foodstuffs are as follows.

- a) To make sure that transportation of perishable foodstuffs are conducted with the equipment that has valid ATP Certificate of Compliance or BTB,
- b) To check that equipment that used for the transportation of perishable foodstuffs are marked complying with the rules determined by ATP or Ministry,

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

First paragraph of the Article 23 of the By-Law can be regulated as follows in accordance with the above stated regulations.

- The special equipment user that violates the first paragraph of article 6 shall be charged with administrative fine at the amount of two thousand Turkish Lira for each clause in case of the violation of (a) and (ç) clauses, and one thousand Turkish Lira for each clause in case of the violation of (b) and (c) clauses.
- The special equipment user that violates the second paragraph of article 6 shall be charged with administrative fine at the amount of two thousand Turkish Lira for each clause in case of the violation of (a), (ç), (d) and (e), and one thousand Turkish Lira for each clause in case of the violation of (b) and (c) clauses.
- The sender who violates the first paragraph of the article 7 shall be charged with administrative fine at the amount of two thousand Turkish Lira in case of the violation of clause (a) and one thousand Turkish Lira in case of the violation of clause (b).

1.4 ATP ARTICLE 6

1.4.1 Legal Gap Analysis

Obligation to take required measures for the effective exercise of ATP:

Duties and authorities of Transport Services Regulation General Management are regulated in the article 477 of Presidential Decree no.1. In the mentioned Decree, issues regarding the regulation and inspection of special load transportation activities such as transportation of dangerous load and combined transportation are regulated but there is not any regulation regarding the transportation of perishable foodstuffs.

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.

Inspection activities are regulated in the section six of the By-Law on Special Equipment to Be Used for the Transportation of Perishable Foodstuffs. In this section, legal basis of inspection activities, institutions and foundations authorized regarding the inspection, land road control activities, obligations of the drafting the reports and protection of reports, are regulated.

By adding a clause to Article 20 of the By-Law, it can be regulated that control activities arising from the By-Law will be conducted in the scope of By-law on Inspection of Transport Services.

1.4.2 Recommendation of Draft Legislation

We suggest adding the following sub-clause to the article 477 of the Presidential Decree No. 1;

ş) Certifying, inspecting and specifying the minimum qualifications of special transportation equipment that used for the transportation of perishable foodstuffs.

We suggest revising the article 20 as follows and abolish the article 21 and 22 of the By-Law.

Inspection

Article 20 – (1) Activities within the scope of this By-Law are subjected to inspection of Ministry.

(2) Execution of administrative sanctions and inspection regarding the issues within the scope of this By-Law shall be conducted pursuant to principles and procedures specified in accordance with the 3/6/2021 dated and 31500 numbered By-law on Inspection of Transport Services.

2. CONCLUSION

Current Turkish Legislation is partially compliant with the ATP requirements and best EU practice countries. However, the need to apply the ATP requirements to the Domestic transport operations is quite a complex question and requires a serious effort. Thanks to the vigorous efforts of the Ministry, many of the requirements are fulfilled up to now and important progress is completed. Since the beginning of the Project, Ministry published two important legislations named “Directive on Test and Technical Inspection of Special Equipment To Be Used For The Transportation of Perishable Foodstuffs” and “By-Law on Special Equipment to Be Used for the Transportation of Perishable Foodstuffs”.

In this way, many of the requirements regarding the legislation compliance are completed.

In accordance with the “Road Map For the Participation and Implementation of ATP” published by UNECE, if any contracting state decides to implement the ATP to inland transportation, should provide three years of transition period before it becomes effective. 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 Transportation for Perishable Foodstuffs (BTB).

The definition of the special equipment is defined in article 4 of the By-Law, as parallel with the best EU practice countries. The name of the national compliance certificate is the Certificate of Transportation for Perishable Foodstuffs. In the Directive, labels and marks that will be used for BTB are specified differently than the ATP Certificate of Compliance, in accordance with the best EU practice countries.

Scope of the By-Law is regulated in the article 2 and covers the road transportation.

On the other hand, it is strongly recommended to analyze this report which is drafted based on the findings obtained by the Gap Analysis Report for Turkish regulation and best European practice (Activity 1.1) and Legislation Analysis Report (Activity 1.2) and complete the compliance process regarding the ATP requirements. Even if important part of the compliance procedure is completed, Turkish legislation will be fully compliant with the ATP requirements and best EU practice countries if following recommendations are implemented.

- 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. In this scope, alongside with the administrative fines, sanctions stated in the Legislative Decree No. 655 such as cancellation, suspension and similar sanctions can be provided.
- Regulation about the validation of ATP certificates issued by other Contracting Parties to special equipment installed on vehicles with foreign plate, as long as it is in Turkey and proven otherwise should be added to By-Law,
- With the amendment of article 2 of the By-Law, it should be regulated that the scope and boundaries of ATP should be abided for international transportation and land road and railway transportation are included in the scope for domestic transportations,
- With the amendment of article 5 of the By-Law, stating that temperature requirements which shall be exercised for international transportation are temperature requirements specified in ATP, and vehicles operating on international transportation of frozen foodstuffs are required to have a temperature recording device.
- Persons subjected to sanctions should be regulated in parallel with the article 4 of the ATP.

- It would be appropriate to state that land road and railway transportation of sea containers are out of scope.
- It can be stated that, inspection operations arising from the mentioned By-Law should be conducted in the manners of Code on Road Inspection Services.
- 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.
- It is recommended to specify that, temperature requirements that should be exercised for the inland transportation of perishable foodstuffs are temperature requirements stated in the Ministry of Agriculture and Forestry. Also, it is detected that temperature requirements stated in the ATP and temperature requirements stated in the relevant legislation of Ministry of Agriculture and Forestry are not fully compatible. In order to prevent the possible confusion that may arise from the implementation of ATP to domestic transportation and provide the full compliance, by reinforcing the cooperation between Ministry of Transportation and Infrastructure and Ministry of Agriculture and Forestry, temperature requirements stated in the relevant legislation of Ministry of Agriculture and Forestry should be made fully compliant with the temperature requirements stated in the ATP.
- 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.

As it is stated above, even if Turkish legislation is partially compliant with the ATP requirements and best EU practice countries, above-stated suggestions should be exercised in order to provide full compliance.



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