

## Turkey- Transposition and Implementation of the EU SEA Directive

### Avosetta Questionnaire: The SEA Directive

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**DIRECTIVE 2001/42/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.**

#### [1] National legislative context

*Identify and summarise the relevant national legislation transposing Directive 2001/42/EC.*

-Transposition has been carried out through the By-law on Strategic Environmental Assessment dated 08.04.2017 (By-law). It entered into force, in general, at the date of its publication. However entering date for plans/programs regarding energy, waste management, industry, telecommunications and transport will be 1.1.2023. The same entering date is also valid for modifications on the plans/programs subjected to the By-law (Provisional Art.2). Furthermore the By-law doesn't include the Directive's provisions regarding transboundary plans/programs.

#### [2] EU infringement proceedings?

*Have EU infringement proceedings been brought against your Member State for alleged failure to comply with the SEA Directive? If yes, please provide brief details.*

-Not applicable for Turkey

#### [3] Objectives (Art. 1)

(i) *Is the Objective of the Directive reflected in your Member State's national legislation?*

-The objective of the Directive has been reflected into the By-law mostly with the same wording of the Directive except the words of "high level of" protection.

(ii) *Has the Objective been used by your national courts to assist them in the interpretation of relevant provisions of national law?*

-There is not any relevant case/ judgement because there is not any application yet.

#### [4] "Plans and Programmes" subject to SEA

(i) ***Art. 2 (a) (Definition of "plans and programmes"):** How has this definition been transposed into national law and, in particular, how is the concept "required by legislative, regulatory or administrative provisions" understood – either in national legislation and / or in national jurisprudence?*

-The definition in the By-law is in line with the Directive. There is not any clarification, or jurisprudence regarding "required by legislative".

*"plans and programmes" which the authorities may draw up at their discretion*

-There is neither any specific provision nor information about plans/ programs prepared under discretionary powers.

### Orders and circulars

-There is not either any specific provision or discussion regarding “orders and circulars”

**Art. 3 (Scope):** How has this provision been transposed into national legislation, and, in particular, has your country added any additional categories of “plans and programmes”, either in legislation or on a case by case basis (see Art. 3(4) and (5))?

-Article 2.a of the Directive has been transposed into the By-law in a great extent. The sectors indicated in that article (agriculture, forestry, fisheries, energy, industry, transport, waste management telecommunications, tourism, town and country planning or land use) are all included into the By-law except “Land use”. In this context the plans/ programs that will be automatically subjected to SEA are listed in the Annex 1 of the By-law. Majority of these listed plans/programs cover the above mentioned sectors except fisheries and forestry. Revisions on these listed plans/programs are also automatically subjected to SEA (Art. 2, Art. 8.1.a).

-Determination process through case by case examination has been accepted for both all other plans/ programs regarding to the sectors mentioned in the article 2 indicating the scope, as well as for revisions on them. Determination will be carried out taken into account the criteria set out in Annex 2 (Art. 8.1.b) which is in line with the Annex II of the Directive. Plan/ programs that have significant effects on the sensitive areas (protected areas) listed in Annex 4 are subjected to SEA through the screening process.

(ii) “likely to have significant environmental effects” – is this concept elaborated on in national legislation? Is there official guidance and / or national jurisprudence on the meaning of the phrase “likely to have significant environmental effects”? Who determines whether a particular plan or programme is “likely to have significant environmental effects”?

-There is not either any legal definition or guide on the clarification of “likely to have significant environmental effects”.

-Determination process has been carried out by the contracting companies worked with the relevant competent authority and the Ministry of Environment and Urbanization (MEU). It is carried out through the collaboration of planning authorities under the control of the MEU. The final decision is given by the MEU.

(iii) Is there screening? If yes, in what context(s) and how does it operate? Who makes the screening determination available to the public?

-Screening is necessary for all the plans/programs specified in the By-law as well as for their revisions and modifications except the ones listed in Annex 1 which are directly subjected to SEA (Article 8.b, Article 9, and Annex 2). Screening has been carried out by the MEU through case-by case analysis according to the criteria listed in the Annex 2 of the By-law. The list in Annex 2 is mostly in line with the criteria listed in the Annex II of the Directive except the “transboundary nature of the effects”. The MEU evaluates the issue taking into account the “screening form” placed in the Annex 6 of the By-law, and filled out by the competent authority.

-Information regarding the screening decision and its reasons must be made available to the public by the MEU through its website.

(iv) “... which set the framework for future development consent of projects” specified in the EIA Directive. Has national legislation / official guidance and / or jurisprudence further elaborated on the meaning of this concept?

-There is not any official document clarifying the relevant sentence.

(v) “Plans and programmes” that “determine the use of small areas at local level” – how has this provision been transposed and how it is applied in practice?

-There is no provision in the By-law indicating “determine the use of small areas at local level”.

(vi) Does your national legislation and practice reflect the CJEU’s conclusion that it is the “content” rather than the “form” of the planning or programming act that is decisive?

-There is not any explicit legal provision indicating the issue. However, there are documents named “strategy” as national air management strategy among the listed plans/ programs that are subjected directly to SEA in the Annex 1 of the By-law.

**[5] General obligations (Art. 4): How has this provision been transposed? In particular, has the obligation to carry out the assessment “during the preparation of” the plan or programme been respected? Are there any practical examples demonstrating the avoidance of duplication of assessment where there is a hierarchy of plans and programmes?**

-Public authorities who are responsible to prepare plans/ programs that are subjected to SEA have to inform the MEU and to conduct the assessment process of both planning and SEA in parallel (Art. 6 of the By-law), and then submit the relevant SEA Report to the MEU before the required consent is given. According to the relevant reports published on the website of the MEU, this obligation has been respected for all completed and ongoing projects.

-The By-Law only indicates (Annex 2) the need to consider the hierarchy among plans/programs as mentioned in the Annex II of the Directive. In practice two completed SEA reports for two plans (NAP<sup>1</sup> and ICZMP<sup>2</sup>) include some information about the issue. SEA Report for NAP summarises the relevant information under the tables titled “relationships with other relevant plans/programs”. For instance as the relationship with the Development Plan-2019-2023, it cites the provision of that plan regarding “measures to prevent the water pollution based on agriculture must be intensified”<sup>3</sup>. SEA Report for ICZMP, under the section regarding the interaction of other relevant Plans/programs, indicates the rank of ICZMP in the hierarchy taking into consideration the relevant by-law<sup>4</sup>. It cites that “coastal zone management plans are not a part of the spatial planning hierarchy, but they should guide the development plans”<sup>5</sup>.

**[6] Environmental Report (Art. 5, together with Art. 2 (b) and Annex I)**

(i) Is there national jurisprudence and / or practical examples demonstrating significant problems with the range of data included in the Environmental Report and the evaluation presented?

-There is not any jurisprudence because the process is new and the relevant studies are still ongoing.

(ii) Who makes the scoping determination?

-The competent authority who is responsible to prepare and/or approve plans/programs at the regional or central level carries out the scoping process (preparation of draft scoping reports, finalizing them, and holding meetings with relevant stakeholders including the public through the collaboration with the MEU). (Art. 10). If there is more than one authority who is responsible to both prepare and approve a plan/program the competent authority is the one who prepares them. Additionally if there is more than one authority who is responsible to prepare a plan/program the competent authority is the one who carries out the coordination (Art. 5. L).

(iii) Is the scoping determination available to the public?

-The competent authority has to organize a consultative meeting for scoping determination after he prepared draft scoping report. He also determines the participants of representatives of NGOs who work on the fields of health and environment, of universities, research institutes, unions and chambers with the collaboration of the MEU. The competent authority and the MEU have discretion both to invite and determine these representatives. The draft scoping report must be made available to these determined representatives. - Some issues regarding public participation (individual or institutional participation; scope, strategy and methods of participation) to the following stages of the SEA must be decided in the scoping meeting.

-Public is entitled to submit both oral and written opinions through the meetings or statements during the whole process. Timeframe is minimum 30 days.

- -The Directorate of SEA within the MEU makes the quality control of SEA reports.

(vi) How is the concept “reasonable alternatives” considered in practice – either in national legislation, official guidance and / or national jurisprudence?

-The By-law uses only the word of “alternatives” (not reasonable alternatives). It requires a comprehensive assessment of determined alternatives regarding the relevant plan by making a comparison among them in terms of their effects on health and environment. This assessment made by the competent authority have be reviewed by the MEU. Additionally the information report must also include chosen alternatives as well as their reasons apart from the ways of integration.

-In practice the NAP SEA Report doesn't consider alternatives in terms of either locations or timing of the proposed measures. It considers only two alternatives as “do nothing alternative” and “environmentally friendly alternative”. It proposes the later and concludes that “even partial implementation of that active alternative can deliver net improvements of key environmental components with negligible likelihood of causing unintended negative side effects to the environment”<sup>6</sup>.

[7] **Consultations (Art. 6 together with Art. 2 (d)):** How has this provision been transposed and is there national jurisprudence and / or practical examples demonstrating significant problems

here? If available, please provide one example of an SEA with regional or national implications (not just local) to illustrate how consultation is carried out.

-Art. 2.d has been completely transposed into the By-law. Additionally the words of “Turkish citizens and foreigners who live in Turkey” are included into the definition of the public (Art. 5.d.). The same is valid for the transposition of Article 6. However contrary to Article 6 of the Directive (it uses the term “shall”) the wording of the provision of the By-Law regarding participation to scoping determination (Article 10.3) is discretionary. As mentioned above the competent authority and the MEU have discretion both to determine and invite the representatives of NGO who work on the fields of health and environment as well as of universities, research institutes, unions and chambers. According to the By-law public authorities to be consulted are the ones who are responsible for the health and environment.

-There is no jurisprudence or practical example about problems regarding consultation.

-The information on consultation meetings (date, place, participants, video recording) has been provided both in the completed SEA reports and on the website of the MEU.

-In practice according to the SEA Report for NAP the main consulting meeting took place in the form of an online meeting in 27 August 2020 with 26 participants. Only one participant was from ENGOs, and only one participant was from a university. The remaining participants were from several relevant public institutions apart from the MEU, and Ministry of Agriculture and Forestry. As to the comments of participants some of them are accepted some others are answered as “will be considered for further actions”<sup>7</sup>.

**[8] Transboundary consultations (Art. 7): Has this provision come into play in your country? Who decides about initiating transboundary consultations? At what stage are transboundary consultations usually initiated? Is there any significant national jurisprudence and / or practical examples? Does the UN ECE SEA Protocol play a role here?**

-The By-law explicitly excludes the transboundary plans/ programs. Furthermore Turkey is not a party to the UNECE SEA Protocol.

**[9] “Taken into account” (Art. 8): How is this provision understood? Is there any significant national jurisprudence? Are there any specific mechanisms in place to monitor compliance with this particular obligation?**

-It is required under the By-law that the competent authority must prepare an “information report” regarding the integration of the results of the SEA into the relevant plans/programs, and submit it to the MEU. The report must include the ways of integration, chosen alternatives as well as their reasons (Art. 14,1.b).

**[10] Monitoring the significant environmental effects of implementation of plans / programmes (Art. 10)**  
Is monitoring a legal requirement in your country? If so, how it is organised and who is responsible for monitoring? Is it effective in practice? Are there any specific mechanisms to address the results of monitoring?

-Monitoring is a legal requirement. -The competent authority is responsible to prepare monitoring programme and submit it to the MEU. This program shall include timing and activities with regard to determination of possible adverse effect on the environment as well as of measures to prevent them at earlier stage. All the relevant information must also been published in the web side of the competent authority.-The competent authority is also responsible the application of monitoring program ((Art. 14 of the By-law). If any unforeseen negative environmental effects occur he is responsible to decide additional measures.

-According to two monitoring reports regarding two completed SEA for NAP and ICZMP, monitoring of environmental and health impacts, and monitoring of SEA recommendations should be carried out separately in line with two different identified matrixes indicated under tables<sup>8</sup>.

-Effectiveness of monitoring can't be assessed because there is not any application yet.

**[11] Access to justice:**

(i) How are alleged deficiencies in the SEA process dealt with by your national courts? In particular, is a plan or programme declared void if a court determines that the SEA process was deficient / unlawful?

-There is not any judgment yet. Legally, administrative courts can declare such a void decision if there is a deficient/unlawful SEA.

(iii) Are there any restrictions / limitations on access to justice as a result of national provisions concerning either legitimacy or jurisdiction of (administrative) courts (i.e. are plans / programs excluded from judicial control on the basis of any rule on jurisdiction of courts or legitimacy)?

-There is not any specific restriction.

(iv) Is it possible to challenge a negative screening determination?

-A negative screening determination can be challenged through three ways. First, views and objections can be put forward at the following stages of the SEA process before both the competent authority and the MEU. Second, according to the planning law, the final plan must be made available to the public to obtain the relevant objections. Third, the screening determination can be challenged through a legal suit brought before administrative court against the final decision about the relevant plan.

(v) Is it possible to challenge the scoping determination?

-The scoping determination can be challenged through three ways as mentioned above.

(vi) Is there any significant national jurisprudence on access to justice in the SEA context?

-The SEA process is new, there is no jurisprudence.

**[12] Direct effect: Are there any decisions of the national courts in your country where, because of alleged non-transposition, the direct effect of the Directive has been invoked?**

-Not applicable for Turkey.

**[13] SEA for proposed policies and legislation:** Have there been any developments in your country as regards SEA requirements for proposed policies and legislation that are likely to have significant effects on the environment, including health? (UN ECE SEA Protocol, Art. 13).

-There is not either any official document or application on the issue.

**[14] National studies:** Have any significant official (or unofficial) studies of the implementation of the Directive and its impact in your country been published? If yes, please provide brief details and the key findings.

-There are several interim and final reports prepared under the projects named “supporting the implementation of by-law on strategic environmental assessment” and co-financed by the European Union and the Republic of Turkey. They are related to several issues regarding ongoing studies (as awareness raising, training, selection of sectors, progress etc.). There are also four guidelines regarding water management, renewable energy, agriculture, and regional development<sup>9</sup>.

-The latest report with regard to the assessment of SEA implementation summarizes the activities that have been carried out since 2019, and provides information regarding latest results and achievements, lessons learned as well as suggestions for further development of SEA practice. Application only in limited areas, the need to establish coordination bodies for plans/programs which require involvement of several public authorities, lack of trained and experienced staff particularly in the regional levels, lack of public awareness as well as of training programs are among the major cited challenges<sup>10</sup>.

**[15] National databases:**

(i) Is there any national database on the number and categories of SEAs carried out each year in your country? If there is, please provide summary data for the most recent year available.

-Related information is provided on the website of the MEU (General Directorate of EIA, Permit and Inspection). This information covers the years 2019, 2020, and 2021. So far, only two final SEA reports were adopted for the above mentioned two plans (NAP and ICZMP). Two draft SEA reports were prepared for only two plans<sup>11</sup>. Environmental assessment process for several water management plans regarding different river basis, and national spatial strategy plan are ongoing. Screening process for five plans are ongoing<sup>12</sup>.

(ii) Is there any national database of SEA reports, Environmental Assessments and the relevant decisions made by the competent authority etc.? If yes, please summarise the position briefly and indicate if the database is available online.

-The main national database is the website of the MEU- General Directorate of EIA, Permit and Inspection (<https://scd.csb.gov.tr>). Some related information can also be reached on the websites of the relevant competent authorities.

**[16] Impact of SEA in practice:** Are you aware of draft plans or programmes in your country which have been amended significantly – prior to their adoption or submission to the legislative procedure – as the result of SEA procedures?

-Currently there is not any information about the issue since the final versions of two plans regarding two selected pilot sectors (NAP-nitrate action plan, and ICZMP- integrated coastal zone management plan) will be adapted on January 2021 by the relevant competent authorities in the light of the relevant two completed SEA reports.

-According to the By-law the competent authority approves the relevant plan/program after taking into account the statement made by the MEU regarding the quality of SEA report.

**[17] *Any other significant issues? Are there any other significant issues concerning the implementation of provisions of the Directive in your country which you consider are worth mentioning here?***

-It seems that the major problem will be to prepare adequate SEA reports in terms of the plans/programs subjected to a hierarchy. It would not be possible to consider all the issues on SEA reports since the By-law doesn't apply to the plans/programs prepared before 2017. Shortly if such a plan (has been already prepared without SEA) is placed an upper level under the hierarchy and includes an unacceptable provision in terms of environmental protection, the new one that is placed lower level must be prepared in conformity with it. That will restrict the effectiveness of the SEA for that plan.

-Other challenges are as following: informing the all the concerned public properly and ensure of wider public participation; impartial determination of the representatives of universities, institutes, chambers as well as NGOs; taking into account scientific efficiency-expertise and experience in that determination process.

-In terms of application of the completed plans/programs there would be problems regarding enforcement since their proper application depends on the strict and impartial inspection. Lack of enforcement is already one of the major problems in terms of environmental legislation.

**[18] *General assessment and / or any recommendations: Do you have any overall view of the effectiveness of SEA in Europe and / or any recommendations for improvement?***

Clarification of the requirement regarding "alternatives" as well as "hierarchy" among plans should be useful for the effectiveness of SEA unless there is already such a clarification.

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<sup>1</sup> **NAP SEA Report**, Supporting the Implementation of By-Law On Strategic Environmental Assessment (Contract N0 Tr2018 Esop Mi A3 12/Cnp/03) for Nitrate Action Plan for Northern Aegean Basin Sea Report-Final.September 2020. <https://scd.csb.gov.tr/>

<sup>2</sup> **ICZMP SEA Report**, Supporting the Implementation of By-Law on Strategic Environment Assessment (Contract No Tr2018 Esop Mi A3 12/Cnp/03) for Integrated Coastal Zone Management Plan for Edirne, Tekirdağ, Kırklareli SEA Report-Final. November, 2020. <https://scd.csb.gov.tr/>

<sup>3</sup> **NAP SEA Report**, note 1, p.12.

<sup>4</sup> Mekansal Planların Hazırlanması Yönetmeliği (By-law on the Preparation of Spatial Plans). Official Gazette 14.06.2012.

<sup>5</sup> **ICZMP SEA Report**, note 2, p.4.

<sup>6</sup> **NAP SEA Report**, note 1, p. 12

<sup>7</sup> Ibid,p. 126,130,148-149.

<sup>8</sup> Supporting the Implementation of By-Law on Strategic Environmental Assessment (Contract N0 Tr2018 Esop Mi A3 12/Cnp/03) **Monitoring Report** for Integrated Coastal Zone Management Plan –Final. November, 2020



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Supporting the Implementation of By-Law on Strategic Environmental Assessment (Contract N0 Tr2018 Esop Mi A3 12/Cnp/03) **Monitoring Report** for Nitrate Action Plan-Final. September 2020. <https://scd.csb.gov.tr>

<sup>9</sup> Since these guidelines have been published before the publication of the By-law on SEA they don't include entirely correct information about that by-law.

<sup>10</sup> Supporting the Implementation of By-Law on Strategic Environmental Assessment (Contract N0 Tr2018 Esop Mi A3 12/Cnp/03) Final Report. February 2021. <https://scd.csb.gov.tr>

<sup>11</sup> Batı Akdeniz Nehir Havzasi Yönetim Planı Stratejik Çevresel Değerlendirme Taslak Raporu (Draft SEA Report on the River Basin Management Plan for Western Mediterranean). 25.3.2021. Akarçay Havzasi Yönetim Planı Stratejik Çevresel değerlendirme Taslak Raporu (Draft SEA Report on the Akarçay River Basin Management Plan). 25.3.2021. <https://scd.csb.gov.tr>

<sup>12</sup> İstanbul İçme Suyu Master Plan (Istanbul Drinking Water Action Plan). Ankara İçmesuyu Atıksu ve Yağmursuyu Yönetimi Master Planı (Ankara Drinking Water Management Plan. Potansiyel Su Ürünleri Yetiştiricilik Alanlarının Belirlenmesi Eylem Planı (Action Plan for Determination of Potential Areas for the Production of Water Products). Ulusal Nitrat Eylem Planları (National Nitrate Action Plans). Tarıma Dayalı yatırımların Desteklenmesi (Supporting the Investments based on Agriculture). <https://scd.csb.gov.tr>