

**Subject: 2014 Progress Report –
Focus on Economic Criteria Chapter 27: Environment**

Overall opinion:

The main findings are:

Horizontal - The first EIA regulation was enacted on 7.2.1993, 10 years after Environment Law entered into force in Turkey. After this date, regulation was changed 6 times completely and in total amended 13 times. The most important one of these amendments is the temporary 3rd article about saving clauses for some projects by the regulation. “Provisions of this regulation will not apply to projects which were included in investment program before the date of 23.6.1997 and which are at the stage of planning as of 5.4.2013 or tender is completed or started production and operation already in addition to buildings and facilities compulsory for operation of these projects with the condition that permissions which should be taken in accordance with the Environment Law and other regulations are reserved.” Although this temporary 3rd article was canceled by the Council of State as a result of lawsuits, it was added to EIA Regulation on 05.04.2013 and to the Environment Law on 21.05.2013 and EIA exemption is legalized under protection of law. Therefore exemptions are arranged with law and the channels to appeal these exemptions to the administrative courts are closed. With this article 3rd Bridge in Istanbul, many micro hydro power plants and coal based thermal power plants are not covered by EIA. However, planned 3rd Airport and nuclear plant projects are covered by the EIA processes. (Contrary to the statement in 2013 Turkey progress report that they are not.)

According to the 5th article of EIA Regulation published in Official Gazette dated 03.10.2013 and numbered 28784, the authority of decision as to requirement for an EIA for mining, petroleum, natural gas, shale gas and geothermal source research projects is assigned to governorships. This article is effective as of 1.3.2014. It has been emphasized in the instructions that there is no specific need of coordination to see the project location and this could be done individually. In this sense, we are anxious that relevant decision makers will be able to decide that “EIA is not required” even without seeing the location of project. Also with the alteration brought by new EIA regulation, the obligation to hold public

participation meetings in the location where the project will be carried out is canceled. This alteration will eliminate effectiveness of participation process, which is already not operated effectively.

Moreover, Aarhus Agreement, which is one of the most important steps towards EU membership, is not signed by Turkey yet. Because of this situation public cannot benefit sufficiently from the right to access information.

In the last year, environmental legislation is dismantled and got inactivated through amendments made in other legislations. For example, according to temporary 8th article of Electricity Market Law published in Official Gazette numbered 6446 and dated 30.3.2012; energy investments are exempted from environmental legislation. Temporary 8th article stipulates that all public energy producers, even if they are privatized are exempt from environmental permissions and sanctions until 2018 which was extended 3 years more to 2021 with decision of Council of Ministers, that administrative penalty due to violation of environmental legislation will not apply to these organizations and electricity production activities of these organizations cannot be stopped. According to energy production data of Turkey published by ETKB, 38% of electricity production of Turkey was supplied by EÜAŞ. One fourth of this electricity is produced in low efficiency and old technology thermic plants aged between 20-55. Together with the 8th article of Electricity Market Law, these thermic plants are also excluded from environmental legislation. Furthermore, petroleum search in forests is allowed with Turkish Petroleum Law dated 11.7.2013.

The most concrete and dangerous example of deactivation of environmental legislation with other legislations is the approval of “Law about amendments of law” numbered 6527. In accordance with this law, Geothermal Resources and Natural Mineral Water Law numbered 5686 were amended. According to this law, in case where geothermal resource and natural mineral water prospect and operation activities prevent projects such as state and provincial roads, highways, railways, airports, ports, dams, energy plants, mining, petroleum, natural gas facilities, water transportation lines which are performed for public benefit than investment decision about geothermal resource and natural mineral water prospect and operations activities will be made by a council assigned by Council of Ministers. This new regulation for example allows 3rd airport construction planned in Istanbul to destruct underground water of the region.

Moreover, it is also observed that recent verdicts of courts about environmental issues are not applied by government. For example, though court made a verdict to stop execution of residential construction in Atatürk Forest Farm, the construction of the project still continues.

According to amendment made in the Regulation about Methods and Basics related to Determination, Registry and Approval of Protected Areas; necessity for subsequent examination for consecutive four seasons for advance assessment report about current and potential natural site areas is lifted.

According to amendment made in regulation about Application of Coast Law, construction of accommodation in all yacht ports without any conditions is allowed. Side arms of Euphrates and Tigris rivers are excluded from Regulation coverage.

Within the context of the Law “Transformation of Disaster Risk Areas”, legislation towards protection is not implemented. According to this, in the areas covered by the law, Law of Forestry, Law of Rangelands, Coast Law, Law on Soil Protection and Land Use will not be applied. Considered that %94 of the country is under the risk of earthquake, the law covers nearly entire country.

Regulation about Protection of Wetlands dated 2005 is re-issued. According to this, wetlands are divided into two within the country to wetlands of national importance and local importance. As criteria for national importance, it will be enough for the area to fulfill at least one criterion of Ramsar Convention criteria. According to the Ramsar Convention of which Turkey is also a signatory party, while protection of all areas whether wetlands or not is guaranteed and former regulation was operational in this way, this contrary regulation against Ramsar is a violation of this agreement. There are only 14 Ramsar areas in Turkey currently. Protection and usage methods about local wetlands will be determined by local commissions. While it is expected that wetlands will be protected, with this regulation existing protected areas are also in danger of being opened to usage.

According to 25th article of the Regulation about the Protection of Wetlands dated 2014, current wetland management plans are declared to be recommendation documents and they are not binding about issuance of physical plans.

Most of members of national and local commissions are formed of state organizations and representatives of ministries. Selection of civil society organizations and academic staff members to participate in these commissions will be made by the Ministry. This situation makes it impossible for interest holders who will be affected by commission decisions to be represented in commissions. It will be impossible for civil society organizations to effect decisions of these commissions, which may harm natural structure since decisions are to be made with majority voting in these commissions.

Controlled usage area as defined in 23rd article of regulation, allows many opportunities for mining, energy and industrial sectors to perform activities, which may harm environment irrevocably in protected areas in wetland zones.

No progress has been made about Strategic and Cumulative Environmental Impact Assessment issues.

Air quality - Air quality standards are quite low in Turkey and limit values are above standards of EU and World Health Organization.¹ Harmonization works were planned to start as of 2014, but have not been actualized yet.

After the approval of the circular² for the foundation of Climate Changes and Air Management Coordination Council on 7.10.2013, “Climate Change Coordination Council” and “Air Emissions Coordination Council” are merged. Therefore, the most important organization about climate change; Climate Change Coordination Council was closed and since the circular on the operation of the new council is still suspended, the Coordination Council cannot work.

Thus, Air Emissions Coordination Council which was established for coordination of activities to be performed for the implementation of the United Nations Economic Commission for Europe (UNECE) Long range Transboundary Air Pollution Convention is closed. Turkey became a party to the Convention and the first protocol of the Convention but hasn't become party to the subsequent protocols signed by Parties and has not put any effort for the implementation of these protocols. There is no mention of these UNECE Convention protocols in 2013 Progress Report. These protocols, which were not signed by Turkey, should be put on the agenda.

Waste management - No critical progress has been made for waste to be reduced at its origin and treated yet. While Turkey should progress about reduction of the quantity of waste gradually after 2012, waste management continues to be a problematic area.

¹ http://hava.cevreorman.gov.tr/hava/Files/s%C4%B1kca_sorulan_sorular.pdf

² <http://www.resmigazete.gov.tr/eskiler/2013/10/20131007-6.htm>

Water quality - In Turkey, there is still no General Regulatory Law on Water which regards water as a natural asset/ being instead of a resource, regards access to sufficient and qualified water as a human right, emphasizing that not only humans but all living creatures need water. Lack of such a Law causes problems about clear determination of water management processes, determination of authority and responsibilities of different organizations, management of water in a participatory model combining the common benefit of nature and society. There are various organizations like the Ministry of Forestry and Water Affairs, General Directorate Of State Hydraulic Works, Metropolitan municipalities and Drainage Administrations responsible for water management and over 40 legal regulations. There is a need for a Draft Law on Water that will end this institutional confusion and protect the “high ecosystem benefit” of which human beings are also part.

Current Draft Law on Water doesn't meet this need and is based on utilization of water instead of conservation. Authority to determine water distribution to sectors is given to Water Basin Management Councils by regulations before the law is enacted. There is an order in the law which determines the order of sequence like Fresh and Usage Water, agricultural irrigation, energy and industry. Water arrangements are made without enactment of these priorities and property ownership rights are established upon water sources by renting for 49 years. In this case, it seems that it would be better if first the related law is enacted and Water basin Councils make water source arrangements within limits determined by law. At this stage legal gap is filled by administrative decisions and public cannot participate in the Water basin Councils.

With the decision of Council of Ministers published in Official Gazette dated 4 March 2014, Temporary 3rd article of Law about Underground Water was amended. Accordingly, “Duration for establishment of water measurements system for those who has acquired certificate of usage of well, gallery, tunnel and such facilities for obtaining underground water has been extended to 2.4.2016.” Drought in overall Turkey increases the importance of protection and correct management of water. Underground water sources formed by leaking from underground transient layers are the guarantee of ground water sources. However, there is serious decrease in underground water levels due to overuse of underground water and illegal wells. Therefore, while monitoring consumption is very significant under these circumstances, extension of duration for establishment of water measurement systems allows uncontrolled consumption of underground water.

Limit values determined in water control and swimming water regulations are above limits of European Union and World Health Organization standards.

Nature protection - In the recent years, there is considerable increase in the number of nature parks, which are considered among protected areas. While number of national parks was 41 in 2010, it became 184 at the end of 2013. However, big part of these parks are used for recreational purposes and in case forest lands are determined as national parks, forest land which can't be opened for construction according to Law on Forests, can be opened for construction of buildings and other facilities as long as they are shown in development plans.

The same problem is also valid for the description of National Park and Nature Parks by alteration of their status as Nature Protection Area.

Also about administrative issues, some of these parks are managed by the Ministry of Environment and Urban Affairs and some of them are managed by the Ministry of Forestry and Water Affairs. This results in complexity in their management.

With newly approved Disaster Law, areas declared as natural disaster risk areas may be opened for construction. Constitutional Court found the regulation that "execution of administrative decisions made according to "Urban Transformation Law" cannot be stopped by lawsuits opened against these administrative decisions" as unconstitutional and cancelled the regulation.

In the context of 8th article of Electricity Market Law, the provision that all public energy producers, even if they are privatized are exempted from environmental permissions and sanctions until 2018 which was extended 3 years more to 2021 with decision of Council of Ministers, that administrative penalty due to violation of environmental legislation will not applied to these organizations and electricity production activities of these organizations cannot be stopped. According to energy production data of Turkey published by ETKB, 38% of electricity production of Turkey was supplied by EÜAŞ. One fourth of this electricity is produced in low efficiency and old technology thermic plants aged between 20-55. Together with 8th article of Electricity Market Law, these thermic plants are also excluded from environmental legislation. Furthermore, petroleum search in forests is allowed with Turkish Petroleum Law dated 11 July 2013.

Industrial pollution control and Chemicals - For Seveso II Directive, there is a coordination problem between the Ministry of Environment and Urban Affairs and Ministry of Industry.

Climate change - Although Turkey is a party to the United Nations Framework Convention on Climate Change and Kyoto Protocol, Turkey has not taken place in the second liability term in contrast to European Union. While Turkey has not determined any national greenhouse gas emission reduction target, Turkey has increased its GHG emissions 133% in 2012 compared to 1990 levels. While per person CO₂ emission was 3.4 ton/person in 1990, it increased to 5.9 ton/person in 2012.

UNFCCC experts criticize GHG emissions data provided annually via TÜİK for containing deficiencies and errors. Necessary progress has not been achieved on this issue.

Despite the decision of European Commission to put HFC gasses under control and their gradual prohibition, these policies have not been reflected to Turkish legislation. No concrete work is carried out on this issue.

While Turkey was expected to submit its 2nd National Declaration to UNFCCC Secretariat, Turkey has submitted 2nd, 3rd, 4th and 5th National Declarations jointly. Given the long break in the preparation process of the National Declaration and submitting 2nd, 3rd, 4th and 5th Declarations together brings question marks on whether the declarations include regular progress.

Two years monitoring and assessment process on Turkey's Climate Change National Action Plan continues. Lack of a numerical national target on emission reduction causes problems in monitoring and assessment process. Moreover, Climate Change National Action Plan of Turkey focuses on agricultural adaptation and issues on urban adaptation are not included in action plan.

With a Prime Ministry circular; "Climate Change Coordination Council" and "Air Emissions Coordination Council" are combined and "Climate Change and Air Management Coordination Council" was created. No Climate Change Coordination Council meeting was held in the last one-year period. This causes problems in coordination of climate change policies from upper management. During combination of two councils, TOBB, TÜSİAD and MÜSİAD were accepted to council as participants. In this context only Ministries and business sector are represented in the Council whereas civil society isn't represented in climate change policy processes.

In 2013 Progress report, Turkey is invited for approximation its 2030 climate and energy framework to the Green Book titled “2030 Climate and Energy Policies Framework” published by the EU. , European Union is determining its 2030 targets. Therefore, Turkey is expected to determine compatible targets in compliance with GHG emissions reduction, renewable energy and energy efficiency policies of European Union.

European Commission published a recommendation about shale gas on 22.1.2014. While many European countries prepare regulations for inclusion of shale gas research- extraction works in Environmental Impact Assessment processes there is no such work about shale gas in Turkey.

Ministry of Environment and Urban Affairs published a circular about shale gas on 27.2.2014 and assigned decision-making about EIA issues to governorships after 1.3.2014.

Noise - There is no measurement about linear noise. No calculation is made about highway and aircraft noise.

Civil protection - Turkey is not a member of EU Civil Protection Mechanism. Disaster issues are appropriated by an authorized institution with the establishment of Disaster and Emergency Management Presidency (AFAD). However disaster works mainly concentrate on earthquakes. Span should be expanded and necessary support is taken from IPA funds to include floods, drought and climate change into disaster works.

Administrative capacity - 2013 Progress Report states that “A balance has still to be found within the MoEU between the environment and development agendas”. However this balance is already established from the start in favor of development. Environment is considered to be an obstacle to development (e.g. Urban Transformation, Law on Disaster and Urgent Expropriation).

Ministries have lost their reason of existence. Mining licenses and EIAs approved by the Ministry of Environment and Urban Affairs decisions increase negative effects on nature overall Turkey.