

Recent Changes to the Turkish Energy Market Legislation

On 17 June 2016, the Law Amending the Electricity Market Law and Certain Other Laws (the "**Amendment Law**") has been published in the Official Gazette and has introduced certain amendments to various laws related to the Turkish energy market legislation, including the Electricity Market Law, the Natural Gas Market Law, the Law on Use of Renewable Energy Resources for Generating Electricity Energy (the "**RER Law**"), the Mining Law and the Petroleum Law.

Amendments to the Electricity Market Law

The renewable energy resource areas. The renewable energy resource areas (the "**RERAs**") are defined under a separate regulation issued under the RER Law. These areas refer to lands which are determined through scientific or technical studies as having a potential to contribute significantly to the regional or countrywide demand. The RERAs are announced in the Official Gazette by the Ministry of Energy and Natural Resources (the "**MENR**").

The Amendment Law envisages principles and procedures relating to the allocation of RERAs and other related aspects including conditions applicable to the legal entities that will use RERAs to be detailed under the secondary legislation. However, some important features are already mentioned in the Amendment Law such as:

- domestic equipment must be used in generation facilities to be constructed on the RERAs;
- the winner of the competition for generating electricity on the RERAs will be determined based on the lowest electricity sale price offered, subject to the maximum amount determined by MENR not exceeding the feed-in tariffs set forth under the RER Law;
- accelerated expropriation process can be followed for the privately owned lands if these fall within the RERAs;
- TEİAŞ - state owned electricity transmission company - will construct the transmission facilities necessary for connecting the generation facilities on the RERAs to the

grid rather than reimbursing the relevant generation companies for cost of such construction; and

- measurement data is not required during the preliminary licence application process for wind and solar generation facilities to be constructed on the RERAs.

Measurement data requirements. The Amendment Law increases the required term of measurement data to be submitted during the preliminary licence application process for solar and wind power plants to 5 years from 3 years. However, the Energy Market Regulatory Authority ("**EMRA**") will no longer strictly require such measurement to be conducted actually over the relevant land and it will be sufficient to provide EMRA with the data "representing" the relevant land. Further requirements for the data to be considered as "representing" the relevant land will be separately regulated.

Wind and solar licensing. Previously, in cases where there are more than one application to connect to the same connection point or connection region by a solar or wind power plant during the preliminary licensing process, the winner was determined via a competition based on the highest contribution fee offered to be paid to TEİAŞ. The Amendment Law provides a new competition mechanism where the applicant offering the lowest price for the sale of generated electricity energy will be granted with the preliminary generation licence. There are a number of issues that are not clear as to for how long and how this pricing would be binding on the winner which may be clarified under the secondary legislation.

Regulating the unlicensed generation activities. In line with the latest changes to the unlicensed electricity

generation legislation in March 2016, under the Amendment Law:

- share transfers in the legal entities that own unlicensed wind and solar power plants are prohibited until the provisional acceptance of the relevant power plant by the MENR and any transfer in breach of this prohibition might lead to cancellation of the legal entity's invitation letter for grid connection agreement; and
- unlicensed generation activities based on wind and solar energy by related parties of distribution and authorised supply companies within the relevant distribution region are restricted.

Privatisation method for EÜAŞ assets. The Amendment Law envisages the winning bidder for privatisation tenders relating to renewable energy and local coal-fired power plants owned by EÜAŞ to be determined based on the lowest electricity sale price offered. Accordingly, there will not be a valuation study for the assets or shares to be privatised. The winning bidder and EÜAŞ - state owned electricity generation company - or TETAŞ - state owned electricity trading and contracting company - will sign an electricity sale agreement based on the winning bid price.

Energy purchase by TETAŞ. According to the Amendment Law, TETAŞ will purchase electricity energy primarily from local coal-fired power plants to meet its undertakings. The principles and procedures applicable to such procurement will be determined by the Council of Ministers. In line with this, the Amendment Law also exempts any purchase of electricity by TETAŞ from the Public Tender Law.

Extended period for compliance with the environmental legislation. The previous Provisional Article 8 of the Electricity Market Law granted a time period (i.e. until 31 December 2018) for compliance of EÜAŞ assets with the environmental legislation. This Provisional Article was cancelled by the Constitutional Court in May 2014 due to breach of Article 5 of the Turkish Constitution which relates to the principal aims and duties of the State and Article 56 of the Turkish Constitution providing the right to live in a healthy and balanced environment. The Amendment Law re-introduces this exemption with minor changes. It is now applicable until 31 December 2019 and it covers assets of EÜAŞ, its affiliates, other state owned generation companies and their generation facilities even if these were/are privatised prior to or after this Provisional Article enters into force. The new Provisional Article also indicates

issuance of an implementation regulation by the MENR within a year to identify the compliance process.

Effectiveness of secondary legislation. The provisions of the current secondary legislation which do not contradict with the Electricity Market Law will remain to be effective until the secondary legislation envisaged under the Amendment Law is enacted.

Amendments to the Natural Gas Market Law

Natural gas storage obligation. The Amendment Law provides that EMRA will determine the ratio of the natural gas storage obligation to be imposed on the importer companies for their annual natural gas imports. This obligation will be for a term of 5 years and will not exceed 20 per cent.

Distribution regions. The Amendment Law enables the distribution regions of the natural gas companies to be re-determined or expanded by EMRA within the provincial borders without having a tender. If a distribution company operating in a city which is out of the scope of a distribution region does not request expansion of its distribution region to cover this city, EMRA might conduct a distribution licence tender for such city. If more than one distribution licence holder applies to expand their distribution regions to cover a certain city where they are already operating, EMRA will prioritise the distribution company which has more subscribers in its distribution region.

The Amendment Law also allows the distribution regions to be merged under a single licence or de-merged into separate licence areas provided that this is requested by the distribution licensees and EMRA finds this technically and economically viable. The Amendment Law further envisages enactment of an implementation regulation in this respect.

Amendments to the RER Law

New regulation. Pursuant to the Amendment Law, a new regulation will be issued by EMRA governing the following:

- transmission and/or distribution system safety liabilities of the generation facilities which will participate in the renewable energy support mechanism; and
- determination of balancing market and/or secondary services market participants and their rights and obligations.

Amendments to the Mining Law and the Petroleum Law

De-merger of the mining licences. The Amendment Law allows licences for certain mines (i.e. peat, lignite, coal, hard coal, asphaltite, oil shale, bituminous shale, coccolith and sapropel) owned by public institutions to be de-merged into separate licences provided that this would not cause any loss of reserves and is done for the purposes of electricity generation. The rationale is effective use of the mining areas, in particular coal mines.

Reclassification of coal gas. Coal gas (*metan gazı*) is removed from the scope of the Mining Law and is now regulated under the Turkish Petroleum Law. The mine owners will be granted with an exploitation licence provided that the produced coal gas remains within the mining licence area and the amount of the coal gas is 5 m³ per ton. The produced coal gas may be traded under a licence obtained in accordance with the Natural Gas Market Law. The State royalty of 1/8 will be payable for the produced coal gas and the Council of Ministers may increase this ratio up to 4 times or decrease it by 1/2.

Authors



Mete Yegin
Partner

T: +90 212 339 0012
E: mete.yegin
@yeginciftci.av.tr



Gözde Çankaya
Counsel

T: +90 212 339 0006
E: gozde.cankaya
@yeginciftci.av.tr

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. If you require legal advice, or further details on any matter referred to, please speak to your usual contact at our Firm.

Yegin Çiftçi Attorney Partnership, Kanyon Ofis Binası Kat 10, Büyükdere Cad. No. 185, 34394 Levent, İstanbul, Turkey
© Yegin Çiftçi Attorney Partnership 2016
Yegin Çiftçi Attorney Partnership is registered with the İstanbul Bar.
Registered office: Kanyon Ofis Binası Kat 10, Büyükdere Cad. No. 185, 34394 Levent, İstanbul, Turkey