

Omnibus Law regarding Energy and Mining Sectors

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The Law No. 7257 Regarding the Amendments to the Electricity Market Law and to Certain Laws (the “[Omnibus Law](#)”) was published in the Official Gazette and entered into force on 2 December 2020. The Omnibus Law addresses, among others, the way forward for the incentives to renewable plants post-2020 which market players have long wondered.

The Omnibus Law amends the following laws: (i) Law No. 5346 on the Utilization of Renewable Energy Resources for the Purpose of Generation Energy (the “**Renewable Energy Law**”), (ii) Law No. 5686 on Geothermal Resources and Natural Mineral Water, (iii) Law No. 6360 Regarding Establishment of Metropolitan Municipalities in Fourteen Cities and of Twenty-Seven Districts and Amendments to Certain Laws and Statutory Decrees, (iv) Electricity Market Law No. 6446 (the “**Electricity Market Law**”), (v) Natural Gas Market Law No. 4646 (the “**Natural Gas Market Law**”), (vi) Value Added Tax Law No. 3065, (vii) Public Procurement Law No. 4734 (the “**Public Procurement Law**”), and (viii) Mining Law No. 3213. In this article, we aim to give an insight on selected amendments which we believe to be of utmost importance for the sector players.

1) Renewable Energy

YEKDEM¹ Post-2020: Under the existing YEKDEM scheme, renewable energy plants are entitled to a feed in tariff which is denominated in USD for the first 10 years of operation and to benefit from domestic production incentive for the first 5 years of operation, provided that such power plants are commissioned by 31 December 2020 (as extended to 30 June 2021 due to the COVID-19 pandemic). The ambiguity surrounding YEKDEM's destiny after 2020 has been a major concern in the renewables market, considering that YEKDEM proved to be a successful scheme boosting financing of renewable power plants over the last decade. Pursuant to the Omnibus Law:

- ✓ YEKDEM will continue to apply to the power plants which will be commissioned after 31 December 2020 (as extended to 30 June 2021 due to the COVID-19 pandemic). The feed-in tariff and term of implementation will be determined by the President of the Republic. The feed-in tariff will be denominated in Turkish Lira and will not exceed the existing feed-in tariffs.
- ✓ The domestic production incentive will continue to apply to the power plants which will be commissioned after 30 June 2021. The incentive amount and term of implementation will be determined by the President of the Republic. The incentive amount will be denominated in Turkish Lira.

¹ Renewable energy support mechanism as envisaged under the Renewable Energy Law.

- ✓ Applications for YEKDEM will be made by the date to be announced by the Energy Market Regulation Authority (“EMRA”) (the controversial date of 31 October is abolished);
- ✓ License-exempt plants will, following the expiry of 10 years of operation, be entitled to (i) continue their operations under a license, provided that 15% of the hourly clearance price is paid as YEKDEM contribution during the license term; or (ii) sell the output in excess of its self-consumption, in which case the price will be determined by the President of the Republic and will not exceed the market clearing price.
- ✓ License holders that were assigned with capacity by submitting zero or minus bids (based on YEKDEM feed in tariffs) in the auctions will not be entitled to benefit from domestic production incentive.

Contribution Fees to TEİAŞ: The solar power plants winning the auctions held between 12 May 2014 – 30 April 2015 and the wind power plants winning the auctions held between 15 February 2011 – 13 September 2011 will pay the proposed contribution fees to TEİAŞ (the grid operator) even if they begin operations after 31 December 2020.

Incentive on Land-Related Fees: The Omnibus Law brought a clarification to the term of the 85% reduction in the fees to be paid for leases, easement rights and usage rights and the exemption from the Forest Villagers Support Fee² and Forestation and Control of Erosion Fee³ by stating that these incentives will be applied for the first 10 years starting from the license date provided that they begin operations before 31 December 2025. Parallel amendments have been made to the relevant provisions of the Electricity Market Law.

Biomass: The definition of biomass is amended in a way to include municipality wastes (including landfill gas) but to exclude (i) agricultural wastes qualified as nutriture or feed and (ii) industrial wood.

2) Electricity Market

Share Transfer Approvals: One of the most significant changes in the Electricity Market Law relates to the transfer of shares of licensed companies. Under the previous version of the Electricity Market Law, transfer of license holder’s shares was subject to EMRA’s prior approval for: (i) direct or indirect acquisitions of 10% or more of the share capital (5% for publicly held companies); or (ii) resulting in a change in control of the license holder. With the amendments brought by the Omnibus Law, the requirement to obtain EMRA approval applies only to the license-holders whose tariffs are regulated. In other words, the transfer of generation license-holders’ shares will no longer be subject to EMRA’s approval.

License-Exempt Activities: A new item has been added among the facilities which does not require a license under the Electricity Market Law: generation facilities using renewable energy will be exempt from license, regardless of their installed capacity, provided that their generation is limited to their self-consumption.

Transmission System Usage: The term of repayment of investment costs for the construction of transmission lines, which was financed by the license holders, is decreased to 5 years from 10, and it has been clarified that the repayment will be made by set-off from the transmission line usage fees to be paid by the license holders.

The Omnibus Law also clarified that TEİAŞ is entitled by law to impose sanctions in connection with its grid operation (which was already the case under the system connection and usage agreements) and the disputes arising out of these sanctions will be settled by administrative courts.

National Tariff Regime: The term of the price equalization and cross-subsidy regime is extended for an additional term of 5 years (i.e. until 31 December 2025).

² Forest Villagers Support Fee to be collected in accordance with Article 5 (b) of the Regulation on Activities for the Support of Forest Villagers, published in the Official Gazette No. 28322 dated 13.06.2012.

³ Forestation and Control of Erosion Fee to be collected in accordance with Article 4 (c) of the Regulation on Forestation and Control of Erosion Services, published in the Official Gazette No. 29945 dated 11.01.2017.

General Lighting: The cost of general lighting will continue to be paid from the budget of the Ministry of Energy and Natural Resources and the municipalities' and provincial directorates' tax income shares until 31 December 2025.

One-time Opportunity: The Omnibus Law provides a one-time opportunity to the preliminary, generation or auto-producer license-holders and allows them to terminate their licenses, decrease the installed power set out under the license or to terminate the license applications without their performance bonds be forfeited by EMRA. To benefit from this opportunity, the relevant application must be made to EMRA within 2 months following the entry into force of this amendment (i.e. by 3 February 2021).

3) Natural Gas Market

Organized Wholesale Market: The Omnibus Law integrates the Organized Wholesale Natural Gas Sales Market ("OTSP"), which was previously regulated under secondary legislation, to the Natural Gas Market Law. In connection with this, the Omnibus Law sets out that:

- ✓ The OTSP will be regulated by EMRA;
- ✓ A "supply of last resort" mechanism is established to ensure continuous gas offer to the consumers in the event of bankruptcy, cancellation of license or default in the OTSP of their supply companies and to the eligible consumers to whom gas supply cannot be performed. EMRA will determine the procedures and principles applicable to the last resort supply mechanism;
- ✓ To create a competitive environment in the markets, EMRA may incentivizes or make it compulsory for certain license holders or all of the license- holders to trade natural gas in the OTSP. The details will be determined by a separate regulation.

Amendments to Key Definitions: Some key definitions under the Natural Gas Market Law has been amended to ease the sale of local gas and LNG (liquidified natural gas) export:

- ✓ The term "production" now includes the transmission of the local gas to the distribution grid;
- ✓ The term "transmission" now excludes the transmission of LNG under an export license (meaning that LNG export license-holders will not be required to obtain a transmission license for the transmission of the exported LNG).

LNG and CNG Distribution: The distribution companies were already entitled, by the secondary legislation, to use LNG or CNG (compressed natural gas) feeds for the areas to which the existing distribution pipeline network cannot reach or in case of emergency / force majeure. The Omnibus Law integrates this option into the Natural Gas Market Law.

Expansion of Distribution Network: The Omnibus Law also introduced some amendments to incentivize the expansion of distribution networks:

- ✓ Distribution companies will be able to make network investments to the areas where an implementation zoning plan does not exist or the roads are not constructed in compliance with the implementation zoning plan, provided that (i) buildings with building registration permit (*yapı kayıt belgesi*) are present in such area and (ii) the distribution company undertakes to displace such network and bear the costs if required by the relevant municipality within 10 years as of construction;
- ✓ Municipalities requesting network investment from distribution companies will not demand a guarantee supervision service fee, covering fee, ground / area destruction fee, excavation casting fee or similar expenses. Additionally, these municipalities shall make the top coatings of the infrastructure excavation area free of charge.

BOTAŞ' Gas Purchase: With the amendments to the Public Procurement Law, production, transportation, storage and gasification activities to be carried out by both BOTAŞ (national grid operator) and TPAO (national petroleum company) on land and sea are exempted from the public procurement rules.

4) Mining

License Fees: The licenses fees that are not paid by the last day of January of the relevant year will be paid by the last day of June of the same year, in the amount increased by default interest applied to public receivables.

License Extensions: For the applications for term extension of operation licenses, (i) the base fee must be paid; (ii) the operation project must be submitted; and (iii) the electronic notification address must be notified to the General Directorate of Mining and Petroleum Affairs within 12 months (instead of 6 months) prior to the date of expiry of the license. An administrative fine in the amount of TRY 100,000 will be imposed in case of breach of these requirements and the license will be cancelled if the application for term extension is not completed within 6 months prior to the date of expiry of the license.

Expansion of Mining Areas: The amendments allow expansion up to 20 meters to the neighboring areas of operation permit or royalty (*rödövens*) areas.

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