

Electricity Market Consumer Services Regulation – Bilateral Agreements

June 2018

Authors: [Özlem Kızıl Voyvoda](#) and [Sultan Kubar](#)

The new Electricity Market Consumer Services Regulation (the “**Consumer Services Regulation**”) was published in the Official Gazette No. 30436 dated 30 May 2018 and replaced the old Electricity Market Consumer Services Regulation (the “**Old Regulation**”) that was published on 8 May 2014. Most of the provisions of the Consumer Services Regulation came into force upon its publication whereas the provisions regarding bilateral agreements under Section 3 and the rights and obligations of suppliers and consumers and the designation of eligible consumer limit under Section 6 will enter into force on 1 July 2018. This client alert summarizes the material novelties introduced by the Consumer Services Regulation with respect to the bilateral agreements to be executed with consumers having low electricity consumption amount.

A. Expands the Purpose and Introduces a New Consumer Category

As it was introduced in the latest draft of the Consumer Services Regulation published on 7 November 2017 (the “**Draft Regulation**”), the Consumer Services Regulation includes minimum standards, principles and procedures for the transactions between consumers, suppliers and/or distribution companies for electrical energy and/or capacity sale and those providing services regarding the same. By doing so, the Consumer Services Regulation expands the “purpose” provision of the Old Regulation so as to include not only the retail sale and bilateral sale agreements, but the framework principles applicable to the transactions between the consumers, and supply or the distribution companies for electrical energy and/or capacity sale to the eligible consumers, non-eligible consumers and consumers within the scope of last resort supply.

Accordingly, the following are regulated within the scope of the Consumer Services Regulation:

- (i) bilateral agreements to be executed between suppliers and eligible consumers having a low electricity consumption amount,
- (ii) retail electricity sale agreements to be executed between the authorized supply companies and non-eligible consumers or last resort consumers, and
- (iii) electricity cuts and meter reading activities of the distribution companies.

The Consumer Services Regulation categorizes eligible consumers based on their consumption amounts as: (i) eligible consumers with high consumption amounts and (ii) eligible consumers with low consumption amounts. Under Article 4 of the Consumer Services Regulation, “eligible consumers with low consumption amount” are defined as the eligible consumers with less than 100,000 kWh of annual electricity consumption and they enjoy protective provisions related to bilateral agreements thereunder. Hence, with this new categorization, the only type of consumer with whom supplier companies can make agreements without being subject to the limitations envisaged for the bilateral agreements under the Consumer Services Regulation are the eligible consumers with more than 100,000 kWh annual electricity consumption.

B. Brings Maximum Term for Fixed Term Bilateral Agreements

A supplier may offer a bilateral agreement to eligible consumers consuming low energy with either (i) a fixed term or (ii) an indefinite term. The Consumer Services Regulation sets out a maximum term for fixed term bilateral agreements which is three years, while this term is one year under the Subscription Agreements Regulation¹ that is applicable to the consumers falling under the consumer protection legislation. Accordingly, any agreement with a longer period will be accepted as an indefinite term agreement. Pursuant to the Consumer Services Regulation, in line with the Subscription Agreements Regulation, eligible consumers having low consumption amounts are entitled to terminate their indefinite term bilateral agreements any time and without being required to show a justified reason. However, they will need to indicate a justified reason if their agreements are with fixed terms.

C. Introduces Procedures for Conclusion, Renewal, Amendment and Termination of Bilateral Agreements

The Consumer Services Regulation sets forth certain protective provisions for eligible consumers with low consumption amounts that are complying with consumer protection legislation with minor differences. It prohibits automatic renewal and extension clauses in bilateral agreements and requires application of the same procedure followed when the bilateral agreement is first entered into. Explicit consent of the consumer is required for conclusion, renewal and amendments of the agreement. Silence of the consumer in response to an offer by a supplier for any of those purposes shall not be interpreted as an implied acceptance.

The Consumer Services Regulation sets forth two standard informative forms to be delivered to consumers before the conclusion and renewal of agreements. Bilateral agreements can be executed by hand or by secured e-signature and a copy of the agreement having the “same as the original” stamp must be given to the consumer on the execution date.

Suppliers who wish to make any amendment to the bilateral agreements are required to communicate their change offers to the consumers at least 15 days before the date such amendments are planned to take effect, together with the copy of the revised agreement and the required form (Annex 3 of the Consumer Services Regulation). The amendment comes into effect only upon the explicit consent of the consumer.

Suppliers are also required to inform the consumers whose bilateral agreements with fixed terms are to be ended, at least 60 days before the end date.

D. Introduces Right to Revoke for the Eligible Consumers with Low Consumption Amounts and Limitation for the Penalty Amount

The Consumer Services Regulation sets forth a right to revoke the agreement within 14 days following the conclusion or renewal of the agreement for the eligible consumers with low consumption amounts. This right is designated regardless of the place where the agreement is concluded, whereas pursuant to the consumer protection legislation, only the consumers that are party to sale agreements executed via communication instruments (*i.e.*, telephone, e-mail, website etc.) or out of the workplace of the seller have this right. Also, the Consumer Services Regulation provides that the penalty amount to be

¹ Published in the Official Gazette No. 29246, dated 24 January 2015.

applicable to consumers in case of unjust termination of the agreement before the end of its term cannot be more than 10% of the total amount calculated multiplying the total electricity consumed in the last 12 months by the applicable fee at the end of the termination date. The supplier who terminates the bilateral agreement unjustly is also required to pay the same penalty amount to the consumer.

E. Provides Minimum Payment Period for the Eligible Consumers with Low Consumption

The Consumer Services Regulation provides that the payment requests/invoices must be sent to those consumers at least 10 days before the payment date, as is the case under the retail sale agreements.

Çakmak Avukatlık Ortaklığı

Piyade Sokak, No. 18
C Blok, Kat:3, 06550
Çankaya, Ankara - Turkey

T +90 312 442 4680

Zorlu Center, D Lobisi, T3 Katı,
Daire 348, Levazım Mahallesi,
Koru Sokak No:2 34340
Beşiktaş İstanbul - Turkey

T +90 212 939 7560