

Amendments to the Energy Legislation

June 2016

Authors: Dr. Çağdaş Evrim Ergün, Mustafa Durakoğlu, Nigar Özbek

The Law Amending the Electricity Market Law and Certain Other Laws (the “**Amending Law**”) has been enacted by the Turkish Parliament on 3 June 2016. The main purpose of the Amending Law is to facilitate the use of indigenous and renewable resources to increase the supply security in the energy sector. The Amending Law has been enacted by the Parliament, but has not yet been published in the Official Gazette. It will become effective on the date of its publication.

A. New Incentives for Indigenous Coal

1. Division of the Mining Licenses

Mining licenses cannot be divided under the current legislation. Although attempts were made to resolve the disadvantages of this prohibition to a certain extent with royalty agreements, indivisibility still causes inefficient usage of the minerals. This issue is especially relevant in the context of the privatizations of electricity generation assets. The parts of mining license areas which are not usable or commercially profitable for electricity generation are also transferred within the scope of privatization and this may cause a part of the license area to remain inactive, causing privatization to lose its attractiveness due to the burden of those unusable areas.

The Amending Law aims to bring a solution to this problem by adding a provision to the Mining Law No. 3213¹ stating that the licenses related to minerals listed in Article 2 Part Group IV Minerals Subparagraph (b) (i.e., peat, lignite, coal, coal gas, hard coal, asphaltite, oil shale, bituminous shale, coccolith and sapropel; however, “coal gas” is deleted from this list as explained below under Section G) that belong to public institutions and organizations may be subject to separate licenses with the approval of the Ministry of Energy and Natural Resources (the “**Ministry**”) for the purposes of electricity generation provided that such separation does not lead to a loss of reserves.

2. Purchase and Price Guarantee Mechanism

A purchase guarantee mechanism is introduced for the privatization of indigenous coal-fired and renewable energy based power plants owned by Elektrik Üretim Anonim Şirketi (“**EÜAŞ**”). According to this new privatization method, the winning bidder will not pay any transfer price for the transfer of the facility or shares and the bargaining will take place by way of reduction of electricity sales price to be sold to Türkiye Elektrik Ticaret ve Taahhüt Anonim Şirketi (“**TETAŞ**”), the state-owned electricity

¹ Published in the Official Gazette no. 18785; dated 15 June 1985.

wholesale company. Therefore, there will be a purchase and price guarantee from TETAŞ regarding the indigenous coal-fired and renewable energy based power plants after their privatization. The Ministry will issue a regulation to set forth the principles and procedures regarding such tenders.

3. Energy Purchase by TETAŞ

The Amending Law amends the Public Tender Law No. 4734² to exempt the energy purchases to be made by TETAŞ from the scope of the Public Tender Law. Prior to the Amending Law, TETAŞ was not able to sign energy purchase agreements with private persons and its energy purchase agreements were limited to those to be signed under the existing concession and implementation agreements. The Amending Law amends the Electricity Market Law to state that in case of shortages in the electric power required to meet the supply obligations of TETAŞ, TETAŞ may hold tenders for the procurement of electric power primarily from domestic coal based power plants. The principles and procedures including the ones related to the amount, period and price of this purchase will be determined by the Council of Ministers.

B. New Incentives for Renewable Energy Resources

The Amending Law brings additional incentives for the generation of electricity from renewable energy resources. Accordingly, the Amending Law introduces the concept of “renewable energy resource areas”, and provide additional incentives to the renewable energy based power plants to be constructed in such areas as follows:

- for such power plants, a separate domestic equipment usage threshold will be determined under a regulation to be issued by the Ministry, which is expected to facilitate the use of domestic equipment incentive by such power plants;
- prior to the Amending Law, in practice, the transmission lines required for the connection of renewable energy based power plants to transformers were constructed by the generation companies and the cost of construction was reimbursed by Türkiye Elektrik İletim Anonim Şirketi (“TEİAŞ”), the state-owned electricity transmission company. The Amending Law provides that these lines will be constructed by TEİAŞ itself prior to the date of operation of the relevant power plant;
- the Amending Law provides that measurement data will no longer be required with regard to generation facilities to be constructed on renewable energy resource areas.

The purchase and price guarantee mechanism, which is explained in Section A.2 above, is also applicable for the privatization of renewable based power plants.

Prior to the Amending Law, renewable energy based power plants were exempt from the balancing requirements. However, the Amending Law amends Law 5346 on the Use of Renewable Energy Sources for Electric Power Generation³ to provide that renewable energy based electricity generation companies may also be subject to the balancing regulations and ancillary services requirements based on a regulation to be issued by the Energy Market Regulatory Authority (“EMRA”).

Lastly, tender method for solar and wind power licensing process have changed under the Amending Law. The tenders will no longer be conducted through a contribution fee based bidding process, but the bidder offering the lowest price for the feed-in tariff will be granted the generation license. The procedures and principles relating to such new tender method will be set out in a regulation to be issued by EMRA.

C. Amendments to Electricity Distribution Tariffs

The most important amendment regarding the distribution tariffs relate to the loss and leakage costs. According to this long-awaited amendment, loss and leakage amounts are described as components

² Published in the Official Gazette no. 24648; dated 22 January 2002.

³ Published in the Official Gazette no. 25819; dated 18 May 2005.

of the distribution tariff which will be reflected to the consumers. EMRA is authorized to issue decisions to determine target ratios for distribution companies' loss and leakage amounts and regulate reflection of those amounts in the tariffs. The Amending Law also provides that these provisions are applicable to pending execution proceedings and lawsuits on loss and leakage claims.

D. Exemption from the Environmental Legislation

The Amending Law reformulates Provisional Article 8 of the Electricity Market Law, which was cancelled by the Constitutional Court on 22 May 2014. Accordingly, this article states that publicly owned power plants that have been privatized prior or subsequent to the Amending Law shall be granted a grace period until 31 December 2019 to achieve compliance with the requirements of the environmental legislation. The procedures and principles regarding the realization of investments during such grace period will be stipulated in a regulation to be adopted by the Ministry within one year following the date of effectiveness of the Amending Law.

E. Amendments to the Nuclear Energy Legislation

1. Exemption from the Construction Permit Requirements

The Amending Law brings an additional article into Law No. 2690 on the Turkish Atomic Energy Authority⁴ which exempts nuclear power plants from the provisions on construction licenses, construction supervision and building use permit requirements provided that any liability shall rest exclusively with the plant operator. Construction supervision of nuclear power plants will be carried out by supervision entities authorized by the Turkish Atomic Energy Authority. Issues relating to permits and supervision of such power plants will be stated in the regulation to be adopted by the Turkish Atomic Energy Authority on the basis of the opinion of the Ministry of Environment and Urbanization.

2. Exemption from the Coastal and Olive Cultivation Restrictions

The Amending Law exempts refineries, petrochemical facilities and attachments as well as facilities to be constructed within the scope of the nuclear power plant projects from the restrictive provisions of Coasts Law No. 3621⁵ and Law No. 3573 Concerning Olive Cultivation Improvement and Vaccination of Wild Olive Trees⁶ by adding a new article into Law No. 2565 Concerning Forbidden Military Zones and Security Zones⁷.

3. Extension of the Period for Obtaining the Permits

In accordance with the Electricity Market Law and Electricity Market Licensing Regulation, all permits and licenses must be received during preliminary licensing periods. The Amending Law provides an exemption from this rule regarding the nuclear power plants. In accordance with the Amending Law, documents relating to the receipt of building licenses to be obtained for nuclear energy generation facilities and permissions, approvals, licenses, permits and similar documents arising from other legislation as well as the receipt of ownership or right of use regarding the site on which the nuclear facility will be installed shall be presented to the Turkish Atomic Energy Authority on a date determined by that Authority and following the issuance of a generation license. Therefore, the period for obtaining the permits is extended specifically for nuclear power plants.

F. Amendments to the Natural Gas Legislation

The Amending Law amends the Natural Gas Market Law No. 4646 to avoid the effects of the short-term conjuncture changes and to provide supply security. Pursuant to the Amending Law, the Board of EMRA will determine the natural gas storage obligation amount of the importer companies for the next five years after the Amending Law becomes effective and the board will be authorized to

⁴ Published in the Official Gazette no. 17753; dated 13 July 1982.

⁵ Published in the Official Gazette no. 20495; dated 17 April 1990.

⁶ Published in the Official Gazette no. 4126; dated 7 February 1939.

⁷ Published in the Official Gazette no. 17552; dated 22 December 1981.

determine the amount of natural gas to be imported for each year by the relevant importer companies of up to 1/5 of the storage obligation of such companies within 5 years.

In addition, the Amending Law facilitates the expansion of the designated areas of the natural gas distribution companies and states that the scope of the designated distribution area of distribution companies may be re-determined or extended by the Authority without a tender, taking account of technical and economic requirements and provided that such scope is not exceeding provincial borders. In the event that distribution companies operating within the provincial borders of a city that is outside the scope of the distribution area does not request extension of the distribution area for such city, a distribution license tender may be held by EMRA for that city. Where more than one distribution company operating within the same provincial borders requests an extension of the distribution area for a given city, the distribution company with the higher number of the total subscribers within the their distribution area will be given priority.

G. Amendments to the Mining Legislation

The Amending Law amends Law No. 2804 Concerning the General Directorate of Mineral Research and Exploration⁸ to allow the General Directorate to carry out exploration and prospecting works abroad and to perform corporate activities such as establishing a company abroad or to become a shareholder of a foreign partnership without being subject to Law No. 2522 Concerning the Participation of Public Institutions in Tenders Abroad.⁹ In accordance with the reasoning of the Amending Law, this amendment aims to facilitate the activities to be performed by the General Directorate to provide supply security and diversity by way of international activities.

Coal gas (*metan gazı*) has been removed from the definition of minerals under the Mining Law No. 3213. Accordingly, the Amending Law reclassifies the coal gas as an energy resource under the Turkish Petroleum Law No. 6491.¹⁰ However, the parties entitled to explore and exploit coal gas resources are limited to mine owners for the coal gas to be extracted from their mines, and on the condition that the coal gas amount in these mines are not less than five cubic meters per ton. Such coal gas can be licensed and traded in accordance with Natural Gas Market Law No. 4646.¹¹ The rate of state's share to be taken from the coal gas is the same with the other hydrocarbons within the scope of the Turkish Petroleum Law, i.e. 1/8 of the production amount. The Council of Ministers shall be authorized upon proposal of the Ministry to increase the rate of the state's share to be taken from the coal gas to be so produced up to fourfold and decrease it by half.

Çakmak Avukatlık Bürosu

Piyade Sokak, No. 18, C Blok, Kat:3, 06550
Çankaya, Ankara - Turkey
T +90 312 442 4680

This information is provided for your convenience and does not constitute legal advice. It is prepared for the general information of our clients and other interested persons. This should not be acted upon in any specific situation without appropriate legal advice and it may include links to websites other than the website. Çakmak Avukatlık Bürosu has no responsibility for any websites other than its own and does not endorse the information, content, presentation or accuracy, or make any warranty, express or implied, regarding any other website. This information is protected by copyright and may not be reproduced or translated without the prior written permission of Çakmak Avukatlık Bürosu.

⁸ Published in the Official Gazette no. 3035; dated 22 June 1935.

⁹ Published in the Official Gazette no. 17459; dated 15 September 1981.

¹⁰ Published in the Official Gazette no. 28674; dated 11 June 2013.

¹¹ Published in the Official Gazette no. 24390; dated 2 May 2001.