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Turkish Energy & Infrastructure

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Recent changes in legislation

License-Exempt Electricity Generation

The Regulation Amending the License-Exempt Electricity Generation Regulation[1] (the "**Amending Regulation**") has been issued by the Energy Market Regulatory Authority ("**EMRA**") and became effective on 23 March 2016. The Amending Regulation provides several important changes in relation to the license-exempt electricity generation projects as explained below. The main purpose of the Amending Regulation is to limit the use of license-exempt generation right as a tool to engage in electricity trade as an alternative licensed generation activity.

Main features of the amending regulation

Share transfer restrictions

The Amending Regulation prohibits any transfer of shares in the license-exempt generation project owners completion of construction and commissioning. Accordingly, any merger, demerger and share transfer before the temporary acceptance of the generation facilities are prohibited while these transactions are permitted after the commissioning. This amendment will be applicable to both existing and future projects.

Minimum consumption requirement

Prior to the Amending Regulation, there was no minimum in house electricity consumption requirement for license-exempt generation facilities. Whereas, the Amending Regulation now requires that the license-exempt generation facilities must themselves consume at least 1/30 of their total generation amount. This amendment shall not be applicable to the eligible projects which were published on the website of the relevant distribution company before 23 March 2016.

Restriction on installed capacity of the projects

Prior to the Amending Regulation, there was no restriction regarding the number of the license-exempt generation facilities to be established by the same individual or legal entity in the same transformer area. The Amending Regulation provides that maximum 1 MW capacity may be

1 Published in the Official Gazette No. 29662; dated 23 March 2016. License-Exempt Generation Communiqué was also amended by the Communiqué Amending the Implementing Communiqué of the License-Exempt Electricity Generation Regulation in line with the Amending Regulation. The amending communiqué has been published in the Official Gazette 29662; dated 23 March 2016.

allocated to any individual or legal entity from the same group of companies for license-exempt generation projects in the same transformer area.

Furthermore, the Amending Regulation states that the distance between a license-exempt electricity generation facility and the transformer that it will be connected to cannot be more than (i) 5 km air distance and 6 km project distance for the facilities with an installed capacity equal to or less than 0.499 MW and (ii) 10 km air distance and 12 km project distance for the facilities with an installed capacity between 0.5 MW and 1 MW.

Similar to the minimum consumption requirement, these amendments shall not be applicable to the projects which were published on the website of the relevant distribution company before 23 March 2016.

Incentives

The Amending Regulation does not change the purchase and price guarantees currently available to license exempt generation facilities based on renewable energy resources. Such facilities will continue to benefit from such incentives as well as the domestic equipment utilization incentive. Accordingly, excess electricity produced by license- exempt electricity generation facilities that are based on renewable resources must be purchased by the relevant authorized supply company for the price guaranteed under the Renewable Energy Law No. 5346 for the first ten years of operation. In addition, license-exempt generation facilities can benefit from the domestic equipment incentive provided under the Renewable Energy Law for the first five years of their operation.

However, please note particularly that EMRA has prepared two draft regulations for further amending the license-exempt generation legislation in March 2016. These amendments do not envisage any change to the price and purchase guarantees for excess power, but do envisage removing the domestic equipment utilization incentive for license exempt projects.

EMRA decision No. 6193 regarding new versions of Distribution System Connection Agreements

EMRA introduced new versions of (i) Distribution System Usage Agreements, (ii) Distribution System Connection Agreements for Consumers and (iii) Distribution System Connection Agreements for Legal Persons Engaged in Generation Activities (the "**Agreements**") with its Decision No. 6193, dated 30 March 2016. The general provisions of the Agreements shall become applicable between distribution companies and users that have already signed a connection or system usage agreement without the need to sign a new agreement. The amendments made to the previous versions of the Agreements are generally minor in nature and include for instance, changes on notification periods or changes in wording.

Recent changes in the energy legislation

The Law Amending the Electricity Market Law and Certain Other Laws (the "**Amending Law**") has been enacted by the Turkish Parliament on 4 June 2016 and has been published in the Official Gazette No. 29745, dated 17 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. To read our client alert on these recent changes please **click here**.

Draft legislation

Working Draft of Law Amending the Turkish Commercial Code

The Ministry of Customs and Trade published the "Working Draft of Law Amending Turkish Commercial Code and Certain Laws and Statutory Decrees" (the "**Draft Law**") for public review and comments.

The major novelties proposed by the Draft Law in terms of Turkish Commercial Code ("**TCC**") can be summarized as follows:

- With the addition to be made to Article 64 of TCC regulating the obligation to keep commercial books for real person and legal entity merchants, the Ministry of Customs and Trade will be entitled to oblige keeping of share ledgers and general assembly meetings minutes books electronically, save for the provisions of Capital Markets Law.
- It is envisaged to extend the existing time limit for holding ordinary general assembly meetings of joint stock and limited liability companies until the end of the fifth month (i.e., until the end of May for companies whose financial year ends on 31 December) following the end of applicable financial year instead of the third month in the current version. Currently TCC and the secondary legislation do not provide any sanction for not holding the ordinary general assembly meeting within the period envisaged under TCC. However, the Draft Law envisages administrative fines

for each of the board members of joint stock companies and managers of limited liability companies who do not call for the ordinary general assembly meeting within the period envisaged under the TCC. The amount of such administrative fine is TRY 5,209 for the year of 2016.

- In line with the above-mentioned amendments related to timing of ordinary general assembly meeting, the deadline for appointment of an independent auditor is extended until the end of the fifth (instead of fourth) month following the end of financial year.

- It is envisaged to enable contribution of immovable, over which easement right or mortgage is created due to a loan utilized by the relevant company, as capital in kind to the company. For contribution of the mortgaged immovable as capital in kind, written permission of the mortgagee would be required.

- The TCC currently includes provisions related to group companies; however the number of companies required to form a "group of companies" is not stipulated under TCC. The Trade Registry Regulation indicates that existence of one controlling company and at least two commercial companies directly or indirectly controlled by such controlling company are required to form a group of companies. In line with the Trade Registry Regulation, Draft Law envisages that in case of existence of one controlling company and at least two commercial companies directly or indirectly controlled by such controlling company, provisions of the TCC related to group companies would be applicable, provided that the headquarters of at least one of controlling or controlled companies are located in Turkey.

- Article 456/1 of the TCC states that "Save for the increases to be made from internal resources, capital of the company shall not be increased unless share capital commitments are fully paid. The unpaid amounts, which are insignificant as against the capital of the company, shall not hinder the capital increase." However, "the unpaid amounts, which are insignificant as against the capital of the company" were controversial in practice. Draft Law clarifies this issue and amends second sentence of 456/1 as follows: "…If the amounts which are less than 5% of the capital of the company are not paid, it shall not obstruct increase of the capital."

- For joint stock companies, the TCC stipulates transfer of shares for which share certificates are issued. However, there is no provision related to transfer of registered shares which are not attached to share certificates. The Draft Law envisages that transfer of joint stock companies' registered shares which are not attached to share certificates shall be made in writing and signatures of the parties shall be approved by the notary public.

- With the aim of harmonization with the European Union legislation, provisions related to mergers and de-mergers are slightly revised.

- Article 375/1 (d) of the TCC states that "appointment and dismissal of managers and the ones that have the same function and the authorized signatories" is one of the non-transferable duties and authorities of the Boards of Directors of joint stock companies. The Draft Law amends Article 375/1 (d) of the TCC and limits the non-transferable authority of the Board of Directors as follows: "appointment and dismissal of managers and the ones granted with the same signing authorities, except the ones granted with limited authority as per Article 371/7 and the ones authorized to represent in the transactions related to works of a branch". However, amendment of Article 375/1 (d) only would not seem to be exclusive, as Article 371/7 also grants non-transferable authority to the Board of Directors for the issuance of an internal directive related to appointment and dismissal of signatories with limited authorities.

Draft Regulation Amending the Electricity Market Consumer Services Regulation

On 18 March 2016, EMRA published the "Draft Regulation Amending the Electricity Market Consumer Services Regulation" (the "**Draft Regulation**") on its website for review and comments of the public.

The major novelties proposed by the Draft Regulation can be summarized as follows:

- Pursuant to the Electricity Market Consumer Services Regulation (the "**Regulation**"), suppliers that do not fulfill the requirement of submitting form "Annex-3" to the authorized supplier via Market Management System ("**PYS**") before the customer is added to its portfolio are imposed with certain sanctions. However, the Draft Regulation envisages a condition for imposing this sanction; and states that the sanctions will be imposed if it is determined that the consumer has suffered damage due to such a breach.

- The Draft Regulation re-defines the "Eligible Consumer" as follows: "the consumers who own or obtain the usage right of the place, where electricity exceeding the eligible consumer limits (including illegal electricity consumptions envisaged under the Regulation) is consumed during the previous year or the current year".

- There are several amendments related to invoicing terms and content of the invoices. For instance, type of the consumer (i.e., eligible or non-eligible) is required to be stated on the invoices. Further, within the scope of subscriptions with undertaking, term of the undertaking, current month of the undertaking, expiration time of the undertaking and the penalty amount to be applied in case of early termination are also envisaged to be stated on the invoices.
- There are certain amendments related to the terms of returning deposit amounts to the subscribers.
- The Draft Law sets forth certain prerequisites for pursuing legal proceedings within the scope of overdue debts of the consumers that purchase electricity via regulated tariffs. According to this amendment, prior to initiation of legal proceedings (i) electricity of the consumer shall actually be cut (ii) the retail sale agreement shall be terminated and (iii) the deposit amount shall be set off for the outstanding debts. In the case that legal proceedings are pursued without fulfilment of these prerequisites, the legal proceedings shall be terminated and no cost and expense shall be collected from the subscribers.

Draft law amending Mining Law

As published in the Summer 2014 and Winter 2015 issues of our Turkish Energy and Infrastructure Newsletter, a set of amendments has been made to the Mining Law which introduced several changes concerning the supervision of operation activities including, among others, limitations on operation by royalty agreements. On 14 April 2016, another draft amendment to the Mining Law, which primarily focuses on royalty agreements, has been submitted to the Parliament's agenda under File No. 2/1091.

One of the most significant changes brought about by the previous amendment in February 2015 has been the prohibition on engagement of third parties by license holders other than public authorities for operation of underground coal mines through royalty agreements. Royalty agreements for other mines, on the other hand, has been made subject to approval of the Ministry of Energy and Natural Resources.

The new draft amendment also targets the coal mine industry and introduces a monthly investigation by the Ministry of Energy and Natural Resources to underground and above ground coal mines. According to the draft, agreements of royalty right holders who fail to fulfill their obligations thereunder for three months consecutively shall be terminated and the mining areas subject to such agreements shall be transferred, together with the existing employees, to the Turkish Coal Enterprise for operation. The reasoning of the draft explains that in addition to the measures on workplace health and security, it is of great importance to ensure compliance of royalty right holders with their contractual obligations towards the license holders.

The draft amendment has been submitted to the Industry, Commerce, Energy, Natural Resources, Information and Technology Commissions of the Parliament as primary commissions; and the Health, Family, Labor and Social Issues Commissions as secondary commissions on 28 April 2016 for their review and comments.

Article

Applicability of consumer protection legislation in the Turkish electricity market

by Dr. Çağdaş Evrim Ergün – Özlem Kızıl Voyvoda – Gülşen Kutlu

Abstract

With the continuous efforts towards liberalization of the electricity market in Turkey, the importance of applicability of consumer legislation to the electricity sector and the way in which it is specifically applied is increasing day by day. Electricity market legislation makes a distinction between "eligible" and "non-eligible" consumers as further explained below; however, the eligibility threshold is being decreased gradually each year with the aim of entitling each electricity customer to choose its electricity supplier freely. In addition, the consumer protection legislation has undergone substantive changes in 2015. These emerging developments require an analysis of the definition of 'consumer' under electricity market legislation and consumer legislation, as well as the applicability of consumer protection legislation to electricity sale contracts.

Introduction

Turkish Electricity Market Overview

Until the early 1980's the power sector in Turkey had been dominated by *Türkiye Elektrik Kurumu*, which was established in 1970 to generate, transmit, distribute and trade electrical energy as a state monopoly. Liberalization efforts for the Turkish power sector started at the beginning of the 1980's

and Turkey's first private power law, the Build-Operate-Transfer Law, was enacted in 1984. As a result of the efforts towards harmonization with the European Union legislation, Electricity Market Law No. 4628[2] ("**Law No. 4628**") was enacted in 2001 to further liberalize the power sector in Turkey; which established an independent administrative institution in order to provide proper operation of the electricity and natural gas markets within a competitive environment. This institution was called the Electricity Market Regulatory Authority, before later being renamed "Energy Market Regulatory Authority". Law No. 4628 envisaged the privatization of state-owned generation and distribution facilities. As part of the liberalization efforts, Turkey was divided into 21 electricity distribution regions and the privatization of all regions was completed in 2013.

On 14 March 2013, new Electricity Market Law[3] No.6446 ("**Electricity Market Law**") was enacted and it entered into force on 30 March 2013. Other than the provisions regulating the organization, powers and duties of EMRA, which remain in effect, the New Electricity Market Law repealed and replaced all provisions of the Law No. 4628 and brought certain novelties to the Turkish electricity market.

Definition of the Consumer

Alongside the energy legislation changes, consumer protection legislation has also been subject to several amendments recently. The Law on Protection of the Consumer[4], No.6502 ("**Consumer Law**") entered into force in May 2014 and since then its secondary legislation has gradually been introduced. Both the Consumer Law and the New Electricity Market Law include a definition of "consumer" and, whilst they are not identical the definitions under these two legislations they do have an intersection.

Under the Consumer Law consumer is defined as 'a legal or real person acting for non-commercial and non-occupational purposes"; whereas the Electricity Market Law defines consumer as "the one who purchases electricity for his/her own needs.'

The Electricity Market Law defines consumers under two categories, namely eligible consumers and non-eligible consumers. Eligible consumers are able to choose their own suppliers while non-eligible consumers must purchase electricity from the supply companies authorized in the relevant region (i.e., authorized supply companies). Since 2002, EMRA has been gradually reducing the eligibility threshold, being the annual power consumption level above which consumers are eligible to choose their own supplier, to liberalize the market and increase competition further. According to the Electricity Market and Supply Security Strategy Paper prepared by the High Board of Planning under the coordination of the Ministry of Energy and Natural Resources in 2009, the eligibility threshold was expected to go down to zero and therefore all consumers were expected to become eligible consumers by 2015. This expectation has not yet been met; though the eligibility threshold has been decreased to 3600 kWh for 2016.

Consumer legislation provisions which are applicable to electricity sale contracts

In the light of the periodic decrease of the eligibility threshold and the aim of eventually decreasing it to zero, the importance of consumer rights and applicability of consumer protection legislation in the electricity market increases day by day.

Article 19 of the Electricity Market Consumer Services Regulation[5] states that the Consumer Law and other related legislation shall be applicable to the rights of and for recovery of losses suffered by the consumers that purchase their electricity services in accordance with this regulation. This provision creates ambiguity on whether or not provisions of the Consumer Law should be applicable to all consumers under electricity legislation regardless of their capacity to be deemed as a "consumer" under the Consumer Law. Having said that, accepting such an interpretation may lead to an undesirable situation in terms of general commercial law principle, where the balance between two commercial entities is damaged in favor of one party. Indeed, both eligible and non-eligible consumers may qualify as a consumer under the Consumer Law, to the extent that they do not purchase electricity for their commercial or occupational purposes. Several precedents of the Court of Appeal[6] confirm that provisions of the Consumer Law should apply to consumers in the electricity market if they also qualify as a consumer under the Consumer Law.

General provisions applicable to all electricity sale contracts

The Regulation on Subscription Agreements[7] ("**Subscription Regulation**"), which was prepared by the Ministry of Customs and Trade, entered into force on 24 April 2015. The Subscription Regulation stipulates the form and mandatory

2 Law No. 4628 published in the Official Gazette No. 24335 (Repeated) dated 3 March 2001.

3 Law No. 6446 published in the Official Gazette No. 28603 dated 30 March 2013.

4 Law No. 6502 published in the Official Gazette No. 28835, dated 28 November 2013.

5 Published in the Official Gazette No. 28994 dated 8 May 2014.

6 Court of Appeals, 13th Chamber Decision dated 27 March 2913, File no. 2013/2563, Decision no. 2013/8571.

content of subscription agreements, the content of payment notifications, subscriptions with undertaking, termination of subscription agreements, the results of termination and the liabilities of the sellers/providers.[8]

As per Article 52 of the Consumer Law, subscription agreements provide perpetual or periodical supply of a commodity or service to consumers. It is clearly stated in the justification of the subject article that electricity subscriptions are evaluated within this scope. Thus, all provisions of the Subscription Regulation are applicable to all types of electricity sale contracts to be executed with customers who are qualified as consumers under consumer protection legislation.

The Subscription Regulation prominently envisages that the sellers/providers are required to execute a subscription agreement with the consumer either in writing or via distant methods, i.e., not in the physical presence of both parties at the same location. Mandatory provisions to be included in those agreements are also explained in detail in the Subscription Regulation. Absence of any of the mandatory provisions would not result in invalidity of the subscription agreement; however, the consumer would become entitled to terminate the subscription agreement without being subject to any compensation or penalty, and as per the Consumer Law certain administrative fines will be applicable to the sellers/providers.[8]

Following the execution of the agreement, a copy of the agreement must be provided to the consumer in paper form or via a durable medium. According to the Consumer Law, durable medium means 'any instrument or media such as SMS, electronic mail, internet, CD, DVD or memory card which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the relevant information and which allows the unchanged reproduction of the information stored'.

The Subscription Regulation envisages an obligation to send payment notifications to the consumer stating the service fee to be paid by the consumer for the relevant period. The mandatory provisions to be provided in the payment notifications are also listed in the Subscription Regulation.

Termination procedure for subscription agreements and consequences of such termination, as well as the rights of consumers around termination are also stipulated in detail under the Subscription Regulation. Consumers may terminate indefinite term and definite term subscription agreements (with a term of one year or more) at any time, without any reason or penalty. With regard to the definite term subscription agreements with terms of less than one year, consumers are entitled to terminate if the conditions of the agreement are changed by the sellers/providers. Consumers may terminate subscription agreements under any circumstances, provided that there is a valid reason restricting the consumer from enjoying the benefits of the services.

Under subscription agreements, sellers may offer certain advantages (including discounts) to their customers in return of undertakings to be obtained from them. The Subscription Regulation also contains provisions regarding execution and early termination of such subscription agreements and undertakings. According to the Subscription Regulation, a written letter of undertaking comprising the conditions and validity period of such undertaking must be submitted to the consumer as an integral part of the subscription agreement. Mandatory information to be included in the undertaking is also stated in the Subscription Regulation. In cases of early termination of a subscription agreement with an undertaking by the consumer, only those discounts that have been made in line with the undertaking and the unpaid instalments for the goods or the services (if additional goods or services are provided within the scope of the advantage provided to the customer), if any, (collectively the Discount Amount) may be requested from the consumer. However, in case the total amount that would have been paid by the consumer if the agreement had not been terminated is less than the Discount Amount, the limit of the amount to be requested from the consumer would be the lesser one.

For termination of subscription agreements by consumers, it would be sufficient to address the termination notification to the sellers/providers in paper form or through another durable medium. Accordingly, it is possible for a consumer to terminate the subscription agreement through electronic mail.

Provisions which are applicable depending on the type of electricity sale contracts

As one of the secondary legislations of the Consumer Law, the Regulation on Distant Contracts ("**Distant Contracts Regulation**") entered into force on 27 April 2015. As electricity sale contracts are not excluded from the scope of Distant Contracts Regulation in Article 2, it would not be wrong to conclude that electricity suppliers may also execute electricity sale agreements with their customers, who are

7 Published in the Official Gazette No. 29246 dated 8 May 2014.

8 Özlem Kızıl Voyvoda & Gülşen Kutlu, "*The Regulation on Subscription Agreements and Its Application to Electricity Agreements*", available at **http://www.mondaq.com/turkey/x/444650/Oil+Gas+Electricity/he+Regulation+On+Subscription+Agreements+And+Its+Application+To+The+Electricity+Sales+Agreements**

qualified as consumers under the consumer protection legislation, via distant sale methods provided that the provisions of the Distant Contracts Regulation are respected.

The Distant Contracts Regulation envisages several obligations on the sellers/providers for protection of consumers with subscription contracts executed via distant methods. First of all, sellers/providers are required to inform consumers prior to execution of the contract via advance information forms, the minimum content of which are stipulated within the Distant Contracts Regulation. The advance information form must be clear, legible and the font size should be at least twelve. Moreover, certain information stated even in the advance information forms must be re-communicated to the consumer just before the consumer assumes payment obligation and the approval of the consumer to assume the payment obligation, in accordance with the distant communication medium, should be obtained separately. In case the parties enter into contract via voice communication, the advance information form should be sent to the consumer separately, prior to performance of the services.

If the total price cannot be calculated beforehand, inclusion of at least the calculation method of the total price in the advance information form is required under the Distant Contracts Regulation. If such obligation is not fulfilled by the sellers/providers, the consumer would not be obliged to make payments related to items not mentioned in the advance information form.

Further, as per the Distant Contracts Regulation, consumers have the right of withdrawal within 14 days following the execution of the contract without being required to provide any justification and without being subject to any penalty payment. The sellers/providers are obliged to prove that the consumer is informed regarding their right of withdrawal. The Distant Contracts Regulation provides a withdrawal notification form and stipulates that with respect to sales conducted over the phone the sellers/providers are obliged to send this withdrawal notification form to the consumer prior to delivery of the goods or the performance of services, at the latest. Consumers may exercise their withdrawal rights in writing or with any durable medium, using the form annexed to the Distant Contracts Regulation or by making a clear statement regarding exercise of the right of withdrawal.

This application is in fact in line with Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the Protection of Consumers in respect of Distance Contracts (Distance Contracts Directive) which states that under any distance contract the consumer shall have a period of at least seven working days to be able to withdraw from the contract without penalty and without giving any reason. In such a case, the only charge that may be imposed to the consumer because of the exercise of his right of withdrawal would be the direct cost of returning the goods.

Despite above, we understand certain experts from EMRA are of the opinion that Distant Contracts Regulation is not applicable to electricity sale contracts and such contracts should bear wet signature of the parties. Paragraph thirteen of Article 30/A of the Electricity Market Balancing and Settlement Regulation[9], which regulates bilateral agreements, requires registration of an eligible consumer upon executing a bilateral agreement or signing the Energy Purchase and Sales Notification Form (IA-02 Form) with the consumer. The fifteenth paragraph of said Article also states that if an eligible consumer is requested by more than one supplier, the required controls will be made and the consumer will be added to the portfolio of the supplier which submits a valid bilateral agreement or Energy Purchase and Sales Notification Form.

As seen, Article 30/A of the Electricity Market Balancing and Settlement Regulation only refers to the signed IA-02 Form and it does not provide any additional condition on the signature. Thus, it may even be argued that a wet signature is not necessary on the IA-02 Form and that an electronic signature may serve for the same purpose. However, since it is known that in practice wet signature is sought for IA.02 Form by the Enerji Piyasaları İşletme A.Ş. (EPİAŞ), even in cases where the electricity sale contract is executed via distant methods, IA-02 Form should bear, for practical reasons, a wet signature of the parties for submission to the market operator when requested. However, despite the fact that there is no explicit provision which prohibits execution of electricity sale contracts via distant methods and that Article 30/A of the Electricity Market Balancing and Settlement Regulation does not include any statement on how bilateral agreements should be executed (*i.e.*, with wet signature, electronic signature, verbally, with distant method etc.), there is in fact no provision in the electricity legislation which can be interpreted that the electricity sale contracts which do not bear wet signature are invalid; on the contrary, the Distant Contracts Regulation does not include electricity sale contracts within its list of agreements that are excluded from the scope of this Regulation.

9 Published in the Official Gazette No. 27200, dated 14 April 2009.

There is also a parallel practice under European Union legislation, where electricity sale contracts are not listed within the exemptions stated in Article 3 of the Distance Contracts Directive, to which the provisions do not apply. Furthermore, Annex I of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning Common Rules for the Internal Market in electricity and Repealing Directive 2003/54/EC (Electricity Directive), while indicating measures on consumer protection, clearly makes reference to the applicability of the Distance Contracts Directive to electricity sale contracts by stating "Without prejudice to Community rules on consumer protection, in particular Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts..."

Conclusion

While determining whether or not consumer legislation is applicable to an electricity sale contract to be executed with a customer, an analysis as to whether that customer qualifies as a consumer under the Consumer Law should be made. If the customer does qualify as a consumer, provisions of the consumer legislation and specifically the secondary legislation including the Regulation should also be taken into account in addition to the provisions of the electricity market legislation.

Even though there is no explicit provision which prohibits validity of electricity sale contracts concluded via distant methods or that specifically state that electricity sale contracts without wet signature are invalid, there are controversial opinions among experts in EMRA and therefore it seems that establishment of a definitive practice in this respect may take some time. Indeed, application of many provisions of consumer legislation may require EMRA to take action and to make amendments in the electricity market legislation in order to avoid conflicting interpretations among the market players.

Other recent developments

Constitutional Court Decision on Administrative Fines under the Petroleum Market Law

The Constitutional Court, with its decision No. 2015/109E. 2016/28K. dated 7 April 2016 published in the Official Gazette No. 29701 dated 3 May 2016 (the "**Decision**") annulled two provisions regarding administrative fines stipulated in Petroleum Market Law No. 5015[10] (the "**Law**"). Article 19.2.a stipulating a TRY 600,000 administrative fine where the dealer fails to continue its activities in a way that it is understood that the dealer is marketing the product of the new distributor (provided under Article 7/4) and; Article 19/2/c stipulating a TRY 800,000 administrative fine should the owner of the dealership license deliver fuel to distributors other than the distributer it is connected to, from the gas station (provided under Article 8/3) have been canceled to become effective within nine months from the date of publishing of the Decision.

The 13th Chamber of Council of State (*Danıştay*) has transmitted the lawsuit file to the Constitutional Court and requested the cancellation of the two provisions mentioned above, stating that the administrative fines implemented by administrative authorities to preserve the public order in a specific area of activity, or to regulate a specific industry are called regulatory fines and are generally provided in a proportioned manner or by manner of a upper – lower limit. The relevant sections of Articles 7 and 8 also call for regulatory fines. Article 19 of the Law on the other hand, stipulates fixed administrative fines; which does not allow for considerations on the economic size or grade of the company; or on the way or the degree of the offense conducted.

The Constitutional Court has found the determination of such fixed administrative fines in violation of Article 2 of the Constitution regarding the State governed by rule of law, and the principle of equity, and has canceled the mentioned provisions.

Recent Court of Appeals decision on the jurisdiction of English courts

The 11th Chamber of the Court of Appeals, in its decision No. 2014/15681E. 2015/11244K. dated 28 October 2015, ruled that merely stipulating the jurisdiction of "English courts" is not enforceable under Turkish Law as the term "English courts" lacks specificity. In this sense, as the term "English courts" is found to be vague, the contracting parties must also specify in the contract the specific court in which the disputes are to be resolved.

10 Published in the Official Gazette No. 25322, dated 20 December 2003.

Recent and upcoming conferences and events

- 26-28 May 2016, Istanbul: **6th International 100% Renewable Energy Conference** organized by EUROSOLAR Turkey.
- 1-3 September 2016, Istanbul: **IWE Istanbul Water Expo - Istanbul Water and Wastewater Treatment Technologies Exhibiton and Conference** organized by ITE Turkey.
- 9-13 October 2016, Istanbul: **23rd World Energy Congress** organized by World Energy Council.
- 3-4 November 2016, Ankara: **9th Energy is Future, International Energy Congress and Expo** organized by Domino Fuarcılık.
- 16-18 November 2016, Istanbul: **The Annual Atlantic Council Energy & Economic Summit** organized by the Atlantic Council.
- 23-24 November 2016, Ankara: **5th Annual PPP in Turkey Forum** organized by EEL Events.

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