Çakmak Avukatlık Ortaklığı

Newsletter | Fall 2017

Turkish Energy & Infrastructure

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Recent changes in legislation

Legislative Developments Concerning the Electricity Market Law[1]

Amendment to Temporary Article 4 of the Electricity Market Law

As known, Temporary Article 4 of the Electricity Market Law enables (i) the facilities generating electricity using renewable resources or local coals such as peat, lignite and hard coals; (ii) transportation routes; and (iii) power transmission lines to benefit, for the first 10 years of their investment and operation periods, from an 85% reduction in the fees to be paid for permits, leases, easement rights and usage rights, as well as an exemption from the Forest Villagers Support Fee[2] and Forestation and Control of Erosion Fee[3]. Facilities generating electricity from renewable resources or local coals were required to start operation before 31 December 2020 to benefit from these incentives, and the Council of Ministers was authorized to extend this term up to five years. On 5 June 2017, the Council of Ministers, using its authority, extended this deadline for generating electricity to 31 December 2025, with its decision No. 2017/1045[4]. This amendment has been well received in the sector, because it will allow recently initiated investments to benefit from the incentives set out in Temporary Article 4.

Regulation on the Implementation of Temporary Article 8 of the Electricity Market Law

A Regulation has been issued on implementation of Temporary Article 8 of the Electricity Market Law which regulates compliance of Electricity Generation Corporation *(EÜAŞ)*, its affiliates, public electricity generation companies established in accordance with the Privatization Law[5], electricity generation companies which have already been privatized and those that have not yet been privatized with environmental requirements. After its cancellation by the Constitutional Court in 2014, the re-introduced Temporary Article 8 of the Electricity

1 Published in the Official Gazette No. 28603 dated 30.03.2013.

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.

4 Published in the Official Gazette No. 30137 dated 28.07.2017.

5 Published in the Official Gazette No. 22124 dated 27.11.1994.

Market Law fixed the deadline for compliance of the relevant entities with environmental requirements as 31 December 2019. Prior to its reiteration in June 2016, Temporary Article 8 that provided the Council of Ministers with the right to extend such deadline until 2021, had been cancelled by the Constitutional Court by its decision dated 22 May 2014[6], concluding that the constitutional right to live in a healthy and balanced environment *"is not of the kind to be renounced for long terms on the pretext that the rule to be adopted will bring economic, bureaucratic and de facto encumbrances and that the production activities will be affected"*.

Following the reintroduction of Temporary Article 8, this time with a fixed deadline for compliance, the Ministry of Energy and Natural Resources published the Implementation Regulation of Temporary Article 8 of the Electricity Market Law No. 6446[7] (**"Implementation Regulation"**) which became effective by its publication on 3 July 2017. The Implementation Regulation requires the production companies to prepare work implementation plans *(iş termin planı)* in the form set out in the annexes of the Implementation Regulation and to submit tri-annual progress reports to the Ministry of Environment and Natural Resources. The work implementation plans will be reviewed and approved by a commission composed of four members representing the Ministry of Environment and Natural Resources and four members representing the Ministry of Environment and Urbanization. This commission will also be responsible for ensuring the implementation of such plans and for conducting audits of the production companies in this respect. This mechanism set out by the Implementation Regulation is intended to address and mitigate the concerns expressed by the Constitutional Court in its decision of 22 May 2014.

Recent Changes in the Electricity Market Legislation regarding Information Systems

The Energy Market Regulatory Authority ("**EMRA**") recently published two pieces of legislation regarding information systems in the energy sector. On 13 July 2017, EMRA published the Regulation on Information Security in Industrial Control System Used in Energy Sector ("**Regulation**").[8] The Regulation will enter into force two months after the date of publication. The Regulation's objective is two-fold: to ensure the continuity of the information system by way of supervision of Industrial Control Systems ("**ICS**"), and to manage and reduce risks concerning information systems in the energy sector.

The key aspects of the Regulation are as follows:

- The following entities qualify as responsible institutions, and are subject to the requirements of the Regulation: electricity transmission license holders, electricity distribution license holders with the exception of Organized Industrial Zones ("**OIZ**") distribution license holders, electricity generation license holders with a total installed capacity of 100 MW or more with the exception of OIZ distribution license holders, natural gas transmission license holders that transmit by pipeline, natural gas storage license holder (LNG, underground), crude oil transmission license holders and refinery license holders.
- The responsible institutions will send ICS recognition and ICS risk evaluation forms on the date of the entry into force of the Regulation. The ICS recognition form covers the responsible institutions' operations concerning ICS, their efforts for information security, and source information. Along with the ICS recognition form, the ICS inventory form will be prepared by responsible institutions and will be made available to EMRA on request.
- The Regulation envisages setting up a risk management mechanism for ICS. The responsible institutions must notify EMRA of any risks related to their ICS systems with risk evaluation forms. EMRA is authorized to identify, evaluate, or eliminate risks related to ICS, or reduce its effects if occurred, based on the notifications of responsible institutions, or its own determination of the existence of such risks.

Furthermore, on 26 July 2017, EMRA published the Draft Procedures and Principles regarding EMRA's Remote Access to Information Systems of Electricity Market Distribution License Holders ("**Draft Procedures and Principles**"). The key considerations regarding the Draft Procedures and Principles are as follows:

- EMRA requires electricity distribution license holders to establish the Electricity Distribution Data Warehouse and Reporting System ("**EDDWRS**"), which enables EMRA to have real-time access to and monitor operational data.
- Distribution license holders must ensure the protection of data integrity and data continuity of all information systems and allow EMRA to verify all data provided through EDDWRS in real time.

[6] Published in the Official Gazette No. 29396 dated 24.06.2015.

[7] Published in the Official Gazette No. 30113 dated 03.07.2017.

[8] Published in the Official Gazette No. 30123 dated 13.07.2017.

Data flow must be operated synchronously between EDDRWS and the main systems hosting data and reports provided to EDDRWS.

Distribution license holders must establish EDDRWS and grant EMRA access to it within 6 months from the date of entry into force of the Draft Procedures and Principles.

New Regulation on Technical Evaluation of Solar Power Plant Applications

The Regulation on Technical Evaluation of Electricity Generation Applications Based on Solar Power ("**New Regulation**") was published in the Official Gazette No. 30110 dated 30 June 2017, and entered into force on the same date. With its entry into force, the New Regulation repealed the former regulation[9] dated 1 June 2013 on the same subject ("**Repealed Regulation**").

The New Regulation sets out the framework for the General Directorate of Renewable Energy's ("**Directorate**") evaluation of applications of a technical nature concerning solar power plants. This evaluation includes a technical assessment of the preliminary generation license and license-exempt electricity generation applications, project site modifications, and technical evaluation application amendments. In this respect, the main scope of the New Regulation is the same as that of the Repealed Regulation. Yet, unlike the Repealed Regulation, the New Regulation incorporates the technical assessment aspects of preliminary licensing and license-exempt electricity generation activities. Concerning the license-exempt generation facilities, the New Regulation foresees comprehensive technical evaluation criteria for both solar power plants with and without a rooftop.

Furthermore, when compared with the Repealed Regulation, the New Regulation provides a detailed but simple list of the circumstances that would lead to the rejection of the relevant technical applications filed with the Directorate. This list includes, among others, correspondence of the project site coordinates with the areas which are precluded in terms of solar power plant purposes; overlap of the project site with other solar plant applications; and the consequences of non-compliance with the required conditions set out in the New Regulation and in its schedules.

Lastly, the New Regulation provides a new requirement that did not exist in the Repealed Regulation which states that facility owners must submit their pre-license or technical evaluation reports obtained pursuant to the provisions of the New Regulation during the acceptance procedures of the subject facilities.

Construction License Exemption for Rooftop Solar Power Panels

The Planned Areas Zoning Regulation ("**Regulation**"), which was published in the Official Gazette No. 30113 dated 3 July 2017, introduced an exemption concerning roof systems utilizing solar power panels. Pursuant to Article 59 of the Regulation, a construction license will not be required to build solar power panels on rooftops, installed to supply energy to the building. Previously, the municipalities generally required the revision of the relevant construction license for the installation of such kind of panels and this was a difficult process particularly for small investments. This newly introduced exemption shows that the government continues to support license-exempt electricity generation established for the electricity needs of the owner. The said exemption will come into force on 1 October 2017.

Turkish Central Bank's Pre-emption Right in Gold Purchase

The Turkish Central Bank published the Notice No. B.02.2.TCM.0.10.02.00-010.07.01 on 21 July 2017 regarding its purchase of standard gold domestically produced from ore ("**Notice**"). The Notice, which was addressed to the banks doing business in Turkey, provides for a pre-emption right of the Turkish Central Bank. Although the Regulation on Precious Metals and Diamonds-related Stock Exchange Transactions at the İstanbul Stock Exchange[10] ("**Precious Metals Regulation**") does not provide such a pre-emption right of the Central Bank, nor explicitly empowers the board of the İstanbul Stock Exchange to grant such right, a pre-emption right has been granted to the Turkish Central Bank by the board of the İstanbul Stock Exchange with Article 6 of the Precious Metals Regulation Implementation Principles[11].

The Notice foresees a mechanism that consists of (i) the Turkish Central Bank, (ii) the agent bank of the Turkish Central Bank, a member of İstanbul Stock Exchange, and (iii) Takasbank. According to the Notice, the agent bank will notify the Turkish Central Bank once the gold is delivered to the İstanbul Stock Exchange by the refinery. Upon the agent bank's notification, which must be made by 2:00 p.m. each day in line with the Notice, the Turkish Central Bank will provide the agent bank with its decision, and the gold must be physically delivered to the Turkish Central Bank's account at the İstanbul Stock Exchange by 3:30 p.m. at the latest, along with the refinery registration certificate. Hence, the pre-emption right will be deemed to have been used once the written response of the Turkish Central Bank is delivered to the notifying agent bank.

9 Published in the Official Gazette No. 28664 dated 1 June 2013.

10 Published in the Official Gazette No. 29150 dated 19 October 2014.

11 Published by İstanbul Stock Exchange on 14 March 2017.

The Turkish Central Bank has recently sent a notice to the banks doing business in Turkey and the İstanbul Stock Exchange stating that it will not use its pre-emption right until its next instruction due to pending preparation of the information system and software required to be established for the use of respective right. It is currently assumed that the execution of the pre-emption right will be suspended until the end of September 2017 subject to extension by the Turkish Central Bank upon its further examination of the process.

Draft legislation

Draft Agreement Amending the Transmission System Use Agreement

On 31 July 2017, the Energy Market Regulatory Authority ("**EMRA**") published the draft agreement amending certain provisions of the transmission system use agreement ("**Amending Draft**") to be signed by the users who want to connect to the transmission system and Türkiye Elektrik İletim A.Ş. ("**TEİAŞ**"). As per the announcement made on EMRA's website[12], the public was invited to comment on the draft agreement by the close of business on 10 August 2017.

The major amendments proposed by the Amending Draft can be summarized as follows:

- **Capacity:** Pursuant to proposed amendments to Article 2 of the transmission system use agreement ("**Agreement**"), separate capacities are determined for each of (i) generation companies, (ii) distribution companies and organized industrial zones holding a distribution license, and (iii) consumers, within the scope of first Agreement to be signed. Restrictions related to users' capacity increase or decrease requests are also proposed to be amended. As per the Amending Draft, capacity increase or decrease requests will be evaluated in accordance with the relevant provisions of the Electricity Market Connection and System Usage Regulation[13] ("**System Use Regulation**") (for the generation companies, in parallel with the respective license amendment). Users can make a maximum of 3 applications within the same tariff year in relation to amendment of the Agreement for capacity increases; TEİAŞ will notify the user of its view at the latest within 45 days following the application. In the current version of the Agreement, TEİAŞ has 60 days to respond to users. Users can request capacity increases once in the 3 years following the date of the change, which would be applicable after 2 months following the request date.

- **Financial Obligations:** As per the proposed amendments to Article 3 of the Agreement, instead of specifying each item to be paid by users to TEİAŞ, it is stated that the calculations will be made pursuant to tariffs approved by EMRA for transmission activities and other items to be paid as per the relevant legislation. Further, it is envisaged that invoices related to penalties within the scope of Article 9 of the Agreement will be sent to users by TEİAŞ within 3 months following becoming aware of, and at the latest within 9 months following the occurrence of the relevant breach.

- **Compensation:** The provision stating that "*the users shall compensate TEİAŞ for losses arising due to breach of the Agreement or the relevant legislation*" is proposed to be deleted as per the Amending Draft.

- **Force Majeure:** The existing provision of the Agreement regulating force majeure events is proposed to be deleted; instead, reference is made to the System Use Regulation and it is stated that the relevant provisions of the System Use Regulation will apply in case of force majeure.

- **Penalties:** Article 9 of the Agreement that regulates the penalties to be applied to users is proposed to be widely amended. The acts constituting a breach are listed, and penalties to be applied to users in such cases are aggravated.

- **Termination:** The Amending Draft eases and shortens the termination process of the Agreement and envisages that the Agreement will automatically terminate within 2 months following the user's written application to TEİAŞ to end its usage of the transmission system, unless the parties agree on a different period. Currently, the users need to apply to TEİAŞ 4 months in advance to end their usage of the transmission system and pay the amounts to be calculated for the transmission system use and system operating fees until the end of the year, and the Agreement terminates on a date mutually agreed by the parties.

- **Settlement of Disputes:** As per Article 13 of the Agreement, the parties can apply to EMRA in writing for the settlement of disputes arising from the Agreement. The Amending Draft envisages that disputes that may arise between the users and TEİAŞ in relation to the Agreement will be finally settled by the Ankara courts and execution offices.

[12] http://www.epdk.org.tr/tr/duyurular/2043

[13] Published in the Official Gazette dated 28 January 2014 and numbered 28896.

- **Notifications:** In its current version, Article 14 of the Agreement states that notifications to be made as per the Agreement shall be made pursuant to the Communique on Transmission in Electricity Market and Connection to Distribution Systems and System Use, which was repealed in 2014. The Amending Draft updates the reference made to the repealed communique in Article 14 and envisages that notifications to be made as per the Agreement will be made pursuant to the Notification Law[14].

- **Guarantees:** Pursuant to the Amending Draft, guarantees to be provided by the users for their payment obligations under the Agreement can no longer be cash guarantees; they are required to be letters of guarantee. In addition, the Amending Draft envisages that the guarantee amount cannot be less than the amount calculated based on system use price for 5-month period (currently, such amount cannot be more than the system use price for a 2-month period). The form of the definite letter of guarantee is proposed to be deleted from Annex 4 of the Agreement.

- **Entry into Force:** Currently, the provisions related to the transmission system use and system operating invoicing transactions and penalties set forth under Article 9 enter into force as of the month following execution of the Agreement; the remaining provisions of the Agreement enter into force on its execution date. Pursuant to the Amending Draft, the Agreement will enter into force on its execution date in its entirety, unless another effective date is stated under Annex 1 of the Agreement.

Draft Implementation Regulation on Mining Zones

Following the introduction of the term "mining zone" to Mining Law No. 3213 ("**Mining Law**") in May 2017, the General Directorate of Mining Affairs ("**Mining Department**") announced on its official website the Draft Implementation Regulation on the Principles and Procedures Applicable to Mining Zones ("**Draft Regulation**") to receive public opinion on the draft.

I. The Mining Zone Concept

With an amendment to Article 29 of the Mining Law in May 2017, the concept of a "mining zone" was introduced to the Turkish mining regime, whereby the holders of adjacent mining licenses can request a merger of their licenses under a single license and the announcement of a consolidated mining zone in the respective area. This aims to improve the environmental and social consequences of mining operations in adjacent license areas, as well as ensuring the efficient operation of mineral reserves.

II. Pre-requisites for Establishment of Mining Zones

Pursuant to amended Article 29 of the Mining Law, a mining zone can be established with the proposal by the Mining Department and the approval of the Ministry of Energy and Natural Resources ("**Ministry**"). The Mining Department can make a proposal for the establishment either *ex officio* pursuant to its own inspections or upon request by (i) the holders of adjacent mining licenses requesting a merger under a single license and legal entity or (ii) the relevant Governorate and/or one or more license holders in a specific region requesting the economical and efficient operation of mineral reserves.

The Draft Regulation sets forth the pre-requisites for the establishment of a mining zone as follows:

a) The subject licenses must be adjacent and/or close to each other with a distance up to 500 meters;

b) The subject licenses must belong to the same group or to the same subsection of a group under the Mining Law;

c) There must be resources that can be made subject to joint operation and planning;

d) Due to the proximity of the relevant licenses, the slope angle and steps of their open pit operations must pose a danger, and it must be impossible to implement the operation projects without the operations reaching the respective license borders and posing a risk to operational safety;

e) There must be a reserve that cannot be operated subject to license boundaries;

f) In the case of multiple operation licenses, the annual average of emission values of dust and particles arising from transportation, explosion, breaking-sieving, etc. conducted during operations must exceed twice or more the environmental standards; and

g) The joint operation of the subject mines must be deemed necessary due to their proximity to urban areas or for environmental reasons.

It is not clear in the Draft Regulation whether the above listed criteria are of a cumulative nature or whether the satisfaction of one or more of the items would in fact be sufficient for the establishment of a mining zone. However, our interpretation of the relevant Article and the other provisions of the Draft Regulation is that the above

[14] Law No. 7201, published in the Official Gazette dated 19 February 1959 and numbered 10139.

listed conditions must be met cumulatively for the establishment of a mining zone.

III. Merger of Subject Licenses

After the announcement of the mining zone in the Official Gazette, the Mining Department will give the relevant license holders a period of 6 months, starting from the date of the announcement, for merger of their licenses under a single legal entity. The consequences of the relevant license holders being able to reach agreement or not is stipulated in further detail in the Draft Regulation.

IV. Formation of Mining Zone Commissions

In cities where mining zones are established, a "Mining Zone Commission" will be formed by the relevant Governorate upon notification of the mining zone by the Mining Department. In metropolitan municipalities, the mining zone commissions will operate under the Investment Supervision and Coordination Departments of the respective Municipalities; whereas in other cities, they will be affiliated with the respective Special Provincial Administrations.

V. Miscellaneous

- The Draft Regulation is silent on the stage of mining licenses that can be merged for the establishment of a mining zone, *i.e.* whether they should all be operation licenses, or whether there can also be licenses at the exploration stage within a mining zone. Although there is not an explicit provision on this, we understand that all licenses to be merged for the establishment of a mining zone must in fact be operation licenses, based on the inclusion of the newly introduced provisions on mining zones in Article 29 of the Mining Law governing mining operation licenses and the fact that a single license will be issued for the operation of the respective zone.

- The Draft Regulation prohibits the operation of mineral reserves within mining zones by royalty agreements; all existing royalty agreements, if any, pertaining to areas within announced mining zones will be automatically cancelled as of the date of the mining zone's announcement in the Official Gazette.

- The Draft Regulation allows for the restriction or relocation of operations pertaining to mines under Group I (*i.e.*, sand, gravel, clay tile, cement tile or marl) and II (a) (*i.e.* grounded forms of stones, such as calcite, limestone, and granite, which are used in ready mixed concrete and asphalt) of the Mining Law on the specific grounds listed in its Articles 16 and 17.

Draft Amendment to the Guideline on Vertical Agreements

The Turkish Competition Authority announced a draft amendment ("**Draft**") to the Guideline on Vertical Agreements (the "**Guideline**") pertaining primarily to "agency contracts", "internet sales" and "most favored customer clauses" on its website for public opinion until 11 September 2017. The motivation behind the amendment is to eliminate problems arising from the implementation of Law No. 4054 on Protection of Competition ("**Competition Law**") and to harmonize the present Guidelines with EU competition law in relation to the relevant subjects.

Agency Agreements

Within the scope of agency agreements, limitations placed on the agency, which are mostly related to the agreements the agent negotiates and/or executes on behalf of its client, are generally considered outside the scope of Article 4 of the Competition Law; therefore, they are, in principle, not deemed subject to the exemption regime as per paragraph 10 of the Guideline. However, it is generally accepted that non-competition obligations imposed on agencies as such may still create a foreclosure effect in the relevant market where the contracted goods and services are being sold, and as a result undesirable anticompetitive effects may occur.

On the EU front, the European Commission Notice regarding Guidelines on Vertical Restraints ("**EU Guidelines**") explained that single branding provisions and post-term non-compete provisions in agency contracts, which concern inter-brand competition, may lead or contribute to a (cumulative) foreclosure effect on the relevant market where the contracted goods or services are sold. Therefore, it is accepted under the EU Guidelines that non-compete provisions in agency contracts leading to such effect may indeed infringe Article 101(1) and accordingly such non-compete obligations cannot benefit from the exemptions provided under Article 101(3). In accordance with such principle, the Draft proposes an amendment to the Guideline to ensure compliance with the EU Guidelines and eliminate the discrepancies between the agency contracts and other vertical agreements in terms of assessment of their non-compete provisions.

Internet Sales

The Guidelines, in their current form, do not cover internet sales other than stating that having a website shall be considered as a form of passive sale. Therefore, in line with the EU Guidelines, the Draft proposes, among others, that the following restrictions in sales over the

internet shall exclude the relevant agreements from the scope of block exemption:

- agreeing that the (exclusive) distributor shall prevent customers located in another (exclusive) territory to view its website or shall put on its website automatic re-routing of customers to the manufacturer's or other (exclusive) distributors' websites;
- agreeing that the (exclusive) distributor shall terminate consumers' transactions over the internet once their credit card data reveal an address that is not within the distributor's (exclusive) territory;
- agreeing that the distributor shall limit its proportion of overall sales made over the internet; and
- agreeing that the distributor shall pay a higher price for products intended to be resold by the distributor online than for products intended to be resold offline.

Most Favored Customer Clauses

As a general principle, most favored customer clauses can restrict the competition in the market as well as they can increase the competition between the undertakings. Accordingly, it cannot be easily determined whether the most favored customer clauses would give rise to a violation of competition law. So far, there has also been no extensive precedent on these clauses in the Turkish competition practice either. The Draft proposes to open a new section titled "9.5.2.9 Most Favored Customer Clauses" where several vertical restrictions are discussed and provides a detailed analysis on such clauses in line with the EU practice.

Court decisions

State Council's Decision on the Cancellation of the Regulation on Inquisition and Inspection of the Activities Pursued by Generation and Distribution Companies

According to the press release published on the website of the Chamber of Electrical Engineers ("**EMO**"), the Regulation on Inquisition and Inspection of the Activities Pursued by Generation and Distribution Companies, published in the Official Gazette No. 28082 dated 12 October 2011 ("**Regulation**"), has been cancelled with the unanimous vote by the 13th Chamber of the State Council on 13 June 2017. EMO filed the cancellation lawsuit against the Regulation on the basis of illegality of the Regulation.

The Regulation was adopted on the grounds of Article 6/C of the Law No. 5346 on Renewable Energy Resources for the Generation of Electrical Energy[15] ("**Renewable Energy Law**"), which allows EMRA to assign the inquisition and inspection services to private inspection companies. This opportunity to procure inspection services from private inspection companies was foreseen by the insertion of the said Article 6/C with the Law No. 6094 Amending the Law No. 5346 on Renewable Energy Resources for the Generation of Electrical Energy[16], which was then cancelled by the Constitutional Court Decision No. 2011/27 E. and 2012/101 K. dated 5 July 2012 ("**Constitutional Court Decision**"). The Constitutional Court had pointed out that the provision concerning the transfer of inspection services was uncertain because of the lack of legal framework of the assignment, and it was in breach of the governing principle of the Administrative Law as to the administration's responsibility to pursue itself the public services with fundamental and continuous character. However, to validly enforce the Regulation, the same provision allowing private companies to pursue inspection services was adopted by the Omnibus Law No. 6353[17] subsequent to the Constitutional Court Decision. This amendment was then challenged again before the State Council by EMO, and the execution of the Regulation was suspended by the decision of the 10th Chamber of the State Council with File No. 2012/345 E. dated 13 July 2012[18], which was later transferred to the 13th Chamber of the State Council with File No. 2013/1864 E. According to EMO's press release, the State Council set out the motives for its suspension decision as the lack of legal basis of the Regulation, since the regulation permitting the transfer of inspection services to private companies had already been ruled out by the Constitutional Court Decision, and further stated that the legality of the Regulation could not have been brought in by a subsequent amendment in the legislation.

Thereafter, the Electricity Market Law No. 6446[19] was adopted, and repealed the provision of the Renewable Energy Law that enabled procurement of inspection services. In this regard, according to the press release, EMO has challenged the legality of the Regulation by arguing that the rule makers' attempt to form a legal basis for the Regulation after the Constitutional Court Decision was fraud in law, since the Regulation itself referred to the repealed provision of the Renewable Energy Law as legal basis. Finally, the Regulation has

[15] Published in the Official Gazette No. 25819, dated 18 May 2005.

[16] Published in the Official Gazette No. 27809, dated 8 January 2011.

[17] Published in the Official Gazette No. 28351, dated 12 July 2012.

[18] Also stated in the website of EMRA. Available at: http://www.epdk.org.tr/TR/DokumanDetay/Elektrik/Mevzuat/Yonetmelikler/UretimDagitimIncelenmesineDenetlenmesi

[19] Published in the Official Gazette No. 28603, dated 30 March 2013.

been cancelled in whole by the final decision of the 13th Chamber of the State Council as first resort on 13 June 2017, and it is awaiting to be notified to the parties when the reasoned decision is finalized by the court.

Articles

Turkey's Ratification of the Trade Amendment of the Energy Charter Treaty

I. Energy Charter Treaty and Turkey

The Energy Charter Treaty ("**ECT**") and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects were executed on 17 December 1994 in Lisbon and entered into force on 19 April 1998, once thirty Contracting Parties completed the ratification process. The ECT establishes a multilateral legal framework for cross-border energy cooperation and investment within a political framework. The departure point for the ECT was to promote cooperation between the East (the Soviet Union) and West (the European Communities)[20] in the energy sector: to "establish a legal framework in order to promote long-term co-operation in the energy field, based on complementarities and mutual benefits, in accordance with the objectives and principles of the Charter" as set out in Article 2 of the ECT. It further establishes, within the scope of the energy sector, the member countries' and their nationals' legal rights and obligations regarding a broad range of investment, trade, and other subjects, such as the transit of energy and goods, competition, the environment, energy efficiency, security of energy supply, and access to capital markets and transfer of technology. The ECT brings together more than fifty-member countries, including many OECD countries, and the European Union together with its member states. Hence, although the ECT is a sector oriented international instrument, it is not limited geographically to the European region.

The scope of the original ECT trade regime is defined in its Annex EM I as "Energy Materials and Products", and includes: nuclear energy[21], coal, natural gas, petroleum and petroleum products, electrical energy, and other energy (fuel wood and charcoal). The ECT's key provisions set out the rules for market access, trade of energy related goods and equipment, and energy investments. The trade related provisions of the ECT provide cross-border conduct of energy markets by implementing the rules of the World Trade Organization ("**WTO**"). At the time of the ECT's execution in 1994, the Uruguay Round[22] was in the course of negotiation. Hence, after the institutionalization of the WTO, the ECT was to be amended in line with the new trading system introduced by the WTO legal instruments.

The Provisional Energy Charter Conference negotiated the trade related provisions of the ECT[23], and an amendment was adopted in April 1998 ("**Trade Amendment**"). The Trade Amendment entered into force in 2010 after being ratified by thirty-five Contracting Parties. The Trade Agreement mainly modifies the ECT's Annexes. The Trade Agreement makes three main changes to the ECT: (i) the technical adaptation of the references to incorporated rules to reflect the change from a GATT based trade regime to a WTO based trade regime; (ii) the inclusion of energy-related equipment in the list of goods to which the ECT applies; and (iii) the possibility for the Energy Charter Conference to progressively replace soft law customs tariffs pledges with a binding customs duty standstill regime.[24] These changes are discussed in further detail below.

Turkey's involvement in international energy cooperation dates back to 1991, to the signature of the European Energy Charter, which was also intended to encourage cross-border energy cooperation. Turkey was among the participants of the Energy Charter Conference, and executed the ECT on 17 December 1994, but did not ratify the ECT until 2001[25]. After more than a decade, the Trade Amendment has finally been ratified by Turkey, when it was approved by the Council of Ministers' decree, published in the Official Gazette No. 30001 and dated 8 March 2017.

II. Trade Amendment of the ECT

A. WTO Rules Applicable under the ECT

The purpose of the application of the WTO rules is to remove non-tariff barriers set up by governments to the energy trade. Therefore, the ECT employs the multilateral trading system introduced by the WTO as a tool to achieve the aims set out in the Preamble of the ECT[26]. In this connection, the ECT establishes a system

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20 Konoplyanik, A., Walde, T., "*Energy Charter Treaty and Its Role in International Energy*", 24 J. Energy Nat. Resources (2006), p. 524.

21 The EU and six Commonwealth and Independent States (CIS) countries declared that bilateral trade in nuclear materials should be covered by other agreements.

22 The 7th round of the GATT, which was launched in September 1986 in Punta del Este and continued until 1994, led to the creation of the WTO. Further information available at: https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm .

23 Item I, Final Act of the International Conference and Decision of the Energy Charter Conference.

24 http://www.energycharter.org/fileadmin/DocumentsMedia/Thematic/Trade_Amendment_Explanations-EN.pdf, at p. 4.

25 The ECT was endorsed by the Turkish legal system with enactment of the Law No. 4519 dated 1 February 2000 and published in the Official Gazette on 12 July 2000, and entered into force on 4 July 2001, after being deposited on 5 April 2001. Information available at: http://www.energycharter.org/who-we-are/members-observers/countries/turkey/.

26 Energy Charter Secretariat, "*TRADE IN ENERGY, WTO Rules Applying under the Energy Charter Treaty*", Brussels (2001), p. 16-17. Available at: http://www.energycharter.org/fileadmin/DocumentsMedia/Thematic/WTO_Rules_applying_to_the_ECT_2002_en.pdf.

to operate the WTO rules depending on the contracting parties' membership status at the WTO.

When the ECT was first negotiated, not all of the participating countries were party to the General Agreement on Tariffs and Trade of 1947 ("**GATT 1947**"). To ensure that both signatories and non-signatories of the GATT 1947 were treated in the same way, and to introduce the standards of the GATT 1947 to the non-signatory countries to encourage them towards accession, the rule-makers of the ECT engaged not all, but a significant number, of the GATT 1947 provisions into the ECT by way of reference (referred to as "GATT by reference" and subsequently "WTO by reference" in literature[27]). Accordingly, the GATT 1947 rules referred to in the ECT were equally applicable to the ECT contracting parties who were not members of the GATT 1947 through Article 29 of the ECT (*Interim Provisions on Trade-Related Matters*). The Trade Amendment followed the same pattern and incorporated the relevant WTO rules into the ECT.

Between the ECT contracting parties who are also members of the WTO, the WTO rules will be applicable exclusively[28]. However, if at least one of the trade parties is not yet a party to the WTO, then the WTO rules will be applicable by reference, under Article 29 of the ECT (*Interim Provisions on Trade-Related Matters*). This "WTO by reference" system treats the non-WTO member signatories as if they were WTO members. Hence, the WTO's trade related provisions as incorporated in the ECT are applicable solely to the signatories of which at least one is not party to the WTO[29].

The technical adaptation of the ECT trade regime from being based on GATT to being based on the WTO involves detailed changes in the wording of the Annexes, but only a minor change in material scope.[30]

1. "Negative List" of Non-applicable WTO Rules

Article 29 of the ECT was amended and Annexes D and G were changed to reflect the WTO rules. The system called "WTO by reference" discussed above is maintained under the Trade Amendment: the Annexes include a "negative list" that states all of the provisions of the GATT that are not applicable to the ECT because they are not relevant to energy. This negative list stating the non-applicable WTO legal instruments of Annex G was replaced by Annex W and renamed "WTO Agreements".

Annex W lists the WTO Agreements that do not apply, including: the WTO Agreements on Trade in Services (GATS), Agreement on Agriculture, Agreement on the Application of Sanitary and Phytosanitary Measures, Agreement on Textiles and Clothing, and Agreement on Trade-Related Investment Measures. Moreover, Annex W indicates the non-applicable provisions of other WTO Agreements, including Agreement on Technical Barriers to Trade ("**TBT Agreement**"), Customs Valuation Agreement, Agreement on Pre-shipment Inspection, Agreement on Rules of Origin, Agreement on Import Licensing Procedures, Agreement on Subsidies and Countervailing Measures, and Agreement on Safeguards. These provisions are mostly related to the clauses pertaining to special commissions or committees to be established, reservation, review, consultation, dispute settlement and developing country members. Also, as per Annex W(A)(2), (i) all provisions in the WTO Agreements related to governmental assistance for economic development and the treatment of developing countries, the establishment or operation of special committees and other subsidiary institutions, and the signature, accession, entry into force, withdrawal, deposit and registration; and (ii) all agreements, arrangements, decisions, understandings or other joint actions pertaining to the WTO Agreements referred to in Annex W are excluded from the ECT's scope of application. Lastly, based on the joint declaration made by the then Russian Federation and the European Union, being part of the Trade Amendment, trade in nuclear materials may be subject to another legal instrument executed between Russia and the European Union[31].

Conversely, the trade related rules provided by the General Agreements on Tariffs and Trade of 1997 ("**GATT 1997**"), may fall under the scope of the ECT, including the benchmark principles of free trade, such as most favoured nation treatment, which ensures non-discrimination based on the origin of the goods in question, and national treatment, which prohibits discrimination between domestic and imported products. Furthermore, the GATT 1997 provisions not listed in Annex G will be in force under the ECT, including freedom of transit (Article V); fees and formalities connected with importation and exportation (Article VIII); marks of origin (Article IX); publication and administration of trade regulations (Article X); general elimination of quantitative restrictions (Article XI); restrictions allowed to safeguard balance of payments (Article XII); non-discriminatory administration of quantitative restrictions (Article XIII); exceptions to the rule of non-discrimination; subsidies; limitations imposed on state trading enterprises; safeguards; general exceptions (Article XX); security exceptions (Article XXI);

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27 *Supra* n. 1, p. 542.

28 Marthold, Anna-Alexandra, "*Fragmentation and the Nexus between the WTO and the ECT in Global Energy Governance – A Legal-Institutional Analysis Twenty Years Later*", The Journal of World Investment & Trade, 16 (2015), p. 406-407.

29 *Supra* n. 7, p. 18.

30 http://www.energycharter.org/fileadmin/DocumentsMedia/Thematic/Trade_Amendment_Explanations-EN.pdf, at p. 5.

31 The Partnership and Cooperation Agreement between the Russian Federation, the European Union and its Member States, which came into effect on 1 December 1997.

exceptions for customs unions and trade unions (Article XXIV); and exceptions in favour of developing countries.

Moreover, alongside the GATT 1997, some other legal instruments of the WTO have been incorporated by the Trade Amendment, including the TBT Agreement; the WTO agreements on anti-dumping, subsidies and safeguards; the Agreement on Import Licensing Procedures; and the Agreement on Rules of Origin. Particularly, the application of the TBT Agreement should be emphasized because Annex EQ to the ECT provides for the energy materials and products and energy-related equipment within the scope. The TBT Agreement will apply when a contracting party endorses a mandatory technical regulation concerning the product characteristics and production and process methods, standards or conformity assessment procedures as to the technical regulations and standards. The energy regulations and standards such as "the composition of natural gas or the flammability of petroleum products and related labelling requirements"[32] may fall under the applicable principles of the TBT Agreement, considering the technical nature of the activities pursued in the electricity market.

2. Changes to the ECT Dispute Settlement System

The Trade Amendment has slightly amended the ECT's dispute resolution system in Annex D. The dispute settlement system has retained a "GATT-like diplomatic character, rather than WTO-like judicial settlement of trade disputes".[33] The settlement dispute system was based on the Uruguay Round dispute settlement procedures, and modified through negotiation.

Trade disputes are first heard by a panel of three individuals selected by the Secretary-General. The Charter Conference adopted a roster of panelists, which includes legal experts nominated by member governments and individuals who have served as panelists on GATT or WTO dispute settlement panels. The panel's report is subject to adoption by the Charter Conference, acting by a vote of three-fourths of those present and voting (and at least a simple majority of the Contracting Parties). This system differs from the WTO dispute settlement system, in which panel reports are automatically adopted unless disapproved by consensus. If a panel determines that a Contracting Party's measure fails to comply with the applicable ECT provisions, the panel may recommend that the Contracting Party modify or revoke the measure. If the Contracting Party fails to comply with the panel's ruling or recommendation, the Charter Conference may, through the same voting procedure, authorize the injured party to suspend ECT trade obligations to the other party "which the injured party considers equivalent in the circumstances".[34] There are certain exceptions to these procedures.

B. Inclusion of Energy-Related Equipment List

The Trade Amendment has extended the scope of the ECT trade rules by the addition of a new Annex EQ I to the ECT. The ECT now applies to energy-related equipment, as well as the "Energy Materials and Products" listed in Annex EM I. An exhaustive list of the energy-related equipment has been prepared and appears in the new Annex EQ I. This list is based on the tariff headings of the Harmonized System (HS) of the World Customs Organization, which is also used in the WTO. It includes a wide array of industrial products used in the energy sector, including pipelines, electric cables and towers, drilling platforms, nuclear reactors, central heating boilers, heat pumps, refrigerators, freezers, electrical transformers, accumulators, and even certain types of motor vehicles.

C. Changes to the ECT tariffs regime

The ECT does not provide tariff commitments as established under the WTO tariffs regime, but foresees a "best-endeavor" mechanism. Under the Trade Amendments, the ECT trade regime now has two pillars: the soft law approach to tariffs, which is maintained under the Trade Amendments, and (ii) a binding standstill projection for customs tariffs, which approaches the WTO system of legally binding tariff commitments. According to Article 1(4) of the Trade Amendments, all signatories must make an effort not to increase any customs duty or charges on the traded goods within the ECT framework, in case the energy materials or energy-related equipment fall under Annexes EQ II and EMQ II. In this respect, the ECT foresees the progressive replacement of the soft law tariff pledges by a legally binding standstill system[35].

III. Conclusion

The ECT trade provisions based on the GATT 1947 and the WTO provisions incorporated by the Trade Amendment remedy the absence of energy specific WTO rules. Therefore, the ECT trade regime holds an important place in the multilateral trade system, because it establishes a slow but progressive realization of trade liberalization in the energy field.

Another advantage may be that the signatories of the ECT that are not members of the WTO become more and more familiar with the legislative framework of the WTO and the European Union concerning the energy

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32 *Supra* n. 7, p. 68.

33 http://www.energycharter.org/fileadmin/DocumentsMedia/Thematic/Trade_Amendment_Explanations-EN.pdf

34 Baumberger, C., Linehan, J. & Waelde, T., "The Energy Charter Treaty in 2000: In a New Phase", Section III.2.3, Chapter from ed. Roggenkamp, M., Energy Law in Europe (Oxford University Press 2000), http://fsi.stanford.edu/sites/default/files/evnts/media/Charter.pdf

35 http://www.energycharter.org/fileadmin/DocumentsMedia/Thematic/Trade_Amendment_Explanations-EN.pdf, at p. 6.

sector[36]. In this sense, it may be said that Turkey's ratification of the Trade Amendment constitutes a step towards harmonizing its energy related legislation and eases the adaption process of Turkey in its accession path.

RERA Tenders

In 2017, the Ministry of Energy and Natural Resources ("**MENR**") has tendered two 1,000 MW RERA projects, one wind power project and one solar power project, based on the Renewable Energy Resource Areas ("**RERA**") model. This is a major step forward for the Turkish renewable energy market considering the fact that Turkey's current installed capacities for wind and solar are at the level of 6,145.5 MW and 1,165.7 MW, respectively.[37]

This article aims to provide information about the (i) main structure of the RERA model; and (ii) key aspects of the RERA tenders in 2017.

RERAs in a Nutshell

The RERA model can basically be described as an investment package comprising the construction and operation of a major-scale renewable power plant ("**Power Plant**") and a domestic component production plant ("**Factory**"), and conducting research and development ("**R&D**") activities.

Below are the prominent aspects of the RERA model:

1. **Purchase Guarantee:** The winning bidder in a RERA tender is entitled to a purchase guarantee over its bidding price for a period specified in the tender specification. During this period, the electricity output is sold through YEKDEM, which is the renewable energy support mechanism.

   The Renewable Resource Areas Regulation[38] ("**Regulation**"), the main piece of legislation governing the RERA model, provides that the ceiling bidding price cannot exceed the total of the applicable feed-in tariff and the domestic component incentives (which may be included on the top of the feed-in tariff in cases where domestically produced components are used in the power plant).

   After the end of the purchase guarantee period, and until the expiry of the generation license, the RERA investor sells its electricity output to the market over the market price.

2. **Domestic Production**: The RERA model requires the use of domestically produced components in the Power Plant. The domestic production ratio of such components is specified in the tender specifications.

   Under the RERA Regulation, the necessary components must be either (i) produced in the Factory of the winning bidder or (ii) purchased from other domestic manufacturers.

   The first RERA tenders, conducted in 2017, specifically required the construction and operation of a Factory to manufacture the relevant components. However, the upcoming RERA tenders may not involve such investment requirement. In this case, the prospective winning bidders may need to purchase local components from the existing factories in Turkey (including the ones to be constructed within the scope of the recent RERA tenders).

3. **Key Phases:** The winning bidder must be approved by the Minister of MENR. Upon approval, the project company is invited to sign the usage right agreement with MENR, in principle, within 30 days following this invitation. The project company must then file an application with the Energy Market Regulatory Authority ("**EMRA**") for a preliminary license. The duration of the preliminary license is stipulated under the tender specifications, and cannot, in any case, exceed 36 months pursuant to the Electricity Market Licensing Regulation[39]. During this period, the investor must complete the construction of the Factory, and finalize the development stage formalities in relation to the Power Plant.

   The preliminary license must be replaced by a generation license, until its expiry. The duration of the generation license is set out in the tender specifications. During the first phase of the generation license period, the RERA investor completes the construction of the Power Plant. The construction period is also determined in the tender specifications.

   The investor starts to benefit from the purchase guarantee with the operation of the Power Plant, as noted above. The RERA Regulation stipulates that the purchase guarantee period starts with the execution of the usage agreement with MENR. However, as highlighted in this section, a certain portion of this "purchase guarantee period" will be

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36 *Supra* n. 1, p. 542.

37 TEİAŞ Report on Installed Capacity in Terms of Fuel Types, 2017.

38 Published in the Official Gazette No. 29852 dated 9 October 2016.

39 Published in the Official Gazette No. 28809, and dated 2 November 2013.

allocated to the development and construction of the project. Therefore, the actual purchase guarantee period will be shorter than the purchase guarantee period set out in the tender specifications.

4. **Possible Bidder Structures**: The bidders may structure themselves as a joint venture or consortium. The participation of a sole bidder is also possible in theory. However, currently there is no sole bidder that can satisfy the criteria set out in the tender specifications.

   In the solar RERA tender, the consortium structure was not permitted. But the wind RERA tender provided a good demonstration of how consortium and joint structures may work in RERA practice. Under a consortium structure, both the technology provider and the investor member of the consortium sign the usage right agreement with MENR while only the investor member forms a company to obtain an electricity generation license(s) from EMRA ("**Power Plant Company**") and the technology provider will be responsible for the Factory and the R&D activities. Yet, both of them are jointly and severally liable towards MENR.

   If a joint venture is awarded with the tender, its members incorporate a special purpose vehicle company, and this company signs the project agreement with MENR and obtains license(s) from EMRA for the said period.

Key Aspects of the 2017 RERA Tenders

Based on the tender specifications made available by MENR to the public, below are the key aspects of the 2017 solar and wind tenders:[40]

Key Aspect	Solar RERA Tender	Wind RERA Tender
Capacity of the Power Plant	1 GWe	• 1 GWe (max) • 700 Mwe (min)
Location	Karapınar, Konya	(i) Kayseri-Niğde; (ii) Sivas; (iii) Edirne-Kırklareli-Tekirdağ; (iv) Ankara-Çankırı-Kırıkkale; (v); Bilecik-Kütahya-Eskişehir; (vi) Malatya; (vii) Burdur-Denizli-Uşak[41]
Possible Bidder Structures	Joint venture	Joint venture or consortium.
Main Technical Eligibility Criteria	Production of at least 3,000 MWp PV solar module between 1 January 2014 and 30 June 2016.	Production of at least 2,000 MWe of wind turbine nacelle components between 1 January 2014 and 31 December 2016.
Completion Date of the Tender	20 March 2017	3 August 2017
Feed-in Tariff	USD 13.3 cent/kWh	USD 7.3 cent/kWh
Ceiling Price in the Tender	USD 8 cent/kWh	USD 7 cent/kWh
Winning Bidder	Kalyon Enerji - Hanwha Q Cells (USD 6.99 cent/kWh)	Siemens - Türkerler-Kalyon (USD 3.48 cent/kWh)
Runner-up Bidder	Acwa-Kibar-Chint (USD USD 7.05 cent/kWh)	MingYang - İlk İnşaat OGG (USD 3.50 cent/kWh)
Performance Bond of the Winning Bidder	USD 40 million	USD 50 million
Purchase Guarantee	15 years	15 years
Preliminary Licensing Period	24 months	24 months
Construction Period for the Factory	18 months	21 months
Capacity of the Factory	Capable of producing at least 500 MWp of PV solar modules per year.	Capable of producing at least 150 turbines per year in a single shift.
Generation License Period	30 years	30 years
Construction Period for the Power Plant	36 months	36 months
Domestic Production Ratio	• Minimum 65% for the first 500 Mwp of production; • Minimum 75% for the remaining production.	Minimum 65%

[40] The information in this chart may not be fully accurate because the specifications may have been revised after their initial announcement. While this chart reflects certain amendments, we may not have been able to access the full set of amendments to the specifications.

[41] As part of their bids, the bidders were required to submit their proposed RERA locations among the connection points provided in this chart up to an installed capacity of 1,700 MW. The specification provides the thresholds for the maximum available capacity in each connection point. MENR will ultimately decide on the RERA locations for an installed capacity of maximum 1,000 MW. At least 400 MW of this 1,000 MW must be located within the Edirne - Tekirdağ - Kırklareli regions (and at least 280 MW if the installed capacity is 700 MWe).

Key Aspect	Solar RERA Tender	Wind RERA Tender
R&D Center	• The R&D center must be operational within 18 months following the execution of the usage right agreement with MENR. • The duration of the R&D activities will be 15 years. • The total R&D investment amount is USD 137 million.	• The R&D center must be operational within 21 months following the execution of the usage right agreement with MENR. • The duration of the R&D activities will be 10 years. • The total R&D investment amount is USD 45 million.
Employment of Turkish Citizens	At least 90% of the employees in the Factory and the Power Plant, and 80% of the employees in the R&D center must be Turkish citizens. The applicable thresholds must be satisfied for each of white collar and blue collar employee categories.	At least 90% of the employees in the Factory and the Power Plant, and 80% of the employees in the R&D center must be Turkish citizens. The applicable thresholds must be satisfied for each of white collar and blue collar employee categories.

Recent and upcoming conferences & events

- 10th International Energy Congress and Fair ("**EIF 2017**") will be held in Ankara Congresium on 8 – 10 November 2017. EIF 2017 is a platform where a wide range of topics related with energy production in Turkey and, also worldwide, will be discussed. EIF 2017 is organized under the auspices of the Republic of Turkey, Ministry of Energy and Natural Resources, and its purpose is to evaluate all dimensions of various energy sources and energy markets and create an environment that discusses the latest developments and practices from different perspectives. Similar to the previous years, EIF 2017 will be held with the participation of high level presenters and delegates as well as the outstanding national and international energy companies.

- Dr. Cem Çağatay Orak, a partner of Çakmak Avukatlık Ortaklığı, will be the moderator and speaker in the advanced educational program on **"Domestic and International Arbitration in Turkey"** organized by the Union of Turkish Bars Association and Turkish Lawyers Foundation (TÜRAVAK) which will be held on 7-8 and 14-15 October in Ankara.

- International Pharma and Medical Devices Summit ("**IPMS**") will be held under the auspices of the Turkish Ministry of Health on 19-20 October 2017 at ATO Congresium International Convention & Exhibition Centre, Ankara, Turkey. IPMS will be an exclusive platform bringing together politicians, bureaucrats, academicians, sector representatives and opinion leaders and will contribute to the development of the sector.

- The PPP in Turkey Forum, organized by the E.E.L. Events for the sixth time will take place on 29 and 30 November 2017 at the Movenpick Hotel in Ankara, Turkey. The Forum has been launched to give a better understanding of PPP healthcare, transport and education investment opportunities available in Turkey. Packed with an unparalleled panel of PPP professionals, the PPP in Turkey Forum discusses real-world issues, best PPP practices, developments and trends within the marketplace.

- Ekonomi World, an economic research center based in Turkey invites all economists and academicians for the 1st International Conference on Economy and Management which will be held on 17 and 18 November 2017 in Istanbul at the Barcelo Eresin Topkapı Hotel.

Recent privatization tenders by the Privatization Administration

On 11 August 2017, the Privatization Administration announced the tender for the privatization of the 28,2% of the shares of Hidrojen Peroksit Sanayi ve Ticaret A.Ş. and 3,81% of the shares of Compagnie Financiere Ottomane S.A.

The deadlines for submission of bids for Hidrojen Peroksit Sanayi ve Ticaret A.Ş. and Compagnie Financiere Ottomane S.A. have been 18 September 2017 and 29 September 2017, respectively.

On 26 September 2017, the Privatization Administration announced the tender for privatization of the coal reserve and the immovable property where the associated electricity generation facility will be established, both belonging to EÜAŞ and located in Alpu / Tepebaşı districts of Eskişehir Province.

The deadline for submission of bids is 26 January 2018.

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