

Nuclear Regulatory Authority

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Authors: [Dr. Cem Çağatay Orak](#) and [Nigar Özbek](#)

The Nuclear Regulatory Authority (“**NRA**”) has been established by the Statutory Decree No. 702 Concerning the Organization and Duties of the Nuclear Regulatory Authority and Amendment of Certain Laws (“**Decree**”). The Decree has been published in the Official Gazette No. 30473 dated 9 July 2018 and became effective on the same date. Accordingly, Turkey now has an independent regulatory authority for nuclear energy related activities.

1) Requirement under the Convention on Nuclear Safety

The requirement for an independent regulatory authority arises from the Convention on Nuclear Safety (“Convention”), to which Turkey is a party. The Convention provides for the establishment of an independent regulatory authority to implement laws passed by the legislative body and adopt implementation regulations accordingly.

Prior to the Decree, in Turkey, the Turkish Atomic Energy Institution (“TAEK”) was empowered with the supervisory and regulatory authorities in the nuclear energy sector under the Law No. 5710 Concerning the Construction and Operation of Nuclear Power Plants and the Sale of the Energy Generated from Nuclear Power Plants¹ (the “Nuclear Energy Law”). However, TAEK was established as a legal entity dependent upon the Prime Ministry² by the Turkish Atomic Energy Institution Law No. 2690³ (“TAEK Law”). Therefore, TAEK was not suitable to be the ultimate body for regulation and supervision of the nuclear sector and its authorization was of temporary nature. The Nuclear Energy Law provided that TAEK would be replaced by another public authority to be established in the future.

In line with both the Convention on Nuclear Safety and the Nuclear Energy Law, the NRA has been established as an independent authority and it took over TAEK’s responsibilities and powers for regulating, coordinating and supervising the nuclear energy-related activities.

¹ Published in the Official Gazette No. 26707 dated 21 November 2007.

² In Turkey, the “Prime Ministry” was abolished and its authorities and affiliates were transferred to the President of Turkey as of 9 July 2018, except for those that were incorporated into other Ministries. Therefore, TAEK will be an affiliated institution of the Presidency, unless otherwise regulated.

³ Published in the Official Gazette No. 17753 dated 13 July 1982.

2) Structure of the NRA

The Decree provides that the NRA shall be composed of a board and a presidency:

- The board will be the decision making organ of the NRA. The first members of the board shall be appointed within two months following the effective date of the Decree, which is 9 July 2018. The board shall hold its first meeting within two weeks following the appointment of its members. The board shall consist of five members. The authority to appoint the board members is granted to the President of Turkey.
- The organizational structure and procedures to be followed regarding the appointment of the presidents and vice presidents of the presidency of the NRA, as well as the duties and authorities of the presidency, shall be provided under a regulation to be issued by the President of Turkey.

The activities, matters and areas to be regulated by the NRA and the duties and authorities of the NRA will be determined by the President of Turkey. In addition, the NRA shall be associated with the Ministry that will be determined by the President of Turkey. Although there is no determination of the President on this issue yet, the Decree itself refers to the Ministry of Energy and Natural Resources (“MENR”) in the definition section of the “Ministry”; thus, it can be assumed that the NRA will be associated with MENR.

3) Current Role of TAEK

The Decree does not abolish TAEK or repeal the TAEK Law; however, the authorities of TAEK concerning nuclear energy are now limited to the disposal of radioactive wastes and the preparation of a National Radioactive Waste Management Plan Draft that must be submitted to MENR every 5 years starting from 2020. TAEK will also continue to perform its activities under the TAEK Law, other than those covered by the Decree as the authorities of NRA. The Decree provides that all plants, equipment, materials and activities regarding nuclear energy and ionizing radiation are within the scope of the Decree.

Accordingly, all protocols, agreements, undertakings, contracts, rights, receivables, debts, lawsuits and execution proceedings of TAEK concerning safety, security and nuclear assurance related regulatory and supervisory activities will be transferred to the NRA without the requirement of an additional transaction as of the publication date of the regulation regarding the organization of the NRA. The NRA will decide which duties of TAEK given under the international agreements will be transferred to the NRA. The NRA will also use those assets of TAEK to be decided with a separate protocol.

4) Licensing Requirement

Pursuant to Article 4 of the Decree, an authorization must be obtained from the NRA to perform the activities falling within the scope of the Decree. Article 4 further provides that the NRA may determine the activities for which no authorization is required but for which a notification would be sufficient. It also provides that the issues that are subject to an authorization certificate or approval by the NRA and the activities that require a permit and/or license to be obtained from the NRA will be determined by the President of Turkey.

The Decree does not specify the timetable and the administrative procedure to be followed by the NRA during the licensing process. It provides that certain fees shall be paid to obtain the licenses; however, no further detail is provided by the Decree in this regard. On the other hand, it provides that the NRA shall determine considerations and address these issues in a regulation within one year following the Decree’s effective date of 9 July 2018.

5) Liability

The main provision set forth under the Turkish legislation regarding liability for a nuclear accident is the direct reference to the Paris Convention on Third Party Liability in the Field of Nuclear Energy (“Paris Convention”) in the Nuclear Energy Law. In accordance with the Paris Convention, only the operator of a nuclear power plant shall be liable for damages arising from a nuclear accident, on a strict liability

basis and irrespective of fault. There are two exceptions to this rule where the operator is entitled to recourse to third parties: (i) in case the damage results from a nuclear accident caused by an individual's willful misconduct (including acts or omissions), the operator shall have the right of recourse against such individual and (ii) in case a right of recourse is provided for the operator by a contract, the operator shall have the right of recourse in accordance with the contract.

The Decree also provides for strict liability and explicitly repeats the same rule by stating that the authorized operator shall be responsible concerning the nuclear activities; taking the respective safety and security measures, complying with the legislation, and fulfilling due obligations do not reduce the liability of the authorized person. It is also clearly stated that the NRA shall have no liability just because of its control and authority over the authorized person.

6) Technical Support Corporation

The Decree provides that a company under the trade name of NÜTED Nükleer Teknik Destek Anonim Şirketi ("NÜTED"), shall be established to provide services required by the NRA in implementing its duties under the Decree such as support, analysis, consultancy, auditing, training and certification. NÜTED will start to operate after its registration to the relevant Trade Registry. The Decree does not provide any specific time period for such registration.

Article 13/6 of the Decree provides, save for the duties and authorities of the NRA, that the President of Turkey shall be authorized to adopt required regulations regarding the principles and procedures to be followed for the activities of NÜTED and the establishment of a corporation or acquiring shares of the existing companies in Turkey or abroad.

Furthermore, the Decree provides that the initial capital of NÜTED shall be one million Turkish Lira, to be paid by the Treasury. At least 51% of the shares of NÜTED shall be owned by the NRA.

7) Waste Management and Decommissioning Fees and Accounts

The Decree does not bring any change in the essence and amounts to be paid for the waste management and decommissioning. Article 6 of the Decree envisages that the relevant facilities producing radioactive waste will deposit certain amounts to "the radioactive waste management special account" and "the decommissioning special account" to be held at MENR. The amount is determined as 0,15 cent/kWh for the nuclear power plants in line with the repealed provisions of the Nuclear Energy Law and existing bilateral agreements of Turkey regarding the establishment of nuclear power plants. The amount to be deposited by the facilities producing radioactive waste, other than the nuclear power plants, will be determined in accordance with the type of the plant as well as the amount, category and activity of the waste. The amounts in the mentioned special accounts shall be used as follows:

- The amounts deposited to the radioactive waste management special account will be transferred to TAEK for its expenses arising from its studies regarding the waste disposal areas, design, licensing, construction, operation, maintenance and closing waste disposal facilities and research and development activities.
- The amounts deposited to the decommissioning special account will be recorded separately for each of the authorized parties (i.e., facility operators). Relevant amounts will be paid to the relevant authorized parties for the decommissioning of the nuclear facilities, radioactive facilities and radioactive waste facilities. The remaining amounts in the decommissioning special account shall be transferred to the radioactive waste management account.

The special accounts mentioned above will be managed by the accounts management committee that will consist of two representatives from MENR, one representative from each of TAEK, the Ministry of Industry and Technology, and the Ministry of Treasury and Finance, and one representative from each nuclear power plant operating in Turkey (maximum of three operators). There will also be a representative in the committee to represent the other plants and facilities. The meeting and decision quorum of the committee is five out of the nine members.

The Decree states that the amounts to be deposited to the mentioned special accounts will be updated to correspond to the needs for the waste management and decommissioning activities of each year; however, it reserves the updating period envisaged under the international agreements.

8) Transition Period

- *Authorization Power:* Pursuant to Temporary Article 3 of the Decree, TAEK will continue to have its authorization power until the first meeting of the NRA Board, which shall take place within two weeks following the appointment of the NRA board members. As mentioned above in item 1(b), the NRA's board members will be appointed within 2 months following the Decree's effective date of 9 July 2018.
- *Existing authorizations and applications:* The Decree provides that the NRA may enact additional requirements for the existing authorization, approval or consent holders. In such a case, the NRA may grant a period of up to three years to the relevant party to fulfill the additional requirements. This principle also applies to the applications that are pending by the time TAEK's authorization power expires following the first meeting of the board. In this regard, all records and documents concerning TAEK's safety, security and nuclear assurance related regulatory and supervisory activities will be transferred to the NRA without the further requirement of an additional transaction as of the publication date of the regulation regarding the NRA's organization.
- *Existing activities:* Concerning the activities that require an authorization from the NRA under the Decree but which started to be performed prior to 9 July 2018 (without being subject to any such authorization requirement), the parties must apply to obtain the required authorization under the Decree within one year following 9 July 2018.
- *References to TAEK under the legislation:* All references made to the TAEK Law under the legislation shall be deemed to be made to the Decree and all references to TAEK under the legislation shall be deemed to be made to the NRA concerning the nuclear energy and ionizing radiation.
- *Secondary legislation:* The existing secondary regulations shall continue to be implemented until the issuance of regulations in accordance with the Decree.

Çakmak Avukatlık Ortaklığı

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

T +90 312 442 4680

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

T +90 212 939 7560