

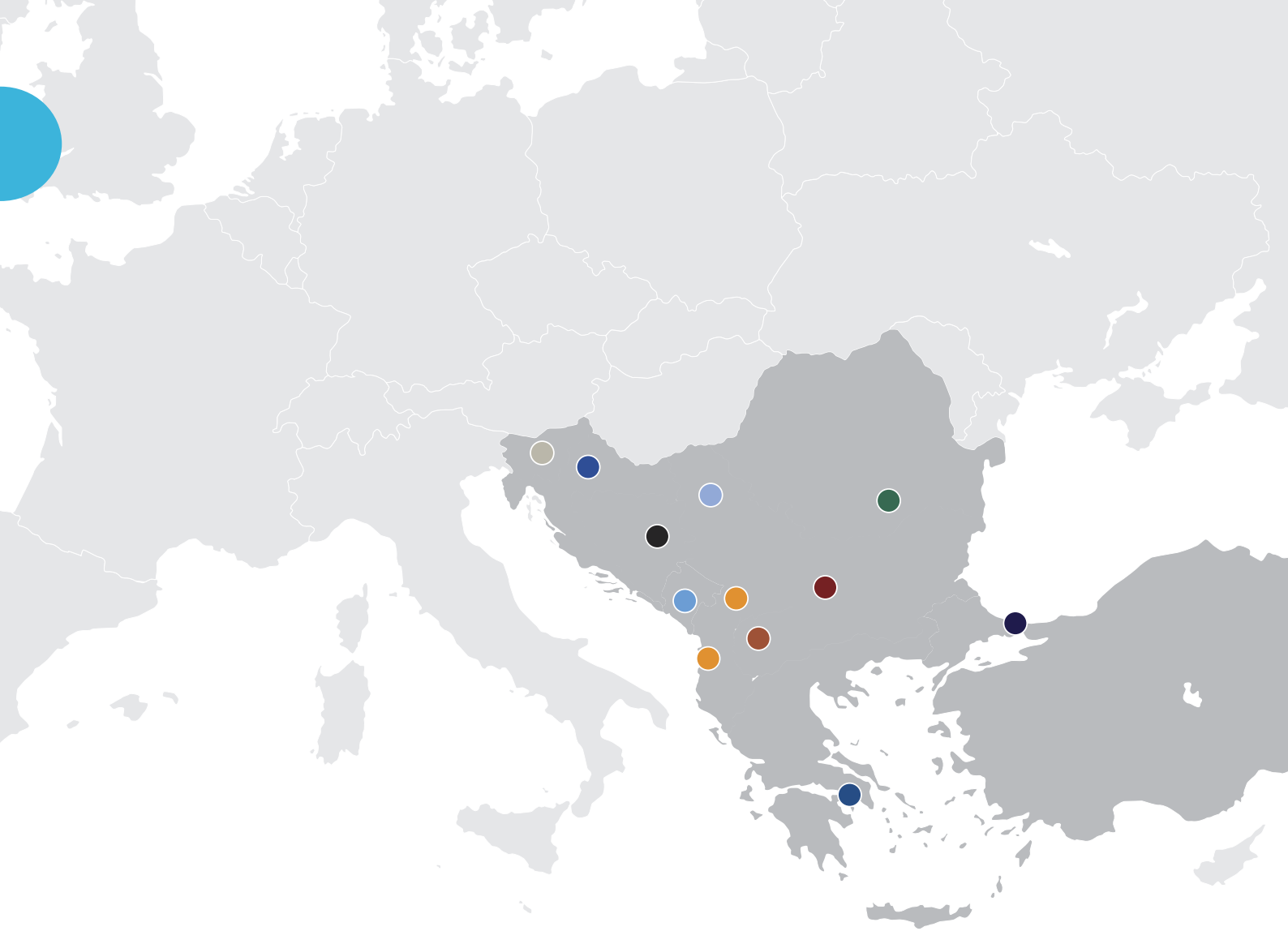


The Southeast Europe Energy Handbook 2019



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PREFACE

Dear Partners and Friends of SEE Legal,

This is the Southeast Europe Energy Handbook 2019 (5th ed.), a product of the Energy-Infrastructure Practice Group functioning within the South East Europe Legal Group ("SEE Legal").

Our aim, through this Handbook, is to highlight the major aspects in the energy sector, such as market structures, licensing, price regulations, access to the grid, etc., and to provide the major legislative updates which took place over the past year in our region.

We are confident that this edition will once again prove to be a helpful desk-book resource when dealing with complex and highly regulated energy related matters in the eleven of the twelve jurisdictions of South East Europe in which our member firms operate. The Energy Handbook is not meant to be a treatise on any particular country's energy legislation and is not exhaustive to the point of eliminating the need of professional advice, but its main purpose is to raise readers' attention as to the energy legislation of each jurisdiction covered by SEE Legal and assist in identifying the issues that might have a significant impact on investment and business development decisions.

Established in 2003, SEE Legal continues as the strongest and longest-standing regional organisation of ten leading independent national law firms covering twelve jurisdictions of South East Europe with a legal force of more than 490 lawyers and an impressive client base of multinational corporations, financial institutions and governmental bodies. Our duty of care to our clients remains at the highest level and we are proud that our achievements in client service continue to distinguish SEE Legal as the leading group of law firms in South East Europe according to Chambers Europe and Chambers Global 2019 rankings. Our member firms continue to be instructed to work on major energy – infrastructure related investment transactions and are associated with most of the important and high profile energy deals in our region. All member firms enjoy the highest recognition from their peers and are constantly ranked every year as market champions.

The Southeast Europe Energy Handbook 2019 is part of the various initiatives undertaken by the Energy-Infrastructure Practice Group to promote our members' capacity and profile in the region in order to maintain our strong presence in the legal market and is a statement of our continuing commitment to further assist you in your legal and business matters.

Sincerely,

Gus J. Papamichalopoulos

*Co-Chair of SEE Legal
Head of Energy-Infrastructure Practice Group*



Kristijan Polenak

Co-Chair of SEE Legal



Disclaimer

This publication is intended to provide a general guide to the law and regulation in the individual jurisdictions described and to be used for reference purposes only. The information contained herein is based on the respective legislation as of June 2019 (unless otherwise indicated) and is not intended to be a comprehensive study nor to provide legal advice. Specific legal advice should always be sought before taking any action based on the information provided herein.

KOLCUOĐLU DEMİRKAN KOĐAKLI

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TR

TURKEY

1. INTRODUCTION TO THE ENERGY MARKET

Due to its remarkable economic growth over the past decade, Turkey's demand for energy has considerably increased. In order to meet this growing demand, Turkey's energy policy for the next ten years includes the following targets:

- (i) increasing total installed power to 120,000 MW;
- (ii) increasing the share of renewable energy sources to 30 per cent;
- (iii) establishing an energy stock exchange with a diversified product range;
- (iv) commissioning at least two nuclear power plants;
- (v) minimising its petroleum and gas import costs;
- (vi) maximising the use of hydropower;
- (vii) increasing wind-power installed capacity to 20,000 MW;
- (viii) installing power plants with 1,000 MW of geothermal and 5,000 MW of solar energy;
- (ix) extending the length of electricity transmission lines to 60,717 km;
- (x) reaching a power distribution unit capacity of 158,460 MVA;
- (xi) raising the natural gas storage capacity to 11 billion m³; and
- (xii) increasing installed coal-fired capacity to 30,000 MW.

These targets demonstrate that energy demand levels will continue to expand, as will the development of Turkey's energy market. Although in the early 2000s Turkey took remarkable steps in liberalising its energy market¹, these steps were not sufficient to reduce Turkey's foreign dependency. Due to insufficient domestic energy generation, Turkey's primary objective is to strengthen the security of supply. Turkey is determined to diversify

its energy supply routes and sources, by including nuclear energy in its generation bundle and increasing the share of renewable energy. Considering Turkey's targets for the next 10 years and the substantial increase in energy demand² it is clear that significant investment (more than double the total amount invested in the last decade) will be required in order to meet expected national demand levels by 2023. In line with these prospects, several significant developments affecting the Turkish energy market and its players occurred in 2017 and 2018 as outlined in the following sections.

2. ELECTRICITY

2.1 Market overview

The Turkish electricity market is one of the fastest growing electricity markets in the world, growing annually by an average of about nine per cent. In addition to private companies, there are three state-owned companies³ active in the local electricity market:

- (i) Elektrik Üretim Anonim Şirketi ("EÜAŞ"), the state generation entity;
- (ii) Türkiye Elektrik İletim Anonim Şirketi ("TEİAŞ"), the state transmission entity; and
- (iii) Türkiye Elektrik Dağıtım Anonim Şirketi ("TEDAŞ"), the state distribution entity.

While the state generation entity, EÜAŞ, still plays an important role in this market, the role of private companies is rapidly increasing through both privatisation and establishment of new facilities.

¹ Turkey had started a significant liberalisation process in the energy sector in 2001, with the electricity sector taking a leading role. With the liberalisation process, the Turkish energy sector became more competitive, attracting more investors in all fields of energy. However, the targeted extent of liberalisation has not been achieved in full. In any case, Turkey's long-term target is to stop being an energy importer and start exporting energy.

² Turkey's energy demand is estimated to grow by approximately seven per cent each year until 2023.

³ Prior to 9 July 2018, there was a fourth state-owned company active in the electricity market, namely Türkiye Elektrik Ticaret ve Taahhüt A.Ş. ("TETAŞ"), which was a state power trading entity. On 9 July 2018, TETAŞ merged with EÜAŞ.

TEİAŞ conducts all of Turkey's transmission activities, effectively operating a monopoly in the local electricity transmission market. Aside from the transmission activities exclusively conducted by TEİAŞ, other market activities are fully accessible to private companies. The distribution network is divided into 21 regions, each with its own distribution company. All of these companies have been privatised since 2013. TEDAŞ no longer operates any distribution companies, but it continues to own the distribution assets. Meanwhile, EÜAŞ still has an important role in the electricity generation market, although the power plants operated by EÜAŞ are being privatised.

The new Electricity Market Law⁴ (the "EML") stipulated the creation of an electricity exchange market, which would be administered through a newly incorporated company, Enerji Piyasaları İşletme Anonim Şirketi ("EPIAŞ"). EPIAŞ was incorporated in March 2015 and obtained a market operation licence on 1 September 2015. Following incorporation, TEİAŞ and the Borsa İstanbul (the "BI") each hold 30 per cent of the corporation's total shares, with the remaining 40 per cent held by various private energy companies. Under this shareholding structure, TEİAŞ and the BI hold Class A and Class B shares, whereas private energy companies hold Class C shares. Upon its incorporation, EPIAŞ started conducting the market operation activities of the organised wholesale electricity markets (including day-ahead and real-time market activities) other than those operated by the İstanbul Stock Exchange and TEİAŞ. TEİAŞ continues to conduct balancing activities.

2.2 Regulatory overview

The Ministry of Energy and Natural Resources (the "MENR") is ultimately responsible for preparing and implementing energy policies, plans, and programs in coordination with its affiliated institutions. Under the MENR's support, the Energy Market Regulatory Authority ("EMRA") is responsible for regulating and supervising electricity market operations in a competitive environment. EMRA's powers and duties can be summarised as issuing licences; setting, amending, enforcing and supervising regulations on performance standards; setting out pricing principles; and maintaining the development and performance of infrastructure for implementation of new power trading and sales methods. The EMRA exercises its powers through the Energy Market Regulatory Board (the "EMRA Board").

The primary pieces of legislation regulating Turkey's electricity market are the EML and the Electricity Market Licence Regulation⁵ (the "Electricity Market Licence Regulation").

2.3 Regulated electricity market activities

The following electricity market activities are regulated by the EML and the Electricity Market Licence Regulation:

- (i) generation (coal, hydro, geothermal, wind, solar, hydraulic, biomass, biogas, wave, current and tidal energy sources);
- (ii) transmission;
- (iii) distribution;
- (iv) wholesale;
- (v) retail;
- (vi) trade;
- (vii) energy exchange;
- (viii) import; and
- (ix) export.

In order to conduct electricity market activities, companies must obtain separate licences for each activity. To conduct a single activity in multiple facilities located in different regions, companies must also obtain a separate licence for each facility. This is the general principle, but supply licence holders can conduct electricity trading activities (wholesale, export, import, and retail sales); and the individuals or legal entities that:

- (i) generate electricity for their own needs; and
- (ii) have facilities or equipment that are not operating parallel to the transmission and distribution network, are not required to obtain any licence, as long as they remain disconnected from the transmission and distribution networks, and do not conduct wholesale or retail activities.

In May 2019, EMRA introduced the new Regulation on Generating Electricity without a Licence⁶ (the "Unlicensed Generation Regulation" or "Regulation"). Under the EML, generation facilities with an installed capacity of up to 1 MW of renewable energy resources are exempt from the licensing requirement. Moreover, if a company generates more electricity than it consumes, the surplus may be sold in the same distribution region in which it is produced, within the scope of the RER Support Mechanism - the Renewable Energy Law established a renewable energy support mechanism ("RER

⁴ Published in the Official Gazette dated 3 March 2001 and numbered 24335.

⁵ Published in the Official Gazette dated 2 November 2013 and numbered 28809.

⁶ Published in the Official Gazette dated 12 May 2019 and numbered 30772.

Support Mechanism”); or may also be consumed in other facilities owned by the same party in the same distribution region for a period of 10 years.⁷ Maximum capacity of 1 MW per transformer centre can be allocated to individuals or legal entities generating solar or wind energy (excluding rooftop installations), regardless of the number of consumption facilities owned by that individual or legal entity. When calculating the 1 MW limit, both the individual or legal entity and/or entities in which such persons have direct or indirect shares are considered the same person. Finally, no capacity fee is charged to the renewable energy facilities whose capacity is below 5 MW.

2.4 Significant sector issues

Under the Electricity Market Licence Regulation, licence holders engaged in more than one market activity and/or carrying out the same licensed activity in more than one facility or region, are required to keep separate accounts and records for each activity, facility or region. Retail companies engaged in both electricity sales and retail services must keep separate accounts for sales and retail services and must avoid cross-subsidization between these activities.

The shareholders of distribution utilities can own shares in newly established retail sales companies. However, as of 1 January 2016, distribution utilities will not be able to purchase administrative and support services from companies controlled by their parent company (i.e. companies controlled by the parent company of the relevant distribution utility). Furthermore, as of 1 January 2016, retail sales companies and distribution utilities will be required to use different physical premises and information system infrastructures.

The Electricity Market Licence Regulation also sets forth certain share transfer restrictions. Under Article 6 of the EML and Article 19 of the Electricity Market Licence Regulation, direct or indirect changes in shareholding structure and/or share transfers (aside from certain exceptions set forth under the Electricity Market Licence Regulation) are forbidden within the preliminary licence period. EMRA will cancel a preliminary licence if such a transaction occurs.

However, Article 57 of the Electricity Market Licence Regulation provides exceptions to this prohibition with respect to the preliminary licence period. Accordingly, in addition to the

situations relating to inheritance and bankruptcy, this prohibition does not apply to:

- (i) changes in the shareholding structure of publicly listed legal entities, with regard to their publicly listed shares;
- (ii) changes in the shareholding structure of legal entities with publicly listed shareholders, with regard to the publicly listed shares of these shareholders;
- (iii) companies granted a preliminary licence for facilities established in line with international agreements;
- (iv) indirect changes in the shareholding structures of companies holding preliminary licences resulting from changes in their foreign shareholders' shareholding structures;
- (v) direct or indirect changes in the shareholding structure of an entity holding a preliminary licence, caused by a public offering of this entity's shares or the shares of its direct or indirect shareholders;
- (vi) direct or indirect changes in the shareholding structure of a legal entity holding a preliminary licence, caused by the exercise of pre-emption rights by the entity's shareholders;
- (vii) changes resulting in direct partnership of the indirect shareholders of a legal entity holding a preliminary licence, which is stated in the preliminary licence of such entity, without any changes in their shareholding percentages in this legal entity;
- (viii) direct or indirect changes in the shareholding structure of a state-owned entity, resulting from this entity's privatisation;
- (ix) direct or indirect changes in the shareholding structure of an entity holding a preliminary licence, among the existing shareholders, which do not result in a change of the company's control;
- (x) direct or indirect changes in the shareholding structure of an entity holding a preliminary licence (in which majority of shares are directly or indirectly held by state institutions and organisations), caused by a capital increase or a change in shareholders, provided that there is no new shareholder, other than state institutions and organisations;
- (xi) direct or indirect changes in the shareholding structure of an entity holding a preliminary licence, caused by this entity's or its direct or indirect shareholders' acquisition of their own shares, within the scope of the Turkish Commercial Code⁸;

⁷ See Section 3 for further information.

- (xii) direct or indirect changes in the shareholding structure of an entity holding a preliminary licence, caused by share transfers among individuals who are direct or indirect shareholders of this entity and who are spouses or first-degree relatives; and
- (xiii) direct or indirect changes in the shareholding structure of an entity holding a preliminary licence, the control of which is seized by the Savings Deposit Insurance Fund of Turkey.

After obtaining a licence under the Electricity Market Licence Regulation, only the following share transfers are subject to EMRA's prior approval:

- (a) direct or indirect acquisition of 10 per cent or more (five per cent or more in publicly-held companies) of the shares in a licence-holding company;
- (b) any transaction resulting in the change of control of a licence-holding company;
- (c) any transaction resulting in the change of ownership or usage rights in a licensed facility;
- (d) share pledge; or
- (e) merger, in accordance with Article 59 of the Electricity Market Licence Regulation.

2.5 Trading including import and export

In addition to the EML and the Electricity Market Licence Regulation, electricity trading is regulated by the Regulation on Electricity Market Balancing and Settlement⁹ (the "**Balancing and Settlement Regulation**"). The Balancing and Settlement Regulation sets forth the principles and procedures regarding the day-ahead market and real-time balancing of active electricity demand and supply, as well as the settlement of trade in these markets. The Market Financial Reconciliation Center (the "**MFRC**") operates the day-ahead market, as well as the balancing market.

In Turkey, supply licence holders (i.e., wholesale, export, import, and retail sales) can conduct electricity trading activities. In order to participate in the electricity market, electricity traders must either conclude a bilateral electricity purchase agreement with another licence holder or contribute to the organised markets themselves.

Electricity is traded mostly through bilateral agreements on an over-the-counter basis. Agreements are not subject to the EMRA's approval and thus, all commercial terms and conditions are freely negotiable. Electricity can also be traded on a day-ahead and real-time basis.

The EML and the Electricity Market Import and Export Regulation¹⁰ (the "**Import/Export Regulation**") set forth the principles and procedures for electricity import and/or export, and the principles with regards to allocation and use of interconnection capacity for cross-border trade in the electricity market. Under the Import /Export Regulation, subject to the EMRA's approval, the following entities can import or export electricity from or to countries that meet the enumerated international interconnection conditions:

- (i) EÜAŞ and private companies holding supply licences may engage in electricity import and/or export and
- (ii) generation companies may engage in electricity import, provided that the relevant provisions permitting such activities are included in their licences.

On 18 September 2010, a trial run was carried out for the synchronous parallel connection of the Turkish national electricity system (operated by TEİAŞ) to the European Network of Transmission System Operators for Electricity ("ENTSO-E"), for the Continental Synchronous Regional Network of Europe. In April 2015, TEİAŞ became an observer member after Turkey's successful synchronisation with the ENTSO-E Continental Europe Region. TEİAŞ signed a long-term agreement for a permanent connection to the continental European grid, following a trial period that started in September 2010. The observer member status will give TEİAŞ the possibility to attend groups and task forces within the association.

Finally, in 2017, through the international interconnections, Turkey imported electricity (GWh 2,729.06) from Bulgaria (76.02 per cent), Georgia (18.08 per cent), Iran (5.58 per cent) and Greece (0.02 per cent) and exported electricity (GWh 3,300.10) to Greece (96.97 per cent), Bulgaria and Georgia. Data in relation to 2018 has not yet been published.

⁸ Published in the Official Gazette dated 14 February 2011 and numbered 27846.

⁹ Published in the Official Gazette dated 1-14 April 2009 and numbered 27200.

¹⁰ Published in the Official Gazette dated 17 May 2014 and numbered 29003.

2.6 Transmission, distribution and grid access

TEİAŞ conducts all of Turkey's transmission activities. The EML does not envisage TEİAŞ's privatisation. The distribution network, however, is divided into 21 regions, with a different distribution company in each, all of which have been privatised. TEDAŞ no longer operates any distribution companies but continues to own the distribution assets. TEİAŞ conducts all transmission activities in Turkey and the 21 distribution companies conduct the distribution activities in their respective regions. TEİAŞ and the distribution companies are required to meet the demands of individuals and companies for connection to the transmission and distribution systems. The Regulation on the Electricity Market Connection to and Use of the System¹¹ (the "System Connection and Use Regulation") sets forth certain circumstances for rejection of requests for connection to the transmission system operated by TEİAŞ and the distribution system operated by the respective distribution company.

3. RENEWABLE ENERGY

3.1 Market overview

In recent years, investments in electricity generation from renewable energy sources have significantly increased. One of Turkey's targets is to increase the share of electricity generated from renewable sources to 30 percent by 2023.

3.2 Regulatory overview

The key legislative instruments regarding renewable energy are as follows:

- (i) the Electricity Market Law and the Electricity Market Licence Regulation;
- (ii) the Law on the Utilization of Renewable Energy Sources for the Purpose of Generating Electrical Energy¹² (the "Renewable Energy Law" or "RER Law");
- (iii) the Geothermal Resources and Natural Mineral Waters Law;¹³ and

- (iv) the Energy Efficiency Law¹⁴.

In line with Turkey's substantial demand potential and its renewable energy targets, Turkey has introduced the following secondary legislation since 2013:

- (i) the Regulation on Generating Electricity without a License;
- (ii) the Regulation on Documentation and Support of Renewable Energy¹⁵;
- (iii) the Regulation on Technical Evaluation of Solar Energy-Based Licence Applications¹⁶;
- (iv) the Regulation on Technical Evaluation of Wind Energy-Based Licence Applications¹⁷;
- (v) Communiqué on Wind and Solar Measurements for Preliminary Licence Applications¹⁸;
- (vi) the Contest Regulation on Pre-Licence Applications Regarding Generation Facilities Based on Solar and Wind Energy¹⁹;
- (vii) the Regulation on Renewable Energy Resources for Electricity Generation²⁰;
- (viii) the Regulation on Certification and Supporting of Renewable Energy Resources (the "RERSM Regulation")²¹;
- (ix) the Regulation on Procedures and Principles Regarding Signing Water Utilisation Agreements to Conduct Generation Activity in the Electricity Market²²; and
- (x) the Regulation on Renewable Energy Resource Areas²³.

3.3 Additional requirements

Electricity generation based on renewable energy sources is subject to the same requirements as all electricity generation. However, the following additional documents are needed when submitting an application to the EMRA:

- (i) a wind power plant contribution agreement (*Rüzgar Enerjisi Santrali Katkı Payı Anlaşması*) for wind energy projects;
- (ii) land allocation for solar energy projects;
- (iii) a water utilization agreement for hydroelectric power plant projects; and
- (iv) a fuel supply agreement or right to use the energy source for facilities using wave, biomass, biogas (including waste gas) or geothermal power plant projects.

¹¹ Published in the Official Gazette dated 28 January 2014 and numbered 28896.

¹² Published in the Official Gazette dated 18 May 2005 and numbered 25819.

¹³ Published in the Official Gazette dated 13 June 2007 and numbered 26551.

¹⁴ Published in the Official Gazette dated 2 May 2007 and numbered 26510.

¹⁵ Published in the Official Gazette dated 1 October 2013 and numbered 28782.

¹⁶ Published in the Official Gazette dated 1 June 2013 and numbered 28664.

¹⁷ Published in the Official Gazette dated 1 June 2013 and numbered 28664.

¹⁸ Published in the Official Gazette dated 17 June 2014 and numbered 29033.

¹⁹ Published in the Official Gazette dated 6 December 2013 and numbered 28843.

²⁰ Published in the Official Gazette dated 27 November 2013 and numbered 28834.

²¹ Published in the Official Gazette dated 1 October 2003 and numbered 28782.

²² Published in the Official Gazette dated 21 February 2015 and numbered 29274.

²³ Published in the Official Gazette dated 9 October 2016 and numbered 29852.

3.4 Governmental support for renewable energy investments

Renewable energy support mechanism

The RER Support Mechanism was formed in order to support renewable energy investments. The support mechanism includes price, terms, procedures, and principles regarding the payments from which individuals generating renewable energy within the scope of the RER Law can benefit. Article 6 of the RER Law provides that the prices in Schedule I (see below) will be applicable for 10 years for those generation licences subject to the RER Support Mechanism and commissioned until 31 December 2020²⁴.

Schedule I

Facility Type	Applicable Price (USD cent/kWh)
Hydroelectric	7.3
Wind	7.3
Geothermal	10.5
Biomass	13.3
Solar power	13.3

Renewable energy facilities must obtain an RER certificate in order to benefit from the RER Support Mechanism. Under the Renewable Energy Law, the EMRA issues RER certificates to generation license-holders, in order to identify and monitor the type of renewable energy resources traded in the domestic and international electricity markets. RER certificates are granted for one year.

Incentive regime

The RER Law provides that, subject to a Council of Ministers' decree, renewable energy facilities may benefit from certain tax incentives, such as customs duty and VAT. Additionally, renewable energy facilities, and related roads and transmission lines established in a forested area or on Treasury land, also benefit from 85 percent discounts on land allocation, lease or utilization fees for 10 years, starting from the commencement of construction; however, this discount applies only if generation activity at the relevant facility commences before 31 December 2020. Furthermore, upon approval from the relevant ministry or regional protection committee, renewable energy facilities can be established in national parks, natural parks, natural monument and conservation zones, protected forests, wildlife protection areas and special environmental protection zones.

Under the RER Law, if the mechanical and/or electro-mechanical equipment used in a renewable energy generation facility commissioned before 31 December 2020 is manufactured domestically, the prices in Schedule I will be added to the Schedule II prices (see below) for five years starting from the commissioning of the generation facility. This higher price will apply for electricity generated in such facilities and delivered to the distribution system.

Schedule II

Facility Type	Domestic Production	Contribution (USD cent/kWh)
Hydroelectric	Turbine	1.3
	Generator and power electronics	1
	Wing	0.8
Wind	Generator and power electronics	1
	Turbine tower	0.6
	The mechanical equipment in rotor and nacelle groups	1.3
Photovoltaic solar	PV panel integration and solar structural mechanics production	0.8
	PV modules	1.3
	Cells forming the PV module	3.5
	Invertor	0.6
	Material focusing the solar rays onto the PV module	0.5
	Radiation collection tube	2.4
	Reflective surface plate	0.6
	Sun chasing system	0.6
	Mechanical accessories of the heat energy storage system	1.3
	Mechanical accessories of a steam production system that collects the sun rays on the tower	2.4
Intensified solar	Stirling engine	1.3
	Panel integration and solar panel structural mechanics	0.6
	Fluid bed steam tank	0.8
	Liquid or gas fuel steam tank	0.4
	Gasification and gas cleaning group	0.6
	Steam or gas turbine	2.0
	Internal combustion engine or sterling engine	0.9
Biomass	Generator and power electronics	0.5
	Cogeneration system	0.4
	Steam or gas turbine	1.3
Geothermal	Generator and power electronics	0.7
	Steam injector or vacuum compressor	0.7

²⁴ Although the initial date set in the RER Law was 31 December 2015, a Council of Ministers' Decree dated 18 November 2013 extended the incentive term until 31 December 2020.

4. PETROLEUM

4.1 Overview

Due to insufficient petroleum sources, Turkey is dependent on importation. It imports petroleum mainly from Iran, Russia, Iraq, Saudi Arabia and Kazakhstan.

While the MENR is generally responsible for the petroleum sector, the EMRA regulates the downstream petroleum market. The Petroleum Market Law²⁵ (the "PML") and the Law Liquefied Petroleum Gas Market Law²⁶ govern downstream petroleum market activities in Turkey, along with the Petroleum Market Licence Regulation.²⁷ The petroleum markets were liberalised following the introduction of the PML in 2003 and the Liquefied Petroleum Gas Market Law in 2005.

In addition to private companies, the Turkish Petroleum Corporation ("TPAO"), a state-owned oil and natural gas company, is active in the downstream petroleum market. TPAO carries out four fundamental activities:

- (i) exploration, drilling, production and well completion (upstream);
- (ii) natural gas storage (downstream natural gas);
- (iii) participation in oil and gas pipeline projects (upstream); and
- (iv) oil trade, distribution and transportation (downstream petroleum).

4.2 Regulated petroleum market activities

Under the PML and the Petroleum Market Licence Regulation, in order to conduct downstream petroleum market activities, companies must obtain the requisite petroleum market licence from the EMRA. A separate licence is required for each activity and each facility. The types of licenses are as follows:

- (i) refining;
- (ii) processing;
- (iii) lubricant production;
- (iv) storage;
- (v) transmission;
- (vi) eligible consumer;
- (vii) bunker delivery;

- (viii) distribution;
- (ix) transportation; and
- (x) dealership.

4.3 Significant sector issues

One of the fundamental sector issues in the downstream petroleum market is related to distributor market shares in the Turkish petroleum market. A distributor's total market share cannot exceed 45 per cent of the total domestic petroleum market. However, the market shares of the key distributors in the Petroleum Markets are far below 45 per cent. According to EMRA's sector reports (2017), the largest market shares were 21.18 per cent for Petrol Ofisi A.Ş. and 17.59 per cent for Opet Petrolcülük A.Ş. in the petroleum market. The PML also imposes another market share restriction with respect to distributors and dealers. A distributor's sales via its own dealers (i.e. through the stations operated by the distributor) cannot exceed 15 per cent of that distributor's total domestic market share.

Competition Board interventions are also relevant to distributors and their dealers. Through its communiqués, the Competition Board has restricted the length of non-compete undertakings contained in vertical agreements. Indefinite term non-compete undertakings, or those exceeding five years, can no longer be granted a block exemption from the prohibition of agreements, concerted practices or decisions that restrict competition in a specific market²⁸. Because the agreements between petroleum distributors and their dealers are vertical agreements, this restriction also affects the downstream petroleum market. Pursuant to the Competition Board's latest decisions, all personal or real rights related to dealership agreements (such as loan contracts, equipment contracts, long-term lease contracts and long-term usufructs) must be limited to five years. This results in a five-year renewal cycle for stations operated under the Dealer Owned Dealer Operated (DODO) model, which is the typical retail station structure in the Turkish market (95 per cent).

Another significant sector issue concerns access to transmission and storage networks. Companies that have distribution or storage licences cannot discriminate among third parties of equal status for access to transmission and storage networks. Transmission and storage licence holders with spare capacity in their facilities must

²⁵ Published in the Official Gazette dated 4 December 2003 and numbered 25322.

²⁶ Published in the Official Gazette dated 13 March 2005 and numbered 25754.

²⁷ Published in the Official Gazette dated 17 June 2004 and numbered 25495.

²⁸ Where the non-compete undertaking may be renewed so that the total term indirectly exceeds five years, the non-compete undertaking will be considered "indefinite".

address the transmission and storage demands of third parties if these demands conform to, *inter alia*, (i) the tariff of the licence holder; (ii) the capacity of the relevant facility; and (iii) the minimum amount in the tariff of the licence holder.

5. NATURAL GAS

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5.1 Market overview

Natural gas consumption in Turkey is also increasing in line with electricity consumption. According to the MENR, natural gas demand is expected to increase at a rate of 2.9 per cent per year until 2020. Due to insufficient natural gas sources, Turkey is dependent on gas imports from Russia, Azerbaijan, and Iran, in addition to LNG imports from Nigeria and Algeria under long-term agreements and spot LNG from several countries under agreements of less than one year.

Although the downstream natural gas market is open to private participation, state-owned Petroleum Pipeline Corporation (“BOTAŞ”) still holds a significant position in this sector. BOTAŞ was established in 1974 as a subsidiary of TPAO to transport Iraqi crude oil to the Ceyhan Marine Terminal (an upstream activity). However, BOTAŞ eventually began conducting downstream natural gas activities as well, such as natural gas importation and trade and has become a key player in the downstream natural gas market.

With the enactment of the Natural Gas Market Law²⁹ (the “NGML”) in 2011, BOTAŞ lost its monopoly in natural gas imports, distribution and sales. However, BOTAŞ maintains a key market position, as it owns and operates the natural gas transmission network and still imports approximately 80 per cent of the natural gas consumed in Turkey. Finally, most of the state-owned distribution companies active in the downstream natural gas market have been privatised. The latest privatisation occurred in 2013, when Ankara’s natural gas distribution company, Başkent Doğalgaz Dağıtım A.Ş., was privatised after two previously failed attempts in 2008 and 2010. The only remaining significant state-owned distribution company is the İstanbul Gaz Dağıtım A.Ş. (İGDAŞ), which is expected to be privatised in the near future.

5.2 Regulatory overview

The EMRA is the authority responsible for regulating and supervising the downstream natural gas market. The NGML governs downstream natural gas activities, which are regulated in more detail by the Natural Gas Market Licence Regulation. An amendment law proposing substantive changes to the NGML was prepared in 2012 and submitted to the Turkish Parliament on 4 August 2014 (“Draft Amendment Law”). However, as it was not discussed and was not passed by the Turkish Parliament by the end of 2014, the Draft Amendment Law became void.

As of the date this guide was drafted, Turkey has not yet enacted these amendments.

5.3 Regulated natural gas market activities

Under the NGML, in order to conduct natural gas market activities, a licence must be obtained from the EMRA. A separate licence is required for each activity and each facility. The types of licenses are as follows:

- (i) import;
- (ii) transmission;
- (iii) storage;
- (iv) wholesale;
- (v) export;
- (vi) distribution within a city; and
- (vii) sale, distribution, and transmission of compressed natural gas.

5.4 Significant sector issues

The NGML provides that market participants active in (a) more than one market activity or (b) a single market activity in more than one facility, must keep separate accounts for each activity or facility. Cross-subsidization between accounts is prohibited. In addition to this account separation, distribution licensees must also maintain separate accounts for their natural gas sale and transportation activities.

The NGML imposes market share restrictions on companies other than natural gas producers, as well as on natural gas importers. Under the NGML, companies cannot sell natural gas corresponding to more than 20 percent of estimated national consumption levels, and importers cannot import more than 20 percent of estimated national consumption. The EMRA determines the relevant natural gas consumption estimates.

²⁹ Published in the Official Gazette dated 2 May 2001 and numbered 24390.

³⁰ Published in the Official Gazette dated 7 September 2002 and numbered 24869.

A recent amendment in the NGML introduced another restriction: distributor licence holders can have licences in only two cities in Turkey. The NGML imposes import restrictions on private companies. Under the NGML, importers cannot conclude new natural gas purchase agreements (except for LNG) with countries with which BOTAŞ currently has agreements.

EMRA Board Decree No. 725 (“**Decree No. 725**”) sets forth the procedures and principles for import licence applications by companies planning to import natural gas from countries from which BOTAŞ does not already import gas. Under Decree No. 725, BOTAŞ’s affirmative opinion is required on these import licence applications. Accordingly, the EMRA must obtain BOTAŞ’s opinion on whether or not such import activity will affect the performance of BOTAŞ’s obligations arising out of its existing contracts (in BOTAŞ’s capacity as a natural gas importer). Moreover, Decree No. 725 requires consultation with BOTAŞ (in its capacity as a transmission system operator (TSO)) on the technical suitability of the proposed importation through BOTAŞ’s transmission network. This contradicts the NGML’s purpose of liberalising the market and decreasing BOTAŞ’s role, and has arguably affected several possible market players in their contemplations to import gas to Turkey.

5.5 Transmission, distribution and access to the system

Distribution or transmission licensees cannot discriminate among third parties of equal status for access to storage, transmission and distribution networks. Licensees can only decline third-party access requests based on certain specific grounds. These specific grounds are:

- (i) insufficient capacity;
- (ii) lack of capacity to fulfil existing obligations; and
- (iii) orders to pay significant financial compensations due to existing contractual obligations.

If an applicant undertakes to pay the relevant expenses, access cannot be denied.

Third party access to the transmission network is regulated under the BOTAŞ Transmission Network Operation Principles³¹ (the Network Code) and the Natural Gas Market Transmission Network Operation Regulation³². In order to access the network, the relevant

company must conclude a connection agreement with BOTAŞ³³. In addition, a standard transportation agreement must be concluded for gas transport.

Third party access to distribution networks is regulated under the Natural Gas Market Distribution and Customer Relations Regulation³⁴. Distribution companies must connect all consumers within their region³⁵. A connection agreement must be concluded, and the technical connection and service lines must be established.

5.6 LNG and natural gas storage and third-party access

In Turkey, there are two underground natural gas storage facilities: the Silivri Underground Natural Gas Storage Facility and Tuz Gölü Underground Natural Gas Storage Facility owned and operated by BOTAŞ. The first phase of the Tuz Gölü Underground Natural Gas Storage Facility was completed and came into service in February 2017. According to the MENR’s official website, the capacity of the Tuz Gölü Underground Natural Gas Storage Facility is planned to be increased to 5.4 bcm by 2023. On 27 June 2018, BOTAŞ and Industrial and Commercial Bank of China (ICBC) signed an MoU for financing this project.

In addition, there are two LNG terminals: the BOTAŞ Marmara Ereğlisi LNG Terminal in Tekirdağ and the Ege Gaz Aliğa LNG Terminal. EMRA also categorised floating liquefied natural gas (FLNG) activities as “storage” and issued the first FLNG licence to Etki Liman İşletmeleri A.Ş. for an FLNG terminal in Aliğa, İzmir and the second FLNG licence to BOTAŞ for an FLNG terminal Dörtüyük, Hatay. These two FLNG terminals came into service in 2017 and in 2018, respectively.

The NGML and the Natural Gas Market Licence Regulation required import licence holder applicants to (i) conclude lease contracts with storage licence holders to ensure storage of 10 per cent of their annual gas import or (ii) to obtain a commitment from storage licence holders confirming that they will have such storage capacity within five years. However, the current total capacity of the three storage facilities in Turkey is below 10 per cent of the nation’s annual gas import amount. The NGML was amended in June 2016 and EMRA was granted the authority to

³¹ Published in the Official Gazette dated 22 August 2004 and numbered 25561.

³² Published in the Official Gazette dated 26 October 2002 and numbered 24918.

³³ BOTAŞ is the owner of the existing national transmission network.

³⁴ Published in the Official Gazette dated 3 November 2002 and numbered 24925.

³⁵ Distribution companies can sell their entire distribution networks prior to expiration of their distribution licence by obtaining EMRA Board approval.

determine the percentage of the annual gas import amount based on which a commitment will be obtained. On the grounds of this authority, EMRA recently set the applicable percentage as 1 per cent for natural gas import licence holders (including spot LNG import licence holders) and natural gas wholesale licence holders).

5.7 Trading

BOTAŞ's Network Operation Manual regulates natural gas trading. In addition, natural gas trading is regulated under the provisions of each separate license. In Turkey, holders of the following four types of licenses conduct gas trading:

- (i) production lease³⁶;
- (ii) import license;
- (iii) export license; and
- (iv) wholesale license.

To participate in natural gas trading, private law contracts must be signed by suppliers and consumers. A natural gas sales agreement is the primary agreement executed within the scope of natural gas trading. Aside from a natural gas sales agreement, the parties must also conclude the following agreements:

- (i) operation agreements;
- (ii) system connection agreements; and
- (iii) lease agreements.

6. UPSTREAM

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6.1 Market overview

Thanks to its geopolitical position, Turkey is a critical country for petroleum and natural gas trade between the East and the West. Being the bridge between energy-rich eastern countries and import-dependent western countries, Turkey is a natural transit point for the maritime and pipeline transportation of crude oil and natural gas. TPAO is the most active state-owned company in the upstream market.³⁷

6.2 Regulatory overview

While the new Turkish Petroleum Law³⁸ (the "TPL") governs upstream crude oil and natural gas activities³⁹, the Law on Transit Passage through Petroleum Pipelines⁴⁰ (the "Transit Law") governs the transit passage of oil and gas. Turkey enacted the TPL in 2013 and abolished the former Petroleum Law (the "PL") after nearly 60 years. In early 2014, the Turkish Petroleum Law⁴¹ Implementation Regulation⁴² was introduced. The General Directorate of Petroleum Affairs (the "GDPA") and the Transit Petroleum Pipelines Department of the MENR are the competent regulatory bodies responsible for the oil and gas upstream market and transit activities respectively. Unlike in the downstream market, the EMRA does not play a role in this market.

6.3 Regulated upstream market activities

The TPL defines a "petroleum right" as any right arising from one of the following permits or licences:

- (i) investigation permit;
- (ii) exploration licence; or
- (iii) production lease.

Investigation permit

Under the TPL, "field research" is defined as the investigation of land from the ground or air by topographical, geological, geophysical, geochemical, and similar methods to gather data, in order to explore petroleum; and conducting drilling, other than exploration drilling, in order to gather geological information. An investigation permit must be obtained from the GDPA in order to conduct research within an area with predetermined boundaries. The GDPA concludes investigation permit applications within 60 days. The fact that there is already an investigation permit, exploration licence or production lease for part of the field for which the permit is requested, does not prevent the issuance of another investigation permit. An investigation permit-holder must pay a one-time fixed fee per hectare.

Exploration licence

As petroleum-right holders, companies holding exploration

³⁶ The licence holder can participate in petroleum trade. However, it cannot conduct natural gas trade activities without a wholesale licence.

³⁷ Upon the enactment of the Turkish Petroleum Law, the Minister of Energy and Natural Resources reiterated the government's intention to privatise TPAO through a public offering of its shares.

³⁸ Published in the Official Gazette dated 11 June 2013 and numbered 28647.

³⁹ Under the TPL, the definition of "petroleum" includes both crude oil and natural gas.

⁴⁰ Published in the Official Gazette dated 29 June 2000 and numbered 24094.

⁴¹ Published in the Official Gazette dated 16 March 1954 and numbered 8659.

⁴² Published in the Official Gazette dated 22 January 2014 and numbered 28890.

licenses can conduct exploration activities within the licensed field, conduct research activities around the licensed field, produce petroleum by developing petroleum fields and apply for discovery rights.

Turkey is divided into two petroleum districts, namely, onshore and offshore districts. In addition, there are general limitations regarding the maximum size of an exploration area. Unlike the former PL, the TPL does not require payment of a fixed fee to the state. However, the legislation retains the 12.5 percent royalty fee requirement.

The term for exploration licences is five years for on-shore licences and eight years for off-shore licences. The terms of these licences may be extended up to nine years for on-shore and 14 years for off-shore exploration. As for exploitation licence, this type of licence is granted for 20 years and it may be extended twice, each time for 10 years. However, if petroleum is discovered at the end of the exploration licence term, an additional term of up to two years can be granted, for the purposes of evaluating the commercial aspects of the petroleum discovery.

Production lease

In the event of discovery during exploration, a production lease must be obtained from the GDPA in order to continue exploration and production, and for the sale of any petroleum produced. Under the PML, companies holding a production lease may sell the crude oil they produce, without obtaining a separate licence from the EMRA. On the other hand, under the NGML, in order to sell natural gas produced, a company must first obtain a wholesale licence from the EMRA.

While the PL used to impose restrictions on the number and area of production leases, the TPL has abolished all of these restrictions. Both exploration licence and production leaseholders must pay a 12.5 per cent royalty. The term of a production lease is 20 years and it can be extended for two additional 10-year terms. Consequently, just as under the PL, the total maximum term of a production lease is 40 years.

Exploration licenses, production leases, and related petroleum rights, as well as their conditions and restrictions, are recorded in the Petroleum Registry. The transfer of rights arising from these

licenses is also recorded in the Petroleum Registry, following the GDPA's evaluation and approval. The GDPA must complete transfer applications within 60 days.

6.4 Material changes in the Turkish Petroleum Law

Turkey is now divided into two petroleum districts in accordance with the TPL, namely onshore and offshore districts. Previously, there were 18 petroleum districts under the (now abolished) PL. As another novelty, the TPL abolished the restriction on the number of licenses a company can obtain for a single petroleum district. Under the PL, the number of licenses a company could obtain for a single petroleum district was eight.

More importantly, the TPL also abolished the "national interest" concept. Based on this concept, TPAO had a statutory right to obtain exploration licenses on the state's behalf, and accordingly, TPAO had an advantage during the exploration licence application process. TPAO no longer has this privilege.

6.5 International crude oil and gas pipelines

The transit passage of oil and gas through Turkey is generally governed by international agreements between Turkey and the relevant country. If there is an international agreement, then the Transit Law⁴³ applies. Accordingly, the legal regime governing transit pipelines consists of (i) the Transit Law; (ii) the international agreement (generally an IGA); and (iii) the project agreements.

Aside from "transit" pipelines travelling through Turkey (e.g. the Baku – Tbilisi – Ceyhan (BTC) Pipeline and the contemplated Trans Anatolian Natural Gas Pipeline (TANAP)), there are non-transit pipelines, such as the Kirkuk – Yumurtalik Crude Oil Pipeline, which transport crude oil or natural gas to or from Turkey. Either a Council of Ministers' Decree (pursuant to the TPL) or an intergovernmental agreement ("IGA") signed specifically for that pipeline, will govern a non-transit pipeline.

Turkey currently has one international transit pipeline crossing Turkey: the Baku–Tbilisi–Ceyhan Crude Oil Pipeline owned by BTC Consortium, transporting crude oil from the Caspian region to Ceyhan.

In addition, Turkey has the following international natural gas import and export pipelines:

⁴³ Published in the Official Gazette dated 29 June 2000 and numbered 24094.

- (i) Russia–Turkey Western Route Natural Gas Pipeline crossing Ukraine, Romania, and Bulgaria to Turkey;
- (ii) Russia–Turkey Blue Stream Natural Gas Pipeline, transporting natural gas from Russia to Turkey through the Black Sea;
- (iii) Iran–Turkey Natural Gas Pipeline, transporting natural gas from Iran to Turkey;
- (iv) Baku–Tbilisi–Erzurum Natural Gas Pipeline, transporting natural gas from Azerbaijan through Georgia to eastern Turkey; and
- (v) Turkey–Greece Natural Gas Pipeline, transporting natural gas from Turkey to Greece.

Finally, upon completion, the following contemplated projects will make Turkey a true oil and gas transport hub:

- (a) Trans–Anatolian Natural Gas Pipeline (“TANAP”) will transport natural gas from Shah Deniz Phase II field in Azerbaijan to Turkey and Europe. The construction of this pipeline started in 2015 and the supply of gas from Azerbaijan to Turkey through TANAP started in June 2018. At the ceremony to mark the start of gas supplies through TANAP, President Erdoğan stated that the gas deliveries to Greece will begin in June 2019 but this target is not likely to be achieved;
- (b) the Trans-Adriatic Natural Gas Pipeline (TAP) Project, to transport natural gas from Turkey to Southern Italy and further into Europe, through Greece and Albania;
- (c) the Turkish Stream Natural Gas Pipeline, which will replace the South Stream Project and transport gas from Russia across an off-shore section under the Black Sea to Turkey and from there onto European markets. On 10 October 2016, Turkey and the Russian Federation signed an IGA for construction of the Turkish Stream pipeline. This pipeline is still under construction;
- (d) the Trans-Caspian Natural Gas Pipeline Project, to transport natural gas from Turkmenistan to Erzurum, Turkey and possibly to Europe; and
- (e) the Northern Region of Iraq – Turkey Crude Oil Pipeline Project, to transport crude oil from the Northern Region of Iraq to Turkey.

7. NUCLEAR

In Turkey, the Law on Construction and Operation of Nuclear Power Plants and the Sale of Energy Generated from those Plants (“Law No. 5710”) and the Regulation on the Principles and Procedures for Competition and Contracts⁴⁴ within the Framework of Law No. 5710 are the main pieces of legislation that govern the principles and procedures of construction and operation of nuclear power plants and the sale of energy generated from those plants, together with the Decree-Law on the Organisation and Nuclear Regulatory Authority⁴⁵. On 2 July 2018, the Council of Ministers adopted the above Decree-Law, under which the Nuclear Regulatory Authority (“NRA”) was established and it was assigned as the regulatory control institution for nuclear activities. In addition, the President adopted a resolution, under which the Turkish Atomic Energy Authority (the “TAEA”) (which was the former regulatory authority on nuclear energy matters) was re-established and was assigned responsibilities only for the promotion of the development of the nuclear industry and radioactive waste management. This resolution was published in the Official Gazette dated 15 July 2018 and entered into force on the same date.

By reference to Law No. 5710, the TAEA (before its re-establishment) set forth the criteria that must be fulfilled by companies wishing to construct and operate nuclear power plants in Turkey. These criteria mainly make reference to the International Atomic Energy Agency Safety Standards for nuclear safety and to the nuclear power plant exporter’s nuclear safety legislation for licensing. In March and April 2017, the TAEA had issued three new regulations in the field of nuclear energy: the Regulation on the Construction Inspection of Nuclear Power Plants⁴⁶ provides for the procedures on the construction of nuclear power plants in accordance with nuclear security principles. The two other regulations govern the management of nuclear power plants and their personnel. These regulations are still in effect.

⁴⁴ Published in the Official Gazette dated 19 March 2008 and numbered 26821.

⁴⁵ Published in the repeated Official Gazette dated 9 July 2018 and numbered 30473.

⁴⁶ Published in the Official Gazette dated 31 March 2017 and numbered 30024.

Alongside these principal pieces of legislation, IGAs and host-government agreements (“HGA”) are concluded in order to establish a special legal regime for contemplated nuclear power plant projects. Currently, there are two nuclear power plant projects in Turkey. The first nuclear power plant project is the Akkuyu Nuclear Power Plant (the “**Akkuyu NPP**”). In 2010, Turkey and the Russian Federation signed an intergovernmental agreement and provided a Build, Own and Operate model for the Akkuyu NPP. EMRA issued the generation licence for the Akkuyu NPP on 15 June 2017, which is valid until 15 June 2066, and the TAEA, which was the then competent regulatory authority, issued the construction licence for the first unit of the Akkuyu NPP on 2 April 2018. On 3 April 2018, the Russian and Turkish presidents launched the construction of the Akkuyu NPP. The first unit of the Akkuyu NPP is expected to be commissioned in 2023.

The second nuclear power plant project is the Sinop Nuclear Power Plant (the “**Sinop NPP**”). The intergovernmental agreement related to the Sinop NPP was signed by Turkey and Japan in 2013; Turkey ratified this intergovernmental agreement in 2015. According to the Minister of Energy and Natural Resources, the feasibility study for the Sinop NPP was completed and submitted to the MENR for its review in July 2018. Moreover, in relation to a possible third nuclear power plant to be constructed in Thrace, the Minister of Energy and Natural Resources stated the MENR is in contact with the Chinese State Nuclear Power Technology Corporation. It is worth noting that, at the 23rd World Energy Congress held in İstanbul, the Turkish President had confirmed that a third nuclear power plant is on the Turkish Government’s agenda.

Draft Nuclear Liability Law

Turkey has ratified the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Protocol of 28 January 1964 and by the Protocol of 16 November 1982 (the “**Convention**”). In line with Article 7(b) of the Convention, the maximum liability of the nuclear installation’s operator in respect of damage caused by a nuclear incident is SDR 15 million. Turkey has signed but not ratified the 2004 Additional Protocol to the Convention, which sets forth EUR 700 million as the operator’s minimum liability.

Turkey does not have any domestic law related to compensation for nuclear damage. However, a MENR official document dated 26 February 2016 stated that the Ministry has prepared a draft law on third party liability in the field of nuclear energy (the “**Draft Nuclear Liability Law**”) and this law will be enacted within 2016. However, it was still not enacted. The Draft Nuclear Liability Law text has not been disclosed to the public. However, the same document further provides that the Draft Nuclear Liability Law was prepared in line with the 2004 Additional Protocol to the Convention, and the prescription period for nuclear damage claims will be extended to 30 years for actions regarding loss of life and personal injury, and in addition the operator of the nuclear power plant will be required to have and maintain insurance to cover its liability as in the 2004 Additional Protocol to the Convention.

⁴⁷ <http://www2.tbmm.gov.tr/d26/7/7-1446sgc.pdf>.

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