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Amendments to Electricity Market Law

Highlights of this issue

International Protocol Regarding
Automatic Processing of Personal Data

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The Law Amending Electricity Market Law and Some Other Laws

The Law Amending Electricity Market Law and Some Other Laws (Law) was published in the Official Gazette on 17 June 2016 and entered into effect as of such date.

Some of the important changes introduced by the Law are as follows; definitions of (i) technical and non-technical losses involved in distribution tariffs and (ii) distribution network are added to the Electricity Market Law (**EML**).

Requirements for legal persons to use the renewable energy source fields, connection opinion to be given by Turkish Electricity Joint Stock Company (**TEIAS**) and capacity assignment, competition to be held, field assignment, securities, recording securities as revenue, conditions for domestic generation and/or usage of domestic goods and designation of procedures and principles regarding practice will fall within the scope of regulation to be made by Ministry of Energy and Natural Resources. Also the latest amendments enable urgent expropriation for under renewable energy provisions.



Exemptions listed under regulation by Energy Market Regulatory Board (**EMRB**) regarding change of shareholding structure of legal person Primary License holders, shall not be subject to revocation of primary license Except from the exemptions specified under regulation made by EMRB, share transfers shall not be allowed within the wind and solar generated plants, between the date of application and temporary acceptance of entire generation plants.

Tariffs issued to be applied on the following month within the scope of EML, shall include all cost and service fees regarding the activity subject to the tariff.

EMRB may determine subscriber groups according to the feature of the consumers.

Changes on (i) connection tariffs, (ii) distribution tariffs, (iii) retail and (iv) last source supply tariffs subject to regulation of EMRB are regulated under the Law.

Jurisdiction of courts and consumer arbitration committee shall be limited with only reviewing the prices for any application and legal proceedings against prices determined in the scope of income and tariff regulations of the Energy Market Regulatory Board (**EMRA**).

Generation plants owned by the Electricity Generation Corporation (**EGC**) or subsidiary company, affiliate and public generation company and privatized before the amendments on the EML, and the generation plants that will be privatized after the effective date of the amendment are granted with a compliance period until 31 August 2019 to comply with environmental legislation and obtain required permissions.

Until the regulations specified under the Law enter into effect, existing regulations, communiqués and EMRB decisions of EML which are not contrary to the Law will be applicable.

Other provisions set forth by the Law and Turkish version of the same can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2016/06/20160617-1.htm>

Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data Regarding Supervisory Authorities and Transborder Data Flows

Following ratification of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (**Convention**) ratified and published in the Official Gazette in recent months, an additional protocol (**Protocol**) dated 8 November 2001 which sets forth further protections was ratified upon the decree published in the Official Gazette on 24 May 2016.

Protocol introduces new provisions on security of data flow which has been increasing due to rapidly growing technology in accordance with the Personal Data Protection Law which was published on 7 April 2016.

Under the Protocol, the State Parties are obliged to establish competent authorities which will protect personal data and personal dataflow and inform judicial authorities in case of any infringement in this regard. Turkey, declared within his ratification decision that such competent authority under the Protocol is “Personal Data Protection Board” (yet to be established).

In addition to this, a State party shall provide for the transfer of personal data to a recipient that is subject to the jurisdiction of a state or organisation that is not party to the Convention only if that state or organisation ensures and adequate level of protection

Turkish text of the Protocol can be found at the following link:
<http://www.resmigazete.gov.tr/eskiler/2016/05/20160524-1.pdf>

The Regulation Amending the Regulation Regarding Authorization in Electronic Communication Sector

The Regulation Amending the Regulation Regarding Authorization in Electronic Communication Sector (**Regulation**) was published in the Official Gazette and came into effect on 11 June 2016. The Regulation introduces several amendments which extend powers of the Information and Communication Technologies Authority (Board) and bring additional criterias to companies for authorization.

Upon the latest amendments, the Board’s power regarding review and examination of authorization applications was increased. In this regard, the Board is entitled to reject applications on grounds of general reasons arising from public order, public health and public interests.

It is regulated that minimum capital requirements for the companies which provide landline phone services will also apply to other electronic communication services.

Another remarkable amendment introduced by the Regulation is obligation to obtain pre-approval from the Board as for any share transfers within the operator company at the rate of 10% or more.

The Regulation also extends scope of keeping communication traffic data. In this respect, access providers or telephone service providers are obliged to keep IP address, port distance, delivering time and type of service, amount of transferred data, user count and subscriber identity information and traffic information regarding conversations throughout its network for two years. Information regarding users shall be kept for the period of time indicated within the relevant legislation.

Provisions regarding phone book services are also amended. In this respect, operators which provide phone number to their customers are entitled to provide phone book services and share their database with phone book service providers against remuneration.

Other provisions set forth by the Regulation and Turkish version of the same can be found at the following link:

<http://www.resmigazete.gov.tr/eskiler/2016/06/20160611-1.htm>

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Answers. Not theories.

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About our firm

Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, real property, and commercial litigation. Please visit our web site at www.gokce.av.tr for further information on our legal staff and expertise.

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