

THE

# Fine PRINT

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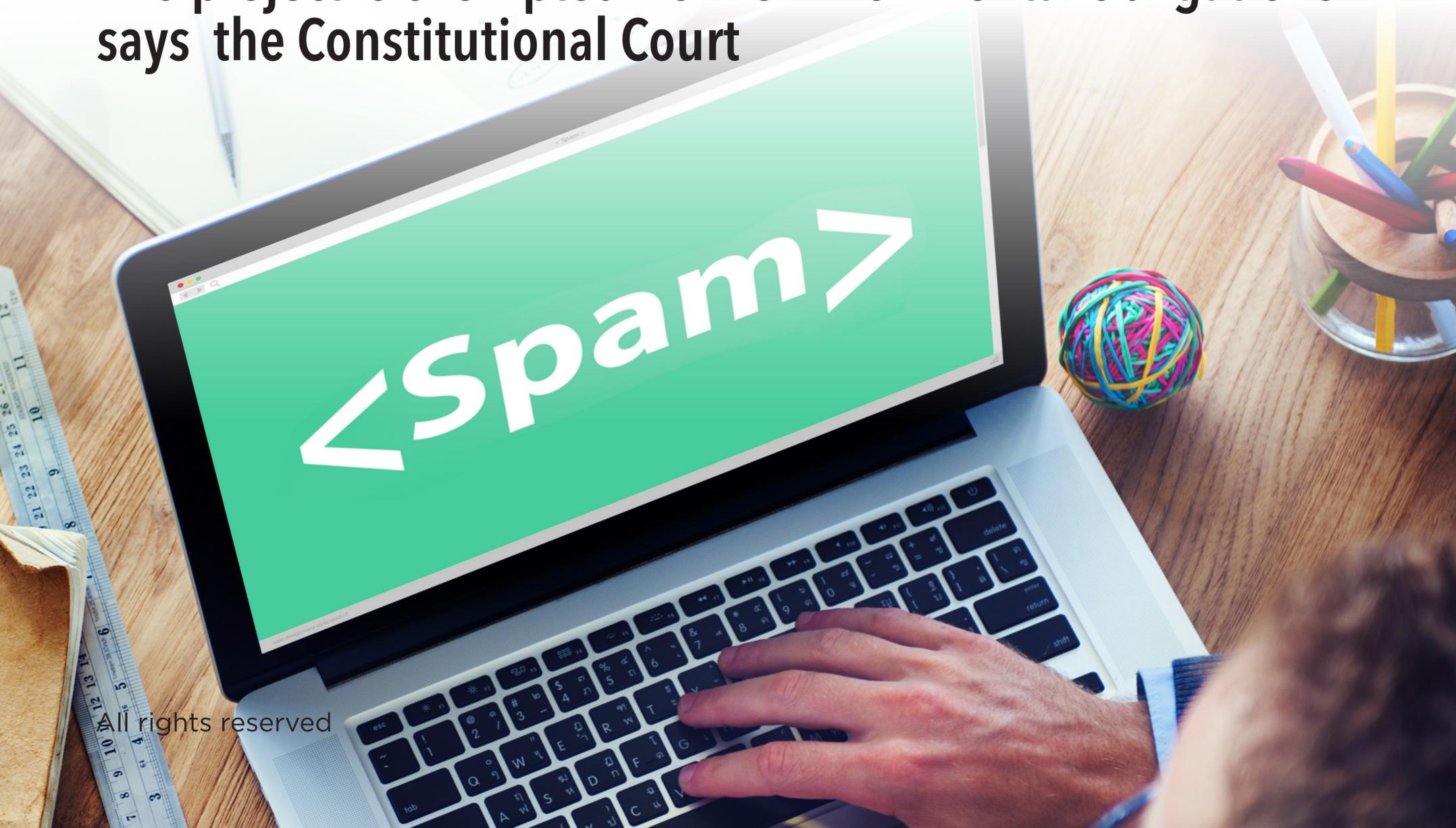
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## Regulation on Spam Ban, finally issued

### Highlights of this issue

Notarial Transactions Now Available Online

"No project is exempted from environmental obligations"  
says the Constitutional Court



## Regulation on Spam Ban, finally issued

We have previously informed you on the “Draft Regulation on Commercial Communication and Commercial Electronic Messages” in The Fine Print’s previous issue <http://gokce.av.tr/files/13/The-Fine-Print-May-2015.pdf>.

Such regulation was published in the Official Gazette and entered into force on 15 July 2015 with some amendments to the draft version. These amendments may require some changes on the “standard approval texts” and “electronic messages texts” which may have been drafted based on the relevant law and the “draft” regulation.

The Turkish text of the Regulation can be found in the following link:

<http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2015/07/20150715.htm&main=http://www.resmigazete.gov.tr/eskiler/2015/07/20150715.htm>



## Notarial Transactions Now Available Online

The Regulation on Carrying out Notarial Transactions electronically was published in the Official Gazette and entered into force on 15 July 2015. The regulation allows certain notarial transactions to be made online and those acts will be kept and shared on the online platform. The transactions now possible to be carried out with secured electronic signature and without the need to be in the presence of a notary are listed briefly in the Regulation.

### IS THIS REALLY A BIG DEAL?

Let us put it in this way: From now on, none of us have to leave our fancy offices for basic procedural jobs that have to be done in the Notary (i.e. application for registration is one click away (Or a few...)).

### NOW YOU GOT ME. KEEP GOING!

The specific transactions regulated under the Regulation can be made with a secured e-signature and a time stamp will be used during the process. However, there are legal transactions that won’t allow you to follow the same path, such as guaranty contracts and agreements/transactions for which the law seeks an official form. The transactions that have to be prepared by the Notary and the ones seeking for declaration of intention still need to be done in the presence of a Notary. Still, the parties of such transactions may initiate the preparation process with their e-signatures via TNBSS; however, the transaction itself has to be finalized before a Notary.

## THE TRANSACTIONS YOU CAN MAKE BY USING A SECURED ELECTRONIC SIGNATURE AND WITH NO NEED TO BE IN THE PRESENCE OF A NOTARY

The following notarial acts are allowed to be done on TNBBS by using a secured electronic signature and with no need to be in the presence of a notary:

- Translations,
- Registrations,
- Declaratory transactions,
- Samples,
- Opening and closing of company books,
- Written warnings and notices without countersign.

### HOW DOES IT WORK?

Union of Turkish Public Notaries sets up the structure and runs it. A document won't be prepared materially unless the parties of the transaction are willing to. Registrations on the electronic platform can be shared with real or legal entities when needed. However unless it is necessary, all the information will be kept confidentially. If wanted, a document can be shared with a third party through the mentioned system.



But for all the good things you have to pay a price, right? All the cost of notary transactions, taxes, fees and other prices shall be also paid through online.

The Turkish text of the Regulation can be found in the following link:  
<http://www.resmigazete.gov.tr/eskiler/2015/07/20150711-19.htm>

## “No project is exempted from environmental obligations” the Constitutional Court says

### General information

Constitutional Court cancelled a provision that exempted certain projects from being subject to the environmental impact assessment procedure (ÇED). The court's decision was published in the Official Gazette and entered into force on 4 July 2015.

### Background

The cancelled provision, which had entered into force as of 29 May 2013, was an amendment to the Environment Law. It provided that submitting an impact assessment report (ÇED Raporu) for projects which were included in the public financial investment program prior to 23 June 1997, is not required provided that the planning and tender phases of such projects had commenced or the production or operation within these projects had started. The scope of the exemption also covered the buildings and facilities which were required to implement these projects.

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### Effects

A Constitutional Court decision enters into force as of their publishing date and these decisions do not have a retrospective effect. So this decision shall not affect the projects which had already benefited from the cancelled provision. However, the projects which are not qualified to benefit from the provision before the publication date of the decision shall be subject to impact assessment procedure as any other projects.

### New Chairman and two new members appointed to the Turkish Competition Board

It's been a while since Turkish Competition Board's previous chairman's and two members' office terms were expired. The Council of Ministers' Decree, which was published in the Official Gazette dated 24 June 2015, appointed a new chairman and two new members to the Turkish Competition Board. The appointees are as follows:

Name	Post	Institution which nominated the member
Prof. Dr. Ömer Torlak	Chairman	Union of Chambers and Commodity Exchanges of Turkey
Arslan Narin	Deputy chairman	Ministry of Customs and Trade
Kenan Türk	Member	Court of Appeals

### Constitutional Court cancels Turkish Patent Institute's powers to refuse a trademark application on the ground that trademark is a well-known trademark according to the Paris Convention

Article 7(1)(i) of the Decree Law No. 556 on trademark protection stated that Turkish Patent Institute must reject ex officio a third party trademark application filed without obtaining permission of the trademark owner of a well-known trademark according to Article 6bis(1) of the Paris Convention.

In practice, this provision provided protection in Turkey to a trademark, which is a well-known trademark in any signatory states of the Paris Convention, regardless whether such well-known trademark is registered or well-known in Turkey.

Constitutional Court cancelled this provision with its decision published in the Official Gazette dated 2 June 2015. The decision is based on the ground that fundamental rights and freedoms cannot be regulated by "decree laws".

In practice, the cancellation decision will have negative affect on well-known trademark owners, who had not yet registered their trademarks in Turkey. These persons should follow third party trademark applications, which are made to Turkish Patent Institute for their well-known trademarks and should take necessary steps to object to such trademarks.



## **Electricity Market Balancing and Settlement**

Some phrases and clauses in Electricity Market Balancing and Settlement Regulation which was published in the Official Gazette and entered into force on April 4 2009 were revised with this new regulation on 15 July 2015. This brand new regulation may put you in an “Inception” effect but clearly catches significant points!

### **CHANGE IS GOOD, RIGHT?**

Well, little change does not hurt anyone. The revision effected just the few provisions of the first version of the Electricity Market Balancing and Settlement Regulation and few phrases of those articles were amended or abolished which may affect the implementation.

### **SO, WHAT CHANGED?**

In case of a free consumer is demanded by a several number of suppliers via Market Management System, the Business Operator of the market checks the required specifications to choose the supplier who makes a valid bilateral agreement and submits the necessary paperwork. The pre-version of the regulation had a different sanction to be imposed which was in Article 30/A Paragraph 14 to those who do not submit the necessary documents. The new regulation changed the sanction by giving the “sanction power” to another paragraph and from now on, suppliers are bound to Paragraph 13.

### **IT SEEMS “13” IS THE NEW BOSS...**

If a supplier/market participant averts a free consumer to leave its supplier and pass to the new one’s customer portfolio, then the necessary readjustment is made through Market Management System as per Article 16 (which regulates the duties of the Turkish Electricity Transmission Corporation) of the amended regulation.

If a market participant makes an application for registration of the free customer without having a bilateral agreement in between or the other documents regarding the transaction, when “detected”, the mentioned free customer will be abolished from the current customer portfolio which was established fraudulently. The responsible person will be unable to do bilateral agreements with customers for three following months. Big Brother watching...

### **Some of the other changes:**

- The “retail” phrase in Article 85 Paragraph 2 was replaced with the word “supply”.
- The “PMUM” and “retail” phrases in Article 129 Paragraph 2 Subclause (b) were abolished.



# 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](http://www.gokce.av.tr) for further information on our legal staff and expertise.

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