

Turkey's New Law on Renewable Energy Sources within the Context of the Accession Negotiations with the EU

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A. Introduction

This article introduces Turkey's Law on Utilization of Renewable Energy Sources for the Purpose of Generating Electrical Energy¹ (hereinafter "Law") which, almost unnoticed abroad, was adopted on 18 May 2005. It provides an overview of the general provisions of the Law, as well as other supporting legislation regarding renewable energy sources ("RES"). However, the legislation on bio-fuel will not be taken into account.²

The Law is a typical sample of the adaptation process that Turkey is undergoing as part of its EU membership bid. According to the European Council decision of 23 January 2006 on the principles, priorities and conditions contained in the accession partnership with Turkey, one of the short-term priorities identified for Turkey namely relates to "[s]tart alignment on the *acquis* on energy efficiency and renewable energy sources and develop administrative capacity in these sectors".³ In June 2006, as part of the accession negotiations, Turkey has provided a presentation on RES to the European Commission ("Commission").⁴ The Commission's examination ("screening") report has not yet been published. Therefore, this article also will analyze Turkey's ability to assume the obligations of membership and its administrative capacity to implement the *acquis* in the field of RES.

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¹ Law No. 5346, Official Gazette 18 May 2005, 25819.

² See Petroleum Market Law No. 5015, Official Gazette 20 December 2003, 25322; Petroleum Market License Regulation, Official Gazette 17 June 2004, 25495; Regulation on Technical Criteria for Petroleum Market, Official Gazette 10 September 2004, 25579.

³ OJ L 22, 26.1.2006, p. 34.

⁴ Available at http://www.abgs.gov.tr/tarama/tarama_files/15/SC15DET_Renewable.pdf (access: 16 March 2007).

RES is not a brand-new topic in Turkey, as both the Electricity Market Law⁵ ("EML"), which was enacted in March 2001, and the Electricity Market License Regulation⁶ ("Regulation") demonstrate. According to the EML, the Energy Market Regulatory Authority ("EMRA") is authorized to take the necessary measures to encourage the utilization of RES. Financial incentives for RES are specified in the Regulation. Legal entities applying to obtain a license for generation of electricity based on RES are required to pay merely 1% of the total licensing fee and are exempted from annual license fees for the first eight years following the facility completion date as inserted in the respective licenses. Moreover, the Regulation stipulates that legal entities, which generate electricity from RES, may purchase electricity from private sector wholesale companies under certain conditions. Finally, it provides that the Turkish Electricity Transmission Company and/or legal entities with a distribution license shall assign priority to system connection of generation facilities based on RES.

B. Objective and Scope of the Law

The purpose of the Law is to expand the utilization of RES for generating electricity in a dependable and economic manner, to increase the diversification of energy resources, to protect the environment and to develop the related manufacturing sector for the realization of these objectives. The Law encompasses wind, solar, geothermal, biomass, biogas, wave, current and tidal energy resources, canal and river type hydroelectric generation facilities and hydroelectric generation facilities with a reservoir area of less than fifteen square kilometers.

C. RES Certificate ("Certificate")

The Law provides that legal entities generating electricity from RES will be granted by the EMRA a Certificate entitling the holders to benefit from the incentives under the Law. The procedures and principles regarding the issuance of this Certificate are specified in a regulation.⁷

⁵ Law No. 4628, Official Gazette 3 March 2001, 24335.

⁶ Official Gazette 4 August 2002, 24836; *see moreover* Electricity Market Grid Regulation, Official Gazette 22 June 2003, 25001; Regulation on Balancing and Settlement, Official Gazette 21 December 2004, 25677; Communiqué Regarding the Principles and Procedures of Financial Settlement, Official Gazette 4 November 2003, 25279.

⁷ Official Gazette 4 October 2005, 25956.

D. Principles of Implementation

The Law provides for a purchase obligation for retail sales companies with regards to electricity generated from RES. The purchase obligation ratio is the proportion of the previous year's sales of the company to the total amount of energy of the company. The amount of RES certified electricity will be published annually by the EMRA. If there is a sufficient amount of RES certified electricity within the market, then the purchase obligation ratio may not be lower than 8% of the sales in the previous calendar year. Public distribution companies holding a retail sales license were exempted from the purchase obligation until 1 January 2007.

Until the end of the year 2010, the price for electrical energy generated from RES, which is to be purchased in accordance with the provisions of the Law, shall be the average wholesale electricity price of the previous year determined by the EMRA. The Law gives the Council of Ministers the authority to increase this price up to 20% at the beginning of each year. After 2011, the above price mechanism shall not be applicable to RES certified energy plants operating for more than seven years. The price is set by bilateral market agreements and the purchase obligation for retail sales companies applies.

Moreover, the Law contains incentives in terms of the investment periods of energy projects. For instance, investments in energy generation facilities, procurement of electro-mechanic systems within Turkey, investments on research, development and production regarding solar energy units and investments on research and development concerning biomass energy, may benefit from incentives determined by the Council of Ministers. Additionally, in the municipalities and governorates with sufficient geothermal resources, the need for heat energy shall be met mainly by geothermal or solar thermal resources. Finally, the Law provides implementations related to the acquisition of land for the purpose of generating electricity based on RES. 50% deduction shall be implemented for rent, right of access and usage permission in the investment period.

E. Sanctions

In the event of violation of the principles of implementation of the Law, legal entities holding retail sales licenses shall be charged an administrative fine of 250.000 YTL (New Turkish Lira - approximately 177.000 USD) by the EMRA and warned to eliminate the violation within sixty days. With regards to repetition of violations, the Law provides for more serious financial sanctions and cancellation of the license to perform activities in the energy sector.

F. Analysis and Conclusion

The Law's enumeration of RES lacks flexibility in terms of technical developments in the future and, thus, for instance, it may be argued that the EMRA should have been authorized to add other types of RES. Another problematic aspect is the division of tasks between the EMRA and the Ministry of Energy and Natural Resources. Hence, the EMRA, as the independent regulatory authority in the field of energy, should have all powers to act as the competent authority regarding the implementation of the Law. Moreover, no tax advantages are given under the Law to entities generating electric energy based on RES. This is an important issue, as it will take some time until RES will be economically competitive with conventional energy sources. Finally, in its 2005 Progress Report concerning Turkey,⁸ the Commission criticized the Law for not setting a target for electricity generated from RES by 2010, as foreseen by the appropriate EU legislation.⁹

The Law, basically modeled after Germany's Renewable Energy Act,¹⁰ is welcome news. It is a first step in the alignment with and implementation of the relevant *acquis* and has the potential to strengthen the role of RES for Turkey's energy supplies and, thus, to decrease the dependence on energy imports from other countries. According to the latest statistics from the International Energy Agency for Turkey, RES contributed 13.2% to the total primary energy supply of 81.9 Million tons of oil equivalent in 2004.¹¹ Due to Turkey's geographic conditions, and the steady increase of the energy requirement as a result of the growth in both population and industrialization, electricity production from many RES is expected to grow significantly. This will also attract new investments within Turkey. However, Turkey should undertake a comprehensive effort to abolish the above deficiencies, especially as regards the partial non-compliance with the legal framework of the EU.

⁸ COM (2005) 251 final; *see also* Commission Staff Working Document, Turkey 2006 Progress Report, COM (2006) 649 final.

⁹ *See* Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity from renewable energy sources in the internal electricity market, OJ L 283, 27.10.2001, 33.

¹⁰ *Gesetz für den Vorrang Erneuerbarer Energien* (EEG) vom 21.7.2004 (BGBl I, 1918), zuletzt geändert durch Artikel 1 des Gesetzes vom 7.11.2006 (BGBl I, 2550); Law on Renewable Energy Sources, 27 July 2004 (BGBl I, 1918), last amended on 11 November 2006 (BGBl I, 2550).

¹¹ Available at http://www.iea.org/textbase/papers/2006/renewable_factsheet.pdf (access: 16 March 2007).