

TURKEY - COUNTRY REPORT 2006

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SCOPE

The Energy Community Treaty requires the adoption, according to a timetable, of certain legal acts from the *acquis communautaire* in the areas of electricity, gas, competition, environment and renewable energy sources. This report is a first analysis of the status quo of each party in relation to the *acquis communautaire*. At this stage it has not been assessed the actual implementation or the functioning of the energy markets.

The report was prepared based on the responses provided by the Parties to a detailed questionnaire regarding the *acquis communautaire* on electricity, gas, renewable energy, environment and competition; on interviews with representatives of relevant organizations from the Parties and finally on the available national legal acts.

Turkey is not a party to the Energy Community. Turkey aims at addressing the alignment with the *acquis* on energy, environment and competition within the framework of the ongoing accession process.

1. INSTITUTIONAL BUILDING

1.1. Ministries

- The Ministry of Energy and Natural Resources (MENR), www.enerji.gov.tr, is responsible for the preparation and implementation of energy policies, plans and programs in coordination with its dependent and related institutions and other public and private entities. The Ministry is mainly responsible to determine and implement national energy policy objectives.
- The Ministry of Environment and Forestry (MoEF) www.cevreorman.gov.tr has an overall co-ordinating role for the development and implementation of environmental policies in Turkey, including the approximation process for the EU environmental *acquis*. The main duties of the MoEF are as follows; a) programme and project development to determine principles of environmental protection, b) conduct, approve and ensure the implementation of environmental plans taking economic and ecological values for decision making, c) monitoring and control of activities which might have negative impacts on the environment.

1.2. Energy Regulators

- Energy Market Regulatory Authority (EMRA), www.emra.org.tr is the independent regulator responsible of electricity, natural gas, petroleum and LPG market regulations. The main duties and responsibilities of EMRA are to; prepare the secondary legislation, issue licenses to authorize market participants to engage in market activities, approve and publish tariffs, monitor and supervise activities of the market participants, conduct technical, legal and financial audits, settle disputes and apply sanctions where necessary.

1.3. Competition Authority

- The Competition Authority, <http://www.rekabet.gov.tr>, having a public legal personality and an administrative and financial autonomy is established in order to ensure the formation and development of a free and sound competitive environment. The Authority is independent in fulfilling its duties. The main tasks of Authority are as follows; a) to carry out, upon application or on its own initiative, examination, inquiry and investigation about the activities and legal transactions, b) to permit mergers and acquisitions, c) to monitor legislations, practices, policies regarding to competition.

2. ELECTRICITY SECTOR

2.1. Introduction

Turkey has been a candidate country to the European Union since 1999 although Association Agreements have been in place since the 60s. The opening of the negotiations for accession to the European Union started in October 2005. During these years Turkey has been working on the alignment of its legislation with the *acquis communautaire*.

The Electricity Market Law adopted in 2001 paved the way for the liberalisation of the electricity sector. A comprehensive package of secondary legislation has been passed since then to develop the provisions of the Law.

The state owned Turkish Electricity Generation Company (EUAS), generators operating under long term purchase agreements with the State (schemes BOT and BOS devised after the first privatisation wave in the 80s) and independent producers (mostly autoproducers) participate in the generation sector at present.

The Transmission System Operator is the also state owned Turkish Electricity Transmission Company (TEIAS).

The distribution activity is dominated by the state owned company TEDAS. The National Electricity Strategy passed in 2004 outlined a phased privatisation process. The first stage is the privatisation of TEDAS and once accomplished, it is intended to privatise EUAS. A call for tenders for TEDAS, which will also be split into 21 companies, is expected by the end of 2006.

The wholesale arrangements are based on bilateral contracts between producers, wholesalers, retailers and eligible customers with no plans for a day-ahead market. A balancing market has also been established, although it only operates virtually given that its prices are still regulated. TETAS, the public wholesale company has taken over the stranded costs (BOT and BOS) and it is responsible of purchasing the electricity for the regulated customers and selling it to the distribution company at a regulated price.

2.2. Public service obligations and customer protection

- Although there is no specific chapter on public service obligations these are addressed through several provisions throughout the primary and secondary legislation. The legislation imposes on electricity undertakings obligations related to security of supply and customer protection. Relevant legal acts are the Electricity Market Distribution Regulation and the Electricity Market Customer Services Regulation.
- Distribution companies are also obliged under the Electricity Market Licensing Regulation to become the Supplier of Last Resort for those eligible customers affected by the suspension of their retailer.
- Provisions on vulnerable customers are found in the Electricity Market Law. The Law establishes that subsidies should be provided through direct cash refunds. The principles and procedures are however still to be defined by the Council of Ministers upon the proposal of the Ministry of Energy.

2.3. Monitoring of Security of Supply

- The main institutions and agents responsible of Security of Supply according to the legislation are the Ministry of Energy, the energy regulator, the TSO and the distribution companies. The TSO periodically prepares a generation capacity

projection based on the demand forecasts. Both the TSO and the distribution companies must also prepare network investment plans and submit them to a specialised the State Planning Department for approval and to the energy regulator.

2.4. Technical rules

- The most relevant technical rules which are part of the secondary legislation are the Transmission Network Code, the Distribution Network Code and the Balancing & Settlement arrangements. The balancing arrangements are only applied virtually though, as the prices for unbalancing are regulated.

2.5. Generation

- Companies willing to generate electricity must obtain a license which terms are outlined in the Electricity Market Licensing Regulation. Licenses are issued by the energy regulator.
- The Electricity Generation Co. Inc. is entitled to build new generation facilities when deemed necessary in accordance with the generation capacity projection. The tender criteria are not laid down in the sectorial legislation but in the Public Procurement Law. This Law establishes the principles and procedures to be applied in procurements held by all public entities and institutions governed by public law or under public control or using public funds.

2.6. Unbundling provisions and access to accounts

Transmission System Operator

- The Turkish Electricity Transmission Company (TEIAS) is the company responsible for the transmission network activities and for the operation of the system. The tasks are defined in both the Electricity Market Law and in the Electricity Market Licensing Regulation. Accounting unbundling is required between both regulated activities.
- The rules regarding the operation of the system, the dispatching of generation facilities and the balancing of the system are defined in the Transmission Grid Code and in the balancing and settlement Regulation.

Distribution System Operator

- The Turkish Electricity Distribution Company (TEDAS) is expected to be privatised and divided into smaller companies. For this purpose 21 distribution regions have been defined. A call for tenders is expected to be issued by the end of 2006. During a transitional phase of 5 years there will be no price differences across the country allowing therefore a cross regional subsidization. The Electricity Market Law and the Electricity Market Licensing Regulation will allow however for the privatised electricity distribution companies to request a license for generation. The distribution companies are also allowed to undertake retail activities with only account unbundling between the activities. In fact non-eligible customers are being supplied by the distribution company.
- Account unbundling has been achieved. However, There has been no action yet to unbundle legally and organisationally the network activities from the liberalised activities.

Access and unbundling of the accounts

- The Electricity Market Law requires the licenses' holders to allow the energy regulator to access and audit their accounts. This same Law also requires licensees

to keep separate accounts for each activity. The Electricity Market Licensing Regulation (Art. 41) further develops the requirements for the unbundling of accounts and for avoiding cross-subsidies between activities.

2.7. Third Party Access (TPA)

- The transmission and distribution companies are obliged under the Electricity Market Law to provide non-discriminatory third party access to all users. The TPA requirements are included in the Transmission and Distribution Grid Codes and in the Electricity Market Licensing Regulation. Disputes regarding TPA are to be solved by the energy regulatory authority.
- The Transmission and Distribution tariffs respond to a revenue cap approach. Transmission and distribution companies are required to propose the tariffs for the following year to the energy regulatory authority which is the institution responsible of approving them. While the Electricity Market Tariffs Regulation sets the tariffs framework, there are several Decisions adopted by the energy regulatory authority providing the details of the methodologies.

2.8. Market opening

- The eligibility threshold is approved every year by the Energy Regulatory Authority. For the year 2006 the level has been set at 6 GWh. Although the national legislation does not contain a calendar for the full eligibility, the National Strategy envisages full eligibility by 2011.

2.9. Direct lines

- The Distribution Grid Code established that granting direct lines is responsibility of the Energy Regulatory Authority after consultation with the TSO and the relevant distribution company.

2.10. Safeguard measures

- The Electricity Market Licensing Regulation defines the “Force Majeure” situations. The energy regulatory authority is the Institution responsible to take the decisions in these circumstances.

2.11. Cross border trade mechanism

- Turkey is interconnected to Bulgaria, Azerbaijan, Iran, Georgia, Armenia, Syria, Iraq and a 400kV line with Greece is under construction. The Turkish electricity system is not however synchronously connected with neighbouring systems. A study intended to synchronise Turkey with the UCTE control area is under way and its results are expected by the end of 2006.
- Electricity imports and exports are small. The rules for cross border trading are defined in the Electricity Market Import and Export Regulation. Capacity at the interconnectors is allocated through explicit auctions managed by the TSO which also publishes the estimated available capacity at the interconnectors four months ahead. At present congestion is solved through curtailment. Any revenues resulting from congestions are to be used in the establishment of new lines, the increase of capacity at the existing lines. If the TSO intends to use congestion rents for other purposes it requires the approval of the energy regulatory authority.

3. GAS SECTOR

3.1. Introduction

The state-owned company, BOTAS is the only gas transmission company in Turkey. Its monopoly in natural gas imports, exports and wholesale trading was abolished with the enactment of the Natural Gas Market Law published in 2001. The natural gas market is reorganized and restructured with the Natural Gas Market Law. The new legal framework breaks the state monopolies and thus allows private sector participation in energy industries in Turkey, under the supervision of Energy Market Regulatory Authority.

A very ambitious program is foreseen by Natural Gas Market Law in order to transfer BOTAŞ's current sale and purchase agreements to third parties. BOTAŞ is required to conduct tenders until its imports share fall to 20% of annual consumption until 2009 in order to create competition in the market. It is also envisaged by this Law to unbundle BOTAŞ's activities as transmission, storage and trade within two years after 2009 and except transmission activity, the others two will be privatized in that period. The first Contract release tender was performed in November 2005. The program is expected to be carried out for following years too.

All legal entities are required to have license from the Energy Market Regulatory Authority in order to be involved in natural gas market. No legal entity is allowed to sell and purchase more than 20% of annual gas consumption.

Legal separation is required for Transmission and distribution companies other than those undertakings performing supply (import and wholesale) by the Law. Furthermore, the private companies are allowed to be involved in transmission activities alongside to BOTAS.

Third party access (TPA) is regulated. Access to the system is a right for all parties. Transmission and distribution companies are obligated to demonstrate Regulatory Authority (EMRA) that their operations are cost efficient, effective and reliable. The Network Code has been in force since 1st September 2004. Principles and procedures pertaining to TPA are set out in the network code and capacity allocation is made on entry-exit system for one year base (based on Madrid Forum envisages). The principle and procedures for storage, LNG and distribution (operation rules) activities are under preparation at the time being.

Import and wholesale companies are required to store 10% of the imported or sold natural gas in five years.

Account unbundling is required between all natural gas activities and between BOTAS' activities too. BOTAS has already completed account unbundling between transmission, storage and trade activities.

Consumers, whose annual consumption is above the threshold set by the EMRA, have right to choose their own gas suppliers. At present, the gas market opening rate is 80%. Although eligible consumers have right to choose their suppliers, this right currently cannot be exercised because of the transitional de facto monopolistic position of BOTAŞ in import and trade.

EMRA is also responsible for organizing tenders for natural gas distribution licenses in the cities. The tender process has been completed more than 40 new cities and most of them started to use natural gas in their regions. It is expected to carry out the tender process for remaining part of Turkey in a few years. The two distribution entities belong to BOTAŞ privatized and BOTAŞ's involvement in the distribution activities has been totally removed.

Principles and procedures related to price and tariff setting with respect to regulated tariffs have been determined and published for all kind of natural gas activities. The tariffs based on the entry-exit system for the transmission network has been published for the year 2006.

The three state distribution enterprises which are operated by municipalities will also be privatized.

3.2. Public service obligation and customer protection

- The Natural Gas Market Law and secondary Legislation imposes public service obligations as it is envisaged by Natural Gas Directive-2003/55/EC on the ensuring security of supply, the non-interruption, quality, efficiency, protection of the environment, safeguard measures etc. In addition EMRA may impose additional obligations on energy companies within the public service obligations. The transmission and distribution companies are obliged to connect all customers to system. Import and wholesale companies are required to store 10% of the imported or sold natural gas. Distribution companies are required to gasify every region in its territory in five years and also are obliged to purchase natural gas at least from two different sources. In addition wholesale companies are obliged to prove that they purchase from the one of the cheapest source. Transmission and distribution companies are obligated to demonstrate EMRA that their operations are cost efficient, effective and reliable. Distribution companies are also obliged to construct a distribution dispatch centre in order to perform gas scheduling and system balancing in accordance with the seasonal changes.
- The vulnerable customer issues are not envisaged within this new legal structure. However there are some studies between distribution companies, EMRA and other relevant authorities in order to find a transparent way to protect vulnerable customers.

3.3. Monitoring security of supply

- The monitoring of security of supply is delegated to Regulatory Authority along side the Ministry of Energy and Natural Resources. The Natural gas demand forecast for the following year is defined by EMRA taking into account the forecast of import and wholesale companies. However the Ministry of Energy and Natural Resources is responsible from the security of supply specifically from the diversification of supply sources and the share of primary energy sources.
- In case of a sudden crisis in the energy market regarding to safeguard measures, EMRA and the Ministry of Energy and Natural Resources is the responsible in order to take necessary measures. EMRA has right to ask all market participant to take all necessary precautions in case of an energy crisis.

3.4. Technical rules

- With respect to design, construction and installation, testing and control, commissioning and operation, maintenance and repair of and provision of minimum safety conditions at all facilities to be used for natural gas market activities, it shall be obligatory to conform to any one of EN, ISO or IEC and TS standards. It shall be obligatory to have facility construction and service activities performed by certificate holders. Licensees may perform such activities themselves. In addition, the technical rules are defined in Network code in details.

3.5. Unbundling provisions and access to accounts

- The unbundling of natural gas activities (BOTAS and others) are foreseen by Natural Gas Market Law. BOTAS is a vertically integrated company performing activities on supply, transmission, distribution, LNG, storage of natural gas. The account unbundling is envisaged between all natural gas activities by Law. The account unbundling has been completed between transmission, storage and trade activities of BOTAS. The legal, organisational and managerial unbundling of BOTAS is foreseen after 2009 into two years. BOTAS will perform only transmission activities after 2011. EMRA has right to access of all accounts of market participants. The two distribution entities belong to BOTAŞ privatised and BOTAŞ's involvement in the distribution activities has been totally removed. The new distribution companies are private companies and they are obliged to unbundle their activities (distribution companies can not be involved in any activity other than distribution). The transmission companies are not allowed to carry out supply activities.

3.6. Third party access

- Third party access (TPA) is regulated. Access to the system is a right for all parties. Within this context, transmission and distribution companies are obligated to connect all customers to the system and demonstrate Regulatory Authority that their operations are cost efficient, effective and reliable. The TSOs/ DSOs are obliged to justify to the interested party the refusal of access to the network. In case of rejection of access to system, EMRA's decision shall be final and binding. Network code has been in force since 1st of September. Capacity allocation is made on entry-exit system for one year base. In case of congestion, it is arranged proportionally (pro-rata) for the applications. Capacity usage is based on use or loose it principle. The entry-exit tariffs come into force for the year 2006. The principles and procedures (system rules) for storage, LNG and distribution activities are under preparation.

3.7. New infrastructure and exemptions

- There is no mechanism defined by Law for granting an exemption for new natural gas infrastructure.

3.8. Market opening

- Although the market opening level is around 80%, due to monopolistic structure of BOTAS, the eligible customers switch their suppliers very limitedly. However with the participation of the new four suppliers, who won the BOTAS's gas release tender recently, the customers would have chance to switch their supplier. The eligibility threshold is redefined every year by EMRA in order to create a fully open market.

3.9. Priorities Projects

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4. COMPETITION

The legal basis is provided by the Competition Law (The Act on the Protection of Competition). The Turkish Competition Authority (TCA) having a public legal personality, and an administrative and financial autonomy is established in order to ensure the formation and development of markets for goods and services in a free and sound competitive environment. The competition legislation covers just anti-trust policies, not state aid control measures although those measures have been required by the Customs Union Agreement

that has been signed between Turkey and EU in 1995. However there is a draft law on issue.

The article 81 and 82 of EC Treaty are harmonised and adopted to a large extent by Turkish Competition Authority. However, article 86 and 87 of EC treaty have not been adopted yet. Nevertheless it was notified that an amendment is under preparation regarding the adaptation of the Article 86 as the subject is linked with several authorities. The authorisation of Competition Authority is sought for the privatisation of energy related activities.

5. ENVIRONMENT

By the time when this report was published, we had not received the answers to the questionnaire. Therefore no detailed analysis can be provided.

In Environment, the environmental provisions in the Energy Community Treaty is one the major reservations of Turkey for not signing the Treaty. Turkey is concerned about the economical implications of implementing the environmental acquis, considering inter alia the significant growth in electricity demand and the extensive need to utilize domestic resources which require huge amount of investments.

6. ENERGY EFFICIENCY AND RENEWABLE ENERGY SOURCES

A law is being drafted regarding energy efficiency. Renewable Energy Sources

The production of electricity from Renewable Energy Sources is addressed in the 2005 Law on Utilisation of Renewable Energy Resources for the purpose of Generating Electrical Energy and in the Regulation and Procedures for Granting Guarantee of Origin.

The Electricity Market Licensing Regulation defines the RES scheme and requires generators to obtain a license.

Under the 2005 RES Law retailers are obliged to purchase at least 8% of their electricity from RES (not including large hydro). Until 2011 the price to be paid is the average wholesale electricity price which has to be determined annually by the regulator. The Council of Ministers can increase up to 20% this price.

The authority responsible of issuing the guarantees of origin is the energy regulator.

Biofuels for transport will also be addressed as part of the ongoing legislative efforts in different subsectors.

7. CONCLUSIONS

Turkey has been a candidate country to the European Union since 1999 although Association Agreements have been in place since the 60s. The opening of the negotiations for accession to the European Union started in October 2005. During these years Turkey has been working on the alignment of its legislation with the *acquis communautaire*. Turkey is not a party to the Energy Community. Turkey aims at addressing the alignment with the *Acquis* on energy, environment and competition within the framework of the ongoing accession process. Turkey's adherence to the *acquis* referred to in this report will be contingent upon the outcome of the accession negotiations of the relevant chapters.

In Electricity, the Electricity Market Law adopted in 2001 paved the way for the liberalisation of the electricity sector. A comprehensive package of secondary legislation has been passed since then to develop the provisions of the Law. Turkey will soon tender the privatisation of the Distribution System operators. The most remarkable issue that has not been adopted is

the legal and organisational unbundling between network and supply activities for the distribution companies.

In Natural gas, the natural gas legal and regulatory framework was established in 2001. Natural gas market has been opened to competition at the end of 2002. The regulatory and legal framework is mostly compatible with 2003/55/EC Natural Gas Directive. In addition, despite that a competitive environment is in place, BOTAS still retains a dominant market position. However, gas release programme and unbundling of activities will reduce the dominant position of BOTAS gradually until 2009. The legal unbundling of BOTAS between transmission, storage and trade is foreseen to be completed within two years after 2009.

In Competition, the legal basis on competition is provided by the Competition Law (The Act on the Protection of Competition). The competition legislation covers both anti-trust and state aid control policies. The article 81 and 82 of EC Treaty are harmonised and adopted by Turkish Competition Authority. However, article 86 and 87 of EC Treaty have not been adopted yet. Nonetheless studies are under preparation regarding this subject.

Turkey has adopted a Law on the Promotion of electricity from Renewable Energy Sources. Biofuels for transport will also be addressed as part of the ongoing legislative efforts in different subsectors.

In Environment, the environmental provisions in the Energy Community Treaty is one the major reservations of Turkey for not signing the Treaty. Turkey is concerned about the economical implications of implementing the environmental acquis, considering inter alia the significant growth in electricity demand and the extensive need to utilize domestic resources which require huge amount of investments.