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Public Comments Sought on Proposed Amendments to Unlicensed Electricity Generation Regime in Turkey

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The Energy Market Regulatory Authority **("EMRA"**) has published draft regulation ("**Draft Regulation**") which would amend the current regime for unlicensed electricity generation in Turkey. The Draft Regulation proposed changes to the Regulation on Electricity Generation without License in Electricity Market, published in Official Gazette number 28783 on 2 October 2013 ("**Unlicensed Regulation**"). The EMRA published the Draft Regulation on its website. Public opinions and feedback on the proposed changes can be provided to EMRA until 4 December 2015.

The Unlicensed Regulation was introduced to provide small and medium scale consumers with an opportunity to generate and use their own electricity, while also allowing them to sell surplus energy to the government via the available feed-in-tariffs. However, the regime primarily attracted solar investors wishing to benefit from the feed-in-tariffs without going through the whole licencing procedures, attracting many large scale investments. As of September 2015, 3,335 projects have applied to distribution companies for unlicensed production, with a total projected installed capacity of 2,812,010.19 KWe (TEDA? statistics).

The Unlicensed Regulation has been heavily criticised since its introduction for not being comprehensive enough to address the needs of all market players, as well as lacking adequate provisions for large scale investments which are currently in place. Furthermore, contrary to its main aim, the Unlicensed Regulation did not prevent large scale investors from entering the market. These parties through establishing separate sister companies and a different consumption unit for each generation facility were able to surpass the 1 MW limit of the legislation. Large scale investors were closing up the capacity limits allocated to each connection point and power distribution unit. Therefore, projects established for self-consumption purposes were prevented from obtaining permission to connect to the grid via the same connection point.

The proposed changes to the Unlicensed Regulation primarily aim to prevent trade of unlicensed facilities through share transfers, as well as prevent incorporation of multiple group companies in order to overcome the 1 MW limit. The EMRA seems to have listened to criticisms by certain market players, to the effect that allowing construction of facilities for purposes besides self-consumption is an inappropriate exploitation of the regime.

The EMRA announced that the proposed changes are the result of market developments and include:

> Changes to the Connection Principles
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> The most significant change under the Draft Regulation is insertion of a new paragraph in relation to the "connection principles". Paragraph (10) / Article 6 introduces a provision whereby each real person, legal entity or legal entities having such real persons or legal entities as their direct or indirect shareholders, is allowed up to 1 MW capacity jointly in each transformer sub-station for renewable energy purposes, regardless of the number of consumption units owned by them.
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> The Unlicensed Regulation includes no such limit. The current regime requires each unlicensed power plant to be associated with at least one "consumption unit". As per Article 5/4 of the Unlicensed Regulation, if the distribution system has enough capacity, more than one generation facility is allowed

per consumption facility. In any case, total installed capacity of generation facilities connected to each consumption facility cannot exceed 1 MW limit.

The proposed change mean affiliated or group companies would no longer be allocated more than 1 MW of capacity for the same sub-station connection point, regardless of the number of consumption units they may have.

Introduction of Share Transfer Restrictions

A new paragraph with respect to share transfer restrictions is proposed by paragraph (20) / Article 31 of the Unlicensed Regulation, titled "Other Provisions". Share transfers for unlicensed facility applicants would be prohibited from the date they apply to build a production facility until the temporary acceptance date. Accordingly, unlicensed facility owners would no longer be able to transfer shares to another person or entity, until facility construction is completed.

After this lock-up period, the relevant network operator (either TE?A? or the distribution company in the region) must be informed of any share transfers at least one month before closing the share transfer transaction. The network owner must be advised of the updated shareholding structure (after the share transfer) within ten business days of the transfer.

Under the current Unlicensed Regulation, transferring the facility itself is restricted and subject to certain conditions. However, there are no rules restricting share transfers by unlicensed producers.

The Draft Regulation does not clarify the status of facilities which have already begun their activities prior to the Draft Regulation coming into effect.

Ownership Restrictions for Distribution and Supply Companies

The Draft Regulation inserts paragraph (21) into Article 31 of the Unlicensed Regulation, titled "Other Provisions". Under the amendment, the following persons or entities would no longer be able to engage in unlicensed production activities:

1. Direct or indirect shareholders of distribution companies and appointed supply companies.
2. Persons employed by distribution companies and appointed supply companies, or their shareholders (direct or indirect).
3. . Legal entities with any persons or legal entities listed under above (a) and (b) as shareholders.

Final Note

The Turkish government aims to increase the rate of renewable energy generation to 30% by 20231. Therefore, the market predicted more detailed provisions supporting large scale investors, by eliminating the unclear points in the current Unlicensed Regulation. For example, uncertainty about the current ten year feed-in-tariff period. However, the EMRA seems to have adopted the opposite approach with the Draft Regulation.

If the proposed changes are finalised and accepted by the EMRA in their current form, the number of large scale investments in the unlicensed market will gradually decrease and unlicensed opportunities will be exclusively provided to small and medium scale self-consumers.

The EMRA did not clarify the status of projects that are currently in place if the Draft Regulation is adopted. If the EMRA applies the new provisions retroactively, current projects could also be prevented from beginning operations, which would pose a risk to investors.

1. . National Renewable Energy Action Plan for Turkey dated December 2014: http://www.eie.gov.tr/duyurular_haberler/document/National_Renewable_Energy_Action_For_Turkey.PDF

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