



CORRUPTION REPORTS 2016:
**ASSESSMENT OF TURKEY'S
STATE-OWNED ENERGY
ENTERPRISES**

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Southeast European Leadership for Development and Integrity (SELDI) is the largest indigenous anticorruption and good governance initiative of CSOs from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Montenegro, Serbia and Turkey. SELDI currently includes partners from Romania and Moldova as well. SELDI contributes to a dynamic civil society in the region, capable of participating in public debate and influencing policy and decision-making process in the area of anticorruption and good governance. The initiative established a coalition for the development and endorsement of a regional CSO strategy and action agenda and carries out good governance monitoring. SELDI raises public awareness and advocates reformist policies through Regional Good Governance and Anti-Corruption Policy Forums.2016, Southeast Europe Leadership for Development and Integrity (SELDI)

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FOREWORD

This report is the product of the research conducted by TESEV within the scope of the network of Southeast European Leadership for Development and Integrity (SELDI). Comprised of 15 NGOs from the states of Montenegro, Bosnia-Herzegovina, Serbia, Albania, Macedonia, Kosovo, and Turkey, the SELDI network acts as a transnational research and collaboration platform for these NGOs. The main goal of the SELDI partnership, through empirical research and data-based assessments of corruption, is to understand and alleviate the problems of corruption and the lack of good governance which have become deep-rooted in Southeastern European states and Turkey.

SELDI seeks to bridge analysis and policy design and to use it for civil society capacity building for good governance. In 2014, the network carried out a comprehensive assessment of corruption in Southeast Europe (SEE) covering the various aspects of the legal and institutional environments of nine countries, outlining the characteristics and challenges of state capture, and measuring actual levels of corruption.¹ As a follow-up to the recommendations of its 2014 analysis, the second phase of the SELDI continued with capacity building projects, public awareness campaigns, and comprehensive analyses of regional corruption issues in 2014 – 2016. This report is the product of regional corruption assessment research and focuses on Turkey. It is the second report of the Corruption Reports 2016 that covers public perceptions of corruption, corruption challenges in the energy sector, and the state of hidden economy in Turkey.

The report based on an extensive and meticulous research and interviews to trace corruption in the energy sector in Turkey. Principles of transparency, accountability, rule of law, and free competition are used as critical lenses to analyze state-owned enterprises, reform processes in the energy sector, public procurement, and management of significant energy projects. The report suggests that corrupt practices such as clientelism and favoritism systematically run through the sector. It explains in detail how private interests sneak into state-owned enterprises and public procurement, how opportunities are used to reiterate political influence, and how arbitrariness trumps merit at the various levels of the sector.

The policy recommendations are distilled via intensive research and analysis and underline key principles of transparency, rule of law, and market liberalization in tackling corruption in the energy sector. This report makes it clear that when these principles are not upheld, rent seeking prevails at the expense of many factors such as environment, equality before the law, or the rights to equal opportunities and to access to information. Energy sector is central to foreign policy, national security, financial stability, and meeting socio-economic needs. Revealing corruption or corruption-related activities in the sector and tackling them would, therefore, bring multi-level benefits. As a key actor in the fight against corruption, civil society is significant in revealing corruption and raising awareness accordingly; and this report should be taken as part of this effort.

¹ SELDI. (2014). *Anti-Corruption Reloaded: Assessment of Southeast Europe*. Center for the Study of Democracy: Sofia.

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ASSESSMENT OF TURKEY'S STATE-OWNED ENERGY ENTERPRISES

The insights gained from the research and advocacy efforts of the first phase of SELDI² put forward that energy is one of the most susceptible sectors to corruption in all nine SELDI partner countries³. Turkey differs from the rest of the SELDI countries in terms of energy sector and state-owned enterprise (SOE) sizes, dynamics, and recent debates. While other SELDI countries are faced with the negative outcomes of mismanagement in privatization endeavors in the energy SOEs, Turkey's current debate revolves around the traits of clientelism and favoritism in public procurement activities. The energy sector in Turkey is tangent to issues of national security and is frequently utilized as a foreign policy tool. Hence, an investigation of governance challenges and shortcomings in Turkish energy SOEs in the last decade will illuminate the roots causes of and the ways to fight against corruption.

In order to identify challenges of Turkey's energy sector, Turkish Economic and Social Studies Foundation (TESEV) and The Economic Policy Research Foundation of Turkey (TEPAV) has collected data through 14 semi-structured interviews with energy bureaucrats, experts, scholars, environmental lawyers, journalists and auditors, besides desktop research. Remarks of the interviewees are presented throughout the report to provide a sectoral and bottom-up analysis of the shortcomings and successes of the Turkish energy sector in the last decade.

In the last decade, the Turkish energy sector transformed from a closed market with a dominant presence of SOEs to a rather open market with more private stakeholders benefitting from allocation of resources. Nevertheless, this research concludes that even though energy market transformation succeeded in adding more stakeholders and beneficiaries to the competition *de jure*, energy policies *de facto* present examples for *clientelism* and *favoritism* where rent is transferred to preselected private entities in return for political support.⁴ The main governance shortcomings identified are the monopoly of state owned natural gas company Petroleum Pipeline Corporation (BOTAS) in the market, numerous changes made to the public procurement law, selective rent distribution in the privatization of electricity distribution companies, traits of favoritism in the allocation of large energy infrastructure projects, and cross-subsidy trends in the electricity sector.

The fact that patterns of clientelism and favoritism are backed with purposefully flawed laws demonstrate that the energy sector in Turkey does not present a scheme of corruption *per se*, but provides a good example

2 Results of the first phase of SELDI are published as Corruption Assessment Report: <http://teseiv.org.tr/en/yayin/corruption-assessment-report-for-turkey/>

3 SELDI countries are Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Republic of Macedonia, Montenegro, Serbia and Turkey.

4 The definition provided by Atiyas (2012) is that while a law may invest an agency with rule making authority and perhaps also set of procedures to develop competition (*de jure*), in reality the agency may through action delay the developments of competition (*de facto*).

Analysis of Regulatory Reform in Turkey's Energy Sector

of how state capture prevents fair competition. State capture refers to the situation when private interests use corruption to mold institutions in such a way as to preserve a monopoly on resources in key economic sectors. They often use the system of public funds allocation to sustain otherwise largely uncompetitive businesses in strategic economic sectors, where clientelistic networks can exploit enormous rents from the corporate governance of SOEs, the management of large-scale projects, and the allocation of public procurement. Foreign governments or international companies can also use their dominant economic position to capture elites and, hence, to directly influence decision-making, sometimes at a catastrophic cost for the political stability and territorial integrity of a country.⁵

This chapter is organized as follows: First the drawbacks of the five main energy SOEs (TEİAŞ, EÜAŞ, TETAŞ, EPIAŞ and BOTAŞ)⁶ and Energy Market Regulatory Authority (EPDK) is described and analyzed, followed by a financial management analysis of energy SOEs. Then corporate governance issues regarding energy SOEs are summarized and controversial cases are outlined in the third part. The fourth part provides examples on how clientelism and favoritism prevail in the management of large energy infrastructure projects. Finally, the numerous changes made to the Public Procurement Law are discussed in relation to arbitrary decisions made by the political elite.

Turkey has had the highest energy demand growth among Organization for Economic Co-operation and Development (OECD) countries in the last 10 years and has the only gas market in the European Union (EU) region showing significant and sustained demand growth, which is forecast to double by 2017.⁷ Energy imports in Turkey satisfy 75% of its energy needs. From a fiscal point of view, Turkey's net energy import bill has a historical tendency to account for two-thirds of the country's current account deficit, which is approximately \$65 billion.⁸ Due to rapid change and uncertainty in international relations, economic expansion, and rising energy demand, Turkey's energy governance is faced with vast challenges. Turkey experienced fundamental need for more energy production facilities in the 1990s that ensured consistent and strong power supply. Even though the first law on privatization was enacted in 1984, the massive privatization endeavors gained traction after market liberalization in 2001, which made Turkey's electricity generation capacity, mostly privately owned, jump from 28,000mW to 70,000mW.⁹

In order to fully grasp the efforts of legislators in transforming the energy sector, legal endeavors should be analyzed. Unlike other Southeastern European countries, the Republic of Turkey started the discussion of liberalization of SOEs in the mid-1980s, which has been followed by concrete steps from

5 <http://seldi.net/events-and-news/seldi-events-and-news/workshop-state-capture-drivers-outcomes-and-measurement/>

6 TEİAŞ (Turkish Electricity Transmission Company); EÜAŞ (Turkish Electricity Generation Company); TETAŞ (Turkish Electricity Trade and Contracting Company); EPIAŞ (Energy Markets Operational Joint Stock Company); BOTAŞ (Petroleum Pipeline Corporation).

7 Herdem Attorneys at Law (2013) Turkey Energy Report. February 2014. Accessed October 28 http://herdem.av.tr/wp-content/uploads/2013_TURKEY_ENERGY_REPORT_FINAL1.pdf

8 International Monetary Fund, Turkey – IMF Country Report 13/363 (2013). 23. Accessed December 7, 2015, <http://www.imf.org/external/pubs/ft/scr/2013/cr13363.pdf>

9 Pascoletti, A. Stevenson, JP (2015) *Rewiring the grid: The State, the Market and the state of the Market*. Power in Turkey, Global Business Reports, June 2015.

the beginning of the 1990s. The announcement of Turkey's EU candidacy in 1999 led to a rapid reform process in the first years of the new millennium. Turkey adopted a series of new energy regulations in response to the EU acquis and International Monetary Fund (IMF) requirements starting from 2001. The financial crises in November 2000 and February 2001 underlined the necessity of tackling the long lasting roadblocks in the energy sector with a regulatory framework that complies with the EU standards. Independent regulatory agencies such as EPDK and the Public Procurement Authority were established then. The AKP government, came to power promising to reorganize public administration, was keen to undertake some reforms such as the liberalization of the energy sector. Although the reorganization of the public procurement law and diminishing the market share of BOTAŞ¹⁰ to

TABLE 1: RELEVANT LEGISLATIONS AND REGULATIONS (1980 – 2015)¹¹

Type/ No	Year (1980 – 2015)	Title of Law
No. 2942	04.11.1983	Expropriation Law
No. 4054	07.12.1994	The Law on the Protection of Competition ¹²
No. 4586	29.06.2000	Law on Transit of Petroleum Through Pipeline
No. 4628	20.02.2001	Electricity Market Law
Regulation	20.02.2001	Licensing Regulation ¹³
No. 4646	02.05.2001	Natural Gas Market Law
No. 4734	22.02.2002	Public Procurement Law ¹⁴
Regulation	07.10.2002	Natural Gas Market License Regulation
No. 5015	04.12.2003	Petroleum Market Law
No. 5307	13.03.2005	Liquefied Petroleum Gas Market Law
No. 5346	18.05.2005	The Law on the Utilization of Renewable Energy Resources (RER Law)
No. 5627	02.05.2007	Energy Efficiency Law
No. 5685	13.06.2007	Geothermal Resources and Natural Mineral Waters Law
No. 5710	09.11.2007	Construction and Operation of Nuclear Power Plants
No. 6094	29.12.2010	Amendments for the Law on Renewable Energy Resources for Generation of Electrical Energy ¹⁵
No. 6446	30.03.2013	New Electricity Market Law (EML)
No. 6491	11.06.2013	Turkish Petroleum Law (Abolished the former Petroleum Law of 1945)
Communiqué	17.06.2013	Communiqué on Wind and Solar Measurements for Preliminary License Applications
Regulation	02.10.2013	Regulation on Generating Electricity without a License
Regulation	01.10.2013	Regulation on Documentation and Support for Renewables

10 BOTAŞ, an SOE, owns and operates the national crude oil pipeline grid and the national natural gas pipeline grid in Turkey.

11 This table is prepared by the research team through compilation of various EPDK reports.

12 Following the enactment of this law, Competition Authority was established in 1997.

13 Most essential secondary regulation governing the investments in the electricity sector has been amended 35 times between 2002 and 2009.

14 Amended 37 times, violated 175 times through special laws, regulations and decrees between 2002 and 2014.

15 Incentives were differentiated on the basis of resources and a new focus on the introduction of local content requirements.

facilitate a more competitive natural gas market were seen as a part of this reform agenda, it is not evident that government efforts were directed to reach those aims. Besides the natural gas market, privatization of electricity production and distribution process has continued rapidly for last ten years. Turkey still holds her SOEs and regulatory institutions operating in electricity and natural gas markets which are analyzed in the following section.

Introduction to Institutions of Turkey's Energy Sector

This part aims to map out the institutional changes after 2001 and illustrate its successes and shortcomings. It will start with a brief analysis of SOEs and the independent regulatory agency EPDK, which will be followed by an evaluation of the developments in the renewable energy projects.

Energy Market Regulatory Authority (EPDK)

In 2001, the parliament enacted the Energy Market Law and Natural Gas Market Law, two fundamental framework laws regulating the Turkish energy sector. In the same year, Turkey established the EPDK as an administratively and financially autonomous public institution to regulate the energy market. EPDK's regulatory responsibilities include, but are not limited to, issuing licenses, determining transmission and access fees, and setting prices for the natural gas sector. From an advisory side, EPDK is responsible for providing supervision and insight on operation of electricity, downstream natural gas market, and downstream petroleum. The Ministry of Energy and Natural Resources is ultimately responsible for preparing energy policies. EPDK is allowed to issue licenses and draft performance standards, setting out the pricing principles and ensuring infrastructure development. It holds the authority to determine the principles for setting the regulated prices and tariffs as well as publishing regulations, preparing communiqués, and managing license auctions. It is the main independent regulatory board established by the parliament, working as a compliance body over all energy SOEs. Compared to other regulatory boards around Europe, EPDK has wider authority.¹⁶

Turkish Electricity Transmission Company (TEİAŞ)

Turkey's energy sector structure has been subject to many changes in the last 20 years. The vertically-integrated state owned company Turkish Electricity Authority (TEK) dominated the Turkish energy sector until early 90s. In 1993, following the liberalization wave in EU energy markets, TEK was divided into TEAŞ (generation, transmission, and wholesale) and TEDAŞ (distribution). Later in 2001, with the enactment of the Electricity Market Law, TEAŞ was separated into EÜAŞ (generation), TETAŞ (wholesale), and TEİAŞ (transmission), each being a legal entity on its own. TEİAŞ is a monopoly in electricity transmission.

¹⁶ For more detailed comparison with other regulatory bodies see also <http://www.entsog.eu/national-regulatory-authorities-nras>; http://www.erc.org.mk/pages_en.aspx?id=169

Turkish Electricity Generation Company (EÜAŞ)

EÜAŞ is the electricity production SOE, holding %59 of the total generation capacity. In 2014 and early 2015, several electricity generation assets owned by EÜAŞ were privatized. The profit EÜAŞ generated from privatization by the end of 2013 was 8 billion dollars. The table below shows the privatized power plants in 2014 and early 2015. The ones completed by 1 April 2015 include:¹⁷

Turkish Electricity Trade and Contracting Company (TETAŞ)

TETAŞ emerged out of TEAŞ in 2001 with the Electricity Market Law. Created to conduct wholesale operations and take over the existing energy sale and purchase agreements from TEAŞ and TEDAŞ, TETAŞ is currently responsible for trading 48% of Turkey's energy. TETAŞ is also responsible for managing the standard cost associated Build Operate (BO), Build Operate Transfer (BOT) and Transfer of Operating Rights (TOR) generation contracts.¹⁸ During the AKP era, privatization is regarded as a crucial vehicle for establishing a market-oriented economy. In order to inject private capital to the market, the government adopted BOT, BOO, and TOR contractual schemes entailing concessions and government take or pay guarantees. Few of these contracts are awarded without any competitive tender procedure¹⁹. Furthermore, many of these contracts were subsequently investigated by the High Court of Accounts and denounced for high costs, possible irregularities, and incompatibility with competitive markets.²⁰

Energy Markets Operational Joint Stock Company (EPIAŞ)

Another notable change has been the establishment of EPIAŞ in March 2015. Shareholders of EPIAŞ are TEİAŞ (30%), Borsa Istanbul (30%) and other private market operators, which hold the remaining 40%. Creation of EPIAŞ paves the way for opening a new electricity exchange market of its own, which is believed to attract more foreign investors to Turkey and increase competition in the energy sector. The new Electricity Market Law enacted in 2013 envisioned the establishment of EPIAŞ and is a milestone in the quest for competitive, transparent, and liberalized energy markets. Through this law, state economic enterprises in the energy sector have been disintegrated

17 Herdem Attorneys at Law (2013) Turkey Energy Report. (2014). Accessed on 28 October 2014. http://herdem.av.tr/wp-content/uploads/2013_TURKEY_ENERGY_REPORT_FINAL1.pdf

18 Even though one of the main purposes of TETAŞ is to diminish its market participation by creating a trustworthy and profitable market in which the private sector feels confident that competition is fair, the experts interviewed from TETAŞ on December 8, 2015 stated that they do not see TETAŞ's market share decreasing anytime soon. This is due to the fact that when energy sector liberalization was accelerating, TETAŞ provided long term purchase guarantee contracts to BOT and BO projects to stimulate the investors. Most are due to expire in 2019. However, starting from 2013, TETAŞ is envisioned to be responsible for trading 50% of Mersin Akkuyu Power Plant and 100% of the Nuclear Power Plant. Therefore, TETAŞ will witness a transition period between 2019 and 2023, experts say.

19 Atiyas, I. (2012) "Economic Institutions and Institutional Change in Turkey during the Neoliberal Era." Published in slightly revised form: *New Perspectives on Turkey*, No. 14 pp. 45-69.

20 Atiyas, I. and F. Emil (2005). "Political Economy of Governance Failures, Crises and Opportunities for Reform" published as Chapter 4 of *Turkey Country Profile*, Cairo: Economic Research Forum, 2005.

into seven stock companies. EPIAŞ commenced its operations on September 2015 mainly focusing on strengthening the liberalization process in the electricity market in which pricing is determined based on competitive market principles.²¹

Petroleum Pipeline Corporation (BOTAŞ)

The natural gas sector is in the early ages of privatization. In 2007, the monopoly of BOTAŞ, the state owned natural gas pipeline company, was set to be limited in the wholesale sector. In fact, the Ministry of Energy and Natural Resources' intention was to reduce the monopolists' share of imports from 80% to 20% by the end of 2009 through the enactment of National Gas market Law of 2001. However, a revised version of the law drafted in May 2012 puts forward the reduction goal as 50% without specifying any due date. The tender for privatization of Istanbul's Natural Gas Distribution Company (IGDAŞ) is expected after the enactment of the Draft Amendment Law.

Privatization in the natural gas market also started with distribution. EPDK grants distribution licenses through a tender process on a region-by-region basis. BOTAŞ maintains a monopolistic position on the import, transmission, and storage of natural gas. Since natural gas in Turkey is one of the most important strategic inputs as well as a foreign policy issue, the government has been very sensitive in controlling the market. It is also the cheapest fuel and the best choice for the Turkish industry in the foreseeable future. All these factors contributed to the fact that the total length of natural gas pipelines increased by 164% from 2002 to 2011, reaching over 12,500 km.²² Natural Gas Market Law No: 4646 was designed to restructure the legal framework of the natural gas market. This law aimed at increasing competition in the market and moving away from its monopolistic structure by reducing the market share of BOTAŞ. The new law was a first step toward the gradual liberalization and vertical separation of the market.²³ However, the government failed to implement the legislation in practice, despite two contract releases amounting to 10bcm on BOTAŞ's and 30bcm on Russian contracts. BOTAŞ has been unable to transfer further volumes. Moreover, Russia showed limited interest to deal with companies other than BOTAŞ. Private firms that participated in the two tenders since 2005 faced difficulties in bidding due to confidentiality and lack of access to information on the terms of the contracts.

The Natural Gas Market Law imposes significant restrictions on private companies. First, it forbids import companies from signing new natural gas

21 Interviewees voiced many times that the next step should be adopting a similar approach in the natural gas market. Gas transactions are still highly regulated and managed by EPDK and the pricing remains the realm of state authorities. They pointed out that the diplomatic crises with Russia and the threat of energy shortages in the winter of 2016 may quicken the liberalization process of the natural gas sector by breaking up of the BOTAŞ's monopoly over gas imports. Interviewees also pointed out that EPIAŞ should work hard to eliminate imbalanced information distribution in the energy sector and help build stronger ties among all stakeholders.

22 Infrastructure Industry Report prepared by Deloitte for the Prime Ministry Investment Support and Promotion Agency in August 2013.

23 Erdogdu, E (2010) "Electricity Market Reform: Lessons for developing countries". Judge Business School, University of Cambridge, UK. August 2010. MPRA Paper No. 27317.

purchase agreements with countries where BOTAŞ has already concluded a gas sale or purchase agreement. Second, private companies cannot sell and import natural gas corresponding to more than 20% of the estimated national consumption. EPDK is responsible for estimating the natural gas consumption levels. However there is a conflict of interest since according to the Board Decree No.725, EPDK is obliged to take BOTAŞ's opinion on all import activity which might affect the performance of BOTAŞ obligations arising out of its existing contracts and its gas import capacity. Therefore, this decree requires EPDK to consult with BOTAŞ on the technical suitability of all gas imports. BOTAŞ affirmative opinion is required when issuing all import licenses. In short, no import activity will be managed by the private sector, if BOTAŞ determines that this would negatively affect its performance.

If BOTAŞ imports gas at high prices (especially from Iran whose prices are the highest), the government reimburses BOTAŞ through subsidies. Consequently, both the state and BOTAŞ suffer financially from the binding gas price formulas in the contracts.²⁴ BOTAŞ loses millions of US dollars every year by supporting a wasteful subsidies system that creates widespread inefficiencies in the energy sector and the economy as a whole.²⁵ According to Turkey's Banking Regulation and Supervision Agency (BRSA) the level of debt that cannot be serviced in the energy and water sectors has increased 400 times to just over \$3.4 billion between September 2005 and 2015, one of the highest in the economy. The weak Turkish lira has also contributed to the problems confronting the sector. Interventionist approaches and regarding the energy market as a political tool increase vulnerability in gas markets and other international relations variables. The pricing policy of natural gas seems to be motivated by political considerations rather than economic realities since the devaluation in TL is not fully reflected in publicly set prices and BOTAŞ has had to endure substantial losses. In addition, while other European countries managed to secure discounts from Russia, Turkish consumers were left to pay the highest gas bills in Europe. Turkey purchases gas at prices that are often higher than the regulated tariffs, which have been set politically rather than by the market.²⁶ Bearing these vulnerabilities in mind, the Draft Amendment Law for the natural gas market was prepared in 2012 and submitted to the parliament in the summer of 2014.

First, the amendment envisions BOTAŞ's restructuring into three legal entities: One for conducting transmission activities; the second for operating Liquefied Natural Gas (LNG) facilities, and a third to manage gas distribution. Second, the law abolishes the ban on private import companies to purchase gas from countries that currently have existing natural gas purchase agreements with BOTAŞ. This would be a critical step towards further liberalization. Third, in terms of the financial burden of the subsidies discussed above, the Draft Amendment Law envisions subsidies to be used only when they are

24 Rzayeva, G. (2014) "Natural Gas in the Turkish Domestic Energy Market: Policies and Challenges". OIES Paper: NG 82. Oxford Institute of Energy Studies.

25 Natural Gas Europe (2015) Turkey-Russia Stand-off: Energy and a Difficult Neighbourhood. Posted in 30 November 2015. Accessed in 15 December 2015. <http://www.naturalgaseurope.com/turkey-russia-stand-off-and-energy-relations-26797>

26 Sabadus, Aura (2015) Turkey Russian Stand Off: Energy And a Difficult Neighbourhood. Natural Gas Europe: <http://www.naturalgaseurope.com/turkey-russia-stand-off-and-energy-relations-26797>

needed in order to support consumers in particular regions or for particular purposes. Therefore these subsidies will be in the form of reimbursements to consumers without any price interventions.²⁷ Lastly, different from the Natural Gas Market Law (NGML), the Draft Amendment Law delegates the Ministry of Energy and Natural Resources to grant licenses for imports and exports. Sinan Ak, general manager of Turkey's largest generator Zorlu Energy, explains pending changes to the regulatory framework of Turkey's energy sector as essential to increase the volume of gas imported into Turkey.²⁸ Currently, these amendments are still not enacted. The legislative action is crucial for decreasing the monopoly of BOTAŞ over the natural gas sector.

Regulations on Renewable Energy

One of Turkey's 2023 targets (set forth by the government) is to increase the share of electricity generated from renewable sources to 30%, with 98% of this share being hydroelectric. In the first ten months of 2012, in terms of total capacity, 54.7% of energy investments were in renewable energy based facilities. The first Law on Utilization of Renewable Energy Resources (RER) for the Purpose of Generating Electrical Energy Law No: 5346 entered into force in 2005. This law sets the prices that will apply for 10 years for generation facilities that benefit from support mechanisms and are commissioned by the end of 2020. The main regulatory support instruments to promote the use of renewable are feed-in tariffs, quota obligations, and tax exemptions and tenders. These support mechanisms are provided to facilities that obtained RER certificates from EPDK. RER certificates are granted for a year. Even though this law reflects the EU policy in terms of promotion of renewable energy, the most important divergence is that the EU Renewable Energy Law lists the renewable "energy resources as plants using wind, solar, geothermal, wave, tide, biomass, hydrogen and canal- and river-type hydropower as well as hydropower facilities with an installed capacity of less than or equal to 50 MW and a reservoir area of less than 15 square km or a reservoir less than 100 million cubic meters."²⁹

This law only applies to hydropower plants that have a reservoir area less than 15 square km. However in Turkey, large dams with more than 15 square km are categorized as renewable energy sources. In fact, large dams/hydroelectric centrals (HES) constitute approximately 98% of the 29% share of renewables in the energy production. Experts interviewed stress that this causes a shift in interest from river type hydropower plants to large hydropower plants. The installed capacity restriction must be revised so that the law is in compliance with the EU standards. The main drive behind Turkey's determined support for renewable energy (and nuclear power) projects seems to be the need to decrease the current account deficit. Currently, Turkey pays approximately \$60 billion for oil, gas, and coal imports every year, which is equal to 22%

27 Akfel Gaz (2013) DIVID Offers BOTAS to Exit The Market via Volume Release. Enerji IQ Issues: 5. Posted on 3 June 2013. Accessed on 10 November 2015. <http://www.akfelgaz.com/the-year-2013-will-be-the-milestone-of-the-liberalization/>

28 Pascoletti, A. Stevenson, JP (2015) Rewiring the grid: The State, the Market and the State of the Market. Power in Turkey, Global Business Reports, June 2015.

29 Kolcuoğlu&Demirkan (2011) Important Developments in Turkish Renewable Energy Legislation. Energy Law Bulletin. October 2011. Accessed on 2 December 2015.<http://www.kolcuoglu.av.tr/Home/OpenDocument/recentdevelopmentsinenergysector>

of total imports.³⁰ As noted by previous Energy Minister Taner Yıldız, Turkey would save \$5.5 billion USD from imports annually as a result of intense investment in renewable energy power plants. The Renewable Energy Law No: 6094, entered into force on January 2011, designs preferential feed-in tariffs for different renewable energy resources to mobilize further efficient investment (\$7.3 cents for hydroelectric and wind, \$10.5 cents for geothermal, and \$13.3 cents for biomass and solar energy). Moreover, this law provides incentives for domestic production of renewable energy equipment that must have at least 55% local content. Another incentive is that companies investing in renewable energy are provided with 10-year power purchase guarantees and are free to select whether to receive guaranteed feed-in tariffs or sell the electricity on the wholesale markets.

EPDK initiated pre-license tenders in 2013 for a solar energy portfolio, including projects that have a combined generation capacity of 600 MW. Prior to 2013, solar energy projects were not subject to a license regime. During the first round of tenders, EPDK received 496 applications for a total capacity of 8,900MW.³¹ This shows that investor appetite is high. Experts from European Climate Foundation, interviewed, stated that investors of solar energy are extremely motivated and ready to invest regardless of favorable feed-in tariffs. They also stated that the new regulation that frees generators below 1 MW from the obligation to gain licenses is a positive policy since it will increase the number of stakeholders in the market. The downside is that generators cannot enter the market without the prior authorization of the distribution companies. Since the same actors exist in both the generation and distribution sectors, there is unfair competition that may lead to favoritism. Energy efficiency experts further mention the fact that consumers are unable to choose their own energy distribution is a roadblock for increasing the market share of renewables.

Additionally, the renewable energy facilities, related roads, and transmission lines established in a forest area or on Treasury land benefit from 85% discounts on land allocation, lease or utilization fees for ten years, starting from the date when construction starts, provided that the generation activity commences before 2020. Furthermore, upon the relevant ministry's or the relevant regional protection committee's approval, renewable energy facilities can be established in national parks, natural parks, near natural monuments and conservation zones, protected forests, wildlife protection areas and special environmental protection areas. Experts from the Union of Chambers of Turkish Engineers and Architects (TMMOB) Energy Unit that we interviewed³² indicated that they have not come across any examples of bribery and favoritism in EPDK's license distribution, but there were times when environmental lawyers won lawsuits for the cancellation of licenses due to inadequate Environmental Impact Assessment Reports (ÇED), though EPDK allowed the continuation of infrastructure activities. An environmental lawyer from the Lawyers of Environment and Ecology Movement (ÇEHAV) interviewed³³ for this research

30 Rzaeva, G. (2014) "Natural Gas in the Turkish Domestic Energy Market: Policies and Challenges". OIES Paper: NG 82. Oxford Institute of Energy Studies.

31 PwC (2014) Spotlight on Solar Power in Turkey. Accessed on 12.12. 2015 <https://www.pwc.com.tr/en/publications/industrial/energy/pdf/turkiyede-gunes-enerjisine-genel-bakis.pdf>

32 Interview conducted on 20 October 2015.

33 Interview conducted on 3 November 2015.

mentioned examples from the construction of 3 wind power plants (RES) in the Aegean Region. She stated that as a part of the 2013 incentives, EPDK lifted the ÇED report obligation for wind turbines that produce less than 50 MW of electricity. After a series of lawsuits, this incentive was removed. She pointed out that construction of wind power plants continue even though there is an on-going legal process. By the time lawsuits result in favor of ÇEHAV (which they usually do) and judiciary asks for the cancellation of construction, the sites' infrastructure is already half finished.

Similarly, according to the New Electricity Market Law No: 6446, electricity generation companies are required to fulfill a pre-licensing procedure from EPDK to complete the necessary process to be granted a full generation license. A pre-license allows holders to obtain further approvals, permissions, licenses and similar authorizations while beginning investments in generation plants, as well as acquiring property at the proposed site of the generation plant. This allows infrastructure work to start before the actual construction of the power plant is approved. This arrangement created problems during the legal action taken against the hydroelectric power plants and wind turbine projects that started the infrastructure project before the ÇED was finalized and approved by all parties. When it comes to climate change related matters, the Turkish government refrains from prioritizing decarbonized interconnected market systems. Government projections remain very much high-carbon focused. The opening of the Energy Chapter in 2016 might stimulate the Turkish government to further push for renewable energy production.

This part focused on mapping out the legislative framework of the institutional roles of energy SOEs, to fully present the changes that have occurred over the last two decades. As mentioned above, the government's dedication to liberalizing the electricity market is evident in the series of laws enacted in the past, whereas reforms in the natural gas market face roadblocks due to BOTAŞ's monopoly. Several energy experts interviewed³⁴ stress that this monopoly has to be overcome if Turkey strives to become an energy hub. Currently BOTAŞ holds the sole responsibility of ensuring energy supply security of the entire country. If a transparent, open, and well-regulated competitive market is established in Turkey, this can facilitate a cost-based pricing system to be adopted in gas markets.

Financial Management of Energy SOEs

This part aims to evaluate the efficiency of the financial management of the five Turkish energy SOEs³⁵ through four financial performance ratios: Quick ratio, liquidity ratio, debt ratio, and long-term debt ratio. Financial performance ratio calculations are based on the financial indicators collected from the Annual Reports of the SOEs and The Court of Accounts (TCA) SOE Reports.³⁶ Since the ratios will be scrutinized by referring to the auditing reports of TCA, which have been submitted to Parliamentary Commission of SMEs and available online, it is significant to first interpret the auditing procedures of SOEs by referring to the central role of the TCA.

³⁴ Interviews conducted in December 2015.

³⁵ BOTAŞ, EÜAŞ, TKİ, TETAŞ, TEİAŞ. EPIAŞ have been left out since it was established in September 2015.

³⁶ These data include: Total assets, total debt, equity, current assets, current liabilities, long-term debt, EBIT (operating income), and net profit.

Auditing of SOEs

In 2005, with an amendment to the constitution, the TCA was given the authority to investigate, monitor, and resolve all issues regarding spending of public offices. This marked many firsts for Turkey and pushed accountability standards to levels demanded by IMF, World Bank (WB), and EU acquis. Yet this law came into effect in 2010 with last minute changes that cast doubt on the transparency of the court. In short, even though the amendments in 2005 were a step forward to tackle long-standing lack of transparency problems in Turkish state institutions, legislative changes made afterwards narrowed the scope of auditing to a great extent. This created an environment for mismanagement in state institutions to go unnoticed. Nevertheless, the Court of Accounts reports on energy SOEs are published regularly and can be found online, which enables an independent and effective auditing of the SOEs in the parliament's SOE commission by lawmakers. However, the parliamentary debating time provided to the court's report diminished over time. Experts³⁷ note that instead of being properly debated in the parliament like before 2010, auditing reports on public institutions are being mostly discussed within the TCA. They agree on the view that Courts of Accounts reports must be sent to parliament before discussions, to provide related working groups with sufficient time to review the report.

Financial Performance Ratios

TABLE 3: QUICK RATIO OF ENERGY SOES³⁸

	2011	2012	2013	2014
BOTAŞ	1.49	1.32	1.44	1.31
EÜAŞ	5.30	4.50	3.71	3.03
TKİ	3.04	5.53	6.12	7.15
TETAŞ	0.46	1.27	1.15	1.47
TEİAŞ	1.90	1.90	1.72	1.63

The current ratio of a company allows us to understand companies' ability to meet its short-term debt and payables with its short-term assets. It also provides a general overview on the financial situation of the company. The data show that in the recent years all energy SOEs are able to meet short-term debts. Since higher current ratios indicate greater capability for the company to pay its obligations, it is clear that TKİ among other SOEs is in better condition to repay its short liabilities. Even though TEİAŞ and BOTAŞ showed

slight decreases in their current ratios over the last five years, it is still above 1, which signifies sound financial condition.

TABLE 4: LIQUIDITY RATIO OF ENERGY SOES (2011- 2014)

	2011	2012	2013	2014
BOTAŞ	0.18	0.07	0.01	0.19
EÜAŞ	1.00	0.34	1.03	-0.52
TKİ	1.28	2.20	0.92	0.31
TETAŞ	0.02	0.30	0.09	0.04
TEİAŞ	0.22	0.51	0.28	0.56

The liquidity ratio shows the ability to repay short-term liabilities with cash. If the ratio is above 1, it means that short-term creditors can be fully covered by the current cash state. This ratio indicates that BOTAŞ, TETAŞ and TEİAŞ were not able to manage their current short-term debts without external help between 2011 and 2014. Except EÜAŞ in 2013, no energy SOE in Turkey was able to cover short-term creditors with current cash in the last two years. When compared to the

³⁷ Interviews conducted in December 2015.

³⁸ Ratios are calculated by the research team depending on the financial data gained from the annual reports of the five selected SOEs.

current ratio, liquidity ratios present a whole different reality as almost none of the companies surpass the 0.2 level, except TKİ.

TABLE 5: LONG –TERM DEBT RATIO OF ENERGY SOES (2011 – 2014)

	2011	2012	2013	2014
BOTAŞ	0.03	0.04	0.05	0.06
EÜAŞ	0.08	0.07	0.07	0.18
TKİ	0.04	0.03	0.05	0.13
TETAŞ	0.80	0.02	0.01	0.02
TEİAŞ	0.15	0.13	0.13	0.13

Long-term debt ratios show the percentage of the corporation's assets that are financed with loans and financial obligations lasting more than one year. A yearly decrease in this ratio would suggest that the company is progressively becoming less dependent on long-term debt to grow their business and vice versa. According to this, it is clear that no energy SOE's long term debt ratios remained intact in the last 4 years. While TETAŞ showed a drastic decrease from 0.8 to 0.02 from

2011 to 2012, that level has remained since then.

TABLE 6: DEBT RATIO OF ENERGY SOES (2011 – 2014)

	2011	2012	2013	2014
BOTAŞ	0.57	0.65	1.00	0.57
EÜAŞ	0.17	0.18	0.21	0.31
TKİ	0.14	0.10	0.18	0.23
TETAŞ	5.94	0.80	1.00	1.00
TEİAŞ	0.30	0.30	0.31	0.31

The debt ratio measures the extent of a company's leverage. This is important because it can be interpreted as the proportion of a company's assets that are financed by debt. The higher the ratio, the more leveraged the company. This poses a financial risk for the company. TETAŞ appears to be the SOE with a badly managed debt ratio, consistently at higher levels compared to the other companies. However, they showed a decreasing trend from 2011 to 2012, which might be due to the before mentioned bad financial state TETAŞ

went through in 2011 TEİAŞ does not show any significant change in the debt ratio and maintains a solid 0.3 as an indicator of solid financial state.

Financial Evaluation

Evaluations below are based on the financial auditing papers of the Undersecretariat of Treasury and TCA.

BOTAŞ

Gross sales of BOTAŞ in 2014 have reached 37.5 billion TL with an increase of 14.2% compared to the previous year. 96.9% of these sales were domestic, while 3.1% were exports. 90% of BOTAŞ revenues are made up of income from gas sales, 5% from transmission activities, and 2% from petroleum transport. Costs in 2014 reached 39.1 billion TL with an increase of 19.4%. Breakdown of costs is as follows: 95.6% gas purchasing costs, 3.6% costs arising from transmission activities. Despite the rise in sales, 19.4% increase in costs led to an operating loss of 1.8 billion TL for BOTAŞ in 2014, and resulted in a loss of 587.3 million TL for the financial year. Corporations spent 535 million TL in 2014 for investments.³⁹ Given that interest and exchange rate differences due to liabilities will cause disruption in the financial structure of

³⁹ Report by Undersecretariat of Treasury: <https://www.hazine.gov.tr/tr-TR/Rapor-Sunum-Sayfasi?mid=615&cid=27&nm=42>

the corporations, measures should be taken in order to strengthen financial structure. Despite the fact that corporate activities for the year 2013 resulted in a profit of 1.6 billion TL, a ratio could not be analyzed, as the previous financial year resulted in loss and there is no opportunity to make a comparison.⁴⁰

EÜAŞ

Gross sales revenues of the company for 2014 was 9 billion TL, operating loss 1.5 billion TL, financing expenses 173.9 million TL, and loss for the financial year 2,5 billion TL. As of the end of the year 2014, total value of EÜAŞ assets was 22.1 billion TL. 8.73 billion TL of the assets was current assets (39.5%) while 13.4 billion TL was fixed assets (60.5%). For the same financial year, the Company had 4.1 billion TL long-term liabilities, 2.9 billion TL short term liabilities, and 15.1 billion TL equity.⁴¹ Based on the assumption that all funds used by the company are equity, the ratio has reached 14.6 with an increase of 11.5 points due to a significant increase in financial year profits despite the decrease in financing expenses.

TKİ

By the end of 2014, TKİ owns 3.7 billion tons of coal reserves. TKİ produced 21.7 billion raw and 14.9 million salable coal in 2014. As a result of the Cabinet Decree on Providing Coal Aid to Poor Families numbered 2014/6219, 2,096,446 families are provided with 2 million tons coal in total without charge. This amount constitutes 11.3% of the wholesale amount. Due to vast power plant privatization in the last couple of years, TKİ's sales revenue increased by 5.6% from 2013. TKİ closed 2014 with a net loss of 8.9 million TL.

TETAŞ

TETAŞ is the one and only state owned wholesale company established in 2001. In 2014, TETAŞ bought 123.1 billion kWh electricity for 20.9 billion TL in total. Approximately 52% of the purchased energy was bought from EÜAŞ owned power plants, and 46% is from public entities with long term agreements (BO, BOT, TOR). The average energy purchase unit cost increased by 1.4% to 17.02 kr/kWh. On the other hand, the average energy sales unit rate decreased by 4% to 17.19kr/kWh. Due to 1.4% decrease in purchase cost and a 4% decrease in selling prices, net profit decreased to 25.4 million TL with a 95.6% decrease from the prior year. TETAŞ in general demonstrates weak financial condition in 2011. According to an expert from TCA⁴² this may be due to subsidy mechanisms. The subsidy mechanisms that aim to benefit some disproportionately more than others are common practice in the electricity sector. In fact, cross-subsidy trends in the electricity sector results in purposefully managed profit levels between EÜAŞ, TEDAŞ, TETAŞ and TEİAŞ. One year TEİAŞ looks more profitable, and another year EÜAŞ is in better shape. The bad financial state of TETAŞ in 2011 therefore might be a result of sectoral mismanagement rather than an institutional one. Due to this equalization mechanism, the prices for different regions are set to be the same

40 2013 Report by Court of Accounts: <http://www.sayistay.gov.tr/rapor/rapor2.asp?id=20155>

41 Report by Undersecretariat of Treasury

42 Interview conducted on 24 December 2015.

and the higher cost regions' losses are charged to consumers from other low-cost regions. The other side is that the costs of the regions that have high levels of electricity theft (and loss) are cross-subsidized by the regions with lower levels. Although cross-subsidizing and equalization mechanisms serve the short term interests of the SOEs, they are not sustainable in the medium and the long term, according to experts from the Court of Accounts. Also, as pointed out by OECD, estimating the extent of this subsidy is complicated by the fact that the financial positions of TEDAŞ and TETAŞ are not stable, but it appears that the degree of cross subsidy is large compared with most other countries.

TEİAŞ

While the investment allocation of the company for the year 2014 was 1.1 billion TL, the relevant amount was increased to 1.6 billion TL by the Higher Planning Council Decision no. 2014/40 on 19/12/2014. Net sales revenue for 2014 was 22.6 billion TL and profit for the financial year was 1.4 billion TL. As of the end of the year 2014, total value of TEİAŞ assets was 12.9 billion TL, 3.4 billion TL current assets (26.4%) and 9.5 billion TL fixed assets (73.6%). For the same financial year, the company had 1.6 billion TL long-term liabilities, 2.1 billion TL short term liabilities, and 9.2 billion TL equity.⁴³ When compared to the previous financial year, there was a decrease of 2.2 points in current ratio and 1.5 points in liquidity ratio. As the company is able to meet short-term liabilities with current assets, there is no bottleneck in terms of short-term liabilities. Equity in the company in 2013 increased 4.4% while operating margin/equity ratio decreased 4.4 points when compared to the previous financial year due to a decrease of 28.2% in operating margin. Total return on assets for the company was 8.8%, while the economic profit ratio, calculated by taking into account financing expenses (187.511 thousand TL) and funds used in investments, which were yet to be operationalized (811.459 thousand TL) was 11.1%, a decrease of 0.8 points.⁴⁴ This part aimed at presenting a complete picture of the financial management of energy SOEs by calculating the financial performance ratios, explaining the auditing structures of SOEs and summarizing the financial analysis in the Undersecretariat of Treasury and TCA reports. The next part will address the institutional management framework of energy SOEs.

Corporate Governance of Energy SOEs

This part will start by discussing the operational autonomy of SOEs, continues by evaluating the legal framework for political oversight of SOEs, and ends by giving examples from controversial corporate governance decisions of energy SOEs. This part aims to chart out whether clientelism and favoritism issues prevail in the energy SOEs. State owned enterprises in Turkey constitute a significant part of GDP and exist mostly in industries that are of great importance to broad segments of the economy. Besides offering broad employment opportunities and market capitalization, they are, however, susceptible to political agenda. The main challenge for these enterprises is to find a balance between the state's responsibility for actively exercising its ownership function, such as nomination and election of the board, but at the same time refraining from imposing undue political interference in management decisions.

⁴³ Report by Undersecretariat of Treasury

⁴⁴ 2013 Report by Court of Accounts

The gross revenue from the privatization of SOEs in Turkey stands at around \$60 billion for the period of 1985-2014.⁴⁵ Currently in Turkey, 50 out of 188 companies that used to be owned by the state are fully privatized and another 128 are partially privatized. In 1985, 650,000 people were working in SOEs. This number has been reduced 19%, to 528,000 by year-end 2014.⁴⁶ Turkish SOEs operations are closely governed by the Turkish Competition Authority⁴⁷ who accepted OECD's Compliance Regulations in 2012. Even though Turkey embraces OECD Guidelines on Corporate Governance of State-owned Enterprises (2005) as a main reference document, the Turkish government stated on many occasions that the document has to be modified to address the realities faced in developing countries like Turkey. Similarly, The Capital Market Board (CMB) adopted the Corporate Governance Principles in 2003 and applied a revision in 2004. From 2004 onwards, SOEs are obliged to publish compliance reports with the CMB.

Operational Autonomy

The role of the Ministry of Energy and Natural Resources is significant while analyzing the independence of energy SOEs. The budgets of SOEs are subject both to political elites' preferences and parliamentary supervision. The CEOs of SOEs are obliged to submit their declaration of conflicts of interest according to Law No: 5176, the Law on the Ethics Council for Public Officials. The council has authority to evaluate any unethical behavior of public officials including the CEOs, but no authority to enforce sanctions.

The promotion process for other junior positions is defined by the law – which is considered by the experts as the basis of a fair and independent promotion policy. For instance, interviews from TETAŞ⁴⁸ pointed out that their yearly "Promotion Determination Exam" is run by the university who offers the most suitable offer. In 2015, it was Ankara University who ran the exam and analyzed the results. The TETAŞ Executive Board promoted assistant experts to experts by following the test scores and the recommendation letters of the university professors. The state does not have directing functions and is effectively managing SOEs through explicit and direct instructions to CEOs.⁴⁹ Besides, the ministry and the parliament maintain control of SOEs through its budget related issues. The budgets of SOEs are prepared annually, approved by executive board, while the ministry holds its authority to demand a long-term budget rather than an annual one. The assignment of high level

45 Türker, Y. (2014) "Strength in Flexibility in Turkey: Updating Corporate Governance in a Changing World." World Bank. Accessed on 1 December 2015. <http://www.worldbank.org/en/news/feature/2014/07/14/strength-in-flexibility-in-turkey>

46 US Department of State 2014 Investment Climate Statement – Turkey. Bureau of Economics and Business Affairs. June 2014.

47 CMB's powers and responsibilities have been broadened with 2011 amendments to the Capital Market Law. Since 2011, CMB has the authority to ask courts for precautionary legal measures file a lawsuit for execution of the relevant corporate governance rules and impose pecuniary fines.

48 Interview conducted on 8 December 2015.

49 The instructions, which cover the duties and responsibilities of energy SOEs, are determined by legislation and each and every implementation is subject to the law, experts from EPDK interviewed on 8 October 2015 stated.

bureaucrats to SOEs is made by a 'decree of three'.⁵⁰ Thus, there is no basis to claim that there has been an explicit intervention of state officials on the decisions of energy SOEs in terms of its implementations within the market. Nevertheless, through appointment of executive board members, political elite preserve influence on the SOEs, which will be discussed in the next section.

Legal Framework for Political Oversight of SOEs

In the post-1980 period, the first regulations to be issued regarding privatization were Law No. 2983 in 1984 and Law no. 3291 in 1986. In accordance with Law no. 4046, enacted on 24.11.1994, it ensured that enterprises included within the scope and program of privatization shall be subject to private law and that the contradicting provisions in the law of establishment of such enterprises, if applicable, and in other laws, as well as the provisions of the Decree Law no. 233, shall not be applied to these enterprises. Even though there was a need for further regulation to clarify the definition and scope of SOEs, no change has been made in the SOE legislation, which resulted in further confusion. The Laws No. 3460 and 440 stipulated that SOEs shall be established through laws while post-1980 regulations empowered the Council of Ministers for the establishment of SOEs. All these regulatory efforts have failed to eliminate the confusion regarding the definition and the scope of SOEs. For instance, Municipality Owned Enterprises (MOEs) in particular, established by municipalities, have been excluded from SOE legislation and the exceptions introduced in this regard further constricted the scope of SOEs. The definition and legal status of SOEs and affiliated organizations, foundations, associated partners as well as subsidiaries have been regulated in the Decree Law no. 233 in force, acting as the framework legislation on SOEs. The Decree Law no. 233 specifies that the relevant ministries have supervision and control authority over SOEs in terms of implementation of organization, foundation and associated partner activities in line with provisions of laws, regulations and by-laws. However, the decree law in question also guarantees that the above-mentioned supervision and control authority shall be used in a way to avoid any constriction in tasks and authorities as well as any disruption in normal activities of such enterprises.

Energy SOE's executive board appointments are also managed according to Decree Law no. 233 and appointments are made by the "decree by three." According to the interviewees working for TEİAŞ, EÜAŞ and TETAŞ, appointing high-level representatives of the institution inevitably contributes to political interference. The interviewees stated that the bureaucrats appointed by the 'decree of three' are independent, while participating in decision-making processes in principle. There was no expression of any political and corporate manipulation towards the decisions of executive board. Further, the authority of the Court of Accounts to investigate the budget of TEİAŞ and EÜAŞ proposes a parliamentary surveillance mechanism over its decisions. This parliamentary supervision of the implementations of SOEs, which brings the parliamentary opposition into the picture at the same time, is significant in terms of accountability of the institution by all means. The executive

⁵⁰ This is a type of governmental decree that is signed by President, Prime Minister, and the Minister responsible for the related institution.

boards of energy SOEs consists of a CEO, two deputy general managers, two senior officials from the Ministry of Energy and Natural Resources and a treasury appointee. If the SOE has come under the privatization realm, active politicians and bureaucrats have the right to become management board members. As an example of this, Celalettin Cerrah, who was Chief of Istanbul Police, was appointed to the TEDAŞ management board in 2006.⁵¹ According to Abdülkadir Ateş, a former opposition party MP, who started to investigate political connections in the executive boards of electricity distribution companies, these appointments are aberrant, since these people appointed to executive boards are not qualified on energy issues at all.⁵²

According to the Turkish Parliament Official Records, Mr. Ateş submitted a formal written question to the speaker of the assembly on 5 April 2006 asking for official data on the Executive Boards of 19 distribution companies related to TEDAŞ. The answer received on 23 May 2006 indicated that out of 76 Executive board members of 19 companies, 39 (51%) were from TEDAŞ, 11 (14%) were from the Privatization Administration, 4 (5%) were from the Ministry of Energy and Natural Resources, 4 (5%) were from the Ministry of Economics, and 2 were from the Prime Ministry.⁵³ The remaining 14% was from the Istanbul Police General Directorate of Customs whose credentials and qualifications do not overlap with an executive board member of an energy distribution company. The arbitrary appointments were shared with the public by several investigative journalists. Prominent investigative journalism newspaper at the time, Radikal, published a detailed article in 2006,⁵⁴ listing all active politicians, politician's executive assistants, municipality mayors, and head advisors of politicians who entered executive boards of 19 electricity distribution companies after they started to become privatized.⁵⁵ Besides arbitrary appointments, favoritism in the privatization of TEDAŞ also gained extensive media attention in recent years. The next section gives examples from these allegations and reveals the purposefully set laws that facilitate favouritism and clientelism.

Controversial Corporate Decisions of Turkish SOEs

In 2014, by utilizing the financial data presented in TCA reports, Republican People's Party (CHP) MP Aykut Erdoğan stated that the government has had an almost \$2 billion loss due to unpaid loans during privatization of 10 distribution arms of TEDAŞ.⁵⁶ Corruption in electricity distribution

51 Birgün (2006) Tanıdıklara milyarlık maaş. Published on 21 June 2005. Accessed on 23 November 2015. <http://www.birgun.net/haber-detay/tanidiklara-milyarlik-maas-27495.html>

52 Demirdöğen, I (2006) TEDAŞ tam arpalık gibi olmuş. Radikal. 13 June 2006. Accessed 11 November 2015. <http://www.radikal.com.tr/haber.php?haberno=190032>

53 Turkish Parliament Official Records. Term: 22; Volume: 131; Published on 11 October 2006. Accessed on 10 November 2015. Pg. 334. <https://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d22/c131/tbmm22131006.pdf>

54 Demirdöğen, I (2006) TEDAŞ tam arpalık gibi olmuş. Radikal. 13 June 2006. Accessed 11 November 2015. <http://www.radikal.com.tr/haber.php?haberno=190032>

55 Examples: AKP Deputy Chairman Salih Kapusuz's relative İbrahim Kapusuz became Başkent Electricity AŞ General Manager Assistant; Mr. Erdoğan's advisor Hasan Tahsin Fendeoğlu assigned to Uludağ Distribution AS Executive Board Member; Minister of Energy Hilmi Güler's advisor appointed to Çamlıbel Distribution AŞ; Minister of Energy Hilmi Güler's advisor appointed to Dicle Distribution AS.

56 TBMM General Assembly Notes from a session on 20 March 2013. https://www.tbmm.gov.tr/develop/owa/genel_kurul.cl_getir?pEid=11673

privatizations made headlines in several cases. Mostly, it has been argued that the government has almost paid additional fees to private investors to participate in tenders.⁵⁷ After this statement of Erdoğan, the Ministry of Energy and Natural Resources released a declaration on these issues. On the one hand, The Ministry claims that the prices have always been negotiable within tender processes, and on the other, the energy prices are always subjected to international prices which could lead to a profit or loss according to instant price changes in international markets. For instance, the Court of Accounts 2013 review of Firat and Meram Electricity Distribution Companies and the comparison of the accounts before and after the privatization show that energy SOEs were sold to the private enterprises with remaining cash on hand and stock. Plus, TEDAŞ paid the remaining debt of the company. Before the privatization, the bank accounts of Meram and Firat Electricity Distribution had negative balances, the Courts of Accounts points out.⁵⁸ However after the privatization was completed, the bank accounts balance was back to positive. During the privatization period, TEDAŞ claimed its account balance was approximately 4.5 million TL, whereas it was actually approximately 15 million TL. 12 days after the privatization was completed, the account balance had risen to 30 million TL.⁵⁹ As a result, Parliamentary State Owned Enterprise Commission asked TEDAŞ Inspection Board to start an investigation. The final report of investigation, delivered to the Court of Accounts, revealed that both enterprises were left to private entities with 10-30 million TL cash on hand and stock. However on 30 January 2013, with the changes in Law No: 6353 Article 22 and Law No: 4628 Article 2/Clause 2/Paragraph 8, authorization to finalize any sort of investigation activity on the electricity distribution companies was yielded to the Ministry of Energy and Natural Resources. This change in law eliminated further evaluation and utilization of TEDAŞ Inspection Board and The Court of Accounts reports.⁶⁰

The privileges given to the private entities that bought state owned distribution companies can also be found in legal documents. Close examination of the "Privatization in Turkey Electricity Distribution Sector"⁶¹ white paper implies that private enterprises selected to manage privatized distribution companies are provided with opportunities to make the investment look more favorable. For instance according to Section 3: Investor Evaluation, the possibilities and opportunities provided to the investors are as follows:

"If the investors demonstrate a better performance than the loss/leaked electricity levels set by EPDK, the company has the right to keep the additional income. By this means, it will become possible to decrease loss/leaked electricity levels to one digit numbers (In 2012, it was 14%, in 1992

57 Cumhuriyet (2013) Yok böyle alışveriş. Published on 07 May 2013. Accessed on 9 December 2015. http://www.cumhuriyet.com.tr/haber/diger/420164/Yok_boyle_alisveris.html

58 Enerji Postası (2013) Sayıştay TEDAŞ'ı Mercek Altına Aldı. Posted on 27 May 2013. Accessed on 9 December 2015. <http://www.enerjipostasi.com/3991--HaberGostersayistay-tedas%E2%80%99i-mercek-altina-aldi!.html>

59 Demirdöğen, I (2006) TEDAŞ tam arpalık gibi olmuş. Radikal. 13 June 2006. Accessed 11 November 2015. <http://www.radikal.com.tr/haber.php?haberno=190032>

60 Enerji magazine (2013) Elektrik Dağıtım Özelleştirmeleri İçin Yolsuzluk İddiası. Accessed on 15 November 2015. <http://enerjimagazin.com/haber-326-Elektrik-Dagitim-Ozellestirmeleri-Icin-YOLSUZLUK-Iddiasi.html>

61 LAZARD. Privatization of Turkey's Electricity Distribution Industry. http://www.oib.gov.tr/TEDAŞ/TEAŞ_er_english.pdf

it was 25%). If the investor manages to obtain electricity for a price lower than the reference price set by EPDK, the company has the right to keep the difference as an additional pay. By this means, low cost power plants will come into effect in short period of time."

It can be argued that these clauses offer favorable conditions to private investors for the distribution companies, whereas putting EPDK in a condition of financial burden. An expert from the Courts of Accounts interviewed⁶² for this research argued that EPDK is an institution that acts "on behalf of the private sector." It represents private sector agenda and objectives. He stated that, "In Turkey, energy prices are set based on the political agenda to favor pre-selected main beneficiaries." The legislative framework and executive board appointments suggest a pattern of selective rent distribution in the privatization efforts of the energy distribution companies.⁶³ These legal and practical factors raise doubts about the existence and extent of state capture in Turkey's energy market. This phenomenon will be discussed more in length in the following part by giving examples from large energy infrastructure projects.⁶⁴

The Role of Competition Regulators on the Energy Market Governance

This part aims to address competition challenges in the natural gas market, the outcomes of the delegation of decision-making power to EPDK, and the autonomy problem of the institution. The modern structure of Turkey's energy market was legally established by the creation of Turkey's Energy Market Law in 2001. EPDK is the main national energy and competition regulator within this regulatory structure. In order to interpret the role of EPDK throughout the 2000s, the transformation of Turkey's energy market (from state-driven to free market) should be stressed in the first place. During the 2000s, there were two main processes to understand the changing character of energy sector regulation: Liberalization and privatization. The state began targeting the most inefficiently operating assets for privatization. Turkey's electricity distribution networks (21 separate distribution regions) were fully privatized by the end of 2013. However, these privatization attempts are not sufficient to claim that the legislative changes during 2000s have meant that the state no longer plays a considerable role in the energy sector.

The government's control and direct intervention in the operation of the natural gas market has continued through the state-owned enterprise BOTAŞ Petroleum Pipeline Company. It holds control over 80% of the wholesale market, and controls 75% of total imports – and transmission, for which it acts as the country's sole operator. Plus, the companies that compete against BOTAŞ in importing natural gas, must sign an agreement with it to transmit their gas as BOTAŞ controls the country's pipeline network. This is diametrically opposite to the EU energy acquis which instructs tariff regulations, ownership unbundling and guaranteed third party access to infrastructure as it is laid

⁶² Interview conducted on 24 December 2015.

⁶³ Turkish Parliament Official Records. Dönem: 22; Cilt: 131; Published on 11 October 2006. Accessed on 10 November 2015. Pg. 334. <https://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d22/c131/tbmm22131006.pdf>

⁶⁴ Chapter 5: Management of Large Energy Infrastructure Projects.

down in articles 9, 32, 41(9), 41(8), 41(10) of Directive 2009/73/EC.⁶⁵ By both being the main player in the natural gas market and subsidizing gas prices in the domestic market, the presence of BOTAŞ displays the way the principles of liberalization and privatization of energy markets have been implemented in Turkey throughout 2000s.

Although the government still plays a significant role especially in terms of intervening in the natural gas market, EPDK's authority over especially the regulation of electricity markets has prevailed during the last 15 years. The EPDK has established an energy sector in which the private sector can carry out investment, trade, and production activities, in which consumers have greater customer satisfaction and service quality. The reforms carried out by EPDK were made within the general framework of the EU harmonization efforts. The state structure in Turkey, which is withdrawing itself from the market as an investor except in extraordinary circumstances, has reorganized itself as far as the energy sector is concerned such that EPDK was established in 2001 in order to perform the regulatory and supervisory functions in the market. EPDK has authority to manage its own institutional management and to conduct investigation and monitoring procedures over the implementations of the market players. EPDK proposes autonomy in terms of managing its own budget alongside with its authority to collect the amounts for license application fees, annual license fees, contribution fees and additional transmission fees. Rather than preparing a second strategic plan, EPDK prepares 'white papers' to be used as a deliberative tool within the sectors – with the participation of the stakeholders. This 'white paper' is to be published at the end of 2015, covering the regulatory framework and detailed procedures of implementation. EPDK tended to attend ACER meetings of EU, however it could not be realized because of the pre-condition of accepting each and every article of EU acquis in order to hold even an 'observer status.' The experts of EPDK claim that this condition is - at the very least - not fair to impose on a candidate country with which the EU has not even opened the Energy chapter during negotiations.⁶⁶ Even the experts of EPDK admit that EPDK is far behind its counterparts in Europe in terms of transparency. However, they claim that the reason for this difference is related with the absence of any regulatory framework for the 'production' of energy in most member states. Besides, as the authority which regulates both the entrance and exit from the market, EPDK tries to deal with huge amounts of bureaucratic work – which somehow harms attempts of being more transparent.

Within this regulatory structure of EPDK, it is plausible to pose a question: How independent is EPDK? The EPDK executive board has been assigned by the cabinet for a period of 6 years. The newly assigned executive board tries to comply more with the EU principle of 'consumer-led energy policy.' It is independent by law, however, by the legalization of statutory decree from 11 August 2011, the Ministry of Energy and Natural resources gained authority to audit EPDK in all manners. By default, energy regulators

65 Energy Community Secretariat (2015) Energy Governance in Turkey: Report on Compliance with the Energy Community Acquis. Accessed on 10 November 2015: https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3894261/25824B882CF017E0E053C92FA8C0EE59.PDF

66 Interview conducted on 21 October 2015.

cannot be independent, if they are appointed by the government without parliamentary approval. Although there is this authority of the Ministry, it has not been used yet since 2011. Nevertheless, the experts claim⁶⁷ that any kind of `independence` issues for any bureaucratic institution within the Turkish system is directly related with the overall political culture of Turkey – implying hardships observed in trying to act independently for the last couple of years. On the one hand, experts state⁶⁸ that there is no judicial statement that subjects EPDK as not being independent and/or being biased amongst several legal cases. On the other hand, experts argue that a high volume of applications for new licenses indicates that there is a positive perception among sector players in terms of the independency of EPDK. Seeing it as an indicator of high levels of trust, energy experts give examples from EPDK's ability to ensure supply security. Although there is no public hearing mechanism of EPDK, the regulatory institution organizes annual evaluation seminars with the participation of stakeholders. Further, every strategic document and activity report has been sent to the stakeholders as a draft in order to collect their views before publication. Enforcement of the Law No: 644 EPDK is subjected to a legal necessity to prepare annual activity reports. There is also an internal auditing unit within the bureaucratic scheme of EPDK which conducts monitoring for each and every unit. Auditing reports are sent to the executive board for assessment.

Nevertheless, the autonomy of EPDK is not guaranteed since all of its board members are appointed by the Council of Ministers. There is also no explicit requirement for relevant experience in the energy market. In addition, board members can be re-appointed after their term expires.⁶⁹ Articles 5 and 6 of the EPDK Law state that EPDK board members cannot take active duties in public or private institutions during their membership and cannot have any relationship with the entities in the energy market. However, contrary steps can be taken.⁷⁰ To sum up, BOTAŞ's monopoly over the natural gas market opposes the EU's unbundling ownership principle and even though the establishment of EPDK managed to contribute to the substantial delegation of decision-making power in the energy sector, weak independence may have compromised the credibility of the regulatory authority.

Management of Large Energy Infrastructure Projects

This part aims to address potential red flags for alleged clientelism and political patronage of two selected energy projects: Trans Anatolian Natural Gas Pipeline Project (TANAP) and Akkuyu Power Plant. These will be identified through analyzing the process of decision-making, cost inflation, misleading market projections, and violation of competition rules based on EU energy acquis.

67 Interview conducted on 23 December 2015.

68 Interview conducted on 11 October 2015.

69 Electricity Market Law No: 4628. The Energy Market Regulatory Board and Chairman's Office, Article 5. Enactment Date: 03.03.2011 http://www.enermet.com.tr/upload/mce/legislations/1_turkish_electricity_market_law.doc.

70 The most recent example is that Berat Albayrak, who served as the CEO of one of the most powerful energy companies Çalık Holding and who is the son-in-law of President Erdoğan, started working as the Minister of Energy and Natural Resources from 25 November 2015 onwards.

Trans Anatolian Natural Gas Pipeline Project (TANAP)

TANAP aims to transport natural gas from the Caspian region to Europe through Turkey and is an investment worth of \$7 billion.⁷¹ It is strategically significant since it is a solid step for Turkey to become an energy hub between the natural gas-rich East and large energy consumers of the West. TANAP requires a 1377 km long pipeline construction in Turkey. The construction of the first 337 km of this pipeline starting from the Georgia border and ending in Eskişehir is allocated to the Fernas Construction company that was a part of the energy sector corruption scandals in the past.⁷² The former President of the Board of Directors Muzaffer Nasiroğlu was sentenced to 2 years and 6 months in prison in 2003 as a result of the Blue Stream investigations.⁷³ Furthermore, long before his investigations, Mr. Nasiroğlu was arrested in February 2005 because of corruption and bribery allegations and convicted on 7 May 2005. As for political links, the owner of Fernas⁷⁴ Construction, Ferhat Nasiroğlu, is AKP Batman MP Nezir Nasiroğlu's cousin.⁷⁵ Another connection that might have led to state capture is that TANAP is owned by an Azeri firm SOCAR. One of the shareholders of this firm is AR Enerji, owned by President Erdoğan's brother-in-law Ziya İlgen. According to previous CHP Corruption Research Unit President Aykut Erdoğan, the 2001 Natural Gas Agreement with Azerbaijan was changed so that Turkey was left to pay a \$1.4 billion price gap for the last one and a half years.⁷⁶

By default, BOTAŞ transports natural gas for \$11 per 1000 m². However, it is not allowed to transport TANAP gas for the same price. Moreover, BOTAŞ is unable to utilize this gas from the pipeline before Eskişehir. When trying to distribute the gas from Eskişehir to other cities, transportation cost for BOTAŞ rises to \$79 per 1000 m² gas. When it tries to do the same from Edirne, the cost rises to \$103 per 1000 m². In short, BOTAŞ transports TANAP gas for approximately \$90 more when it can transport other gases for \$11. In addition, according to the bilateral agreements these levels are subject to increase 1% every year for the next 15 years. Mr. Erdoğan calculates the loss of BOTAŞ as \$7.5 billion, if they agree to transport 6 billion m² gas from TANAP for the next 15 years. This deal has been given to the SOCAR-BP-BOTAŞ partnership, which resulted in a \$7.5 billion public

71 TANAP's bilateral agreements between Turkey and Azerbaijan were approved by Law No: 6375 on January 2013. Following approval by the Council of Ministers, the Agreements were published in the Official Gazette on 19 March 2013 and entered into force.

72 Today's Zaman (2007) "Özdemir, top bureaucrats taken into custody." October 27, 2007. Accessed at 12 December 2014. http://www.todayszaman.com/business_ozdemir-top-bureaucrats-taken-into-custody_125658.html

73 Erşin, Tamer (2015) Yolsuzluk ve Rüşvet Tanap'la Döşenecek. Evrensel, 19 February 2015. Web. 10 November 2015. <http://www.evrensel.net/haber/105288/yolsuzluk-ve-rusvet-tanapla-dosenecek>

74 Fernans Construction received more bids worth of total 232 million TL. Public procurement bid record of Fernans Construction is as follows: Hydroelectric plant built on Şirvan, Ankara, Eruh, Karasu dams; distribution of natural gas in urban Diyarbakır, petroleum pipeline construction of Bakü-Tiflis-Ceyhan line; natural gas pipeline construction in Doğubeyazıt-Erzurum line; natural gas pipeline construction of Samsun, Kombine, Çevrim and lastly development and improvement of the Russia-Turkey natural gas pipeline.

75 As for the process of decision-making, 15 companies entered to the TANAP tender – 11 being foreign companies and 4 being Turkish. Foreign companies were unable to acquire any of the 3 lots.

76 Birgün Newspaper (2015) Aykut Erdoğan'dan Enerji Bakanı'na Yanıt. 24 Ekim 2015. Web. <http://www.birgun.net/haber-detay/aykut-erdogdu-dan-enerji-bakani-na-yanit-93390.html>

loss.⁷⁷ The Ministry of Energy and Natural Resources released a declaration confronting Erdoğan's claims. The Ministry argues that the problems of NABUCCO project were related with Azerbaijan, not Turkey; TANAP was designed by Turkey in order to set up an advantageous position again after NABUCCO project. The Ministry claims that high construction prices made gas transportation facilities more costly than estimated by representatives of opposition.

Akkuyu Nuclear Power Plant

The Akkuyu project is the world's first nuclear power plant project to use the BOO financing model.⁷⁸ TAEK (Turkish Atomic Energy Authority) began to review the Russian proposal in October 2008 and approved the Russian bid in December, prompting TETAŞ to begin to review the financial and commercial bidding documents in January 2009. The Ministry of Environment and Urbanization approved the ÇED report of Akkuyu on 1 December 2014, hours before the official visit of the President Putin to Ankara. According to the newly elected president of the International Association for Energy Economics, (IAEE Mr. Kumbaroğlu) who was interviewed for this research,⁷⁹ Akkuyu is not a commercial agreement because it does not provide any long term benefit for the Russians. According to the agreement, Turkey will buy electricity at a price of 12.35 US cents/kWh from the Rosatom for 15 years (between 2020 and 2035). This seems a favorable price.⁸⁰ On the other hand, this low price can cause a financial burden for TETAŞ, which already has a weak balance sheet. In addition, after the sale agreement that covers 15 years ends, 20% of the net profit of the power plant will be given to the Turkish side.⁸¹ Therefore, Akkuyu has advantages for Turkey from an economic perspective. The disadvantage is as stated by Turkish Atomic Energy Authority (TAEK) Professor Hasan Saygın: "The nuclear reactor VVER 1200 the Russians are going to build in Akkuyu has not been tried anywhere. It will also increase dependency on Russia drastically." Once Akkuyu starts to operate, Rosatom and Gazprom together will be dominating 74% of Turkey's energy market.⁸²

77 Diken (2015) CHP'li Erdoğan: Erdoğan'ın akrabaları yolsuzluk yapan şirketlerin hissedarı. 22 Ekim 2015. Web. <http://www.diken.com.tr/chpli-erdogdu-erdoganin-akrabalari-yolsuzluk-yapan-sirketlerin-hissedari/>

78 Build-Own-Operate (BOO) is a public-private partnership model in which private entity builds, owns and operates the facility with degree of encouragement from the government. The government doesn't provide direct financial resources in this model, but it may offer other financial incentives (tax-exempt). The developer independently operates the facility. Built Operate Transfer is another public-private partnership model in which private entity transfers the operational authority to public institution once the concession is finalized. Prime Minister Özal first came up with it in the early 1980s.

79 Interview conducted on 16 December 2015.

80 Since July 1, 2015 average price of electricity in Turkey is 13 US cents/kWh.

81 Gürkan Kumbaroğlu, The Economics of Nuclear Power in the Turkish Context Section III <http://www.edam.org.tr/EDAMNukleer/Nuclear%20Report%202012/EN/section3.pdf>

82 Dogan, Z. (2014) Energy deals may make Turkey irreversibly reliant on Moscow. Turkey Pulse, AlMonitor. Posted in 12 December 2014 .Accessed in 9 December 2015.<http://www.al-monitor.com/pulse/originals/2014/12/turkey-russia-nuclear-power-plant-projects.html>

This goes in the opposite direction from the supply security based on diversifying resources principle of Turkey's energy governance goals.⁸³

Rosatom has an incentive to build the plant as fast as possible. If the construction drags on, then more interest will accrue on the loans they took to finance construction. The interest, in turn, will eat into their potential profits – which are already deferred for at least 20 years. Turkey is relying on Rosatom “to handle all aspects of the new program, from the construction to the day-to-day operation, and even the regulation,” according to U.S. Nuclear Regulatory Commission (NRC) Chairman Allison Macfarlane.⁸⁴ Moreover, after the IAEA visited Turkey in November, they “recommended on Feb. 20 that Turkey enact a law establishing an independent regulatory body to oversee its ambitious nuclear building program,”⁸⁵ the Vienna-based agency said in a statement. The recommendation came in a report, not made public, on an IAEA Integrated Nuclear Infrastructure Review mission that visited Turkey in November. Apart from that, the parliamentary process for the approval for the construction of Akkuyu Project was not transparent and accountable. As stated by Mr. Kubaroglu, the Energy Ministry refused a court request to see the IAEA report on Akkuyu. The issue of nuclear power has been widely debated and highly controversial in the civil front of Turkey as well. Greenpeace and various local environmental organizations expressed serious concerns and staged protests in opposition to the power plant due to potential environmental degradation. Greenpeace also claimed the construction had begun way before the environmental impact assessment

83 As to the centrality of energy in Turkey-Russia relations, the Erdogan-Putin meeting to restore the relations in the aftermath of the 15 July coup attempt should be noted. During the meeting, trade and energy ties were at the forefront; and both leaders emphasized the importance of joint energy projects. See for further information: <http://www.reuters.com/article/us-russia-turkey-idUSKCN10K19T> , <https://southfront.org/russia-turkey-resume-turkish-stream-akkuyu-nuclear-power-plant-projects/>

U.S.NRC (2013) Remarks of NRC Chairman Allison M. Macfarlane in American Nuclear Society Winter Meeting. November 11, 2013. Accessed on 1 December 2015.<http://pbadupws.nrc.gov/docs/ML1331/ML13318B020.pdf>

Turkey Wonk (2014) “The Akkuyu Power Plant: What Exactly is Going On?”. Accessed in November 20, 2015. <https://turkeywonk.wordpress.com/2014/04/16/the-akkuyu-nuclear-plant-what-exactly-is-going-on/>

Greenpeace (2014) Allegations that Rosatom has begun Nuclear plant construction in Turkey. Energydesk. Posted on 31 January 2015. Accessed on 15 December 2015.<http://www.greenpeace.org.uk/newsdesk/energy/analysis/rosatom-begins-illegal-construction-akkuyu-0>

HurriyetDailyNews(2015)ImplicatedcompanytobuildpartofTurkey'sfirstnuclearplant. Ankara. Accessed on 10 November 2015. <http://www.hurriyetdailynews.com/implicated-company-to-build-part-of-turkeys-first-nuclear-plant.aspx?pageID=238&nID=80799&NewsCatID=348>

Yildirim, Kadir (2015) “Clientalism 2.0 vs. Democracy in Erdogan's New Turkey.” The Washington Post. 13 March 2015. Web. <https://www.washingtonpost.com/blogs/monkey-cage/wp/2015/03/13/clientalism-2-0-vs-democracy-in-erdogans-new-turkey/>

Radikal (2013) Büyük ihalelerin Cengiz Han'ı böyle olunuyor. Posted on 15 July 2015. Accessed on 10 November 2015. <http://www.radikal.com.tr/ekonomi/buyuk-ihalelerin-cengiz-hani-boyle-olunuyor-1141826/>

Mr. Cengiz managed to win 28 bids in the last decade from the government's privatization efforts for a total value of almost TL 100 billion.(2014). Accessed on 10 November 2015. <http://arsiv.taraf.com.tr/haber-mehmet-abi-kamuda-ihale-birakmamis-147695/>

84 U.S.NRC (2013) Remarks of NRC Chairman Allison M. Macfarlane in American Nuclear Society Winter Meeting. (2013). Accessed on 1 December 2015.<http://pbadupws.nrc.gov/docs/ML1331/ML13318B020.pdf>

85 Turkey Wonk (2014) “The Akkuyu Power Plant: What Exactly is Going On?” (2014). Accessed in November 20, 2015. <https://turkeywonk.wordpress.com/2014/04/16/the-akkuyu-nuclear-plant-what-exactly-is-going-on/>

report was approved. The group posted photos and video footage on their website showing various construction vehicles in the site.⁸⁶ Furthermore, in February 2014, citizens groups filed a legal challenge with the Mersin administrative court seeking the withdrawal of the site license. They argue that the original license, granted in 1975, has been updated by TAEK without adequately taking into account data, acquired during recent decades, showing the region is at risk of major seismic events.

On April 2015, Turkey's Cengiz Holding announced that they won the tender to build the marine hydro-technical instalment of Akkuyu. Cengiz Holding, which also won the multi-billion-dollar tender for Istanbul's 3rd airport, became known to most, when its owner Mehmet Cengiz was implicated on December 25, 2013 corruption probe. The investigation on the allegations was dropped amid a massive reshuffling in the judiciary, and labeled as a coup attempt by the ruling party.⁸⁷ Besides the tenders of the first nuclear power plant and the biggest airport in the country upon completion, Cengiz Holding also purchased Eti Aluminum as a part of the government's privatization drive for \$305 million.⁸⁸ Further, according to the then daily Radikal,⁸⁹ Oymapınar Hydroelectric Company, a public hydroelectric company with annual profits of \$60 million was included in the deal for no additional cost to Cengiz Holding.⁹⁰ The TANAP and Akkuyu examples prove that traits of clientelism and favoritism prevail in the most important energy infrastructure tenders in Turkey. Laws and regulations are changed, amended, and drafted along the way to form the legal foundation for practices of clientelism and favoritism to remain unexplored. The next part will discuss the changes made in the Public Procurement Law to legally facilitate such ill practices.

Public Procurement Mismanagement and Corrupt Practices

Public procurement comprises a substantial part of government spending in Turkey. One-fourth of annual public spending goes to public procurement. The share of public procurement in GDP is around 8.5%. Every year, more than 100 thousand public procurement contracts are awarded to more than 50 thousand firms that are mainly small and medium sized enterprises (SMEs). As Turkey's GDP has grown, the yearly total value of public procurement has also risen. Just in 2014, 123,778 public procurement auctions with a total contract value above 100 billion TL were conducted in Turkey (Gürakar, 2016).

Turkey's public procurement law (PPL, Law No: 4734) that was drafted with the efforts of the IMF-WB-EU to improve the administration of public

86 Greenpeace (2014) Allegations that Rosatom has begun Nuclear plant construction in Turkey. Energydesk. Accessed on 15 December 2015. <http://www.greenpeace.org.uk/newsdesk/energy/analysis/rosatom-begins-illegal-construction-akkuyu-0>

87 Hurriyet Daily News (2015) Implicated company to build part of Turkey's first nuclear plant. Ankara. Accessed on 10 November 2015. <http://www.hurriyetdailynews.com/implicated-company-to-build-part-of-turkeys-first-nuclear-plant.aspx?pageID=238&nID=80799&NewsCatID=348>

88 Yildirim, Kadir (2015) "Clientalism 2.0 vs. Democracy in Erdogan's New Turkey." The Washington Post. 13 March 2015. Web. <https://www.washingtonpost.com/blogs/monkey-cage/wp/2015/03/13/clientalism-2-0-vs-democracy-in-erdogans-new-turkey/>

89 Radikal (2013) Büyük ihalelerin Cengiz Han'ı böyle oluyor. Posted on 15 July 2015. Accessed on 10 November 2015. <http://www.radikal.com.tr/ekonomi/buyuk-ihalelerin-cengiz-hani-boyle-olunuyor-1141826/>

90 Mr. Cengiz managed to win 28 bids in the last decade from the government's privatization efforts for a total value of almost TL 100 billion. (2014). Accessed on 10 November 2015. Web. <http://arsiv.taraf.com.tr/haber-mehmet-abi-kamuda-ihale-birakmamis-147695/>

procurements - in order to make public spending more efficient and transparent and depoliticize the procurement process - passed on January 4, 2002. Yet, since 2003, the PPL has been amended more than 150 times. Many of the amendments increased the use of less transparent and less competitive procurement methods. Overall, both the number and the value-share of public procurement contracts that fall outside the relatively more competitive public procurement procedures (open auctions) increased substantially during the period of 2005 and 2014.⁹¹ Moreover, with a series of laws, the authority of the Public Procurement Authority (PPA) to review public allegations has been abandoned. Currently, the PPA is authorized only to review appeal applications. In addition, the rules of appointment and re-appointment to the PPA board, and the terms and rules in office, have been changed in a way that curtails the independence of the PPA. For instance, a clause that banned individuals who previously had political experience, including being nominated as an MP candidate by a political party, has been removed from the law. In addition, the Minister of Finance has been authorized to appoint three vice presidents in order to assist in the duties to the head of the PPA. Later, with a further amendment, all the independent regulatory agencies (IRA) have been made dependent on the relevant ministries. The PPA has been made dependent on the Ministry of Finance.

Two of the most severely intervened articles of the PPL have been the Article 2 that defines the scope of the Law and the Article 3 that regulates the exceptions. Energy, water, transportation and telecommunication projects have been exempt from the scope of the PPL. In fact, this amendment would be in line with the EU Directives, if a secondary legal framework, similar to the one in the EU (Directive 2004/17/EC) was prepared and put into force. However, contrary to the European practices, there is no specific legislation for entities operating in the utilities sector or for concession contracts. Rather, the legislation has remained scattered through various pieces of legislations. The lack of standardization impedes potential bidders to fully understand and get prepared for the planned procurements and hence hinders competition.

Moreover, an organization responsible for overall policy coordination and implementation in all areas related to public procurement, including concessions and public private partnerships, does not exist (Gürakar, 2016). Even though there is a prepared draft law that envisions the establishment of a central unit for the public-private partnership (PPP) called General Directorate of Public-Private Cooperation to standardize tender procedures, facilitate risk sharing, project assessment, and dispute resolution, it has not been passed in the parliament. Thus a major legislative gap remains regarding energy concessions. This situation implies that a serious political rent risk might be created through the SOEs, in particular through those operating in energy, water, transportation, and telecommunication (TEPAV 2009).⁹² EU Progress Reports consistently highlight the fact that the unceasing amendments to the PPL widen the gap between Turkey's legislative framework and *acquis* rather than aligning the former with the latter. For instance, the latest Progress

91 For details, see Gürakar (2016) *Politics of Favoritism in Public Procurement in Turkey*, Palgrave McMillan

92 TEPAV Fiscal Monitoring Group (2009) *What Do the Amendments in Public Procurement Law Mean*. February 2009, pg. 15.

Report (2014) states that: "Turkey's public procurement legislation remains out of line with the *acquis* in a number of aspects. This includes numerous derogations and exemptions from the scope of the law. Both the classical and utilities sectors are formally subject to the same law and procedures, thus making the legislation for the utilities sector more restrictive than envisaged by the EU Utilities Directive. Turkey needs to ensure a more consistent legal framework for concessions and public private partnerships to increase transparency and efficiency. There have been various allegations of political influence on public tenders."

Consequently, for the energy sector SOEs of Turkey, public procurement and PPPs projects serve as two major mechanisms for rent creation and distribution. Looking at the public procurement data for the 2004-2011 period used in Gürakar (2016),⁹³ SOEs account for approximately one-fourth of the total value of all high value procurements that are above TL 1 million.⁹⁴ The selected five energy sector SOEs with 1295 procurements account for 6 % (TL 20 billion) of the total value of all procurements. Two thirds of this 6 % share went to politically connected firms such as those with owners/shareholders who are (i) a member of the parliament from the ruling AKP; ii) an AKP official at the local level such as a provincial head or a member of the provincial party organization; and iii) close relatives/immediate family members of ruling party officials indicated in (i) and (ii).⁹⁵

Although public procurement is one of the major areas of transfers controlled by the government and where the state and the private sector interact extensively, in the energy sector in Turkey, PPPs appear to be more influential tools of rent distribution. The PPPs trend gained traction in Turkey with the law that enabled private companies to generate electricity in the early 1980s. In the Turkish energy PPP system, state support is threefold: Allocation of public land as well as public assets such as resources, guaranteeing the purchase of the produced energy or other services for a period of 25-30 years from a predetermined price, and assurance from international banks that debts will be covered jointly during the building of projects as necessary.⁹⁶ Currently, there are 211 PPPs in Turkey with a total value of more than \$120 billion.⁹⁷ The fact that there is no coherent legal framework and a specific responsible state authority to govern the PPPs raise doubts over purposeful mismanagement of the PPP's dismantling of transparency and accountability as well as rise in corrupt transfers.

93 The public procurement dataset is not fully publicly available in Turkey. The PPA's web site provides some data, but not all. We applied to the PPA to get the full data for the 2009-2014 period, but our request was declined. We then applied to the SOEs analyzed in this report, but again our request was rejected.

94 Gürakar (2016) states that the total value of high value procurements conducted during the period of analysis, despite being relatively few in number (around 10 percent of the total number of contracts awarded), account for almost three-fourth of the total value of all procurements.

95 Gürakar (2016) uses the Trade Registry Gazette of Turkey in order to find the owners/shareholders of the contract awarded firms. For methodological details see Gürakar (2016).

96 Hurriyet Daily News (2014). Public-private Partnership Projects Reach \$88 Billion. Accessed on 23 September 2016. <http://www.hurriyetdailynews.com/private-public-partnership-projects-reach-88-billion.aspx?pageID=238&nID=65626&NewsCatID=344>

97 Republic of Turkey Ministry of Development Public-Private Partnership Projects. Accessed on 23 September 2016. https://koi.kalkinma.gov.tr/Main_EN.aspx

CONCLUSIONS AND POLICY RECOMMENDATIONS

This chapter illustrates how the institutional map of the energy sector has changed since 2001 with the enactment of “The Natural Gas Law” and the “New Electricity Law”. It discusses the successes and shortcomings of five selected energy SOEs: EÜAŞ, TEİAŞ, TETAŞ, EPIAŞ and BOTAŞ. The most prominent challenge identified in the overall Turkish energy SOEs is the monopoly of BOTAŞ over the natural gas market. The fact that BOTAŞ has a final say on the addition of new stakeholders to the natural gas market is in direct contradiction with the EU energy acquis and Turkey’s long term goal to establish a cost-based priced natural gas market that functions as an energy hub. Furthermore, first part discusses the developments in the renewable energy sector in Turkey. Interviews conducted with TMMOB experts and ÇEHAV lawyers on this particular subject were beneficial to understand the shortcomings in the license distribution. Accordingly, EPDK can allow renewable energy projects with inadequate ÇED reports or tend to circumvent the ÇED report obligation from time to time. EPDK seems to be profuse, when it comes to issuing licenses and pre-licenses since it is regarded as a strong incentive for new investors. However, pre-licenses were awarded before the legal act on the validity of ÇED reports was finalized. The Turkish renewable energy law diverges from the EU law as it identifies large HES projects that produce more than 50 MW energy as RER, whereas the EU law does not. Almost all of the Turkish renewable energy power plants in energy production come from hydroelectric power plants that are not regarded as RER by the EU. This ends up illustrating a fallacy that Turkey succeeded in pushing renewable energy share to the level set in the 2023 goals, whereas the truth is a large share of that are large dams that are not counted as renewable energy resources by the EU.

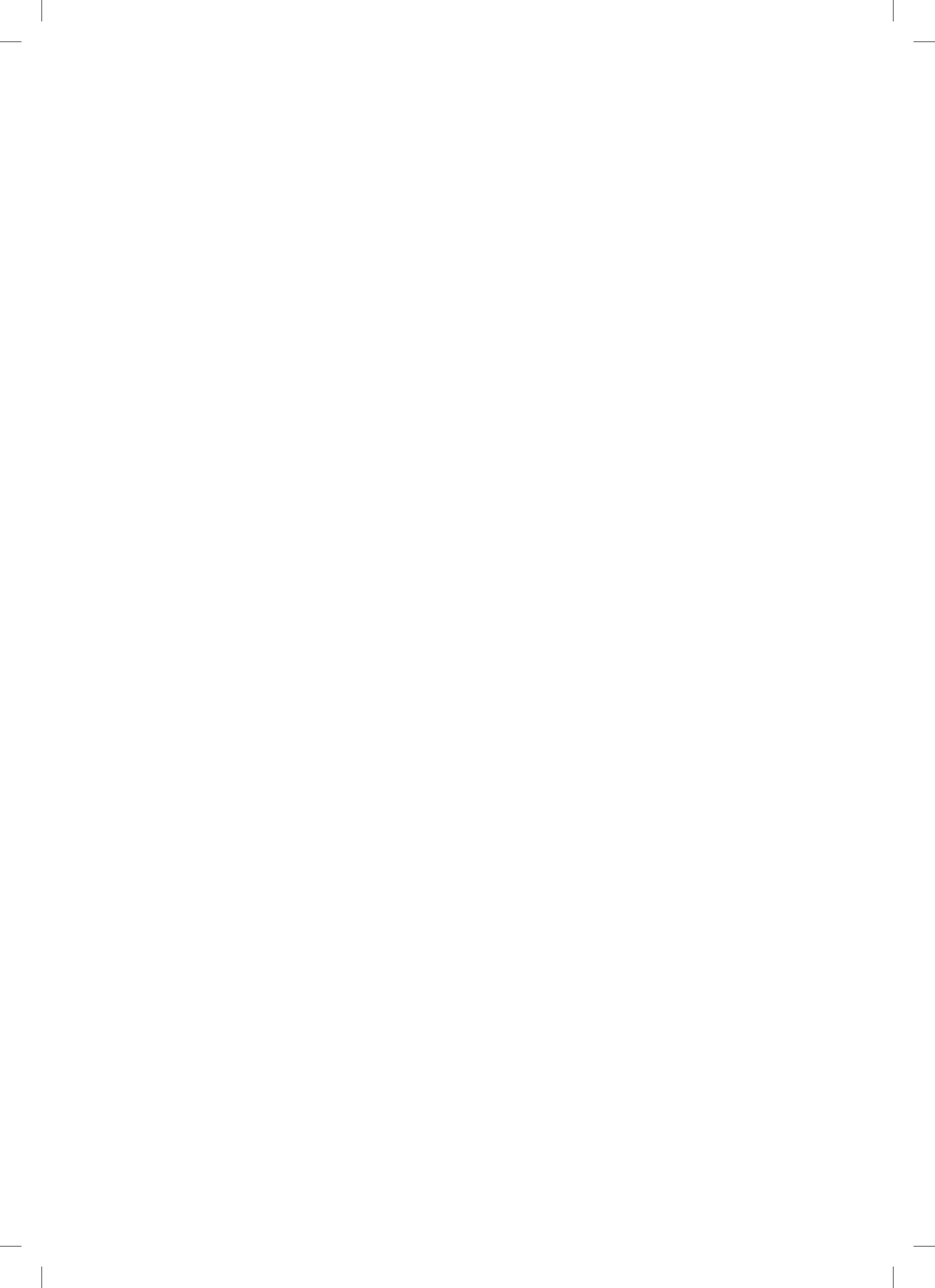
Regarding the financial management of energy SOEs, this report has discussed the auditing process of SOEs, presented the financial performance ratios calculated by the research team and evaluated the financial outlook of five selected SOEs. This analysis showed that the cross-subsidy system in the Turkish electricity sector is a sectoral phenomenon rather than an institutional one. For instance the weak condition of TETAŞ in 2011 was caused by sectoral burden because they have not been properly subsidized. The part on corporate governance of energy SOEs looked at the operational autonomy, political oversight and controversial corporate governance issues in Turkish SOEs in the recent decade and concluded that even though there is no explicit intervention of state officials on the managerial decisions of energy SOEs, arbitrary appointments made to the executive board allow political elite to preserve its influence on the enterprises.

The part on the role of competition regulation on energy market governance addressed the importance of unbundling of BOTAŞ to tackle the competition problems in the natural gas market and the importance to advancing EPDK’s independence to ensure an autonomous regulatory decision-making channel. The EPDK example was addressed through the utilization of the difference between ‘de jure’ and ‘de facto’ institutions. Regarding “The Management

of Large Energy Infrastructure Projects," this study utilized the TANAP and Akkuyu Power Plant examples to discuss how the traits of clientelism and favoritism prevailed in corporate decisions. Finally, the shortcomings of the public procurement law, which has been amended numerous times since 2005 are discussed in order to form a legal base for practices of clientelism and favoritism in procurement activities. Based on the discussion in this section, the policy recommendations are as follows:

- ❖ Even though transparency in some areas have remarkably improved in the last decade; disclosures related to the sensitive topics of ownership and control, related party transactions, effectiveness of internal controls, and perhaps most importantly, actual decision-making processes and structures remain highly opaque. Therefore increased transparency is still needed.
- ❖ The public procurement law should include energy and public private partnership tenders. Also, there should be a legal framework to regulate energy bidding and regulatory institutions' independence should be reiterated so that public procurement of energy companies would not be prone to corruption.
- ❖ Liberalization of the natural gas market and hence eliminating BOTAŞ's monopoly are significant to improve energy market liberalization and to comply with the Chapter 15 – Energy and Chapter 8- Competition Policy of the EU accession negotiations⁹⁸.

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