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TURKEY UPDATE: DRAFT CLIMATE LAW AND OTHER DEVELOPMENTS PARALLEL TO EU'S GREEN DEAL

This article outlines the latest developments in Turkey parallel to EU's Green Deal, with a particular focus on the draft Climate Law ("**Draft Climate Law**") that the Turkish Ministry of Environment and Urbanization ("**Ministry of Environment**") is currently working on (please also refer to our article on EU's Green Deal and how it might affect Turkish economy and companies from the link given below) .[1]

I.Climate Declaration

The Ministry of Environment's Final Declaration on Fighting Climate Change ("**Climate Declaration**") was published on 17 February 2021. The Climate Declaration has announced that the Turkish Government will adopt the 2050 National Climate Change Strategy and Action Plan ("**Climate Action Plan**") to reduce greenhouse gas emissions and to become climate neutral. If Turkey implements the Climate Action Plan as planned, this will contribute greatly to Turkish climate and ecology, and align Turkish economy with the great transformation that EU has initiated with its Green Deal.

The Climate Declaration sets similar goals with the EU's Green Deal. In order to achieve these goals, Turkish Government will certainly need to adopt a number of policies and draw a road map as to how and when these polices will be regulated and implemented.

Some of the key objectives provided in the Climate Declaration of the Ministry of Environment are as follows:

- A **Climate Law** will be enacted, which includes basic principles, responsibilities and actions of the players that has an impact on climate.
- 2050 National Climate Change Strategy and Action Plan will be executed.
- Turkey's 7 geographical regions will be adapted to climate change in all areas.
- Investment strategy in agriculture, livestock, tourism, renewable energy and industry will be aligned with the goals of the Climate Action Plan.
- Recycling of waste will be increased; this rate will be increased to 60% in 2035. In 2050, disposal of domestic wastes by landfill will cease completely.
- The rate of treated and reused wastewater, which is currently 2.5%, will be increased to 5% in 2023 and to 15% in 2030.
- Electricity generation capacity from renewable energy sources will be increased. By 2030, solar energy will be increased to 10 GW, and wind energy to 16 GW. Additional measures and incentives will be provided for energy and industrial facilities to support climate and environmentally friendly production.
- The Emissions Trading System, which will support climate-friendly investments and reward facilities that invest in cleaner production technologies, will be implemented.
- Incentives and financing opportunities for the public and private sector's efforts to combat climate change will be developed, and their access to international financing resources will be facilitated.
- For the effective management and protection of water resources, a joint cooperation with all institutions will be developed and measures for the efficient use of water will be implemented.

II. Draft Climate Law

The Ministry of Environment has been working on the draft Climate Law ("Draft Climate Law"), which is also stated as one of the priority goals in Climate Declaration. Although the Draft Climate Law may undergo certain changes over the enactment process, the draft text gives a good understanding of the backbone of the regulations to be introduced. Below is a summary of some of the main aspects of the Draft Climate Law:

1.Purpose and Scope of the Draft Climate Law

Main purpose of the Draft Climate Law is to keep the global average temperature increase limit below 2°C as compared to the pre-industrial period, and in addition, to limit this increase below 1.5°C.

In order to achieve this fundamental goal, it is aimed to:

- gradually reduce greenhouse gas emissions in line with the principle of sustainable development;
- establish the necessary legal and institutional framework for adaptation to climate change, and
- determine the relevant technical and financial requirements to serve this purpose.

In order to achieve these fundamental goals, it is envisioned to switch to a low-carbon economic model, which is also one of the fundamental goals of the EU's Green Deal.

The Climate Law will also cover the rights and obligations of all real and legal persons carrying out the activities that has direct or indirect impact on the climate.

2.Fundamental Principles of the Draft Climate Law

Equality, environmental justice and climate justice principle: This principle aims to include policies and practices that eliminate inequality in (i) participation to decision-making processes, (ii) accessing to resources to help mitigate the risks climate change may create, and (iii) bearing the cost of becoming a climate neutral ecosystem.

Environmental responsibility principle: Everyone involved in actions and activities that affect or have the potential to affect the environment is obliged to prevent deterioration and destruction of

[1] https://www.cdcalaw.com/upload/data/files/publications/eu_green_deal__formatted.pdf

environmental values and ecological balance and to indemnify the damages caused.
This principle is particularly important as it implies that some sort of environmental, social and governance responsibility (or sustainability, or corporate social responsibility) mechanism may be introduced in Turkish law in connection with Climate Law and the relevant regulations.

Principle of observing the risk of carbon leakage: The risk of carbon leakage should be observed and sectoral economic impact analysis should be enforced on applications with high impact potential.

3.Establishment of Market Based Mechanisms

The Draft Climate Law regulates the establishment of various market-based mechanisms to encourage the reduction of emissions, especially the emissions trading system. These market-based mechanisms are as follows:

i.Emissions trading system: ETS will be established by taking into account the country targets submitted to the United Nations Framework Convention on Climate Change, which aim to reduce nationwide greenhouse gas emissions in a cost-effectively, measurable, reportable and verifiable way. ETS will establish an emissions trading system based on the cap emission principle, which encourages limiting greenhouse gas emissions and activities that cause greenhouse gases by trading greenhouse gas emission allowances.

How does Emission Trading System Works:

- ETS sets a limit or an upper limit on greenhouse gas emissions caused by all entities in the ETS system within the region covered by the system.
- Since the cap directly limits greenhouse gas emissions, this tool gives policy makers some certainty about the amount of emissions that will be released over a certain period of time. This cap is gradually reduced over time in accordance with the emission reduction targets in a particular region.
- Allowances are allocated to entities participating in the ETS, either free of charge or through an auction process. These allowances are used for greenhouse gas emissions resulting from the activities of the relevant entities. If the respective entity's allocated emission limit is exceeded, they must purchase allowances from the ETS system to cover excess amount. If emission amount is below the limit allocated to that entity, they can convert it into an economic value by selling it within the ETS.
- These allowances can also be obtained through trading between other third parties, which determines the market price of the allowances.
- Since the ETS creates a cost

for greenhouse gas emissions, an incentive is created for entities which reduce their emissions. The entities which release emissions less than their allowances will have the right to sell their unused allowances, and thereby convert this value into a monetary value.

ii.Other market-based mechanisms: The Draft Law also provides that other market-based greenhouse gas reduction instruments, such as energy efficiency certificate (white certificate) trading, renewable energy certificate (green certificate) trading, result-oriented financing and comprehensive credit-allocating mechanisms, will be established in addition to the ETS.
The Ministry may also regulate other carbon pricing policies, such as the application of a carbon tax for sectors that may or may not be covered by the ETS, in a manner that will avoid duplicated payments.

iii.Carbon Market: Draft Climate Law provides that a carbon market will be established to ensure that allowances, other eligible emission trading contracts, documents and assets can be traded easily and securely in a competitive market. Carbon market is planned as a marketplace, operated and/or managed by the carbon market itself or the market operator, which brings together the trading orders to finalize or facilitate these orders,

and which will determine and announce the prices established in such market. This marketplace will be regulated by the Capital Markets Board of Turkey.

iv.Crediting mechanisms: It is a policy instrument that issues and distributes emission reduction certificates which are called credits, to sectors or entities that reduce greenhouse gas emissions and energy use

or reduce energy intensity below the predetermined targets or levels.

4.Monitoring, Reporting and Verification Obligations

Draft Climate Law brings forth certain auditing and reporting obligations to ensure that the market-based mechanisms could function properly and in compliance with the regulations.

Monitoring: The relevant entities will prepare a greenhouse gas emission monitoring plan and monitor their greenhouse gas emissions within the framework of this plan. The procedures and principles for the monitoring obligations will be determined by the Ministry with secondary legislation.
Reporting: Greenhouse gas emissions will be reported to the Ministry.

Verification: Mechanisms and tools will be established to verify the greenhouse gas emission reports before they are submitted to the Ministry and the other regulators.

5. Sanctions

Draft Climate Law provides various sanctions for violation of the Climate Law by the relevant parties. Although the Draft Climate Law does not yet involve the amounts of the fines, there are certain violations upon which the regulators are authorised to imposed fixed fines as well as turnover-based fines such as 3% to 5% of the turnover of the violating entity which are quite severe sanctions. The sanctions also include suspension of the rights of the relevant parties to trade allowances in the ETS etc. We believe the extend and the scope of these fines will probably be debated during the enactment process and will be finalized after these discussions.

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