

# PETROLEUM MARKET LAW

Law No: 5015      Enacted : 04.12.2003      Gazetted: 20.12.2003

## PART ONE

General Provisions

### SECTION ONE

Objective, Scope, Definitions and Abbreviations

#### Objective and Scope

**Article 1.** The objective of this Law is to regulate the guidance, surveillance and supervision activities in order to ensure the transparent, non-discriminatory and stable performance of market activities pertaining to the delivery of petroleum supplied from domestic and foreign resources to consumers, directly or after processing, in a reliable, cost-effective manner within a competitive environment.

This Law covers the regulation, guidance, surveillance and supervision procedures to ensure and improve the sound and regular operation of the markets pertaining to petroleum.

The activities of the Turkish Armed Forces within the scope of this Law and which are carried out directly via equipment and facilities under the ownership of the same and the activities which are carried out via equipment and facilities under the ownership of the Ministry of National Defense Liquid Fuel Transport and NATO POL Facilities Operation Directorate within the scope of Law No. 4636 dated 5 April 2001 on the establishment and duties of the same, shall not be subject to the provisions of this Law.

#### Definitions and Abbreviations

**Article 2.** The terms used in this Law are defined as follows:

- 1) Ministry: Ministry of Energy and Natural Resources,
- 2) Authority: Energy Market Regulatory Authority,
- 3) Board: Energy Market Regulatory Board,
- 4) AFRA: The valuation of average freight rate published in London,
- 5) Liquid fuel: Benzine types, naphtha (except for raw material and solvent naphtha) gas oil, jet fuel, diesel oil and fuel oil types and other products determined by the Authority,
- 6) Liquid fuel Station: Places established in conformity with the relevant legislation (technical, quality, safety) by distributors or vendors who have signed exclusive purchase contracts with those distributors, and are operated under the registered trademark of a liquid fuel distributor or distributors from a different sub-title, and are specifically serving to meet the liquid fuel, lube oil, auto-gas, LPG needs of the vehicles, offering the facilities of cleaning, facultative maintenance and other basic needs of the customers except for LPG in bottles,
- 7) Products that can be blended with liquid fuel: Products which are or shall be subject to an equivalent tax as liquid fuel, such as methyl tarsier butyl ether (MTBE), ethanol (except for those produced artificially from domestic agricultural products and bio-diesel),
- 8) Asphalt: The product used for ground coating,
- 9) Vendor: Real or legal persons having the necessary equipment to perform vendor activities,
- 10) Vendor activity: The process of authorizing real or legal persons to deliver liquid fuel to consumers by liquid fuel distribution companies under a contract of the mutual liabilities, including a feasibility study,
- 11) Distribution undertaking: A capital company authorized to distribute liquid fuel and may perform storage, transportation, bunker and lube oil production activities provided that they are included in their licenses,
- 12) Distribution: All liquid fuel sale and transportation activities to vendors including wholesale and transportation of liquid fuel to eligible consumers,
- 13) Feasibility: The report that includes the analysis of the investments to be made and is enclosed to the vendor activity contract but shall not necessarily be submitted to the Authority,
- 14) Crude Oil: Natural hydrocarbons produced from the ground in a liquid state,

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- 15) Bunker: Liquid fuel and lube oil supplied to sea vehicles in and/or next to territorial waters or to domestic or foreign airplanes at airports, whether taxed or not,
- 16) Bunker Delivery Company and Vendor: License holding capital companies and vendors which supply bunker obtained domestically or from abroad to air and sea vehicles,
- 17) Transmission undertaking: A capital company that performs transmission activities,
- 18) Transmission: Transportation of petroleum through pipelines (except for the producers' pipelines connected to the refinery or transmission grid and the pipelines within the facilities),
- 19) Processing: The procedures regarding the production of new products from petroleum and other chemical materials, except for the production of lube oil, and/or the alteration of the quality or quantity of products,
- 20) Processing undertaking: Capital company been granted the right to perform processing activities due to its license,
- 21) Additive materials: Organic and inorganic materials that are aimed at improving the quality of liquid fuel products,
- 22) Kilometer limitation: The minimum distance between two liquid fuel stations on the same direction of public roads in the city or on high-ways that shall be determined by the regulation to be issued by the Board,
- 23) Malicious Intent: Any act or negligence causing loss, contamination, deterioration or misuse of petroleum while performing market activities,
- 24) Consumer: Real or legal persons utilizing petroleum,
- 25) Utilization: The consumption of petroleum only for personal and operational needs,
- 26) License: The certificate granted to real or legal persons by the Board indicating the permission to operate in the market as per this Law,
- 27) Licensed storage undertaking: A capital company performing licensed storage activities,
- 28) Licensed storage: Storage of the petroleum under the ownership of third parties to meet the stocking and operational requirements of those performing market activities,
- 29) Lube oil producer: Real or legal persons performing lube oil production activities,
- 30) Lube oil: Natural or artificial materials turned into substances which reduce friction and/or abrasion between two moving and contacting surfaces or has cooling effect, upon addition of certain additives to base oil or to the materials processed with chemical synthesis method,
- 31) Special Process: Methods determined by the Authority pertaining to the transformation of the petroleum into another product,
- 32) Petroleum: The definitions made in subparagraphs 5, 14 and 44 of this Article,
- 33) Market activity: The import, export, refining, processing, storage, transmission, bunker delivery, transportation, distribution and vendor activity of petroleum,
- 34) Refining: The process of producing new products from crude oil,
- 35) Refining undertaking: A capital company which has been granted the right to perform refining and petroleum trade activities due to its license,
- 36) Eligible Consumer: The licensed consumer whose annual petroleum consumption is more than the amount determined by the Authority on product base, being no less than 5.000 tones in fuel-oil, heating fuel and diesel annually.
- 37) Solvent: Petroleum products consumed in chemical and industrial facilities and/or used for the production of new chemical and industrial products,
- 38) Transportation: Transportation activities performed for the delivery of crude oil to the refinery from the delivery point and for other products all transportation activities performed by means of transportation,
- 39) Transportation undertaking: Real or legal persons performing transportation activities,
- 40) Unsafe Act: An act or negligence in the conduct of any market activity that causes or is likely to cause the death, injury or sickness of a person that is lawfully at the place or within the vicinity where market activity is performed or that causes or is likely to cause environmental pollution,
- 41) Transit transportation: Transportation of petroleum from abroad to another country through Turkey via road and marine transportation,

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42) National marker: Additive to be added to the liquid fuel at the refinery exit point or at customs entry point,

43) Production: The production, pre-processing and transportation via pipelines to storages within the field, transmission line or to the refinery or storage of petroleum,

44) Product: Any hydrocarbon of product or by-product produced from crude oil and/or crude oil products via physical and chemical processes or refining and other methods,

## **SECTION TWO**

Procedures and principles that licenses shall be subject to, Basic Rights and Liabilities of the Licensees

### **Procedures and principles that licenses shall be subject to**

**Article 3.** Holding a license is obligatory for the following petroleum activities:

a) Performing refining, processing, lube oil production, storage, transmission, eligible consumer and bunker activities and to establish and/or operate facilities for the performance of aforesaid activities,

b) Performing liquid fuel distribution, transportation and vendor activities. The Authority may impose exemptions for holding licenses for transmission and processing activities in line with the principles and criteria to be developed. Licenses shall not be granted based on commitments.

The evaluation of license applications shall be concluded and notified in accordance with the provisions of Article 3 and other aspects to be decided by the Authority no later than 60 days. The justifications for the rejection of applications shall also be notified.

In accordance with this Law, the process of granting, updating and temporarily suspending or canceling the licenses shall be undertaken by the Authority. In granting licenses, the technology, quality, safety and sustainability of the enterprise and service shall be taken into account with respect to market entry, and no limitations shall be placed on quantities such as the number of vendors or storage capacity (except for operation stock capacity).

The application shall be in compliance with the terms and conditions of the related legislation in order to be approved or rejected.

Private law legal persons to perform the activities specified within the scope of a license shall be subject to the provisions of Turkish Commercial Code No. 6762 dated 29.06.1956. Private law legal persons that are capital companies as per the legislation of foreign countries, and performing market activities in Turkey shall be deemed settled in Turkey with regards to their activities in Turkey according to the legislation on the protection of value of Turkish Lira.

The licenses shall be issued in accordance with the aforesaid activity topics. Sub-topics determined by the Authority shall also be specified in the licenses.

The license shall be granted in the name of the real or legal persons granted the right to perform the activity written on it. Beside the activity type, the license shall also include information about the type and geographical position of facility, technology and quantities required to perform the activity.

The Authority, in line with the powers vested in it by this Law, shall be authorized to enact regulations on the following:

- a) The scope of the activities and/or operations requiring licenses,
- b) The rights and liabilities as per the license,
- c) Limitations on activities within the scope of the license,
- d) Determination of special terms and conditions regarding the performance of the activity.

The activities that require a modification in issues appearing on the license cannot be performed unless they are approved and noted on the license by the Authority.

The following procedures and principles pertaining to licenses shall be regulated by the regulations to be issued by the Authority:

a) Procedures for application, evaluation, and granting of licenses and their duration, modification, fees, termination and extension,

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- b) Classification terms for licenses which are deemed adequate for classification and their minimum size according to the class,
- c) Processes for class changes in licenses which are subject to modification and classification,
- d) Minimum qualifications to be sought and minimum assets to be under the ownership of the related parties,
- e) Necessary records to be kept, registration methods and notification liabilities,
- f) Sub-titles of activities and their definitions,
- g) Issues regarding protection of life and property of public and consumer's rights,
- h) Subjects to be included in the license,
- i) Guidance, surveillance, audit and related issues of the market activities whether they are within the scope of the license or not.

Licenseses or consumers shall be able to construct and/or operate any petroleum storage facility or mechanism, except for licensed storages, provided that the provisions of this Law are reserved and all necessary official procedures are completed in accordance with the related legislation.

#### **Basic Rights and Liabilities of Licensees**

**Article 4.** The license shall convey the rights to the holder to perform activities included in the license and enter into commitments.

The rights conveyed by the license shall be utilized provided that the specifics noted in this Law, related legislation and license, are fulfilled.

Those who perform market activities should avoid any kind of activity that would result in malicious intent or unsafe activities, take necessary measures to prevent their occurrence and eliminate any undesirable situations as soon as possible.

Those who perform activities as per this Law, shall be obliged to:

- a) Act in accordance with the commercial and technical legislation,
- b) Take necessary measures to prevent environmental risks,
- c) In case a condition arises that seriously threatens or adversely affects the security of life, property and environment of the public and their own facilities and activities, notify the public authorities and those related parties who might be adversely affected of such threat and also notify the Authority of the nature of the threat and the measures being taken to prevent such threat.
- d) Insure the facilities and/or activities that are in the scope of compulsory insurance liability,
- e) Compensate any loss or damage incurred by third parties or the environment as a result of their operations,
- f) Make notifications in compliance with the procedures and principles determined by the Authority as per paragraph 1 of Article 14,
- g) Submit the required information, documents and samples, sign the minutes and allow officials to conduct on-site investigation of the facilities when requested by the Authority as per paragraph 3 of Article 14 of this Law
- h) Submit the copies of standard contracts pertaining to their main field of activity and notify the Authority of the modifications to be made on them before implementing such modifications.
- i) Supply liquid fuel in market operations in accordance with the technical standards to be determined by the Board,
- j) Meet demands on non-discriminatory basis except for the capacity restrictions on transmission and storage,
- k) Grant equal rights and liabilities to equal receivers (categories) and not stipulate different terms and conditions.

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## **PART THREE**

### License Types and Restrictions on Activities

#### **License types**

##### **Refining Undertaking**

**Article 5.** Refining undertaking licensees shall also be able to perform the activities specified below in addition to the activities defined in Article 9:

a) Provided that it is registered in the license, processing and storage activities within the facility or in the vicinity, and transportation activities to other facilities in the vicinity via pipelines,

b) Liquid fuel distribution activities via its distribution company. The refining undertaking licensee should offer, on category basis, the same conditions to those demanding liquid fuel from himself as he does to his own distribution company.

The production and delivery of liquid fuel and other products needed for national security shall have priority. Refining undertakings shall be obliged to provide and protect the production capacity of tactical liquid fuels utilized by Turkish Armed Forces.

##### **Transportation, processing, storage, transmission, lube oil production, eligible consumer, bunker delivery company and bunker vendor**

**Article 6.** The Authority shall set forth the evaluation criteria to be applied in granting licenses for performing the activities defined in sub-paragraphs (16), (18), (19), (28), (29), (36) and (38) of paragraph 1 of Article 2 and technical and financial provisions necessary for granting such licenses.

#### **Distribution**

**Article 7.** Distribution licensees shall have the right to distribute products defined as liquid fuel.

Distribution licensees shall also be able to perform transportation activities via pipelines to the facilities within the vicinity of storage facilities and liquid fuel wholesale activity to eligible consumers, besides liquid fuel distribution to the stations of vendors under their ownership or to be established by contracts. They shall not be able to distribute to vendors of other liquid fuel distributors.

Distribution undertakings shall be obligated to make annual marketing projections and submit them to the Authority with details in February of each year. They shall also be obligated to evaluate the realization of their projections quarterly every year and submit such evaluation to the Authority in January, April, July and October and provide explanations for an increase or decrease of more than 10% in their projections.

Distribution undertakings shall establish vendors with contracts as defined in subparagraphs (10) and (13) of paragraph 1 of Article 2. In case the contract is not renewed for the continuation of the vendor activity 3 months prior to the termination of the contract, the distributor shall meet the supply need of the vendor until the termination of the contract. At the end of the contract period, the vendor shall commence marketing the products of the new distribution undertaking in such a way as to ensure that the new distribution undertaking is evident and remove all indications belonging to the former distribution company no later than 1 month.

The sale of distribution undertakings made through stations under their ownership shall not exceed 15% of the distributor's total domestic market share. The domestic market share of the distribution undertaking shall not exceed 45% of the total domestic market. Distribution undertaking shall not grant subsidies to stations under their ownership or treat them differently from vendor stations.

Distribution undertakings shall be obligated to ensure an efficient monitoring of quality control of the activities performed under their trademark and notify the Authority on the cancellations of the vendor activity contracts with their justifications. Technical, safety, environmental and related criteria pertaining to the facilities and the equipments to be established for liquid fuel distribution shall be determined by the regulation to be issued by the Authority.

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## **Vendors**

**Article 8.** The regulations (technical, safety, capacity, environment and etc.) regarding vendor licenses shall be made by the Authority. Vendors shall perform vendor activities according to the exclusive purchase contracts to be entered into with their distribution undertakings.

Vendors shall have the following obligations during the license period:

- a) Not to take the delivery of liquid fuel from other distribution undertakings and their vendors other than the liquid fuel distribution undertaking whom they are the vendors of,
- b) Not to add products that could be added for adulteration and/or for fraud to liquid fuel and keep such material in their stations.

Upon notifying the Authority, vendors and liquid fuel distribution undertakings shall commence operating liquid fuel stations that are established according to their licenses. Liquid fuel stations shall be able to sell liquid fuel except LPG via tankers and village pumps for the requirements of agriculture sector by taking necessary measures.

The Board shall be able to establish vendor categories according to technical and economic criteria. In such case, vendor licenses shall be prepared in accordance with their categories. Distances between liquid fuel and LPG stations on the same direction shall be regulated by the regulation to be issued by the Board and shall be effective on 01.01.2005 being no less than 10 km. on highways and 1 km. within the city

## **Restrictions of Activities**

**Article 9.** Suppliers of crude oil and liquid fuel from foreign countries shall hold a license of refining undertaking, distribution undertaking or bunker delivery company. Producers producing crude oil in Turkey shall be able to import crude oil at an amount to blend with the low gravity domestic crude oil. Imports of crude oil and liquid fuel shall be made at the authorized custom administrations having the necessary equipment to perform specific technical and quantity measurements. The import to be made by distribution undertakings shall be limited with the liquid fuels registered in the sub-title of the license of the related party and can be made upon the notification of the Authority of its compliance with the marketing projection submitted to the Authority together with vendor information. Liquid fuel trade between distribution undertakings shall be subject to Board permission. Crude oil trade within the country can only be performed by producers and refining undertakings and between each other.

Distribution undertakings should submit white product (petroleum, diesel oil) distribution projection at an amount of minimum 60,000 tons/year and vendor information to the Authority with their license applications and shall not deliver consumers liquid fuels that are not included in their licenses except for the activities to be performed as a vendor of the distribution undertakings having a separate license at the liquid fuel stations operated by vendors connected to their distribution network

Bunker deliveries shall be performed by refining undertakings, distribution undertakings and bunker companies. Those who perform bunker deliveries shall notify the Authority quarterly of the type and quantity of liquid fuel which is brought to customs entrepots and taken out with the purpose of supplying sea/air vehicles.

The activities including the import and export of petroleum products excluding liquid fuel (solvent, lube oil and base oil, asphalt, solvent naphtha etc.) shall be performed as per the regulations to be issued by the Authority.

In the event that the product produced as a by-product at industrial facilities is used in a liquid fuel activity within the country, with the provision of notifying the Authority, the ones compliant with the technical regulations shall be delivered to distributors and the ones which are not compliant shall be delivered to refineries on the condition that the refineries' approval is taken and an agreement is reached. Information regarding actual production and export shall be submitted to the Authority every month in the event that the products not delivered to refineries are exported.

Liquid fuels that are not in compliance with the technical regulations set forth in subparagraph (i) of paragraph 4 of Article 4, shall not be used in any type of activity.

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Liquid fuel supply to vehicles shall not be made in places except for liquid fuel stations holding a vendor license and equipped sufficiently, excluding places such as factory, work sites, transportation fleet base and related places having storage facilities for their own needs and liquid fuel supply capacity for their own vehicles.

Vendors may perform transportation activities provided that this activity is registered on their licenses and their own vehicles meet the criteria sought for the vehicles of the transportation license holders.

Where a facility is required in order to perform activities, the facility must be actively operating in order to benefit from the rights set forth in this Article.

Refining undertakings shall be obligated to deliver products of required quality and distribution undertakings and vendors shall be obligated not to change the quality, quantity and the purpose of usage of the liquid fuel.

Products blended with liquid fuel in accordance with the procedures and principles to be determined by the Board shall be subject to the equivalent tax rate imposed on liquid fuel. However, the products obtained from domestic agricultural products and blended with liquid fuel shall be exempt from this provision.

Distribution undertakings shall inform their vendors of promotional campaign to be carried out with their participation in a transparent and clear manner together with the documents regarding the costs of such campaigns. However, the participation of the vendors in the campaign shall be optional.

## **PART FOUR**

### **Pricing, Expropriation, Access and Coordination**

#### **Pricing**

**Article 10.** The pricing for the purchase and sales of petroleum shall be constituted according to the nearest accessible global free market conditions. For domestic crude oil, “market price” formed in the nearest delivery port or refinery shall be accepted as the price.

Such market price shall be accepted as the exact applied crude oil sales price calculated from free competitive price determined in accordance with the usual adjustments of quality and specific gravity of crude oil within Turkey or in the nearest accessible world market plus half of the expenses incurred for the transportation of the same quality of crude oil from world markets to the delivery point in Turkey except for the Suez Channel crossing and Batman-Dörtyol pipeline fees, for the oil produced in and around Batman for the market price calculated at Batman Refinery or actual sales price applied at the delivery point in Turkey by the producer excluding taxes and in the case that there is no accessible world market.

30-days term prices of Arab Medium crude oil (31 API) for 26 API or lighter crude oil and Ras Gharib crude oil (21.5 API) for crude oil heavier than 26 API shall be taken as basis for the domestically produced crude oil and in the evaluation of the gravity differences between the equivalent petroleum and domestic crude oil with respect to prices;

2 US cent shall be added to or deducted from the barrel price of the equivalent crude for each 0,1 API gravity difference between the equivalent petroleum and domestic crude oil . However, the price of the lower gravity group shall not be higher than the price of the higher gravity group.

In the calculation of all expenses regarding the delivery of equivalent crude oil to Turkey, the nominal freight charge announced in the “Worldscale” shall be taken as basis. The transportation cost shall be calculated by applying AFRA percentage determined for LR-2 category tankers.

Current insurance legislation and premium shall apply to the price (C+F) calculated by adding gravity adjustment and transportation costs. Insurance premium implementations regarding hazardous and war situations shall be subject to the evaluation of the Ministry. The insurance premium amount until revised shall not exceed 0,075%.

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Market price of the domestic crude oil shall be calculated by adding taxes and levies taken for import. Transportation market value formed in the liquid fuel prices shall be taken for the domestic land transportation fees.

Monthly foreign exchange average selling rate announced by The Turkish Central Bank, barrel and metric ton as petroleum unit and US Dollar as foreign currency shall be used in the market price proposals. The Board shall be authorized to evaluate and solve the problems that may arise during the implementation of the components forming the market prices.

Refining undertakings shall purchase the domestic crude oil from this minimum price formed upon the proposal of the crude oil producers and shall give priority to domestic crude oil in crude oil supply. Refining undertakings shall give a written response within 15 days to crude oil producer's proposals offering the crude oil with the minimum price set forth in this article or higher. Refining undertakings shall not make any monetary demand and offer concerning delivery point and conditions which may adversely affect producers. Disputes on prices shall be settled no later than 30 days by the arbitration of the Authority.

Imported crude oil prices shall be considered as prices obtained according to petroleum agreements made in line with the globally announced prices and spot market values. Information regarding actual import shall be submitted to the Authority every month.

Prices regarding activities performed within the scope of refining and distribution licenses shall be submitted to the Authority as ceiling prices prepared by licensees by taking into account the global free market prices at the closest accessible point.

Tariffs for processing, licensed storage that is not connected with pipelines and transportation activities shall be implemented after their preparation by the licensees and notification of the same to the Authority.

Tariffs for transportation and licensed storage activities within the facilities connected to these lines under the scope of transmission licenses shall be prepared by the licensees and implemented pursuant to the approval of the Board. The Board shall render decisions on the applications for tariff approvals within 30 days following the application date.

However, in the case that the risks arising from agreements and activities aimed at or may result in hindering, disrupting or restricting the competitive environment and delivery in the petroleum market, the Authority shall be authorized to determine base and/or ceiling price(s) and take necessary measures to apply on regional or national basis in all phases of activities not exceeding two months in each time.

The procedures and principles and the amounts for the supporting of consumers without interfering with prices with respect to specific regions and specific purposes shall be determined by a Decree of Council of Ministers upon the proposal of the Ministry.

### **Ownership, Expropriation and Special Measures**

**Article 11.** a) The acquisition of rights or properties regarding lands, estates and buildings necessary for facilities as per the provisions of this Law shall be obtained primarily through agreements.

In the event that the activities put forward herein necessitate, the acquisitions regarding the followings may also be realized as per the provisions stated in the Expropriation Law No.2942;

- 1) Refineries and licensed storage facilities,
- 2) The establishment of easement rights on lands where transmission lines cross and real estates in the vicinity of other buildings standing as an inseparable part of such transmission lines, and,
- 3) Processing facilities to be determined by the Authority. The ownership of the expropriated real estate shall belong to the Treasury and the right to use it shall belong to the licensee who has paid the expropriation cost.. The right of utilization shall be registered in the title deed register in the name of the licensee and such right shall be a part of the license and continue until the termination of the license period. Expropriation cost paid by licensees shall not be returned in the event that the license terminates or is cancelled.

The expropriation decree to be issued by the Authority shall be considered as a public interest decree and the expropriation process shall be realized as per the provisions of the Expropriation Law.

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It is also noted in the title deed registers of the facilities owned by refining and transmission licensees, including the ones found appropriate by the Board, that no other note can be registered in the title deed registers unless approved by the Authority.

b) Limited real rights and leasing of the assets: Legal bodies may request to have the limited real rights of the lands under the ownership of the state regarding their activities provided that the cost is paid by the related legal body and may request to lease such lands.

If these requests are approved by the Board, the Authority shall consider the right of usufruct, servitude, right of construction or long-term leasing as per the related legislation and according to the need.

The legal body taking over the rights gained in this way, shall be liable to pay the cost of holding these rights determined by the Board. Utilization rights are an integral part of the relevant license or contract, and their validity period shall be limited with the period of the validity of the same.

The limitations regarding construction, agricultural and dangerous activities that may create risks; within a minimum of 15 meters and maximum of 100 meters distant on both sides of transmission lines, within a maximum of 500 meters distant surrounding the facilities necessary for pipelines and refineries and licensed storage facilities, together with the procedures and principles of the same shall be set forth in the regulation to be issued by the Authority.

The provision of Article 11 of Telegraph and Telephone Law No. 406 shall not apply to transmission lines and to the relevant premises which are the inseparable parts of such transmission lines.

#### **Access to transmission facilities and licensed storage facilities**

**Article 12.** Transmission and storage licensees who have spare capacity in their facilities shall be liable to meet the transmission and storage demands on the condition that these demands meet the following conditions:

The demands should;

- a) be in compliance with the tariff of the licensee,
- b) be appropriate for the capacity of the relevant facility,
- c) not have deteriorating or risk increasing negative effects on the licensee's facilities, operational rules and conditions and the petroleum transmitted or stored by the licensee,
- d) be in conformity with the quality of the facility, transmitted or stored petroleum, and be at the minimum quantity determined in the tariff of the licensee,
- e) for transmission, be made by producer, transmitter or distribution undertaking by taking into account the type of petroleum and for storage, be made by all with the provision of exceeding the minimum quantity determined in the tariff of the licensed storage undertaking.

#### **Coordination**

**Article 13.** The Authority shall be informed and the participation of the Authority shall be provided in any of the preparatory studies (except for regulations regarding taxes, duties and levies) related directly or indirectly with the petroleum market to be performed by other authorized competent authorities..

The representative of the Authority shall take part in standard preparatory studies to be carried out by the Turkish Standards Institution regarding petroleum market activities. The Turkish standards regarding petroleum market activities can be enforced as compulsory by Board's approval.

The Authority shall be authorized to give comments and make requests from the related authorities in following conditions:

- a) in cases which may cause substantial hazards to licensed facilities,
- b) in case misleading advertisements and announcements and other similar activities which may cause unfair competition in the market are made,
- c) in regulations and implementations regarding importers, producers and providers of goods and equipment and their authorized services performing in the market.

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The Authority may be a third party intervener in public cases regarding petroleum market activities. In addition to filing criminal complaints, it may also request the judicial or civil authorities to take action for the proper implementation of the legislation.

## **PART FIVE**

### Information Gathering, Records, Audit, Notification and Insurance

#### **Information Gathering, Records, Audit and Notification**

**Article 14.** The notification liabilities shall be determined by the Authority for the purpose of gathering information regarding market operations. The Authority may determine specific procedures and principles regarding the preparation of documents and the record keeping system of the licensees provided that the provisions of the Tax Procedure Law are reserved.

The Authority can request any information it deems necessary during the performance of its duties, from public institutions, real and legal persons.

Regarding the market parties and/or facilities the appointed Authority official shall be authorized to review any document and commodity including accounting books, take copies or samples, request written or verbal explanations on the subject, prepare necessary minutes, inspect the facilities and operations. The framework of the objective, scope, duration and authority shall take part in the letter of authorization.

The Authority shall audit the market activities via its own personnel or by the way of service procurement from public institutions and organizations and private auditing organizations. The Authority may establish accredited stable and mobile laboratories to be used for audits in cooperation with the Turkish Accreditation Agency and allocate resources for their establishment. The procedures and principles to be followed in audits, preliminary investigations and investigations shall be regulated by the regulation to be issued.

The fundamentals, procedures and principles regarding the disclosure of information to related parties and the public shall be set forth in the regulation to be issued by the Authority. Commercially confidential information with respect to the market shall not be disclosed.

The abstract information on the content of the license document of the licensees shall be announced by the Authority.

The provisions of the Notification Law No. 7201 shall apply for any notification to be made by the Authority in accordance with this Law. However, notifications by publication shall be published in the Official Gazette.

#### **Insurance**

**Article 15.** It is compulsory to get insurance for the activities carried out within the scope of a license. The activities to be exempt from compulsory insurance may be determined by a Decree of the Council of Ministers. The determination of the types of assets to be included to the insurance coverage, insurance types to apply to these assets and exemption issues shall be regulated by the regulation to be issued by the Authority.

## **PART SIX**

### Other Provisions

#### **Petroleum Stocks**

**Article 16.** For the purposes of sustaining continuation in the market, preventing the risks in crisis or extraordinary cases and fulfillment of the liabilities regarding extraordinary case petroleum stocks as a requirement of international agreements, a petroleum stock shall be kept in an amount of at least 90 days' amount of the net import in the previous year's average daily consumption.

The national petroleum stock is obtained through the liability of the refinery, liquid fuel and LPG distribution licensees to keep minimum 20 times of the average supplied daily product amount at their own storage or licensed storage facilities whether as a whole or separately according to their status. Loaded tankers within territorial waters to be transferred to refineries and storages and crude oil

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and semi-products in refineries shall be deemed as part of the national stock liability. The national petroleum stock might be kept tax-free according to the status of the stored place and with the provision of the allowance of the legislation.

Liquid fuel and LPG distribution licensees' 20 days' amount of the total stock, except for the portion in the bottom of their tanks shall be taken as the minimum operational stock of the company and deemed as part of the national petroleum stock. In addition, eligible consumers that consume 20,000 tons or more of each type of liquid fuel each year in a consumption facility shall be obliged to stock an amount in their storage to meet 15-days of their consumption and this stock shall be considered as part of the national petroleum stock.

The supplementary portion of the national petroleum stock shall be retained by refining undertakings and any funding need that may arise as a result of the acquisition of such supplementary portion, financing expenses and stocking and maintenance costs of such stocks shall be covered by the income added to the consumer prices (determined by the Board at a maximum of 10 US Dollars/ton) and the income at the utilization of the refining undertakings. In the event of imports except for refining undertakings, such income shall be paid to the refining undertaking by the importer. Refining undertakings are obliged to provide the Authority with information regarding the accounting of this income every year. The income shall be drawn to the level to cover the maintenance costs once sufficient storage facilities and stocks have been provided.

The Council of Ministers shall be authorized to render decisions to determine and increase the actual number of days of the national petroleum stock, to manage and impose liabilities on national petroleum stock, the term, type and amount of the national petroleum stock and to determine the location of stocking; and procurement of petroleum and services regarding the national petroleum stock; to take other decisions and measures regarding stock and stocking, to perform sales from the national petroleum stocks, to prepare the proposals to be submitted to the Council of Ministers and to determine the procedures and principles regarding the activities of the Commission established according to this Law.

The Commission shall be comprised of the representatives of the Ministry of Defense, Ministry of Interior Affairs, Ministry of Finance, Ministry of Foreign Affairs, Undersecretariat of Treasury, General Directorate of Petroleum Affairs and the Authority and chaired by the Undersecretary of the Ministry of Energy and Natural Resources. The Ministry shall implement the decisions taken by the Commission and carry out the secretarial work. The Ministry shall be the counterpart for the legal process to be carried out against the decisions of the Commission.

### **Eligible Consumers**

**Article 17.** The procedures and principles for determining eligible customers and granting licenses shall be regulated by the regulation to be issued by the Board.

Distributors cannot perform sale at the liquid fuel stations operated by themselves to the consumers whose annual consumption of heating fuel, fuel-oil and diesel oil is below the annual consumption amount to be determined by the Authority not being less than 5000 tones.

### **National Marker**

**Article 18.** Refining undertakings and distribution undertakings shall add a marker, the conditions and quality of which shall be determined by the Authority, to the liquid fuel to be marketed in Turkey at the exit point of the refinery or at the customs entry point.

Refining undertakings and distribution undertakings shall submit their marketing projections of the current year in February to the Authority. The national marker to be provided by the Authority according to these projections shall be delivered to refining undertakings and distribution undertakings in order to be added to the liquid fuel according to the procedures and principles to be set forth by the Authority.

The Authority shall establish an audit system by national marker with administrative and technological methods. In the event that an authorized official files an application, the Governor's offices are responsible for gathering the samples from consumers and vendors for auditing purposes and ensuring their security.

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In case, during the tests to be made on samples, it is determined that the national marker is not at the required condition and level and in case it is determined by laboratory analysis that the samples are not compliant with the technical regulations, the provisions of Article 19 shall be applied.

**SECTION TWO**  
**Miscellaneous Provisions**  
**PART ONE**

Penalties, Administrative Sanctions, Right to Legal Action, Regulation and Repealed and Inapplicable Provisions

**Administrative Fines**

**Article 19.** The imposition of administrative fines and sanctions in accordance with this Law shall not prevent the implementation of the other provisions of this Law. The imposition of penalties and measures in accordance with this Law shall not prevent any other act to be carried out in accordance with other laws.

As per this Law;

a) The following acts shall be considered acts of gross fault and an administrative fine at an amount of 500 billion Turkish Liras shall be imposed on those responsible:

1) To carry out activities subject to a license without holding license,

2) To hinder directly or indirectly or to try to hinder the implementations made by the Authority in accordance with Article 10,

3) Incompliance with the limitations set forth in Article 9,

4) The violation of the provisions of Articles 5, 6, 7, 8, 16, 17 and 18,

b) The following acts shall be considered acts of first-degree fault and an administrative fine at an amount of 200 billion TL shall be imposed on those responsible:

1) To commence construction and/or operation of facilities without holding a license or to perform actions that may lead to possession on such facilities,

2) To perform activities beyond the scope of the license,

3) To violate the provisions of Article 4,

4) To hinder the access to transmission and storage facilities directly or indirectly within the provisions taking part in Article 12.

An administrative fine at an amount of fifty billion Turkish Liras shall be imposed by the Authority to people who is not compliant with the liabilities set forth by the Law and which are not listed above.

One fifth of the fines mentioned above shall be applied to vendors.

Until the fines are collected, the assets of the parties may be confiscated by a court order. Facilities shall be sealed until related license is obtained or until the facilities are modified to a stage to perform an activity not requiring license as per this Law.

In the event that the same act for which an administrative fine has been imposed is repeated within 2 calendar years, the above fines shall be two-folds.

The statute of limitations for the imposition of a fine by the Authority shall be five years following the violation and/or occurrence date. Any action to be made by the Authority on this issue for investigation and examination purposes shall interrupt the statute of limitations as of the date of notification of the action to one of the relevant party. A lawsuit brought against the decisions shall also interrupt the statute of limitations.

The fines collected in a month shall be transferred to be recorded as revenue to the Treasury until the end of the twentieth working day of the following month.

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The liabilities of the legal persons regarding administrative fines shall be determined according to the Article 65 of Turkish Commercial Code No. 6762.

In the event that a fine is not paid within 30 days following the accrual date, the collection of the fine shall be realized by the related Tax Office. The provisions of the Collection of Public Sector Claims Law No. 6183 shall apply for collection.

The amount of administrative fines shall be applied every year pertaining to the previous year, by increasing at the revaluation rate determined in line with the reiterated Article 298 of Tax Procedure Law No. 213. Fractions in millions shall not be taken into account in such calculations.

### **Administrative Sanctions**

**Article 20.** The Authority shall commence a preliminary inquiry or investigation in the event that the licensee does not comply with this Law, with regulations put into effect according to this Law, with written directives of the Authority or any issue registered in their licenses. In addition, the relevant licensee shall be notified to eliminate the incompliance within fifteen days or otherwise the subject market activities shall be suspended temporarily or terminated permanently. Despite such notification, in the event that the incompliance continues at the end of the fifteen day period, the Authority shall order that the market activity be temporarily suspended for not less than thirty and not more than one hundred and eighty days. During the period of temporarily suspension, no market activity shall be carried out except the ones to prevent unsafe act or malicious intent or harm on the products and to eliminate the incompliance causing the suspension. Cancellations of licenses shall be decided pursuant to an investigation to be carried out by the Authority.

The licenses of those who supply illegal products and products of which the country of origin are indefinite shall be cancelled. Those who supply products that do not comply with the technical regulations shall be held liable to compensate any damage incurred.

In case it is determined by the Authority that the vendor activities carried out at liquid fuel stations are incompliant with this Law or the regulations issued as per this Law, liquid fuel supply at the mentioned station shall be suspended by sealing temporarily or for an indefinite period of time by the Authority. The procedures and principles regarding the cancellation and sealing shall be set forth in the regulations to be issued by the Authority.

The provisions of Article 274 of Turkish Criminal Code No. 765 shall apply to real or legal persons that continue to carry out activities despite the cancellation of license and sealing.

The license shall be cancelled in the event it is determined that there is fraud or misleading declarations against law regarding demand or operations carried out in the framework of this Law.

The compensation issue regarding the losses and damages towards the consumers arising from the petroleum supply which is incompliant with technical regulations shall take part in the licenses and contracts of the real and legal persons who are the addressees of the users. The procedures and principles regarding implementation shall be determined by the regulation to be issued.

Vendors connected to a distribution company whose distribution license has been cancelled or temporarily suspended shall carry out their activities as vendors of other distribution companies.

### **Preliminary inquiry, investigation and right to legal action**

**Article 21.** On it's own initiative or upon a notification or complaint filed into the Board, the Board shall decide directly to carry out an investigation regarding the parties carrying out market activities or a preliminary inquiry to determine whether an investigation is required.

The procedures and principles to be followed in preliminary inquiry and investigations shall be determined by the regulations to be issued by the Authority.

Any lawsuit against the decisions of the Board shall be submitted to the Council of State as the court of first instance. The Council of State shall consider such filings against Board decisions as urgent matters.

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## **Regulation**

**Article 22.** Issues regarding market activities shall be regulated with the regulations referred to in the relevant articles of this Law and the regulations to be issued by the Authority on other issues needed during the operation of the market. These regulations shall be published in the Official Gazette.

Besides, the Authority may use its authority by taking specific decisions by the decision of the Board. Specific decisions concerning the public and the communiqués to be published for further clarification of the regulations to be made shall be announced by press and broadcasting or special bulletins.

## **Repealed and inapplicable provisions**

**Article 23.** A) Article 5 of Law No. 79 dated 10.09.1960 on the Discharge of National Preservation Crimes, National Preservation Organization, the Liquidation of Capital and Fund Accounts and Reating Other Provisions,

B) Subparagraph 41 of Paragraph two of Article 15 of the Municipality Law No. 1580 dated 03.04.1930,

have been repealed.

C) The provisions of the Petroleum Law No. 6326 contrary to this Law shall not be applied.

## **PART TWO**

### **Amendments to the Electricity Market Law**

**Article 24.** Paragraph one of Article 5 of the Electricity Market Law No. 4628 dated 20.02.2001 has been amended as follows:

The Board shall consist of 9 members, out of which are one President and one Vice President.

**Article 25.** The following Article 5/B has been added after Article 5/A of the Electricity Market Law No. 4628.

Duties of the Board regarding the petroleum market;

Article 5/B – The Energy Market Regulatory Board shall also be responsible for the following duties regarding the petroleum market:

a) To implement the provisions of Petroleum Market Law, to issue and implement any regulation regarding market activities,

b) To state the Authority's views and comments regarding the plans, policies and implementation of petroleum activities,

c) To carry out audits, preliminary inquiries and investigations, to impose penalties and sanctions, decide on the filing of application into any legal or administrative organ including the filing of lawsuits,

d) To monitor the implementation of international organizations and institutions regarding the petroleum market,

e) To determine the fees for licenses and actions for licenses in the petroleum market,

f) To examine the audited financial tables of those carrying out activities in the petroleum market or to have them examined,

g) To determine the scope of the reports regarding service reliability, service outages and other performance criteria to be required from those performing activities in the petroleum market,

h) To impose administrative fines and cancel licenses in cases when it is determined that there is incompliance with the provisions of the Petroleum Market Law, tariffs and regulations approved by the Board, license terms and conditions and the Board's decisions.

**Article 26.** The following paragraphs have been added to Article 9 of the Electricity Market Law No. 4628:

“Those who have been employed in public institutions and organizations for at least 5 years and possess an undergraduate degree, and have scored an “A” in the state personnel language tests, or who have worked in the private sector for more than 5 years and have the same qualities in terms of

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higher education and foreign language and whose service is deemed necessary, may be appointed as experts to the appropriate vacant posts of the Authority until 31.12.2004 by taking into consideration their terms of office in these organizations and institutions provided that their degrees and levels are determined and without being subject to the exam and application requirements of Law No. 657. The personnel of the General Directorate of Petroleum Affairs who do not possess the aforesaid qualifications may be employed in the Authority as office personnel upon their request on the condition that it is agreed both by the Authority and the General Directorate of Petroleum Affairs. The appointment of those employed in accordance with the provisions of Labor Law No. 4857 shall be evaluated within the frame of the aforesaid Law. Their indemnity payments shall be paid by their institutions.

The reorganization of the Authority shall be made within 3 months following the enactment of this Law upon the proposal of the Board and based on the regulation to be enacted by the Council of Ministers. The Directorate of State Employee shall be informed within a month as of the coming into force of the aforesaid regulation, about the personnel who are employed at the Authority by administrative service contracts and who are subject to the State Employee Law No. 657 except for wages and financial rights, and the personnel whose cadre is cancelled, changed because of the institutional reorganization or over necessity personnel and who are found insufficient by the Board with his qualifications for service necessities of the cadre. This Directorate shall submit the appointment proposal of the related ones to public institutions and organizations within fifteen days. These public institutions and organizations shall appoint the related personnel whose appointment proposal has been made, to the appropriate vacant staff positions in fifteen days. The provisions of Articles 62 and 63 of the State Employee Law No. 657 shall apply for the commencement terms and issues in the case that these personnel do not commence working. The wages and financial rights of the Authority's personnel appointed to other public institutions and organizations shall be covered by the Authority until they begin working at their new appointments.

**Article 27.** After the statement "...in the event that" in Article 2 subparagraph 3 of the Electricity Market Law No. 4628 the following statement has been added "except for auto-producers", and the following subparagraph (C) has been added after subparagraph (B) of Article 10:

"C) The revenues of the Authority regarding the petroleum market shall be comprised of the following:

- a) Participation fee.
- b) Fees collected for license, approval, permission and visa procedures.
- c) Publications and other revenues.
- d) Grants to be extended by international organizations and institutions to finance studies and projects relating to development of market provided the details of such grants are made public.

Participation fee payers mentioned in subparagraph (a) shall be the real and legal persons holding refining, processing, distribution, transmission, transportation, bunker, storage, vendor and lube oil production licenses. Joint license holders shall pay the participation fee based on their total net sales. The participation fee shall be determined by the Board provided that such rate does not exceed 0,1 % of the net sales amount taking part on the license holders' annual income statements and 2 million USD. The participation fee to be implemented within the current year shall be announced in December of the previous year.

If it is within the net sales profit, the sum of tax, customs, duties and levies and Special Consumption Tax paid for petroleum within the year shall be deducted from the sum of the net sales.

Licensees liable to pay a participation fee shall also be liable to submit balance sheets and income statements of the previous year to the Authority until the end of May of each year and pay half of the fee until the end of June and the other half until the end of November

Penal and administrative procedures regarding participation fees not declared in time and false declarations shall be completed by the Authority and such procedure shall be commenced at related bodies. The provisions of Collection of Public Claims Law No. 6183 shall apply to financial liabilities not paid in time and late payment interest, and shall be collected through related tax offices.

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**Article 28.** The following provisions have been added to the end of subparagraph 2 of Temporary Article 2 of the Electricity Market Law No. 4628.

The terms of office of the two members to be appointed not later than one month following the enactment of the Petroleum Market Law shall be 6 years. These members shall not be subject to the drawing of lots and new appointments shall be made for these two memberships at the end of the terms of office.

### **PART 3**

#### Temporary and Final Provisions

**Temporary Article 1.** Before the enactment of this Law, the rights and liabilities of certificate holders as per the Petroleum Law No. 6326, and liquid fuel distribution and trading companies permitted to carry out activities according to regulations issued by the Ministry shall be reserved until they are granted licenses regarding the activities within the period and in line with the conditions determined by this Law.

On the enactment date of this Law, those who are actively carrying out activities that require a license as per this Law should be in compliance with the provisions of this Law within one year following the enactment of this Law by submitting the required information and documents to the Authority. The Authority shall be authorized to grant extensions not exceeding 3 months to those who have applied but not completed the necessary procedures.

The activities of those who have not applied within the determined period or those despite applying in time cannot be compliant with the provisions of this Law, shall be ceased by the end of the period. All kinds of decisions, procedures and documents granting right, permission and authority shall be invalid without any further procedure.

The provisions taking part in the decrees, legislation, regulations and communiqués regarding petroleum products shall remain in effect until the Authority enacts the relevant regulations. Until the effective date of regulation and other legislation enacted by the Authority, the duties regarding activities and operations carried out by the Ministry of Energy and Natural Resources and/or the General Directorate of Petroleum Affairs shall continue to be carried out. However, no new preliminary permission and statutes regarding the establishment of liquid fuel distribution and marketing companies shall be granted.

License applications regarding activities shall not be made until the Licensing Regulation comes into effect. The enactment of the Licensing Regulation cannot exceed 180 days following the enactment date of the Law.

Article 5 of Law No. 79 dated 10.09.1960 on the Discharge of National Preservation Crimes, National Preservation Organization, the Liquidation of Capital and Fund Accounts and Reating Other Provisions and the Decree No. 98/10745 of the Council of Ministers regarding petroleum products shall be valid until 01.01.2005. This period may be extended for a period of six months, if necessary, by a Decree of the Council of Ministers. Free import activities of the distribution undertakings shall commence with the annulment of the Decree No. 98/10745 of the Council of Ministers

The General Directorate of Petroleum Affairs shall continue issuing certificates until the secondary legislation is prepared and the necessary regulations are completed by the Board. At the end of this process, the provisions of Petroleum Law No. 6326 regarding the certificates shall be annulled.

According to the provisions of Petroleum Law No. 6326, the limitations regarding the materials which have been imported by certificate holders with the exemption of customs and other import taxes and duties shall be abolished without any further action. All kinds of charges on this issue and registers shall be cancelled.

**Temporary Article 2.** The Authority shall be notified of the privatization procedures concerning the petroleum market. Granting of licenses and modifications on licenses as a result of privatization realized in accordance with the applicable legislation shall be carried out by the Authority without any other procedures.

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The organizations under the scope of privatization and operating in issues which are subject to licenses as of the enactment date of this Law shall not be subject to the Public Procurement Law No. 4734 dated 04.01.2002 with regards to their production and trading activities until they are privatized. The Executive Board of the organization shall be authorized to determine the total monthly wages and other financial rights of the personnel working beyond the scope, provided that these wages and other rights do not exceed the two-folds of the average monthly wage of the Undersecretary of the Prime Ministry. However, concerning the personnel beyond the scope and whose wages and financial rights are determined according to this Clause in the event of a transfer to another public organization or institution, for a transfer made in accordance with Article 33 of Law No. 4046, dated 24.11.1984, when determining the wages and other financial rights with regards to these personnel's previous positions in accordance with the Clause 5 of the same Article; the amount will be calculated by applying the increase ratio and/or amounts to the wages of public personnel within the period from 15.11.2003 to the date they are assigned, on to their wages and other financial rights on 15.11.2003 according to Clause 2 of the same Article, which will be taken as a base amount.

**Temporary Article 3.** Liquid fuel sales to be made to commercial sea vehicles without Special Consumption Tax shall be made directly by distribution undertakings except for the limitations set forth in paragraph two of Article 7.

**Effectiveness**

**Article 29.** This Law shall be effective on the date of its publication.

**Execution**

**Article 30.** The provisions of this Law shall be executed by the Council of Ministers.

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