

THE ENVIRONMENT  
AND CLIMATE  
CHANGE LAW  
REVIEW

THIRD EDITION

Editor  
Theodore L Garrett

THE LAWREVIEWS

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AND CLIMATE  
CHANGE LAW  
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# CONTENTS

PREFACE.....	v
<i>Theodore L Garrett</i>	
Chapter 1 AUSTRALIA.....	7
<i>Jennifer Hughes, Ilona Millar and Roopa Varadharajan</i>	
Chapter 2 BRAZIL.....	21
<i>Lina Pimentel Garcia, Luiz Gustavo Bezerra, Viviane Otsubo Kwon and Meg Ferreira Cirilo</i>	
Chapter 3 CANADA.....	30
<i>Jonathan Cocker</i>	
Chapter 4 CHINA.....	42
<i>Cheng Xiaofeng, Hu Ke, Jiang Xinyan</i>	
Chapter 5 EUROPEAN UNION.....	53
<i>Jacquelyn F MacLennan and Tallat S Hussain</i>	
Chapter 6 FRANCE.....	71
<i>Christian Huglo</i>	
Chapter 7 GERMANY.....	82
<i>Dirk Uwer and Moritz Rademacher</i>	
Chapter 8 INDIA.....	93
<i>Sanjeev Kapoor and Nawneet Vibhaw</i>	
Chapter 9 ITALY.....	104
<i>Gianluca Atzori</i>	
Chapter 10 MEXICO.....	116
<i>Ricardo Eloy Evangelista Garcia and Mariana Arrieta Maza</i>	

Chapter 11	NETHERLANDS.....	131
	<i>Jochem Spaans, Seppe Stax, Rob van der Hulle and Marjet van Bezooijen</i>	
Chapter 12	PORTUGAL.....	145
	<i>Manuel Gouveia Pereira</i>	
Chapter 13	RUSSIA.....	160
	<i>Sergey Kozlov</i>	
Chapter 14	SPAIN.....	173
	<i>Carlos de Miguel and Bárbara Fernández</i>	
Chapter 15	TURKEY.....	184
	<i>Ümit Hergüner, Deniz Tuncel and Zeynep Tor</i>	
Chapter 16	UNITED KINGDOM.....	195
	<i>Tallat S Hussain</i>	
Chapter 17	UNITED STATES.....	218
	<i>Theodore L Garrett</i>	
Appendix 1	ABOUT THE AUTHORS.....	241
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS.....	255

# PREFACE

Environmental law is global in its reach. Multinational companies make business plans based on the laws and regulations of the countries in which they are headquartered and have manufacturing facilities as well as the countries in which they distribute and sell their products. Moreover, multinational companies have global environmental, health and safety goals and practices that tend to be worldwide in their scope for reasons of policy and operational consistency.

For these and other reasons, this third edition of *The Environment and Climate Change Law Review* is timely and significant. This book offers a review, by leading environmental lawyers, of significant environmental laws and issues in their respective countries around the world, with updates since last year's edition.

Climate change continues to dominate international environmental efforts, and we have also witnessed efforts to promote sustainability. Many countries are making efforts to promote conservation and renewable or green energy. Changes in reliance on coal and nuclear energy have impacts on the demand for other energy sources. All of these changes have impacts on efforts to reduce greenhouse gases.

Environmental law continues to change and evolve, as new regulations are adopted and existing rules are amended or challenged in courts or interpreted by agencies. In the United States, 2017 has seen the election of a new President and an administration that have different priorities in the related areas of environment and energy. Future editions of this book will continue to focus on changes and developments.

This book presents an overview and, of necessity, omits many details. The book should thus be viewed as a starting point rather than a comprehensive guide. Each chapter of this book, including mine, represents the views of the author in his or her individual capacity, and does not necessarily reflect the views of the authors' firms or clients, or the authors of other chapters, or my views as the editor. This book does not provide legal advice, which should be obtained from the reader's own lawyers.

I wish to thank the many authors who contributed their time and expertise to the preparation of the various chapters to this book. I also wish to thank the editors at Law Business Research for their continued attention to this project. We hope this book helps you to gain a better understanding of environmental law in various countries around the globe.

**Theodore L Garrett**

Covington & Burling LLP

Washington, DC

United States

January 2019

## Chapter 15

# TURKEY

*Ümit Hergüner, Deniz Tuncel and Zeynep Tor*<sup>1</sup>

## I INTRODUCTION

Article 56 of the Constitution of the Republic of Turkey of 1982 (the Constitution of 1982)<sup>2</sup> identifies environmental protection and pollution avoidance as fundamental instruments for achieving policy goals aimed at protecting and enhancing human health and the right to live in a healthy environment. Article 56 requires the state and all of its citizens to comply with this framework.

The Environmental Law No. 2872 (the Environmental Law)<sup>3</sup> was enacted in 1983 and is the primary law addressing environmental issues. The Ministry of the Environment and Urbanisation (the Ministry) is the principal authority that oversees implementation of the Environmental Law, issues secondary legislation and regulates a broad range of activities that impact the environment.

Turkey accelerated its adoption of environmental legislation in the 1990s following its EU membership application submitted in 1987. In the early 2000s, Turkey started an ongoing trend of adapting environmental regulations and standards acknowledged by the European Union as part of the long-lasting accession talks that commenced in 2005. Turkey's regulatory standards have become more comprehensive and sophisticated in an effort to match the European Union in addition to the numerous bilateral and multilateral treaties ratified to address regional and global environmental issues. That being said, Turkey is also subject to domestic and international criticism owing to its struggle to balance environmental protection with economic development. Despite the comprehensive legislative foundation framing environmental protection, there is room for improvement on the implementation and enforcement front. Environmentalists have been known to criticise the frequency and quality of governmental audits and the many investor-friendly exceptions introduced in legislative framework over the years (e.g., certain infrastructure investments being carved out of secondary legislation that require an environmental impact assessment).

## II LEGISLATIVE FRAMEWORK

The Environmental Law, as the primary legislation governing environmental protection, sets forth the framework for environmental protection principles and the sanctions applicable to the violations of such principles. The secondary legislation sets forth detailed standards

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1 Ümit Hergüner is a senior partner, Deniz Tuncel is a partner and Zeynep Tor is a senior associate at Hergüner Bilgen Özeke Attorney Partnership.

2 Published in the Official Gazette, dated 9 November 1982, No. 17863.

3 Published in the Official Gazette, dated 11 August 1983, No. 18132.

and obligations, and defines specific types of environment and pollutants affecting it (e.g., soil pollution, water pollution, noise pollution). The secondary legislation refers to the Environmental Law for sanctions applicable to non-compliance with such detailed standards.

The main objectives of the Environmental Law are to protect and improve the environment, to make better use of and preserve land and natural resources, and to prevent water, land and air pollution in order to foster the health, civilisation and living conditions of present and future generations.

The Environmental Law hinges on the 'polluter pays' principle and imposes liability on the polluter for all actions against the environment. A 'polluter' is defined as an individual or legal entity that directly or indirectly causes environmental pollution or deterioration of the ecological balance or otherwise disturbs the environment during or because of their activities.

Environmental polluters and those who inflict damage on the environment are liable for any damage arising from the pollution and destruction it may cause regardless of their degree of fault. The polluter is also required to pay compensation for the resulting damage in accordance with general tort liability.

All institutions and enterprises falling within the scope of the environmental legislation are obliged to establish, individually or collectively, waste treatment facilities or systems. The legislation imposes a responsibility on the institutions and enterprises to conduct waste treatment, avert and eliminate the harmful effects of all waste generated, and take any necessary precautions to prevent possible damage to the environment during operations.

The most significant pieces of secondary legislation are the Environmental Impact Assessment Regulation (the EIA Regulation)<sup>4</sup> and the Regulation on Environmental Permits and Licences (the Permit and Licence Regulation).<sup>5</sup>

The EIA Regulation details the environmental impact assessment procedure and requirements, obliging institutions and enterprises to mitigate their impact on the environment.

The Permit and Licence Regulation governs the issuance and terms of permits and licences. Pursuant to the Permit and Licence Regulation, companies must obtain an integrated environmental permit for the commissioning of their facilities, covering air, noise, wastewater and deep water emissions to the extent applicable.

Both the EIA Regulation and the Permit and Licence Regulation specifically list the type of facilities that fall within their scope together with the applicable exemptions.

Turkey also takes part in the global combat against greenhouse gas emissions and global warming. The Ministry introduced the National Climate Change Action Plan for the period between 2011 and 2023 in an effort to work towards global climate change-related objectives. For this reason, Turkish authorities have issued the Regulation on the Monitoring of Greenhouse Gas Emissions (the Regulation on Emissions Monitoring)<sup>6</sup> and the Regulation on the Reduction of Ozone Layer Depleting Substances<sup>7</sup> to address the monitoring, reporting and verification of greenhouse gas emissions from certain activities and facilities listed in the regulations. However, these regulations are merely focused on the monitoring of gas emissions for statistical purposes; they do not impose any actual preventive measures to reduce emissions. In the absence of such provisions, the current legal framework does not

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4 Published in the Official Gazette, dated 25 November 2014, No. 29186.

5 Published in the Official Gazette, dated 29 April 2009, No. 27214.

6 Published in the Official Gazette, dated 17 May 2014, No. 29003.

7 Published in the Official Gazette, dated 7 April 2017, No. 30031.

provide meaningful tools to fight climate change. Until the legislative background on climate change is amended to introduce a defined plan with incentives and meaningful sanctions, it is unrealistic to expect much change in the concerned parties' approach against climate change.

Turkey is a signatory to many multilateral conventions and agreements, along with many bilateral agreements. Turkey is, among others, party to the following international agreements, conventions and protocols concerning protection of the environment:

- a* air pollution: the Convention of Long-Range Transboundary Air Pollution;
- b* water pollution:
  - the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean;
  - the Convention on the Protection of the Black Sea Against Pollution; and
  - the International Convention for the Prevention of Pollution from Ships;
- c* chemicals, hazardous wastes and land contamination:
  - the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade;
  - the Stockholm Convention on Persistent Organic Pollutants;
  - the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; and
  - the International Convention on Civil Liability for Oil Pollution Damage;
- d* climate change:
  - the United Nations Framework Convention on Climate Change (UNFCCC);
  - the Kyoto Protocol to the UNFCCC;<sup>8</sup>
  - the Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol on Substances that Deplete the Ozone Layer; and
  - the Montreal Protocol on Substances that Deplete the Ozone Layer; and
- e* biodiversity:
  - the Cartagena Protocol on Biosafety to the Convention on Biological Diversity; and
  - the Convention on the Conservation of European Wildlife and Natural Habitats;

Under Turkish law, duly ratified international agreements and conventions carry the force of law in accordance with Article 90 of the Constitution of 1982.

### III THE REGULATORS

The Ministry is the principal authority for enforcing and overseeing the related legislation and introducing, amending, implementing and enforcing regulations related to the environment. Pursuant to Article 31 of the Environmental Law, regulations issued pursuant to the Environmental Law are to be drafted by the Ministry in consultation with other ministries when necessary.

The Ministry uses its authority with regard to environmental protection through certain boards and directorates. These boards and directorates supervise and audit the implementation of the EIA Regulation as well as permits and licences.

The main boards and directorates under the Ministry are as follows:

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<sup>8</sup> As Turkey is not among the Annex 2 signatories, Turkey's status under the Kyoto Protocol is limited to general undertakings without being bound with quantitative limitations on current emissions levels.

- a* High Council of Environment: this higher board is responsible for and authorised to, among others, designate missions, policies and strategies; adopt the necessary legal and administrative measures; and resolve disputes on environmental issues concerning more than one ministry or governmental institution by rendering a final decision.
- b* Regional Environmental Boards: these local boards are presided over by the governors of their respective cities or districts and are engaged in ensuring environmental protection and preventing pollution in their assigned area.
- c* General Directorate of Environmental Management: this general directorate focuses on providing opinions and drafting the necessary regulations; developing standards for preventing environmental pollution; promoting cleaner manufacturing and use of renewable energy resources; collaborating with the Turkish Atomic Energy Authority with regard to nuclear energy; and preparing, coordinating, and implementing national environmental strategies and guiding local environmental boards.
- d* General Directorate of Permit and Supervision for Environmental Impact Assessment: this general directorate focuses on, among others, handling strategic EIA work and taking necessary measures within such context; providing permits and licences, if necessary; monitoring facilities and motor vehicles, emissions, waste treatment systems, etc., that contribute to environment pollution; and establishing laboratories to make any analyses required to monitor the environment and pollutants.
- e* General Directorate of Protection of Natural Heritage: this directorate is responsible for conducting the necessary work for the management of national parks, preparation of zoning plans with regard to such areas and the designation of principles for protection with regard to conflicted heritage areas where natural heritage, archaeological and urban areas overlap with other protected areas.

#### IV ENFORCEMENT

In general, Turkish law prescribes the following measures against pollution.

##### **i Preventive action**

As per Article 30 of the Environmental Law, anyone who has been harmed by or has become aware of any action that pollutes the environment has the right to apply to the administrative or judicial authorities for preventive measures, including ceasing the responsible activities. The claimant can apply to the regional units of the Ministry or to the administrative court against any action by private persons or administrative bodies. As opposed to the general administrative compensation and cancellation lawsuits described under the Administrative Procedural Law No. 2577,<sup>9</sup> the claimant does not have to establish a legitimate interest to make a claim for the prevention of pollution. Both the Ministry and the courts are authorised to suspend operations of the polluter. The enforcement regime under the Environmental Law echoes the principle of Article 56 of the Constitution of 1982: everyone has the right to live in a healthy and balanced environment.

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<sup>9</sup> Published in the Official Gazette, dated 20 January 1982, No. 17580.

## ii Civil Liability

The Environmental Law's liability regime adopts the 'polluter pays' principle. In principle, all costs in relation to preventing, limiting and diminishing pollution are to be borne by the polluter and all necessary expenditures made by public authorities or agencies for preventing pollution are collected from the polluter in accordance with the provisions of the Law Regarding Collection of Public Receivables No. 6183 (the Public Receivables Law).<sup>10</sup> As per Article 28 of the Environmental Law, the polluter is liable irrespective of whether it was at fault and regardless of the severity of its fault. Further, the liability extends to damages incurred from the pollution as well as the expenses for recovery and rehabilitation of the polluted area. The polluter will also be required to indemnify any claims by affected parties in accordance with the general torts liability regime under Turkish law. There is a five year statute of limitations that is triggered once the affected party becomes aware of the polluting activity or pollution.

## iii Administrative fines

Article 20 of the Environmental Law sets forth various administrative fines<sup>11</sup> to be imposed on polluters, including, among others, those who establish or operate facilities subject to permits without obtaining authorisation from the competent authorities, those who continue to operate despite the cancellation of their permit, those who modify a permitted facility without permission and those who fail to make the necessary changes required by competent authorities.

If the action that led to a fine under the Environmental Law is repeated by the violating party within three years, the amount of the fine to be imposed will be multiplied by two for the first re-occurrence and multiplied by three for the second and following re-occurrences.

The Misdemeanour Law No. 5326<sup>12</sup> sets forth the various administrative fines to be imposed by municipal police officers. Fines will be imposed under the said law on persons that cause noise pollution and those who dispose waste to places other than designated waste collection or storage areas. The cost for removal of such waste is also charged to the polluter.

## iv Criminal Liability

Under the Criminal Code No. 5237 (the Criminal Code)<sup>13</sup> (Articles 181, 182, 183 and 184), intentionally polluting the environment through discharge or disposal of waste into the soil, water or air in violation of applicable procedures constitutes a crime. Offenders may be punished by imprisonment from six months to two years if such action is proven to have resulted in environmental pollution, regardless of the materiality of its environmental impact.

If the above offence causes permanent damage to the environment, the penalty will be doubled. If it is committed by negligence, the penalty would be from two months to one year.

As per the Coastal Law No. 3621,<sup>14</sup> those who dispose harmful material such as debris, soil or rubbish to the shore or to coastal strips designated in the zoning plan will be fined

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10 Published in the Official Gazette, dated 28 July 1953, No. 8469.

11 The amounts of administrative monetary fines are updated each year.

12 Published in the Official Gazette, dated 31 March 2005, No. 25772.

13 Published in the Official Gazette, dated 12 October 2004, No. 25611.

14 Published in the Official Gazette, dated 17 April 1990, No. 20495.

in accordance with the provisions of the Criminal Code, the Environmental Law and the Misdemeanour Law. If these acts result in disrupting the coastal environment or placement of obstacles to accessing the coast, a penalty from six months to two years will apply.

## V REPORTING AND DISCLOSURE

Under Turkish legislation, there is no general reporting obligation for permit or regulation violations or for climate change; however, specific regulations mandate certain reporting requirements. For example, pursuant to the Regulation on the Control of Water Pollution,<sup>15</sup> those who do not have a treatment facility fail to meet effluent standards during operations, increase processing capacity, or those who stop activities temporarily or permanently are obliged to immediately inform the relevant administration.

As mentioned under Section II, the EIA Regulation focuses on the environmental impact assessment procedure and requirements. Accordingly, if the proposed activities of an entity have the potential to adversely impact the environment, the investor must obtain either an 'EIA Positive Decision' or an 'EIA Not Required Decision' from the Ministry. For more significant activities falling within the scope of Annex I of the EIA Regulation, an EIA report must be prepared and submitted to the Ministry for approval. The Ministry will then decide whether the relevant facility's impact on the environment is acceptable within the framework of the applicable legislation. For activities within the scope of Annex II of the EIA Regulation (projects subject to election and assessment criteria), an EIA presentation file must be submitted to the Ministry or the relevant authority, who will then assess whether preparation of an EIA report is required for the specific project. If an EIA procedure is not required, the applicant may directly commence its activities. Failure to satisfy the EIA requirement prior to commencement of a qualifying activity may lead to temporary or permanent suspension of the relevant activity and reinstatement of the project site as well as an administrative fine amounting to 2 per cent of the investment value of the facility.

There is no general disclosure requirement for potential environmental liability to prospective purchasers and in financial statements or reports.

## VI ENVIRONMENTAL PROTECTION

### i Air quality

The Environmental Law sets out the framework principles for the preservation of air quality. Specifics thereof are governed by various regulations enacted based on the Environmental Law.

The Regulation on the Assessment and Management of Air Quality<sup>16</sup> is based on EU Directives 96/62/EC, 99/30/EC, 2000/69/EC, 2002/3/EC and 2004/107/EC, establishing the main principles and procedures for the preservation of air quality.

The Regulation on the Control of Air Pollution from Heating Sources<sup>17</sup> and the Regulation on the Control of Industrial Air Pollution<sup>18</sup> are sector-specific regulations governing air pollution with a focus on the activity it originates from.

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15 Published in the Official Gazette, dated 31 December 2004, No. 25687.

16 Published in the Official Gazette, dated 6 June 2008, No. 26898.

17 Published in the Official Gazette, dated 13 January 2005, No. 25699.

18 Published in the Official Gazette, dated 3 July 2009, No. 27277.

The Regulation on the Control of Industrial Air Pollution sets forth the principles for the control of soot, smoke, dust, gas, steam and aerosol emissions as a result of industrial and energy production. Environmental permits are mandatory for the establishment and operation of enterprises with air emissions and are issued subject to the Permit and Licence Regulation.

The Regulation on the Control of Air Pollution from Heating Sources specifies the substances that can be used for heating purposes and prohibits the use of certain scrap materials, including petroleum coke, mineral oil, plastic car parts, rubber, sawdust, solid waste, scrap textile, cables, wet wood, painted wood, plastic, household goods, food waste, medical waste, asphalt and asphalt products, paint and paint products, or fuel-oil containers to minimise air pollution.

See Section II for details on the environmental permits and licences required under the Permit and Licence Regulation.

As explained in detail under Section IV, a fine may also be imposed on the operator of a facility if a facility that is subject to permits under the air pollution legislation fails to comply with the terms of the permits or regulations or if the facility generates emissions in excess of the applicable emissions standards and limitations set out in the relevant regulations.

## **ii Water quality**

The Regulation on the Water Pollution Control sets forth the main principles for preserving water quality and preventing water pollution. In this regard, all kinds of pollutants are required to take permits for water pollution control.

It is forbidden to dispose wastewater in the receiving medium without any purification treatment and without ensuring that the quality standards determined for the environment in which the treated wastewater will be discharged in are not adversely affected.

Facilities that discharge waste into sewage systems should also obtain a wastewater connection permit. See Section II for details on the environment permits and licences required as per the Permit and Licence Regulation.

Further, if a facility has dangerous substances in its waste water, it must obtain a dangerous waste storage permit from the Ministry in accordance with the Regulation on the General Principles of Waste Management and the Regulation on the Control of Pollution Caused by Dangerous Substances in Aquatic Environments. Such waste must be collected from the permitted facility every six months by a licensed storage entity.

## **iii Chemicals**

Aside from the Environmental Law, the Regulation on the Classification, Labelling, and Packaging of Materials and Mixtures (the CLP Regulation)<sup>19</sup> and the Regulation on the Recording, Evaluating, Permission and Limitation of Chemicals (the Permission Regulation)<sup>20</sup> set up the legal framework governing the environmental implications of chemicals.

The Permission Regulation promotes alternative methods for the assessment of hazardous substances while enhancing competitiveness and innovation to protect human health and the environment. Accordingly, all manufacturers, importers and downstream users are responsible for ensuring that the production, market placement and use of the

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19 Published in the Official Gazette, dated 11 December 2013, No. 28848.

20 Published in the Official Gazette, dated 23 June 2017, No. 30105.

chemical substance does not cause any negative effect on human health or the environment. It obliges the manufacturers and importers handling substances in quantities of one ton or more per year to submit a registration to the Ministry by using the online Chemical Registration System. Within three weeks of submitting their registration, applicants may start or continue manufacturing or importing the relevant substance unless otherwise indicated by the Ministry.

The Permission Regulation further requires that a substance listed under the annexes of the regulation not be manufactured, placed on the market or used unless it complies with the conditions of the restriction.

As per the CLP Regulation, a material or a mixture cannot be introduced to the market unless it is classified, labelled and packaged in accordance with the potential physical damage or harm threat it poses to human health and the environment. Manufacturers, importers, downstream users and product manufacturers are liable with respect to the classification of materials or mixtures. The label of a material or mixture that is classified as hazardous should contain certain information such as the suppliers' details, and satisfy certain form requirements (e.g., legible, non-erasable).

Where the hazard class of the material or mixture changes, leading to more significant threats requiring additional information to be placed on the label, the supplier should update the label without delay. Except for such changes that require immediate amendment to the labels, suppliers should update the labels within 18 months in case of a change.

The CLP Regulation further stipulates that suppliers should collect all of the information they use during classification and labelling and keep this information for 10 years starting from the last day of supply. Upon request, the supplier will be under the obligation to provide such information to the Ministry.

The Regulation on Persistent Organic Pollutants recently entered into force. This new regulation aims to prohibit production, market placement and use of certain persistent organic pollutants, and covers the provisions in order to minimise and manage waste containing or contaminated by any of these substances.

As per the Environmental Law, all parties involved in the handling of hazardous chemicals (i.e., manufacturing, sale, storage, use and transportation) are jointly liable in connection with any damage inflicted by the release of such chemicals. Further, each of these parties should obtain liability insurance for any possible harm to be caused to third parties during their professional activities.

Pursuant to Article 20 of the Environmental Law, a fine is applicable to the processing, importing, exporting, transporting, storing, packaging, labelling and sale of dangerous chemicals and substances containing hazardous chemicals in breach of the principles and procedures set forth under the relevant regulations. The amount of the fine is tripled for individuals.

#### **iv Solid and hazardous waste**

The Regulation on Waste Management (the Waste Management Regulation)<sup>21</sup> is the centrepiece of secondary legislation outlining principles related to the management of waste from the production stage to disposal without harming the environment or human health in order to improve the overall use of natural resources by way of re-use, recycle and recovery.

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21 Published in the Official Gazette, dated 2 April 2015, No. 29314.

As per the Waste Management Regulation, facilities that produce more than 1,000 kilograms of hazardous waste per month are required to obtain a temporary storage permit. If the production of hazardous waste is less than 1,000 kilograms per month, these facilities should still apply to the Ministry to obtain an exemption. In terms of timing limitations, hazardous waste may only be stored for up to six months, whereas this limit is one year for non-hazardous waste.

Facilities that engage in the collection, transportation, storage, recycling and temporary storage of hazardous waste, regardless of the amount of the hazardous waste processed, are obliged to purchase a liability insurance policy to provide coverage for damages that may be inflicted on third parties during these activities.

The Regulation does not address particular types of waste. Different types of waste are governed under specific secondary legislation, such as those pertaining to the disposal of medical, packaging and mining waste.

## **v Contaminated land**

The Law on Soil Preservation and Land Utilisation No. 5403 (the Land Utilisation Law)<sup>22</sup> has the purpose of determining soil and land classification, land utilisation, and land and soil preservation. The Land Utilisation Law prohibits the use of agricultural lands for other purposes and introduces measures to ensure the protection and sustainable use of soil. Soil preservation boards are established in each province to oversee that land use is in compliance with the Land Utilisation Law.

The Regulation on the Control of Soil Pollution and Sites Contaminated by Point Source Pollution (the Soil Pollution Regulation)<sup>23</sup> is the main secondary legislation regarding the prevention of soil pollution. Pursuant to the Soil Pollution Regulation, facilities that use, store or produce hazardous waste should take the necessary measures to prevent soil pollution and should notify the authorities prior to commencement of such activities. In principle, the priority is to prevent soil pollution at the source. Direct or indirect storage and discharge of hazardous material and waste to soil is prohibited, and contaminated soil should not be mixed with clean soil.

In the case of failure to comply with these provisions addressing soil pollution, the prevention, remedy and compensation regime under the Environmental Law will apply (see Section IV).

## **VII CLIMATE CHANGE**

Turkey is not bound by the greenhouse gas emission limitations under the Kyoto Protocol. Nevertheless, Turkey has taken various actions and implemented a series of legislative modifications to reduce green gas emissions and increase the use of clean and renewable energy resources in various activities, such as manufacturing, heating, waste and transport.

The Ministry has introduced a national climate change action plan for the period between 2011 and 2023, taking into account the UNFCCC, Kyoto Protocol, Bali Action Plan and other sources of international consensus in the area of climate change. In terms of legislative framework, the Regulation on Emissions Monitoring introduces procedures

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22 Published in the Official Gazette, dated 19 July 2005, No.25880.

23 Published in the Official Gazette, dated 8 June 2010, No. 27605.

for the monitoring, verification and reporting of greenhouse gas emission, and introduces certain concepts such as greenhouse gas emissions, greenhouse gas emission reports and verification entity. Businesses generating greenhouse gas must monitor their emissions levels in accordance with the monitoring plans prepared by the business operator and approved by the Ministry.

The Ministry has also issued the Communiqué on Greenhouse Gas Emissions Monitoring and Reporting<sup>24</sup> for the implementation of the Regulation on Emissions Monitoring, which describes detailed procedures and principles governing the monitoring and reporting of greenhouse gas emissions.

The Regulation on the Reduction of Ozone Layer Depleting Substances also plays an important role in the fight against climate change. The purpose of this Regulation is to determine the general procedures and principles regarding the use and reduction of substances controlled by the Montreal Protocol on Ozone Layer Depleting Substances, to which Turkey is a party. Finally, the Energy Efficiency Law No. 5627<sup>25</sup> governs the principles for the promotion of renewable energy, and the development and implementation of energy efficiency.

## VIII OUTLOOK AND CONCLUSIONS

While Turkey does not rank among the top performers in dealing with environmental issues, it continues to show an effort to adopt environmental regulations and standards acknowledged by the European Union. Several draft regulations were recently announced by the Ministry, such as the Zero Waste Regulation, the Integrated Pollution Prevention and Control Regulation, the Regulation on the Storage of Wastes, the Regulation on the Control of Water Pollution, and the Regulation on the Classification, Labelling and Packaging of Substances and Mixtures. While still in draft form, these regulations are expected to strengthen the criteria for environmental protection obligations of all responsible parties. Further, a bill has been submitted to Parliament providing heavier fines for non-compliance with the Environmental Law. As of 1 January 2019, Turkey has banned the use of free plastic bags at retail stores.

Turkey became a signatory to the Paris Agreement on 22 April 2016, which is focused on strengthening and coordinating the global response to climate change. Its ratification is pending by the Turkish government, as Turkey requests financial and technological support as well as an exemption from the absolute emission reductions under the agreement. Turkey also does not have a carbon tax or emissions trading scheme in place and has been criticised for encouraging the use of coal in energy generation.

While the legislative framework for monitoring the effects of climate change is present, there is still much room for improvement in terms of the governing rules, principles and consequences of non-adherence to the legislation. For the legislation to serve as a meaningful tool to fight against climate change, Turkey should quickly take the necessary steps to ensure an increased awareness in stakeholders.

It cannot be denied that Turkey has learned valuable lessons from past environmental disasters attributable to unplanned and uncontrolled development. However, to be better equipped for the future and steer its development towards sustainability, Turkey must take

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24 Published in the Official Gazette, dated 22 July 2014, No. 29068.

25 Published in the Official Gazette, dated 2 May 2007, No. 26510.

a closer look at its shortcomings and prepare with better coordination and planning. In the short run, Turkey will remain a developing country that is expected to prioritise rapid development over environmental protection and focus on the use of conventional energy sources over renewables.

## Appendix 1

# ABOUT THE AUTHORS

### ÜMİT HERGÜNER

*Hergüner Bilgen Özeke Attorney Partnership*

Ümit Hergüner is the founder and the senior partner of Hergüner Bilgen Özeke Attorney Partnership, founded in 1989, which has grown to become one of the leading independent, full-service law firms in Turkey. In his role as senior partner, Mr Hergüner leads the Corporate Practice Group, representing major international and national clientele. He also lends his expertise to international financial institutions in matters of project finance, public-private partnerships and strategic investment. Mr Hergüner is very well known in the regional project finance community, in part for having drafted the first Turkish host government agreement, intergovernmental agreement and accompanying Turkish legislation for the Baku-Tbilisi-Ceyhan Pipeline, one of Turkey's benchmark energy infrastructure projects.

After graduating from Istanbul University Law School in 1979, he won a Fulbright Scholarship in 1983 and earned LLM degrees from American University Washington College of Law in 1984 and the University of Virginia School of Law in 1985. Outside of his legal practice, Mr Hergüner holds various public policy and advisory roles. He is on the Advisory Board of the International Relations and European Union Center at the Union of Turkish Bar Associations in Ankara. He is a founder and the former President of the Istanbul chapter of the Washington, DC-based International Law Institute (ILI) and is currently an Advisory Council Member of the ILI Istanbul Chapter. He is a former President and current Advisory Board Member of the Corporate Governance Association of Turkey, and he is a member of the Turkish Industrialists and Businessmen Association.

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Deniz Tuncel has been with Hergüner for nine years where he is a partner in the firm's Corporate and M&A and Energy practice groups. Having joined the firm in 2009, Mr Tuncel was seconded to the Tokyo office of the prominent Japanese law firm of Mori & Matsumoto in 2014. His major work with Hergüner has included acquisitions of power generation plants, upstream and downstream oil and gas transactions (e.g., E&P and distribution business), and advising cross-border natural gas pipeline projects.

Mr Tuncel is a graduate of Istanbul University and received his first LLM degree from Istanbul Bilgi University and a second LLM degree from Harvard Law School. He is a member of the Istanbul Bar Association and the Harvard Law Alumni Association. He also

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