

ENFORCEMENT OF WARNING IN THE PETROLEUM MARKET

Although it has been applicable since the Electricity Market Law No. 6446 and Natural Gas Market Law No. 4646 have entered into force, the **warning procedure** to be applied to violations of license holders before imposition of any further sanction has become effective after the amendment on the Petroleum Market Law numbered 5015 (the "**Law**") made with Article 33 of The Law Amending the Mining Law and Certain Laws and Decrees numbered 7164 (the "**Amending Law**") which was published in the Turkish Official Gazette dated 28/02/2019.

The prerequisite for the enforcement of warning due to acts contrary to the Petroleum Market Legislation is that the addressee / the relevant person must hold a license.

According to the amendment made in the Article 20 of the Law, the warning will be enforced further on for some acts that are in contradiction with the petroleum market legislation and in order to apply the warning procedure the addressee/ the relevant person shall firstly be a license holder. The subparagraph (a) of paragraph two of article 20 of the Law stipulating the enforcement of warning starts with "*in the event that the licensee does not comply with this Law, with secondary legislation or license conditions or decisions of Energy Market Regulation Board ("Board")...*" From this statement, it is clearly understood that the warning mechanism is solely applicable to the license holders. Therefore, **the violations of non-license holders** (e.g. activity without license, violation of monitoring obligation etc.) will not be subject to the warning procedure and **directly, an investigation will be opened for these violations and the appropriate sanction will be applied to the relevant person.**

Actions that May Lead to Administrative Sanctions are Subjected to Triple Categorization

Actions that may lead to administrative sanctions as per Article 19 of the Law are categorized in three under Article 20 of the Law as **acts that are recoverable by nature, acts that are unrecoverable by nature and acts related to petroleum smuggling**. This classification is important in terms of determining which procedure will be applied by the Energy Market Regulatory Authority ("EMRA", "Authority") for which actions under the Law No. 5015.

The Applicable Procedure for Acts Recoverable by Nature

The procedure to be applied to acts recoverable by nature is regulated under subparagraph (a) of paragraph two of Article 20 of the Law. Accordingly :"*In case of violation of this Law, secondary legislation or license terms and Board decisions by license holders; for acts that are recoverable by nature which are determined by the Board, the relevant person shall be served with a warning by the Authority or the institutions authorized by the Authority, which states that the violation should be eliminated within*

*thirty days, otherwise a temporary suspension will be applied. At the end of the given warning period, the relevant market activity of those who maintain the situation contrary to the legislation shall be temporarily suspended for sixty days.” In this context, as of the amendment under the Law no. 7164, **in case of a violation that is recoverable by nature; EMRA will firstly warn the relevant license holder to eliminate the violation so no sanction will be directly imposed on the relevant person.***

The capacity to determine which acts are recoverable by nature is granted to EMRA under subparagraph (a) of paragraph two of Article 20 of the Law. Since no objective criteria regarding acts recoverable by nature were designated by the law maker, it is clear that the Authority was empowered with an extensive discretionary power to interpret the said notion and fill the legal gap.

In case of acts recoverable by nature, if the violation is not eliminated within the 30 (thirty) day period given in the warning, the market activity of the concerned party will be temporarily suspended for 60 (sixty) days, and if the contradiction is still not eliminated, the suspension will be continued and an investigation regarding the relevant person will be opened. As a result of the investigation, the relevant person will face the administrative sanction corresponding to their violation. **If the violation is repeated within two years from detection of the act recoverable by nature, the market activity of the relevant party will be directly suspended for 60 (sixty) days without a warning.** In the event that the violation is not eliminated during the suspension period, the suspension will continue and an investigation will be opened then the administrative sanction corresponding to the violation will be imposed on the relevant person.

The Warning Shall Not Apply to Acts Unrecoverable by Nature and to Acts of Smuggling Defined Under Anti-Smuggling Law No. 5607.

Consequences of acts unrecoverable by nature and acts of smuggling under Anti-Smuggling Law No.5607 is regulated under subparagraph (b) of paragraph two of Article 20 of the Law and accordingly, EMRA will directly open an investigation and impose the necessary sanctions in case of such actions. According to this regulation, **market activity of the relevant person can be directly suspended by the Authority in the event of an action unrecoverable by nature or any act under bad faith or dangerous act. In terms of acts of smuggling, sanction of temporary suspension will be executed until decision of non-prosecution or the ruling of the court is finalized.**

Rules and Procedures Regarding Enforcement of Warning are Set in the Monitoring Regulation.

Regulation on Rules and Procedures to be Followed in the Petroleum Market Monitoring and Preliminary Researches and Investigations (the “Monitoring Regulation”) which was prepared in order to determine the rules and procedures regarding the monitoring, inspection and enforcement in petroleum market activities entered into force by being published in the Official Gazette dated 27/11/2013. According to the Monitoring Regulation, the Authority shall monitor the market activities through their own staff or staff of other public institutions and organizations when necessary. Under Article 8 of the Monitoring Regulation, **the staff appointed for monitoring is also authorized to warn the person being monitored.** With that being said, Article 19 of the Monitoring Regulation states that enforcement of warning can also be made by the Authority or institutions delegated by the Authority and in this way, **even the institutions conducting field inspection are authorized to impose warnings.**

No Investigation Is Made or Defense of the Addressees Are Not Taken Before Enforcement of the Warning

Before enforcement of warning, no investigation is opened due to the violation and the defense of the relevant persons is not taken. Unilateral (by the administration) determination of the violation is sufficient for the enforcement of warning. When the regulations regarding the energy markets are analyzed, it is seen that in case of a violation, an investigation is made before the warning in the electricity and natural gas markets upon which defense of the relevant persons are taken and then the warning is imposed with the decision of the Board so therefore, a higher level of legal certainty was provided for the relevant persons.

Conclusion

- In accordance with the Law, if the license holders perform an act recoverable by nature as determined by EMRA, they will be given a 30 (thirty) day period with a warning to stop or eliminate the violation before any sanction is applied.
- If the violation is not terminated or eliminated within the given period, relevant sanctions will be imposed on such persons.
- EMRA, EMRA’s relevant departments, institutions conducting monitoring services and personnel in charge with monitoring can impose the warning and the claim of violation will be sufficient to do so.
- There is no need to open a separate investigation and / or take defense.

- However, since the proceedings regarding the warning are administrative actions, a case may be brought before the competent administrative court regarding any warning.

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