

ENFORCEMENT OF WARNING IN THE ELECTRICITY MARKET

With the objective to ensure a financially strong, stable and transparent electricity market that operates in accordance with the provisions of private law in a competitive environment, and an independent regulation and monitoring in this market for the purpose of electricity supply to the consumers in an efficient, good-quality, sustainable, low-cost and environment-friendly manner; Electricity Market Law numbered 6446 (“**Law**”) re-regulating Electricity Market Law numbered 4628 dated 2001 was published in the Official Gazette and entered into force on 30/03/2013.

Pursuant to Article 15 of the Law, the inspection and supervision of electricity market activities and unlicensed persons except distribution companies within the context of this Law are carried out by the Energy Market Regulatory Authority (“EMRA”, “Authority”) which is an independent administrative authority. The capacity of EMRA vested by the law maker includes the capacity to impose sanctions on real and legal persons within the scope of relevant legislation.

Procedures for the Imposition of the Sanctions in Electricity Market Law No: 6446

The capacity of EMRA to impose sanctions under the Law is regulated in Article 16 with the caption “*Sanctions and Procedures for the Imposition of the Sanctions*”. Within the context of the said article, apart from exceptional circumstances, **it is regulated that the relevant person shall be provided with a warning for the elimination of the violation before any sanction on that person is applied.** Relevant persons, who won’t eliminate their violations within the given term, shall be imposed sanctions such as administrative fines and/or license termination.

Violations that Are Unrecoverable by Nature Won’t Be Subject to Warning Before Enforcement of Sanctions.

An exception under the Law was regulated in subparagraphs (c) and (ç) of the first paragraph of its Article 16 that if the violation is “*unrecoverable by nature*” or “*it is not possible to correct the change in the license terms or the said false documents or misleading information*” and according to subparagraph (f) “*the conditions constituting basis for licensing are not sustained during the license validity period*” or in terms of subparagraph (g); “*there is fraud against law or false declaration*”, it is foreseen that **the relevant persons will directly be subject to sanctions without a warning.** The “irrecoverable by nature” feature of the violation mentioned has not been further explained by the law maker and thus creates a legal gap.

Acts which constitute a violation of Law are counted one by one within the Law.

If the representative and decision-making organ of the EMRA, Energy Market Regulatory Board (“Board”), **requests information or a site inspection and if it is discovered that such information given by the relevant party is incorrect, deficient or misleading or no information or no opportunity for a site inspection is provided**, the relevant person shall be given a warning to provide correct information and an opportunity for the inspection within **fifteen** days. Those continuing the violation despite the written warning will be imposed the fixed administrative fine in subparagraph (a) of the first paragraph of Article 16 of the Law.

If it is discovered that **the provisions of the Law, secondary legislation or license conditions or the decisions and instructions of the Board are violated**, pursuant to the nature of the violation, the relevant person will be served with a warning for the elimination of the violation within **thirty days** and for not repeating the same breach. Those continuing the violation or repeating the same action despite the written warning will be imposed the fixed administrative fine in subparagraph (b) of the first paragraph of Article 16 of the Law. The crucial point drawing one’s attention here is that the law maker enables the warning procedure according to the nature of the violation. Likewise, as foreseen in subparagraph (c) of the same article if provisions of the Law, secondary legislation or license conditions are irrecoverably violated, the relevant person will be subject to administrative fine without the necessity of a warning. In this case, the Board will act according to the nature of the violation and those who have committed violations unrecoverable by nature will not be able to benefit from the warning procedure.

As set out in subparagraph (ç) of the first paragraph of Article 16 of the Law, **if a person submits false documents or gives misleading information regarding license conditions or does not inform the Board of changes in license conditions that affect licensing during license application process or the license validity period, the relevant person will be subject to administrative fine**. If the false document or misleading information or change in license conditions is irreparable or if the relevant party maintains the violation despite the written warning demanding the violation to be fixed within **thirty days**, the license of the relevant party will be terminated. In this instance, **the warning procedure is regulated as a pre-condition for license suspension**.

In case of inconsistency with the prohibition on affiliate relation throughout the license term, a warning for the correction of the affiliate relation within **thirty days** will be addressed. If the relevant person continues the violation despite the written

warning, the administrative fine under subparagraph (d) of the first paragraph of Article 16 of the Law will be applied to such persons.

In the event that a person is operating in the market outside their license's scope, such person shall be warned for the termination of the said or unfavorable activity within **fifteen days**. Persons who maintain the violation despite the written warning will be subject to the administrative fine set out in subparagraph (d) of the first paragraph of Article 16 of the Law.

Circumstances Requiring Direct License Termination

If it is discovered that the fundamental conditions for licensing are not sustained during the license validity period or such conditions were already absent from the beginning or if it is discovered that there is fraud against law or false declaration in the claims raised and actions performed under this Law, the license of the relevant party will be directly terminated without a warning.

Another case where license termination is applicable is when the administrative fine imposed on the relevant party exceeds ten percent of the relevant person's gross income in the balance sheet of the previous fiscal year. According to paragraph two of Article 16; **following the application of fines, in cases where the violation is repeated or not eliminated within the period granted in the warning, the fines will be applied as increased two times more than the previous fine. Previously-imposed fines shall not be taken into account in recurrence of the action to be charged if it is not committed within two years after the last administrative fine is imposed.** However, the amount of raised penalty fine due to repeating the same action within two years shall not exceed ten percent of the relevant person's gross income in the balance sheet of the previous fiscal year. If the total fine amount reaches this level, the Board may terminate the license of the relevant person within its discretion.

The Board May Grant Different Warning Periods.

As stated in the second paragraph of Article 16, the Board may apply warning periods differently for the actions requiring pecuniary fines depending on the nature of the action. Therefore, it is seen that **the Board was given a discretionary power regarding the nature of the action that could result either in favor of or against the relevant person.**

Conclusion

- Under the Law numbered 6446, the law maker rules that while the actions recoverable by nature are firstly subject to warning procedure, it was held that the actions unrecoverable by nature will be directly subject to administrative fines or license termination in cases regulated under the Law.
- While the procedure to be applied to the relevant persons within the discretion of the Board under Article 16 of the Law may differ, it is noteworthy that the pecuniary fines have been fixed without any criterion and without giving any discretion to the Board.
- Lastly, since the sanctions within the scope of the Law are administrative actions, the lawsuits regarding such sanctions can be brought before the competent administrative court which is Ankara Administrative Court.