

ENFORCEMENT OF WARNING IN THE NATURAL GAS MARKET

The **Turkish Natural Gas Market Law** numbered 4646 regulating the import, transmission, distribution, storage, marketing, trade, and export of natural gas and the rights and obligations of all individuals and legal entities relating to these activities (the “Law”) had entered into force on 2 May 2001. The aim of the Law was to ensure supply of good-quality natural gas at competitive prices to consumers in a regular and environmentally sound manner under competitive conditions by liberalization of **the natural gas market** and formation of a financially sound, stable and transparent market along with institution of an independent supervision and control mechanism. Thus, **the Law foresees that the regulation and monitoring of the market shall be made by Energy Market Regulation Authority (“EMRA”, “Authority”) which is an independent administrative authority.**

EMRA is the competent authority to impose sanctions on people who violate the Natural Gas Market Law.

For establishing and maintaining the market structure and order stipulated in the Law, many obligations are included **both in the Law and in secondary regulations** involving their addressees. As the regulatory authority of the market, **EMRA** was provided by the legislator **with the authority and duty to impose severe sanctions such as high administrative fines and termination of licenses to persons who violate these obligations.** The sanctions to be applied are determined in Article 9 of the Law titled “Sanctions and the Procedure on the Imposition of the Sanctions”.

The warning is a prerequisite for applying sanctions to those who violate the Natural Gas Market Law.

As can be seen in Article 9 of the Law, apart from exceptional circumstances, it is obligatory to apply the “Warning” procedure before any sanction is imposed on relevant persons. The Warning process can be defined as a proceeding of the Energy Market Regulation Board (“Board”) about the violation determined as a result of investigation to give an appropriate time to the relevant person with a written warning to remedy the violation and if the violation is not remedied, to apply the sanctions or penalties in the same article to the relevant person.

The rules and procedures regarding the warning process are regulated in the Natural Gas Market Audits and Preliminary Research Regulation.

According to Article 10 of the Law No. 4646, it is regulated that the rules and procedures to be followed during investigation will be determined by a regulation to be put into force. The warning process is stipulated in Article 21 of the Natural Gas Market Audits and Preliminary Research Regulation (“Audit Regulation”) published in the Official Gazette numbered 25007 on 28/01/2003. According to the aforesaid article, **if the violation of the relevant legislation provisions has been determined in the investigation report and this determination is approved by the Board, an**

appropriate period of minimum 15 (fifteen) days for the individual or legal entity subject to investigation should be granted in the warning to correct the violation within the given period. If the **violation is corrected within the period given in the warning, the Board would decide to terminate the investigation** in process.

The sanctions will be applied if the violation is not corrected within the period given in the warning.

If the violation of the relevant legislation provisions isn't corrected within the given term the Board will rule application of the sanctions stipulated in Article 9 of the Law. Administrative sanctions stipulated in the article in question are **administrative fines, second warning and license termination.** **Within the scope of the second warning,** different periods of time are granted depending on the nature of the violation and **the relevant party is warned to stop or eliminate the violation.**

In cases when the 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 opportunity for a site inspection is provided, the fixed administrative fine in subparagraph (a) of the first paragraph of Article 9 of the Law will be imposed and the relevant person will be served with a written warning to correct the information or provide opportunity for inspection within 7 (seven) days.

If it is discovered by the Board that the relevant person is acting against provisions of the Law, regulations, instructions and communiqués; the fixed administrative fine in subparagraph (b) of the first paragraph of Article 9 of the Law will be imposed and the relevant person will be served with a written warning to eliminate the violation within 30 (thirty) days.

If the Board discovers that **the relevant person is breaching any of the general conditions and obligations arising from the license or certificate,** the fixed administrative fine in subparagraph (c) of the first paragraph of Article 9 of the Law will be imposed and the relevant person will be served with a written warning to eliminate the violation within 30 (thirty) days.

According to subparagraph (d) of the same paragraph, **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 the administrative fine stipulated in the said article and the relevant person will be served with a warning to correct the violation within 30 (thirty) days.

Nonetheless, **providing misleading information about affiliate relations during license application or inconsistency with the prohibition on affiliate relation throughout the operation term** are regulated separately from giving misleading information regarding license conditions. In that case, the administrative fine in subparagraph (e) of the first paragraph of Article 9 of the Law will be imposed and the

relevant person will also be served with a written warning to correct the affiliate relationship within 30 (thirty) days.

In the event that a person is **operating in the market outside their license's scope**, the relevant person will be subject to an administrative fine under subparagraph (f) of the said paragraph and such person shall be warned for the termination of the said or unfavorable activity within 15 (fifteen) days.

Exceptional Circumstances Regarding Enforcement of Warning

As stated above, **the general practice** according to the Law No. 4646 is **firstly addressing the warning to eliminate the violation of legislation. Secondly, if the violation is not eliminated despite the written warning, an administrative fine and the second warning will be applied to the relative person.** However, unlike the general situation, **circumstances requiring direct license termination** are regulated in subparagraph (g) of the first paragraph of Article 9 of the Law. Within the scope of the mentioned provision, if it is discovered that the fundamental conditions for licensing are not sustained during the license validity period, the license or certificate of the relevant person will be directly terminated. In the event that such conditions were already absent from the beginning, the relevant person will be imposed an administrative fine in addition to license or certificate termination.

Increase in Sanctions in Case of Repetition

If the party breaching the legislation doesn't correct their violation in question or repeats the same violating action within 2 (two) years from ruling of the sanction, the fines will be applied as increased 2 (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 2 (two) years after the last administrative fine is imposed. **The amount of raised penalty fine due to repeating the same action within 2 (two) years shall not exceed twenty 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.

Conclusion

In summary, if a violation of the relevant legislation is determined in the investigation report and this determination is deemed accurate by the Board; the relevant person will be warned to correct the violation in at least 15 (fifteen) days. Persons who maintain the violation after the given term despite the written warning will be subject to the related sanction as set out in Article 9 of the Law.

The pecuniary fines imposed by EMRA within the context of the Law were regulated by the law maker as fixed fines and EMRA wasn't given any discretionary power as regards the amount of any fine.

LBF

PARTNERS

Avukatlık ve Danışmanlık

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.

For any questions please contact us at info@lbfpartners.com