

THE SECURITY OF NETWORKS AND INFORMATION SYSTEMS LAW , 2020

Decision under sections 17(y), 17(z), 17(l), 19, 20(1)(d), 20(1)(e), 20(1)(f), 20(2), 21, 23, 24(d), 26, 43, 46(1), 46(2), 46(4) and 46(5) of L. 89(I)/2020

Preamble.

In exercise of the powers vested in it under sections 17(y), 17(z), 17(l), 19, 20(1)(d), 20(1)(e), 20(1)(f), 20(2), 21, 23, 24(d), 26, 43, 46(1), 46(2), 46(4) and 46(5) of the Security of Networks and Information Systems Law ,2020 ,as amended from time to time, the Digital Security Authority (hereinafter the "Authority"), issues this Decision establishing the procedure for imposing an Administrative Fine on a person who does an act or makes an omission in violation of the provisions of the Law.

PART I

Preliminary

Short title.

1. This Decision may be cited as the Collection of Information and Imposition of Administrative Fines Decision,2021.

Interpretation.

2. (1) In this Decision, unless the context otherwise requires-

"Legal person" means any entity that has been incorporated under a special Law that determines the matters related to its establishment and operation;

89(I)/2020.

"Law" means the Security of Networks and Information Systems Law, 2020 and includes any Law amending or substituted for the same;

"Person" means operators of essential services, operators of critical information infrastructure, providers of electronic communications network and/or service and digital service providers, and any other

legal or natural persons or organizations that the Authority considers from time to time, based on its powers deriving from the Security of Networks and Information Systems Law;

(2) Any terms used in this Decision which are not defined otherwise, shall have the meaning assigned to them by the Law.

Scope of application.

3. This Decision applies to the process of collection of information, the imposition of administrative fines or other administrative sanctions by the Authority.

PART II

Main Part

Chapter I – Carrying out an Investigation

Power to collect information.

4. (1) The Authority shall have the power, in cases where it considers necessary, in compliance with the principle of proportionality, to collect information with a reasoned request where this is deemed necessary for the purpose of exercising its powers and/or including the undertaking of an investigation by its own motion or an investigation following the submission of a complaint or report. Within this framework, it may address a written request for this purpose to any person who is under its control and supervision, as well as to any other person that it considers is in a position to provide the necessary information.

(2) The written request of the Authority will explicitly state the provisions of the Law and of this Decision, the reasons for the request, the deadline for providing the information which must be reasonable and the possible sanctions in case of non-compliance with the above obligation to provide the information.

(3) A person to whom the Authority's request is addressed has an

obligation to provide the requested information fully and accurately within the specified deadline.

(4) Where deemed necessary, the Authority may obtain the necessary information by issuing a Court Order.

(5) In case of providing incomplete and/or unclear information or in case of failure to provide the requested information within the prescribed deadline or in case of intentional or negligent provision of inaccurate or misleading information, notwithstanding any criminal or disciplinary responsibility of the person at fault, the Authority shall have the power, upon previously summoning the person who is responsible for the violation to provide an apology, to impose the administrative sanctions provided by this Decision with a duly reasoned decision, unless the Law otherwise provides on the specific matter.

(6) In case of failure to provide the requested information within the prescribed deadline, the Authority shall have the additional power to impose an administrative fine not exceeding ten thousand euros (€10,000) for each day of the violation, unless the Law provides otherwise on the specific matter.

(7) The information obtained by the Authority in the exercise of such power shall be confidential and may only be used for the purpose for which it was requested.

(8) For the purposes of this paragraph, the obligation to provide information includes the obligation to provide and submit any type of written information and to provide information which is stored on computers.

Power of the Authority to enter and investigate.

5. The Authority shall have the power to carry out investigations that it considers necessary for the exercise of its powers and for the

investigation of possible violations of imposed obligations and for this purpose it may-

(1) check files, books, other documents and data stored in information systems and/or computers of any person for whom there is a reasonable suspicion that he possesses data that could assist the Authority in its investigation and to receive copies or extracts thereof, based on its powers by virtue of the provisions of the Law and the Decisions issued thereunder , and

(2) Pursuant to the provisions of subsection (2) of section 20 of the Law, after giving a notice of at least forty-eight (48) hours and after the Authority determines the purpose of the investigation, the Commissioner may authorize any employee of the Authority to enter, inspect, investigate, carry out an inspection at any reasonable time in any area, premises or vehicle, excluding any premises used as a residence, which are used for the provision of any electronic communications networks and systems, the provision/management of critical information infrastructure/essential information services or and digital services, in accordance with the provisions of the Law, and to collect data that may be used for evidence purposes or in any legal proceedings regarding any violation or failure to comply with the provisions of the Law or of the provisions of the Regulations or Decisions issued thereunder .

Procedure for entry and investigation and the imposition of an administrative fine.

6. (1) Investigations carried out pursuant to articles 4 and 5 of this Decision shall be carried out on behalf of the Authority, upon a notice or without prior notice to the person concerned in urgent and specially justified cases.

(2) The Authority's order must be in writing and must specify the purpose of the investigation, it must set the date of commencement of the investigation, the provision under which the power is granted to the Authority and the possible sanctions in case of refusal of the

person to whom the instruction is addressed to comply with the terms of the instruction.

(3) The person under investigation may consult his lawyer during the investigation, but the presence of his lawyer does not constitute a prerequisite by law for the validity of the investigation.

(4) It is not permitted to enter a residence or to carry out an investigation in a residence, for the purposes of the Law and the Decisions issued thereunder, except under a court order.

(5) If a person refuses to comply with an order for investigation or if a person presents and/or provides incomplete requested records, books, other documents and information referred to in articles 4 and 5 of this Decision, notwithstanding any criminal or disciplinary liability that such person may have, the Authority has the power to impose the administrative sanctions provided by this Decision by a duly reasoned decision, upon previously calling him to an apology.

(6) In case of failure to comply with an order of the Authority in accordance with the provisions of this section to carry out an investigation, the Authority has additional power to impose an administrative fine not exceeding ten thousand Euros (€10,000) for each day during which the violation continues, unless the law provides otherwise on this matter.

(7) The information obtained by the Authority in the exercise of this power shall be confidential and may only be used for the purpose for which the investigation is carried out subject to the provisions of section 19 of the Law.

Actions of the Authority
in case of violations.

7. If the Authority ascertains, during the exercise of its powers to collect information, to enter or investigate, or from evidence presented before it in any way, that there is a possible violation of the provisions

of the relevant Law and the Decisions issued thereunder as well as under the relevant Regulations issued by the competent bodies of the European Union, it shall act as follows:

(a) shall draw up its conclusions and submit them together with the evidence that it has in its possession to the Attorney-General of the Republic, who will decide based on the evidence presented to him whether there is criminal liability and whether the criminal prosecution of the offender is justified, and/or

(b) shall undertake the case itself and decide whether it is justified to impose an administrative fine as set out in this Decision or to impose any other administrative sanctions provided by the Law and/or by the Decisions issued thereunder , as well as in the relevant Regulations issued by the competent bodies of the European Union.

Appointment of an
Authorized Officer of the
Authority.

8. (1) When examining a violation as set out in article 7 of this Decision and pursuant to subsection (2) of section 20 of the Law, the Commissioner shall authorize any officer of the Authority to investigate the violation.

(2) The investigation shall be carried out as fast as possible.

(3) During the investigation, the authorized officer of the Authority shall be vested with the powers of collecting information, entry and search, with which the Authority is vested in accordance with the provisions of the Law and this Decision.

(4) The authorized officer of the Authority has the power to call, hear testimony and take written statements from persons who may have information or know anything about the case under investigation. The persons must provide the information they possess and sign their statement, having the relevant statement previously been read to them.

(5) After completing his investigation, the authorized officer of the Authority shall draw up his findings and submit them to the Authority together with all documents related to the case, including the documents he is authorized to receive under article 5 of this Decision.

Chapter II – Imposition of an Administrative Fine – Right to be heard

Authority to impose an Administrative Fine.

9. (1) Unless otherwise provided by the Law on the specific matter, the Authority, if ascertains that a person does an act or makes an omission in violation of the provisions of the Law and this Decision, has the authority to impose an administrative fine thereon not exceeding two hundred thousand euros (€200,000), depending on the gravity of the violation, and a fine not exceeding ten thousand euros (€10,000) for each day during which the violation continues.

(2) In addition, the Authority shall have the power to impose an administrative fine on any person who does an act or makes an omission in violation of the provisions of any Decisions and/or Regulations of the European Union, for an amount not exceeding three hundred thousand four hundred euros (€300,400) and, in case of repetition of the violation, an administrative fine not exceeding two hundred thousand euros (€200,000).

(3) If proven that the person responsible for the violation obtained an unlawful benefit from this violation, the Authority has the authority, unless the Law provides otherwise on the specific matter, to impose an administrative fine of up to twice the benefit that the person responsible was proven to have unlawfully obtained from the violation:

Provided that in this case, the Authority may draw up a relevant conclusion, which it will submit to the Attorney-General of the Republic

who shall decide whether the criminal prosecution of the person responsible for the violation is justified.

Call to make
representations -
right to be heard.

10. (1) Before issuing its Decision on the imposition of an administrative fine as set out in article 9 of this Decision and/or other administrative sanctions, the Authority must notify each affected person in writing in a manner that ensures that the notification is received, of its intention to investigate the violation, to give reasons justifying its intention to investigate and to impose an administrative fine and/or any other administrative sanctions and to point out the rights which are granted to him pursuant to paragraph (2) of this article.

(2) A person to whom a document is notified pursuant to paragraph (1) of this article, has the right, within a period of ten (10) working days from the notification of the document, to proceed with written representations, and to make oral representations to the Authority following his relevant request to the Authority and decision at its discretion:

Provided that, the Authority has the right, if it deems it necessary and without a prior request to it, to call any person to appear before it in order to make oral representations and to give explanations:

Provided further that, if the Authority deems it appropriate, and upon a relevant request to it, it is possible to extend the above deadline of ten (10) working days in case of an impediment or for any other reasonable cause.

(3) The Authority must take these representations into account, as well as all the facts related to the case and the matter, before issuing its Decision whether to impose an administrative fine and before determining the amount due.

(4) The Authority shall determine the procedure before it , in such a way so as to ensure a fair trial including, not restrictively, the principles of natural justice:

Provided that, in relation to the various procedural requirements and actions before it, the Authority shall, at its discretion, follow, *mutatis mutandis*, the procedure to be followed in civil cases.

(5) The Authority has a deadline within forty-five (45) working days after the completion of the procedure set out by this article, to issue its Decision on the imposition of an administrative fine.

(6) The Decision of the Authority on the imposition of an administrative fine should be duly justified and notified by registered letter:

Provided that, the Decisions of the Authority are subject to recourse before the Administrative Court pursuant to Article 146 of the Constitution and the Establishment and Operation of the Administrative Court Law, 2015, as amended or substituted for the time being.

131(I) of 2015
72(I) of 2018.

(7) The Authority may publish its Decision on the imposition of an administrative fine.

Imposition of an
administrative fine
on a legal entity.

11. An administrative fine imposed by the Authority in accordance with the provisions of the Law and the Decision issued thereunder may, at the discretion of the Authority, in cases where the imposition of the said fine concerns a legal entity, be imposed simultaneously on its statutory officials pursuant to the relevant Law concerning the establishment of a legal entity.

Collection of an administrative fine.

12. (1) An administrative fine imposed by the Authority in accordance with the provisions of this Decision shall be counted against the revenues of the Authority, unless the Law provides otherwise.

(2) In case of omission to pay an administrative fine, the Authority shall take judicial measures to collect the sum due as a civil debt owed to the Republic.

PART III

Final Provisions

Date of commencement.

13. This Decision shall come into effect from the date of its publication in the Official Gazette of the Republic.

Amendments.

14. The Authority may, by a Decision thereof, repeal/replace, amend and/or supplement this Decision. In order to amend or supplement this Decision, the Authority may carry out a public consultation. Each amendment shall be published in the Official Gazette of the Republic and shall be posted on the website of the Authority.

Explanatory Report

In accordance with sections 17(y), 17(z), 17(l), 19, 20(1)(d), 20(1)(e), 20(1)(f), 20(2), 21, 23, 24(d), 26, 43, 46(1), 46(2), 46(4) and 46(5) of the Law, the Digital Security Authority issues the Decision on the Collection of Information and the Imposition of an Administrative Fine.

The Decision establishes the rights and obligations of persons (legal and natural) with regard to the Authority's ability to request information and to carry out investigations and check records, books, other documents and data stored in information systems and/or in the computers of the persons concerned, as well as the procedure regarding the ability of the Authority to impose administrative fines or other administrative sanctions in every case where a violation of the relevant existing legislation is ascertained, ensuring at the same time the rights of the offenders in question, such as the right to be heard, etc.

