

DECISION
No 10100/D3B/4020

Control Services competent for the application of Law 2121/1993 provisions and determination of the procedure for the imposition and collection of the administrative fine provided for in articles 65A and 66 of Law 2121/1993 as modified by article 2, Law 3524/2007 [OFFICIAL JOURNAL OF THE HELLENIC REPUBLIC, issue A 15].

**THE MINISTER OF ECONOMY AND FINANCE AND THE
MINISTER OF CULTURE**

Taking under consideration:

1. The provisions:

a) of articles 41, 50, 51, 52, 53, 54 and 90 of the “Code of the Legislation on Government and Government Bodies” ratified by the article premier of the Presidential Decree (P.D.) 63/2005 "Codification of the Legislation on Government and Governmental Bodies" (OFFICIAL JOURNAL OF THE HELLENIC REPUBLIC, issue A 98).

b) of article 81, Law 1892/1990 "Concerning modernization and growth and other provisions" (A 101).

c) of P.D.81/2002 "Merger of Ministries of Finance and National Economy into the Ministry of Economy and Finance" (A 57).

d) of article 30 of Law 3296/2004 "Income Taxation of natural and legal persons, tax controls and other provisions" (A 253).

e) of P.D. 85/2005 "Organisation of the Special Control Service (S.C.S.) with the Ministry of Economy and Finance" (A 122).

f) of A.Y.O.O. nr. 1067366/930/0006B/8.7.2005 (B 993) "Determination of commencement of operation of the Special Control Service (S.C.S.) and the cessation of the operation of the Financial Crime Prosecution Body (F.C.P.B.) ".

g) of A.Y.O.O. nr. 1065455/898/006V/12.7.2005 (B 967) "Personnel Qualifications for the post of heads of structural units within the Special Control Service (S.C.S.)".

h) of P.D. 191/2003 "Organization of the Ministry of Culture" (A 146).

j) of P.D. 437/1985 "Determination and redeployment of competences of the Ministries" (A 157).

k) of articles 65A and 66 of Law 2121/93 as modified by article 2, Law 3524/2007 (A 15).

2. The need not only for the disentanglement of the Courts regarding misdemeanours, which will result from the unconditional payment of the administrative fine and the consequent lifting of punishability, but also for the disengagement of the prosecution authorities from the flagrant crimes procedure, which reduces their effectiveness.

3. The ascertainment that the enforcement and the collection of administrative sanctions deters the offenders from breaking the Law, increases state revenues and at the same time simplifies the relevant procedures; the latter will result to a more effective elimination of bureaucracy, to a faster processing of legal cases, as well as to a more efficient operation of the competent national authorities.

4. The fact that the provisions of the present decision do not cause any expense to the government's budget, we decide:

We appoint the competent services for the control and the application of provisions of Law 2121/1993, we determine the procedure and the competent services for the imposition and the collection of the administrative fine as well as any other relevant detail for the implementation and immediate application of articles 65A and 66 of Law 2121/1993, as modified by article, 2 Law 3524/2007 [OFFICIAL JOURNAL OF THE HELLENIC REPUBLIC issue A 15], as follows:

ARTICLE 1

COMPETENT CONTROL SERVICES FOR THE APPLICATION OF PROVISIONS PURSUANT FROM LAW 2121/1993

- a. The S.C.S for the whole country
- b. The Custom authorities for the region of their territorial jurisdiction, according to the legislation in force.

c. The Police authorities of the Ministry of Public Order for the whole country, and of the Ministry of Merchant Shipping for the region of their territorial jurisdiction, according to the legislation in force.

ARTICLE 2

PROVISIONS OF ADMINISTRATIVE SANCTIONS

A new art. 65A has been added after art. 65 of Law 2121/1993, with art. 2 of Law 3524/2007, providing the following:

A Article 65A. Administrative Sanctions.

1. Any person, who, without legal right and contrary to present Law reproduces, sells or in any other way distributes to the public or possesses with the intention to distribute computer software, is subject to an administrative fine of 1.000 euros for each illegal copy of computer software.

2. Street vendors arrested while distributing to the public by sale or other means or in possession with the intention to distribute material carriers of sound, in which a work of intellectual property is embodied, are subject to an administrative fine of 20 euros for each carrier, according to the seizure report drafted during the arrest.

The minimum amount of an administrative fine is set to 1.000 euros.

3. By Presidential Decree, issued by the Minister of Economy and Finance and the Minister of Culture, the aforementioned amounts may change.

4. The S.C.S., the police and Custom authorities are competent for the control of the application of the present Law and the enforcement of the legal sanctions; after a violation is confirmed, said services inform the copyright holders via the Intellectual Property Organisation (OPI).

5. The procedure for the imposition and the collection of the administrative fine, the appropriate function of collection services, as well as any other detail necessary for the application of the present decision are determined by joint decision by the Minister of Economy and Finance and the Minister of Culture.

B. Article 66. Penal Sanctions

New paragraphs 11, 12, 13 and 14 are added to art. 66, Law 2121/1993, currently in force.

11. In case of computer software infringement, the unreserved payment of the administrative fine by the offender, according to par. 1 of art. 65A, results to the lifting of punishability in case of quantities of up to 50 illegal copies.

12. In case of sound carriers' infringement, embodying a work of intellectual property, the unreserved payment of the administrative fine by the offender, according to par. 1 of art. 65A, results to the lifting of punishability in case of quantities of up to 500 illegal sound carriers.

13. The payment of the administrative fine and the consequent lifting of punishability do not relieve the offender, according to the relevant legal provisions, from payment to the copyright holders of royalties, damages and other charges.

14. In case of recidivist offender within the same fiscal year, the administrative fine provided in art. 65A is doubled.

ARTICLE 3

THE OBJECTIVE OF THE COMPETENT SERVICES FOR THE CONTROL OF APPLICATION OF LAW 2121/1993

In case the inspectors of the aforementioned competent services confirm violations of Law 2121/1993 in force, in order to implement art. 65A and 66, they proceed to the following actions:

a) They draft a confirmatory act of violation, in which, besides other details (see attached sample), they mention the quantity of the illegal copies either of the infringing computer software, including the servers, or the sound carriers (cds), as well as the amount of the stipulated fine.

In any case said fine shall not be less than 1.000 euros.

In case of recidivist offender within the same fiscal year, the administrative fine provided in art. 65A is doubled.

The competent control services are updated about the recidivist offenders

i) until a central data base covering all competent services is constructed, through the data base of each competent control service and ii) through the data base of the Intellectual Property Organisation (OPI) kept separately for violations as per art. 65A and 66 and on an annual basis for all competent services; the latter will have access to said data base using an access code.

The confirmatory act of violation, after being signed by the inspectors of the competent control services and authenticated by the competent supervisor, is served readily to the offender, who is notified about the beneficial provisions of art. 65A and 66 of Law 2121/1993.

In case of computer software infringement, including companies' servers, the fine is imputed on both company's legal representative and the logistics' supervisor if appointed.

b) They draft a Seizure Report containing a detailed description of the illegal computer software or servers or the illegal sound carriers (CDs).

Especially in the case of the computer software and servers, their temporary impounding is allowed for a reasonable lapse of time and as long as the investigation lasts, in order to bring down any doubts, until an expert is called in to draft a report and to confirm the illegal nature of the computer software, according to art. 183 - 203 of the Penal Procedure Code.

If personal data are contained in the computers or servers, then a relevant permission from the competent, independent authority (Hellenic Data Protection Authority) is required, unless the above mentioned authority or other legal provisions provide otherwise.

c) In any case, (payment or not of the fine), they serve a summons for hearing to the offender, according to art 6 of Law 2690/99 (as stated to the sample in Annex II) and receive the offender's views in writing within the limits of the flagrant crimes procedure.

The offender's views regarding the administrative fine, are independent from his/hers testimony concerning the penal procedure.

In case the offender pays the fine, a copy of the offender's views (if any) is attached to the confirmatory act of violation and is sent to the competent Tax Revenue Office or Custom Services, responsible for the collection of the fine.

In case the offender refuses to pay the fine immediately, then a copy of his views is sent to the competent service.

d) They receive from the offender a statutory declaration of art. 8, Law 1595/96, in which he/she states the unconditional and immediate payment of the administrative fine, as well as his/her waiver of remedies.

ARTICLE 4

CASES IN WHICH PUNISHABILITY IS NOT LIFTED

In the following cases the punishability is not lifted and consequently the penal and administrative procedures are followed as usual:

- i. All violations as per art. 66 of Law 2121/93, which take place by habitual criminal or on a commercial scale or when the offender is extremely dangerous, are considered felonies, punished by incarceration up to ten (10) years.
- ii. When a street vendor is arrested while distributing to the public by sale or by other means or while possessing with the intention to distribute material carrier of image or image and sound (DVDs), either exclusively or along with material carriers of sound (cds), or computer software, protected by copyright, in that case punishability is lifted only for the material carriers of sound (cds) or for the computer software and up to 50 computer programs or/and 500 sound material carriers and only if the offender pays immediately and unconditionally the stipulated administrative fine.

ARTICLE 5

COMPETENT SERVICES FOR THE ENFORCEMENT AND COLLECTION OF ADMINISTRATIVE SANCTIONS

The violations of copyright legislation are prosecuted by force of law.

The provisions of art. 65A and 66 of Law 2121/93 provide that for violations up to 50 items of computer software or servers and up to 500 sound materials carriers (CDs) the offender is given the possibility, within the limit of flagrant crime procedure, to pay the relevant administrative fine and to sign a waiver of remedies. In case said provision is applied, the punishability is lifted and no prosecution is pursued.

The payment of the fine and the consequent lifting of punishability do not exempt the offenders from the obligation of paying the proportional royalties to the copyright holders, according to the relevant laws. The competent authorities in every case of violation of article 65A must transmit to the OPI (Intellectual Property

Organization) the full data of the closed cases, in order to notify the copyright holders and to constantly update the central data base on this matter.

In any other case (refusal of payment of the fine) the penal procedure is followed as usual.

The Regional and Operational departments of S.C.S. and the Customs Offices, at the territorial jurisdiction of which the violation has taken place, are appointed as the competent services for the enforcement of the administrative sanctions.

Competent services for the collection of the administration sanctions are the competent Tax Revenue Offices and Customs Offices.

In case of immediate and unconditional payment of the administrative fine and due to the flagrant crimes procedure, the competent Tax Revenue Office or Customs Offices may use the copy of the confirmatory act of violation along with a copy of the offender's testimony as an administrative act of imposition of the fine and may proceed directly to the its collection, the amount of which is mentioned to said confirmatory act.

After the payment of the fine to the competent Tax Revenue Office or Customs Offices, the issued collection receipt constitutes evidence for the payment of the fine and also for crediting of the relevant case file to the services responsible for the verification of the violation.

In that case (of collection of the fine), seized items are destroyed by the competent seizure services, which draft a destruction protocol, signed by the offender as well, according to the destruction procedures of property within the Greek state.

The competent control services, in all cases where art 65A and 66 of Law 2121/93 are applied, complete each file case:

- with the payment receipt,
- with the offender's statutory declaration, where he/she states his/hers resignation from legal remedies.
- and with the protocol of destruction of the seized goods.

The case is considered closed and is withdrawn, when the above mentioned services credit the seizure report.

ARTICLE 6

CASES IN WHICH THE OFFENDER REFUSES TO PAY IMMEDIATELY AND UNCONDITIONALLY THE ADMINISTRATIVE FINE

If the offender refuses to pay immediately and unconditionally the administrative fine, then the penal procedure continues as usual by the competent services. The exact amount of the administrative fine and the offender's refusal to pay directly and unconditionally the fine must be mentioned in the accusatory statement.

In any case of refusal, the issuance of imputation act is compulsory and will only be issued by the Regional and Operational departments of S.C.S. for all control services, with the exception of Customs Offices, which will issue imputation act ex officio for their cases.

In said cases the control services will transmit to the above mentioned competent services for the issuance of the imputation act, a copy of the confirmatory act of violation as well as a copy of the offender's testimony for the legal issuance of the imputation act.

Full offender's data, his/hers address and his/hers VAT number are required for direct issuance and legal service of the imputation act.

ARTICLE 7

PROCEDURES OF PAYMENT AND COLLECTION OF THE ADMINISTRATIVE FINES

When offenders wish the immediate and unconditional payment of the fine, its collection can be done:

- a) Either on working days and hours to the local Tax Revenue Office or Customs Offices.
- b) Or in the evening, as well as on holidays and extraordinary days to the nearest local Customs Offices operating 24 hours a day.

If, for some reasons, the above is not possible and in case the competent district attorney has approved offender's confinement beyond 24 hours, the fine is paid on the next working day to the aforementioned Tax Revenue Office or Customs Offices.

Otherwise, the procedure of criminal prosecution is followed.

ARTICLE 8
PROCEDURES OF ADMINISTRATIVE SANCTIONS' ASSESSMENT
[FINES] TO THE COMPETENT TAX REVENUE OFFICES

After the imputation act has been finalized, a money order is drafted by the competent services including all necessary information and it is sent to the offender's Tax Revenue Office for assessment, provided the offender disposes a VAT number.

Therefore, if an offender not disposing a VAT number refuses to pay the fine, the competent control services must mention it into the case file stressing the fact that, once finalized, the administrative fine will not be able to be assessed by the local Tax Revenue Office in order to be collected.

The amount of the administrative fine is considered public revenue.

The competent control services and the competent services for the imposition and the collection of the administrative fine are requested to inform their authorities with respect to the above.

ARTICLE 9
ENTRY INTO FORCE

The present is entering into force the date of its publication to the OFFICIAL JOURNAL OF THE HELLENIC REPUBLIC. This decision is to be published to the OFFICIAL JOURNAL OF THE HELLENIC REPUBLIC

Athens 27 July 2007

THE MINISTERS

Of ECONOMY AND FINANCE

of CULTURE

ANNEX I

The present sample constitutes inseparable section of art. 3, joint decision nr. 10100/D3B/4020/27-07-2007 issued by the Minister of Economy and Finance and the Minister of Culture.

Hellenique Republic

MINISTRY.....

SERVICE.....

Address.....

CONFIRMATORY ACT OF VIOLATION

of art. 65A and 66, Law 2121/1993, as modified by art. 2, Law 3524/2007

Today of month..... year.....

day..... hour..... the undersigned civil servants:

1.....

2.....

3.....

During the control

[offender's full personal data].....

Seat/domicile..... Street.....nr.....

Identity card number.....

VAT number.....

We observed the following violations

.....

.....

.....

The deeds of the offender constitute a violation stipulated and punishable according to provisions of art. 65A and 66 of Law 2121/1993 par.....and moreover, an administrative fine may be imposed equal to the total value [εδώ λείει γινόμενο, όχι ανά τεμάχιο] of illegal items (price estimated by multiplying single item value in euros)..... euros, according to the seizure report.

Total fine amount (in words)euros.

Minimum fine amount to collect A THOUSAND [1.000] EUROS.

A copy of the offender's defence is attached.

After the offender's defence, the imputation of the violation and the verification of the offender's identity the proper charge has been proffered and questions were asked to the offender.

THE INSPECTORS

1.....2.....3.....

Authenticated

ANNEX II

The present sample constitutes inseparable section of art. 3, joint decision nr. 10100/D3B/4020/27-07-2007 issued by the Minister of Economy and Finance and the Minister of Culture.

Hellenique Republic2007

MINISTRY.....
SERVICE.....
Address
Tel.
FAX.

TO:
VAT number
Identity card number
Address
Street.....nr.....
City.....District.....
Postal Code.....

SUBJECT: SUMMONS FOR HEARING

[According to art. 6, Law 2690/1999]

During the control made (to the enterprise or to the offender himself)

.....
by the competent bodies of our Service.....
on.....

Flagrant violations have been established, stipulated and punishable according to provisions of art. 65A and 66, Law 2121/1993.

Therefore, you are summoned within the limits of the flagrant crimes procedure, to submit your views in writing to the competent service which certified the violation, in order to be considered for the potential enforcement of the existing administrative sanctions.

A copy has been served:

To

Today on

Day..... hour.....

Person serving

Person receiving the document

Full name and signature