

## THE SECURITY OF NETWORKS AND INFORMATION SYSTEMS LAW , 2020

Decision under sections 17(y), 19(3), 20(1)(d), 21, 24(a), 24(b), 46(1), 46(4) and 46(5) of Law 89(I)/2020

Preamble.

In exercise of the powers vested in it under sections 17(y), 19(3), 20(1)(d), 21, 24(a), 24(b), 46(1), 46(4) and 46(5) of the Security of Networks and Information Systems Law , 2020, as amended for the time being , the Digital Security Authority (hereinafter the “Authority”) issues this Decision establishing the procedure for conducting Public Consultations, in accordance with the requirements and obligations of the Law.

### PART I

#### Introductory Provisions

Short Title.

1. This Decision may be cited as the Public Consultations Procedure Decision of 2021.

Interpretation.

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

«public consultation» means the public consultation which is held in accordance with paragraphs (a) and (b) of section 24 of the Law;

"duration of the public consultation" means the period of time from the date of publication of the public consultation until the date that interested parties have available to send their views on the issues raised in the public consultation;

"interested bodies" means the representatives of the Republic, the operators of essential services, the operators of critical information infrastructure, the providers of digital services and the providers of electronic communications networks and/or services, and any other persons or organizations that the Authority determines from time to

time, based on its powers which derive from the Security of Networks and Information Systems Law , 2020;

89(I)/2020.

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

(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 shall apply to the determination of the procedure for Public Consultations, which will be carried out by the Authority, in accordance with the provisions of paragraphs (a) and (b) of section 24 of the Law.

Purpose – Object of the  
Public Consultation  
procedure.

4.(1) The public hearing is a form of public dialogue and consultation aimed at ensuring conditions of transparency and democracy in the process of updating and informing the Authority and/or in the decision-making process.

(2) The Public Consultation is primarily aimed at:

a) the formation of an accurate picture and providing the most complete and accurate information to the Authority, so that it is able to reach a complete, well-informed and sufficiently reasoned decision, and

b) to enable interested parties to express their views on specific issues related to the Security of Networks and Information Systems.

## PART II

### General Issues of Public Consultations

5. (1) Without prejudice to section 21 of the Law, the Authority may carry out public consultations prior to the adoption of decisions/measures related to the Security of Networks and Information Systems, providing the opportunity to interested parties to submit their views on specific issues. The Authority may invite any other persons or organizations, whenever it deems necessary, in accordance with the requirements and obligations of the Law.

(2) All interested parties or any other persons or organizations invited by the Authority to participate in public consultations have the right to participate, whenever the Authority deems necessary, in accordance with the requirements and obligations of the Law.

(3) The texts of the public consultation may contain a description of the respective issues related to Security of Networks and Information Systems, the proposed measures on these issues, specific questions addressed to the participants in the relevant public consultation, as well as information/instructions regarding the conditions for carrying out the said Public Consultation.

6. The Authority shall take into account the views expressed in each public consultation before reaching, at its discretion, the adoption of decisions/measures on issues that were examined in each public consultation.

**7.(1)** In duly justified cases, the Authority may not follow the provisions regarding the carrying out of public consultations as described in this Decision, in particular with regard to the duration of the public consultations.

(2) In the application of paragraph (1) of this article, the Authority may notify all interested parties of the cases in which it will not follow the provisions for carrying out Public Consultations as described in this Decision.

(3) The Authority shall take into account and follow more specific provisions regarding the carrying out of Public Consultations than those described in this Decision, in cases where the examined issues are governed by different Public Consultations procedures provided by the Law and the Decisions issued thereunder.

### PART III

#### Public Consultations Procedure

Publication of the Public Consultation.

8.(1) The Authority shall publish the text of each Public Consultation in a prominent place on its website. Stakeholders may also obtain the content of each Public Consultation in printed form from the Authority, in accordance with the instructions/guidelines contained in the text of each Public Consultation.

(2) At the same time of publishing the text of the Public Consultation as described in paragraph (1) of this article, the Authority may, at its discretion, publish an announcement in at least two (2) daily newspapers concerning the commencement of each Public Consultation. The notice of commencement shall contain at least the topic of the Public Consultation as well as the duration of the Public Consultation, as specified in article 9 of this Decision.

Duration of the Public Consultation.

9.(1) The duration of each Public Consultation will be defined every time in the text and in the announcement of the Public Consultation. The public consultation will last at least thirty (30) days.

(2) The Authority may, at its discretion, define a longer or shorter period of time of duration of a Public Consultation, as opposed to the provisions of paragraph (1) of this section. When determining the duration of a Public Consultation, the Authority will take in particular the following into account:

- a) the possible urgent need to take measures on specific issues regarding the Security of Networks and Information Systems,
- b) the complexity of the issues raised in the public consultation,
- c) the conditions that prevail during the Public Consultation and which may affect the time required by interested parties to send replies to the said public consultation,
- d) any prior consultations with affected interested parties.

Extension of the duration  
of the Public Consultation.

10.(1) The Authority may extend the duration of a Public Consultation, following written reasoned requests from the interested parties to the Authority which must be submitted to the Authority no later than ten (10) working days from the publication of the Public Consultation, in accordance with the provisions of article 8 of this Decision, taking into account paragraph (2) of article 9 of this Decision.

(2) Any Decision of the Authority to extend the duration of a Public Consultation, as well as its new duration, will be announced on the website of the Authority and if there was a publication, in accordance with paragraph (2) of article 8 of this Decision, in at least two (2) daily newspapers, at the latest within twenty (20) working days from the publication of the Public Consultation, in accordance the provisions of section 8 of this Decision.

(3) Requests by interested parties regarding the extension of the duration of a Public Consultation which are submitted to the Authority later than the period of ten (10) working days from the date of publication of the Public Consultation in accordance with the provisions of article 8 of this Decision, will not be considered by the Authority.

Instructions/guidelines for participating in the public consultation.

11.(1) Stakeholders who wish to participate in a public consultation are required to follow the instructions/guidelines contained in the text of each Public Consultation regarding the manner in which they can submit their position to each public consultation.

(2) In cases where the Authority receives positions from interested parties, in a way that is not in line with the instructions/guidelines of the respective Public Consultation, the Authority will have the discretion to take into account or to reject these positions on a case-by-case basis.

Publication of replies.

12.(1) The Authority may inform the interested parties by sending them a letter regarding its conclusions and provide them with answers to any comments arising from the Public consultation, no later than one (1) month from the termination of the said Public Consultation.

(2) In exceptional cases which are justified by the Authority, the Authority may publish all the positions of the participants in the public consultation on its website, as well as the conclusions that arise from the replies to the public consultation in compliance with paragraphs (1), (3), (4) and (5) of this article.

(3) Where a participant in a public consultation wishes not to disclose all or part of the information included in its positions, it will be obliged, along with submitting the answers to the relevant public consultation, to submit a relevant request, stating precisely the information it considers confidential and which it does not wish to be published, by providing the relevant justification.

(4) (a) In compliance with paragraph (a) of subsection 3 of section 19 of the Law, the Authority will preserve and accept the confidentiality of any information provided by an interested entity that is categorized by the Authority as confidential, except in cases where the Authority has reasonable grounds to consider otherwise.

(b) Subject to paragraph (b) of subsection 3 of section 19, the Authority will not disclose any information protected by professional secrecy and specifically information related to the interested parties, their professional relationships or their pricing, and this prohibition will be subject to reservation of the right of the Authority to disclose information where this is fundamental for the purpose of carrying out its duties:

Provided that, in such a case, any disclosure will be proportionate and will take into account the legitimate interests of the parties concerned in order to safeguard their business secrets.

(5) The Authority's obligation pursuant to paragraph (4) of this article does not affect its right to disclose information which is necessary for the fulfilment of its duties. In particular, the Authority may not accept in whole or in part the request of the participant referred to in paragraph (3) of this article, by providing an objectively reasoned opinion in this respect which will be based on the principle of proportionality and will take into account the legitimate interests of the interested entities for the protection of their professional confidentiality in accordance with the provisions of article 4 of this Decision and subsection (3) of section 19 of the Law.

(6) The Authority may at any time revoke its relevant decision on the public consultation which is carried out from time to time, if it becomes aware of new data or information that was not disclosed to it.

#### PART IV 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 its Decision, 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 will be published in the Official Gazette of the Republic and will be posted on the website of the Authority.

### Explanatory Report

In accordance with sections 17(y), 19(3), 20(1)(d), 21, 24(a), 24(b), 46(1), 46(4) and 46(5) of the Security of Networks and Information Systems Law, 2020, the Digital Security Authority issues the Decision on the procedure of Public Consultations.

The relevant Decision establishes the procedure for carrying out Public Consultations with representatives of the Republic, with operators of essential services, operators of critical information infrastructure, with providers of digital services and/or providers of electronic communications networks and services, and with any other persons or organizations, whenever the Authority deems appropriate, in accordance with the requirements and obligations of the Law.