



**Report  
on penalties applicable for infringement  
of the provisions of the REACH Regulation  
in the Member States**

**FINAL REPORT**



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European Commission  
Directorate General Environment  
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## FOREWORD

This Report has been prepared by Milieu Ltd, under contract to the European Commission, DG Environment (Study Contract No 07.307/2008/520090/ETU/D1). **The views expressed herein are those of the consultants alone and do not represent the official views of the European Commission.**

The report is based on the contractor's analysis of Member States provisions for REACH enforcement penalties notified to the Commission, as required by Article 126 of REACH, and subsequent feedback from Member States' Competent Authorities. The final report was discussed with Member States at a workshop held by the Commission on 19 February 2010. It is acknowledged that the concept of "penalty" may have different scope and understanding in different Member States which does not necessarily correspond with the understanding of that term in the contractor's report.

The aim of the report was to provide support to the Commission in creating an objective and exhaustive overview of provisions on penalties applicable for infringement of the provisions of the REACH Regulation in the Member States (including EEA/EFTA States). The report therefore focused on the current provisions set out in Member States' national law and notified to the Commission on the penalties applicable for infringements of the REACH Regulation. The report itself cannot give a full picture of the enforcement regimes in the Member States, as it did not intend to address how the penalties are implemented in practice. Therefore, the enforcement cultures and approaches towards enforcement could not necessarily be fully reflected, including for example the extent to which maximum available fines would be applied. At present there is only limited REACH enforcement experience available, given that REACH implementation is still at an early stage. The comparison in the report of levels of fines in different Member States should therefore be understood in this context.

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## Executive summary

This study gathers, compiles and analyses the national legislation setting penalties for infringements of the provisions of REACH adopted across all EU Member States and EEA countries. The report covers twenty-nine countries (all EU Member States and EEA countries, except Spain), and provides an overview of the sanctions set by these countries. The information gathered is based on the notifications the national authorities provided to the European Commission<sup>1</sup> as required under Article 126 of the Regulation. The study also provides a comparative analysis of the types of offences and levels of penalties between countries, and the levels of penalties compared to the costs of compliance and to comparable offences under other national legislation.

The analysis begins with an overview of the articles of REACH considered as enforceable on the basis of a close study of the Regulation and including the work carried out by the Forum for Exchange of Information on Enforcement on that topic. It shows that many articles of the Regulation may require enforcement. However, while such articles should all be equally enforced, the level of priority for enforcement can vary and some practical difficulties for implementation and enforcement may arise with respect to some articles. The overview indicates that most provisions of the Regulation considered as enforceable are subject to penalties in the national law, and therefore breaches of obligations under REACH are punishable under national legislation in most cases.

The analysis then considers whether the penalties provided in Member State legislation are be dissuasive, proportionate and effective. An effective penalty should provide adequate incentive for complying with regulatory obligations, so as to ensure that private and public actors do not compromise citizens' health and safety, pollute the environment, distort the market or violate consumers' rights. It is moreover important to make penalties proportionate to the offence committed in order not to discourage undertaking as a whole, and to include a proportionate array of penalties that correspond to the gravity of the offence and the intention of the offender, including economic, financial, administrative and criminal sanctions. Consistency across Member States concerning the enforcement mechanisms under REACH will help to ensure a level playing field for businesses across the EU. Finally, penalties are supposed to decrease the risk of recidivism by, for instance, creating increased penalties for repeat infringements.

The comparative analysis then studies in sequence different aspects of the Member States' systems for ensuring the enforcement of REACH. It concludes with some indications as to the level of dissuasiveness, proportionality and effectiveness of the measures adopted in the different countries.

### *Types of offences*

In view of the many offences possible under REACH and the number of national systems surveyed, the information from the twenty-nine countries under study on the behaviours identified as offenses under REACH was entered into four tables corresponding to the main obligations under REACH. The four categories are the following:

- Registration and evaluation, which corresponds to Title II on registration,<sup>2</sup> Title III on data sharing and avoidance of unnecessary testing,<sup>3</sup> and Title VI on evaluation.<sup>4</sup>

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<sup>1</sup> and the EFTA Surveillance authority for the EEA countries.

<sup>2</sup> Articles 5 to 24 of REACH.

<sup>3</sup> Articles 25 to 30 of REACH.

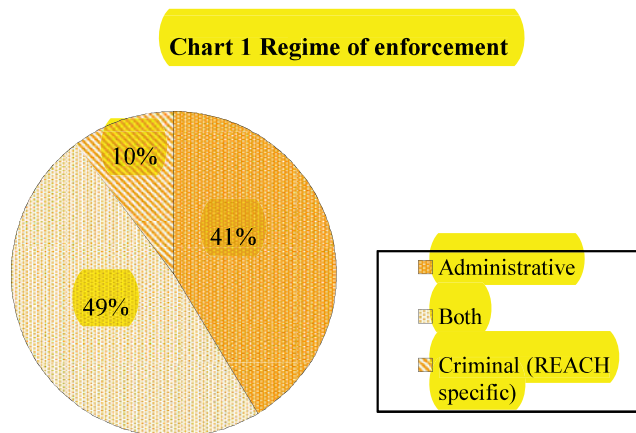
<sup>4</sup> Articles 40 to 53 of REACH.

- Authorisation and restrictions, which corresponds to Title VII on authorisation<sup>5</sup> and Title VIII on restrictions on the manufacturing, placing on the market and use of certain dangerous substances.<sup>6</sup>
- Supply chain, corresponding to Title VI on information to the supply chain,<sup>7</sup> and
- Downstream users, corresponding to Title V of REACH.<sup>8</sup>

These tables compare the types of offences for the infringement of REACH provisions across Member States, *i.e.*, whether criminal or administrative.

The methods of enforcement vary from one country to another, and the choice of enforcement regime depends on the legal cultural background of each country. The common law countries have based enforcement mostly on criminal law, with an emphasis on the use of notices before applying criminal sanctions. The Nordic countries have based their enforcement policy on coercive measures and aim first at compelling the offender to comply with the legislation through the issuance of notices or coercive fines, rather than at punishing the breach of law. The remaining countries are divided between those enforcing REACH mostly at the administrative level (12 countries) and those combining administrative and criminal approaches (14 countries). Countries with a combined approach have usually inserted an element of intentional infringement or of endangerment to justify the use of criminal sanctions.

The pie chart below shows the types of enforcement regimes Member States have chosen to address infringements of REACH obligations:



The study focuses on the provisions that specifically enforce the obligations set by the REACH Regulation. The tables on the types of offences therefore do not include provisions in the national legislation containing general obligations that could impact on the implementation of REACH.

In some countries, the list of situations that will be regarded as an offence is quite extensive, and aimed at providing an exhaustive overview of the cases constituting an infringement of the REACH Regulation. This is the case in Belgium (Federal level), Bulgaria, Cyprus, Greece, Hungary, Italy, Lithuania, Portugal, Romania, Slovakia, Slovenia and the United Kingdom. Other countries (Austria, Finland, France, Germany, Luxembourg, the Netherlands, Poland and

<sup>5</sup> Articles 55 to 66 of REACH.

<sup>6</sup> Article 67(1) of REACH.

<sup>7</sup> Articles 31 to 36 of REACH.

<sup>8</sup> Articles 37 to 39 of REACH.

Sweden) have made use of more general terms reflecting the main obligations under REACH. Still other countries have used so-called “catch-all” provisions (*i.e.*, Austria, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Iceland, Ireland, Latvia, Liechtenstein, Malta, Norway), meaning that the situations regarded as being in violation with REACH are not exhaustively defined in the text of the enforcement legislation, but rather included through a more general reference to violations of the Regulation.

Two of the three countries where enforcement is primarily done via criminal law have used a catch-all provision (Ireland and Malta). The use of a catch-all provision to cover breaches of the REACH obligations is less frequent among the countries where the legislation is mainly (or only) enforced through administrative law, *i.e.*, five out of twelve countries (Austria, Czech Republic, Estonia, Hungary, and Latvia).

The use of the catch-all provision has taken two different forms. In some cases (Czech Republic, Denmark, Estonia, Iceland, Ireland, Liechtenstein, Malta, Norway) the legislation provides only a catch-all provision, while other countries (Austria, Cyprus, France, Germany, Hungary and Latvia) provide a residual catch-all provision, to allow the sanctioning of any other breach of legislation not expressly mentioned.

Given the extensive numbers of REACH obligations considered as enforceable by Member States, many countries used a so-called “by-reference provision”. This is not to be confused with a catch-all provision, as it tends to list the provisions of REACH, infringements of which will be considered as an offence. Such provisions were used in Belgium (federal level), Bulgaria, Finland, Greece, Hungary, Italy, Latvia, Luxembourg, the Netherlands, Poland, Romania, Slovenia, Sweden and the United Kingdom.

### ***Type and level of penalties***

Article 126 of REACH refers to the obligation for Member States to impose “penalties”. In the context of this provision, this term is understood as equivalent to “sanctions”. The sanctions are characterised by their punitive or repressive character. However, this repressive character does not prevent a sanction from having also a preventive dimension.

The type of penalty varies among the countries under study. In general, the Member States under study have systematically included fines in their penalty systems, as a continuation of their existing systems. Other types of penalties include injunctions (including market withdrawal), prison sentences, and name-and-shame methods where non-compliance is made public.

With regards to administrative measures, the main type of sanction is economic. Fines are the only instrument foreseen at the administrative level in Bulgaria, Cyprus, Estonia, Hungary, Italy, Latvia, Liechtenstein and Romania. Some countries, although having the possibility to apply fines, rarely use them since their systems are mostly based on coercive measures, including initial warnings and formal notices, and fines are imposed only as an *ultima ratio*. On the other hand, the Nordic countries consider the fine as a coercive instrument, rather than as a punitive tool. The fine is then calculated on a case by case basis, depending on varying criteria, such as the size of the company, the importance of the interests affected by the offence or the severeness of the infringement.

With regards to criminal sanctions, three main types of measures - pecuniary, deprivation of rights and prohibitions and orders - can be identified. Fines and prison sentences are the main criminal sanctions in all countries where criminal law is applied. The fine can be extremely high, and will usually be higher than the administrative fine, in the countries where fines can be imposed both under criminal and administrative law. In almost all countries with criminal sanctions, the most serious breaches of the REACH regulation are punished with imprisonment.



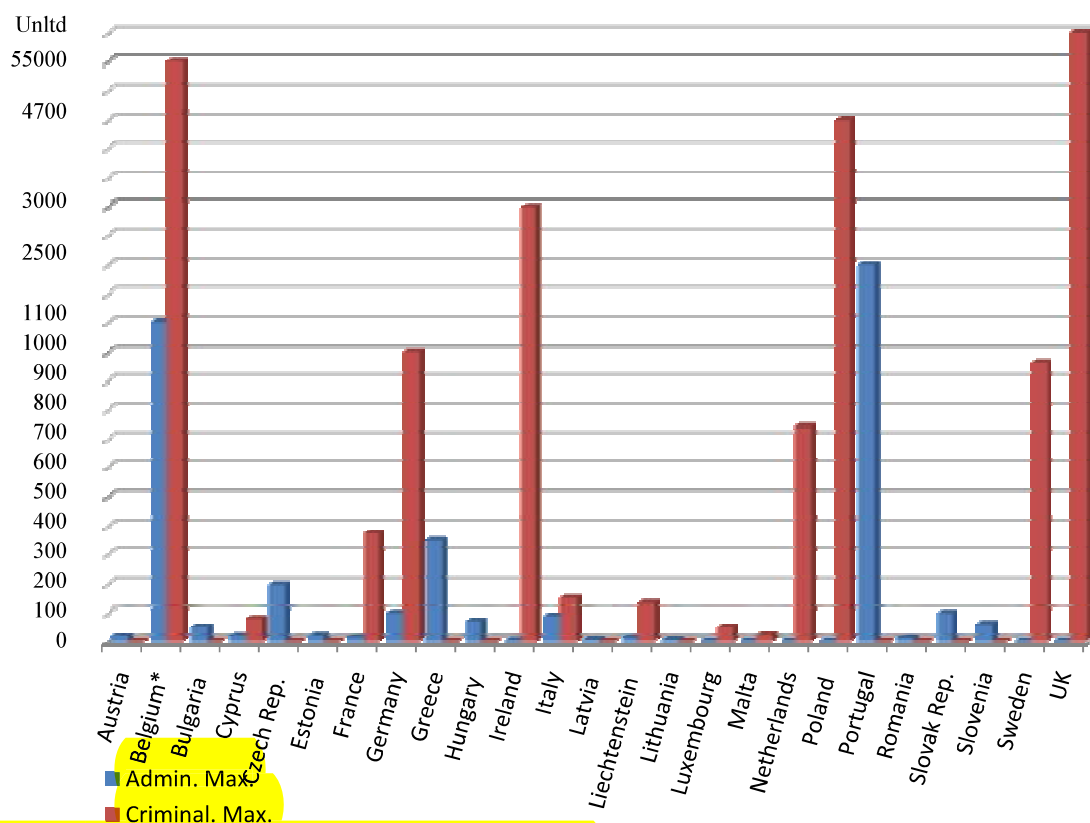
When a range of sanctions is foreseen in the legislation, the authorities and/or the courts have the possibility to adjust and to choose the most appropriate sanctions.

Overall, the fine is the sanction most commonly provided for in the legislation. Most countries provide for fines between 50 000 and 1 000 000 Euros maximum for the first infringement. A few countries have adopted significantly lower or higher fines. In Latvia and Lithuania, on the one hand, the maximum fine is below 5 000 Euros. In Belgium, on the other hand, the fine can go up to 55 000 000 Euros under the federal legislation and in the UK the fine is unlimited.

The bar chart below demonstrates the variation in the level of fines that are at the disposal of the authorities in the countries under study.

**Chart 2 Level of administrative and criminal fines**

Unit= 1000 EUR



\* The fine indicated for Belgium concerns the federal level.

The above graph takes into account only the maximum fines that can be imposed upon first infringement, on natural as well as on legal persons<sup>9</sup>. It does not include all of the countries under study, since four (Denmark, Finland, Iceland, Norway) do not fix the amounts of fines in their legislation. It also does not reflect the possibility to cumulate sanctions for multiple

<sup>9</sup> Please note that the purpose of this study is to present the legal options offered by the national legislation of the Member States and not to indicate how sanctions are applied in practice. It should however be reminded that, for criminal sanctions, and more particularly for criminal fines, it is for the judge to decide the actual amount he/she will impose on the infringer, which does not necessarily mean the maximum amount provided by the law.