

SAFE GUARDS

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EU MEMBER STATES REACH ENFORCEMENT REGIME

The new European Union chemical regulation – REACH (Registration Evaluation and Authorization of Chemicals) has been in force for over one and a half years. While businesses have been preparing for compliance measures, they also want to find out penalties for non-compliance so as to estimate resource allocation.

According to REACH regulation article 126, the 27 EU member states shall lay down their own penalties regime applicable for infringement of the provisions thereof and shall take all necessary measures to ensure they are implemented. There are no detailed guidelines for member states to follow but the regulation requires the penalties shall be effective, proportionate and dissuasive.



Despite the fact that member states were required to inform the European Commission regarding their penalties structure by December 1st, 2008, with references to the response of national helpdesks only two-thirds of the member states have their regime prepared. The rest of member states could have their enforcement legislations ready by the end of 2009.

Member States are required to report to the European Commission results of the inspection, monitoring and penalties by June 1, 2010 and then regularly every five years.

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Member states with enforcement measures in place as of April 2009:

- Belgium
- Bulgaria
- Cyprus
- Czech Republic
- Denmark
- Germany
- Finland
- Hungary
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Romania
- Slovenia
- Spain
- Sweden
- United Kingdom

Enforcement Priority

To ensure a harmonized approach of REACH implementation among the 27 member states, the regulation explicitly required a set up of "Forum for Exchange of information on Enforcement". In the third meeting of the Forum held in December 2-4, 2008, representatives of member states agreed to have the first coordinated enforcement project focus on:

- Pre-registration
- Registration and
- Safety Data Sheets for phase-in substances.

20 member states, Norway and Iceland are involved in the project which is to be carried out during the first half of 2009. The second coordinated project may be organized in 2010.

To see a list of enforceable REACH provisions in the UK, please see Schedule 1 of The REACH Enforcement Regulations 2008.

The duties of the Forum for Exchange of Information on Enforcement:

- (a)** Spreading good practice and highlighting problems at Community level;
- (b)** Proposing, coordinating and evaluating harmonized enforcement projects and joint inspections;
- (c)** Coordinating exchange of inspectors;
- (d)** Identifying enforcement strategies, as well as best practice in enforcement;
- (e)** Developing working methods and tools of use to local inspectors;
- (f)** Developing an electronic information exchange procedure;
- (g)** Liaising with industry, taking particular account of the specific needs of SMEs, and other stakeholders, including relevant international organizations, as necessary;
- (h)** Examining proposals for restrictions with a view to advising on enforceability.

EU member states	Penalties
Belgium	Fines: €52 to €4 000 000 Imprisonment: 8 days to 3 years
Czech Republic	Fines: CZK 500 000 to CZK 5 000 000
Denmark	Chemical substances and products Act no. 1755 Imprisonment up to two years
Germany	Less severe infringement: fines up to €50 000 or imprisonment up to 1 year More severe infringement: fines up to €100 000 or imprisonment up to 5 years
Finland	Chemical Act No. 744/1989 and Penal Code of Finland No. 39/1889 Fines or imprisonment up to 2 years
Hungary	Government decree on chemical load penalty HUF 50 000 to 20 000 000
Ireland	Chemical Act 2008 (S.I. No. 273 of 2008) On summary conviction, a fine not exceeding € 5,000 or imprisonment for a term not exceeding 6 months or both, or On conviction on indictment, to a fine not exceeding € 3,000,000 or imprisonment for a term not exceeding 2 years or both.
Latvia	Fines: 300 to 1000 lats
Lithuania	Fines: 500 to 300 000 litas
Malta	Fines: € 466 to € 23 294 Imprisonment: < 6 months to 4 years
Netherlands	Economic Offences Act Fines up to 670 000 or imprisonment up to six years
Romania	Fines: Lei 6 500 to 50 000
Spain	In Parliament
Sweden	Environmental Code (Chapter 29) Fines or imprisonment up to 2 years
United Kingdom	REACH Enforcement Regulations 2008 No. 2852 <ul style="list-style-type: none"> • Up to £5,000 fine and/or up to 3 months imprisonment following summary conviction • An unlimited fine and /or up to two years imprisonment following conviction on indictment

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