

GERMANY

1. Provisions in place in the Member States on REACH penalties

The table below has been compiled on the basis of the information provided in the legislation sent by Germany in its notification to the European Commission. This table indicates briefly which REACH articles are covered in the national legislation.

When there is a star (*) next to the country name, it means that the country applies what is called a “catch-all” provision, meaning that there is a provision in the law indicating that any infringement of the REACH Regulation can be sanctioned under national law. The crosses represent the articles that are precisely mentioned in the law.

We understand that in Germany the catch-all provision can be derived from § 23 (1) ChemG in conjunction with § 26 (1) no. 10 (a) ChemG. § 23 (1) ChemG which entitles the competent authority to issue administrative acts for the purpose of eliminating infringements of REACH. Art. 26 (1) no. 10 (a) ChemG stipulates that the non-compliance with these administrative acts constitutes “Ordnungswidrigkeiten”. Consequently, the non-compliance with *all* REACH provisions can be sanctioned indirectly.

Country	Germany*
Article	
5	X
6(1)	X
6(2)	
6(3)	X
7(1)	X
7(2)	
7(3)	
7(5)	X
8(1 and 2)	
9(2)	
9(6)	
10	
11(1 and 3)	
12(1)	
12(2)	
13(1-5)	
14(1)	
14(6)	
14(7)	
17(1 and 2)	
18(1 to 3)	
19(1 and 2)	
20(2)	
21(1)	
21(2)	
21(3)	
22(1)	
22(2)	
24(2)	
25(1)	
26(1)	
27(1 to 3)	
27(4)	
27(6)	
28(1)	
28(6)	
29(3)	

Country	Germany*
Article	
30(2)	
30(6)	
31(1)	X
31(2-9)	X
32(1)	X
32(2-3)	X
33(1 and 2)	
34	
35	
36(1)	
36(2)	
37(2)	
37(3)	
37(4)	X (39 (1))
37(5)	
37(6)	
37(7)	
38(1)	
38(2)	
38(3)	
38(4)	
40(4)	
41(4)	
46(2)	
49(a)	
50(2-3)	
50(4)	
53(1 to 3)	
53(4)	
55	
56(1)	X
56(2)	
60(8)	
60(10)	
61(1)	
61(3)	
62 (4 and 5)	X (62 (1 and 4))
63(3)	
65	
66(1)	
67(1)	

2. Types of offences related to REACH in Germany

This section gathers information on the REACH offences (administrative and/or criminal ones) pointed by the law in Germany. We divided the offences in four groups:

- Offences related to the registration requirements;
- Offences related to authorisation and restrictions requirements;
- Offences related to the supply chain requirements;
- Offences related to the downstream user requirements;

	Administrative offences	Criminal offences
Offences related to the registration requirements	<p>“Ordnungswidrigkeiten”</p> <ul style="list-style-type: none"> • Intentional/ negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of registration obligations • Negligent manufacture or marketing of a 	<ul style="list-style-type: none"> • Intentional/ negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of registration obligations and placement of somebody else in danger of injury or death or objects not belonging to his property in danger of damage

	substances without registration or negligent provision of incorrect/ incomplete information in a registration	<ul style="list-style-type: none"> or destruction (aggravating circumstances) Intentional manufacture or marketing of substances without registration or provision of incorrect/incomplete information in a registration Intentional violation of registration obligations and fulfilment of aggravating circumstances
Offences related to authorisation and restrictions requirements	<p>“<i>Ordnungswidrigkeiten</i>”</p> <ul style="list-style-type: none"> Intentional/ negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of authorisation obligations Negligent provision of incorrect/ incomplete information in an application for authorisation 	<ul style="list-style-type: none"> Intentional/ negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of authorisation obligations and fulfilment of aggravating circumstances Intentional marketing without authorisation or provision of incorrect/ incomplete information in an application for authorisation Intentional marketing without authorisation or provision of incorrect/ incomplete information in an application for authorisation and fulfilment of aggravating circumstances Negligent marketing without authorisation
Offences related to the supply chain requirements	<p>“<i>Ordnungswidrigkeiten</i>”</p> <ul style="list-style-type: none"> Intentional/ negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of requirements laid down for safety data sheets Intentional/ negligent non-provision of safety data sheets, required information, updates or related infringements 	<ul style="list-style-type: none"> Intentional/ negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of requirements laid down for safety data sheets and fulfilment of aggravating facts Intentional/ negligent failure to provide safety data sheets, required information, updates or related infringements and fulfilment of aggravating circumstances
Offences related to the downstream user requirements	<p>“<i>Ordnungswidrigkeiten</i>”</p> <ul style="list-style-type: none"> Intentional/ negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of requirements laid down for chemical safety reports Negligent failure to prepare chemical safety reports or provision of incorrect/ incomplete information 	<ul style="list-style-type: none"> Intentional/ negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of requirements laid down for chemical safety reports and fulfilment of aggravating circumstances Intentional failure to prepare chemical safety reports or provision of incorrect/ incomplete information Intentional failure to prepare chemical safety reports or provision of incorrect/ incomplete information and fulfilment of aggravating circumstances

3. Sanctions applicable to legal persons in Germany

This table mentions whether or not Germany applies administrative or/and criminal sanctions to legal persons when REACH provisions are infringed.

	Sanctions applicable to legal persons	Criteria	Sanctions applicable to other groups
Germany	Y	-“ <i>Ordnungswidrigkeiten</i> ”: Identical to natural persons -Criminal offences: Special provisions	Y (Associations without legal personality)

4. REACH related administrative and criminal penalties in Germany

This section gathers information regarding administrative and/or criminal penalties applicable for the infringement of REACH in Germany. We divided the penalties in four groups:

- Penalties related to infringement of registration requirements;

- Penalties related to infringement of authorisation requirements;
- Penalties related to infringement of the supply chain requirements;
- Penalties related to infringement of the downstream users requirements;

	Administrative penalties	Criminal penalties
Penalties related to infringement of registration requirements	<ul style="list-style-type: none"> • Intentional or negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of registration obligations: Fine up to 50 000/ 25 000 EUR, identical fines for legal persons • Confiscation and deprivation of objects • Negligent violation of registration obligations: Fine up to 100 000 EUR, identical fine for legal persons 	<ul style="list-style-type: none"> • Intentional/ negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of registration obligations and fulfilment of aggravating circumstances: Up to 5 years prison or up to 360 daily units fine/ Up to 2 years prison or up to 360 daily units fine, Legal persons: Fine up to 1 000 000/ 500 000 EUR. • Intentional violation of registration obligations: Up to 2 years prison or up to 360 daily units fine, Legal persons: Fine up to 1 000 000 EUR (with aggravating circumstances: Up to 5 years prison or maximum fine of 360 daily units, Legal persons: Fine up to 1 000 000 EUR) • Confiscation and deprivation of objects
Penalties related to infringement of authorisation requirements	<ul style="list-style-type: none"> • Intentional or negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of authorisation obligations: Fine up to 50 000/ 25 000 EUR, identical fines for legal persons • Confiscation and deprivation of objects • Negligent violation of authorisation obligations: Fine up to 100 000 EUR, identical fine for legal persons 	<ul style="list-style-type: none"> • Intentional/ negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of authorisation obligations and fulfilment of aggravating circumstances: Up to 5 years prison or up to 360 daily units fine/ Up to 2 years prison or up to 360 daily units fine, Legal persons: Fine up to 1 000 000/ 500 000 EUR. • Intentional marketing without authorisation or provision of incorrect/ incomplete information in an application: up to 2 years prison or fine up to 360 daily units, Legal persons: Maximum fine of 1 000 000 EUR (with aggravating circumstances: Maximum imprisonment of 5 years or maximum fine of 360 daily units, legal persons: Maximum fine of 1 000 000 EUR) • Negligent marketing without authorisation: Up to 1 year prison or fine up to 360 daily units, Legal persons: Maximum fine of 500 000 EUR • Confiscation and deprivation of objects
Penalties related to infringement of the supply chain requirements	<ul style="list-style-type: none"> • Intentional or negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of requirements laid down for safety data sheets: Fine up to 50 000/ 25 000 EUR, identical fines for legal persons • Confiscation and deprivation of objects 	<ul style="list-style-type: none"> • Intentional/ negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of requirements laid down for safety data sheets and fulfilment of aggravating circumstances: Up to 5 years prison or up to 360 daily units fine/ Up to 2 years prison or up to 360 daily units fine, Legal persons: Fine up to 1 000 000/ 500 000 EUR. • Confiscation and deprivation of objects

Penalties related to infringement of the downstream users requirements	<ul style="list-style-type: none"> • Intentional or negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of requirements laid down for chemical safety reports: Fine up to 50 000/ 25 000 EUR, identical fines for legal persons • Confiscation and deprivation of objects • Negligent failure to prepare chemical safety reports or provision of incorrect/ incomplete information: Maximum fine of 100.000 EUR 	<ul style="list-style-type: none"> • Intentional/ negligent non-compliance with enforceable administrative acts targeting the elimination of infringements of requirements laid down for chemical safety reports and fulfilment of aggravating circumstances: Up to 5 years prison or up to 360 daily units fine/ Up to 2 years prison or up to 360 daily units fine, Legal persons: Fine up to 1 000 000/ 500 000 EUR. • Intentional failure to prepare chemical safety reports or provision of incorrect/ incomplete information: up to 2 years prison/ fine up to 360 daily units (with aggravating circumstances: up to 5 years prison / fine up to 360 daily units) • Confiscation and deprivation of objects
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5. Short description of REACH sanctions and related issues in Germany

The competent authorities of the Federal States, determined by the law of the Federal States, control and enforce REACH. Dependent on each Federal State the control and enforcement of REACH is carried out on different administrative levels. Within these administrative levels, primarily the departments (*Amt*) for chemical safety for occupational safety and for consumer protection are responsible for these controls and enforcements. Technical inspectors carry out on-site inspections and are supported by specialized authorities providing scientific support.

Criminal offences are prosecuted by the prosecutor and offenders are convicted by the criminal court, while “*Ordnungswidrigkeiten*” are prosecuted by the competent surveillance authority of the Federal State. If the alleged offender appeals against the fine, the administrative procedure ends and competence is transferred to the court.

The Federation/Federal State working group on Chemical Safety (*Bund/Länder Arbeitsgemeinschaft Chemiesicherheit*, BLAC) serves to coordinate the supervision and the enforcement of REACH in the Federal State and constitutes a platform for the exchange of information. BLAC has developed non-public guidelines for monitoring the chemical market (*Leitfaden für die Marktüberwachung von Chemikalien*) for the Federal States. The Committee of the Federal States on occupational safety and safety engineering has also published guidelines for the supervision and enforcement of REACH in the area of occupational protection (*Handlungsanleitung für die Umsetzung der REACH-Verordnung im Arbeitsschutz*).

It should be emphasised that the competent authorities -prior to the enforcement of REACH- had already gathered experience in the supervision and enforcement of certain obligations enforced by REACH, e.g. obligations of the market participants linked to the provision of safety data sheets and linked to marketing restrictions of certain dangerous substances, since they had been responsible for the control and enforcement of the previous legislation on chemical safety (inter alia the GefStoffV and the German Chemicals Prohibition Regulation, *Chemikalienverbotsverordnung*, ChemVerbotsV) that had already subscribed these obligations in transposition of directive 91/155/EC and 76/769/EC - both revoked and replaced by REACH.

Some competent authorities of the Federal States have reported that they regard the issuing of enforceable administrative acts and their enforcement as preferable to the imposition of administrative sanctions (“*Ordnungswidrigkeiten*”), as long as the offender appears to be willing to comply with REACH and has not committed repeated violations of REACH, without prejudice to considerations on a case-by-case basis. This approach aims at maintaining an open dialogue between the authorities and the companies.

