

THE NETHERLANDS

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 The Netherlands 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.

Country	THE NETHERLANDS
Article	
5	X
6(1)	X
6(2)	
6(3)	X
7(1)	X
7(2)	X
7(3)	X
7(5)	X
8(1 and 2)	X ⁽²⁾
9(2)	X
9(6)	X
10	
11(1 and 3)	X ⁽¹⁾
12(1)	
12(2)	
13(1-5)	X ^(not 2&5)
14(1)	X
14(6)	X
14(7)	X
17(1 and 2)	X ⁽¹⁾
18(1 to 3)	X ⁽¹⁾
19(1 and 2)	X ⁽¹⁾
20(2)	
21(1)	
21(2)	
21(3)	
22(1)	X
22(2)	X
24(2)	X
25(1)	X
26(1)	X
27(1 to 3)	
27(4)	
27(6)	
28(1)	
28(6)	
29(3)	
30(2)	X
30(6)	
31(1)	X
31(2-9)	X ^(not 4&6)
32(1)	X
32(2-3)	X
33(1 and 2)	X
34	X
35	X
36(1)	X
36(2)	X
37(2)	X
37(3)	X
37(4)	X

Country	THE NETHERLANDS
Article	
37(5)	X
37(6)	X
37(7)	X
38(1)	X
38(2)	
38(3)	X
38(4)	X
40(4)	X
41(4)	X
46(2)	X
49(a)	X
50(2-3)	X
50(4)	X
53(1) to (3)	
53(4)	
55	X
56(1)	X
56(2)	X
60(8)	
60(10)	X
61(1)	X
61(3)	X
62 (4 and 5)	
63(3)	X
65	X
66(1)	X
67(1)	X

2. Types of offences related to REACH in The Netherlands

This section gathers information on the REACH offences (administrative and/or criminal ones) pointed by the law in The Netherlands. 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;

The articles 67 (1) ,40 (3) en 40 (4) are not included in the next table

Article 67 (1) is classified under Offences related to authorisation and restrictions requirement.

Article 40 (3) and 40 (4) can't be classified under the category offences named above (so where do we put them?).

	Administrative offences	Criminal offences
Offences related to the registration requirements	<p>Infringements of all REACH obligations, in addition to the ones considered as criminal offences</p> <p>It should be noted that in the Dutch legal system, criminal and administrative sanctions can be imposed for a same violation of a provision of REACH because these enforcement systems display different aims (compliance and punitive).</p>	<p><i>Major offences:</i></p> <p>-Failure to comply with the requirements of REACH related to <i>registration</i> of Articles 5, 7(3), 8(2), 9(4&6), 14(1,6-7), 40(4), 50(4).</p> <p><i>Minor offences:</i></p> <p>- Failure to comply with the requirements of REACH related to <i>registration</i> of Articles 6 (1&3), 7(1,2 and 5), 11(1), 13(1&3), 17(1), 18(1), 19(1), 22(1&2), 24(2), 25(1), 26(1), 30(1&2), 41(4), 46(2), 49, 50(2-3).</p> <p>NB: The law also provides for the possibility to identify by Orders in Council (AMvB) other potential offences</p>
Offences related to authorisation and restrictions requirements	<p>Infringements of all REACH obligations, in addition to the ones considered as criminal offences.</p>	<p><i>Major offences</i></p> <p>-Failure to comply with the requirements of REACH related to <i>authorisation</i> and <i>restrictions</i> of Articles 55, 56(1-2), 60(10) and 65. and 67 (1)</p> <p><i>Minor offences</i></p> <p>-Failure to comply with the requirements of REACH related to <i>authorisation</i> and <i>restrictions</i> of Articles 61(1-3), 63(3) and 66(1&3), 63(3) and 66(1).</p> <p>NB: The law also provides for the possibility to identify by Orders in Council (AMvB) other potential offences</p>
Offences related to the supply chain requirements	<p>Infringements of all REACH obligations, in addition to the ones considered as criminal offences</p>	<p><i>Major offences</i></p> <p>-Failure to comply with the obligations related to the <i>supply chain</i> of Article 31(1-3, 7, 9), 32(1&3), 33, 34 and 35.</p> <p><i>Minor offences:</i></p> <p>-Failure to comply with the obligations related to the <i>supply chain</i> of Article 31(5&8), 32(2) and 36.</p> <p>NB: The law also provides for the possibility to identify by Orders in Council (AMvB) other potential offences</p>
Offences related to the downstream user requirements	<p>Infringements of all REACH obligations, in addition to the ones considered as criminal offences</p>	<p><i>Major offences</i></p> <p>- Failure to comply with the obligations of REACH related to the <i>downstream users</i> of Article 37(4-7), 38(1,3&4), and 39 (1&2).</p> <p><i>Minor offences</i></p> <p>- Failure to comply with the obligations of REACH related to the <i>downstream users</i> of Article 37(2&3).</p> <p>NB: The law also provides for the possibility to identify by Orders in Council (AMvB) other potential offences</p>

3. Sanctions applicable to legal persons in The Netherlands

This table mentions whether or not The Netherlands applies administrative or/and criminal sanctions to legal persons when REACH provisions are infringed and of a specific regime applies for legal persons in comparison to the regime applicable to natural persons.

	Sanctions applicable to	Criteria	Sanctions applicable to other groups
--	-------------------------	----------	--------------------------------------

	legal persons		
The Netherlands	Y	Fine one category higher than for natural persons	N

4. REACH related administrative and criminal penalties in The Netherlands

This section gathers information regarding administrative and/or criminal penalties applicable for the infringement of REACH in The Netherlands. 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"> • Enforcement action (<i>Bestuursdwang</i>): physical action whereby, after a period wherein the wrongdoer can correct the situation himself, the authorities correct the illegal situation at the cost of the wrongdoer . • Conditional Fine (<i>Dwangsom</i>): after a period wherein the offender can correct the situation, the wrongdoer has to pay a fine for every time an offence is observed or for every period an illegal situation continues. When possible, it is common to set the maximum <i>dwangsom</i> at twice the amount of the financial advantage obtained from the illegal behaviour when not, standard amounts are imposed. It should be proportionate to the violation and the aimed effect of the penalty imposed. • Withdrawal of a permit: can be permanent or temporary 	<ul style="list-style-type: none"> • Major offences are punished with : When committed <i>intentionnally</i> (crime): -6 years prison or -a fine up to 74 000EUR for physical persons/ 740 000 EUR for legal persons, When <i>not</i> committed intentionnally(offence): - 1 year prison or - a fine up to 18 500 EUR. • Minor offences are punished with: When committed <i>intentionnally</i>: -2 years prison or - a fine up to 18 500 EUR When <i>not</i> committed intentionnally: - six months prison or - a fine up to 18 500 EUR.
Penalties related to infringement of authorisation requirements	<ul style="list-style-type: none"> • Enforcement action (<i>Bestuursdwang</i>): physical action whereby, after a period wherein the wrongdoer can correct the situation himself, the authorities correct the illegal situation at the cost of the wrongdoer. • Conditional Fine (<i>Dwangsom</i>): after a period wherein the offender can correct the situation, the wrongdoer has to pay a fine for every time an offence is observed or for every period an illegal situation continues. When possible, it is common to set the maximum <i>dwangsom</i> at twice the amount of the financial advantage obtained from the illegal behaviour when not, standard amounts are imposed. It should be proportionate to the violation and the aimed effect of the penalty imposed. • Withdrawal of a permit: can be permanent or temporary 	<ul style="list-style-type: none"> • Major offences are punished with : When committed <i>intentionnally</i> (crime): -6 years prison or -a fine up to 74 000EUR for physical persons/ 740 000 EUR for legal persons, When <i>not</i> committed intentionnally(offence): - 1 year prison or - a fine up to 18 500 EUR. • Minor offences are punished with: When committed <i>intentionnally</i>: -2 years prison or - a fine up to 18 500 EUR When <i>not</i> committed intentionnally: - six months prison or - a fine up to 18 500 EUR.
Penalties related to infringement of the supply chain requirements	<ul style="list-style-type: none"> • Enforcement action (<i>Bestuursdwang</i>): physical action whereby, after a period wherein the wrongdoer can correct the situation himself, the authorities correct the illegal situation at the cost of the wrongdoer. • Conditional Fine (<i>Dwangsom</i>): after a period wherein the offender can correct the situation, the wrongdoer has to pay a fine for every time an offence is observed or for every period an illegal situation continues. When possible, it is common to set the maximum <i>dwangsom</i> at twice the amount of the financial advantage obtained from the illegal behaviour when not, standard amounts are imposed. It should be proportionate to the violation and the aimed effect of the penalty imposed. • Withdrawal of a permit: can be permanent or temporary 	<ul style="list-style-type: none"> • Major offences are punished with : When committed <i>intentionnally</i> (crime): -6 years prison or -a fine up to 74 000EUR for physical persons/ 740 000 EUR for legal persons, When <i>not</i> committed intentionnally(offence): - 1 year prison or - a fine up to 18 500 EUR. • Minor offences are punished with: When committed <i>intentionnally</i>: -2 years prison or - a fine up to 18 500 EUR When <i>not</i> committed intentionnally: - six months prison or - a fine up to 18 500 EUR.
Penalties related to infringement of the downstream users requirements	<ul style="list-style-type: none"> • Enforcement action (<i>Bestuursdwang</i>): physical action whereby, after a period wherein the wrongdoer can correct the situation himself, the authorities correct the illegal situation at the cost of the wrongdoer. • Conditional Fine (<i>Dwangsom</i>): after a period wherein the offender can correct the situation, the wrongdoer has to pay a fine for every time an offence is observed or for every period an illegal situation continues. When possible, it is common to set the maximum <i>dwangsom</i> at twice the amount of the financial advantage obtained from the illegal behaviour when not, standard amounts are imposed. It should be proportionate to the violation and the aimed effect of the penalty imposed. • Withdrawal of a permit: can be permanent or temporary 	<ul style="list-style-type: none"> • Major offences are punished with : When committed <i>intentionnally</i> (crime): -6 years prison or -a fine up to 74 000EUR for physical persons/ 740 000 EUR for legal persons, When <i>not</i> committed intentionnally(offence): - 1 year prison or - a fine up to 18 500 EUR. • Minor offences are punished with: When committed <i>intentionnally</i>: -2 years prison or - a fine up to 18 500 EUR When <i>not</i> committed intentionnally: - six months prison or - a fine up to 18 500 EUR.

5. Short description of REACH sanctions and related issues in The Netherlands

In the Dutch legal system, criminal and administrative enforcement can be imposed for a violation of a provision of REACH because these enforcement systems display different aims (compliance and punitive).

Administrative penalties and enforcement are based on the Wm; the penalties can exist of incremental penalty payments (according to Article 5:32 Awb, the order defines the remedial action that needs to be taken); administrative coercion (the penalty depends on the violated interest and the expected effect of the penalty. This means it takes account of the seriousness of the offence and the financial benefit that the offender obtained by committing the offence) or a withdrawal of the permit. The Wm also includes the possibility of an administrative fine. This does however not apply to chapter 9 Wm that regulates REACH. There is ongoing discussion about the option to have this administrative fine applied to REACH; which requires changes in the Wm. One specific application which is currently under discussion is whether Annex 17 to the REACH Directive should fall under the Commodity Act (on the basis of Article 9.3.3(5) of the Wm).

Criminal penalties and enforcement are based on the WM, with reference to the Economic Offences Act (WED). The methodology for the penalties has been subject to discussion with other Member States. Category 1 and 2 apply: Category 1 crimes are punished with six years in prison or a fine of the fifth category for individuals can be up to € 74.000. Under the Criminal Code, legal persons can be punished by a fine of the next higher category. For example, a sixth category fine is € 740.000, -. Offences are punished with one year in prison or a fine of the fourth category (up to € 18.500,-). For Category 2 crimes are punished with two years in prison or a fine of the fourth category. Offences are punished with six months in prison or a fine of the fourth category (up to € 18.500,-).

The inspectors that monitor REACH compliance are the Labour Inspection (AI), the Food and Consumer Product Safety Authority (VWA) and the VROM-Inspectorate (VI). Each individual service is responsible for monitoring specific groups:

- Labour Inspection (AI) for the monitoring of compliance with the rules for the protection safety and health of employees;
- the Food and Consumer Product Safety Authority (VWA) for the enforcement of rules for to protect the safety and health of consumers in using consumer products;
- the VROM Inspectorate to monitor the enforcement of protection rules for humans and the environment through the industrial application of substances and products.

With the monitoring and enforcement of REACH just started (2007), it cannot yet be said how the use of these penalties will evolve. Up to now, obligations have been the registration of new substances and the establishments of safety data sheets. According to the 2008 year report of the steering group on the enforcement of REACH the inspected companies have been aware of the reach obligations and about 83% of the companies (subject to inspection) could provide the safety data sheets.