

PORTUGAL

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 Portugal 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	PORTUGAL	Comments
Article		
5	X	
6(1)	X	
6(2)		We have established a penalty related to the general obligation to register monomers according to 6(3), which we consider that already covers this provision.
6(3)	X	
7(1)	X	
7(2)	X	
7(3)		In evaluation
7(5)		In evaluation
8(1 and 2)	X	
9(2)	X	
9(6)	X	
10		This article specifies the information that must be included in the registration dossier. If the dossier doesn't include all the information, it will not be considered as an effective registration. We consider that this provision is foreseen under the obligation to register (articles 6 and 7), for which a penalty has been established.
11(1 and 3)		Article 11 establishes the procedure in case of joint submission. If it is the case and the procedure is not followed, we believe that the registration dossier will not be considered an effective registration. If a conflict arises between registrants, we consider that it should be dealt in national courts.
12(1)		This article specifies the information that must be included in the registration dossier. If the dossier doesn't include all the information, it will not be considered as an effective registration. We consider that this provision is foreseen under the obligation to register (articles 6 and 7), for which a penalty has been established.
12(2)	X	
13(1-5)		In our opinion, this article refers to good practices regarding the collection of information and shouldn't be regarded as an obligation.
14(1)		The Chemical safety report is a part of the registration dossier. If the dossier doesn't include all the information, it will not be considered as an effective registration. We consider that this provision is foreseen under the obligation to register (articles 6 and 7), for which a penalty has been established.
14(6)		In evaluation.
14(7)	X	
17(1 and 2)	X	
18(1 to 3)	X	
19(1 and 2)		Article 19 establishes the procedure in case of joint submission. If it is the case and the procedure is not followed, we believe that the registration dossier will not be considered an effective registration. If a conflict arises between registrants, we consider that it should be dealt in national courts.
20(2)		This article refers to the obligation of the registrant to complete the registration dossier. If the dossier doesn't include all the information, it will not be considered as an effective registration. We consider that this provision is foreseen under the obligation to register (articles 6 and 7), for which a penalty has been established.
21(1)	X	
21(2)	X	
21(3)	X	
22(1)	X	
22(2)	X	

Country	PORTUGAL	Comments
Article		
24(2)	X	
25(1)		In our opinion, this article refers to good practices regarding the collection of information and shouldn't be regarded as an obligation.
26(1)		In evaluation.
27(1 to 3)		This provision refers to the obligation to request and share information with previous registrants. Article 27 establishes the procedure between registrants in order to share existing data, and defines the correspondent legal consequences from an eventual non agreement, in particular in article 27 (6) – which specify that if a registrant has a claim, this should be dealt in national courts. In this regard, we consider that no penalty should be established.
27(4)		This provision refers to the obligation to request and share information with previous registrants. Article 27 establishes the procedure between registrants in order to share existing data, and defines the correspondent legal consequences from an eventual non agreement, in particular in article 27 (6) – which specify that if a registrant has a claim, this should be dealt in national courts. In this regard, we consider that no penalty should be established.
27(6)		This article already establishes that if a registrant has a claim, this will be dealt in national courts. In this regard, we consider that no penalty should be established.
28(1)		The pre-registration is a voluntary procedure that benefits the registrant with extra time to provide the registration dossier. If a company doesn't pre-register, the substance can't be manufactured or placed in the market the substance without registration after December 2008. We consider that this provision is foreseen under the obligation to register (articles 6 and 7), for which a penalty has been established.
28(6)		The pre-registration is a voluntary procedure that benefits the registrant with extra time to provide the registration dossier. If a company doesn't pre-register, the substance can't be manufactured or placed in the market the substance without registration. We consider that this provision is foreseen under the obligation to register (articles 6 and 7), for which a penalty has been established.
29(3)		We consider that this obligation should be covered by a contract established between the SIEF participants and any contract deviation shall be dealt with in the competent forum.
30(2)	X	
30(6)	X	
31(1)	X	
31(2-9)	X(not 4)	In evaluation.
32(1)	X	
32(2-3)	X	
33(1 and 2)	X	
34	X	
35		In evaluation.
36(1)	X	
36(2)	X	
37(2)		The first part of this article refers to a right of downstream users to make his use known. In order to accomplish this right w will have to send the information to the next actor up the supply chain. For this part we consider that there is no need to define a penalty. The second part defines the obligation of the distributor to pass on this information to the next actor up the supply chain, which could be difficult to check at national level.
37(3)	X	
37(4)	X	
37(5)	X	
37(6)	X	
37(7)	X	
38(1)	X	
38(2)	X	
38(3)	X	
38(4)	X	
40(4)		This article refers to the examination of testing proposals set out in a registration or a downstream user report for provision of information specified in Annexes IX and X. If the dossier doesn't include all the information required, it will not be considered a registration. We consider that this provision is foreseen under the obligation to register (articles 6 and 7), for which a penalty has been established.
41(4)		This article refers to the request of information during check compliance of the registration dossier. If the dossier doesn't include all the information required, it will not be considered a registration. We consider that this provision is foreseen under the obligation to register (articles 6 and 7), for which a penalty has been established.
46(2)		In evaluation.
49(a)		In evaluation.
50(2-3)		This article refers to the registrant's and downstream user's rights and not duties. Any non compliance of this obligation will only be reflected on their rights. For this reason, we consider that there is no need to define penalties.
50(4)		We consider that the corresponding penalty is covered by the penalty already identified for article 46(2).

Country	PORTUGAL	Comments
Article		
53(1) to (3)		This Article establishes the procedure in order to share the cost of tests and defines the correspondent legal consequences from an eventual non agreement, in particular in article 53 (4) – which specify that any claims should be dealt in national courts.
53(4)		Any claims should be dealt in national courts.
55		Article 55 specifies the aim of the authorisation requirement. Obligations are specified further in this title. For this reason, we consider that there is no need to define penalties since there are penalties established for these obligations elsewhere, for example on article 56.
56(1)	X	
56(2)	X	
60(8)		In this article there is no obligation to industry, it specifies the obligations of the Commission.
60(10)		This article refers to the obligation to reduce exposure. In our opinion, this obligation is not quantifiable and very difficult to verify and for this reason we consider that it shouldn't be subject to penalties.
61(1)		This article refers to the extension of the authorisation. In our opinion, if the authorisation holder doesn't submit the information required in this point, the authorisation will not be extended. In this case if the manufacturer or importer continues to use or place the substance on the market, after the time limit defined in the authorisation, he will not be able to comply with article 56, for which a penalty has already been established.
61(3)		This article refers to the extension of the authorisation. In our opinion, if the authorisation holder doesn't submit the information required in this point, the authorisation will not be extended. In this case if the manufacturer or importer continues to use or place the substance on the market, after the time limit defined in the authorisation, he will not be able to comply with article 56, for which a penalty has already been established.
62 (4 and 5)		Article 62 (4) specifies the information that must be included in the application for an authorisation. In our opinion, if the applicant doesn't submit the information required in this point, the authorisation will not be granted. As we already defined a penalty associated with the obligation to have an authorisation (article 56), we considered that there was no need to define a penalty for this point. Article 62 (5) is not an obligation.
63(3)		This article refers to the obligation to update information related to any previous authorisation application, as necessary. In our opinion, this obligation is subjective and for this reason we consider that it shouldn't be subject to penalties. We also consider that the consequence for this non compliance will be that the applicant will not have his request granted. As we already defined a penalty associated with the obligation to have an authorisation (article 56), we considered that there was no need to define a penalty for this point.
65	X	
66(1)	X	
67(1)	X	

2. Types of offences related to REACH in Portugal

This section gathers information on the REACH offences (administrative and/or criminal ones) pointed by the law in Portugal. 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><i>Very serious offences</i> (Art. 11 (1) DL 293/2009):</p> <ul style="list-style-type: none"> - Failure to register before the placing on the market of substances, in preparation, articles (Art. 5); - Failure to submit a registration to ECHA (Art. 6 (1) and (3), Art. 7(1) and (2) and Art. 8 (1)); - Failure to notify ECHA with additional information where it reaches the next tonnage threshold (Art. 12(2)); - Failure to keep CSR available and up to date (Art. 	N/A

	<p>14 (7));</p> <ul style="list-style-type: none"> - Failure to update registration and to submit updated registrations to ECHA (Art. 22 (1) and (2)); <p><i>Serious offences</i> (Art. 11 (2) DL 293/2009):</p> <ul style="list-style-type: none"> - Failure to keep information available and up to date (Art. 8 (2)); - Failure to comply with ECHA's conditions regarding PPORD products (Art. 9 (6)); - Failure to register on-site isolated intermediates (Art. 17); - Failure to register transported isolated intermediates (Art.18); - Failure to comply with the publications on manufacturing and importing of substances under Art. 21; - Failure to notify where the quantity reaches the next tonnage threshold (Art. 24 (1) and (2)); - Failure to share data involving tests (Art. 30). 	
<p>Offences related to authorisation and restrictions requirements</p>	<p><i>Very serious offences</i> (Art. 11 (1) DL 293/2009):</p> <ul style="list-style-type: none"> - Failure to ask for an authorisation before the placing on the market of substances subject to authorisation (Art. 56 (1) and (2)); <p><i>Serious offences</i> (Art. 11 (2) DL 293/2009):</p> <ul style="list-style-type: none"> - Failure by holder of an authorisation and downstream users to include the authorisation number on the label before placing on the market (Art. 65); - Failure by downstream users to notify ECHA within three months of the first supply (Art. 66(1)); - Failure to comply with the conditions of the restrictions on the manufacturing, placing on the market and use of certain dangerous substances, preparations and articles (Art. 67 (1)). 	<p>N/A</p>
<p>Offences related to the supply chain requirements</p>	<p><i>Very serious offences</i> (Art. 11 (1) DL 293/2009):</p> <ul style="list-style-type: none"> - Failure by the supplier to provide SDS in accordance with Annex III (Art. 31 (1)); - Failure to provide consistent information in the CDS (Art. 31 (2)); - Failure by the supplier to provide sufficient information to allow safe use (Art. 33 (1)); - Failure by supplier on request of consumer to provide information free of charge and within 45 days of the request (Art. 33 (2)). <p><i>Serious offences</i> (Art. 11 (2) DL 293/2009):</p> <ul style="list-style-type: none"> - Failure by the supplier to provide SDS when requested in accordance with Annex II (Art. 31 (3)); - Failure by the supplier to provide SDS which is offered or sold to the general public (Art. 31 (4)); - Failure by the supplier to provide SDS in the language of the MS concerned (Art. 31 (5)) and with the information listed under paragraph 6 (Art. 31 (6)); - Failure by actors in the supply chain to expose scenarios in an annex to SDS (Art. 31 (7)); - Failure to provide the SDS free of charge (Art. 31 (8) and to update it (Art. 31 (9)); - Failure by the supplier who is not requested to provide SDS to provide information under paragraph 1 (Art. 32 (1)), free of charge (Art. 32 (2) and updated (Art. 32 (3)); - Failure by any actor of the supply chain to communicate information on substances and preparations up the supply chain (Art. 34); - Failure by manufacturer, importer, downstream 	<p>N/A</p>

	user, distributor and the party responsible for liquidating the registrant to keep information available for at least 10 years and submit it to CA or ECHA when requested (Art. 36).	
Offences related to the downstream user requirements	<p><i>Very serious offences:</i> <i>No major offences are foreseen under DL 293/2009 for downstream users</i></p> <p><i>Serious offences (Art. 11 (2) DL 293/2009)::</i> - Non compliance by manufacturer, importer or downstream user with Art. 14 and failure to provide the ECHA and downstream users with reasons for not including a use in the CSR (Art. 37 (3)); - Failure by downstream user to comply with the obligations foreseen under Arts 37 (4-7)); - Failure by downstream user to report information (Art. 38).</p>	N/A

3. Sanctions applicable to legal persons in Portugal

This table mentions whether or not Portugal 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 legal persons	Criteria	Sanctions applicable to other groups
Portugal	Y	Specific to legal persons (Higher than for natural persons depending on the type and nature of the infringement but without a fixed rate) ¹	Y (partnerships and organisations without legal status)

4. REACH related administrative and criminal penalties in Portugal

This section gathers information regarding administrative and/or criminal penalties applicable for the infringement of REACH in Portugal. 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	<p><i>Very serious offences:</i> - Natural Persons – Fine from 20 000 EUR to 30 000 EUR (negligence) and from 30 000 EUR to 37 500 (fault) - Legal Persons – Fine from 38 500 EUR to 70 000 EUR (negligence) and from 200 000 EUR to 2 500 000 (fault)</p> <p><i>Serious offences:</i> - Natural Persons – Fine from 2 000 EUR to 10 000</p>	N/A

¹ Fine multiplied by 5 applies also in Portugal, but only for infringement of the Biocides legislation.

	<p>EUR (negligence) and from 6 000 EUR to 20 000 (fault)</p> <ul style="list-style-type: none"> - Legal Persons – Fine from 15 000 EUR to 30 000 EUR (negligence) and from 30 000 EUR to 48 000 (fault) <p>For serious and very serious offences the following administrative sanctions may be applicable together with the fine:</p> <ul style="list-style-type: none"> - Confiscation of the assets (objects used or that were meant to be used to commit the offence) belonging to the agent; - Suspension of the right to undertake the activity or profession which are subject to public title or public authorisation; - Suspension of the right to obtain subsidies or other benefits issued by public authorities (at national or EC level); - Suspension of the right to participate in exhibitions or events at national or international level aimed at selling or marketing the products or activities of the agent; - Suspension of the right to participate in public tenders for providing public services or the right to be issued permits; - Closure of the establishment subject to permit from the administrative authority; - Revocation of authorisation and permits related with the activity; - Sealing up the equipment; - Loss of fiscal and credits benefits; - Application of measures aimed at preventing environmental damage; - Publicity of the administrative conviction/decision - Animal's confiscation. 	
<p>Penalties related to infringement of authorisation requirements</p>	<p><i>Very serious offences:</i></p> <ul style="list-style-type: none"> - Natural Persons – Fine from 20 000 EUR to 30 000 EUR (negligence) and from 30 000 EUR to 37 500 (fault) - Legal Persons – Fine from 38 500 EUR to 70 000 EUR (negligence) and from 200 000 EUR to 2 500 000 (fault) <p><i>Serious offences:</i></p> <ul style="list-style-type: none"> - Natural Persons – Fine from 2 000 EUR to 10 000 EUR (negligence) and from 6 000 EUR to 20 000 (fault) - Legal Persons – Fine from 15 000 EUR to 30 000 EUR (negligence) and from 30 000 EUR to 48 000 (fault) <p>For serious and very serious offences the following administrative sanctions may be applicable together with the fine:</p> <ul style="list-style-type: none"> - Confiscation of the assets (objects used or that were meant to be used to commit the offence) belonging to the agent; - Suspension of the right to undertake the activity or profession which are subject to public title or public authorisation; - Suspension of the right to obtain subsidies or other benefits issued by public authorities (at national or EC level); - Suspension of the right to participate in exhibitions or events at national or international level aimed at selling or marketing the products or activities of the agent; 	<p>N/A</p>

	<ul style="list-style-type: none"> -Suspension of the right to participate in public tenders for providing public services or the right to be issued permits; - Closure of the establishment subject to permit from the administrative authority; -Revocation of authorisation and permits related with the activity; - Sealing up the equipment; - Loss of fiscal and credits benefits; - Application of measures aimed at preventing environmental damage; - Publicity of the administrative conviction/decision - Animal's confiscation. 	
Penalties related to infringement of the supply chain requirements	<p><i>Very serious offences:</i></p> <ul style="list-style-type: none"> - Natural Persons – Fine from 20 000 EUR to 30 000 EUR (negligence) and from 30 000 EUR to 37 500 (fault) - Legal Persons – Fine from 38 500 EUR to 70 000 EUR (negligence) and from 200 000 EUR to 2 500 000 (fault) <p><i>Serious offences:</i></p> <ul style="list-style-type: none"> - Natural Persons – Fine from 2 000 EUR to 10 000 EUR (negligence) and from 6 000 EUR to 20 000 (fault) - Legal Persons – Fine from 15 000 EUR to 30 000 EUR (negligence) and from 30 000 EUR to 48 000 (fault) <p>For serious and very serious offences the following administrative sanctions may be applicable together with the fine:</p> <ul style="list-style-type: none"> - Confiscation of the assets (objects used or that were meant to be used to commit the offence) belonging to the agent; - Suspension of the right to undertake the activity or profession which are subject to public title or public authorisation; - Suspension of the right to obtain subsidies or other benefits issued by public authorities (at national or EC level); - Suspension of the right to participate in exhibitions or events at national or international level aimed at selling or marketing the products or activities of the agent; -Suspension of the right to participate in public tenders for providing public services or the right to be issued permits; - Closure of the establishment subject to permit from the administrative authority; -Revocation of authorisation and permits related with the activity; - Sealing up the equipment; - Loss of fiscal and credits benefits; - Application of measures aimed at preventing environmental damage; - Publicity of the administrative conviction/decision - Animal's confiscation. 	N/A
Penalties related to infringement of the downstream users requirements	<p><i>Very serious offences:</i></p> <ul style="list-style-type: none"> - Natural Persons – Fine from 20 000 EUR to 30 000 EUR (negligence) and from 30 000 EUR to 37 500 (fault) - Legal Persons – Fine from 38 500 EUR to 70 000 EUR (negligence) and from 200 000 EUR to 2 500 000 (fault) <p><i>Serious offences:</i></p>	N/A

	<ul style="list-style-type: none"> - Natural Persons – Fine from 2 000 EUR to 10 000 EUR (negligence) and from 6 000 EUR to 20 000 (fault) - Legal Persons – Fine from 15 000 EUR to 30 000 EUR (negligence) and from 30 000 EUR to 48 000 (fault) <p>For serious and very serious offences the following administrative sanctions may be applicable together with the fine:</p> <ul style="list-style-type: none"> - Confiscation of the assets (objects used or that were meant to be used to commit the offence) belonging to the agent; - Suspension of the right to undertake the activity or profession which are subject to public title or public authorisation; - Suspension of the right to obtain subsidies or other benefits issued by public authorities (at national or EC level); - Suspension of the right to participate in exhibitions or events at national or international level aimed at selling or marketing the products or activities of the agent; - Suspension of the right to participate in public tenders for providing public services or the right to be issued permits; - Closure of the establishment subject to permit from the administrative authority; - Revocation of authorisation and permits related with the activity; - Sealing up the equipment; - Loss of fiscal and credits benefits; - Application of measures aimed at preventing environmental damage; - Publicity of the administrative conviction/decision - Animal's confiscation. 	
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5. Short description of REACH sanctions and related issues in Portugal

The General Administrative Offences Regime (approved by Law Decree 433/82 and last amended by Law 109/2001) sets out a simplified procedure, based on “an illegal fact that results in the application of a fine” which is within the competence of administrative bodies with the aim of preserving public objectives and interests. It gives rise to the application of fines or accessory sanctions, which are administrative enforcement measures applied by administrative authorities.

A special regime of Administrative Offences has been established for violations of environmental laws and regulations which was approved by Law 50/2006 of 29 August and amended by Law 89/2009 of 31 August.

Law Decree 293/2007, which defines the national CA and the sanctions scheme under Regulation (EC) n.º 1907/2006, establishes a set of infringements to REACH classified as very serious or serious and refers to the Administrative Environmental Offences regime the amount of the fines and accessory sanctions to be determined on a case by case basis by the national CA.

The imposition of administrative enforcement measures is not automatic. It is assessed by the General Inspectorate of the Environment and the General Directorate of Customs and Special Taxes over Consumption on a case-by-case basis and shall be proportional to the objective and subjective seriousness of each violation.

The amount of the fine is determined in accordance with the following factors: the seriousness of the offence; the fault of the agent; the economic situation of the agent and the benefit he/she obtained from the offence.

Together with the fine the CA may impose accessory sanctions, the application of which depends exclusively on the seriousness of the offence and the fault of the agent. These sanctions do not have a pecuniary nature but, rather, result in the deprivation of rights, including confiscation of assets or closure of establishment.