

European Union Network for  
the Implementation and Enforcement  
of Environmental Law

**DRAFT REPORT OF THE IMPEL PROJECT**  
**COMPARISON OF METHODOLOGIES USED FOR THE ENVIRONMENTAL**  
**ADMINISTRATIVE FINE CALCULATION**

## Foreword

The European Union Network for the Implementation and Enforcement of Environmental Law is an informal network of the environmental authorities of EU Member States, acceding and candidate countries, and Norway. The European Commission is also a member of the network and shares the chairmanship of its Plenary Meetings.

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| The network is commonly known as the IMPEL Network |
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The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on certain of the technical and regulatory aspects of EU environmental legislation. The Network's objective is to create the necessary impetus in the EU to make progress on ensuring a more effective application of environmental legislation. It promotes the exchange of information and experience and the development of greater consistency of approach in the implementation, application and enforcement of environmental legislation, with special emphasis on EU environmental legislation. It provides a framework for policy makers, environmental inspectors and enforcement officers to exchange ideas, and encourages the development of enforcement structures and best practices.

Information on the IMPEL Network is also available through its web site at:  
<http://ec.europa.eu/environment/impel/index.htm>

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| <b>Report title:</b><br><b>Comparison of methodologies used for the administrative fine calculation</b>  | <b>Number report:</b><br>Year/number:<br>Year: 2007<br>Number:17 |
| <b>Project managers:</b><br><b>George Chronopoulos, Greek Environmental Inspectorate</b><br><b>Ioannis Dermitzakis, General Inspector of Greek Environmental Inspectorate</b>  | <b>Report adopted at IMPEL Plenary Meeting in Brdo May 2008:</b> |
|  | <b>Number of pages: 58</b>                                       |
| <b><i>Executive Summary</i></b> <p>Administrative fines are available to almost all of the replied countries. Having as starting point that the development and the present status of the relevant administrative legislative frame varies, significantly among EU MS, administrative fines are applied with deviated rationale and methodology.</p> <p>In general, in the majority of countries variable administrative fines are applied, while in some other, fixed administrative ones are also available. In all cases, the relevant legislation determines the limits of these fines, in most cases by providing the upper and lower values, which differ significantly among the MS.</p> <p>In parallel, administrative fines are observed into various forms – definitions, according to the case, circumstances and practice.</p> <p>Administrative fines are possible for both natural persons and legal one.</p> <p>A large variety of factors are taken into consideration in the calculation of variable administrative fines. Some of them are applied to almost all the MS, since these are considered as the most crucial and representative for the valuation of environmental offence. These factors include, among others:</p> <ul style="list-style-type: none"><li>• Environmental impact(s) of violation</li><li>• Period that the infringement occurs</li><li>• Intention for the violation</li><li>• Economic profit for the offender resulting from the violation</li><li>• Economic situation of the offender</li><li>• Restoration cost</li><li>• Behavior of the offender (previous confirmed infractions, or possible efforts for restoration...)</li><li>• Other appropriate administrative measures against the offender</li></ul> <p>In most of the cases, the regulators have the responsibility to calculate the exact amount of administrative fine, taking into consideration the legislative restrictions and limitations. In other words, the law provide the general pattern, the thresholds and criteria and the competent authority determines the fine.</p> <p>Only a limited number of replied countries / authorities apply a certain tool / formula for the exact calculation of variable administrative fine. According to the information provided from these replies, the main scope of these tools/formulas is to evaluate the punishable non-conformities.</p> <p>In most of the cases, the regulators have the responsibility to calculate the exact amount of administrative fine, taking into consideration the legislative restrictions and limitations. In other words, the law provide the general pattern, the thresholds and criteria and the competent authority determines the fine.</p> |  |
| <b><i>Disclaimer</i></b> <p>This report is the result of a project within the IMPEL Network. The content does not necessarily represent the view of the national administrations or the Commission.</p>  |  |

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# 1. Introduction

Compliance with environmental legislation is achieved by, among other, public law enforcement, which can be divided into administrative law, criminal law, and private law enforcement. Most EU Member States have these three categories of laws.

Although over the last decades much work has been done on harmonisation, environmental legislation in the Member States still contains significant differences. These differences are more pronounced in the field of enforcement.

Within the EU Member States, several courses of action are possible in case of non-compliance.

Among others:

- warnings or compliance notices, issued by inspectors;
- prohibition notices, issued by inspectors or authority administrators;
- closing down processes on installations (in case of serious violations with considerable public health risks and/or environmental damage);
- administrative sanctions leading to fines, imposed by inspectors or any other competent authority administrators;
- criminal action leading to fines and/or imprisonment usually initiated by the public prosecutor in response to a report / notice from inspectors or authority administrator;
- civil action leading to payment of compensation.

## Enforcement of Administrative law

Application of administrative law is the first tool for the competent governmental authority which perform controls / checks to any type of legal / natural persons whose activities have environmental impact or operate under environmental permit regime.

In most of the cases, administrative law is initiated by environmental inspectors who certify the violation of the environmental law or of the terms of the relevant permit.

In case of non-compliance , the following administrative sanctions can be applied:

- exercise **executive coercion**: i.e. to take remedial action at the expense of the offender;
- impose **penalty payments**: i.e. a penalty which applies as long as the person/legal entity violate the rules and which has to be paid per period of time that the infringement lasts or per offence;
- modify the licence or the exemption;
- cancel (in total or partially) the licence or the exemption;
- use of a formal letter or notice to require the offender to take remedial action.

| Administrative Measures                                     | Cases where these measures are applied  |
|---|---|
| Compulsory measures (notices, letters, orders, advice etc.) | - to end a situation of non-compliance<br>- remedial action at the cost of the offender   |
| Fines   | - stimulation to correct a situation of non-compliance  |
| Withdrawal of the licence                                   | - when the conditions are violated. withdrawal may be possible immediately or only after a period of time, so the violator has time to end the situation of non-compliance with the conditions stated in the licence<br>- after conviction by court |

### **Enforcement of Criminal law**

In most EU Member States criminal law can be used, in case of environmental non-compliance. In most cases criminal law applies after the public prosecutor has been informed of the infringement, by the competent environmental authority. The public prosecutor must decide whether to prosecute or not. In some countries, the environmental regulator can take prosecutions themselves e.g. England and Wales.

The “Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law”<sup>1</sup> proposes that criminal sanctions should be available in all Member States for certain offences. The Directive proposal recognises that “existing systems of sanctions have not been sufficient to achieve complete compliance with laws for the protection of the environment. Such compliance can and should be strengthened by the availability of criminal penalties, which demonstrate a social disapproval of a qualitatively different nature compared to administrative sanctions or a compensation mechanism under civil law”.

**The present project has as scope to collect and assess information from IMPEL MS on how they calculate the imposed administrative fines for environmental violations. This presupposes that the needed relevant mechanisms are in place, which may include:**

- **Determination of cases of non-compliance (by inspection, check, audit or any other procedure)**
- **Launch of the procedure for administrative sanction**
- **Ability of the competent authority to propose or impose administrative fines and in particular variable administrative fines**
- **Procedure for the determination / calculation of the amount of the administrative fine**

All the above mentioned were included into the relevant questionnaire which was distributed to all IMPEL MS. The replies received, provide valuable information on the procedures for administrative fines, their calculation, the procedures for its imposition and the administrative and appeal mechanisms after the imposition.

It should be mentioned that not all the replied authorities are Inspection ones (with the classical meaning of the Inspectorate). This has as a result to receive a wide range of feedback, especially in the fields of competencies and the followed procedures, which do not necessarily affect the quality of the gathered information. It rather improves the consistency of the work done, under this project, since it summarizes information from various authorities among the IMPEL MS, with a wide horizontal thematic competency.

Information regarding fining under the EU ETS scheme and the associated national laws was not included in the questionnaire and subsequently in this report since this type of fine is not considered to be relevant to the scope of the project. Fining under ETS is included under the relevant Directive together with a description of the exact methodology and calculation that has to be followed.

The material included in this report would be useful for countries that do not have in place administrative fines and intend to develop such a system.

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<sup>1</sup> See: 2007/0022 (COD), 10/3/2008

## 2. METHOD

The project was initiated by a workshop in Brussels in October 2007, attended by participants from 10 countries. Appendix II lists all the project participants<sup>2</sup> as well as who took part in this first workshop and/or the second project workshop, held on March 2008 in Athens.

The first workshop clarified the objectives of the project and the means of its implementation. The needed information for the project was gathered by the development and use of a questionnaire asking a series of questions concerning environmental administrative fines. The blank questionnaire is shown in Appendix III.

The questionnaire was sent by the project participants to all IMPEL MS, asking for their contribution.

The results of the information gathering and analyses were summarised in preparation for the second project workshop in March 2008. This meeting discussed the findings and agreed outline conclusions of the project as a whole, as a starting point for the production of this final report.

The next sections of the report consist of:

- Section 3 - the analytical part of the report presenting a summary of the questionnaire responses.
- Section 4 – conclusions

The project was managed by the Greek Environmental Inspectorate (George Chronopoulos and Ioannis Dermizakis). The project managers wish to acknowledge with gratitude the hard work and efforts of the project participants listed in Appendix II, in both the project team meetings and the completion of the questionnaire.

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<sup>2</sup> By the meaning of replying to the relevant questionnaire

### 3. Summary of replies

#### 3.1. Repliers profile, role and competency

A total of 15 replies from 12 countries submitted. In table 1, the repliers country and institution / authority they belong, is shown.

Table 1: Authorities and persons that replied into the questionnaire

|    | <b>Country</b>                     | <b>authority replied</b>   | <b>Replier name</b>                             |
|----|------------------------------------|--|---|
| 1  | Belgium, Brussels region           | Division Inspection and Soil pollution                           | JANSSENS Jean Pierre / LEMAÎTRE Marie Françoise |
| 2  | Czech Republic                     | Czech Environmental Inspectorate                                 | Lenka Němcová / Petra Valouchová                |
| 3  | England and Wales                  | Environment Agency – with responsibility for England and Wales   | Keith Froud                                     |
| 4  | Germany                            | Bezirksregierung Köln / Regional Government Office Cologne       | Achim Halmschlag                                |
| 5  | Greece                             | Greek Environmental Inspectorate                                 | George Chronopoulos / Panagiotis Karlis         |
| 6  | Ireland                            | Environmental Protection Agency                                  | Ray Cullinane                                   |
| 7  | Latvia                             | State Environmental Service                                      | Vilis Avotiņš<br>Inese Kurmahere                |
| 8  | Netherlands, Provincie Overijssel  | Provincie Overijssel   | Edwin Lange                                     |
| 9  | Netherlands                        | Inspectorate for Housing, Spatial Planning and the Environment   | Atze Dijkstra                                   |
| 10 | Poland                             | Voivodship Inspectorate for Environmental Protection in Lublin   | Stefania Banach                                 |
| 11 | Portugal                           | Environmental And Territorial Planning General Inspectorate      | Joana Texugo de Sousa                           |
| 12 | Romania                            | National Environmental Guard, General Commissariat               | Virgil Grecu                                    |
| 13 | Scotland                           | Scottish Environment Protection Agency                           | Karen Riddick                                   |
| 14 | Spain, Madrid                      | CONSEJERÍA MEDIO AMBIENTE Y ORDENACIÓN DEL TERRITORIO (C.MADRID) | Eva Escobar Pérez                               |
| 15 | Spain, Duero water basin authority | RIVER DUERO WATER AUTHORITY                                      | TOMAS POLO<br>HOBOTH                            |

### 3.2. Role of replied authorities

The role of the institutions/authorities is shown into the following table 2.

Table 2: Main role of the replied authorities

|    | Country                            | Issuing environmental permits       | Carrying out inspections – checking compliance | Enforcement                         | Other  |
|----|------------------------------------|-------------------------------------|--|-------------------------------------|--|
| 1  | Belgium, Brussels region           | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>            | <input checked="" type="checkbox"/> | Planning / Information   |
| 2  | Czech Republic                     | <input type="checkbox"/>            | <input checked="" type="checkbox"/>            | <input checked="" type="checkbox"/> |  |
| 3  | England and Wales                  | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>            | <input checked="" type="checkbox"/> | <ul style="list-style-type: none"> <li>• Environmental regulation in England and Wales</li> <li>• Promote sustainable development</li> <li>• Advice to government</li> </ul>   |
| 4  | Germany                            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>            | <input checked="" type="checkbox"/> |  |
| 5  | Greece                             | <input type="checkbox"/>            | <input checked="" type="checkbox"/>            | <input type="checkbox"/>            |  |
| 6  | Ireland                            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>            | <input checked="" type="checkbox"/> | Monitoring, analysing and reporting on the environment, Regulating Ireland's Greenhouse Gas Emissions, Environmental Research and Development, SEA and Environmental Planning, Education and Guidance  |
| 7  | Latvia                             | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>            | <input type="checkbox"/>            |  |
| 8  | Netherlands Provincie Overijssel   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>            | <input checked="" type="checkbox"/> |  |
| 9  | Netherlands                        | <input type="checkbox"/>            | <input checked="" type="checkbox"/>            | <input checked="" type="checkbox"/> |  |
| 10 | Poland                             | <input type="checkbox"/>            | <input checked="" type="checkbox"/>            | <input checked="" type="checkbox"/> | <ul style="list-style-type: none"> <li>➤ Organising and coordinating the environmental monitoring system</li> <li>➤ Measuring environmental quality</li> <li>➤ Ordering decisions connected with violation of envir. regulations</li> <li>➤ Participating in investment procedures in relation to facilities which may have an adverse environmental impact</li> </ul> |
| 11 | Portugal                           | <input type="checkbox"/>            | <input checked="" type="checkbox"/>            | <input checked="" type="checkbox"/> |  |
| 12 | Romania                            | <input type="checkbox"/>            | <input checked="" type="checkbox"/>            | <input checked="" type="checkbox"/> |  |
| 13 | Scotland                           | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>            | <input checked="" type="checkbox"/> | SEPA also has the wider role of providing advice to Scottish Government and others and promoting Sustainable Development.  |
| 14 | Spain, Madrid                      | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>            | <input checked="" type="checkbox"/> | Planning and promoting new regulations   |
| 15 | Spain, Duero water basin authority | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>            | <input checked="" type="checkbox"/> |  |

As it is clear from the elements of the previous table, all the replied authorities have a responsibility to perform inspections / check compliance in general. A vast majority of the replied authorities has also a responsibility to issue environmental permits and to undertake all necessary efforts for enforcement.

### 3.3. Main fields of competency of replied authorities

The competency of the institutions/authorities is shown into the following table 3.

Table 3: Fields of competency of the replied authorities

|    | Country                            | air  | water                               | Solid waste                         | noise                               | Soil pollution                      | Energy efficiency                   | IPPC                                | Nuclear installations               | Chemicals - REACH                                | Natural environment – designated areas           | other   |
|----|------------------------------------|--|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--|--|---|
| 1  | Belgium, Brussels region           | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/>              |   |
| 2  | Czech Republic                     | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/>              |   |
| 3  | England and Wales                  | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> <sup>3</sup> | <input checked="" type="checkbox"/> <sup>4</sup> | Flood risk management   |
| 4  | Germany                            | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>                         | <input type="checkbox"/>                         |   |
| 5  | Greece                             | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>                         | <input checked="" type="checkbox"/>              |   |
| 6  | Ireland                            | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/>              | .Regulating Ireland's greenhouse Gas emissions<br>.SEA<br>.Env. Res. & Development                              |
| 7  | Latvia                             | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/>              | Natural resources (protection of earth entrails)  |
| 8  | Netherlands Provincie Overijssel   | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>                         | <input checked="" type="checkbox"/>              |   |
| 9  | Netherlands                        | <input type="checkbox"/>                         | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>              | <input type="checkbox"/>                         | ➤ Biocides<br>➤ Spatial planning  |
| 10 | Poland                             | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/>              | 1.Waste water<br>2. Electromagnetic radiation<br>3. Marketed surveillance<br>4. GMOs<br>5. SEVEZO installations |
| 11 | Portugal                           | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/>              | .SEVESo installations<br>.Infrastructures   |
| 12 | Romania                            | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/>              | . SEVESO<br>.LCP<br>.VOC<br>.GMOs   |
| 13 | Scotland                           | <input checked="" type="checkbox"/>              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> <sup>5</sup> | <input checked="" type="checkbox"/> <sup>6</sup> | .“Producer Responsibility”<br>.Provision of Flood Warning System  |
| 14 | Spain, Madrid                      | <input checked="" type="checkbox"/> <sup>7</sup> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>                         | <input checked="" type="checkbox"/>              |   |
| 15 | Spain, Duero water basin authority | <input type="checkbox"/>                         | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>                         | <input type="checkbox"/>                         |   |

<sup>3</sup> Limited role - not primary authority

<sup>4</sup> as 3

<sup>5</sup> as 3

<sup>6</sup> as 3

<sup>7</sup> Only in quality issues

### 3.4. Foreseen administrative measure in case of non-compliance

A large variety of administrative measures are imposed by the replied authorities. The full description of these is shown in table 4.

Table 4: Administrative measures that are foreseen for the replied authorities, in case of non-compliance.

| Country |                                  | Administrative Measures for environmental non-compliance   |
|---------|----------------------------------|--|
| 1       | Belgium, Brussels region         | Warning – proof of default – complete or partial stopping activity with or without sealing de place / or other administrative measures   |
| 2       | Czech Republic                   | Restrictions or even order for closing of operations that seriously endanger the environment. Issuing of administrative decisions. Imposing of fines for non-compliance with environmental legislation. Prescription of needed measures for rectification of identified shortcomings.  |
| 3       | England and Wales                | Warnings.<br>Imposing of a range of notices according to the specific regime. Notices to: assist an investigation (request for providing info or documents) – change the status of a permit (suspension or revocation) – prevent / remediate pollution – require compliance with legislation or permit terms, or remedy the consequences of breach – seize items – prohibit / stop activities<br>Ability to issue fixed penalty notices (FPNs) for certain offences.           |
| 4       | Germany                          | Application and enforcement of environmental law by issuing permits, carrying out inspections and monitoring the compliance with permit terms and environmental law. In case of violation, administrative measures are imposed and sanctions can be imposed  |
| 5       | Greece                           | Carrying out inspections at all works, installations, activities of public and private sector and introduction of administrative sanctions in case of violation of environmental law or permit terms and provisions.   |
| 6       | Ireland                          | Licence/permit amendment, suspension or revocation, enforcement notice, order or direction, clean-up/Pollution Notice or Order, Regulator Steps-In and Recovery of Costs Order, Financial Security, Entry Powers, Mandatory Environmental Audit, Information Notices, Costs Order and ability to apply to the High Court for an Injunction.  |
| 7       | Latvia                           | In case when the regulatory enactments regarding environmental protection and the utilisation of natural resources are not observed, stop, suspend or prohibit the activities of natural or legal persons at fault, annual or recommended the annulment of illegally acquired or utilised permits (licences).<br>Bring actions against persons at fault regarding losses, which have been done to the environment.   |
| 8       | Netherlands Provincie Overijssel | Imposing of fine in cases where there is an illegal situation which has negative effects on the environment and (eventually) they refuse to end that situation   |
| 9       | Netherlands                      | * Administrative fine, for offences of the Dutch Biocides Act<br>* Administrative coercion, which means that we can be competent to restore in a legal way to its former conditions which has been or is being kept, made, put somewhere, undertaken, omitted, damaged or removed in contravention of the regulations, at the expense of the offender.<br>* Pecuniary penalty, which has to be paid if the offence has not stopped or is not restored within a certain period. |

|    |          |  |
|----|----------|--|
| 10 | Poland   | <p>Two types of administrative sanctions used in case of non-compliance with environmental legislation:</p> <ul style="list-style-type: none"> <li>- financial – imposing fines in form of the penal tickets, administrative fines, sanction charges</li> <li>- non- financial - issuing the follow-up instructions relating to removal of less significant irregularities upon completion of the inspection, ordering decisions in case of identified infringement on environmental requirements includes decisions on cessation of activities.</li> </ul> <ul style="list-style-type: none"> <li>- the penal tickets - are kind of criminal sanctions which are facultative and being imposed in case of the petty offences against the environment. The Inspectorate may submit a motion for punishment to the competent district court or public prosecutor's office.</li> <li>- the administrative fines – are obligatory and being imposed in case of exceeding admissible emission limits of pollutants which are defined in environmental permits.</li> <li>- sanction charges – are obligatory and being imposed in some cases of violation of solid wastes regulations. The value of charges is limited .</li> </ul> |
| 11 | Portugal | <p>In cases, where people's health or irreversible damage of the environment are at stake, we can issue any order able to prevent or eliminate that danger. These are urgent measures taken case by case.</p> <p>As an example, we can issue an order towards a factory our establishment, for it to stop labouring until it guaranties to comply with environmental law.</p> <p>Nevertheless in the same procedure for administrative fines we can simultaneously apply administrative sanctions, such as forbidding the exercise of a certain activity</p>   |
| 12 | Romania  | <p>Contraventional measures:</p> <ol style="list-style-type: none"> <li>1. Main (principal) measures <ul style="list-style-type: none"> <li>- fines</li> <li>- warnings</li> </ul> </li> <li>2. Additional (complimentary) <ul style="list-style-type: none"> <li>▪ deprivation of the items used for or resulting from the deed</li> <li>▪ suspension or annulment of the right or authorization to exercise the activity</li> <li>▪ retrieving the premises</li> <li>▪ suspension of the activity</li> <li>▪ bringing the terrain back to the initial state</li> </ul> </li> </ol> <p>According to Romanian Law, contravention- fines are always administrative</p>  |

|    |                                    |  |
|----|------------------------------------|--|
| 13 | Scotland                           | <p>Warnings.</p> <p>Imposing of a range of notices according to the specific regime. Notices to: assist an investigation (request for providing info or documents) – change the status of a permit (suspension or revocation) – prevent / remediate pollution – require compliance with legislation or permit terms, or remedy the consequences of breach – seize items – prohibit / stop activities</p> <p>Ability to issue fixed penalty notices (FPNs) for certain offences.</p> <p>Imposition of fixed penalty notice for breaches of section 33(1)(a) or (c) of the Environmental Protection Act 1990 (relates to depositing controlled waste except in accordance with a waste management licence, and treating/keeping/disposing of controlled waste in a manner likely to cause pollution of the environment or harm to human health).</p> <p>Fixed penalty notice for offences under the Transfrontier Shipment of Waste Regulations 2007 (which implement EC Regulation No 1013/2006).</p> |
| 14 | Spain, Madrid                      | <ul style="list-style-type: none"> <li>- Fines</li> <li>- Restoration to the previous situation</li> <li>- Force enterprises to invest in environmental measures (example: wastewater treatments)</li> <li>- Payment of costs and damage</li> </ul>  |
| 15 | Spain, Duero water basin authority | <p>The water authority is responsible for authorizing wastewater releases, and for controlling the adequate observance of the conditions established for this release. In case a wastewater release is done without authorization, or without respecting the conditions of the existing authorization, the water authority is responsible for proposing and imposing sanctions to the offender. The administrative sanctions are normally administrative fines. Sometimes the administrative procedure establishes other obligations like the obligation to the offender to restore the environment affected to its state previous to the incidence, or to compensate the damages caused</p>   |

### 3.5. Administrative fines, type and historical data

Table 5. Type of procedure related to the administrative sanctions that the replied authorities apply, type of administrative fines and other data related to environmental administrative fines.

| MS/authorities replied             | Administrative sanctions            | Administrative fines proposed       | Administrative fines imposed        | Fixed administrative fines          | Variable administrative fines       | Year of first introduction of administrative fines | Total amount / time basis                                   |
|------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--|---|
| Belgium, Brussels region           | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 1999   | 4.520.354 €<br>(in 7 years)                                 |
| Czech Republic                     | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 1962   | 2006: 5.302.000 €   |
| England and Wales                  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | 2005   |   |
| Germany                            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 1952   |   |
| Greece                             | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 1981   | 12 Meuros in 4 years<br>(2004-2007)                         |
| Ireland                            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            |  |   |
| Latvia                             | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 1984   | 2005: 145000 €<br>2006: 181500 €<br>2007: 257400 €          |
| Netherlands Provincie Overijssel   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 2007   | No info available   |
| Netherlands                        | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 2007   |   |
| Poland                             | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | 1974   | 2006: 6.271.250 €   |
| Portugal                           | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 1982   | 2006: 2,5 M€  |
| Romania                            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 1995   | 2007: 2.200.000 €   |
| Scotland                           | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 2004   | -   |
| Spain Madrid                       | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 1983   | 2003: 2.700.000 €<br>2004: 4.200.000€:<br>2005: 4.900.000 € |
| Spain, Duero water basin authority | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 1986   | 2006: 1.400.000 €   |

From the data of the previous table, the following conclusions could be drawn:

1. All but one replied authority have the ability to propose or impose administrative sanctions.
2. Almost the half of the replied authorities/institutions have the ability to propose administrative fines, while almost the total (12 out of 14) have also the ability to impose administrative fines.
3. Regarding the nature /type of administrative fines, only one authority has the ability to propose both, fixed and variable administrative fines. Replies show also that the vast majority of replies propose or impose variable administrative fines.
4. A large variety into the history of the administrative environmental fines is shown. For some countries, administrative environmental fines were first introduced at the '50 or the '70s, while for the majority of them during the '80s.

|         |      |            |      |        |      |                                    |      |      |                          |      |      |  |
|---------|------|------------|------|--------|------|------------------------------------|------|------|--------------------------|------|------|--|
| Germany |      |            |      |        |      |                                    |      |      |                          |      |      |  |
|         |      | Czech Rep. |      |        |      |                                    |      |      |                          |      |      |  |
|         |      |            |      | Poland |      |                                    |      |      |                          |      |      |  |
|         |      |            |      |        |      | Greece - Portugal                  |      |      |                          |      |      |  |
|         |      |            |      |        |      | Spain Madrid                       |      |      |                          |      |      |  |
|         |      |            |      |        |      | Latvia                             |      |      |                          |      |      |  |
|         |      |            |      |        |      | Spain, Duero water basin authority |      |      |                          |      |      |  |
|         |      |            |      |        |      |                                    |      |      | Romania                  |      |      |  |
|         |      |            |      |        |      |                                    |      |      | Belgium, Brussels region |      |      |  |
|         |      |            |      |        |      |                                    |      |      | Scotland                 |      |      |  |
|         |      |            |      |        |      |                                    |      |      | England and Wales        |      |      |  |
|         |      |            |      |        |      |                                    |      |      | Netherlands              |      |      |  |
| 1950    | 1955 | 1960       | 1965 | 1970   | 1975 | 1980                               | 1985 | 1990 | 1995                     | 2004 | 2005 |  |

### 3.6. Imposition of environmental administrative fines

Table 6. Cases in which administrative fines are imposed

| Country |                          | Examples of cases where administrative fines are imposed   |
|---------|--------------------------|--|
| 1       | Belgium, Brussels region | For prosecution reports concerning an infraction for which a criminal sanction is possible (exploitation without an environmental permit, illegal waste deposal, illegal discharge in surface water, exploitation in violation with the permit conditions...)  |
| 2       | Czech Republic           | In any case of non-compliance with environmental legislation.  |
| 3       | England and Wales        | <p>FPNs (Fixed Penalty Notices) are now available under three regimes:</p> <p>1. Hazardous Waste (England) Regulations 2005 and Hazardous Waste (Wales) Regulations 2005. This legislation sets out the controls on the management and transport of hazardous waste. The regulations allow the regulator to impose an FPN for a variety of offences such as failure to complete documentation or submit information.</p> <p>2. Clean Neighbourhoods and Environment Act (CNEA) 2005- this amended the Environmental Protection Act 1990 which is the one of the major pieces of waste legislation. The CNEA allows FPNs to be issued where a waste carrier fails to provide evidence of their authority to carry waste or to produce appropriate documentation for waste.</p> <p>3. Transfrontier Shipment of Waste Regulations 2007 – this allows regulators to issue FPNs for a range of offences associated with the import and export of waste from 12<sup>th</sup> July 07.</p> <p>FPNs in all of the above regimes are for a maximum of £300.</p> <p>FPNs are also being considered for introduction in other areas of environmental regulation.</p> <p>The decision on whether to issue an FPN is at the discretion of the regulator.</p> <p>Currently there is not the ability to impose variable monetary penalties. However, the Regulatory Enforcement and Sanctions (RES) Bill is currently progressing through Parliament. If this legislation is enacted, it would allow Government Ministers to introduce a range of civil sanctions, including fixed and variable monetary penalties. Further legislation (i.e. secondary legislation in addition to the RES Bill) will be required before the sanctions can be implemented. As the Bill is progressing through Parliament, its provisions are subject to possible change.</p> |
| 4       | Germany                  | <p>There are cases of administrative fines in every important environmental law in Germany.</p> <p>Often there are catalogues of 5 – 30 violations, in which cases administrative fines can be proposed.</p> <p>Examples are in German federal laws:<br/> Emissions (air pollution, noise): § 62 Bundes-Immissionsschutzgesetz<br/> Solid waste: § 61 Kreislaufwirtschafts- und Abfallgesetz<br/> Water: § 41 Wasserhaushaltsgesetz<br/> and the same in the corresponding laws of the regional states.</p> <p>Mostly administrative fines are proposed in cases of minor violations or in cases of formal offences (refraining from carrying out reports to the administration, deviation from permits without serious emissions, hindering inspections, etc.).</p>   |

|    |                                  |  |
|----|----------------------------------|--|
| 5  | Greece                           | In all the cases of certified violations of environmental legislation or the approved environmental conditions   |
| 6  | Ireland                          | N/A  |
| 7  | Latvia                           | <p>Offences for which state environmental inspectors can impose a penalty are listed in the Code of Administrative Offences (CAO). Every article of the CAO consists of modus of offence (a specific illegal action or inaction) and sanction – penalty to be applied.</p> <p>In case when the regulatory enactments regarding environmental protection and the utilisation of natural resources are not observed, stop, suspend or prohibit the activities of natural or legal persons at fault, annual or recommended the annulment of illegally acquired or utilised permits (licences).</p> <p>Bring actions against persons at fault regarding losses, which have been done to the environment.</p>   |
| 8  | Netherlands Provincie Overijssel | Every time there is an illegal situation which has negative effects on the environment and (eventually) they refuse to end that situation the fine will be imposed. Bottom-line is that there is a need to stop an illegal situation.  |
| 9  | Netherlands                      | <p>An administrative fine can be imposed for offences of the Dutch Act on biocides and means for plant protection and the Environmental management at for the trade in emission.</p> <p>Especially in cases where biocides are being old or used that are not authorised in the Netherlands. Other cases are the incorrect use of biocides or the use by unauthorised persons.</p> <p>For the trade in emissions provided that an administrative fine will be imposed in cases where plants or factories have more emitted as permitted by the valid permit</p>  |
| 10 | Poland                           | <p>1/ the administrative fines:</p> <ul style="list-style-type: none"> <li>- exceeding of admissible quality standards in exhaust gases and wastewater</li> <li>- exceeding emission levels of noise</li> <li>- exceeding of amount water intake</li> <li>- exceeding emission limits of carbon dioxide</li> <li>- non – compliance with requirements concerning solid waste dumping/waste storage</li> <li>- non – compliance with requirements concerning substances deteriorating the ozone layer</li> </ul> <p>2/ the penalty tickets: e.g.</p> <ul style="list-style-type: none"> <li>- performing activities without required environmental regulations</li> <li>- failure to comply with permits and environmental law obligations</li> <li>- incorrect operation of pollution abatement equipment</li> <li>- incorrectness in respect to the required registers/ information</li> </ul> <p>3/ sanction charges:</p> <ul style="list-style-type: none"> <li>- non- compliance with requirements concerning solid wastes e.g. hazardous waste transport, international waste trading.</li> </ul> |
| 11 | Portugal                         | Administrative fines can only be proposed/imposed, in cases of non compliance with environmental law, and when the law specifies that type of sanction for each type of environmental law violation  |
| 12 | Romania                          | <p>Noncompliance with the conditions stipulated in the environment authorisation</p> <p>Accidental pollution</p> <p>Exceeding the danger values of parameters that characterize the quality of air, water and soil</p> <p>Noncompliance with the environmental regulations and with the regulations about waste (debris)</p>   |

|    |                                    |   |
|----|------------------------------------|---|
| 13 | Scotland                           | Imposition of fixed penalty notice for breaches of section 33(1)(a) or (c) of the Environmental Protection Act 1990 (relates to depositing controlled waste except in accordance with a waste management licence, and treating/keeping/disposing of controlled waste in a manner likely to cause pollution of the environment or harm to human health).<br>Fixed penalty notice for offences under the Transfrontier Shipment of Waste Regulations 2007 (which implement EC Regulation No 1013/2006). |
| 14 | Spain, Madrid                      | All the cases are foreseen in environmental laws and regulations. There are a complex system for fining in each theme such as “Environmental Assessment Act”, “Waste Act” or “Industrial Wastewater Act”  |
| 15 | Spain, Duero water basin authority | Administrative fines can be proposed and imposed for all actions that could harm the water environment. The Spanish water law and other existing regulations gives a detailed list of possible infractions and its classification according to the seriousness and the possible damage caused by them   |

From the replies it is clear that administrative fines are imposed in cases where there is:

1. Violation of environmental law
2. Non-compliance with the permit conditions and terms
3. Uncontrolled or above the thresholds emissions/effluents to all environmental means (air, water, soil, noise etc)
4. Actions that endanger the environmental conditions

The replies stress the differences among the MS systems, in some countries the possible violations are clearly defined into the relevant pieces of legislation, while in some other countries; fines are imposed on a more general (broader) pattern, where there is evidence that there is no compliance with environmental legislation. This also reflects the differences that exist on the scope, the role and the competency of the replied authorities, since some of them have a limited – clearly defined scope and field of competency while for the others, (mainly the authorities under the definition of Inspectorate), their role and field of competency is broader.

### 3.7. Followed procedures

Table 7. Procedure that is followed in case of environmental non-compliance

| MS/authorities replied           | Can administrative fines be used only in cases where no criminal sanctions are imposed | Can administrative fines be used in addition to criminal sanctions | Who decides which procedure will be followed (criminal – administrative – both)  |
|----------------------------------|--|--|--|
| Belgium, Brussels region         | YES  | NO   | Prosecutor of Brussels   |
| Czech Republic                   | YES  | NO   | Czech Environmental Inspectorate in conjunction with the Police  |
| England and Wales                | YES  | NO   | The Environment Agency has the discretion to decide which approach to take, including whether to issue an FPN or take a prosecution  |
| Germany                          | YES  | NO   | the competent government agency has to decide whether to inform the public prosecutor  |
| Greece                           | NO   | YES  | Law foreseen both procedures in parallel   |
| Ireland                          | N/A  | N/A  | N/A  |
| Latvia                           | YES  | NO   | State environmental service according to rules   |
| Netherlands Provincie Overijssel | YES  | NO   | Each authority (for the criminal procedure and for the administrative procedure) makes its own decision  |
| Netherlands                      | NO   | YES  | The offences can also be approached under criminal law. That will also be the case in the coming act that will increase the administrative fine to more offences of environmental legislation  |
| Poland                           | NO   | YES  | The inspector who carries out inspection decides which procedure will be followed.   |
| Portugal                         | YES  | NO   | Administrative authorities in case of an accusation or a notice of violation they have to decide, if there are enough matter of fact and law to follow with the administrative procedure, but if there are circumstantial evidences that a crime was undertaken they are obliged to send the accusation or notice of violation to the public prosecutor<br>Regarding criminal procedure, is the public prosecutor who decides if he will follow the criminal procedure or not. |
| Romania                          | NO   | YES  | The environment inspector acknowledges the deed, applies the administrative fine and notifies the criminal law authority in case of criminal acts  |

|                                    |     |    |   |
|------------------------------------|-----|----|---|
| Scotland                           | YES | NO | SEPA decides to serve a fixed penalty notice – service of such a notice is not mandatory. SEPA could decide not to serve such a notice and instead simply seek to instigate a prosecution   |
| Spain Madrid                       | YES | NO | The “Disciplina Unit”, area who deals with infringements, decides if some action <u>could</u> be declared “criminal”. In these cases, all the information is given to a prosecutor in order to promote a criminal procedure, if appropriate. When the action is not serious enough to be considered “criminal”, we start the “administrative procedure” in an ordinary way. |
| Spain, Duero water basin authority | YES | NO | Judge shall decide if a criminal procedure must be carried out  |

In the question if administrative sanctions (fines) are imposed only in case where penal sanctions are not used, the majority of replies give a positive answer. For most of the replied countries, the national legal system does not allow to have both procedures for the same case. The decisive authority for the type of procedure which will be followed (administrative or penal) is different among the replied countries.

Only in few countries, the national legal system allows (or determine) that both procedures (administrative combined with penal) have to be followed.

### 3.8. Type of environmental administrative fines

Table 8. Parameters and factors that influence – determine the fixed and variable administrative fines

| MS/authorities replied   | Factors that influence/modify the fixed administrative fines  | Minimum and maximum level for variable administrative fines  |
|--------------------------|---|--|
| Belgium, Brussels region | Not Applicable  | The defending means, ending the infringement, stopping the activity following or not an administrative measure...<br>62,5 to 625 EUR for the small infractions<br>625 to 62500 EUR for the others infractions<br>The fine is double in case of a repetition of the infraction (for the same or a new one), with a maximum of 125.000 EUR   |
| Czech Republic           | Not Applicable  | According to a violation of law and it is stated in proper law. From thousands until tens of million CZK<br>(1 € ~ 25 CZK)   |
| England and Wales        | The FPNs that are currently available are fixed at £300 by legislation and the regulator cannot adjust this. The Clean Neighbourhoods and Environment Act 2005 does allow for a reduction for early payment | Not Applicable   |
| Germany                  | Not Applicable  | In the general law for administrative fines there is a frame between 5 € and 1.000 €. The special frames in the environmental laws are on a much higher level:<br>Emissions (air pollution, noise): § 62 Bundes-Immissionsschutzgesetz Up to 50.000 € in cases of section 1<br>Up to 10.000 € in cases of section 2<br>Solid waste: § 61 Kreislaufwirtschafts- und Abfallgesetz<br>Up to 50.000 € in cases of section 1<br>Up to 10.000 € in cases of section 2<br>Water: § 41 Wasserhaushaltsgesetz<br>Up to 50.000 € in cases of section 1<br>Up to 10.000 € in case of section 1 Nr. 7<br>Other environmental laws have similar levels depending to the weight of the violation |

|                                  |  |   |
|----------------------------------|--|---|
| Greece                           | Not Applicable   | <p>Administrative fines are calculated following a simplified algorithm that has been developed by Greek Environmental Inspectorate.</p> <p>In this algorithm, factors/coefficients for air/water/solid mean are defined, regarding the following non-compliance cases:</p> <ul style="list-style-type: none"> <li>- antipollution technology</li> <li>- normal operation</li> <li>- licensing</li> <li>- monitoring</li> </ul> <p>The sum of factors/coefficients is multiplied with the basis value for the determination of the final fine amount. The maximum amount of fine is up to 2MEuros</p> |
| Ireland                          | N/A  | N/A   |
| Latvia                           | Not Applicable   | <p>According to the Article 33 (modify factors – acknowledge offence, avert damage or offence) and the Article 34 (influence factors – activity continue, reiterate offence) of the Code of Administrative Offences (CAO) state environmental inspectors can indicate that factors in an administrative act.</p> <p>Min level – 20 Ls (~30 Euros) and Max level – 1 000 Ls (~ 1400 Euros) for natural persons (individuals)</p> <p>Min levels – 50 Ls (~70 Euros) and Max level – 10000 Ls (~14000 Euros) for legal persons (companies)</p>   |
| Netherlands Provincie Overijssel | Not Applicable   | <p>the rules are that the fine has to be proportional and effective. Settled case law shows that the authority can determine an amount of two times the economic windfall maximum</p>   |
| Netherlands                      | <ul style="list-style-type: none"> <li>- the volume of the profit that has been made by the offence;</li> <li>- the size of the company/factory that has committed the offence;</li> <li>- the scope of the offence</li> </ul> | <p>No minimum</p> <p>Maximum limits are:</p> <p>For biocides:</p> <ul style="list-style-type: none"> <li>- € 11,500 for natural persons in case of minor offences</li> <li>- € 42,500 for natural persons in case of major offences</li> <li>- € 42,500 for legal persons in case of minor offences</li> <li>- € 450,000 for legal persons in case of major offences</li> </ul> <p>For emissions:</p> <ul style="list-style-type: none"> <li>- € 450,000 per offence or 10% of the annual turnover</li> </ul>   |

|              |   |   |
|--------------|---|---|
| Poland       |   | <p>Various forms of administrative fines are applied:</p> <ul style="list-style-type: none"> <li>- the penalty ticket there is a frame between EUR 15 and 150 EUR</li> <li>- Sanction charge (only for waste and were introduced for the first time in 2007) from EUR 2.780 up to EUR 11.110.</li> </ul> <p>But most significant fines are administrative fines which are calculated based on the results of measurements. For this type of fines there is only minimum value which is EUR 220 but there is not maximum value</p> |
| Portugal     | Not Applicable  | <p>Examples: the infringement concerning the water legislation goes from €500 to €2.500.000 . Regarding solid wastes the minimum is €250 and the maximum is €44.890, and so on...</p>   |
| Romania      |   | <p>Min and max values as well as different levels for companies and individuals are set by the Law.(G.O. 2 / 2001)</p> <p>Min = 25 lei (~10 Euros)</p> <p>Max = 100,000 lei (~33.000 Euros)</p> <p>The guilty party may pay only 50% of the amount if the payment is made within 48 hrs of application</p>  |
| Scotland     | Under the Environmental Protection Act 1990 the penalty under a fixed penalty notice is fixed at £50 (although the Scottish Ministers could legislate to change this figure). Under the Transfrontier Shipment of Waste Regulations the penalty is fixed at £300. | Not Applicable  |
| Spain Madrid | Not Applicable  | <p>The Area responsible for fining has established internal criteria for making concrete the fine to each case</p>  |

|                                    |                |   |
|------------------------------------|----------------|---|
| Spain, Duero water basin authority | Not Applicable | <p>The amount of the administrative fines is regulated by law. The water law establishes 4 categories of administrative infractions, depending on its seriousness: minor infraction, major infraction, serious infraction and very serious ones. For each of them there is a minimum and a maximum level for administrative fines.</p> <ul style="list-style-type: none"> <li>• Minor infractions: Fines up to 6.010,12 €</li> <li>• Major infractions: Fines from 6.010,13 € up to 30.050,61 €</li> <li>• Serious infractions: Fines from 30.050,62 € up to 300.506,05 €</li> <li>• Very serious infractions: Fines from 300.506,05 € up to 601.012,10 €</li> </ul> <p>The industrial installations regulated by COUNCIL DIRECTIVE 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, have a particular regulation (although the water legislation is still applicable). This regulation establishes only three categories of infraction:</p> <ul style="list-style-type: none"> <li>• Minor infractions: Fines up to 20.000 €</li> <li>• Serious infractions: Fines from 20.001 € up to 200.000 €</li> <li>• Very serious infractions: Fines from 200.001 € up to 2.000.000 €</li> </ul> |
|------------------------------------|----------------|---|

The majority of replied authorities imposes or proposes variable administrative fines. Fixed environmental administrative fines are proposed / imposed only in cases where there is the certain Law provision or in cases where a fixed penalty is foreseen for specific instances of non-compliance.

Variable administrative environmental fines show significant differences among the countries where applicable. The common area is that for all MS' cases, a minimum and a maximum level of administrative fine is determined. The absolute minimum and maximum fine values, differ significant among MS.

The procedure for the calculation / determination of the fine amount is different among the MS. In some of them, there are detailed legislative provisions for every type of environmental infraction / violation / non compliance. Specific fine reduction procedures are followed in case of early payment or for fine payment in the first 48 hours after the imposition. In addition, in some MS multiply factors are applied into the fine amount in case of repetition of the infraction.

### 3.9. Administrative fines, competency for the calculation and subject to environmental administrative fines

Table 9. Competency for calculation and subject to environmental administrative fines

| MS/authorities replied           | Is the methodology for calculating fines specified in legislation or does the regulator have the responsibility for determining the methodology?  | Are administrative fines for environmental violations possible for legal persons (companies) - natural ones (individuals) or both?     |
|----------------------------------|---|--|
| Belgium, Brussels region         | The regulator has the responsibility and the appreciation power   | Both   |
| Czech Republic                   | Both. Common conditions are stated in laws, concrete amount is at Inspectorate's discretion   | Both   |
| England and Wales                | At present, variable penalties are unavailable.<br><br>Under the RES Bill proposals, the methodology would not be specified in legislation. Instead, in accordance with Clause 61(4)(c) of the Bill, regulators would have to publish guidance which sets out "the matters likely to be taken into account by the regulator in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance)." | Both   |
| Germany                          | The regulator has the responsibility for determining the methodology.<br><br>The only rule specified in legislation is, that in cases, where intent and negligence both is dealt with in the law, in case of negligence there is only an administrative fine possible up to half as high as the maximum sum (§ 17 OWiG).  | both<br>In Germany administrative fines are possible both for legal persons (companies) or for natural ones (individuals) (§ 30 OWiG). |
| Greece                           | Administrative fines are calculated following a simplified algorithm that has been developed by Greek Environmental Inspectorate.<br>The aim is to develop a scientific algorithm which will be specified in Greek legislation.   | Both   |
| Ireland                          | N/A   | N/A  |
| Latvia                           |   | Both   |
| Netherlands Provincie Overijssel | It's not specified in legislation. So an authority has a relative freedom for determining the amount of the fine. But they have to follow the following general principles: that the fine has to be proportional and effective. Settled case law shows that the authority can determine an amount of two times the economic windfall maximum  | Both (even at the same time)   |

|                                    |  |   |
|------------------------------------|--|---|
| Netherlands                        | The regulator has the responsibility   | Both  |
| Poland                             | In legislation there are general rules for calculating administrative fines depending on the individual components of the environment. They are generally clear though sometimes Inspectors have problems with interpreting those rules and using them in specific situation in practice.  | both<br>All subjects which use the environment in the understanding of environmental protection law.              |
| Portugal                           | The methodology for calculating fines, is already specified in legislation and it is obligatory to follow that same methodology  | Both  |
| Romania                            | No calculation algorithm – the amounts are set by the law. The inspector is responsible for the right application of the law   | Both  |
| Scotland                           | Variable penalties are unavailable   | Both<br>Under both the Environmental Protection Act 1990 and the Transfrontier shipment of Waste Regulations 2007 |
| Spain Madrid                       | The maximum and minimum level for each “infraction” is determined by Law, depending on the seriousness. There are 3 or 4 levels, it depends on the matter. The methodology to make the fine concrete is established with internal criteria, no with legal criteria   | Both  |
| Spain, Duero water basin authority | The current national legislation establishes only the minimum and maximum level for the fine, according to the category of the infraction. It establishes also general criteria that should be taken into consideration for calculating fines, but in this moment there is not a methodology approved at national level for calculating fines. Several regional authorities (for example the River Duero Water Authority) have approved methodologies at regional level for estimating the damage caused, which is the most important factor necessary for the calculation of a fine.. Otherwise the regulator has the responsibility for determining the methodology for calculating fines between the limits that the legislation establishes.<br>In this moment it exists a piece of regulation at national level, which is still under discussion and will probably takes into force in a short period of time, that will establish a methodology for estimating the damage caused | Both  |

In the question if the methodology for calculating administrative fines is specified in legislation or does the regulator have the responsibility for determining it, the replies provide a mixture of both approaches. In some countries, relevant legislation provides detailed frame for the environmental administrative fines, with definite determination of the fine upper and lower thresholds.

In other MS, it is up to the regulator to decide on the fine actual amount by using (or in other cases not using) specific algorithms.

It is interesting that in some cases where the Law sets the fine amount limits, there is the flexibility to the imposing (or proposing) authority to determine the exact fine amount, by using a certain methodology, under the condition that the calculated amount should be in-between the legal limits.

In some cases, the methodology for the exact determination of the administrative fine is foreseen into the relevant pieces of legislation.

### 3.10. Procedure for issuing an administrative fine – Description of the relevant scheme if applicable

Table 10: Schematic view of the procedure for issuing of an administrative fine.

| MS/authorities replied   | Scheme for issuing an administrative fine   |
|--------------------------|---|
| Belgium, Brussels region | Prosecutor of Brussels decides not to prosecute<br>=>BIME starts an administrative fine procedure<br>=>Invitation for defense <ul style="list-style-type: none"> <li>• Written defense</li> <li>• And/or oral defense</li> </ul> => Motivated decision  |
| Czech Republic           | Inspection - initialisation – statement of the participant in proceedings – disclosure of participant with the bases - issuance of a decision – in some cases remedial measures   |
| England and Wales        | An FPN is served on the offender. Once an FPN has been issued, the recipient has a specified period in which to make payment. If they do not pay the FPN, the regulator must decide whether to prosecute for the original offence.<br>The procedures for issuing monetary penalties under the proposed RES Bill provisions are described in guidance produced by Government |
| Germany                  | Suspicion of a violence/offence<br>Investigation (documents, inspection, witnesses)<br>Decision for issuing an administrative fine<br>Hearing of the violator with a concept of the notice of fine due<br>Notice of fine due<br>Possible: Appeal  |

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| Greece                           | <ul style="list-style-type: none"> <li>• An “on-the-spot report”, in which both the typical elements referred to the operation of the installation as well as the initial findings of the inspectors is prepared in situ. The on-the-spot report is co-signed by all the inspectors and the operator and a copy of that is left to the operator. Additionally, in many cases the inspectors pause a limited time period to the operator to submit, additional elements that were not available during the inspection or need some time to be available (time series of measurements, etc).</li> <li>• Taking into consideration the total of the so-called inspection material: the on-the-spot report and the additional elements, the inspectors examine the <u>compliance</u> of the installation to the permit, and the environmental legislation in general.</li> <li>• The results are concluded into the so-called inspection report, in which the possible non-compliance elements are underlined as concluded non-compliances to the environmental legislation. In the same document, a limited time period for objections / submission of additional elements is given to the operator.</li> <li>• After this period, the inspectors examine the possible submitted objections / elements etc, from the operator’s side and in case that non-compliance remains, they conduct the justified act of the confirmation of the violation of environmental law.</li> <li>• Then the inspectors conduct the so-called “recommendation for the imposition of the administrative sanction” and an environmental penalty (fine) is proposed: <ul style="list-style-type: none"> <li>• to the local Prefect, if the fine amounts up to appr. 60,000 €</li> <li>• to the Secretary-General of the Region, if the fine varies between 60,000 € and 150,000 €</li> <li>• to the Minister of Environment if the fine exceeds the amount of 150,000 €</li> </ul> </li> <li>• Moreover this document is being sent to the competent prosecutor of the first instance judges in case of any punishable actions and it is forwarded to the violator and to the local permitting authorities.</li> </ul> |
| Ireland                          | N/A   |
| Latvia                           | <p>In order to decrease the number of appealed decision the record keeping procedure set by Article 237-321 of the Code of Administrative Offences (CAO) shall be followed.</p> <p>CAO explains:</p> <ol style="list-style-type: none"> <li>1) what is an administrative offence (Article 9)</li> <li>2) degree of guilt (Articles 10 – 11)</li> <li>3) age of administrative liability – 14 (Article 12)</li> <li>4) administrative penalty procedure (including terms) (Articles 32 - 40)</li> <li>5) administrative penalty execution procedure (Articles 290 – 312)</li> </ol>  |
| Netherlands Provincie Overijssel | <p>First there is the duty of the authority to express the intension of imposing a fine. The offender can give its side of the story. The authority draws this information in its decision. After that, generally the fine will be issued</p>   |
| Netherlands                      | <p>The competent authority gives the administrative fine by official order. The offender can lodge objections by the authorities and when he is not satisfied with the decision he can lodge an appeal by the administrative judge.</p>   |

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| Poland   | <p>The procedure for issuing the administrative fines is performed under the provisions of the administrative proceeding code.</p> <p>In course of legal proceedings setting out the daily/hourly rate of the fine could be changed sometimes. The administrative fine is being issued:</p> <ul style="list-style-type: none"> <li>- after cessation of the exceedance in view of the results of measurements, the new provisions of permit, other reasons /</li> <li>- in the end of the calendar year . The running fine is issued based on the new financial rate if exceedance doesn't stop.</li> </ul> <p>There are schemes for more typical situation:</p> <pre> graph TD     A[1. the results of measurements made by inspectors] --&gt; B[decision called " the running fine" which is hourly/daily fine rate]     B --&gt; C[decision on the administrative fine]     D[2. In the course of the duration of the running fine an operator may submit a motion for a cessation of exceedance] --&gt; E[a motion for a cessation the decision on the running fine]     E --&gt; F[no revision of the request]     E --&gt; G[revision of the request]     F --&gt; H[decision on the new running fine or decision on the administrative fine]     G --&gt; I[control measurements made by the inspector and if the results are higher than submitted by an operator]     I --&gt; J[decision on the double running fine for 60 days]     K[3. the obligatory results of measurements made by an operator] --&gt; L[No questions]     K --&gt; M[revision (art.301, str141 POŚ)]     L --&gt; N[decision on the administrative fine]     M --&gt; O[decision on the administrative fine issuing based on the decision of the inspector]     M --&gt; P[control measurements but without further consequences]     P --&gt; Q[decision on the new running fine]     Q --&gt; R[decision on the administrative fine] </pre> |
| Portugal | <p>Law environmental infringement - Notice of violation- administrative proceeding (includes self defence and inquiry of witness if they are enrolled by the defendant)-decision – administrative fine</p>   |

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| Romania                            | <p>The inspector writes an official document (3 copies, the model is published officially, for example in an Governmental Decision) of the event containing the following:</p> <ul style="list-style-type: none"> <li>- date and time of document</li> <li>- name, capacity and institution of the inspector</li> <li>- personal data, capacity and work place of the subject</li> <li>- description of event</li> <li>- law / regulation applicable</li> <li>- right to pay within 48 hrs only half of the amount</li> </ul> <p>deadline for appeal and authority where the complaint is to be submitted</p>  |
| Scotland                           | <p>Under the Environmental Protection Act 1990 the fixed penalty notice must set out the circumstances of the offence, the 14 day period within which proceedings may not be taken, the £50 fixed penalty and the name and address of who may be paid. The only differences under the Transfrontier Shipment of Waste Regulations are that under these it is 28 days during which proceedings may not be taken and the fine level is £300.</p> <p>In each case, if the fine is not paid then SEPA must decide whether to pursue a prosecution for the original offence.</p>  |
| Spain Madrid                       | <p>The procedure is establish by the Decree 245/2000, 16<sup>th</sup> of December. It implies:</p> <ul style="list-style-type: none"> <li>- reception of official report/complaint</li> <li>- Starting agreement</li> <li>- Period of audience (as a right for the offender)</li> <li>- Resolution</li> </ul>  |
| Spain, Duero water basin authority | <p>The exact procedure for issuing an administrative fine is regulated by the “Reglamento para el ejercicio de la potestad sancionadora (Norm for the exercising of the sanction authority, RD 1398/1993)”, and in some particular aspects by the Water regulation (Water Law and other derived rules).</p> <p>The procedure can be started ex-officio or with a formal complaint of someone, particular or public. The competent body for it is the basin water authority. It will be designated an instructor for the case, who is responsible for formulating the list of charges. This list of charges is notified to the alleged offender, who has ten days for presenting his allegations. After this time the procedure continues, and the instructor investigates the case, asks for reports and orders the necessary actuaciones for recollecting evidences of the case. After the instruction, the instructor formulates the proposal of resolution.</p> <p>The body competent for dictating the resolution depends on the category of the infraction established in the proposal of resolution. If it is a minor or major infraction, the resolution is taken by the regional water authority. If it is a serious infraction, the resolution is taken by the Ministry of Environment, and if it is a very serious one, the resolution is taken by the Cabinet Meeting.</p> <p>The maximal duration of the whole administrative procedure for issuing an administrative fine is one year</p> |

### 3.11. Factors that are considered when calculating the administrative fine

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|--------------------------|---|
| MS/authorities replied   | Factors that are taken into account when calculating the environmental administrative fine  |
| Belgium, Brussels region | <ul style="list-style-type: none"> <li>• Cost of measurements (for example: noise measurements) or sampling</li> <li>• Duration of complaint</li> <li>• Repetition of the infraction</li> <li>• Infraction with influence on the security/ environmental impact</li> <li>• Means of profit</li> <li>• End of a part of the infraction</li> </ul>  |
| Czech Republic           | The restoration cost, the economic situation of the offender, the intent of the offender, range of damage, place of an offence (protected area etc.), seriousness, repeating  |
| England and Wales        | <p>At present, variable penalties are unavailable.</p> <p>The guidance document <b>on the proposed RES Bill</b> provisions sets out some of the factors that may be considered when calculating a variable penalty.</p> <p>The RES Bill follows up a report published in November 2006, Regulatory Justice: Making Sanctions Effective written by Professor Richard Macrory – see <a href="http://bre.berr.gov.uk/regulation/documents/pdf/macrory_penalties.pdf">http://bre.berr.gov.uk/regulation/documents/pdf/macrory_penalties.pdf</a>. This set out 6 penalty principles that describe what any sanction should seek to achieve.</p> <p>“A sanction should:</p> <ol style="list-style-type: none"> <li>1. Aim to change the behaviour of the offender;</li> <li>2. Aim to eliminate any financial gain or benefit from non-compliance;</li> <li>3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;</li> <li>4. Be proportionate to the nature of the offence and the harm caused;</li> <li>5. Aim to restore the harm caused by regulatory non-compliance, where appropriate; and</li> <li>6. Aim to deter future non-compliance.”</li> </ol> |

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| Germany | <p>§ 17 OWiG:</p> <p>Abs. 3: Basis for the estimation of an administrative fine is the importance of the offence and the reproach, which meets the offender. The economic situation of the offender may be of importance; they will usually be unnoticed at minor offences.</p> <p>Abs. 4: The administrative fine shall exceed the benefit the offender has had from the violation. Is the maximum level not high enough for that, it can be exceeded.</p> <p>Beside that legal definition, legislation und literature have developed some rules for the calculation of administrative fines, which are as follows:</p> <ol style="list-style-type: none"> <li>1. Importance of the offence <ul style="list-style-type: none"> <li>Level of endangering</li> <li>Frequency</li> <li>Manner of carrying out the offence</li> <li>Aspects of general prevention</li> </ul> </li> <li>2. Reproach, which meets the offender <ul style="list-style-type: none"> <li>Negligence, carelessness or frivolity</li> <li>Reasonable motivation</li> <li>Being hardly involved in the offence</li> <li>Making an effort for restoration</li> <li>Long time since the offence, since then correct behaviour</li> </ul> </li> <li>3. Economic situation of the offender <ul style="list-style-type: none"> <li>Legal person – individual</li> <li>Income / property / debts / Maintaining the family / productivity of the company</li> </ul> </li> </ol> |
| Greece  | <p>A number of factors are considered, like:</p> <ul style="list-style-type: none"> <li>- type and magnitude of the installation</li> <li>- area where the installation is operating (industrial, urban, designated-protected, etc.)</li> <li>- installation history in relation to its environmental performance</li> <li>- type (air pollutants, wastewaters, solid wastes-hazardous or not) and magnitude of pollution</li> <li>- operation of the installed environmental technology systems for pollution abatement</li> <li>- results of pollution measurements</li> <li>- administrative issues (lack of environmental permits or any additionally required environmental licence)</li> </ul>  |
| Ireland | N/A   |
| Latvia  | <p>In order to determine the amount of administrative fine, Inspectors should take into account several conditions according to the Code of Administration Offences:</p> <ul style="list-style-type: none"> <li>- Level of endangering (environmental impact of violation)</li> <li>- Frequency of offences</li> <li>- Making an effort for restoration</li> <li>- Cooperation with environmental authorities (giving information due in course)</li> <li>- Economic situation of offender (in practise applied mostly for natural persons).</li> <li>- Etc...</li> </ul>   |

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| Netherlands<br>Provincie<br>Overijssel | It depends on the situation. Normally the economic windfall of the offender, otherwise restoration costs. Most of the times we will upgrade the amount to stimulate the offender to restore the illegal situation.  |
| Netherlands                            | <ul style="list-style-type: none"> <li>- the volume of the profit that has been made by the offence;</li> <li>- the size of the company/factory that has committed the offence;</li> <li>- the scope of the offence.</li> </ul>   |
| Poland                                 | <p>The mentioned factors are considered when penalty tickets or sanction charges should be imposed or before submitting a motion for punishment to the court or public prosecutor's office.</p> <p>In respect of the administrative fines none of these factors are considered. But the offender can propose to pay it in instalments or to postpone the deadline of payment for max. five years if he undertakes pro-ecological investments.</p> <p>Upon confirmation the achievement of the required environmental targets, the fine is decreased by the amount spent on the implementation of the investment project.</p> <p>This mechanism lets the offender to avoid paying administrative fines if costs of investment are higher than the amount of the administrative fine.</p> |
| Portugal                               | <p>The factors considered when calculating the administrative fine are the following: offender's guilt (intent of the offender), previous convictions, economic situation and the infringement danger towards to environment.</p> <p>It's also possible to evaluate the environmental damage and make it report on the fine.</p>  |
| Romania                                | <p>Even the amount of fine is clear for each type of non compliance (in the law it is stipulated the minimum and maximum of the fine), there is still the possibility to choose the concrete value of the fine. In choosing the concrete value of the fine the following factors are taken into consideration:</p> <ul style="list-style-type: none"> <li>- the degree of conformity whit environmental regulations of the subject company</li> <li>- how the company assisted the inspectors during the inspection</li> <li>- how seriously the environment components have been damaged</li> <li>- monitoring results</li> <li>- company's investment in the place inspected</li> <li>- whether the company was fined before and for what</li> </ul>                                  |
| Scotland                               | Variable penalties are not available  |
| Spain Madrid                           | <p>Those criteria are not available for the inspectorate but there are several hints in the environmental law:</p> <ul style="list-style-type: none"> <li>- a repeat offender behaviour</li> <li>- level of damage which that the action creates</li> <li>- benefit of the illegal behaviour</li> <li>- intend or not</li> <li>- other</li> </ul>   |

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| Spain, Duero<br>water basin<br>authority | <p>The first question to consider for calculating an administrative fine is the classification of the infraction between the four legal categories attending to its seriousness. This depends on the damage that has been done. This damage must be evaluated taking into account the negative consequences for both the environment and the uses of the water resources, the risk for the security caused and the personal circumstances of the offender.</p> <p>In the field of water pollution, the law establishes the evaluation of the cost of an adequate treatment that would have been required in order to authorize the release of the waste water to the environment. The methods used for the evaluation of the damage normally takes into account the cost of the treatment, the intrinsically risk of the pollution release, and the sensibility of the local environment affected.</p> |
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### 3.12. Exact calculation of the administrative fine

| MS/authorities replied           | Exact calculation of the administrative fine  |
|----------------------------------|---|
| Belgium, Brussels region         | Depends on the type of infraction (noise, waste,...)<br>The BIME uses a guide of reference as base for the calculation  |
| Czech Republic                   | There is not have any specific methodology or formula that is used for the administrative fine calculation  |
| England and Wales                | At present, variable penalties are unavailable  |
| Germany                          | There is no mathematical method for calculation, it depends on the official discretion of the regulator.<br>To prevent arbitrary acts, a few regional states have developed fixed penalty codes.<br>For each case there is a nearer frame, which meets the special offence.<br>These catalogues are widely used by the administration and accepted by the courts / judges.  |
| Greece                           | It is calculated according to a simplified algorithm that has been developed by Greek Environmental Inspectorate.<br>For each violation, a relevant table (matrix system) provides the factor attributed to this. The absolute values of this table vary from 0,6 up to 4,0. The matrix provides detailed factors for outflows and discharges to air – water – soil resulting from 4 major categories (lack of antipollution technology – permitting – abnormal operation - monitoring). The sum of all factors for all certified violations provides the final factor. Some increasing or decreasing factors applied depending on the area type, repetition and collaboration of the offender. This factor is multiplied by the base value which depends on the size (magnitude) of the installation / facility / activity. The outcome of this multiplication provides the final proposed amount. |
| Ireland                          | N/A   |
| Latvia                           | There is not a specific methodology or formula for administrative fine calculation.<br>According to the Article 33 (modify factors – acknowledge offence, avert damage or offence) and the Article 34 (influence factors – activity continue, reiterate offence) of the Code of Administrative Offences (CAO) state environmental inspectors can indicate that factors in an administrative act.  |
| Netherlands Provincie Overijssel | Is an amount determined which is expected to be effective but also proportion, and is two times the economic windfall maximum   |
| Netherlands                      | There is not a specific methodology. Amounts have been laid down in legislation or are arranged in covenants. At this moment there are no arrangements yet. An administrative has to be effective and proportional.   |

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| Poland       | <p>In various legislative acts there is only the specific methodology that is used for the administrative fine calculation. There are defined situation, mentioned in point 2.4 when the administrative fine have to be issued.</p> <p>On the whole it is possible to specify fixed elements which are considered when calculating the fines:</p> <p>I. Calculating the volumes of exceedances referring to the admissible values defined in respective permits for the use of environmental. It is being set up based on the results of measurements, which are made as part of the monitoring system of operators or the results of control measurements made by the inspector.</p> <p>Calculating the volume of exceedance varies for individual components</p> <p>1/ exceedances of air emission standards is calculated as a load of pollutants:<br/> a/ automatic measurements made by operators – in case of combustion of fuels in boilers it is being calculated referring to exceedance of mean monthly concentration of pollutants and exceedance of permissible defined 3 to 5 percentage of 110% admissible standards of 48 - hour concentration of pollutants in conjunction with weighted mean flow of waste gases. There are a bit different rules to estimate the exceedances depending on kind of fuel or waste and method of combustion.<br/> b/ periodic measurements made by operators and measurements made by the inspector - it is calculated as the exceedance of concentration of pollutants as a load per an hour</p> <p>2/ exceedance of permissible pollutant indexes in wastewater<br/> - the results of periodic measurements made by operators - it is being set up exceedance concentration of pollutants as a load per a day<br/> If the results of measurements don't include a full scope of defined indexes the results are refused. The fine is calculated as if it hasn't done by the operator</p> <p>3/ exceedance of emission limits of noise<br/> - the results of periodic measurements made by operators and by the inspectors<br/> it is being set up exceedance the numbers of decibels separately for day –time and night -time</p> <p>4 / exceedance of amount water intake<br/> It is being set up exceedance of the amount of permissible levels</p> <p>5/ exceeding emission limits of carbon dioxide<br/> It is being set up a number of the lack of allowances</p> <p>6/ non – compliance with requirements concerning solid waste dumping/waste storage<br/> non – compliance with requirements concerning substances deteriorating the ozon layer<br/> It is being set up the amount of wastes or substances.</p> <p>II. In the same cases as mentioned in point 1b and 3 it is issued the fine of daily/hourly rate which is a result of multiplying the value of exceedance by the financial rate. The value of the financial rate is published in respective acts annually. The financial rate for fines in some cases is ten times higher than financial rate for charge.<br/> The value of hourly/daily rate might change in course of duration of exceedance.</p> <p>III. After cessation of exceedance or in the end of the calendar year the administrative fine is being issued. The final value of administrative fine is calculated:<br/> - based on the fine of daily/hourly rate and the period of exceedance<br/> - in cases mentioned in point 1a, 2,3,4,5,6 defined exceedance is being multiplied by the financial rate<br/> There are additional condition in case of automatic and periodic measurements and if the obligatory measurements aren't made by the installation operators.</p> |
| Portugal     | In order to calculate the exact fine amount, we have to consider the criteria defined by law that are already specified on the previous question   |
| Romania      | There is not a certain methodology. The value (minimum and maximum), is stipulated in the law  |
| Scotland     | The level of fines is specified by the relevant pieces of legislation. Variable penalties are not available  |
| Spain Madrid | Those concrete criteria are not available for the inspectorate   |

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| Spain, Duero water basin authority | <p>The law establishes four degrees of infractions according to the estimation of the damage caused, or the type of infraction committed:</p> <ul style="list-style-type: none"> <li>• Minor infraction: Estimated damage under 450,76 €</li> <li>• Major infraction: Estimated damage between 450,77 € and 4.507,59 €</li> <li>• Serious infraction: Estimated damage between 4.507,60 € and 45.075,91 €</li> <li>• Very serious infraction: Estimated damage below 45.075,91 €</li> </ul> <p>For each of these categories of infractions the instructor has to establish the value of the fine inside a range of values that the law stipulates. There is not an exact procedure to calculate the exact amount of the fine inside this range, and the instructor has to decide taking into account different aspects of the offence, like the type of infraction, the amount of the damage, the severity of the problems caused to the public or environment, risks to the security, the circumstances of the offenders, etc.</p> <p>The method employed by the River Duero Water Authority for the estimation of the damage caused, consists on the application of the following formula:</p> <p>Damage value estimation (€) = a x V x K1 x K2</p> <ul style="list-style-type: none"> <li>• a = Reference cost of wastewater treatment (0,12 € / m3)</li> <li>• V = Wastewater volume</li> <li>• K1 = dimensionless coefficient that takes into account the dangerousness of the spillage</li> <li>• K2 = dimensionless coefficient that takes into account the sensibility of the environment affected.</li> </ul> <p>K1 is calculated by comparing for each parameter the concentration of the wastewater poured against the authorized value or, in case there is not authorized value, a reference value. The value of the resultant K1 is in the range 0 – 7.12.</p> <p>K2 is a fixed value in the range 1 – 3 that depends on the classification of the quality of the water environment affected by the spillage.</p> <p>This method is very similar to the proposal existing for the approval of a method to be employed at national level, which is currently under discussion</p> |
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In some countries, a detailed methodology for the calculation of the administrative fine is available. In this case, the procedures focus on the determination of the major environmental aspects which are taken into account as factors / parameters that determine / influence the fine's amount. This weighting procedure gives attention to environmental impacts, resulted from the non-compliance, as well as to effluents quantity and quality.

In other countries, there is not a specific formula for calculation of the administrative fine. In most of the cases, Law provides the limits (upper and lower), in-between the fine should vary, providing detailed or more general classification of the foreseen violations / non-compliance cases.

### 3.13. Post-imposing procedures: What happens if the administrative fine is not paid

| MS/authorities replied             | What happens if the administrative fine is not paid   |
|------------------------------------|---|
| Belgium, Brussels region           | The file is sent to the regional Ministry of Finances who imposes means of coercion   |
| Czech Republic                     | For enforcing <ol style="list-style-type: none"> <li>1. administrative enforcing</li> <li>2. in court - executor</li> </ol>   |
| England and Wales                  | If an FPN is not paid, the regulator must decide whether to prosecute for the original offence. Failure to pay the FPN is not an offence in itself. Under the RES Bill proposals, regulators will have to pursue unpaid penalties as civil debts. They will not be able to prosecute for the original offence and non-payment would not be an offence in itself.  |
| Germany                            | In that case the notice of fine due is enforced by the authority  |
| Greece                             | The imposing fine is certified into the competent tax office (Ministry of Economy), for levy  |
| Ireland                            | N/A   |
| Latvia                             | All information is being sent to the executor   |
| Netherlands Provincie Overijssel   | The authority send to the offender an assignment. Eventually the bailiff seizes goods in order to make sure that fine still will be paid. In case of non-payment, the violator is subject of civil law  |
| Netherlands                        | A collection procedure will be started under criminal law. At the end of the procedure a bailiff will be called in.   |
| Poland                             | The inspector initiate a motion to the tax office or in specific situation to the court to execute the administrative fine  |
| Portugal                           | In cases were the offender does not appeal or pay the fine we send the proceeding to the executive court  |
| Romania                            | Within 30 days, the inspector notifies the fiscal authority (if the measure has not been appealed); the fiscal authority is entitled to execute the subject's assets in order to cover the fine due.  |
| Scotland                           | Under both the Environmental Protection Act 1990 and the Transfrontier Shipment of Waste Regulations 2007, the situation is the same as if the notice had never been served. Service of the notice simply gives the offender the opportunity to pay in order to preclude proceedings from being taken against him, if he chooses not to pay the situation remains that it is possible for proceedings to be taken against him (for the original offence – failure to pay the fine mentioned in the fixed penalty notice is not in itself an offence).                   |
| Spain Madrid                       | There are a established procedure which consists on: <ul style="list-style-type: none"> <li>- First warning: where we fix a period to pay or to do the action required</li> </ul> Forced execution and Subsidiary executions: those tools are related to gathering the money (first) and doing the recovery actions directly (second) by the Administration but with the offender's economic resources. This procedures are dealt with by the Regional Ministry for Treasury (forced execution) and by the Regional Ministry for the Environment (subsidiary execution) |
| Spain, Duero water basin authority | The law establishes different methods that the regulator can use in these cases, e.g. enforced collection action, compulsion surcharge and cautionary measures  |

### 3.14. Fate of the collected money from environmental administrative fines – publicity of the imposing fines

| MS/authorities replied   | Fate of the money collected from administrative fines   | Publicity of administrative fines – ways – means for that  |
|--------------------------|---|--|
| Belgium, Brussels region | The money is used for an environmental fund   | No   |
| Czech Republic           | 50% for municipal government – money have to be used for better environment (environmental issues)<br>50% for The State Environmental Fund ( <a href="http://www.sfzp.cz">www.sfzp.cz</a> you can find information in English about The State Environmental Fund)   | Only in the case, that is not possible to contact participant directly, We published the decision on the official notice board as well as in electronic form. We supply information in the case of the request from public under the conditions which are determined in a special law.   |
| England and Wales        | Environment Agency receipts from FPNs are paid to Government. The Environment Agency does not keep the revenue.<br>It should be noted that local authorities, who have responsibility for some waste regulation matters, also have the ability to impose FPNs under the Clean Neighbourhoods and Environment Act 2005. Local authorities are able to keep the revenue from these FPNs.<br>Under the RES Bill proposals, all revenue from monetary penalties will be returned to Government. | Not applicable, we have not issued any FPNs at this time   |
| Germany                  | The money raised from administrative fines is normal income of the state, as are charges, fees and forced money.<br>It is not separated from these other sources; the authority has no benefit from administrative fines  | There is no information to the public, if not asked for.<br>The decisions for administrative fines are (starting with a certain minimum sum) listed in a special register, which is held all over Germany.<br>This register is looked about in cases of reliability of natural persons (individuals), as necessary for certain forms of permits. |

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| Greece                           | <p>The fate of the money is depend on the imposing authority:<br/> Money from fines imposed by the Minister of Environment (fines greater that 150.000 Euros) are directed to the General Governmental Budget.<br/> Money from fines imposed by regional and prefectural authorities are directed as follows: 50% to the the General Gov. budget and 50% to the local (Regional and Prefectural) authority budget.</p> | <p>The Minister of Environment publicly announces the fines he imposes and the proposed ones (subject to be imposed by prefectural and regional authorities)</p>   |
| Ireland                          |  | <p>Currently, publish of prosecutions under the criminal code on EPA website <a href="http://www.epa.ie">www.epa.ie</a></p>  |
| Latvia                           | <p>All administrative fines shall be transferred into the Latvian Environmental protection fund (public treasury).</p>   | <p>Information about administrative penalty of a natural person cannot be made public. Data from the Penalty Register shall be provided by a relevant authority of the Ministry of the Interior. Inspectors shall not provide information to the interested persons, but instead shall tell such information can be requested and received from in the aforementioned authority and according to the procedure as provided by Penalty register law of Latvia</p> |
| Netherlands Provincie Overijssel | <p>The money will go to the public fund.</p>   | <p>No</p>  |
| Netherlands                      | <p>This money is fallen to the general resources of the administrative authorities</p>   | <p>The administrative fine is only very recently laid down in our national environmental legislation and we do not have any experience with this instrument yet at our national level<br/> There hasn't been made any arrangement about publishing</p>   |
| Poland                           | <p>All of the money raised from administrative fines is transferred to the funds for environmental protection and water management which are on different levels of self – governmental bodies. Some money is transferred to the national budget.</p>  | <p>Information on the decisions for administrative fines are published on the Internet. The information that is published on the website of the Inspectorate excludes the amount of the fines.</p>   |

|                                    |   |   |
|------------------------------------|---|---|
| Portugal                           | 60% of it goes for the state budget revenue while the environmental fund is not operative yet and the remaining 40% are distributed as own revenues for all the different involved entities that contribute to the process (e.g. 10% to the authority responsible for the note of violation, 20% for the entity responsible for the administrative procedure and 10% for the fining entity. | Until the year 2006, it wasn't possible in our legal system to publish those sort of decisions.<br>Today and although the law specifies that possibility we have never published a decision for administrative fines. |
| Romania                            | Go to the State Budget  | Amount of fine, reason and name of subject may be published   |
| Scotland                           | The money raised from fixed penalty notices paid under the Environmental Protection Act 1990 is paid to the local authority. The money raised from fixed penalty notices paid under the Transfrontier Shipment of Waste Regulations 2007 is paid to the Secretary of State.   | Any fines imposed by the courts are published but it is unlikely that details of a FPN would be published. Details would, however, probably be available if requested under 'Access to Information' routes.           |
| Spain Madrid                       | The money is managed by the Regional Ministry for Treasury  | Only in extraordinary cases. (high seriousness, for awareness purposes)The information is published in the Official Diary of Madrid Community and, at the same time, in the mass media.                               |
| Spain, Duero water basin authority | The law rules that all the money raised from administrative fines shall be used in repairing the damages caused to the affected environment, or in investments done with the objective of improving the state of the water environment  | No, not generally   |

Fate of the money collected from administrative fines: It is interesting that in various countries, money from environmental administrative fines are directed to the local or national budget, having no clear correspondence with environmental prevention – restoration activities. In some other countries, money from administrative fines is dedicated for environmental fund.

Regarding the publicity of the imposed administrative fines, the replies show a general trend not to have an organised information dissemination system in place. In the majority of the countries where this information is available, this is done occasionally, or under specific request.

### 3.15. Appeal mechanism for administrative fines, responsible authorities for the appeal procedures and power of these authorities

| MS/authorities replied   | Existence of an appeal mechanism in place for administrative fines   | Responsible body/authority for the appeal  | Power that the appeal body has   |
|--------------------------|--|--|--|
| Belgium, Brussels region | YES  | College of Environment (administrative body of 6 lawyers)  | Cancel and/or replace the decision of the BIME<br>Appeal against the decision of the College is possible by the Council of State (highest administrative court).   |
| Czech Republic           | YES  | Ministry of the Environment – 9 Departments of operation of public administration  | Appeal body can change, return or confirm a decision on a fine which the Czech Environmental Inspectorate imposed.   |
| England and Wales        | Under existing FPNs, there is no appeal mechanism as such<br>Under the RES Bill proposals appeals against monetary penalties will be heard by an independent tribunal that is completely separate from the criminal courts | The recipient has the option of not paying the FPN. In these circumstances the regulator must decide if it wants to proceed with a prosecution in the normal way through the criminal courts.<br>Under the RES Bill proposals, an independent regulatory tribunal will hear appeals. | Under the RES Bill proposals, the powers of the tribunal would be specified in further legislation. This may grant the tribunal the power to withdraw or confirm a sanction, to take such other steps which a regulator could take (e.g. impose another sanction upon the person), and a power to remit the sanctioning decision back to the regulator for further consideration |
| Germany                  | YES  | The authority for the appeal is a criminal court (mostly a single judge).  | This court can change the fine of the notice of fine due in every way, abolish, increase, reduce or confirm it.  |
| Greece                   | YES  | The responsible authority is the Greek Administrative Court of Law (second degree).  | To freely decide upon changing the fee based on their judgement. Appeal against the decision of this court is possible by the Council of State (highest administrative court).   |
| Ireland                  | N/A  | N/A  | N/A  |

|                                  |     |   |   |
|----------------------------------|-----|---|---|
| Latvia                           | YES | According to the Article 20 3rd part of the Law on Environmental Protection and according to the Article 77 of the Law on Administrative Process an administrative act can be appealed a month after it has come into force of the General director's to the State Environmental Service of Latvia. | The State Environmental Service General director's act can be appealed in the law-court.<br>The General director's to the State Environmental Service of Latvia can set aside fine, revise (reconsider) the decision for the administrative fine and enhance the administrative fine.<br>The law-court can do a procedure the same. |
| Netherlands Provincie Overijssel | YES | At first the authority that imposed the fine deals with a formal objection. That results in a new decision. When the offender still is not satisfied there is a possibility of grievance. In that case there is an independent legal judge who decides about the issue.                             | Withdrawn of the fine   |
| Netherlands                      | YES | The authority that has imposed the administrative fine is also competent for dealing with complaints/objections. This procedure will end with a new order/decision against which the offender can enter an appeal by an independent administrative judge  | The competent authority and the judge can confirm, change or reverse the administrative order by which the fine has been imposed  |

|          |     |  |   |
|----------|-----|--|---|
| Poland   | YES | <p>The body for the appeal against the administrative fine decision issued by the Voivodship Inspector is its superior body The Chief Inspectorate for Environmental Protection.</p> <p>If the offender isn't satisfied with the decision from the Chief Inspectorate he may submit a complaint to the competent district court or the high court.</p>   | <p>The appeal body can interfere in the essence of decision and can :</p> <ol style="list-style-type: none"> <li>1/ keep/justify a decision</li> <li>2/ reverse the whole or part of decision and issue its own decision</li> <li>3/ reverse the whole or part of decision and point out what should be considered during the explanation proceedings by the inferior body</li> <li>4/ discontinue legal proceedings</li> </ol> |
| Portugal | YES | <p>The offender can appeal to criminal court , but first their appeal will be examined by the administrative authorities responsible for the decision that confirmed the administrative fine (pecuniary sanction). The appeal will only be sent to the criminal court if the administrative authorities do not agree with the offender allegations, otherwise the administrative authorities can revoke/annul the administrative decision.</p> | <p>In the criminal court the judge will be responsible for examining the appeal, and the administrative authorities will be represented in court by a public prosecutor.</p> <p>The judge can revoke the administrative decision (fine), acquit the defendant, affirm the administrative fine, or decide for a different amount, concerning the minimum and the maximum for the fine previous fixed by law</p>                  |
| Romania  | YES | <p>If the subject believes that the measure is not right, he can dissent it within 15 days of his being notified at the Court in whose jurisdiction the deed has been done.</p>  | <p>The Court may leave the fine as initially set by the inspector or transform it into a warning.</p>   |

|                                    |     |  |  |
|------------------------------------|-----|--|--|
| Scotland                           | NO  | There is no appeal mechanism against the service of fixed penalty notices. If the offender disagrees that an offence has been committed, he could simply refuse to pay. Thereafter, SEPA would need to decide whether to pursue prosecution under the original offence   | Not Applicable   |
| Spain Madrid                       | YES | The ordinary one designed by our laws:<br>- Administrative: “Alzada” appeal, “Reposicion appeal” and “Extraordinary appeal”<br>- Judicial: “Contencioso-Administrativo”<br>The responsible body is a specialized Unit called “Appeal Unit” for the administrative appeals  | It has the same power as the “Disciplina Unit” so the possibility of reconsidering the resolution is completely possible |
| Spain, Duero water basin authority | YES | The alleged offender has the possibility of appealing inside the administrative procedure to the authority responsible for the sentence (depending of its seriousness can be the basin water authority or the Ministry of Environment). The alleged offender has the right as well to appeal to the Court for contentious administrative proceedings which is a judicial authority | The appeal body has all the power to revoke or modify the sentence   |

## 4. Conclusions

### 4.1. Introduction

First of all, it should be stressed that the present project is the first attempt of information exchange on the issue of administrative fines, across the EU member states. Administrative fines consist a significant instrument in enforcement of environmental law.

In order to better assess the information gathered, there is a need to determine the limitations of the available information from the replies and consequently to the information included in this report.

1. Not all IMPEL members replied. A total of 15 replies from 12 EU countries was collected and elaborated.
2. The fields of competency of replied authorities vary significantly. Not all the replied authorities / institutions are inspection authorities, with the typical meaning of this term. As a result, not all replied authorities have the competency to propose or impose fines.
3. Some replied authorities have spatial competency to all the territory of the country, so their replies could be considered as representative of the national situation. On the other hand, some other replied authorities have limited spatial competency (regional mostly), so their replies reflect the situation only at a part of the country. It should be noted that the federal administrative system at some countries allows slight (or more pronounce) differences in the administrative systems, applied into various regions of the same country.

Apart from the above-mentioned limitations, a significant piece of information is included in this report, presented in detail in previous Chapter 3 and in concluded format into the next paragraphs of this chapter.

It is worth mentioning that the replied authorities represent appropriately all geographical sections of European Union. It is also important that authorities from 4 new EU member states participated and provided information.

**The material included in this report would be useful for countries that do not have in place administrative fines and intend to develop such a system. Apart from the general information on administrative fines mechanisms, some useful detailed explanations of methodologies for the calculation of administrative fines, from various countries are also included.**

### 4.2. Availability of administrative fines

Administrative fines are available to almost all of the replied countries. Having as starting point that the development and the present status of the relevant administrative legislative frame varies, significantly among EU MS, administrative fines are applied with deviated rationale and methodology.

In general, in the majority of countries variable administrative fines are applied, while in some other, fixed administrative ones are also available. In all cases, the relevant legislation determines the limits of these fines, in most cases by providing the upper and lower values.

In parallel, administrative fines are observed into various forms – definitions, according to the case, circumstances and practice.

### 4.3. When administrative fines are applied.

It could be said that there are two basic approaches, answering this question:

- The first is the more general, stating that administrative fines apply in all cases where violation of environmental legislation or terms occurs (lack of environmental permit, illegal effluents to air, water bodies and soil/ surface, non-conformity with the permit terms etc... ).
- The second approach is more specific, since administrative fines are foreseen in limited and specific pieces of legislation

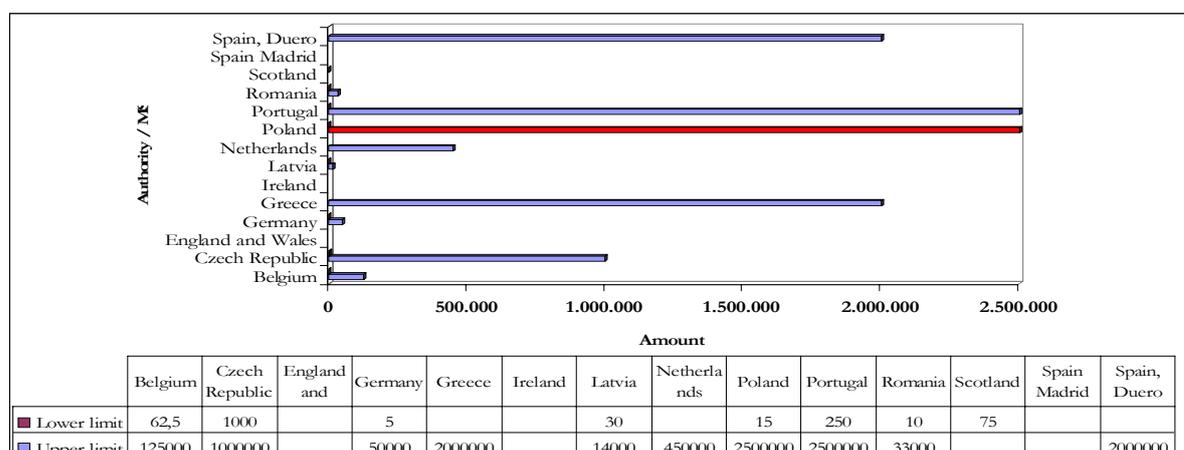
In most of the replied countries, administrative fines are applied only when there is no criminal action against the violator. On the opposite, in some countries, the legal frame allows or determines parallel criminal investigations in case of environmental non-conformity. In this case, the relevant information is submitted to the public prosecutor, who will decide on the continuation of the criminal procedure.

### 4.4. Types of administrative fines

Administrative fines are possible for both natural persons and legal ones. This is the case in all countries that replied.

In general, two forms of administrative fines are available:

- The fixed administrative fines which apply in cases where specific legislation foresees this type of sanction for certain infringements. Based on the replies from MS, the main form of fixed administrative fines is the fixed penalty, and the average amount of it is equal to some hundreds of Euros (average of 3 replies).
- The variable administrative fines, which apply into the majority of cases for a wide variety of situations (non-compliance, exceedence of effluent limit values, significant negative impact on the environmental conditions, etc). In almost all the cases, the relevant legislation determines the limit values for the variable administrative fine (upper and lower level of fine) which differ significantly among the MS. In the following diagram, the deviation of limit values (upper and lower) of variable administrative fines per MS is presented. It should be noticed that the lower and upper limits depicted in this figure are the absolute ones, resulting from the consideration of all possible variable fines for all cases<sup>8</sup>. More detailed information per country is available in paragraph 3.8 of this report.



<sup>8</sup> Red bar indicates that no upper limit is foreseen.

#### **4.5. Competency for the determination of the exact amount of variable administrative fine**

Since legislation provides the upper and lower limits of variable administrative fines, it's up to regulators competency to determine (calculate) the exact amount of fine. This determination is, in some cases already foreseen into the legislation while in others, competent authorities have this task. The methodologies used for this determination are applied either at national level or at regional level, accordingly to the spatial appositeness of the competent authority.

#### **4.6. Factors that are considered into the calculation of the administrative fine**

A large variety of factors are taken into consideration in the calculation of variable administrative fines. Some of them are applied to almost all the MS, since these are considered as the most crucial and representative for the valuation of environmental offense. These factors include, among others:

- Environmental impact(s) of violation
- Period that the infringement occurs
- Intention for the violation
- Economic profit for the offender resulting from the violation
- Economic situation of the offender
- Restoration cost
- Behavior of the offender (previous confirmed infractions, or possible efforts for restoration...)
- Other appropriate administrative measures against the offender

#### **4.7. Exact calculation of the administrative fine**

In most of the cases, the regulators have the responsibility to calculate the exact amount of administrative fine, taking into consideration the legislative restrictions and limitations. In other words, the law provide the general pattern, the thresholds and criteria and the competent authority determines the fine.

Only a limited number of replied countries / authorities apply a certain tool / formula for the exact calculation of variable administrative fine.

According to the information provided from these replies, the main scope of these tools/formulas is to evaluate the punishable non-conformities. A more detailed description of the methodology for the calculation of administrative fines in Belgium- Brussels region and Greece is included in Appendix III of this report.

#### **4.8. Assurance of money collection**

In almost all replies, a series of administrative measures are foreseen in order to ensure that imposing administrative fines will be paid, by the offender. In the majority of cases, the competent tax authorities are involved (since they have the competency and the established mechanisms for fines collection) and in some other the administrative or court authorities are involved.

#### **4.9. Fate of collected money from administrative fines**

Money from administrative fines are generally directed to the regional or national budgets, not necessarily connected with environmental funds or the operation of the environmental competent authorities or to environmental projects and activities. In some cases, the total or part of money from fines, are directed to local or regional environmental authorities budget. In one case, money from administrative fines can be included to the cost of anti-pollution technology.

#### **4.10. Publicity of information on imposed administrative fines**

In general, there is not a regular mechanism for information dissemination on the imposed fines to the public. In some countries, this type of information is not possible to become available to the public, or in some others, information is available upon specific request. Only in few countries, information on imposing fines is publicly available on a regular basis.

In some countries, information on imposed fines is directly communicated to related judicial or administrative authorities.

#### **4.11. Appeal mechanism**

In all but one country, an appeal mechanism is available for offenders. The competent body for the appeal is either a hierarchically superior administrative authority or the administrative / criminal court of law. The appeal body usually has the power to preserve, repeal, reduce or increase the fine's amount.

# APPENDIX I

## PROJECT TERMS OF REFERENCE

| No | Name of project   |
|----|---|
|    | <b>Comparison of methodologies used for the administrative fine calculation</b> |

### 1. Scope

|   |  |
|---|--|
| <b>1.1. Background</b>                              | <p>In the regular processes of environmental inspections and audits, a significant aspect is the imposition of administrative sanctions, mainly in terms of a fine, where non-compliance is assured. Based on the already existing information, national competent authorities at the IMPEL countries, follow various approaches and practices for the calculation / determination of the amount of the administrative fines. In parallel, in various EU legislative acts the determination of penalties is foreseen, with the provision that these penalties shall be effective, proportionate and dissuasive.</p> <p>Additionally, in the recent Commission proposal for a new Directive for the environmental protection through the criminal law, the imposing of fines for legal persons is foreseen, on a three-step approach.</p> |
| <b>1.2. Link to MAWP and IMPEL's role and scope</b> | <p>Strategic Goal III - Development of Good Practices</p> <p>Strategic Goal V - Providing feedback to policy makers</p>  |
| <b>1.3. Objective (s)</b>                           | <p>To obtain information from IMPEL MS relating to the methodology, the procedure and the processes that is used for the calculation / determination of the fine which is imposed in case of non-compliance with the environmental legislation.</p>  |

|                        |   |
|------------------------|---|
| <b>1.4. Definition</b> | <p>The project consists of organising a coordinated input from IMPEL on the methodologies / practices that are used for the calculation of fines for penalties imposed. In particular IMPEL members will be invited to provide information on:</p> <ul style="list-style-type: none"> <li>• Is the fine used as a tool in the frame of administrative sanctions?</li> <li>• In which cases fines are imposed</li> <li>• How many steps are taken before fines are imposed and what other types of enforcement are used?</li> <li>• Which are the principles that are used for the calculation of the fine amount (e.g. the evaluation of the environmental damage in monetary terms, the restoration cost, the external environmental cost ....)</li> <li>• How the exact amount of fine is being calculated?</li> <li>• Which is the exact methodology that is being used?</li> </ul> <p>In order to obtain answers to the questions proposed above, the following approach is proposed.</p> <p>Firstly, a core team will be established comprising:</p> <ul style="list-style-type: none"> <li>• a representative of the European Commission,</li> <li>• a representative of Hellenic Environmental Inspectorate,</li> <li>• and around 10-12 additional members of IMPEL (to be identified).</li> </ul> <p>This core team would meet in Brussels in the first meeting (ideally October 2007) to discuss the project, review the information already available, identify the main additional data to pursue, and to elaborate a questionnaire consisting of a series of short, specific questions.</p> <p>The questionnaire would then be circulated to all IMPEL members via the IMPEL National Coordinators. Members of the core team would encourage and help the participating IMPEL members to reply the questionnaire over a specified time period (1 month).</p> <p>The information collected from the answered questionnaires, will be consolidated in a draft final report including a short summary section. The draft report as well as any individual contribution (from IMPEL MS) will be discussed at an anticipated meeting of IMPEL Cluster I in the spring of 2008 (possibly April).</p> <p>Following the outcome of the IMPEL Cluster I meeting (Spring 2008), the final report will be prepared and presented for adoption in the IMPEL Plenary (June 2008). The preparation of the final report will be supported by a second meeting of the project core team in Athens, just after the Cluster I meeting.</p> |
| <b>1.5. Product(s)</b> | <ul style="list-style-type: none"> <li>• Information on the various approaches / methodologies that are used for the determination of the amount of the administrative fine in case of non-compliance after a environmental inspection / audit</li> <li>• Consolidated report</li> </ul>  |

## 2. Structure of the project

|  |   |
|--|---|
| <b>2.1. Participants</b>                               | All IMPEL Members are invited to give input to the project. A wide participation is considered desirable to maximise the information exchange and the ability of the results to give a representative picture of practises/ methodologies that are used in EU/IMPEL-wide. |
| <b>2.2. Project team</b>                               | <ul style="list-style-type: none"> <li>• A core project team would be formed comprising the Commission, the Hellenic Environmental Inspectorate, and 10-12 additional members of IMPEL MS (to be identified).</li> </ul>  |
| <b>2.3. Manager Executor</b>                           | The project will be managed by Mr Ioannis Dermizakis (Head of Hellenic Environmental Inspectorate) and Mr George Chronopoulos.  |
| <b>2.4. Reporting arrangements</b>                     | The draft report will be discussed in an IMPEL cluster I meeting anticipated to take place in spring 2008. A final report will be submitted to the Plenary (Slovenia), for adoption.  |
| <b>2.5 Dissemination of results/main target groups</b> | The report will be put on the IMPEL website and disseminated to all the competent authorities in the Member States.   |

## 3. Resources required

|   |  |
|---|--|
| <b>3.1 Project costs</b>                  | <p>1 project meeting for the core team in Brussels – assume 12 participants; travel plus one day's subsistence estimated at €650 per person<br/>Total travel costs €7,800</p> <p>1 project meeting for the core team in Athens – assume 12 participants; travel plus one day's subsistence estimated at €650 per person<br/>Total travel costs €7,800</p> <p>Discussion of the information provided and draft report would be prepared in the context of an anticipated Cluster I meeting with no additional travel costs.</p> |
| <b>3.2. Fin. from Com.</b>                | € 12.000   |
| <b>3.3. Fin. from MS (and any other )</b> | Greece: € 3.600  |
| <b>3.4. Human from Com.</b>               | <p>Organising and hosting core team meeting in Brussels and Athens, working with core team to formulate and disseminate questions: 5 days</p> <p>Reviewing information received and drafting report: 3 days</p> <p>Attending Cluster I meeting and finalising report: 3 days</p>   |

#### 4. Quality review mechanisms

The quality of the report will be reviewed by the core team, by the Cluster I (where the draft report will be discussed).

#### 5. Legal base

|  |  |
|--|--|
| <b>5.1. Directive/Regulation/ Decision</b> | National wide legislation of EU MS, setting up the administrative system for the implementation of environmental inspections and audits and imposing administrative sanctions / fines for case of non compliance |
| <b>5.2. Article and description</b>        |  |
| <b>5.3 Link to the 6<sup>th</sup> EAP</b>  | More effective implementation and enforcement of environmental legislation is one of the priorities of the 6 <sup>th</sup> EAP..   |

#### 6. Project planning

|                                  |  |
|----------------------------------|--|
| <b>6.1. Approval</b>             | The draft ToR is presented for adoption at the Plenary Meeting in Berlin, May 2006   |
| <b>(6.2. Fin. Contributions)</b> |  |
| <b>6.3. Start</b>                | The project should start September 2007  |
| <b>6.4 Milestones</b>            | <p>1. core team meeting: October 2007</p> <p>2. Questionnaire to IMPEL participants: November 2007</p> <p>3. Replies from IMPEL participants, consolidation and drafting of report: February 2008</p> <p>4. Discussion in IMPEL cluster I: March 2008</p> <p>5. Core team meeting April 2008</p> |
| <b>6.5 Product</b>               | Final report May 2008  |
| <b>6.6 Adoption</b>              | IMPEL plenary in Slovenia (May-June) 2008  |

## APPENDIX II

### Participants at the project meetings

#### 1<sup>st</sup> meeting: Brussels, Belgium, Friday, 26-10-2007

| country | name                  | e-mail   | Tel / fax   | Institution / Postal address  |
|---------|-----------------------|--|---|---|
| NL      | Atze Dijkstra         | <a href="mailto:atze.dijkstra@minvrom.nl">atze.dijkstra@minvrom.nl</a>                           | Tel.00-31-703391222<br>fax: 00-31-703391299                 | Inspectorate of Housing, Spatial Planning en the Environment,<br>Rijnstraat 8, 2515 XP Den Haag, Netherlands                        |
| PL      | Stefania Banach       | <a href="mailto:banach@wios.lublin.pl">banach@wios.lublin.pl</a>                                 | tel: +48 81 718 62 22<br>fax:+48 81 718 62 55               | The Voivodship Inspectorate for Environmental Protection in<br>Lublin.Obywatelska, number 13, Postal code: 20-092 Lublin,<br>Poland |
| PT      | Joana Texugo de Sousa | <a href="mailto:jtexugo@igaot.pt">jtexugo@igaot.pt</a>   | tel: (+351)213215526<br>fax: (+351)213215562                | Environmental and Territorial Planning General Inspectorate<br>Rua de O Século, 63 1249-033 LISBOA                                  |
| UK      | Keith Froud           | <a href="mailto:Keith.froud@environment-agency.gov.uk">Keith.froud@environment-agency.gov.uk</a> | Tel: +44 (0)7776 482 743<br>Fax: + (0)1925 542105           | Environment Agency, Knutsford Road, Warrington, WA4<br>1HT, England   |
| BE      | Jean-Pierre Janssens  | <a href="mailto:jpj@ibgebim.be">jpj@ibgebim.be</a>   | tel: 02/775 75 01<br>fax: 02/775 75 05                      | Brussels Institute for the Management of the environment<br>guledelle 100 - 1200 Brussels Belgium                                   |
| DE      | Achim Halmschlag      | <a href="mailto:achim.halmschlag@bezreg-koeln.nrw.de">achim.halmschlag@bezreg-koeln.nrw.de</a>   | +49-241-457-409 or<br>+49-241-457-777<br>Fax+49-241-457-778 | Bezirksregierung Köln/Cologne, NorthRhine Westfalia,<br>Germany , c/o Bezirksregierung Köln, 50606 Köln Germany                     |
| LV      | Vilis Avotins         | <a href="mailto:vilis.avotins@vvd.gov.lv">vilis.avotins@vvd.gov.lv</a>                           | Tel +371 7084200<br>Fax +371 7084212                        | State Environmental service<br>Rupniecibas street 23, Riga, LV-1045, Latvia   |
| IE      | Raymont Cullinane     | <a href="mailto:R.Cullinane@epa.ie">R.Cullinane@epa.ie</a>                                       | Tel: 00353 53 9160600<br>Fax: 00353 53 9160699              | Office of Environmental Enforcement<br>Environmental Protection Agency, PO Box 3000 Johnstown<br>Castle Estate, Co Wexford, Ireland |
| RO      | Virgil Grecu          | <a href="mailto:g.virgil@gnm.ro">g.virgil@gnm.ro</a>   | Tel:+40749.064.425 or<br>Fax:+4021.326.89.80                | Bd. Unirii 78, Bl.J2, Sector 3, Bucharest, Romania  |
| GR      | George Chronopoulos   | <a href="mailto:g.chronopoulos@eyep.minenv.gr">g.chronopoulos@eyep.minenv.gr</a>                 | Tel:+30-210-8701902<br>Fax: +30-210- 8701883                | Greek Environmental Inspectorate, 1-3 Kifisias Ave., Athens<br>115 23 Greece  |
| GR      | Despoina Kolitsa      | <a href="mailto:d.kolitsa@eyep.minenv.gr">d.kolitsa@eyep.minenv.gr</a>                           | Tel:+30-210-8701903<br>Fax: +30-210- 8701883                | Greek Environmental Inspectorate, 1-3 Kifisias Ave., Athens<br>115 23 Greece  |

2<sup>nd</sup> meeting: Athens, Greece 17-18/3/2008

| country | name                            | e-mail   | Tel / fax   | Institution / Postal address   |
|---------|---------------------------------|--|---|--|
| NL      | mr. Atze Dijkstra               | atze.dijkstra@minvrom.nl   | phone00-31-703391222<br>fax: 00-31-703391299                    | Inspectorate of Housing, Spatial Planning en the Environment, Rijnstraat 8, 2515 XP<br>Den Haag, Netherlands         |
| UK      | Keith Froud                     | <a href="mailto:Keith.froud@environment-agency.gov.uk">Keith.froud@environment-agency.gov.uk</a> | Tel: +44 (0)7776 482 743<br>Fax: + (0)1925 542105               | Environment Agency, Richard Fairclough House, Knutsford Road, Warrington, WA4 1HG, England                           |
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## APPENDIX III

### 1. Belgium – Brussels region

#### **Determination of the amount of the administrative fine:**

The amount of the administrative fine is calculated on the basis of a guide of reference which taken different criteria's into account.

Those criteria are:

- the exceeding of the authorized noise decibels and the cost of the measurements
- the number of installations which are run without environmental permit
- the number of infractions on the authorized conditions of the environmental permit
- the method and the way of elimination of the waste hazardous or not
- exercise an activity without accreditation
- duration of the complaint
- the means of profit in case of non compliance with the legislation
- the administrative costs (PV – letters – sampling,...)
- repetition of the infraction
- a maximum amount of 125.000 EUR
- reduction if the person put himself an end at the infraction (-50%), if the infraction ended because of an imposed measure (-30%), if the person took some action to put an end on the infraction but it is not enough (-10%).

There is a specified way of calculation of the amount of the fine for the noise of airplanes, the non elimination of “transformer with oil containing PCBs” and for not being in conformity with the law for gas oil stations.

Is also taken into account beside the guide of reference, de specificity of the case, the evolution of the infraction and the defence of the person when there is a hearing or a written defence.

## 2. Greece, Greek Environmental Inspectorate – Methodology for the calculation of the administrative fine

Greek Environmental Inspectorate has developed an analytical table of coefficients (weighting factors) for each type of violation (to environmental means: solid wastes – waste water – air emissions) for each type of process that results on pollution:

(Licensing – monitoring – antipollution technology – proper operation)

| TYPE OF VIOLATION                | WEIGHTING COEFFICIENT OF VIOLATION IN RELATION WITH TYPE AND QUANTITY |     |        |     |     |     |             |     |        |     |     |     |               |     |        |     |     |     |
|----------------------------------|---|-----|--------|-----|-----|-----|-------------|-----|--------|-----|-----|-----|---------------|-----|--------|-----|-----|-----|
|                                  | WASTE WATER   |     |        |     |     |     | SOLID WASTE |     |        |     |     |     | AIR EMISSIONS |     |        |     |     |     |
|                                  | HIGH  |     | MEDIUM |     | LOW |     | HIGH        |     | MEDIUM |     | LOW |     | HIGH          |     | MEDIUM |     | LOW |     |
| QUANTITY                         | H   | NH  | H      | NH  | H   | NH  | H           | NH  | H      | NH  | H   | NH  | H             | NH  | H      | NH  | H   | NH  |
| <b>LISENCING</b>                 | 4.2   | 2.8 | 2.1    | 1.4 | 1.6 | 1.1 | 4.2         | 2.8 | 2.1    | 1.4 | 1.6 | 1.1 | 4.2           | 2.8 | 2.1    | 1.4 | 1.6 | 1.1 |
| <b>ANTI-POLLUTION TECHNOLOGY</b> | 6.3   | 4.2 | 3.2    | 2.1 | 2.4 | 1.6 | 6.3         | 4.2 | 3.2    | 2.1 | 2.4 | 1.6 | 6.3           | 4.2 | 3.2    | 2.1 | 2.4 | 1.6 |
| <b>MONITORING</b>                | 2.1   | 1.4 | 1.1    | 0.7 | 0.8 | 0.5 | 2.1         | 1.4 | 1.1    | 0.7 | 0.8 | 0.5 | 2.1           | 1.4 | 1.1    | 0.7 | 0.8 | 0.5 |
| <b>NORMAL OPERATION</b>          | 6.3   | 4.2 | 3.2    | 2.1 | 2.4 | 1.6 | 6.3         | 4.2 | 3.2    | 2.1 | 2.4 | 1.6 | 6.3           | 4.2 | 3.2    | 2.1 | 2.4 | 1.6 |

H: hazardous. NH: non-hazardous

For each one of the certified violations of environmental legislation or terms of the permit(s), the appropriate coefficient (weighting factor) is selected from the table above. The sum of all coefficients for all violations produces the final coefficient. This final coefficient is multiplied with the base value (see below).

Additionally, the set of following weighting factors are also applied, in case-specific base (historical background – cooperation – type of area):

| Previous certified environmental violations | Weighting factor | Type of area of activity / installation | Weighting factor | Degree of cooperation during the inspection procedure | Weighting factor |
|---|------------------|---|------------------|---|------------------|
| <i>Without previous violation</i>           | <i>0.9</i>       | <i>Industrial zone / area</i>           | <i>0.9</i>       | <i>Good</i>   | <i>0.9</i>       |
| <i>1 case</i>                               | <i>1</i>         | <i>Other (e.g. urban)</i>               | <i>1</i>         | <i>Moderate</i>                                       | <i>1</i>         |
| <i>More than 1</i>                          | <i>1.1</i>       | <i>Designated area</i>                  | <i>1.1</i>       | <i>Bad</i>  | <i>1.1</i>       |

For each one of the inspected installations, the base value is determined based on the classification of the following table (valid for all type of activities / installation except of the specific cases which presented into the next tables).

| Activity / installation category / groups | Base value (Euros) |
|---|--------------------|
| <i>Group 1</i>                            | <i>40.000</i>      |
| Group 2                                   | <i>20.000</i>      |
| Group 3                                   | <i>10.000</i>      |
| Group 4                                   | <i>5.000</i>       |
| Group 5                                   | <i>1.000</i>       |

**Base values for specific cases**

| <b>Hotels</b>                                  |         | <b>Mining activities</b>                      |         |
|--|---------|---|---------|
| Nr of beds                                     | group   | Area (103 sq.m)                               | group   |
| <i>&gt;1000</i>                                | Group 1 | <i>&gt;1000</i>                               | Group 1 |
| <i>501-1000</i>                                | Group 2 | <i>501-1000</i>                               | Group 2 |
| <i>301-500</i>                                 | Group 3 | <i>201-500</i>                                | Group 3 |
| <i>101-300</i>                                 | Group 4 | <i>101-200</i>                                | Group 4 |
| <i>50-100</i>                                  | Group 5 | <i>20-100</i>                                 | Group 5 |
| <b>Installations for waste water treatment</b> |         | <b>Controlled and un-controlled landfills</b> |         |
| Equivalent population                          | group   | Population concerned                          | group   |
| <i>&gt;1000000</i>                             | Group 1 | <i>&gt;200000</i>                             | Group 1 |
| <i>500000-1000000</i>                          | Group 2 | <i>100000-200000</i>                          | Group 2 |
| <i>100000-500000</i>                           | Group 3 | <i>50000-100000</i>                           | Group 3 |
| <i>10000-100000</i>                            | Group 4 | <i>15000-50000</i>                            | Group 4 |
| <i>&lt;10000</i>                               | Group 5 | <i>&lt;15000</i>                              | Group 5 |

The classification of installation/ activity in each group is being made according to its magnitude (in conjunction with licensing classification)

**The product of the multiplication provides the fine amount.**