Non-criminal measures in AC – Study for DG Environment A3

REGULATION No 2037/2000 of 1 February 1993 of 29 June 2000 on substances that deplete the ozone layer

Annex I
I. Background and Approach

The European Commission, in its pursuit of an adequate environmental governance framework, is interested in gathering information concerning the enforcement responses to environmental violations in the Acceding Countries, and the extent to which administrative enforcement measures are applied. Thus, it issued a tender to develop a study on "Measures other than criminal ones in cases where environmental Community law has not been respected in a few candidate countries". In December 2003 the contract was awarded to kancelaria Jendroska Jerzmanski Bar i Wspólnicy. Prawo gospodarcze i ochrony środowiska (Jendroska Jerzmanski Bar & Partners. Environmental Lawyers, hereinafter Kancelaria) on the basis of the proposal submitted jointly by Kancelaria and Environmental Management and Law Association (hereinafter EMLA). The project team includes also Milieu Ltd and the national experts from the countries covered by the study.

The European Commission has already developed one study concerning criminal sanctions in Acceding Countries and two studies on criminal sanction in Member States.

Currently there is another study on "Measures other than criminal ones in cases where environmental Community law has not been respected in the Member States" run in parallel to our study. One of our team members - Milieu Ltd - is involved in the implementation of that study as a consortium leader. There is an assumption to co-ordinate both studies in order to ensure they are comparable.

These guidelines are developed as a joint effort of the contractors for both studies on non-criminal penalties in Acceding Countries and Member States.

Our study builds on previous study commissioned by the EU in the fields of criminal liability and will thus complement the European Commission vision concerning the degree of adequate enforcement of the environmental *acquis communautaire* at national level. The study will not only provide the European Commission with information, analysis and evaluation on the different national enforcement measures other than criminal ones, but may also serve, together with previous study, as a tool to justify application of criminal law at Community level if its deterrent effectiveness is justified.

II. Objectives

The aim of the project, according to DG ENV’s Terms of reference (ToR), which each of you has already received as an Annex to your contract, is to provide the Commission with legal information on measures other than criminal ones, with a particular focus in administrative enforcement measures, in cases where environmental Community law has not been respected in the Acceding Countries.

The current study will focus on 11 Directives and 3 Regulations dealing with areas of environmental protection where sanctions appear to be particularly appropriate, because of inherent economic incentives for violations and/or because of histories of repeated violations in the present Member States. These instruments provide for different measures to ensure adequate protection of the environment, which may explicitly require in certain cases a clear obligation to public authorities to establish administrative or even criminal sanctions at national level. They include as follows:

REGULATION No 2037/2000 of 1 February 1993 of 29 June 2000 on substances that deplete the ozone layer


The study will also provide National Reports relating to the non-criminal enforcement measures in Accession Countries with particular analysis of the administrative measures. These National Reports will aim at answering the questions asked by the Commission in the ToR, and will be structured accordingly. They will help to complete the picture of all the measures set forth at national level to enforce environmental Community law as well as to evaluate the level of protection they provide.

Since it has been said that administrative enforcement measures may have a greater deterrent effect than criminal sanctions, the evaluation of the effectiveness of the administrative measures compared to the criminal sanctions will be specifically analysed in a separate section of the National Reports.

III. Methodology & Timing

The methodology below aims to provide uniform guidelines for the national reports. This methodology will be structured in order to ensure full coverage of the two main tasks included in the ToR to the study:

1) Completion of ToCs for analysis of administrative law provisions giving effect to the 11 Directives and 3 Regulations covered by the study and their sanctions (guidance provided below)

2) Elaboration of National Reports on non-criminal measures:

   a) Overview of non criminal measures, with a particular focus on administrative enforcement measures, and effective enforcement of such measures by country (further guidance below)

   b) Analysis of effectiveness of non-criminal measures in relation to criminal measures (further guidance below).

The work of the national experts should start with the completion of the Tables of Concordance (ToCs) for each of the EU legal texts targeted in the study. We are asking each of you to initially fill out two pilot ToCs for the Waste Framework Directive and the Hazardous Waste Directive. The filled tables should be delivered before the workshop by Friday, 5 March 2004.

The remaining ToCs for all other targeted EU acts covered by this study will be distributed after the workshop.

Completion of the first nine ToCs (two revised - if needed - pilot plus seven other ToCs) and submission of a first draft of national reports on non-criminal measures is scheduled for Monday, 19 April 2004. For the sake of comparability of your findings and to allow Kancelaria and EMLA to begin the drafting of the Interim Report, we ask each of you to submit the same information. For the interim report the national experts should submit the following 9 ToCs:

Waste:
Non-criminal measures in AC – Study for DG Environment A3

REGULATION No 2037/2000 of 1 February 1993 of 29 June 2000 on substances that deplete the ozone layer


Nature Protection:


Others:


In addition to the above-mentioned ToCs, you should also submit a draft of sections 1.1 to 1.4 of the National Reports. The sections on effectiveness and conclusions of the national reports will be submitted for the second deliverables deadline. National experts are nevertheless encouraged to preliminarily gather some statistical information and to inform the management team for the interim report about the availability of such information and the way it is processed nationally (e.g., by sectors). Interviews should also take place before the summer to avoid the lack of responses that may be linked to the holiday period.

We will then do a quality check and get back to you with queries as appropriate. As per our contract with DG ENV, we will submit an Interim Report, including the materials delivered by the national experts to DG ENV. The Interim Report will be subject to DG ENV comments; therefore, further refinement of drafted materials should be expected.

In May and June, national experts will continue analysis of the 5 remaining ToCs related to industry:


In addition, during the above period national experts will finalise their drafting of National Reports on non-criminal measures. You may finalise the sections already submitted and focus on the sections on effectiveness and conclusions. A final version of all ToCs and national reports should be delivered on 30 June 2004. After the reception of these reports and based on their findings, we will draft a summary report. As per our contract with DG ENV, we will submit a Draft Study to DG ENV. We will forward this draft to each of you at the same time, so that you could make comments.

In September 2004, we will hold a workshop in Brussels to present our draft study, national findings as well as overall conclusions, to DG ENV for their comment. This workshop will gather the entire team together with selected Commission officials. The final outcome of the workshop will be the submission of the Final Study on Measures other than criminal ones in cases where environmental community law has not been respected in a few candidate countries to DG ENV.

Please note that our management team will provide continuous support throughout the life of the project. You should not hesitate to contact us whenever specific questions may arise.
Non-criminal measures in AC – Study for DG Environment A3

REGULATION No 2037/2000 of 1 February 1993 of 29 June 2000 on substances that deplete the ozone layer

The following table illustrates our work plan until completion of the study:

<table>
<thead>
<tr>
<th>Date</th>
<th>Activity</th>
<th>National experts</th>
<th>Kancelaria (JJB) + EMLA + Milieu</th>
<th>DG ENV</th>
</tr>
</thead>
<tbody>
<tr>
<td>05.03.2004</td>
<td>Submission of pilot ToCs by the national experts</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.03.2004 (Mon)</td>
<td>Workshop in Brussels (discussion on methodology and ToCs format) (date and venue to be confirmed)</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>10 days after the workshop</td>
<td>Submission of 9 ToCs formats, revised guidelines and revised time schedule (if needed) to the national experts</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>by 19.04.2004</td>
<td>Submission of first 9 ToCs and draft national reports</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20.04-05.05.2004</td>
<td>Consultation with the national experts if needed</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>by 30.05.2004</td>
<td>Preparation of the interim report</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>31.05.2004</td>
<td><strong>Delivering of the interim report to the DG ENV</strong></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>by 30.06.2004</td>
<td>Submission of the 5 remaining ToCs and revised national reports</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>by 11.08.2004</td>
<td>Finalizing of the study, consultations with the national experts</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td><strong>12.08.2004</strong></td>
<td><strong>Delivering of the draft study to DG ENV</strong></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>10.09.2004 (Fri)</td>
<td>Workshop in Brussels to present the final report</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>by 27.09.2004</td>
<td>Integration of comments from DG ENV, consultation with the national experts</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td><strong>30.09.2004</strong></td>
<td><strong>Delivering of the final study to the DG ENV</strong></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

IV. Methodology for national experts

IV. 1. Tables of Concordance to analyse non criminal penalties in place for those obligations set by the targeted EU acquis

We have prepared a total of 14 Tables of Concordance (ToC) for the EU legal texts covered by the project. These ToCs will enable us, together with the National Reports, to undertake a comparative analysis for all countries covered by the study at a later stage of the project. As agreed during the inception meeting with DG ENV, the ToCs will provide information only concerning the administrative sanctions set forth at national level, whether purely administrative or administrative criminal.

The top of each ToC provides a box indicating the country for which this information is provided, the name of the person(s) filling out the ToC, and the date.

1.1. Introduction to the content of each TOC  (max.1- 2 pages)
REGULATION No 2037/2000 of 1 February 1993 of 29 June 2000 on substances that deplete the ozone layer

In order to facilitate the reading and comprehension of the ToCs’ contents, each ToC will start with an introductory page describing the transposing instrument and the particularities that can be found for the specific legal act.

This introduction should cover the following items:

- Introductory paragraph: it should be very brief and aiming at presenting the most important legislation and some peculiarities (e.g., the same legal act applies for both hazardous and non-hazardous waste). Please, avoid long historical backgrounds

- Transposing legislation:

The summary should begin with a list of relevant transposing legislation for the targeted EU legal act. The first legal act to be cited should be the most relevant instruments transposing the targeted Directive. The national instrument should be cited with its full title in the national language and its full legal citation. Each national instrument should be given an abbreviation to be used when filling in the ToCs as well as an unofficial English translation of its title (included at least the key words), e.g., Ustawa z dnia 27 kwietnia 2001 r. o odpadach, Dz. U. Nr 62, poz. 628 ze zm. (Act on Waste of 27 April 2001, O.J. No. 62, item 628 as amended), – hereinafter AW

Please note that in the case of Regulations, in principle there will be no transposing instrument but there can be relevant legislation to give force to the legal act.

There may be other national legislation that may be related to or incidentally transposing the Directive. In this case please list them in chronological order, when possible, from the most recent to the oldest. If there is no transposing provision in national law, please indicate that the EU act has not been yet transposed.

- Administrative/Quasi-criminal measures:

Measures to be included into the ToCs are to be of administrative or administrative criminal (quasi-penal) nature.

After listing the relevant information there will be a section aiming at indicating the measures that can be applied for the implementation of the relevant legal act.

If possible and appropriate, please classify them.

For example:

1. Main sanction/measure:
   - Fine from …… to …………… EUR
   - Closure of establishment
   - Revocation of permit…

2. Accessory measures:
   - Obligation of restoration

3. Provisional measures…

4. Coercive measures…

Please note that the above classification is only an example - i.e. should be followed by national experts if they consider it appropriate for their legal systems. In any case the classification applied by the expert shall be linked to (explained in) the national report. (The classification of measures is to be provided for under point 1.2.3 whereas the authorities competent for imposing them are to be described under 1.2.5).

If the measures cannot be classified, please only list them.
REGULATION No 2037/2000 of 1 February 1993 of 29 June 2000 on substances that deplete the ozone layer

Indicate if they can be accumulated, the existence of catch-all provisions, or any other relevant aspect concerning measures.

Terminology used: based on the previous study on criminal sanctions, there seem to be two categories of sanctions: administrative and/or quasi-criminal. We have decided to include in the ToCs the nature of the sanction (see below, at 1.2). Thus, you will have to justify here why you have decided to qualify a sanction under a specific category.

- Remarks:

You should include your specific remarks, as needed, for peculiarities that may arise and will need to be taken into account to fully understand the contents of the information included in the ToCs. For example (please treat the bullets below as possible examples only):

- Cases where there are no implementing measures,
- National measures that have been adopted but not yet enforced.
- Possible conflict of competence among different competent authorities.
- Explanation of legislation and/or special articles, e.g., the legislation on waste is based on the IPPC system;
- Anything that needs to be highlighted, e.g., exclusion of responsibility that may apply for specific cases, special regime for responsibility that may apply.

- Abbreviations

Finally you should include a list with all the abbreviations that are going to be used when filling in the ToCs, concerning both the sanctions and other terms, e.g.,:

P: Imprisonment (will be the case for some countries with administrative criminal law)
F: Fine. Please note that when referring to the total amount for a fine, this should be given in the national currency and its equivalent in EUR.
O: Other types of enforcement measures (e.g., confiscation, public works, disqualification, revocation of certain rights, publication of a judgement/decision, restoration, etc.)
CA: competent authority
HW: hazardous waste

1.2. Content of ToCs

The ToC includes the following columns:

<table>
<thead>
<tr>
<th>Article</th>
<th>Content (if necessary simplified) of EU Obligation</th>
<th>Transposing provision in national law (give relevant law or regulation &amp; no. of article)</th>
<th>Legal description of situations in which enforcement measures can be taken by competent authority</th>
<th>Specific provision setting admteve/quasi-criminal enforcement measure (give relevant law/reg. &amp; no. of article)</th>
<th>Nature of the enforcement measure (administrative, quasi-penal)</th>
<th>Description of the enforcement measure</th>
</tr>
</thead>
</table>

1. and 2. column

Article and EU Obligation: These columns list the legal provisions in the respective Directive or Regulation that lead to obligations on natural and/or legal persons. They are provided to try to link non-criminal measures laid down in national law back to a particular EU obligation, in order to be able to compare the measures in the various countries for violations of that provision. In order to facilitate the tasks of the national experts such obligations have been

1) simplified by summarising the contents of the article concerned;
REGULATION No 2037/2000 of 1 February 1993 of 29 June 2000 on substances that deplete the ozone layer

2) shaded in those cases of discretionary provisions, which would only need to be filled out if the country has decided to cover such obligation under national law;

We decided that, due to the differences among the countries, it was more appropriate to include almost all the articles of the Directive or Regulation, even if all of them may not be relevant for the study. In many countries there are catch-all provisions and almost all articles will have an enforcement measure. This broader approach also helps to have an overview of the articles of the Directive or Regulation that are going to be most commonly enforced through different administrative measures.

At the end of the rows for the EU obligations, an additional row has been added to allow you to list any additional relevant measures under national law, e.g., more stringent measures and their sanctions.

Since we have simplified the EU provisions, please read the text of the Directive through to get an overview of the EU law. National experts should consult consolidated pdf / EUR-LEX files when looking for a particular Directive/Regulation.

**Column 3.**

**Transposing provision in national law** (give relevant law or regulation & no. of article): This column provides a place to enter the reference of the relevant provision from national law that has transposed the EU requirement. Please indicate the relevant article of the law and the abbreviation or legal citation of the national instruments as indicated in the introduction to the ToC.

If there is more than one national instrument transposing the relevant EU obligation, please list them in order of relevance. If it is not possible to assess which instrument is more relevant, please list them in order of time - from the most recent to the oldest (in this case a relevant explanation (information) should be added in the footnote).

As mentioned before, not all the articles of the Directive or Regulation are relevant for the study. For this reason you will have to indicate the transposing provision in national law only in those cases where the EU obligation will have a correspondent enforcement measure at the national level.

This column has been provisionally filled in by Kancelaria or EMLA. Please note that the data provided there may be out-dated or incomplete, since they are based on the resources we had. Therefore please verify them in order to update or modify them if needed.

**Column 4.**

**Legal description of situations in which enforcement measures can be taken by competent authorities:** This column provides a place to enter the full text in English of the national provision describing the situation in which an enforcement measure can be taken by the competent authorities.

If the provision is too complicated, long and/or in different provisions, please summarise the provision/s in order to provide an understandable legal description of the situation in which the enforcement measure can be taken: e.g., failure to comply with permit requirements.

In cases where, even if summarised, the situation is not properly described and/or understandable, please include the translation in English of the full text of the provision as a note at the end of the table.

If there is no specific provision in national legislation, leave this column in blank.

If there is a legal act setting administrative sanctions that has already been adopted but will be enforced in some months, you should include it in the ToC. If the legal act has not yet been adopted, but is in its final stages (going through different readings in the Parliament) you should include it in the study and the summary.

**Column 5.**

**Specific provision setting admin/ quasi-criminal enforcement measure** (give relevant law/reg. & no. of article):
REGULATION No 2037/2000 of 1 February 1993 of 29 June 2000 on substances that deplete the ozone layer

This column is to be used to indicate which provision in national law specifies an administrative/quasi-criminal measure/s for the corresponding EU obligation. Please provide only the reference of the specific article of the national instrument related to the specific obligation enshrined in the concrete article of the EU legal act. Again, please provide the abbreviation or legal citation, as appropriate. If there are more than one piece of legislation setting the administrative/quasi-criminal measure, please list them in order of relevance. If it is not possible to assess which measure is more relevant, please list them from that provided by the most recent legal instrument to that provided by the oldest instrument (in order of time; in this case a relevant explanation (information) should be added in the footnote).

In case where a sanction set in the primary legislation is further developed in a secondary legislation (e.g. a fine provided for in a Parliamentary Act and its rate - in an executive regulation), both primary and secondary legislation should be indicated in the 5. column. At the same time relevant explanation of the role of primary and secondary legislation shall be given in the introductory part of ToCs (under “Sanctions”).

**Column 6.**

**Nature of the enforcement measure:** Please indicate in this column whether the measure is administrative or quasi-criminal according to the justification included in the introduction to the ToC.

**Column 7.**

**Description of the enforcement measure established:**

This column provides a place to enter the administrative/quasi-criminal enforcement measure set for a particular offence/situation. Measures should be listed and detailed under the following categories:

- **P:** Imprisonment (will be the case for some countries with administrative criminal law)
- **F:** Fine. Please note that when referring to the total amount for a fine, this should be detailed in the country’s national currency with its equivalent in EUR.
- **O:** Others (e.g., confiscation, public works, disqualification, revocation of certain rights, publication of a judgement/decision, restoration, etc.)

Please use bold to indicate the duration of imprisonment (one year up to five years), the amount of the fine (500 EUR), the key word (confiscation) indicating the measure and the period of time (1 up to 10 years).

Please indicate whether the enforcement measures apply to natural or legal persons, whenever the penalties vary for one or the other case.

If there are cases where alternative measures exist, please include reference to and/or if imprisonment, and/or fine, and/or others.

An example is provided here below:

- **F:** natural person: 500 -3750 EUR
- **F:** legal person: 2500 – 45000 EUR

and/or

- **O:** Closure of establishment from 1 up to 5 years

and

- **O:** Accessory measures

  *(In the case of accessory measures, if the accessory measures are applicable for all cases, then please list them in the introductory part of the table and just mention the existence of accessory measures in the body of the ToC (as per example above). If it is an accessory measure specific for a particular sanction/measure, then add it to the table e.g.)*

- **F:** natural person: 500 -3750 EUR
IV. 2. National Reports on non-criminal measures

Each national expert should draft a comprehensive analysis of the existing non-criminal measures in place in his/her country to ensure enforcement of environmental legislation and/or otherwise to protect the environment. Please try to be as clear as possible and to avoid lengthy and academic discussions of legal issues.

We provide here below some concrete issues that will need to be covered as a minimum for each section of the national reports. Please note that the headings and numbering covered in the following pages correspond to those of the table of contents for Volume II: National Reports on Non-Criminal Measures (See Annex).

1.1 Types of enforcement systems and relationship among different types of environmental liability (3 pages max)

This section should include an overview of the enforcement system and the type of sanctions that can be found in cases where Community environmental legislation has not been respected, such as administrative, administrative criminal, civil, criminal. It will also include an overview of the relation between administrative/criminal and civil liability (including possibility of accumulation of administrative, administrative criminal, criminal and civil sanctions/proceedings in the same case).

In order to ensure that one of the main objectives of the study, i.e., analyse interaction between the administrative, criminal and civil systems we included a case-study - see point 1.5 below.

1.2 Administrative enforcement measures (10-15 pages max)

As a general comment, please note that reference to courts’ rulings in certain individual cases should be made throughout the whole report, as a way to illustrate the conditions under which measures are applied and to delineate the powers of public authorities. The reference can be also made to an administrative decision when the expert considers it especially relevant for the issue dealt with.

1.2.1 Introduction

Please provide a short overview of the principal characteristics of the administrative law regime (i.e., main source of administrative law, such as an administrative code, competent authorities, indicate whether there is a specific administrative jurisdiction). In particular:

- Indicate whether the sanctions are mainly included in a code or in different instruments. This part is meant to deal first of all with the “substantial” measures (i.e. not with, for example, the coercive ones; the existence of the latter may be however here briefly mentioned). Further classification of sanction is to be included into section 1.2.3.
- General principles of the administrative law enforcement e.g. gradual enforcement, fair, equitable or proportional measures or the finality principle. During the workshop the asked the questions about the meaning of the above named principles. It was agreed that the experts should describe the principles existing and recognizing in their legal systems.
- Competent authorities and police powers of the administration. Please, include as well those persons and bodies empowered to carry out control and to impose sanctions whether it can be the administrative authority or body (e.g. environmental inspectors, sanitary inspectors) or a sanction has to be imposed by a court only. Please note that there is no need to analyse in-depth the monitoring-compliance system,
since the aim of the study is to examine measures applied in cases of non-compliance with the environmental law, and not the whole system of monitoring and control. However, please describe briefly the authorities/bodies rights.

- Nature of the sanctions (purely administrative, administrative criminal (quasi-criminal), others?) and justify why this qualification was chosen.

1.2.2 Classification and description of the situations in which administrative enforcement measures can be taken

- Classification of administrative environmental offences/situations in which an administrative enforcement measures can be taken. This classification could be based on seriousness, abstraction of the environmental good or component protected the person able to commit the offence, such as entrepreneurs only or everyone etc.). Please indicate whether endangerment can be abstract or concrete. If concrete please indicate if only potential endangerment is needed. An other way of differentiation could be among the offences directly infringing environmental protection goals an offences against the order and discipline of administrative procedures, especially offences in connection with several reporting, self-measuring or similar responsibilities.

1.2.3 Classification and description of administrative enforcement measures

- General classification of administrative measures, including coercive and provisional (interim) measures, such as order of immediate enforceability.
- Specific types of administrative measures for breaches of environmental law (i.e., fine, closure of establishment or limitation of its activity, reparation of damage/prevention of damage, suspension of right, revocation/limitation of a permit, or revision of its conditions). Please note that although the study shall present “enforcement measures” which have broader meaning than “sanction”, a measure applied must be connected with an infringement of environmental law to be considered as an “enforcement” one (the infringement is a precondition). This means that measures such as, for example, order the operator to carry out additional measurements of emissions level or a so-called environmental audit in case where the authority suspects only an infringement shall not be considered as enforcement measures.

- Possibility of accumulation of the same measure in time (administrative measures, as main rule, can be accumulated in time).

1.2.4 Summary of administrative enforcement measures by sectors for targeted EU legal acts

Summary of the sanctions included in the ToCs by sectors, where appropriate. Please follow the order of sectors provided below:

(2) Nature protection (which includes Directive 79/409, Directive 92/43, Regulation 338/97)
(3) Industrial pollution (which includes Directive 96/82, Directive 99/13, Directive 88/609)
(4) Chemicals and Biotechnology (which includes Regulation 2037/2000, Directive 90/219)
(5) Water (which includes Directive 76/464 and Directive 83/513)

Please note that this distribution of sectors is only a proposal, as it will be finally decided during the workshop.
1.2.5 Overview of the administrative and administrative judicial framework and procedure

This section is further divided into two subsections: 1.2.5.1 Overview of the administrative framework and procedure and 1.2.5.2 Overview of the administrative judicial framework and procedure, but in case when in a country would be more reasonably to describe both stages (administrative and administrative judicial) jointly, instead to divide them (e.g. because they are close connected with each other), please do so.

The idea is to have a general overview on how the administrative and administrative judicial procedure works, not to do an in-depth theoretical analysis of the administrative procedural law and practice. It should be kept in mind that as the Commission may publish the study at a later stage in its webpage, national reports must be easy to read and understand by any citizen without a specific legal background.

The points introduced in the guidelines concerning persons empowered to initiate the procedure are only illustrative examples of different aspects that can be analysed, but they do not constitute issues that would necessarily have to be extensively developed by the national experts.

1.2.5.1. Overview of the administrative framework and procedure

- Principles of administrative procedures
- Stages of procedure (first, second administrative instance…)
- Parties to the procedure
- Persons and bodies empowered to initiate/carry out the administrative procedures (on particular stages of proceedings, including authorities competent to carry impose coercive measures). Note that not all the points suggested below have to be dealt unless relevant for your country. The goal is to know who can initiate the procedure and before which competent administrative authorities at first and second instance and/or who and under what circumstances is entitled to challenge the decision:
  - person concerned,
  - *Actio popularis*,
  - the role of individuals and NGOs in the denunciation of breaches of environmental law and their participation in the proceedings
  - the role of the Ombudsman and - if appropriate - others authorities, such as public prosecutors
  - the competent administrative/other bodies
- Costs of the procedure (to be borne by a client)
- Length of the procedure in every stages
- Conditions for the applicability of interim measures and extraordinary execution of the decision when an authority shall not wait until the decision becomes final (an order of immediate enforceability).

1.2.5.2. Overview of the administrative judicial framework and procedure

- Principles of administrative judicial procedures
- Stages of procedure (first, second instance…)
- Parties to the procedure
- Persons and bodies empowered to initiate/carry out the administrative judicial procedures. Note that not all the points suggested below have to be dealt unless relevant for your country. The goal is to know who can initiate the procedure and before which competent courts at first and second instance and/or who and under what circumstances is entitled to appeal:
  - person concerned,
  - *Actio popularis*,
  - the role of individuals and NGOs in the denunciation of breaches of environmental law and their participation in the proceedings
  - the role of the Ombudsman
  - the competent courts/judges
- Costs of the procedure (to be borne by a client)
- Length of the procedure
- Conditions for the applicability of interim measures
- Power of courts hearing appeals from the decisions/verdicts which imposed sanctions - cassation function (cancellation of the decision) or merit function.
1.3 Administrative criminal measures

For those countries having an administrative criminal law regime, a specific section entitled “Administrative criminal measures” should be added, which content should be similar to those of the section related to administrative liability.

Where some parts of this sections overlap with the parts of section 1.2, the relevant reference will be made.

1.4 Case-study

As mentioned before, one of the aims of the study is to explain the interaction among the different systems (administrative, civil and criminal) in cases where environmental Community law has not been respected. The best way to easily illustrate this interaction seems to be through a case-study. The standard case study we propose to be analysed by all experts is as follows:

Case-study:
Company A produces chemical products at a facility situated within the territory of local authority X. Company A owns the premises on which the facility is located. The activity of the facility is subject to a permit granted by local authority X. Hazardous waste is a by-product of the industrial activity. The permit for the facility requires that the hazardous waste must be disposed of without harm to the environment. It allows Company A to use an on-site landfill for depositing this hazardous waste.

However, an unexpected increase in demand for its product led to an increase in production and more hazardous waste, which filled up the landfill. In an emergency move and without getting permission from local authority X, Company A drilled a deep hole in the ground of its premises in order to deposit the hazardous waste. The hazardous waste deposited underground has now contaminated the underlying groundwater and this contamination has spread to the property of a neighbouring farm, polluting the farm’s well. The contamination is now spreading towards the neighbouring river.

Objective of the case-study:
Explain the different actions that can be taken against the company (natural/legal person) regarding the applicable provisions. More precisely, explain the:

- Administrative measures that could be taken by the competent authorities
- Actions before civil, administrative and/or criminal jurisdiction. You should indicate:
  - Interaction among the jurisdiction: if the action is exclusive before one jurisdiction or they can be cumulated; and
  - Conditions to bring the different actions before each jurisdiction.
- Special attention should be paid to actions that private persons could bring before the different jurisdictions. For example:
  - Actions against the administration to question the conditions under which the permit was granted to the company or action against the omission to act of the administration.
  - Actions supporting the administration against the company, such as private prosecution before the criminal jurisdiction parallel to the administrative measures taken by the competent authority.
  - Actions against the perpetrator(s) before civil court
- Please also compare, as far as possible, the effectiveness of the different actions.

1.5 Effectiveness of non-criminal measures in relation to criminal measures (5 pages max.)

One of the specific tasks of the study concerns the effectiveness of measures other than criminal ones in cases where environmental law has not been respected in relation to criminal measures. The analysis of the effectiveness is extremely important as it is meant to contribute to the final conclusion of the different studies carried out by DG ENV concerning enforcement of environmental Community law in the Acceding Countries.

This section will be the least legal but the most important part of the study. The purpose of this analysis is to complete the conclusions reached in the previous criminal penalties study. According to that study, although
REGULATION No 2037/2000 of 1 February 1993 of 29 June 2000 on substances that deplete the ozone layer

criminal measures exist, their application is very limited. Indeed the argument often made is that administrative sanctions are more appropriate and effective than criminal ones for environmental cases. The present study on non-criminal measures intends to complete the conclusions of that previous study and to determine whether or not administrative sanctions are indeed more effective in cases where environmental law has been breached.

To analyse effectiveness, we will need to use a common criterion as a point of reference. We consider that effectiveness should be linked to the capacity of measures other than criminal ones to serve as a deterrent, as the main objective is to ensure compliance with national and community law.

1.5.1 Comparative statistics on administrative, quasi-criminal and criminal procedures

The content of this section will depend upon the amount of statistical data that could be found at national level. It is envisaged that interviews with relevant officials from the national administration may be needed for this particular section. Therefore, we will provide you with official letters from the European Commission, as needed.

The initial idea is that the available information should be presented in a table for each country as follows:

<table>
<thead>
<tr>
<th></th>
<th>No. of Administrative Cases</th>
<th>Average length of proceeding</th>
<th>Most common sanction &amp; average</th>
<th>No. of Criminal cases</th>
<th>Average length of proceeding</th>
<th>Most common penalty &amp; average</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No of proceedings</td>
<td>No of cases finalised with sanctions</td>
<td></td>
<td>No of prosecutions</td>
<td>No of convictions</td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For countries having an administrative criminal law system, another part of four columns will be added to include statistical data on administrative criminal provisions.

This table could also be completed disaggregating the information by sectors, i.e., waste, nature, as per section 1.2.4. This possibility will depend upon the statistical information we will be able to collect.

It was agreed during the workshop that statistics concerning non-criminal measures will cover time period 1999 - 2003. In order to ensure that these statistics data may be compared to the data gathered within the previous study on criminal sanctions (which covered time period 1999 - 2002), statistics on criminal sanctions will be completed by those of 2003.

1.5.2 Evaluation of effectiveness according to the selected indicators

It was agreed during the inception meeting that the number of administrative cases/prosecutions in relation to the criminal cases, as well as the level of the administrative fines/sanctions in relation to the criminal ones will be essential indicators to evaluate effectiveness. Nevertheless, other aspects should also be taken into account. As the quality of the deterrent is a very subjective issue, it was decided that further discussion should be carried out during the workshop.

The experts may also interview members of the ministry of environment, agencies, inspectors and NGOs in order to have their views on the effectiveness of administrative measures compared to criminal ones. We will provide the experts with official letters from the Commission to help them to have access to statistical information, as well as to interviews with national officials.

One of the most important sources of statistical information may by the first or second instance authority. The experts may inquiry e.g. about rate of self compliance, rate of compliance in case of a certain frequency of official monitoring, rate of compliance only in case of initiating enforcement measures and rate of non-compliance against practically all of the possible administrative measures and sanctions. In other words: how
NON-CRIMINAL MEASURES IN AC – STUDY FOR DG ENVIRONMENT A3

REGULATION No 2037/2000 of 1 February 1993 of 29 June 2000 on substances that deplete the ozone layer

many companies (facilities) in a given area comply with the environmental provisions without any authorities’ action, how many - if the above mentioned steps are taken.

Inter-agency communication could also be an important issue to ask questions about (e.g. cooperation between the Chief Environmental Inspectorate and the General Prosecutor’s Office).

We have preliminarily identified a number of indicators that could guide you in your analysis of effectiveness of administrative measures as compared to criminal ones. Please note that while you are not bound to consider each of these indicators, you should as a minimum cover those indicators dealing with the level of fines and other measures imposed, as well as the length of the proceedings (i.e., two first bullet points listed below) as they were specifically included in the original TOR of DG ENV:

- level of the fines and other sanctions imposed compared to GDP per capita
- the length of the proceedings. Please check how many cases ended up in the first instance before an administrative authority, how many is continued before the second instance/court in order to assess which period (1. + 2. instance / 1. + 2. instance + court / etc.) is the most representative one.
- type of violation pursued through criminal and administrative jurisdictions (e.g., severe material infraction through criminal jurisdiction, infraction of technical requirements of a permit through the administrative jurisdiction…)
- the final result (i.e., comparison of how many cases, administrative and criminal, ended up with a sanction) - in percentage, comparing the number of cases ending up with a sanction to the number of initiating proceedings.
- “Recidivism” - i.e., how many violators commit the same offence again; i.e., to what extent they intend to include e.g., the fines imposed, into “the costs of activity”.
- when possibility of an administrative or criminal procedure, which via was chosen (possible environmental jurisdiction shopping)
- Possibility to negotiate between administrative authorities and the violator compared with the criminal proceedings and how this can affect the length of the proceedings and deterrent effect of the measures (e.g., plea bargaining)
- the inclusion of the condemnation into the cahier or publication of the condemnation
- level of administrative tolerance for certain types of infractions, as technical ones
- level of social disapproval (that the imposition of a sanction demonstrates)

To facilitate the experts their interviews with the relevant authorities and other institutions the relevant “checklist” will be prepared by the management team. The list should not serve as a questionnaire to be filled by the interviewees but only as a suggestion for experts.

1.6 Conclusions and recommendations (1-2 pages max.)

Please include a section on conclusions and recommendations from your national study focusing on the measures that are more effective in your country (according to the information gathered in the course of the study) and the reasons behind such effectiveness. This section will help us to provide the Commission with recommendations for harmonisation in the comparative analysis, so please be as general as possible. The aim is not to make recommendations for the improvement of the situation in your country, but to use your country as a good or bad example from which lessons can be drawn and recommendations for the EU developed (but - as mentioned above - please indicate general recommendations, not only good or bad examples).

Annex

Measures other than criminal ones in cases where environmental Community law has not been respected in a few candidate countries

Volume I: Summary Report

Executive Summary

1. Introduction
REGULATION No 2037/2000 of 1 February 1993 of 29 June 2000 on substances that deplete the ozone layer

2. Comparative overview of non-criminal sanctions

3. Analysis of the effectiveness of measures other than criminal ones in relation to criminal measures
   3.1. Introduction
   3.1.1. Definition of effectiveness
   3.1.2. Indicators selected to evaluate effectiveness
   3.2. Comparative analysis

4. Conclusions

Volume II: National Reports on non-criminal measures

1. Czech Republic
   1.1. Type of enforcement systems and relationship among different types of environmental liability
   1.2. Administrative enforcement measures
      1.2.1. Introduction
      1.2.2. Classification and description of the situations in which administrative enforcement measures can be taken
      1.2.3. Classification and description of administrative enforcement measures
      1.2.4. Summary of administrative enforcement measure by sectors for targeted EU legal acts
      1.2.5. Overview of the administrative and administrative judicial framework and procedure
         1.2.5.1. Overview of the administrative framework and procedure
         1.2.5.2. Overview of the administrative judicial framework and procedure
   1.3. Administrative criminal enforcement measures
      1.3.1. Introduction
      1.3.2. Classification and description of situations in which administrative criminal measures can be taken
      1.3.3. Classification and description of administrative criminal measures
      1.3.4. Summary of administrative criminal sanctions by sectors for targeted EU legal acts
      1.3.5. Overview of the administrative criminal and administrative criminal judicial framework and procedure
         1.3.5.1. Overview of the administrative criminal framework and procedure
         1.3.5.2. Overview of the administrative criminal judicial framework and procedure
   1.4. Case-study
   1.5. Effectiveness of non-criminal measures in relation to criminal measures
      1.5.1. Comparative statistics on administrative, quasi-criminal and criminal procedures
      1.5.2. Evaluation of effectiveness according to the selected indicators
   1.6. Conclusions and recommendations

ANNEX I: List of national legislation per country
ANNEX II: Tables of Concordance for targeted EU legal acts

2. Hungary
3. Lithuania
4. Poland
5. Slovakia