1. **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 Member States, 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 the EU Member States”. The contract was awarded to Milieu Ltd on the basis of the proposal submitted jointly by Milieu and Huglo Lepage & Associés Conseil (hereinafter Huglo Lepage) and its team of national experts in December 2003.

The European Commission has already developed three different studies concerning criminal sanctions in Member States and Accessing Countries. Milieu and Huglo Lepage teams prepared two of these studies in 2003 (for further details see hyperlinks in section 6 on supporting documents). It should be noted that Milieu is also currently involved in the implementation of a similar study on “Measures other than criminal ones in cases where environmental Community law has not been respected in selected Accessing Countries”, which will run in parallel to our study. These guidelines are developed as a joint effort of the contractors for both studies on non criminal penalties in Accessing Countries and Member States.

Following conclusion of all contractual arrangements needed to kick off the project, Milieu and Huglo Lepage met with the DG ENV responsible official, Françoise Comte-Horeanga, to discuss how to approach the study and to agree on deadlines for deliverables. It was agreed that our approach will be based on our past experiences with the Criminal Penalties Studies for Member States and Accessing Countries, in order to ensure the highest level of comparability and uniformity possible across the studies for all its Member States. This goal of comparability of national reports is the main reason behind the development of these research guidelines for each section of the National Reports.

The team meeting held with DG ENV and our core team of national experts served to clarify the scope of the study and to adapt our preliminary materials.

Our study builds on previous studies commissioned by the EU in the fields of criminal and civil 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 studies, as a tool to justify application of criminal law at Community level if its deterrent effectiveness is justified.

2. **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 Member States.

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. 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:


The study will also provide National Reports relating to the non-criminal enforcement measures in Member States 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.
3. 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 at section 4.1 of this research guidelines)

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 to be provided at section 4.2)
   b. Analysis of effectiveness of non-criminal measures in relation to criminal measures (further guidance to be provided at section 4.3)

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 prepared by Milieu and Huglo Lepage for the Waste Framework Directive and the Hazardous Waste Directive. The tables should be delivered before the workshop by Friday, 6 February 2004. A new set of revised and refined pilot ToCs, according to the comments presented at the workshop by the national experts, were distributed on Friday, 13 February 2004. To ensure that all the doubts that arose during the completion of these ToCs have been solved, we are asking each of you to revise the pilot ToCs according to the conclusions reached at the workshop. The final version of these pilot ToCs should be submitted by the national experts by Friday, 20 February 2004. Please note that it is extremely important for us that this deadline is met by all national experts. Our management team will review them again and we will go back to you, if needed, to resolve any problem or mistake identified. It is very important to resolve all the doubts and problems at this initial stage of the project to ensure a good understanding of the ToCs among all national experts, as well as uniformity in their contents and formats.

The remaining ToCs for all other targeted EU acts covered by this study will be distributed on Monday, 16 February 2004.

Completion of the first nine ToCs and submission of a first draft of national reports on non-criminal measures is scheduled for Monday, 3 May 2004. For the sake of comparability of your findings and to allow Milieu and Huglo Lepage 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:
Study on Measures other than criminal in Member States
Environmental Law

- Nature Protection:


In addition to the above-mentioned ToCs, you should also submit a very complete 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.

Milieu and Huglo Lepage 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, on 19 May 2004. 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 Thursday, 1 July 2004. After the reception of these reports and based on their findings, Milieu and Huglo Lepage will then draft a summary report. This summary report should include an overall comparison of the non-criminal sanctions that can be found in the current Member States and should draw up initial conclusions from the work completed by the national experts related to the effectiveness of these non-criminal sanctions as compared to the criminal ones. As per our contract with DG ENV, we will submit a Draft Study on Measures other than criminal ones in cases where environmental community law has not been respected in EU Member States on 3 August 2004 (for information on contents of the Draft Study see the
Study on Measures other than criminal in Member States
Environmental Law

Annex). We will forward this draft to each of you at the same time, so that you could make comments.

On Friday, 10 September 2004, the teams of the two studies for non-criminal penalties in Member States and selected Acceding Countries 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 should be held in DG ENV premises and will gather the entire team (all national experts, senior advisor, Milieu and Huglo LePage’s management 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 EU Member States to DG ENV on 19 September 2004.

Please note that Milieu and Huglo LePage’s management team will provide continuous support throughout the life of the project. You should not hesitate to contact us whenever specific questions may arise.

The following table illustrates our work plan until completion of the study (specific deliverables from national experts and corresponding deadlines are in bold):

<table>
<thead>
<tr>
<th>Date 2003</th>
<th>Activity</th>
<th>National experts</th>
<th>Milieu/Huglo LePage</th>
<th>DG ENV</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 Jan – 7 Feb</td>
<td>Finalise contractual arrangements</td>
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<tr>
<td>23 Jan</td>
<td>Distribute guidelines &amp; pilot ToCs</td>
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<tr>
<td>6 February</td>
<td>Submit pilot TOCs</td>
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<tr>
<td>11 Feb</td>
<td>Workshop in BXL – Discussion of ToCs &amp; methodology</td>
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<td></td>
<td></td>
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<tr>
<td>23 Feb- 26 April</td>
<td>Completion 9 TOCs and start drafting national reports</td>
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<tr>
<td>3 May</td>
<td>Submit first 9 ToCs &amp; Draft national reports</td>
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<tr>
<td>3 – 10 May</td>
<td>Consultation with national experts as needed</td>
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<tr>
<td>19 May</td>
<td>Submission of Interim Report</td>
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<tr>
<td>5 May – 23 June</td>
<td>Completion of 5 remaining TOCs and revision of national reports</td>
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<tr>
<td>1 July</td>
<td>Submit 5 remaining TOCs and revised national reports</td>
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<tr>
<td>7 July – 11 Aug</td>
<td>Finalise study and consultations as needed</td>
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<td></td>
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<tr>
<td>3 Aug</td>
<td>Draft study delivered to DG ENV</td>
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<tr>
<td>10 September</td>
<td>Workshop in BXL to present Final studies for both MS &amp; selected ACs</td>
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<td></td>
<td></td>
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<tr>
<td>8 – 15 Sept.</td>
<td>Integrate comments from DG ENV and consultations with national experts as needed</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>19 Sept.</td>
<td>Final study delivered to DG ENV</td>
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</table>

4. Methodology for national experts

Milieu and Huglo LePage’s methodology intends to set forth a straight-forward and uniform process for gathering the national-level information required by the contract. National experts will need to focus on the following items:

1 Please note that this updated schedule introduces some changes to the one previously received by you via e-mail on 28 January 2003.
4.1 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 Milieu and Huglo Lepage, together with the National Reports, to undertake a comparative analysis for all Member States 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 Member State 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.

4.1.1 Introduction to the content of each TOC (max. 2 pages)

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 official 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 translation in English or French or at least key words, e.g., Ley 10/98 sobre Residuos de 11 Abril 1998 (Law on Waste), BOE num 28, de 9 abril, 1998 (RCL 1169) – hereinafter Law 10/98

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. Moreover, sometimes Regulations include articles similar to those of a Directive and thus, national measures might be required.

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:

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, please classify them.
For example:
1. Main sanction/measure:
   a) For very serious offences:
      - Fine from 6000 to 1.000.000EUR
      - Closure of establishment
      - Revocation of permit…
   b) For serious offences….
   c) For petty offences….

2. Accessory measures:
   - Obligation of restoration

3. Provisional measures…
4. Coercive fines…

If they cannot be classified, please only list them.

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 studies, there seem to be three categories of sanctions: administrative and/or quasi-criminal. We have decided to include in the ToCs the nature of the sanction (see below, at 4.1.3). Thus, you will have to justify here why you have decided to qualify a sanction under a specific category. Please indicate as well, if needed, any other term you will be using in the ToCs; e.g., *mise en demeure* – initial order to comply…

- 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, cases where there are no implementing measures and there is an open infringement case against the country, national measures that have been adopted but not yet enforced. If you mention competent authorities, please make sure that it is something particular for the case of the directive concerned, e.g., possible conflict of competence among different authorities. You can also include explanation of legislation and/or special articles, e.g., the legislation on waste is based on the IPPC system; as well as 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 the sanctions, 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 EUR (in the case of Denmark, Sweden and UK 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.)
4.1.2 Content of ToCs

The ToC includes the following columns:

| Article | Content (if necessary simplified) of EU Obligation | Transposing provision in national law (give relevant law or regulation & no. of article) | Legal description of situations in which enforcement measures can be taken by CAs | Specific provision setting admvtve/quasi-criminal enforcement measure (give relevant law/reg. & no. of article) | Nature of the enforcement measure (administrative, quasi-penal) | Description of the enforcement measure |

**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;
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.

**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.

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.

**Legal description of situations in which enforcement measures can be taken by CAs:** This column provides a place to enter the full text in English or French 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 or French 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 (under point 1, see page 8 of methodology).

**Specific provision setting admin/ quasi-criminal enforcement measure (give relevant law/reg. & no. of article):** 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.

**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.

**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 (in the case of Denmark, Sweden and United Kingdom) and always 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.:

and

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

accessory measure: **publication** of the fine

Please make sure that there is a comprehensive presentation of the measure and it is easy to identify to which situation the measure refers, e.g., making sure that there are presented in the same line as in the model of table distributed. Please, do not add more break downs to the columns.

* * * * * * *

* Note 1: As a general comment, when articles, descriptions, others are repeated throughout the ToC use the word *idem* in italics.

* Note 2: In many countries the situation in which the enforcement measure can be taken and the enforcement measures that can be imposed are in the same article. In other countries the provision describing these situations and the national transposing provision are the same. Moreover, there are other countries where the provision transposing the EU obligation, the provision describing
the situation in which enforcement measures can be taken, and the provision containing the enforcement measure that can be taken are different. For these countries, a new column will be added before the column on legal description of the situations named “Specific provision setting the legal description of the situation in which enforcement measures can be taken by CAs, give relevant law or reg. & no.art.”. Those countries where the latter situation occurs should mention this particular situation ASAP to the legal team coordinator, Esther Pozo Vera, so that their Tocs could be further refined to include this additional column.

4.2 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 Type 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 articulation 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, a case-study will be added instead of the section on civil liability (section that will be deleted). This case study will be included in the outline.

During the workshop, some concerns were raised regarding the wide scope of the study and the restricted time framework for completion of all tasks. In particular, possibilities to limit the contents of the section on civil liability were explored. Because DG ENV has already covered civil liability at Member States level via a number of studies and as one of the main objectives of the study is to see how the different systems (administrative, criminal and civil) interact, a case-study will be added instead of the section on civil liability initially foreseen. This section on overview of environmental civil liability will be thus deleted. The case study will be included in the outline just before the section on effectiveness.

1.2 Administrative enforcement measures (10-15 pages max)

As a general comment, please note that reference to case rulings 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. A reference could also be made to an administrative decision, which the expert considers particularly relevant for the specific case.

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
- 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 or a sanction has to be imposed by a court.
- Nature of the sanctions (purely administrative, quasi-criminal, hybrid…) and justify why this qualification was chosen

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

- Type of different offences/situations in the administrative regime, general classification and categories within the classification (e.g., seriousness, etc.);
- Classification of administrative environmental offences/situations in which an administrative enforcement measure 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 abstract or concrete. If concrete please indicate if only potential endangerment is needed.

1.2.3 Classification and description of administrative enforcement measures

- General classification of administrative measures
- 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)

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 procedure and administrative judicial framework

The main aim of this section is to provide an overview of the procedure before administrative bodies and/or judges. We basically intend to cover two possible scenarios. Firstly, the case where an individual reacts against an action of the administration (such as a sanction but also action against the conditions under which a permit has been granted…). Secondly, cases where individuals act against an omission of the administration.

The idea is to have a general overview on how the administrative 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.

- Principles of administrative procedures
- Types of actions that can be brought before the courts/administrative bodies (action for annulment, action for damage…)
- Persons and bodies empowered to initiate/carry out the administrative procedures (Please note that this has already been discussed and analysed in detail in the Study on access to justice. Therefore, any discussion under that bullet should be kept very short). 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 authorities, either administrative bodies or judges, at first and second instance and/or appeal in order to complete the general picture on administrative procedures:
  - 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 judges or administrative/other bodies
- Costs of the procedure
- Length of the procedure: here you are asked to explain, on the one side, the deadlines for the administration to act, as well as the average length of an action brought from an individual against an action or omission of the administration. In many cases it is said that the administrative measures are more effective than criminal ones because the conditions of applicability differ from those of the criminal measures where the defence rights have to be respected. This situation would make application of the administrative measures faster and thus more effective. In this section you may illustrate if that is the case and it will serve as a factual introduction to what will be discussed at the section on effectiveness. We consider that this aspect should be included here to complete the picture on the administrative procedural framework. This is completed with the average length of the procedure where the individual reacts against the action of the administration or against an omission. If data are only available for proceedings before the administrative bodies, please indicate it. If data are also available concerning procedures before the judicial bodies, include them in your overview.
- Conditions for the applicability of interim measures: interim measures can be extremely interesting in cases of breaches of environmental law. The conditions of applicability of
these measures can be an incentive to use this instrument or, in the contrary, a barrier for individuals who e.g., act against omissions of the administration. Please indicate the conditions to apply interim measures

### 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.

### 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. For this reason, it was suggested and agreed in the workshop that the best way to easily illustrate this interaction was 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.
Study on Measures others than criminal in Member States  
Environmental Law

- 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.

- Please also compare 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 Member States.

This section will be the least legal but the most important of the study. The purpose of this analysis is to complete the conclusions reached in the previous criminal penalties studies. According to these studies, although 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 those previous studies 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

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 seems that there will be data available concerning administrative proceedings before the administrative competent authority and not so much information concerning any eventual judgements. If information on judgements or judicial procedures is available, it should be indicated and included in the study. The data that might be comparable concerning administrative measures and criminal ones might be relating to the number of prosecutions initiated but that will very much depend on each country. 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.

Please note that the statistical data to be gathered should cover the period 1999-2003.
The initial idea is that the available information should be presented in a table for each Member States as follows:

<table>
<thead>
<tr>
<th>YEAR</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 prosecutions/proceedings</td>
<td>No of convictions/cases finalised with sanctions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1999</td>
<td></td>
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<td>2000</td>
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<td>2003</td>
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</table>

For countries having an administrative criminal law system, another column 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 1.3.5. This possibility will depend upon the statistical information we will be able to collect. This issue will be discussed during the initial workshop.

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 conclusion of the workshop was that interviews will be needed. The experts are thus encouraged to 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 develop a questionnaire to be used and further expanded, as needed, by the experts in their interviews, as well as official letters to help the experts to have access to statistical information, as well as to interviews with key national officials.

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
- 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 shopping jurisdiction)

- 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)

We will provide you with an initial checklist that you may use as a guiding document when interviewing relevant persons to assess effectiveness of non-criminal measures. The list should not serve as a questionnaire to be filled out by the interviewees, but only as a suggestion to carry out your interview.

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

Please include a one-page 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.
5. Formatting rules

Please note that for the analysis of the criminal legislation and jurisprudence on environmental matters, you should follow for uniformity reasons, the FORMAT RULES distributed by Milieu.

6. Supporting documents

For background, you may want to have the following documents at hand. The addresses are provided below.

- METRO Report on Criminal Penalties in EU member State’s Environmental Law
  (http://europa.eu.int/comm/environment/docum/02544_final_report.pdf)
- Huglo Lepage Study on Criminal Penalties in EU Member States’ Environmental Law - Study II
  (http://europa.eu.int/comm/environment/crime/criminal_penalties2.pdf)
- Milieu Study on Criminal Penalties in Five Candidate Countries (vol I & II)
  (http://europa.eu.int/comm/environment/crime/criminal_penalties_candidate_countries_vol1.pdf)
  (http://europa.eu.int/comm/environment/crime/criminal_penalties_candidate_countries_vol2.pdf)
- Framework Decision on the Protection of Environment through Criminal Law
- Amended Proposal for a Directive on the Protection the Environment through Criminal Law
- Access to Justice in Environmental Matters, Final Report
  (http://europa.eu.int/comm/environment/aarhus/pdf/accesstojustice_final.pdf)
- IMPEL report: Criminal Enforcement of Environmental Law in the European Union
  (http://europa.eu.int/comm/environment/impel/criminal.htm)
- 11 Directives and 3 Regulations to be covered by the study
Measures other than criminal ones in cases where environmental Community law has not been respected in the Member States

Volume I: Summary Report

Executive Summary

1. Introduction

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

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   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 judicial framework and procedure
   1.3. Administrative criminal 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
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   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. Belgium
3. Denmark … remaining countries