Penalty regimes for violations of the EU Methane Regulation in selected EU Member States

Debunking the “unmanageable liability” claim
Good practice examples
How to avoid an uneven playing field

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Executive Summary

Chapter 1 of this paper offers a concise overview of the penalty provisions in the EU Methane Regulation (EU-MER), supported by three overview charts.

Chapter 2 debunks the scaremongering narrative promoted by some fossil energy business associations and companies, which claims that the EU-MER creates “unmanageable liability” for EU fossil fuel importers and their suppliers through fines of up to 20% of annual turnover. However, Article 33 EU-MER requires Member States’ authorities to weigh clearly specified aggravating and mitigating factors. The maximum penalty is therefore lawful only in cases of intentional, exceptionally serious, repeated, and unremedied violations combined with a blatant lack of cooperation with public authorities. Ordinary negligence, minor breaches or even serious breaches that are followed by remedial action cannot trigger such fines, and any disproportionate sanction could be overturned on appeal. Companies can therefore easily manage this risk by making genuine efforts to comply.

Chapter 3 compares the penalty rules set out in adopted or draft legal acts implementing the EU-MER in Czechia, Denmark, Hungary, Italy and Romania, drawing on the provisions and criteria analysed in Chapter 1. It assesses timeliness, the powers and resources of competent authorities (CAs); completeness of infringement coverage; application of the general criteria for fines under Art 33(1) and of the aggravating and mitigating factors under Article 33(7), and the clarity and dissuasiveness of minimum and maximum fine levels.

It concludes that Denmark offers a best practice model across all criteria. Italy’s draft law can also be regarded as good practice, except that its minimum penalty level is not sufficiently dissuasive and, because Italy is late, no penalty rules are currently in force. Even more problematic, Czechia’s and Romania’s draft acts appear stalled, with unclear prospects of adoption in the short term. By contrast, Hungary’s law entered into force on time, but in several respects it is not, or not fully, compliant with EU-MER provisions. Czechia’s and especially Romania’s drafts likewise show serious compliance gaps.

Chapter 4 warns that – given that EU regulations apply directly but penalties are set national - identical EU-MER infringements may be sanctioned unevenly, distorting the internal market. This is especially acute for import provisions, since importers report to the competent authority of the Member State where they are established, not where fossil fuels physically enter the EU. Divergent regimes could therefore enable “enforcement shopping,” with importers shifting import contracts to lenient jurisdictions, which would undermine implementation, tax revenues, and enforcement quality. Although harmonised penalties lack a legal basis, the Commission could issue informal guidance to support consistent national regimes, notably on estimating economic gains from non-compliance, on estimating environmental and health damage via methane-emission volumes associated with specific types of infringements, and on applying aggravating/mitigating factors coherently.

Contents

Introduction

The EU Methane Emissions Regulation (EU-MER)[1] was adopted in 2024, after three years of debate, with an exceptionally high level of democratic legitimacy. In the European Parliament, it received 530 votes in favour (85%), 63 votes against (10%), and 28 abstentions (5%). In the Council, 26 of the 27 Member States supported the regulation, with only Hungary voting against.

Despite this high democratic legitimation, the process of implementation is currently unfolding amid direct challenges from parts of the oil and gas industry and from the Trump administration. Even some actors who voted in favour of the EU-MER now argue it should be amended, creating uncertainty about its enforcement. However, no amendment procedure has in fact been initiated. Any change would need to be adopted by both the European Parliament and the Council, a process that would be lengthy and, in this case, highly unusual. In November 2025, the European Commission gave tip level signals of its commitment to implement the EU-MER.[2]

Article 33 of the EU-MER sets out robust principles regarding penalties for non-compliance. However, as the EU has only limited competence in matters of justice, these principles must be implemented through national legislation adopted by each Member State.

The EU-MER entered into force on 5 August 2024. Since then, as with any EU regulation, all its provisions became directly applicable in every Member State, and all entities subject to them became legally obliged to comply. However, until a Member State adopts its own penalty rules, it remains uncertain how infringements occurring in its territory, or committed by importers established there, will be sanctioned in practice. Although key aspects, such as the level of fines, remain unclear until national rules are in place, non-compliance is unequivocally unlawful.

Since the publication of the EU-MER on the Official Journal in June 2024, and at the latest since its entry into force on 5 August 2024, companies subject to its obligations must expect that non-compliance will be punished in line with the principles laid down in Article 33. It could therefore be argued that moderate sanctions consistent with those principles might also be applied by the competent Member State to infringements that occur before the national penalty rules enter into force. However, the imposition of penalties for infringements committed before national penalty regimes are in place may raise issues related to legal certainty. Whether such penalties would withstand judicial scrutiny lies beyond the scope of this paper.

While penalties for infringements occurring before the Member State's penalty rules are in force may face legal obstacles, the fact that such infringements were already unlawful under the directly applicable Regulation suggests that they can legitimately be considered as relevant contextual factors when determining sanctions for subsequent breaches. Therefore, it seems likely that infringements committed after the entry in force of the EU Regulation but before the national regimes are in force may still be taken into account when assessing the duration and degree of repetition of infringements occurred after that date, for the purpose of determining the appropriate level of fines.

[1] Regulation (EU) 2024/1787 of the European Parliament and of the European Council of 13 June 2024 on methane emissions in the energy sector and amending Regulation (EU) 2019/942. See: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32024R1787

[2] In an unpublished letter to MEPs of November 2025, Ursula von der Leyen, President of the European Commission, wrote: "Implementing the EU Methane Regulation will ensure the gas we import has the lowest methane intensity possible. We are engaged with US partners, government and industry, to ensure a full, effective implementation of the EU Methane Regulation." .See: https://www.linkedin.com/posts/environmental-defense-fund-europe_methaneregulation-activity-7399524966951550976-3cKI/

1 Short overview on the EU-MER penalty provisions

This chapter provides a short introduction of the key features of the EU-MER penalty provisions, forming the basis for the subsequent chapters.

Figure 1 provides an overview of the governance and timeline of the EU-MER penalty regime. Like the other charts in this section, it is drawn from a study published by Ecologic Institute in June 2024, which offers a more detailed analysis of all issues discussed in this chapter.

Figure 1: Governance and timeline of the EU-MER penalty regime: an overview[3]

By 5 August 2025, the Member States were legally required to set their own rules on penalties, which must comply with all the provisions of the EU-MER. The European Commission may initiate infringement procedures against any Member State that fails to meet this obligation.

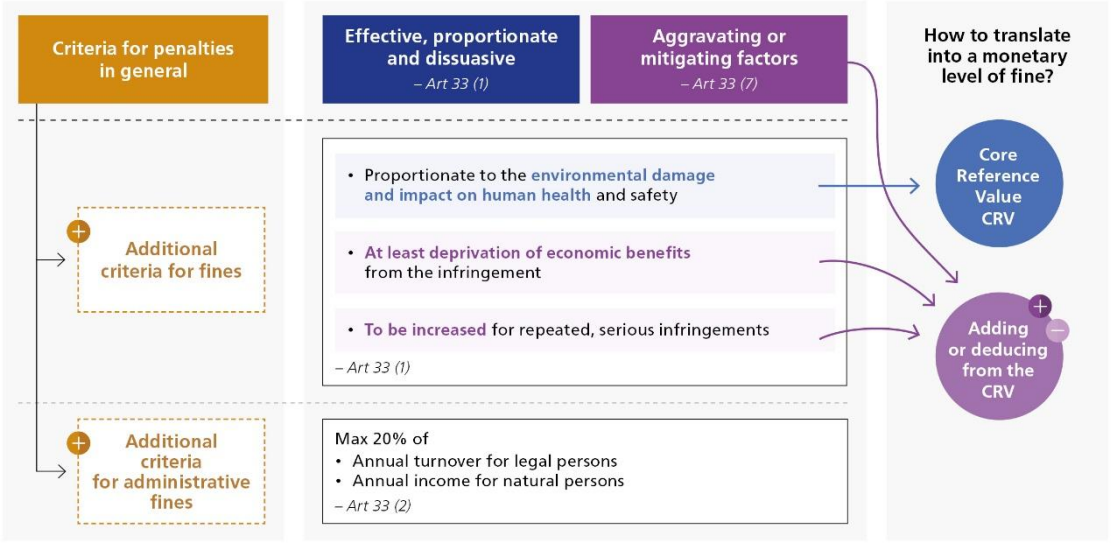
As illustrated in Figure 2, Article 33(1) establishes criteria that apply to all types of penalties imposed for infringements of the EU-MER: they must be "*effective, proportionate and dissuasive*". In addition, they must be "*proportionate to the environmental damage and impact on human safety and health*", set at a level that "*at least deprives those responsible of the economic benefits derived from the infringement in an effective way*", and must "*gradually increase for repeated serious infringements*". Furthermore, the penalty regimes must include "*periodic penalty payments to compel operators (…) or importers to put an end to an infringement, comply with a decision ordering remedial actions or corrective measures, provide information or submit to an inspection*". Each of these requirements is mandatory, not optional: if a Member State adopts penalty rules that do not comply with all of them, those rules are in breach of EU law. Chapter 3 of

Art 33(2) requires Member States to ensure that their competent authorities (CAs), when sanctioning infringements of a specified set of EU-MER provisions, have the power to "*adopt a decision requiring the person to bring the infringement to an end; order the confiscation of the profits gained or losses avoided due to the infringements insofar as they can be determined; issue public warnings or notices; adopt a decision imposing periodic penalty payments; adopt a decision imposing administrative fines*", provided that these measures do not endanger the

[3] Piria, Raffaele, Stephan Sina and Lina-Marie Dück: Implementing the EU Methane Regulation, Working paper N° 3. Penalties and selected legal issues. Ecologic Institute, Berlin, 2024. Available at: https://www.ecologic.eu/node/19720

security of energy supply. These requirements are likewise mandatory: if a Member State's has not been effectively granted each of these powers, that Member States is in breach of EU law.

Figure 2: Criteria for the level of penalties in the EU-MER



The EU-MER sets out a series of principles for determining the level of penalties, while granting Member States and their competent authorities a degree of discretion in how these principles are applied.

Art 33(3) allows Member States whose legal systems do not provide for administrative fines - meaning fines directly imposed by administrative authorities without a court decision - to establish an equivalent regime based on courts decisions. This exception applies to only a few Member States; among those examined in this paper, it concerns only Denmark.

Only for administrative fines does Article 33(2) establish a maximum ceiling of 20% of the annual turnover of legal persons, or 20% of the annual income of natural persons, in the preceding year. This ceiling restricts the discretion of Member State legislators and their competent authorities when applying the other principles set out in the EU-MER. If Member States were to allow, or their CAs were to impose administrative fines exceeding these ceilings, they would be in breach of EU law. Chapter 2 of this paper debunks the claim that this ceiling creates an "unmanageable liability" for EU fossil fuel importers and their suppliers.

Art 33(4) stipulates that the CAs must "*cooperate closely to ensure that their powers are exercised, and that the administrative penalties and administrative measures they impose are designed and applied, in an effective and consistent way across the Union*". Member States whose implementing legislation does not explicitly provide this mandate and the resources to implement it are not necessarily in breach of EU law, as both the mandate and the necessary resources may be insured by other means. Chapter 3 of this paper therefore examines, among other criteria, whether CAs have been granted an explicit mandate and adequate resources to comply with this provision by the implementing legislation. Where this is not the case, the assessment is classified as unclear.

Art 33(5) sets out a detailed, mandatory minimum list of infringements that must be subject to penalties. Where a Member State's implementing legislation generically refers to all infringements covered by Art 33(5), the assessment in Chapter 3 considers this requirement fulfilled.

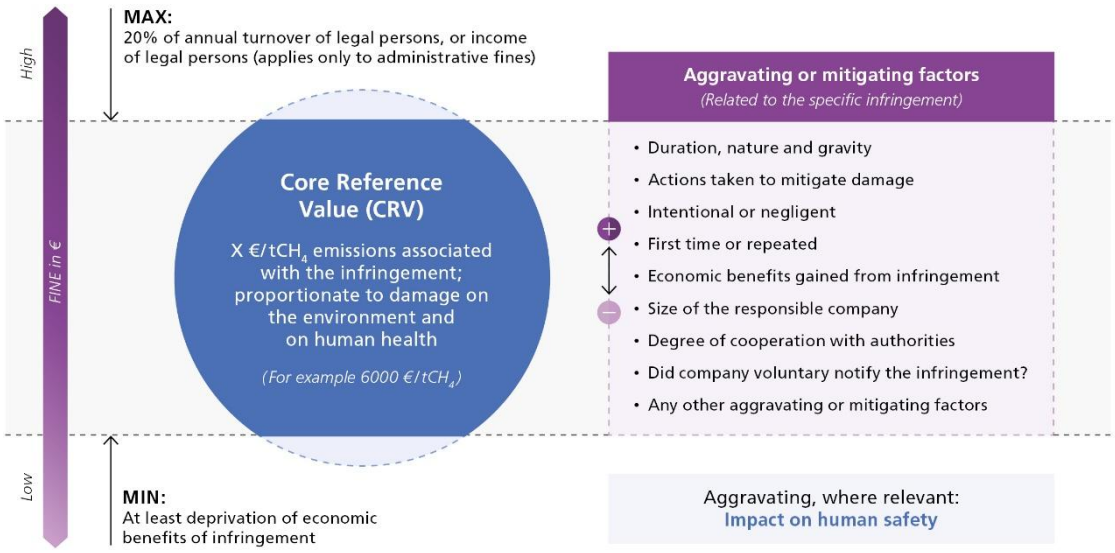
In some Member States, however, the implementing (draft) legislation contains explicit lists of punishable infringements, sometimes linked to specific minimum and/or maximum fines for breaches of particular EU-MER provisions. In such cases, the omission of a type of infringement from this list creates a legal situation in which the conduct remains unequivocally unlawful but may not be readily sanctionable in that Member States. If such an omission is identified, Chapter 3 assigns a negative assessment. However, verifying whether all potential infringements by operators subject to any EU-MER obligation are included in the lists contained in the national implementing legislation is a time-consuming exercise and prone to error. This aspect of the analysis in Chapter 3 is therefore preliminary. To ensure systematic coverage, it should be repeated with additional resources.

Article 33(6) requires Member States to consider reducing or waiving penalties where operators are unable to comply because of exceptional delays in obtaining permits or other administrative authorisations, or due to the unavailability of venting or flaring equipment. As this reduction or waiver is ultimately discretionary ("consider") and applies only in a limited set of situations, it is not examined in Chapter 3.

Article 33(7) sets out a series of criteria that Member States must take into account when imposing penalties. Chapter 3 examines whether the national implementing legislation explicitly refers to these criteria. Where this is not the case, the criteria remain in force, as they form part of a directly applicable EU Regulation, but their practical application in practice may be uncertain or weakened. These criteria, presented as aggravating and mitigating factors in Figure 3, are also central to the discussion in the following chapter, which addresses and debunks the "unmanageable liability" claim.

Figure 3 illustrates how the complex provisions of Art 33 can be coherently translated into monetary fines. The figure is explained briefly in the following paragraph. A more detailed discussion can be found in the publication from which it is drawn, cited above in the footnote at the beginning of this chapter.

Figure 3: Translating the criteria into monetary fines



At the centre of the figure is the fundamental principle set out in Art 33(1) EU-MER: penalties must be proportionate to the damage caused to the environment and to human health. This is

operationalised as the quantity of methane (CH_4) emissions directly or indirectly associated with the infringement. To convert these emissions into a monetary penalty, a "core reference value" (CRV), expressed in €/tCH_4, is either explicitly or implicitly required. The paper from which this figure is drawn proposes a CRV of 6,000 €/tCH_4, following an assessment of several possible anchor points.

When determining the level of a fine for a specific infringement, the competent authorities or courts in the Member States must then adjust the CRV by taking into account the relevant aggravating and mitigating factors. The EU-MER also requires penalties to be proportionate to the damage to human safety. As EU-MER infringements affecting human safety are expected to occur only in exceptional cases, this aspect is treated as an additional aggravating factor where applicable.

Finally, the EU-MER sets principles on minimum and maximum penalty levels, which limit the discretion available to national legislators and competent authorities when applying the other principles and criteria. On minimum levels, beyond the general requirement that penalties be dissuasive, Art 33(1) provides that fines must at least remove any economic benefit derived from the infringement. On maximum levels, Art 33(2) states that administrative fines, i.e. fines imposed by administrative authorities rather than courts, must not exceed 20 % of a legal person's annual turnover in the previous year, or a natural person's annual income.

Notably, turnover-based maximum fines are well established in EU law. The principle was introduced in the competition rules of the former European Communities as early as 1962[4] and remains central to EU antitrust enforcement, where fines may not exceed 10% of an undertaking's annual turnover.

Several more recent EU instruments follow the same approach with maxima defined as shares of global annual turnover, including the General Data Protection Regulation, the Digital Services Act, the Artificial Intelligence Act, and the Digital Markets Act. The latter sets maximum fines of up to 20% for repeated infringements, the same ceiling as under the EU-MER.

[4] See Art 15(2) of Regulation N° 17, First Regulation implementing Articles 85 arid 86 of the Treaty, Official Journal of the European Communities 204/62 of 21 February 1962.
See: https://eur-lex.europa.eu/eli/reg/1962/17/oj/eng

2 Debunking the "unmanageable liability" claim

A recurring argument advanced by some fossil fuel industry associations and companies criticises the EU-MER for allegedly imposing disproportionate financial risks on energy importers and producers, potentially jeopardising the EU's ability to meet its fossil fuel import needs and, ultimately, to safeguard its energy security. A central claim is that the Regulation, by empowering Member States to impose fines of up to 20% of a company's annual turnover, creates what has been described as an "*unmanageable liability*" for firms importing fossil fuels into the EU and potentially for their suppliers.

For example, in an open letter dated 28 April 2025, Eurogas and eighteen other energy companies and associations warned that "*market participants face considerable uncertainty regarding compliance with yet-to-be-defined requirements, unmanageable liability risks, and potential penalties of up to 20% of an importer's annual turnover.*" [5] On 9 July 2025, a joint position paper by seven oil and gas industry associations - including Eurogas, International Association of Oil & Gas Producers, and the International Gas Union - stated that "*the regulatory uncertainty is impacting market participants with, for example, undefined future compliance rules and severe liability risks with potential penalties of up to 20% of an importer's annual turnover.*"[6] A few weeks later, on 1 August 2025, a joint letter to two EU Commissioners, signed by the directors of Eurogas, FuelsEurope, GIIGNL (International Group of Liquefied Natural Gas Importers) and IOGP Europe (International Association of Oil & Gas Producers), formulated three requests for modifications to the EU-MER. One of them was to "*adjust disproportionate non-compliance penalty provisions (up to 20% of annual global turnover in case of legal person) according to the real implementation progress and existing compliance options.*" [7]

Taken together, these statements encapsulate the essence of the unmanageable liability claim: that the EU-MER's enforcement provisions, by allowing substantial turnover-based penalties, allegedly expose energy companies and exporters to unsustainable legal and financial risks, potentially prompting them to withdraw from the EU market, with serious repercussions for Europe's gas supply security.

These and similar lobbying statements rest on the suggestion that fossil fuel importers or their suppliers cannot take feasible measures within their control to avoid the risk of incurring in very high fines of up to 20% of annual turnover. This would indeed be a concern if such penalties could be lawfully imposed on companies that inadvertently fail to comply, commit individual minor infringements, or cannot comply because certain obligations are insufficiently defined or technically impossible to meet.

However, such assertions amount to scaremongering, based on a wild misrepresentation of the provisions of Article 33 of the EU-MER.

This paper does not address to what extent particular EU-MER provisions are sufficiently clear or technically feasible to implement. One point, however, is unambiguous: in the highly unlikely event that a competent authority or court imposed a very high, or even the maximum, penalty for infringing a provision that is insufficiently determined or technically impossible to fulfil, the penalised company would be able to challenge such a decision successfully.

[5] See: https://www.eurogas.org/wp-content/uploads/2025/04/250428-Current-impact-of-MER-on-EU-SoS.pdf
[6] See: https://iogpeurope.org/wp-content/uploads/2025/07/250709-Action-plan-to-address-the-issues-of-the-importers-requirements-in-the-Methane-Regulation.pdf
[7] See: https://iogpeurope.org/resource/integrating-the-eu-methane-regulation-into-the-eu-simplification-agenda-2/

Moreover, article 33(7) of the EU-MER states: "*Member States shall take into account at least the following indicative criteria for the imposition of penalties, as appropriate*", followed by the list of aggravating and mitigating factors illustrated in Figure 3 above and in the bullet points below. While this wording gives Member States a degree of discretion in how to apply these criteria, and allows them to consider additional factors, the listed criteria cannot be ignored when determining the level of sanctions. This means that the maximum penalty level may be applied only in cases that fully meet all the aggravating factors. In other words, the maximum fine could lawfully be imposed only where the company's infringement meets at least all the following conditions:

- The infringement is unequivocally intentional, and clearly not the result of negligence;
- The nature of the infringement is exceptionally serious, and its effects persist for an exceptionally long period;
- The company responsible for the infringement has taken no action to mitigate or remedy the damage in a timely manner;
- The company is particularly large and has repeatedly committed serious infringements of EU-MER provisions in the past;
- The company has not notified the infringement, and it has displayed a complete lack of cooperation with the authorities.

It is evident that a situation fulfilling all these criteria cannot arise through mere oversight. Infringements of a negligent character cannot be punished with the maximum fine, nor can violations that are not exceptionally serious, repeated, and left entirely unremedied. Even basic cooperation with the authorities once an infringement has been detected would already rule out the application of the highest penalty. Therefore, any responsible company making even a limited effort to comply with the Regulation faces no realistic risk of incurring a fine anywhere near the maximum level.

In the unlikely event that a 20% turnover penalty were unlawfully applied to a company or infringement that does not meet all these criteria, the company could successfully challenge such a disproportionate sanction on appeal.

An analogy with driving sanctions helps to illustrate the point. Incurring the maximum penalty would be akin to repeatedly driving drunk at 120 km/h through an extended pedestrian zone, each time killing or severely injuring several people and leaving massive havoc behind, without ever braking or calling for help, and systematically refusing to cooperate with the authorities afterwards. If a country punishes such behaviour with severe fines, permanent withdrawal of the driving licence and imprisonment, would anyone seriously claim that this strict penalty regime makes driving in that country an unmanageable risk for motorists?

3 State of play in selected Member States

This section analyses the penalty rules contained in the following adopted or draft legal texts, assessing the extent to which they comply with the EU-MER provisions:

Czechia: Draft law submitted by the Minister for Environment om 11 November 2025 to the Prime Minister.[8] At the time this report was published, the draft law had not yet been submitted to Parliament.

Denmark: Law (LOV) nr 1453 of 10 December 2024, Executive Order nr 312 of 26 March 2025.[9] Both the law and the executive order are in force.

Hungary: Art. 48 of the most recent (1 August 2025) revision of the Act XLVIII of 1993 on mining[10]. While the Act itself has a very broad purpose, Art. 48 is dedicated to the EU-MER implementation.

Italy: Draft law adopted by the Cabinet on 30 June 2025 on the designation of competent authorities and on sanctions, as well as on several other issues not related to the EU-MER.[11]

Romania: Draft emergency ordinance published by the government on 22 July 2025.[12] At the time of writing the draft emergency ordinance has not entered in force, the legislative procedure appears to be stalled.

The set of Member States considered here reflects only the (draft) legal acts that were accessible to the author when the analysis was undertaken.

> Disclaimer: The following information reflects a rapid, preliminary analysis partly based on DeepL© translations of legal texts from various countries. Every effort has been made to ensure accuracy and precision; however, the author cannot accept legal responsibility for any potential inaccuracies in these comparisons.

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According to Art 33(1) of the EU-MER; the Member States should have adopted and notified to the European Commission their rules on penalties by 5 August 2025.

[8] For the Czech draft law, see: https://www.odok.gov.cz/portal/veklep/material/KORNDGPEDBGW/
[9] For Law 2024/1453, see: https://www.retsinformation.dk/eli/lta/2024/1453 For Executive Order 2025/312, see: https://www.retsinformation.dk/eli/lta/2025/312
[10] See: https://njt.hu/jogszabaly/1993-48-00-00
[11] At the time of writing, the draft law is not officially published. However, a leak was published in July by the specialised news portal. See: https://www.qualenergia.it/wp-content/uploads/2025/07/Legge-Delega-CCS-Metano-Emissioni.pdf
[12] See: https://energie.gov.ro/proiectul-de-ordonanta-de-urgenta-pentru-stabilirea-masurilor-necesare-de-punere-in-aplicare-a-regulamentului-ue-2024-1787-privind-reducerea-emisiilor-de-metan-in-sectorul-energetic-si-de-modificare/

Table 1: Timeliness of adoption of the Member States' penalty rules

Timeliness	CZE	DNK	HUN	ITA	ROM
In force on 5 Aug 2025	no	yes	yes	no	no
In force now (30 Nov 2025)	no	yes	yes	no	no
Draft formally tabled	no	yes	yes	yes	yes
State of advancement	stalled	In force	in force	advancing	stalled

Note: In these and the following tables, green fields indicate full compliance, yellow partial compliance or progress; orange a lower level of compliance or progress; and red fields no or lowest compliance.

Denmark and Hungary adopted their national penalty rules in due time.

The Italian government adopted a draft law on 30 June, which also addresses several issues unrelated to the EU-MER. At the time of writing, after a review by the State Budget Office - prolonged due to the budgetary implications of some of these additional issues - the draft law was about to be assigned to one of the two Houses of Parliament to begin the legislative process.

In July 2025, the Romanian government published a draft emergency ordinance. In the preamble, the Romanian government justified the use of an emergency ordinance on the grounds that an ordinary legislative procedure was impossible during the parliamentary recess and that any delay could trigger infringement proceedings against Romania. It did not mention that the EU-MER had been in force since almost one year, and that its provisions had been well known to the government since the conclusion of the trilogue in December 2023. The public consultation closed on 1 August 2025, only ten days after publication. Since then, however, the draft emergency ordinance has not yet been advanced to further legislative stages.

In Czechia, the Minister for the Environment submitted a draft law to the Prime Minister on 11 November. At the time of writing it had not yet been officially adopted or submitted by the government to Parliament.

This implies that in Czechia, Italy, and Romania - as well as in several other Member States not examined here - there is currently no legal certainty regarding the penalties applicable to infringements. While this situation persists, companies that comply with the Regulation in these and other countries may face a competitive disadvantage relative to non-compliant competitors, which is clearly unsatisfactory.

Czechia, Italy, and Romania are currently in breach of Art 33(1) EU-MER. The European Commission is entitled to initiate an infringement procedure against these Member States.

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Pursuant to Art. 33(2) of the EU-MER, the Member States must ensure that the competent authorities are empowered to impose at least the administrative penalties and administrative measures listed in the left column of Table 2 for infringements of specified EU-MER provisions, provided that such penalties do not endanger the security of energy supply:

Table 2: Empowering CAs to impose a series of penalties and measures as of Art 33(2)

CAs empowerement as of §33(2)	CZE	DNK	HUN	ITA	ROM
(a) adopt a decision requiring the person to bring the infringement to an end	yes	yes	yes	yes	not clear
(b) order the confiscation of the profits gained or losses avoided due to the infringements	no	yes	no	yes	no
(c) issue public warnings or notices	yes	yes	no	yes	no
(d) adopt a decision imposing periodic penalty payments	limited	yes	no	yes	no
(e) adopt a decision imposing administrative fines	yes	yes	yes	yes	yes

On the positive side, all (draft) legal acts examined explicitly empower the CAs to impose administrative fines. Although not shown in the table, each also includes the required derogation where the security of energy supply is endangered. Denmark's law and Italy's draft law meet all these criteria, demonstrating that best practice can be implemented without difficulty.

All (draft) laws examined, with the possible exception of Romania's, whose draft emergency ordinance is not entirely clear on this point, grant their CAs the power to require the legal or natural person responsible for infringements to take corrective action.

However, the obligation to empower CAs to order the confiscation of profits gained or losses avoided through infringements, insofar as these can be determined, is not implemented in the draft legal acts of Czechia and Romania, nor in Hungary's law currently in force. Likewise, Hungary's law and Romania's draft emergency ordinance do not authorise their CAs to impose periodic penalty payments. Czechia's draft law confers this power, but caps the total amount at around €200,000. Although this ceiling may be dissuasive for various types of infringement, it may not be for others or for a combination of several infringements. In practice, a company could choose not to implement its EU-MER obligations, knowing that the maximum exposure is limited to €200,000. More fundamentally, any fixed upper limit is inconsistent with the logic of periodic penalty payments, which are intended to accrue until compliance is achieved.

Romania's draft emergency ordinance is the only one among those examined that fails to empower the CAs to issue public warnings or notices about ongoing or past infringements.

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There are **further essential aspects of CA empowerment** related to penalties and, more broadly, to the enforcement of the EU-MER that are not covered in Table 2.

First, CAs must be empowered to **"*cooperate closely*" with competent authorities in other Member States** "*to ensure that their powers are exercised, and that the administrative penalties and administrative measures they impose are designed and applied, in an effective and consistent way across the Union*", as required by Article 33(4) EU-MER. In some Member States, however, it is not clear whether this requirement is fulfilled.

In several member States, the CAs responsible for imposing penalties and applying administrative measures are not, or not exclusively, the same institutions that act as the national contact

point for the European Commission and hold the overall responsibility for implementing the EU-MER. For example, in Germany, a significant share of infringements will be sanctioned by regional authorities, which may not have either a clear formal mandate or adequate resources to cooperate closely with public authorities in other Member States. The absence of an explicit mandate - or lack of clarity on this point - in the (draft) legal acts implementing the EU-MER does not necessarily mean that such a mandate does not exist in practice. Nevertheless, explicitly providing it in the implementing act would be preferable for legal certainty and effective cross-border coordination.

From this perspective, Hungary's enacting law does not appear to provide such a mandate, and Romania's draft emergency ordinance seems to limit the cooperation mandate to the ministry with overall responsibility for implementing the EU-MER, without extending it to the other Romanian CAs.

Another key aspect of CA empowerment, though only indirectly related to sanctions, is the CAs' ability to **secure effective access to sites and records for inspections**, including where site operators or record holders obstruct access through passive or active resistance, e.g. by not enabling entry to parts of sites or withholding specific records. Denmark's and Hungary's law, and Italy's draft law explicitly empower CAs to obtain police assistance where necessary to conduct inspections. No equivalent provision appears in the (draft) legal acts of Czechia and Romania, although such powers may be available to their competent authorities under general national legislation.

Finally, a crucial issue is **whether the CAs are provided with the resources** – skilled staff, equipment, funding – needed to fulfil their enforcement tasks, including the application of penalties. This aspect is examined in detail in a paper published by Ecologic Institute in June 2024[13]. In this respect, the Danish law represents best practice: the costs incurred by the public administration to implement the EU-MER will be covered by a fee paid by every company subject to EU-MER obligations in Denmark. This approach applies the polluter-pays principle and ensures that CAs can be equipped with the necessary resources to perform the work required as a result of the activities of the entitities paying the fee. It will be interesting to observe how this model functions in practice.

In the (draft) legal acts of the other member States examined, there is no indication of how the implementation costs will be financed. Given tight public budgets and the peak in implementation activities during the first years following the EU-MER entry into force, insufficient resources for effective enforcement and implementation represent a significant risk in several Member States.

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Art 33(5) sets out a minimum list of infringements that must be subject to penalties. Table 3 provides an overview on whether the examined Member States's (draft) laws cover all these infringements.

[13] Piria, Raffaele, Ramiro de la Vega, Leon Martini and Eike Karola Velten: Implementing the EU Methane Regulation, Working paper N° 1. Tasks and resources needed at the national level. Ecologic Institute, Berlin, 2024. Available at: https://www.ecologic.eu/19718

Table 3: Coverage of all of infringements pursuant to Art 33(5) EU-MER

Coverage as of §33(5)	CZE	DNK	HUN	ITA	ROM
	yes	yes	yes	yes	no

The (draft) laws of Czechia, Denmark, Hungary and Italy ensure that all infringements pursuant to Art 33(5) are subject to penalties.

Romania's draft emergency ordinance does not meet this requirement. Article 10 contains 32 sub-paragraphs, each identifying one or more EU-MER provisions and specifying the applicable range of fines. The relevant EU-MER provisions are designated at sub-paragraph level. For instance, Article 10 b) provides that "(i) failure to adopt, in accordance with Article 6(6) of the Regulation, the measures established by the competent authority in the inspection report referred to in Article 6(5) of the Regulation; (ii) failure to submit the revised report referred to in Article 8(4) of the Regulation;" are punishable by a fine of 15,000 to 30,000 lei.

By relying on an exhaustive list, Romania's draft emergency ordinance may imply that infringements not expressly included are, in practice, not punishable in Romania, even though the underlying conduct remains unequivocally unlawful.

For this reason, it should be noted that Romania's draft emergency ordinance makes no reference to infringements of the following EU-MER provisions:

- Art. 12(4): required content of methane monitoring reports to be submitted by oil and gas operators under Article 12.
- Art 12(5): technical requirements for the measurements and quantifications to be reported by oil and gas operators under Article 12.
- Art 12(6): duty for oil and gas sectors operators to compare source-level quantification with site-level measurement, notify CAs of statistically relevant discrepancies, and carry out reconciliation with specified procedures.
- Art 12(7): obligation for oil and gas sectors operators to indicate any withheld information in reports and justify confidentiality claims.
- Art 15(5): requirement for oil and gas sectors operators to replace methane-venting equipment with non-emitting alternatives compliant with standards set under Article 32 where commercially available.
- Art 15(7): requirement for oil and gas sectors operators to install and use only commercially available zero-emitting pneumatic devices, compressors, atmospheric pressure storage tanks, sampling and measuring devices and dry gas seals, where a site is built, replaced or refurbished.
- Article 16: requirement for oil and gas sectors operators to notify the CAs of venting events and flaring events.
- Art 20(3): requirement for surface coal mine operators to use deposit-specific coal mine methane emission factors, update them quarterly, and follow related technical criteria.
- Art 20(4): technical standards for methane measurement and quantification by coal mines and drainage stations operators.
- Art 20(5): standards for estimating coal post-mining methane emissions using annually updated emission factors.

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Table 3 assesses the extent to which the examined Member States' (draft) legal acts comply with the general criteria for penalties set out in Art 33(1) EU-MER as well as with the aggravating or mitigating factors as of Art 33(7), both of which discussed above in Chapter 1.

It is important to note that these two paragraphs, like all provisions of Art 33 EU-MER on penalties, are addressed to the Member States. Member States are therefore legally required to adopt national legal acts incorporating these principles into domestic law. If they do not so in due time, the European Commission may initiate an infringement procedure. In such circumstances, these criteria and factors remain legally valid, but competent authorities are not necessarily directly required to apply them.

Table 4: General criteria for fines as of §33(1), aggravating and mitigating factors as of §33(7)

General criteria for fines	CZE	DNK	HUN	ITA	ROM
Proportionate to impact on environment, health & safety	yes	yes	no	yes	no
At least deprivation of economic benefits	yes	yes	no	yes	no
To be increased for repeated, serious infringements	yes	yes	no	yes	probably not
Explicit consideration of aggravating & mitigating factors	yes	yes	no	yes	no
Aggravating & mitigating factors	**CZE**	**DNK**	**HUN**	**ITA**	**ROM**
Duration, nature and gravity	yes	yes	no	yes	probably not
Actions taken to mitigate damage	yes	yes	no	yes	probably not
Intentional or negligent	yes	yes	no	yes	probably not
First time or repeated infringement	yes	yes	yes	yes	yes
Economic benefits from infringement	yes	yes	no	yes	probably not
Size of responsible company	yes	yes	no	yes	probably not
Degree of cooperation with authorities	yes	yes	no	yes	probably not
Timely infringement notification	yes	yes	no	yes	probably not

The general criteria for fines under Article 33(1) and the aggravating and mitigating factors under Article 33(7) are directly incorporated into the Czech and Italian acts through explicit reference to the EU-MER. The Danish act contains no such explicit reference. However, its explanatory memorandum sets out these criteria in detail and, according to sources in the Danish Ministry, is de facto legally binding. This approach reflects Denmark's legal framework, which does not allow administrative fines and therefore requires judicial involvement.

By explicitly requiring competent authorities to take these criteria into account when imposing penalties for specific infringements, the (draft) legal acts of these three Member States establish a clear legal position fully consistent with the EU-MER. In these Member States, a penalty imposed without due regard to one or more of these principles could be successfully challenged before a court. Chapter 2 provides an example: a company fined at the maximum level could contest the decision by demonstrating that the competent authority failed to consider relevant mitigating factors, or even simply that not all aggravating factors were present. Conversely, a fine set at the minimum level could be challenged on the basis that not all mitigating factors applied in the case.

However, Hungary's law and Romania's draft emergency ordinance contains no reference to these criteria. This creates an ambiguous legal situation. Whether an affected party could successfully challenge a decision on the ground that it failed to consider one or more of these principles, including mitigating factors, is doubtful and cannot be examined within the scope of this paper. However, it is clear that the absence of an explicit reference to these principles and

to the aggravating or mitigating factors undermines legal certainty and is inconsistent with the EU-MER provisions.

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As discussed in Chapter 1 and illustrated in Figure 3, the EU-MER establishes some important criteria concerning the level of penalties.

Relevant for the **minimum level**, besides the general requirement that penalties be "*effective, proportionate and dissuasive*", Art 33(1) further stipulates that they should be set at a level that "*at least deprives those responsible of the economic benefits derived from the infringement in an effective way*".

In general, the economic benefit of an infringement can be assumed to be at least equal to the avoided cost of compliance; otherwise, most operators would comply on purely economic grounds. Penalties should therefore be set at least at the level of compliance costs. However, because public authorities cannot detect and sanction all infringements, a penalty set exactly at compliance cost would still leave operators with an incentive to breach the rules, given the reasonable expectation that some infringements will go unpunished. Economic theory thus indicates that, to be genuinely effective and dissuasive, fines should be set clearly above the cost of compliance.

Table 4 assesses whether the (draft) legal acts of the Member States examined specify a minimum penalty level, and whether that minimum level is always or mostly dissuasive as required by the EU-MER. The latter is a qualitative judgement, based on the considerations above and briefly justified in the text following the table.

As regards the **maximum level**, the EU-MER, as noted above (Figure 3), caps fines at 20% of the annual turnover of a legal person, or 20% of the annual income of a natural person. National penalty rules allowing for higher maxima would breach the Regulation. Member States may, however, set lower maximum levels, provided these remain compatible with an effective and dissuasive penalty regime.

A maximum defined as a fixed monetary amount for a given type of infringement may be highly dissuasive in some situations, but not in others. Compliance costs for the same EU-MER obligations can vary substantially with the size and characteristics of the asset concerned, or with other technical and market conditions. The size of the infringing company also matters: an amount that is onerous for one operator may be negligible for another. By linking maxima to turnover or income, the EU-MER legislators explicitly accounted for these differences.

Table 4 assesses whether the maximum fine levels of fines set by in the examined Member States' (draft) legal acts are dissuasive. This is qualitative judgement based, informed by the considerations in Chapter 2 and briefly justified in the text following the table.

Table 5: Minimum and maximum level of fines

Level of fines	CZE	DNK	HUN	ITA	ROM
Minimum level clearly defined	no	yes	yes	yes	yes
Minimum level sufficiently dissuasive	no	yes	no	no	partly
Maximum level explicitly defined	yes	yes	yes	yes	yes
Maximum level dissuasive	partly	yes	yes	yes	no

Czechia's draft law does not define a minimum penalty level. While it refers to the general EU-MER principles - implicitly including dissuasiveness and the deprivation of economic benefit - it sets no specific floor. In its absence, the competent authority could, in principle, impose fines as low as 1 Czech koruna. Although such fines would plainly conflict with EU-MER requirements, it is doubtful that they would be challenged in practice. The absence of a minimum level is therefore considered insufficiently dissuasive.

§13(7) of the Czech draft law sets three absolute maximum penalty levels : CZK 5 million, CZK 10 million and CZK 20 million (approximately EUR 200,000, EUR400,000 and EUR 800,000). These maxima may be dissuasive in some cases, but clearly not in others, particularly when combined with the cap on penalties for repeated infringements, which, as noted above, is also set at CZK 5,000.000 (approximately EUR 200,000). The lowest of the three maxima applies, among several other cases, to a fossil fuel importer's failure to provide the information on methane intensity of the production of crude oil, natural gas and goal as required under Article 29(1) and 29(2) EU-MER .This clause would allow importers to remain persistently in breach of these (and other) EU-MER obligations while facing a maximum fine of only around EUR 200.000. Beyond the impact on methane emissions, this could materially distort the internal market, as non-compliant importers registered in Czechia would enjoy an undue competitive advantage over compliant importers, and over non-compliant importers registered in Member States applying turnover-based maxima, such as Denmark and Italy.

Denmark is the only of the Member States examined whose legal system does not allow for administrative fines. Therefore, infringements of EU-MER provisions will be sanctioned by courts, which are legally bound to apply all EU-MER provisions. Accordingly, the Danish enacting law does not specify minimum or maximum amounts. However, the explanatory memorandum to the legislative proposal suggests a minimum fine level of DKK 75,000 (approximately EUR 10,000), which will in practice bind Danish courts when setting fines on a case-by-case basis. This minimum is deemed to be sufficiently dissuasive.

For legal persons, Hungary's law sets a minimum fine of HUF 500,000 HUF (approximately EUR 1,250) and a maximum of 20% of annual turnover. For natural persons, the minimum is HUF 100,000 (approximately EUR 250), the maximum 20% of annual income. As noted above (Table 3), Hungary's law contains no reference to the general criteria for fines and to almost none of the aggravating or mitigating factors. Taken together with the very low absolute minimum levels, Hungary's minimum level cannot be regarded as sufficiently dissuasive.

Italy's draft law sets a uniform minimum fine of €1,000 for any infringement and a uniform maximum of 10% of the annual turnover or income of the legal or natural person concerned. These limits apply across all infringements, without differentiation. The draft law refers to the EU-MER articles containing the overall principles, which the competent authorities must therefore apply when imposing sanctions. If adopted, however, this approach would leave the competent authorities with very wide discretion. In our assessment, the maximum is deemed sufficiently dissuasive, but no the flat minimum of €1,000.

Romania's draft act specifies minimum and maximum fines for many, though by far not all (see above), potential EU-MER infringements. Minimum fines range from RON 10,000 to RON 50,000 (approximately EUR 2,000 - 10,000), and maximum fines from RON 20,000 to RON 100,000 (approximately EUR 4,000 - 20,000). For some infringements, the minimum levels may be sufficiently dissuasive, but clearly not for many others. The lowest minimum, around EUR 2,000, and the lowest maximum, around 4,000 EUR apply to a long list of fourteen potential infringements, including serious breaches with potentially significant distorting effect on the functioning of the internal market, such as importers' failure to provide the competent authorities

with the information required to ensure compliance with Articles 27 and 28 EU-MER. Taken together with the absence of any reference to the removal of economic benefit, to the principle of dissuasiveness, or to annual turnover, these penalty levels appear to be patently inconsistent with Art 33 EU-MER.

4 How to avoid an uneven playing field

The discrepancy between the direct applicability of EU regulations and national responsibility for the adoption of penalty regimes entails a general risk of an uneven playing field in the internal market, as identical infringements may be sanctioned differently across Member States.

In the case of the EU-MER, this risk is particularly pronounced for provisions on imports. Contrary to widespread perception, importers' reports are not submitted to the CA of the Member States where fossil fuels physically enter the EU, but to that of the Member State in which the importing company is legally established. Divergent penalty rules and enforcement practices may therefore enable "enforcement shopping", with importers shifting contracts from Member States with strict regimes to those with more lenient ones.

This could undermine the functioning of the internal market and the effective implementation of the EU-MER, as such "enforcement shopping" may affect tax revenues and encourage a race to the bottom in enforcement quality.

While there is no legal basis for harmonised penalty rules, the European Commission could consider developing at least informal guidance. Such guidance could provide evidence, arguments, tools and model approaches to help MS design penalty regimes that apply the EU-MER principles consistently and effectively.

Some of the key issues that could be addressed

1) Quantifying the benefits of non-compliance: The EU-MER requires that penalties effectively remove the economic benefits gained from non-compliance. The challenge lies in how national penalty regimes and competent authorities can operationalise this principle. In many cases, the economic benefit corresponds to the avoided cost of compliance. For certain – particularly serious or likely – infringements, the Commission could collect evidence on the typical costs of compliance to support consistent enforcement across Member States.

2) Quantifying environment and health damage: The EU-MER also requires that penalties be proportionate to the damage caused to the environment, human health, and safety. Several aspects of this provision have been discussed and clarified in the Ecologic Institute (2024) study from which the charts above are drawn. That study proposes using the volume of actual or potential methane (CH_4) emissions directly or indirectly linked to the infringement as the key criterion. The main remaining challenge is how national penalty regimes and competent authorities can estimate such emission volumes, as in many cases this will require approximations.

3) Operationalising (some of the) aggravating / mitigating factors: The EU-MER requires that penalty levels take into account a range of aggravating and mitigating factors. Further analysis could focus on how these factors can be applied consistently across Member States. Potential areas for exploration include:

   - Establishing a minimal list of infringements to be classified as (very) serious.

- Defining a minimal list of infringements to be considered intentional rather than negligent.
- Assessing the feasibility of treating repeated infringements as an aggravating factor even when committed by different companies within the same group, for example importers or infrastructure operators active in more than one Member State.

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