



CYCLEVIA

The producer responsibility organization
for the waste oils and lubricants industry.

EPR PROCEDURE FOR MINERAL OILS

**Marketers: risks incurred if you do not fulfil
your obligations.**



CYCLEVIA, which is the only eco-organisation currently accredited for the “Mineral or synthetic lubricating or industrial oils” EPR procedure, informs marketers about the risks they face if they fail to join an eco-organisation, and if they fail to declare or submit an incorrect declaration to an eco-organisation.

“Marketers” are defined as any natural person or legal entity that, in a professional capacity, either produces in France, imports, or introduces for the first time to the French market mineral or synthetic lubricating or industrial oils.

1. Risks incurred by the marketer if they do not join CYCLEVIA

Article L. 541-10 of the French Environment Code requires all marketers of waste-generating products from sectors subject to the expanded producer responsibility (EPR) principle:

- either to join an accredited eco-organisation (CYCLEVIA for the “mineral or synthetic lubricating or industrial oils” EPR);¹
- or to put in place an individual accredited collection and treatment system.²

If this obligation is not met, the marketer may be subject to an administrative fine, pursuant to article L. 541-9-5 of the French Environment Code.

In terms of the EPR, the amount of this administrative fine is calculated taking into account:³

- firstly, the average estimated annual quantity of products brought to market by the marketer over the duration of the breach;
- and secondly, the maximum unit-based eco-contribution established by CYCLEVIA.

In addition, the amount of the fine takes into account the severity of the breaches found and the advantages obtained from them. It therefore represents a maximum of €1,500 per tonne of product for a natural person, and €7,500 per tonne of product for a legal entity. An additional daily penalty of €20,000 can be set by a decision of the Environment Minister starting from a date set by them until the ordered measures are implemented.⁴

Aside from the risk of an administrative fine, failure by a marketer to join CYCLEVIA represents a violation of its obligations to provide information to the French Agency for the Environment and Energy Management (ADEME) for traceability purposes, which carries a criminal penalty.

2. Risks incurred by the marketer if they fail to submit a declaration or submit an incorrect declaration

The marketer is obliged to send information to ADEME to guarantee product traceability, and this is a legal obligation.⁵

The membership agreement that the marketer enters into with CYCLEVIA delegates this obligation to send information to ADEME to CYCLEVIA. Therefore, the marketer sends CYCLEVIA the information required pursuant to its contractual obligation. CYCLEVIA can then send the information to ADEME, thereby ensuring the marketer fulfils their legal obligation.

However, if the marketer does not fulfil their contractual obligation to send information to CYCLEVIA, they risk incurring (a.) administrative and (b.) criminal sanctions, in addition to the (c.) contractual penalties.

a. Administrative sanctions

A marketer that has not fulfilled its obligation to send information to ADEME (reporting obligation) risks receiving two cumulative administrative fines.

They are firstly at risk of the administrative fine described above (1.) due to a breach of their general expanded producer responsibility obligation, and secondly, a breach of one of the four following reporting obligations exposes the marketer to an additional administrative fine of €30,000.⁶ The marketer may be penalised in the following scenarios:

- If they are not enrolled in the ADEME monitoring register,
- If they have not provided information to this register,
- If they have provided incorrect information,
- If they have not included their unique identifier⁷ in their general terms of business or, if they do not have such a document, in any other contractual document sent to the purchaser, and on their website, if they have one.⁸

¹ Article L. 541-10-1, 17

² According to article L. 541-10 I, paragraph 9 of the French Environment Code, an individual system is possible on the condition that “its products bear markings identifying their origin, that it ensures the resulting waste is recovered free of charge from anywhere within France and provides, if it improves the efficiency of the waste collection, a return bonus intended to prevent waste dumping, and that it has a financial guarantee in the case of failure.”

³ Article L. 541-9-5, paragraph 3 of the French Environment Code

⁴ Article L. 541-9-5, paragraph 2 of the French Environment Code

⁵ Article L. 541-9-5, paragraph 4 of the French Environment Code

⁶ Article L. 541-9-5, paragraph 4 of the French Environment Code

⁷ Since 1 January 2022, article L. 541-10-13 of the French Environment Code requires any marketer of waste-generating products subject to an EPR procedure to obtain a unique identifier via the ADEME “SYDEREP” portal.

⁸ Article R. 541-173 of the French Environment Code

Moreover, non-compliance with the aforementioned obligations by the marketer exposes them to the administrative measures and penalties provided for in articles L. 171-6 to L. 171-12 of the French Environment Code,⁹ in particular: enactment of interim measures, referral to a public accountant and suspension of activities until full execution of the conditions imposed.

b. Criminal penalties

A marketer that does not fulfil its obligation to send information to ADEME and therefore to CYCLEVIA also risks receiving criminal penalties.

According to article L. 541-9 III, paragraph 3 of the French Environment Code:

"[In the case of marketers] subject to the expanded producer responsibility principle [...], [ADEME] has access to quantitative data, the characteristics of the products brought to market and financial information held by the producers or their eco-organisation regarding the preventative and management measures for the waste generated by their products."

By not complying with these provisions, the marketer therefore risks two years in prison and a fine of €75,000.¹⁰ This conviction could be the result of proceedings instigated by the public prosecutor (*procureur de la République*), or an allegation or complaint.¹¹

In the case of proceedings brought by the public prosecutor, the correctional court (*tribunal correctionnel*) can order operations to cease or be suspended, and under penalty if applicable.¹² Additional penalties can also be ordered, such as the dissolution of the legal entity, exclusion from public tenders definitively or for a maximum term of five years, a ban, definitively or for a maximum term of five years, on offering financial securities to the public or admitting its financial securities for trading on a regulated market, or a requirement to display the ruling or communicate it to the public either in the written press or using any means of digital communication.¹³

c. Contractual penalties

Marketers who have joined CYCLEVIA have a contractual obligation to inform CYCLEVIA of the quantities of

products they have brought to market themselves and, if applicable, by the principals for whom they are performing the declarative obligations.¹⁴

An incorrect declaration requires payment of the monetary amounts concerned. In the event of a shortfall in the declarations of products placed on the market as a result of repeated errors or fraudulent practices, the remaining sums to be paid shall automatically be increased by a penalty clause of 10%.¹⁵

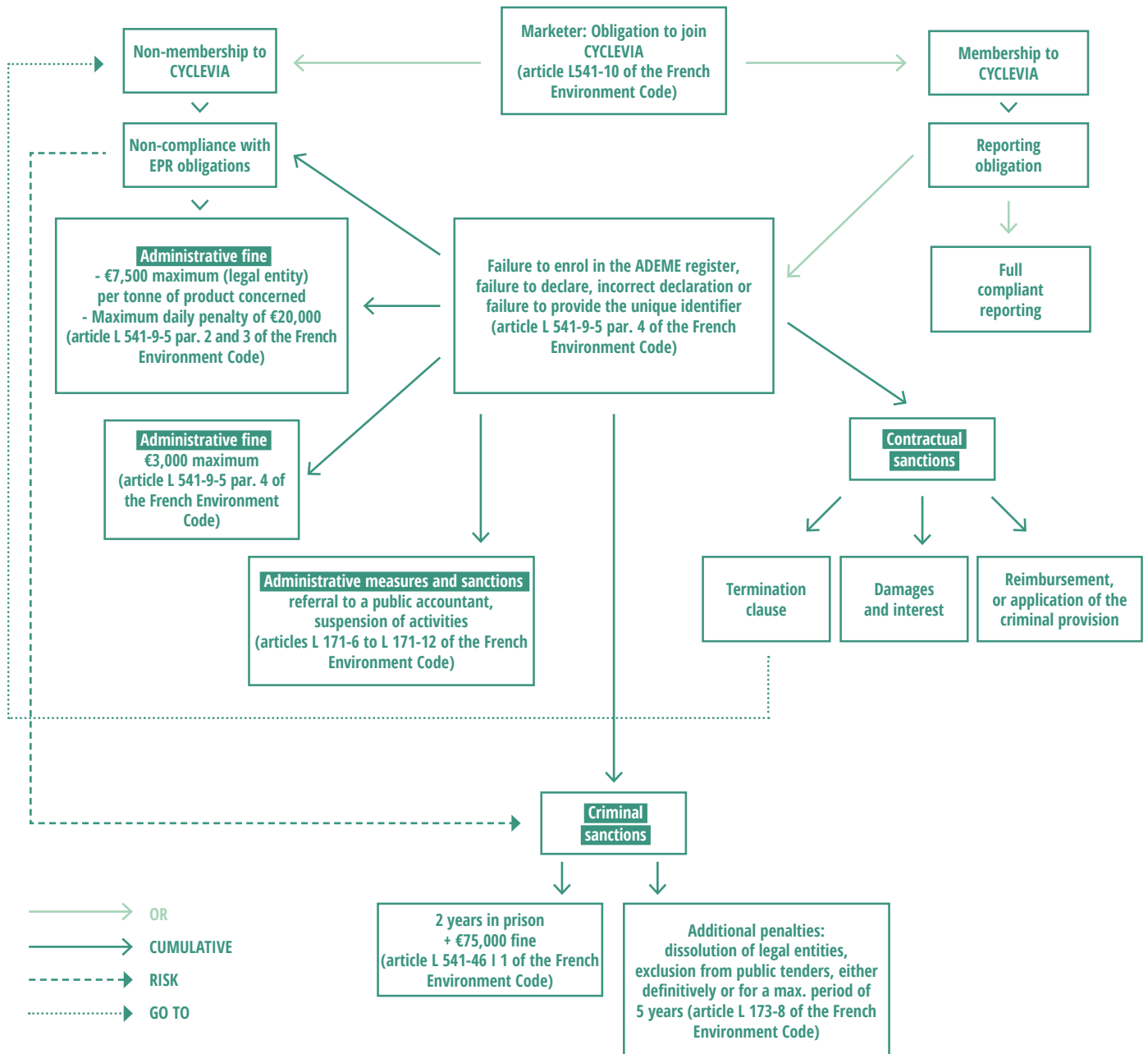
Moreover, it is also stipulated in the contract¹⁶ that said contract can be unilaterally terminated by CYCLEVIA in the case of a missing or incorrect declaration.

In addition, pursuant to article L. 1231-1 of the French Civil Code, the marketer is liable to pay damages and interest to CYCLEVIA.

9 In accordance with article L. 541-9-7 of the French Environment Code
10 Article L. 541-46 I, 1 of the French Environment Code applies in particular to a refusal to provide the authorities with the information specified in part III of article L. 541-9 or providing incorrect information, which refers to paragraphs 1, 2 and 3 according to our analysis. Paragraph 3 specifically covers the EPR and it is therefore this paragraph that applies in this case.
11 Article 40 of the French Penal Procedural Code
12 Article L. 173-5 of the French Environment Code

13 Article L. 173-8 of the French Environment Code
14 According to the model membership agreement provided by CYCLEVIA.
15 *Ibid.*
16 *Ibid.*

Risks incurred by marketers if they do not join or do not report to an eco-organisation.



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