



# Public Consultation Submissions & Responses

## Daily Penalties (Environment) Regulations, 2018

February 2018

Legal Office / National Affairs

CONSULTATION FEEDBACK



Ref No.	Name of Stakeholder / Date	Comments Received	Response / Remarks
DPR 1	Carmen Borg (Senior Executive) obo GRTU 28/04/17	<p>Dan ir-regolament jolqot diversi setturi rappreżentati mill-GRTU u nassigurak li l-maggiorparti ta' dawn l-operaturi huma kollha liċenzjati sabiex jkunu jistgħu joperaw l-mestier tagħhom. Kif ħareġ sew waqt l-laqgħa li kellna miegħek l-membri preżenti talbu sabiex l-awtoritajiet jiffokaw aktar fuq l-ammont ta' abbuż li qiegħed jsir min operaturi mhux liċenzjati milli minn operaturi li qegħdin jiggeraw l-ekonomija u joperaw skond kif titlob l-Ligi.</p> <p>L-Avviz Legali jimponi diversi multi fejn dawn jibqgħu telgħin jekk kemm il-darba ma jiġiex osservat dan l-Avviz Legali. Barra minhekk hemm <i>fee</i> ta' € 100 għal xogħol amministrattiv.</p> <p>Wara li gie studjat sew dan l-Avviz Legali l-GRTU għan nom tal-membri kkonċernati qegħda tagħmel dawn it-talbiet:</p> <ul style="list-style-type: none"> <li>• Is-somma amministrattiva tinzel għal €50 min €100 u tiskatta mas-16 l-gurnata wara notificazzjoni bil-miktub;</li> </ul>	<p>L-Awtorità tiegħi konjizzjoni ta' dan il-punt u tibqa' twettaq il-ħidma tagħha sabiex jitnaqqas l-abbuż.</p> <p>Dawn ir-regolamenti japplikaw ukoll għall-operat mingħajr liċenzja u huma intiżi biex jiffaċilitaw kull azzjoni li tista' tiegħi l-Awtorità bil-għan li tagħxi b'mod iktar effiċjenti kontra min qiegħed jopera mingħajr liċenzja.</p> <p>Dawn ir-regolamenti huma intiżi biss biex jintużaw f'ċirkostanzi fejn operatur jippersisti fin-nuqqas ta' osservanza mal-obbligi relatati mal-liġijiet ambjentali. Dan il-proċess jirrikjedi ammont ta' rizorsi umani li jimponu piż finanzjaru fuq l-Awtorità. Il-multa amministrattiva ser tinħareġ biss wara komunikazzjoni mill-Awtorità mal-operatur sabiex jirrimedja l-pożizzjoni tiegħu u dan jibqa' inadempjenti. Għaldaqstant il-multa ta' €100 hija meqjusa bħala ammont ġust għax-xogħol involut.</p>

		<ul style="list-style-type: none"> <li>• L-15 l-gurnata ghandhom jigu kkalkulati fuq <i>working days</i>, (<i>weekends</i> u <i>public holidays</i> ma jghoddux) u mhux <i>calendar days</i>;</li> <li>• L-Awtorita' tibqa taghmel viziti spontanji pero, qabel ma johrog r-rapport tara li tkun qeghda titkellem mall-persuna awtorizzat/a jew l-persuna licenzjat/a;</li> <li>• L-ERA tahdem flimkien mall-GRTU sabiex l-operaturi jkunu nformati fil-hin bl-iskadenza tal-permess jew affarijiet ohra relatati;</li> <li>• Il-licenzja tal- <i>waste carrier</i> ghandha tkun imgedda awtomatikalment kull sena bil-kundizzjoni li l-ERA tircievi kopja tal-licenzja u l-<i>insurance</i> tal- vettura awtorizzata. Jekk jirrizulta <i>infringement</i> min naha ta l-operatur tiskatta mmedjatement il-penali;</li> <li>• Il-licenzja tal-<i>waste broker</i> ghandha tkun imgedda kull sentejn. B'hekk tigi eliminata t-tensjoni ta' kull sena bejn l- ERA u l-operaturi;</li> <li>• L-ERA ghandha tikkopera mall- <i>permit holder</i> u tiehu l-rwol ta' ahna qeghdin hawn biex ngihinuk attitudni.</li> </ul>	<p>Il-perjodu ta' jiem successivi huwa konformi ma' ligijiet ta' entitajiet ohrajn li huma diga fis-sehħ f'circonstanzi simili.</p> <p>L-Awtorità tieħu konjizzjoni ta' dan il-punt u tikkonferma li din hija prassi ezistenti, li sejra titkomplu u tigi msaħħa.</p> <p>L-Awtorità ser tibqa' tagħmel l-almu tagħha biex qabel ma toħroġ kwalunkwe multa, l-operaturi jibqgħu jigu kkuntatjati biex jirrimedjaw il-pożizzjoni tagħhom. Madankollu l-obbligu jibqa' dejjem fuq l-operatur li jara li jottompera mar-rekwiziti tal-Awtorità.</p> <p>Dan is-suggeriment imur oltre mill-iskop ta' din il-ligi.</p> <p>Dan is-suggeriment imur oltre mill-iskop ta' din il-ligi.</p> <p>L-Awtorità tieħu nota ta' dan il-kumment.</p>
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		L-ERA għandha tinforma lill-GRTU direttament dwar tibdil f'materji li jolqtu lill-membri tagħha b'hekk jiġu evitati konflitti bla bżonn.	L-ERA tikkonferma li hija digà tinforma lill- <i>stakeholders</i> konċernati fuq tibdil fil-legislazzjoni jew gwidi li tkun qiegħda tippubblika.
DPR 2	Joe Attard (CEO) Green mt / WEEE Malta 01/05/17	<p>Whilst it is the responsibility of any Government to establish legal parameters to improve its monitoring of Environmental Legislation the step about to be taken by the said Ministry is to address income shortfalls for the Environment and Resources Authority since it is now an independent entity ( since the demerger).</p> <p>Whilst saying this we are concerned at the fact that action in this format is being taken whilst a number of issues relating to Compliance Schemes in particular remain on the shelf.</p> <p>The enforcement mechanism has been lacking over the years and thus has brought about continued free riding and also reduced declaration volumes from producer members. The issue of a fair and level playing field remains one of importance. A competing Scheme continues to avail itself of funds from Local Councils to pay its operations, i.e. The Local Council paying directly to the contractor and in addition the volume received through that Local Council is accredited to our Competing Scheme in the market for which volumes the Scheme is paid Euro 48 plus VAT from Wasteserv Malta Limited.</p>	<p>While ERA takes note of your comment, it believes that the proposal is an additional tool in ensuring compliance with environmental legislation.</p> <p>The daily penalty regulation is intended to address all environmental sectors.</p> <p>This proposal is beyond the scope of these regulations. This is a tool to ensure compliance.</p>

		<p>Whilst there is still all these anomalies, the Ministry for Sustainable Environment, the Environment and Climate Change after consultation with ERA and MFIN have decided to find a way of how to finance operations at ERA.</p> <p><b><u>Draft. Legislation</u></b></p> <p>Article 3(1).' Notice in writing ' - Is to be defined in Interpretation.</p> <p>The Notice in writing needs to provide minimally 30 calendar days to rectify or remedy the said outlined infringement. If no remedial action is put in place, the Authority shall issue a 'Final Notice' giving 15 days notice to remedy the infringement.</p> <p>Daily penalties will only then be in place from 45 days of failure to remedy infringement and not before.</p> <p>The administrative fine of Euro 100 is exorbitant. There needs to be established a criteria, or a scale for the issuing of an administrative fine. This scale would be related to the size of the offender, establishing whether it is an individual or an organization and in doing so also establish the administrative work required. i.e. If the Notice in writing costs the Competent Authority just Euro 10 in real terms then the administrative fine needs to be in line with the cost and not issued as a straight Euro 100. This would be a form of usury established by a Government Authority which is not acceptable.</p> <p><b><u>Article 3 (2)</u></b></p> <p>We are not in agreement with this clause.</p>	<p>Notices will be sent in accordance with the provisions laid down in Article 76 of the Environment Protection Act, 2016 (EPA).</p> <p>These regulations will mainly target those operators who repeatedly persist to disregard the law. The administrative process to ensure compliance with statutory requirements involves considerable human resources independently of the size or scale of the offence. In general, the administrative fine will only be issued following notification to the operator to adhere to the obligations imposed by the relevant environmental legislation. Thus, in practice, the operator will have more than 15 days notice to comply.</p>
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		<p>A person, individual or entity or organization cannot be penalized more than once for the same offense or infringement. This is the ethics of the rule of law.</p> <p><b><u>Article 4</u></b> <b><i>Concurrent Offenses</i></b> We contend that if there are concurrent offenses, that daily penalty which is the highest only will be liable as a daily penalty. Is if the individual or organization is faced with multiple offenses, that daily penalty relating to the highest offense daily will be liable only.</p> <p><b><u>Article 5</u></b> <b><i>Appeal</i></b> The penalty shall be due from the 46th day, in line with amendments requested in Article 3 (1).</p> <p><b><u>Article 7</u></b> <b><i>Remediation</i></b> The draft legislation states : 'When the person subject to daily penalty under this regulation remedies the matter subject to the daily fine, formal written notice to the Authority is to be</p>	<p>Regulation 3(2) is not to be interpreted that a person will be penalised twice for the same offence but rather it states:</p> <p><i>“This penalty shall be levied without prejudice to any other fine or amount payable to the Authority under the provisions of the Act.”</i></p> <p>For the same infringement a person will not be penalised more than once, however the Authority retains the right to levy penalties for different infringements that the operator may be conducting.</p> <p>Point noted.</p> <p>Kindly refer to reply above.</p> <p>Kindly note that entity is included in the definition of “person”.</p> <p>Regulation 7 has been reworded as follows:</p>
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		<p>sent without delay, accompanied by any submissions and evidence as required by the Authority, which in turn will be verified by the authority and will confirm in writing that the source of infringement has been remedied'.</p> <p>This draft requires the inclusion of the following specifics.</p> <p>'When a person or entity subject to daily penalty under this regulation remedies the matter subject to the daily fine, formal written notice needs to include informing the Authority by email or by hand carried delivery or registered post. The receipt of such documentation is to be acknowledged in writing through a receipt issued by the authority on the same day. Fines will cease on that day, with the actual day of submission not being included as a fine.</p> <p>Verification by the Authority needs to take place within 7 days and the Authority will confirm in writing within those 7 days whether the infringement has been corrected or otherwise.</p> <p>In addition the there could be infringements of a very subjective nature as in the case of reporting and as such it is not correct to have an Authority acting as prosecutor , judge and jury at the same time. It is recommended that an independent board is established which will cater for such verifications.</p> <p>Verifications issued by this independent board should be either communicated by electronic mail, hand delivered mail or registered</p>	<p><i>'When the person subject to daily penalty under these regulations remedies the matter subject to the daily penalty, the person should send formal written notice to the Authority without delay, accompanied by any submissions and evidence as required by the Authority. The Authority will verify and confirm in writing that the source of infringement has been remedied.'</i></p> <p>Suggestion has been noted however same day confirmation is not logistically possible in view that ERA's feedback has to confirm that the offence subject to the notice has been remedied to ERA's satisfaction.</p> <p>It is to be noted that daily penalty will temporarily stop accruing until the Authority processes the documentation submitted.</p> <p>There are legal safeguards that regulate the Authority's role and every administrative decision taken by the Authority is subject to scrutiny and legal redress before Courts established by law.</p>
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		<p>Authorization and as such we cannot allow such an infringement with such low daily penalties. If the fines are issued as drafted it would only be a legal loophole for a company or individual to operate illegally and integrate the cost of his daily fine in his operations</p> <p>We should however show more leniency where the cases are those relating to permit renewals. As thus we recommend as follows :</p> <p>Part II Failure to comply with conditions set out in permit</p> <p>0-45 days. NIL , 46-90 days Euro 5, 91 to 180 days Euro 10, 181 days to 365 days Euro 20, beyond 366 days daily fine of Euro 100 Together with formal notice to cease operations.</p> <p><b><u>Conclusion</u></b></p> <p>Whilst environmental legislation in place requires enforcing, the draft legislation does not go far enough to assess whether individuals or organizations actually effect an offense out of their own free will or otherwise due to negligence also of third parties. The draft regulations open a pandora's box in relation to operations without authorization. We expect that anyone without Authorization does not operate at all in the market.</p> <p>Failure to change the daily penalties to meet our recommendations would only mean that the Authorities will be more lenient than ever before in</p>	<p>Refer to previous replies.</p>
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		<p>environmental issues with ERA using these daily fines to take in funds only.</p> <p>Prior to issuing infringement notices, ERA should set up a Category of Infringements which would determine the category of the said infringement in relation to culpability and harm factors. Infringements could be of a deliberate, reckless, negligent or low culpability.</p> <p>In addition and of utmost importance is the establishment of an independent body to ascertain that the Authority ERA does not act as prosecutor, judge and jury at the same time.</p>	
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