

## TS3B: Apply sanctions under the terms set out in legislation

REGULATORY FUNCTION: TARIFF SETTING		TS3B
<b>OBJECTIVE TS3</b> Administrative infringement proceedings against uncompliant operators are in place	<b>ACTION CARD TS3B</b>  <h1>APPLY SANCTIONS UNDER THE TERMS SET OUT IN LEGISLATION</h1>	
<b>COST:</b> High <b>FREQUENCY:</b> One time <b>TARGET GROUPS:</b> Regulators, service operators, service clusters		
<b>DESCRIPTION</b> Regulators penalize operators who do not comply with tariff directives. Possible sanctions include fines, prosecution, changes to operator's management teams, licence removal, or transferring licenses to other operators. However, prior to actual application, sanctions must be made transparent through regulatory policies and acts. Predefined penalty systems allow for the imposition of adequate penalties on utilities for acts or omissions that infringe legal provisions in terms of tariff collection, fulfilment of key performance indicators established in concessions, or other social or environmental regulations. Transparently outlined sanction mechanisms ensure the integrity of regulatory infringement actions.		
<b>EXPECTED OUTCOMES</b> <ul style="list-style-type: none"> <li>• Transparent sanctions are applied within the rule of law.</li> <li>• Non-complaints cannot continue their operations without aligning to agreed tariff regulations.</li> <li>• Affected consumers and other relevant parties are satisfied, morally and financially.</li> </ul>		
<b>EXAMPLE 1: KENYA</b> In <b>Kenya</b> , following its enforcement strategy, the regulator WASREB enforces tariff-related decisions through the following actions. <ul style="list-style-type: none"> <li>• Issuing of fines.</li> <li>• Ordering the payment of penalties by licensees to third parties aggrieved by action or inaction of licensees.</li> <li>• Levying of penalties for non-payment of regulatory levies.</li> <li>• Prosecution of offences committed by licensees under the Water Act or recommending prosecution of culprits to other concerned public agencies for offences in relation to any other Act.</li> <li>• Use of court action in judicial review proceedings.</li> <li>• Recommending to the Ministry the removal of the top management and board of directors of the water services board if inspection reports are not followed up by licensee.</li> <li>• Order the removal of top management team of Water Service Provider and board of directors.</li> <li>• Cancellation of the Service Provision Agreement (SPA).</li> <li>• Transfer of licenses to another licensees.</li> </ul>		
<b>EXAMPLE 2: PARAGUAY</b> In Paraguay, the sanctions system considers the application of tariffs that don't correspond to user category or consumed volume to be minor violations. However, it is considered a severe violation when users are billed for services that have not been provided, including unauthorized tariffs, or in excess of the authorized margin for average-based billing, as well as collections that are not allowed by the tariff system; the application of unit charges and tariffs greater than those authorized constitutes a major violation. The severity of the violation is related to applicable sanctions. Minor violations result in warnings and severe or major violations result in fines of varying amounts, with the possibility of a rescission or revocation of the concession when a Report by an Independent Third-Party Accounting, Financial and Technical Audit establishes, in line with Tariff regulations, irregularities in the accounting statements and/or in the entity's financial or technical management that could place normal service management at risk, or when unauthorized tariffs are applied to over thirty percent (30%) of users.		

**EXAMPLE 3: COLOMBIA**

In Colombia, the Superintendency of Household Public Utilities (SSPD) may apply sanctions to entities that violate regulations, in accordance with the nature and severity of the violation. These fines may reach up to two thousand (2000) times the statutory monthly minimum wage in the case of natural persons and one hundred thousand (100,000) times the statutory monthly minimum wage in the case of legal persons. Decree No. 1158 of 2017 regulates the criteria and methodology for adjusting and calculating fines by the SSPD for infringements related to household aqueduct, sewerage and garbage collection utilities. The procedure for applying fines is set forth in Law No. 1437 of 2011, Administrative Procedure and Litigation Code.

**LINKS**

Kenya: Kenya Enforcement Strategy: <https://wasreb.go.ke/downloads/Enforcement%20And%20Compliance%20Strategy.pdf>

Paraguay: Law No. 1.614/2000 Infringements and Sanctions Regulation

[https://www.erssan.gov.py/application/files/3315/8896/1500/Reglamento\\_de\\_Infracciones\\_y\\_Sanciones.pdf](https://www.erssan.gov.py/application/files/3315/8896/1500/Reglamento_de_Infracciones_y_Sanciones.pdf)

Colombia: Decree No. 1158 of 2017, which amends Decree No. 1082 of 2015, regulates the criteria and methodology for adjusting and calculating fines by the Superintendency of Household Public Utilities for infringements related to household aqueduct, sewerage and garbage collection utilities.

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=82615>

**INTERNAL CAPACITIES NEEDED AND THE ROLE OF PARTNERS**

Imposing sanctions require regulators to have certain judiciary and administrative skills. These could also be sustained and supported by best practices from other regulators. Potential partners include national judiciary and disciplinary institutions, and development partners who can train regulators' staff on how to apply and manage sanction measures within their regulatory mandates.