

# EN3A: Penalize actors for their non-compliance with environmental legislation and policies

REGULATORY FUNCTION: ENVIRONMENT		EN3A
<b>OBJECTIVE EN3</b> Water abstractors and polluters are sanctioned when committing environmental infringements	<b>ACTION CARD EN3A</b>  <h2 style="margin: 0;">PENALIZE ACTORS FOR THEIR NON-COMPLIANCE WITH ENVIRONMENTAL LEGISLATION AND POLICIES</h2>	
<b>COST:</b> Medium <b>FREQUENCY:</b> One time <b>TARGET GROUPS:</b> Regulators, service operators, industrial and agricultural consumers, environmental authorities		
<b>DESCRIPTION</b> Environmental regulators sanction non-compliant operators, and industrial or agricultural users. Sanctions, applied as a last resort, must be defined in advance and made publicly accessible. Regulators may sanction any kind of misconduct due to consequent damage being irreversible. In cases where self-corrective measures are still possible, regulators issue remedial instructions with a fixed deadline, though failure to address these in time may result in more severe penalties.		
<b>EXPECTED OUTCOMES</b> <ul style="list-style-type: none"> <li>• Operators are prevented from continuing inappropriate practices.</li> <li>• The environment is protected from further damage.</li> <li>• Consumers are transparently informed about respective penalties.</li> </ul>		
<b>EXAMPLE 1: GERMANY</b> In <b>Germany</b> , environmental criminal offences are defined in sections 324 et seqq. under Chapter 29 ('Offences against environment') of the German Criminal Code (StGB), and in a number of environmental laws (e.g. sections 27 et seqq. Chemicals Act; sections 71, 71a Federal Nature Conservation Act). The prosecution of administrative and criminal offences is generally in the remit of the German federal states (Länder), although the Federal government is responsible for prosecution of several specific violations. The German Environment Agency is the competent body for prosecution and sanctioning. Especially serious offences of environmental law are punishable by fines or prison sentences of up to two, three or five years. The penalty for particularly serious cases, e.g. ones which endanger the public water supply (cf. section 330 StGB), is imprisonment for a term of ten or 15 years. However, just as with fines, sanctions imposed usually do not reach the maximum degree. Unlike administrative offence and in other countries, German law allows for the prosecution of individuals only and not of legal entities. This is because German criminal law assumes the personal guilt of the offender. Since 2017, however, the law provides for the confiscation of the proceeds of crime from companies if the criminal act was committed by an employee (section 73b StGB).		
<b>EXAMPLE 2: IRELAND</b> In <b>Ireland</b> , the Environmental Protection Agency (EPA) Office of Environmental Enforcement (OEE) commissioned a study on the use of civil/administrative sanctions relevant to environmental protection in Ireland, the UK, USA, Germany and Australia. It identified 20 administrative sanctions available to environmental regulators to enforce environmental law, without resort to criminal or civil court proceedings. Ireland already has access to 11 of these 20 non-criminal sanctions identified, including those below. <ul style="list-style-type: none"> <li>• Enforcement undertakings: Written undertakings to remedy the harm done that can be enforceable in court.</li> <li>• Fixed or variable penalties: Payment of specified or variable monetary amounts to discharge or compensate for the breach (on the spot fines or infringement notices).</li> <li>• Environmental or community services orders: Offenders carry out a specified project for public benefit, e.g. the provision of recycling facilities, conservation or remediation work, training, or education initiatives.</li> <li>• Compensation orders: Offenders compensate the regulator or a third party for costs incurred.</li> <li>• Name and shame or publicity orders: Orders requiring publicity of environmental consequences or penalties.</li> </ul>		

### EXAMPLE 3: COLOMBIA

In Colombia, Law No. 1333 of 2009 established an administrative procedure for environmental sanctions. The procedure is initiated by environmental authorities in the event of regulatory infringement or environmental damage. The procedure presumes the fault or willful misconduct of the presumed offender, which leads to preventive measures, and the offender is definitively sanctioned if the presumption of fault or willful misconduct is not dispelled, a task for which the offender shall bear the burden of proof and may use all legal evidence available. The environmental sanction shall expire 20 years after the act or omission giving rise to the infringement.

The sanctions that may be imposed are as follows:

1. Daily fines for up to five thousand (5000) statutory monthly minimum wages in force.
2. The temporary or definitive closure of the establishment, construction or service.
3. The evocation or termination of the environmental license, authorization, concession, permit or registration.
4. The demolition of the work at the expense of the offender.
5. The definitive confiscation of specimens, exotic wild species, products and by-products, elements, means or implements used to commit the infringement.
6. The restitution of specimens of wild fauna and flora.
7. Community service pursuant to the conditions set forth by the environmental authority.

### EXAMPLE 4: PERU

In Peru, the Environmental Assessment and Auditing Body (OEFA) is the entity empowered to investigate possible administrative infringements and impose sanctions for non-compliance with obligations and commitments deriving from environmental management instruments, environmental regulations, environmental commitments undertaken in concession contracts, and mandates and provisions issued by OEFA. Among other matters, the authority may investigate violations to the administrative authorization system for water consumption and wastewater dumping. Applicable sanctions are defined by the OEFA Board of Directors on the basis of the provisions of Article 136 of General Environmental Law No. 28611, namely:

- a. Warning.
- b. Fine of up to 30,000 Tax Units in force on the date of payment.
- c. Temporary or definitive confiscation of objects, instruments, artifacts or substances employed to commit the infringement.
- d. Suspension or restriction of the activity causing the infringement.
- e. Suspension or termination of the permit, license, concession or any other type of authorization, as the case may be.
- f. Partial or total closure of the facilities or establishment in which the activity that generated the infringement is carried out.

### LINKS

Germany: <https://www.umweltbundesamt.de/en/topics/sustainability-strategies-international/environmental-law/environmental-administrative-offences-environmental>

Ireland: Irish EPA web site: <https://www.epa.ie/our-services/compliance--enforcement/whats-happening/prosecutions-and-penalties/>

Colombia: Law No. 1333 of 2009

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=36879>

Peru: OEFA institutional information

Institutional information - Environmental Assessment and Auditing Body - Government of Peru ([www.gob.pe](http://www.gob.pe))

### INTERNAL CAPACITIES NEEDED AND THE ROLE OF PARTNERS

Penalizing actors for their non-compliance with environmental legislation and policies requires a range of legal capacities to establish a framework of non-legal, legal, and criminal punishments available to be used, and to develop guidance on their suitable and proportionate use. If punishments are monetary, financial and administrative capacities are needed to establish and set formulas to calculate the amount of fines, depending on the pollutant, relative toxicity, potential to cause environmental damage, and costs of actual damage caused in terms of remediation (clean up) and social and ecological damage. Development actors can assist by providing technical assistance in formula setting, a by supporting environmental economists in national environmental authorities, and peer reviewing developed formulas.