

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

REGULATORY FUNCTION: ENVIRONMENT		EN3A
OBJECTIVE EN3 Water abstractors and polluters are sanctioned when committing environmental infringements	ACTION CARD EN3A <h2 style="margin: 0;">PENALIZE ACTORS FOR THEIR NON-COMPLIANCE WITH ENVIRONMENTAL LEGISLATION AND POLICIES</h2>	
COST: Medium FREQUENCY: One time TARGET GROUPS: Regulators, service operators, industrial and agricultural consumers, environmental authorities		
DESCRIPTION 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.		
EXPECTED OUTCOMES <ul style="list-style-type: none"> • Operators are prevented from continuing inappropriate practices. • The environment is protected from further damage. • Consumers are transparently informed about respective penalties. 		
EXAMPLE 1: GERMANY In Germany , 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).		
EXAMPLE 2: IRELAND In Ireland , 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"> • Enforcement undertakings: Written undertakings to remedy the harm done that can be enforceable in court. • 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). • 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. • Compensation orders: Offenders compensate the regulator or a third party for costs incurred. • Name and shame or publicity orders: Orders requiring publicity of environmental consequences or penalties. 		

LINKS

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

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

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.