

## CP3B: Establish penalty systems for infringing contractual provisions regarding consumer protection

REGULATORY FUNCTION: CONSUMER PROTECTION REGULATION		CP3B
<b>OBJECTIVE CP4</b> Consumer protection is enforced through sanctions or rewards	<b>ACTION CARD CP3B</b>  <h1>ESTABLISH PENALTY SYSTEMS FOR INFRINGING CONTRACTUAL PROVISIONS REGARDING CONSUMER PROTECTION</h1>	
<b>COST:</b> Low <b>FREQUENCY:</b> One time <b>TARGET GROUPS:</b> Regulators, service operators, consumers		
<b>DESCRIPTION</b> <p>In more severe cases of breaching service contract obligations, regulators may apply sanctions as a last resort. However, they can open administrative infringement proceedings against an operator only under the terms set out in legislation. Sanctions should be incremental. For example, they can amend procedures, or a decision initially taken by an operator, or penalize operators for non-compliance to regulatory instructions. An operator's staff member may be also penalized if reported information has intentionally not represented reality. Prior to actual application, sanctions must also be transparently outlined through a mechanism, specifying its time sequence, conditions, and terms. Predefined penalty systems allow for the imposition of adequate penalties on utilities for acts or omissions infringing legal provisions within service contracts. Transparently outlined sanction mechanisms ensure the integrity of regulatory infringement actions.</p>		
<b>EXPECTED OUTCOMES</b> <ul style="list-style-type: none"> <li>• Contractual infringements are reduced or prevented in a timely manner.</li> <li>• Service operators and consumers are prevented from further breaches of contract.</li> <li>• Consumers are properly compensated when applicable.</li> </ul>		
<b>EXAMPLE 1: ZAMBIA</b> <p>In <b>Zambia</b>, the Water Supply and Sanitation Act (No. 28 of 1997) states that utility's operating license can be suspended or cancelled if a provider fails to meet license conditions. Other penalties applicable under the same act can penalize an individual (a staff member of a provider) if they are found to be responsible for a negligent act leading to the provision of unsafe water. This can be a fine, imprisonment, or both. The National Water Supply and Sanitation Council (NWASCO) carries out annual inspections of 11 commercial utilities and six private schemes, with findings published in sector reports.</p>		
<b>EXAMPLE 2: BOLIVIA</b> <p>The Authority for the Auditing and Social Supervision of Drinking Water and Basic Sanitation (AAPS) is the Bolivian regulator, whose functions include monitoring compliance with the commitments undertaken by providers in relation to drinking water and sewerage service provision quality, with the aim of ensuring the achievement of management indicators in the areas of coverage, continuity, quality, quantity and sustainability.</p> <p>Accordingly, AAPS has a Manual on the Monitoring and Auditing of Providers, which sets forth a sanctions and fines system that determines the types of infringements in which providers may incur, which include the following:</p> <ul style="list-style-type: none"> <li>• Infringements related to the provision of an emergency drinking water service.</li> <li>• Infringements related to the suspension or the continuity of the service.</li> <li>• Infringements related to non-compliance with reporting obligations toward AAPS or users.</li> <li>• Infringements related to user service.</li> <li>• Infringements related to wastewater discharges that exceed permitted quality values.</li> <li>• Infringements related to any non-compliance in permitted drinking water parameters assessed according to the risk posed for population health.</li> </ul>		

- Infringements related to non-compliance with obligations related to insurance policies, charges to users (tariffs) and contributions or payments to AAPS or users.

The manual defines the fine for each type of infringement according to the severity of the non-compliance case.

### EXAMPLE 3: PARAGUAY

The General Law on the Regulatory and Tariff Framework for Drinking Water and Sanitary Sewerage Provision in the Republic of Paraguay indicates that the Sanitary Services Regulator may apply different types of sanctions to providers and users, which include warnings, fines, protective measures, contractual rescission or permit revocation, or facilities closure.

Sanctions are related to a series of infringements stipulated in law on matters such as the following:

- Infringement of General Law provisions or regulations issued by ERSSAN.
- Provider non-compliance with any of their obligations.
- User non-compliance with any of their obligations.
- Drinking water loss at the facilities.
- Malfunction of consumption meters.
- Errors in billing and/or distribution of utilities bills.
- Non-compliance with water quality parameters.

Accordingly, ERSSAN adopted an infringements and sanctions regulation detailing the types of sanctions to be applied, violation categories (minor, severe or major), fine amounts and aggravating and mitigating circumstances, as well as procedures for payment or revocation, among other aspects.

### LINKS

Zambia: NWASCO web page, example of communication linked to unsatisfactory fulfilment of duties:

<http://www.nwasco.org.zm/index.php/media-center/news1/120-nwasco-implores-lwsc-to-comply-with-water-supply-guidelines>

Bolivia: Manual on the Monitoring and Auditing of Drinking Water and Sanitary Sewerage Providers (EPSA) with licenses and temporary authorizations: <http://www.aaps.gob.bo/images/MarcoLegal/ResolucionesAdministrativas/RAR%20171%20EPSA.pdf>

Paraguay: General Law and Infringements and Sanctions Regulation:

[https://erssan.gov.py/application/files/7515/8741/1529/Marco\\_Regulatorio.pdf](https://erssan.gov.py/application/files/7515/8741/1529/Marco_Regulatorio.pdf) and

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

### INTERNAL CAPACITIES NEEDED AND THE ROLE OF PARTNERS

Setting sanctions require regulators to have certain judiciary and administrative skills. These can be sustained and supported by best practices from other regulators. Potential partners include national judiciary and disciplinary institutions, along with development partners. Regulators' staff must be trained on how to apply and manage disciplinary measures within its regulatory mandate.