

Meeting of the Council at Ministerial Level, 7-8 June 2023**DRAFT RECOMMENDATION OF THE COUNCIL ON ENVIRONMENTAL
COMPLIANCE ASSURANCE****JT03520027**

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

HAVING REGARD to the standards developed by the OECD in the area of integrated pollution prevention and control, on environmental information and reporting and on regulatory enforcement and inspections;

RECOGNISING the OECD's work on environmental compliance assurance, including regular evaluation of compliance assurance practices as part of OECD environmental performance reviews;

UNDERLINING the importance of compliance assurance for the implementation of environmental laws and policies and promotion of sustainable development;

CONSIDERING the need to reinforce credibility, fairness and the deterrence effect of environmental regulations and to strengthen public confidence in the policies and institutions responsible for environmental protection, conservation and more equitable access to natural resources;

CONSIDERING the need to maintain a level playing field for businesses by ensuring that no company obtains a competitive advantage from its non-compliance;

CONSIDERING that compliance assurance is a crucial element of the iterative, cyclical process of environmental regulation as it links legislative requirements with the assessment of policy implementation and feedback allowing adjustment of the legal and policy framework;

CONSIDERING that effective compliance assurance involves a combination of mutually supportive compliance promotion, monitoring, and enforcement tools and engages a broad array of government and non-government actors at the national and subnational levels;

On the proposal of the Environment Policy Committee:

I. AGREES that the purpose of this Recommendation is to support Members and non-Members having adhered to this Recommendation (hereafter the "Adherents") in designing an effective and efficient package of tools for promoting, monitoring and enforcing environmental compliance.

Compliance promotion

II. RECOMMENDS that Adherents provide advice, guidance, training and engage in other forms of outreach to help regulated entities, particularly small and medium-sized enterprises, understand and meet its obligations, as well as promote proactive compliance. To this effect, Adherents should:

1. Develop and implement compliance promotion approaches and tools tailored for specific economic activity sectors, through enhanced collaboration between various regulatory bodies and in partnership with trade associations and business support organisations.
2. Provide compliance assistance through direct contact with businesses where feasible, including interactions during site inspections, other face-to-face meetings, phone help lines and outreach events.

3. Disseminate information on regulatory requirements and good compliance practices through a variety of channels, ensure that this information is easily accessible and user-friendly.
4. Promote corporate environmental management systems as a tool for identifying, understanding and managing the regulated entity's compliance as well as a vehicle for increasing its market competitiveness, make compliance one of the criteria of green public procurement.
5. Promote transparency of compliance assurance activities and public disclosure of compliance records as a tool to apply market and public pressure on non-compliant businesses.

Compliance monitoring

III. RECOMMENDS that Adherents ensure effective and efficient compliance monitoring, adapting it to regulatory priorities and the profile of the regulated community while reducing unnecessary administrative burden on regulated entities. To this effect, Adherents should:

1. Collect, maintain and analyse information on the regulated community and share it with all relevant regulatory bodies.
2. Focus compliance monitoring on areas of known or suspected non-compliance and/or activities that are of higher risk to human health or the environment, calibrating the frequency of inspections and the resources employed with the risk posed by potential infractions; as part of risk-based inspection planning, systematically consider, among other factors, the inherent environmental risk of the regulated activity, its location and the operator's compliance record.
3. While maintaining the priority of proactive, planned compliance monitoring, implement adequate procedures to respond to citizens' complaints and facilitate citizen participation in compliance assurance efforts through various information technology tools; set up a mechanism to filter complaints to avoid overburdening the competent authority.
4. Complement, as appropriate, integrated, cross-media site inspections with in-depth compliance assessments to identify root causes of non-compliance rather than only detect it, and thematic or sector-specific inspection campaigns for low-risk activities.

Enforcement

IV. RECOMMENDS that Adherents use appropriate administrative, civil and criminal enforcement tools in a timely manner to restore compliance, punish the offender proportionately to the severity of non-compliance and provide deterrence against future violations. To this effect, Adherents should:

1. Adopt, make available to all relevant actors and implement formal non-compliance response policies and guidance accounting for severity of the offence, aggravating and mitigating factors, and aiming at deterrence of violations, from an informal warning and directions for corrective actions to issuing administrative notices and penalties, to prosecution with increasingly serious consequences.
2. Allow, in cases of non-criminal infractions, offenders an opportunity to correct the violation before a sanction is imposed; consider the possibility of an

alternative environmentally beneficial expenditure to replace part or whole of a monetary penalty.

3. Provide for criminal prosecution of wilful, knowing or negligent unlawful behaviour that causes serious damage to, or endangerment of, human health or the environment, or in cases where other enforcement instruments have not been sufficient to ensure compliance; depending on the country's legal tradition, consider alternatives to prosecution under civil or administrative law.
4. Ensure that monetary penalties (fines) provide sufficient deterrence from violating the law by removing the economic benefit of non-compliance for the offender; and that such penalties are determined consistently, using the same approach, methods and factors, including those accounting for the gravity of the offence.
5. Create an effective mechanism to enforce payment of imposed monetary penalties in collaboration with fiscal authorities.

Institutional aspects of compliance assurance

V. RECOMMENDS that Adherents take measures to address the challenges of multi-level governance, engage all stakeholders having compliance-related competencies, build institutional capacity and measure performance of environmental enforcement authorities. To this effect, Adherents should:

1. Ensure nationwide consistency of environmental enforcement and a level playing field for regulated entities by defining compliance monitoring and enforcement priorities and approaches in formal or informal partnership between national and subnational environmental enforcement authorities; and, as appropriate, providing for oversight of lower-level authorities by higher-level ones.
2. Co-ordinate compliance monitoring activities and share relevant data across regulatory agencies that have authority in areas that affect, or are affected by, environmental policy implementation, including food safety, occupational health and safety, natural resource management, land-use planning and emergency response.
3. Strengthen collaboration between environmental enforcement authorities, the police, customs and prosecutors in fighting environmental crime; ensure that police officers, prosecutors and judges in charge of environmental cases receive proper training; consider establishing specialised environmental police and prosecution units and/or dedicated environmental courts, as appropriate.
4. Build capacity of environmental enforcement authorities by developing standard operating procedures or guidance and offering formal training to inspectors to ensure they accumulate sufficient knowledge and practical experience; promote peer learning through national and international networks of environmental compliance assurance professionals.
5. Conduct regular performance assessments of environmental enforcement authorities using input (resource), output (activity) and outcome (result) indicators; emphasise outcome performance measures that characterise changes in compliance knowledge and behaviour of the regulated community to enable policy makers and the public to see the impact of compliance assurance activities on the state of the environment and draw conclusions on the quality of regulations.

- VI. INVITES** the Secretary-General to disseminate this Recommendation.
- VII. INVITES** Adherents to disseminate this Recommendation at all levels of government.
- VIII. INVITES** non-Adherents to take account of, and adhere to, this Recommendation.
- IX. INSTRUCTS** the Environment Policy Committee, through the Working Party on Environmental Performance, to:
- a) Serve as a forum to exchange information, good practices and innovative experiences with respect to the implementation of this Recommendation;
 - b) Support and facilitate Adherents' efforts to implement this Recommendation, in co-operation with other relevant international organisations and stakeholders, including through the use of OECD environmental performance reviews; and
 - c) Report to Council on the implementation, dissemination and continued relevance of this Recommendation no later than five years following its adoption and at least every ten years thereafter.