Council of the European Union
General Secretariat

PUBLIC

Brussels, 21 October 2025

WK 14032/2025 INIT

LIMITE

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (Digital Euro Package) Financial Services Attachés
Subject:	Legal Tender of Cash Regulation: WP on 28 October – Presidency discussion note on penalties (Article 12)

Danish Presidency
Council of the European Union

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Legal tender – Presidency discussion note on penalties (Article 12)

Working Party on Financial Services and the Banking Union

Proposal for a regulation on the legal tender of euro banknotes and coins

Meeting on 28 October 2025

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Proposal for compromise text regarding penalties (Article 12)

Introduction

Article 12 was last discussed during the Council Working Party meeting under the Polish Presidency on 11 June 2025. A group of Member States can accept the current wording, according to which the Member States have an obligation to lay down the rules on effective, proportionate and dissuasive penalties, while other Member States prefer a voluntary approach. However, the Polish Presidency explained that an approach with voluntary penalties would be an entirely new concept which might raise additional questions and set a precedent for other files in the future.

Member States in favor of a voluntary approach consider that an obligatory penalty regime could entail high administrative costs related to enforcement, including for monitoring, investigating, and prosecuting fines. They argue that the implementation of compulsory penalties may place a significant burden on national authorities, diverting resources from other important enforcement activities. Furthermore, some Member States have indicated that rigid penalty systems may not take sufficient account of existing national legal frameworks and enforcement traditions. On that basis, Member States have requested more flexibility on how to enforce the Regulation, proposing that national authorities should be allowed greater discretion in determining the most appropriate enforcement measures, including the possibility to tailor penalties to specific national contexts.

Against this background, the Presidency has prepared this note with the aim of constructively addressing Member States' concerns regarding Article 12. In doing so, the note also seeks to highlight the considerable flexibility already inherent in the wording of the provision. By clarifying these aspects, the Presidency hopes to facilitate a solution that not only respects national positions, but also remains faithful to the overall objectives of the regulation.

National discretion in the framing and implementation of penalties

Member States have an obligation to implement EU law, which is stated in Article 4(3), second subparagraph, TEU:

"The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union."

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To put it another way, Member States, even in the absence of an explicit provision such as Article 12 in the regulation, are still required to ensure the effective application of EU law. This general duty of sincere cooperation means that Member States must not only refrain from actions that would jeopardize the attainment of the Union's objectives, but are also obliged to take all necessary steps—whether legislative, administrative or judicial—to guarantee that EU rules produce their intended effects. Thus, the obligations and responsibilities of the Member States in implementing and applying EU law remain binding by virtue of the Treaties themselves, regardless of specific provisions in secondary legislation.

In any event, Article 12 (in the same way as similar provisions in many acts of Union legislation) operates as a minimum provision, granting a margin of discretion to Member States in the framing and implementation of penalties. Rather than prescribing a concrete type or amount of penalty, Article 12 simply obliges Member states to ensure that compliance with the regulation is achieved via the application of effective, dissuasive and proportionate penalties. Article 12 does not attempt to harmonise penalties at the EU level; instead, Member States have a margin of discretion to frame those and apply penalties which seem appropriate to them, as long as they comply with those requirements in order to achieve the objectives of the Regulation. This margin of discretion is rooted in the case law of the Court of Justice, which allows Member States to impose penalties in accordance with their own procedural (principle of procedural autonomy) and substantive rules, as long as they remain effective, dissuasive and proportionate.

In practice, this means that Member States can tailor the forms, severity, and mechanisms of enforcement to their particular legal systems and policy preferences, as long as their approach fulfils the requirement that the regulation is effectively enforced. The result is a minimum standard: while all Member States must ensure that violations are met with such penalties, the regulation deliberately leaves the design and implementation of these measures to national authorities who, when making use of that competence, are required to comply with EU law and its general principles, in particular the principle of proportionality. This approach respects the diversity of national legal traditions and enables Member States to respond flexibly to different contexts, provided the overarching aim of compliance is met. [1]

[1] The Presidency brings attention to the established case law of the EU court that recognises that, in the **absence of harmonization** of the Union legislation in the field at issue, Member States are empowered to **choose the penalties which seem appropriate** to them while acting in accordance with principles of EU law, in particular the proportionality principle: see, by way of example, Case 50/76 *Amsterdam Bulb v Produktschap voor Siergewassen*, paragraph 33, Case 240/81 *Einberger v Hauptzollamt Freiburg*, paragraph 17, Case C-36/94, Siesse v Director da Alfândega de Alcântara, paragraph 21; Case C-430/05, *Ntionik and Pikoulas*, paragraph 53; Case C-210/91, *Commission v Greece*, paragraph 19; Case C-210/10, *Urbán*, paragraphs 23 and 53; Joined cases C-497/15 and C-498/15, *Euro-Team Kft.,* paragraphs 39 and 58; Case C-501/14, *EL-EM*, paragraph 37; Case C-77/20, *K.M.,* paragraph 36.

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A recital to recall existence of Member States´ discretion to address concerns

The concerns on high administrative costs raised by some Member States and the call for more flexibility in enforcing the Regulation are duly noted. However, as described above, the proposed Article 12 already provides a large degree of flexibility to Member States in applying the penalties regime in a national context. As described by the previous Presidency, optional sanctions would be a complete novelty in EU law. A provision that would make the adoption of the rules on sanctions only voluntary would, as a minimum, be misleading as contradicting the obligations directly stemming from the Treaties (see Article 4(3), second subparagraph, TFEU), and could potentially even being breach of Union law.

Taking these arguments into account and in order to accommodate the concerns expressed by Member States, the Presidency proposes to add a recital explaining the discretion the text of Article 12 leaves to the Member States.

The Danish Presidency proposes no change to Article 12 but includes the latest draft from the Polish legacy text here for ease of reference:

Article 12

Penalties

Member States shall lay down the rules on penalties ~~*[including financial penalties and non-criminal fines]*~~ applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, within ~~one~~ **two** year**s** after the entry into force of this Regulation, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

Drafting suggestion from the Danish Presidency to the legacy text from the Polish Presidency regarding legal tender of the euro banknotes and coins recital

New recital 8b

To ensure the effective protection of the legal tender of, and access to, euro banknotes and coins throughout the euro area, rules on penalties for infringements should be laid down and applied in the Member States. Since this Regulation does not harmonise the system of penalties and only requires that penalties are effective, proportionate and dissuasive, Member States enjoy a margin of discretion in framing those penalties and also in applying them in individual cases, as recognised by established case law of EU courts. Subject to the requirements of being effective, proportionate and dissuasive, such penalties could include financial penalties, warnings, reprimands or orders to bring business practices into compliance with the obligations imposed by this Regulation. In addition, when laying down rules on enforcement and imposing

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penalties in individual cases, Member States enjoy procedural autonomy subject to principles of effectiveness and equivalence.

Question to Member States:

1. Do Member States support adding the proposed recital text?