Commission Guidance on penalties
Industry recommendations

17 April 2026

Summary of the recommendations:

- Penalties should not be the only source of flexibility in the EU MR framework, particularly in a context where key elements required for compliance are missing. Penalties setting should therefore acknowledge such gaps and how much of the relevant current requirements can be met.
- **Fragmentation in national implementation represents a significant risk**, including for penalties.
- Considering Security of Supply risks when setting penalties is a positive approach, provided it relies on a clear and comprehensive definition of Security of Supply encompassing risks on affordability, allowing to prevent risks ex-ante and matching the timeline of the EU MR reporting requirements. Additionally, it will be required to ensure that when a Security of Supply risk is recognised in a given Member State, it should be acknowledged by the Member States in which the importers supplying that country are established.
- Regarding the guidance being drafted, in light of the current compliance possibility, exacerbated by the emerging energy crisis, **we believe the only valid guidance is to have a pan-European grace period associated with a proper grandfathering of the contracts signed in the interim period**. Industry remains committed to developing implementable solutions to meet the EU MR objectives. It should be noted that the relief such measures will provide may have different impacts on natural gas vs. crude oil, and that the challenges encountered by the crude oil sectors may require complementary measures: the crude oil market is indeed relying most on short-term/spot deals instead of long-term agreements.
- Guidance is a welcome support from the EC but **have no concrete impact in terms of legal certainty at the EU level**, something that can only be delivered by changes to the EU legislation and its timeline (e.g., Omnibus with stop-the-clock) and a fully harmonised implementation in all Member States.

1. Penalties should not be the only source of regulatory flexibility

We stress that industry's primary objective is to be compliant. Ensuring that operators are placed in the condition to comply requires more than setting penalties at zero. A credible regulatory framework requires that obligations and provisions are clear, proportionate and achievable. Defining feasible provisions and providing legal certainty is key to reducing the risk of systematic non-compliance and contributing to better environmental outcomes.

Recommendation: The sanctions regime should remain the final element of any regulation, and it should not be the main source of flexibility nor the element to provide legal certainty for its implementation.

2. Realistic impact of the EC guidance vs. binding measures

We appreciate the efforts of the European Commission to provide guidance and to communicate with Competent Authorities. **Nevertheless, we wish to underline that while guidance could be helpful as seen in the REPowerEU discussion, their non-binding character will not:**

- Provide the legal certainty needed for the industry and Member States
- Fully address the risk of fragmented implementation and solve the fundamental issue we have been seeing of double reporting hence double exposure to different national set of rules/penalties.

<u>Recommendation:</u> The only way to provide necessary certainty would be an EU-level change of the legislation, its timeline and a fully harmonised enforcement across the EU.

3. Penalty setting should reflect compliance feasibility beyond security of supply

Beyond the relevant impact on Security of (Affordable) Supply, the Industry has consistently advocated for taking into account the possibility to comply in the setting of penalties. As of April 2026, key elements necessary for compliance remain unavailable or incomplete:

- The Implementing Act specifying the evidence to establish MRV equivalence for third countries has yet to be adopted.
- The separate Implementing Acts on a country-by-country basis to establish their equivalence have yet to be initiated.
- The verifiers for e.g., OGMP reports have not yet been accredited by the National Accreditation Bodies and no independent verifier for 3rd countries has been recognized as acceptable. The ISO Standards will be valid in 1.5/2 years – too late for the new requirements.
- The industry considers positive the recognition of certification, but more elements remain to be defined and clarified to launch its implementation for compliance.

<u>Recommendations:</u> Given these gaps, penalties setting should take into account the current status of the regulatory framework and the actual ability of the industry to comply in addition to consideration of the Security of (Affordable) Supply. In light of the current compliance possibility, exacerbated by the starting energy crisis, **we believe the only valid guidance is to have a pan-European grace period associated with a proper grandfathering of the contracts signed in the interim period**. Industry remains committed to developing implementable solutions to meet the EU MR requirements.

4. Need for harmonisation across the EU

The broad and undefined reference to “security of energy supply”, absent clear coordination mechanisms and well-defined criteria, leaves excessive discretion to Member States, undermining legal certainty **by making it impossible for operators to predict how and when the exemption from penalties will be applied at the time of delivery and reporting**.

Divergent national interpretations may lead to inconsistent or conflicting enforcement outcomes, distorting the level playing field within the EU internal market. It is also worth noting that the prejudice

to Security of Supply recognized by a Competent Authority will only exempt imports from importers established in the same Member State. Finally, it must be underlined that the Competent Authority in a given Member State may not be adequately positioned to assess the occurrence of Security of Supply risks in other Member States.

5. Defining Security of Supply and its application in penalty regimes

We recommend that **Security of Supply should be interpreted broadly**, beyond what has been presented by the European Commission to Competent Authorities during the 4th Expert Group. It should be notably considering e.g., situations where EU MR requirements and/or national frameworks are at risk to:

- **Undermine diversification efforts** (e.g., in the context of enabling the phase-out of Russian oil and gas) by creating barriers to contracting or the renewal of supply arrangements from certain origins and routes as well as oil grades, which is overall detrimental to energy security and autonomy;
- Have a **material adverse impact on affordability** of energy supplies; or,
- Have a material adverse impact on the **operations of critical infrastructure e.g., such as refineries**, exposed to the competition with oil derivative products that can be produced extra-EU without adhering to the EU MR requirements.

Importantly, these safeguards should apply **not only where a security-of-supply risk has materialised in the past** but also **prevent a foreseeable security-of-supply risk** from emerging. National frameworks should therefore include **explicit circumstances in which penalties shall be suspended or deferred or producers/importers exempted**. **Such explicit circumstances must be complemented by clear derogation procedures to follow,** along with detailed documents to be presented and timeframes applicable for such request. In defining such circumstances, it should be recalled that **security of supply risks arise at the level of supply routes and countries of origin**, and penalties should therefore be assessed on the **same basis rather than on a contract-by-contract basis**.

More specifically with regard to the guidance provided during the 4th Expert Group meeting, we believe that criteria should in general not be contract/importer specific and that any SoS impact assessment should go beyond a given Member State in order to consider neighbouring Member State(s)/regional/EU impact. The criteria should not be limited to the SoS regulatory framework and should adequately cover oil and gas.