



EUROPEAN COMMISSION

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COMMUNICATION FROM THE COMMISSION

**Updating of data used to calculate lump sum and penalty payments to be proposed by
the Commission to the Court of Justice in infringement proceedings**

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I. INTRODUCTION

The recast of the Commission Communication on the application of Article 228 of the EC Treaty¹ (now Article 260(1) and (2) TFEU) established the basis on which the Commission calculates the amount of the financial sanctions, either lump sum or penalty payments, that it requests the Court of Justice to apply when the Commission brings a case before the Court under Article 260 TFEU in the context of infringement proceedings against a Member State.

In its Communication of 2010² on the updating of the data used for this calculation the Commission established an annual adjustment of these economic data in order to take account of inflation and GDP movements, thus amending the Communication of 2005.

The Commission, acting in agreement with the Member responsible for economic and monetary affairs, empowered its President to adopt the above measures³.

The aim of this Communication is to make any necessary updates in accordance with the general rules set out in the Communications of 2005 and 2010.

The method for this update⁴ should be based on developments in the inflation and GDP of each Member State. Relevant statistics related to the inflation rate and GDP established two years prior to the update should be used ('n-2 rule') as two years is the minimum period of time necessary for gathering relatively stable macroeconomic data.

The present Commission Communication is therefore based on economic data for nominal GDP and the GDP deflator for 2010 and the current weighting of Member State voting rights in the Council. The other elements used for carrying out the update are also in line with those approved by the Commission⁵.

¹ SEC(2005) 1658; OJ C 126, 7.6.2007.

² SEC(2010) 923/3. This Communication has been updated in 2011 for the yearly adaptation of economic data, SEC(2011)1024.

³ Empowerment of 13 December 2005 for the adoption of decisions up-dating certain data used to calculate lump sum and penalty payments under the Commission's policy regarding the application of Article 228 of the EC Treaty; SEC(2005) 1616.

⁴ Point 18.2 and footnotes 12, 17, 18 and 22 of the recast Communication of 2005.

⁵ The GDP price deflator is used as a measure of inflation. The uniform amounts for lump sum and penalty payments are rounded to the nearest multiple of ten. The minimum lump sums are rounded to the nearest thousand. The 'n' factor is rounded to two decimal places.

II. COMPONENTS OF THE UPDATE

The list of economic criteria to be revised is as follows:

- the standard flat-rate amount for the penalty payment⁶, currently fixed at €30 per day, to be revised in line with inflation;
- the standard flat-rate amount for the lump sum payment⁷, currently fixed at €208 per day, to be revised in line with inflation;
- the special 'n' factor⁸, to be revised in line with the GDP of the Member State in question taking into account the number of voting rights it has in the Council; the 'n' factor is identical for the calculation of lump sum and daily penalty payments;
- minimum lump sum payments⁹ to be revised in line with inflation.

III. UPDATES

In accordance with the Commission recast Communication of 2005¹⁰, the Commission will apply the following updated figures to indicate to the Court of Justice, when it brings a case before it under Article 260 TFEU, the amount of the financial sanctions, either lump sum or penalty payments, the Commission considers appropriate in the circumstances.

- (1) The standard flat-rate amount for calculating the penalty payment is fixed at €40 per day.
- (2) The standard flat rate for the lump sum payment is fixed at €10 per day.

⁶ The standard or uniform flat-rate amount for daily penalty payments is defined as the fixed basic amount to which certain multiplier weightings are applied. The weightings are the coefficients for the seriousness and the duration of the infringement and the special factor 'n' corresponding to the Member State concerned that are to be applied for the calculation of a daily penalty payment.

⁷ The flat-rate amount is to be applied when calculating the lump sum. The lump sum will result from multiplying a daily (lump sum) amount (resulting from multiplying the flat-rate for lump sum payments by the coefficient for seriousness and the result of this calculation being multiplied by the special factor 'n') by the number of days the infringement persists between the date of the first judgment and the date that the infringement comes to an end or the date of delivery of the judgment under Article 260(2) TFEU. The (daily) lump sum will be proposed by the Commission when the result of the above-mentioned calculation exceeds the minimum fixed lump.

⁸ The special factor 'n' takes into account the capacity of the Member States to pay (gross domestic product (GDP)) and the number of votes it has in the Council.

⁹ The minimum fixed lump sum payment is determined for each Member State according to the special 'n' factor. The minimum fixed lump sum will be proposed to the Court when the summed up daily lump sum payments do not exceed the minimum fixed lump sum.

¹⁰ See footnotes 1 and 2.

(3) The special 'n' factor for the 27 EU Member States is:

	Special 'n' factor
Belgium	5,14
Bulgaria	1,50
Czech Republic	3,34
Denmark	3,20
Germany	21,12
Estonia	0,60
Ireland	2,60
Greece	4,12
Spain	13,28
France	18,68
Italy	16,72
Cyprus	0,66
Latvia	0,67
Lithuania	1,09
Luxembourg	1,00
Hungary	2,69
Malta	0,34
Netherlands	6,89
Austria	4,22
Poland	7,71
Portugal	3,59
Romania	3,28
Slovenia	0,94
Slovakia	1,69
Finland	2,79
Sweden	4,66
United Kingdom	17,54

(4) The minimum lump sum (in €) is set at:

	Special 'n' factor	Minimum lump sum (€thousand)
Belgium	5,14	2.724
Bulgaria	1,50	793
Czech Republic	3,34	1.768
Denmark	3,20	1.696
Germany	21,12	11.192
Estonia	0,60	316
Ireland	2,60	1.380
Greece	4,12	2.181
Spain	13,28	7.036
France	18,68	9.898
Italy	16,72	8.863
Cyprus	0,66	348
Latvia	0,67	354
Lithuania	1,09	580
Luxembourg	1,00	530
Hungary	2,69	1.425
Malta	0,34	179
Netherlands	6,89	3.652
Austria	4,22	2.234
Poland	7,71	4.086
Portugal	3,59	1.901
Romania	3,28	1.740
Slovenia	0,94	497
Slovakia	1,69	896
Finland	2,79	1.481
Sweden	4,66	2.468
United Kingdom	17,54	9.299

- (5) The Commission will apply the updated figures to decisions it takes to bring a case before the Court of Justice under Article 260 TFEU as from the tenth working day from the date of adoption of this Communication.