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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 2005 Commission Communication on the application of Article 228 of the EC Treaty¹ (now Article 260 (1) and (2) of the Treaty on the Functioning of the European Union (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 a subsequent Communication of 2010² on the updating of the data used for this calculation, the Commission established that the macroeconomic data be subject to revision every year, in order to take into account inflation and gross domestic product ('GDP') movements.

The yearly update provided in this Communication is based on developments in the inflation and GDP of each Member State.³ The relevant rate of inflation and GDP statistics to be used are those established two years prior to the update ('n-2 rule'), as two years is the minimum period of time necessary for gathering relatively stable macroeconomic data. This Communication is therefore based on economic data for nominal GDP and the GDP deflator for 2013⁴ and the current weighting of Member State voting rights in the Council.

¹ SEC(2005) 1658; OJ C 126, 7.6.2007, p. 15.

² SEC(2010) 923/3. This Communication was updated in 2011 (SEC(2011) 1024 final), in 2012 (C(2012) 6106 final), in 2013 (C(2013) 8101 final) and in 2014 (C(2014) 6767 final), for the yearly adaptation of economic data.

³ According to the general rules set out in the communications of 2005 and 2010.

⁴ 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 multiple of 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 payment⁵, currently fixed at EUR 660 per day, to be revised in line with inflation;
- the standard flat-rate amount for the lump sum payment,⁶ currently fixed at EUR 220 per day, to be revised in line with inflation;
- the special 'n' factor⁷, 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 payments⁸ to be revised in line with inflation.

III. UPDATES

The Commission will apply the following updated figures to calculate the amount of the financial sanctions (lump sum or penalty payments) when it brings a case to the Court of Justice under Article 260 (2) and (3) TFEU:

- (1) the standard flat-rate amount for calculating the penalty payment is fixed at **EUR 670** per day,
- (2) the standard flat rate for the lump sum payment is fixed at **EUR 220** per day.

⁵ 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.

⁶ The flat-rate amount is to be applied when calculating the lump sum. As regards Article 260 (2) TFEU, 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. As regards Article 260 (3) TFEU, according to point 28 of the Commission Communication on "Implementation of Article 260 (3) of the Treaty" (SEC (2010)1371 final; OJ C 12, 15.1.2011, p. 1), 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 from the day after the time limit for transposition set out in the directive expired until the first judgment under Articles 258 and 260 (3) TFEU. The (daily) lump sum will be proposed by the Commission when the result of the calculation mentioned in the first sentence exceeds the minimum fixed lump sum.

⁷ The special factor 'n' takes into account the capacity of the Member State to pay (GDP) and the number of votes it has in the Council.

⁸ 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.

(3) The special 'n' factor and the minimum lump sum (in EUR) for the 28 Member States are set as follows:

	Special 'n' factor	Minimum lump sum (thousand EUR)
Belgium	5.12	2844
Bulgaria	1.51	839
Czech Republic	3.23	1794
Denmark	3.13	1739
Germany	21.21	11782
Estonia	0.64	356
Ireland	2.60	1444
Greece	3.48	1933
Spain	12.51	6949
France	18.41	10227
Croatia	1.30	722
Italy	16.05	8916
Cyprus	0.63	350
Latvia	0.72	400
Lithuania	1.16	644
Luxembourg	1.00	556
Hungary	2.58	1433
Malta	0.35	194
Netherlands	6.79	3772
Austria	4.22	2344
Poland	7.68	4266
Portugal	3.35	1861
Romania	3.34	1855
Slovenia	0.89	494
Slovakia	1.69	939
Finland	2.79	1550
Sweden	4.91	2728
United Kingdom	17.97	9982

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