



COMMUNICATION FROM THE COMMISSION

Modification of the calculation method for financial sanctions proposed by the Commission in infringement proceedings before the Court of Justice of the European Union

(C/2025/1481)

1. Introduction

Under the Treaty on the Functioning of the European Union ("TFEU"), where the Commission refers a Member State to the Court of Justice of the European Union ('the Court') for failing to fulfil an obligation under the Treaties, it may propose to the Court to impose financial sanctions on that Member State in two situations:

- where the Member State has not taken the necessary measures to comply with an earlier judgment of the Court finding an infringement of Union law (Article 260(2) TFEU) ⁽¹⁾,
- where the Member State has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure (Article 260(3) TFEU).

In both cases, the sanctions imposed by the Court may be composed of a lump sum payment, as a consequence of the continuation of the infringement until the delivery of its judgment or full compliance, if reached earlier, and a daily penalty payment, to prompt the Member State concerned to bring the infringement to an end as soon as possible after the delivery of the judgment. The Commission proposes an amount for the financial sanctions to the Court, but it is for the Court, in the exercise of its discretion ⁽²⁾, to determine the amounts that it considers appropriate to the circumstances and proportionate both to the breach that has been established and to the capacity to pay of the Member State concerned ⁽³⁾.

The possibility for the Court to impose financial sanctions on Member States – and for the Commission to request the imposition of such sanctions – dates back to the Maastricht Treaty of 1992. To ensure transparency and equal treatment, the Commission has, since 1996, published a number of communications laying out its policy and the methodology it applies to the calculation of financial sanctions. With its Communication on financial sanctions in infringement proceedings published in 2023 ⁽⁴⁾ (hereafter 'the 2023 Communication'), the Commission reviewed and replaced all earlier Communications in this area. The figures and data used to calculate financial sanctions were updated in 2024 ⁽⁵⁾.

In its 2023 Communication, the Commission introduced a method of calculation of the Member States' capacity to pay relying (with a weight of 2/3) on the Member State's gross domestic product (GDP) and (with a weight of 1/3) on the population of the Member State concerned.

On 25 April 2024, the Court delivered a judgment in case C-147/23, *Commission v. Poland*, ⁽⁶⁾ where it examined, inter alia, the method of calculation of financial sanctions introduced in the Commission's 2023 Communication.

In that judgment, the Court held that the Commission's "[...] method is based on the presumption of a correlation between the size of a Member State's population and its capacity to pay, which is not necessarily the case. Accordingly, taking into account a demographic criterion such as that resulting from the method breaks the link between the n factor and the actual capacity to pay of the Member State concerned, which may result in the determination of an n factor that does not necessarily reflect that capacity. [...] Therefore, when determining the capacity to pay of the Member State concerned, a demographic criterion cannot be taken into account." ⁽⁷⁾

⁽¹⁾ Or where the Member State has not taken the necessary measures to comply with a judgment finding an infringement of a State aid decision under Article 108(2) TFEU.

⁽²⁾ Communication 2023/C 2/01 from the Commission, 'Financial sanctions in infringement proceedings' (OJ C 2, 4.1.2023, p. 1).

⁽³⁾ Communication C/2024/360 from the Commission – Update of data used to calculate financial sanctions proposed by the Commission to the Court of Justice of the European Union in infringement proceedings (OJ C, C/2024/1123, 26.1.2024).

⁽⁴⁾ Judgment of the Court (First Chamber) of 25 April 2024, *Commission v Poland* (C-147/23 EU:C:2024:346).

⁽⁵⁾ C-147/23, paragraphs 84-86 of the judgment.

In light of this recent case-law, it is necessary to revise the method of calculation used by the Commission to propose financial sanctions in infringement proceedings. In particular, following the Court's judgment, the calculation of Member States' capacity to pay or n factor (section 3.4 of the 2023 Communication) should rely solely on Member States' GDP. This Communication therefore replaces section 3.4 of the 2023 Communication, as well as its Annex I, updating the relevant figures with the latest macroeconomic data.

2. Member States' capacity to pay

The amount of the penalty payment should ensure that the sanction is both proportionate and dissuasive. The deterrent effect of the penalty payment has two aspects. The sanction must be sufficiently high to ensure that:

- the Member State brings the infringement to an end (it must therefore be higher than the benefit that the Member State gains from the infringement),
- the Member State does not repeat the infringement.

The level of sanction required to serve as a deterrent will vary according to Member States' capacity to pay. This deterrent effect is reflected in the n factor. It is defined as a ratio of the gross domestic product (GDP) ⁽⁶⁾ of the Member State concerned compared to the average of the Member States' GDPs. This represents the capacity to pay of the Member State concerned in relation to the other Member States' capacity to pay:

$$n \text{ factor} = \frac{GDP_n}{GDP_{avg}}$$

As set out in section 4.2.2 of the 2023 Communication, the Commission applies the same n factor for the calculation of the lump sum as for the calculation of the penalty payment.

The n factors for each Member State are laid down in point 3 of the Annex, along with the minimum lump sums in point 5 of the Annex.

As set out in section 5 of the 2023 Communication, if the Commission should propose financial sanctions against the United Kingdom, it will rely on the same formula as that laid down in this Communication for determining Member States' capacity to pay ⁽⁷⁾.

3. Date of application

The Commission will apply the rules and criteria set out in this Communication to all decisions it takes to refer matters to the Court under Article 260 TFEU after the publication of this Communication in the Official Journal.

⁽⁶⁾ Source: Nominal GDP - Eurostat. Eurostat regularly publishes GDP data for Member States (nama_10_gdp).

⁽⁷⁾

$$UK \text{ n factor} = \frac{GDP_{UK}}{GDP_{avg}}$$

ANNEX

Data used for determining financial sanctions proposed to the Court

The data in this Annex is to be reviewed and updated by the Commission on a yearly basis, in the light of variations in inflation and Member States' GDPs, based on official data published by Eurostat.

1. FLAT-RATE AMOUNT FOR THE PENALTY PAYMENT

The flat-rate amount for the penalty payment mentioned in section 3.1. of this Communication is fixed at **EUR 3 440** per day.

2. FLAT-RATE AMOUNT FOR THE LUMP SUM PAYMENT

The flat-rate amount for the lump sum payment mentioned in section 4.2.2. of this Communication is fixed at **EUR 1 150** per day, that is one third of the flat-rate for penalty payments.

3. N FACTORS

The n factors mentioned in section 1 of this Communication are:

	N factor ⁽¹⁾
Belgium	0,94
Bulgaria	0,15
Czechia	0,50
Denmark	0,59
Germany	6,57
Estonia	0,06
Ireland	0,80
Greece	0,35
Spain	2,35
France	4,43
Croatia	0,12
Italy	3,34
Cyprus	0,05
Latvia	0,06
Lithuania	0,12
Luxembourg	0,12
Hungary	0,31
Malta	0,03
Netherlands	1,68
Austria	0,74
Poland	1,18
Portugal	0,42
Romania	0,51
Slovenia	0,10

	N factor ⁽¹⁾
Slovakia	0,19
Finland	0,43
Sweden	0,85

⁽¹⁾ Based on 2023 GDP extracted on 20 January 2025, and rounded to two decimals.

4. REFERENCE LUMP SUM

The reference lump sum used for calculating the minimum lump sums per Member State is set at EUR 3 208 660.

5. MINIMUM LUMP SUMS PER MEMBER STATE

The minimum lump sums correspond to the reference lump sum multiplied by the n factors.

The minimum lump sums ⁽¹⁾ are set at:

	Minimum lump sums (EUR)
Belgium	3 016 000
Bulgaria	481 000
Czechia	1 604 000
Denmark	1 893 000
Germany	21 081 000
Estonia	193 000
Ireland	2 567 000
Greece	1 123 000
Spain	7 540 000
France	14 214 000
Croatia	385 000
Italy	10 717 000
Cyprus	160 000
Latvia	193 000
Lithuania	385 000
Luxembourg	385 000
Hungary	995 000
Malta	96 000
Netherlands	5 391 000
Austria	2 374 000
Poland	3 786 000

⁽¹⁾ Based on 2023 GDP extracted on 20 January 2025 and rounded to the nearest thousand.

	Minimum lump sums (EUR)
Portugal	1 348 000
Romania	1 636 000
Slovenia	321 000
Slovakia	610 000
Finland	1 380 000
Sweden	2 727 000