

**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**

(2014/C 338/02)

**I. INTRODUCTION**

The 2005 Commission communication on the application of Article 228 of the EC Treaty <sup>(1)</sup> (now Article 260(1) and (2) of the 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 2010 <sup>(2)</sup> on the updating of the data used for this calculation, the Commission established that these macroeconomic data be subject to revision every year, in order to take into account inflation and GDP movements.

The yearly update provided in this Communication is based on developments in the inflation and GDP of each Member State <sup>(3)</sup>. 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 2012 <sup>(4)</sup> and the current weighting of Member State voting rights in the Council.

The Commission empowered its President, acting in agreement with the Member responsible for economic and monetary affairs, to adopt the above measures <sup>(5)</sup>.

**II. COMPONENTS OF THE UPDATE**

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

- the standard flat-rate amount for the penalty payment <sup>(6)</sup>, currently fixed at EUR 650 per day, to be revised in line with inflation,
- the standard flat-rate amount for the lump sum payment <sup>(7)</sup>, currently fixed at EUR 220 per day, to be revised in line with inflation,
- the special 'n' factor <sup>(8)</sup>, 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,

<sup>(1)</sup> SEC(2005) 1658; OJ C 126, 7.6.2007, p. 15.

<sup>(2)</sup> SEC(2010) 923/3. This communication has been updated in 2011 (SEC(2011) 1024 final), in 2012 (C(2012) 6106 final) and in 2013 (C(2013) 8101 final), for the yearly adaptation of economic data.

<sup>(3)</sup> According to the general rules set out in the communications of 2005 and 2010.

<sup>(4)</sup> 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.

<sup>(5)</sup> Empowerment of 13 December 2005 for the adoption of decisions updating 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.

<sup>(6)</sup> 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.

<sup>(7)</sup> 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 abovementioned calculation exceeds the minimum fixed lump.

<sup>(8)</sup> 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.

— minimum lump sum payments <sup>(1)</sup> 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 660** per day,
- (2) the standard flat rate for the lump sum payment is fixed at **EUR 220** per day.
- (3) The special 'n' factor and the minimum lump sum (in EUR) for the 28 EU Member States are set as follows:

	Special 'n' factor	Minimum lump sum (EUR 1 000)
Belgium	5,13	2 829
Bulgaria	1,53	844
Czech Republic	3,27	1 803
Denmark	3,16	1 743
Germany	21,22	11 703
Estonia	0,64	353
Ireland	2,59	1 428
Greece	3,68	2 030
Spain	12,72	7 015
France	18,53	10 219
Croatia	1,33	733
Italy	16,27	8 973
Cyprus	0,64	353
Latvia	0,72	397
Lithuania	1,16	640
Luxembourg	1,00	552
Hungary	2,60	1 434
Malta	0,35	193
Netherlands	6,74	3 717
Austria	4,23	2 333
Poland	7,75	4 274
Portugal	3,40	1 875

<sup>(1)</sup> 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.

	Special 'n' factor	Minimum lump sum (EUR 1 000)
Romania	3,28	1 809
Slovenia	0,91	502
Slovakia	1,70	938
Finland	2,80	1 544
Sweden	4,87	2 686
United Kingdom	18,02	9 938

- (4) 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 adoption of this Communication.
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