

Infringements: Commission adapts its calculation methodology for financial sanctions

When the Commission refers a Member State to the Court of Justice of the EU for having infringed EU law, the Court may, in certain situations, impose financial sanctions. The Commission proposes an amount to the Court, which then takes the final decision.

When calculating the proposed financial sanction, in addition to the seriousness of the infringement and its duration, the Commission has always taken into account both the economic situation of the Member State concerned, and its institutional weight. In order to translate those two elements into a number, the Commission has until now looked at the gross domestic product (GDP) of a Member State and the number of votes allocated to it in the Council.

In a recent judgment, the Court of Justice considered that the Council voting rules as changed by the Lisbon Treaty could no longer be used for this purpose. Since the Commission believes that, in addition to relying on the Member States' GDP, the institutional weight should continue to be taken into account, a new method of reflecting that weight was needed.

For this purpose, the Commission will in the future use the number of seats for representatives in the European Parliament allocated to each Member State. This will lead to amounts that do not create unjustified differences between Member States and stay as close as possible to the amounts resulting from the current calculation method, which are both proportionate and sufficiently deterring. Under the new method, the Commission's approach will continue to be vigorous, balanced and fair to all Member States.

What is next?

The Commission will apply the adapted calculation method from the date today's Communication will be published in the Official Journal.

Once the withdrawal of the United Kingdom from the EU becomes legally effective, and irrespective of whether the Withdrawal Agreement enters into force or not, the Commission will recalculate the relevant averages and will adjust the figures as set out in this Communication accordingly.

Background

According to the EU Treaty, the Commission may take legal action – an infringement procedure – against an EU Member State that fails to implement EU law. When the Commission refers a Member State to the Court of Justice, the Court may impose financial sanctions in two situations: first, when the Court has ruled that a Member State infringing EU law has not yet complied

with an earlier judgment finding that infringement (Article 260(2) TFEU); second, when a 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 sanction consists of a lump sum payment, to penalise the existence of the infringement itself, and a daily penalty payment, to penalise the continuation of the infringement after the Court's judgment. The Commission proposes an amount for the financial sanctions to the Court, which then takes the final decision.

While the adapted methodology may lead to lower financial penalty amounts compared to the current situation, they come closer to the practice of the Court, which generally sets lower fines than those proposed by the European Commission.

For More Information:

- Communication on modification of the calculation method for lump sum payments and daily penalty payments ([20 February 2019](#))
- [EU infringement procedure](#)
- [EU infringement decisions](#)