



The Accountability of European Renewable Energy and Climate Policy

Paper
Delft, April 2011

Drafted by:
Dorien Bennink
Harry Croezen
Margaret van Valkengoed



Publication Data

Bibliographical data:

Dorien Bennink, Harry Croezen, Margaret van Valkengoed

The Accountability of European Renewable Energy and Climate Policy

Delft, CE Delft, April 2011

Publication number: 11.3320.24

CE-publications are available from www.cedelft.eu.

Commissioned by: Climate Action Network Europe

Further information on this study can be obtained from the contact person Dorien Bennink.

© copyright, CE Delft, Delft

CE Delft
Committed to the Environment

CE Delft is an independent research and consultancy organisation specialised in developing structural and innovative solutions to environmental problems. CE Delft's solutions are characterised in being politically feasible, technologically sound, economically prudent and socially equitable.



Foreword

Last year, 2010, European member states submitted their National Renewable Energy Action Plans (NREAPs) to the European Commission, setting out the measures scheduled or already implemented to meet the European Union's agreed target of 20% renewable energy in 2020. The individual NREAPs have been analysed by ECN, the Energy research Centre of the Netherlands, which has concluded that if member states indeed follow the strategies proposed in these documents the share of renewable energy is expected to slightly overshoot the target (20.7%). This share will only be feasible, though, if member states put substantial additional efforts into energy efficiency measures. In a reference scenario in which no additional energy efficiency measures are taken, the target is not secured (18.7%)¹.

The fact that meeting the renewable energy target relies heavily on the success of energy end-use efficiency measures is a cause of concern, because no binding targets have been laid down in legislation on energy end-use efficiency. In relation to the European Energy Efficiency Plan 2011, published in March 2011², Commissioner Oettinger has stated that there will be no discussion of any such targets before 2012, even though there is clearly a need for member states to seriously step up their efforts in this field³.

Given that binding energy end-use efficiency targets are unlikely to be introduced before 2015, the question is: does the Renewable Energy Directive (amongst other European legislation on climate policy) in itself provide sufficient incentive for member states to do what is necessary to meet the targets? If not, the need for introducing binding energy end-use efficiency targets as a matter of priority becomes even more apparent.

Climate Action Network Europe asked CE Delft to analyse the effectiveness of European renewable energy and climate policy, focusing on the degree to which stated obligations are indeed binding and whether the threat of a penalty for failure to meet these targets would constitute an adequate deterrent.

¹ See: <http://www.ecn.nl/units/ps/themes/renewable-energy/projects/nreap/>.

² See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0109:FIN:EN:PDF>.

³ As the response of the Commission to the first submission of National Energy Efficiency Action Plans by the respective member states (2007) shows, member states will have to seriously step up their efforts regarding implementation of announced energy efficiency measures and making available the necessary funds to follow through their energy efficiency ambitions. See: http://ec.europa.eu/energy/climate_actions/doc/2008_ee_comm_en.pdf.



Summary

This paper considers the question of what might happen if in 2015 and 2020 it transpires that European renewable energy and climate policy targets have not been met. More specifically, CE Delft has examined (1) the degree to which the various energy and climate targets are 'firm' in the sense that they bring about accountable result obligations for member states that are binding, (2) the risks affecting the probability of the targets not being met, (3) the penalties the European Commission might demand if the targets are not met, and (4) the likely deterrent effect of such penalties. The results are as follows:

1. The analysis shows that almost all the European renewable energy and climate targets are formulated as binding result obligations for member states. In the field of energy saving and energy efficiency, however, binding targets are lacking, despite member states having a statutory obligation to take (cost-effective) measures to promote energy saving and energy efficiency.
2. To meet their national renewable energy targets member states need to step up their efforts, especially when it comes to energy end-use efficiency. After publication of the first national action plans on energy efficiency in 2007, the Commission declared that member states were making too little effort to improve energy end-use efficiency. At the same time the Commission provided no indication of how it values the *quality*, i.e. anticipated effectiveness, of the measures proposed to (further) promote renewable energy generation and consumption, as stated in the various NREAPs.
3. Member states failing to meet their renewable energy or climate policy targets may face a penalty in the form of a lump sum payment and/or periodic penalty payments. The magnitude of such penalties will depend on (a) the severity of the infringement, (b) its duration and (c) the desired deterrent effect. At the moment it is unknown if and how the Commission will make use of its penalty-imposing powers. If at some point in the future the Commission wishes to exercise this right, it will have to indicate in a timely and transparent manner that efforts to comply have been insufficient. The Communication published by the Commission this January (2011) reviewing the submitted NREAPs makes no pronouncement at all on the quality of the measures proposed by the member states, however.
4. It is unclear how the deterrent of possible penalties might weigh up against the benefits of not complying with agreed targets, in terms of both costs saved and profits made by choosing 'cheap' fossil-fuelled options for power generation instead. Further study can shed light on the magnitude and type of penalty required to act as sufficient incentive for member states to meet their targets. Only if timely action is taken regarding this issue will the Commission (and benevolent member states) be able to make its intentions concrete and propose policy adjustments, if necessary, in response to relevant (market) developments. If insufficient action is taken the (internal) market could suffer, e.g. if one country considers the targets to be binding (and invests accordingly) while another opts not to because this is deemed economically favourable.

It is not yet clear what will happen after a financial penalty is imposed. The assumption is that a Member State will still be supposed to comply as quickly as possible, but how will the Commission additionally enforce this? And to what extent will the Commission's strategy depend, for example, on the degree to which the overall European target is indeed met but without each individual member state succeeding in meeting its national target? It would be interesting to investigate these issues further.



1 Introduction and goal of this study

In 2020 20% of the energy consumed in the European Union must be renewably sourced and a 20% reduction in CO₂ emissions achieved compared with 1990. European energy and climate policy is laid down in EU legislation, mainly in the form of Directives, with which member states must comply in order to meet the set targets. If they fail to do so, the European Commission can ask the European Court of Justice to impose a penalty.

This paper is concerned with (the effectiveness of) the sanctions the Commission could impose if a member state does not comply with European energy and climate legislation. If the conclusion to emerge is that the type and severity of such sanctions pose no real threat to member states, this will weaken the effectiveness of European energy and climate policy.

The following questions are addressed:

- Are (all) the obligations following from European environmental, renewable energy and biofuels legislation binding in the sense that member states can be held accountable if they fail to meet the targets?
- To the extent that targets are indeed binding and meeting them can be enforced by the Commission, what (financial) sanctions are available to the Commission to enforce compliance?
- Do these (financial) sanctions provide an adequate deterrent? This depends among other things on the (relative) magnitude of the lump sum payment required, but also on the extent to which policy makers in individual member states are able to shift financial and political responsibility onto other parties, such as other ministries, industry or consumers. The latter aspect will not be discussed further in this paper, as this may differ among member states, but is important to bear in mind when assessing the degree to which a penalty poses a financial and/or political threat to the various stakeholders.

2 Most European targets are binding

Table 1 below provides an overview of the European legislation of relevance for energy saving, renewable energy and CO₂ emissions reduction that is examined in this paper. The focus here is on the principal overriding targets, with no discussion of supporting measures or subsidiary targets. For each of the main targets an assessment is made of whether or not it is binding.



Table 1 European legislation examined in this paper

European legislation ⁴	Most important targets/obligations	Binding? (yes/no)
Renewable Energy: Directive 2009/28/EC	<ul style="list-style-type: none"> – Minimum share of energy from renewable sources in gross final consumption of at least 20% in 2020, with binding national targets per member state – Minimum share of energy from renewable sources in final consumption of energy in transport of at least 10% in 2020 in each member state – Notification by member states of their national renewable energy action plan by no later than June 30st, 2010 	Yes Yes Yes
Energy efficiency: Directive 2006/32/EC	<ul style="list-style-type: none"> – Indicative energy savings target of 9% in 2016 in each member state – Member states shall take cost-effective, practicable and reasonable measures designed to contribute towards achieving this target and assign an agency to supervise progress – Every three years member states shall submit an action plan for energy saving (next: June 30st, 2011) 	No Yes Yes
Reduction and monitoring of greenhouse gas emissions: Decisions 406/2009/EC en 280/2004/EC	<ul style="list-style-type: none"> – National targets, per member state, in order to meet the overall EU target of 20% reduction of greenhouse gas emissions in 2020 (compared with 1990), including trajectory obligations – Until 2020 member states are allowed a limited exceedance of their emission ceiling in a certain year provided this is compensated for in later years and the Commission approves such action – Every year member states report their greenhouse gas emissions, the emission reduction measures taken and the effects thereof. The Commission assesses progress on an annual basis 	Yes N.a. Yes
EU ETS: Directives 2009/29/EC ⁵ and 2003/87/EC	<ul style="list-style-type: none"> – Member states must ensure that, where appropriate, installations have compulsory emission permits for the activities performed – At least 50% of auctioning revenues must be used to reduce emissions, implement CCS, develop renewable energy, etc. Member states must report on this issue annually – Under certain circumstances permits may be issued free of charge, provided prior permission is granted by the Commission 	Yes Yes N.a.

⁴ The difference between a Directive and Regulation is that the former must be transposed into national legislation while the latter does not. A Decision involves legislation that applies only to individual cases and that can be addressed to individual citizens or member states.

⁵ This Directive must be transposed no later than 31 December, 2012.



European legislation ⁴	Most important targets/obligations	Binding? (yes/no)
Ecodesign: Directive, renewed 2009/125/EC and Regulation (EC) 1275/2008	<ul style="list-style-type: none"> – Appropriate measures to ensure that only products bearing the ‘CE’ mark may be marketed and assigning of a supervising authority – Member states must notify the Commission of arrangements for market supervision 	Yes Yes
Energy Performance of Buildings: Directive, renewed 2010/31/EC ⁶	<ul style="list-style-type: none"> – Adoption of cost-optimising minimum obligations for the energy performance of buildings, and measures to ensure buildings indeed meet these standards – Introduction of a system for energy performance certificates for buildings, and measures to ensure these are indeed issued – Member states must adopt sanctions for cases of non-compliance and inform the Commission of these no later than January 9th, 2013 – Every five years member states must report to the Commission on the above issues 	Yes Yes Yes Yes
Fuel Quality: Directive, renewed 2009/30/EC	<ul style="list-style-type: none"> – 6% reduction of ‘well-to-wheel’ emissions of greenhouse gases between 2010 and 2020 (member states may adopt interim targets of 2% in 2014 and 4% in 2017) – Additional voluntary greenhouse gas reductions of 4% (2% via environmentally friendly CCS and 2% via purchase of CDM credits). As yet this target is not binding, but this may change after 2012 or 2014 when the Directive is reviewed 	Yes No
Emission performance standards passenger cars: Regulation (EC) 433/2009	<ul style="list-style-type: none"> – In 2015 the average CO₂ emission of a passenger car may not exceed 130 g CO₂/km. By 2020 this will be further reduced to 95 g CO₂/km – Member states must report annually to the Commission on progress 	Yes Yes

If a member state fails to comply (in time) with the binding targets set, the Commission can start an infringement procedure which could, eventually, result in a penalty being imposed.

It should be noted that the energy savings target of 20% in the Energy Efficiency Directive is not binding. In the Renewable Energy Directive and the Decision regarding the reduction of greenhouse gas emissions the following is stated with regard to energy saving:

- In order to more readily meet their renewable energy targets, member states must promote energy efficiency and reduction of energy consumption (Article 3 of Directive 2009/28/EC).
- Improvement of energy efficiency is essential for meeting the obligations (consideration (5) and Article 4 of Decision 406/2009/EC).

⁶ This Directive must be transposed no later than 9 July, 2012.



The paragraphs concerned are relatively 'soft' and the options for sanctions in the case of non-compliance are consequently limited. One of the reasons for not setting a binding target, stated in the clarifying paragraphs of the Energy Efficiency Directive, is that achieving a certain reduction in energy consumption is influenced by exogenous factors.

3 Monitoring by the Commission

Member states are under an obligation to report frequently on the progress being made towards the various targets to enable the Commission to monitor this progress (see Table 1). In addition, in the legislation on greenhouse gas emissions and CO₂ emission reduction obligations for passenger cars, binding intermediate targets have been set in relation to the overall target, allowing the Commission to intervene if insufficient progress is being made. The Fuel Quality Directive also cites intermediate targets, but these are not binding and member states are under no obligation to apply them. In the Renewable Energy Directive an indicative trajectory towards the 2020 target is set out. If growth in the share of renewables in a particular member state proves to be below this trajectory, the Commission can request a modified National Renewable Energy Action Plan. What are clearly lacking, however, are binding (intermediate) targets for energy saving, i.e. improved energy efficiency and reduced energy consumption.

Last year, 2010, European member states submitted their National Renewable Energy Action Plans (NREAPs) to the Commission, setting out the measures scheduled or already implemented to meet the EU's agreed target of 20% renewable energy in 2020. ECN, the Energy research Centre of the Netherlands, has analysed the individual NREAPs and concludes that if member states indeed follow the strategies proposed in these documents the share of renewable energy is expected to slightly overshoot the target (20.7%). This share will only be feasible, though, if member states put substantial additional efforts into energy efficiency measures⁷. In a reference scenario in which no additional energy efficiency measures are taken, the target is not secured (18.7%)⁸.

The fact that meeting the renewable energy target relies heavily on the success of energy efficiency measures causes concern, because no binding targets have been laid down in legislation on energy end-use efficiency. Such targets are unlikely to be introduced before 2015, though⁹, and the question is thus: does the Renewable Energy Directive (amongst other European legislation on climate policy) in itself provide sufficient incentive for member states to do what is needed to meet the targets?

The Commission is currently assessing whether member states have effectively transposed the Renewable Energy Directive into national legislation. Once this assessment is complete, the Commission has the prerogative to approach any member states showing shortcomings and request them to take remedial action. In 2014 the Renewable Energy Directive will be evaluated, including an

⁷ Removing administrative barriers and stepping up the use of renewable energy for heating and cooling are also important issues. See: http://www.repap2020.eu/fileadmin/user_upload/Roadmaps/Assessment_of_NREAPs_REPA_P_report_-_interim_status_.pdf.

⁸ See: <http://www.ecn.nl/units/ps/themes/renewable-energy/projects/nreap/>.

⁹ See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0109:FIN:EN:PDF>.



assessment of the effectiveness of subsidy schemes in the respective member states. Again, this will be an opportunity for the Commission to intervene. If the Commission opts to make effective use of these evaluation moments, there will be substantially less chance of member states being caught unawares by any conclusion by the Commission that insufficient effort was made to meet the targets¹⁰. Member states will then have no easy grounds for claiming they were unaware that additional or different action was expected of them and then using this as a reason for (successfully) requesting more time to meet the target. Also there is no reason to assume in advance that the fact that several member states have failed to meet the deadline would prompt the Commission to show leniency regarding an extension for meeting the target or a penalty being imposed¹¹. For every individual case the Commission will assess the relevant circumstances and what type of intervention (sanction) seems appropriate¹².

4 Non-compliance and penalty threat

As the examples in Box 1 in Annex B show, member states failing to comply with European energy and climate legislation are at risk of being penalised. However, the magnitude of any lump sum payment is not clear in advance, because the severity of each infringement will have to be assessed individually, giving due consideration to the need for this to act as an adequate deterrent in that specific case. The duration of the infringement and the need for member states to be treated uniformly in similar cases will influence the magnitude of the lump sum payment. For each member state, minimum lump sum penalties have been set (see Table 4, Annex B). In view of the criteria deemed relevant for judging the severity of any infringement in relation to energy and climate policy, it is anticipated that the penalty set by the Commission could well be higher than this minimum¹³. This assumption is based on two premises: (1) that the relevant articles in the European legislation concerned leave limited scope for differences of interpretation between the Commission and member states, and (2) that any infringement will damage the environment (People and Planet). These damages can be quantified, using shadow prices for example, and used to set a penalty of suitable magnitude.

Whether or not it will be fit and proportional to impose a periodic penalty payment over and above the lump sum payment will depend on the given circumstances. In answering this question, though, it should be borne in mind that not meeting a target for renewable energy or CO₂ emissions reduction is not something that can be resolved from one day to the next. Under such circumstances a very high periodic penalty for each day the infringement continues, on top of a lump sum payment, could be deemed disproportional. For each individual case a balance must be found between an objectively defensible sanction that the penalised member state can

¹⁰ The Communication published by the Commission in January 2011 on progress on national renewable energy targets in individual member states says nothing about the assessed quality (estimated effectiveness) of national measures. See: http://ec.europa.eu/energy/renewables/reports/doc/com_2011_0031_en.pdf.

¹¹ This could provoke strategic behaviour (collusion) in the sense that member states would benefit from agreeing with other member states to jointly put less effort into securing the targets.

¹² In addition, there is a need for similar cases to be treated as uniformly as possible.

¹³ Although this will also depend on the (expected) duration of the infringement.



reasonably bear and action that at the same time acts as sufficient deterrent¹⁴. Nevertheless, for the periodic penalty payment, too, it is expected that *if* the Commission deems a periodic penalty payment reasonable it will probably be higher than the minimum amount (see Table 4, Annex A).

Although there are as yet no binding targets in relation to energy end-use efficiency, member states do have an obligation to take (cost-effective) measures in order to promote energy saving and energy efficiency. As explained above, though, there could still be risks in this area, since until now the Commission has indicated that member states' efforts appear to be insufficient. On June 30st, 2011 member states must have submitted their second Energy Efficiency Action Plan¹⁵. The Commission's assessment of this second plan will hopefully shed more light on possible penalties for member states whose efforts are still deemed inadequate.

5 Conclusions and recommendations

Conclusions

- Most of the European Union's renewable energy and climate policy targets are binding and member states can therefore be held accountable. If they do not meet the target (on time), they could face a penalty in the form of a lump sum payment and/or periodic penalty payment. To enforce compliance the Commission can opt to initiate an infringement procedure, but is under no obligation to do so.
- When it comes to energy end-use efficiency, binding targets are lacking, although member states do have an obligation to take (cost-effective) measures to promote such energy saving and energy efficiency. This absence of targets on this issue limits the scope for timely and effective intervention by the Commission if member states fail to make sufficient progress.
- It is by no means certain whether the EU will secure its renewable energy target of 20% in 2020. Many of the measures set out in the NREAPs (or improvements to them) are still to be implemented or proven in practice. The fact that meeting the renewable energy targets appears to rely heavily on (additional) energy end-use efficiency measures is a cause for concern, since there is already a clear need for member states to step up their efforts considerably in this field.
- Member states failing to meet their renewable energy or climate policy targets may face a lump sum payment or periodic penalty payment. The magnitude of these penalties will depend on (a) the severity of the infringement, (b) its duration and (c) the desired deterrent effect. It is as yet unclear if and how the Commission will make use of its penalty-imposing powers. If at some point in the future it wishes to do so, it will have to indicate in a timely and transparent manner that efforts to comply have been insufficient. The Communication published by the Commission this January (2011) providing an overview of the submitted NREAPs makes no pronouncement on the quality (estimated effectiveness) of the measures proposed by the member states, however.

¹⁴ See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005SC1658:EN:HTML>

¹⁵ The most important conclusion of the Commission after assessing the first National Energy Efficiency Action Plans (2007) was that additional efforts are required regarding the implementation and funding of proposed measures. See: http://ec.europa.eu/energy/climate_actions/doc/2008_ee_comm_en.pdf.



- If the Commission should decide to impose financial penalties, their magnitude will depend on the three factors just cited. At this point in time it is not possible to indicate to what specific penalties this will lead in individual cases, although it is anticipated that they could well be higher than the minimum values laid down in the Commission's guidelines because the renewable energy and climate targets leave no room for misinterpretation and infringements will clearly cause damage to the environment (People and Planet).

Recommendations

To guarantee the effectiveness of European energy and climate policy, due consideration should be given to the following issues.

- There is a need for the Commission to indicate in a clear and timely fashion whether member states are deemed to be on track towards the various renewable energy and climate policy targets (qualitative assessment of measures). In this respect the Commission should:
 - Provide insight into the penalty scheme being planned in the case of non-compliance and the order of magnitude of the financial penalty that will be imposed in any infringement procedure.
 - Adopt a 'naming and shaming' policy with regard to the achievements (best practices) of member states and communicate this accordingly ('scorecard'.)

In this sense the Communication on the first assessment of the NREAPs (January 2011) can be seen as a partially forfeited opportunity, since it provides no indication of the Commission's assessment of the estimated quality of the proposed measures.

- Binding targets for energy end-use efficiency should be introduced as soon as possible, since it appears to be a vital element of securing the 2020 renewable energy target.

Further study

One thing that remains unclear is the deterrent effect of possible penalties compared to the benefits of non-compliance with agreed targets, in terms of both costs saved and profits made by pursuing 'cheap' fossil-fuelled options for power generation instead. Further study can shed light on the magnitude and type of penalty required to act as sufficient incentive for member states to meet their targets. Only if timely action is taken on this issue the Commission (and benevolent member states) will be able to make its intentions concrete and propose policy adjustments, if necessary, in response to relevant (market) developments. If insufficient action is taken the (internal) market could suffer, for example if one country considers the targets to be binding (and invests accordingly) while another chooses not to because this is deemed economically favourable.

It is as yet also unclear what will happen after a financial penalty is imposed. Although a member state will still presumably be obliged to comply as quickly as possible, it is unclear how the Commission will additionally enforce this. Furthermore, to what extent will the Commission's strategy depend on such issues as the degree to which the overall European target is indeed met but not every member states successfully meets its own national target? It would be interesting to investigate these issues further.



If a member state fails to comply with European energy and climate legislation the Commission may take steps to force it to do so, to that end initiating an ‘infringement procedure’¹⁶. Table 2 sets out the stages of such a procedure.

Table 2 Stages of an infringement procedure (Articles 258, 259, 260 EC)¹⁷

1.	The letter of formal notice represents the first stage in the pre-litigation procedure, during which the Commission requests a member state to submit its observations on an identified problem regarding the application of EU law within a given time limit.
2.	In the light of the reply or absence of such from the member state concerned, the Commission may decide to address a ‘reasoned opinion’ to the member state, setting out clearly and definitively why it considers there to have been an infringement of EU law and calling on the member state to comply with EU law within a specified period (normally two months).
3.	If the member state fails to comply with the reasoned opinion, the Commission may decide to bring the case before the European Court of Justice (Article 258 EC). In doing so the Commission will already cite the estimated penalty they are intending to demand if the Court confirms that an infringement was indeed made (deterrent effect).
4.	If the Commission then indeed chooses to go to Court, the Court will rule on the case, leading to a judgement. If the Court concludes that an infringement was made it can impose a lump sum payment and/or periodic penalty payment, taking into account the penalty claim brought forward by the Commission.

It is important to note that if, in the meantime, the infringement is resolved this does not constitute a reason to end the procedure. In such cases the member state could still face a lump sum payment.

In setting an appropriate lump sum payment or periodic penalty payment (see Table 3) the Commission makes use of three criteria: the severity of the infringement, its duration and the required deterrent effect. In judging the severity of the infringement the following issues are relevant:

1. The relative importance of the provisions concerned for the European Community. For example, an infringement impinging on fundamental freedoms safeguarded by the Treaty will be categorised as extremely severe.
2. The degree to which the infringement is obvious and there is no room for discussion on interpretation of the provisions being violated.
3. The degree to which a member state has made due efforts to act according to European legislation. A member state may sometimes be under the impression it is doing the right thing, with only subsequent realisation that it should have acted otherwise. Under such circumstances the Commission may conclude that the member state did all it deemed necessary at the time.

¹⁶ Prior to this formal procedure the Commission will usually discuss the situation informally with the member state concerned, with both parties seeking a satisfactory solution in order to avoid such an infringement procedure. It should also be noted that the Commission is under no obligation to start an infringement procedure.

¹⁷ Source: <http://www.minbuza.nl/ecer/Dossiers/Rechtsbescherming/Verdragsschendingsprocedure> and http://ec.europa.eu/eu_law/your_rights/your_rights_en.htm. Although in theory the procedure may also be initiated by another member state, this rarely happens in practice.



4. The damages faced by parties as a result of the infringement, for example the possible financial benefits of one member state over another in the case of (incomplete) compliance, or the degree to which the infringement harms the environment.

The lump sum payments and periodic penalty payments are to be calculated on a case-by-case basis and consist of a fixed amount, which is the same for every member state, multiplied by a coefficient for the severity of the infringement (from 1 to 20) and, where relevant, an additional coefficient for its duration (from 1 to 3). The result is multiplied by a so-called n-factor for each member state that takes into account both its financial position and its voting power in the European Council. The methodology is shown in Table 3, the minimum lump sum payments and n-factors per member states in Table 4¹⁸.

Table 3 Periodic penalty payment and lump sum payment methodology

	Lump sum	Penalty per day	n-factor (differs per MS; see Table 4)	Severity factor (1-20)	Duration factor (1-3)
Periodic penalty payment					
Per day (minimum)		€ 640	n	1	1
Per day (maximum)		€ 640	n	20	3
Lump sum payment					
Minimum	See Table 4				
Per day (minimum)		€ 210	n	1	-
Per day (maximum)		€ 210	n	20	-

Table 4 Minimum lump sum payments and n-factors for the EU-27 member states

Member state	Minimum lump sum (thousand €) ¹⁹	n-factor
Belgium	2,707	5.13
Bulgaria	777	1.47
Czech Republic	1,773	3.36
Denmark	1,700	3.22
Germany	11,323	21.44
Estonia	337	0.64
Ireland	1,501	2.84
Greece	2,255	4.27
Spain	7,215	13.66
France	10,008	18.96
Italy	8,974	17.00
Cyprus	350	0.66
Latvia	405	0.77
Lithuania	632	1.20
Luxembourg	528	1.00
Hungary	1,498	2.84
Malta	174	0.33
Netherlands	3,704	7.02

¹⁸ These figures are based on the penalty guidelines published by the Commission; the Court has the power to rule differently in the sense that a higher or lower amount may be imposed. See: http://ec.europa.eu/eu_law/docs/docs_infringements/sec_2010_923_en.pdf.

¹⁹ Should the calculated lump sum payment, following from Table 3, exceed this minimum level, this higher amount will be used for setting the penalty.



Member state	Minimum lump sum (thousand €) ¹⁹	n-factor
Austria	2,234	4.23
Poland	4,163	7.88
Portugal	1,881	3.56
Romania	1,862	3.53
Slovenia	513	0.97
Slovakia	896	1.70
Finland	1,511	2.86
Sweden	2,411	4.57
United Kingdom	9,666	18.31

In certain rare cases the Commission may grant an extension in order to give the member state extra time to meet the target²⁰. Possible reasons for doing so could be (1) that a member state has misinterpreted the provisions concerned without being aware of it, or (2) that implemented and effective measures are taking longer to have (full) effect. Such matters will be judged by the European Court of Justice in individual cases. No general guidance can therefore be provided on situations in which there is a likelihood of the Commission being inclined to grant a temporary extension for (full) compliance with legislation.

²⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005SC1658:EN:HTML>.



This annex provides a very brief review of cases in which member states did not (in full or timely fashion) comply with European legislation and the penalties that followed, to provide a degree of insight into the types of situation in which financial penalties have been incurred. Of the thirty-five Article 260 cases that have been initiated by the Commission, nine have so far led to a Court ruling in which a lump sum or periodic penalty payment was imposed. These cases are described in Box 1 below.

Box 1 Cases in which a lump sum or periodic penalty payment was imposed by the Court²¹

Commission vs. Greece (C-387/97): July 4th, 2000

In this case the Court imposed a periodic penalty payment of € 20,000 per day for not applying a ruling from 1992 (a payment of € 24,600 per day had been proposed by the Commission). According to this ruling, Greece should have taken due steps to remove waste substances in the Chania area without endangering human health or harming the environment, thus to comply with Article 4 of Directive 75/442. The Court qualified this infringement as 'extremely severe' and the duration as 'significant'.

Commission vs. Spain (C-278/01): November 25th, 2003

In this case the Court imposed a periodic penalty payment of € 625,150 per year for 1% non-compliant bathing zones. This was the result of Spain not taking the necessary action to bring the quality of its swimming water in line with the minimum values in the relevant European Directive.

Commission vs. France (C-304/02): July 12th, 2005

In this case the Court imposed a periodic penalty payment of € 57,761,250 for every 6 months that France did not comply with a ruling from June 11th, 1991. In this ruling the Court determined that France had not put in place the supervision required to ensure compliance with measures to protect fish populations. In addition to this periodic penalty payment, the Court itself ruled that a lump sum payment of € 20 million was appropriate because of the long duration of the infringement, without this being explicitly requested by the Commission. It is on the basis of this ruling that the Commission today always demands a lump sum payment alongside a periodic penalty payment by way of standard procedure.

Commission vs. France (C-177/04): March 14th, 2006

In this case the Court imposed a periodic penalty payment of € 31,650 per day because France had not complied with a ruling from 2002. This involved not having implemented a directive on product accountability in timely fashion.

Commission vs. Portugal (C-70/06): January 10th, 2008

In this case the Court imposed a periodic penalty payment of € 19,392 per day because Portugal had not complied with a ruling of October 14th, 2004. In that ruling the Court had decreed that Portugal had failed to comply with mandatory procurement procedures in relation to governmental contracts.

²¹ <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=nl&Submit=Zoeken&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=&datefs=&datefe=&nomusuel=&domaine=&mots=dwangsom+%22artikel+228%22&resmax=100>. Consulted on January 31st, 2010.



Commission vs. France (C-121/07): December 9th, 2008

In this case the Court imposed a lump sum payment of € 10 million for non-compliance with a ruling of July 15th, 2004. In that ruling the Court had deemed, among other things, that France had not fully implemented Directive 2001/81/EC.

Commission vs. Greece (C-568/07): June 4th, 2009

In this case the Court imposed a lump sum payment of € 1 million for non-compliance with a ruling of April 21st, 2005 on freedom of business settlement.

Commission vs. Greece (C-109/08): June 4th, 2009

In this case the Court imposed a periodic penalty payment of € 31,536 per day and a lump sum payment of € 3 million for non-compliance with a ruling of October 26th, 2006 in relation to non-compliance with the ban on the usage and installation of games in public areas.

Commission vs. Greece (C-369/07): July 7th, 2009

In this case the Court imposed a periodic penalty payment of € 16,000 per day and a lump sum payment of € 2 million for non-compliance with a ruling of May 12th, 2005 in relation to impermissible governmental support.

