

AMENDMENT FORM

Suggestion for amendment of Article 263

Suggestion for Part: III

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Status : Member Alternate

~~1. If the European Court of Justice finds that a Member State has failed to fulfil an obligation under the Constitution, the State shall be required to take the necessary measures to comply with the judgement of the European Court of Justice.~~

~~If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the Court's judgement, it may bring the case before the European Court of Justice after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.~~

~~If the European Court of Justice finds that the Member State concerned has not complied with its judgement it may impose a lump sum or penalty payment on it.~~

~~This procedure shall be without prejudice to [Article III-262 (ex 227)].~~

~~When the Commission brings a case before the European Court of Justice pursuant to [Article III-261 (ex 226)] on the grounds that the State concerned has failed to fulfil its obligations to notify measures transposing a framework law, it may, when it deems appropriate, request that, in the course of the same proceedings, the European Court of Justice impose the payment of a lump sum or penalty if the Court finds that there has been such a failure. If the European Court of Justice complies with the Commission's request, the payment in question shall take effect within the time limit laid down by the European Court of Justice in its judgement.~~

1. If a Member State has not brought an action against a Commission decision establishing a failure to fulfil its obligation, or if the Court of Justice finds that a Member State has failed to fulfil an obligation under the Constitution, the State shall be required to take the necessary measures to comply with the Commission's decision or the judgement of the Court of Justice. The Court of Justice may set a reasonable time period in its judgement for the Member State to comply with the judgement.

2. If the Commission considers that the Member State concerned has not taken the measures referred to in paragraph 1, it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion, specifying the points on which the Member State concerned has not complied with the Commission's decision or the judgment of the Court of Justice.

If the Member State concerned fails to take the measures referred to in paragraph 1 within the time limit laid down by the Commission in that reasoned opinion, the latter may bring the case before the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not taken the measures referred to in paragraph 1, it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to [Article III-262].

Explanation (if any):

This provision is in line with the relevant provisions of the Penelope-document of the Commission (Additional Act to the Constitution no. 4, supplementary institutional provisions, articles 21-22) and in line with the Spanish-Dutch proposal (CONV 620/03), in article Y (2), the last sentence is added (“This action shall have suspensory effect.”) and in article X (1), the last sentence is added (“The Court of Justice may set a reasonable time period in its judgment for the Member State to comply with the judgment.”).