
Supervision of the execution of judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system

Document prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL)

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¹ This document has been classified restricted at the date of issue. It was declassified at the 1092nd meeting of the Ministers' Deputies (September 2010) (see CM/Del/Dec(2010)1092 Decisions adopted at the meeting).

I. Introduction

1. At their 1090th meeting (7 July 2010) (see CM/Del/Dec(2010)1090, item 1.10), the Deputies instructed the Secretariat to prepare a detailed document on the modalities for a new twin track supervision system, as described in the document on the supervision of the execution of the judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – elements for a roadmap (CM/Inf(2010)28 rev), with a view to its examination at their 1092nd (DH) meeting (14-15 September 2010).
2. The present document sets out detailed proposals for the practical implementation of a twin-track supervision system for the execution of Court judgments and decisions. It also makes a number of practical proposals on certain other issues directly touching on this new approach, which also respond to the Committee of Ministers' request "to step up [...] efforts to make execution supervision more effective and transparent and to bring this work to a conclusion by December 2010" (Committee of Ministers' 120th session, May 2010).
3. The document also contains two appendices. Appendix I aims at answering numerous delegations' questions about the possible content of action plans and reports. Appendix II makes proposals for simplifying the supervision of just satisfaction, as requested by numerous delegations. The underlying principle of these proposals is that simple registration of payments should be the rule and supervision, the exception.
4. Depending on the decisions taken by the Committee of Ministers on the proposals made, other questions will need to be examined, in particular the questions of the adaptation of the Committee's current rules on supervision and of the replacement of the present system of sections by a more simple system based on the twin-track approach.
5. Finally, it should be noted that the introduction of a twin-track supervisory system will require a transitional period to deal with cases currently before the Committee of Ministers. It is suggested that delegations and the Secretariat identify, through bilateral consultations, the most appropriate form of supervision for these cases, with a view to submitting a proposal to the Committee of Ministers in due course.

II. Practical modalities of the functioning of the proposed twin-track supervision system

6. The Deputies have largely supported the principle of continuous supervision, detached from the schedule of "Human Rights" meetings, which will operate on a twin-track approach (i.e. "enhanced" supervision and "simplified" supervision). It should be noted that what was referred to as "simplified" supervision is the standard form of supervision. Enhanced supervision would only concern cases to which the Committee of Ministers needs to give priority and which would also entail more intensive involvement of the Secretariat. It is therefore proposed to use the term "standard" rather than "simplified" supervision.
7. As requested by the Deputies, the practical modalities of such a twin-track approach are set out below. The proposed arrangements are based on the principle that all cases are technically considered to be on the agenda of every "Human Rights" meeting until their closure. The arrangements also reflect the need for prioritised and ranked supervision by the Committee of Ministers.

A. Classification under the twin-track system

8. Under the twin-track system, all cases will be examined under the standard procedure² unless, because of its specific nature, a case warrants consideration under the enhanced procedure. The types of cases that should be followed under the enhanced procedure are the following:
 - judgments requiring urgent individual measures;
 - pilot judgments;
 - judgments raising structural and/or complex problems as identified by the Court or by the Committee of Ministers;
 - interstate cases.

² It is recalled that standard and enhanced procedures were explained in the CM/Inf(2010)28rev (see, §§ 7 and 8). This document is available on the Department for the Execution's website.

9. In addition, any case may be examined under the enhanced procedure upon the request of a member State or the Secretariat. The request may be made at any stage of the supervision process.

10. In practical terms this implies that, as soon as a final judgment or a decision is transmitted to the Committee of Ministers, it will be invited to take note of the judgments and decisions that have become final since its last "Human Rights" meeting and to decide, on the basis of the above criteria, under which procedure it will carry out its examination.

Sample decision (new case in standard procedure):

The Deputies,

1. noted that the cases below have become final since their last DH meeting in [June 2010];
 2. decided to examine these cases under the standard procedure.
- [list of all new cases per country]

Sample decision (new case in enhanced procedure):

The Deputies,

1. noted that the cases below have become final since their last DH meeting in [June 2010];
 2. decided to examine these cases under the enhanced procedure.
- [list of all new cases per criteria/per country]

11. As already highlighted by the Deputies³, these two practical supervision methods should be parallel and interconnected. The transfer of cases from the standard to the enhanced procedure or vice versa will always be confirmed by a decision of the Committee of Ministers (see below, proposed procedure for "transfers").

B. Practical modalities of the standard procedure

12. In order for the standard procedure to operate effectively, member States are expected to present an action plan or an action report as soon as possible and in any event not later than six months after a judgment becomes final. The Committee's involvement in the standard procedure will be limited to verifying whether or not action plans or action reports have been presented by member states. This formal involvement of the Committee will not only be necessary for the smooth functioning of the execution process but will also contribute to its transparency and visibility.

13. The concept of action plans and action reports is explained in detail in Appendix I. In short, an action plan is a plan presenting the measures a respondent state intends to take to implement a judgment of the Court. An action report is a report presenting the measures taken by a respondent state to implement a judgment of the Court and explaining why no measures or no further measures are necessary.

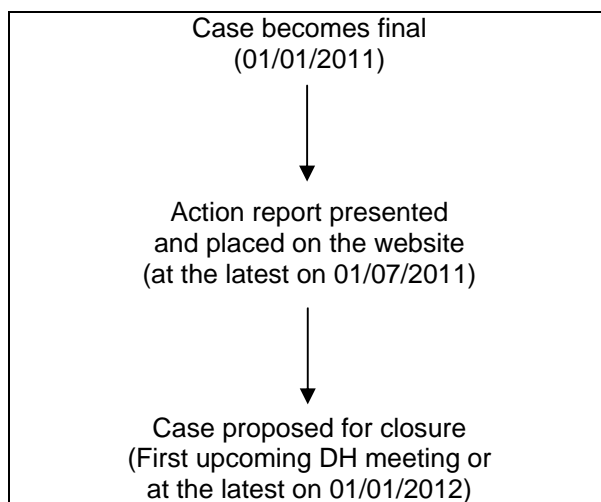
14. In practice, there are two possible situations:

- the state concerned considers that it has already taken all the necessary measures to implement a judgment: in such a situation it presents an action report (see a) below);
- the state concerned is in the process of identifying/adopting the measures that are necessary to be taken to implement a judgment: in such a situation it presents an action plan (see b) below).

³ "A flexible approach [...] which would make it possible to move from one supervision method to the other, was considered essential" (CM/Inf(2010)28rev, §11).

a) Action report presented (i.e. all measures have been taken):

15. When there is agreement between a member state and the Secretariat on the content of the action report, the case will be presented to the Committee of Ministers with a proposal for closure at the first upcoming "Human Rights" meeting or in any event not later than six months after the presentation of the action report.



b) Action plan presented (i.e. measures envisaged)

16. Upon reception of the action plan, the Secretariat will make a preliminary assessment on the measures envisaged and the timetable proposed in the action plan and will contact the national authorities if further information and clarifications are necessary.

17. When an action plan is presented, the Committee will be invited to adopt the following decision at the first upcoming "Human Rights" meeting or in any case not later than six months after the presentation of the action plan:

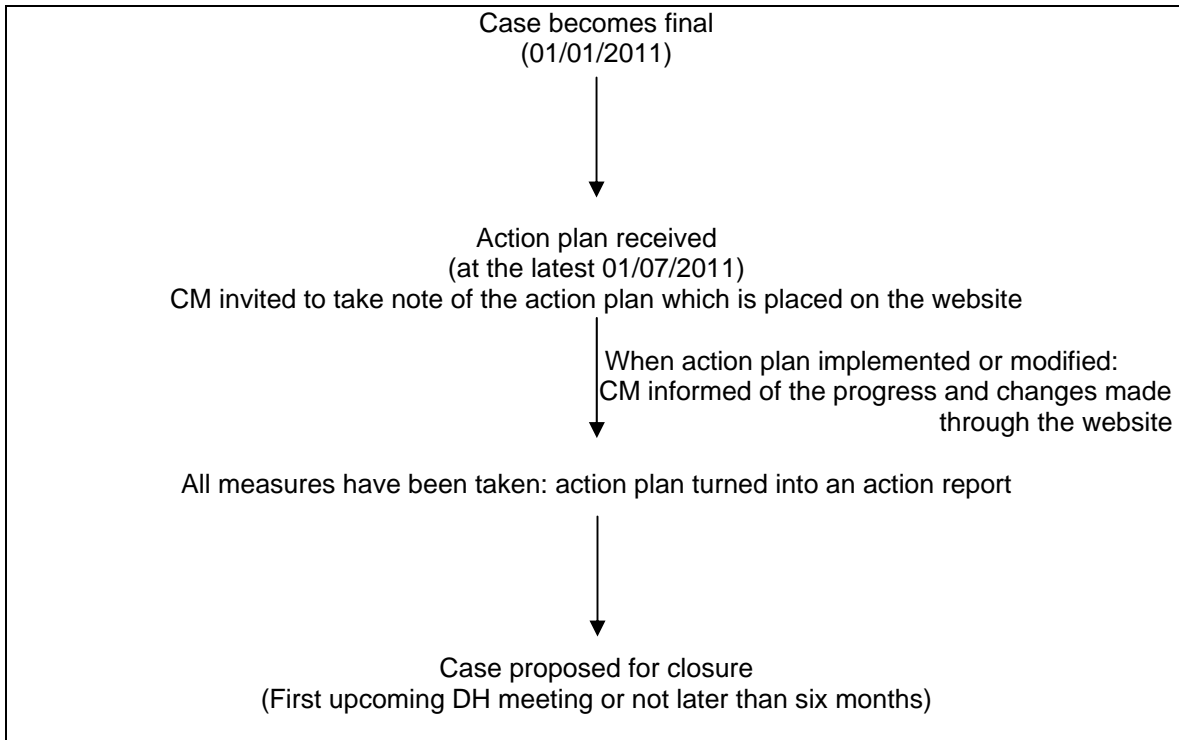
Sample decision (presentation of the action plan):

The Deputies,

1. noted that, in the cases below, actions plans setting out the measures planned to abide by the judgments of the Court have been presented;
2. invited the authorities of [the member State(s) concerned] to keep the Committee of Ministers regularly informed of the progress made in the implementation of these action plans.

[list of cases per State]

18. When the member State informs the Secretariat that it considers that all measures have been taken and that it has complied with its obligation under Article 46 of the Convention, the action plan is turned into an action report. The Secretariat will make a conclusive assessment of those measures not later than six months after the submission of this information. If the member State and the Secretariat agree on the measures adopted/implemented, the Secretariat will propose that the Committee adopts a final resolution closing the examination of the case.



19. All developments and updated information regarding the action plan will be available on the website of the Department for Execution.

C. Practical modalities of the enhanced procedure

20. The supervision under this procedure does not mean that each and every case should be systematically debated. It means in particular that the Committee of Ministers entrusts the Secretariat with more intensive and pro-active cooperation with the States concerned by means of:

- assistance in the preparation and/or implementation of action plans;
- expertise assistance as regards the type of measures envisaged;
- bilateral/multilateral cooperation programmes (e.g. seminars, round-tables) in case of complex and substantive issues.

21. It is proposed that, under the enhanced procedure without debate, the Committee of Ministers exercises its supervision through decisions adopted at the "Human Rights" meetings. These decisions would aim at demonstrating, whenever necessary, the developments in the execution process (for example, stocktaking of the measures already adopted and identification of the outstanding issues). An example of such a decision which could be adopted without debate is as follows:

Sample decision (a case examined under the enhanced procedure without debate):

The Deputies,

1. noted with satisfaction that the Criminal Code of [member State] has been amended and that this amendment is capable of preventing similar violations in the future;
2. called upon the respondent State to intensify its efforts with a view to finding a rapid solution to the remaining outstanding issues [specify issues];
3. noted that bilateral consultations will be held between the authorities of the respondent State and the Secretariat in October 2011 on the outstanding issues;
4. instructed the Secretariat to inform the Committee on the results of these bilateral consultations;
5. decided to examine the outstanding issues at their [...] meeting.

22. A request for debate can be made by any member State and/or the Secretariat. It emerges from the spirit of the new twin-track system that the issues to be proposed for debate are closely linked to the progress in the execution process and to the need to seek the guidance and/or support of the Committee of Ministers (see for example sample decision B in § 29 below). It therefore does not seem advisable to set in advance rigid criteria for issues to be proposed with debate.

23. When a case is proposed with debate to the Committee of Ministers, the Secretariat will ensure that clear and concrete reasons are given⁴. Delegations will receive the relevant information on the cases proposed with debate one month before each "Human Rights" meeting (see, § 31 below).

Sample document (information to be provided to the delegations regarding the cases with debate):

In the case of X v. [member State]:

Case description:

State of execution:

Issues to be debated: [specify the reasons for debate]

Proposed decision: [proposed decision for each case] or [proposed interim resolution]

D. Transfer from enhanced to standard procedure or vice versa

24. A case may be transferred from one procedure to the other by a duly reasoned decision of the Committee of Ministers. A number of situations for transfer of cases are listed below. However, these situations are not exhaustive (see, appendix II on just satisfaction §§ 12, 14 and 15). The Committee may always decide to transfer a case from one procedure to the other on grounds other than those listed here. The following situations are envisaged:

a) Enhanced → Standard

25.

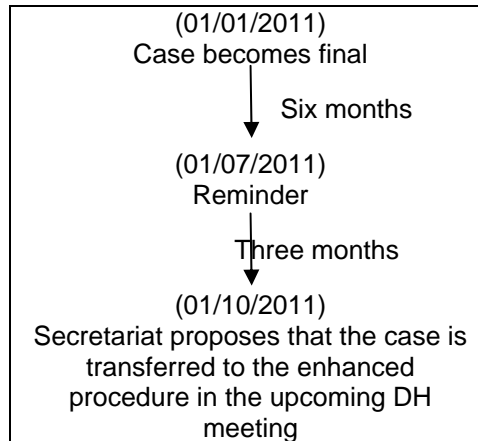
- When the Committee of Ministers is satisfied with the action plan presented and/or its implementation;
- When obstacles to the execution no longer exist;
- When required urgent individual measures have been taken.

b) Standard → Enhanced

26. *Failure to present action plan or action reports:* If no action plan or report has been received within six months after a judgment becomes final, the Secretariat will send a reminder to the member State concerned. The Secretariat will also ensure that a list of cases for which no action plan or report has been received is circulated to the delegations before each "Human Rights" meeting.

⁴ (see, CM/Inf(2010)28rev § 16 "It is equally essential to allow the Committee of Ministers to hold an informed collective debate based on exhaustive documents for each case setting out the questions submitted to the Deputies that await reply. Those documents should be circulated in a timely manner. Transparency concerning the debate also requires that the choice of cases be duly reasoned...").

27. If a member State still does not present an action plan or report within three months after the Secretariat's reminder, the Secretariat will propose that the case is examined under the enhanced procedure.



28. Consequently, it will be proposed to the Committee that a decision is adopted at the first "Human Rights" meeting following the expiry of the three months period inviting the member State concerned to provide an action plan/report without any further delay:

Sample decision (no action plan or report has been presented)

In the case of A v. [member State]:

The Deputies,

1. noted with regret that no action plan or report has been presented in this case despite the reminder sent to the authorities on [specify the date];
2. invited the authorities of the respondent State to present an action plan or report without any further delay and decided to transfer this case for its examination under the enhanced procedure.

[the list of cases concerned]

29. *Disagreement between a member state and the Secretariat on the contents of the action plan or report:* In certain cases, a member state and the Secretariat might have divergent views regarding the necessity or the scope of the measures presented in the action plan or report. When the member State and the Secretariat cannot reach an agreement, the member State and/or the Secretariat can propose that the case is transferred to the enhanced procedure so that the Committee can provide guidance in order to assist the execution process.

Sample decision (divergent views on the measures presented in the action plan or report)

In the case of B v. [member State]:

The Deputies,

1. observed that the measures contained in the action plan or report raise certain issues requiring close examination of the Committee of Ministers.
2. decided therefore to transfer this case for its examination under its enhanced supervision procedure and to examine it in detail at its next "Human Rights" meeting.

OR

2. decided that it is not necessary to transfer this case under its enhanced procedure because [specify the Committee of Ministers' advice].

30. *Serious delay in the implementation of the measures announced in the action plan:* In cases of serious delays in the implementation of the measures indicated in the action plan, the Committee will be invited to transfer the case concerned for its examination under the enhanced procedure.

Sample decision (serious delay in implementing the measures announced)

In the case of C v. [member State]

The Deputies,

1. recalled that the respondent State presented an action plan to the Committee of Ministers in [specify date] setting out the measures it envisaged taking;
2. noted with concern that no progress have been achieved in the implementation of this action plan;
3. decided therefore to examine this case under its enhanced supervision procedure.

E. List of documents to be prepared for the “Human Rights” meetings

31. In the light of the above, delegations will receive the following documents one month before each “Human Rights” meeting:

- i) Short notes on the agenda indicating the decisions proposed:
 - in the new cases that will be examined under the standard or enhanced procedure (see § 10 above);
 - in the cases in which an action plan has been received (see § 17 above);
 - in the cases that require examination under the enhanced procedure at the meeting (including the cases that will be proposed with debate) (see §§ 21 and 23 above);
 - in the cases that are in the “transfer procedure” (see §§ 28-30 above);
 - in the cases in which there is no information on the payment of just satisfaction (see appendix II, § 13) and;
 - final resolutions with the appended action reports.
- ii) An order of business indicating the items proposed for adoption with debate or without debate.
- iii) Secretariat’s information documents setting out the main execution issues, in particular in the cases proposed with debate (see sample document, § 23 above) or other relevant documents in complex cases.

32. The decisions that will be taken by the Deputies in the light of the above considerations will influence the format, frequency and organisation of “Human Rights” meetings as well as the deadlines for the issuing of documents. More detailed proposals will be submitted to the Deputies in due course. Should the practical modalities regarding the twin-track approach be accepted by the Deputies, consideration might be given to a frequency of three Human Rights meeting per year.

Appendix I: Proposed content for Action plans / action reports

I. Background

Where do the concepts of action plan/action report come from?

1. Basically these concepts of action plans and action reports do not introduce anything new: under Article 46 of the Convention, the respondent States have an obligation to submit information on measures taken or envisaged, to enable the Committee of Ministers (CM) to exercise its collective responsibility.
2. The idea of states submitting rapidly comprehensive action plans was already endorsed in 2004 in the context of the reflection on how to improve the CM's working methods. This led in particular to certain proposals by the Chair⁵ on the issue.
3. The practice of action plans/reports has since been further endorsed by the CM. It thus decided, in June 2009, formally to invite respondent states to submit such documents within six months after a judgment has become final.
4. The Interlaken conference has since underlined the urgent need to improve the execution process. In the follow up to the conference, the crucial role of action plans/reports has been stressed (see *in particular* CM/Inf (2010)28 and (2010)28 rev and written proposals made by France and Norway in DD(2010)263 and(2010)293, respectively, as well as in numerous interventions by other delegations). Action plans/reports are perceived as a key element of the principal of subsidiarity. Their content constitutes the expression of the Respondent States' responsibility to execute the Court's judgments and their freedom of choice as regards the means of execution under the supervision of the CM.

II. Content of action plans/reports

Definitions of action plans/reports⁶

5. An action plan is :

A plan setting out the measures the respondent State intends to take to implement a judgment of the Court, including an indicative timetable. The plan shall, if possible, set out all measures necessary to implement the judgment. Alternatively, where it is not possible to determine all measures immediately, the plan shall set out the steps to be taken to determine the measures required, including an indicative timetable for such steps.

It is axiomatic that action plans could contain information on measures already taken.

6. It may be underlined at the outset that action plans are evolving documents and should be regularly updated with information on the progress achieved with respect to their implementation. They should be amended if the initial plans prove unachievable or inappropriate in view of new developments.

7. An action report is:

A report by the respondent State setting out all the measures taken to implement a judgment of the European Court of Human Rights, an/or an explanation of why no measures, or no further measures, are necessary.

⁵ Cf CM/Inf(2004)8 final

⁶ See also CDDH(2008)014 Addendum II

Possible structure for action plans and reports

General structure of an action report

8. A possible general structure for action reports presented with a view to the closure of the supervision process could be the following:

CASE [NAME], APPLICATION NO. [XXX], JUDGMENT OF [DATE], FINAL ON [DATE]

1) INDIVIDUAL MEASURES

- An indication, in the light of the Court's judgment, if possible violation by violation, of measures taken or at the applicant's disposal and how these have erased, or may erase, the consequences of the violation(s) for the applicant(s);
- If no measures are deemed required, a short statement to this effect, explaining why no consequences of the violation/s established persist.

2) GENERAL MEASURES

- An indication, in the light of the Court's judgment, of the assessment made of the scope of the violation(s) and its/their origin(s) (practice, legislation etc...), and of measures taken, if possible violation by violation, and how these prevent similar violations;
- If it is perceived that a specific violation is an isolated instance, a short indication to this effect.

3) JUST SATISFACTION

In the light of the proposed simplification of payment controls, it will be sufficient to fill in the special payment registration form proposed (see appendix III). In order to ensure rapid registration of payments, this information should preferably be sent directly to the Execution Department after payment, and need thus not be included in the action plan or subsequent updates. The Department will ensure that the information is included in the action report and the final resolution which will be adopted by the Committee of Ministers.

General structure of an action plan

9. A possible general structure for action plans could be the following :

CASE [NAME], APPLICATION NO. [XXX], JUDGMENT OF [DATE], FINAL ON [DATE]

1) INDIVIDUAL MEASURES

- An indication, in the light of the Court's judgment, if possible violation by violation, of
 - a. measures possibly already taken or at the applicant's disposal, and/or
 - b. measures envisaged,
 and how these have erased or may erase the consequences of the violation(s) for the applicant(s);
- If no measures are deemed required, a short statement to this effect, explaining why no consequences of the violation/s established persist.

2) GENERAL MEASURES

- An indication, in the light of the Court's judgment, of the assessment of the scope of the violation(s) and its/their origin(s) (practice, legislation etc...), and, if possible violation by violation, of
 - a. measures possibly already taken, and/or
 - b. measures envisaged.
 and how these have or are expected to prevent similar violations.
- For complex situations it may be that further clarifications are needed. The action plan will then provide information on the steps taken to identify the measures to be taken.
- If it is perceived that a specific violation is an isolated instance, a short indication to this effect.

3) JUST SATISFACTION

In the light of the proposed simplification of payment controls, it will be sufficient to fill in the special payment registration form proposed (see appendix III). In order to ensure rapid registration of payments, this information should preferably be sent directly to the Execution Department after payment, and need thus not be included in the action plan or subsequent updates. The Department will ensure that the information is included in the action report and the final resolution which will be adopted by the Committee of Ministers.

10. Updates to original action plans should preferably follow the same structure as the original plan, with indications of the progress made in respect of the different measures announced.

11. If the remedial actions required in respect of one or several violations are dealt with in the context of other cases or groups of cases, a mere reference to the relevant cases or groups of cases is enough.

Appendix II: Practical arrangements for simplifying the supervision of the payment of just satisfaction

Operating principles of the simplified system

1. In the light of the Committee of Ministers' discussions and delegations' written contributions, it is proposed that the Committee of Ministers approves the following principles:

- registration by the Execution of Judgments Department of payments by States of sums awarded by the Court for just satisfaction;
- supervision if the applicant contests the payment or the amount of the sums paid.

2. Registration would therefore become the standard procedure and supervision the exception. Moreover, such registration would make it easier for both governments and the Committee of Ministers to manage situations that may require verification.

3. On this basis:

- States will provide simplified information to permit the registration of payments (see below);
- if the payment is contested, States will agree to provide the necessary information for the Committee of Ministers to exercise its supervision;
- the Secretariat will remain at the Committee of Ministers and States disposal for any questions they might wish to raise.

II. Operational arrangements of the simplified system

4. As for the information to be given by States, they will be supplied with a simple, standardised form. The form will be limited to the information necessary for registering the payment.

5. The following form is proposed:

| JUST SATISFACTION FORM | |
|--|---|
| <u>Information regarding the payment of just satisfaction</u> | |
| State: _____ | |
| ☒ | |
| Case title | |
| Application number | |
| Sum due | |
| Payment deadline | |
| Date of payment | |
| Amount paid | Total sum |
| | Default interest |
| Exchange rate (if necessary) | |
| Comments (if any) | |
| Please send this document to « Execution_just_satisfaction@coe.int » The Department for the execution of ECHR will register this information | |
| Council of Europe F-67075 Strasbourg Cedex | Tel.: +33 (0)3 90 21 55 54 Fax: +33 (0)3 88 41 27 93 |
| E-mail: DGHLexecution@coe.int www.coe.int www.coe.int/execution | |

6. Delegations will be able to access the form via the Sharepoint. States will be invited to complete the form and return it to the Execution Department. The completed form will be the only document to be provided by States as evidence of payment⁷.
7. The just satisfaction unit of the Execution Department will register the form, which is the evidence of payment, and send an acknowledgement of receipt to the State concerned.
8. The information in the form supplied by States will be very rapidly put on line on the department's Web site. The current section 3 will be replaced by a more visible heading which could be entitled "Payment of just satisfaction awarded by the Court", and showing the payment situation country by country.
9. There will also be a just satisfaction page on the web site, in both official languages and subsequently – subject to resources – in other ones. The information could take the form of "frequently asked questions" and include information for applicants on what steps to take if they wanted to submit comments to the Committee. There will be a special email address on the site to which applicants can send their comments⁸.
10. Discussions are also currently under way with the Court Registry to determine whether more information should be included in the letters to applicants transmitting judgments and decisions.
11. It is proposed that if an applicant has not made any complaint within two months of the date when the payment was registered by the department, he or she will be considered to have accepted the payment by the State concerned. However, as at present, the Committee of Ministers may, if necessary, reopen the matter.
12. In case an applicant contests, the Execution Department will discuss the matter with the relevant delegation, drawing on the relevant documentation kept by the national authorities and any other relevant information, with a view to finding an appropriate solution. In exceptional circumstances and should the situation warrant it, the matter might be submitted to the Committee of Ministers for guidance, as part of the enhanced supervision process (see Appendix I).

III. Information to and action by the Committee of Ministers

13. A month before each Human Rights meeting, delegations will receive a list of cases for which, following the expiry of the deadline set by the Court, no information on payment has been received (see Appendix I, § 26). The Committee of Ministers will be invited to adopt a general decision, without debate, asking States to supply information on just satisfaction payments and any default interest. Such a decision might be worded as follows:

The Deputies:

1. noted that in the following cases, no information had been supplied to the Committee of Ministers concerning the payment of the just satisfaction awarded by the European Court;
2. invited the States concerned to supply information confirming payment of the sums in questions without delay.

14. Persistent failure by States to supply information on the payment of just satisfaction could lead to a proposal for the Committee of Ministers to consider the matter under the enhanced supervision procedure (see Appendix I, § 18).

15. Finally, States or the Secretariat should keep the possibility to still refer important substantive issues concerning just satisfaction to the Committee of Ministers if they warrant its intervention.

⁷ The national authorities will themselves be responsible for determining when the amounts concerned have been placed at applicants' disposal (see memorandum CM/Inf/DH(2008)7 final "Monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice"). The standardised and simplified form will replace the current procedure, which consists in accepting a variety of national documents, at the choice of the country concerned, attesting to the payment of the sums involved and any default interest.

⁸ This address will be completely separate from the one available to delegations, which will be on the Sharepoint.