

Commercial transactions: combating late payment. Recast

2009/0054(COD) - 08/04/2009 - Legislative proposal

PURPOSE: to combat late payments in commercial transactions between businesses or between businesses and public authorities with a view to improving the cash flow of European business.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: Directive 2000/35/EC was adopted to combat late payment in commercial transactions between businesses or between businesses and public authorities. It specifies, inter alia, that statutory interest may be charged when payment is not made within the contractual or legal deadline.

There is overwhelming evidence that, despite the entry into force of Directive 2000/35/EC late payment in commercial transactions is still a general problem within the EU. In addition, there is also evidence in a number of Member States of unjustifiably long contractual payment periods in transactions involving public administrations. Given the importance of public procurement in the EU (more than 1 943 billion euro per year), late payment by public authorities has a strong negative impact on enterprises. Many public authorities do not face the same financing constraints as businesses and late payment in their case is avoidable. It should therefore be more **severely sanctioned** when it occurs. Moreover, diverging payment attitudes across the EU might hamper business participation in public tenders, which distorts competition and undermines the functioning of the internal market.

It is therefore essential to modify Directive 2000/35/EC. While safeguarding the main elements of the Directive, it is essential to introduce additional tools to reduce the number of late payments in commercial transactions, to shorten payment periods for public administrations and to substantially reinforce the incentives for public administrations to pay in time by recasting the Directive, incorporating in a single text both the substantive amendments made to the Directive and its unchanged provisions.

IMPACT ASSESSMENT: the Commission considers the following options:

- Option 1: baseline option- comprises a number of recently adopted measures that will quicken the payment process and introduce new means of pursuing judicial and extra-judicial claims for the recovery of outstanding payments for commercial transactions in cross-border cases within the EU.
- Option 2a (non-legislative): the organisation of awareness raising activities targeted at businesses.
- Option 2b (non-legislative): the organisation of awareness raising activities targeted at organisations representing SMEs.
- Option 2c (non-legislative): Publication of information on bad debtors.
- Option 3a (legislative): Harmonisation of payment periods.
 - Option 3a/1: The harmonisation of payment periods between economic operators.
 - Option 3a/2: the harmonisation of the periods for payment by national authorities to economic operators.
 - Option 3b (legislative): increasing the “margin” interest rate.
- Option 3c (legislative): the abolition of the threshold.
- Option 3d (legislative): the introduction of a “Late Payment Fee”.
- Option 3e (legislative): the introduction of a “Late Payment Compensation”.
- Option 3f (legislative): Extending the role of representing organisations.

Only options 3a/2, 3c, 3d and 3e meet the criteria of effectiveness, efficiency and consistency. Therefore, these 4 options constitute the basis of this proposal.

CONTENT: this proposal is part of the Lisbon Agenda for Growth and Jobs and implements the [Small Business Act](#) which highlighted the importance of SMEs for the competitiveness of the EU economy and the Commission Communication on an [European Economic Recovery Plan](#) which called in particular for public authorities to pay invoices for supplies and services within one month.

This recast of Directive 2000/35/EC aims at **improving the effectiveness and the efficiency of remedies for late payment** through the introduction of an entitlement to the recovery of administrative costs and compensation for internal costs incurred due to late payment.

More specifically, the proposal lays down the following:

- the provisions of Directive 2000/35/EC on its scope (Article 1 of this proposal), interest in case of late payment (Article 3), the retention of title (Article 8) and the recovery procedure for unchallenged claims (Article 9) remain fundamentally unchanged. The various definitions and concepts are streamlined and brought together in Article 2.

The reasons for the other proposed substantive amendments are the following:

- Article 1(2) removes the possibility that **claims for interest of less than €5 may be excluded** by Member States. This will clear a hurdle for claiming interest for late payments, in particular for SMEs and for late payment in smaller transactions where interest amounts to only a small sum.
- Article 4 specifies that, in the case of late payment, creditors will be entitled to **obtain a sum for internal recovery costs related to the amount paid late**. The objective is twofold: firstly, the creditor would be able to recover his internal administrative costs related to late payment and, secondly, this would have a deterrent effect on debtors, additional to the statutory interest.
- Article 5 of the proposal tackles **late payment by public authorities** which will be obliged as a general rule to pay invoices for commercial transactions leading to the delivery of goods or the provision of services **within 30 days**. Past this period, the creditor will in principle be entitled to **compensation of 5% of the amount specified**, in addition to the interest for late payment and the compensation for recovery costs. The budgetary impact for national authorities will be proportional to their capacity to ensure compliance with the provisions of the directive. In addition, the expected improvement in payment behaviour of public authorities will help reduce the number of business bankruptcies and thus reduce the social costs that they entail.
- Article 6 of the proposal **strengthens the provisions about grossly unfair contractual clauses**. It includes a provision whereby a clause which excludes interest for late payment will always be considered as grossly unfair.
- Article 7 obliges Member States to ensure **full transparency** about the rights and obligations stemming from this directive and in particular to publish the statutory interest rate. This aims at providing in the most appropriate way practical information to businesses, and especially SMEs, and will enable them to take action against debtors paying late.
- Article 10 lays down the **monitoring and evaluation system** allowing other European institutions and stakeholders an insight into the actual implementation of the Directive.

BUDGETARY IMPLICATIONS: the budgetary implications are limited to administrative expenditure.