Commercial transactions: combating late payment. Recast

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The Committee on Committee on Industry, Research and Energy adopted the report drawn up by Barbara WEILER (S&D, DE) on the proposal for a directive of the European Parliament and of the Council on combating late payment in commercial transactions (recast). It recommended that the European Parliament's position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) should be to amend the Commission proposal as follows:

Definitions: Members made amendments to the definitions of ""public authority", "late payment", and "interest for late payments". The latter should not be lower than "statutory interest, "which is now defined as simple interest for late payment at a rate which is the sum of the reference rate, plus at least nine (rather than seven) percentage points.

A definition is inserted for **checkable invoice**, which means a clearly drawn up final invoice which keeps to the agreed order of items and uses the descriptions contained in the contract. The quantity calculations, drawings and other supporting documents required to prove the nature and scope of the work performed must be enclosed with the invoice.

Interest in the case of late payment: Members made the following amendments:

- they clarified that the relevant time limit is 30 calendar days from the date of the invoice, and this applies also to public authorities;
- the date of the receipt of the invoice shall not be subject to a contractual agreement between debtor and creditor;
- the maximum duration of the procedure of acceptance or verification referred to in the text shall not exceed 30 days;
- if the period for payment is fixed in the contract, this shall not exceed 60 days, unless it is specifically agreed between the debtor and the creditor and it does not lead to unjustified damages to any of the contracting parties.

Compensation for recovery costs: the committee specified that when interest for late payment becomes payable in commercial transactions the creditor is automatically entitled to obtain from the debtor, i.e. without the individual creditor's having to take any action, as a minimum, a fixed sum of EUR 40.It deleted the amounts of compensation in the Commission proposal, and stated that Your Rapporteur considers that an open-ended 1% compensation rate payable on late payments of EUR 10 000 or more could involve significant and disproportionate costs for larger value transactions and may not reflect actual costs.

Furthermore, in the case of multiple claims against the same debtor, the compensation for recovery costs shall be payable only on the sum of the debts and not on the individual claims. Members note that it would not be fair, or consistent with current practice, to compensate the same suppliers' and purchasers' recovery costs for individual claims. This is particularly relevant in the healthcare sector, when hospitals cannot pay a supplier of various types of medicines for individual supplies because of late payment on the part of health insurers.

Payment by public authorities: a new amendment states that for public health institutions and public medico-social institutions, the time limits referred to in the text (30 calendar days) shall be 60 days.

The committee also considered that the derogation from the 30-day period for verification is open to an indefinite number of interpretations and should therefore be deleted. Moreover, as there is often no level playing field between public purchasers and private suppliers, it leaves a gateway for public authorities to introduce different periods for the verification procedure. Furthermore the amendment specifies the starting date for counting the 30 day-period: the date of the receipt of the goods or services.

Members deleted the clause stating that when interest for late payment becomes payable, the creditor is entitled to a lump sum compensation equal to 5% of the amount due, in additional to the interest for late payment. They stated that it would be an anomaly for penalties to take the form of payments to creditors, since the beneficiaries would be the individuals concerned and not a public authority. Creditors' compensation should take the form of interest.

Unfair contract terms and practices: Members deleted the term "grossly unfair contractual clauses" and this amendment applies throughout the text. A term or a practice which excludes interest for late payment or compensation for recovery costs, or both, shall always be considered as unfair. Members felt that it is necessary to send a clear message to economic operators that excluding the right to compensation for recovery costs, a right which the proposal seeks to strengthen, is an unfair term which cannot be enforced against creditors and which can give rise to a claim for damages.

Transparency: this article is now called "transparency and awareness raising". Member States must publish the applicable statutory interest rate and the procedure relating to payments by public authorities, as a specific guarantee to any possible chain for subcontractors. The Commission shall publish in the Official Journal and on the Internet details of the current statutory rates of interest applying in all the Member States in the event of late payment in commercial transactions. The committee considered that his will ensure greater clarity and easier access for courts and creditors to details of the statutory interest rates applying in the individual Member States, which is of particular importance in connection with cross-border transactions.

Member States shall, where appropriate, use professional publications, promotion campaigns or any other functional means to increase awareness of the remedies for late payment among businesses. They may encourage the establishment of prompt payment codes which set out clearly defined payment time limits and a proper process for dealing with any payments that are in dispute, or any other initiatives that tackle the crucial issue of late payment and contribute to developing a culture of prompt payment which supports the aims of the Directive. Furthermore, Member States shall make efforts to encourage the publication of a list of prompt payers to foster the spread of good pratice.

Lastly, the committee inserted a new clause on **payment schedules**. It states that the Directive shall be without prejudice to the ability of parties to agree, subject to the relevant provisions of applicable national law, on payment schedules providing for the amounts due to be paid by instalments over a period of time. In such cases, where any of the instalments is not paid at the agreed date, interest, compensation and other penalties provided for in this Directive shall be calculated solely on the basis of overdue amounts.

The committee felt that **staggered payment arrangements** may contribute to ensure liquidity of businesses and SMEs in particular. It is therefore appropriate to clarify that parties to a commercial transaction remain entirely free to agree, subject to the application of the relevant provisions of national law, on arrangements of this kind; and that in the event of late payment of one instalment, interest, compensation and other penalties should be calculated solely on the basis of overdue amounts.