Commercial transactions: combating late payment. Recast

2009/0054(COD) - 20/10/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 612 votes to 12, with 21 abstentions a legislative resolution on the proposal for a directive of the European Parliament and of the Council on combating late payment in commercial transactions (recast).

The Parliament adopted its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure). The amendments adopted in plenary are the result of a compromise reached between the European Parliament and the Council. Parliament amends the Commission's proposal as follows:

Subject matter and scope: the amended text specifies that the aim of this Directive is to combat late payment in commercial transactions, in order to ensure the proper functioning of the internal market, thereby fostering the competitiveness of businesses and in particular of SMEs

Definitions: 'late payment' means payment not made within the contractual or statutory period of payment. A debtor's payment is considered late if the creditor does not receive the money by the agreed date and has fulfilled its contractual and legal obligations.

'Amount due' means the principal sum which should have been paid within the contractual or statutory period of payment, including the applicable taxes, duties, levies or charges specified in the invoice or the equivalent request for payment.

Interest on late payments – transactions between undertakings: Member States shall ensure that if the date or period for payment is not fixed in the contract, the creditor is entitled to interest for late payment upon the expiry of any of the following time-limits:

- **30 calendar days** following the date of receipt by the debtor of the invoice or an equivalent request for payment ;
- if the date of the receipt of the invoice or the equivalent request for payment is uncertain, **30 calendar days after the date of receipt of the goods or services**.

In addition, Member States shall ensure that:

- the maximum duration of the procedure of acceptance or verification does not exceed 30 calendar days from the date of receipt of the goods or services, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor;
- the period for payment fixed in the contract **does not exceed 60 calendar days**, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor.

Compensation for recovery costs: when interest for late payment becomes payable in commercial transactions, the creditor is entitled to obtain from the debtor, as a minimum, **a fixed sum of EUR 40**. This fixed sum is payable without the necessity of a reminder and as compensation for the creditor's own recovery costs.

The creditor shall, in addition to the fixed sum, be entitled to obtain **reasonable compensationfrom the debtor for any recovery costs** exceeding that fixed sum and incurred due to the debtor's late payment.

This could include expenses incurred, inter alia, in instructing a lawyer or employing a debt collection agency.

Transactions between undertakings and public authorities: in commercial transactions where the debtor is a public authority , the creditor is entitled upon expiry of the period defined in the Directive to statutory interest for late payment , without the necessity of a reminder, where the following conditions are satisfied:

Member States shall ensure that :

- the period for payment does not exceed any of the following time-limits: i) **30 calendar days** following the date of receipt by the debtor of the invoice or an equivalent request for payment; ii) if the date of receipt of the invoice or the equivalent request for payment is uncertain, 30 calendar days after the date of the receipt of the goods or services;
- the date of receipt of the invoice is not subject to a contractual agreement between debtor and creditor.

Member States may extend the time-limits up to **a maximum of 60 calendar days** for:

- any public authority which carries out **economic activities of an industrial or commercial nature** by offering goods or services on the market and which is subject as a public undertaking to the transparency requirements laid down in Commission Directive 2006/111/EC;
- public entities **providing healthcare** which are duly recognised for that purpose.

If a Member State decides to extend the time-limits in accordance with the first subparagraph, it shall send a report on its implementation to the Commission within five years of the entry into force of this Directive. On this basis, the Commission shall submit a report to the European Parliament and the Council indicating which Member States have extended the time-limits in and taking into account the impact on the functioning of the internal market, in particular on SMEs. That report shall be accompanied by any appropriate proposals.

Member States shall ensure that:

- the maximum duration of a procedure of acceptance or verification does not exceed **30 calendar days** from the date of receipt of the goods or services , unless otherwise expressly agreed in the contract and any tender documents and provided it is not grossly unfair to the creditor;
- the period for payment fixed in the contract does not exceed the time-limits, unless otherwise expressly agreed in the contract and provided it is objectively justified in the light of the particular nature or features of the contract, and that it in any event **does not exceed 60 calendar days**.

Unfair contractual terms and practices: the Directive should prohibit abuse of freedom of contract to the disadvantage of the creditor.

As a result, where a term in a contract or a practice relating to the date or period for payment, the rate of interest for late payment or the compensation for recovery costs is not justified on the grounds of the terms granted to the debtor, or it mainly serves the purpose of procuring the debtor additional liquidity at the expense of the creditor, it may be regarded as constituting such an abuse. For that purpose, any contract term or practice **grossly deviating from good commercial practice**, contrary to good faith and fair dealing, should be regarded as unfair to the creditor.

In particular, the **outright exclusion of the right to charge interest** should always be considered as grossly unfair, whereas the exclusion of the right to compensation for recovery costs should be presumed to be grossly unfair.

In the context of enhanced efforts to prevent the abuse of contractual freedom to creditors' detriment, in the amended Directive, **officially recognised bodies, and bodies with a legitimate interest in, representing undertakings** should be able to take action before national courts or administrative bodies in order to prevent the continued use of contract terms or practices which are grossly unfair to the creditor.

Transparency and awareness raising: Member States shall ensure transparency about the rights and obligations stemming from this Directive, including by **making publicly available the applicable rate of statutory interest for late payment**. Furthermore, the Commission shall make publicly available on the Internet details of the current statutory rates of interest which apply in all the Member States in the event of late payment in commercial transactions.

Member States shall i) use professional publications, promotion campaigns or any other functional means to increase awareness of the remedies for late payment among businesses; ii) 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; iii) encourage the publication of a list of prompt payers.

Payment schedules: it is stipulated that this 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 instalments. In such cases, where any of the instalments is not paid by the agreed date, interest and compensation provided for in this Directive shall be calculated solely on the basis of overdue amounts.

Recovery procedures for unchallenged claims: Member States shall ensure that an enforceable title can be obtained, including through an expedited procedure and irrespective of the amount of the debt. They shall carry out this duty in accordance with their respective national laws, regulations and administrative provisions.