Commercial transactions: combating late payment. Recast

2009/0054(COD) - 16/02/2011 - Final act

PURPOSE: to combat late payment in commercial transactions, in order to ensure the proper functioning of the internal market, thereby fostering the competitiveness of undertakings and in particular of SMEs.

LEGISLATIVE ACT: Directive 2011/7/EU of the European Parliament and of the Council on combating late payment in commercial transactions.

CONTENT: following the agreement reached with the European Parliament at first reading, the Council adopted a directive laying down new rules in relation to combating late payment in commercial transactions.

The reduction in the number of late payments in commercial transactions is one of the ten principles cited in the Small Business Act for Europe as a means to help SMEs to deal with the difficult market conditions currently being experienced.

This Directive lays down the specific deadlines for the payment of invoices and establishes a right to compensation in the event of late payment in all commercial transactions, whether they relate to transactions between private or public undertakings, or between undertakings and public authorities. The Member States may exclude debts that are subject to insolvency proceedings, including proceedings aimed at debt restructuring.

Payment terms: under the new rules, the creditor is entitled to interest for late payment without the necessity of a reminder, where the following conditions are satisfied: a) the creditor has fulfilled its contractual and legal obligations; and (b) the creditor has not received the amount due on time, unless the debtor is not responsible for the delay. The creditor is entitled to interest for late payment from the day following the date or the end of the period for payment fixed in the contract.

Where 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 the period of **30 calendar days following the date of receipt by the debtor of the invoice** or an equivalent request for payment or, where 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.

As a general rule, 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.

In transactions between undertakings and public authorities, a derogation in the Directive allows certain public undertakings, as well as enterprises providing healthcare, to **extend the statutory payment period up to a maximum of 60 calendar days**. If a Member State decides to extend the time limits in accordance with the Directive, it shall send a report on such extension to the Commission by 16 March 2018.

Compensation for recovery costs: where 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**. The fixed sum is payable without the necessity of a reminder and as compensation for the creditor's own recovery costs.

In addition to the fixed sum, be entitled to obtain **reasonable compensation from 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.

Unfair contractual terms and practices:any contractual term 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 either unenforceable or gives rise to a claim for damages if it is grossly unfair to the creditor.

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, normally within **90 calendar days** of the lodging of the creditor's action or application at the court or other competent authority, provided that the debt or aspects of the procedure are not disputed.

Transparency and awareness raising: Member States shall ensure transparency regarding the rights and obligations stemming from this Directive, including by making publicly available the applicable rate of statutory interest for late payment. 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.

Report: by 16 March 2016, the Commission shall submit a report to the European Parliament and the Council on the implementation of this Directive. The report shall be accompanied by any appropriate proposals.

ENTRY INTO FORCE: 15/03/2011.

TRANSPOSITION: 16/03/2013.