Basic information

2009/0054(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Commercial transactions: combating late payment. Recast Repealing Directive 2000/35/EC 1998/0099(COD) See also 2018/2056(INI) **Subject** 3.45.02 Small and medium-sized enterprises (SME), craft industries 3.45.03 Financial management of undertakings, business loans, accounting	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
IMCO Internal Market and Consumer Protection	WEILER Barbara (S&D)	14/09/2009
	Shadow rapporteur HANDZLIK Małgorzata (PPE) CREUTZMANN Jürgen (ALDE) RÜHLE Heide (Verts/ALE) KOŽUŠNÍK Edvard (ECR) DE JONG Dennis (GUE/NGL) SALVINI Matteo (EFD)	

Former committee responsible	Former rapporteur	Appointed
IMCO Internal Market and Consumer Protection		

Committee for opinion	Rapporteur for opinion	Appointed
ITRE Industry, Research and Energy	DE ANGELIS Francesco (S&D)	09/11/2009
JURI Legal Affairs (Associated committee)	BALDASSARRE Raffaele (PPE) GERINGER DE OEDENBERG Lidia Joanna (S&D)	02/09/2009 02/09/2009

Former committee for opinion	Former rapporteur for opinion	Appointed
ITRE Industry, Research and Energy		
JURI Legal Affairs		

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	3035	2010-10-11
Agriculture and Fisheries	3063	2011-01-24

European Commission

Commission DG	Commissioner
Internal Market, Industry, Entrepreneurship and SMEs	TAJANI Antonio

Key events

Date	Event	Reference	Summary
08/04/2009	Legislative proposal published	COM(2009)0126	Summary
14/09/2009	Committee referral announced in Parliament, 1st reading		
17/12/2009	Referral to associated committees announced in Parliament		
28/04/2010	Vote in committee, 1st reading		Summary
04/05/2010	Committee report tabled for plenary, 1st reading	A7-0136/2010	
11/10/2010	Debate in Council		
19/10/2010	Debate in Parliament		
20/10/2010	Decision by Parliament, 1st reading	T7-0374/2010	Summary
20/10/2010	Results of vote in Parliament		
24/01/2011	Act adopted by Council after Parliament's 1st reading		
16/02/2011	Final act signed		
16/02/2011	End of procedure in Parliament		
23/02/2011	Final act published in Official Journal		

Technical information

Procedure reference	2009/0054(COD)

Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Recast
Legislative instrument	Directive
Amendments and repeals	Repealing Directive 2000/35/EC 1998/0099(COD) See also 2018/2056(INI)
Legal basis	Treaty on the Functioning of the European Union TFEU 114-p1
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	IMCO/7/00289

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE438.475	04/02/2010	
Committee opinion	ITRE	PE430.892	19/03/2010	
Committee opinion	JURI	PE438.157	25/03/2010	
Amendments tabled in committee		PE439.270	25/03/2010	
Committee report tabled for plenary, 1st reading/single reading		A7-0136/2010	04/05/2010	
Text adopted by Parliament, 1st reading/single reading		T7-0374/2010	20/10/2010	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00057/2010/LEX	16/02/2011	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2009)0126	08/04/2009	Summary
Document attached to the procedure	SEC(2009)0315	08/04/2009	
Document attached to the procedure	SEC(2009)0316	08/04/2009	
Follow-up document	COM(2016)0534	26/08/2016	Summary
Follow-up document	SWD(2016)0278	30/08/2016	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	AT_BUNDESRAT	COM(2009)0126	27/07/2009	
Contribution	EL_PARLIAMENT	COM(2009)0126	02/09/2009	
Contribution	IT_CHAMBER	COM(2009)0126	11/06/2010	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1930/2009	16/12/2009	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Directive 2011/0007
OJ L 048 23.02.2011, p. 0001 Summary

Corrigendum to final act 32011L0007R(01)
OJ L 233 30.08.2012, p. 0003

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.

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.

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 conomic 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.

Commercial transactions: combating late payment. Recast

2009/0054(COD) - 26/08/2016 - Follow-up document

The Commission presented a report on the implementation of Directive 2011/7/EU of the European Parliament and of the Council on combating late payment in commercial transactions.

This report assesses whether the Directive is on track to achieve its intended objectives and includes recommendations on how to improve its implementation.

Evaluation of the Directive: there are three key factors that rendered a definitive ex-post evaluation a challenge: (i) the recent entry into force of the Directive; (ii) the difficulty to isolate the role of the Directive in changes seen on the ground; (iii) external conjuncture such as the financial crisis and the economic situation of certain Member States.

The evaluation of the Directive was conducted against five criteria: effectiveness, efficiency, coherence, relevance and EU added value. It reveals that:

- the Directive has **raised awareness** of the problem of late payment and has placed the issue high on the political agenda. In response, governing authorities in a number of Member States are adopting structural and voluntary measures to support the provisions of the Directive;
- although public entities in more than half of all Member States are not yet respecting the 30-day limit imposed by law, supplementary efforts are being undertaken and the overall trend is already showing signs of improvement. In the private sector, with the exception of a handful of Member States that record poor figures in this area, the periods established in the Directive appear to be broadly respected;
- **many SMEs continue to accept long payment terms imposed by larger companies** and approximately half of all creditors do not exercise their rights to claim late payment interest, compensation and recovery costs as provided for by the Directive for fear of damaging their commercial relationships;
- there is little evidence to date that the Directive has had a measureable impact on businesses' liquidity and facilitated cross-border trades;
- several factors have contributed to an effective application of the Directive. These include measures adopted at national level (i.e. **prompt payment codes**) that have successfully supported the objectives of the Directive. Additionally, forums that enable the exchange of best practices between Member States on how to tackle late payment. Finally, continued awareness raising and expertise-sharing by the Commission and by national experts was found to be useful.

Overall conclusions: the report concluded that:

- the Directive is at an early stage of its lifecycle. The improvements in average payment periods remain **modest to date**;
- although companies are highly aware of their rights stemming from the Directive, **usage of them is not yet widespread**;
- several factors appear to prevent an effective application of the Directive such as the lack of a common monitoring system, lack of clarity on some key concepts of the Directive and the market imbalance between bigger and smaller companies.

However, the Directive is found to be coherent with other EU legislations and policies, is **still relevant and has achieved EU added value**.

Recommendations: on this basis of this evaluation, it is recommended that the Directive is **maintained in its current form and that more time is needed** to allow all its effects to bear fruit.

The following actions are being suggested to Member States:

- set up a system/procedure to **monitor progress**, report and publish information on average payment periods in both the public and private sectors;
- maintain the issue of late payment high on the **political agenda** by continuing to raise awareness of the topic at national level;
- encourage the development and implementation of **supporting initiatives** such as prompt payment codes, mediation, incentives for timely payment (positive naming and shaming), etc.

For the Commission:

- run targeted studies in Member States to identify best practices in different sectors that contribute to a more effective implementation of the Directive, take stock of the results and disseminate the information via various channels;
- continue to provide **guidance** to stakeholders and **exchange good practices** in different forms (expert group meetings, interpretative notes);
- explore the possibility to **collect comparable information** on how national justice systems function when implementing the expedited recovery procedure for unchallenged claims and present the results in the EU Justice Scoreboard;
- **assess at a regular basis the Directive's impact** and its success in reaching its objectives, bearing in mind that some effects are likely to take a longer time to materalisise fully.