

Late Payments in Commercial Transactions: Recent legislative developments

Conférence 25 October 2011

« Les retards et délais de paiement au Luxembourg et en Europe »



European Commission
Enterprise and Industry

Current legal framework: – Directive 2000/35/EC

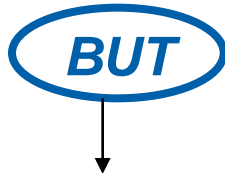
- Applies since 8 August 2002
- **Scope:** all payments made as remuneration for **commercial transactions:**
 - B2B transactions or between undertakings and public authorities
 - Delivery of goods or provision of services for remuneration

Directive 2000/35/EC: Exceptions

- Member States may exclude:
 - Debts that are subject to insolvency proceedings against the debtor
 - Contracts concluded prior to 8 August 2002
 - Claims for interest of less than 5€
- Member States may adopt more favourable provisions for the creditor

Directive 2000/35/EC: Late Payment

- Late payment = **payment after the contractual or statutory period** of payment (Article 2(2))
- **Not harmonise payment period**



creates a **statutory right to interest** for late payment

- **Level of interest:** ECB refinancing rate or equivalent on 01/01 or 01/07 (« reference rate») + at least 7% (« margin »)

Directive 2000/35/EC: Interest

- Period of payment **not fixed in the Contract?** Interest becomes payable **after 30 days**
- When the **period for payment is fixed in the contract:** Interest becomes payable from **the day following the date or the end** of the period of payment, unless debtor is not responsible for the payment delay
- **Creditor must have fulfilled his contractual and legal obligations** to be entitled to interest

Directive 2000/35/EC: Retention of title

Seller retains title to goods until they are fully paid for if a retention of title clause has been expressly agreed between the buyer and the seller before the delivery of the goods

Directive 2000/35/EC: Recovery procedures for unchallenged claims

- Enforceable title can be obtained normally **within 90 calendar days** of the lodging of the creditor's action or application at the court or other competent authority
- 90 Calendar day period **does not include** periods for service of documents or delays caused by the creditor

Revision of Directive 2000/35/EC: The Problems and its Causes

- **Late payment** in commercial transactions **is still a widespread practice** in the EU
- **Interrelated Causes:**
 1. **The market structure**
 2. **Access to finance and budgetary constraints**
 3. **The business cycle**
 4. **The internal organisation** of creditors and debtors
 5. **The absence** of effective and efficient **remedies**



Revision of Directive 2000/35/EC: The Effects of the Problem

- Late payment represents a **significant cost to creditors**, especially for SMEs
- **Debtor companies and public authorities** paying late get **free trade credit**
- Late payments have a **negative impact on intra-community trade**

Revision of Directive 2000/35/EC: Political background

Small Business Act

- Key importance of SMEs for the competitiveness of the EU economy
- Effective access to finance is one of the major challenges for SMEs
- Need to make better use of the opportunities provided by the Single Market.

European Economic Recovery Plan

- Sufficient and affordable access to finance is a precondition for investment, growth and job creation
- The EU and the Member States should ensure that public authorities pay invoices **within 30 days**



The regulatory landscape

- Regulation (EC) No 1896/2006 creating a **European order for payment procedure**;
- Regulation (EC) No 805/2004 creating a **European Enforcement Order for Uncontested Claims**
- Regulation (EC) No 861/2007 establishes a **European Small Claims Procedure**
- Regulation (EC) No 44/2001 on jurisdiction and the **recognition and enforcement of judgments in civil and commercial matters**;
- Directive 2008/52/EC on certain aspects of **mediation in civil and commercial matters**

Directive 2011/7/EU

Current state of play

- Adopted on 16 February 2011 (under the first reading- ordinary legislative procedure)
- Published in Official Journal on 23 February 2011
- To be transposed by 16 March 2013 at the latest

Directive 2011/7/EU

Main Principles

- Enterprises are entitled to **claim interests for late payment**, but also to **obtain a minimum fixed amount of 40 EUR as a compensation for recovery costs** related to late payment.
- **Public authorities must pay** for the goods and services that they procure **within 30 days**.
(Derogation: healthcare sector)

Directive 2011/7/EU

Main principles

- **Statutory interest rate** will be the reference rate plus at least 8 percentage points.
- Businesses will have **more opportunities to challenge grossly unfair contractual clauses**.
- **Transparency**: Member States will have to provide all relevant information, for example on a web site

Directive 2011/7/EU

Main Principles

- **Prompt payment codes**
- **Publication of the interest rates** for late payments
- Even **small amounts of interest** for late payment may be charged
- The **other provisions** of Directive 2000/35/EC remain in force but are **simplified**.

Directive 2011/7/EU

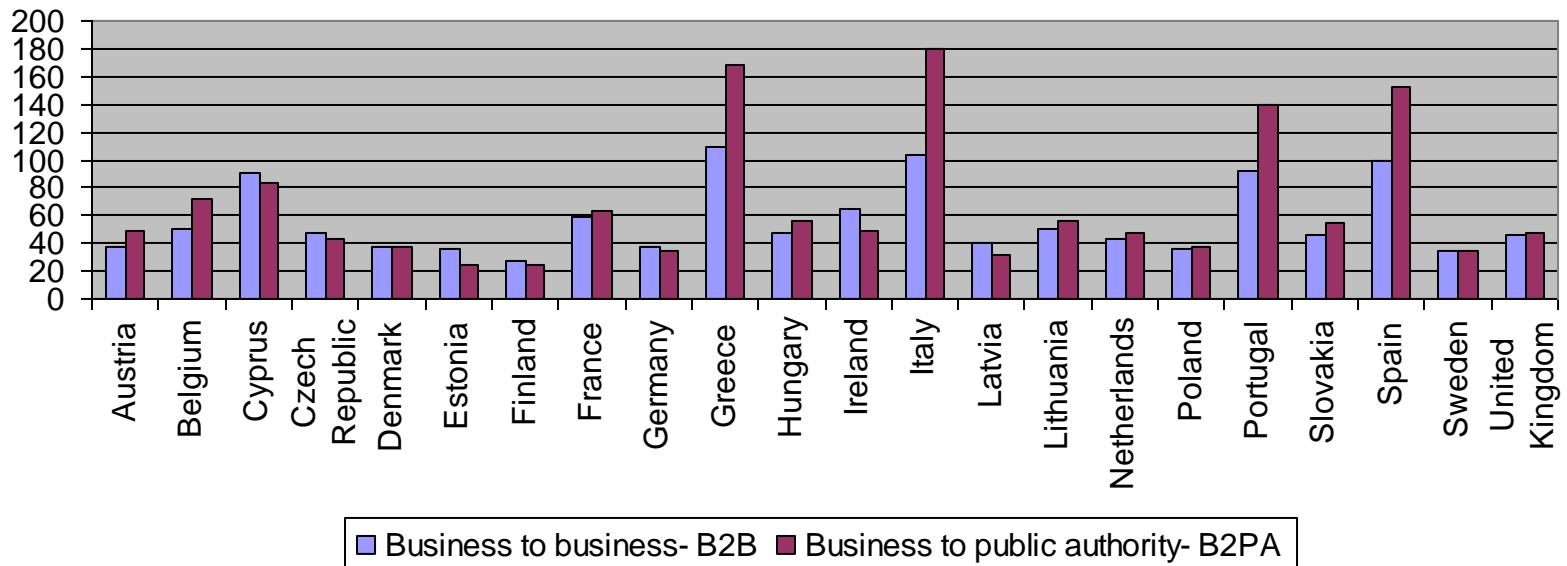
Main Principles

- The new measures are **optional** for enterprises
- The new measures are **obligatory** for public authorities
- Member States may continue to adopt **more favourable provisions for the creditor**

European Payment Index 2011

Average payment duration in days in 2010

(Source: European Payment Index 2010)



Next steps: Pilot project (2011/2012)

Aims at supporting SMEs that operate **aCROSS** borders in the enforcement of outstanding claims, i.e.

- to improve information access and dissemination in the area of claims management instruments and options,
- to improve the use, understanding and awareness of the available legal instruments.

Results:

- **Guidelines** focused on credit management to be published on the new version of the eJustice Portal.
- **Financial support to seminars** to be held in all Member States (training seminars for SMEs, free of charge).

Next steps: Information campaign (2012)

- **Organised by** the Commission in cooperation with European Enterprise Network, chambers of commerce and professional organisations in all Member States
- **Aimed at enterprises** on combating late payment in commercial transactions in all Member States
- **Financed by** the CIP-programme (0.8 MEUR)

Other developments

- ***Due to the current economic crisis earlier measures are required.***
- ***The Commission call on Member States to step up efforts at national level for the **transposition** of this Directive for implementation **by January 2012** (Communication "A roadmap to stability and growth"-COM(2011)669).***

**Thank you
for your attention!**

Contact

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