



**Note on the EC proposal for a Directive on combating late payment in commercial transactions
(Recast of Directive 2000/35/EC of 29/6/2000)**

1) Background of the EC proposal:

Since the end of its transposition period on 8/8/2002, **Directive 2000/35/EC** has covered payment deadlines in commercial transactions.

This Directive concerns both B2B and business to public authority relations. It introduces the right to charge interest for late payments “from the day following the date or the end of the period for payment fixed in the contract.” Both parties to a contract agree with each other how long this deadline should be. If the contract does not include any such clause, the Directive foresees that a default deadline of 30 days shall apply. A possible derogation up to a maximum of 60 days is also foreseen in the Directive.

As it was requested in the Directive, the Commission undertook a broad impact assessment 2 years after its implementation. Despite some improvements during the past few years, the Commission concluded that late payments were still a major problem for EU businesses, and especially for SMEs. Surveys also showed that, in general, the payment periods in the public sector were even longer than the payment periods in private sector contracts.

The Commission therefore adopted on 8/4/2009 a proposal (COM (2009) 126/4) in order to recast the current Directive on late payment.

In the meantime, this initiative has also been integrated, as implementing measure, in:

- The “**Small Business Act**” of 25/6/2008, where “the facilitation of SME’s access to finance and the development of a legal and business environment supportive to timely payments in commercial transactions” is one of the 10 principles to guide the conception and implementation of SME policies both at EU and Member States level.
- The **European Economic Recovery Plan**, as it promotes businesses’ cash flow in order to reinforce the competitiveness of European enterprises in the long term.

2) Current EC proposal:

The proposed changes reflect the importance of timely payments to businesses, and especially payments from public authorities and to SMEs.

- a) The possibility to exclude claims for interest of less than 5€ is abolished (article 1(2)).
- b) The derogation to extend the legal payment period of 30 days up to 60 days is abolished. However, the contractual freedom in B2B relations is respected: they are free to agree on a different payment deadline (article 3).
- c) Creditors (both in B2B or business to public authority relations) are entitled to obtain a compensation for (administrative) recovery costs (article 4).
- d) It is set as a general rule that public authorities shall pay within a period of 30 days. A derogation (extension) to this rule is possible IF: (1) it is specifically agreed between the debtor and the creditor, AND (2) it is duly justified in the light of particular circumstances such as an objective need to schedule payment over a longer period.
If the public authority does not respect the payment deadline, the creditor is entitled to obtain a flat-rate compensation of 5% of the amount due, IN ADDITION TO the interest for late payment, as well as the compensation for recovery costs foreseen in article 4 (article 5).
- e) The rules on grossly unfair contracts are tightened (article 6).
- f) The other rules remain basically unchanged.



So basically, the EC proposal introduces a general legal payment period of 30 days for both businesses and public authorities, while respecting the contractual freedom of parties which can agree, under circumstances as concerns business to public authority relations, on a longer contractual payment period.

The Commission also recalls that these rules are optional for businesses, in the sense that, again, they are free to agree on longer payment period than the legal one, and they are entitled to claim for interest and compensations, but not obliged to, "for the sake of good customer relations (!).

Main goals of these changes:

- Shorten payment periods through the harmonization of periods of payment by public authorities to businesses;
- Reinforce disincentives towards public authorities to late payment;
- Make public authorities show the good example in this field.

In parallel, the Commission announced that it committed itself to speed up payment of goods and services so to fully respect the targets for paying bills and even shortening payment times to under the current legal period (cf. forthcoming Communication initiated by DG BUDGET on the rationalization of payment periods by the EC institutions).

3) FIEC latest position:

Until now, FIEC main position on this issue was to request the amendment of the current existing Directive on late payment by deleting article 3 §2, which allows the possibility to extend the legal payment period for certain types of contracts from 30 to 60 days.

FIEC also pledged for combating late payment through a top-down approach, where the clients, both public and private, respect their engagements as regards payments by observing a strict discipline, this strict discipline being consequently transmitted throughout the whole payment chain, from the main contractor to its sub-contractors.

The current EC proposal responds to FIEC request and even goes beyond.

4) Next steps

If adopted, the recast Directive will enter into force in 2010.

- Update FIEC position: what should be FIEC position towards current EC proposal?
- Follow-up legislative procedure and undertake actions according to updated FIEC position and legislative developments.