

Late payments in commercial transactions

Introduction

During the ongoing crisis, the private and public sectors are under attack, often unable to react to the destructive power of evolution. Trade transactions are hit by uncertainty due to the ongoing liquidity constraints.

The new EU directive

In the new Directive 2011/7/EU of the European Union on combating late payment in commercial transactions, published on 23 February 2011 in the Official Journal, Member States have to bring into force the laws, regulations and administrative provisions by 16 March 2013. Certain provisions of the previous Directive 2000/35/EC have been revised.

Reservations are stipulated in the new directive on the obligations of Member States concerning the deadlines for transposition and entry into force. However, the previous directive remains in effect for existing contracts which were signed prior to the repeal date.

After making the point in its introductory text, Directive 2000/13/EC of 29 June 2000 will undergo substantial changes in both clarity and rationality and thus the relevant provisions will be reviewed.

Further, it is noted that the majority of goods and services within the internal market by operators or public authorities are provided with deferred payment, whereby the supplier provides the customer with time to settle the invoice as agreed between the parties or as defined in the suppliers invoice or as it is specified by the law.

The new directive applies to all remuneration in the field of commercial transactions, ie for every transaction either between companies or between companies and public authorities which leads to the delivery of goods or services for a fee.

Amendment Act transposing directive in the Republic of Cyprus

In the Republic of Cyprus, the Bill amending the law on combating late payments in commercial transactions was filed on 10 March 2011 and to date the transposal of the directive into national law has not yet been voted on.

The purpose of the legislative proposal is to ensure the good functioning of the internal market, to clarify the ambiguities contained in the old directive and to enhance thereby the competitiveness of any company.

Moreover, this directive, which will soon be new legislation for the Member States, provides basic payment, under threat of fine, of debts to the public and private sector within 30 days with exception in some cases, but this period is not to exceed 60 days. Specifically:

- With regard to late payment of commercial transactions the customer must pay by the mutually agreed date or, if such date has not been agreed, within 30 days from receipt of the invoiced goods or services.
- If there is provision for a process control or acceptance, and the invoice was delivered to the customer before its completion, then the deadline is 30 days from the completion of this process and if the process has been completed before the delivery of the invoice then it is 30 days from the receipt of the invoice.
- When the buyer of the goods or recipient of the service is the public, then the deadline for the payment is 60 days.
- If all contractual obligations have been fulfilled to the client and the amount due has not been collected, then it is possible that interest will be added to the arrears at the rate applied by the European Central Bank, plus seven percentage points for the period of late payment.

The directive applies to all payments made as remuneration by way of trade. Member States may exclude debts that are subject to insolvency proceedings against the debtor including debt restructuring processes.

The Bill transposing the directive into national law emphasises that late payment in commercial transactions is still widespread in the European Union creating liquidity problems, adding costs, reducing the opportunities for investment and exacerbating the uncertainty for many creditors. A direct effect of this situation is that healthy competition and solvency are often compromised.

Finally, based on the Bill, in article 7 of the basic law, a new subsection is foreseen under which the creditor also has the right to require reasonable compensation for any costs incurred in the recovery of the lump sum, due to the late payment of the debtor, including costs attributable inter alia to the use of lawyers or debt collection agencies.

Future legislative proposals in the EU

Future legislative proposals in the EU intend to improve the recovery of payments across the EU and to encourage trade and services between Member States. Therefore, the European Parliament called the Commission to promote new laws for the freezing and publication of debtors' assets.

Given the fact that the single European market gives citizens the right to live, work and operate anywhere in the EU, it is emphasised that it is simultaneously necessary to preserve the right to justice for fraud, theft or non-payment of debts. Based on the fact that the current level of success of cross border debt recovery is extremely low, the Parliament asked the Commission to propose two draft regulations concerning the electronic European order of payment for freezing the debtor's assets and for disclosure. Based on the above regulations, national courts will have the right to issue orders without a corresponding original notice to be notified to the debtor and limited to the minimum of costs.

The European Commission has already informed the Parliament that it plans to submit the Bill concerning the freezing of debtors' assets from July 2011 as well as a draft legislation on the transparency of debtors' assets which is scheduled for 2013.

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