

Directive 2000/35/EC: combating late payment in commercial transactions

General principles

Screening Chapter 20 – Preparatory meeting

Combating late payment in commercial transactions

- 8 August 2000, Directive 2000/35/EC of the European Parliament and of the Council on combating late payment in commercial transactions was published in the Official Journal.
- 8 August 2002, the Directive entered into force
(EU + EEA members – Iceland, Norway & Liechtenstein).
- 1 May 2004, the Directive entered into force also in the ten new Member States.

Why a Directive?

**One out of four insolvencies is
due to late payment**

And this means...

- 450 000 jobs lost each year,
- outstanding debts worth EUR 23.6 billion lost every year through insolvencies.

Why a Directive?

Need to act

The SME dimension:

- SMEs are compelled to grant long-lasting supplier credit,
- late payment leads to unfair results for small and medium-sized economic agents.

Why a Directive?

Need to act

The Internal Market dimension:

- Average statistics: 21% of all undertakings would export more if their foreign customers were to pay more quickly (Netherlands 37%, Ireland 48%)
- Late payment is an obstacle to the proper functioning of the Internal Market (Art. 14 EC).

Features of Directive 2000/35/EC

Scope:

- It applies to all payments made as remuneration for commercial transactions:
 - ✓ those taking place just only in one country as well as intra-community transactions;
 - ✓ transactions between undertakings; or
 - ✓ between undertakings and public authorities.

Features of Directive 2000/35/EC

Scope:

- “Undertaking” means any organisation acting in the course of its independent economic or professional activity, even where it is carried on by a single person.

Features of Directive 2000/35/EC

When a payment becomes a late payment:

If the date or period for payment **is not** fixed in the contract, interest automatically becomes payable 30 days following the date of receipt of the invoice or the date of receipt of the goods or services.

Features of Directive 2000/35/EC

Statutory interest & interest rate:

Unless otherwise specified in an agreed contract, the penalty interest rate is the one set up by the European Central Bank plus, at least, 7 percentage points.

Features of Directive 2000/35/EC

Statutory interest & interest rate:

Penalty interest due for late payments is calculated on a daily basis (simple interest).

Features of Directive 2000/35/EC

Reminder:

Directive 2000/35/EC harmonises neither the payment period at 30 days, nor the statutory interest.

The contracting parties can actually agree contractually to conditions below the minimum requirements set out in the Directive or more stringent delays.

Features of Directive 2000/35/EC

Such an agreement would only be unacceptable if it is determined to be “grossly unfair” by a national court.

Features of Directive 2000/35/EC

Legitimate interest:

Organisations officially recognised as, or having a legitimate interest in, representing small and medium-sized enterprises may take action according to the national law concerned before the courts or before competent administrative bodies on the grounds that contractual terms drawn up for general use are grossly unfair.

Features of Directive 2000/35/EC

Interest rate out of the Euro Zone:

- ✓ The rate is set by the national central bank.
- ✓ In the UK, the rate is set at the official dealing rate of the Bank of England.

Features of Directive 2000/35/EC

Other rights:

Creditors can also claim full compensation for all relevant recovery costs incurred when trying to obtain payment from their customers.

These recovery costs are, for example, administrative costs, procedural costs and third-party costs.

Features of Directive 2000/35/EC

Other rights:

The Directive allows the seller to retain title to the goods until payment is completed, if that is explicitly agreed before delivery.

Features of Directive 2000/35/EC

Recovery procedures:

Member States must ensure that an enforceable title can be obtained within 90 calendar days of the lodging of the creditor's action, provided that the debt or aspects of the procedure are not disputed.

National legislation, regulations and administrative provisions have to apply the same conditions for all creditors who are established in the European Community.

European institutions

The European Commission has undertaken to apply the terms of Directive 2000/35/EC to its own contracting procedures.

Review on the effectiveness of European Community legislation on combating late payments

Article 6.5 of Directive 2000/35/EC stipulates that:

«The Commission shall undertake two years after 8 August 2002 a review of, inter alia, the statutory rate, contractual payment periods and late payments, to assess the impact on commercial transactions and the operation of the legislation in practice. The results of this review and of other reviews will be made known to the European Parliament and the Council, accompanied where appropriate by proposals for improvement of this Directive.»

Review on the effectiveness of European Community legislation on combating late payments

This study started on January 2006. It will last 12 months.

In this review, data from the ten new Member States will also be taken into account, after two years of having put into force this legislation to fight late payment.