

Show Me The Money! European Parliament Approves New Late Payments Regime

The European Parliament recently approved a proposal for a new Directive regulating late payment of commercial debts. The Directive, which will replace the existing Late Payments Directive of 2000, calls for a “decisive shift to a culture of prompt payment” within the EU. It aims to give further protection and confidence to creditors providing goods and services - in particular SMEs, who are generally more affected by the liquidity problems caused by late payment.

The new Directive aims to reverse the trend of late payment by making it less attractive to debtors, and introduces specific provisions on payment periods, fixed penalties and interest rates. Where payment hasn't been received within the relevant payment period, the Directive will ensure that the creditor is entitled to receive interest for late payment from the debtor, without the need of issuing a reminder. Late-paying debtors will also be required to pay fixed fees to cover the creditor's costs of recovery. While this will be set at £40 minimum, it may ultimately be more, to cover all reasonable recovery costs the creditor incurs.

Contracting commercial undertakings will be subject to maximum payment periods of 30 calendar days, unless expressly agreed in the contract – in which case, the maximum payment period will be 60 days. The Directive does provide limited scope for variation. Both the interest rate and the relevant payment periods may be extended. However, only where this is expressly agreed in the contract, and isn't grossly unfair to the creditor – which will be determined with reference to, for example, whether the contractual term represents a gross deviation from good commercial practice, contrary to good faith and fair dealing. Certain terms, such as the exclusion of interest, or compensation for recovery costs, will be presumed to be grossly unfair to the creditor.

The Directive notes that public authorities generally occupy a stronger position in commercial contracts. Therefore, in transactions where a public body is the debtor, the payment period can't exceed 30 days, unless expressly agreed in writing and objectively justified in light of the transaction – in which case, the period can be extended to a maximum of 60 days. Member States will also have the option to provide a 60 day timeframe as standard for public entities providing healthcare, and public bodies which carry out economic activities of a commercial nature.

The Directive will likely be adopted over the coming weeks, with the Commission noting that Member States have until early 2013 to implement its provisions. The Directive and the European Parliament's Amendments can be accessed at:

http://ec.europa.eu/enterprise/policies/single-market_goods/files/late_payments/doc/directive_en.pdf

MacRoberts can advise on all compliance and regulatory matters within the commercial sphere. For further info, please contact David Flint, Partner, at david.flint@macroberts.com

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