



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

COSME Programme

COSME Programme, SME Envoys and Relations with EASME

## **Late Payment Directive 2011/7/EU**

### **FAQs**

#### **THE PROVISIONS OF THE DIRECTIVE**

##### **1. HOW DOES THE DIRECTIVE WORK IN PRACTICE?**

The Directive regulates commercial transactions between public authorities and businesses and between businesses. Public authorities have to pay for the goods and services that they procure within 30 days or, in very exceptional circumstances, within 60 days.

Businesses have to pay their invoices within 60 days, but can choose a longer payment term as long as it is expressly agreed in the contract and provided that it is not grossly unfair to the creditor. In cases of delayed payment, creditors are automatically entitled to interest for late payment and €40 minimum as compensation for recovery costs. According to Article 2(6) of the Directive, statutory interest for late payment is the **TOTAL** of i) the reference rate of the European central bank (or the reference rate of the national central bank for Member States whose currency is not EUR) and ii) at least 8 percentage points.

##### **2. WHAT ARE THE LEGAL CONSEQUENCES IF PARTIES DO NOT COMPLY WITH THE TERMS OF THE DIRECTIVE?**

The legal consequences of non-compliance with the provisions of the Directive differ depending on the specific breach and on the national courts' judgements.

##### **3. WHAT IS A GROSSLY UNFAIR CONTRACTUAL TERM OR PRACTICE?**

In general, a national judge will determine whether a contractual term or practice is grossly unfair considering all circumstances of the case in question, in particular:

- Any gross deviation from good commercial practice, contrary to good faith and fair dealing
- The nature of the product/service
- Whether the debtor has any objective reason to deviate from the rules stated by this directive (see Article 7(1)c)

- For example, any contractual term that excludes interest for late payment will be considered to be grossly unfair to the creditor and will either be unenforceable or will give rise to a claim for damages. A contractual term that excludes compensation for recovery costs will also be presumed to be unfair.

**4. SHOULD THE PERIOD FOR PAYMENT BE CALCULATED FROM THE DATE THE INVOICE IS ISSUED OR THE DATE ON WHICH IT IS DELIVERED?**

The days allowed for payment should be calculated from the date that an invoice is delivered.

**5. SHOULD THE PERIOD FOR PAYMENT BE CALCULATED FROM THE DATE THE INVOICE IS RECEIVED OR FROM THE DATE THE GOODS/SERVICES ARE DELIVERED?**

If the date of receipt of the invoice or the equivalent request for payment is uncertain:

- The period for payment should be calculated from the date of receipt of the goods/services

If the invoice or the equivalent request for payment is received earlier than the goods or services:

- The period for payment should be calculated after the receipt of the goods or services

**6. IF A PAYMENT IS EXECUTED BEFORE A WEEKEND OR A BANK HOLIDAY AND IS RECEIVED AFTERWARDS, CAN THE CREDITOR CLAIM INTEREST FOR THE DAYS THAT THE PAYMENT WAS IN CYCLE?**

Yes, the creditor should receive the payment within x amount of days as specified in the contract. This means that days needed to execute the transfer must be taken into consideration by the debtor.

**7. WHAT IS INCLUDED IN THE FIXED SUM OF €40 COMPENSATION FOR RECOVERY COSTS?**

The fixed sum of €40 is compensation that the creditor is entitled to obtain from the debtor for recovery costs. It is related to administrative costs incurred in claiming the payment.

This fixed sum is intended for each unpaid invoice. If the creditor has different transactions on different invoices, even if the claim has to do with the same debtor, the creditor will have a separate fixed amount of €40 per invoice. The Directive gives the creditor the right to claim the €40 plus any other costs that you have reasonably incurred to receive the payment that is already late. Such costs could include further administrative costs, debt collection costs, legal costs etc.

**8. IS THE CREDITOR OBLIGED TO CLAIM INTEREST AND COMPENSATION FOR RECOVERY COSTS?**

No, the Directive permits contractual freedom in this sense. The creditor is entitled to claim interest for late payment and compensation for recovery costs without reminding the debtor, but it is not an obligation.

**9. DEBT RECOVERY IS A VERY LONG PROCEDURE; OFTEN BUSINESSES GO BANKRUPT WAITING FOR PAYMENT. HOW DOES THE DIRECTIVE HELP IN THIS SENSE?**

Member States must ensure that, in the case of undisputed debts, an enforceable title can be obtained, including through an expedited process, within 90 calendar days of the lodging of the creditor's action at a court or other competent authority. Another condition is that there is no dispute concerning procedural aspects.

**APPLICATION OF THE DIRECTIVE**

**10. WHAT HAPPENS TO THOSE MEMBER STATES THAT FAIL TO CORRECTLY APPLY THE DIRECTIVE?**

The Commission closely monitors the correct application of the Directive in all Member States. According to Article 258 of the Treaty on the Functioning of the European Union (TFEU), the Commission has the right to initiate infringement proceedings if a Member State has failed to fulfil an obligation under the Treaties. Should sufficient evidence indicate that a Member State is failing to correctly apply the Directive, the Commission, may take the necessary action, including where appropriate infringement procedures.

**11. DOES THE DIRECTIVE APPLY TO BUSINESS TO CONSUMER (B2C) TRANSACTIONS?**

No. Business to Consumer transactions are covered by other provisions of Union law, for example Directive 2005/29/EC 'concerning unfair business-to-consumer practices in the internal market' or Directive 93/13/EEC' on unfair terms in consumer contracts'.

**12. CAN THE PROVISIONS OF THE DIRECTIVE BE APPLIED TO A COMMERCIAL TRANSACTION BETWEEN AN EU AND NON-EU BASED BUYER/SELLER?**

The provisions of the Directive could apply in this case; it depends on which agreement was made when setting up the contract. At that time, both parties should agree on which legislation applies to the transaction in case of dispute – national law transposing the Directive or the legislation of the other country. More information available at: [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/judicial\\_cooperation\\_in\\_civil\\_matters/133054\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/133054_en.htm)

**13. DOES THE DIRECTIVE APPLY TO COMMERCIAL TRANSACTIONS IN THE EFTA STATES AND SWITZERLAND?**

Yes, the Directive applies to undertakings organized in the EFTA states and Switzerland.

**14. DOES THE DIRECTIVE APPLY TO THE EXECUTION OF AN ENFORCEABLE TITLE?**

No. The Directive does not govern forced execution procedures which remain subject of the national law of the Member States.

**IMPLEMENTATION OF THE DIRECTIVE IN MEMBER STATES**

**15. IS THERE AN UPDATED LIST OF THE MEMBER STATES THAT HAVE ENACTED THE LAW?**

All 28 Member States have notified their national transposition measures to the European Commission. Please find here below a link which would allow you to check the transposition measures in full: <http://eur-lex.europa.eu/collection/n-law/mne.html>

**16. DID SOME MEMBER STATES OPT TO IMPOSE MAXIMUM PAYMENT TERMS IN B2B TRANSACTIONS?**

The Directive provides that 60 days should be the norm in B2B transactions but maintains contractual flexibility in that a higher payment term may be agreed provided that it is expressly agreed in the contract and is not grossly unfair to the creditor. A few countries went further than the Directive by setting maximum payment terms in their national laws for **B2B** transactions:

**Germany:** 30 days maximum. The law implies that a higher payment term, whilst possible to negotiate, is likely to be considered unreasonable in case of a dispute.

**Austria:** 60 days maximum. The law implies that a higher payment term, whilst possible to negotiate, is likely to be considered unreasonable in case of a dispute.

**Spain:** 60 days maximum

**France:** 60 days or 45 days end of month maximum

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**If you have not found the answer to your question above or elsewhere on our website or on [Your Europe portal](#), please contact: [GROW-LATE-PAY-E-DESK@ec.europa.eu](mailto:GROW-LATE-PAY-E-DESK@ec.europa.eu)**