

# Briefing: Combating Late Payments in Commercial Transactions



**Summary:** This briefing relates to [Directive 2000/35/EC](#), which addresses Late Payments in Commercial Transactions within the European Union

## 1. Why is there a Directive on this Issue?

The rationale behind this Directive is to ensure that small firms no longer face financial problems due to late payments by public authorities or companies.

Payment deadlines vary between all member states, resulting in administrative and financial burdens, especially during cross-boarder trade. Small and medium sized enterprises (SMEs) are the most vulnerable here as delayed payment can often lead to insolvency.

## 2. Solutions to this Problem

It was decided to undertake a draft directive that applies to transactions between undertakings or between undertakings and public authorities. A "Public authority" is defined as any contracting authority or entity in public procurement directives.

This Directive is concerned with the introduction of standard payments deadlines and the provision of late payment interest and compensation for recovery costs. The Directive represents a clear added value for SMEs and ensures equal treatment between private undertakings and public authorities.

### 3. **Scope of Application**

- **Payment Deadline**

The provisions of this directive apply only if the parties have not fixed alternative arrangements in their contractual relationship. Therefore, if not specified in a contract, the standard deadline for both public and private sectors to pay a bill for goods or services is now 30 days. The **Internal Market and Consumer Affairs Committee (IMCO)** succeeded in persuading member state representatives to allow the inclusion of a payment period of no more than 60 days for public authorities and public healthcare institutions "if expressly agreed in the contract and provided it is not grossly unfair to the creditors". This optional 60 day extension was deemed necessary due to the special nature of bodies such as public hospitals, which may be largely funded through reimbursements under social security systems.

- **Compensation for Recovery Costs**

The payment of a penalty interest begins immediately in the event of a payment delay

The directive allows businesses to be entitled to claim late payment interest and a fixed sum of €40 as compensation. The IMCO Committee was successful in securing a 1% increase in the statutory interest rate, an increase to to 8%, which will apply to both public and private authorities.

- **Going Forward - The Legal Framework**

The directive allows the seller to retain title to the goods until payment has been received.

The directive was voted in the European Parliament and should be published in the Official Journal of the EU by the end of the year.

Member States can continue to maintain or bring into force new laws and regulations which are more favourable to the creditor than the provisions of this Directive. Most likely, the Directive will have to be transposed into national law by the beginning of 2013.