



# FIGHTING LATE PAYMENTS IN THE EU

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## Summary

Many payments in commercial transactions are delayed or late, resulting in losses to businesses especially small-and-medium-sized enterprises (SMEs). According to the European Commission (EC) this costs Europe 450,000 jobs and \$32 billion every year<sup>1</sup>.

This report explains the rules and protection mechanisms introduced by Directive 2011/7/EU on combating late payment in commercial transactions that is designed to alter the late payment culture in Europe. The Directive applies to all commercial transactions in business-to-business (B2B) and in public-authorities-to-business (PA2B) but does NOT apply to business-to-consumer (B2C) transactions. U.S. businesses should take this Directive into account for all the contracts they sign that fall under a European country's law.

## Introduction

In 2008 the EC introduced its "Small Business Act" to establish a comprehensive SME policy framework for the EU and its Member States. Combating late payments in both B2B and PA2B transactions became one of the EC's top priorities. Directive 2011/7/EU, adopted on 23 February 2011, aims to eliminate late payments in commercial transactions throughout Europe. It replaced the previous legislation<sup>2</sup> and introduced two main features:

- A maximum payment period of 30 days for public authorities and 60 days for businesses, unless very exceptional circumstances exist;
- An entitlement to the recovery of administrative costs and to compensation for internal costs incurred due to late payment, such as legal fees, both without prior notice to the debtor.

## 1. Contractual Implications

While the Directive distinguishes between B2B<sup>3</sup> commercial transactions and PA2B<sup>4</sup> commercial transactions, the same rules apply to both goods and services and extend to all commercial transactions between main contractors and their suppliers and subcontractors.

In dealing with public authorities (PA), firms can apply the following rules:

- The general payment period is limited to 30 calendar days after receipt of invoice or equivalent document.

<sup>1</sup> Estimates from the European Commission, "Small Business Act", COM(2008) 394 final, 6/25/2008

<sup>2</sup> Directive 2000/35/EC

<sup>3</sup> The definition of business includes liberal professions.

<sup>4</sup> This applies for instance to the design and execution of public works and building and civil engineering works.

- In very exceptional cases (defined by national law), the period can be extended to 60 calendar days unless that is considered grossly unfair.

In dealing with other businesses, companies can apply the following rules:

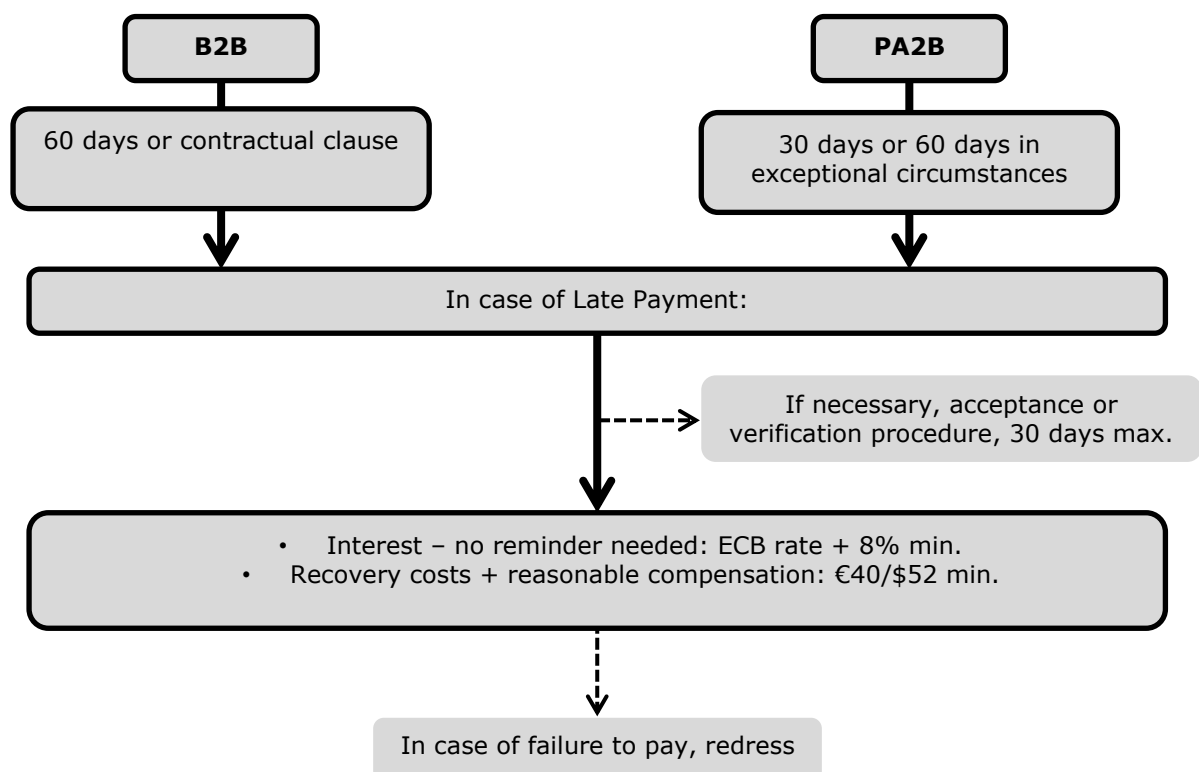
- The general payment period is limited to 60 calendar days after receipt of invoice or equivalent document.
- The period can be extended and expressly agreed in the contract (e.g. for trade credit) but must not be considered grossly unfair.

In both types of commercial transactions and in case of late payment:

- The creditor is entitled (but not obliged) to:
  - interest<sup>5</sup> for late payment from the day following the end of the payment period, without having to send a reminder to the debtor;
  - a minimum recovery cost of €40 (i.e. \$52) that can be increased under national legislation;
  - reasonable compensation for any recovery costs exceeding that fixed sum, for instance legal fees or employing a debt collection agency.
- If an acceptance or verification procedure is needed, it should not exceed 30 calendar days from the date of receipt of the goods or services.

The Directive also applies equally to installment or staggered payments.

Simplified schematic:



<sup>5</sup> In PA2B transactions, the rate is at least eight percentage points above the European Central Bank's reference rate.

## 2. Exceptions

Several situations are specifically excluded from the scope of the Directive:

- Transactions with consumers;
- Interest in connection with other payments;
- Payments made as compensation for damages (including from insurance companies);
- Debts subject to insolvency proceedings.

Healthcare payments can extend beyond the maximum of 60 calendar days under certain conditions set in national law.

## 3. Situation in Member States

In European law a Directive ought to be transposed into national legislation by the Member States in order to be enforceable. For this Directive the deadline for transposition was 16 March 2013.

On 1<sup>st</sup> July 2013, the following 22 Member States had transposed the Directive into national law: Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Germany, Ireland, Italy, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, the Netherlands and UK.

The Commission can either fine countries that fail to transpose the Directive or launch an infringement procedure, but that is a lengthy process. This Directive however has also been granted with "direct effect" which means that even if a Member State does not transpose it on time, companies can still apply the new rules.

## 4. Enforcement of the Legislation

While the legislation sets clear rights for the creditor, it needs to be backed by solid enforcement mechanisms that will be easily accessible, in particular to SMEs, and at minimum cost. Creditors can action existing enforcement mechanisms such as the European order for payment procedure<sup>6</sup> or the European small claims procedure for cases concerning sums under €2000 (\$2600). Creditors should also be able to use national redress, mediation or other types of alternative dispute resolution. The drafting of voluntary codes of conduct should also be encouraged by Member States.

For additional information on national legislation, U.S. businesses should consult the Commercial Service's offices in Member States or the EC's Enterprise Europe Network.

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<sup>6</sup> Procedure for cross-border cases concerning uncontested pecuniary claims in civil and commercial matters.

## 5. Useful links

[European Commission's information page on the Directive](#)

[Directive 2011/7/EU on combating late payment](#)

[Small Business Act for Europe](#)

[Enterprise Europe Network](#)

The European Commission's "Late Payment Information Campaign" schedule of events in the 28 Member States<sup>7</sup> can be found [here](#).

## 6. For more information

The U.S. Commercial Service at the U.S. Mission to the European Union is located at Boulevard du Regent 27, Brussels BE-1000, Belgium, and can be contacted via e-mail at:

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One can locate the nearest U.S. Export Assistance Center or Commercial Service offices throughout Europe by visiting [www.export.gov](http://www.export.gov)

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<sup>7</sup> Croatia joined as 28<sup>th</sup> Member States on 1<sup>st</sup> July 2013.