Penalty interest

The payment of penalty interest starts **automatically** in the event of payment delay. The rate of interest is 7 % above the set European Central Bank rate. For Member States not forming part of the euro zone (Denmark, Sweden and the United Kingdom) a rate equivalent to that of the ECB is fixed by their own central banks. In both cases, the reference rate in force on the first calendar day of the half-year in question is applied for the following six months. In other words, the rate is fixed on 1 January and 1 July and remains in force for six months.

Retention of title

The directive allows the seller to retain title to the goods until payment is completed, if that is explicitly agreed before delivery. This clause is very important because it affects national legislation in those Member States where the principle of 'retention of title' does not exist.

Procedure for recovery — unchallenged claims

A recovery procedure has to be put in place within 90 days of the lodging of the creditor's claim or application at the court or other competent authority, provided that the debt, or aspects of the procedure, are not disputed.

Compensation for all recovery costs

These recovery costs are those generated from banking operations in so far as they are not covered by late payment interest, administrative costs, procedural costs, third-party costs, etc. These costs must be included in the payment, unless the debtor is not responsible for the delay.

The timetable for the application of Directive 2000/35/EC

The timetable for the application of Directive 2000/35/EC comprises the following stages.

- The transposition of the European directive into national legislation by 8 August 2002.
- Verification of the national implementing measures by the European Commission.
- Two years after the entry into force of the directive (i.e. August 2004), the Commission will have to verify whether there is an improvement regarding payment delays in commercial transactions. If the results of this research are not satisfactory, the Commission may propose amendments to the directive, including more severe measures if there is no reduction in payment delays.

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This leaflet is published on the initiative of the Directorate-General for Enterprise of the European Commission, but it cannot be taken to commit the institution; only the text of Directive 2000/35/EC has binding force.

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EUROPEAN COMMISSION

Directorate-General for Enterprise

A GUIDE FOR BUSINESSES

Combating late payments in commercial transactions

Directive 2000/35/EC

Internet:
http://europa.eu.int/comm/enterprise/regulation/late_payments/index.htm

Directive 2000/35/EC
of the European Parliament and of the Council
of 29 June 2000 on combating late payment
in commercial transactions
Official Journal of the European Communities,
L 200, 8.8.2000, pp. 35–38

Why a directive?

Payment delays harmful to the companies

The economic rationale behind the Commission's proposal lies in the fact that one out of four insolvencies is due to late payment. This leads to the loss of 450 000 jobs each year, adding to the high level of unemployment in Europe. In addition, outstanding debts worth EUR 23.6 billion are lost every year through insolvencies caused by late payment. The payment delays in commercial transactions were quantified at EUR 90 billion a year and they account for EUR 10.8 billion in terms of lost interest.

Great differences between the EU Member States as regards payment periods and payment delays

Payment deadlines vary from an average of approximately 32 days in the Scandinavian countries to 78 days in the south of Europe. These differences regarding payment periods are basically due to three main factors.

Penalties for delay

The countries where the payment deadlines are the shortest use very severe, and therefore dissuasive, penalties. This is the case in the Scandinavian and Anglo-Saxon countries where payment deadlines are short and high interest rates (18–24 %) often apply as penalties. In southern Europe and Belgium, on the other hand, interest rates are not very often applied, or are applied but at a lower rate (8–12 %). As a consequence, in this latter group of countries, the debtors are more interested in owing money to their creditors/providers than in borrowing in order to pay their debts on time.

Means of payment

These are very rapid in some Member States (basically credit transfers), while in other Member States payments are usually made by cheque or by bill of exchange.

The cultural factor

Payment delays are encouraged by the fact that firms which are established in countries having the same 'delay culture' trade among themselves to conclude transactions. Additional factors that cause delays consist of the fact that in some countries many contracts are still concluded orally or that the parties to the contract come from different regions with completely different commercial practices.

Bad practices in the public sector

A large number of firms (in sectors like defence and construction) are dependent on public contracts.

The differences between SMEs and large companies — an unfair situation

Research has shown that payment delays caused by big companies are twice as frequent as those caused by SMEs. Furthermore, delays in payment from big companies to SMEs are twice as long as those from SMEs to big companies.

Key points of the European directive

The scope of application

It was finally decided to prepare a draft directive that applies to all commercial transactions, i.e. to all transactions carried out between undertakings or between undertakings and public authorities or bodies forming part of the public sector, which lead to the delivery of goods or the provision of services for remuneration. 'Public authority' means any contracting authority or entity, as defined in the public procurement directives. The directive does not apply to transactions with consumers.

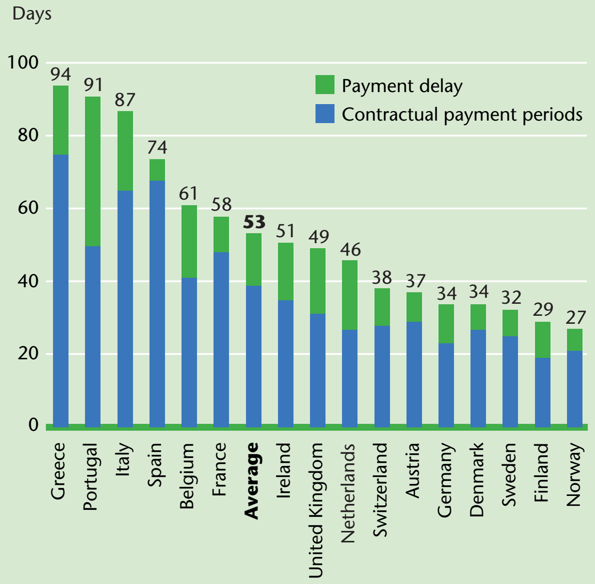
The provisions of the directive are default provisions: they apply only if the parties have not fixed something else in the contract. Thus the principle of contractual freedom, which is recognised in all Member States, still applies. According to this, parties can fix longer payment periods than the ones provided for in the directive.

A payment period

The directive does not harmonise the payment period (this is still up to the national legislator or to the contracting parties to define as they wish); it provides for a default mechanism which only concerns the period of the payment delay (which runs from the date on which payment is due).

The directive defines a reference period, fixed at 30 days. This reference period begins on the date of receipt of the invoice or at the date of receipt of the goods. In cases where the parties have agreed a procedure for acceptance or verification of the goods, it starts after this process has been completed. The payment period can be extended by agreement of the parties. Any agreement on the payment period is not enforceable if it is grossly unfair to the creditor. In this respect all circumstances of the case, including good commercial practice and the nature of the product, will have to be considered.

Average payment periods in Europe — National markets in 1996



Source: Eurosurvey 1997, Intrum Justitia/NOP.