European Commission

TOO MANY EUROPEAN BUSINESSES HAVE CLOSED BECAUSE OF LATE PAYMENT

Pay on Time

Protect Jobs

Promote Growth

Prevent Insolvencies

LATE PAYMENT INFORMATION CAMPAIGN

Europe Direct is a service to help you find answers to your questions about the European Union

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More information on the European Union is available on the Internet (europa.eu).

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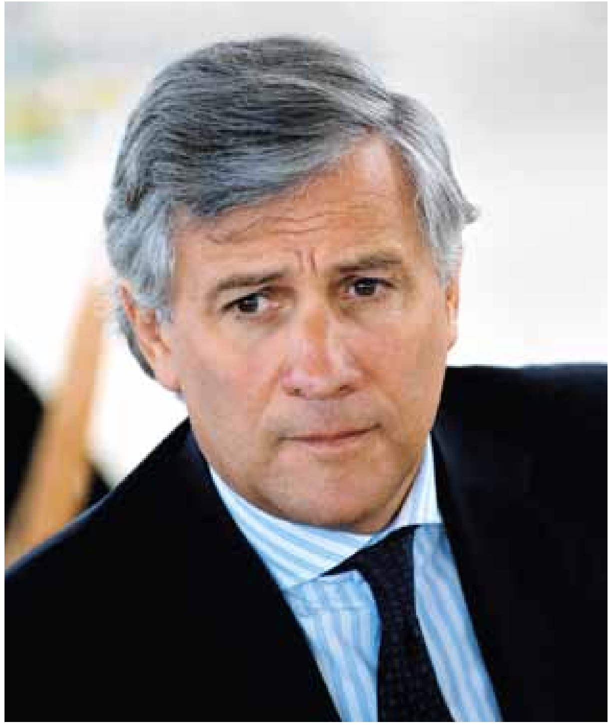

“Europe is experiencing an unprecedented economic and social challenge, with a very high number of bankruptcies and of job losses. Late payments make things worse. It's time for change. There's no time to lose.”

Antonio Tajani
Vice-President of the European Commission
Responsible for Industry and Entrepreneurship

Let's fight late payment together

Every year across Europe thousands of Small and Medium Enterprises (SMEs) go bankrupt waiting for their invoices to be paid. It is time to end this damaging culture of late payment in Europe.

Too many cases of insolvency in Europe are caused by late payment, in particular amongst SMEs. Such insolvencies lead to job losses and can be a personal tragedy for the individual entrepreneurs involved. It is time to stop this waste.

It is often difficult for SMEs to stand up for their right to prompt payment. Late payment can lead to high costs in time and money, and a dispute can sour relations with customers.

Pursuing payment has to be made simpler; receiving payment on time has to become the norm.

The 'Late Payment Directive' (Directive 2011/7/EU on combating late payment in commercial transactions) is the EU's tool to combat overdue payment. It is part of Europe's Small Business Act (SBA) – a wide-ranging set of measures designed to make life easier for SMEs.

The directive provides a legal framework for pursuing debtors.

The rules are simple:

Debtors will be forced to pay interest and reimburse all the additional recovery costs of their creditor if they do not pay for goods and services on time (30 days for public authorities and 60 days for businesses).

Our Late Payment Information Campaign provides information on the new directive and a forum for sharing best practices to help SMEs obtain prompt payment.

Late payment causes thousands of unnecessary bankruptcies each year

Today's reality for European enterprises, especially for SMEs, is that late payment of their invoices can cause bankruptcy and lead to job losses. Furthermore, late payment results in administrative and financial burdens, which are particularly acute when businesses and customers are in different Member States. This in turn can affect cross-border trade.

As a result, the entire European economy is negatively affected. SMEs and the craft sector are the most vulnerable. For Europe's valued SMEs, any disruption to cash flow can mean the difference between solvency and bankruptcy. The economic crisis has presented numerous difficulties, but for SMEs the challenges presented by late payment have grown disproportionately as credit lines and bank loans become less available.

In order to protect against late payment and to improve the competitiveness of European enterprises, the Late Payment Directive was adopted on 16 February 2011. It must be transposed into national law by Member States by 16 March 2013 at the latest.

Europe helps to overcome the problem of late payment

The Late Payment Directive is designed to combat late payment in commercial transactions, i.e. late payment between businesses or between businesses and public authorities. Its 'parent' act, the Small Business Act (SBA), stems from the Commission's will to recognise the central role of SMEs in the EU economy and recognises that effective access to finance is one of the major challenges SMEs have to face.

The directive reflects the real need to find solutions to improve the competitiveness of European enterprises. This directive, when properly implemented by Member States, will contribute significantly to the liquidity of enterprises and therefore to employment and growth.

Commercial transactions with consumers are not covered by the directive.

What's new in commercial transactions between public authorities and businesses?

If you are a public authority you need to know that:

- You must pay for the goods and services that you procure within 30 days.
- If you do not pay within the deadline, you must pay interest at the statutory rate, in addition to reimbursing the creditor for the costs of recovering the late payment. You will not be given a reminder.
- The statutory interest rate for late payment will be at least 8 percentage points above the European Central Bank's reference. Public authorities are not allowed to fix a lower interest rate.
- If you have established a procedure of verification or acceptance in the contract, or if it is provided for by statute, the procedure cannot exceed 30 calendar days unless otherwise expressly stated in the tendering process and in the contract. In addition, the procedure must not be grossly unfair to the creditor.
- In very exceptional cases, the time limit for the payment period can be extended to a maximum of 60 calendar days.

These new measures are obligatory for public authorities. They have a responsibility to set a good example to the private sector and demonstrate their reliability and efficiency by honouring their contracts and paying on time.

If you are a business involved in a commercial transaction with a public authority, you need to know that:

1. When signing the contract:

- According to the new rules, the public authority must pay you for the goods or services you procure within 30 calendar days. Only in very exceptional cases can the public authority extend this period to a maximum of 60 calendar days. Any contractual clause that establishes a payment period that exceeds 60 days will be considered to be grossly unfair and will either be unenforceable or will give rise to a claim for damages.
- Any contractual term in the contract 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. Contractual terms that exclude compensation for recovery cost will also be presumed to be unfair.
- Verification and acceptance procedures should be expressly mentioned in the tender documents and in the contract. As a general rule, such procedures cannot exceed 30 calendar days unless otherwise expressly agreed and provided it is not unfair to you (the creditor).
- The late payment interest rate will be a minimum of 8 percentage points above the European Central Bank´s reference. This rate cannot be negotiated. Any rate below this threshold is in principle considered to be grossly unfair.

2. When facing late payment from a public authority:

- After the expiration of the payment period, which is 30 calendars days as a general rule, you are entitled, without the necessity of a reminder, to impose the late payment interest rate plus all recovery costs related to late payment, if you have not been paid. The late payment interest rate is fixed at a minimum of at least 8 percentage points above the European Central Bank's reference.

You are not obliged to, but you have the right to take these actions against your debtor.

What's new in commercial transactions between businesses?

If you are a business involved in a commercial transaction with another business, you need to know that:

- Businesses must pay their invoice within 60 days, unless expressly agreed otherwise and provided it is not unfair to the creditor.
- Businesses can also agree on the late payment interest rate provided it is not grossly unfair to the creditor. If nothing is agreed, the statutory interest rate applies (at least 8 percentage points above the European Central Bank's reference).

If you are a creditor:

In cases of late payment, you are entitled to claim interest for the late payment without a reminder. You can also request reimbursement of the recovery costs for the late payment. To stop any abuse of negotiation power, you have further opportunities under the directive to challenge grossly unfair contractual terms and practices.

You are not obliged to, but you have the right to take these actions against your debtor.

As a European business dealing with commercial transactions in another Member State, this directive should make your life easier. From now on your Member State will make public all relevant information on late payment including the interest rate that applies for the corresponding period. The Commission, with the assistance of the Member States, will publish online the interest rate for late payment.

Summary of new measures

- **Harmonisation of the period for payment by public authorities to businesses:** Public authorities will have to pay for the goods and services that they procure within **30 days** or, only in very exceptional circumstances, within **60 days**.
- **Contractual freedom in business to business commercial transactions:** Businesses will have to pay their invoices within **60 days**, unless they expressly agree otherwise and provided it is not grossly unfair.
- Businesses will automatically be entitled to **claim interest** for late payment and will also be able to obtain a minimum fixed amount of €40 as **compensation for recovery costs**. They can also claim compensation for all remaining reasonable recovery costs.
- The statutory interest rate for late payment will be increased to **at least 8 percentage points** above the European Central Bank's reference. Public authorities are not allowed to fix a lower interest rate for late payment.
- Businesses can **challenge grossly unfair contract terms** and practices more easily before courts.
- **More transparency and awareness:** Member States will have to publish the interest rates for late payment so that businesses have easy access to information on these rates.
- Member States are encouraged to establish voluntary codes of commitment for **prompt payment**.
- The other European provisions against late payment remain in force and have been revised to **simplify** ambiguous text and eliminate loopholes.
- Businesses are not obliged to, but have the right to apply the new measures. In some circumstances, a business may wish to extend the payment period for some days or weeks to maintain a **good commercial relationship** with a specific client.
- The new measures are obligatory for public authorities. They must lead by example and show their **reliability and efficiency** by honouring their contracts and paying on time.
- Member States may maintain or bring into force laws and regulations which are more **favourable to the creditor** than the provisions of the directive.

Attend a national seminar

As part of the pan-European information campaign to raise awareness of the issue of late payment and support early implementation by Member States of the Late Payment Directive, the Directorate-General for Enterprise & Industry is hosting a national seminar in each Member State of the European Union.

These information seminars are an opportunity for relevant parties to better understand the problem of late payment in their country, and to receive useful information, training and advice about the combative measures provided by the Late Payment Directive, and other statutory instruments.

The content for each national seminar includes:

- An introduction to the issue of late payment
- An overview of the Late Payment Directive
- An overview of business to business (B2B) and public authority to business (PA2B) transactions
- Transparency rules, unfair contractual terms and practices, and recovery costs
- Steps and instruments to overcome late payment in commercial transactions

There will be an opportunity to network over coffee and a buffet lunch.

Further information on these events and how to attend is available on our website **ec.europa.eu/enterprise/late-payment-campaign**

Further information:

Late Payment Information Campaign
ec.europa.eu/enterprise/late-payment-campaign

European Commission
Directorate-General for Enterprise and Industry
ec.europa.eu/enterprise

European Commission
Directorate-General for Justice
ec.europa.eu/justice

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Promoting growth and employment are primary objectives for the European Union. Europe's 23 million Small and Medium Enterprises (SMEs) are the lifeblood of Europe's economy, accounting for 99% of businesses. Over the past five years they have provided two thirds of private employment and created around 85% of new jobs. However, these are tough times for small firms; companies need a helping hand to weather the storm. In order to support growth and job creation, the European Commission is committed to making all necessary efforts to improve the business environment by a range of actions including improving access to finance, reducing red tape, and improving regulation for a more efficient internal market and to promote innovation.

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