



# ECMA Fact Sheet

## Industry Challenges: Late Payment Directive

### FIGHTING LATE PAYMENTS

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

The EU Late Payment Directive 2011/7/EU **on combating late payment in commercial transactions** has been adopted to combat late payment and to replace the old EU Directive 2000/35/EC.

The new Directive had to be transposed by the EU Member States into national law by **16 March 2013**.

The provisions of the new Directive include, among others:

- **Harmonisation of 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, in very exceptional circumstances, within 60 days.
- **Contractual freedom in businesses commercial transactions:** Enterprises will have to pay their invoices within 60 days, unless they expressly agree otherwise and if it is not grossly unfair.
- Enterprises will automatically be entitled to claim interest for late payment and will also be able to obtain a minimum fixed amount of € 40 as a **compensation for recovery costs**. They can 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 an interest rate for late payment below.

Member States may continue to maintain or to bring into force laws and regulations which are more favourable to the creditor than the provisions of the new Directive.

#### What does the new Directive do for businesses?

It is designed to combat late payment in commercial transactions to ensure the proper functioning of the internal market by:

- Harmonising and limiting payment terms
- Entitling suppliers to claim compensation and
- Interest in the event of late payment

Key considerations are:

- It relates only to commercial transactions between organisations
- Flexibility can be agreed between contracting parties

What does the Directive do?

- Payment terms capped at 60 days for purchases made by businesses, 30 days for purchases made by the public sector
- Acceptance and verification delays capped at 30 days
- Late payment interest at 8% above base rate
- A minimum late payment fee of € 40

What local variations can be applied?

- A higher rate of interest for late payment
- Inclusion of contracts concluded by 16 March 2013
- Reduced period for acceptance and verification
- A lower maximum payment term
- Higher payment term limits for certain Public Sector purchases
- Provisions for dealing with down payments already made

## Report on the implementation of Directive 2011/7/EU

On the 28<sup>th</sup> of August 2016 a Report on the implementation of Directive 2011/7/EU was sent from the Commission to the European Parliament and Council.

### Conclusions / recommendations:

- The Directive is at an early stage of its lifecycle. The improvements in average payment periods remain modest to date. Although companies are highly aware of their rights stemming from the Directive, usage of them is not yet widespread.
- Several factors appear to prevent an effective application of the Directive such as the lack of a common monitoring system, lack of clarity on some key concepts of the Directive and the market imbalance between bigger and smaller companies.
- However, the Directive is found to be coherent with other EU legislations and policies, is still relevant and has achieved EU added value.
- On this basis, it is recommended that the Directive is maintained in its current form and that more time is needed to allow all its effects to bear fruit.

The full report can be found here: <http://ec.europa.eu/DocsRoom/documents/18401>

Please find more background information about Directive 2011/7/EU and some useful links:

### Late Payment Directive 2011/7/EU

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:048:0001:0010:en:PDF>

European Commission website for Growth / Internal Market, Industry, Entrepreneurship and SMEs / Late Payment Directive [https://ec.europa.eu/growth/smes/support/late-payment\\_en](https://ec.europa.eu/growth/smes/support/late-payment_en)

