February 2014

EU Directive on Late Payment

What does the directive actually say?

Directive 2011/7/EU states:

- For all public bodies the standard term will be 30 days, with the exception of healthcare suppliers where the term will be 60 days

- For business to business transactions, where no term is specified the term will be implied to be 30 days

- For business to business transactions, where there is no formal contractual term trading may occur on a term of up to 60 days

- For business to business transactions, where the term is in excess of 60 days it must be documented in an agreed contract and is not deemed to be “grossly unfair” to the supplier. “Grossly unfair” has been defined as any gross deviation from good commercial practice, contrary to good faith and fair dealing. The effect will be that there will be limited circumstances where terms will be in excess of 60 Days

- It will still be possible to have terms in excess of 60 Days but this will only be allowed where there is contractually agreed payment installment plan

- The Directive’s instructions on payment terms are not retrospective, i.e. If there is a term in place in excess of 60 days that will not change unless the specific legislation in each EU Member state is retrospective

- In the event that an invoice is overdue for payment the supplier can charge €40 per invoice as an administration charge as well as charging interest at a rate of 8% over the ECB or other local central bank rate and claim any other relevant recovery charges e.g. the employment of a recovery agent

- If not expressly agreed otherwise, for the purposes of the calculation of overdue interest the payment term will be deemed to have begun at the point of invoice receipt by the customer

- Any contractual clause that seeks to prevent the charging of interest, the charging of the minimum €40 administration charge or the recovery of any other relevant collection costs will be automatically deemed to be “grossly unfair”

How do EU Directives work?

A European Union Directive is not in itself law. It is an instruction from the European Union to the Member states to implement a law that complies with the directive. Therefore the directive does not become law until the member state passes its own law. While Directive 2011/7/EU is fully implemented in all 27 member states, there are many directives that have never been implemented in all member states. It also follows that a directive is not the basis of any legal precedent if it is not passed legislation in the relevant member state. The final complication is that a directive only sets the minimum standard that each member state should pass into law. Therefore the member states are free to pass laws that are stricter than the directive. In such cases, a single member state’s law may be rejected by the European Court if that law is seen to be anti-competitive toward other member states. But to establish such a case can take many years and considerable funding to meander through legal process.

Individual Member State Legislation as at 16 March 2013

	Country	Variant?	Retrospective?
	Austria	No	No
	Belgium	No	No
	Bulgaria	Yes	No
	Cyprus	No	No
	Czech Republic	No	No
	Denmark	Yes	No
	Estonia	No	No
	Finland	No	No
	France	Yes	No
	Germany	Yes	No
	Greece	No	No
	Hungary	No	No
	Ireland	Yes	No
	Italy	No	No
	Latvia	No	No
	Lithuania	No	No
	Luxembourg	No	No
	Malta	No	No
	Netherlands	Yes	No
	Poland	No	No
	Portugal	No	No
	Romania	No	No
	Slovakia	No	No
	Slovenia	No	No
	Spain	No	No
	Sweden	Yes	No
	United Kingdom	Yes	No

Variants

	Country	Variants
	Bulgaria	If no payment term is specified then it is deemed to be 14 days after the invoice is received by the customer.
	Denmark & Sweden	The Danes and the Swedes decided on a law that is stricter than the directive. If the payment term is in excess of 30 Days it must be agreed in writing by both parties. The Danish and Swedish laws do not state a maximum term but imply that the longer the term is the more likely it will be that a court will deem the term to be grossly unfair.
	France	The French LME law has been declared compliant by the EU Commission. But the LME states that the maximum payment term can be 60 days or 45 after the end of month. The latter term means that a payment term could be as much as 75 days depending on the date of the specific invoice.
	Germany	According to German Civil Code section 270, where no payment term is specified then the payment immediately due on receipt of invoice.
	United Kingdom, Netherlands and Ireland	The British, Dutch and Irish decided to waive the ability to have payment terms in the healthcare sector up to 60 days. As a result the maximum term for all public bodies is 30 days.

Conclusion

While all would agree that this is welcome legislation, our opinion is that it is unlikely to make a dramatic difference to small companies in the short to medium term. The main reason is that the legislation is not retrospective. So if your contract is not time bound, the new directive may never apply to you. Secondly, there are very few places in Europe where charging interest for late payment is a common practice. In fact, legislation had been in place since 2001 allowing companies to charge interest for late payment that has had no detectable impact across the EU. Lastly, there is some skepticism about the ability of a number of Southern European countries public bodies to comply given the lack of funds available for the foreseeable future. It should also be noted that Croatia has transposed the law ahead of its accession to the EU in July 2013 and the EEA states of Norway, Iceland and Liechtenstein are required to transpose the directive. Under Switerland's trade agreement with the EU, they will also be required to transpose the directive.

About Informita

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