

EU Adopts Amended Late Payment Directive

In 2000 the EU adopted a Directive regarding late payment in commercial transactions and this directive was implemented in the UK through The Late Payment of Commercial Debts Regulations 2002.

In 2009 a report by the European Commission found that there was just under €2trn of late payments in the European economy, of which over a half was owed to small or medium businesses and so the Commission proposed replacing/amending the Late Payments Directive to try to deal with the continuing problem of late payments within the EU.

In October 2010 the European Parliament approved an amended directive and on 24 January 2011 the amended directive was formally adopted by the European Parliament

The new Directive will come into force twenty days after its publication in the Official Journal which as at 1 February 2011 has not yet been published.

The key amendments to the directive are summarised below:-

- 1) For business-to business payments, the general deadline is 30 days unless otherwise stated in the contract. It is possible, if both parties agree to extend payment terms up to 60 days. The period may be extended beyond 60 days only if "expressly agreed" by the parties in the contract and provided that it is not "grossly unfair to the creditor".
- 2) The standard deadline for public to business payments is 30 days. Payment can be extended up to 60 days only if it is "expressly agreed" and justified in light of the nature or feature of the contract or if the public entity is providing healthcare.
- 3) If purchasers default on the payment terms then the supplier will be entitled to interest at the statutory rate of 8% above the European Central Bank interest rate.
- 4) The supplier is also entitled to compensation costs from defaulting purchasers. Suppliers are entitled to charge €40 in relation to expenses incurred as a result of the late payment and may also be able to claim any reasonable recovery costs incurred.
- 5) Where a contract provides for a verification or acceptance period, the Directive provides that interest does not run until verification or acceptance has taken place.
- 6) Where payment is made by instalments, the late payment of an instalment will attract interest and compensation under the rules of the Directive but only in respect of that instalment and not the whole contract price.
- 7) Any clause in a contract which seeks to exclude interest for late payment or compensation is held to be grossly unfair and the Directive requires Member States to provide that such a clause is either unenforceable or gives a rise to a claim to damages.

Member States will be required to implement the Directive within 2 years of its coming into force although the European Parliament is encouraging Member States to begin adopting the Directive into national law from the beginning of this year.

It is hoped that this recast Directive will improve timely payments and thereby ease the cash flow burden on small and medium businesses. What remains important despite this Directive are the terms of the contract including any terms and conditions with regards to payment terms, interest rates applicable on late payments and the jurisdiction to apply in the event of a dispute are in place.

Please visit **Pitmans Insolvency & Restructuring** website for further information or contact our team direct.

Rachel Brown

Legal Executive

+44 (0)118 957 0502

rbrown@pitmans.com

Suzanne Brooker

Partner - Head of the Insolvency & Restructuring

+44 (0)118 957 0516

sbrooker@pitmans.com

<http://www.pitmans.com/insolvency-restructuring/>

Reading Offices:
47 Castle Street, Reading
Berkshire, RG1 7SR
T: +44 (0) 118 958 0224
F: +44 (0) 118 958 5097
DX 146420 Reading 21

The Anchorage
34 Bridge Street, Reading
Berkshire, RG1 2LU
T: +44 (0) 118 958 0224
F: +44 (0) 118 958 5097
DX 146420 Reading 21

London Office:
1 Crown Court
66 Cheapside
London, EC2V 6LR
T: +44 (0) 20 7634 4620
F: +44 (0) 20 7634 4621
DX 133108 Cheapside 2

www.pitmans.com

REGULATED BY THE SOLICITORS REGULATION AUTHORITY UNDER NO 57601.
A LIST OF PARTNERS IS OPEN TO INSPECTION AT 47 CASTLE STREET, READING
THE FIRM IS A MEMBER OF INTERACT EUROPE (A EUROPEAN NETWORK OF INDEPENDENT LEGAL PRACTICES)
VAT REGISTRATION NO GB199496974