

**NACM'S CREDIT CONGRESS 2013, MAY 19 – 22
(RIO HOTEL, LAS VEGAS)**

**ALTERNATIVE INTERNATIONAL FINANCING OPTIONS
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LATE PAYMENT INTEREST IN EUROPE

By

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MAIN PROVISIONS OF DIRECTIVE 2011/7/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 16 FEBRUARY 2011 ON COMBATING LATE PAYMENT IN COMMERCIAL TRANSACTIONS

This directive had to be transposed in member states at the latest on **16 March 2013**. Most EU countries have transposed it in their national legal system.

- . It applies to B2B transactions and also to B2public authorities transactions.
- . **In the absence of contractual provisions**, the standard deadline for payment of goods or services in **both the public and private sectors** is **30 calendar days** of the latest of receiving the creditor's invoice or (if such receipt is uncertain) receiving the goods or services. A period of 30 days, as from such receiving of goods or services, is granted to verify that the goods or services are in compliance with contractual terms, which can be extended if expressly agreed between the creditor and the debtor and provided it is not "grossly unfair to the creditor".
- . For **B2B payments**, the period for payment stipulated in the contract should not exceed **60 days**, unless parties expressly agree otherwise and if it is not "grossly unfair to the creditor".
- . For **B2public authorities**, deadline for payment is the above period of **30 calendar days**, but the parties can nevertheless **agree a payment period of up to 60 calendar days** where circumstances objectively justify it, in the light of the particular nature or features of the contract. As an exception, worth noting that for public entities providing healthcare, Member States may nevertheless decide to extend payment deadlines up to 60 days.
- . Interest rate for late payment may be freely negotiated between parties (subject to not being "grossly unfair to the creditor"). However, public entities cannot agree on a rate below the statutory interest rate below mentioned.
- . A **statutory interest rate for late payment** is applicable (if there is no agreement between the parties or if the interest rate negotiated between the parties is "grossly unfair to the creditor"). It is **at least 8% over the ECB (European Central Bank) rate for its most recent main financing operations** ("reference rate" as at 1 January for the first semester of the year in question or 1 July for the second semester of that year, as appropriate. The current reference rate being 0.75%, hence a minimum rate for late payment of **8.75%**). For a Member State whose currency is not the euro, the reference rate is the equivalent rate set by its national bank.
- . A **minimum fixed sum of 40 euros** is set as **compensation for recovery costs** (plus any reasonable compensation, if evidenced, for any recovery costs exceeding that sum, e.g. legal fees of debt collection agency fees).
- . Member States shall provide that a contractual term or practice relating to (i) the date or period for payment, (ii) the rate of interest for late payment, or (iii) the compensation for recovery costs is either unenforceable or gives rise to claim for damages if it is **"grossly unfair to the creditor"**.

In this respect, and as examples, stipulations excluding interest for late payment or compensation for recovery costs or which are contrary to good faith and fair dealing, as well as any gross deviation from good commercial practice, are considered as "grossly unfair".

This note is only a general summary. It is in no way intended to provide a legal or other advice.