

Enterprise Policy

TERMS OF PAYMENTS

Proposal for a Directive of the European Parliament and of the Council on combating late payment in commercial transactions - (Recast) implementing the Small Business Act, [COM\(2009\) 126 final](#) of 8.4.2009

Objective

To combat late payment by providing for a legal framework which will serve as a sufficient deterrent to bad payers, thereby ensuring that contractual payment periods are adhered. To ensure that reasonable payment periods are maintained in transactions where the contracting parties are not on equal footing, in particular public procurement contracts.

Relevance for the hospitality industry

Over 99% of hospitality businesses are SMEs. As such they are very vulnerable to late payments and abusive contractual terms related to payments.

State of progress

The proposal was issued on 8.4.2009.

It proposes to revise the existing Directive [2000/35/EC](#) on combating late payments in commercial transactions (Adopted on 29 June 2000 and to be implemented by 8 August 2002).

The proposal now has to be discussed by both the European Parliament and the Council. In the European Parliament, the Rapporteur released her draft report. The draft report is expected to be voted in Committee in April 2010.

For a detailed overview of the state of progress and related documents you can visit [PreLex](#) (European Commission) or [OEIL](#) (European Parliament).

Content

The draft Directive proposes to amend the existing Directive 2000/35/EC on terms of payments, in order to shorten payment periods.

The existing Directive 2000/35/EC contains measures to reinforce transparency in contractual relations, to ensure adequate compensation for late payments, to guarantee appropriate redress procedures, to eliminate difficulties specific to cross-border trade and to improve payment for public procurement contracts. Public and private sectors are placed on an equal footing; the provisions of the Directive will apply equally to both sectors.

The existing Directive 2000/35/EC was already providing that a payment was considered late when it was still due:

- After the date specified in the contract for the payment; or
- 30 days after the invoice was received; or
- 30 days after the provision of the good or service.

According to the existing the Directive 2000/35/EC, creditors were entitled to claim interests for late payments.

The Commission proposal suggests amending the existing Directive as follows:

- Creditors would be entitled to receive, in addition to the interests for late payments, a compensation for internal recovery costs (article 4);
- Public authorities will be obliged to pay invoices within 30 days. Past this period, creditors will be entitled to receive in addition to the interests for late payments and the compensation for recovery costs, a lump-sum compensation of 5% of the amount due (article 5);
- The possibility for Member States to exclude claims for interests of less than 5€ is removed;
- Rules on grossly unfair contracts are tightened (article 6).

For a detailed summary of the existing Directive 2000/35/EC you can visit the [SCADPlus](#) website (European Commission).

HOTREC position

HOTREC regrets that the Commission proposal:

- Fails to include Business to Consumer contractual relationships in its scope;
- Does not set a maximum date for making payment when public authorities exceed the 30 days period;
- Does not contain any obligation for public authorities to pay compensations, but only allow companies to claim them. There is therefore a great risk that small hospitality businesses will not use such possibility by fear of either loosing the contract or not obtaining new contracts with public authorities.

Official references

Proposal for a Directive of the European Parliament and of the Council on combating late payment in commercial transactions - (Recast) implementing the Small Business Act, [COM\(2009\) 126 final](#) of 8.4.2009

Commission staff working document - Accompanying document to the Proposal for a Directive of the European Parliament and of the Council on combating late payment in commercial transactions (recast) - Impact assessment, [SEC\(2009\) 315](#)

Directive [2000/35/EC](#) of the European Parliament and of the Council of 29 June 2000 on combating late payments in commercial transactions, O.J. L 200 of 08.08.2000

See also:

Draft report on the proposal for a directive of the European Parliament and of the Council on combating late payment in commercial transactions, Barbara Weiler, 4 February 2010, [PE438.475](#)

Communication from the Commission to the Council and the European Parliament concerning a New Legal Framework for Payments in the Internal Market (Consultative Document), Brussels, [COM\(2003\) 718](#) final of 2.12.2003

Working Document "A possible legal framework for the single payment area in the Internal Market", MARKT/208/2001 – Rev.1 of 07.05.2002

Website of DG Enterprise of the Commission, [specific section](#) on the Commission proposal

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