



**COUNCIL OF EUROPEAN MUNICIPALITIES AND REGIONS
CONSEIL DES COMMUNES ET REGIONS D'EUROPE**

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CEMR POSITION

**On the Directive on combating late
payments in commercial transactions
(recast)**

Brussels, November 2009

Proposal for a Directive of the European Parliament and of the Council on Combating Late Payment in Commercial Transactions

COM(2009) 126 final

Background:

Directive 2000/35/EC on late payments, in force since August 2002, has had limited impact in practice. In the context of the financial and economic crisis, the Commission intends to help in particular small and medium sized enterprises to get their invoices paid.

According to the Commission, surveys show that late payment occurs in particular where public authorities are involved and that they do not face the same financing constraints as businesses. Therefore late payment in their case could be avoidable and should be more severely sanctioned.

The Commission's proposal concerning public authorities (article 5) mainly concern three issues:

1. Public authorities should be treated differently than the private sector
2. Payment period should be limited to maximum 30 days for public authorities, unless otherwise specified and duly justified
3. When the payment period of the 30 days is exceeded, the creditor should be entitled to a lump sum compensation of 5% of the amount due, in addition to an interest rate charge and recovery costs.

The Commission's proposal would have a major impact on local and regional government and therefore we wish to express our view on these aspects.

CEMR recommendations

1. The same provisions for public authorities and for private enterprises (ie. businesses to business (B2B) payments) should fall within the scope of the sanctions).
2. The same payment period should apply for public authorities and private companies
3. A fairer and more proportionate pecuniary sanction with a progressive element, which starts low (or at zero) but increases over time, should apply to those who are late in making payments.

Introduction and General Remarks

1. CEMR takes note of the Commission's initiative, which aims to help small and medium sized companies to get their invoices paid within a reasonable period of payment, in particular during difficult economic and financial times.
2. Like the private sector, local and regional government are facing difficulties these days with reduced income from taxes or payments from national government or other sources. Furthermore, their expenses have increased in particular in relation to social services and related areas. This puts some of the local and regional authorities in very difficult situations.
3. We wish to ensure that local and regional authorities have an interest in good relationships with their suppliers and contractors who are often tax payers and relevant employers in their territory. Therefore, our interest is not to avoid good payment practice, but to look for improvements where they are still necessary.
4. Directive 2000/35/EC may not have achieved the desired effects, which means that there is a lack of monitoring successful application of existing legislation. Remedy lies not only in additional or stricter rules, but in increased enforcement measures, which should be more closely monitored by the Member States and the European Commission.
5. It would be worth and necessary to examine the reasons for late payments and look for solutions of these problems. As far as local and regional authorities are concerned, these are often justified by a careful spending policy and cautious control procedures of expenditures of tax payers' money.
6. With respect of the principles on subsidiarity and proportionality, the European Commission should better identify what needs to be regulated at European level and where joint action is necessary. A European directive should take into account existing rules at national level, provided that they have been applied effectively and achieved the set objective.

Payment Practice of Local and Regional Authorities

7. The statement that public authorities are bad payers is too general. In a number of EU Member States, local and regional authorities are more prompt than the figures outlined in the Commission's impact assessment.
8. Local and regional authorities depend to a great extent on transfers of funds from central government, which in their return require and apply strict expenditure procedures.
9. In addition to funding from national sources, delayed payments of European funds by the paying authorities, due to auditing and certification of the expenditures or other administrative procedures are also causing cash flow difficulties for local and regional authorities, when implementing major projects in the field of infrastructure or buildings.

10. CEMR member associations have made surveys to identify reasons for late payments and documented a broad range of reasons, which are presented hereafter.
11. Exceeding payment deadlines are not necessarily deliberate actions of the public authority concerned. Respecting formal procedures, including sound financial management and auditing of internal and external bodies can require some time.
12. Sometimes the delay is caused by the supplier / contractor when the responsible department is not correctly addressed or relevant information on the invoice is missing. Other delays can occur when the public authority needs to check the quality of work carried out, in a construction project for example.
13. It also happens that the invoices are dated wrongly (e.g. dated back to achieve a more rapid payment), or payment dates have already been exceeded when the invoice is received or are shorter than agreed.
14. In order to achieve the objective, which is a better payment practice in those cases where problems occur, it would be useful to exchange good practices and experiences on prompt payment, to introduce incentives and other positive actions.
15. Such measures should be promoted and encouraged instead of creating further regulation.

Specific Provisions for Public Authorities

16. CEMR is against specific and stricter provisions for public authorities. We believe that the statistical evidence that the Commission uses for its justification, is very general. We contest a general accusation of all public authorities, which does not differentiate between different levels of public authorities, cultural differences, national regulations, etc.
17. Unequal treatment of public authorities is an unfair measure and not justified given the fact that in the internal market context, public authorities are exposed to competition like private enterprises.
18. European Commission's data also show that businesses pay other businesses very late. SME's in particular may suffer long credit terms from larger businesses.
19. Furthermore, we wish to stress the EU's 'competitive neutrality' principle, which requires public sector and private sector to compete on the same basis.
20. We believe that it should be a generally accepted precondition for both, private and public sector that payments are to be paid in due time.
21. Therefore, instead of building mistrust between private companies and public authorities, both sides should work in partnership to improve their payment procedure.

Recommendation:

- The same provisions for public authorities and for private enterprises (ie. businesses to business (B2B) payments should fall within the scope of the sanctions).

Five Percent Flat Rate Penalty for Public Authorities

22. CEMR believes that the introduction of an uncapped 5% flat rate compensation penalty for public authorities in addition to both interest and recovery charges is disproportionate.
23. This measure, which would apply to late payments in general, could even discourage public authorities to pay promptly since the same percentage applies regardless the number of days they are exceeding the payment period (one day late is treated the same as 90 days late for example).
24. The flat rate compensation would amount to an inefficient use of public money, and would not address the underlying reasons why late payments from both the public and private sector continue in some cases.

Recommendation:

- A fairer and more proportionate pecuniary sanction with a progressive element which starts low (or at zero) but increases over time, should apply to those who are late in making payments.

Thirty Days Payment Period for Public Authorities

25. Again, a stricter provision for public authorities than for private companies is not justified. Limiting the maximum duration to 30 days unless agreed otherwise in the contract in specific circumstances, is an unequal treatment, which we are opposing.
26. The Commission proposal provides exemptions from the application of the 30 days payment period, but these provisions bear the risk to create uncertainty. Instead of elaborating further detailed conditions, the directive should concentrate on the general legal framework. With respect to the subsidiarity principle, it should be left to the Member States to specify the conditions under which a longer payment period is permitted.

Recommendation:

- The same payment period should apply for public authorities and private companies

Final Remark

27. CEMR appreciates that we have been invited to present our view at the public hearing of the Internal Market Committee in the European Parliament on 4 November 2009 and is interested in contributing to the further discussions on the relevant questions of the directive.

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